

Organization of Staff Analysts, 80 OCB 1 (BOC 2007) [Decision No. 1-2007]
(Docket No. AC-21-05).

Summary of Decision: OSA filed a petition to accrete the title NYCAPS Process Analyst into its bargaining unit. The City asserted that the employees in the title were ineligible for collective bargaining because they were confidential. The Board found that the employees in the NYCAPS Process Analyst title are not confidential and, thus, eligible for collective bargaining. (***Official decision follows.***)

**OFFICE OF COLLECTIVE BARGAINING
BOARD OF CERTIFICATION**

In the Matter of the Certification Proceeding

-between-

ORGANIZATION OF STAFF ANALYSTS,

Petitioner,

-and-

THE CITY OF NEW YORK,

Respondent.

DECISION AND ORDER

On March 14, 2005, the Organization of Staff Analysts (“OSA” or “Union”) filed a petition seeking to accrete the employees in the title NYCAPS Process Analyst (Title Code No. 06752) employed by the City of New York (“City”) into its bargaining unit, Certification No. 3-88. On May 6, 2005, the City asserted that the petitioned-for employees are confidential and are, therefore, not eligible for collective bargaining. We find that employees in the NYCAPS Process Analyst title are

eligible for collective bargaining, with the exception of the NYCAPS Process Analyst employee position at the New York City Office of Labor Relations. Therefore, we direct that Certification No. 3-88 be amended accordingly.

BACKGROUND

The NYCAPS Program

The New York City Automated Personnel System program (“NYCAPS”) is an “off-the-shelf,” web-based computer program produced by People-Soft, a private company, that has been customized to service the human resources management needs of the City and its agencies. This program will enable to the City to develop and implement a citywide system that will contain all human resources data and operations and will replace the current, separate human resource management systems, such as: the Payroll Management System (“PMS”); the Personnel Accounting Control Enrollment System (“PACES”), which handles benefits administration; the Personnel Reporting Information System for Employees (“PRISE”), which contains personnel history; the Civil Service Exam Application Program (“APPS”), which manages civil service applications; and the program that handles civil service list certifications, which is referred to as CERTS.

NYCAPS was created, developed, and implemented in order to create a single system of records for all personnel data and transactions with more accurate and timely reporting capabilities, to improve access to such information, to replace the existing, antiquated systems, to consolidate all such information within one resource rather than each agency maintaining its own individual systems, to reduce paperwork, and to increase productivity and efficiency.

According to the Deputy Commissioner for the Division of Citywide Personnel Services,

Joseph DeMarco, NYCAPS is programmed to implement and recognize all of the human resources related rules, regulations, and policies that govern City employees, including those that are citywide, agency specific and applicable to respective bargaining units.¹ NYCAPS is an improvement over the existing human resources systems since they do not take into account for such rules, regulations, and policies. Additionally, NYCAPS retrieves and consolidates the necessary information contained on the existing human resources databases.

Five oversight agencies were involved in the development and implementation of NYCAPS: the Department of Citywide Administrative Services (“DCAS”), the Financial Information Service Agency (“FISA”), the Department of Information Technology and Telecommunications (“DOITT”), the Office of Payroll Administration (“OPA”), and the Office of Labor Relations (“OLR”). In August 2005, NYCAPS was “rolled out” at FISA, DOITT, OPA and OLR. Sometime after the initial “roll out,” DCAS, the Department of Finance (“DOF”), and the Department of Transportation (“DOT”) began using NYCAPS.

NYCAPS Process Analysts

According to the job specification for the NYCAPS Process Analyst title (“NPA”), employees in this title are responsible for the “planning, managing, organizing, coordinating and directing the design, development and delivery of technology solutions addressing the business needs of NYCAPS.” The NPA title has two assignment levels. The job specification states that “under general supervision, with latitude for independent judgment and decision making, [NPA, Level I employees are] responsible for application analysis for a moderate sized, complex portion of the

¹ The Division of Citywide Personnel Services, formerly known as the Department of Personnel, was integrated into Department of Citywide Administrative Services and is the department that oversees NYCAPS.

NYCAPS project.” Regarding NPAs Level II, the job specification provides that “under general managerial direction, with very wide latitude for independent judgment and decision making, [NPA Level II employees are] responsible for managing the application planning and implementation of a major and/or highly complex portion of the NYCAPS project.”

According to the NPA job specification, typical tasks include but are not limited to:

Works with functional owners to: define strategy and requirements for customizing off-the-shelf software; articulate and define project needs, options and consequences; document user requirements and ensure that these requirements are incorporated into NYCAPS application; and develop scope of project, programmatic requirements, project plans and schedules necessary for the customization, testing and rollout of the NYCAPS application.

Works with agency personnel, vendors and consultants to define application requirements to foster the design, development, testing and implementation of NYCAPS application solutions, including developing scenarios for user testing, reviewing table value requirements, and identifying conversion issues and strategies.

Reviews design documents and specifications to ensure that application requirements are accurate and complete. Coordinates activities associated with project completion, including reviewing specifications, agreements, schedules, and reports prepared by consultants, vendors and agencies to assure conformance with project completion dates and quality standards.

NPAs are involved in automating many existing human resources processes by incorporating them into NYCAPS. They investigate which processes need to be automated, what information is needed from each database (i.e. PMS, PACES, PRISE) for successful automation, and what is the most efficient and effective manner to “capture” this information. (Tr. 245.)² Based upon their findings, NPAs make recommendations to their supervisors, Deputy Commissioner DeMarco, the Deputy Commissioner of Special Projects at DOITT, Annette Hines, and the Assistant Commissioner of Civil Service Administration at DCAS, Maria DiPaola. According to the

² “Tr.” refers to citations from the hearing transcript.

testimony of Assistant Commissioner DiPaola and Deputy Commissioner DeMarco, these supervisors rely heavily upon the recommendations offered by NPAs regarding work flow and analysis as they relate to personnel administration.

In furtherance of these duties, NPAs have access to the human resources databases, have the ability to view all personnel information concerning any employee within those databases, and have the ability and authorization to correct, alter, or change any information contained in the databases.³ (Tr. 223.) In addition, NPAs monitor NYCAPS to ensure that the human resources personnel at the agencies are using the program properly.

At the time the record was closed, 33 NPA positions had been created: 15 at DCAS, 10 at FISA, 5 at DOITT, 2 at OPA, and 1 at OLR.⁴ However, only six people had been hired into the NPA title, 4 at DCAS and 2 at DOITT. Out of the six NPAs, only four testified. We consider these four NPAs to be representative of all employees in the NPA title.

Caitlin Armistead started with DOITT in August 2004 in the title of Associate Staff Analyst, which is represented by OSA, and transferred to the NPA title in September 2005. She reports directly to Deputy Commissioner Hines. As a NPA, Armistead routinely interacts with the Assistant Commissioner for Research and Negotiation at OLR, Jean Brewer, prepares supervisors for their presentations to unions about NYCAPS, and regularly attends meetings with Deputy Commissioner Hines and the NYCAPS Functional Architect Marisa Caggiano. Armistead routinely attends two types of meetings: (i) oversight agency meetings involving OLR, DCAS, OPA, FISA and DOITT

³ Based upon the testimony offered, it is unclear whether all NPAs will have “corrective capabilities,” or whether only the NPAs working in DCAS possess such authority.

⁴ The Union “concedes that the one person to be hired at OLR would be ineligible for bargaining.” Petitioner’s Post-Hearing Brief, p. 2.

and (ii) “roll out” meetings involving the specific agencies where NYCAPS is going to be implemented.

At oversight agency meetings, representatives from each oversight agency gather in order to determine which human resources rules and regulations are going to be implemented into NYCAPS, so that these protocols are universally applied. Armistead documents the protocols that had been discussed. Then, she researches these protocols by interviewing employees with relevant information to the particular issue, compiles background materials on the protocols, and determines the feasibility and efficiency of implementing these protocols into NYCAPS. An example of a protocol discussed at such meetings is how an employee’s start date is recorded in the citywide system. These meetings can be held as often as weekly and as infrequent as monthly.

At “roll out” meetings, NPAs meet with representatives from the agencies that are about to implement NYCAPS and outside consultants, as well as Deputy Commissioner Hines and NYCAPS Functional Architect Caggiano. Topics discussed at these meetings included specific human resources needs unique to the agencies, potential problems that may arise during the installation and performance of NYCAPS, and the training of the agencies’ employees who will be using NYCAPS. Also at these “roll out” meetings, NPAs perform “fit-gap analysis,” which means “walking an agency through their current system and kind of making sure that the gap between the old system and the new system is closable.” (Tr. 61-62.)

Stella Xu began working for DCAS in May 2004 in the title of Staff Analyst, represented by OSA, and was transferred into the title of NPA in May 2005. Her direct supervisor is the Director of Operational Analysis, Brian Goldberg, who in turn reports to Assistant Commissioner DiPaola. Xu is currently performing functional analysis on existing civil service procedures and processes.

She is documenting these procedures and processes in an “as-is format so that we know exactly what steps are being taken, who are the parties involved and what documentation is required.” (Tr. 103.)

She then seeks ways in which to streamline, improve, and automate these procedures and processes and makes recommendations regarding these potential improvements.

In furtherance of these duties, she interviews the employees responsible for performing these procedures and processes, drafts flow charts and Microsoft Word documents explaining her research and recommendations, and conducts presentations where her findings are shared. Examples of the functional analysis performed by Xu involve projects in the Investigations Unit in DCAS on: the application process when seeking a skilled-trade license, the tracking of employees’ applications for veteran’s credit, and the documentation of new-hires’ arrest records and fingerprints. One of Xu’s other principal duties is working for the NYCAPS Functional Team, which provides “executive support to civil service administration” by providing information, reports, analysis, and technical support to the various administrators at the oversight agencies. (Tr. 89.)

Victoria Schragger started with DCAS in June 2005 as a NPA. Like Xu, she reports to Director of Operational Analysis Goldberg and works closely with Assistant Commissioner DiPaola. One of Schragger’s main duties is writing and processing inquiries “against the data in PMS.”⁵ (Tr. 140.) An example of a SQL inquiry run by Schragger is the change in salaries prior to and immediately following a change in the mayoral administration. She further testified that the topics of these requests originate from Assistant Commissioner DiPaola. She also aides in the preparation of a quarterly report, which documents the employment status of employees, who are either

⁵ Standard query language (“SQL”) is used to search for and retrieve information from databases and format the requested information into table form.

provisional, permanent, competitive, or non-competitive. According to Schrager, this report is to ensure that the practices of the Civil Service Administration are implemented by NYCAPS. In addition, Schrager assisted in streamlining the process that created these reports by changing the format of these reports from paper to entirely electronic.

Other projects Schrager has worked on include: the “social security number change” project and the notice of examination project. The first project involved the examination of employees’ social security numbers that were inputted into PMS and PRISE incorrectly. Schrager’s responsibility during this project was to determine why these numbers were incorrect, to determine who had the authority to correct these mistakes, and when these omissions should be corrected. After her investigation, Schrager made recommendations to several supervisors, including the head of the Applications Department. In the latter project, she was asked to analyze the examination and notice of examination processes to ensure that the Examinations Bureau complied with the recommendations suggested by the Director of Certification and the Director of Personnel Audit Transactions. If any aspects of these recommendations were absent from these processes, Schrager was authorized to incorporate them. As explained by Schrager, these two projects relate to NYCAPS because they utilized information found in NYCAPS and were designed to ensure that this information was being properly transferred from the old systems, such as PMS and PRISE, to the new one, NYCAPS.

Maria Ciniglio began working at DCAS as a NPA in November 2005. She is assigned to work at NYCAPS Central, which is the help desk function for the implementation of NYCAPS.⁶

⁶ NYCAPS Central is a liason group, similar to a help desk, consisting of two NPAs, as well as various other titles, including Staff Analysts, Systems Analysts, and various clerical titles.
(continued...)

Ciniglio's main duty at NYCAPS Central is determining whether a System Information Request ("SIR") is needed concerning a particular human resources question that arose out of a system-wide problem in NYCAPS. These system-wide problems include agency difficulty in entering new hires or rehires who have been out of City service for over a year into NYCAPS, or entering a transfer coming from an agency that was not utilizing NYCAPS into an agency that is. Aside from this main duty, Ciniglio also ensures that NYCAPS is accurately transferring information from the other human resources programs; works with Remedy, which is a program that manages the help requests from the other agencies; makes recommendations regarding changes to job-aids, which are documents detailing the process by which an agency's human resources personnel carry out most transactions on NYCAPS; and assists in the training of human resources personnel from other agencies.

NYCAPS Functional Architect Caggiano, Assistant Commissioner DiPaola, and Deputy Commissioner DeMarco also testified on behalf of the City. NYCAPS Functional Architect Caggiano has a background in personnel and was the Assistant Commissioner of Human Resources at the Department of Design and Construction. As the Functional Architect, Caggiano designs and builds "the functionality of NYCAPS," but does not engage in the technical construction of the actual program. (Tr. 33.) Rather, she drafts and interprets human resources policies "from a

⁶(...continued)

NYCAPS Central acts as a conduit between the end users at the various agencies, the human resources employees who need to utilize the information contained on NYCAPS, and the program developers, the architects of this program who work at FISA and DOITT. The NPAs at NYCAPS Central answer questions about functionality, trouble shoot problems, perform audit functions, track and log "bugs," track and log enhancement requests, and communicate with developers regarding "bugs." The NPAs in this unit also interact with agencies' personnel officers by processing "ticket requests," which are requests for assistance from an agency, and routing these "tickets" to FISA and DOITT.

business point of view, not from a technical point of view.” (Tr. 34.) She relies on the expertise of the NPAs, such as Armistead, who accompany her to meetings in order to discuss the more technical aspects of NYCAPS. Caggiano stated that the NPAs have access to all the personnel information of employees working for the City and have the authority and the ability to change every aspect of that information.

Assistant Commissioner DiPaola, who reports directly to Deputy Commissioner DeMarco, testified that she ensures that the Civil Service Administration, which is a unit within the Division of Citywide Personnel Services that administers personnel matters such as examinations and certifications, internal investigations, unemployment insurance matters, audits of personnel, and operational analysis throughout the City. Assistant Commissioner DiPaola testified regarding two projects on which NPAs were currently working. One deals with the examination of prospective employees and their subsequent certification, and the other addresses the functional analysis of the investigations unit. In both instances, NPAs engaged in the analysis of the systems by which these two operations are completed.

Regarding the examination and certification project, NPAs examined whether NYCAPS would be able to manage the application process to take an exam, the taking of such exams online, and the scoring of that exam. In sum, NPAs were “finding out exactly how something [the examination and certification process] is currently done and planning how it will be done in the new system [NYCAPS].” (Tr. 218.) The NPAs then prepared documents for their supervisors that communicated their findings and offered various recommendations. According to Assistant Commissioner DiPaola, she and other superiors relied heavily upon the NPAs’ findings and suggestions.

With regard to the investigation unit project, NPAs examined the manner in which this unit's implementation of new digital fingerprinting technology effected the investigatory process. NPAs examined how NYCAPS could improve the intake of new fingerprints, the cataloging of such prints, and the review of the reports generated by these prints. The NPAs then drafted an "as-is document" detailing the current process and a "to-be document" describing the manner in which NYCAPS could improve this investigatory process. Assistant Commissioner DiPaola asserted that the Civil Service Administration relies upon these functional analysis documents, created by the NPAs, that dictate the manner in which the projects involving NYCAPS would proceed.

Deputy Commissioner DeMarco testified that his department, the Department of Citywide Personnel Services, oversees citywide personnel operations of all personnel departments, in order to ensure that the other agencies "are complying with the civil service laws [as well as] all the personnel rules [and] all of the policies that affect employees." (Tr. 271.) Furthermore, the Department of Citywide Personnel Services oversees other units within DCAS, such the Civil Service Administration, which manages NYCAPS.

He testified that the overall purpose of the NPAs is to "figure out how the city's personnel procedures and rules and policies are going to be automated in the system [NYCAPS]" and ensure that NYCAPS properly implements and abides by these procedures, rules, and policies. (Tr. 277.) Deputy Commissioner DeMarco stated that he relies on the recommendations of the NPAs because NPAs understand "what the system [NYCAPS] can do and can't do." (Tr. 278.) He asserted that NPAs are different than human resource personnel in the agencies because they have access to all personnel mainframes, such as PMS, PACES, APPS, and CERTS, for every employee citywide, whereas, a human resources employee would normally have access only with respect to employees

within their own agency. Furthermore, NPAs are different from employees in analyst titles because Deputy Commissioner DeMarco relies “much more heavily” on the recommendations of the NPAs. Finally, he asserted that NPAs utilize independent thought, have access to and authority to alter personnel information, and offer extremely valued recommendations.

POSITIONS OF THE PARTIES

City’s Position

The City argues that NPAs are confidential employees who should be excluded from collective bargaining because they assist managerial employees in personnel administration and act in a confidential capacity toward these managerial employees.

The City contends that NPAs aid managers, as defined by N.Y. Civil Service Law (“CSL”) § 201, in personnel administration. They directly interact and collaborate with Deputy Commissioner DeMarco, Assistant Commissioner Hines, and Assistant Commissioner DiPaola, who are clearly managerial. With regards to NYCAPS, NPAs attend meetings with, report directly to, take orders and directions from, and offer suggestions to Deputy Commissioner DeMarco, Assistant Commissioner Hines, and Assistant Commissioner DiPaola. More importantly, these three managers have the highest regard for the advice and counsel received from the NPAs concerning NYCAPS, and often implement the NPAs’ recommendations without any alteration or adjustment.

Further, the City contends that NPAs act in a confidential capacity with respect to its interaction with these managers. Specifically, NPAs have access to confidential information concerning personnel administration, such as personnel files, disciplinary files, and benefit status of every employee currently in NYCAPS. In addition, NPAs can log into NYCAPS and alter any

information contained in this database. Thus, the inclusion of NPAs into a bargaining unit would lead to a conflict of interest and would be inimical to the collective bargaining process.

Union's Position

The Union asserts that employees in the NPA title are eligible for collective bargaining. Under the NYCCBL, the NPAs are presumed to be eligible for collective bargaining, and the City has failed to meet its burden of demonstrating that these employees are confidential.

The Union contends that the NPAs are not confidential employees because they do not act in a confidential capacity to managers who are involved in personnel matters and are not so involved in personnel administration as to warrant exclusion from collective bargaining. NPAs, according to the Union, simply take information from a variety of human resources databases and ensure that this information from the different sources are properly consolidated into NYCAPS. Even though they perform important, functional, and technical tasks, NPAs do not perform duties that would require the designation of confidential employees, such as assisting in layoffs, preparing and administering civil service exams, investigating employees and applicants, representing the city in labor management meetings, or conducting audits of out-of-title grievances.

The Union disputes the City's claim that NPAs are rendered confidential because they have access to personnel information and have the ability to change such information. NPAs have access to personnel information to which many other employees also have access, and these other employees also have the ability to correct, revise, and alter such information. These other employees who share such similar duties and responsibilities are represented for collective bargaining purposes. For example, employees in the Staff Analyst and Associate Staff Analyst titles who work at DCAS, are eligible for collective bargaining in spite of their access to and ability to input information into

the same personnel, pay, and benefit databases utilized by the NPAs.

DISCUSSION

The issue presented in the instant matter is whether the employees in the NPA title are eligible for collective bargaining or are confidential employees excluded from collective bargaining under the NYCCBL.

NYCCBL § 12-305 states, in pertinent part, that “public employees shall be presumed eligible for the rights set forth in this section . . . ,” such as the right to self-organization and the right to bargain collectively. Therefore, when the City objects to the bargaining status of a title, the City has the burden to demonstrate that a title is not eligible for bargaining because it is managerial and/or confidential. Pursuant to NYCCBL § 12-309(c)(4), determinations concerning employees’ eligibility for representation are made consistent with N.Y. Civil Service Law (“CSL”) § 201.7, which states, in pertinent part:

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 negotiation 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) defines a “confidential” employee as one who acts in a confidential capacity to a managerial employee involved in collective negotiations, the administration of collective bargaining agreements, or in personnel administration. This limited and narrow definition of confidential employees has been repeatedly upheld as a constitutional exercise of legislative power.

See Matter of Shelofsky, 32 N.Y.2d 54 (1973), *cert denied*, 414 U.S. 804 (1974); *Lippman v. Public Employment Relations Bd.*, 263 A.D.2d 891, 902-903 (3rd Dep't 1999). To establish that an employee is confidential, the employer must meet a two-pronged test. First, the employee must assist a manager in collective negotiations, the administration of collective bargaining agreements, or in personnel administration. Second, the employee must act in a confidential capacity to that manager. *See New York City Dep't of Investigation Investigator's Ass'n*, Decision No. 2-2003 at 17-18; *Civil Serv. Employees Ass'n*, 32 PERB ¶ 3001 (1999).

This Board has applied this standard to exclude only employees who regularly have “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.”⁷ *District Council 37*, Decision No. 4-98 at 13-14. The secretive or highly sensitive nature of an employee’s work alone does not compel a confidential designation. *Ass'n of New York City Assistant Dist. Attorneys*, Decision No. 13-74 at 26; *New York City Dep't of Investigation Investigator's Ass'n*, Decision No. 2-2003 at 18. Rather, the employee’s involvement in collective negotiations, the administration of collective bargaining agreements, or personnel administration makes him or her ineligible for inclusion in collective bargaining.

With the exception of the NPA position at OLR that the Union concedes is confidential, we find that NPAs are eligible for collective bargaining. They do not provide confidential assistance

⁷ We note that the exercise of this Board’s discretion concerning the managerial and/or confidential exclusion from collective bargaining has been upheld by the courts. *See, e.g., Matter of Civil Service Technical Guild, Local 375 v. Anderson*, 79 A.D.2d 541, 542-545 (1st Dep't 1980) (Kupferman, J. dissenting), *rev'd on grounds of dissent*, 55 N.Y.2d 618 (1981).

in collective negotiations, the administration of collective bargaining agreements, or personnel administration such that their inclusion in collective bargaining would lead to conflicts of interest inimical to the bargaining process. Even though NPAs work closely with Deputy Commissioner DeMarco, Assistant Commissioner Hines, and Assistant Commissioner DiPaola, NPAs' primary function is to adapt and administer computer systems. Although these systems are utilized in personnel administration, the duties and responsibilities of the NPAs concern information management, not personnel administration.

NPA Armistead testified that she examines various protocols, documents them, interviews the employees who are involved in these protocols, determines if these protocols can be implemented by NYCAPS, and then makes recommendations to her supervisors regarding the feasibility of the implementation based upon her findings. NPA Xu testified that she worked on a functional analysis program involving civil service procedures, in which she documented existing processes, interviewed employees involved on those processes, and developed ways in which to streamline and automate those processes. NPA Xu took the results of her investigation and made recommendations to her supervisors. NPA Schrage testified that she worked on the social security number change project, which required her to study various systems, to determine why incorrect data was transferring from the old system to NYCAPS, to correct the data, and to recommend to her superiors how to fix the problems plaguing those systems. NPA Schrage also worked on the notice of examination project, in which she examined the notice process to ensure that the Examinations Bureau complied with the recommendations of her supervisors, and, if not, she was authorized to input the changes. NPA Ciniglio performed trouble shooting at the NYCAPS help desk, made recommendations to her supervisors regarding job-aids, and aided in the training of employees from

other agencies in the operation of NYCAPS.

In sum, NPAs perform systems analysis, examining every aspect of various human resources databases, in an attempt to consolidate and streamline these systems into a singular computer program, NYCAPS. They oversee and ensure the accurate transfer of data. They train other employees in operating and managing of NYCAPS. They study the various human resources databases and systems, as well as the end users who operate them, and develop a manner by which to improve the systems. They make recommendations to their supervisors regarding these possible improvements. These skills and tasks may assist Deputy Commissioner DeMarco, Assistant Commissioner Hines, and Assistant Commissioner DiPaola, but are not intrinsic to personnel administration such that inclusion of the NPAs in collective bargaining would create a conflict of interest for the employer. Indeed, similar tasks and duties are performed by various other City employees who are eligible for collective bargaining. *See New York City Dep't of Investigation Investigator's Ass'n*, Decision No. 2-2003 at 4, 18 (finding eligible employees whose tasks included accessing, protecting, and maintaining the security of the City's information technology infrastructure); *see also Organization of Staff Analysts*, Decision No. 1-2006 at 42-43, 48 (finding eligible employees who examined clinical needs of hospitals concerning workflow and computerization of medical records, sought feedback from end users who utilize these various computer systems, devised solutions regarding those needs, and made recommendations to their supervisors).

In contrast, in *Organization of Staff Analysts*, Decision No. 17-91, we found that a number of employees who worked in the Department of Personnel, the predecessor agency to DCAS, were confidential because they were engaged in collective negotiations, the administration of collective

bargaining agreements, or personnel administration. Specifically, Staff Analysts and Associate Staff Analysts in the Quality of Work Life Unit were designated confidential because they represented the City on the bilateral labor management program. The Staff Analysts and Associate Staff Analysts in the Bureau of Exams were ineligible because they performed special projects involving exam preparation, exam administration, and appeals of exams. Finally, two employees were deemed confidential because they were privy to information concerning layoffs before it was made public.

Moreover, contrary to the City's assertion, access to all the human resources databases and ability to change the information they contain does not render the NPAs confidential. *See New York City Dep't of Investigation Investigator's Ass'n*, Decision No. 2-2003 at (finding that access to sensitive personnel data, such as PMS, civil service exams, personnel records and disciplinary records, is not sufficient for a confidential designation under the NYCCBL).

The Union concedes that the NPA position at OLR is confidential. This is consistent with this Board's determination in *District Council 37, AFSCME*, Decision No. 75-74, in which we held that all employees of OLR and the New York City Office of Collective Bargaining are excluded from collective bargaining because "by reason of the nature of said offices and agencies, [these employees] are involved in the formulation or administration of labor relations and executive policies and are, therefore, deemed to be managerial and/or confidential employees." *District Council 37 AFSCME*, Interim Decision No. 51-74 at 6, *upheld in District Council 37, AFSCME*, Decision No. 75-74.

Therefore, with the exception of the NPA position at OLR, we find the NPA title to be eligible for collective bargaining.

ORDER

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 NYCAPS Process Analyst, Levels I and II (Title Code No. 06752), are eligible for collective bargaining, except for the NYCAPS Process Analyst position at the New York City Office of Labor Relations which is designated confidential and excluded from collective bargaining; and it is further,

ORDERED, that Certification No. 3-88 (as previously amended) be, and the same hereby is, further amended to include the title NYCAPS Process Analyst, Levels I and II (Title Code No. 06752), subject to existing contracts, if any.

DATED: New York, New York
January 5, 2007

MARLENE A. GOLD
CHAIR

GEORGE NICOLAU
MEMBER

CAROL A. WITTENBERG
MEMBER

NOTICE OF AMENDED CERTIFICATION

This notice is to acknowledge that the Board of Certification has issued a Decision and Order as follows:

DATE: January 5, 2007

DOCKET #: AC-21-05

DECISION NUMBER: 1-2007

EMPLOYER: The City of New York, represented by the Office of Labor Relations
40 Rector Street, New York, New York 10006

CERTIFIED/RECOGNIZED BARGAINING

REPRESENTATIVE:

Organization of Staff Analysts
220 East 23rd Street, Suite 707, New York, New York 10010

AMENDMENT: Certification No. 3-88 has been amended to add the following
Title/Code:

Added: NYCAPS Process Analyst, Levels I and II (Title Code No. 06752)

NOTICE OF DESIGNATION

This notice is to acknowledge that the Board of Certification has issued a Decision and Order designating a title/position confidential as follows:

DATE: January 5, 2007

DOCKET #: AC-21-05

DECISION NUMBER: 1-2007

EMPLOYER: The City of New York, represented by the Office of Labor Relations
40 Rector Street, New York, New York 10006

CERTIFIED/RECOGNIZED BARGAINING

REPRESENTATIVE:

Organization of Staff Analysts
220 East 23rd Street, Suite 707, New York, New York 10010

DESIGNATION: **The NYCAPS Process Analyst (Title Code No. 06752) position at the New York City Office of Labor Relations is designated confidential and is therefore excluded from collective bargaining.**