

L.300, SEIU, Civil Ser. Forum v. City, HHC, 12 OCB 47 (BOC 1973) [Decision No. 47-73 (Amend. Cert.)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF CERTIFICATION
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In the Matter of

CIVIL SERVICE FORUM,
LOCAL 300, SEIU, AFL-CIO

Decision No. 47-73

Docket No. RU-320B-73

-and-

THE CITY OF NEW YORK

-and-

THE NEW YORK CITY HEALTH
AND HOSPITALS CORPORATION
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A P P E A R A N C E S:

John E. Sands Esq.
Office of Labor Relations
By: William Babiskin, Esq.
for The City of New York

Steven Goldsmith, Esq.
For N. Y. C. Health and
Hospitals Corporation

Israelson & Streit, Esqs.
By: Ronald Raab, Esq.
for Civil Service Forums,
Local 300, SEIU, AFL-CIO

DECISION AND ORDER
AMENDING CERTIFICATION

On May 18, 1972, Civil Service Forum, Local 300, SEIU, AFL-CIO, petitioned to add the titles of procurement and Materials Analyst (four employees) and Procurement ad Material Specialist (five employees) to its certification, CWR 21-67, as amended by Decision No. 97-70, covering the titles of Assistant Buyer (including Specialties) and Furniture Specifications Writer. By letter dated August 14, 1972, the City asked that the petition be denied for the

Decision No. 47-73
Docket No. RU-320-B-73.

2.

reason that the petitioned unit of two Health and Hospitals Corporation titles was inappropriately small, contending that the appropriate unit should be an overall one embracing not only the petitioned titles, but also two Purchase Inspector units and two Buyer units (including a supervisory unit consisting of thirty-one Senior Buyers and Supervising Buyers).

By a Notice in the City Record, dated October 12, 1973, the Board of Certification advised all interested parties of its proposal to consolidate the above-mentioned titles of Procurement and Materials Analyst and Procurement and Material Specialist, and a third Health and Hospitals Corporation title, Specification Analyst, with certain city-wide buyer and purchase inspector titles certified to Local 300, SEIU, AFL-CIO, and the title of Salvage Appraiser certified to another union. In a letter, dated October 24, 1972, the Office of Labor Relations objected to the inclusion of the Procurement and Material Specialist in the proposed consolidated unit on the ground that the employees in that title were managerial/confidential employees. In Decision No. 68-72 the Board severed the title of Procurement and Material Specialist (hereinafter PMS) for the purpose of holding a hearing to take evidence concerning the alleged managerial/confidential status of the incumbents, indicating that, should the Board determine after hearing that such title is not managerial/

confidential, it would include it in the consolidated unit directed to be combined by the decision.

Hearings were held on March 6th and 9th, 1973 before Ernest Doerfler, Esq., Trial Examiner. The Health and Hospitals Corporation called three witnesses - the Director of Planning and Operations Analysis (a former PMS); the Director of Procurement; and the Senior Vice-President for Finance. The Union presented no affirmative case of its own. The parties waived briefs and closing statements.

BACKGROUND

The Health and Hospitals Corporation, upon its creation on July 1, 1970, took over from the New York City Department of Purchase the procurement function which the latter had performed for the predecessor Department of Hospitals. The Corporation, with a purchasing budget of over \$90 million per year, permits each of the nineteen constituent hospitals, under a basic Operating Procedure (No. 110-1) to do its own purchasing within certain dollar constraints. Purchases in excess of these maxima must be requisitioned through the Division of Procurement in the Central Office of the Corporation.

The Division of Procurement is headed by a Director, who reports to the Senior Vice-President for Finance. The Division maintains standard procedures and policies, supervises relinquishment and salvage functions

in the hospitals, provides contracts and specifications as standards for the individual hospital buying units, and post-audits hospital purchases to determine that purchase orders are properly prepared, products ordered are correct, contract provisions are complied with, and pricing is proper. The individual hospital Purchasing Directors are subject to the operating procedures issued by the Central Office of the Corporation, and, in this sense are "controlled" by the Division of Procurement.

The Division of Procurement itself has two main branches: a stores or warehouse section, and a purchase section headed by a Director of Product Development and Evaluation. Immediately below the latter in the purchase chain of command are a Director of Planning and Operations Analysis (who plays a purely advisory role); the five PMSs, each supervising a small unit known as a Product Advisory Group and specializing in a particular product area (Medical-Surgical, Pharmacy, etc.); and a Supervising Buyer who heads a staff of buyers. The heads of the Product Advisory Groups (PMSs) and the head of the Buying Section (Supervising Buyer) all report to the Director of Product Development and Evaluation, who, in turn, is responsible to the Director of Procurement.

The PMS has the responsibility of deciding whether, in order to effect cost savings and/or obtain speedy delivery,

(1) to make a requirement contract (obligating the Corporation to buy an item only from the contracting vendor for the contract period) after receiving competitive bids, or (2) to make a specialty contract (where there is only one source of supply), or (3) to make a spot purchase. In each instance, however, the PMS's decision is subject to review by the Director of Product Development and Evaluation and higher officers. When the PMS decides to make a spot purchase of an item requisitioned by a hospital, the matter is referred to the Supervising Buyer, whose staff then finds and recommends a source of supply through competitive bids. The PMS is then no longer involved. Such spot purchases represent about 40% of the Corporation's total purchases of supplies and equipment.

The Supervising Buyer is the highest title currently included in the bargaining unit to which the unique PMS title would be added if it is deemed non-managerial. His duties and responsibilities are:

"Under direction, with wide latitude for independent and unreviewed action or decision, is in charge of and supervises a major sub-division in a large bureau engaged in the procurement of supplies, materials, equipment and services in accordance with standard procedures and legal requirements..."

"The Supervising Buyer's salary range is \$13,075-\$16,675. The salary range of the next lower Buyer title, Senior Buyer, is \$11,200-14,350, the same as that of the PMS.

The three titles above the PMS in the hospital Corporation hierarchy, i.e., Director of Planning and Operations Analysis, Director of Product Development and Evaluation, and Director of Procurement, have all been included by the Corporation in its Managerial Pay Plan. The PMS has not been included in the Plan. The PMS has not been included in the Plan.

POSITION OF THE HEALTH
AND HOSPITALS CORPORATION

The Corporation contends that PMS employees are managerial because (1) they participate in the making of policy, and (2) they exercise broad discretion and initiative. During the hearing the Corporation conceded that the PMSs have no involvement in labor relations or personnel relations, and, therefore, are not confidential employees.

The Corporation argues that although the basic Operating Procedure (No. 110-1) sets forth general guidelines for the attainment of corporate procurement objectives, twelve additional operating procedures have been adopted since No. 110-1 elaborating on the basic purchase and relinquishment procedures of the agency. Some of these operating procedures (Inspection Procedures, Sterile Medical Supplies, Silver Salvage Recovery) were developed and written by PMSs, although final approval was given by their superiors.

The Corporation stresses, also, the broad mandate extended to the PMS to explore constantly, without prior

consultation with superiors, the advantages of standardization, with a view to buyer in bulk, and being able thereby to save.

THE UNION'S POSITION

The Union contends that the PMS's job description does not indicate a policy role, nor does it set forth duties and responsibilities cognizable as managerial. The Union avers that the PMS's contribution to the development and writing of operating procedures does not constitute policy-making, but merely implements the basic corporate policy on procurement set forth in Operating Procedure No. 110-1, in the promulgation of which the PMSs had no hand.

DETERMINATION

Procurement objectives (to secure needed supplies economically and quickly) and the procedures to be followed to achieve them are essentially the same for the Department of Purchase (which procures for most City agencies) and the Health and Hospitals Corporation. Although the Corporation has divided procurement duties and responsibilities between the PMS groups and the buying group within the Corporation's purchasing section, it is clear from an examination of the job description of Supervising Buyer (as well as that of Senior Buyer) that employees in these titles perform essentially the same duties and responsibilities outside the Corporation (i.e., in the Department of Purchase,

the Housing Authority, etc.) as do the PMSs within. "Outside" buyers also exercise wide latitude for independent and unreviewed action or decision, deciding whether to enter into requirement contracts, consulting with using departments with a view to developing maximum orders of standard products, and making recommendations of awards to lowest responsible bidders. Although these duties require a high order of expertise and considerable skills, these qualities do not establish that either PMSs or buyers are managerial employees (Decisions 69-68; 59-69; 19A-70).

It is significant that neither the City nor the Hospitals Corporation, which singled out the PMSs for exclusion from collective bargaining, objected to the inclusion within the over-all unit of the Supervising Buyers and Senior Buyers, a much larger group whose salary ranges exceed or equal that of the PMSs. Indeed, in a letter dated August 14, 1972, the city, stating its position with respect to Local 300's original petition for the unique Hospitals Corporation titles, asserted that the requested unit was inappropriately small, and urged that "due to the strong community of interest between the buying unit and the purchase inspection unit, the appropriate bargaining unit is an overall unit of all the supervisory and non-supervisory titles mentioned above [including Supervising Buyer and Senior Buyer]."

Moreover, the PMS's contribution to the promulgation of Operating Procedures is essentially one of expanding upon a basic procedure already established by others. Further, even the operating procedures they developed required the approval of superiors before they were issued by the Central Office of the Corporation.

Finally, it is noteworthy that the PMSs are "first level" supervisors, and that they receive salaries well below those of employees in the Managerial Pay Plan from which they were excluded.

We therefore conclude that, based upon the entire record, and for the foregoing reasons, the City and the Hospitals Corporation have failed to establish the managerial status of the PMSs, which would exclude them from the collective bargaining rights granted to public employees under the New York City Collective Bargaining Law. Under the circumstances, the PMSs share a greater community of interest with employees in the merged unit created by Decision No. 68-72 than they do with employees engaged in formulating policy, whose interests are more allied with management of the Corporation.

It appears to the satisfaction of the Board that a majority of the employees in the aforementioned consolidated unit, as amended herein, have demonstrated their desire to be represented by Civil Service Forum, Local 300, SEIU, AFL-CIO, by having authorized checkoff of dues in behalf of said organization.

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 title of Procurement and Material Specialist be, and the same hereby is, added to and included in the consolidated unit created by Decision No. 68-72, subject to existing contracts, if any.

Dated: New York, N.Y.

June 25, 1973

ARVID ANDERSON
Chairman

WALTER L. EISENBERG
Member

ERIC J. SCHMERTZ
Member

Decision No. 47-73
Docket No. RU-320B-73

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The title and title code number of the
employees affected by this decision are as follows:

Procurement and Material Specialist 03942