

City v. Prob. & Parole Off. Ass, 10 OCB 76 (BOC 1972) [Decision No. 76-72 (Cert.)]

OFFICE OF COLLECTIVE BARGAINING  
BOARD OF CERTIFICATION

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In the Matter of

THE CITY OF NEW YORK and  
RELATED PUBLIC EMPLOYERS

DECISION NO. 76-72

Petitioner

DOCKET NO. RE-21-71

-and-

PROBATION AND PAROLE OFFICERS  
ASSOCIATION OF GREATER NEW YORK  
Respondent.

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APPEARANCES:

JOHN E. SANDS, ESQ.  
Counsel for Petitioner  
by WILLIAM BABISKIN ESQ. for The City of New York

MORRIS WEISSBERG, ESQ.  
by ROBERT J. KRENGEL, ESQ. for Probation and Parole  
Officers Association of Greater New York

DECISION AND ORDER

The City of New York, petitioner herein, asserts, and Respondent Probation and Parole Officers Association of Greater New York denies, that Principal Probation Officers, presently represented by Respondent pursuant to certification MR-9-68, are managerial employees. The City requests that they be excluded from Respondent's certification.

A hearing was held before Oscar Geltman, Esquire, Trial Examiner, on various dates commencing July 6, 1972.

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Upon consideration of the entire record and the briefs submitted, the Board of Certification makes the following determination:

I. PRINCIPAL PROBATION OFFICERS GENERALLY

Employees in the title of Principal Probation Officer, with their staffs, are engaged in the performance of probation and related functions at various courts within the City of New York. The job description for Principal Probation Officer, issued by the Administrative Board, of the Judicial Conference of the State of New York, notes that the duties include the planning and assigning of the work of subordinates, the planning of treatment of probationers, and cooperating with agencies and individuals concerned with probation. A Notice of Examination for the position of Principal Probation Officer recently issued by the Administrative Board of the Judicial Conference specifies substantially the same or similar functions, with this extra item: "identifies gaps in community services and endeavors to create community services to aid probationers and their families."

All Principal Probation Officers have been recommended for inclusion in the Managerial Pay Plan.

II. PRINCIPAL PROBATION OFFICERS UNDER THE DIRECTOR OF PROBATION

Twenty four Principal Probation Officers are employed by the Office of Probation, headed by Director of Probation, John A. Wallace. These employees are paid, for the most part, between \$15,000 and \$16,000 per annum with a few receiving somewhat less or somewhat more.

Of this group, two function as executive assistants to Wallace, two are called Project Directors, and twenty are called Branch Chiefs. The Project Directors head federally funded projects for probationers. One such project provides services to juveniles who otherwise would be kept in a juvenile detention facility pending hearing. The project involves a federal grant in the neighborhood of \$500,000. The Project Director, Mr. Boneri, by himself has been conducting negotiations with the City's Department of Real Estate for the leasing of four day-care centers. Mr. Wallace testified: "Mr. Boneri, in dealing with the Department of Real Estate, has not involved myself nor any Deputy Director; he does his own dealings with them, working out with them the requirements he has on space, going with them and examining what they can offer him and rejecting what they offer that does not meet his requirements. And he has the responsibility of nursing that through

until it comes through the Board of Estimate."

Each Branch Chief is in charge of a branch of the Office of Probation. The Division of Courts and Community Services, to which these branches are attached, is headed by a Deputy Director, under Mr. Wallace. Under the Deputy Director, each county, other than Richmond, has an Assistant Deputy Director who is the immediate superior of the Branch Chiefs in his county. The County of Richmond is covered by the Assistant Deputy Director for the County of Kings.

With a few exceptions, each branch is attached to and performs services for a particular Criminal Court, Family Court, or Juvenile Court. Each Branch Chief is in charge of a group consisting of at least 20 and usually about 40 Probation Officers and their supervisors, as well as the clerical employees who assist them.

It appears from the credited testimony of the Director of Probation and a Branch Chief that Branch Chiefs are authorized, and, in fact, encouraged, to operate freely in many important areas without first clearing with their superiors. Without such clearance, a number of Branch Chiefs have dealt directly with the

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City Department of Real Estate to obtain space, in similar fashion to Mr. Boneri's dealings with that Department; several have arranged and are arranging with local community groups to obtain locations away from the office premises so that probationers can see their Probation Officers in the areas where the probationers live; several have arranged and are arranging with local volunteer groups and local colleges to establish -- in one instance, with the aid of a federally funded grant, in another, with the aid of a private grant -- remedial reading programs and street academies for probationers; one is arranging to obtain space where probationers may reside; one inaugurated a program in his office, later adopted by the central office. for all of the branches, setting limits for his subordinates as to how many investigations they would perform and how many clients they would supervise, and he is currently experimenting with a team-produced probationary report; and one inaugurated a procedure in his office, later adopted by the central office for all of the branches, whereby the staff prepared a report on the possible Youthful Offender status of a person charged with a

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crime on the same day when the youth appeared before a Criminal Court Judge, instead of, as previously, taking approximately a week to deliver such a report.

Branch Chiefs are expected to, and it appears from the credible testimony that they do, carry out policies of the Office of Probation even where such policies cause-conflict with the judges of the courts to which they are attached.

III. PRINCIPAL PROBATION OFFICERS ATTACHED TO THE  
SUPREME COURT.

The pay of Principal Probation Officers attached to the Supreme Court is approximately \$3,000 more per annum than that of Principal Probation Officers employed by the Office of Probation.

Principal Probation Officers Barnett and Seidman work in the First Judicial District, which covers New York and Bronx Counties. Their superior is Chief Probation Officer Reeves. Principal Probation Officer Dix works in Queens County, in the Eleventh Judicial District, under Chief Probation Officer Kreppein. Kreppein and Reeves are, concededly, managerial employees. Barnett, Seidman and Dix all testified credibly. Dix testified that he participates with Mr. Kreppein in making

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decisions regarding the administrative and professional activities of the Probation Department for the Eleventh Judicial District; that-he works together with the Chief Probation Officer in embarking on experimental changes; that they discuss new programs together before undertaking them; and that there is no change in "focus or emphasis" in the department without his participation. Seidman gave substantially similar testimony concerning his working relationship with Chief Probation Officer Reeves. Seidman is in charge of the administrative staff in both New York and Bronx Counties. In addition, he acts as assistant to Reeves, and is in charge of the administrative functions of Reeves' office when Reeves is absent. He testified that he discusses with Reeves all problems of Reeves' Department, professional as well as administrative, and that significant changes have been made in the operations of the department pursuant to his recommendations. Among them are: the use of women interchangeably with men as Probation Officer; the placing of a maximum of the number of cases to be assigned for investigation by a Probation Officer in a given period; and the transfer of cases to Probation

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Officers in the supervision part when the Probation Officers in the investigation part are overtaxed.

Barnett is in charge of the Division of Investigation in New York County. In describing the manner in which he exercises his functions, he testified that he consults with Reeves before taking novel steps, and he indicated that in general he has not been exercising the freedom of action which characterizes the activities of Seidman and Dix. Barnett's testimony did not make clear whether or not his manner of exercising the functions of the job was a matter of his own volition.

#### IV. DISCUSSION

Respondent argues that the absence of any statement in the job description for Principal Probation Officer with respect to formulation of policy is a significant indication that Principal Probation Officers are not managerial employees. However, it appears from the testimony that notwithstanding the absence of such a statement in the job description, Principal Probation Officers do in fact formulate policy.



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Principal Probation Officers who are Branch Chiefs and Project Directors in the Office of Probation represent that department in dealing with the City's Department of Real Estate, in selecting sites to be used by their offices to carry out some of their functions. Branch Chiefs initiate substantial changes in procedure without prior clearance; they initiate dealings with community organizations, and initiate the obtaining of grants so that their particular offices may carry out the assigned functions of those offices in ways that will be helpful to their clients and advantageous to their communities. The freedom accorded. he Principal Probation Officers under the Director of Probation, Mr. Wallace, encourages them to perform such significant and important functions, and it results in the acceptance by the Office of Probation of the fruits of their efforts. This holds true both for those who act as Branch Chiefs and those who act as Project Directors. The remaining Principal Probation Officers in the Office of Probation consist of two employees in that title who function as executive assistants to Mr. Wallace, and as such, clearly have managerial status.

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As for Principal Probation Officers Barnett, Seidman and Dix, attached to the Supreme Court in the counties within New York 'City , it is clear that Seidman and Dix significantly and responsibly participate in the formulation of policy. Although it appears that Barnett does not act with equal freedom, it is not clear whether he is restricted or voluntarily pursues a policy of self restraint. The fact that Barnett may inhibit himself from what otherwise appears to be the role of a managerial employee does not make his position -- as distinguished from Barnett -- less managerial.

#### C O N C L U S I O N

The record as a whole supports a finding that the Principal Probation Officers are managerial employees with the guidelines of our prior decisions since, inter alia, their interests are more closely allied with management than with rank and file employees. (cf. In the Matter of Deputy Wardens and Deputy Superintendents and the City of New York, Decision No. 73-71). In this particular respect, we note-that management has recommended that they be included in the Managerial

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Pay Plan which is persuasive, if not decisive, of their status.

The freedom of action in important areas permitted to the Principal Probation Officers who are the subject of this proceeding is much like the conduct of the Principal Consumer Affairs Inspector found managerial by the Board in its Decision No. 8-72, Matter of Civil Service Forum Local 300 SEIU, AFL-CIO. In that case, the employee in the title was permitted to engage in and did engage in important conduct not within the job specifications for his title. In this case, as in that, the duties and-functions of the title, as actually performed, warrant the conclusion that the employees in the title are managerial employees. Accordingly, we shall grant the City's petition to exclude them from the bargaining unit heretofore found appropriate. Therefore, the certification of Representative heretofore issued under No. MR-9-68 will be modified by the order entered below.

O R D E R

Pursuant to the powers vested in the Board

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of Certification by t-he New York City Collective Bargaining Law,  
it is hereby

ORDERED, that the petition filed herein by the City of New  
York be, and the same hereby is, granted, and it is further

ORDERED, that the Certificate of Representative heretofore  
issued under Certification No. MR-9-68 be, and the same hereby  
is, modified by deleting from the unit description herein the  
title of Principal Probation Officer.

DATED: New York, N.Y.  
December 21, 1972

ARVID ANDERSON  
CHAIRMAN

WALTER L. EISENBERG  
MEMBER

ERIC J. SCHMERTZ  
MEMBER