

**MARTIN F. SCHEINMAN, Esq.**

*Arbitrator*

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September 8, 2011

**Via E-Mail and Regular Mail**

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The New York City Department of Education  
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New York, NY 10007

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New York, NY 10007

**Re: The New York City Department of Education  
and  
United Federation of Teachers  
(Case No. 13 390 00083 06/UI Education Officers & Analysts)**

Dear Gentlemen:

Enclosed please find my Opinion and Award in the above referenced matter. I have also enclosed my bill for services rendered.

Thank you.

Sincerely,



Enclosure

MFS/kt

nycdoe.ufi.8306.ui.officers.trans

cc: Jeffrey Kriegsman, Case Manager  
Robert E. Waters, Esq., Supervising Attorney  
Ellen Gallin Procida, Director

AMERICAN ARBITRATION ASSOCIATION

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In the Matter of the Arbitration

between

THE NEW YORK CITY DEPARTMENT  
OF EDUCATION

"Department"

-and-

UNITED FEDERATION OF TEACHERS

"Union"

-----X

X Case No.  
13 390 00083 06  
X  
X Re: UI: Education  
X Officers & Analysts

**APPEARANCES**

**For the Department**

Russell J. Platzek, Esq.

**For the Union**

LAW OFFICES OF LEONARD A. SHRIER  
Leonard A. Shrier, Esq., Of Counsel

**Before:** Martin F. Scheinman, Esq., Arbitrator

## **BACKGROUND**

This grievance protests the Department's treatment of a substantial number of employees holding the titles of Education Officer, Education Analyst, Associate Education Officer and Associate Education Analyst as being excluded from the Union's bargaining unit. The Union insists such exclusion violated the parties' Collective Bargaining Agreement ("Agreement") covering the teachers bargaining unit. It asks the Department be directed to recognize these employees as being within the Union's bargaining unit, retroactive to their dates of hire with the Department.

The basic facts of this case are not in dispute. The Agreement contains the Recognition Clause, Article One, which recognizes the Union as the exclusive bargaining agent for teachers and other employees whose positions are listed in the clause. Included in that list are, *inter alia*, certain Education Officers, Education Analysts, Associate Education Officers and Associate Education Analysts (hereinafter, the "Education Officer titles"). The pertinent text of Article One is set forth below. So far as relevant to this dispute, Article One excludes from the Union's bargaining unit persons serving in the Education Officer titles who are managerial and confidential as defined in Section 201.7 of Article 14 of the Civil Service Law.

On or about September 8, 2005, the Union filed a grievance claiming the Department was violating the Agreement by excluding from its bargaining unit certain persons employed in the Education Officer titles, who were not managerial or confidential employees. When the parties were unable to resolve the matter during the lower stages of the grievance procedure, the Union demanded arbitration.

In the course of the arbitration proceeding, so as to avoid the need for hundreds of individuals holding the Education Officer titles from appearing to give testimony, I directed the parties to jointly develop a survey questionnaire which was sent to affected employees, with questions relevant to the dispute. The purpose of the surveys was to seek written information from each employee and his or her Department Head, concerning the duties performed by each employee. Of the surveys returned by employees, some were stipulated as being accurate. Others were disputed by the Department.

Hearings were held on November 12, 2008, April 23, 2009, June 4, 2010, June 8, 2010, August 18, 2010, September 20, 2010, September 27, 2010, December 15, 2010, February 9, 2011, February 15, 2011, March 3, 2011, and April 8, 2011, at the American Arbitration Association in New York City. Additional telephonic conferences were conducted with the parties.

At the hearings, both parties were afforded full opportunity to introduce evidence and argument in support of their respective positions. They did so. Surveys were received into evidence as exhibits. As well, witnesses, including several supervisors, were presented as to disputed factual issues. At the conclusion of the hearing on April 8, 2011, I declared the hearings closed pending additional information from the parties. Upon my receipt of same, the record was declared closed.

### **DISCUSSION AND FINDINGS**

#### **The Issues:**

The parties have submitted the following issues for my determination:

1. Whether the Department violated Articles One and/or Twenty of the Agreement by failing to include in the bargaining unit, certain employees in the titles of Education Officer, Education Analyst, Associate Education Officer, and Associate Education Analyst?
2. If so, then with respect to the particular terms and limitations contained in the Agreement and the specific limitations contained therein on the authority of the arbitrator, what is the appropriate remedy?

#### **Relevant Contractual Provisions**

##### **ARTICLE ONE UNION RECOGNITION**

**The Board recognizes the Union as the exclusive bargaining representative of ... certain education officers, education analysts, associate education officers and associate education analysts ...**

The term "certain education officers, education analysts, associate education officers and associate education analysts" (herein referred to as "education officers and education analysts") comprises employees in the titles Education Officer, Education Analyst, Associate Education Officer, and Associate Education Analyst except those serving in the Offices of the Chancellor, Deputy Chancellors, Labor Relations and Collective Bargaining, and Legal Services; those serving in the Division of Budget Operations and Review and in the Division of Human Resources, except employees who are neither managerial nor confidential as defined in Section 201.7 of Article 14 of the CSL; and those serving elsewhere in the Board of Education who are managerial or confidential as defined in Section 201.7 of Article 14 of the CSL.

\* \* \* \* \*

**ARTICLE TWENTY  
MATTERS NOT COVERED**

With respect to matters not covered by this Agreement which are proper subjects for collective bargaining, the Board agrees that it will make no changes without appropriate prior consultation and negotiation with the Union.

The Board will continue its present policy with respect to sick leave, sabbatical leaves, vacations and holidays except insofar as change is commanded by law.

All existing determinations, authorizations, by-laws, regulations, rules, rulings, resolutions, certifications, orders, directives, and other actions, made, issued or entered into by the Board of Education governing or affecting salary and working conditions of the employees in the bargaining unit shall continue in force during the term of this Agreement, except insofar as change is commanded by law.

\* \* \* \* \*

**Positions of the Parties**

The Union argues the Department violated the Agreement by failing to treat the employees identified in this proceeding as being part of the Union's bargaining unit. It contends these

employees are not managerial or confidential and belong in the bargaining unit.

The Union maintains the employees in question are not managerial employees. It asserts they do not formulate policy or assist directly in preparation for or conducting of collective bargaining. The Union claims these employees have no major role in administering the Agreement or in personnel administration and are not called upon to exercise independent judgment toward these ends. It insists the excluded employees are not managerial within the meaning of the Agreement.

The Union alleges these employees are not confidential employees. It contends they do not assist managerial employees or act in a confidential capacity to managerial employees. The Union insists these employees are not confidential employees within the meaning of the Agreement.

The Union argues the duties performed by these employees were not those of managerial or confidential employees. It reasons these employees were, therefore, entitled to be treated as being within its bargaining unit.

In short, the Union insists its grievance has merit. It asks the Department be directed to treat all of the employees identified in this proceeding as being within the Union's bargaining unit, retroactive to their dates of hire with the

Department and to make them whole for all losses incurred as a result of the Department's improper action.

The Department, on the other hand, argues the Union's grievance lacks merit. It asks the grievance be denied.

The Department contends the identified employees were properly treated as being outside of the Union's bargaining unit. It alleges they perform managerial or confidential duties within the meaning of the Agreement.

The Department alleges Article One of the Agreement provides no recognition of bargaining unit status for employees in Education Officer titles who are managerial or confidential within the meaning of Civil Service Law Article 14, Section 201.7. It claims the parties expressly referred to Section 201.7 in their Agreement and, by doing so, intended to adopt the concepts of managerial and confidential established under Civil Service Law Article 14.

The Department asserts the excluded employees' duties are managerial or confidential within the meaning of the Agreement. It claims the evidence presented establishes these employees meet the definition of managerial or confidential and were, therefore, properly excluded from the bargaining unit.

The Department argues the concept of managerial employee is sufficiently broad to include persons who directly assist ultimate decision-makers. It asserts the employees identified in



this proceeding participate in roles or processes by which objectives and policies are formulated or implemented. In the Department's view, these employees meet the definition of managerial employee and were properly treated as being outside of the Union's bargaining unit.

As well, the Department contends these employees play a sufficiently strong role in preparing for or conducting collective bargaining, or administering the Agreement and in matters of personnel, to warrant designation as managerial employees. It alleges they have substantial supervisory and personnel administration duties which justify their exclusion from the bargaining unit under the exceptions to recognition set forth in Article One of the Agreement.

The Department maintains the employees at issue include some who are properly deemed confidential within the meaning of the Agreement. It asserts they assist managerial employees with labor relations responsibilities, or have access to information relevant to collective bargaining or contract administration which is not appropriate for sharing with members of the Union's bargaining unit. The Department contends placing these employees within the bargaining unit would impede its ability to administer the Agreement and conduct collective bargaining on behalf of the Department, free of conflicting loyalties amongst staff serving in a confidential capacity.

Without prejudice to the foregoing contentions, the Department argues even if I conclude some of the excluded employees belong within the Union's bargaining unit, such a remedy should be prospective only. It contends retroactive relief would result in substantial and burdensome back pay, due to differentials in salary, holiday schedules and fringe benefit coverages.

The Department also alleges retroactive relief is not appropriate because the Union unreasonably delayed bringing this case to arbitration. It claims the grievance was filed in September 2005 but the Union did not proceed to arbitration until November 2008. The Department alleges under these circumstances, an award of retroactive relief is unreasonable and not in the spirit of the Agreement, which contemplates the speedy resolution of grievances through timely processing of claims.

The Department rejects any contention Article Twenty was violated by a failure to treat the affected employees as being within the Union's bargaining unit. In its view, Article Twenty refers to "matters not covered" by the Agreement and, therefore, has no application to the subject matter of the Union's grievance, which the Union alleges is covered by Article One. The Department claims the Union improperly argues the subject

matter underlying this dispute is both covered and not covered by the Agreement.

In short, the Department insists the Union's grievance is without merit. It asks the grievance be denied.

### **Opinion**

Certain preliminary comments are appropriate. As an arbitrator, my role is a limited one. It is to interpret the parties' Agreement as written. If the parties' Agreement is clear on its face, and if from the parties' chosen words their intentions are manifest, then I am without power or authority to deviate from those intentions. In addition, I must interpret the Agreement to give effect to all provisions, and to avoid nullifying language adopted by the parties.

With these principles in mind, I turn to the facts presented.

At the outset, there is no dispute the Department agreed to recognize the Union as the exclusive bargaining representative for persons employed in the Education Officer titles,

**except those serving in the Offices of the Chancellor, Deputy Chancellors, Labor Relations and Collective Bargaining, and Legal Services; those serving in the Division of Budget Operations and Review and in the Division of Human Resources, except employees who are neither managerial nor confidential as defined in Section 201.7 of Article 14 of the CSL; and those serving elsewhere in the Board of Education who are managerial**

**or confidential as defined in Section 201.7 of Article 14 of the CSL.<sup>1</sup>**

During the course of this proceeding, the Union identified one hundred forty seven (147) employees of the Department as having been wrongly excluded from its bargaining unit despite being employed in one (1) of the Education Officer titles. The parties have asked me to decide whether exclusion of any of these employees violated the Agreement, and if so, to determine the appropriate remedy.

Having carefully considered all of the evidence and arguments presented, I conclude of the one hundred forty seven (147) employees identified, one hundred twelve (112) were wrongly excluded from the Union's bargaining unit and thirty five (35) were properly excluded. The names of the employees in each category are set forth below.

In reaching my conclusion, I have applied those definitions of "managerial" and "confidential" developed under Section 201.7 of Article 14 of the Civil Service Law. Doing so is consistent with the parties' intent, expressed in Article One, that persons "who are managerial or confidential as defined in Section 201.7 of Article 14 of the Civil Service Law" be excepted from representation by the Union.

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<sup>1</sup> Article One of Agreement.

Section 201.7(a) of Article 14 of the Civil Service Law

states:

7. (a) The term "public employee" means any person holding a position by appointment or employment in the service of a public employer, except that such term shall not include for the purposes of any provision of this article other than sections two hundred ten and two hundred eleven of this article, judges and justices of the unified court system, persons holding positions by appointment or employment in the organized militia of the state and persons who may reasonably be designated from time to time as managerial or confidential upon application of the public employer to the appropriate board in accordance with procedures established pursuant to section two hundred five or two hundred twelve of this article, which procedures shall provide that any such designations made during a period of unchallenged representation pursuant to subdivision two of section two hundred eight of this chapter shall only become effective upon the termination of such period of unchallenged representation. 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). (underlining supplied)

\* \* \* \* \*

Applying these criteria to the facts presented, I conclude the following one hundred twelve (112) employees were wrongly excluded from the Union's bargaining unit:

NAME	TITLE	OFFICE/LOCATION
Anna Agoropoulos	Associate Education Analyst	Instructional & Information Technology 335 Adams Street 29 <sup>th</sup> floor

		Brooklyn, NY 11201
Marilyn Agustin	Associate Education Analyst	Finance 52 Chambers Street New York, NY 10007
Jontra Angrum	Associate Education Analyst	Adult & Continuing Education 475 Nostrand Avenue Brooklyn, NY 11216
Marcie Arguello	Associate Education Analyst	Space Planning 131 Livingston Street #209 Brooklyn, NY 11201
Andrew Armet	Associate Education Analyst	Grant Administration 715 Ocean Terrace Road Staten Island, NY 10301
Marie-Jouvelle Aubourg	Associate Education Analyst	DHRT Office of Teacher Recruitment and Quality 65 Court Street Room 320 Brooklyn, NY 11201
Girraj Bansai	Associate Education Analyst	Instructional & Information Technology/DFO Fiscal Affairs (54DF01)
Richard S. Barbiera	Associate Education Analyst	96 RISC Staten Island ISC 715 Ocean Terrace Road, A-314 Staten Island, NY 10301
Barbara Barkan	Education Analyst	HR/WEP Unit 65 Court Street Brooklyn, NY 11201
Emilia Barrett	Associate Education Analyst	Scholarship & Incentive Programs 65 Court Street Room 508 Brooklyn, NY 11201
Paul S. Barth	Associate Education Analyst	Queens UPK 82-01 Rockaway Blvd. Ozone Park, NY 11416

Deanna Beasley	Associate Education Analyst	Early Childhood Ed. 1 Fordham Plaza Room 808 Bronx, NY 10458
Germaine Behagen	Associate Education Analyst	Children First Network 6 1230 Zerega Ave. Bronx, NY 10462
Ermine Bergamino	Associate Education Analyst	Early Childhood Ed. 715 Ocean Terrace Staten Island, NY 10301
Joel Berlinsky	Associate Education Analyst	DBOR 52 Chambers Street New York, NY 10007
Barbara Biscotti	Associate Education Analyst	Sub Central 65 Court Street Brooklyn, NY 11201
Antoinette Brown	Associate Education Analyst	Administrative Payroll 65 Court Street Brooklyn, NY 11201
Nemeesha R. Brown	Associate Education Officer	Office of Accountability (40M04S)
Kali A. Browne <sup>2</sup>	Education Analyst	After School Professional Development 65 Court Street Room 301 Brooklyn, NY 11201
Robert Bubnik	Associate Education Analyst	Capital Budget & Financial Planning 335 Adams Street 28 <sup>th</sup> floor, H305 Brooklyn, NY 11201
Sylvia K. Chan	Associate Education Analyst	Portfolio Planning (56PP09) 52 Chambers Street New York, NY 10007
Yenjen Chang	Associate Education Analyst	Instructional and Information

<sup>2</sup> Subsequent to the hearings the Department informed the Union Kali A. Browne was terminated on April 1, 2011. If someone has been placed in the position formerly held by Kali A. Browne, that person would be a member of the bargaining unit.

		Technology/DFO Fiscal Affairs (54DF01)
Nathifa A. Charles	Associate Education Analyst	Human Resources (46C113)
Samuel Cheung	Associate Education Analyst	Operational Support Services - Bilingual Pupil Services 65 Court Street #504 Brooklyn, NY 11201
Alice H. Chiappetta	Associate Education Analyst	Instructional & Information Technology 335 Adams Street 28 <sup>th</sup> floor Brooklyn, NY 11201
Leah Ciaschi <sup>3</sup>	Associate Education Officer	Office of Accountability (40M04S)
Ronald C. Clemente	Associate Education Analyst	Portfolio Planning (56PP04)
Frantz Cochy	Associate Education Analyst	Portfolio Planning (56PP04)
Terence P. Connors	Associate Education Analyst	Adult Ed Services (79K055)
Yvonne Cordero- Collazo	Associate Education Analyst	Phoenix Academy P.O. Box 458 Stoney Street Shrub Oak, NY 10588
Mark N. Crespi	Associate Education Analyst	Childrens First Network 533 715 Ocean Terrace Staten Island, NY 10301
Scott F. David	Associate Education Analyst	Revenue Operations 65 Court Street

<sup>3</sup> Subsequent to the hearings, the Department notified the Union Leah Ciaschi had moved into an Administrative Education Officer title not covered by Article One of the Agreement. If someone has been placed in the position formerly held by Leah Ciaschi, that person would be a member of the bargaining unit.



		Brooklyn, NY 11201
George L. Davis <sup>4</sup>	Associate Education Officer	Academics Performance & Support 52 Chambers Street Room 313 New York, NY 10007
Aneta DeClara	Associate Education Analyst	Early Childhood Ed. 82-01 Rockaway Blvd. Ozone Park, NY 11416
Grace R. Denza	Associate Education Analyst	Instructional & Information Technology 335 Adams Street 28 <sup>th</sup> floor Brooklyn, NY 11201
Jeffrey Dixon	Associate Education Analyst	Portfolio Planning (56PP04)
Patricia Duffy	Associate Education Analyst	Operational Support 65 Court Street Room 504 Brooklyn, NY 11201
Luis Echevarria	Associate Education Analyst	Scholarships & Incentives 65 Court Street Room 508 Brooklyn, NY 11201
Nicole Fenice	Associate Education Analyst	Early Childhood Ed. MS 113 300 Adelphi Street Room 206 Brooklyn, NY 11205
Janet L. Forbes	Associate Education Analyst	Human Resources 65 Court Street Brooklyn, NY 11201
Daphne Franklin	Associate Education Officer	RTTT - Innovation Central (2.0)
Callista Frederic	Associate Education Analyst	Queens UPK 82-01 Rockaway Blvd. Room 420 Ozone Park, NY 11416

<sup>4</sup>Subsequent to the hearings, the Department informed the Union George L. Davis was terminated on July 27, 2011. If someone has been placed in the position formerly held by George L. Davis, that person would be a member of the bargaining unit.

Maria A. Gambino	Associate Education Analyst	Academic Support/Childrens First Network 605
Yvonne Ganesh	Associate Education Analyst	Queens UPK 82-01 Rockaway Blvd. Ozone Park, NY 11416
Clara D. Glasgow	Associate Education Analyst	Contracts & Purchasing 65 Court Street Brooklyn, NY 11201
Reinaldo Gonzalez	Associate Education Analyst	School & Youth Development 52 Chambers Street New York, NY 10007
Michael Greenberg	Associate Education Analyst	Student Enrollment 52 Chambers Street New York, NY 10007
Michael Grobshteyn	Associate Education Analyst	School Facilities 44-36 Vernon Blvd. Long Island City, NY 11101
Qing Guo	Associate Education Analyst	Capital Budget 52 Chambers Street New York, NY 10007
Edwin Hankerson	Associate Education Analyst	Students in Temporary Housing 333 7 <sup>th</sup> Avenue Room 760 New York, NY 10001
Salustio Herrera	Associate Education Analyst	FSBO Client Services (98FS03)
Lawrence G. Houston	Education Analyst	NYCSCA - Capital Planning 30-30 Thomson Avenue Long Island City, NY 11101
Erika F. Humphrey <sup>5</sup>	Associate Education Officer	School & Youth Development (60B111)
Edward M. Illiano	Associate Education	Finance

<sup>5</sup> Subsequent to the hearings, the Department notified the Union Erika F. Humphrey moved into a title not covered by Article One of the Agreement. If someone has been placed in the position formerly held by Erika F. Humphrey, that person would be a member of the bargaining unit.

	Analyst	65 Court Street Brooklyn, NY 11201
Carmen Irizarry	Associate Education Analyst	Bronx UPK Contracts 1 Fordham Plaza Room 808 Bronx, NY
Carlene Johnson	Associate Education Analyst	Portfolio Planning (56PP04)
Kami Kent	Associate Education Analyst	Instructional & Information Technology 335 Adams Street 28 <sup>th</sup> floor Brooklyn, NY 11201
Ira Kerper	Associate Education Analyst	Children First Network 407 4360 Broadway New York, NY 10033
Cory Labanow	Associate Education Officer	Achievement Resources 52 Chambers Street New York, NY 10007
Tatiana LaForest	Associate Education Analyst	Adult & Continuing Education 475 Nostrand Avenue Brooklyn, NY 11216
Jennifer Lai <sup>6</sup>	Associate Education Analyst	Childrens First Network 405 131 Livingston Street Brooklyn, NY 11201
Dwayne Lennon	Associate Education Analyst	Financial Operations 65 Court Street Brooklyn, NY 11201
Hong Liu	Associate Education Analyst	Performance & Accountability 335 Adams Street 28 <sup>th</sup> floor Brooklyn, NY 11201
Jennifer Lopez	Associate Education Analyst	Human Resources 52 Chambers Street

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<sup>6</sup>Subsequent to the hearings, the Department notified the Union Jennifer Lai moved into an Administrative Education Officer title not covered by Article One of the Agreement. If someone has been placed in the position formerly held by Jennifer Lai, that person would be a member of the bargaining unit.

		Room 215 New York, NY 10007
Michele C. Lord	Associate Education Officer	Zoning and Parent Choice (35E616)
Heidi Malcolm	Associate Education Analyst	Revenue Operations 65 Court Street Room 824 Brooklyn, NY 11201
Mirna I. Masa	Associate Education Analyst	International Teachers Support Unit 65 Court Street Room 506B Brooklyn, NY 11201
Daniel Menezes	Associate Education Officer	Accountability (40M04S)
Pauline Miller-John	Associate Education Analyst	School & Youth Development 131 Livingston Street Brooklyn, NY 11201
Jose Morales	Associate Education Analyst	Financial Operations 65 Court Street Room 1400 Brooklyn, NY 11201
Marilyn Moreno	Associate Education Analyst	Instructional & Information Technology 2 Metrotech Brooklyn, NY 11201
Susan C. Naste	Associate Education Analyst	Contracts & Purchasing 65 Court Street Brooklyn, NY 11201
Carmelita Neal	Associate Education Analyst	Instructional and Information Technology 335 Adams Street Brooklyn, NY 11201
Maria Nieves	Associate Education Analyst	Instructional and Information Technology 335 Adams Street Suite 2800 Brooklyn, NY 11201
Andre J. Noel	Associate Education Analyst	Portfolio Planning (56PP04)

Christopher U. Obuseli	Education Analyst	Brooklyn Integrated Service Center 131 Livingston Street, Room 501 Brooklyn, NY 11201
Christine L. Paduch	Associate Education Officer	ARIS (ARRA Pro. Admin.)
Bart Pelucco <sup>7</sup>	Associate Education Analyst	Support Services 44-36 Vernon Blvd. Room 403 Long Island City, NY 11101
Patricia Perales <sup>8</sup>	Associate Education Analyst	Childrens First Network 541/402 130 Livingston Street Brooklyn, NY 11201
Kristine L. Pinon	Associate Education Analyst	District 75 ISC 28-11 Queens Plaza North Long Island City, NY 11101
Anthony J. Plunkett	Associate Education Analyst	Assessment 52 Chambers Street Room 315 New York, NY 10007
Marc G. Pongnon	Associate Education Analyst	OACE 475 Nostrand Avenue Brooklyn, NY 11216
Maria Ramos	Associate Education Analyst	Cluster 2 30-48 Linden Place Flushing, NY 11354
James Range	Associate Education Analyst	Financial Operations 65 Court Street

<sup>7</sup>Subsequent to the hearings, the Department notified the Union Bart Pelucco moved into an Administrative Staff Analyst title not covered by Article One of the Agreement. If someone has been placed in the position formerly held by Bart Pelucco, that person would be a member of the bargaining unit.

<sup>8</sup>Subsequent to the hearings, the Department notified the Union Patricia Perales moved into an Administrative Education Analyst title not covered by Article One of the Agreement. If someone has been placed in the position formerly held by Patricia Perales, that person would be a member of the bargaining unit.

		Room 1301 Brooklyn, NY 11201
Sheila Reese	Associate Education Analyst	Childrens First Network 204 30-48 Linden Place Room 319 Flushing, NY 11354
Charles Reeves	Associate Education Analyst	Queens ISC 28-11 Queens Plaza North Long Island City, NY 11101
Ann M. Ricci-Mastro	Associate Education Analyst	Extended Use/Grants 715 Ocean Terrace Staten Island, NY 10301
Ines Richards	Associate Education Analyst	Financial Management & Reporting 65 Court Street Brooklyn, NY 11201
Eleanor Rollins	Associate Education Analyst	Teacher Recruitment & Quality 65 Court Street Brooklyn, NY 11201
Elizabeth Roman	Associate Education Analyst	Staten Island ISC Budget Office 715 Ocean Terrace Staten Island, NY 10301
Frank Savasta	Associate Education Analyst	Revenue Administration 65 Court Street Room 824 Brooklyn, NY 11201
Gaindaa Sawh	Associate Education Analyst	School Facilities 44-36 Vernon Blvd. Long Island City, NY 11101
Nelida Sebili	Associate Education Analyst	Early Childhood Ed. 300 Adelphi Street Brooklyn, NY 11205
Kandasam R. Shivakumar	Associate Education Analyst	Human Resources 65 Court Street Room 504 Brooklyn, NY 11201
Sharon Siegel	Associate Education	Human Resources

	Analyst	65 Court Street Room 502 Brooklyn, NY 11201
Montgomery Smith <sup>9</sup>	Associate Education Officer	Students in Temporary Housing 28-11 Queens Plaza North, Long Island City, NY 11101
Vanessa G. Sullivan	Associate Education Analyst	Operational Support Services (SAP) 65 Court Street Room 504 Brooklyn, NY 11201
Nancy C. Tang	Associate Education Analyst	Revenue Administration 65 Court Street Brooklyn, NY 11201
Susan Than	Associate Education Analyst	Children First Network 202 (94N202)
Toye E. Tossas	Associate Education Analyst	Operations Support 65 Court Street Brooklyn, NY 11201
Ada Uribe <sup>10</sup>	Associate Education Officer	Students in Temporary Housing 1 Fordham Plaza Room 816 Bronx, NY 10458
Juanita Vega	Associate Education Analyst	Financial Planning 52 Chambers Street New York, NY 10007
Maria L. Villafane	Associate Education Analyst	Nursing (67E644)
Raquel Virola	Associate Education Analyst	Tweed Human Resources 52 Chambers Street

<sup>9</sup> Subsequent to the hearings, the Department notified the Union Montgomery Smith moved into a title not covered by Article One of the Agreement. If someone has been placed in the position formerly held by Montgomery Smith, that person would be a member of the bargaining unit.

<sup>10</sup> Subsequent to the hearings, the Department notified the Union Ada Uribe moved into a title not covered by Article One of the Agreement. If someone has been placed in the position formerly held by Ada Uribe, that person would be a member of the bargaining unit.

		New York, NY 10007
Lewis Waldman	Education Analyst	Field Services 65 Court Street Brooklyn, NY 11201
Manjit Walia	Associate Education Analyst	Certification 65 Court Street Brooklyn, NY 11201
Cynthia S. Warner	Associate Education Officer	E-learning (83EL01)
Joy L. Williams	Associate Education Analyst	Human Resources (46C113)
Stephen Williams	Associate Education Analyst	District 49 Finance Budget Unit 335 Adams Street 28 <sup>th</sup> floor Brooklyn, NY 11201
Ellen Winkler	Associate Education Analyst	Certification 65 Court Street Brooklyn, NY 11201
Jessica Yanez	Associate Education Analyst	Portfolio Planning (56PP04)
Michele Zeitchik	Associate Education Analyst	Budget Operations & Review 52 Chambers Street New York, NY 10007

As to these employees, I find, after reviewing all of the pertinent facts, each was employed in an Education Officer title but was neither managerial nor confidential within the meaning of the Agreement.<sup>11</sup>

The evidence presented demonstrated these persons were not involved in preparing for collective bargaining or conducting

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<sup>11</sup> An additional employee, Vandna Mehta, filled out and returned a survey and was the subject of additional testimony presented during the hearings. However, upon the Department's undisputed representation, Mehta retired from the Department's employ in January 2011 and her position was not filled. Therefore, no finding has been made as to whether Mehta belonged in the bargaining unit.



negotiations with the Union over terms and conditions of employment. Nor did they play a significant role in policy formulation or perform major roles in the administration of the Agreement or personnel administration. As such, I find these persons were not managerial employees within the meaning of the Agreement.

As well, I am persuaded these persons were not privy to labor relations information unintended for sharing with members of the bargaining unit or their Union representatives. Nor do I find they were called upon to serve in a confidential capacity with managerial employees of the Department. As such, I conclude these employees were not confidential within the meaning of the Agreement.

Since the persons listed above were employed by the Department within Education Officer titles, but were not managerial or confidential employees, they did not fall within the exceptions to Union representation adopted in Article One of the Agreement. Instead, Article One required they be treated as being within the Union's bargaining unit. Under these proven circumstances, I conclude the Department violated the Agreement by treating these one hundred twelve (112) employees as being outside of the bargaining unit.

In contrast, the following thirty five (35) persons were properly excluded from the Union's bargaining unit:

NAME	TITLE	OFFICE/LOCATION
Theresa J. Argudo	Associate Education Analyst	Deputy Chancellor for Comm. Engagement 52 Chambers Street New York, NY 10007
Meghan Barboza	Associate Education Analyst	Family Engagement & Advocacy 49 Chambers Street New York, NY 10007
Holly Bedwell	Education Analyst	School & Youth Development 131 Livingston Street, Room 408 Brooklyn, NY 11201
Aderemi Bello	Associate Education Analyst	Personnel Investigation 15 Court Street Brooklyn, NY 11201
William H. Brewton	Associate Education Analyst	Equal Opportunity (66D769)
Amanda B. Cahn	Associate Education Officer	Portfolio Planning 52 Chambers Street New York, NY 10007
Katherine B. Connelly	Associate Education Officer	Operations and Administration Services /Accountability (40M04S)
Glenn B. Darien	Associate Education Analyst	Human Resouces (46C113)
Arlene Dominguez	Associate Education Analyst	Strategic Partnerships 52 Chambers Street New York, NY 10007
Ronald Eisenberg	Associate Education Analyst	Students With Disabilities & E.L.L. 52 Chambers Street, Room 220 New York, NY 10007
Chanelle F. Figueroa	Associate Education Analyst	Alternative Programs Admin. (79K802)
Judith A. Foster	Associate Education Analyst	School Food/Support Services 44-36 Vernon Blvd.

		Long Island City, NY 11101
Jessica Fredston Hermann	Education Officer	Portfolio Planning (56PP02)
Mercuria Gibson	Associate Education Analyst	Human Resources - Medical Administration 65 Court Street, Room 201-9 Brooklyn, NY 11201
Oliver Ho	Associate Education Officer	Academics Performance & Support 52 Chambers Street New York, NY 10007
Brandi L. Holten	Education Officer	Portfolio Planning (56PP09)
Sheldon D. Hychman	Associate Education Analyst	OPI/Human Resources (46C113)
Stephen Kassan	Associate Education Analyst	School Buildings (52G873)
Robin Kittrell	Associate Education Analyst	Appeals & Reviews 65 Court Street Brooklyn, NY 11201
Arlane A. Levy	Education Analyst	Human Resources (46C113)
Judith V. Murray	Associate Education Analyst	School Based Support Services Unit 65 Court Street Room 504 Brooklyn, NY 11201
Janice Oh	Associate Education Officer	Operations 52 Chambers Street New York, NY 10007
Stacey Oliger	Education Analyst	District 79 4360 Broadway 4 <sup>th</sup> floor New York, NY 10033
Rebecca Nylini Rawlins	Associate Education Analyst	Portfolio Planning 52 Chambers Street Room 405 New York, NY 10007
Angel R. Rivera	Associate Education Analyst	Bureau of Non-Public Schools (64D469)
Dave Roman	Associate Education Analyst	Equal Opportunity (66D769)
Samuel Rosaldo	Associate Education	District 79

	Officer	4360 Broadway 4 <sup>th</sup> floor New York, NY 10033
Tritia Samaniego	Associate Education Officer	District 79 4360 Broadway 4 <sup>th</sup> floor New York, NY 10033
James Sarkis	Associate Education Analyst	School Facilities 44-36 Vernon Blvd. Long Island City, NY 11101
Roseanne L. Secor	Associate Education Officer	Portfolio Planning (56PP09)
Aglae Shaw	Associate Education Officer	
Roberto N. Storelli- Castro	Associate Education Analyst	Intergovernment Affairs (57M070)
Joy Thomas	Associate Education Analyst	School & Youth Development 52 Chambers Street New York, NY 10007
Katherine C. Weiland	Associate Education Analyst	Human Resources 65 Court Street Room 405 Brooklyn, NY 11201
Jun Xu	Associate Education Analyst	Budget Operations & Review 335 Adams Street 28 <sup>th</sup> floor Brooklyn, NY 11201

The record demonstrates these employees were managerial or confidential within the meaning of the Agreement. Some had significant input into policy formulation and initiatives, including but not limited to school phase outs and layoff recommendations affecting members of the Union's bargaining unit. Others performed tasks involving review and analysis of collective bargaining proposals. Still others were called upon to provide high level policy analysis to senior management or to

execute personnel administration functions, including the performance of sensitive and confidential investigations, medical claims determinations or grievance administration for the Department. Some also served in a confidential capacity to managerial employees of the Department.<sup>12</sup>

Suffice it to say, after carefully examining all of the evidence and arguments presented, I am convinced the above listed thirty five (35) persons were managerial or confidential employees within the meaning of the Agreement. Therefore, they fell within the exceptions to Union recognition recited in Article One of the Agreement and were properly viewed as being outside of the Union's bargaining unit. I find the Department's treatment of these thirty five (35) persons as being outside of the bargaining unit did not violate the Agreement.

There remains the question of what remedy is appropriate for the Department's wrongful exclusion of the one hundred twelve (112) persons I have determined belonged in the Union's bargaining unit. The Union has asked each person be placed into its bargaining unit with back pay and benefits differentials

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<sup>12</sup> An additional employee, John Kelleher, filled out and returned a survey and was the subject of additional testimony presented during the hearings. However, based upon the Department's undisputed representation, it appears Kelleher was promoted out of his former Education Officer title and the position has not been refilled. Therefore, no finding has been made as to whether Kelleher belonged in the bargaining unit.

retroactive to his or her date of hire. The Department has opposed retroactive relief as unduly burdensome and inequitable.

As well, both parties recognize the group of one hundred twelve (112) persons contains several persons no longer serving in an Education Officer title.

Under all of these circumstances and after careful consideration, I am persuaded relief retroactive to April 7, 2011, is appropriate. Therefore, I shall direct the Department treat each of the persons listed above as being in the Union's bargaining unit as of April 7, 2011, other than Kali A. Browne, who was terminated on April 1, 2011. The Department shall make each of these persons whole for any compensation and benefits not received from April 7, 2011, forward, as a result of their being treated as outside of the Union's bargaining unit. Any back pay differentials calculated in furtherance of this Award shall be less applicable payroll deductions including Union dues or agency fees. I shall also require the parties cooperate in notifying said persons of their status as members of the Union's bargaining unit. As well, the Department will be directed to provide the Union sufficient contact information for said persons to enable the Union to service these newly represented employees.

As to those persons listed above in covered positions, where the person no longer is employed in the covered Education

Officer title, I shall direct the Department to inform the Union of the date when each such person left the covered title, whether the duties formerly performed by such person in that title are still being performed by other personnel and if so, the contact information for the person performing those duties.

The Department shall notify the Union when an incumbent is removed from or leaves an Education Officer position. If the position is filled with another person, the Department shall inform the Union and provide the Union the name and contact information of the person who is filling the position, sufficient for the Union to contact the new occupant of the position and undertake representation. These requirements are inherent in Article One, which recognizes the Union's status as exclusive bargaining agent for persons holding positions of employment within its bargaining unit. For all these reasons, I shall require the Department, going forward, to so notify and inform the Union.

As requested, I shall retain jurisdiction to resolve any disputes over implementation of my Opinion and Award, until the end of the 2011 - 2012, school year. As well, because the situation underlying this dispute has been fluid, with many changes in circumstances occurring while the matter was pending, I have set forth and applied the general rules and disposed of the particular positions presented, but recognize there may be

disputes involving other employees holding the same title(s).  
Therefore, as requested, my retention of jurisdiction shall also  
include such claims arising during the period I have retained  
jurisdiction.

In all, the Union's grievance is sustained in part and  
denied in part.



**AWARD**

1. The Department violated the Agreement by treating the following one hundred twelve (112) persons as being outside of the Union's bargaining unit:

NAME	TITLE	OFFICE/LOCATION
Anna Agoropoulos	Associate Education Analyst	Instructional & Information Technology 335 Adams Street 29 <sup>th</sup> floor Brooklyn, NY 11201
Marilyn Agustin	Associate Education Analyst	Finance 52 Chambers Street New York, NY 10007
Jontra Angrum	Associate Education Analyst	Adult & Continuing Education 475 Nostrand Avenue Brooklyn, NY 11216
Marcie Arguello	Associate Education Analyst	Space Planning 131 Livingston Street #209 Brooklyn, NY 11201
Andrew Armet	Associate Education Analyst	Grant Administration 715 Ocean Terrace Road Staten Island, NY 10301
Marie-Jouvelle Aubourg	Associate Education Analyst	DHRT Office of Teacher Recruitment and Quality 65 Court Street Room 320 Brooklyn, NY 11201
Girraj Bansai	Associate Education Analyst	Instructional & Information Technology/DFO Fiscal Affairs (54DF01)
Richard S. Barbiera	Associate Education Analyst	96 RISC Staten Island ISC 715 Ocean Terrace Road, A-314 Staten Island, NY

		10301
Barbara Barkan	Education Analyst	HR/WEP Unit 65 Court Street Brooklyn, NY 11201
Emilia Barrett	Associate Education Analyst	Scholarship & Incentive Programs 65 Court Street Room 508 Brooklyn, NY 11201
Paul S. Barth	Associate Education Analyst	Queens UPK 82-01 Rockaway Blvd. Ozone Park, NY 11416
Deanna Beasley	Associate Education Analyst	Early Childhood Ed. 1 Fordham Plaza Room 808 Bronx, NY 10458
Germaine Behagen	Associate Education Analyst	Children First Network 6 1230 Zerega Ave. Bronx, NY 10462
Ermine Bergamino	Associate Education Analyst	Early Childhood Ed. 715 Ocean Terrace Staten Island, NY 10301
Joel Berlinsky	Associate Education Analyst	DBOR 52 Chambers Street New York, NY 10007
Barbara Biscotti	Associate Education Analyst	Sub Central 65 Court Street Brooklyn, NY 11201
Antoinette Brown	Associate Education Analyst	Administrative Payroll 65 Court Street Brooklyn, NY 11201
Nemeesha R. Brown	Associate Education Officer	Office of Accountability (40M04S)
Kali A. Browne**	Education Analyst	After School Professional Development 65 Court Street Room 301 Brooklyn, NY 11201
Robert Bubnik	Associate Education Analyst	Capital Budget & Financial Planning 335 Adams Street 28 <sup>th</sup> floor, H305

		Brooklyn, NY 11201
Sylvia K. Chan	Associate Education Analyst	Portfolio Planning (56PP09) 52 Chambers Street New York, NY 10007
Yenjen Chang	Associate Education Analyst	Instructional and Information Technology/DFO Fiscal Affairs (54DF01)
Nathifa A. Charles	Associate Education Analyst	Human Resources (46C113)
Samuel Cheung	Associate Education Analyst	Operational Support Services - Bilingual Pupil Services 65 Court Street #504 Brooklyn, NY 11201
Alice H. Chiappetta	Associate Education Analyst	Instructional & Information Technology 335 Adams Street 28 <sup>th</sup> floor Brooklyn, NY 11201
Leah Ciaschi**	Associate Education Officer	Office of Accountability (40M04S)
Ronald C. Clemente	Associate Education Analyst	Portfolio Planning (56PP04)
Frantz Cochy	Associate Education Analyst	Portfolio Planning (56PP04)
Terence P. Connors	Associate Education Analyst	Adult Ed Services (79K055)
Yvonne Cordero-Collazo	Associate Education Analyst	Phoenix Academy P.O. Box 458 Stoney Street Shrub Oak, NY 10588
Mark N. Crespi	Associate Education Analyst	Childrens First Network 533 715 Ocean Terrace Staten Island, NY 10301
Scott F. David	Associate Education	Revenue Operations

	Analyst	65 Court Street Brooklyn, NY 11201
George L. Davis**	Associate Education Officer	Academics Performance & Support 52 Chambers Street Room 313 New York, NY 10007
Aneta DeClara	Associate Education Analyst	Early Childhood Ed. 82-01 Rockaway Blvd. Ozone Park, NY 11416
Grace R. Denza	Associate Education Analyst	Instructional & Information Technology 335 Adams Street 28 <sup>th</sup> floor Brooklyn, NY 11201
Jeffrey Dixon	Associate Education Analyst	Portfolio Planning (56PP04)
Patricia Duffy	Associate Education Analyst	Operational Support 65 Court Street Room 504 Brooklyn, NY 11201
Luis Echevarria	Associate Education Analyst	Scholarships & Incentives 65 Court Street Room 508 Brooklyn, NY 11201
Nicole Fenice	Associate Education Analyst	Early Childhood Ed. MS 113 300 Adelphi Street Room 206 Brooklyn, NY 11205
Janet L. Forbes	Associate Education Analyst	Human Resources 65 Court Street Brooklyn, NY 11201
Daphne Franklin	Associate Education Officer	RTTT - Innovation Central (2.0)
Callista Frederic	Associate Education Analyst	Queens UPK 82-01 Rockaway Blvd. Room 420 Ozone Park, NY 11416
Maria A. Gambino	Associate Education Analyst	Academic Support/Childrens First Network 605
Yvonne Ganesh	Associate Education	Queens UPK

	Analyst	82-01 Rockaway Blvd. Ozone Park, NY 11416
Clara D. Glasgow	Associate Education Analyst	Contracts & Purchasing 65 Court Street Brooklyn, NY 11201
Reinaldo Gonzalez	Associate Education Analyst	School & Youth Development 52 Chambers Street New York, NY 10007
Michael Greenberg	Associate Education Analyst	Student Enrollment 52 Chambers Street New York, NY 10007
Michael Grobshteyn	Associate Education Analyst	School Facilities 44-36 Vernon Blvd. Long Island City, NY 11101
Qing Guo	Associate Education Analyst	Capital Budget 52 Chambers Street New York, NY 10007
Edwin Hankerson	Associate Education Analyst	Students in Temporary Housing 333 7 <sup>th</sup> Avenue Room 760 New York, NY 10001
Salustio Herrera	Associate Education Analyst	FSBO Client Services (98FS03)
Lawrence G. Houston	Education Analyst	NYCSCA - Capital Planning 30-30 Thomson Avenue Long Island City, NY 11101
Erika F. Humphrey**	Associate Education Officer	School & Youth Development (60B111)
Edward M. Illiano	Associate Education Analyst	Finance 65 Court Street Brooklyn, NY 11201
Carmen Irizarry	Associate Education Analyst	Bronx UPK Contracts 1 Fordham Plaza Room 808 Bronx, NY
Carlene Johnson	Associate Education Analyst	Portfolio Planning (56PP04)
Kami Kent	Associate Education Analyst	Instructional & Information

		Technology 335 Adams Street 28 <sup>th</sup> floor Brooklyn, NY 11201
Ira Kerper	Associate Education Analyst	Children First Network 407 4360 Broadway New York, NY 10033
Cory Labanow	Associate Education Officer	Achievement Resources 52 Chambers Street New York, NY 10007
Tatiana LaForest	Associate Education Analyst	Adult & Continuing Education 475 Nostrand Avenue Brooklyn, NY 11216
Jennifer Lai**	Associate Education Analyst	Childrens First Network 405 131 Livingston Street Brooklyn, NY 11201
Dwayne Lennon	Associate Education Analyst	Financial Operations 65 Court Street Brooklyn, NY 11201
Hong Liu	Associate Education Analyst	Performance & Accountability 335 Adams Street 28 <sup>th</sup> floor Brooklyn, NY 11201
Jennifer Lopez	Associate Education Analyst	Human Resources 52 Chambers Street Room 215 New York, NY 10007
Michele C. Lord	Associate Education Officer	Zoning and Parent Choice (35E616)
Heidi Malcolm	Associate Education Analyst	Revenue Operations 65 Court Street Room 824 Brooklyn, NY 11201
Mirna I. Masa	Associate Education Analyst	International Teachers Support Unit 65 Court Street Room 506B Brooklyn, NY 11201
Daniel Menezes	Associate Education Officer	Accountability (40M04S)

Pauline Miller-John	Associate Education Analyst	School & Youth Development 131 Livingston Street Brooklyn, NY 11201
Jose Morales	Associate Education Analyst	Financial Operations 65 Court Street Room 1400 Brooklyn, NY 11201
Marilyn Moreno	Associate Education Analyst	Instructional & Information Technology 2 Metrotech Brooklyn, NY 11201
Susan C. Naste	Associate Education Analyst	Contracts & Purchasing 65 Court Street Brooklyn, NY 11201
Carmelita Neal	Associate Education Analyst	Instructional and Information Technology 335 Adams Street Brooklyn, NY 11201
Maria Nieves	Associate Education Analyst	Instructional and Information Technology 335 Adams Street Suite 2800 Brooklyn, NY 11201
Andre J. Noel	Associate Education Analyst	Portfolio Planning (56PP04)
Christopher U. Obuseli	Education Analyst	Brooklyn Integrated Service Center 131 Livingston Street, Room 501 Brooklyn, NY 11201
Christine L. Paduch	Associate Education Officer	ARIS (ARRA Pro. Admin.)
Bart Pelucco**	Associate Education Analyst	Support Services 44-36 Vernon Blvd. Room 403 Long Island City, NY 11101
Patricia Perales**	Associate Education Analyst	Childrens First Network 541/402 130 Livingston

		Street Brooklyn, NY 11201
Kristine L. Pinon	Associate Education Analyst	District 75 ISC 28-11 Queens Plaza North Long Island City, NY 11101
Anthony J. Plunkett	Associate Education Analyst	Assessment 52 Chambers Street Room 315 New York, NY 10007
Marc G. Pongnon	Associate Education Analyst	OACE 475 Nostrand Avenue Brooklyn, NY 11216
Maria Ramos	Associate Education Analyst	Cluster 2 30-48 Linden Place Flushing, NY 11354
James Range	Associate Education Analyst	Financial Operations 65 Court Street Room 1301 Brooklyn, NY 11201
Sheila Reese	Associate Education Analyst	Childrens First Network 204 30-48 Linden Place Room 319 Flushing, NY 11354
Charles Reeves	Associate Education Analyst	Queens ISC 28-11 Queens Plaza North Long Island City, NY 11101
Ann M. Ricci-Mastro	Associate Education Analyst	Extended Use/Grants 715 Ocean Terrace Staten Island, NY 10301
Ines Richards	Associate Education Analyst	Financial Management & Reporting 65 Court Street Brooklyn, NY 11201
Eleanor Rollins	Associate Education Analyst	Teacher Recruitment & Quality 65 Court Street Brooklyn, NY 11201
Elizabeth Roman	Associate Education Analyst	Staten Island ISC Budget Office 715 Ocean Terrace



		Staten Island, NY 10301
Frank Savasta	Associate Education Analyst	Revenue Administration 65 Court Street Room 824 Brooklyn, NY 11201
Gaindaa Sawh	Associate Education Analyst	School Facilities 44-36 Vernon Blvd. Long Island City, NY 11101
Nelida Sebili	Associate Education Analyst	Early Childhood Ed. 300 Adelphi Street Brooklyn, NY 11205
Kandasam R. Shivakumar	Associate Education Analyst	Human Resources 65 Court Street Room 504 Brooklyn, NY 11201
Sharon Siegel	Associate Education Analyst	Human Resources 65 Court Street Room 502 Brooklyn, NY 11201
Montgomery Smith**	Associate Education Officer	Students in Temporary Housing 28-11 Queens Plaza North, Long Island City, NY 11101
Vanessa G. Sullivan	Associate Education Analyst	Operational Support Services (SAP) 65 Court Street Room 504 Brooklyn, NY 11201
Nancy C. Tang	Associate Education Analyst	Revenue Administration 65 Court Street Brooklyn, NY 11201
Susan Than	Associate Education Analyst	Children First Network 202 (94N202)
Toye E. Tossas	Associate Education Analyst	Operations Support 65 Court Street Brooklyn, NY 11201
Ada Uribe**	Associate Education Officer	Students in Temporary Housing 1 Fordham Plaza Room 816 Bronx, NY 10458
Juanita Vega	Associate Education	Financial Planning

	Analyst	52 Chambers Street New York, NY 10007
Maria L. Villafane	Associate Education Analyst	Nursing (67E644)
Raquel Virola	Associate Education Analyst	Tweed Human Resources 52 Chambers Street New York, NY 10007
Lewis Waldman	Education Analyst	Field Services 65 Court Street Brooklyn, NY 11201
Manjit Walia	Associate Education Analyst	Certification 65 Court Street Brooklyn, NY 11201
Cynthia S. Warner	Associate Education Officer	E-learning (83EL01)
Joy L. Williams	Associate Education Analyst	Human Resources (46C113)
Stephen Williams	Associate Education Analyst	District 49 Finance Budget Unit 335 Adams Street 28 <sup>th</sup> floor Brooklyn, NY 11201
Ellen Winkler	Associate Education Analyst	Certification 65 Court Street Brooklyn, NY 11201
Jessica Yanez	Associate Education Analyst	Portfolio Planning (56PP04)
Michele Zeitchik	Associate Education Analyst	Budget Operations & Review 52 Chambers Street New York, NY 10007

\*\*Kali A. Browne, Leah Ciaschi, George L. Davis, Erika F. Humphrey, Jennifer Lai, Bart Pelucco, Patricia Perales, Montgomery Smith and Ada Uribe are no longer in the bargaining unit because they no longer holding an Education Officer title covered by Article One. If someone has been placed in the position formerly held by these individuals, that person would be a member of the bargaining unit.

2. The Department did not violate the Agreement by treating the following thirty five (35) persons as being outside of the Union's bargaining unit:

NAME	TITLE	OFFICE/LOCATION
Theresa J. Argudo	Associate Education Analyst	Deputy Chancellor for Comm. Engagement 52 Chambers Street New York, NY 10007
Meghan Barboza	Associate Education Analyst	Family Engagement & Advocacy 49 Chambers Street New York, NY 10007
Holly Bedwell	Education Analyst	School & Youth Development 131 Livingston Street, Room 408 Brooklyn, NY 11201
Aderemi Bello	Associate Education Analyst	Personnel Investigation 15 Court Street Brooklyn, NY 11201
William H. Brewton	Associate Education Analyst	Equal Opportunity (66D769)
Amanda B. Cahn	Associate Education Officer	Portfolio Planning 52 Chambers Street New York, NY 10007
Katherine B. Connelly	Associate Education Officer	Operations and Administration Services /Accountability (40M04S)
Glenn B. Darien	Associate Education Analyst	Human Resouces (46C113)
Arlene Dominguez	Associate Education Analyst	Strategic Partnerships 52 Chambers Street New York, NY 10007
Ronald Eisenberg	Associate Education Analyst	Students With Disabilities & E.L.L. 52 Chambers Street, Room 220 New York, NY 10007
Chanelle F. Figueroa	Associate Education Analyst	Alternative Programs Admin. (79K802)

Judith A. Foster	Associate Education Analyst	School Food/Support Services 44-36 Vernon Blvd. Long Island City, NY 11101
Jessica Fredston Hermann	Education Officer	Portfolio Planning (56PP02)
Mercuria Gibson	Associate Education Analyst	Human Resources - Medical Administration 65 Court Street, Room 201-9 Brooklyn, NY 11201
Oliver Ho	Associate Education Officer	Academics Performance & Support 52 Chambers Street New York, NY 10007
Brandi L. Holten	Education Officer	Portfolio Planning (56PP09)
Sheldon D. Hychman	Associate Education Analyst	OPI/Human Resources (46C113)
Stephen Kassin	Associate Education Analyst	School Buildings (52G873)
Robin Kittrell	Associate Education Analyst	Appeals & Reviews 65 Court Street Brooklyn, NY 11201
Arlane A. Levy	Education Analyst	Human Resources (46C113)
Judith V. Murray	Associate Education Analyst	School Based Support Services Unit 65 Court Street Room 504 Brooklyn, NY 11201
Janice Oh	Associate Education Officer	Operations 52 Chambers Street New York, NY 10007
Stacey Oliger	Education Analyst	District 79 4360 Broadway 4 <sup>th</sup> floor New York, NY 10033
Rebecca Nylini Rawlins	Associate Education Analyst	Portfolio Planning 52 Chambers Street Room 405 New York, NY 10007
Angel R. Rivera	Associate Education Analyst	Bureau of Non-Public Schools (64D469)

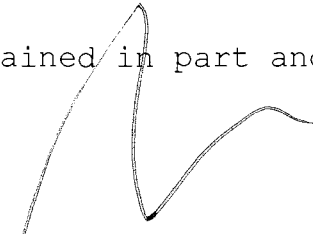
Dave Roman	Associate Education Analyst	Equal Opportunity (66D769)
Samuel Rosaldo	Associate Education Officer	District 79 4360 Broadway 4 <sup>th</sup> floor New York, NY 10033
Tritia Samaniego	Associate Education Officer	District 79 4360 Broadway 4 <sup>th</sup> floor New York, NY 10033
James Sarkis	Associate Education Analyst	School Facilities 44-36 Vernon Blvd. Long Island City, NY 11101
Roseanne L. Secor	Associate Education Officer	Portfolio Planning (56PP09)
Aglae Shaw	Associate Education Officer	
Roberto N. Storelli-Castro	Associate Education Analyst	Intergovernment Affairs (57M070)
Joy Thomas	Associate Education Analyst	School & Youth Development 52 Chambers Street New York, NY 10007
Katherine C. Weiland	Associate Education Analyst	Human Resources 65 Court Street Room 405 Brooklyn, NY 11201
Jun Xu	Associate Education Analyst	Budget Operations & Review 335 Adams Street 28 <sup>th</sup> floor Brooklyn, NY 11201

3. As remedy, the Department shall treat each of the one hundred twelve (112) persons listed in paragraph 1 of this Award, supra, as being in the Union's bargaining unit as of April 7, 2011, other than Kali A. Browne, who was terminated on April 1, 2011. The Department shall make each of these persons whole for any compensation and benefits not received from April 7, 2011, forward, as a result of their being treated as outside of the Union's bargaining unit. Any back pay differentials calculated in furtherance of this Award shall be less applicable payroll deductions including Union dues or agency fees. The parties shall

cooperate in notifying said persons of their status as members of the Union's bargaining unit. The Department shall provide the Union contact information for said persons, sufficient to enable the Union to service these newly represented employees.

4. As to those of the one hundred twelve (112) persons no longer employed in the covered Education Officer title the Department shall inform the Union of the date when each such person left the covered title, whether the duties formerly performed by such person in that title are still being performed by other personnel and if so, the contact information for the persons performing those duties.
5. The Department shall notify the Union when an incumbent is removed from, or leaves, an Education Officer position. If the position is filled with another person, the Department shall inform the Union and provide the Union the name and contact information of the person who is filling the position, sufficient for the Union to contact the new occupant of the position and undertake representation.
6. As requested, I shall retain jurisdiction to resolve any disputes that may arise over the interpretation or implementation of this Opinion and Award, until the end of the 2011 - 2012, school year. As well, because the situation underlying this dispute has been fluid, with many changes in circumstances occurring while the matter was pending, I have set forth and applied the general rules and disposed of the particular positions presented, but recognize there may be disputes involving other employees holding the same title(s). Therefore, as requested, my retention of jurisdiction shall also include such claims arising during the period I have retained jurisdiction.
7. The Union's grievance is sustained in part and denied in part.

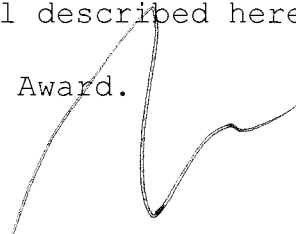
September 8, 2011.

  
\_\_\_\_\_  
Martin F. Scheinman, Esq.  
Arbitrator

STATE OF NEW YORK        )  
                                  )        ss.:  
COUNTY OF NASSAU        )

I, MARTIN F. SCHEINMAN, ESQ., do hereby affirm upon my oath as Arbitrator that I am the individual described herein and who executed this instrument, which is my Award.

September  , 2011.

  
\_\_\_\_\_  
Martin F. Scheinman, Esq.  
Arbitrator