

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY
PRESENT: Hon. MICHAEL D. STALLMAN **PART 21**

Justice

Index Number : 400464/2007 CITY OF NEW YORK VS. BOARD OF CERTIFICATION SEQUENCE NUMBER : 004 OTHER RELIEFS

INDEX NO.	400464/07
MOTION DATE	3/29/10
MOTION SEQ. NO.	004
MOTION CAL. NO.	16

The following papers, numbered 1 to 3 were read on this Article 78 petition

Re-Notice of Amended Petition— Amended Verified
 Petition — Exhibits 1-6; A

Verified Answer

Replying Affidavits — Exhibits

PAPERS NUMBERED

1-2

3

Cross-Motion: Yes No

Upon the foregoing papers, it is ORDERED that this Article 78 petition is hereby transferred to the Appellate Division, First Department pursuant to CPLR 7804 (g); and it is further

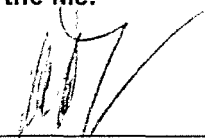
ORDERED that the parties shall file with the Clerk of the Appellate Division a transcript of the hearing before the Office of Collective Bargaining Board of Certification.

In this Article 78 petition, the City of New York seeks to overturn the decision of the Office of Collective Bargaining Board of Certification, which found that the employees in the title NYCAPS Process Analyst, Levels I and II (Title Code No. 06752) are eligible for collection bargaining, except for the NYCAPS Process Analyst position at the New York City Office of Labor Relations. Paragraph 44 states that the Office of Collective Bargaining Board of Certification ordered a hearing “to determine whether employees who were presently serving in the NPA title are managerial and/or confidential employees and, therefore, excluded from collective bargaining.” The Board decision cites to pages of the hearing transcript. Petition, Ex 2, at 4.

Upon review of the parties’ legal arguments, the Court sees the petition presents a question of whether substantial evidence supports the Board’s decision, which is intertwined with, among other things, issues of whether the Board applied the correct legal standard in determining whether the employees’ were eligible for collective bargaining. Accordingly, the petition must be transferred to the Appellate Division. CPLR 7804 (g); Administrative Code § 12-308 (b). Because no hearing transcript was filed with this petition, the Court directs petitioner to file the hearing transcript with the Appellate Division upon transfer of the file.

Copies to counsel.

Dated: 4/1/10
 New York, New York



 J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):