

Organization of Staff Analysts, 78 OCB 6 (BOC 2006) [Decision No. 6-2006
(Rep) (Docket No. AC-18-04).]

Summary of Decision: OSA filed a petition to accrete the title Systems Project Leader into its bargaining unit. DC 37 intervened and sought to accrete this title into its bargaining unit. The Board found that either bargaining unit would be appropriate and directed an election in order to ascertain the wishes of the employees as to their union representation. ***(Official decision follows.)***

**OFFICE OF COLLECTIVE BARGAINING
BOARD OF CERTIFICATION**

In the Matter of the Certification Proceeding

-between-

ORGANIZATION OF STAFF ANALYSTS,

Petitioner,

-and-

DISTRICT COUNCIL 37, AFSCME, AFL-CIO,

Intervenor,

-and-

**NEW YORK CITY HEALTH AND
HOSPITALS CORPORATION,**

Respondent.

DECISION AND DIRECTION OF ELECTION

On November 15, 2004, the Organization of Staff Analysts (“OSA”) filed a petition seeking to accrete the employees in the title Systems Project Leader (Title Code No. 03998H) (“SPL”) employed at the New York City Health and Hospitals Corporation (“HHC”) into its bargaining unit, Certification No. 3-88, which includes titles such as Supervising Systems Analyst, Systems Analyst,

Assistant Systems Analyst, and Senior Systems Analyst.¹ On February 25, 2005, District Council 37, AFSCME, AFL-CIO (“DC 37”) moved to intervene seeking to accrete the title into its bargaining unit, Certification No. 46D-75, which includes titles such as Systems Analyst (EDP), Senior Systems Analyst (EDP), Computer Programmer Analyst, Computer Associate (Software), and Computer Specialist (Software). HHC takes no position on which unit is appropriate for the title at issue. Pursuant to the New York City Collective Bargaining Law (New York City Administrative Code, Title 12, Chapter 3) (“NYCCBL”) § 12-309(b)(1), we find that the SPL title would be appropriately placed in either of the units sought. Accordingly, we direct an election in order to ascertain the wishes of the employees in this title as to their unit placement.

BACKGROUND

Systems Project Leaders

A hearing was held over five days. At the time the record in this matter was closed, there were 19 SPLs, who were employed at the following facilities: Jacobi Medical Center (“Jacobi”), Elmhurst Hospital Center (“Elmhurst”), Woodhull Medical and Mental Health Center (“Woodhull”), Kings County Hospital Center (“Kings”), and Lincoln Medical and Mental Health Center (“Lincoln”). These employees work in three divisions within HHC, the Information and Technology (“IT”) Division, the Finance Division, and the Radiology Division. According to the HHC Position Description for the SPL title (“Position Description”), SPLs are “responsible for assigned projects where he or she performs and directs analysis of existing and proposed systems and procedures, their

¹ Although a showing of interest is not required in an accretion matter, OSA witnesses testified that OSA obtained cards from the majority of the employees in this title. OSA did not submit these cards to the Trial Examiner.

costs and operational objectives as they are related to E.D.P. [electronic data processing].” They also determine “benefits to be derived by computerization of existing systems or the development of new systems.” In addition, SPLs plan and supervise “the design of major systems or subsystems.”

According to the Position Description, the typical tasks of SPLs are:

1. Leads and performs feasibility studies and analyses of requests for new systems development or for changes or extensions to existing systems and applications.
2. Plans the fulfillment of approved systems design and development projects by scheduling each step of the project through completion and determining budgets of manpower, time and costs
3. Requests and assembles teams of systems analysts and other technical and professional personnel within the Information Systems Department in sufficient strength to ensure the successful fulfillment of projects.
4. Leads and directs the activities of project teams in the execution of surveys, analysis, systems design development and documentation.
5. Instructs project teams members in the objectives of specific systems and applications under development, and in the function of operations of those user hospitals or departments, for which specific systems are being developed.
6. Maintains strong liaison with the management and other key personnel in hospitals or user departments of the Corporation, and with appropriate consultants and contractors engaged by the Corporation, with respect to systems design and development projects
7. Monitors regularly and frequently the progress of the projects under his supervision, measures the contribution of individual team members, reports progress according to project control methods . . . and takes action to correct slippages in scheduled completion of project tasks and overruns of project budget.
8. Maintains a high level of technical and professional competence . . . with regard to the latest E.D.P. technology and applications of computers and related devices in the field of health care

The qualification requirements listed on the Position Description include:

a baccalaureate degree in mathematics, business administration, accounting or similar

fields, plus five years of full time paid experience in data processing . . . ; and broad knowledge of computer or communications hardware capabilities, programming languages, E.D.P. applications, systems analysis methodology, data management and information retrieval technique; or an acceptable combination of comparable education and experience.

In general, SPLs are capable of working in network design, network applications, and network management. They can be responsible for troubleshooting the network, repairing hardware and software problems, maintaining existing systems, installing new applications, and managing specific projects related to the above duties. Further, they are capable of working on security issues or database application development and support. In doing so, SPLs may interact with Supervising Systems Analysts, Systems Analysts, Assistant Systems Analysts, and Senior Systems Analysts, who are represented by OSA, and Systems Analysts (EDP), Senior Systems Analyst (EDP), Computer Programmer Analysts, Computer Associates (Software) and Computer Specialists (Software), who are represented by DC 37. The salary for SPLs range from \$38,012 to \$79,790.

To explain some of the technical complex terms used in the Position Description and to offer a broad overview of this title, DC 37 offered the testimony of Peter Jablin, who is the Secretary of DC 37, Local 2627 (“Local 2627”).² He has been in the employ of the City of New York for over

² While OSA objected to the testimony of Jablin because he allegedly lacked the requisite expertise to testify as an expert witness concerning the Position Description, the Trial Examiner allowed the testimony because it was relevant. In OSA’s Post-Hearing Brief, it argued that expert testimony is not admissible in unit placement proceedings. OSA requests that this Board overturn the Trial Examiner’s ruling, strike the testimony from the record, and not rely upon the testimony in its determination. We affirm the ruling of the Trial Examiner. Although Trial Examiners are not bound by the rules of evidence, they “may be guided in the conduct of the hearings by the Federal Rules of Evidence.” *See United Probation Officers Ass’n*, Decision No. B-12-88 at 22-23. In this instance, we find that Jablin’s lay opinion provided relevant background information related to the SPL title, explained highly technical terms utilized in the Position Description, and facilitated our understanding of the facts of this case. *See United States v. Garcia*, 413 F.3d 201, 213-214 (2nd Cir. 2005) (according to Federal Rule of Evidence 701(b), “lay opinion may be received in evidence only (continued...)”) (continued...)

20 years, has held Staff Analyst and Associate Staff Analyst positions, and currently holds the civil service title of Computer Specialist (Software). Having worked in the area of title classification for over 13 years, he is familiar with job specifications. Based upon his examination of the Position Description, Jablin testified that SPLs engage in duties that require sophisticated knowledge and expertise in electronic data processing because SPLs are required to, *inter alia*, perform feasibility analyses for development of new systems or extensions of existing systems, which require checking the compatibility of various software and hardware products with new and existing systems. In addition, Jablin testified that SPLs must maintain specific and technical documentation regarding ongoing projects that contain information concerning the “behind-the-scenes” programs being utilized to run certain systems and must be able to understand the systems that are used when the programs are running.

Edward Hysyk, President of Local 2627, also testified. Based upon his review of the Position Description and his own personal knowledge of the SPL title, he stated that SPLs must be familiar with various computer applications, must know programming languages, and must be able to engage in information retrieval techniques. In addition, Hysyk testified that SPLs’ duties include: application development to support a database, network design, network management, installation of new applications and ensuring their functionality with existing applications, administration of visual databases, management of security protocols and passwords, and establishing various routing systems from the HHC computer network to the end users.

Out of the 19 SPLs, testimony was offered concerning nine. We consider these nine

²(...continued)
if it is helpful to the jury’s clear understanding of the witness’ testimony or the determination of a fact in issue”).

employees and SPLs to be representative of all employees in the SPL title.

Sergey Ginzburg works in the IT Division at Jacobi and reports to Margaret Broderick, the Director of Systems and Programming in the North Central Bronx Health Care Network. He designs and develops applications for end users within HHC. Thus, he is in constant contact with nurses, doctors, administrative personnel, and other end users who utilize the HHC computer network and mainframe. He also leads a team of two outside contractors.

Norma Pace is a SPL working in the IT Division at Jacobi and is also supervised by Broderick. Pace is responsible for developing new security measures for the HHC computer network. The security measures include increasing the HHC computer network's privacy and confidentiality capabilities and administering passwords and security authorizations. She also manages the security software training for end users.

Linda Smith is a SPL working in the IT Division at Jacobi, is supervised by Daniel Morealli, and is working exclusively on a project involving the HHC computer network's compliance with the Health Insurance Portability and Accountability Act ("HIPAA"). As such, she has been designated as the HIPAA privacy officer for Jacobi. She is responsible for implementing HHC's current policies and procedures concerning HIPAA by installing onto the computer network a program, which must be compatible with existing programs on the computer network. Prior to this project, Smith led the Help Desk project.

Hector Muniz works in the IT Division at Jacobi and reports to Craig Franklin. He coordinates the installation of new servers within the HHC computer network and ensures that all the appropriate applications are installed and functioning properly. To accomplish such installations, Muniz is authorized to open ports to the HHC computer network that grant the necessary access to

the end users. On occasion, he works with a team that consists of employees in the Computer Associate and Systems Analyst titles. Muniz is also responsible for backing-up data on the HHC computer network and copying data from the servers used by HHC.

Robert Rico is a SPL in the IT Division at Jacobi and also reports to Franklin. He testified that he oversees technical service teams, which are responsible for installing new computer applications and repairing existing applications on the HHC computer network and the computers of the end users. These teams are comprised of employees in the Computer Aide, Computer Associate, and Systems Analyst titles. In addition, he performs upgrades of existing network systems and “walk throughs,” which are visits to prospective locations to ensure that the area has adequate electricity and connectivity to house the intended computer equipment. (Tr. 46.)³

Thomas Troina is a SPL in the Radiology Division at Jacobi and is supervised by Marie Schepis. His main duties involve working with the Picture Archive Communication System (“PACS”), which digitizes the image of an x-ray or MRI. Troina is responsible for ensuring that PACS operates in an effective and efficient manner and for repairing the system if problems arise, either due to a hardware or software issue. In addition, he trains end users, such as doctors, nurses, and technicians, on PACS. He interacts with SPL Rico and employees in the Computer Associate and Network Administrator titles. His position requires advanced knowledge of: computer hardware and software applications; the HHC computer network; Windows-based, Oracle-based, and Impax-based programs; and equipment specific to radiology, such as CAT scan devices, and x-ray consoles.

Bonita Simmons works in the Finance Division at Jacobi and is supervised by Eddie Aponte, the Director of Programming and Financial Systems. Prior to becoming a SPL, she worked as a

³ “Tr.” refers to citations from the hearing transcript.

Systems Analyst. Simmons is responsible for managing the document imaging software, as well as training employees in the Health Care Planning Program Analyst, Senior Systems Analysts and Assistant Systems Analyst titles on use of such programs. She also maintains the applications used to register patients. In addition, she provides assistance to the Help Desk when issues involving document imaging arise. She regularly interacts with the IT, Nursing, and Clinical divisions.

David Vega, who was a Senior Systems Analyst prior to his promotion to the SPL title, currently works at Elmhurst and is supervised by Samuel Shutman, the Associate Executive Director of Finance. His major duty is to maintain and manage a program called "Unitygrabber," which automates the user input into the HHC computer network. He also creates programming codes and databases for various departments, including the Managed Care and Patient Accounts Divisions. He also routinely works with Senior Systems Analysts and provides them with the necessary security clearance if their projects require access to restricted portions of the HHC computer network. Finally, he stated that, when he is absent, no other HHC employee can perform his job.

Tyson Lillard works in the IT Division at Woodhull and reports to Whitney Mayberry, the Associate Director of IT. His main duties are supervising the Help Desk and maintaining the Virtual Print Service, which is a program that allows end users to view and download medical records onto their computers from the HHC computer network. Lillard regularly interacts with the IT, Admissions, Radiology, Statistics, Personal Accounts, Medical Communications, and Medical Records divisions concerning the Virtual Print Service. He ensures that these divisions have proper connectivity and access to patient records. On occasion, he works with HHC employees in the Computer Aide, Systems Analyst, Supervisor Systems Analyst, and Senior Systems Analyst titles.

The Bargaining Units at Issue

OSA's bargaining unit includes titles such as Supervising Systems Analyst, Senior Systems Analyst, Systems Analyst, and Assistant Systems Analyst.

According to the position description for the Supervising Systems Analyst title, the purpose of the position is to: perform complicated systems studies and investigate; analyze; and design systems. As such, an employee in this title analyzes critical situations to develop alternate solutions, reviews feasibility of automated systems, develops training programs, and directs, prepares, develops, and modifies complex systems to optimize resources. The salary of this title begins at \$39,113. OSA offered the testimony of a Supervising Systems Analyst who works at Woodhull and is supervised by SPL Lillard. Her main duties include inputting data, updating master computer files, generating computer reports, researching problems in the HHC computer network, and providing end users with advice and assistance. In addition, she also performs some software installation and general troubleshooting.

The Senior Systems Analyst title "develops, implements, analyzes, maintains, monitors and modifies existing and proposed systems, sub-systems and parallel systems in order to effectuate optimization of operations." (Petitioner's Ex. 5.) A Senior Systems Analyst conducts studies, surveys, and analyses of existing operational systems; develops plans for the implementation of new and parallel systems and subsystems; and maintains the improvements to the systems to ensure efficacy and efficiency. The salary range for the Senior Systems Analyst is \$31,949 to \$59,677.

The Systems Analyst title is required to implement newly designed systems and revise existing systems, methods, and procedures to increase effectiveness. This title's duties include utilizing industrial engineering techniques to establish performance standards and to analyze

alternative means of deriving input. A Systems Analyst also must participate in the training of staff in new programs, determine whether existing systems meet operational needs, and monitor and modify existing operational systems. The salary range for the Systems Analyst title is \$28,884 to \$53,046.

The purpose of the Assistant Systems Analyst title is to assist in the preparation and conduct of administrative and procedural studies, to assist in the preparation of industrial engineering studies, to make reports and evaluations, and to coordinate specific projects. An employee in this title studies and analyzes existing systems, collects management information regarding these systems, makes recommendations to improve these systems, and participates in the incorporation of any changes to these systems. The salary for this title ranges from \$26,691 to \$49,424.

DC 37's bargaining unit includes titles such as Senior Systems Analyst (EDP), Systems Analyst (EDP), Computer Programmer Analyst, Computer Associate (Software), and Computer Specialist (Software).

As set forth in the position description, an employee in the Senior Systems Analyst (EDP) title develops, implements, maintains, monitors, and modifies "existing and proposed systems, sub-systems and parallel systems to effectuate optimization." (Intervenor's Ex. 5.) The duties of a Senior Systems Analyst include conducting surveys and analyses of existing operational systems and making recommendations on the modification of those systems to increase efficiency. Further, an employee in this title prepares, develops, and designs procedures for the implementation of new and parallel systems and sub-systems and develops new systems in accordance with operational objectives and needs. The salary range for this title is \$31,949 to \$59,677.

According to the position description for the Systems Analyst (EDP) title, the purpose of the

position is to implement newly designed systems and parallel systems, revise systems, methods and procedures and modify and improve existing systems, in order to optimize effectiveness. An employee in this title must study and analyze existing systems, procedures, and methods to determine whether they meet operational needs. They also participate in the training of staff, recommend improvements to existing systems, and implement existing systems and sub-systems. The salary range for this title is from \$28,884 to \$53,046.

The purpose of the Computer Programmer Analyst title is to develop computer programs and perform whatever ordinary or complex work such development requires. Some typical tasks performed by employees in this title include: coding program instructions, assisting in surveys and feasibility studies, meeting with end users and training them in the newly developed programs, and modifying existing programs to accommodate changing needs. The salary range for the Computer Programmer Analyst title is \$41,566 to \$59,080.

According to the position description for the Computer Associate (Software) title, an employee in this title is responsible for the “design, implementation, enhancement and maintenance of computer applications, systems or data base programming and/or data communications systems,” such as the Data Base Management Systems, Operating Systems and other related software functions. (Intervenor’s Ex. 9.) Employees in this title are engaged in complex and technically difficult work relating to the above programs. The salary range for this job title is from \$54,031 to \$79,096. DC 37 offered the testimony of a Computer Associate Level III, who works at Jacobi in the IT Division and is supervised by Franklin. He regularly interacts with five other SPLs concerning various matters such as security rules and regulations, HIPAA compliance, hardware issues throughout HHC, and connectivity. As support staff to SPLs during the course of their

respective projects, he performs troubleshooting, installs hardware and software, and ensures that the HHC computer network remains secure.

The Computer Specialist (Software) title encompasses “highly technical . . . responsibilities for the design, implementation, enhancement, maintenance and analysis of software systems.” (Intervenor’s Ex. 11.) Employees in this title may maintain, design, and implement various computer systems and their related software and may perform such highly complex and technical work independently. They may also

in a multi-programming computer system, serve as a project leader performing complex staff work and the full range of computer systems analysis functions utilizing general software and software systems analysis in highly complex systems development projects, or supervises the activities of a number of applications programming units engaged in work of more than ordinary difficulty, complexity and responsibility in a multi-programming electronic computer installation.

(Intervenor’s Ex. 11). The salary range for the Computer Specialist (Software) title is from \$66,489 to \$96,620.

Related Representation Proceedings

On June 4, 1979, DC 37 filed an accretion petition, docketed as RU-710-79, seeking to add the Assistant Systems Analyst, Systems Analyst, and Senior Systems Analyst titles (collectively, “Systems Analyst Series”) and the Supervising Systems Analyst title. Thereafter, various other unions, including OSA, made applications to intervene in the proceeding. On December 1, 1994, the parties still remaining in the proceeding executed a stipulation stating that “employees serving in the titles Assistant Systems Analyst, Systems Analyst and Senior Systems Analyst” would be placed in OSA’s bargaining unit; “employees serving in the titles Assistant Systems Analyst (finance), Systems Analyst (finance) and Senior Systems Analyst (finance)” and “in the titles

Assistant Systems Analyst (EDP), Systems Analyst (EDP) and Senior Systems Analyst (EDP)” would be placed in DC 37’s bargaining unit. However, the remaining title of Supervising Systems Analyst was deemed confidential and, thus, excluded from collective bargaining for two years from the execution of the stipulation. In *District Council 37*, Decision No. 12-94, the Board of Certification (“BOC”) amended the respective certifications as requested by the stipulation.

OSA and DC 37 have conflicting accounts regarding the manner and method in which these two parties agreed to divide these titles.

According to Robert Croghan, the Chairperson for OSA, who was duly elected in 1984, OSA “got cards from assistant systems analysts, systems analysts, senior systems analysts and supervising systems analysts,” subsequent to 1979. (Tr. 357.) After obtaining these cards, “we [OSA] asked to pick up the systems analysts, and everybody else intervened.” (Tr. 358). Then, rather than engage in another protracted litigation, the unions involved decided “to work out some kind of arrangement.” (Tr. 358.) Croghan testified that “OSA picked up 60 percent [of the employees in the Systems Analyst Series] because we [OSA] had done all the work.” (Tr. 359.) The remaining percentages of the employees in the applicable job titles were split between DC 37, Local 1407, which received “30 percent,” and DC 37, Local 2627, which received “10 percent.” (Tr. 359.) According to Croghan, there was no other basis for this division by percentages because the duties of every employee serving in these titles severely overlapped. This arrangement was then memorialized in the Stipulation that was adopted in *District Council 37*, Decision No. 12-94.

According to Hysyk, DC 37, OSA, and HHC began negotiating a stipulation to resolve the dispute over the Systems Analyst Series titles and the Supervising Systems Analyst title in May 1994. Hysyk testified that “position papers,” which were informal questionnaires, were distributed

to the over 500 employees in the Systems Analyst Series. (Tr. 390.) These documents asked for an employee's official title, his/her supervisor's official title, his/her unit and department, his/her major duties, and the amount of time spent performing each major duty. (Intervenor's Ex. 16.) These questionnaires were then collected from the employees. Hysyk testified that the parties, using these questionnaires as a basis for placing employees in the appropriate union, determined which employees would be placed in each union.

If they were doing the majority of the work and the tasks involved accounting and bookkeeping, they were supposed to be assigned to Local 1407 If they were doing computer work, working with computers in the sense of installation, programming, troubleshooting, so on, so forth, they belonged to my local [Local 2627] If they did pure systems analytical type of work, studies and things like that, they were supposed to be assigned to OSA.

(Tr. 398.) In sum, Hysyk stated that the division of the employees in the Systems Analyst Series was based upon analyzing their duties and tasks and not based upon percentages.

After the requisite two year period set forth in *District Council 37*, Decision No. 12-94, OSA filed a petition to accrete the Supervising Systems Analyst title on December 10, 1996. HHC opposed the petition on the basis that the employees in this title were confidential. DC 37 moved to intervene in this proceeding claiming that they were the appropriate bargaining unit for the Supervising Systems Analyst title. Following a hearing, the BOC issued *Organization of Staff Analysts*, Decision No. 1-2000, finding that Supervising Systems Analysts have similar responsibilities, duties, and salary range as the employees represented by both OSA and DC 37. Therefore, a community of interest existed between the title and both OSA and DC 37, and "either party [OSA or DC 37] may sufficiently represent the SSAs [Supervising Systems Analysts]." *Organization of Staff Analysts*, Decision No. 1-2000 at 16. As such, the BOC ordered an election,

which was subsequently won by OSA.

POSITIONS OF THE PARTIES

OSA's Position

OSA contends that the SPL title should be accreted to its bargaining unit because this title has a strong community of interest with those titles already represented by OSA. SPLs regularly deal with employees from the Systems Analyst Series titles, and there is considerable overlap with the duties of the Supervising Systems Analyst title. These two titles also share required skills and training and have similar pay scales. In addition, OSA argues that the history of bargaining involving other very closely related titles is determinative and demonstrates that OSA is the proper bargaining unit. Since OSA represents approximately 60% of the employees in the Systems Analyst Series titles, many of which routinely perform computer-related tasks, and the Supervising Systems Analyst title, which is the title most closely related to the SPL title, OSA is the appropriate unit. Finally, OSA asserts that, since it recruited this title, obtained signature cards from a majority of the employees in the SPL title, and filed the petition to represent them, the inclusion of this title in OSA's bargaining unit would assure the fullest freedom in the exercise of these employees' rights.

In the alternative, OSA contends that a self-determination election should be held for the employees in the SPL title. A number of the duties and qualifications of the SPLs compare favorably to the duties and qualifications of employees in the Systems Analyst Series titles represented by OSA and DC 37. Thus, if it is found that both OSA and DC 37 share a strong community of interest with the SPLs, then an election should be held.

DC 37's Position

DC 37 argues that the SPL title should be accreted to the bargaining unit represented by DC 37, Local 2627, which is also known as the EDP Unit. This specific unit of DC 37 represents approximately 10% of the employees in the Systems Analyst Series titles, and its other titles include Computer Programmer Analyst, Computer Associate (Operations), Computer Associate (Software), and Computer Specialist (Software). Due to the SPLs' exclusive work with computer hardware and software, computer applications and programs, and HHC's computer network, servers, and routers, this computer-intensive unit of DC 37 is the most appropriate bargaining unit for the SPL title because of the strong community of interest.

Furthermore, DC 37 contends that the SPL title should remain separate from the Supervising Systems Analyst title because such an accretion would result in an "irrational" labor environment. Specifically, based upon the testimony of the Supervising Systems Analyst, this title currently makes more money than SPLs, even though SPLs direct, oversee, and review the work of the Supervising Systems Analysts.

Finally, DC 37 asserts that no election should be ordered because DC 37 has demonstrated a strong community of interest with the SPLs, while OSA has failed to demonstrate that the titles represented by OSA are as computer-oriented as the title in question. The titles represented by DC 37, Local 2726, and the SPL title are exclusively centered on computer duties and electronic data processing functions. Thus, where the evidence demonstrates that one bargaining unit is more appropriate than the other, an election is not proper, regardless of the desires of the current employees in that title.

HHC's Position

HHC concedes that the SPL title is eligible for collective bargaining and takes no position on which unit is appropriate for the title.

DISCUSSION

We must determine whether it is appropriate to add the title of SPL to the bargaining unit represented by OSA or the bargaining unit represented by DC 37. Based on the record presented, we find that either of the petitioned-for units is appropriate, especially since the SPL title is comparable to the Systems Analyst Series titles, representation of which was divided among these two unions. Therefore, we direct an election in order to ascertain the employees' preference for representation.

Section 12-309(b)(1) of the NYCCBL provides that this Board shall have the power and duty:

to make final determinations of the units appropriate for purposes of collective bargaining between public employers and public employee organizations, which units shall be such as shall assure to public employees the fullest freedom of exercising the rights granted hereunder and under executive orders, consistent with the efficient operation of the public service, and sound labor relations

The Rules of the Office of Collective Bargaining (Rules of the City of New York, Title 61, Chapter 1) ("OCB Rules") § 1-02(k), which is designed to implement NYCCBL §12-309(b)(1), sets forth criteria that we apply in making determinations of appropriate unit placement of employees.

OCB Rule § 1-02(k) provides:

In determining appropriate bargaining units, the Board will consider, among other factors:

- (1) Which unit will assure public employees the fullest freedom in the exercise of the rights granted under the statute and the applicable executive order;

- (2) The community of interest of the employees;
- (3) The history of collective bargaining in the unit, among other employees of the public employer, and in similar public employment;
- (4) The effect of the unit on the efficient operation of the public service and sound labor relations;
- (5) Whether the officials of government at the level of the unit have the power to agree or make effective recommendations to other administrative authority or the legislative body with respect to the terms and conditions of employment which are the subject of collective bargaining;
- (6) Whether the unit is consistent with the decisions and policies of the Board.

When deciding whether there is a community of interest, we consider a number of factors, including but not limited to: (a) the job duties and responsibilities of the employees; (b) their qualifications, skills, and training; (c) interchange and contact; (d) wage rates; (e) lines of promotion; and (f) organization or supervision of the department, office, or other subdivision. *See, e.g. Local 508, District Council 37, AFSCME*, Decision No. 16-93 at 24; *Unif. Firefighters Ass'n*, Decision No. 7-91 at 24; *Corr. Captains Ass'n*, Decision No. 11-90 at 22-23. This list is not exclusive and none of the factors necessarily is controlling. We consider each case individually and balance the various factors to determine where the greater community of interest lies.

Here, accretion to either of the two bargaining units would be appropriate. Taken as a whole, the factors we consider do not weigh in favor of one bargaining unit over the other. SPLs share a community of interest with employees in each of the two bargaining units.

The job duties and responsibilities of SPLs are similar to those of the titles represented by both OSA and DC 37. Similar to the Supervising Systems Analysts and the Senior Systems Analysts, represented by OSA, employees in the SPL title perform studies of existing systems and

analyze these systems in order to possibly develop new systems. These tasks and duties are also performed by employees in the Senior Systems Analyst (EDP) and Computer Programming Analyst titles, represented by DC 37. In addition, like SPLs Ginzburg, Smith, and Pace, each of whom install new programs onto HHC's computer network and train end users in the usage of the new programs, Systems Analysts, represented by OSA, and Systems Analysts (EDP), represented by DC 37, implement newly designed systems and train others on the usages of these systems. Furthermore, similar to Senior Systems Analysts, represented by OSA, and Senior Systems Analysts (EDP), represented by DC 37, SPLs Rico, Lillard, and Troina are responsible for maintaining and repairing existing systems such PACS and the Virtual Printing Service program. Finally, SPLs Rico, Muniz, and Simmons upgrade and improve upon the existing programs on HHC's computer network, much like the Supervising Systems Analysts and Systems Analysts, represented by OSA, and the Computer Specialists (Software) and Computer Associates, represented by DC 37. While each represented title also performs tasks that the SPLs do not, there is a significant overlap in duties. *See Local 371, Social Serv. Employees Union, District Council 37, AFSCME*, Decision No. 1-2005 at 27 (finding accretion appropriate to bargaining units with titles whose tasks include some of those of the petitioned-for titles); *Communications Workers of America*, Decision No. 11-90 at 26 (finding accretion to any of the three proposed bargaining units appropriate when each of the unions represented employees doing some of the tasks of the title at issue).

There is also considerable contact between some SPLs and other HHC employees who are represented by OSA and DC 37, particularly the employees in the Systems Analyst Series titles, which are represented by both OSA and DC 37. According to SPL Rico, the service teams he supervises consist of Computer Associates, represented by DC 37, and Systems Analysts,

represented by both OSA and DC 37. When SPL Muniz supervises teams that are responsible for installing new servers and other hardware, he works with Computer Associates, represented by DC 37, and Systems Analysts, represented by both OSA and DC 37. SPL Vega routinely works with Senior Systems Analysts, represented by both OSA and DC 37, because he provides them with security clearance to restricted portions of HHC's computer network when their projects require such access. SPL Simmons regularly works with Systems Analysts, represented by both OSA and DC 37. She also has trained Senior Health Care Planning Program Analysts, represented by OSA, and Senior Systems Analysts and Assistant Systems Analysts, represented by both OSA and DC 37, in the use of the document imaging software used by HHC. According to SPL Lillard, he routinely trains Computer Aides, represented by DC 37, Supervising Systems Analysts, represented by OSA, and Systems Analysts and Senior Systems Analysts, represented by both OSA and DC 37, in the Virtual Print Service program. SPL Troina regularly interacts with Computer Associates, represented by DC 37, with respect to the PACS program. In addition, both the Supervising Systems Analyst, represented by OSA, and the Computer Associate Level III, represented by DC 37, testified that they routinely work with SPLs. As demonstrated above, SPLs interact with employees represented by OSA and employees represented by DC 37.

The wage rates of SPLs overlap with those of the titles represented by OSA and DC 37. SPLs earn between \$38,012 to \$79,790. Titles in OSA's bargaining unit earn between \$26,691, the starting salary for an Assistant Systems Analysts, and \$59,677, the maximum salary for a Senior Systems Analyst. The titles represented by DC 37 earn between \$28,884, which is the starting salary for a Systems Analyst (EDP) to \$96,620, the maximum salary for a Computer Specialist (Software).

In sum, since the duties and responsibilities of the SPLs are similar to the ones exhibited by

employees represented by both OSA and DC 37, there is significant interaction between the SPLs and employees represented by both OSA and DC 37, and the salary ranges of the SPLs and employees represented by both OSA and DC 37 overlap, we find that the SPL title shares a community of interest with employees represented by OSA and DC 37.

When competing unions establish a community of interest between the petitioned-for title and pre-existing unit titles, the Board has found that it cannot determine which unit is more appropriate. *See Local Lodge No. 5 Int'l Bhd. of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL-CIO*, Decision No. 7-91 at 25-31 (skills, qualifications, and duties of the title at issue overlapped with employees in both petitioned-for units); *Communications Workers of America, AFL-CIO*, Decision No. 11-90 at 25-28 (principal job tasks of three pre-existing titles overlapped with the new titles' tasks, and each competing union already represented employees doing similar work). In such instances, the Board has stated that the purposes and policies of the NYCCBL are best served by ascertaining the employees' representation wishes in order to determine unit placement. *Org. of Staff Analysts*, Decision No. 1-2000 at 17.

Since NYCCBL § 12-309(b)(2) authorizes the Board to conduct secret-ballot elections to determine the majority representative of the public employees in an appropriate collective bargaining unit and to certify the same as the exclusive bargaining representative, we direct that an election be conducted among employees in the SPL title with OSA and DC 37 appearing on the ballot.⁴ The

⁴ NYCCBL § 12-309(b)(2) provides, in pertinent part:

The board of certification . . . shall have the power and duty:

(2) to determine the majority representative of the public employees in an appropriate collective bargaining unit by conducting secret-ballot elections or by utilizing any other appropriate and suitable method designed to ascertain the free choice of a majority of such employees, to certify the same as the exclusive bargaining

(continued...)

SPL title will be added to the bargaining unit represented by the union that receives a majority of the valid ballots cast. If either Petitioner or Intervenor does not desire to participate in an election, it may decline to do so by making a request in writing to the Director of Representation, within ten days after service of this Decision and Direction of Election.

⁴(...continued)
representative thereof; to designate representatives; and to determine the length of time during which such certification or designation shall remain in effect and free from challenge or attack

ORDER AND DIRECTION OF ELECTION

Pursuant to the powers vested in the Board of Certification by the New York City Collective Bargaining Law, it is hereby

ORDERED, that the employees in the title Systems Project Leader (Title Code No. 03998H) are eligible for collective bargaining; and it is further,

DIRECTED, that as part of the investigation authorized by the Board, an election by secret ballot be conducted under the Board's supervision, at a date, time, and place to be fixed by the Board, among the employees in the title of Systems Project Leader employed by the New York City Health and Hospitals Corporation to determine whether these employees wish to be represented by the Organization of Staff Analysts or District Council 37, AFSCME, AFL-CIO, for the purposes of collective bargaining and thereby be added to the bargaining unit represented by the Organization of Staff Analysts in Certification No. 3-88 or the bargaining unit represented by District Council 37, AFSCME, AFL-CIO, in Certification No. 46D-75. Employees in the title Systems Project Leader employed during the payroll period immediately preceding this Decision and Direction of Election, other than those who have voluntarily quit, retired, or who have been discharged for cause before the date of the election, are eligible to vote; and it is further

DIRECTED, that if either the Petitioner or the Intervenor does not desire to participate in an election, it may decline to do so by making a request in writing to the Director of Representation within ten days after service of this Decision and Direction of Election; and it is further

DIRECTED, that within 14 days after service of this Decision and Direction of Election, the New York City Health and Hospitals Corporation will submit to the Director of Representation an accurate list of the names and addresses of all the employees in the title Systems Project Leader who

were employed during the payroll period immediately preceding the date of this Decision and

Direction of Election.

Dated: July 6, 2006

New York, New York

MARLENE A. GOLD

CHAIR

GEORGE NICOLAU

MEMBER

CAROL A. WITTENBERG

MEMBER