

OFFICE OF COLLECTIVE BARGAINING
BOARD OF CERTIFICATION

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In the Matter of

LEGAL SERVICES STAFF ASSOCIATION,

DECISION NO. 65-73

Petitioner

-and-

DOCKET NOS. RU-340-72

RE-25-73

COUNCIL AGAINST POVERTY (HUMAN
RESOURCES ADMINISTRATION) and
COMMUNITY ACTION FOR LEGAL
SERVICES, INC., and the
DELEGATE CORPORATIONS OF CALS

Respondent

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

CAMMER & SHAPIRO, P.C.
by Ralph Shapiro, Esq.
for the Association

WILLIAM BABISKIN, ESQ.
Office of Labor Relations
for the Employer

DECISION AND DIRECTION OF ELECTION

On June 25, 1973, the Board issued its Decision No.48-73 in this case finding that the Board has jurisdiction over the Employer herein, and directing the parties to file further briefs "discussing the scope and content of the appropriate unit in light of the structure and functioning of HRA as it relates to the various agencies and commissions under its aegis, and developing further the argument whether any community of interest exists among the employees of CALS, the employees of the Community Corporations and the employees

of the other agencies of HRA.” The Board noted that “such evidence as is already in the record on the unit issues remains before this Board” and the Board gave the parties leave to request a further hearing, if they were so advised, to present further evidence on the unit issue. ¹

The Employer reaffirmed the position set forth in its brief described in Decision No.48-73 that the only appropriate unit is an industrial unit composed of the employees of CALS and the community corporations, and further stated that “because of funding arrangements no community of interest for collective bargaining purposes is deemed to exist between the employees of CALS and the other community corporations on the one hand and the employees of other agencies of ERA on the other”.

The LSSA submitted a memorandum on the appropriate unit which argues that:

“There is no evidence of a common hiring policy, common wage or fringe benefits structure, or common supervision or responsibility for the day to day

A summary of the evidence before the Board appears at pages 7-16 of Dec. No.48-73.

administration of personnel. There is no interchange of employees, no common job descriptions, and no testimony about the duties, skills and working conditions required of employees, of community poverty corporations and of CALS. The suspension and termination procedures for CALS employees (CAP Ex.#14) are unique because appeals terminate with CALS Chief Counsel or Board of Directors, without the intervention of HRA or CDA”.

The brief asserts that a unit composed solely of CALS employees would meet the unit criteria set forth in the NYCCBL. The LSSA brief points out that:

“despite its professed fear of fragmentation of units, CALS was unable to offer one example, real or hypothetical, where a unit of CALS employees would adversely affect the efficiency of its operations or adversely affect its labor relations”.

THE APPROPRIATE UNIT

In its determination of the appropriate unit herein, the Board has considered the record before it and the briefs and arguments of the parties. The Board is mindful of its expressed policy against fragmentation of units and notes the city’s contention that the unit requested is inconsistent with that policy. The policy referred to is a policy and not a hard and fast rule; it is subject to exceptions in appropriate cases and must give way in a given case, such as the instant matter, to other considerations, the ultimate aim

being the promotion of sound labor relations and efficiency of governmental operations. The policy against fragmentation is thus not simply a rule mandating large units nor does it even establish a rule that the best or most appropriate unit in all cases is the largest possible unit. A more accurate description of the effect of the policy is that where relevant factors in a given case have no particular bearing upon the size or scope of the unit to be formed, the largest possible unit will be preferred by the Board.

The Board has considered the statutory criteria set forth in §1173-5.0b(1) and implemented by Rule 2.10. The record shows that the personnel policies of CALS are different from those applicable to employees of community corporations and that their respective working conditions are not similar. There is no evidence that there is any interchange among the employees of the legal services corporations and the community corporations. Moreover, although the record shows that employees of certain community corporations were represented for the purposes of collective bargaining in the past, the bargaining did not include CALS employees.

The Employer did not present any evidence tending to show that a unit of CALS employees would have an adverse effect on the public service and sound labor relations. The evidence

on this point shows that while application procedures for federal funding of the various anti-poverty programs and the disbursement of funds are centralized to a certain degree, the administration of the anti-poverty program is fragmented according to the specific and various needs of the individual programs. Pursuant to this policy, for example, CDA agreements with community corporations provide for CDA training of corporation employees and the imposition of a trusteeship should a corporation prove unequal to the tasks assigned to it. In contrast, the CDA contract with CALS gives the CALS Central Administration virtual plenary power over recruitment and the practice of law and, in compliance with the order of the Appellate Division, CDA agrees to furnish CALS with copies of its evaluations in order to assist CALS in its supervision of CALS delegate agencies.

Therefore, we find that a unit of the employees of CALS and its delegate agencies, excluding employees who are managerial or confidential, is appropriate and will assure public employees the fullest freedom in the exercise of their rights consistent with the efficient operation of the public

service and sound labor relations. ²

Although CALS and its delegate legal services corporations and the community corporations are all dedicated to an attempt to diminish the causes and effects of poverty, we find that there is not a sufficient community of interest among their respective employees to warrant a single combined unit. CALS and its delegate corporations, as distinguished from the other corporations which the Employer contends should be combined in one unit, are the only HRA agencies authorized to practice law. As we noted in Dec. No.48-73, the community corporations perform a wide and ever changing variety of anti-poverty services but CALS and its delegate legal services corporations were formed solely to practice law. CALS and its delegate corporations are authorized to practice law pursuant to an order of the Appellate Division of the Supreme Court and are therefore subject to the continuous supervision and mandate of the court. The contract between CDA and CALS grants

The parties did not urge the Board to find an appropriate unit which would not include both professionals and non-professionals or supervisors and non-supervisors. Indeed, the LSSA specifically disclaimed any interest in a unit which did not combine professionals and non-professionals. Further, the parties made no attempt to show that any similarity exists among titles in CALS and titles in city wide bargaining units heretofore certified to cover public employees.

CALS complete authority in the practice of law: this great latitude and discretion in professional matters is in marked contrast to the position of the community corporations described in the Williamsburg decision. The appointment of the executive director of a community corporation is effective only upon ratification by CDA, whereas the CALS Board of Directors and the Chief Counsel exercise complete control over hiring in CALS through the roster system subject to general guidelines of OEO and CAP. The sole exception to this rule is that the Chief Fiscal Officer of CALS may be appointed only upon certification by CDA that the appointment is consistent with applicable procedures.

The parties have agreed that the following employees are managerial or confidential and we shall exclude them from the unit:

Central Administration

Chief Counsel	Managerial
Special Asst. to Chief Counsel	Confidential
Senior Attorney	Managerial
Administrative Officer	Managerial
Internal Auditor	Confidential
Budget Director	Confidential
Executive Administrator	Confidential
Executive Secretary	Confidential
Comptroller	Managerial

MFY Legal Services, Inc.

Director	Managerial
Executive Administrator	Managerial
Associate Director	Managerial
Managing Attorney	Managerial
Social Worker	Managerial

Harlem Assertion of Rights

Executive Director	Managerial
Managing Attorney	Managerial

Bedford Stuyvesant Legal Services, Inc.

Executive Director	Managerial
Executive Secretary	Confidential

Brooklyn Legal Services, Inc. (Williamsburg)³

Attorney in Charge	Managerial
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Brooklyn Legal Services, Inc. (E.N.Y. & Brownsville)

Attorney in Charge	Managerial
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Brooklyn, Legal Services, Inc. (South Brooklyn)

Project Director	Managerial
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Queens Legal Services, Inc. (South Jamaica & L.I.C.)

Project Director	Managerial
Attorney in Charge	Managerial

The Williamsburg, East New York and Brownsville offices are part of a single corporation.

Brooklyn Legal Services, Inc. (E.N.Y. & Brownsville)

Director Community Development	Managerial
Director of Litigation	Managerial
Executive Secretary	Confidential

Brooklyn Legal Services, Inc. (South Brooklyn)

Sr. Attorney (CDLR)	Managerial
Sr. Attorney - Matrimony	Managerial
Executive Secretary (1/3)	Confidential

Queens Legal Services, Inc. (South Jamaica & L.I.C.)

Executive Secretary	Confidential
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Manhattan Legal Services (East Harlem)

Director of Community Development	Managerial
Executive Secretary	Confidential

Bronx Legal Services, Inc. (Morrisania)

Executive Secretary	Confidential
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Bronx Legal Services, (Hunts Point & Landlord and Tenant Unit)

Director CDLR	Managerial
Executive Secretary	Confidential

In order not to delay the determination of the employees' desires concerning collective bargaining representation by the Association while resolving the dispute concerning the managerial or confidential status of employees, we shall direct the holding of an election forthwith. Employees who are contended to be managerial or confidential by the Employer may vote challenged

ballots. If a sufficiently large majority of unchallenged ballots are cast in favor of representation by the Association, so that inclusion of the challenged ballots could not affect the outcome of the election, we shall direct prompt issuance of an appropriate certification, and we shall direct the Trial Examiner to hold a further hearing in this case so that we may determine the managerial or confidential status of the employees listed above. Any such employees found not to be either managerial or confidential will be included by the Board in the cited unit. On the other hand, if inclusion of the challenged ballots would be dispositive of the outcome of the election, any certification will be delayed until appropriate determinations of the managerial confidential issues are made.

DIRECTION OF ELECTION

Pursuant to the powers vested in the Board of Certification by the New York City Collective Bargaining Law, it is hereby

DIRECTED that, as part of the investigation authorized by the Board, an election by secret ballot shall be conducted under the supervision of the Board of Certification or its agents, at a time, place, and during hours to be fixed by the Board, among the employees in the unit found appropriate herein who were employed during the payroll period immediately preceding

the date of this Direction of Election (other than those who have voluntarily quit or who have been discharged for cause before the date of election), to determine whether they desire to be represented for the purposes of Collective Bargaining by the Legal Services Staff Association. Employees who are contended to be managerial or confidential by the Employer may vote challenged ballots. If a sufficiently large majority of unchallenged ballots are cast in favor of representation by the Association, so that inclusion of the challenged ballots could not affect the outcome of the election, we shall direct prompt issuance of an appropriate certification, and we shall direct the Trial Examiner to hold a further hearing in this case so that we may determine the managerial or confidential status of the employees listed above. Any such employees found not to be either managerial or confidential will be included by the Board in the cited unit. On the other hand, if inclusion of the challenged ballots would be dispositive of the outcome of the election, any certification will be delayed until appropriate determinations of the managerial confidential issues are made.

DATED: New York, N.Y.

August 13, 1973

Arvid Anderson
CHAIRMAN

Walter L. Eisenberg
MEMBER

Eric J. Schmertz
MEMBER