

L.371, DC37, et. Al v. City, 10 OCB 46 (BOC 1972) [Decision No. 46-72 (Cert.)]

OFFICE OF COLLECTIVE BARGAINING  
BOARD OF CERTIFICATION

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In the Matter of

LOCAL 371, DISTRICT COUNCIL 37, AFSCME,  
AFL-CIO

DECISION NO. 46-72

-and-

DOCKET NO. RU-212-70

SENIOR SOCIAL SERVICE ADMINISTRATORS  
ASSOCIATION

-and-

THE CITY OF NEW YORK AND RELATED PUBLIC  
EMPLOYERS

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A P P E A R A N C E S :

DISTRICT COUNCIL 37, AFSCME, AFL-CIO  
by Joan Stern Kiok, Esq.  
Associate General Counsel

LOCAL 371, SOCIAL SERVICE EMPLOYEES UNION  
D.C. 37, AFSCME, AFL-CIO  
by Sol Gorelick  
and Jack Reuben

SENIOR SOCIAL SERVICE ADMINISTRATORS  
ASSOCIATION  
by Jacob Posner

JOHN E. SANDS, ESQ.  
by Neil Lipton, Esq.  
for the Employer

DECISION AND ORDER

On July 29, 1970 Local 371, District Council 37, AFSCME, AFL-CIO (herein referred to as the Union) filed a petition with the Office of Collective Bargaining requesting certification as the collective bargaining representative for the title Assistant Director (Welfare), Assistant Director (Child Welfare) and Assistant Director (Welfare Training). The petition showed that another organization, Senior Social

Service Administrator's Association (the Association) claimed to represent the titles petitioned for. This claim was based upon a certification (CWR #71/67) granted to the said Association by the New York City Department of Labor on August 25, 1967 covering the subject titles. By letter dated September 17, 1970 the Association notified the Office of Collective Bargaining of its intention to intervene herein. In the hearings which were subsequently held, the Association appeared in opposition to the certification petitioned for and in support of the employer's contention that the titles are managerial and should be included in the Managerial Pay Plan. The position thus taken by the Association was consistent with a provision of the last collective bargaining agreement between the city and the Association which terminated on December 31, 1970 and which reads in pertinent part as follows:

ARTICLE XVI - MANAGERIAL STATUS OF EMPLOYEES

The parties agree to the following stipulation with respect to the titles covered by this agreement.

1. Each of these titles actually possess and exercise as a matter of independent judgment and discretion, the responsibilities contained in the relevant class specifications, including the following managerial responsibilities:

- a. Establish and/or assist in establishing the philosophy, aims, standards and policies of the Department of Social Services.
- b. Plan, direct, organize, control and coordinate services in a welfare center or significant equivalent branch or function of the Department of Social Services.

2. The Union will not object or intervene in any way and, further, will join with the City in any petition requesting the Board of Certification of the Office of Collective Bargaining to declare that, effective as of the date of termination of this Contract, the titles covered herein are managerial in nature and not subject to further collective bargaining.

Hearings on the question of the alleged managerial status of the titles were held on April 6, June 21, June 30, August 17, August 18 and August 19, 1971 and on February 7, April 27 and May 10, 1972 before Malcolm D. MacDonald, Esq., Trial Examiner. The parties waived the filing of briefs.

Upon consideration of the entire record herein, the Board renders the following decision:

The Department of Social Services is one of a number of New York City agencies grouped under the general authority of the Human Resources Administration; currently the person serving as Commissioner of Social Services is also the Administrator of the Human Resources Administration. Among the other agencies forming the Human Resources Administration are the Agency for Child Development, Addiction Services Agency, Community Development Agency, Manpower and Career Development Agency, New York City Council Against Poverty and Youth Services Agency.

There is no evidence that HRA has any significant role in directing the operations or in formulating the policies of any of its component agencies. The authority exercised over the Department of Social Services is very broad and indirect, and the Commissioner of Social Services, as the department head, exercises

considerable authority and discretion. A sizeable portion of the funding of the Department of Social Services derives from state and federal sources. In receiving such funding, however, the department is also required to accept and adopt the standards and requirements set by the appropriating authorities. It may thus be said that to some extent the formulation of policies and practices of the department are influenced above the departmental level. To begin with, however, the department makes the basic decision as to whether to accept funds together with the conditions upon which they are appropriated. Moreover these conditions are apparently stated in general terms and are subject to interpretation and adaptation by the department. Even if these state and federal guidelines were the initial source of all departmental policy - and they are not - it could not be said that the Department of Social Services was a mere conduit for the dispensation by state and/or federal authorities of social services in the City of New York. It is the New York City Department of Social Services which has that function and the Commissioner of Social Services is vested with powers at least equal to those of any department head in the New York City government.

The department has 35,000 budgeted employment positions or "lines" and the current working staff consists of 25,000 employees in over 100 titles. At the time when testimony was given on the point the projected budget of the department for fiscal 1972-73 was 2.7 - 2.9 billion dollars. The department is subdivided into a number of Bureaus, some of which are concerned

with administrative matters ; an example would be the Bureau of Personnel. A number of other Bureaus are involved in operations and it is exclusively in these bureaus that the approximately 89 Assistant Directors whose status is the subject of this decision are employed. By far the largest of the Bureaus is the Bureau of Public Assistance.<sup>1</sup> This Bureau accounts for 18,000 of the 25,000 employees of the department and has an annual budget of approximately 1.8 billion dollars. B.P.A. also employs the majority of Assistant Directors; it has 60 of the 89 Assistant Directors employed in the department. The remaining 29 Assistant Directors are distributed through the Bureaus of the department as follows:

<u>Bureau</u>	<u>No. of Assistant Directors</u>
Child Welfare	16
Special Services	7
Welfare Training	6

The title, Assistant Director, is the highest in the Social Service Occupational Group, and is divided into three categories as follows:

1. Assistant Director (Welfare)
2. Assistant Director (Child Welfare)
3. Assistant Director (Welfare Training)

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The name of this Bureau was changed on April 24, 1972, during the course of the hearings herein, to Bureau of Income Maintenance but is referred to herein by its original name or by the initials "BPA" since the bulk of testimony relating, to it was given before the change.

Among the qualification requirements for the first two categories is "Equivalent to baccalaureate degree plus four years experience." The Requirement for A.D. (Welfare Training) is "A master's degree from graduate school of social work, and eight years of casework experience in a social work agency, or as a teacher in an accredited graduate school of social work."

All of the Assistant Directors are covered by the Managerial Pay Plan and their salaries range from \$17,600 to \$22,880 per annum.

The titles supervised by Assistant Directors include Supervisor III, Supervisor 11, Supervisor 1, Caseworker, various titles in the administrative series, various titles in the clerical series and consultants in certain specialized fields; the majority of Assistant Directors head staffs including all of the titles listed. The average Assistant Director is assigned as a Welfare Center Director in the Bureau of Public Assistance and directs a staff of 350 employees handling a caseload of 12,000 cases under a total annual budget of 12 - 15 million dollars. In other bureaus, the majority of Assistant Directors serve as division heads. In general, the chain of command applicable to all bureaus above the level of Assistant Directors and in ascending order includes Deputy Bureau Director, Bureau Director, Deputy Commissioner, Commissioner. In the Bureau of Public Assistance there is an additional supervisory level consisting of a Field Directors (a functional title) but all of these are Assistant Directors by Civil Service title. There are thus approximately 7 - 9 levels of supervision below the majority of the Assistant Directors and approximately 4 - 5 levels above them in the departmental chain of Command. Almost all Assistant

Directors are the chief administrative officers of the units in which they serve and consequently constitute the first step in a four-stop grievance process in which the second stop is the Commissioner. The third step is dealt with outside of the department by the office of Labor Relations and the fourth is final and binding arbitration. Assistant Directors also pass upon disciplinary matters within their units and make ultimate determinations as to whether such cases should be referred to Personnel Bureau for formal proceedings. They serve as resource persons in connection with collective bargaining negotiations and are called upon to provide written evaluations of the potential impact of union demands upon their respective units and operations.

There is considerable interaction at the Assistant Director level among bureaus and it is a regular aspect of an Assistant Director's duties to maintain liaison with and to coordinate the functions of his unit with those in other bureaus.

All major decisions and all policy are made by the commissioner. He has the ultimate responsibility and the exclusive authority for all policy decisions affecting the department. These constitute an extensive body of written directives and orders dealing with every aspect of the department's numerous, varied and complex operations. The system whereby this great volume of policy is created and implemented is one in which there is a constant flow of information, suggestions and recommendations upward and a similarly steady flow of orders and directives downward. Each of these streams is characterized by a consistent progression from the general to the specific.

Thus, the orders which issue from Central Office are of a relatively broad nature leaving considerable discretion to the professional staff responsible for their implementation. One union witness spoke of this allowance for the exercise of discretion as the gray area of an order; he testified that he had never seen an order which did not contain a gray area. Assistant Directors in the majority of functions to which they are assigned constitute the highest operational or line level in the department and as such are the chief users of the gray areas. They are the level at which any policy decision is first tested in actual use; they are the point at which implementation commences, the level at which theory is translated into practice. The success or failure of any departmental policy or program can be measured by the extent to which they apply their professional expertise to devise methods and means, to instruct and motivate their staffs regarding the objectives involved, to deploy their staffs and to establish appropriate priorities in the implementation and effectuation of that policy or program. This top operational level is also the most vital single source of the information and recommendations upon which all departmental decision making is based. It is at this point that the most direct and complete overview of all aspects of operations in the field is available. The Assistant Director is an essential factor in the upward passage of information and recommendation and the counter flow of policy decisions and constitutes the crossover point between theory and practice, between the establishment of Goals and their accomplishment. In the majority of cases the Assistant Directors head free-standing, self-



contained units and constitute the most vital single element in the system whereby policy is created and effectuated.

The Managerial Questionnaires prepared by the great majority of Assistant Directors and which led to this title being included in the Managerial Pay Plan were introduced in evidence herein. They clearly indicate that Assistant Directors regularly exercise considerable judgment and discretion in their work, that almost all of them play a role in various areas of labor relations including grievance handling, disciplinary matters, employee evaluations, contract interpretation, and supportive services relating to the employer's -engagement in contract negotiations. Most of them direct sizeable staffs (some in excess of 400 employees) for whom they make work assignments, arrange training programs, set priorities, evaluate adherence to work standards, approve leave schedules and for whose overall performance they are ultimately responsible. The union objected to the receipt of these questionnaires in evidence, maintaining that the employer coached and otherwise influenced the employees in their preparation; it also objected to any inferences as to managerial status being drawn from the fact that the title has been included in the Managerial Pay Plan. While we find that there is some merit to the latter objection since the inclusion of the title in the Pay Plan was a unilateral action of the employer based upon criteria which, in this case, were not known to us, we do not agree that the questionnaires are without probative value or that they are subject to any defect which might bar them from our consideration. There is

no evidence that the employees were coerced in the matter of consenting to prepare and file the questionnaires. On the contrary, it was shown by the testimony of a witness for the union that a few Assistant Directors had refused to fill out questionnaires. As to the form of the answers they gave and the fact that the employer provided the employees with model questionnaires and with other forms of guidance and assistance in filling out the forms, we note that these employees are college graduates and professionals, that they were aware of the fact that the questionnaire constituted a sworn statement and in light of these facts, we find it fair to presume that their answers are substantially accurate and true.

Upon the entire record we find that Assistant Directors exercise extensive supervisory authority at the highest level of field operations in the department; that they have a significant role in labor relations in which their function is identical with the interests of the employer; and that they constitute a vital and essential component in the system whereby departmental policy is formulated and effectuated. Consequently, we find and conclude that Assistant Directors in the Department of Social Services are managerial-executive employees and are not entitled to engage in collective bargaining under the New York City Collective Bargaining Law. Accordingly, we shall dismiss the petition herein.

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 the petition here same hereby is dismissed.

DATED:       New York, N.Y.  
              September 11, 1972

ARVID ANDERSON  
C h a i r m a n

ERIC J. SCHMERTZ  
M e m b e r

WALTER L. EISENBERG  
M e m b e r