

OSA, 8 OCB2d 19 (BOC 2015)

(Rep) (Docket No. AC-60-10)

Summary of Decision: OSA petitioned to add the title Senior Consultant, Management Information Services to its bargaining unit. DC 37 intervened and sought to add the title to its bargaining unit. HHC argued that SC/MISs are excluded from collective bargaining because they are managerial and/or confidential under Taylor Law § 201.7(a) and in the alternative, HHC Act § 7385(11). The Board held that the HHC Act and the NYCCBL are consistent in mandating the application of Taylor Law § 201.7(a) to HHC employees to determine their eligibility for collective bargaining. The Board found that the SC/MIS title was eligible for collective bargaining and that either bargaining unit is appropriate. The Board directed an election 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-

NEW YORK CITY HEALTH AND HOSPITALS CORPORATION,

Respondent,

-and-

DISTRICT COUNCIL 37, AFSCME, AFL-CIO,

Intervenor.

DECISION AND ORDER

On October 29, 2010, the Organization of Staff Analysts (“OSA”) filed a petition to accrete the title Senior Consultant, Management Information Services (“SC/MIS”), Levels I, II,

and III (Title Code Nos. 985011, 985012, and 985013) to the Staff Analyst bargaining unit, Certification No. 3-88. District Council 37, AFSCME, AFL-CIO (“DC 37”) intervened and argues that the SC/MIS title should be added to the Accounting and EDP bargaining unit, Certification No. 46D-75. The New York City Health and Hospitals Corporation (“HHC”) argues that the SC/MIS title is excluded from collective bargaining under the New York City Collective Bargaining Law (New York City Administrative Code, Title 12, Chapter 3) (“NYCCBL”) and, in the alternative, the New York City Health and Hospitals Corporation Act, N.Y. Unconsolidated Law §§ 7381-7406 (“HHC Act”). The Board finds that the NYCCBL and the HHC Act are consistent in mandating the application of Civil Service Law Article 14 (“Taylor Law” or “CSL”) § 201.7(a) to HHC employees to determine their eligibility for collective bargaining.¹ The Board also finds that SC/MIS employees are eligible for collective

¹ NYCCBL § 12-309(b)(4) requires the application of Taylor Law §201.7(a) “to determine whether specified public employees are managerial or confidential within the meaning of [Taylor Law §201.7(a)].” Taylor Law §201.7(a), in relevant part, provides:

. . . Employees may be designated as managerial only if they are persons (i) who formulate policy or (ii) who may reasonably be required on behalf of the public employer to assist directly in the preparation for and conduct of collective negotiations or to have a major role in the administration of agreements or in personnel administration provided that such role is not of a routine or clerical nature and requires the exercise of independent judgment.

HHC Act § 7390, entitled “[p]ersonnel administration; *collective bargaining*; pension and retirement benefits; *article fourteen civil service law*; paragraph two hundred twenty labor law; personnel review board,” in relevant part, provides:

(5) The corporation, its officers and employees, shall be subject to article 14 of the [CSL] and for all such purposes the corporation shall be deemed ‘public employees’, provided, however, that chapter fifty-four of the New York City Charter and Administrative Code [explicitly addressing the powers and duties of the Board of Certification] and Executive Order No. 52 dated September 29, 1967, promulgated by the mayor of the city of New

bargaining and that accretion to either bargaining unit is appropriate. Accordingly, the Board directs an election to ascertain the wishes of the employees as to their union representation.

BACKGROUND

Senior Consultant, Management Information Services

At the time the record was closed, HHC employed 171 SC/MISs. 139 SC/MISs completed surveys of their duties and responsibilities, and 102 SC/MISs testified over 27 hearing days.²

According to HHC's position description, an SC/MIS

serves as [an] expert consultant and advisor on complex data processing problems; participates broadly in the design of computer based information systems under development or to be developed In the area of Computer Operations, the SC/MIS title provides technical support and operations management In the area of Network Services, the SC/MIS title participates in the planning and implementation of Network Services . . . and helps resolve complex network and communications issues.

(OSA Pet., Ex. B; DC 37 Pet., Ex. 1). The typical tasks performed by SC/MISs are:

Application and Systems Engineering Discipline

1. Recommends alternative approaches for users concerning aspects of data processing system design and selection of systems for computerization and processing of management information
2. Develops design for feasibility studies and participates in analysis of project requests

York, shall apply in all respects to the corporation, its officers and employees except that paragraph seven and paragraph eight of said executive order shall not be applicable to the corporation, its officers and employees.” (emphasis added)

² All surveys submitted by HHC were considered by the Board.

3. Recommends programs, practices and standards to facilitate uniform application of electronic data methods and their correlation with other units and regulatory jurisdictions.
4. Maintains a high level of technical competence . . . in the field of healthcare and management information systems.
5. Performs in depth investigation and analysis to identify and resolve processing problems. . . .
6. Selects computer, communications and peripheral equipment

Network Services (MPP I and MPP II)

1. Plans and assists in the coordination of network equipment at remote user sites.
2. Supervises the assignment of network technicians
3. Recommends standards and procedures for the uniform application of data communications methods and interfaces.
4. Interfaces with communication carriers . . . to coordinate service and problem resolution issues.

Computer Operations (MPP I and MPP II)

1. Manages operation of all computers and peripheral devices . . .
2. Insures that specific job operating instructions are understood and followed and that all operational directives, guidelines and procedures are adhered to . . .
3. Manages vendor field service engineer support to insure maintenance and repair work is performed.
4. Provides operations support to systems engineers in the maintenance of all operating systems software and in the diagnosis of hardware problems . . .
5. Responsible for training, development, motivation, performance evaluation, and discipline of all assigned operations staff.
6. Maintains and insures satisfactory operating environment of Computer Center.

(OSA Pet., Ex. B; DC 37 Pet., Ex. 1)

The qualifications for the SC/MIS position are:

1. A Baccalaureate Degree from an accredited college or university with a major in Computer Science, Systems Engineering, applied Mathematics, Business Administration, Economics/Statistics, Telecommunications, Data Communications or related field of study; and
2. Five years . . . experience in . . . data processing, computer systems and applications. Operations Specialty requires 5 years of supervisory experience.

Network Services requires a telecommunications background and experience.

3. Broad knowledge and expertise in the characteristics of computers, peripheral devices, communications systems and hardware capabilities, programming languages, E.D.P. applications, systems analysis methodology, data management and retrieval techniques; or
4. A satisfactory equivalent combination of training, education and experience.

(OSA Pet., Ex. B; DC 37 Pet., Ex. 1) The salary of the SC/MIS employees ranges from \$48,925 to \$140,400.

SC/MISs work in the Application Programming and System Engineering, Network Services, and Computer Operations areas within HHC's Central Office, Hospitals, and MetroPlus Health Plan in the following departments: Finance (Corporate Planning, Corporate Reimbursement, and Revenue Management Units); Management Information Systems (Clinical Information Systems, Data Center Operations, Infrastructure Services, Integrated Services and Support, Website, Programming, Server, and Applications Units); Operations Administrative Services; Service Management Office (Information Technology); Strategic Planning and Program Management, Office of Inspector General, and Core Systems.

SC/MIS Duties³

In general, SC/MISs design, maintain, update, and implement computer systems, applications, and databases; administer and maintain information technology (“IT”) hardware and software; develop, revise and implement technical policies and procedures; provide technical support; analyze and manipulate data; attend meetings in an advisory capacity as IT subject matter experts, and perform routine supervisory responsibilities. We further address the evidence within these SC/MIS duties:

SC/MISs who design, maintain, update, and implement computer systems, applications, and databases perform duties such as upgrading technical programs; developing systems based on instructions provided by others; implementing HHC’s patient accounting and billing system; designing computer system infrastructure for corporate-wide finance applications; developing and maintaining auxiliary applications that support the medical records system; developing new electronic medical record (“EMR”) functionality; developing programs for lab nurses and physicians; performing upgrades and patches to ensure that applications function properly; designing and maintaining the MetroPlus website and the secure portal system; processing files and developing software that validates, loads, and formats data; developing programs to refresh outdated software; designing and developing the case management system; designing technical specifications used by Quality Assurance; performing identity management services, such as

³ When employees in a title have held different positions with a wide-range of work responsibilities, this Board has often organized the facts by individual employee and conducted an individual-by-individual analysis. However, here we find that the duties of SC/MISs are sufficiently similar such that they can be summarized and analyzed as a group. *See Matter of City v. Bd. of Certification*, Index Nos. 402466/10 & 402496/10 (Sup. Ct. N.Y. Co. Oct. 27, 2011) (Kern, J.) (affirming a Board decision that did not summarize duties by employee and noting that “[t]here is no requirement that each employee be discussed individually”). To the extent that an employee’s job duties have significant differences from the group, we summarize the individual duties and conduct an individual analysis.

standardizing internet and email user IDs; developing and administering databases and database applications, such as the World Trade Center database; ensuring that the data maintained in eight HHC databases is accurate, backed-up, and secure; performing data analysis and quality analysis testing for data warehousing; and handling requests for database changes. With respect to IT project development and management, SC/MISs perform duties such as translating the needs of clinical staff into technical specifications; submitting modification requests for existing programs for approval; participating on a team that identifies projects to add to the budget and discusses pricing with vendors; working with vendors to customize software; reporting on system and application modifications and maintenance; developing presentations on IT initiatives; developing, communicating, and monitoring IT implementation plans to ensure their timely completion within budgetary constraints; submitting yearly budgets to the Chief Information Officer (“CIO”) for approval; updating principals on the status of projects across HHC; monitoring the budget for HHC telecommunication services and projects; and collaborating with change management staff on the consolidation of IT across HHC facilities.⁴

SC/MISs who maintain and administer HHC’s IT hardware and software perform duties such as overseeing the network infrastructure; maintaining operations in the event of a disaster; identifying and reporting outdated equipment; evaluating and recommending hardware and software upgrades, vendor products, and other IT services to senior management; researching equipment and service expenses; participating on committees involved in vendor purchasing

⁴ Some employees with duties referenced in this paragraph include: Melvin Bobea, Mary Donahue, Leon Williams, Yuning Ding, Sergey Ginzburg, Pedapudi, Alfred Rama, Jay VanderVoort, Yarina Agosto, Randolph Kraus, Marcel Carreon, Tyson Lillard, Marvin Picon, Robert Innamorato, Angel Lyman, Suzanne Fathi, Andrew Greenspan, Kim-Yugen Le, Jim Acquaviva, Igor Bass, Irina Marchuk, Lan Feng, Meuludin Mahmutbegovic, Sergey Cherepakhin, Boris Mizhiritsky, Glenn Fernandez, Wayne Greer, Chi Siu, James Harrington, Shawn Smith, Michael Wade, Susan Joseph, and Mark Weekes.

decisions; gathering information and developing proposals on expenditures that assist the CIO in developing the HHC IT budget; maintaining HHC's mainframe hardware and telecom inventory; cleaning, organizing, and upgrading monitors; securing servers and databases; replacing and monitoring the installation of new servers and the deployment of virtual servers and work stations; implementing and managing Structured Query Language servers, Windows servers, and remote applications; performing disaster recovery services for on-site and off-site servers; maintaining server connections; centralizing HHC's servers; managing corporate computer accounts and the Active Directory for the Central Office; managing the data centers; maintaining and updating the Blackberry servers and the Jacobi datacenter website; installing computer applications; upgrading software; providing guidance to help-desk staff; assigning computer storage space to users; granting employee access to computer systems and computer folders; administering the log-in system; supporting the email system, email back-up, archiving, instant messaging, and directory services; coordinating, installing, configuring, maintaining, and warehousing the e-commerce and IT system; maintaining and supporting the payroll system, the MEDS system, Quadramed, Oracle Identity Manager ("OIM"), System Center Control Configuration Manager, the Internet Protocol, and the Enterprise Single Sign On project; supporting the integration of information from medical devices and third-party applications into the EMR; developing a connection between PeopleSoft and OIM;⁵ entering codes into the Automated Workflow Distributor; operating the picture archiving and communications systems utilized by radiology; mapping data from eight clinical systems to a warehouse; reviewing the

⁵ PeopleSoft is an integrated software package that provides a wide variety of business applications to assist in the day-to-day execution and operation of business processes.

accuracy of telecom bills; paying invoices; and overseeing the data entry of billing information for Family Health Plus, Child Health Plus, and Medicaid.⁶

SC/MISs who develop, revise and implement technical policies and procedures perform duties such as developing and implementing security protocols for new applications and processes that protect against computer viruses and unauthorized access to HIPPA-protected information; designing technical protocols for using Clinical Information System applications; supporting and participating in the formulation of IT policies; writing programming rules and standards; establishing standards and procedures related to the proper use and functioning of the mainframe system; creating procedures governing the use of software; reviewing, revising, or developing backup, upgrade, disaster recovery, problem management process, project management, MEDS system, and strategic IT initiative policies; developing processes that consolidate fraud and terrorism information and determine eligibility for insurance; designing workflow policies that ensure employee and patient records are released to authorized personnel; reviewing and modifying policies to conform with National Information Security Standards; reviewing and updating technical procedures and policies relating to the data centers; redesigning the medication administration policy and procedure to provide for electronic medication administration; and developing internal guidelines for the case management system. In addition, SC/MISs implement HHC's policy on screening for errors and revenue management; recommend workflow changes related to the billing process; create usernames and passwords;

⁶ Some employees with duties referenced in this paragraph include: Melvin Bobea, Yuriy Libster, Leon Williams, Michael Coppa, Joseph Franolich, Sergey Ginzburg, Gary Sylvian, Jay VanderVoort, Yarina Agosto, Rodrigo Amaral, Jocelyn Backman, Christopher Burge, Brenda Evans, Michael Fischman, Ven-Chin Lee, Paul Lin, Andrey Yatsko, Vonda Brishbon, Hoi Fong, Andrew Greenspan, Ankush Mahindru, Joseph Martire, Jim Acquaviva, Igor Bass, Jimmy Jen, Mariya Kleyner, Ante Aleksa, Stephen Budd, Michael Drugov, Michael Gioia, Wayne Greer, Anwar Khan, George Reyes, Thomas Dicks, Marie Houston, Lawrence Callender, Georgia Bond, Hubert Harte, Peter Welch, and Terron Mann.

ensure HHC help desk employees adhere to a standardized process of managing, documenting, and resolving computer problems; and implement the disaster policies to maintain HHC's computer operations in the event of a disaster.⁷

SC/MISs who provide technical support perform duties such as supporting employees during the roll-out of new applications; assessing user-needs; drafting user instructions adapted from existing hospital policies or vendor instructions; identifying, troubleshooting, and resolving hardware, system, and software issues; administering the ticketing mechanism used for resolving technical issues; updating the help desk instructional guide; assisting the desktop support staff; supporting HHC staff unable to access the system; providing support for user training and demos; and converting patient information into electronic records.⁸

SC/MISs who analyze and manipulate data perform duties such as compiling financial, patient, and human resources data; developing and maintaining data warehouses for patient data; transferring data to create tables and queries; transferring and storing information; preparing financial, patient, human resources, state-mandated and other *ad hoc* reports requested by HHC clinical staff and senior management; providing user access to financial information; providing

⁷ Some employees with duties referenced in this paragraph include: Melvin Bobea, Mary Donahue, Yuriy Libster, Leon Williams, Joseph Franolich, Sergey Ginzburg, Jay VanderVoort, Brenda Evans, Paul Lin, Lockima Thatcher, Andrey Yatsko, Marcel Carreon, Tyson Lillard, Vonda Brishbon, Robert Innamorato, Suzanne Fathi, Andrew Greenspan, Patricia Gaegler, Jim Acquaviva, Puttiev Anvar, Irina Marchuk, Ante Aleksa, Sergey Cherepakhin, Boris Mizhiritsky, Michael Drugov, Marie Houston, Brenda Morell, Hubert Harte, Michael Wade, and Michael Gioia.

⁸ Some employees with duties referenced in this paragraph include: Yuriy Libster, Leon Williams, Kelvin Agard, Karen Clayton, Michael Coppa, Alfred Rama, Jay VanderVoort, Brenda Evans, Lockima Thatcher, Barton Weinstein, Yelizaverta Bumshteyn, Gretchel Hill, Angel Lyman, Karin Poirer, Rafael Torres, Stephen Budd, Anwar Khan, Thomas Dicks, Fabio Gallipoli, James Harrington, Binu Nair, Shawn Smith, Lawrence Callender, and Terron Mann.

data analysis and predictive modeling; creating service forms used to compile state and federally mandated data reports; and designing new reports.⁹

SC/MISs also attend meetings in an advisory capacity as IT subject matter experts. For example, SC/MISs attend meetings with facility coordinators to share information on future projects; offer their input and recommendations as IT subject matter experts during staff meetings and meetings with Directors, Senior Directors, and Assistant Vice Presidents; discuss the status of ongoing projects during monthly meetings with HHC facility CIOs; and represent their department or attend meetings when their supervisor is not available.¹⁰

SC/MISs who perform supervisory responsibilities perform duties such as overseeing the work of employees, consultants and outside vendors; assigning and scheduling work; counseling and disciplining employees; conducting employee evaluations; approving leaves; training employees; interviewing candidates for employment; and recommending hiring and firing employees and consultants.¹¹

Other SC/MISs provide clinical and IT support for assigned projects; manage time, risk, communication, budget, resources, quality, and procurement for projects; interview clinicians to gather information about workflow and documentation; work with outside vendors; provide 24/7

⁹ Some employees with duties referenced in this paragraph include: Patricia Castro, Yuriy Libster, Karen Clayton, Yuning Ding, Joseph Franolich, Chandrasekhara Pedapudi, Michael Kim, Hoi Fong, Patricia Gaegler, Joseph Martire, Rafael Torres, Kim-Yugen Le, Puttiev Anvar, Mariya Kleyner, Ante Aleksa, Jeffrey Coaker, Lan Feng, Hugo Teo, and Susan Joseph.

¹⁰ Some employees with duties referenced in this paragraph include: Patricia Castro, Kelvin Agard, Michael Coppa, Ramon Sanchez, Paul Lin, Marcel Carreon, Marvin Picon, Robert Innamorato, Rafael Torres, Ante Aleksa, Michael Drugov, Dmitry Frukmis, Brenda Morell, Shawn Smith, Hubert Harte, and Peter Welch.

¹¹ Some employees with duties referenced in this paragraph include: Melvin Bobea, Patricia Castro, Joseph Franolich, Alfred Rama, Ramon Sanchez, Jay VanderVoort, Paul Lin, Barton Weinstein, Marcel Carreon, Marvin Picon, Vonda Brishbon, Gretchel Hill, Robert Innamorato, Suzanne Fathi, Joseph Martire, Rafael Torres, Jim Acquaviva, Jeffrey Coaker, Stephen Budd, Thomas Dicks, and Hubert Harte.

coverage for processing corporate systems, coordinating repair services, and placing service calls during emergency conditions or outages; maintain corporate-wide applications that track Other Than Personnel Services (“OTPS”) budgets; develop, maintain, and update interfaces; evaluate new applications; monitor security card access and maintain the security activities log; provide support for e-commerce services and for HHC service assurance; oversee the deployment of PeopleSoft and the administration of OIM; record reports of filed medical claims and disseminate the information to the claims department; conduct quality assurance testing on procedures; manage intra-network data communications; provide solutions to system users; oversee software maintenance and updates; maintain network shared drives; manage network engineers and helpdesk staff; support the MetroPlus call center; troubleshoot issues within the VMware system; maintain systems and modify the member application system; build and test clinical databases; support clinical help desk issues; generate management-requested reports; install printers and GroupWise;¹² troubleshoot connectivity issues; monitor network interface; design and support reports; perform maintenance functions; test new server functions; and program.

Individual SC/MISs

Robert Knauf, a finance expert in the HHC Finance Department, works on cost-containment projects, some of which are assigned by HHC’s Chief Financial Officer (“CFO”). Knauf attributes a plurality of his work time to developing an algebraic formula for quantifying how many employees are needed to treat HHC’s patient population. This staffing model will establish staffing benchmarks for HHC’s facilities. Knauf meets regularly with facility financial officers to review the staffing model and makes adjustments to the model based on feedback

¹² GroupWise is a messaging and collaboration platform from Novell that supports email, calendaring, personal information management, instant messaging, and document management.

from these financial officers. Knauf also designed the financial feasibility plan related to the conversion of HHC clinics to federally qualified health centers, which included a reorganization of the clinics' departmental structure and staffing. Knauf attends meetings once or twice a month with facility financial officers, Assistant Vice Presidents, and HHC's CFO. Knauf presents his costing analysis and recommends what HHC should do "based on patient care and financial ability to pay," but is not the decision-maker. (Tr. 1039-40).

Corey Morris, the Assistant Budget Director at Harlem Hospital, generates and presents financial data to managers and administrators. Based on cost and expenses over the prior five years, Morris prepares the initial Harlem Hospital operating budget that he submits to the hospital Budget Director and financial officer for their review, modification, and approval. He reviews personnel requisitions to ensure the positions are budgeted for prior to submitting them for final approval by the Harlem Hospital financial officer; produces revenue/deficit projection reports using guidelines that have been in place for 16 years; distributes and reviews these reports in meetings with group center managers, cost group administrators, and executive staff; and recommends cost-containment measures to cost group administrators, who make the final decision.¹³

Jonathan Goldstein works in the Corporate Planning unit of the HHC Finance Department and reports to the Senior Director.¹⁴ He analyzes patient and employee demographic information related to anticipated restructurings, openings, or closings of HHC facilities, which he provides to senior-level HHC staff, who decide how to use the information. Goldstein is not

¹³ Morris' participation in layoffs is limited to providing non-union employee information requested by the hospital financial officer. *See* Tr. 2282.

¹⁴ The Corporate Planning Unit monitors and implements changes to the physical configuration and layout of HHC facilities.

involved in determining the closure or opening of HHC facilities; whether to effectuate layoffs, or who will be laid off.

Kevin Beauchamp, the only IT employee in the HHC Office of the Inspector General, reports to the Inspector General.¹⁵ Beauchamp provides general IT support to the office, including maintaining the secure email system and databases, developing programs that aide in investigations, automating office tasks, recommending software and hardware purchases, and advising HHC's budget office of anticipated department spending. Beauchamp does not directly assist or participate in investigations or the administration of a collective bargaining agreement.¹⁶

Michelle Bowen, an Administrative Assistant for the Associate Director of Information Technology at Harlem Hospital, is the security liaison for GroupWise. Bowen creates accounts for new employees, provides IT support, and performs office manager tasks, such as the administration of payroll, performance evaluations, timekeeping, training, and the revision and distribution of policies drafted by her superiors. Bowen has knowledge of employee hirings, resignations, terminations, and layoffs for the purpose of activating and deactivating access to HHC's IT systems and adding and removing hospital employees from HHC's payroll.

OSA's Bargaining Unit

OSA's bargaining unit, Certification No. 3-88, consists of approximately 4,500 employees with titles including Systems Project Leader, Supervising Systems Analyst

¹⁵ The Office of the Inspector General investigates allegations of agency, officer, elected official, or employee misconduct.

¹⁶ Beauchamp previously cloned a hard-drive as part of an investigation. All tasks related to investigations were transferred to another employee and Beauchamp no longer performs any tasks related to investigations.

(Approved Specialties), Manager (Scheduling and Control – EDP), and Senior Management Consultant (Business Organization and Methods).

Systems Project Leader

The Systems Project Leader title is responsible for performing feasibility studies and analyses of requests for new systems or for changes to existing systems and applications; scheduling the steps of a project through completion and determining budgets for manpower, time, and costs; assembling and directing teams of systems analysts and other technical and professional personnel; and liaising with management and other key personnel on systems design and development projects. The qualifications for the Systems Project Leader title are a Baccalaureate degree, five years of experience in data processing, which must include three years of system analyst experience and one year of supervisory experience. (OSA Pet., Ex. C)

Supervising Systems Analyst (Approved Specialties)

The Supervising Systems Analyst title is responsible for directing the preparation, development, design, modification and planning of complex systems; supervising, coordinating, and monitoring implementation of systems and subsystems; reviewing systems, identifying problems, and developing and implementing solutions; assigning and supervising work and evaluating performance of systems analysts; developing training programs; and serving on task forces to manage system-wide problems. The qualifications for the Supervising Systems Analyst (Approved Specialties) title are a Baccalaureate degree, three years of experience in the development, analysis and implementation of systems and subsystems, of which one year must be in a supervisory capacity. (OSA Pet., Ex. D)

Manager – Scheduling and Control (EDP)

The Manager – Scheduling and Control (EDP) title is responsible for preparing daily schedules of computer and peripheral device operations; establishing the processing schedule of

routine jobs; developing procedures responsive to the needs of the department and users; and directing and managing the data control and fine control functions and personnel fulfilling these functions.¹⁷ (OSA Pet., Ex. E)

Senior Management Consultant (Business Organization & Methods)

The Senior Management Consultant (Business Organization & Methods) title is responsible for providing advice on business organization and methods and for the establishment and implementation of programs for the evaluation, improvement, and regularization of normal business operations to executives, department heads, and City-wide committees; preparing or supervising the preparation of reports; conducting or supervising special studies of complex and important management problems; and cooperating and liaising with executive personnel concerning problems and activities in the area of business organization. The qualifications for the Senior Management Consultant (Business Organization & Methods) title are a Master's degree in public administration or business administration and four years' work experience or a Baccalaureate and five years of work experience in management analysis or in operational direction, planning, coordination, or control, of which two years must be in a supervisory, administrative, or consultative capacity. (OSA Pet., Ex. F)

DC 37's Bargaining Unit

DC 37's bargaining unit, Certification No. 46D-75, consists of approximately 4,200 employees with titles including Certified Application Developer, Certified Database Administrator, Certified Local Area Network Administrator, Certified Wide Area Network Administrator, and Computer Specialist (Software). Each title has up to four levels, which are

¹⁷ The qualifications for the Manager – Scheduling and Control (EDP) title are not in the record.

assigned based on the complexity and sophistication of the applications, database systems, network, or hardware and software systems and the amount of supervision required.

Certified Application Developer

The duties and responsibilities of the Certified Application Developer (“CAD”) title encompass:

highly technical and supervisory responsibilities in applications development, including planning, designing, configuring, installing, testing, troubleshooting, integrating, performance monitoring, maintaining, enhancing, security management, and support of complex computer applications programs. [CADs] perform at varying levels of difficulty and with varying degrees of latitude for independent initiative and judgment. . . . All [CADs] perform related work, including end user support and disaster recovery and, when necessary, perform the duties of related or lower titles and Assignment Levels.

(DC 37 Pet., Ex. 2) The qualifications for the CAD title are a professional/vendor certification(s) in computer applications programming, a baccalaureate degree and two years of work experience, or a high school diploma and six years of work experience in computer applications development planning, design, configuration, installation, troubleshooting, integration, performance monitoring, maintenance, enhancement, and security management.

Certified Database Administrator, Certified Local Area Network Administrator, and Certified Wide Area Network Administrator

The duties, typical tasks, and qualifications for the Certified Database Administrator, Certified Local Area Network Administrator, and Certified Wide Area Network Administrator titles are identical to the CAD title, except that the responsibilities and qualifications are for database administration, local area network administration, and Wide Area Network and Metropolitan Area Network administration, respectively. (DC 37 Pet., Exs. 3-5)

Computer Specialist (Software)

The duties and responsibilities of the Computer Specialist (Software) title include “highly technical and supervisory responsibilities in the design, implementation, enhancement and maintenance of software systems performed at varying levels of difficulty and with varying degrees of latitude for independent initiative and judgment.” (DC 37 Pet., Ex. 6). The typical tasks performed by a Computer Specialist (Software) (Level II) include serving as project leader, performing complex staff work, and the full range of computer systems analysis in highly complex systems development projects and supervising the activities of applications programming units. The qualifications for the Computer Specialist (Software) title are a Baccalaureate Degree and four years of work experience, an Associate Degree or completion of two years of study (60 credits) and six years of work experience or a high school diploma and eight years of computer software experience, of which one year must be in a project leader capacity or as a major contributor on a complex project.

Community of Interest Agreement between OSA and DC 37

OSA and DC 37 agreed that the SC/MIS title has a community of interest with the titles in both bargaining units and indicated a preference for an election to decide which Union would represent the SC/MIS title.

Historical Application of Taylor Law § 201.7(a) to HHC Employees

In order to better understand the parties’ positions, we will review the historical standard for determining HHC employee eligibility for collective bargaining. When the Taylor Law and the NYCCBL were enacted in 1967, both statutes were silent as to the status and bargaining rights of managerial and confidential employees. In 1968, this Board held that managerial and confidential employees were excluded from bargaining units and established criteria to

determine when a title is properly excluded from representation as managerial or confidential. *See, e.g., Local 154, DC 37, 2 OCB 73, at 8-10 (BOC 1968) (managerial); Local 188, DC 37, 2 OCB 70, at 4-5 (BOC 1968) (confidential).* Under the initial managerial criteria, this Board placed the “greatest emphasis” on “the formulation, determination and effectuation of an employer’s policies; that is, regular exercise of independent judgment or discretion in the formulation and promulgation of policy.” *Local 154, DC 37, 2 OCB 73, at 8 (citations omitted).* We found that discretion does not exist “if it [] conform[s] to [an] employer’s established policy.” *Id.* Rather, “the managerial role involves the broad and active participation associated with the formulation of objectives or the methods of fulfilling established purposes.” *Id.* In regard to confidential employees, this Board found that “[c]onfidential employees are those who regularly assist and act in a confidential capacity to persons who formulate, determine and effectuate management policies in the field of labor relations.” *Local 188, DC 37, 2 OCB 70, at 4 (citations omitted).*

Prior to 1969, the New York City (“City”) Department of Hospitals (“DOH”), HHC’s predecessor, was subject to this Board’s jurisdiction. As such, the Board determined the eligibility of DOH employees for collective bargaining under the Board’s managerial and confidential criteria established by case law. *See, e.g., CEU, L. 237, 2 OCB 79, at 3 (BOC 1968)* (noting that, while not defined in the NYCCBL, the terms managerial and confidential each have “established meaning in the field of labor relations”).

In 1969, HHC was created with the passage of the HHC Act. The HHC Act’s “declaration of policy and statement of purposes” provides that “a system permitting legal, financial and managerial flexibility is required for the provision and delivery of high quality [health care]” and that prior “procedures in the administration of health and medical services . . .

obstruct and impair efficient operation of health and medical resources.” HHC Act § 7382.

HHC’s “general powers” include the authority:

To employ officers, executives, management personnel, and such other employees who formulate or participate in the formulation of the plans, policies, aims, standards, or who administer, manage or operate the corporation and its hospitals or health facilities, or who assist and act in a confidential capacity to persons who are responsible for the formulation, determination and effectuation of management policies concerning personnel or labor relations, or who determine the number of, and appointment and removal of, employees of the corporation, fix their qualifications and prescribe their duties and other terms of employment.

All such personnel shall be excluded from collective bargaining representation.

HHC Act § 7385(11). The HHC Act expressly provides that HHC is subject to the Taylor Law and the NYCCBL “in all respects . . . except that [paragraphs 7 and 8 of Executive Order 52, dated September 29, 1967] shall not be applicable.”¹⁸ HHC Act § 7390(5). The HHC Act further provides that “[i]nsofar as the provisions of this act are inconsistent with the provisions of any other law, general, special or local, the provisions of [the HHC Act] shall be controlling.” HHC Act § 7405.

In 1971, the Taylor Law was amended to exclude managerial and confidential employees from bargaining units and defined managerial and confidential employees as follows:

Employees may be designated as managerial only if they are persons (i) who formulate policy or (ii) who may reasonably be required on behalf of the public employer to assist directly in the preparation for and conduct of collective negotiations or to have a major role in the administration of agreements or in personnel administration provided that such role is not of a routine or clerical nature and requires the exercise of independent judgment. Employees may be designated as confidential only if they are

¹⁸ Paragraphs 7 and 8 of Executive Order 52 pertain to joint labor relations committees and grievance procedures and are not pertinent here.

persons who assist and act in a confidential capacity to managerial employees described in clause (ii).

NY CSL §201.7(a); 1971 N.Y. Laws, Ch. 503, § 4, and Ch. 504, § 1. Subsequent to the 1971 Taylor Law amendment, we found that the pre-1971 managerial/confidential criteria used by this Board were substantially equivalent to the 1971 enacted Taylor Law definitions and designed to accomplish the same end. *See ADWDS*, 8 OCB 73, at 9 (BOC 1971).

In 1972, the NYCCBL was amended to exclude managerial and confidential employees from bargaining units and to add HHC to the list of public employers subject to the NYCCBL. *See NYCCBL* §§ 12-305 & 12-303(g)(2). Subsequent to the 1972 amendments, this Board continued to apply its pre-1972 criteria and the Taylor Law § 201.7(a) managerial and confidential employee definitions to determine the eligibility of HHC employees for collective bargaining.

Since the enactment of the HHC Act, HHC has challenged the applicability of the Taylor Law § 201.7(a) managerial and confidential employee definitions to HHC employees four times. In 1972, HHC argued that “the statutory standard of proof of manageriality is not laid out in § 201.7 of the Taylor Law, but is found in [§12-305] of the NYCCBL and in [§ 7390(5)] of the [HHC Act].” *DC 37*, 10 OCB 41, at 13 (BOC 1972). HHC contended that the Taylor Law’s definition of manager was “narrower than the pre-amendment definitions enunciated by [the Public Employment Relations Board (“PERB”)] and the Board of Certification.” *Id.* Citing *State of New York*, 5 PERB ¶ 3001, at 3005 (1972), the Board found “that the formulation of policy criterion set forth in Taylor Law § 201.7 and the 1972 amended NYCCBL is the same as the standard developed before the [1971] amendments [to the Taylor Law].” *DC 37*, 10 OCB 41, at 13 (acknowledging the HHC Act’s policy statement concerning “a system permitting legal, financial and managerial flexibility”); *see also CWA*, 10 OCB 63, at 7 (BOC 1972) (noting that

the HHC Act § 7385(11) defines confidential similarly to prior Board decisions and that HHC is “free to classify its employees in a similar manner to a civil service commission for civil service purposes while the statutory function of this Board is to determine units appropriate for collective bargaining purposes”). Thus, the Board held that Taylor Law § 201.7(a) applied to HHC employees.

In 1978, HHC argued that HHC’s classification of job titles as managerial determined their eligibility for collective bargaining because, unlike other employing agencies, HHC is empowered by the HHC Act to create and administer its own personnel structure. The Board rejected this argument, noting that the HHC Act “also provides that the employees of the HHC be treated like other public employees in [the City] in that they come within the jurisdiction of the Office of Collective Bargaining and, as a result, can only be excluded from collective bargaining based on a finding of managerial-confidential status by this Board.” *Local 375, CSTG*, 22 OCB 45, at 31 (BOC 1978), *revd sub nom. Civil Service Technical Guild, Local 375 v. Anderson*, N.Y.L.J., Oct. 9, 1979, at 10 (Sup. Ct. N.Y. Co.), *affd.*, 79 A.D.2d 541 (1st Dept. 1980), *revd on dissenting mem.*, 55 N.Y.2d 618 (1981). The Court of Appeals affirmed the Board in its application of Taylor Law § 201.7(a) by adopting the Appellate Division’s dissent, which concluded that “the factors used as indicia of manageriality, when considered together, are appropriate aids in determining either who formulates policy [under] (Civil Service Law §201.7(a)(i)) or who may reasonably be required to assist in collective bargaining [under] (Civil Service Law § 201.7(a)(i[i])).” 79 A.D.2d at 543. The Court of Appeals also adopted the Appellate Division dissent’s finding that the Board’s “conclusions . . . were rationally based on articulated facts and in substantial conformance with the statutory [Taylor Law § 201.7(a)] criteria because the Board applied the [Taylor Law § 201.7(a)] guidelines, . . . not slavishly, nor

without reviewing the evidence as a whole, nor without *constant reference to the statutory criteria* and its goals.” *Id.* (emphasis added)

In 1987, HHC argued that HHC Act § 7385(11) supersedes or supplements Taylor Law § 201.7(a) and establishes the criteria for excluding HHC employees from collective bargaining. *See CWA*, 40 OCB 5 (BOC 1987). The Board rejected this argument in an Interim Decision and Order, finding that the Taylor Law § 201.7(a) managerial and confidential employee definitions applied. *Id.* at 23. The Board reasoned as follows:

First, at the time the HHC Act was passed, the Legislature was or should have been aware of prior decisions of this Board in cases which involved, *inter alia*, employees of HHC’s predecessor, the Department of Hospitals, in which managerial/confidential criteria were used which were substantially equivalent to the subsequently-enacted Taylor Law criteria. We believe that if the Legislature had intended that different criteria be applied by this Board with respect to employees of HHC, it would have said so in placing HHC under this Board’s jurisdiction.

* * *

Second, . . . the Court of Appeals in confirming a decision of this Board which affected, *inter alia*, employees of HHC, made no mention of the § 7385 “criteria” but affirmed that this Board is required to administer the Taylor Law in determining questions of managerial status, and that other guidelines or indicia of manageriality may be used only with constant reference to the Taylor Law criteria and its goals.

Id. at 18-20. Furthermore, the Board noted that “the definition contained in § 201.7(a) [of the Taylor Law] did not exist when § 7385(11) [of the HHC Act] was enacted, so [identical] language could not be expected.” *Id.* at 21. The Board also agreed with HHC that statutes should be construed harmoniously where possible, and found that the descriptions in HHC Act § 7385(11) should be construed “as indicia of managerial and/or confidential status, to be used by this Board solely as aids in applying the governing criteria set forth in § 201.7(a) of the Taylor

Law.” *Id.* at 22. We reasoned that such a construction gives meaning to both the Taylor Law definitions and HHC Act § 7385(11), avoids any internal inconsistency within the HHC Act provision that HHC is subject to the Taylor Law and the NYCCBL, and is consistent with the Court of Appeals’ decision in *Civil Service Technical Guild*, 55 N.Y.2d 618. *Id.* at 22-23.¹⁹

In 1998, the NYCCBL was again amended to codify the Board’s pre-1998 practice of excluding managerial and confidential employees from collective bargaining. The 1998 amendment granted this Board the “power and duty . . . to determine whether specified employees are managerial and confidential within the meaning of [Taylor Law § 201.7] and are thus excluded from collective bargaining.” *See* NYCCBL § 12-309(b)(4).

In 2004, HHC again argued that the HHC Act required the Board to give broad deference to HHC’s personnel decisions and that HHC Act § 7385(11) preempts Taylor Law § 201.7(a), pursuant to HHC Act § 7405, because HHC Act § 7385(11) is broader than the Taylor Law § 201.7(a) exclusions from collective bargaining.²⁰ The Board rejected these arguments and held

¹⁹ HHC did not appeal *CWA*, 40 OCB 5.

²⁰ HHC Act § 7385, in relevant part, provides,:

The corporation shall have the following powers in addition to those specifically conferred elsewhere in this act:

* * *

11. to employ officers, executives, management personnel, and such other employees who formulate or participate in the formulation of plans, policies, aims, standards, or who administer, manage or operate the corporation and its hospitals or health facilities, or who assist and act in a confidential capacity to persons who are responsible for the formulation, determination and effectuation of management policies concerning personnel or labor relations, or who determine the number of, and appointment and removal of, employees of the corporation, fix their qualifications and prescribe their duties and other terms of employment.

that “the determination of managerial and/or confidential [is] governed by the NYCCBL and the Taylor Law and that HHC’s designation of employees . . . as managerial and/or confidential is not entitled to deference.” *OSA*, 74 OCB 1, at 7 (BOC 2004). Rather, the descriptions of managerial and confidential employees in HHC Act § 7385(11) are “indicia of managerial and/or confidential status” used by the Board “solely as aides in applying the governing criteria set forth in § 201.7 of the Taylor Law.” *CWA*, 74 OCB 1, at 6. “The Board [again] emphasized that . . . the Taylor Law criteria will control our final determination in this matter” because “the clear language of [HHC Act § 7390(5)] expresses the Legislature’s intent that HHC and its employees be subject to the provisions of both the Taylor Law and the NYCCBL.” *Id.* at 6, 18-21. The Board reasoned that “[n]o exception or limitation is placed upon the applicability of these laws [and that the] Legislature knew how to express an exception when such was intended, as was done concerning the applicability of certain terms of Executive Order No. 52.” *Id.*²¹

POSITIONS OF THE PARTIES

OSA’s Position

OSA argues that HHC Act § 7390(5) in conjunction with NYCCBL §§ 12-303(g), 12-304(b), and 12-305 requires the Board to apply Taylor Law § 201.7(a) to determine the eligibility of HHC employees for collective bargaining. OSA asserts that HHC Act § 7390(5) and NYCCBL §§ 12-303(g) and 12-304(b) grants the Board jurisdiction over HHC and its employees and that HHC Act § 7390(5) and NYCCBL § 12-305 mandates the Board to apply Taylor Law § 201.7(a) to determine the eligibility of HHC employees for collective bargaining. OSA also argues that the Board should apply the doctrines of collateral estoppel and *stare decisis*

All such personnel shall be excluded from collective bargaining representation.

²¹ HHC did not appeal *OSA*, 74 OCB 1.

because the Board previously rejected the identical arguments in *CWA*, 40 OCB 5, and in *OSA*, 74 OCB 1. In both cases, the Board found that the application of Taylor Law § 201.7(a) to HHC employees was appropriate and that the language in HHC Act § 7385(11) was substantively equivalent to the language in Taylor Law § 201.7(a). *OSA* also contends that HHC accepted the Taylor Law § 201.7(a) managerial and confidential criteria because it did not appeal the *CWA* or *OSA* decisions or raise objections to the Board's application of Taylor Law § 201.7(a) in subsequent representation cases.

OSA also argues that HHC did not demonstrate the managerial status of any SC/MIS employee. Specifically, there is no evidence that any SC/MIS employees are decision-makers who participate actively and regularly in proposing and implementing policy in a manner such that their discretion is not limited by preexisting laws, regulations, or other guidelines. *OSA* contends that some of the functions performed by SC/MIS employees, such as approving routine budgetary expenditures, performing accounting tasks, and preparing financial reports, are not sufficient to exclude them from collective bargaining as a manager. Rather, the "policy-maker" managerial exclusion is limited to employees who perform tasks that show significant direct authority, such as recommending the opening and closing of hospital facilities, and determining agency-wide investment strategies. Nor are any SC/MIS employees involved in collective bargaining or other personnel matters such that their involvement is not of a routine or clerical nature. Routine supervisory duties performed by some SC/MIS employees, such as approving overtime, administering employee discipline, assigning work, or conducting performance evaluations, are not sufficient to exclude them as a manager for involvement in personnel matters. Rather, the "involvement in personnel matters" managerial exclusion is limited to

employees who participate in tasks such as preparing and administering civil service exams and participating in layoff discussions.

Further, OSA argues that HHC failed to demonstrate the confidential status of any SC/MIS employee to warrant their exclusion from collective bargaining representation. OSA asserts that the confidential exclusion is not intended to exclude SC/MIS employees with access to any confidential information, such as employees' social security numbers or salaries. Rather, the confidential employee exception is limited to employees with access to confidential information that is integral to the collective bargaining process or the administration of collective bargaining agreements, such that the access to the confidential information creates a conflict inimical to the bargaining process or the employer's interest.

Finally, OSA argues that SC/MIS employees share a community of interest with the Systems Project Leader, Supervising Systems Analyst (Approved Specialties), Manager (Scheduling and Control – EDP), Senior Management Consultant (Business Organization and Methods) titles that OSA represents because their job responsibilities and job qualifications are substantially similar.

DC 37's Position

DC 37 argues that Taylor Law § 201.7(a) establishes the criteria by which the Board determines the eligibility of HHC employees for collective bargaining and cites *OSA*, 74 OCB 1, and *CWA*, 40 OCB 5 as evidence of a 28-year Board precedent of rejecting HHC's arguments as to the applicability of HHC Act § 7385(11). DC 37 also asserts that HHC Act § 7390(5) extends coverage of Taylor Law § 201.7(a) to HHC and its employees and that HHC's position on the applicability of HHC Act § 7385(11) conflicts with HHC's Personnel Review Board's ("PRB")

requirement that all HHC rules and regulations be consistent with the New York Civil Service Law (“CSL”).

DC 37 also contends that SC/MIS employees are not managerial or confidential because the title’s job duties and qualifications are substantially similar to the Certified Application Developer, Certified Database Administrator, Certified Local Area Network Administrator, Certified Wide Area Network Administrator, and Computer Specialist (Software) titles that DC 37 represents. Moreover, DC 37 argues that HHC failed to establish the managerial status of any SC/MIS employee as a policy maker or as an employee involved in collective bargaining or other personnel matters. DC 37 contends that SC/MIS employees are not elevated to managerial status because they provide technical skills or expertise in the policy making or budgeting process, or exercise discretion within the boundaries of predetermined policy. Further, DC 37 asserts that SC/MIS employees do not directly assist in preparing for or conducting collective bargaining, or play a major role in the administration of collective bargaining agreements or other personnel matters. Nor are the supervisory functions performed by some SC/MIS employees sufficient to exclude them as managerial employees because they are not involved in labor relations.

Further, DC 37 argues that HHC failed to establish the confidential status of any SC/MIS employees because no SC/MIS employee regularly assists a manager involved in labor relations or personnel administration. Rather, DC 37 contends that SC/MISs who have access to confidential information do so irregularly and that their “inclusion in collective bargaining would not lead to a conflict of interest inimical to the bargaining process and the full and fair representation of the employer’s interests.” (DC 37 Br. at 53) (quoting *OSA*, 78 OCB 5, at 41

(BOC 2006)). Therefore, DC 37 requests that the Board find all SC/MIS employees eligible for collective bargaining.

Finally, DC 37 argues that SC/MIS employees share a community of interest with the Certified Application Developer, Certified Database Administrator, Certified Local Area Network Administrator, Certified Wide Area Network Administrator, and Computer Specialist (Software) titles that DC 37 represents because their job responsibilities and job qualifications are substantially similar.

HHC's Position

HHC argues that, based on a representative sample of 41 of the 102 SC/MIS employees who testified, all SC/MIS employees are excluded from collective bargaining as managerial and/or confidential under Taylor Law § 201.7(a) because SC/MIS employees' job duties encompass broad discretion in the formulation of policy that effectuates the mission of the employer or "act in confidential capacity to high level officials." (HHC Br. at 12) HHC acknowledges that this Board has jurisdiction over HHC and its employees; that HHC is subject to the NYCCBL and the Taylor Law; and that HHC Act § 7385(11) does not define who is managerial or confidential under the Taylor Law. Notwithstanding, HHC argues, in the alternative, that SC/MIS employees are managerial employees under the HHC Act § 7385(11). HHC claims that HHC Act § 7385(11) language is broader than and conflicts with the Taylor Law § 201.7(a) exclusions. HHC also alleges that HHC Act § 7405 directs the Board to apply HHC Act § 7385(11) to HHC employees.

HHC interprets HHC Act § 7385(11) as excluding two broad groups of managerial employees and one group of confidential employees from collective bargaining. With regard to managerial employees, HHC argues for the exclusion of: (1) employees who formulate, or

participate in the formulation of plans, policies, aims, and standards of an HHC hospital and (2) employees who administer, manage, or operate an HHC hospital. According to HHC, these two sub-sections include employees who determine the appointment and removal of HHC employees, fix their qualifications, and prescribe their duties and other terms of employment. With respect to confidential employees, HHC Act § 7385(11) excludes employees who assist managerial employees involved in labor relations or personnel matters in a confidential manner. While acknowledging that HHC Act § 7385(11) does not define who is managerial or confidential under the Taylor Law, HHC argues that HHC Act § 7385(11) does not expressly limit the managerial exclusion to a particular type or degree of managerial, operational, or administrative functions or any qualifying benchmarks for HHC employees, as outlined in either the Taylor Law or by the Board in its decisions.

HHC asserts that the HHC Act § 7385(11) managerial criteria are broader than the NYCCBL criteria in two respects. First, HHC claims that, unlike the NYCCBL criteria that narrowly excludes employees who formulate policy in a manner such that their discretion is not limited by preexisting laws, regulations, or other guidelines, HHC Act § 7385(11) broadly excludes all employees who “participate [in any capacity, other than solely ministerial tasks,] in policy or plan formulation, and those who provide advice, opinion or input; participate in meetings in which policy is discussed; collect and analyze necessary data and/or report to senior staff as to the materials or information necessary to formulate policy.” (HHC Br. at 44) Second, according to HHC, unlike the NYCCBL’s managerial criteria that narrowly excludes those who exercise independent judgment in the administration of collective bargaining agreements or personnel administration, HHC Act § 7385(11) broadly excludes all those who administer, manage, or operate the corporation and its hospitals or health facilities.

HHC acknowledges that NYCCBL § 12-309(b)(4) permits the Board to determine whether non-HHC employees under its jurisdiction are excluded from representation because of their managerial or confidential status under Taylor Law § 201.7(a). However, HHC argues that the NYCCBL is preempted by HHC Act § 7385(11), pursuant to HHC Act § 7405, because the HHC Act provides a broader standard by which to exclude HHC employees from representation as managers. Since HHC Act § 7385(11) provides a broader managerial exclusion than Taylor Law § 201.7(a), HHC argues that the Board must exclude a larger class of HHC employees under HHC Act § 7385(11) than this Board would otherwise exclude under Taylor Law § 201.7(a) and that this outcome is necessary to ensure HHC has the “legal, financial, and managerial flexibility” to meet its mission of providing comprehensive healthcare to all New Yorkers. (HHC Br. at 42) Applying HHC Act § 7385(11) to SC/MIS employees, HHC concludes that all SC/MIS employees are managerial because they formulate or participate in the formulation of HHC’s plans, policies, aims, and standards; supervise staff; and collect and analyze data for senior executives.

HHC also contends that the Board’s decisions in *CWA*, 40 OCB 5 and *OSA*, 74 OCB 1 did not consider or address the conflict between HHC Act § 7385(11) and Taylor Law § 201.7(a) as to the managerial criteria or the preemptive effect of HHC Act § 7405. Rather, HHC asserts that the Board incorrectly determined that HHC Act § 7385(11)’s language is not broader than Taylor Law § 201.7(a)’s managerial exclusion by relying exclusively on HHC Act § 7385(11)’s confidential employee definition. HHC further asserts that the Board should not harmonize HHC Act § 7385(11) and Taylor Law § 201.7(a), as it did in *CWA*, because HHC Act §§ 7385(11) and 7405 establish the Legislature’s intent to apply a different standard to HHC employees than to other public employees in determining the exclusion of managerial employees from collective

bargaining. As such, HHC requests that this Board apply HHC Act § 7385(11) to exclude SC/MIS employees from collective bargaining and deny the petitions brought by OSA and DC 37.

Finally, in its post-hearing brief, HHC did not take a position on whether or not the SC/MIS title shares a community of interest with the titles in the OSA or DC 37 bargaining units.

DISCUSSION

The issue presented in the instant matter is whether employees in the SC/MIS title are eligible for collective bargaining. Section 12-305 of the NYCCBL grants public employees collective bargaining rights and establishes a limited exception to exclude managerial and confidential employees.²²

Standard for Determining Eligibility for Collective Bargaining

As a preliminary matter, we address the standard the Board applies to exclude HHC employees from collective bargaining. Pursuant to NYCCBL § 12-309(b)(4), this Board has applied the same standard for exclusion from collective bargaining to HHC employees as to all public employees for more than 40 years. *See, e.g., OSA*, 78 OCB 5 (BOC 2006), *affd sub nom. Matter of NYC Health & Hosps. Corp. v. Bd. of Certification of the City of NY*, 2007 N.Y. Slip.

²² NYCCBL § 12-305 provides:

[N]either managerial nor confidential employees shall constitute or be included in any bargaining unit, nor shall they have the right to bargain collectively; provided, however, that *public employees shall be presumed eligible for the rights set forth in this section*, and no employees shall be deprived of these rights unless, as to such employee, a determination of managerial and confidential status has been rendered by the board of certification.
(emphasis added)

Op 30921(U) (Sup. Ct. N.Y. Co. Apr. 23, 2007); *DC 37*, 10 OCB 41, at 13 (finding that Taylor Law § 201.7(a) applies to HHC employees). CSL § 201(7), in relevant part, provides:

Employees may be designated as managerial only if they are persons (i) who formulate policy or (ii) who may reasonably be required on behalf of the public employer to assist directly in the preparation for and conduct of collective negotiations or to have a major role in the administration of agreements or in personnel administration provided that such role is not of a routine or clerical nature and requires the exercise of independent judgment. Employees may be designated as confidential only if they are persons who assist and act in a confidential capacity to managerial employees described in clause (ii).

CSL § 201.7(a); *see also Matter of Shelofsky v. Helsby*, 32 N.Y.2d 54, 58 (1973) (upholding NYCCBL's statutory criteria for managerial and confidential designations as not being constitutionally vague).

NYCCBL § 12-309(b)(4) confers upon the Board of Certification the power and duty “to determine whether specified public employees are managerial or confidential within the meaning of [CSL § 201(7)] and thus [] excluded from collective bargaining.” NYCCBL § 12-309(b)(4). The NYCCBL defines “specified public employees” as “municipal employees and employees of other public employers” and includes “the New York city health and hospital corporation” in the definition of public employer.²³ NYCCBL §§ 12-303(h) & (g)(2). As such, the clear and

²³ NYCCBL §12-303(g)(2) defines a public employer as:

(1) Any municipal agency; (2) the board of education, the *New York city health and hospital corporation*, the [City] off-track betting corporation, the [City] board of elections and the public administrator and the district attorney of any county within the [City]; (3) any public authority other than a state public authority as defined in [CSL § 201(8)], whose activities are conducted in whole or in substantial part within the city; and (4) any public benefit corporation, or any museum, library, zoological garden or similar cultural institution, which is a public employer or government

unambiguous language of NYCCBL §§ 12-303(g)(2), 12-303(h), and 12-309(b)(4), grants the Board jurisdiction over HHC and its employees and requires this Board to apply Taylor Law § 201.7(a) to determine the exclusion of HHC employees from collective bargaining.

Consistent with NYCCBL §§12-303(g)(2) and 12-303(h), HHC Act § 7390(5) provides that “[HHC], its officers and employees, shall be subject to article fourteen of the Civil Service Law [or the Taylor Law] and for all such purposes the corporation shall be deemed public employees.” HHC Act § 7390(5)’s clear and unambiguous language, that HHC is subject to the Taylor Law and the NYCCBL “in all respects,” triggers the Board’s jurisdiction over HHC and mandates that the Board apply Taylor Law § 201.7(a) to HHC employees to determine exclusions from collective bargaining.²⁴ HHC acknowledges that it is subject to the NYCCBL and the Taylor Law and that HHC Act § 7385(11) does not define who is managerial or confidential under the Taylor Law. *See* HHC Brief at 40-41. Notwithstanding, HHC argues that the Board must substitute HHC Act § 7385(11) for Taylor Law § 201.7(a) to determine the exclusion of HHC employees from collective bargaining. We find no basis for this conclusion.

We have previously rejected HHC’s arguments on the perceived conflict between HHC Act § 7385(11) and Taylor Law § 201.7(a) and the preemptive effect of HHC Act § 7405. *See OSA*, 74 OCB 1; *CWA*, 40 OCB 5. We find no change in circumstances to warrant deviating from our prior conclusions and rationales. *See OSA*, 78 OCB 1, at 8 n.2 (BOC 2006). Since the HHC Act and the NYCCBL remain consistent in their mandates to apply Taylor Law § 201.7(a)

within the meaning of article fourteen of the [CSL],
employing personnel whose salary is paid in whole or in
part from the [C]ity treasury. (emphasis added)

²⁴ The inclusion of the terms “collective bargaining” and “article fourteen civil service law” in HHC Act § 7390’s title further supports the conclusion that this Board is required to apply Taylor Law § 201.7(a) to determine the eligibility of HHC employees for collective bargaining.

to HHC employees, there is no conflict between the NYCCBL and the HHC Act and, therefore, no basis for preemption under HHC Act § 7405.²⁵ As such, we reaffirm the conclusions and rationales of this Board's prior decisions on identical HHC arguments and find that the clear and unambiguous language of the HHC Act and NYCCBL are consistent in requiring the Board to apply Taylor Law § 201.7(a) to determine the eligibility of HHC employees for collective bargaining.²⁶

We recognize that the language in HHC Act § 7385(11) and Taylor Law § 201.7(a) is not identical. Notwithstanding, “[b]oth sections are designed to accomplish the same end, and the definition contained in § 201.7(a) of the Taylor Law did not exist when § 7385(11) was enacted, so identity of language could not be expected.” *OSA*, 74 OCB 1, at 6 (citing *CWA*, 40 OCB 5, at 21). HHC Act § 7390(5) and NYCCBL §12-309(b)(4) mandate this Board to apply Taylor Law § 201.7(a) to all public employees within its jurisdiction. While we acknowledge the importance of HHC's mission of providing high quality comprehensive healthcare to New Yorkers, there is no provision in the HHC Act or the NYCCBL that require this Board to apply a different standard to HHC employees than to other New York State public employees. Such an interpretation would be incongruous with the City's bargaining structure. While the SC/MIS title is used exclusively at HHC, HHC has employees in Citywide titles performing identical duties as non-HHC City employees in identical titles. Moreover, HHC employees in Citywide titles are in bargaining units comprised of HHC employees and non-HHC City employees. *See, e.g., DC 37*,

²⁵ We note that that the only conflict that can arguably be found is between § 7390(5) and § 7385(11) of the HHC Act. This Board has previously held that the application of Taylor Law § 201.7(a) avoids such internal inconsistency within the HHC Act. *See CWA*, 40 OCB 5, at 22-23.

²⁶ We are not convinced that NY CLS Unconsol Chapter 214-A§(9)(1) requires the Board to apply Taylor Law § 201.7(a) to HHC employees. Rather, NYCCBL §§12-303(g)(2) and 12-303(h) and HHC Act § 7390(5) requires the application of Taylor Law § 201.7(a) to HHC employees to determine their eligibility for collective bargaining.

80 OCB 16 (BOC 2007). If accepted, HHC's argument would require this Board to apply a different legal standard to City employees performing identical duties as HHC employees in the same title and/or in the same bargaining unit. Such an interpretation also conflicts with the mandates of NYCCBL §§ 12-303(g)(2), 12-309(b)(4), and HHC Act § 7390(5), and this Board's obligation to ensure that "public employees shall be presumed eligible for [collective bargaining] rights unless [] a determination of managerial or confidential status has been rendered by the board of certification" under Taylor Law § 201.7(a).²⁷ NYCCBL § 12-305.

Application of Taylor Law § 201.7(a) to the SC/MIS Title

The managerial and confidential exclusions "are an exception to the Taylor Law's strong policy of extending coverage to all public employees and are to be read narrowly, with all uncertainties resolved in favor of coverage." *CWA, L. 1180*, 2 OCB2d 13, at 11 (BOC 2009) (quoting *Matter of Lippman v. Pub. Empl. Relations Bd.*, 263 A.D.2d 891, 904 (3d Dept. 1999)) (internal quotation marks omitted); *Matter of NYC Health & Hosp. Corp. v. Bd. of Certification of the City of NY*, 2007 NY Slip Op. 30921 (U) (Sup. Ct. N.Y. Co. Apr. 23, 2007) (Tolub, J.).

The Taylor Law provides for two managerial exclusions. The first is a manager "who formulate[s] policy." Taylor Law § 201.7(a)(i). Policy has been defined as "the development of the particular objectives of a government or agency thereof in the fulfillment of its mission and the methods, means and extent of achieving such objectives." *State of New York*, 5 PERB ¶ 3001, at 3005; *see EMS SOA*, 68 OCB 10, at 21 (BOC 2001); *USCA*, 66 OCB 4, at 26 (BOC 2000). Employees who formulate policy "include not only person[s] who ha[ve] the authority or responsibility to select among options and to put a proposed policy into effect, but also [those] who participate[] with regularity in the essential process which results in a policy proposal and

²⁷ Consequently, the employer bears the burden of proving a title is not eligible for collective bargaining. *See, e.g., CSBA*, 64 OCB 1, at 10 (BOC 1999).

the decision to put such proposal into effect.” *State of New York*, 5 PERB at ¶ 3005; *see also OSA*, 78 OCB 1.

The Board has held that “[p]articipation in the formulation of policy must be ‘regular,’ ‘active,’ and ‘significant’ to support a finding of managerial status.” *CWA*, 78 OCB 3, at 11 (BOC 2006) (citing *UFOA, L. 854*, 50 OCB 15, at 20 (BOC 1992)). The definition of policy formulation is limited to “those relatively few individuals who directly assist the ultimate decision-makers in reaching the decisions necessary to the conduct of the business of the governmental agency.” *State of New York (Dept. of Env. Conservation)*, 36 PERB ¶ 3029, at 3083 (2003) (finding managerial an employee who initiated a regulatory change proposal with “significant statewide implication,” formulated the long-term policy for the direction of the New York State Nursery program, and reallocated funding from efficiency studies to trade show promotions). For example, this Board has designated positions as managerial when the employees formulated policy by deciding how to protect the water supply system and planning a City agency’s response to emergencies. *See CWA, L. 1180*, 2 OCB2d 13, at 16-21.

There is a key distinction between setting policy and promulgating procedures. “Policy sets the agency’s course whereas procedures are the practical steps taken to implement such policy, including the determination of methods of operation that are merely of a technical nature.” *Local 621, SEIU*, 4 OCB2d 57, at 24 (BOC 2011) (internal quotations omitted) (quoting *Matter of City*, Index No. 402496/10, slip op. at 4-5); *see also Lippman*, 263 A.D.2d at 899; *City of Binghamton*, 12 PERB ¶ 3099, at 3185 (1979). Additionally, “exercising a high level of expertise and technical skill in performing one’s duties does not warrant excluding that employee from collective bargaining.” *Local 621, SEIU*, 4 OCB2d 57, at 24 (citing *OSA*, 3 OCB2d 33, at 47 (BOC 2010)). This is because “[t]he exercise of discretion, alone, is insufficient for a

managerial designation.” *CWA, L. 1180*, 2 OCB2d 13, at 13. “It is the condition under which discretion may be exercised, not the exercise of discretion itself, which we find relevant in determining manageriality. Employees who exercise their discretion only when permitted by policy, and exercise it within the specified guidelines of that policy, do not have the degree of freedom or authority to make decisions necessary to invoke managerial status.” *Id.* (quoting *UFOA, L. 854*, 50 OCB 15, at 23) (internal quotation marks omitted).

Notably, “budgetary duties are not dispositive of managerial status.” *CWA, L. 1180*, 2 OCB2d 13, at 14. “[W]hile involvement in budget formulation is one of the factors that this Board has considered in interpreting the Taylor Law definitions of managerial, those employees with budgetary duties, who do not formulate policy or do not have significant involvement in labor relations or personnel administration, are not excluded from collective bargaining as managerial.” *Id.* at 15 (citing *CWA*, 78 OCB 3, at 39, 45, 51). Among the duties found to be insufficient to establish that an employee formulates policy are “preparing budget proposals, overseeing and maintaining unit budgets, overseeing OTPS budget, preparing management reports and tracking spending[,] calculating overtime needs based on prior years’ expenditures, determining historical trends and anticipating expenses, implementing budget reductions, budget reconciliation, grant oversight, and entering into contracts with vendors to have office equipment maintained.” *Id.* at 22; *see also OSA*, 78 OCB 1, at 21, 25-26, 34, 36 (finding employees who prepare grant budgets, participate in allocating grant funds between facilities, allocate departmental expenses, prepare capital budget proposals, and make need-based recommendations for the departmental budget are eligible for collective bargaining).

We find that SC/MISs do not formulate policy. They recommend, establish, and implement technical operational procedures or processes and provide technical support or

perform project management responsibilities that improve how HHC's computer/IT-based work is done. SC/MISs perform duties such as analyzing reports; updating and maintaining software/systems; reviewing and revising the problem management process; managing corporate computer accounts; designing and writing scripts for applications; establishing and implementing computer/system security procedures and protocols; installing and maintaining servers; recommending upgrades and purchases of software and hardware; attending meetings in an advisory role to decision-makers; explaining revenue/deficit projection reports; providing status updates on IT projects; developing policies associated with IT project management and other IT strategic initiatives; providing technical support in the formulation of IT policies; designing new functionality for the EMR system; ensuring the accuracy, back-up, and security of HHC databases; transferring data; creating tables and queries; creating and standardizing usernames and passwords; creating departmental standards and procedures for the use and functioning of the mainframe system; reviewing and updating technical procedures and policies relating to the data centers; creating procedures that protect against computer viruses; developing IT project plans; standardizing the use of SharePoint; standardizing the provisioning and de-provisioning process; drafting user instructions adapted from existing hospital policies or vendor instructions; and monitoring service and equipment expenditures. These duties improve HHC's computer operations and serve an important role in supporting HHC's IT infrastructure. However, these duties do not rise to the level of policy formulation under the NYCCBL.

Indeed, SC/MISs perform duties similar to other HHC employees who are eligible for collective bargaining. In *OSA*, 78 OCB 6 (BOC 2006), HHC did not challenge the eligibility of employees in the System Project Leader title, who perform duties such as conducting studies of existing systems; analyzing systems to develop new systems; installing new programs onto

HHC's computer network; training end-users in new programs; maintaining, repairing, upgrading, and improving existing systems and programs on HHC's computer network. *Id.*, at 17, 18-19. Similarly, this Board found eligible three Senior Management Consultants (Business Organization and Methods), who perform IT duties such as preparing specifications for programmers; making recommendations to supervisors; preparing budget cost analysis for submission and approval by the HHC Budget Department and Board of Directors; coordinating implementations and trainings; creating corporate training policies and procedures; designing and developing applications, drafting policies and procedures for entry of medical notes into the EMR; assessing technical needs and offering solutions; attending Medical Board meetings where EMR is discussed; and performing project management responsibilities. *See OSA*, 78 OCB 1, at 42-43, 48. In particular, we found the Bellevue Hospital Director of Clinical Information Systems eligible for bargaining because "he improves how work is done and how information is captured electronically and used, but does not have a significant role in formulating policy regarding [HHC's] mission." *Id.*

Similarly, we find that the positions held by Robert Knauf, Cory Morris, and Jonathan Goldstein are eligible for collective bargaining because their role in the formulation of policy is to primarily serve as resources to more senior officials. Knauf analyzes patient and staffing data to recommend a staffing model to facility CFOs based on patient care and financial ability to pay. Morris reviews facility financial data, distributes revenue/deficit projection reports, and recommends cost-containment measures to cost group administrators. Similarly, Goldstein analyzes patient and employee demographic information related to anticipated restructurings, closures, and openings of HHC facilities, which he provides to senior-level HHC staff to make decisions. Neither Knauf, Morris, nor Goldstein actively or regularly participate in the decision-

making process to determine appropriate staffing levels, cost-containment measures, or the restructuring, closure or opening of HHC facilities. Rather, they gather and analyze information as resource people for decision-makers that formulate policy.²⁸ See *OSA*, 78 OCB 1, at 19 (finding Senior Management Consultants (Business Organization and Methods) at HHC eligible for bargaining because “they gather and analyze data for use by upper management but are not directly involved in making decisions”); *DC 37*, 60 OCB 4 at 37 (BOC 1997) (finding Project Planners eligible for bargaining because their tasks are “more in the nature of gathering and analyzing data, or making reports and suggestions, used in the formulation of policy”).

The second type of manager excluded from collective bargaining is one “who may reasonably be required on behalf of the public employer to assist directly in the preparation for and conduct of collective negotiations or has a major role in the administration of agreements or in personnel administration provided that such role is not of a routine or clerical nature and requires the exercise of independent judgment.” Taylor Law § 201.7(a)(ii). To fall within this exclusion, an employee must be “a direct participant in the preparation of the employer’s proposals and positions in collective negotiations and an active participant in the negotiating process itself . . . having the authority to exercise independent judgment in the employer’s procedures or methods of operation as necessitated by the implementation of [collective bargaining] agreements,” or, concerning personnel administration, “exercise independent judgment and fundamental control over the direction and scope of the employer’s mission.” *County of Rockland*, 28 PERB ¶ 3063, at 3141-3142 (1995) (quoting *City of Binghamton*, 12 PERB ¶ 4022, at 4035).

²⁸ We note that this Board previously found Goldstein eligible for collective bargaining for performing similar duties as a Senior Management Consultant (Business Organization and Methods). See *OSA*, 78 OCB 1, at 17-21.

However, “[t]here is a critical and long-standing distinction between managers involved in labor relations/personnel administration, who are excluded from collective bargaining, and the broader category of employees who perform supervisory functions, who are eligible for collective bargaining.” *OSA*, 3 OCB2d 33, at 66-67 (quoting *Lippman*, 263 A.D.2d at 901-902) (internal quotation marks omitted). Thus, even employees with a substantial role in hiring, firing, promotional, disciplinary, and staffing decisions have been found eligible for collective bargaining. *Id.* at 67; *see also CWA, L. 1180*, 2 OCB2d 13, at 92; *Local 621, SEIU*, 78 OCB 2, at 21 (2006); *CWA, L. 1180*, 76 OCB 4.

There is no evidence that SC/MISs prepare for or conduct collective negotiations or play a major role in the administration of agreements. The record reflects that some SC/MISs perform supervisory duties such as overseeing the work of employees, consultants, and outside vendors; assigning and scheduling work; counseling and disciplining employees; conducting employee evaluations; approving leaves; training employees; interviewing candidates for employment; and recommending hiring and firing employees and consultants. Such routine supervisory duties do not warrant the exclusion of these employees from collective bargaining.

As to confidentiality, “[e]mployees may be designated as confidential only if they are persons who assist and act in a confidential capacity to managerial employees described in clause (ii).”²⁹ Taylor Law § 201.7(a). In order to meet this definition, the employee must meet both prongs of a two-part test: “(1) the employee . . . must assist a Civil Service Law § 201(7)(a)(ii) manager in the delivery of labor relations duties described in that subdivision—a duty oriented

²⁹ Managerial employees described in clause (ii) are those “who may reasonably be required on behalf of the public employer to assist directly in the preparation for and conduct of collective negotiations or to have a major role in the administration of agreements or in personnel administration provided that such role is not of a routine or clerical nature and requires the exercise of independent judgment.” Taylor Law § 201.7(a)(ii).

analysis; and (2) the employee . . . must be acting in a confidential capacity to that manager—a relationship oriented evaluation.” *Lippman*, 263 A.D.2d at 902.³⁰

The record reflects that SC/MISs do not assist a manager with significant involvement in labor relations or personnel administration in the performance of those duties. With one exception, SC/MISs do not meet the first prong of the confidentiality test. For example, Bowen’s and Beauchamp’s access to confidential employee information is not related to personnel administration as contemplated by Taylor Law § 201.7(a). Rather, Bowen’s access to confidential employee information is for the purpose of activating or deactivating access to HHC’s computer system and adding and removing employees from HHC’s payroll. Likewise, Beauchamp provides general IT support to IG office staff that is not related to IG investigations. The highly sensitive nature of the work performed in Beauchamp’s office, without Beauchamp participating or directly assisting the IG in IG investigations, does not compel a confidential designation. *See Assn of NYC ADAs*, 14 OCB 13, at 26 (BOC 1974); *NYC Dept. of Investigations Investigator’s Assoc.*, 72 OCB 2, at 18 (BOC 2003). Similarly, other SC/MISs’ access to personnel confidential information is for the purpose of performing technical tasks, such as troubleshooting or enhancing databases or systems.

In contrast, Goldstein meets the first prong of the confidentiality test. He has access to and performs analysis of employee information related to HHC anticipated restructurings and employee layoffs. However, Goldstein does not satisfy the second prong of the test for

³⁰ The purpose of this analysis “is [to] determine whether the employee regularly has access to confidential information concerning labor relations and/or personnel matters to such an extent that their inclusion in collective bargaining would lead to conflicts of interest inimical to the bargaining process and the full and fair representation of the employer’s interests.” *DC 37*, 62 OCB 4, at 13-14 (BOC 1998). This purpose “do[es] not create a [different] standard apart from [the two-prong test] set forth in [Taylor Law § 201.7(a)].” *OSA*, 3 OCB2d 33, at 40 (quoting *CWA*, 2 OCB2d 13, at 101) (internal quotation marks omitted).

confidentiality because there is no evidence that the Senior Director to whom Goldstein reports to is actively involved in the decision-making process to effectuate or implement a restructuring or layoff or otherwise, significantly involved in the administration of collective bargaining agreements or personnel administration. As such, there is no basis to exclude any SC/MIS employees from collective bargaining as confidential.

Accordingly, for the reasons stated here, we find that all employees in the SC/MIS title are eligible for collective bargaining.

Appropriate Bargaining Unit Determination

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.

The Rules of the Office of Collective Bargaining (Rules of the City of New York, Title 61, Chapter 1) (“OCB Rules”) § 1-02(k).

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. UFA*, 48 OCB 7, at 24 (BOC 1991); *CCA*, 46 OCB 11, at 22-23 (BOC 1990).

DC 37 and OSA agreed that the SC/MIS title has a community of interest with the titles in both units and indicated a preference for an election to decide which Union would represent the SC/MIS title. HHC did not take a position in its post-hearing brief on the appropriateness of OSA's or DC 37's bargaining units. Given the parties' positions and the evidence before us, we find that accretion to either bargaining unit is appropriate because the SC/MIS title job duties, qualifications, and/or working conditions are substantially similar to the System Project Leader, Supervising Systems Analyst (Approved Specialties), Manager – Scheduling and Control (EDP), and Senior Management Consultant (Business Organization & Methods) titles represented by OSA and the Certified Application Developer Certified Database Administrator, Certified Local Area Network Administrator, Certified Wide Area Network Administrator, and Computer Specialist (Software) titles represented by DC 37.

Accordingly, we direct that an election be conducted among employees in the SC/MIS title to ascertain the wishes of the employees as to their union representation.³¹ The SC/MIS title

³¹ 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

will be added to the bargaining unit represented by the union that receives a majority of the valid ballots cast.

appropriate and suitable method designed to ascertain the free choice of a majority of such employees, to certify the same as the exclusive bargaining 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 Senior Consultant, Management Information Services, Level I, II, and III (Title Code Nos. 985011, 985012, and 985013), 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 Senior Consultant, Management Information Services, Levels I, II, and III (Title Code Nos. 985011, 985012, and 985013), 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 Senior Consultant, Management Information Services, Levels I, II, and III, 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 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 Senior

Consultant, Management Information Services, Levels I, II, and III, who were employed during the payroll period immediately preceding the date of this Decision and Direction of Election.

DATED: July 7, 2015
New York, New York

SUSAN J. PANEPENTO
CHAIR

CAROL A. WITTENBERG
MEMBER