

DC37 v. City, 10 OCB 38 (BOC 1972) [Decision No. 38-72 (Cert.)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF CERTIFICATION

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In the Matter of

D. C. 37, AFSCME, AFL-CIO

DECISION NO. 38-72

- and -

DOCKET NO. RU-197-C-70

THE CITY OF NEW YORK

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DECISION AND ORDER

This proceeding was originally part of Docket No. RU-197-B-70. The Union made a motion to sever the title of Principal Human Resources Specialist (PHRS) from that case and for the Board to proceed. The City consented to the motion and the proceeding was given the docket number of RU-197-C-700.

A hearing was held before Richard J. Horrigan, Esq., Trial Examiner, on January 24 and 26, February 4, 16, 17 and 18 and March 17, all in 1972.

The City's position was that the title PHRS was managerial and that, in any event, if some persons in the title are managerial, the whole title is managerial. The Union's position was that some persons in the title are managerial and some are not. The Union did not make the distinction between the two categories.

The job specification for the title under the heading "Duties and Responsibilities" reads as follows: "Under general direction, with a minimum of supervision and with wide latitude for the selection of management techniques and the exercise of independent judgment manages an important, distinct function ** within the

Human Resources Administration; or directs a major activity or program of the agency in which a number of diverse or complex functions must be integrated; or performs work requiring outstanding abilities in one of the most complex of specialized, technical or professional fields and which has clear-cut policy implications throughout the administration." One of the examples of typical tasks of a PHRS is "Devises operating policies and procedures to provide direction of important and complex programs or major activities carried out by HRA."

HRA has PHRS with an~ without specialties. When the title was created there were no specialities. The title was designed for flexibility and HRA switches job assignments in the same title regardless of specialty.

The vast majority of PHRS devise operating policies and procedures and participate regularly in the process which puts a policy proposal into affect. They have a high level of responsibility in decision making and most attend high level meetings regularly.

There are 84 PHRS in HRA, the only administration that has them. 47 of that number are in the Managerial Pay Plan of the City and 14 others have been recommended for the Managerial Pay Plan by HRA. That leaves 23 PHRS, some of whom are now performing managerial duties. Some of the 23 have office titles of Director, Assistant Director, District Officer and Education Action Coordinator. Others can be assigned managerial functions at any time.

We have decided not to split the title. A handful of borderline cases hovering between managerial and non-managerial does not lend itself to such a result, especially where, as here, the large majority of the title is managerial. We are of the opinion that all persons employed as Principal Human Resources Specialists must be deemed managerial - executive employees and as such are not entitled to collective bargaining

rights. (See Association of Deputy Wardens and Deputy Superintendents and City of New York, Decision No. 73-71 and cases cited therein).

We are also mindful of the fact that since the above decision, the Public Employment Relations Board of the State handed down a decision on January 20, 1972, (Matter of State of New York, Case No. E-0081) which said, in part:

"Thus, it would appear to have been the intent of the Legislature that persons who formulate policy may be designated managerial even though they do not exercise a labor relations function."

"The term 'formulate' ** would appear to include not only a person who has the authority or responsibility to select among options and to put a proposed policy into effect, but also a person who participates with regularity in the essential process which results in a policy proposal and the decision to put such proposal into effect." (See Section 201 subd. 7 of the Civil Service Law, also known as the Taylor Law).

We are persuaded, on the basis of the extensive record herein, that PHRS participate in the essential process which results in a policy proposal and the decision to put such proposal into effect. It is an anomaly that 47 of the 84 PHRS are already in the Managerial Pay Plan though HRA has recommended to City officials that additional PHRS be included therein. In any event, the majority of the remainder, not now in the Pay Plan, are employees performing managerial duties. If the duties of some of the PHRS are not currently quite up to managerial - executive status, such duties can be increased by management or the duties can be reclassified. In our view, management has the duty to see to it, that if persons are assigned to or claimed to be assigned to managerial duties, they should be placed by original jurisdiction in the existing or an alternate managerial pay plan, which will fairly compensate such employees who are denied the right to collective bargaining.

O R D E R

Pursuant to the powers vested in the Board of Certification by the New York City Collective Bargaining Law, it is hereby ORDERED, that so much of the petition herein as refers to Principal Human Resources Specialists be, and the same hereby is, dismissed.

DATED: New York, N.Y.
August 9, 1972

ARVID ANDERSON
CHAIRMAN

WALTER L. EISENBERG
MEMBER

ERIC J. SCHMERTZ
MEMBER