

OSA, 10 OCB2d 2 (BOC 2017)
(Rep) (Docket No. AC-1633-16)

Summary of Decision: The Union sought to amend Certification No. 3-88 to add the title Senior Auditor. HHC argued that the title should be excluded from collective bargaining. The Board found that the employees in the title are eligible for collective bargaining and added the title to the bargaining unit. (***Official decision follows.***)

**OFFICE OF COLLECTIVE BARGAINING
BOARD OF CERTIFICATION**

In the Matter of the Certification Proceeding

-between-

ORGANIZATION OF STAFF ANALYSTS,

Petitioner,

-and-

NEW YORK CITY HEALTH + HOSPITALS,

Respondent.

DECISION AND ORDER

On June 6, 2016, the Organization of Staff Analysts (“Union”) filed a petition requesting that the Board of Certification add the title Senior Auditor (Title Code No. 00462H) to Certification No. 3-88, a bargaining unit including titles such as Senior Health Care Program Planner/Analyst, Clinical Business Analyst I, II, and III, Senior Management Consultant, and Senior Consultant Management Information Systems. The New York City Health + Hospitals Corporation (“HHC”) argues that the titles at issue are managerial and/or confidential and therefore should be excluded from collective bargaining pursuant to § 12-305 of the New York City Collective Bargaining Law (New York City Administrative Code, Title 12, Chapter 3) (“NYCCBL”) or, in the alternative,

pursuant to the New York City Health and Hospitals Corporation Act, N.Y. Unconsolidated Law §§ 7381-7406 (“HHC Act”).¹ The Board has repeatedly found that the NYCCBL and the HHC Act are consistent in mandating that Civil Service Law Article 14 (“Taylor Law” or “CSL”) § 201.7(a) provides the applicable standard to determine eligibility and does so again here. The Board finds that HHC did not establish that the employees in the title at issue are managerial and/or confidential under the NYCCBL or the Taylor Law. Accordingly, the Senior Auditor title is eligible for collective bargaining and appropriately added to Certification No. 3-88.

BACKGROUND

At the time of the hearing in this matter, six employees held the Senior Auditor title, all of whom testified over three days.²

HHC is a public health care system created by New York State statute as a public benefit corporation. It provides medical, mental health, and substance abuse services through its approximately 11 acute care hospitals, four nursing facilities, six diagnostic and treatment centers, and more than 80 community-based clinics throughout the City of New York.

All Senior Auditors work in the Department of Internal Audits (“DIA”) at HHC’s Central Office and report to the Senior Director. The Senior Director reports to the Chief Internal Auditor, who is responsible for directing all internal audit activities across HHC, including determining the audits that the DIA will conduct throughout the year. In addition to Senior Auditors, Staff Auditors report to the Senior Director. Staff Auditors have many of the same auditing duties as Senior

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

² As of November 1, 2016, two employees remained in the Senior Auditor title.

Auditors, but they may not be appointed as the lead auditor for a particular audit. Senior Auditors do not supervise anyone, though they may delegate work to Staff Auditors and fellow Senior Auditors within the context of a specific audit.

The DIA is governed by Operating Procedure No. 50-4 (“OP 50-4”). In addition to articulating the mission of the DIA, OP 50-4 establishes the authority and scope of the Senior Auditors’ powers in conducting audits. It provides that any person under the supervision of the Chief Internal Auditor (including a Senior Auditor) is authorized to: (i) have unrestricted access to all HHC locations, records, data, and personnel; (ii) examine any document or file necessary to conduct an audit; (iii) require any officer of HHC to supply information and explanations as may be needed; and (iv) have discussions with HHC line managers and employees at any reasonable time.

The Senior Auditor job specification provides that an employee in that title performs the following typical assignments:

Directing all activities within assigned projects including communicating with operating management, coordinating the work of other team members, establishing project milestones, completing and monitoring field work progress, providing updates to audit management, and proposing modifications to current procedures to improve audit effectiveness and efficiency for the Department.

Defining expectations for each audit project including objectives, scope, timing, key contacts, and deliverables.

Communicating expectations to Staff Auditors and tracking time budgets for assignments.

Providing feedback to Staff Auditors on audit performance on an on-going basis.

Preparing comprehensive working papers that are consistent with professional standards promulgated by the Institute of Internal Auditors.

Analyzing audit evidence, identifying audit issues, and proposing solutions to be discussed with senior management to initiate change and improve the effectiveness of the control environment or business process.

Working with auditees and the audit team to ensure the successful development of risk assessments and design of audit programs.

Identifying internal control gaps, assigning management in creating action plans to address risks and ensuring that action plans are completed.

Communicating effectively, leading client meetings, discussing issues and reporting progress on the status of the audit.

Drafting clear and concise audit reports that identify key risks and value-added recommendations to improve the effectiveness of the internal control environment.

Contributing to the positive, team-oriented culture of the department by maintaining cooperative relationships, facilitating the resolution of conflicts, sharing information, and accepting and providing constructive feedback.

Keeping current on new industry guidance and standards.

(Joint Exhibit 6) Additionally, the position description states that “[t]he Senior Auditor does not develop procedures, prepare records, make management decisions, or engage in any other activities that could be reasonably construed to compromise objectivity.” (Joint Exhibit 6).

The qualifications for the Senior Auditor title are:

A Baccalaureate Degree from an accredited college or university in accounting, finance, or business administration;

Three-plus years of responsible level experience in internal auditing and/or public accounting, of which at least one year shall be in a capacity of supervising audits and staff;

Knowledge of manual and computer-based systems and the capacity to develop effective financial and operational audit programs;

Working knowledge of the Internal Auditing Standards promulgated by the Institute of Internal Auditors and Generally Accepted Accounting Principles;

Ability to work with all types of people and to easily adapt to various environments and situations as necessary;

Able to travel to and from the various HHC facilities;

A Master's degree or relevant professional certification such as Certified Internal Auditor (CIA), Certified Fraud Examiner (CFE) or Certified Public Accountant (CPA) is a plus.

(Joint Exhibit 6)

The primary duty of a Senior Auditor is to conduct audits, either as the lead auditor or as a member of the audit team.³ The matter to be audited, the composition of the audit team, and the individual designated to be the lead auditor are all determined by the Senior Director. The number of people working on an audit varies depending on the type of audit. Before the audit begins, the lead auditor will prepare by researching the issue being audited.⁴ The lead auditor also develops an Audit Program to establish how the team will conduct the audit. This may include identifying the department heads and staff to be interviewed, determining the tests that the audit team will conduct, as well as setting forth the proper control group and sample size.

In preparing to conduct an audit, Senior Auditors engage in a series of meetings and interviews to determine how the audit will proceed. First, the audit team has a preliminary meeting with the Senior Director and Chief Internal Auditor. At the preliminary meeting, the Senior Director and Chief Internal Auditor advise the audit team regarding the objectives of the audit.⁵

³ Audits conducted by DIA may have several different objectives. These include: (i) evaluating operating processes for effectiveness and usefulness; (ii) reviewing the measures taken to safeguard assets, including tests to confirm location and ownership as appropriate; (iii) verifying the reliability, relevance, consistency, and integrity of management, financial, and operating information; and (iv) confirming, in consultation with the Corporation's Chief Compliance Officer and the General Counsel, the compliance with policies, plans, standards, laws, and regulations that could have significant impact on operations. (Respondent Ex. 1)

⁴ For example, in order to prepare for an audit of implantable medical devices (such as pacemakers), a Senior Auditor researched how implantable devices are used.

⁵ The Senior Director and Chief Internal Auditor determine the objectives of the audit before the team meeting.

The group also discusses the Audit Program and amends it, if necessary. The audit team then has an entrance conference with the facility management, HHC management, and the process owner involved in the audit.⁶ At the entrance conference, they discuss the matter being audited and agree on a start date.

The team then creates a flow chart for the audit based on their discussion with management and the process owner. Based on the flow chart, the team identifies areas where there may be risks and then “tests” those risks. For example, a Senior Auditor might identify that placing high-value implantables in unsecure locations is a source of risk. A test would attempt to track implantables when they are being used. The team’s concerns during the testing process are then discussed with the process owner.

During the audit, Senior Auditors might have access to confidential information, although the type of confidential information involved depends upon the nature of the audit. In one audit of employee longevity pay, a Senior Auditor reviewed personnel payroll records and compared them to the relevant collective bargaining agreement, in order to ensure that employees were receiving the correct amount of pay. Additionally, during the course of an audit, Senior Auditors might be informed of personnel decisions prior to an official announcement, such as layoffs or terminations. This may occur if relevant organizational changes are scheduled to take place prior to the issuance of the final audit report.

Following testing, the Senior Auditor develops an issue sheet. The issue sheet identifies the team’s conclusions during the testing process, including the concerns raised, the causes of those concerns, the level of associated risk, and the team’s recommendation to alleviate the risk level.

⁶ A “process owner” is a person in charge of the subject of the audit. Audits can have more than one process owner.

Senior Auditors then inform the process owner of the issues identified and possible action plans to remedy the issues. The process owner may also submit a rebuttal to the audit team's findings.

The Senior Auditor then writes a draft report summarizing all of the outstanding issues. Included in the draft report are the objectives of the audit, the scope of the audit, the individuals involved, a summary of the issues, and the risks found by the audit team. The draft report also includes recommendations for the process owner. Recommendations may address "policies that need to be initiated, contracts that need to be renewed . . . [or] how to make things more efficient." (Tr. 288) For example, one Senior Auditor testified that he has made recommendations concerning the use of e-commerce applications, which resulted in a reduction in staff. Other recommendations have included streamlining the procedure for new employees and contractors to gain access to the PeopleSoft software, suggesting that Human Resources use particular IT applications, establishing guidelines to document the use of implantables, and identifying that IT coders should receive additional training.

The draft report is then reviewed by the Senior Director and the Chief Internal Auditor and issued to management and the process owner. After the draft report is issued, the process owner has three days to request an exit conference. If an exit conference is requested, the audit team meets with the process owner and management regarding the recommendations included in the draft report. Following the exit conference, or if no exit conference occurs, the process owner has two weeks to submit a response. The report is finalized once the audit team receives a response from the process owner, which is included in the final report. Additionally, the lead auditor may write a comment to the process owner's response. The Senior Director and Chief Internal Auditor

then review the proposed final draft and provide edits. The final report is issued to the Audit Committee and the Chief Executive Officer of the facility.⁷

Senior Auditors also participate in follow-up audits six months after the issuance of the final report. In a follow-up audit, the process owner submits a planned response to the audit. Senior Auditors compare the submitted response to the final report.

POSITIONS OF THE PARTIES

HHC's Position

HHC argues that the evidence establishes that the Senior Auditor title performs managerial and/or confidential duties and is therefore exempt from collective bargaining. It also argues that the proper standard for determining eligibility for collective bargaining is found in the HHC Act, rather than in the NYCCBL.

Initially, HHC contends that Senior Auditors play active roles in effectuating system-wide, facility-wide, and department-wide policy and personnel decisions. It maintains that the central function of Senior Auditors is to “prepare for, perform, and follow-up regarding internal and at times confidential audits of operational processes, financial issues, and special topic matters necessary to independently examine and identify issues, to formulate corrective policy actions, and work hand-in-hand with the process owner or examinee to ensure proper policy formulation and implementation at follow-up.” (Br. at 14). It further asserts that Senior Auditors exercise independent discretion and recommend changes to managerial staff. In performing these

⁷ The Audit Committee is a committee of HHC senior managers and directors who meet quarterly to oversee the audit process.

functions, Senior Auditors routinely act in a confidential capacity to senior staff and management regarding matters such as confidential investigations.

HHC additionally asserts that the HHC Act precludes Senior Auditors from being represented by an employee organization. Specifically, HHC asserts that these employees should be precluded from representation when considered under the exclusions established by § 7385(11) of the HHC Act, which it claims provides a much broader exclusion from the right to representation than the Taylor Law or the NYCCBL. HHC argues that under HHC Act § 7405, any conflicts between the HHC Act and the Taylor Law must be resolved in favor of the HHC Act. Further, HHC contends that the Board's decisions in *CWA*, 40 OCB 5 (BOC 1987), and *OSA*, 74 OCB 1 (BOC 2004) did not consider or correctly address the perceived conflict between HHC Act § 7385(11) and the Taylor Law as to the managerial criteria or the preemptive effect of HHC Act § 7405.

Accordingly, HHC concludes that it has satisfied its burden of proving that these titles are managerial and/or confidential who are ineligible for collective bargaining under both the NYCCBL and the HHC Act.⁸

Union's Position

The Union seeks to add the Senior Auditor title to its bargaining unit. The Union argues that there is a presumption of eligibility for collective bargaining rights in the Taylor Law and the NYCCBL. Although the NYCCBL provides a limited exception for those employees whom the Board finds to be managerial or confidential, the Union asserts that HHC did not meet its burden of demonstrating the managerial or confidential status of employees in the Senior Auditor title.

⁸ HHC does not contest that Senior Auditors have a community of interest with the titles represented by the Union.

The Union contends that these employees do not have a role with respect to the development of the “specific objectives” of HHC to fulfill its mission. (Union Br. at 27)

The Union asserts that Senior Auditors audit existing processes and make recommendations for how to improve them. They have no role in the selection of what will be audited or whether their recommendations will be implemented. Accordingly, the Union urges the Board to conclude that Senior Auditors are similar to other titles found eligible that review policies and give management reports of their findings and recommendations.

Additionally, the Union argues that Senior Auditors do not participate in collective bargaining or personnel administration and have no role in administering collective bargaining agreements. Moreover, although Senior Auditors may have access to sensitive information such as social security numbers, salaries, and medical records, the Union asserts that mere access to this information does not warrant a finding that these employees are confidential.

Regarding HHC’s argument that the HHC Act provides the applicable standard for determining whether employees are eligible, the Union asserts that the Board should apply the doctrines of collateral estoppel and *stare decisis* because it previously rejected identical arguments in multiple prior proceedings, including *CWA*, 40 OBC 5, *OSA*, 74 OCB 1, *OSA*, 78 OCB 1 (BOC 2006), *OSA*, 8 OCB2d 19 (BOC 2015), and *OSA*, 8 OCB2d 28 (BOC 2015). In these cases, the Board has found and repeatedly reaffirmed that HHC Act § 7390(5) grants the Board jurisdiction over HHC and its employees. The Board further found that the application of Taylor Law § 201.7(a) to HHC employees was appropriate and that there is no conflict between the NYCCBL and the HHC Act.

Thus, the Union contends that Senior Auditors are eligible for collective bargaining and should be added to the Union’s bargaining unit.

DISCUSSION

At issue in this case is whether Senior Auditors are ineligible for collective bargaining under the NYCCBL either because they perform a policymaking function or because they act in a confidential capacity to managerial employees involved in collective bargaining. The record establishes that Senior Auditors do not warrant designation as managerial/confidential employees, and therefore are eligible for collective bargaining.

In granting public employees the right to bargain collectively, the NYCCBL provides a limited exception for those employees whom this Board finds to be 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 (emphasis added). The definitions of managerial and confidential are set forth in Taylor Law § 201.7(a). Accordingly, when evaluating a public employer's assertion that an employee should be excluded from collective bargaining as managerial and/or confidential, the Board applies the following statutory standard:

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).⁹

CSL § 201.7(a); *see DC 37*, 78 OCB 7, at 39 (BOC 2006), *affid.*, *Matter of City of New York v. NYC Bd. of Certification*, No. 404461/06 (Sup. Ct. N.Y. Co. Sept. 19, 2007) (Wetzel, J.); *see also Matter of Shelofsky v. Helsby*, 32 N.Y.2d 54, 58-61 (1973) (finding that the statutory criteria for managerial and confidential designations are not unconstitutionally vague). “Significantly, the exclusions for managerial and confidential employees 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 (BOC 2009) (quoting *Matter of Lippman v. Pub. Empl. Relations Bd.*, 263 A.D.2d 891, 904 (3d Dept. 1999)) (internal quotation marks omitted); *see also Matter of NYC Health & Hosp. Corp. v. Bd. of Cert. of the City of New York*, 2007 NY Slip Op. 30921 (U) (Sup. Ct. N.Y. Co. Apr. 23, 2007) (Tolub, J.).

The Board distinguishes between setting policy and promulgating procedures. “[P]olicy sets the agency’s course whereas procedures are the practical steps taken to implement such policy, including the determination of methods of operation that are merely of a technical nature.” *Local 621, SEIU*, 4 OCB2d 57, at 24-25 (BOC 2011) (internal quotations omitted) (quoting *Matter of City v. Bd. of Certification*, Index Nos. 402466/10 & 402496/10, Slip. Op. 4-5 (Sup. Ct. N.Y. Co. Oct. 27, 2011) (Kern, J.); *see also Lippman*, 263 A.D.2d at 899; *City of Binghamton*, 12 PERB ¶ 3099, at 3185 (1979)). Indeed, “[t]he exercise of discretion, alone, is insufficient for a managerial designation Employees who exercise their discretion only when permitted by policy, and exercise it within the specified guidelines of that policy, do not have the degree of freedom or

⁹ HHC does not allege that the exclusion from bargaining of certain managerial employees set forth in Taylor Law § 201.7(a)(ii) applies to Senior Auditors.-

authority to make decisions necessary to invoke managerial status.” *L. 1180*, 2 OCB2d 13, at 13 (quoting *UFOA*, *L. 854*, 50 OCB 15, at 23 (BOC 1992)) (internal quotation marks omitted). Here, the discretion of Senior Auditors is circumscribed by OP No. 50-4, which establishes the scope and functions of Senior Auditors when conducting an audit.

None of the employees at issue formulate policy. Senior Auditors gather and analyze data concerning processes and procedures within HHC. They also recommend improvements to existing policies based upon their analyses. In order to analyze and gather data, Senior Auditors interview process owners and other HHC stakeholders, review documents, and conduct tests to assess the level of risk. Based on their assessments, Senior Auditors make recommendations to their superiors.¹⁰ These recommendations have included streamlining access to PeopleSoft, suggesting improvements for the use of IT applications, and establishing guidelines to track implantables. These duties involve a high level of analytical and technical skill, and in some instances effective communication of policies, but do not rise to the level of policy formulation under the NYCCBL. *See OSA*, 8 OCB2d 28, at 23.

Further, the Senior Auditors at issue here are not the type of active participants in the development of policy that we have previously found ineligible. In *OSA*, 7 OCB2d 2 (BOC 2014), the Board deemed the Assistant Commissioner of the Family Assistance Unit to be a managerial employee where she was “responsible for developing policies to address issues unique to the population her unit serves and generally has control over the formulation and implementation of those policies.” *Id.* at 17. By contrast, Senior Auditors have no control over the matters to be audited or whether their recommendations are incorporated into final policy.

¹⁰ Indeed, OP-54 expressly prohibits Senior Auditors from engaging in any activities that could compromise their objectivity, such as “mak[ing] management decisions.” (Joint Ex. 6)

Senior Auditors perform duties similar to other employees who have been found eligible for collective bargaining. For example, in *CWA, Local 1180*, 2 OCB2d 13, the Board found eligible an employee in the Audit Manager title in the Comptroller's Bureau of Management Audits. His responsibilities included conducting risk assessments of City agencies and recommending audits to his supervisor, the Director of Management Audit. He also assisted in developing the findings and recommendations of the audits, which often had policy implications. We concluded that "[w]hile the audited agencies may make policy changes in response to audits, the supervision and preparation of those audits does not rise to the formulation of policy at the Office of Comptroller." *Id.* at 46. Similarly, in *OSA*, 78 OCB 1, the Board found that the majority of employees in the Senior Management Consultant (Business Organization and Methods) title were eligible because rather than formulating policy, they primarily provided data and information resources to employees with policy-making authority.

Moreover, we have repeatedly found that employees with audit responsibilities are eligible for collective bargaining, including employees in the titles of Management Auditor, Management Auditor Trainee, City Tax Auditor, and Auditor of Accounts. Indeed, employees who have a high level of discretion and responsibility in conducting audits have been found eligible for collective bargaining. For example, in *OSA*, 3 OCB2d 33 (BOC 2010), *affd.*, *Matter of City v. Bd. of Certification*, Index Nos. 402466/10 & 402496/10 (Sup. Ct. N.Y. Co. Oct. 27, 2011) (Kern, J.), we found eligible Administrative Staff Analysts in the following in-house positions at a variety of New York City agencies: Senior Advisor (Management Policy and External Audits); Director of Audits and Compliance; Deputy Director for the Office of Audit Services in the Division of Financial Services; Special Assistant to the Director in the Bureau of Financial Audit; Audit Director in Audit Services; Deputy Audit Director in Audit Services; Senior Director of Internal

Audit and Special Projects in the Executive/Internal Audit department; Audit Director in Business System Improvement department; Deputy Director of the Financial and Management Audit Bureau in the Office of the Auditor General; Audit Manager in the Bureau of Compliance; and Database Administrator, Payment and Audit in the Technical Services department. *See also DC 37, 78 OCB 7, at 28* (finding eligible an Investigator (Employee Discipline) working in the Department of Building’s Office of Internal Audits and Discipline, who “performed a thorough audit and reviewed standards of procedures in conjunction with the Building Special Investigation Unit”); *OSA, 78 OCB 5 (BOC 2006) affd., Matter of HHC v Bd. of Certification, 237 N.Y.L.J. 99* (Sup. Ct. N.Y. Co. April 23, 2007) (finding eligible an Enrollment Sales Representative in the functional title of Compliance Audit Assistant); *see CWA, 78 OCB 3 (BOC 2006); New York City Dept. of Investigation Investigator’s Ass’n, 72 OCB 2, at 15 (BOC 2003)* (finding eligible employees who made non-binding recommendations concerning “procedural safeguards to prevent future misconduct”); *L. 375, 38 OCB 8, at 79-80 (1986)* (finding eligible an employee in the Staff Analyst title who analyzed data and made recommendations for changes in procedures).

As to 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).”¹¹ CSL § 201.7(a). The employer has the burden to establish confidentiality. *See NYCCBL § 12-305.* To do so, it 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

¹¹ Managerial employees described in clause (ii) are those “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).

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 58-59 (quoting *Lippman*, 263 A.D.2d at 902); *see also UFA*, 4 OCB2d 57, at 28 (BOC 2011); *DC 37*, 78 OCB 7, at 40.

Regarding the duty-oriented prong of the test for confidential status, “the secretive or highly sensitive nature of an employee’s work alone does not compel a confidential designation.” *OSA*, 3 OCB2d 33, at 150 (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 New York Power Auth.*, 38 PERB ¶ 3003, at 3008 (2005) (running a computer program that randomly selects an employee for drug testing does not satisfy the duty prong); *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). Indeed, “access to personnel files, training records, performance appraisals, addresses, salaries, . . . internal investigations . . . are insufficient for a confidential designation in the absence of confidential assistance to a manager with significant involvement in labor relations or personnel administration.” *CWA, L. 1180*, 2 OCB2d 13, at 106-107. Since 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.” *Lippman*, 263 A.D.2d at 903. Thus, standing alone, “employees’ access to and involvement in personnel records and matters . . . [are] insufficient to support a confidential designation.” *Id.*

Here, the Senior Auditor title does not meet the duty prong. The record shows only that they have advance knowledge of personnel decisions incidental to audits and access to employee

personnel records. However, they do not assist with collective negotiations, the administration of collective bargaining agreements, or in personnel administration. *See CWA, L. 1180*, 2 OCB2d 13, at 106-107.

Finally, the Board acknowledges that HHC raised arguments concerning a perceived conflict between HHC Act § 7385(11) and Taylor Law § 201.7(a) and the preemptive effect of HHC Act § 7405. HHC asserts that these arguments are new, but in fact they are identical to those raised and rejected in previous matters. *See OSA*, 8 OCB2d 28; *OSA*, 8 OCB2d 19, at 34 (BOC 2015); *see also OSA*, 74 OCB 1, at 6-7. We addressed these arguments in depth in *OSA*, 8 OCB2d 19. The HHC has not identified any facts or legal positions to warrant deviating from our prior conclusions and rationales. *See Deposit Central School District v. Pub. Employment Relations Bd.*, 214 A.D.2d 288 (3d Dept. 1995) (“The doctrine of *stare decisis* recognizes that legal questions, once resolved, should not be reexamined every time they are presented.”)

For the reasons stated above, the Board finds that HHC has not met its burden of proving that the Senior Auditor title is managerial or confidential. The Board is satisfied that no evidence was presented to rebut the assertion that the eligible employees share a community of interest with the bargaining unit members. Accordingly, we add the title to Certification No. 3-88.

ORDER

NOW, THEREFORE, pursuant to the powers vested in the Board of Certification by the New York City Collective Bargaining Law (New York City Administrative Code, Title 12, Chapter 3), it is hereby

ORDERED, that employees in the title Senior Auditor (Title Code No. 00462H) are eligible for collective bargaining; and it is further

ORDERED, that Certification No. 3-88 (as previously amended) be, and the same hereby is, further amended to include the title Senior Auditor (Title Code No. 00462H) subject to existing contracts, if any.

DATED: February 1, 2017
New York, New York

SUSAN J. PANEPENTO
CHAIR

ALAN R. VIANI
MEMBER



OFFICE OF COLLECTIVE BARGAINING

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PAMELA S. SILVERBLATT

LABOR MEMBERS

CHARLES G. MOERDLER
GWYNNE WILCOX

NOTICE OF AMENDED CERTIFICATION

This notice acknowledges that the Board of Certification has issued an Order Amending Certification as follows:

DATE: February 1, 2017 **DOCKET #:** AC-1633-16

DECISION: 10 OCB2d 2 (BOC 2017)

EMPLOYER: New York City Health and Hospitals Corporation
125 Worth Street - Room 500
New York, NY 10013

CERTIFIED/RECOGNIZED BARGAINING REPRESENTATIVE:

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

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

Added: Senior Auditor (Title Code No. 00462H)