

CWA, Local 1180, 13 OCB2d 12 (BOC 2020)

(Rep) (Docket No. AC-57-10)

Summary of Decision: CWA sought to add the title Assistant Director, Hospitals, and OSA sought to add the title Associate Director, Hospitals, to their respective bargaining units. HHC argued that the titles are managerial and/or confidential and do not share a community of interest with titles in either bargaining unit. The Board found that, with certain exceptions, the employees in these titles are eligible for collective bargaining. As the titles share a community of interest with the existing bargaining units, the Board accreted the Assistant Director title to CWA's bargaining unit and the Associate Director title to OSA's bargaining unit. (*Official decision follows.*)

**OFFICE OF COLLECTIVE BARGAINING
BOARD OF CERTIFICATION**

In the Matter of the Certification Proceeding

-between-

COMMUNICATIONS WORKERS OF AMERICA, LOCAL 1180,

Petitioner,

-and-

NEW YORK CITY HEALTH + HOSPITALS,

Respondent,

-and-

THE ORGANIZATION OF STAFF ANALYSTS,

Intervenor.

DECISION AND ORDER

On June 16, 2010, Communications Workers of America, Local 1180 ("CWA") filed a petition to add the titles Assistant Director, Hospitals (Title Code Nos. 00013C, 00013E, and 00013G) ("Assistant Director") and Associate Director, Hospitals (Title Code Nos. 981311,

981322, and 981333) (“Associate Director”) to Certification No. 41-73, its Principal Administrative Associate bargaining unit, which includes titles such as Coordinating Manager and Health Care Program Planner Analyst. On October 26, 2010, the Organization of Staff Analysts (“OSA”) filed a motion to intervene, seeking to add the same two titles to Certification No. 3-88, its Staff Analyst bargaining unit, which includes titles such as Senior Management Consultant (Business Organization and Methods) and Senior Health Care Program Planner Analyst. Subsequently, CWA withdrew interest in the Associate Director title, and OSA withdrew interest in the Assistant Director title. The Board hereby grants the withdrawal requests. Accordingly, CWA seeks to represent only the Assistant Directors, and OSA seeks to only represent the Associate Directors.

Employees in the Assistant and Associate Director titles are employed at New York City Health + Hospitals (“HHC”).¹ HHC argues that Assistant and Associate Directors are managerial and/or confidential employees who are excluded from collective bargaining, that it was precluded from fully presenting its case, and that accretion is inappropriate. Accordingly, it asserts that the Unions’ petitions must be dismissed.

After careful review of the testimony and documentary evidence in this proceeding, the Board finds that HHC was afforded due process, that the majority of the employees in the titles are eligible for collective bargaining, and that some Assistant and Associate Directors are excluded from collective bargaining as managerial and/or confidential. The Board further finds that eligible Assistant Directors are appropriately added to CWA’s bargaining unit and that eligible Associate Directors are appropriately added to OSA’s bargaining unit.

¹ We refer to New York City Health and Hospitals Corporation as “New York City Health + Hospitals” or “HHC” throughout this Decision and Order.

BACKGROUND

HHC is the largest public municipal health care system in the nation. It is governed by a Board of Directors comprised of appointed officials of the City of New York (“City”) and other health care professionals and community leaders. HHC is composed of a Central Office, approximately 11 acute care hospitals, five skilled nursing facilities, and several large diagnostic treatment centers and community-based clinics, all of which are organized into regional networks. It also operates MetroPlus, a health insurance plan.

In addition to its Board of Directors, HHC is led by its Chief Executive Officer (“CEO”) and a senior leadership team comprised of Senior Vice Presidents, Vice Presidents, and other corporate officers (“Senior Executives”). The CEO, Chair of the Board of Directors, and members of the Board of Directors participate in committees with responsibilities such as strategic planning, governance, finance, and capital. There are also CEOs or Executive Directors (“ED”) for at least 15 HHC facilities.² At all of HHC’s facilities and networks, there are layers of other senior executives and administrators who are subordinate to the Board of Directors, Senior Executives, and facility and network CEOs and EDs. The record reflects that many different titles are used for those senior executives and administrators who are subordinate to the Senior Executives, including Associate Vice President, Chief Information Officer (“CIO”), Chief Finance Officer (“CFO”), and Deputy Executive Director (“DED”). In addition, titles used that fall below those executives and administrators include, but are not limited to, Deputy CFO, Associate Executive Director (“AED”), and Senior Associate Executive Director (“Senior AED”). In the organization’s hierarchy, employees holding the title Associate Director fall at least one and often more than one

² We take administrative notice of HHC’s corporate structure published on its website at https://www.nychealthandhospitals.org/leadership_roles/executive-directors/#leaders.

level below the aforementioned senior administrator titles, and Assistant Directors fall below Associate Directors.

At the commencement of this proceeding, HHC employed 650 Assistant Directors and 626 Associate Directors throughout its networks, at its Central Office, and at MetroPlus. Some of the departments in which Assistant and Associate Directors work provide health care, such as Ambulatory Care, Audiology, Behavioral Health, Dentistry, Emergency, HIV Services, Neurology, Nursing, Pathology, Pharmacy, Radiology, Rehabilitation Services, Respiratory Care Services, Social Services, and Women's Health. Assistant and Associate Directors also work in departments that have administrative functions, such as Admissions, Breakthrough, Community and Public Affairs, Facilities Management, Finance, Health Information Management, Human Resources, Materials Management, Patient Services, Quality Management, Regulatory Affairs, and Support Services.

Assistant Director

HHC's position description for an Assistant Director states:

Under supervision provides assistance to management executives in operation of a health care facility and assists in supervision of a group of services. Performs administrative and managerial functions related to the operation of total hospital or specific patient services. Implements and coordinates new programs and projects and monitors their operations and effectiveness.³

(Ans., Ex. A) It lists the following examples as typical tasks:

1. Provides assistance to executives in a wide range of activities in the management of a hospital and/or medical center including such areas as hospital administration, total management and

³ CWA asserts that the Assistant Director position description is vague and generally overstates the discretion and authority actually exercised by employees in the title. Additionally, it asserts that, even by the terms in the job description, Assistant Directors are not statutory managers.

- administrative systems, professional, medical, technical, operational and related support activity services.
2. Assists in the administration management of specified activities and functions. Carries out assignments and undertakes studies involving the total service center or specific patient services, including budget planning, cost studies/analysis, and preparing specific budgets.
 3. Collects and analyzes data needed as a basis for administrative and management decisions relative to various hospital activities.
 4. Accumulates data for budget preparations, fiscal reports, and review of budget estimates.
 5. Investigates and reports on patient and visitors complaints and performs special studies ... and investigations on operational units.
 6. Prepares and develops informational data in hospital training programs, and participates in the development and updating of activity programs.
 7. Plans, directs, supervises, coordinates, controls, and reviews work of subordinate administrative personnel relating to assigned tasks and projects in hospital care administration, hospital management and related fields.
 8. Attends staff meetings, inter-departmental conferences and represents the Executive Director, as well as the departmental administrator at inter-departmental functions and programs.
 9. Implements new programs and projects and monitors their operation and effectiveness.

(*Id.*)⁴

Assistant Directors have a wide range of in-house positions such as Assistant Comptroller, Business Analyst, Chart Reviewer, Chronic Disease Coordinator, Clinical Documentation Specialist, Data Manager, Fire Safety Director, Nurse Recruiter, Office Manager, Patient Safety

⁴ The listed required qualifications for an Assistant Director are: a “Master’s degree in Arts or Science with a specialization in hospital administration, health care administration, administrative medicine or in public health when conferred for a program in hospital administration, from an approved college or university; or a Baccalaureate degree;” and one year of administrative experience; or an equivalent combination of training, education, and experience; and “[g]eneral knowledge of policies and programs utilized in the operation of a health care facility, ability to assimilate and analyze data, to recommend action based on analytical findings, and to assist in the solution of complex problems in health care administration and management.” (Ans., Ex. A)

Associate, and Utilization Review Nurse. Assistant Directors may be in charge of a subdivision within a larger department, such as Child Services in the Behavioral Health/Social Work department, Microbiology in the Pathology department, IT Informatics in the Pharmacy department, and Revenue Recovery in the Finance/Managed Care department, or they may assist the subdivision or department administrator. Assistant Directors often report to Associate Directors.⁵

Many Assistant Directors were formerly Coordinating Managers, a civil service title represented by CWA, or occupy positions at the same level in the organizational chart as a Coordinating Manager. Others supervise Coordinating Managers or Assistant Coordinating Managers.

Associate Director

HHC's position description for an Associate Director states:

Under general supervision, provides assistance in the administration of activities and supervision of activities within a group of services within the health care facility. Responsible for several departments and manages the technical, managerial, ancillary, clerical and support staff of these departments.

(Ans., Ex. B) It lists the following as examples of typical tasks:

1. Directs and supervises the staff and support departments, coordinates special services and coordinates activities of related support and professional service departments.
2. Prepares operating plans and drafts of plans, policies, programs and procedures. Implements improved systems and procedures, monitors systems, and controls and audits programs.
3. Makes studies of adequacy and effectiveness of general administrative and support services and makes recommendations.
4. Prepares data for budget preparation, operating and statistical reports, analysis and makes recommendations.

⁵ The salaries for Assistant Directors range from \$19 to \$54 per hour and from \$32,730 to \$124,384 per year.

5. Monitors requisitioning of supplies and equipment. Requisitions materials and supplies for administrative, professional and support service activities.
6. Prepares studies on patient care standards, makes analysis and prepares recommendations.
7. Attends management staff meetings, conferences and consults with Medical and Support Services departments.
8. May represent hospital administration in hospital functions and programs.
9. Assists in grant proposal writing and in submitting revenue and expenditure reports for special funded programs.

*(Id.)*⁶

Generally, Associate Directors function at a higher level within a facility or network than Assistant Directors. They also hold a very wide range of in-house positions such as Administrative Director, Breakthrough Facilitator, Chief Technologist, Clinical Documentation Specialist, Director of Adult Day Health Care Program, Laboratory Manager, Nursing Budget Director, Payroll Manager, Relationship Manager, Risk Manager, and Ultrasound Manager. Many Associate Directors are the administrative heads of departments or smaller units within a department at a facility. For instance, they serve as Directors of Audiology, Health Information Management, Hospital Police, Pharmacy, Rehabilitation Medicine, Social Services, and Quality Management. In health care departments, they are often lead administrators. They often supervise multiple employees, including some Assistant Directors and Coordinating Managers. Many

⁶ The listed required qualifications for an Associate Director are: a “Master’s Degree in Art or Science with a specialization in Hospital Administration, Health Care Administration, Administrative Medicine or in Public Health when conferred for a program in hospital administration from an approved college or university;” and four years of administrative experience at responsible management and administrative levels; or an equivalent combination of training, education, and experience; and “[k]nowledge of fundamentals of hospital organization, administration and standards, regulations and laws applicable to hospital operations” and “[k]nowledge of principles of business and personnel administration, management functions and support service functions and ability to direct and supervise personnel.” (Ans., Ex. B)

Associate Directors employed in facilities report to Senior Associate Directors, who are the most senior administrators in a department or facility. Generally, in health care departments there are also a Medical Director and/or Nursing Director who have significant decision-making authority. In addition, several Associate Directors hold positions at the network level, such as Network Director of Care Management, Network Payroll Director, and Network Records Management Director. Most Associate Directors at the network level report to employees in positions higher in the organization than those with facility-level responsibilities.⁷

DUE PROCESS

HHC makes several arguments relating to the conduct of the hearing, which it claims constituted a denial of its due process rights. It argues that it was precluded from presenting evidence to support its position that the Assistant and Associate Director titles are managerial and/or confidential. Thus, it claims that any decision on the merits would be *per se* arbitrary and capricious. In addition, HHC asserts that the record is stale and not representative of all the Assistant and Associate Directors. Accordingly, it argues that the Board should dismiss the petitions or, in the alternative, order an expedited rehearing for HHC to offer evidence regarding the current population of Assistant and Associate Directors. We find that HHC was afforded due process in presenting its case and was not precluded from presenting relevant and non-duplicative evidence. As described in detail below, the record created in this matter was expansive and thorough. In addition, the case processing time did not undermine the reliability of the evidence in the record.

⁷ The salaries for Associate Directors range from \$35 to \$91 per hour and from \$48,607 to \$170,731 per year.

Prior to the commencement of the hearing, surveys were distributed to one network of HHC facilities.⁸ When HHC indicated that it was near the completion of its case regarding one network, surveys were sent to employees at another network. Thus, from March 2011 to June 2016 HHC was permitted to present testimony from any Assistant or Associate Director, one network of facilities at a time.⁹ During those five years, by agreement of the parties, hearings were scheduled every other week, or approximately 26 per year. Although hearing dates were announced months in advance, HHC witnesses were frequently unavailable at the last minute, and the time set aside for the hearing was not fully utilized.¹⁰

The Trial Examiners took effective steps to avoid duplicative and irrelevant testimony in order to progress the case.¹¹ In December 2011, the Trial Examiner first cautioned HHC against presenting duplicative testimony. However, her instruction was not consistently followed. In

⁸ Historically, the Board has utilized surveys to facilitate settlement and streamline the hearing to focus on information that has changed or needs further elaboration. *See OSA*, 3 OCB2d 33, at 87 (BOC 2010). Surveys are typically reviewed by the employee's supervisor and often include organizational charts and functional job descriptions. Employees were not precluded from submitting surveys late, and several surveys were submitted contemporaneously with the testimony. All surveys are part of the record and have been considered even if the employee was not called to testify.

⁹ With no limitations on witnesses, HHC chose to present testimony from 40% of Assistant Directors and 61% of Associate Directors in the Central Brooklyn Family Health Network ("Central Brooklyn Network"); 43% of the Assistant Directors and 52% of the Associate Directors in the Generations + Network; and 44% of Assistant Directors and 13% of Associate Directors in the North Bronx Healthcare Network ("North Bronx Network").

¹⁰ The Trial Examiner requested that HHC call a minimum of four witnesses per hearing date in order to have four to five hours of testimony. HHC cancelled hearing dates on five occasions because of the last-minute unavailability of its witnesses. For the majority of hearing dates, HHC produced only three witnesses. It proceeded with less than three witnesses on ten occasions.

¹¹ This case was heard first by the Director of Representation and then by the Deputy Director of Dispute Resolution.

addition, over the ensuing years, the testimony, including that of seven Breakthrough Facilitators in different networks, demonstrated that in-house positions with the same or similar titles perform comparable duties from one network or facility to another.¹² See two Associate Directors at the North Bronx Network (L. Cardinale, Tr. 9435-9511, HHC Ex. 236; and K. Johnson, Tr. 10079-10110, HHC Ex. 304), two Associate Directors at Harlem Hospital (“Harlem”) (R. Gomez, Tr. 5950-5978, HHC Ex. 147; and O. Oluwole, Tr. 5983-6038, HHC Ex. 148), an Associate Directors in the Generations + Network (P. Qvale, Tr. 5715-5780, HHC Ex. 142), an Associate Director at Kings County Hospital (“Kings County”) (A. Robertson, Tr. 2237-2307, HHC Ex. 65), and an Associate Director at Lincoln Hospital (“Lincoln”) (H. Williams, Tr. 6412-6475, HHC Ex. 157). Accordingly, in August of 2015, after hearing testimony from Assistant and Associate Directors in three networks of facilities, the Trial Examiner notified the parties that a review of the record showed that “much of the testimony regarding the duties and responsibilities of the two titles at issue is duplicative of evidence already in the record.” (Trial Examiner (“TE”) Ex. 155) She solicited input from the parties regarding how to best proceed to avoid further duplicative testimony, which was inefficient and a waste of resources.¹³ Subsequently, a conference was held

¹² Initially, HHC assigned only one attorney to present its case. However, after the departure of the first two attorneys, who were assigned successively, between two to four attorneys were assigned at a time and rotated presenting witnesses. Approximately ten HHC attorneys solicited testimony over the course of this hearing. During this process, assigned counsel became increasingly unaware of the testimony elicited by prior or concurrent counsel. For example, one HHC attorney did not know that an employee on their witness list had already testified until notified by counsel for the Unions. (TE Ex. 76)

¹³ The Trial Examiner requested that the parties “submit any and all proposals so that future testimony does not repeat information already included in transcript, which currently exceeds 10,000 pages.” (TE Ex. 155) In response, HHC proposed that within each network, it would call witnesses one department at a time and would call only one witness if it found that “several employees in a particular department are doing the exact same work.” (TE Ex. 163) To present evidence in this manner, it requested that hearing dates be scheduled only once a month. The Trial Examiner found that “HHC’s proposal does not sufficiently address utilizing the evidence

to discuss the parties' proposals. Thereafter, surveys were solicited from Assistant and Associate Directors at all the remaining networks.

From November 2015 to June 2016, the Trial Examiner heard evidence regarding a fourth network of HHC facilities and informed the parties that "the duplicative nature of the witness testimony ha[d] continued." (TE Ex. 176) It is the Trial Examiner's duty to determine whether testimony would assist the Board in its investigation. *See* § 1-10(c) & (d) of the Rules of the Office of Collective Bargaining (Rules of the City of New York, Title 61, Chapter 1) ("OCB Rules").¹⁴ Accordingly, on June 14, 2016, she announced a new procedure regarding the presentation of witnesses for the remainder of the case. She compiled and distributed a list of 17 employees whose

submitted at the prior 71 hearing days." (TE Ex. 164) She noted that the "evidence has shown that similarities among the duties of [Assistant and Associate Directors] run primarily between networks rather than within departments." (*Id.*)

¹⁴ OCB Rule § 1-10 provides:

(c) Conduct of hearings. Hearings shall be conducted by a trial examiner. At any time, a trial examiner may be designated to take the place of the trial examiner previously designated to conduct a hearing. Except as otherwise provided, all hearings shall be open to the public. During the course of any hearing, the trial examiner, shall have full authority to control the conduct and procedure of the hearing and the record thereof, to admit or exclude testimony or other evidence, and to rule upon all motions and objections. It shall be the duty of the trial examiner to see that a full inquiry is made into all the facts in issue and to obtain a complete record of all facts necessary for a fair determination. The trial examiner shall have the right to call and examine witnesses, to issue subpoenas as permitted by law, to direct the production of evidence and to introduce evidence into the record, except as may otherwise be limited herein.

(d) Rights of parties. In any hearing, all parties shall have the right to call, examine and cross examine witnesses, and to introduce documentary or other evidence, subject to the rulings of the trial examiner, except as otherwise provided in these rules.

testimony could “assist the Board in its investigation” and requested that HHC first call any employees it wished from that list.¹⁵ (TE Ex. 176) Thereafter, the parties would be required to submit a list of other employees that they wished to call and would have the opportunity to review each other’s lists. Further, any “party seeking to produce additional witnesses [would] be required to provide an offer of proof for each additional witness,” and the Trial Examiner would determine whether additional testimony was necessary.¹⁶ *Id.* This procedure was formulated by drawing upon the information contained in all the remaining surveys and a close review of the transcript. It was created to ensure a more efficient use of resources while ensuring the parties had every opportunity to present any non-duplicative evidence they felt necessary.

¹⁵ The Trial Examiner explained to the parties the methodology used to compile the list:

The surveys were sorted and reviewed, with a focus on employees who answered “yes” to the question of [whether they engaged in] policy-making. An evaluation was then conducted of the duties performed by those within this group to ensure that the duties enumerated were not duplicative of employees who had already testified. In addition, we also reviewed the surveys of high-level employees, even if they did not answer “yes” to the question of policy-making, to evaluate whether their duties were duplicative of prior testimony.

Id.

¹⁶ HHC objected to the Trial Examiner’s direction and submitted offers of proof for two witnesses not on her list. The Trial Examiner reminded the parties that “we will be hearing testimony from the 17 witnesses before we consider offers of proof of any other witnesses” and informed HHC that it could renew its application at the appropriate time. (TE Ex. 179) The Trial Examiner also noted that the offers of proof that HHC submitted were insufficient because they “offered no specific facts beyond what is in the surveys that have already been submitted, or otherwise demonstrated that their testimony would be necessary.” *Id.* HHC did not subsequently renew its request to present the two additional witnesses.

Between June and November of 2017, HHC called 10 of the 17 employees identified by the Trial Examiner. Thereafter, no party produced a list of additional witnesses that it wished to call or submitted any offers of proof, despite the Trial Examiner having reminded them of the opportunity to do so.¹⁷ (TE Ex. 201)

Representation cases are fact-finding investigations, and no party is entitled to present duplicative or cumulative testimony. See OCB Rule § 1-02(j)(1); *Matter of N.Y.C. Health & Hosps. Corp. v. Bd. of Certification of the City of N.Y.*, 2007 N.Y. Slip. Op 30921(U) (Sup. Ct. N.Y. Co. Apr. 23, 2007) (Tolub, J.) (noting that “the Board’s granting of a hearing to determine [a title’s] representation status is merely discretionary” and that the Board “may consider whatever evidence is at hand, whether said evidence is obtained through a hearing or otherwise”).¹⁸ We have previously found that a Trial Examiner’s request for witnesses and offers of proof when testimony became “cumulative and, therefore, no longer helpful to the Board’s investigation” does not deprive a party of due process. See *OSA*, 11 OCB2d 22, at 14 (BOC 2018) (rejecting HHC’s objection to “any limitation or restriction on the quality of its defense”).

¹⁷ On February 1, 2018, the Trial Examiner provided the parties with copies of the three exhibit lists: Hearing Exhibit List, a list of all exhibits admitted during the course of the hearing including documents such as collective bargaining agreements, surveys, and organizational charts (see *CWA 1*, *OSA 1*, *HHC 1-245*, and *HHC 296-345*); Remaining Surveys Exhibit List, a list of the remaining surveys completed by Assistant and Associate Directors (see *HHC 346-931*); and Trial Examiner Exhibit List, a list of exhibits including pleadings and correspondence (see *TE 1-204*). In its closing brief, HHC references the Trial Examiner Exhibit List and asserts that “several exhibits are missing.” (*HHC Closing Br.* at 3, n.7). Contrary to HHC’s assertion, all of the exhibits it asserts are missing are in the record, appear on the Hearing Exhibit List, and were considered along with all of the other exhibits in the record.

¹⁸ OCB Rule § 1-02(j)(1) provides that “[i]n its investigation of a question or controversy concerning representation, the Board may conduct informal conferences or hearings, may direct an election or elections, or use any other suitable method to resolve the question concerning representation.”

We find that the manner in which the proceeding in this matter was conducted did not prejudice HHC or violate its right to due process. The record developed is sufficient for the Board to determine whether the Assistant and Associate Director titles are eligible for collective bargaining and, if so, the appropriate unit placement for each title. The extensive testimony elicited from more than 265 witnesses over 85 days of hearing and the voluminous documentary evidence demonstrate not only a broad range of duties and responsibilities performed by Assistant and Associate Directors in a wide variety of departments in different types of facilities but also overarching similarities among subsets of Assistant and Associate Directors.¹⁹ For example, as the Trial Examiner found, the duties of an in-house position are similar from one network of facilities to another. Indeed, many witnesses testified about attending meetings with their counterparts at other facilities to discuss best practices. While each facility faces distinct challenges, they generally have similar goals and are subject to the same regulations. Therefore, our determinations regarding specific in-house positions apply to all Assistant and Associate Directors in the same or similar in-house positions across facilities.

We reject HHC's argument that the record before us is only a "sampling" and "is not an accurate representative of the entirety of the population." (HHC Closing Br. at 12). In addition to similarities between specific departments from one facility to another, we find similarities among broader categories of departments. As a whole, Assistant and Associate Directors in administrative

¹⁹ We rely upon over 11,250 pages of transcript, more than 850 surveys completed by employees, and dozens of additional exhibits. Surveys were submitted by approximately 98% of Assistant Directors and 91% of Associate Directors in the Central Brooklyn Network, 93% of Assistant Directors and 85% of Associate Directors in the Generations + Network, 81% of Assistant Directors and 73% of Associate Directors in the North Bronx Network, and 88% of Assistant Directors and 22% of Associate Directors in the North Brooklyn Healthcare Network ("North Brooklyn Network").

departments serve a similar role, regardless of the specialty of the department. Similarly, there are commonalities among Assistant and Associate Directors in departments directly providing medical services, despite differences in the medical service offered. Further, while the scope of responsibility varies depending on the size and type of facility, there are similarities among Assistant and Associate Directors employed at large acute care hospitals, those working at smaller hospitals, those employed at long-term care facilities, and those assigned to neighborhood diagnostic and treatment centers. These similarities are sufficient to make determinations based on categories and subgroups.

In addition, we do not find that the record is stale or that there is a need to reopen the hearing.²⁰ In the ordinary course of operations, employees routinely depart and are replaced. For this reason, we have previously held that our representation decisions apply to successor employees who perform substantially the same duties. *See, e.g., CWA*, 2 OCB2d 13, at 117 n.70 (BOC 2009) (noting that “[t]o the extent that employees no longer hold the positions about which they testified, our decision runs to the position, not the individual, and applies to their successors who perform substantially the same duties and functions”); *OSA*, 3 OCB2d 33, at 24 n.6. Further, while individual employees may have changed, HHC has not asserted that the role of Assistant and Associate Directors in operating HHC facilities has changed.

²⁰ “Having the burden of proof does not relieve a party from a reasonable obligation to proceed efficiently and in a timely manner in order to avoid needlessly delaying the final adjudication of public employees’ representation rights.” *OSA*, 3 OCB2d 33, at 88 (BOC 2010), *affd.*, *Matter of City of N.Y. v. Bd. of Certification of the City of N.Y.*, 2011 NY Slip. Op 32814(U) (Sup. Ct. N.Y. Co.) (Kern, J.) (finding no violation of due process when the Trial Examiner set a deadline for the employer to complete its case regarding managerial or confidential status). HHC indicated that it could not present witnesses more frequently than every two weeks and did not proceed efficiently. Accordingly, HHC was largely responsible for the length of this proceeding and thus was not prejudiced by it.

Accordingly, we find that HHC was afforded due process and that the record is sufficient to determine the issues presented.

STANDARD OF LAW

The New York City Collective Bargaining Law (New York City Administrative Code, Title 12, Chapter 3) (“NYCCBL”) presumes that public employees are eligible for collective bargaining but provides a limited exception for employees whom the Board finds are managerial and/or confidential:

Public employees shall have the right to self-organization, to form, join or assist public employee organizations, to bargain collectively through certified employee organizations of their own choosing and shall have the right to refrain from any or all of such activities. However, neither managerial nor confidential employees shall constitute or be included in any bargaining unit, nor shall they have the right to bargain collectively; provided, however, that public employees shall be presumed eligible for the rights set forth in this section, and no employees shall be deprived of these rights unless, as to such employee, a determination of managerial and confidential status has been rendered by the board of certification.

NYCCBL § 12-305. Accordingly, “[i]t is the public employer’s burden to overcome the statutory presumption favoring eligibility for collective bargaining.” *Local 621, SEIU*, 4 OCB2d 57, at 22-23 (BOC 2011); *see also DC 37*, 78 OCB 7, at 39 (BOC 2006), *affd.*, *Matter of City of N.Y. v. N.Y.C. Bd. of Certification*, Index No. 404461/06 (Sup. Ct. N.Y. Co. Sept. 19, 2007) (Wetzel, J.).

The Board and the Courts recognize that the managerial and confidential exclusions “are an exception to the Taylor Law’s strong policy of extending coverage to all public employees and are to be read narrowly, with all uncertainties resolved in favor of coverage.” *CWA, L. 1180*, 2 OCB2d 13, at 11 (quoting *Matter of Lippman v. Pub. Empl. Relations Bd.*, 263 A.D.2d 891, 904 (3d Dept. 1999)); *Matter of N.Y.C Health & Hosps. Corp.*, 2007 N.Y. Slip. Op 30921(U); *Village of Suffern*, 38 PERB ¶ 3016, at 3056 (2005).

The NYCCBL further provides that the Board has “the power and duty ... to determine whether specified public employees are managerial or confidential within the meaning of [the Taylor Law § 201(7)] and thus [] excluded from collective bargaining.” NYCCBL § 12-309(b)(4).

The Taylor Law § 201.7(a) provides, in relevant part, that:

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

Civil Service Law Article 14 (“CSL”) § 201.7(a); *see Matter of Shelofsky v. Helsby*, 32 N.Y.2d 54, 60 (1973) (upholding the statutory criteria for managerial and confidential designations as not being unconstitutionally vague).

The first exclusion from eligibility for collective bargaining provided by the Taylor Law is a manager “who formulate[s] policy.” CSL § 201.7(a)(i). Policy formulation is “the development of the particular objectives of a government or agency thereof in the fulfillment of its mission and the methods, means and extent of achieving such objectives.” *OSA*, 3 OCB2d 33, at 22 (quoting *State of New York*, 5 PERB ¶ 3001, at 3005 (1972)); *see also OSA*, 8 OCB2d 19, at 36 (BOC 2015); *CWA, L. 1180*, 76 OCB 4, at 22 (BOC 2005); *EMS Superior Officers Association*, 68 OCB 10, at 21 (BOC 2001); *USCA*, 66 OCB 4, at 26 (BOC 2000). “Employees who formulate policy ‘include not only a person who has the authority or responsibility to select among options and to put a proposed policy into effect, but also a person who participates with regularity in the essential process which results in a policy proposal and the decision to put such proposal into effect.’” *OSA*, 3 OCB2d 33, at 22-23 (quoting *State of New York*, 5 PERB ¶ 3001, at 3005); *see also OSA*, 8

OCB2d 19, at 36; *OSA*, 78 OCB 1, at 7 (BOC 2006); *CWA, L. 1180*, 76 OCB 4, at 22; *UFOA, L. 854*, 50 OCB 15, at 19-20 (BOC 1992); *DC 37*, 30 OCB 36, at 14 (BOC 1982). To support a finding of managerial status, the “[p]articipation in the formulation of policy must be ‘regular,’ ‘active,’ and ‘significant.’” *CWA, L. 1180*, 76 OCB 4, at 22 (quoting *UFOA, L. 854*, 50 OCB 15, at 20); *see also Local 621, SEIU*, 4 OCB2d 57, at 23; *OSA*, 3 OCB2d 33, at 23. “An employee who participates in the policy making process in an advisory role, as a resource person, or in a clerical capacity does not formulate policy.” *CWA, L. 1180*, 2 OCB2d 13, at 13 (citing *OSA*, 78 OCB 1, at 19, 27; *Local 1180, CWA*, 46 OCB 3, at 10 (BOC 1990); *County of Rockland*, 28 PERB ¶ 3063, at 3144 (1995)).

The second type of manager excluded from collective bargaining is one “who may reasonably be required on behalf of the public employer to assist directly in the preparation for and conduct of collective negotiations or 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.” CSL § 201.7(a)(ii). “To fall within this exclusion, an employee must be ‘a direct participant in the preparation of the employer’s proposals and positions in collective negotiations and an active participant in the negotiating process itself ... having the authority to exercise independent judgment in the employer’s procedures or methods of operation as necessitated by the implementation of [collective bargaining] agreements,’ or, concerning personnel administration, ‘exercise independent judgment and fundamental control over the direction and scope of the employer’s mission.’” *OSA*, 8 OCB2d 19, at 41 (quoting *County of Rockland*, 28 PERB ¶ 3063, at 3141-3142; *City of Binghamton*, 12 PERB ¶ 4022, at 4035 (1979)).

As to the issue of confidentiality, “[e]mployees may be designated as confidential only if they are persons who assist and act in a confidential capacity to managerial employees described in clause (ii).” CSL § 201.7(a)(ii). To establish confidentiality, the employer must show that the employee satisfies both prongs of a two-pronged test: “(1) the employee . . . must assist a [CSL] § 201(7)(a)(ii) manager in the delivery of labor relations[/personnel administration] duties described in that subdivision—a duty oriented analysis; and (2) the employee . . . must be acting in a confidential capacity to that manager—a relationship oriented evaluation.” OSA, 3 OCB2d 33, at 38-39 (quoting *Lippman*, 263 A.D.2d at 902); see also *Local 621, SEIU*, 4 OCB2d 57, at 28; *DC 37*, 78 OCB 7, at 40.

As it has done in several cases in recent years, HHC again argues that the New York City Health and Hospitals Corporation Act, New York Unconsolidated Law §§ 7381-7406 (“HHC Act”) controls and that the titles at issue are managerial and/or confidential and excluded from collective bargaining under the HHC Act. The Unions assert that the Board should reject this claim as it has done previously. We consider the application of the Taylor Law standard for managerial and/or confidential employees to HHC to be a well-settled issue of law that requires no further analysis. See OSA, 11 OCB2d 22, at 16-17; OSA, 11 OCB2d 8, at 17 (BOC 2018), *affd.*, 2019 N.Y. Slip. Op 30466(U) (Sup. Ct. N.Y. Co.) (Crane, J.), *affd.*, 179 A.D.3d 573 (1st Dept. 2020), *lv. denied*, 35 N.Y.3d 906 (2020); OSA, 10 OCB2d 2, at 17 (BOC 2017), *affd.*, *Matter of NYC Health + Hosps. v. Org. of Staff Analysts*, 2017 N.Y. Slip. Op 32393(U) (Sup. Ct. N.Y. Co.) (Edwards, J.), *affd.*, 171 A.D.3d 529 (1st Dept. 2019), *lv. denied*, 34 N.Y.3d 909 (2020); OSA, 8 OCB2d 28, at 18-19 (BOC 2015); OSA, 8 OCB2d 19, at 18-25, 32-36 (BOC 2015); OSA, 74 OCB 1, at 4-7 (BOC 2004); CWA, 40 OCB 5, at 15-23 (BOC 1987). See also OSA, 78 OCB 5, at 40-42 (BOC 2006), *affd.*, *Matter of NYC Health & Hosps. Corp.*, 2007 N.Y. Slip. Op 30921(U) (Tolub,

J.) (applying CSL § 201.7(a) to HHC employees); *OSA*, 78 OCB 1, at 5-8; *DC 37*, 10 OCB 41, at 13-14 (BOC 1972). Accordingly, we once again reject HHC's assertion that the HHC Act controls and that the titles at issue are managerial and/or confidential and excluded from collective bargaining under the HHC Act. *See OSA*, 10 OCB2d 2, at 17 ("The doctrine of *stare decisis* recognizes that legal questions, once resolved, should not be reexamined every time they are presented") (quoting *Matter of Deposit Cent. Sch. Dist. v. Pub. Empl. Relations Bd.*, 214 A.D.2d 288, 290 (3d Dept. 1995)); *State of New York (Department of Correctional Services)*, 43 PERB ¶ 3039, at 3144 n.2 (2010) (no need to repeat reasoning for rejecting arguments recently rejected in another matter). The Board will apply the standard for managerial and/or confidential employees set forth in the Taylor Law.

ELIGIBLE ASSISTANT AND ASSOCIATE DIRECTORS

We find that, with the exception of some specific positions, Assistant and Associate Directors do not meet the statutory definitions for a managerial and/or confidential designation and are therefore eligible for collective bargaining. They do not have a significant role in policy formulation, labor relations, or personnel administration that would require them to be excluded from collective bargaining as managerial under the NYCCBL. Instead, the general duties of both titles are similar to those of other titles found eligible for collective bargaining. However, as explained later, a few Assistant and Associate Director positions are appropriately excluded from collective bargaining under the NYCCBL as managerial because of their role in formulating policy or other managerial indicia.²¹

²¹ HHC asserts that all Assistant and Associate Directors are managerial and/or confidential. In its closing brief, it made specific arguments with respect to 73 positions it alleges are managerial

Generally, Assistant and Associate Directors have significant and important roles in the delivery of health care and the day-to-day operation of HHC's facilities. Along with doctors, nurses, and other health care professionals, the work they perform is essential to the delivery of health care to hundreds of thousands of New York City residents. Nevertheless, the skills required of these employees and the importance of their work are not inimical to union representation. Indeed, the Taylor Law presumes that all public employees are eligible for collective bargaining and only excludes those who fall into the narrow definitions of managerial or confidential. *See* NYCCBL § 12-305. For example, with the exception of the Chiefs of Service, physicians at HHC who regularly make critical health care decisions are eligible for collective bargaining. *See Doctors Assn. of the City of N.Y.*, 12 OCB 31 (BOC 1973); *see also Westchester County Health Care Corp.*, 34 PERB ¶ 4020 (2001). Indeed, in the past this Board has certified numerous high-level, important, and/or responsible titles used by HHC as eligible for collective bargaining. *See OSA*, 11 OCB2d 22 (finding Patient Representatives eligible); *OSA*, 11 OCB2d 8 (finding Directors of Planning eligible); *CWA*, 78 OCB 3 (BOC 2006) (finding Coordinating Managers eligible, with limited exceptions); *OSA*, 78 OCB 1 (finding Senior Management Consultants eligible, with limited exceptions).

We have previously acknowledged that while management functions, such as policy-making, are carried out by personnel within hospital administration at the highest levels, the staff required to fulfill these management functions may extend beyond the CEO, Executive Directors, and Senior Vice Presidents. *See generally, DC 37*, 10 OCB 41 (BOC 1972); *CWA*, 6 OCB 6 (BOC 1970). Nevertheless, in most instances Assistant and Associate Directors fall several levels below

and 15 positions it alleges are confidential, and within those groups it alleges that 10 positions are both managerial and confidential.

the senior administrators in HHC's corporate structure, and the management functions are being performed by HHC's Senior Executives and administrators above those at issue here. *See generally Westchester County Health Care Corp.*, 34 PERB ¶ 4020.

Assistant Directors may be the head administrator for a subdivision within a larger department or report to the subdivision or department administrator.²² Many Assistant Directors were formerly Coordinating Managers, a civil service title represented by CWA, and remain at the same level in the organizational chart as a Coordinating Manager or supervise Coordinating Managers or Assistant Coordinating Managers. Their positions are mainly at the facility or department level. In most, if not all instances, they are not the highest administrator responsible for the unit or department. They often assist an Associate Director.

Associate Directors generally function at a higher level than Assistant Directors.²³ They are often the head administrator for a department at a small facility or a sub-group of a larger unit

²² CWA argues that Assistant Directors are eligible for collective bargaining. It contends that Assistant Directors have roles in the creation of procedures rather than policies, meaning they are involved in the practical steps taken to implement HHC's policies or the determination of methods of operation of a technical nature. It asserts that the procedures were generally departmental in scope, or narrower, and applicable only within a small work-group; no Assistant Director had any role in formulating policies or procedures for the entire HHC health system. Further, it asserts that many of the policies described by witnesses were drafted to comply with the requirements of various regulatory agencies and accrediting bodies and that procedures that are formulated simply to comply with pre-established parameters do not require the level of authority and independent judgment necessary for a finding of managerial status. Moreover, it claims that no Assistant Directors possess the authority to put a policy into effect without approval from their supervisor or someone higher in the organization.

²³ OSA argues that while many Associate Directors are responsible for supervising units and/or divisions within HHC facilities, they lack the authority and discretion required to be designated managerial. It claims that they do not regularly and actively participate in policy-making on an HHC-wide basis. Similarly, although several Associate Directors may have functions that are significant within their department or ancillary to their respective facilities' budget, it asserts that they lack the discretion to make financial decisions that would ultimately impact the mission of HHC. While some Associate Directors do occasionally serve as an Administrator on Duty,

at a larger facility. Many Associate Directors have a significant amount of responsibility, are highly skilled, often report to high level managers, and/or have a wide range of discretion to oversee the functions of one or more departments or units including making decisions to improve operations and efficiency. They often supervise multiple employees, including some Assistant Directors and Coordinating Managers. In addition, several Associate Directors hold positions at the network level, such as Network Director of Care Management, Network Payroll Director, and Network Relations Manager. In most instances, Associate Directors at facilities report to titles such as Sr. Associate Director and AED. In such cases they are at least two levels, if not more, below the most senior executives at a facility. Occasionally, Associate Directors report to a Deputy CFO, CFO, Chief Operating Officer (“COO”), or DED.²⁴

The majority of Associate Directors and a few Assistant Directors have high level supervisory and/or administrative duties that may include: directing and coordinating a department, program area, sub-division, or unit; improving patient experience/care; supervising staff; ensuring departmental compliance with regulations; drafting, reviewing, revising, implementing, and/or promulgating departmental procedures based on new or revised statutory regulations, manufacturer recommendations, and/or changes within HHC or the department; revising, formatting, and/or creating manuals, brochures, and other policy or procedure documents; informing and/or training staff on new or revised policies and procedures; acting as a resource for

typically one or two times a year, OSA contends that these responsibilities are not a regular part of their duties and should not influence their eligibility for collective bargaining.

²⁴ Contrary to HHC’s assertion, for the most part we do not find that Assistant Directors or Associate Directors are at the highest levels of a facility’s operation and engaged in policy-making like other hospital titles such as Hospital Patient Account Manager and certain nursing titles. *Cf. DC 37, 10 OCB 41 (BOC 1972) (Hospital Patient Account Managers who report directly to the facility executive directors are managers); NYSNA, 4 OCB 6 (BOC 1969) (high-level nursing titles are managers).*

senior managers; serving on HHC, facility, and/or leadership committees and suggesting and implementing changes to improve the department's operation; liaising with regulatory agencies and other organizations; developing and monitoring budgets and grants; and/or overseeing customer service.

Eligible Assistant and Associate Directors Who Do Not Formulate Policy

Most Assistant Directors and Associate Directors do not have a regular and significant role in policy formulation. “The definition of policy formulation is limited to ‘those relatively few individuals who directly assist the ultimate decision-makers in reaching the decisions necessary to the conduct of the business of the governmental agency.’” *OSA*, 3 OCB2d 33, at 23 (quoting *State of New York (Dept. of Env'tl. Conservation)*, 36 PERB ¶ 3029, at 3085 (2003) (finding managerial an employee who initiated a regulatory change proposal with “significant statewide implication” and formulated the long-term policy for the direction of the New York State Nursery program)).

In *OSA*, 11 OCB2d 8, the Board found the Director of Planning title at HHC eligible for collective bargaining. Like many Associate Directors, Directors of Planning are employed by HHC at high levels in a variety of departments, are subject matter experts who ensure compliance with regulations, act as resource people for senior management, serve on high-level committees, are liaisons with City and New York State agencies and other organizations, and have budgetary and supervisory duties within their departments. *Id.* at 4-10. Some Directors of Planning manage projects or units, train and supervise employees, and prepare budgets. The Board found that although they are “highly skilled and function at senior levels of HHC,” they “do so as implementers or resource people, not policy makers, as they provide information which others use to make policy determinations.” *Id.* at 20-21 (citing *OSA*, 3 OCB2d 33, at 45; *OSA*, 78 OCB 1, at 19, 27; *Local 1180, CWA*, 46 OCB 3, at 10). In addition, the Board found that HHC's Patient

Representatives were eligible for collective bargaining. *See OSA*, 11 OCB2d 22, at 20. Patient Representatives are resource people who on a daily basis “ensure proper implementation of policies.” *Id.* Their recommendations concern “improving operational quality and efficiency, not policy formulation,” and must be approved by others. *Id.* at 21 (citing *OSA*, 3 OCB2d 33, at 58-59 (finding that duties such as improving the efficiency of payment operations do not rise to the level of policy formulation); *see also City of Binghamton*, 12 PERB ¶ 3099, at 3185 (finding that making suggestions concerning internal operating procedures of a department do not rise to the level of policy formulation); *CWA, L. 1180*, 2 OCB2d 13, at 24; *OSA*, 78 OCB 1, at 41-43.

In addition, in *OSA*, 78 OCB 1, the Board found eligible the HHC title Senior Management Consultant (“SMC”) Levels I and II, including the Assistant Director of Medicine at Coney Island Hospital (“Coney Island”) whose primary function is to supervise the day-to-day administrative operations of the department. The Board found that the Assistant Director of Medicine “is involved with the creation and modification of procedures,” but “is not significantly involved in the creation of policy.” *Id.* at 49. An example of her duties included reviewing and updating the department’s policies and drafting a policy to govern the process for non-salaried physicians’ credential checks, pre-employment physicals, and other on-boarding procedures to obtain photo identification, contact information, employee numbers, and signature stamps.

Similarly, we find that very few Associate Directors and even fewer Assistant Directors formulate policy. Associate Directors and some Assistant Directors spend the majority of their time working to maintain effective, efficient, and safe departmental or sub-division operations.²⁵

²⁵ Examples of Assistant and Associate Directors performing these duties are: an Associate Director at the North Bronx Network who oversees the Nuclear Medicine lab, which prepares patients for imaging (R. Fernandez, Tr. 7849-7893, HHC Ex. 191); an Assistant Director at Woodhull Medical Center (“Woodhull”) who oversees the Materials Management department, which handles the purchase and distribution of supplies (I. Figueroa, Tr. 10232-10242, HHC Ex.

Many of them are subject matter experts.²⁶ They may also have a role in drafting, reviewing, revising, implementing, and/or promulgating procedures or department policies.²⁷ For example, a group of Associate Directors in Network Relations at MetroPlus draft procedures such as how to sign in and out at work and how to update the MetroPlus provider directory. If the Associate Directors' proposals are approved by the AED and the Chief Medical Officer, then the Associate Directors assist in implementing the procedures. (S. Charles, Tr. 10883-10922, HHC Ex. 335; A. Fowler, HHC Ex. 523; K. McCall, Tr. 10988-11023, HHC Ex. 338; and D. Schiffman, Tr. 11152-11161, HHC Ex. 342)

In some instances, Assistant and Associate Directors memorialize current departmental practices and/or update outdated procedures. For example, at the request of her supervisor, an

312); an Associate Director of Telecommunications, Mail Services, Duplication, and Signage at Woodhull (G. Vega, Tr. 10035-10075, HHC Ex. 305); an Associate Director who runs the Blood Bank at Lincoln (M. Aslam, Tr. 5428-5453, HHC Ex. 133); and two Assistant Directors who oversee the Emergency department at Jacobi Medical Center ("Jacobi") including managing patient flow. (J. Suarez, Tr. 8066-8089, HHC Ex. 198; and W. Worthy, Tr. 9036-9058, HHC Ex. 226).

²⁶ For example, an Associate Director in Central Sterile Supply at the North Bronx Network is a subject matter expert on decontamination and sterilization. He researches industry standards and manufacturer recommendations and creates and revises technical procedures on subjects such as the use of steam sterilization. He has made recommendations regarding the types of disinfectant and towels used, tray storage procedures, and the transfer of some operating room duties from the Nursing department to his department. (D. Bialt, Tr. 7716-7797, HHC Ex. 188).

²⁷ An Associate Director in External Affairs at the North Bronx Network with an in-house title of Assistant Director of Community Affiliations/Outreach Development, for example, has written protocols including what type of clinical information primary care physicians need to submit to get a referral appointment, and she has revised Patient Relations policies pursuant to specific recommendations from the Centers for Medicare and Medicaid Services that reduced the time to respond to patient complaints from 30 days to seven days. (T. Schneider, Tr. 9843-9911, HHC Ex. 297)

Assistant Director in the Patient Escort Services department at the North Bronx Network memorialized the wheelchair maintenance procedure as well as the stretcher and wheelchair cleaning procedures and updated them in response to an incident in order to facilitate record keeping and staff accountability. (B. Rodriguez, Tr. 7898-7919, HHC Ex. 192). Additionally, an Assistant Director of IT Informatics in the Pharmacy department at Kings County revised a procedure to reflect new safety features on the latest model of a medication dispensing machine, which now requires that barcodes be scanned before loading. The Assistant Director needed approval to make the change from the Associate Director of Outpatient Pharmacy, who is also eligible for collective bargaining. (J. Minhas, Tr. 2342-2369, HHC Ex. 67).

Additionally, many Associate Directors and some Assistant Directors play a significant role in ensuring that their department complies with all pertinent regulations.²⁸ This is especially important because healthcare departments receive licensing and funding only if they strictly adhere to regulations. Regulations and standards that require compliance are issued by the Joint Commission, the World Health Organization, the Centers for Disease Control and Prevention, the Occupational Safety and Health Administration (“OSHA”), the New York State Department of Health, the New York City Department of Health and Mental Hygiene, and the College of American Pathologist, among others. Assistant and Associate Directors do not have the authority to change the governing regulations, but they may have some discretion in how they are implemented.

²⁸ For example, an Associate Director in Regulatory Affairs at the North Bronx Network maintains an HHC intranet repository of thousands of policies that meet the Joint Commission and regulatory standards. This position does not devise the policies but identifies policies that may need revisions due to changes in regulations, poor wording, or other reasons. (R. Annunziata, Tr. 7294-7353, HHC Ex. 181).

Because regulations change, Assistant and Associate Directors must stay current on regulations and are often responsible for informing the staff of modifications. Sometimes they will prepare reports and create presentations clarifying and/or narrowing the regulatory language for the staff. For example, an Associate Director in the Safety Management department at North Central Bronx Hospital (“North Central Bronx”) ensures that fire education for the staff complies with National Fire Protection Agency regulations and the New York City Fire Code. When staff had to be retrained after OSHA made significant changes to the Hazard Communication Standard Policy, she created a presentation showing the necessary training and other required information. (C. Williams, Tr. 9584-9628, at 9605, HHC Ex. 239).

If new or modified regulations affect a certain practice, Assistant and Associate Directors may help to ensure that departmental procedures are updated and in compliance. For example, an Associate Director of the Sea View Long-Term Care Center (“Sea View”) reviews and revises policies annually based on a list of updated and new state regulations. (L. Duane, Tr. 11098-11142, HHC Ex. 341) Additionally, an Associate Director in the Behavioral Health Care Services department at the North Bronx Network is responsible for updating records retention policies, Health Insurance Portability and Accountability Act policies, and consumer rights policies whenever the underlying regulations are modified.²⁹

Additionally, new or modified operational changes may require Assistant and Associate Directors to update department procedures while ensuring regulatory compliance. For example, in response to the Radiology department’s switch from analog to digital mammography, an

²⁹ This Associate Director worked with a compliance officer to add the retention of billing documents to the records retention policy. (H. J. Solomon, Tr. 9306-9358, at 9320-22, HHC Ex. 232)

Assistant Director in Radiology ensured that the new machinery complied with the Mammography Quality Standards Act.³⁰ (S. Suarez, Tr. 7217-7248, HHC Ex. 179) Although vital to the success of these departments, the aforementioned regulatory compliance duties alone do not rise to the level of formulating policy. *See OSA*, 11 OCB2d 8, at 21 n.29 (“[C]ompliance with legal requirements and regulations alone does not rise to the level of formulating policy.”); *see also SEIU*, L. 300, 5 OCB2d 33, at 32-33 (BOC 2012) (employees who “promulgated standard operating procedures to ensure . . . compliance with laws and regulations” found eligible for collective bargaining); *OSA*, 3 OCB2d 33, at 76 (finding eligible employees who primarily implement policy and/or comply with regulations); *CWA*, L. 1180, 2 OCB2d 13, at 23-24, 27-28; *OSA*, 78 OCB 1, at 44 (finding eligible a SMC Level I, with an in-house title of Assistant Director of Quality Management, who makes suggestions on how to improve processes and comply with regulations).

Assistant and Associate Directors with departmental oversight are also often significantly involved in improving efficiency. An Associate Director in the Radiology department at Jacobi identified the need for technicians to review their work while the patient is still present and before images are sent.³¹ She also recommended staggering when patients arrive to decrease wait times and directed technicians to complete patient logs to record the full amount of time spent in the

³⁰ The same Assistant Director for Radiology at Morrisania Community Health Center (“Morrisania”) and Belvis Community Health Center (“Belvis”) also wrote a department procedure to ensure that the hospital was using appropriate ionizing radiation to comply with Department of Health regulations. (S. Suarez, Tr. 7217-7248, HHC Ex. 179)

³¹ Under the direction of the department head, this Associate Director is also responsible for reviewing ultrasound orders to make sure they are consistent with the medical need, contacting the particular floors or wards that the patients are on to give the clerks instructions on preparing the patients for their tests, ensuring that preventative maintenance is done on machines, and recommending which machines to purchase, among other things.

department. Notably, this Associate Director did similar work when she was a Coordinating Manager for a smaller section of the department, and the procedures she developed as a Coordinating Manager were similar to those she creates now. For example, as a Coordinating Manager, she modified the technician illness call-in procedure to specify who to call and the number.³² As an Associate Director, she performs technician duties less frequently and spends more of her time on paperwork. (S. Somar, Tr. 8564-8605, HHC Ex. 211) *See OSA*, 3 OCB2d 33, at 48 (finding eligible Administrative Staff Analysts Levels II and III who perform tasks such as developing mechanisms to improve the processing of claims for remittance and refunds).

Assistant and Associate Directors may also be responsible for improvements to the patient experience. They may accomplish this task by visiting patients, monitoring and responding to patient complaints and concerns, ensuring that patients' needs are addressed, and updating or creating new procedures to ensure efficient departmental operations. For example, in response to patient feedback, an Associate Director in the Nursing department at Lincoln devised unit quiet time, added a practice for patients to receive a call from the hospital within 24 hours of dismissal, and improved nurse presence by limiting the area that each nurse covers. (S. Falla, Tr. 6644-6694, HHC Ex. 161) These duties are similar to the duties performed by HHC title Patient

³² Multiple other Assistant and Associate Directors testified that they were promoted from the Coordinating Manager title without a significant change to their duties or that as Assistant and Associate Directors they had similar duties to Coordinating Managers. For example, an Assistant Director in the Risk Management division of the Quality Management department at Woodhull testified that when she was a Coordinating Manager she performed "the same work" that she performs as an Assistant Director. (M. Chalvire, Tr. 10571-10594, at 10594, HHC Ex. 325). An Assistant Director in the Ambulatory Care department at Lincoln testified that she replaced a Coordinating Manager who had identical duties, noting that the job descriptions were the same except for their titles. (M. Maysonet, Tr. 4567-4612, HHC Ex. 112). An Associate Director in the Utilization/Case Management department at Kings County testified that when she was promoted from Coordinating Manager to Associate Director her job did not change. (I. Alleyne-Green, Tr. 1502-1540, at 1540, HHC Ex. 48)

Representative that the Board found eligible for collective bargaining in *OSA*, 11 OCB2d 22 (finding that Patient Representatives in the guest relations or patient advocacy departments function as liaisons between the facility and the patients or their families, address and investigate patients' complaints and grievances, mitigate potential risks, and attend multi-disciplinary and high-level meetings where they make recommendations on ways to improve the patient experience).

Additionally, some Assistant and Associate Directors attend facility, network, or HHC-wide meetings and/or serve on a number of committees that address the subject area of their assignment.³³ These meetings may also be attended by high-level executive administration and medical staff, such as the CFO, COO, Chief Medical Officer, Chief Nursing Officer, AED, Deputy CFO, Medical Director, and Director of Nursing, among others. For most Assistant and Associate Directors, their participation in these meetings does not constitute policy-making because either the purpose of the committee is not to determine policy and/or their role is limited to informational or advisory.³⁴ Many are high-level resource people who do not have the discretion to determine

³³ For example, an Associate Director in the Nursing department at Lincoln attends a Central Office meeting with the Chief Nursing Officer and representatives from each hospital where they all report on and discuss their hospital's nursing practices. She then shares what she has learned with the managers and nursing department leadership at Lincoln. Multiple ideas that she learned from the Central Office meeting have been tailored to Lincoln and turned into pilot programs. (S. Falla, Tr. 6644-6694, HHC Ex. 161). Similarly, an Associate Director of Emergency Management at Coney Island attends corporate level Emergency Management Council meetings along with high level titles including the Chief Medical Officer of HHC, the CEO of HHC or the CEO's representative, and Emergency Management representatives from each facility. The topics discussed at the meeting include current trends and potential emergency events. The Associate Director's role is to share Coney Island's processes and preparedness level and see how Coney Island can support the Corporate Emergency process. (J. Marcellino, Tr. 10958-10988, HHC Ex. 337)

³⁴ For example, an Assistant Director in the Emergency Medicine Residency Program at Jacobi is part of a ten-person committee that recruits and hires. (E. Morales, Tr. 10002-10013, HHC Ex. 300). Another Assistant Director in the Infection Prevention department at Jacobi attends

policy and/or do not have a regular or significant role in recommending policy.³⁵ At meetings, they typically provide reports or data from their department, answer questions, and learn about new regulations, policies, procedures and/or initiatives.³⁶ Thus, their roles in these meeting and

department and facility level meetings, where she reports on infection rates. (J. Figueredo, Tr. 9395-9430, HHC Ex. 235) An Assistant Director in the Emergency department at Woodhull attends departmental meetings and implements policies announced during them. He also attends facility-wide operation meetings where he makes recommendations such as procuring equipment to replace broken equipment, but he testified that “the making of policy or making the decision is not my part.” (M. Khan, Tr. 10322-10343 at 10333, HHC Ex. 315).

³⁵ Many Associate Directors and some Assistant Directors serve as resources for senior managers. For example, an Associate Director, the Director of Statistics in the Office of the Comptroller at the North Bronx Network, aggregates data, does comparisons and analyses, and reports her findings to executive administrators who make decisions based upon those findings. Pursuant to a grant, she analyzed the demographics of disease patterns and patient return rates and predicted that revenue would improve if more physician assistants were hired. She also prepared revenue analyses of the impact of the closure of a women’s health clinic and hiring more surgeons. Her role at meetings is to understand proposals and report back her analyses of the impacts. One of her analyses of a proposed federal change resulted in the savings of millions of dollars because it showed that the change would be very expensive. As a result, implementation was delayed until the change was required. (J. Stern, Tr. 9530-9561, HHC Ex. 238). Another example of an Associate Director that serves as a high-level resource for senior managers is an Associate Director in the Facilities Planning, Construction, and Design Development department at the North Bronx Network who oversees renovation and construction projects at the facilities. (X. Urban, Tr. 8904-8962, HHC Ex. 223)

³⁶ For example, an Associate Director of Supply Chain Management at Metropolitan Hospital (“Metropolitan”) runs the monthly Equipment Request Committee, which is comprised of the CFO, COO, Chief Medical Officers, the Chief Nursing Officer, and others. The Committee determines what equipment is purchased, and the Associate Director processes the approved requisitions. (G. Bonanno, Tr. 10845-10882, HHC Ex. 334). An Associate Director of Contracting/Legal at the North Bronx Network attends meetings with the CFO, AED, Deputy CFO, and the Medical Director at which she makes suggestions such as changing admissions forms to prevent denial of certain classes of insurance claims. (L. Broessel, Tr. 10035-10063, HHC 302). An Associate Director in Risk Management at Jacobi investigates adverse patient outcomes and drafts a root cause analysis of her results for a committee comprised of senior hospital administrators such as the Director of Nursing, the Medical Director, and department directors who review adverse patient outcome cases. At the committee meetings, the Associate Director responds to questions regarding her investigations. (B. Centkowski, Tr. 9660-9694, HHC Ex. 242) An Assistant Director of Wellness and Recovery Services in Behavioral Health at Kings County serves on the facility’s Consumer and Family Behavioral Health Advisory Committee, which meets every other month to foster and build partnerships with community mental health providers

on these committees are not managerial.³⁷ In interpreting policy formulation, the courts have noted that “all employees who advise the ultimate decision makers are not automatically policy formulators to be designated managerial.” *Lippman*, 263 A.D.2d at 900-01 (finding that employees “in important and fairly-high level informational, advisory and implementer roles” did not formulate policy); *County of Nassau v. Nassau County Pub. Empl. Relations Bd.*, 283 A.D.2d 428, 428-29 (2d Dept. 2001) (finding that “supervisors are not involved in policy formulation merely because they attend monthly meeting at which, based upon their field experience and technical expertise, they make suggestions of how to improve upon the methods by which mental health services are presented”).

and identify hospital needs. The committee approved the Assistant Director’s recommendation to create a laminated patient empowerment card deck containing affirmations and inspirations. (J. Edwards, Tr. 3132-3199, HHC Ex. 85). An Associate Director in Behavioral Health at the North Central Bronx Hospital attends behavioral health service meetings with Senior Vice Presidents, COOs, and senior administrators where she reports on topics such as patient satisfaction and patient safety. (M. Pereira, Tr. 9732-9771, HHC Ex. 244). An Associate Director of Women’s Health Services at Jacobi attends bi-weekly meetings with the department chair, her supervisor, and the Medical Director to discuss all aspects of departmental operations, and she shares productivity data and makes recommendations. (N. Richardson, Tr. 8352-8364, HHC Ex. 204).

³⁷ Assistant and Associate Directors who are Facilitators in Breakthrough departments have unique roles at meetings. A Breakthrough Facilitator coaches leadership on the use of Toyota’s “Lean process” and leads team meetings, including both unionized employees and leadership, that analyze sources and solutions to their problems, particularly in workflow. For instance, a Facilitator helped the Behavioral Health and IT departments build an electronic data management system by writing down the group’s brain-stormed ideas. He also assisted a group in considering different financial options to resolve bottleneck problems in the psychiatric emergency room. (A. Robertson, Tr. 2237-2307, HHC Ex. 65). Some Facilitators also participate in planning meetings at which hospital leadership in a specific field determines the areas that they are going to focus on improving. (K. Johnson, Tr. 10079-10110, HHC Ex. 304). We have previously found that employees who perform Breakthrough Facilitator duties are eligible for collective bargaining. *See OSA*, 8 OCB2d 28 (BOC 2015).

Some Assistant and many Associate Directors are responsible for training and educating employees.³⁸ They primarily train new department employees and keep current employees updated on changes in regulations, procedures, and policies affecting their department.³⁹ Examples of the training topics include safety and risk-reduction strategies, how to use new instruments/equipment, handling samples and testing procedures, emergency procedures, proper record keeping, reading patient charts, medical procedure and diagnosis codes, customer service, and communicating with physicians. Some Assistant and Associate Directors are given the training materials and/or a template, while others design the training programs themselves. Some Assistant and Associate Directors conduct post-training testing and/or monitor employee performance.⁴⁰ These duties involve a significant level of analytical and technical skills, and in

³⁸ A number of the training programs are required by regulations. *See CWA, L. 1180*, 2 OCB2d 13, at 27 (finding eligible two Captains at the Department of Environmental Protection who develop policies and procedures for the Environmental Police Officer patrol guide that are not self-initiated, but rather are required by New York State for accreditation); *see also N.Y.C. Deputy Sheriffs Assn.*, 70 OCB 3, at 10 (BOC 2002) (finding eligible Administrative Sheriffs who had revised a policy and procedure manual).

³⁹ There are a few Associate and Assistant Directors that create and/or conduct facility-wide trainings. For example, an Associate Director, the Director of Safety at Jacobi, develops and conducts fire safety training programs for all new employees that are derived from requirements of the New York City Fire Department, New York State, and the Joint Commission. These programs are reviewed by the Human Resources department and the Environmental Care Committee, which rarely make any changes. (J. Falci, Tr. 9006-9035, HHC Ex. 225). The Assistant Director of Education and Training at the North Bronx Network is responsible for teaching and coordinating a variety of employee training programs, in addition to acting as a facilitator and assisting departments on improving work flow. (V. Nolan, Tr. 9146-9188, HHC Ex. 228)

⁴⁰ The sample training duties listed in this section are derived from the testimony and surveys of the following Assistant and Associate Directors, among others: an Associate Director in Central Sterile Supply at the North Bronx Network (D. Bialt, Tr. 7716-7797, HHC Ex. 188); the Director of Safety at Jacobi (J. Falci, Tr. 9006-9035, HHC Ex. 225); an Assistant Director in the Emergency department at Woodhull (M. Khan, Tr. 10322-10343, HHC Ex. 315); an Assistant Budget Director at Woodhull (C. Morris, Tr. 10776-10815, HHC Ex. 332); an Assistant Director of Education and Training at the North Bronx Network (V. Nolan, Tr. 9146-9188, HHC Ex. 228); an Assistant

some instances effective communication and/or implementation of policies, but do not rise to the level of policy formulation under the NYCCBL. *See OSA*, 8 OCB2d 28, at 23; *CWA, L. 1180*, 2 OCB2d 13, at 23-24 (finding eligible Administrative Managers who, among other duties, managed and implemented a Common Core training program, which is a New York State initiative, assessed training needs, developed training programs on two advisory boards, and made recommendations concerning training and the implementation of new policies); *see also OSA*, 78 OCB 1 (finding eligible for collective bargaining employees who, among other duties, created corporate training policies and procedures, coordinated trainings, and drafted policies and procedures for electronic medical recordkeeping).

HHC asserts that certain positions are managerial because of their budgetary duties, such as: preparing departmental budget proposals and/or projections, maintaining department or unit budgets, overseeing a facility's budgets, preparing reports for managers, ascertaining staffing needs, requesting or allocating department funds, determining historical trends and anticipating expenses, implementing budget modifications and/or reductions, grant allocation or oversight, purchasing equipment, and entering into contracts with vendors.⁴¹ However, it is well established

Director in Radiology at Jacobi (M. Papa, Tr. 9806-9835, HHC 296); an Associate Director of Behavioral Healthcare at North Central Bronx (M. Pereira, Tr. 9732-9771, HHC Ex. 244); an Associate Director of Hematology at Jacobi (M. Sairi, Tr. 8501-8529, HHC Ex. 209); an Assistant Director who oversees the Central Sterile department at Woodhull (D. Thomas, Tr. 10600-10628, HHC 326); and an Associate Director in the Safety Management department at North Central Bronx (C. Williams, Tr. 9584-9628, HHC Ex. 239).

⁴¹ The sample budgetary duties listed are derived from the testimony and surveys of the following individuals, among others: an Associate Director in Surgical Services at the North Bronx Network (J. Amato, Tr. 9976-10002, HHC Ex. 299); an Associate Director in Regulatory Affairs at the North Bronx Network (R. Annunziata, Tr. 7294-7353, HHC Ex. 181); an Associate Director of Women's Health Services at North Central Bronx (L. Antzis, Tr. 9694-9732, HHC Ex. 243); an Associate Director of Grants and OTPS at Jacobi (C. Bowen-Allen, Tr. 9058-9141, HHC Ex. 227); an Assistant Director of Materials Management at Woodhull (I. Figueroa, Tr. 10232-10242, HHC Ex. 312); an Assistant Director in the Behavioral Health Inpatient Unit at North Central Bronx (S.

that such budgetary duties alone are insufficient to establish that an employee formulates policy or has managerial involvement in collective negotiations, administration of collective bargaining agreements or personnel administration. *See CWA, L. 1180*, 2 OCB2d 13, at 22; *see also OSA*, 78 OCB 1, at 21, 25-26, 34, 36 (finding employees who prepare grant budgets, participate in allocating grant funds between facilities, allocate department expenses, prepare capital budget proposals, and make need-based recommendations for departmental budgets are eligible for collective bargaining).

For the most part, the budget-related duties performed by Assistant and Associate Directors do not demonstrate that they formulate policy or are managerial. For example, the Assistant Budget Director position at Woodhull is not managerial because his budget or finance duties primarily include acting as a resource to more senior officials.⁴² (C. Morris, Tr. 10775-10816, HHC Ex. 332) The Assistant Budget Director generates and presents financial data to managers

George, Tr. 9629-9640, HHC Ex. 240); an Associate Director in Finance at Queens and Elmhurst Hospitals (“Queens and Elmhurst”) (K. Gooding, Tr. 10822-10844, HHC Ex. 333); an Associate Director in Emergency Management at Coney Island (J. Marcellino, Tr. 10958-10986, HHC Ex. 337); an Associate Director in the Outpatient Medicine/Adult Primary Care and Medical Subspecialties at Jacobi (J. Perez, Tr. 8327-8352, HHC Ex. 203); an Assistant Director in the WIC department at the North Bronx Network (H. Pham, Tr. 8094-8146, HHC Ex. 199); an Associate Director of Women’s Health Services at Jacobi (N. Richardson, Tr. 8352-8364, HHC Ex. 204); an Associate Director in the Behavioral Health Care Services at the North Bronx Network (H. J. Solomon, Tr. 9306-9359, HHC Ex. 232); an Associate Director in Maternal and Child Health at Woodhull (A. Villatoro-Bussa, Tr. 10630-10662, HHC Ex. 327); and an Assistant Director in Telecommunications at Harlem (P. Williams, Tr. 5842-5894, HHC Ex. 145).

⁴² Prior to becoming an Assistant Director, the employee in the Assistant Budget Director position held other civil service titles including the title Coordinating Manager and Senior Consultant, Management Information Services. *See OSA*, 8 OCB2d 19, at 40-41 (BOC 2015). As a Senior Consultant, his participation in layoffs was limited to providing non-union employee information requested by the hospital financial officer. *Id.* at n.13. In his current position at Woodhull, he provides financial data to the CEO and CFO who make layoff determinations. *See CWA, L. 1180*, 2 OCB2d 13, at 24, 86, 96.

including the CEO and CFO. He analyzes financial trends, prepares and submits the Woodhull budgets for Central Office approval, monitors the budgets, implements budget modifications from the CEO or CFO, and consistent with available resources, approves non-payroll requests and personnel requisitions.⁴³ Similar to our finding in *OSA*, 8 OCB2d 19, the Assistant Budget Director at Woodhull “gather[s] and analyze[s] information as [a] resource pe[rson] for decision-makers that formulate policy.” 8 OCB2d 19, at 41 (BCB 2015); *see also OSA*, 78 OCB 1, at 19; *DC 37*, 60 OCB 4 at 37 (BOC 1997).

Accordingly, we find that generally Assistant and Associate Directors that HHC asserts are managerial as a result of, in whole or in part, their policy-related duties do not have the discretion to determine policy. While many Associate Directors may oversee administrative departments at a facility and exercise broad authority over the operation of their departments, the evidence does not establish that they have a regular or significant role in determining policy. Instead, the evidence supports the conclusion that most of the Associate Directors raised by HHC are people who perform duties that are consistent with those eligible Associate Directors discussed above.⁴⁴

⁴³ The Assistant Budget Director has written multiple step-by-step procedures for processes like handling requisitions. He also trains employees on existing policies, and he produces monthly reports for the cost center and cost group administrators to help them monitor and control their budgets.

⁴⁴ An Associate Director in Infection Control at Jacobi is responsible for formatting all Infection Control policies and procedure documents, including making sure that referenced documents still exist, that room numbers haven’t changed, and identifying errors and omissions. For example, she asked whether the flower and plant policy prohibiting plants in the Intensive Care Unit should be extended to all clinical areas, and the department agreed. Additionally, she pointed out that the Ebola policy did not specify the type of protective mask necessary, and that was then added to the policy. (G. Castorina, Tr. 9359-9385, HHC Ex. 233) An Associate Director of Supply Chain Management at Metropolitan, with approval of the CFO, created a centralized supply approval process and a process for surplus equipment. (G. Bonanno, Tr. 10845-10882, HHC Ex. 334) An Associate Director in the Clinical Documentation Improvement department at the North Bronx Network assists her supervisor in the development, revision, and review of departmental procedures such as how often employees go on rounds and having employees perform work back

Similarly, several Assistant Directors that HHC asserts are managerial as a result of, in whole or in part, their policy-related duties, have far less policy related duties than Associate Directors and do not have the discretion to determine policy or have a significant role in effectively recommending policy.⁴⁵

Thus, while many Associate and Assistant Directors exercise a high level of expertise and professional and technical skill in performing their duties, the evidence does not demonstrate that they have the authority to “shape and define [the] overall operation, direction and objectives in furtherance of [HHC's] institutional mission” *Lippman*, 263 A.D.2d at 900. Instead, they primarily implement policies, comply with regulations, determine the methods of operation that are merely of a technical nature, and/or act as resource people rather than decision makers. *See OSA*, 3 OCB2d 33, at 33, 35, 48 (finding eligible Administrative Staff Analysts Levels II and III who perform tasks “such as collecting data for reports and recommending a change in indicators,”

at the office instead of on laptops in the field. (C. O’Connor, Tr. 8962-9000, HHC Ex. 224) An Associate Director in the Behavioral Health department at North Central Bronx reviews regulations and drafts procedures for approval by the department head. For example, in preparation for the Joint Commission’s visit, she considered whether the stated visiting times interfered with meals or operations flow. (M. Pereira, Tr. 9732-9771, HHC Ex. 244) At the suggestion of Patient Relations, an Associate Director in the Outpatient Medicine/Adult Primary Care and Medical Subspecialties department at Jacobi wrote a procedure for contacting patients by telegram or mailgram using a website, and the department implemented it. (J. Perez, Tr. 8327-8351, HHC Ex. 203)

⁴⁵ An Assistant Director in Quality Management at Harlem, at the request of the Chief of Service, rewrote the medication reconciliation upon discharge policy to comply with Medicare/Medicaid guidelines. (C. Chandel, Tr. 4634-4669, HHC Ex. 114) An Assistant Director of Materials Management at Woodhull annually submits revisions of departmental policies such as document retrieval and storage and distribution of stationery supplies to his supervisor for approval. (I. Figueroa, Tr. 10232-10242, HHC Ex. 312) Another Assistant Director who oversees the Central Sterile department at Woodhull writes procedures for cleaning and sterilizing new instruments based upon manufacturer information and ensures that the procedures comply with Joint Commission mandates. (D. Thomas, Tr. 10600-10628, HHC Ex. 326).

“ensuring that direct care bureaus comply with state law, . . . participating on a committee to improve communications between the divisions of the agency, [] ensuring that federal Housing and Urban Development procurement regulations are followed” or “determining inspection and operation protocols for rodent control.”)

Eligible Assistant and Associate Directors Who Do Not Have Managerial Involvement in Labor Relations/Personnel Administration

Additionally, the vast majority of Assistant and Associate Directors do not fall into the second category of manager excluded from collective bargaining. They are not employees “who may reasonably be required on behalf of the public employer to assist directly in the preparation for and conduct of collective negotiations or to have a major role in the administration of agreements or in personnel administration provided that such role is not of a routine or clerical nature and requires the exercise of independent judgment.” CSL § 201.7(a)(ii). Notably, “[t]here is a critical and long-standing distinction between managers involved in labor relations/personnel administration, who are excluded from collective bargaining, and the broader category of employees who perform supervisory functions, who are eligible for collective bargaining.” *OSA*, 3 OCB2d 33, at 66-67 (quoting *Lippman*, 263 A.D.2d at 901-02) (internal quotation marks omitted).

HHC asserts that certain positions are managerial because they perform supervisory duties, such as: updating and submitting job postings; screening, interviewing, and recommending candidates for hire; making hiring decisions; supervising directly or indirectly a large number of employees; transferring employees between units; assigning work; writing tasks and standards; making or changing shift assignments or work schedules; reviewing time sheets; authorizing overtime; counseling employees about work performance, absenteeism, and tardiness; monitoring work performance; preparing, giving input for, or reviewing performance evaluations;

recommending promotions; and/or recommending discipline, sometimes including termination.⁴⁶

However, it is well settled that such supervisory duties do not establish involvement in collective negotiations, administration of collective bargaining agreements, or personnel administration that is managerial. *See, e.g., OSA*, 3 OCB2d 33, at 66-67; *CWA, L. 1180*, 2 OCB2d 13, at 80-81, 92; *Local 621, SEIU*, 78 OCB 2, at 21 (2006); *CWA, L. 1180*, 76 OCB 4, at 23-24. Additionally,

⁴⁶ The sample supervisory duties listed are derived from the testimony and surveys of Assistant Directors in Training and Development at the North Bronx Network (V. Nolan, Tr. 9146-9188, HHC Ex. 228); in the Emergency department at Jacobi (J. Suarez, Tr. 8066-8089, HHC Ex. 198; and W. Worthy, Tr. 9036-9058, HHC Ex. 226); in the Comprehensive Addiction Treatment Center at Jacobi (D. Brown, Tr. 9282-9301, HHC Ex. 231); in Finance at Jacobi (R. Lujan, Tr. 8665-8699, HHC Ex. 214); in Behavioral Health at Kings County (J. Edwards, Tr. 3132-3199, HHC Ex. 85); in Ophthalmology and Rehab at Woodhull (B. Emptage-Smith, Tr. 10406-10432, HHC Ex. 319); in the Emergency department at Woodhull (M. Khan, Tr. 10322-10343, HHC Ex. 315); and in Customer Service at MetroPlus (J. Arroyo, HHC Ex. 372) as well as from the testimony and surveys of Associate Directors in Ambulatory Care at Woodhull (H. Shaaban, Tr. 10670-10699, HHC Ex. 328); in Payroll at Woodhull (A. Pagan, Tr. 10076-10095, HHC Ex. 306); in Maternal and Child Health at Woodhull (A. Villatoro-Bussa, Tr. 10630-10662, HHC Ex. 327); in Finance/Admitting at Woodhull (C. Bailey, Tr. 10276-10321, HHC Ex. 314); in Finance at Woodhull (M. Crawford, Tr. 10253-10274, HHC Ex. 313); in Finance at Queens and Elmhurst (K. Gooding, Tr. 10822-10844, HHC Ex. 333); in the AIDS Center at Woodhull (M. Maisonaive, Tr. 10705-10737, HHC Ex. 329); in Transportation at the North Bronx Network (B. Rodriguez Tr. 7898-7919, HHC Ex. 192); in Central Sterile Supply at the North Bronx Network (D. Bialt, Tr. 7716-7797, HHC Ex. 188); in Nuclear Medicine at the North Bronx Network (R. Fernandez, Tr. 7849-7893, HHC Ex. 191); in the Medical Residency program at Jacobi (E. Morales, Tr. 10002-10013, HHC Ex. 300); in the WIC department at the North Bronx Network (H. Pham, Tr. 8094-8146, HHC Ex. 199); in Surgical Services at the North Bronx Network (J. Amato, Tr. 9976-10002, HHC Ex. 299); in Safety at Jacobi (J. Falci, Tr. 9006-9035, HHC Ex. 225); in Adult Medicine at Jacobi (J. Perez, Tr. 8327-8352, HHC Ex. 203); in Pathology at Jacobi (D. Meighan, Tr. 8146-8239, HHC Ex. 200; and N. Trowers, Tr. 8402-8426, HHC Ex. 206); in Radiology at Jacobi (M. Papa, Tr. 9806-9835, HHC Ex. 296); in Behavioral Health at the North Central Bronx (M. Pereira, Tr. 9732-9771, HHC Ex. 244; and S. George, Tr. 9629-9640, HHC Ex. 240); in Hematology at Jacobi (M. Sairi, Tr. 8501-8529, HHC Ex. 209); in the Blood Bank at North Central Bronx (M. Rojas, Tr. 10014-10030, HHC Ex. 301); in Women's Health Services at Jacobi (N. Richardson, Tr. 8352-8364, HHC Ex. 204); in Human Resources at the North Brooklyn Network (T. Lawrence, Tr. 11206-11219, HHC Ex. 344); in the Police department at Bellevue Hospital ("Bellevue") (J. Sweeney, HHC Ex. 867); in Network Relations at MetroPlus (K. McCall, Tr. 10988-11023, HHC Ex. 338; and D. Schiffman, Tr. 11152-11161, HHC Ex. 342); in Health Information Management at East New York Diagnostic and Treatment Center (P. Demmitt, Tr. 598-647, HHC Ex. 19); and in Pathology at Lincoln (W. Santos, Tr. 6761-6787, HHC Ex. 164), among others.

Assistant and Associate Directors that occasionally participate at grievance hearings are not managerial based solely upon those duties. *See CWA, L. 1180*, 2 OCB2d 13, at 65-66, 80-81; *see also Metro. Suburban Bus Auth.*, 48 A.D.2d 206, 211-12 (3d Dept. 1975) (noting that employees did not make “any major interpretation of the [collective bargaining] agreements” and had “no power to resolve actual grievances once such procedure goes beyond this initial aspect”); *County of Rockland*, 28 PERB ¶ 3063, at 3141-3142 (acting as a resource person or observer at the bargaining table or in caucuses and participating in the first level of the grievance process are insufficient for a managerial designation) (*quoting City of Binghamton*, 12 PERB ¶ 4022, at 4035); *Town of Greece*, 27 PERB ¶ 3024, at 3058 (1994) (finding eligible department heads who have twice been assigned to second and final step of the grievance procedure).

Eligible Assistant and Associate Directors Who Do Not Assist in a Confidential Capacity Managers with Involvement in Labor Relations/ Personnel Administration

The vast majority of Assistant and Associate Directors are also not confidential. As noted earlier, “[e]mployees may be designated as confidential only if they are persons who assist and act in a confidential capacity to managerial employees described in clause (ii).” CSL § 201.7(a). “[T]he secretive or highly sensitive nature of an employee’s work alone does not compel a confidential designation.” *OSA*, 3 OCB2d 33, at 82 (internal quotation marks omitted) (*quoting OSA*, 78 OCB 5, at 41); *see Town of Dewitt*, 32 PERB ¶ 3001, at 3003 (1999) (“Simple access to existing personnel or financial information . . . is not sufficient for a confidential designation.”); *see also County of Orange*, 31 PERB ¶ 3016, at 3029 (1998) (limited access to personnel records and exposure to finalized disciplinary matters is insufficient to satisfy duty prong). Additionally, “[s]ince knowledge of personnel or disciplinary matters is often inherent in supervisory positions, it does not warrant a confidential designation where . . . it is limited and does not encompass labor

relations information significant to the basic mission of the employer.” *See OSA*, 10 OCB2d 2, at 16 (internal quotation marks omitted) (*quoting Lippman*, 263 A.D.2d at 903).

HHC asserts that certain Assistant and Associate Directors are confidential based on their access to information and/or duties. It asserts these employees have access to and/or maintain information including: patient information; department personnel files; staff evaluations, payroll, leave balances, discipline letters, compliance and licensing documents; medical residents’ personal identifying information; and/or visa paperwork. It asserts their duties include: facilitating medical resident credentialing; annually compiling rosters of new doctors and residents who will be terminated; tracking medical residents’ malpractice claims and reporting them to other entities; verifying medical residents’ HHC employment; preparing documents for the Labor Relations department in advance of staff counseling or grievance sessions; and answering questions for the collective bargaining negotiating committee on how titles in the department function.⁴⁷ Nevertheless, these duties and/or access to these types of information alone do not make the claimed positions ineligible for collective bargaining. *See CWA*, *L.1180*, 2 OCB2d 13, at 106-107; *see also DC 37*, 78 OCB 7, at 43, *affd.*, *City of N.Y. v. N.Y.C Bd. of Certification*, No. 404461/06 (Sup. Ct. N.Y. Co. Sept. 19, 2007); *N.Y.C. Dept. of Investigation Investigator’s Assn.*, 72 OCB 2, at 18 (BOC 2003); *Town of Dewitt*, 32 PERB ¶ 3001, at 3003; *County of Orange*, 31 PERB ¶ 3016, at 3029. Further, aside from limited exceptions set forth below, the record does not establish that

⁴⁷ The sample duties listed are derived from the testimony and/or surveys of the following individuals, among others: an Associate Director in Medical Staff Affairs at Jacobi (V. Hibbit, Tr. 8239-8286, HHC Ex. 201); an Assistant Director in Pathology/Laboratory Administration at Jacobi (V. Nieves, Tr. 8863-8892, HHC Ex. 222); an Associate Director in Ambulatory Care at Woodhull (H. Shaaban, Tr. 10670-10699, HHC Ex. 328); an Associate Director in the Office of the Comptroller at the North Bronx Network (J. Stern, Tr. 9530-9561, HHC Ex. 238); an Associate Director in Maternal and Child Health at Woodhull (A. Villatoro-Bussa, Tr. 10630-10662, HHC Ex. 327); and an Assistant Director at Jacobi (W. Worthy, Tr. 9036-9058, HHC Ex. 226).

Assistant and Associate Directors have the type of relationship required to satisfy the second prong of the confidentiality test.⁴⁸

In particular, we find that those Assistant or Associate Directors serving as Directors of Hospital Police or Directors of Security are not confidential. While these individuals may perform investigations of employees that could lead to discipline, we have repeatedly found that others who perform employee investigations are not confidential. *See DC 37, 78 OCB 7, at 42-43* (employees serving in the title Investigator (Employee Discipline) who investigate potential employee misconduct, conduct surveillance, interrogate witnesses, and testify at hearings found eligible for collective bargaining); *OSA, 78 OCB 1, at 34* (Senior Management Consultant serving in the HHC in-house title Director of Hospital Police was not confidential); *Dept. of Investigation Investigator's Assn., 72 OCB 2, at 15* (Confidential Investigator and Special Investigators who are primarily responsible for investigating corruption and misconduct and have a role in formulating recommended future safeguards are not confidential).⁴⁹

⁴⁸ For example, an Assistant Director of Hospitals in Radiology at Jacobi runs reports for superiors who are responsible for “[h]iring, disciplinary actions, evaluations, scheduling of staff and conferences.” (HHC Ex. 296 at 8). These duties do not establish that the Assistant Director has the type of relationship to a manager involved in labor relations or personnel administration that would warrant a confidential designation. (M. Papa, Tr. 9806-9835, HHC 296). Similarly, an Associate Director in Medical Staff Affairs at Jacobi (V. Hibbit, Tr. 8239-8286, HHC Ex. 201) and an Associate Director in Maternal and Child Health department at Woodhull (A. Villatoro-Bussa, Tr. 10630-10662, HHC Ex. 327) also do not meet the second prong of the confidentiality test.

⁴⁹ Similarly, we do not find that employees serving as Directors of Hospital Police or Security have a significant role in policy-making. The evidence shows that they may have a role in creating important security procedures, but not HHC policy. (T. Stellas, Tr. 11027-11058, HHC Ex. 339; and J. Sweeney, HHC Ex. 867). *See OSA, 78 OCB 1, at 34* (creation of security “policies” required layers of superiors’ review and approval and were often protocols or procedures).

ASSISTANT AND ASSOCIATE DIRECTORS WHO ARE MANAGERIAL

Generally, positions that we find are managerial are engaged in policy-making. They are responsible for the overall management and oversight of their unit; they have a high level of discretion and independent operational judgment and play an integral and effective role in the determination and designing of policy intended to fulfill HHC's health care mission; and/or they attend and have a regular and significant role in HHC-wide, network level, and/or facility level meetings where policies are determined. As discussed below, the positions we find managerial are either network level administrators, the highest or one of the highest administrators in a medical service at a facility, or they perform both administrative and clinical functions in a clinical unit or department. In these positions they participate in committees outside their assigned network, department, or facility and work directly with managers who are formulating policy, and their participation is more than advisory.

Administrative Units

In some instances, Associate Directors in network level administrative units have a regular and significant role in policy-making. This is distinct from most Associate and Assistant Directors in administrative units at the facility or department level who are primarily implementing and adapting policies for use in their facility and do not regularly participate in policy-making.⁵⁰

Generally, we find that Associate Directors in positions at the network or Corporation level of HHC who are the directors for an administrative function at several facilities or departments, have broad authority and oversight over that function, and have a regular role in designing and determining administrative policy are managerial employees. These managers are not merely

⁵⁰ Those Associate Directors at the facility and department level often report to higher level department or facility administrators such as Sr. Associate Directors. Some who report to a higher-level administrator, i.e. to a CIO, COO or CFO, are discussed here and are also not managers.

high-level advisors or subject matter experts, and they report to senior executive administrators such as a network CFO, DED, AED, or Deputy CFO.

For example, the Director of Research, an Associate Director, for the North Bronx Network is the founding member of the Research department and has a significant role in the network's research and treatment policies.⁵¹ He created all of the department's policies, including those that establish which patients participate in drug studies and when placebo recipients are disclosed. He identifies appropriate research studies, solicits nationwide partners to participate in studies, and assists physicians who want to initiate studies at a facility. He determines when studies are not feasible and helps restructure studies to receive grant funding. He is a member of Central Office's Committee on Research Policies for HHC, which has created or rewritten research policies. He negotiates rates with research sponsors and has the discretion to determine the agreed-upon rate charged. In sum, the Director of Research has an integral role in the policy-making process. The evidence shows that he has considerable discretion in the operation of the Research department and a significant role in defining policies and programs to fulfill the mission of HHC. (H. Nadel, Tr. 7943-7972, HHC Ex. 194)

Other Associate Directors who are assigned to administrative units at the network level and demonstrate a regular and significant role in policy-making are: a Director of Clinical Document Improvement in the Finance-Clinical Document Improvement department at the North Bronx Network (D. Nerko, Tr. 9912-9962, HHC Ex. 298); a Director of Care Management for the North Bronx Network (R. Ramnanan, Tr. 8366-8390, HHC Ex. 205); and a Managed Care Director at Generations + Network (B. Workman, Tr. 5034-5081, HHC Ex. 123).

⁵¹ The Director of Research reports to the Associate Executive Director for Affiliation and Research. He directly supervises three people and indirectly supervises the approximately 50 non-HHC employees working on grants in his department.

The employees mentioned above are not an exclusive list of managers. Rather, based on the similarities across networks and facilities found in the record, employees in similar positions at other networks are also deemed managers. Accordingly, we find that the Director of Research position and other Associate Directors in positions at network administrative units who are performing a majority of the aforementioned policy formulation duties are managerial.

Health Care Units

Generally, most Associate Directors assigned to health care departments at the facility do not have a regular or significant role in policy-making. However, there are some that do exhibit significant control and independent discretion in the delivery of health care services and a significant role in policy-making and are therefore managerial employees.

Most, if not all, medical services have lead administrators who work closely with the Chief or Director of each Medical Service in determining the methods and means of the health care service provided.⁵² Not only do employees in these positions work hand in hand with the Chiefs or Medical Directors and sometimes a lead nurse, but they exercise significant discretion and independence. As a result, we find that Associate Directors are managers if they report to or work alongside the most senior department medical professional, i.e. the Chief/Medical Director of service, and have a regular and significant role in determining the health services provided.⁵³

⁵² We have previously designated the Chiefs or Directors of Medical Services managerial. *See Doctors Assn. of the City of N.Y.*, 12 OCB 31.

⁵³ As discussed above, there are many Associate Directors who are not the highest administrator responsible for the department, unit, or sub-unit and/or are not working closely with the Chief of Medicine. While they have broad and important duties, in most instances, they do not have a significant and regular role in policy-making.

For example, the Administrator for the Cardiac Catheterization Lab and Endovascular Services departments for the North Bronx Network reports to an AED, is a respiratory therapist, and works closely with the Medical Director of Respiratory Care to oversee all aspects of the department. She regularly attends network and HHC meetings and participates in making decisions regarding the network's Cardiac Catheterization and Endovascular services. (S. Slotoroff, Tr. 8704-8781, HHC Ex. 215). Similarly, a licensed respiratory therapist is the Director of Respiratory Care for the North Bronx Network. He also has administrative oversight over the Cardiology and EEG departments. He works closely with respective departmental Medical Directors to determine policies for the network's Cardiology and Respiratory departments. (M. Callinan, Tr. 9771-9801, HHC Ex. 245)

In addition, there are some Associate Directors who are also licensed health care professionals and have oversight over both health care and administrative functions of a health service. We find that some of these Associate Directors who have the independent discretion to determine the health care services provided are managers.⁵⁴ For example, the Associate Director with the in-house title of Director of Forensic Psychiatry in Behavioral Health at Kings County

⁵⁴ The sample duties listed in this section regarding health care unit directors are derived from the testimony and/or surveys of the following Associate Directors, among others: an Associate Director of Substance Abuse Services in Behavioral Health at Jacobi (N. Cataldi, Tr. 9189-9240, HHC Ex. 229); a Division Director of Substance Abuse Programs in Behavioral Health at Coney Island (S. Florio, Tr. 10924-10947, HHC Ex. 336); an Administrative Director of Laboratories in Pathology at Kings County (T. Glean, HHC Ex. 542); a Department Head of Therapeutic Activities Services in Behavioral Health at the North Bronx Network (G. Hara, Tr. 7559-7599, HHC Ex. 186); an Associate Director of Therapeutic Rehabilitation in Behavioral Health at Kings County (C. Rodriguez Perez, Tr. 2690-2770, HHC Ex. 76); a Director of Forensic Psychiatry in Behavioral Health at Kings County (E. Owen, Tr. 2307-2336, HHC Ex. 66); and an Administrator Cardiac Catheterization & Endovascular Services in the Cardiac Catheterization Lab at the North Bronx Network (S. Slotoroff, Tr. 8704-8781, HHC Ex. 215).

reports to a Sr. AED who is Chief of Staff to the Deputy Executive Director of Behavioral Health.⁵⁵ The Director of Forensic Psychiatry is primarily responsible for both the health care and administrative functions of the department. She has significant discretion in determining the health care service provided and to that end has formulated and instituted many policies that cover a broad range of operational issues, such as regulations regarding how clinicians provide court testimony, what they should wear, and where they should sit during patient evaluations. She provides court-ordered competency evaluations in order for individuals to proceed to trial for three different City boroughs. Additionally, the Director of Forensic Psychiatry regularly participates in facility and department meetings and makes recommendations that are often adopted, such as conducting risk and violence assessment training to identify potentially violent patients. This recommendation was reviewed at the corporate level to evaluate its application throughout HHC. In sum, the evidence shows that the Director of Forensic Psychiatry has broad discretion in the provision of Forensic Psychiatry services and a significant role in defining, as well as implementing, policies and programs critical to fulfilling the mission of Forensic Psychiatry at HHC. Accordingly, we find that the Director of Forensic Psychiatry position and other positions that are performing similar duties are managerial. (E. Owen, Tr. 2307-2336, HHC Ex. 66)

Another example of an Associate Director with significant policy-making duties is the Division Director of Substance Abuse Programs at Coney Island. (S. Florio, Tr. 10923-10947, HHC Ex. 336).⁵⁶ He is a licensed social worker who works alongside the Medical Director of

⁵⁵ The Associate Director was the Interim Director of Forensic Psychiatry at the time she testified. She has a doctorate in Forensic Psychiatry.

⁵⁶ As discussed earlier, there are many Associate Directors who are responsible for the administrative and clinical functions of a department, unit, or sub-unit but do not have a regular and significant role in policymaking.

Behavioral Health and has oversight over the department. He regularly participates in HHC and network meetings where policies are discussed and determined for chemical dependency services. Similarly, we find that Directors of Pharmacy, who are licensed pharmacists and oversee the pharmacy operations at a facility, are managers. These Associate Directors participate in Corporation-wide committees that determine pharmacy policy, such as the drug formulary, as well as set policies at their facilities.⁵⁷

Full-Time Administrators on Duty

Some Assistant and Associate Directors are assigned to function as Administrators on Duty (“AODs”).⁵⁸ AODs are responsible for the safe operation of a facility or department during other than normal business hours, i.e., weekday evenings and overnight, weekends, and holidays, when the most senior administrative staff is not working.⁵⁹ Full-time AODs with facility-wide responsibilities have the authority to manage and make administrative operational decisions in the

⁵⁷ The sample duties listed for Directors of Pharmacy are derived from the testimony and/or surveys of Associate Directors at Morrisania (Y. Chun Kum, Tr. 6177-6205, HHC Ex. 153); Sea View (P. O’Toole, HHC Ex. 748); and McKinney Long-Term Care (“McKinney”) (S. Rose, Tr. 323-351, HHC Ex. 11).

⁵⁸ HHC argues that certain Assistant and Associate Directors are managerial because they perform either full-time or intermittent AOD duties. CWA argues that Assistant Directors who are assigned to perform full-time AOD duties are not managerial because they do not have significant personnel, budgetary, or policy-formulation duties. OSA argues that Associate Directors do not perform AOD duties regularly and therefore any assignment to do so is infrequent. Therefore, it maintains that these infrequent duties do not make Associate Directors managerial.

⁵⁹ Who is assigned to perform AOD duties varies widely among HHC facilities: some use full-time AODs, others use administrative staff who perform these duties intermittently in addition to their regular duties, and still others use a mix of full-time and intermittent AODs. In addition, some AODs have facility-wide administrative responsibilities, and others have responsibility that is limited to a department or service area.

absence of the regular executive-level administrative staff.⁶⁰ Generally, these AODs are supervised by executive-level administrators, such as the Chief Operating Officer or Deputy Executive Director of Operations. In essence, the full-time facility-wide AODs are performing the duties that other executive-level administrators perform during regular business hours.⁶¹ For example, the full-time AODs at Kings County report to the Deputy Executive Director of Operations, who reports directly to the Hospital's Executive Director. Assistant and Associate Directors who function as full-time AODs oversee all aspects of the facility's administrative operation, including admissions, patient and guest relations, coordination of patient care services, housekeeping, hospital police, facilities management, escort and transportation services, pharmacy, central supply, and information technology.⁶² In addition to handling all operational decision-making during their tours, they handle emergencies that arise at a facility. Full-time AODs may notify or confer with the COO or other senior executive staff in the event of any unusual occurrences. They provide the senior executive staff with daily or post-weekend reports

⁶⁰ Some Assistant and Associate Directors who exclusively perform AOD duties are not salaried, but are paid as per diem employees and do not have regular work hours. "Full-time" in this section refers to persons who exclusively perform AOD duties.

⁶¹ In contrast, for Assistant and Associate Directors who are only occasionally assigned to perform hospital or facility-wide AOD duties, the frequency of these assignments varies widely. Some are assigned these duties for one weekend every other month, others may be assigned a handful of days per month, and still others may only be assigned as an AOD a few times per year. At large HHC facilities, administrators from many different departments, including non-clinical departments such as finance, admissions, and information management as well as some clinical departments, may be assigned to perform intermittent AOD duties. As a result, the salaries, regular duties, skills, education, and qualifications of Assistant and Associate Directors who perform intermittent AOD duties also vary widely. Some Assistant and Associate Directors who intermittently perform AOD duties may also do so only at the department or unit level and report only to the head of the department or unit.

⁶² Many full-time AODs have master's degrees in Public Health Administration and/or equivalent health care administration experience.

on all issues and incidents that occurred during their absence. For example, the weekend AOD meets with executive staff on Mondays to review the weekend operation. Inasmuch as they are the highest-level administrator on duty, full-time AODs with facility-wide responsibilities also have broad personnel and human resource responsibilities. They have the discretion to resolve issues that arise on site that may involve vendors, personnel, patients, and visitors. They authorize staff reassignments and removal, initiate disciplinary action, and authorize staff overtime and use of outside vendors in emergencies.

In *CWA*, 78 OCB 3, this Board found that the HHC title Coordinating Manager was eligible for collective bargaining, with some exceptions. One exception concerned several positions that were assigned to perform full-time as AODs. The Board found that employees in these positions assumed the responsibilities of senior administrative management in their absence. The Board found those Coordinating Managers who were assigned as full-time AODs were managers because they were, “the most senior administrative staff member[s] onsite during other than normal business hours and, during that time, [are] responsible for the safe and effective operation of the hospital.” 78 OCB 3, at 31, 35. As such the Board concluded that as AODs, these positions were an “integral part of the executive management team” and possessed a “broad scope of authority” and a “regular role in resolving personnel and labor relations issues.” *Id.*

Similar to Coordinating Managers who were full-time AODs, here we find that Assistant and Associate Directors who are assigned to function as full-time AODs for a facility are managers.⁶³ The duties of the Coordinating Managers who were performing as full-time AODs

⁶³ Examples of Assistant and Associate Directors who are full-time AODs for a facility that we find are managers include those at King’s County (E. Bond Jr., HHC Ex. 404; H. Gibbs, Tr. 1711-1757, HHC Ex. 52; T. Hinkson, HHC Ex. 573; B. Hirschhorn, HHC Ex. 574; A. Hoo Kong, HHC Ex. 580; A. Shedline, HHC Ex. 355; and L. Ulysse, Tr. 1658-1710, HHC Ex. 51); at Elmhurst (P.

are substantially the same as those Assistant and Associate Directors assigned as full-time AODs for a facility. As full-time AODs, these Assistant and Associate Directors are “responsible for the overall management and oversight” of a facility, exercise independent discretion and judgment in personnel matters, and directly report to and work closely with senior administrators such that they are an integral part of the facility’s executive management team. Accordingly, we find that Assistant and Associate Directors that are assigned as full-time AODs with facility-wide authority are managerial.⁶⁴

Clarke, HHC Ex. 443); at Lincoln (S. Margolis, HHC Ex. 669; and G. Wilson, HHC Ex. 921); and at Coler (N. McLeish, HHC Ex. 690).

⁶⁴ We do not conclude that Assistant and Associate Directors who perform AOD duties part-time are managers. Their assignments to these duties are infrequent relative to their regular duties, and there is simply no evidence that they otherwise possess the skills, training, or authority to conclude that they are exercising independent judgment in personnel matters or formulating policy. Instead, many of them appear to act only as intermediaries to executive administrative staff who are not on site but are otherwise accessible. For these Assistant and Associate Directors, we do not find that they possess the level of authority, independent discretion, or interaction with the highest-level administrators that makes them an integral part of the executive management team. *See* C. Valentine (Tr. 481-524, HHC Ex. 17); J. Kerr (HHC Ex. 619); P. Demmitt (Tr. 598-647, HHC Ex. 19); F. Charles (HHC Ex. 435); E. Liburd (HHC Ex. 647); A. Cooper (Tr. 7-63, HHC Ex. 4); K. Johnson (Tr. 10079-10110, HHC Ex. 304); J. Suarez (Tr. 8066-8089, HHC Ex. 198); D. Meighan (Tr. 8146- 8238, HHC Ex. 200); J. Amato (Tr. 9976-10002, HHC Ex. 299); K. Brinson (Tr. 7353-7408, HHC Ex. 182); B. Rodriguez (Tr. 7898-7919, HHC Ex. 192); M. Pereira (Tr. 9732-9771, HHC Ex. 244); W. Worthy (Tr. 9036-9058, HHC Ex. 226); L. Antzis (Tr. 9694-9732, HHC Ex. 243); J. Rosario (HHC Ex. 818); D. Mahadeo (HHC Ex. 661); J. Jones (HHC Ex. 607); D. Wesley (HHC Ex. 916); A. Brown (HHC Ex. 413); N. Manolache (HHC Ex. 667); W. Fasbender (HHC Ex. 508). However, a few of these Assistant and Associate Directors who are intermittently assigned as facility AODs or whose scope of authority is limited to a department or unit may have regularly assigned duties that are managerial based on the other criteria set forth herein. *See* CWA, 78 OCB 3, at 32-33, 41-42 (finding two Coordinating Managers who only performed AOD duties occasionally to be managers based on all the duties they were assigned to perform). These Assistant and Associate Directors are discussed in other sections of this decision. *See* M. Callinan (Tr. 9771-9801, HHC Ex. 245); M. Driscoll (HHC Ex. 486).

Labor Relations/Human Resources

The following Associate Directors are appropriately excluded as managerial based on their labor relations and/or personnel administration duties. They work in Human Resources departments, and some are responsible for overseeing all labor relations for their facility. These Associate Directors play an essential role in shaping HHC's position in labor relations matters including collective bargaining. Others have a significant role in personnel administration and are integral to the operations of the Human Resources department. Accordingly, all Directors of Labor Relations, Directors of Human Resources, Associate Directors of Labor Relations, Labor Relations Officers, and other Associate Directors in human resources departments who have equivalent labor relations and/or personnel administration duties to those positions are appropriately excluded from collective bargaining as managerial employees.

For example, the Director of Human Resources/Labor Relations at Coler/Carter/Gouverneur who reports directly to the Senior AED of Human Resources for the South Manhattan Network is managerial. He spends the majority of his time handling labor relations matters including participating in labor-management meetings on behalf of HHC. He meets with all unions at least once a month to discuss labor issues. He represents HHC in the grievance process at Steps II and III and at arbitrations. He assists the Central Office with collective bargaining, and when requested he handles labor relations and EEO issues for the Senior AED of Human Resources. With respect to layoffs, he has advance knowledge, coordinates layoff lists with unions, notifies staff, and ensures compliance with collective bargaining agreements. He asserts that he has access to information concerning all labor relations issues, including confidential information. (M. Driscoll, HHC Ex. 486)

Like the Administrative Managers designated managerial based on their participation in labor relations in *CWA*, 2 OCB2d 13, the Associate Directors involved in labor relations and/or personnel administration are responsible for duties such as assisting the Central Office with collective bargaining; guiding and advising senior staff on labor relations issues; regularly representing HHC at all stages of the grievance process including arbitration or OATH; representing HHC in joint labor-management meetings; and investigating and rendering written decisions on Step I grievances.⁶⁵ Some of them also have advance knowledge of layoffs in order to ensure compliance with collective bargaining agreements.⁶⁶ *See CWA*, 2 OCB2d 13, at 66-80 & 90-91; *see also OSA*, 3 OCB2d 33, at 50.

The Associate Director of Wage and Salary/Benefits at Metropolitan is also managerial and is an example of an Associate Director with significant duties in personnel administration. She is responsible for managing the daily operations of the Wage and Salary Unit and the Benefits Unit and reports to the Director of HR, a Senior Associate Director. She also oversees the Workers Compensation, Leave, and Health Insurance units. As part of her duties, she has knowledge of

⁶⁵ Only those Associate Directors who represent HHC in the aforementioned capacities and work in Human Resources and Labor Relations are designated managerial.

⁶⁶ The sample labor relations and personnel administration duties listed in this section are derived from the testimony and/or surveys of the following Associate Directors, among others: the Director of Human Resources/Labor Relations at Coler/Carter/Gouverneur (M. Driscoll, HHC Ex. 486); the Director of Labor Relations at Bellevue (P. Rivera, HHC Ex. 804); two Associate Directors of Labor Relations at Bellevue (S. Viswanthan, HHC Ex. 900; N-C. Simmons, HHC Ex. 848); an Associate Director of Labor Relations in Network Human Resources at the Central Brooklyn Network, who was conceded as managerial and confidential by the parties (C. Copeland, Tr. 936, HHC Ex. 447); an Associate Director of Labor Relations at Queens and Elmhurst (R. Richardson, HHC Ex. 797); a Labor Relations Officer in the Human Resources/OHS Office at Coler/Carter/Gouverneur (C. Chicvak, HHC Ex. 437); an Associate Director of Wage and Salary/Benefits at Metropolitan (A. Mulett, HHC Ex. 715); an Associate Director in Human Resources at Coney Island (R. Semorile, HHC Ex. 840); and the Benefits Director at Kings County (C. Santiago, Tr. 3363-3431, HHC Ex. 89);.

potential firings and layoffs prior to an official announcement so that she can produce layoff lists and prepare termination letters. Additionally, she prepares and forwards HRSS tickets for any Wage/Salary and Benefit issues. She also prepares, reviews, and enters into the human resources database personnel-related employment status changes, including but not limited to employee promotions, appointments, separations, and leaves of absence. She conducts trainings for employees on pensions, the Family and Medical Leave Act, and transfer periods and also conducts exit interviews and completes Financial Disclosure releases for employees separating from Metropolitan.⁶⁷ (A. Mulett, HHC Ex. 715) Associate Directors performing similar duties are integral to the operation of the Human Resources departments at HHC. Their role in personnel administration is not of a routine or clerical nature and requires the exercise of independent judgment. Thus, they are deemed managerial.

ASSISTANT AND ASSOCIATE DIRECTORS WHO ARE CONFIDENTIAL

Additionally, a few Assistant and Associate Directors provide assistance in a confidential capacity to a manager who has significant involvement in labor relations or personnel administration and are, therefore, appropriately excluded from collective bargaining as confidential employees.

⁶⁷ Such duties are similar to those performed by Coordinating Managers deemed to be managerial for having a significant role in personnel administration in *CWA*, 78 OCB 3 (BOC 2006). For example, S. Facey, a Coordinating Manager with the in-house title of Benefits Manager in the Human Resources department at Bellevue, oversaw the processing of immigration, health benefits, workers compensation, pension, and flexible spending requests and generally managed and supervised the employee benefits office and thus had a significant role in the administration of employee benefits. *See CWA*, 78 OCB 3, at 17-18. *See also CWA*, *L. 1180*, 2 OCB2d 13, at 73.

The Board has held that “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.” *OSA*, 78 OCB 5, at 41; *Town of Dewitt*, 32 PERB ¶ 3001, at 3003 (1999) (noting that designations have been based on personnel functions with exposure “to information which has a direct relationship to and impact upon collective negotiations and the administration of collective bargaining agreements”). Thus, the Board has found employees who provide confidential assistance to managers in Human Resources departments confidential. *See CWA, L. 1180*, 2 OCB2d 13, at 99; *see also CWA, L. 1180*, 78 OCB 3, at 12-13. As discussed above, there are multiple Associate Directors in Human Resources and/or Labor Relations that are managerial. These Associate Directors are also confidential because they assist in a confidential capacity other managers who are significantly involved in labor relations or personnel administration, such as the Senior Associate Executive Director of Network Human Resources or the Senior AED’s direct report.⁶⁸ Similarly, there are some Assistant and Associate Directors in Human Resources and/or Labor Relations that are not managerial, but do have a confidential relationship with managers who have significant involvement in labor relations or

⁶⁸ For example, an Associate Director with an in-house title of Director of Human Resources/Labor Relations at Coler/Carter/Gouverneur (M. Driscoll, HHC Ex. 486); an Associate Director with an in-house title of Labor Relations Officer in the Human Resources/OHS Office at Coler/Carter/Gouverneur (C. Chicvak, HHC Ex. 437); an Associate Director with an in-house title of Director of Labor Relations at Bellevue (P. Rivera, HHC Ex. 804); two Associate Directors Labor Relations at Bellevue (S. Viswanthan, HHC Ex. 900; N-C. Simmons, HHC Ex. 848); an Associate Director of Labor Relations in Network Human Resources at the Central Brooklyn Network, who was conceded as managerial and confidential by the parties (C. Copeland, Tr. 936, HHC Ex. 447); an Associate Director of Labor Relations at Queens and Elmhurst (R. Richardson, HHC Ex. 797); an Associate Director at Coney Island (R. Semorile, HHC Ex. 840); an Associate Director with an in-house title of Benefits Director at Kings County (C. Santiago, Tr. 3363-3431, HHC Ex. 89); and an Associate Director of Wage and Salary/Benefits at Metropolitan (A. Mulett, HHC Ex. 715).

personnel administration. For example, the unions conceded that the Associate Director of Human Resource Operations in Network Human Resources at the Central Brooklyn Network who assists a Senior Associate Director of Human Resources is confidential.⁶⁹ (S. Clarke, Tr. 1027-1083, HHC Ex. 39)

Moreover, the Board has repeatedly found that employees who assist negotiators by calculating the cost of collective bargaining proposals and union demands are confidential. *See CWA, L. 1180*, 2 OCB2d 13, at 99-104; *see also OSA*, 78 OCB 1, at 9-12; *Town of Ulster*, 36 PERB ¶ 3001, at 3002 (2003). Thus, all Assistant and Associate Directors that perform those duties are confidential. For example, an Assistant Director in the Assistant Budget Director position at Woodhull, who we noted earlier is not managerial, has duties that make him confidential. (C. Morris, Tr. 10775-10816, HHC Ex. 332) He performs cost analyses of collective bargaining proposals for the CEO and CFO during bargaining. Specifically, during the course of collective bargaining negotiations, he has been asked to determine the cost and impact on the budget of particular proposals. The position also provides financial analyses regarding layoffs to the CEO and CFO. Since the position assists and acts in a confidential capacity to the hospital's CEO and CFO, a manager who is involved in collective bargaining and labor relations matters, it is confidential. *See OSA*, 78 OCB 1, at 9-12 (finding confidential multiple Senior Management Consultants Level I whose duties included cost analysis of bargaining proposals); *see also CWA*, 78 OCB 3, at 32 (finding confidential a Coordinating Manager who assists a CFO by preparing financial data for collective bargaining); *ADW*, 56 OCB 11, at 20 (BOC 1995) (finding confidential

⁶⁹ Additional examples of confidential Assistant and Associate Directors in Human Resources at the Central Brooklyn Network include an Assistant Director Employee Assistance Program Coordinator (M. Loney, Tr. 891-930, HHC Ex. 32); an Associate Director of Background Investigations (M. Moe, Tr. 979-1014, HHC Ex. 38); and an Associate Director of Network Records Management (P. Williams, Tr. 938-975, HHC Ex. 37).

a Deputy Warden whose duties included cost analysis of collective bargaining proposals); *Town of Ulster*, 36 PERB ¶ 3001, at 3002 (2003) (finding the duty prong satisfied by knowledge of possible personnel reductions and calculation of the cost of a wage proposal before it was made at negotiations).

UNIT PLACEMENT

Having found that generally the titles Assistant and Associate Director of Hospitals are eligible for collective bargaining, we now turn to the issue of their unit placement. CWA seeks to add the Assistant Director title to its Principal Administrative Associate bargaining unit, which includes titles such as Assistant Coordinating Manager, Coordinating Manager, and Health Care Program Planner/Analyst. OSA seeks to add the Associate Director title to its Staff Analyst bargaining unit, which includes titles such as Administrative Staff Analyst, Director of Planning, Senior Health Care Program Planner Analyst, and Senior Management Consultant (Business Organization and Methods).

In accordance with OCB Rule § 1-02(u), neither union was required to submit a showing of interest from Assistant and Associate Directors to support their accretion petitions.⁷⁰ A showing of interest is required when a union seeks to create a new bargaining unit or replace the incumbent

⁷⁰ OCB Rule § 1-02(u)(1) provides:

A public employer or the certified bargaining representative of a unit may file a petition requesting amendment of a certification to add and/or delete titles or to reflect that the certified bargaining representative has changed its name. . . . If a proposed amendment raises a question concerning the majority status of the certified bargaining representative, the petition must be filed pursuant to § 1-02(c).

representative of an existing unit pursuant to OCB Rule § 1-02(c). *See LEEBA*, 11 OCB2d 7, at 5 (BOC 2018) (“The purpose of the showing of interest is to enable the Board to avoid the needless expenditure of public funds in the investigation and processing of cases in which the petitioner does not have substantial support of the employees.”). However, since a certified bargaining representative is presumed to have majority support of its bargaining unit, a showing of interest is not required when it seeks to add a relatively small number of employees compared to the number of employees already in the unit. *See OSA*, 48 OCB 17, at 7-8 (BOC 1991). In these circumstances, there is no question concerning the continued majority status of the certified bargaining representative raised by the petition. *See OSA*, 56 OCB 18A, at 6 (BOC 1995); *City Empl. Union, L. 237, IBT*, 30 OCB 41, at 18 (BOC 1982).

HHC argues that CWA and OSA must be precluded from utilizing accretion to represent these titles because it is a mechanism that is intended to promote labor relations stability by allowing only minor adjustments in bargaining units. According to HHC, the Assistant Directors would represent approximately 9% of the entire CWA unit, and the Associate Directors would represent approximately 10% of the entire OSA unit. HHC contends that an accretion under these circumstances would deprive more than 1,300 HHC employees of their right to self-determination. Further, HHC claims that the Unions’ decision to each seek to represent only one title deprives the employees of the opportunity to vote in an election if the Board were to decide that placement in either bargaining unit would be appropriate. HHC broadly asserts that the employees who have long been classified as non-represented should not be automatically placed into a unit when there has been no showing that they are interested in joining that unit.

As an initial matter, we reject HHC’s argument contesting an accretion. The Board has accreted titles that share a community of interest to existing bargaining units without a showing of

interest (unless the relative number of employees at issue requires it) since its inception over 50 years ago. *See Local 1199*, 14 OCB 33 (BOC 1974); *DC 37*, 2 OCB 44 (BOC 1968); *SSEU*, 2 OCB 2 (BOC 1968). Accretion, along with consolidation of bargaining units, is one of the primary tools used by the Board to reduce the number of bargaining units “so as to develop a structure of bargaining that is coherent and viable.”⁷¹ *United Fedn. of Law Enforcement Officers*, 40 OCB 14, at 14 (BOC 1987); *see OSA*, 56 OCB 18A, at 5-6 (BOC 1995) (holding that accretion is not limited to newly created titles); *Local 1199, Natl. Union of Hosp. & Health Care Empls.*, 22 OCB 66, at 6 (BOC 1978). Therefore, in accordance with our long-standing policy against the proliferation of bargaining units, the Board has added titles to existing bargaining units whenever possible rather than creating new bargaining units. *See OSA*, 78 OCB 5, at 46 (BOC 2006) (noting that “we have found a separate bargaining unit inappropriate when accretion would be appropriate”); *Local 144, SEIU*, 48 OCB 1, at 20-21 (BOC 1991) (finding accretion appropriate when no grounds sufficiently “outweigh the adverse effect that the creation of a separate bargaining unit would have on the efficient operation of the public service and sound labor relations”); *DC 37*, 2 OCB 44.

While bargaining representatives are determined by the majority of employees in an appropriate unit, it is the Board that determines the configuration of bargaining units. *See* NYCCBL § 12-309(b)(1) & (2).⁷² “[W]e do not base our determination of an appropriate unit

⁷¹ Prior to the enactment of the NYCCBL, the City and its unions were unable to effectively bargain due to the hundreds of bargaining units in existence at the time. *See DC 37*, 22 OCB 28, at 12-13 (BOC 1978); *DC 37*, 2 OCB 44, at 2 (explaining the reasoning behind the Board’s policy against the proliferation of bargaining units).

⁷² NYCCBL § 12-309(b) grants this Board the “power and duty,” in relevant part:

- (1) to make final determinations of the units appropriate for purposes of collective bargaining between public employers and public employee organizations, which units shall be such as shall assure to public employees the fullest freedom of exercising the rights granted

solely on an employee’s right of self-determination.” *NYSNA*, 54 OCB 2, at 50 (BOC 1994); *see United Fedn. of Law Enforcement Officers*, 40 OCB 14, at 15 (explaining that employees’ opinions are not determinative of appropriate unit placement because their wishes must be “balanced against considerations of efficiency of operation of the public service and sound labor relations”); *City Empl. Union, L. 237, IBT*, 30 OCB 41, at 15 (noting that a showing of interest from employees “does not of itself establish a basis for unit placement”).

Thus, if the Board determines that a title is appropriately added to a bargaining unit and that the continued majority status of the bargaining representative is not in question, it grants the accretion and amends the bargaining certification. *See, e.g., OSA*, 10 OCB2d 2, at 17 (BOC 2017) (adding an HHC title to OSA’s bargaining unit without an election), *affd., NYC Health + Hospitals v. Organization of Staff Analysts, et al.*, Index No. 152144/17 (Sup. Ct. N.Y. Co. Nov. 13, 2017) (Edwards, J.), *affd.*, 171 A.D.3d 529 (1st Dept. 2019), *lv. denied*, 34 N.Y.3d 909 (2020).⁷³

In determining an appropriate bargaining unit, this Board is not bound by the unit configurations proposed by the parties. *See DC 37*, 7 OCB2d 1, at 64 (BOC 2014). Nevertheless, we do not certify a union to represent titles it does not wish to represent. *See UFT*, 80 OCB 12, at

hereunder and under executive orders, consistent with the efficient operation of the public service, and sound labor relations, . . .

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

⁷³ An election is not held in an accretion case unless the Board finds that accretion to more than one bargaining unit would be equally appropriate. *See, e.g., OSA*, 11 OCB2d 22, at 25; *OSA*, 8 OCB2d 19, at 45 (BOC 2015).

2 (BOC 2007) (finding that accretion to a bargaining unit is inappropriate when the certified bargaining representative has not indicated that it wishes to represent the title). Indeed, even when the Board has found accretion to more than one bargaining unit to be appropriate and ordered an election, it gives the certified bargaining representatives the opportunity to decline to participate in an election.⁷⁴ *See, e.g., CWA, L. 1180*, 3 OCB2d 32, at 28 (BOC 2010); *OSA*, 78 OCB 5, at 51.

Substantively, HHC also argues that the petition must be dismissed because Assistant and Associate Directors do not share a community of interest with either the administrative titles in the CWA unit or the analyst titles in the OSA unit.⁷⁵ According to HHC, the degree of skill and expertise required by Assistant and Associate Directors, who are responsible for managing operations and personnel in their respective departments, is entirely different from that required by employees in the existing CWA and OSA units. For instance, Assistant and Associate Directors can be required to maintain professional licenses.

The questions properly before us are whether the Assistant Director title is appropriately added to CWA's bargaining unit and whether the Associate Director title is appropriately added to OSA's bargaining unit. OCB Rule § 1-02(k) provides that "[i]n 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;

⁷⁴ Accordingly, we reject HHC's argument that any withdrawal must be with prejudice in order to be effective.

⁷⁵ HHC did not argue that the Assistant and Associate Director titles were so unique that they must be placed in a new bargaining unit. Since the issue was not raised, and we find accretion appropriate, we do not need to address the creation of a new bargaining unit.

- (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.

In making accretion determinations, we consider whether the title to be added has a “similarity or close relationship to unit titles.” *NYSNA*, 54 OCB 2, at 49. “When deciding whether there is a community of interest, we consider a number of factors, including but not limited to: (a) the job duties and responsibilities of the employees; (b) their qualifications, skills, and training; (c) interchange and contact; (d) wage rates; (e) lines of promotion; and (f) organization or supervision of the department, office, or other subdivision.” *OSA*, 78 OCB 6, at 18 (BOC 2006) (citations omitted). No one factor is controlling. *See, e.g., CWA L. 1180*, 3 OCB2d 32, at 24 (BOC 2010) (quoting *OSA*, 78 OCB 5, at 45).

We find that Assistant Directors have a community of interest with members of CWA’s bargaining unit and are appropriately added to that unit. Like Assistant Directors, Coordinating Managers in the Principal Administrative Associate bargaining unit provide “supervisory and administrative” work for a “health therapy program and support services,” plan “administrative and office operations,” and interpret “compliance with predetermined standards for quality care.” (TE Ex. 5 at Ex. C); *see also CWA*, 78 OCB 3 (BOC 2006) (discussing the duties of Coordinating Managers). The testimony and exhibits show that many Assistant Directors were previously in

the Coordinating Manager title.⁷⁶ Many Assistant Directors supervise Coordinating Managers and/or Assistant Coordinating Managers.⁷⁷ Assistant Directors perform duties that are also performed or were previously performed by Coordinating Managers.⁷⁸ These facts demonstrate that many of the Assistant Directors share qualifications, supervision, skills, and duties that are similar to employees in CWA's bargaining unit and are sufficient to establish a community of interest. *See DC 37*, 3 OCB2d 21, at 20 (BOC 2010).

We are not persuaded by HHC's assertion that Assistant Directors have an "entirely different" level of skill and expertise than the administrative titles in CWA's bargaining unit. (HHC Closing Br. at 8) Specifically, HHC relies on the fact that Assistant Directors can be required to maintain professional licenses. While some Assistant Directors maintain professional licenses, professional licenses are not listed as a qualification requirement in HHC's position description. Instead, Assistant Directors must have a "specialization in hospital administration,

⁷⁶ For example, an Assistant Director in the Anatomic Pathology department at Kings County (V. Foster, Tr. 2371-2405, HHC Ex. 68); an Assistant Director in Outpatient Billing at Jacobi (L. Lulaj, Tr. 8619-8640, HHC Ex. 212); an Assistant Director in Contracts at Kings County (W. Headley, Tr. 1940-1970, HHC Ex. 60); an Assistant Director in Ambulatory Care at Kings County (S. Parks, Tr. 2137-2176, HHC Ex. 63); an Assistant Director in the WIC program at the North Bronx Network (H. Pham, Tr. 8094-8146, HHC Ex. 199); and an Assistant Director in Facility Operations at Kings County (J. Woodbury, Tr. 1763-1811, HHC Ex. 53).

⁷⁷ For example, the Director of Volunteer Services at McKinney (A. Cooper, Tr. 7-63, HHC Ex. 4); the Administrator for the Center for H.O.P.E. at Kings County (G. Greenage, Tr. 2594-2622, HHC Ex. 74); the Assistant Controller at McKinney (G. Hall, Tr. 66-134, HHC Ex. 5); the Assistant Director of Fire & Safety at Harlem (C. Morales, Tr. 4217-4237, HHC Ex. 105); the Assistant Director of Education and Training at the North Bronx Network (V. Nolan, Tr. 9146-9188, HHC Ex. 228); and the Patient Centered Medical Home Coordinator at Harlem (T. Watson, Tr. 4735-4788, HHC Ex. 116).

⁷⁸ For example, an Assistant Director in Pathology at Lincoln (S. Abraham, Tr. 5664-5709, HHC Ex. 141) and two Fire Safety Directors at Lincoln (C. Biney, Tr. 5166-5187, HHC Ex. 126; and D. Mederos, HHC Ex. 693).

health care administration, administrative medicine” or its equivalent, which is similar to the knowledge and skills required of Coordinating Managers.⁷⁹ (TE Ex. 5 at Ex. A). Further, unlike HHC’s position description for Assistant Director, the position description for Coordinating Manager expressly provides that “[c]ertification or licensure may be required.” (*Id.* at Ex. C)

Similarly, we find that Associate Directors have a community of interest with employees in OSA’s bargaining unit and are appropriately added to that unit. Titles in OSA’s bargaining unit are generally at a higher level in HHC’s organization than titles in CWA’s unit. For instance, Senior Health Care Program Planner Analyst is in OSA’s unit, while Health Care Program Planner Analyst is in CWA’s unit. In addition, we find that Associate Directors perform duties very similar to those performed by titles in OSA’s unit such as Director of Planning or Senior Management Consultant (Business Organization and Methods).⁸⁰ *See OSA*, 78 OCB 1, at 32-33, 44 (adding Senior Management Consultants holding positions such as Director of Admissions, Director of Hospital Police, and Administrator of Operations in the Social Work department to OSA’s Staff Analyst bargaining unit). For instance, like Associate Directors, HHC’s Directors of Planning work at high levels in their departments, are responsible for ensuring HHC’s compliance with

⁷⁹ Qualifications for a Coordinating Manager include a combination of education in the disciplines of “public health, public administration, business administration, social work, psychology, [and] rehabilitation counseling” and experience “in an administrative or supervisory capacity in such occupations as physical, occupational, inhalation, speech and audiology therapy or as medical/laboratory technologist, microbiologist (various specialties) chemist (biochemist), radiation and x-ray technician” or in “business management systems or general administration.” (TE Ex. 5 at Ex. C)

⁸⁰ HHC’s position description for Senior Management Consultant (Business Organization & Methods) provides that the title “[u]nder varying degrees of direction, with broad latitude for the exercise of independent judgment, acts as an expert consultant and advisor on complex and important management problems, with particular reference to business organization and methods.” (OSA Motion to Intervene Ex. E)

regulations, interact with senior management, and serve on HHC committees. *See OSA*, 11 OCB2d 8, at 5-10 (adding the Director of Planning title to OSA's Staff Analyst bargaining unit). Some Directors of Planning are the heads of their department and, like Associate Directors, supervise several Assistant Directors. *Id.* at 10.

Similarly, the record indicates that several Associate Directors supervise other titles in OSA's Staff Analyst bargaining unit such as: Senior Healthcare Program Planner Analysts, Senior Management Consultants (Business Organization and Methods), or Senior Systems Analysts.⁸¹ Several Associate Directors were previously in the subordinate titles of Assistant Systems Analyst, Senior Management Consultants (Business Organization and Methods), Systems Analyst, or Senior Healthcare Program Planner Analyst titles.⁸² These facts demonstrate that many of the Associate Directors share qualifications, skills, and duties that are similar to other titles in OSA's bargaining unit and are sufficient to demonstrate a community of interest.⁸³ *See OSA*, 78 OCB 5, at 47-50.

⁸¹ For example, an Associate Director in Utilization/Case Management at Kings County (I. Alleyne-Green, Tr. 1502-1540, HHC Ex. 48); an Associate Director in Facilities Development/Design at Kings County (D. Gadioma, Tr. 2411-2446, HHC Ex. 69); an Associate Director in the Cancer Services Program at Lincoln (M. Annette Joseph, Tr. 6695-6733, HHC Ex. 162); and an Associate Director in HIV Services at Kings County (I. Turnbull, Tr. 3624-3697, HHC Ex. 93).

⁸² For example, an Associate Director in Volunteer Services at Harlem (S. Harewood, Tr. 5572-5606, HHC Ex. 139); the Payroll Manager at Kings County (E. Rogers, Tr. 2447-2463, HHC 70); the Director of Statistics at the North Bronx Network (J. Stern, Tr. 9530-9561, HHC Ex. 238); and a Network Managed Care Director at the Generations + Network (B. Workman, Tr. 5034-5081, HHC Ex. 123).

⁸³ For instance, both Associate Directors and Senior Management Consultants (Business Organization and Methods) must have a master's degree and four years of experience, or the equivalent. Similar to Assistant Directors, some Associate Directors maintain professional licenses. However, this is also not a qualification listed in HHC's position description for the title and does not negate the other factors establishing a community of interest.

Accordingly, we amend CWA's Certification No. 41-73 to add the eligible Assistant Directors and amend OSA's Certification No. 3-88 to add the eligible Associate Directors.

ORDER

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

ORDERED that Certification No. 41-73 (as previously amended) be, and the same hereby is, further amended to add the title Assistant Director, Hospitals (Title Code Nos. 00013C, 00013E, and 00013G), subject to existing contracts, if any; and it is further

ORDERED that Certification No. 3-88 (as previously amended) be, and the same hereby is, further amended to add the title Associate Director, Hospitals (Title Code Nos. 981311, 981322, and 981333); and it is further

ORDERED that the following Assistant Directors, Hospitals (Title Code Nos. 00013C, 00013E, and 00013G) and others in the equivalent positions are designated managerial: Administrator on Duty (full-time); and it is further

ORDERED that the following Assistant Directors, Hospitals (Title Code Nos. 00013C, 00013E, and 00013G) and others in the equivalent positions are designated confidential: Assistant Budget Director at Woodhull and Employee Assistance Program Coordinator for the Central Brooklyn Network; and it is further

ORDERED that the following Associate Directors, Hospitals (Title Code Nos. 981311, 981322, and 981333) and others in the equivalent positions are designated managerial:

Director of Research for the North Bronx Network;

Director of Clinical Document Improvement for the North Bronx Network;

Director of Care Management for the North Bronx Network;

Managed Care Director for the Generations + Network;

Administrator for the Cardiac Catheterization Lab and Endovascular Services for the North Bronx Network;

Director of Respiratory Care for the North Bronx Network;

Associate Director of Substance Abuse Services in Behavioral Health at Jacobi;

Division Director of Substance Abuse Programs in Behavioral Health at Coney Island;

Administrative Director of Laboratories in Pathology at Kings County;

Department Head of Therapeutic Activities in Behavioral Health for the North Bronx Network;

Associate Director of Therapeutic Rehabilitation in Behavioral Health at Kings County;

Director of Forensic Psychiatry in Behavioral Health at Kings County;

Director of Pharmacy;

Administrator on Duty (full-time);

Director of Human Resources/Labor Relations;

Director of Labor Relations;

Associate Director of Labor Relations;

Labor Relations Officer;

Associate Director of Wage and Salary/Benefits at Metropolitan;

Associate Director in Human Resources at Coney Island;

Benefits Director at Kings County; and it is further

ORDERED that the following Associate Directors, Hospitals (Title Code Nos. 981311, 981322, and 981333) and others in the equivalent positions are designated confidential: Associate Director of Human Resource Operations in Network Human Resources, Associate Director of Background Investigations, and Associate Director of Network Records Management for the Central Brooklyn Network.

Dated: July 16, 2020
New York, New York

SUSAN J. PANEPENTO
CHAIR

ALAN R. VIANI
MEMBER



OFFICE OF COLLECTIVE BARGAINING

NOTICE OF AMENDED CERTIFICATIONS

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Gwvonne A. Wilcox

CITY MEMBERS

M. David Zurndorfer
Pamela S. Silverblatt

DEPUTY CHAIRS

Monu Singh
Steven Star

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

DATE: July 16, 2020 **DOCKET #:** AC-57-10

DECISION: 13 OCB2d 12 (BOC 2020)

EMPLOYER: NYC Health + Hospitals
55 Water Street, 26th Floor
New York, NY 10041

AMENDMENT 1: Certification No. 41-73, the Principal Administrative Associate bargaining unit, has been amended as follows:

Added: **Assistant Director, Hospitals**
(Title Code Nos. 00013C, 00013E, and 00013G)

Bargaining Representative:

Communications Workers of America, Local 1180
6 Harrison Street
New York, NY 10013

AMENDMENT 2: Certification No. 3-88, the Staff Analyst bargaining unit, has been amended as follows:

Added: **Associate Director, Hospitals**
(Title Code Nos. 981311, 981322, and 981333)

Bargaining Representative:

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



OFFICE OF COLLECTIVE BARGAINING

NOTICE OF DESIGNATIONS

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

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Pamela S. Silverblatt

DEPUTY CHAIRS
Monu Singh
Steven Star

DATE: July 16, 2020 **DOCKET #:** AC-57-10

DECISION: 13 OCB2d 12 (BOC 2020)

EMPLOYER: NYC Health + Hospitals
55 Water Street, 26th Floor
New York, NY 10041

DESIGNATIONS: The following positions and their equivalents are designated managerial and/or confidential, therefore, excluded from collective bargaining:

Assistant Director, Hospitals
(Title Code Nos. 00013C, 00013E, and 00013G)

Administrator on Duty (full-time)

Assistant Budget Director at Woodhull

Employee Assistance Program Coordinator for the Central Brooklyn Network

Associate Director, Hospitals
(Title Code Nos. 981311, 981322, and 981333)

Director of Research for the North Bronx Network

Director of Clinical Document Improvement for the North Bronx Network

Director of Care Management for the North Bronx Network

Managed Care Director for the Generations + Network

Administrator for the Cardiac Catheterization Lab and Endovascular Services for the North Bronx Network

Director of Respiratory Care for the North Bronx Network

Associate Director of Substance Abuse Services in Behavioral Health at Jacobi

Division Director of Substance Abuse Programs in Behavioral Health at Coney Island

Administrative Director of Laboratories in Pathology at Kings County

Department Head of Therapeutic Activities in Behavioral Health for the North Bronx Network

Associate Director of Therapeutic Rehabilitation in Behavioral Health at Kings County

Director of Forensic Psychiatry in Behavioral Health at Kings County

Director of Pharmacy

Administrator on Duty (full-time)

Director of Human Resources/Labor Relations

Director of Labor Relations

Associate Director of Labor Relations

Labor Relations Officer

Associate Director of Wage and Salary/Benefits at Metropolitan

Associate Director in Human Resources at Coney Island

Benefits Director at Kings County

Associate Director of Human Resource Operations
for the Central Brooklyn Network

Associate Director of Background Investigations for
the Central Brooklyn Network

Associate Director of Network Records
Management for the Central Brooklyn Network