

**L. 371, SSEU, L.1549 DC37 and L.1180 CWA v. City and HRA,76 OCB 1 (BOC 2005)  
[Decision No. 1-2005]**

OFFICE OF COLLECTIVE BARGAINING  
BOARD OF CERTIFICATION

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In the Matter of

LOCAL 371, SOCIAL SERVICE EMPLOYEES  
UNION, DISTRICT COUNCIL 37, AFSCME,  
LOCAL 1549, DISTRICT COUNCIL 37, AFSCME,  
LOCAL 1180, COMMUNICATION WORKERS  
OF AMERICA, AFL-CIO,

Decision No. 1-2005

Docket No. RU-1239-01

Docket No. RU-1240-01

Docket No. RU-1242-01

Petitioners,

-and-

THE CITY OF NEW YORK, and THE NEW YORK  
CITY HUMAN RESOURCES ADMINISTRATION,

Respondents.

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**DECISION AND DIRECTION OF ELECTION**

On February 20, 2001, Local 371, Social Service Employees Union (“Local 371”) filed a petition, Docket No. RU-1239-01, seeking to add employees in the titles Job Opportunity Specialist (“JOS”) and Associate Job Opportunity Specialist (“AJOS”)(collectively the “JOS title series”) to its bargaining unit established by Certification No. 37-78. On February 22, 2001, Local 1549, Clerical Administrative Employees (“Local 1549”), filed a petition, Docket No. RU-1240-01, seeking to add the JOS title to its bargaining unit established by Certification No. 46C-75. On March 19, 2001, Local 1180, Communications Workers of America, AFL-CIO (“Local 1180”), filed a petition, Docket No. RU-1242-01, seeking to add the AJOS title to its bargaining unit established by Certification No. 41-73. The Employer, the City of New York and the New

York City Human Resources Administration (“City” or “HRA”), takes no position on which unit is appropriate for the titles in issue.

Due to common facts and issues, these cases were consolidated and a hearing was held over 31 days, commencing in May 2002 and ending in December 2003. Testimony was taken from numerous witnesses for Local 371, Local 1549, and Local 1180, and one City witness. Based on a thorough review of the extensive record, and pursuant to Section 12-309(b)(1) of the New York City Collective Bargaining Law (New York City Administrative Code, Title 12, Chapter 3) (“NYCCBL”), we conclude that the JOS and AJOS titles would be appropriately placed in any of the units sought by Petitioners. Accordingly, we direct an election in order to ascertain the wishes of employees in each title as to their unit placement.

## **BACKGROUND**

### **The Creation of Job Centers**

The issue in this matter arises from the creation of the JOS title series at HRA. In response to 1996 federal welfare reform legislation, HRA developed a new model for distribution of welfare benefits - the Job Center model. In 1998, HRA began creating Job Centers to replace Income Support Centers (ISC), and by 2002 about 30 Job Centers had replaced existing ISCs. The concept behind the Job Center was to merge certain HRA functions including the Office of Employment Services and the Office of Income Support into one Family Independence Administration Operation (“FIAO”) that would have oversight over Job Centers.

In fall 2000, HRA announced that it was creating the JOS title series to staff the Job Centers. The JOS title series was created in order to put more emphasis on helping applicants

and participants achieve paid employment and have one case manager responsible for performing the functions necessary to achieve that purpose. HRA wanted professional staff performing both the financial eligibility and the employment functions and therefore the JOS and AJOS job descriptions require a four-year college degree.

In spring 2001, incumbents in the titles: Caseworker, Eligibility Specialist Level III (“ES”),<sup>1</sup> Principal Administrative Associate (“PAA”) and Supervisor (Welfare) (“SUP”) were asked to voluntarily convert to the new JOS and AJOS titles. Caseworkers and SUPs are represented by Local 371, PAAs are represented by Local 1180, and ESs are represented by Local 1549. HRA began filling the JOS title with employees who were formerly ESs and Caseworkers and the AJOS title with employees who were formerly SUPs and PAAs. Approximately 200 new employees were also hired into these titles. Even though primary job titles at the Job Centers were AJOS and JOS, the old titles continue to be used in the agency. As of March 2002, 73% of the employees who converted to the JOS title formerly held the ES title, while about 18% formerly held the Caseworker title. In addition, approximately 52% of the employees who converted to the AJOS title formerly held the PAA title, and 48% were former SUPs. As of October 2003, there were 1,365 employees in the JOS title working in the Job Centers, 244 employees in the ES title, and 174 employees in the Caseworker title. At that same time, there were 655 employees in the AJOS title, 163 in the PAA title, and 103 in the SUP title.

### **Distribution of Welfare Benefits and Social Services Prior to Job Centers**

Prior to 1970, HRA operated Welfare Centers which provided services utilizing mainly

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<sup>1</sup> Hereinafter, “ES” shall refer to Eligibility Specialist Level III, unless otherwise noted.

Caseworkers.<sup>2</sup> Each Caseworker had a caseload of applicants/participants and was responsible for initial and ongoing welfare eligibility determinations and delivery of services. The Caseworker's tasks included conducting home visits, interviewing applicants and clients, filling out forms, preparing a budget, and calculating eligibility for welfare benefits. At that time, there was little emphasis on employment as a component of financial assistance. Within a Welfare Center, Caseworkers were also assigned to perform as resource consultants, housing consultants, or employment consultants. Caseworkers were supervised by SUPs. Both the Caseworkers and SUPs were represented by either the Social Service Employees Union ("SSEU") or Local 371.<sup>3</sup>

In the early 1970's, as a result of state legislation, eligibility and social service functions were separated, and the centers were renamed ISCs.<sup>4</sup> There were nearly 40 ISCs which provided cash assistance (Welfare), Food Stamps, and Medicaid to qualified participants. Within the ISC there were two divisions: Applications or Intake, where initial eligibility determinations were made, and the Undercare Unit, where continuing eligibility was reviewed and monitored. One of the goals of Undercare was to help employable clients find their way back into the labor market. Each ICS also maintained several other units: Control Unit, Reception Distribution & Collection ("Reception D&C"), Fair Hearing & Conciliation,<sup>5</sup> Homeless Diversion, a Rent Group, and

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<sup>2</sup> In the 1960's the title "Social Investigator" existed. That job title preceded the Caseworker job title and had duties similar to the Caseworker title.

<sup>3</sup> SSEU merged with Local 371 in 1968.

<sup>4</sup> At some time, the Centers may have been called Income Maintenance Centers, but their function was the same as the Income Support Centers.

<sup>5</sup> In 1997, the Liaison and Adjustment and Fair Hearings units were combined into one Fair Hearing and Conciliation Unit.

sometimes a Social Services Section. The Control Unit managed different financial actions, checked documents and were responsible for data entry into the Welfare Management System (“WMS”). That unit was usually staffed by one PAA, and Clerical Associates. Reception D&C directed walk-in clients to the right unit, disbursed certain funds such as emergency checks, and carfare, and was usually staffed by a PAA, ESs and Clerks.

Initially, during the ISC period, Caseworkers continued to make eligibility determinations, but eventually these duties were assigned to the title Income Maintenance Specialists (“IMS”). Supervising Clerks were trained to make eligibility determinations and then were given the IMS title. Late in the 1970’s, the eligibility worker’s title was changed to ES. Each ISC had about 50 ESs who were responsible for determining initial eligibility for public assistance, Food Stamps, and Medicaid, and handling various emergency situations. The job specification for the ES title generally describes the duties and responsibilities as follows:

[R]esponsible for the determination and verification of initial and continuing eligibility for Public Assistance, including Income Maintenance, Medicaid, Emergency Housing Services and/or Food Stamps. This work is performed under well-defined procedures of the Human Resources Administration/Department of Social Services in the Bureau of Income Maintenance, Medical Assistance and Food Stamps, and in the Department of Homeless Services. Eligibility is determined through the use of agency procedures, automated systems and/or based on face-to-face client interviews. . . .

The minimum qualifications for this title include completion of 60 credits at an accredited college, a four year high school diploma and either experience as a Police Administrative Aide or two years of related work, or a combination of these factors. The job specification also states that an ES: “determines appropriate employability status of members of households of

client/applicant, refers to employment programs and takes required action based upon employability code.”

In an ISC, an ES was basically responsible for gathering an applicant’s information such as assets, rent, number of children, and formulating a household budget. The ES was assigned cases randomly and consulted eligibility standards in manuals to determine if an applicant was qualified to receive public assistance. ESs in the Applications Unit also made referrals for medical examinations, domestic violence and addiction evaluations, and referrals to the Homeless Diversion Unit. ESs also did an initial employment screening, to determine if an applicant or client was able to work, which involved explaining an applicant’s work obligations, the work rules and identifying whether the applicant exhibited some barrier to employment, such as illness, substance abuse or very young children. If the applicant was able to work, the ES coded them as employable, and the client was referred to an employment program.

In Undercare, ESs had “caseloads” of recertifications and worked with a client until the case was closed. The ES’s responsibilities in Undercare were similar to their duties in Applications. They conducted interviews with participants to determine whether they remained eligible for public assistance, Food Stamps, and Medicare. They reviewed documents, processed requests for emergency assistance for rent or utility bills, and made referrals for services such as child care, medical, child support enforcement, domestic violence and substance abuse.

Once an eligibility determination was made, the file was sent to a PAA for review and approval. Each ISC had between 15 and 20 PAAs. The PAA job specification generally describes the duties and responsibilities as follows:

[S]upervises and trains the staff of a large office engaged in routine

clerical activities or supervises the staff of a small office engaged in departmental or administrative activities. Supervises and trains the staff of a small office engaged in data entry or such personnel functions as payroll processing, timekeeping, or employee benefits administration. Supervises and trains a group or section of subordinate personnel in the clerical and related activities performed in an income maintenance center. Performs difficult and responsible administrative or management work, including work related to budgeting and work that is required for the conduct of hearings, control processing, and integrity of dispositions of parking violations.

Levels II and III of the PAA job description include work of greater difficulty. For example, the

Level III description states:

[P]erforms exceptionally difficult and still more responsible supervisory, analytic or specialized administrative or management work in any one or more of the settings described in Assignment Level I in the largest and most complex operations; or supervises an exceptionally large office engaged in routine activities, or supervises a very large office engaged in departmental or administrative activities.

The minimum qualifications for the PAA title include a baccalaureate degree from an accredited college and three years full-time related work experience, or an associate degree and four years full-time related work experience, or a four year high school diploma and five years full-time related work experience, or a combination of these qualifications.

PAA Level I responsibilities included supervising a group of about ten ESs, staffing some support areas such as the Control Unit, and Reception D&C, and monitoring fair hearing performance and eviction prevention. PAAs Level II were responsible for three to four PAA Level Is and their groups of ES subordinates. PAAs Level III, although few existed, performed the same duties as PAAs Level II but also would substitute as the Deputy Center Director, in their absence. Generally, PAAs were responsible for supervision of ESs, including evaluating

their performance, initiating disciplinary action, and approving leave requests.

In ISCs, HRA's social service functions continued to be performed by Caseworkers. An ISC had three to six Caseworkers and one or two SUPs. Within an ISC, Caseworkers worked in either the Homeless Diversion unit, the Social Service Section, or Fair Hearing & Conciliation. A domestic violence counselor in each center was also a Caseworker or SUP. The Caseworker job specification generally describes their duties and responsibilities as follows:

[D]evelops and implements social service plans for disadvantaged clients, including recipients of public and medical assistance and child welfare services, adults/children receiving or needing institutional care, and homeless adults/families; may also determine eligibility for these services; may perform counseling and investigative activities; . . . .

The minimum qualifications for this title is a baccalaureate degree from an accredited college.

In the Social Service Section,<sup>6</sup> Caseworkers were responsible for making field visits to home-bound applicants or clients to obtain information, assisting applicants to complete financial assistance forms, determining disability levels, and delivering checks. Caseworkers and SUPs in this unit were also responsible for visiting clients' workplaces, employment agencies, and real estate agents. They were involved in helping clients obtain services such as daycare, protective services, long term health care, utility disconnect services and substance abuse counseling.

The Homeless Diversion Units, also staffed by Caseworkers and SUPs, provided assistance in client housing. Caseworkers interviewed clients, provided assistance with rent arrears, landlord relations, apartment searches and inspections, delivered checks to courts and

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<sup>6</sup> Since the 1970's and up to the time the JOS title was implemented, a unit of this type existed under various names such as the Special Task Group, the Service Section, and Special Services.



landlords, and prepared cases for the Rental Assistance Unit. This Unit handled matters for walk-in clients, as well as active clients referred by Applications or Undercare units.

In addition, Caseworkers and SUPs Level I and II staffed Fair Hearing & Conciliations where they held conferences and compiled hearing packets. Prior to 1997, the Fair Hearing Unit, located outside the ISC, were staffed by SUPs Level II, and sometimes Caseworkers, who would represent the City at hearings where clients were challenging agency eligibility determinations.

Generally, SUPs in the ISC were responsible for supervision of Caseworkers, including performance evaluations, initiation of disciplinary action and approval of leave requests. SUPs also reviewed and approved employment plans, case records, and issuance of child care funds. The SUP job specification generally describes the Level I duties and responsibilities as supervision of social service staff, and involvement “. . . in the provision of protective and supportive services to vulnerable client groups, such as aged, disabled, or handicapped adults, minor and dependent children, multi-problem families, and the unemployed or underemployed, or supervises staff involved in operations auxiliary to such a program.” The minimum qualifications for the SUP title is a baccalaureate degree from an accredited college. Levels II and III also require two and three years, respectively, of full-time experience in social casework.

There were other units outside of the ISC staffed by Caseworkers and SUPs. If participants were part of a family case and determined employable they would be called into a BEGIN center, or if a home relief or single case, the participant was sent to Central Call-In.<sup>7</sup> BEGIN offices were responsible for helping employable participants (family cases) find work

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<sup>7</sup> As early as 1974, the functions similar to those Caseworkers performed in the BEGIN offices were a more integrated part of the Welfare Center.

activities and remove work barriers such as child care, medical and substance abuse problems and language barriers. However, seeking or obtaining employment through these offices was not always mandatory for participants. There were certain legally mandated criteria or rules which determined whether a client had to be referred to an employment program.

HRA operated nine BEGIN offices. Each office employed 20 to 40 Caseworkers, and 10 to 12 SUPs. Each SUP supervised approximately six Caseworkers. Clients were referred to intake by a code entered by the ESs in either the Undercare or Application units. The intake Caseworkers evaluated the employability of the clients, determined whether the participant was able to work, and/or what barriers to employment existed, and made referrals for child care, training, education, substance abuse and medical issues. Caseworkers were responsible for filling out an Employability Assessment and Employment Plan (“EA/EP”). If no barriers to employment existed, the Caseworker gave the participant a work assignment in the “managed programs” part of the unit. One such referral was to the Work Experience Program (“WEP”), which is also staffed by Caseworkers. Caseworkers worked with individual participants until they obtained employment. Among other duties, SUPs Level II supervised the SUPs Level I, and usually one SUP Level III acted as a Director or Deputy Director of the BEGIN office.

The Human Resources Central Call-In office was similar to BEGIN but gave assistance for “unattached” or single adults and home-relief clients. This office was staffed by 75 to 100 Caseworkers, and about 40 SUPs ranging from Levels I-III. Caseworkers obtained work assignments for the participants from WEP or similar programs, and then recorded the assignments.

Over time, the processing of welfare applications, recertifications and administering

related social services became more automated. For example, the ESs' role in computing the budgets changed from a hand computation to inputting information into the WMS system, which automatically generates the budget. Similarly, many paper forms used by Caseworkers in administering social services were eliminated. New computer systems permitted the ESs to enter a code into the software, which automatically generated an appointment for the client with the BEGIN office, and notified the office of the referral. The NYC Work Accountability and You ("WAY") computer system permitted Caseworkers and SUPs to enter and track work assignments. Later, the WMS and WAY systems were linked.

### **Job Centers**

#### **A. The Transition to Job Centers**

In 1998, HRA began to convert ISCs to Job Centers. At the time the hearing commenced, there were 30 Job Centers. Most Job Centers have two divisions: Case Management and Case Establishment. The Case Establishment unit deals with initial eligibility determinations, similar to the Applications unit, while Case Management unit is analogous to the Undercare unit, and works with active public assistance cases to process recertifications and assist clients in obtaining employment or other means of financial independence.

When Job Centers were first introduced, but prior to the creation of the JOS title series, ESs still determined eligibility and performed financial planning functions. Caseworkers, who were still supervised by SUPs, performed employment planning functions, such as evaluating clients for work activities, and making referrals regarding health and child care issues. Employment planning remained separate from financial planning as it was in the ISCs.

Initially, when the JOS title series was implemented, an insufficient number of

employees transferred to the new AJOS and JOS job titles to properly staff the Job Centers. As a result, applicants and employable clients were assigned to JOSs, and the unemployable clients to ESs. Also, child only cases began to be moved to a special center staffed by ESs.

Sometime later, HRA moved Caseworkers from BEGIN into the Job Centers to do call-ins on active cases and conciliations. Regardless of their assignment, both Caseworkers and ESs became responsible for discussing employability with the client, and all clients were required to have an EA/EP. Despite the structural changes, certain HRA units were not affected by the JOS conversion, including Food Stamps, Rental Assistance, and WEP.

**\_\_\_\_\_ B. AJOS and JOS in the Job Centers**

During 2001 and 2002, employees in the ES, Caseworker, SUP, and PAA job titles converted to the JOS and AJOS titles. Thereafter, in most instances the Job Centers' Case Establishment and Case Management units were staffed by JOSs and AJOSs. All JOSs, as well as the remaining ESs and Caseworkers, currently have a role in achieving the goal to help employable clients re-enter the labor market. The Reception D&C units, previously staffed by ESs, PAAs, and Clericals are now staffed by JOSs and AJOSs. In units that address special needs such as PRIDE, POISED and Senior Works, previously staffed by Caseworkers, JOSs staff these programs.<sup>8</sup>

The JOS job specification generally describes the duties and responsibilities as “provides economic support and employment related services to persons in need, to promote individual and family self-sufficiency; performs related work.” The minimum qualifications for a JOS

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<sup>8</sup> PRIDE and POISED are designed to help participants with substance abuse problems become more employable. Senior Works is aimed at employing senior citizens who want to re-enter the labor force, but are not required to work to receive public assistance.

position are a baccalaureate degree from an accredited college or a four-year high school diploma and four years full-time work experience in a Job Center or related program.<sup>9</sup>

The duties of a JOS include: determining and verifying initial and continuing eligibility for public assistance, Medicaid and Food Stamps; entering budget information into computerized forms; computing and modifying the amount of public assistance and Food Stamps an applicant is entitled to receive; reviewing documents from clients; updating databases with client information, conducting face to face interviews with clients to determine initial or continuing eligibility for benefits; referring clients to employment vendors for training, job search or placement, and making referrals to domestic violence counselors, child care services, medical services, housing services, and addiction evaluations. With respect to employment, JOSs advise clients about their employment responsibilities to qualify for eligibility and assign them an employability code if employable. Certain codes result in a client's referral to Skills, Assessment and Placement (SAP) and Employment, Services and Placement (ESP) vendors, and the WEP program. With respect to housing, JOSs enter information into databases concerning housing actions such as rent increases, changes of address, and rent advances. They also contact landlords, agents, agencies, or officials to help obtain and maintain suitable housing for clients.

JOSs must enter information into an EA/EP and other electronic documents. They also enter codes into NYC WAY which in turn makes automatic referrals for employment and medical services. A small number of JOS work on location with SAP vendors who are contracted to perform skills assessments. Within the Job Centers, Caseworkers, SUPs and

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<sup>9</sup> The specified minimum qualifications were not required of incumbents in the pre-existing ISC titles who applied for the JOS positions. In addition, the minimum qualifications were suspended for new hires when the title was first introduced.

AJOSs are now the liaisons with the SAP vendors. In addition, there are employees in the AJOS title who work at Goodwill, one of the employment vendors, in order to facilitate clients introduction to employment. These positions were formerly held by SUPs.

The AJOS job specification generally describes the duties and responsibilities as supervisory relating to “the provision of economic support and employment related services to persons in need. . . .” The AJOS Level I duties are to supervise “a Job Center job opportunity team or perform fair hearing work.” Levels II and III of the AJOS title supervise larger units or multiple teams within the Job Centers. Typical tasks assigned to an AJOS include assigning caseloads to small groups of JOS workers and reviewing and approving all eligibility determinations and modifications. Minimum qualifications for AJOS are a baccalaureate degree from an accredited college plus eighteen months of full time experience as a JOS or a four year high school diploma and six years full-time experience working in a Job Center or related program.

Each Job Center has a Fair Hearing and Alternate Dispute Resolution unit staffed by AJOSs. The AJOSs Level I and II perform the duties previously performed by SUPs Level I and II in the Fair Hearings and Conciliations unit. They prepare documents for client hearings and attend the hearings on behalf of HRA.

BEGIN continues to refer clients with significant employment barriers, such as poor language skills and illiteracy, to services that are designed to remove those barriers. JOSs perform the basic functions of these units, and are supervised by AJOSs. Workers in BEGIN are primarily responsible for completing EA/EP forms and determining what, if any, employment barriers exist and to make appropriate referrals. Referrals of active clients to this

program come from the Case Establishment unit. JOSs then determine the employable clients and refer them to work assignments or BEGIN managed programs. Although the BEGIN in-take function was consolidated with the Job Center functions, the BEGIN managed programs which included English as a Second Language (ESL) and General Education Degree (GED) programs, remain separate. It is not clear whether Caseworkers and SUPs in BEGIN managed programs remained in the Caseworker and SUP titles or converted to the AJOS and JOS titles.

ESs still maintain a role in the revamped Job Center structure. The Family Services Call center, staffed by ESs, handles all child-only active cases, and the work is done primarily by mail and phone. Further, the Senior Works program is staffed by ESs, along with some Caseworkers, and provides financial assistance to recipients older than 60 who are not subject to mandatory work rules. ESs make eligibility determinations, while Caseworkers provide employment planning services. Some ESs still remain in the Reception D&C unit of the Job Centers, as well as in the stand alone Food Stamp and Medicaid units.

In the Homeless Diversion Units, JOSs who had previously been Caseworkers continue to perform the same duties as before. In addition to their traditional duties, these JOSs are now required to make budget adjustments in the computer system, issue checks for rent arrears, and issue “one shot deals.”<sup>10</sup> AJOSs now perform duties formerly performed by SUPs and oversee all subordinate employees.

In certain Job Centers, there remain Special Services units staffed by Caseworkers who do home visits and deliver rent arrears and utility checks. In Job Centers that do not have these

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<sup>10</sup> A “one shot deal,” is a one time emergency cash disbursement usually for rent that imposes no related employment activity. These disbursements were typically given by ESs in other units, but are now given by JOSs in the Homeless Diversion units.

units, employees in the Homeless Diversion unit do these tasks. However, JOSs in Homeless Diversion, who were previously ESs, do not perform home visits or deliver checks.

In certain instances, ESs are performing duties that HRA intends employees in the JOS title to eventually perform. For example, some ESs continue to work with JOS employees in the Case Management and Case Establishment units. In those instances, JOSs are responsible for the employable cases as well as the employment piece of new application. ESs, on the other hand, are responsible for the unemployable cases and may handle “one shot deals.” However, if employment activity arises on those cases, the employment functions are handled by Caseworkers.

AJOS are generally responsible for monitoring and supervising the applications for public assistance and reviewing referrals from JOSs. In the Case Establishment unit, AJOSs supervise initial applications for public assistance and review and approve determinations of eligibility and employment plans made by JOSs. In the Case Management unit, AJOSs supervise JOSs who endeavor to remove employment barriers and get participants to work. AJOSs review and approve EA/EPs, referrals for child care services, and child care and carfare checks. AJOSs also review cases to determine if cause exists for a Fair Hearing request, and review compliance with Fair Hearing decisions. AJOSs Level I also handle conferences when a Fair Hearing is sought by a client, while AJOSs Level II represent the City at these hearings. In limited instances, AJOSs may also supervise the Reception D&C unit, which may be staffed by ESs and who are responsible for the flow of clients in the facility.



**POSITIONS OF THE PARTIES**

**Local 1180**

Local 1180 represents employees who serve as PAAs and seeks the accretion of the AJOS job title into its bargaining unit. Local 1180 asserts that the AJOS title shares the same community of interest with PAAs because both titles perform the same basic duties and share the same job description. Both AJOSs and PAAs determine the eligibility of public assistance applicants for benefits and other forms of aid, as well as perform identical supervisory duties, such as managing ESs and JOSs, overseeing disciplinary actions, monitoring use of leave time, and training and development.

Even though some functions performed by PAAs are also done by SUPs and AJOSs, Local 1180 claims that PAAs' community of interest is more closely comparable to that of the AJOSs, not the SUPs, because SUPs assess, train, and place clients in employment, whereas AJOSs do not perform such duties. Moreover, AJOSs merely assess employability and input an "action code" into a computer for an employment referral from an outside employment vendor. Further, the conducting of field visits, typically performed by SUPs and AJOSs, does not create a significant enough community of interest between the AJOSs and SUPs, especially since a strong bond already exists between the AJOSs and PAAs.

Additionally, the AJOS and SUP job titles do not share professional status because of new qualifications, skills, and training. Even assuming *arguendo* that these titles are professional, the commonly performed functions and responsibilities of the PAAs and the AJOSs indicate a stronger community of interest between these two job titles.

**Local 1549**

Local 1549 currently represents employees in the ES title and seeks the accretion of the JOS title into its bargaining unit. According to Local 1549, the JOS and ESs titles share a close community of interest because both perform identical clerical and administrative duties; both make child care, employability, and benefits eligibility determinations, and both perform a variety of other referral services. Further, JOSs perform all tasks within the ESs' job description, and a significant number of JOSs and AJOSs were formerly ESs. Also, both titles share similar job qualifications, and utilize the same manuals and forms.

Further, JOSs and Caseworkers do not belong in the same bargaining unit because these titles do not share a community of interest. The Caseworker title does not: (a) have a caseload system, but instead see clients on a randomly assigned basis; (b) work inside of job centers, rather they are assigned to units which operate at other sites; (c) determine eligibility for public assistance; and (d) have the authority to issue checks for rent arrears. In contrast, ESs and JOSs perform these functions. The Caseworker title performs many social services and employment placement duties, whereas ESs and JOSs do not because their duties are strictly clerical or administrative.

Additionally, accretion of the JOS title into the bargaining unit represented by Local 1549 would be consistent with the Board's policy of separating supervisory and non-supervisory titles and be consistent with applicable state statutes. Since the JOS title is purely clerical or administrative in nature, it is inappropriate to place such employees with supervisors in a bargaining unit because separation of supervisory and non-supervisory titles, when there are other, more appropriate units, is preferred. To avoid further statutory conflict, New York State

Social Service Law (“SSL”) § 64 prohibits employees who perform social service functions from also making eligibility determinations, and accretion of the JOS job title into the bargaining unit represented by Local 371 would merge these two functions, thereby contravening state law.

Alternatively, if the Board finds that Local 1549 and Local 371 are equally appropriate units for representing JOSs, it should direct an election to ultimately determine which unit will represent the title.

**Local 371**

Local 371 currently represents employees in the SUP and Caseworker titles and seeks the accretion of both the AJOS and JOS titles into its bargaining unit. Local 371 asserts that the JOSs and AJOSs share a community of interest with the SUPs and Caseworkers, as well as the other professional titles that Local 371 represents. The AJOSs and JOSs are professional employees because they require a higher level of education and qualifications; they receive employment training; they evaluate assignments, deliver checks and fill out household applications; and their performance evaluations emphasize professional duties, not clerical ones. Also, JOSs, much like Caseworkers did previously, determine if barriers to employment existed and then determine if referrals should be made. Furthermore, JOSs, similar to Caseworkers, assess applicants’ employability and participants’ availability for work programs.

In contrast, Caseworkers and SUPs, like JOSs, were assigned to go into the field, while PAAs and ESs did not. Whereas JOSs and Caseworkers do employment evaluations, ESs determine assistance eligibility. The PAA and ES titles are clerical positions and are essentially different from the AJOS and JOS job titles, which are professional positions. The fact that

incumbent PAAs and ESs have been allowed to transfer into the AJOS and JOS titles does not prevent these titles from being professional because such transfers were permitted as an accommodation.

Local 371 contends that the Board has determined that it is inappropriate to include professional titles in a non-professional unit. Local 371 is the only Petitioner representing a bargaining unit that includes professional titles. Therefore accretion of the AJOS and JOS titles to Local 371's bargaining unit is appropriate. Further, because the AJOS and JOS perform both social service functions, those titles must be accreted into the same unit with the SUPs and the Caseworkers, who also perform those functions.

Finally, the argument alleged by Local 1549 with SSL § 64 is completely irrelevant to the instant determination, and any such assertion is more properly suited for redress by the courts.

### **DISCUSSION**

Pursuant to Section 12-309(b)(1) of the NYCCBL, we must determine whether the title JOS should be added, to one of two previously certified units represented by either Local 1549 or Local 371, and whether the AJOS title should be accreted to either the bargaining unit represented by Local 371 or Local 1180. Based on the record presented, we find that either of the petitioned-for units is appropriate for each title, and therefore direct an election in order to ascertain the employees' preference for representation.

In making bargaining unit determinations in accretion cases, we consider whether the title, because of its similarity or close relationship to the unit titles, would have been included in

the unit at the time of the original certification. *Correction Officers Democratic Alliance*, Decision No. B-12-95; *Nixon*, Decision No. B-6-93; *Social Services Employees Union*, Decision No. B-15-87; *Local 3, I.B.E.W.*, Decision No. B-23-75.

Section 1-02(k) of the Rules of the Office of Collective Bargaining (Rules of the City of New York, Title 61, Chapter 1) (OCB Rules) states:

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.

Where competing petitioners establish a similarity or close relationship between the petitioned-for title and their pre-existing unit titles, the Board has found that it cannot determine which unit is more appropriate. *Local Lodge No. 5 Int'l Bhd. of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL-CIO*, Decision No. B-7-91 (The skills, qualifications and duties of the title in issue overlapped with employees in both petitioned for units); *Communications Workers of America, AFL-CIO*, Decision No. B-11-90 (The principal job tasks of three pre-existing titles overlapped with the new titles' tasks and each competing

union already represented employees doing similar work). In such instances, the Board has stated that the purposes and policies of the NYCCBL are best served by ascertaining the employees representation wishes in order to determine unit placement. *Organization of Staff Analysts*, Decision No. 1-2000 at 17, *Civil Service Technical Guild*, Decision No. 27-80.

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

In this instance, the record establishes that employees in the JOS title share a community of interest with employees in both the ES and Caseworker titles and employees in the AJOS title share a community of interest with employees in both the SUP and PAA titles. At one time, Caseworkers, or employees in the predecessor titles, performed both eligibility and employment functions and were represented by Local 371, or SSEU. In the early 1970's, these functions were separated and the eligibility functions were assumed by the predecessor title to ES. By the time Job Centers were introduced, in early 2001, a considerable number of years had passed and the split in functions was maintained by utilizing separate job titles. The implementation of the JOS title series did not effect the services HRA provides, nor significantly change the tasks or

functions which individual employees perform. The main change was to increase the agency's focus on employment as a requirement for receiving public assistance. Aside from the greater emphasis placed on employment requirements at all phases of the welfare process, most employees' titles changed. Employees who were ESs and PAAs are now JOSs and AJOSs.

Each Petitioner presented numerous witnesses who had extensive experience at HRA in the pre-existing and/or new titles. These current or recent HRA employees gave detailed testimony concerning the long history of distribution of public assistance benefits and the current FIAO operations. Altogether this testimony presented a full and complete description of the Job Centers, the roles of employees in the JOS and AJOS titles, and the manner in which the work was previously performed. Most witnesses, if not all, testified that they were performing nearly the same duties in the AJOS and JOS titles that they had performed in their former titles. For example, Miriam Ortiz, a witness for Local 371, who served in Caseworker, SUP and AJOS titles essentially testified that at the Crotona Job Center AJOS and JOS perform the functions which ESs, PAAs, Caseworkers, and SUPs, previously performed. Gwendolyn Richardson, a Senior Grievance representative for Local 1180, held the titles of Income Maintenance Specialist, ES, and PAA, and now represents employees in the AJOS title. She testified that AJOSs in the Job Centers perform "essentially the same" duties as performed by PAAs. Jose Cruz, the Secretary-Treasurer for Local 1549, held the ES and JOS titles and testified that there was no change in an ESs' job duties at the Richmond Job Center when their titles were changed to JOS.

The evidence presented supports the conclusion that nearly the identical functions that were performed in the Applications and Undercare units, are currently performed by JOSs and

AJOSs in the Case Establishment and Case Management units, respectively. The Case Establishment and Case Management units are still responsible for initial and continuing eligibility determinations, employability designations, and referrals to social services for substance abuse counseling, medical assistance, domestic violence assistance and child care. Similarly, functions formerly performed by Caseworkers and SUPs in the BEGIN, Homeless Diversion, Special Tasks, PRIDE, POISED, and Fair Hearing & Conciliation units are now being performed by AJOSs and JOSs.

In addition, AJOSs and JOSs continue to work in Job Centers with employees who remain in the ES, PAA, Caseworker, and SUP job titles sometimes performing the same duties as those in the AJOS and JOS titles. Similarly, the JOSs in the Reception D&C and Case Establishment units are performing nearly the same duties that ESs continue to perform in those units. This is also true for the AJOSs in the Reception D&C and Case Establishment units who perform duties nearly identical to those of the PAAs in those units. As a result, each Petitioner has presented evidence that their respective bargaining units share a community of interest with the employees in the AJOS and/or JOS job titles because it represents employees who have duties and responsibilities similar to those of JOSs and/or AJOSs.

Since implementation of the JOS title series, there has been some restructuring of the Job Centers, or attempt to bring more services, such as BEGIN, inside the Job Centers rather than provide services at remote locations. In addition, individual employees' work duties have changed to the extent they are accessing more information from desktop computers than was previously available. However, these changes did not significantly change the duties and



responsibilities of the employees in issue, but only affected the location where their work was performed and the manner in which their duties were executed.

While either of the petitioned-for units for each title would be appropriate, none of the Petitioners have persuaded this Board that the unit it seeks is more appropriate than the unit sought by its opponent. There are several factors which preclude us from finding one unit more appropriate than the other. First, the record does not establish that all employees in the JOS job title have a greater community of interest with ESs or Caseworkers, or that all AJOS have a greater community of interest with PAAs or SUPs. A comparison of the job specifications establishes that tasks performed by ESs, Caseworkers, PAAs and SUPs are also being performed by AJOSs and JOSs. Typical JOS tasks such as employability screening and eligibility determinations are also ES tasks. For example, the typical tasks described in the JOS job specification are:

[E]xplores employment opportunities through discussion of participants and other household members' educational and employment background; . . . .

Works with participants to formulate a plan to further self-sufficiency, setting goals and objectives.

Directs participants to employment services for job search, training, and placement.

Works with participants to formulate a plan to obtain employment; discusses barriers to employment and steps needed to be taken to remove these barriers; . . . .

[I]nterviews applicants to establish eligibility for assistance; . . . recertifies cases for financial eligibility, . . . verifies information impacting on participants eligibility status. . . .

Similarly, the ES job specification states typical tasks include: "determines appropriate employability status of members of households of clients/applicants; refers to employment programs, and takes required case actions based upon employability coding."

Further, the above-described JOS tasks relating to counseling and removal of employment barriers are similar to the Caseworker job specification typical tasks including:

[M]akes referrals and confers with representatives of other agencies in such areas as . . . employment, . . . helps the client identify the need for services and develops appropriate service plans, . . . determines eligibility for institutional or hospital care, foster home care, or day care placement of children.

In addition a JOS “provides emergency assistance to avert evictions/homelessness and/or shut offs [and] in instances of disasters such as fire and theft recommends rehousing, clothing replacements, establishment or re-establishment of a home.” Similarly, the Caseworker tasks include, “makes referrals and confers with representatives of other agencies in such areas as housing . . . ; follows up to determine whether services were provided and/or utilized.”

Tasks described in the PAA and SUP specifications also appear in the AJOS job specification. For example, the AJOS specification includes the following typical tasks:

Level I : [P]rovides expert guidance, assistance and day to day training to Job Opportunity Specialists, . . . supervises the provision of and/or referral to employment training/work related activities and other services, . . . maintains and prepares written and/or computerized records, . . . prepares employment and outcome reports. . . .

Level II: [O]versees several Job Opportunity teams, . . . allocates and reallocates work and staff, . . . reviews audits and selected records, to ensure the information contained in them is accurate, . . . reviews, compiles and analyzes employment and outcome reports, . . . prepares reports making recommendations as needed.

Level III: [P]erforms operational analyses and conducts special projects; prepares reports and makes recommendations to improve productivity and efficiency of the Job Center; assesses results of outside audits; and oversees the preparation of corrective action plans. . . .

The PAA job specification, although very general, contains similar tasks to AJOS such as, “supervises and trains the staff of a large office,” and “performs difficult and responsible supervisory, analytic, or administrative work.” The SUP job specification, which is specifically used for welfare employees, also contains tasks similar to those in the AJOS specification. SUP typical tasks include:

Level I: [S]upervises a unit engaged in the provision of social services, . . . participates in the formulation, development and administration of training programs. . . .

Level II: [C]onducts studies to determine more effective means for the provision of social services, . . . plans content and conducts training, . . . supervises and monitors Social Service staff. . . .

Level III: [A]dministers a training program, . . . organizes and supervises social service staff, . . . develops and maintains internal administrative controls, . . . prepares reports on staff operations and recommends changes in policy or procedures. . . .

In sum, many ES, Caseworker, SUP, or PAA tasks are similar to those listed in the JOS and AJOS specifications. The use of two titles, instead of four, has expanded the range of duties for employees in the new titles. Therefore, the typical tasks listed in the JOS and AJOS job specifications are more numerous and broader than the tasks listed in either the ES, Caseworker, SUP, or PAA job specifications. Because the duties of the various titles overlap and the ES, Caseworker, PAA and SUP job titles continue to be used, there is a community of interest between AJOS and JOS and all of the petitioned-for units.

In analyzing other community of interest factors, we find that no other factor favors one Petitioner more than the other. Although the job qualifications for AJOS and JOS are nearly the same as those required for Caseworkers and SUPs, those qualifications are broadly defined and

therefore do not necessarily exclude persons who would also be eligible for the ES and PAA positions. Also, it is undisputed that employees who converted to the new titles hold a wide range of qualifications and skills. Therefore, any distinctions between qualifications are not dispositive.

The bargaining history of employees in HRA's Job Centers also fails to favor one Petitioner. Local 1549 has represented the ES job title and its predecessor for more than 30 years, while Local 371, and its predecessor, have represented the Caseworkers and SUPs even longer. Similarly, Local 1180 has represented PAAs for many years. Since all three Petitioners have a long history of representing employees in HRA welfare distribution operations, all of them are familiar with the operations and the needs of these employees. Further, because the AJOS and JOS duties overlap with the pre-existing job titles, the new titles are not so unique as to render only one Petitioner qualified to represent them. Moreover, although there are more employees holding the JOS title, who were formerly ESs, this factor alone is not sufficient to establish a greater community of interest between the JOS title and the bargaining unit represented by Local 1549.

Further, we reject Local 371's claim that because AJOS and JOS are "professional" employees, they belong in a bargaining unit with only other "professional" employees. Section 12-309 (b)(1) of the NYCCBL gives the Board the right to make final bargaining unit determinations,

provided that in any case involving a petition for certification where supervisory or professional employees petition to be represented for purposes of collective bargaining separate and apart from non-supervisory or non-professional employees, or where a petition for certification has been filed requesting a unit

of supervisory and non-supervisory or a unit of professional and non-professional employees and **the public employer objects thereto**, the board of certification shall not include such supervisory or professional employees in a bargaining unit which includes non-supervisory or non-professional employees respectively unless a majority of the supervisory or professional employees voting in an election vote in favor thereof;

(Emphasis added.) Here, the City has not made any objection to the inclusion of professional and non-professional employees in the same bargaining unit. Further, absent such objection, this Board is not required to separate professional and non-professional employees in distinct units, in all instances. *District Council 37, AFSCME*, Decision No. 46-75 at 8. The Board of Collective Bargaining has explained that NYCCBL Section 12-309(b)(1) expressly allows the combination of supervisory and non-supervisory, as well as professional and non-professional, employees in the same bargaining units. *Pablo Lara*, Decision No. B-47-91 at 9. Moreover, we find nothing in this record which compels the separation of professional from non-professional employees or which requires us to make a determination as to whether JOS and AJOS are indeed “professional” titles.

We also reject Local 1549's claim that JOS and AJOS should not be included in the same bargaining unit because it would be combining supervisory and non-supervisory employees.<sup>11</sup> As noted above, NYCCBL §12-306(b)(1) requires that the City make an objection to the inclusion of supervisory and non-supervisory employees in the same bargaining unit and no such objection was made. Further, we do not find that the inclusion of both AJOS and JOS titles in the same unit would prejudice the employees or the parties hereto. Currently, SUPs and their subordinates, Caseworkers, are in the same bargaining unit. In addition, there are other

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<sup>11</sup> In this instance, the outcome of the election will determine whether supervisors, AJOSs, and non-supervisors, JOSs, will be combined in the same bargaining unit.

bargaining units in the City which contain both supervisory and non-supervisory employees.

In addition, no arguments were presented to suggest that the efficient operation of public service or labor relations would be negatively affected by the placement of JOSs or AJOSs in either of the petitioned-for bargaining units. Local 1549 asserts that SSL § 64 requires that employees performing eligibility functions remain separate from employees performing social service functions and therefore, accretion of the JOS title to the 1549 bargaining unit avoids any conflict with that law. However, we need not interpret or apply that law in order to make a bargaining unit determination. On its face the SSL does not present a conflict with the JOS title series, as Local 1549 suggested. As stated above, the implementation of the AJOS and JOS titles has permitted HRA to assign employees in these titles to a broader range of duties than the previous, corresponding job specifications provided. However, renaming the employees and reorganizing the Job Centers did not necessarily combine eligibility and social service functions for any individual AJOSs or JOSs. Rather, as explained herein, the functions of various units and employees remained the same after the job titles changed.

Based on the above, we find that either the bargaining unit represented by Local 1549 or the unit represented by Local 371 would be appropriate for the JOS title. Further, we find that either the bargaining unit represented by Local 371 or the unit represented by Local 1180 would be appropriate for the AJOS title. The NYCCBL authorizes the Board to conduct elections to determine “the majority representative of the public employees in an appropriate collective bargaining unit by conducting secret-ballot elections or by utilizing any other appropriate and suitable method designed to ascertain the free choice of a majority of such employees, [and] to certify the same as exclusive bargaining representative.” NYCCBL § 12-309(b)(2). Where, as

here, either of the petitioned-for units is appropriate, the purposes and policies of the NYCCBL are best served by ascertaining the employees representation wishes in order to determine unit placement. *Organization of Staff Analysts*, Decision No. 1-2000 at 17; *Civil Service Technical Guild*, Decision No. 27-80.

Accordingly, we direct that an election be conducted among employees in the JOS title with Local 1549 and Local 371 appearing on the ballot, and that an election be conducted among employees in the AJOS title with Local 371 and Local 1180 appearing on the ballot. The JOS and/or AJOS titles will be added to the bargaining units represented by the union that receives a majority of the valid ballots cast for that title. If any Petitioner does not desire to participate in an election, it may decline to do so by making a request in writing to the Director of Representation, within ten days after service of this Decision and Direction of Election.

**ORDER**

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

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 Job Opportunity Specialist title employed by the City of New York and related public employers, to determine whether these employees wish to be represented by Local 1549, District Council 37, AFSCME or Local 371, Social Service Employees Union, District Council 37, AFSCME for the purposes of collective bargaining and thereby added to the bargaining unit represented by Local 1549, District Council 37, AFSCME

in Certification No. 46C-75, or to the bargaining unit represented by Local 371, Social Service Employees Union, District Council 37, AFSCME in Certification No. 37-78. Employees in the Job Opportunity Specialist title employed during the payroll period immediately preceding this 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 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 Associate Job Opportunity Specialist title employed by the City of New York and related public employers, to determine whether these employees wish to be represented by Local 371, Social Service Employees Union, District Council 37, AFSCME or Local 1180, Communication Workers of America, AFL-CIO for the purposes of collective bargaining and thereby added to the bargaining unit represented by Local 371, Social Service Employees Union, District Council 37, AFSCME in Certification No. 37-78, or to the bargaining unit represented by Local 1180, Communication Workers of America, AFL-CIO in Certification No. 41-73. Employees in the Associate Job Opportunity Specialist title employed during the payroll period immediately preceding this Direction of Election, other than those who have voluntarily quit, retired, or who have been discharged for cause before the date of the election, are eligible to vote; and it is further

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



Dated: January 3, 2005  
New York, New York

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MARLENE A. GOLD  
CHAIR

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GEORGE NICOLAU  
MEMBER

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CAROL A. WITTENBERG  
MEMBER