

City v. CEU, L.237, IBT, 12 OCB 97 (BOC 1973) [Decision No. 97-73 (Cert.)]

OFFICE OF COLLECTIVE BARGAINING  
BOARD OF CERTIFICATION

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In the Matter of the Petition of

THE CITY OF NEW YORK,

Petitioner,

-and-

CITY EMPLOYEES UNION, LOCAL 237,  
INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS,

Respondent

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DEC. NO. 97-73

DOCKET NO. RU-353-73

DECISION AND ORDER

On January 12, 1973 City Employees Union, Local 237, IBT, filed a petition requesting that the 16 employees in the new title of Supervising Special Officer (established by Personnel Order No. 60/72, dated December 19, 1972) be accreted to the basic supervisory-non-supervisory unit of Special Officers, Senior Special Officers, and Hospital Security Officers for which it had been certified in Decision No. 56-70. All the Supervising Special Officers are employed by the Human Resources Administration, which also employs 490 of the 1057 Special Officers, and 75 of the 175 Senior Special Officers employed city-wide. Local 237's current contract for the basic three-title unit expires December 31, 1975.

In a letter dated April 2, 1973 the City contended that the title of Supervising Special Officer is managerial and should not be accreted to the basic unit. At the outset of the hearing authorized by the Board, Local 237, IBT, maintained that the City's manageriality claim was not timely, was not in the form of a petition, and therefore should be dismissed. The Trial Examiner reserved decision on the Union's notion and proceeded with the hearing. We find and conclude that the City's response to the petition herein in the form of a letter was adequate to raise the issue of manageriality, and that such assertion was timely under Sec. 2.20.b. Subd.2 of the Consolidated Rules, which calls for filing "during the pendency of a representation proceeding in which the unit includes the employees sought to be designated as managerial."

Duties and Responsibilities of the  
Supervising Special Officers

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The Supervising, Special Officers are the highest civil service title in the Division of Police Operations of the Human Resources Administration. Fifteen of them have the office title of Lieutenant, while one, Calvin Bass, has the office title of Captain. In the HRA the Senior Special Officers and the Special Officers have been given the office titles of Sergeant and Patrolman respectively.

The 15 Lieutenants under %Captain Bass are divided into executive (3) and field Lieutenants (12). The former work out of the Patrol Division headquarters, and include an Executive Lieutenant who is second in command to Bass, and handles the administrative Administrative Lieutenant who handles the administrative and clerical operations within the Division, including leave approvals, transfers, new assignments and personnel records; and an Operations Lieutenant who is in charge of communications and equipment, maintains files of the monthly reports of field lieutenants, and makes evaluations of their problems and needs. Each of the executive lieutenants has a small staff consisting of one or two administrative sergeants, an administrative patrolmen, and three clerks.

Ten of the field lieutenants, also known as division commanders, are In charge of the ten geographical divisions into which the HRA complex of installations is divided; one is in charge of, the training school for patrol personnel maintained by HRA; and one is a relief field lieutenant. Typically a field lieutenant commands 8 sergeants and 30-60 patrolmen in 9-10 installations. If non-patrol personnel (clericals) are included, the average field lieutenant supervises 60-90 persons.

There are 76 installations or locations within the HRA complex: 45 income maintenance centers, 5 adult institutions, 4 children's institutions, 5 administrative buildings, and 17 miscellaneous service locations. Each category, of course, poses a different kind of patrol problem.

The "Proposed Job Specifications" (1/19/73) for Supervising Special Officer describe the duties and responsibilities of the title as follows:

Under general supervision, is responsible for planning, developing and/or implementing security programs of the department of Social Services and for supervising and coordinating the security staff within an assigned geographical area; performs related work.

The Proposed specifications also set forth that there be a direct line of promotion from Senior Special Officer to Supervising Special Officer. Both of these titles are in the Special Officer Occupational Group. All the present Supervising Special Officers are provisionals.

The civil service title closest to that of Supervising Special Officer is Hospital Security Officer (12), a title established in 1968 and employed only in the Health and Hospitals Corporation and its predecessor, the Department of Hospitals.

The Hospital Security Officer job specifications (5/27/68) describe the duties and responsibilities of the title thus:

“Under direction, is responsible for the effective planning, coordinating and control of the security program of a municipal hospital; performs related work.”

The job specifications set forth that the direct line of promotion to Hospital Security Officer is “to be determined.” So far as can now be established, therefore the HSO title is not necessarily attained by a promotion examination from Senior Special Officer, as is the Supervising Special Officer.

A comparison of the security chain of command in HRA and in the Health and Hospitals Corporation, indicates that the Supervising Special Officer and the Hospital Security Officer occupy similar places in the hierarchy of authority within their respective agencies.

<u>HRA (5/31/73)</u>	<u>H &amp; H Corp. (7/9/73)</u>
Special Officers (Patrolmen) -490 Pay scale -\$7400-\$9200	Special Officers-698 Pay scale - \$7400-\$9200
Sr. Special Officers (Sgts) - 75 Pay scale -\$10,250	Sr. Special Officers - 144 Pay scale -\$10,250
Supv. Special Officers (Lieut) - 15 Pay scale - \$12,000	Hospital Security Officer-13 \$11,950 plus \$400-800 differ- ential depending on size of hospital
Supv. Special Officers (Capt.) -1 Pay scale -\$13,600	Director of Security Hospital) (in large hospitals, or Associate Hospital Director in small hospitals. Both titles in Managerial Pay Plan.
Asst. Deputy Administrator (Office of Management and Planning). In Managerial Pay Plan.	Director of Security (Corp) Managerial
Deputy Administrator-Managerial	Vice President in Charge of Operations Managerial
Administrator-Managerial	President-Managerial

The Alleged Managerial Status of the  
Supervising Special Officers

The City contends that the Supervising Special Officers are the chief field officers of HRA's Division of Patrol Operations, that they play a broad and active role in the process of formulating and promulgating policy and operating procedures affecting security, involving the regular exercise of independent judgment, and that they meet the tests of managerial status established by the Board. It is conceded that the Supervising Special Officers play no part in collective bargaining negotiations. While admitting a similarity between

the job specifications of Supervising Special Officers and Hospital Security Officers (who are in bargaining), the City nevertheless maintains that the actual roles of the two titles differ materially because of the alleged basic dissimilarity of the patrol or security function in the Human Resources Administration and the Health and the the job specifications of Supervising Special Officers and Hospitals Security Officers (who are bargaining), the City nevertheless maintains that the actual roles of the two titles differ materially because of the alleged basic dissimilarity of the patrol or security function in the Human Resources Administration and the Health and Hospitals Corporation.

William M. Shanhouse, an Assistant Deputy Administrator of HRA, who heads the Office of Management and Planning which has jurisdiction over the Division of Patrol Operations, testified that in his view the Hospitals Corporation's security program is essentially engaged in a guard-type or crowd control function, while the HRA patrol operation, because of the different mentality and motivation of its clientele, is engaged in more difficult, violence-fraught police work. Shanhouse admitted he had no first-hand knowledge of the Hospital Corporation's security program, but asserted that on the basis of information allegedly received from Hospitals Corporation authorities and officials of Local 237, the patrol operations of the two agencies were dissimilar. From this

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Local 237, IBT, in a "Supporting Statement" strongly denies that union representatives advised Shanhouse that they regarded the patrol operations of the two agencies as basically dissimilar, and declares, "It is the Union's position that both agencies have police operations, and that neither has a greater or lesser police problem or capability."

asserted difference in the security problems faced by the two agencies, the City concludes that the decision-making authority granted the top security personnel also differs. In this connection the City points to the alleged "extensive policy-making role" accorded the Supervising Special Officers as a result of their participation in the formulation and implementation of Operational and Security Guidelines."

Mr. Shanhouse, who came to the HRA in the Spring of 1971, testified that prior to his coming, none of the Supervising Special Officers, not even Captain Bass, exercised any managerial function. All security policy was made by the then Assistant Deputy Administrator who oversaw the Division of Patrol Operations, but since the latter had very extensive responsibilities in addition to the Patrol Division, there was in practice "barely any input from him," thus leaving Captain Bass with the sole operating responsibility for the Division. Meanwhile the Division was growing rapidly in size-from 180 men in 1964 to over 600 men in 1972 - at the same time that the HRA locations were also growing in number and diversity. On taking office, therefore, Mr. Shanhouse perceived the need to develop a "management



team" for the Division of Patrol Operations, and proceeded to confer on the Supervising Special Officers duties and authority not reflected in the job specifications. Although the Supervising Special Officers are not in the Managerial Pay Plan, he regarded the Supervising Special Officers as a group as a "management board or administrative Board" which would assist him and his immediate staff in the Office of Management and Planning to develop and implement policy in the security area. To this end the Lieutenants (both executive and field), meeting weekly with Captain Bass, initiate Organizational Guidelines and Security Guidelines.<sup>2</sup> The former embrace operational procedures governing the reporting by patrolmen, standard attendance reporting by patrolmen and sergeants, rules governing the granting of leave to officers, daily visitation of locations

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The guidelines are adopted by consensus at the weekly meetings between Captain Bass and the lieutenants. There is no formal voting. The Organizational Guidelines are promulgated by Captain Bass, but Security Guidelines, whose subject matter involves another branch of HRA, are issued jointly by Captain Bass and the other agency's head. Assistant Deputy Administrator Shanhouse testified that his approval is not required of guidelines made by the "management group" of Captain Bass and the Lieutenants unless a budgetary matter is involved. Being a non-professional is to patrol 01 and security operations, he accepts the recommendations of the group. Although Captain Bass is not bound even by a majority vote of the Lieutenants, "if all the Lieutenants are in opposition to Captain Bass, ... the Captain would have sufficient integrity to tell me that was so, and then I might have to play Solomon. That has not occurred."

under their command by Lieutenants, office hours of divisional commands, time card maintenance, and uses of communication equipment. The Security Guidelines, on the other hand, are intended to demarcate the extent of the Patrol Division's authority in various types of locations. Thus, for example, the Security Guideline for Income Maintenance Centers (the largest category of locations in HRA) was issued on April 14, 1972 by Captain Bass and the Director of Income Maintenance Programs, after having been developed by the Supervising Special Officers. It clarifies the respective responsibilities of the Center Directors [Civil Service title Assistant Directors(Welfare)] who have general charge of the welfare centers, and the Sergeants and Lieutenants who are responsible for security there. The Center Director (found in Dec. #46-72 to be a managerial employee) is responsible for the operation and management of the Center, including whether it should be closed or staff moved from a particular area. The Police Sergeant assigned to each center shall work closely with the Center Director, but the final decision on all operational matters other than security rests with the Center Director or his designee. However, the Sergeant (or his superior, the Field Lieutenant) is solely responsible for the provision of security and the enforcement of laws, as

well as the supervision and deployment of patrol staff at a Center, arrests, calls for police assistance, and adherence to fire regulations. The Guidelines set forth with great particularity how the separate authorities of the Center Director and the Patrol Commander shall be exercised, and how the mutual consultation and cooperation between them shall be carried out. Sergeants are to be included in all cabinet meetings of the Center Director and all other appropriate meetings involving security, and periodic meetings are to be held at least once a month between the Sergeant and/or the Lieutenant and the Center Director.

An almost identical set of security guidelines, embodying similar division of authority and joint consultation, was issued by Captain Bass and the Director of Operations of Children's Centers on November 8, 1972, and similar Guidelines are planned for the other types of programs operated by HRA.

The City maintains that the Lieutenants have "the same Level of authority as the Center Directors who are managerial employees, that the Lieutenants played a direct role in devising the policy that established their superior role in security matters vis-a-vis the Center Directors," and that "it would be anomalous for the Lieutenants and Center Directors to bear the same level of authority and yet have one regarded as managerial and one not."

The City also draws attention to the fact that Captain Bass is a member of the six-person Advisory Group made up of the operating heads of the Divisions (Discipline, Industrial Engineering, Patrol Operations) and Bureaus (Plant Management, Administrative Services, Procurement) comprising the Office of Management and Planning, which meets regularly with the Assistant Deputy Administrator and participates in the formulation of general policy for the Office.

The City concludes, therefore, that the Lieutenants' participation in the formulation of Operational and Security Guidelines, their attendance at the monthly cabinet meeting of the Center Directors, and Captain Bass's membership in the Advisory Group of the Assistant Deputy Administrator in charge of the Office of Management and Planning, establish that the Supervising Special Officers as a group are engaged in the essential process of policy-making and are, therefore, managerial employees. They are expected to exercise independent judgment in their divisional command functions, and have authority to make decisions in "matters of life and death importance to the residents of New York City as well as to thousands of employees working in HRA installations."

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FINDINGS

The testimony of Captain Bass and Assistant Deputy Administrator Shanhouse support the view that the Supervising, Special Officers perform a high-level supervisory role, but do not establish their alleged managerial role. Even if the Lieutenants have a shared responsibility with the Center Directors at individual welfare centers, such separate responsibility does not necessarily imply equality of responsibility - or, as the City's brief puts it, the "same level of authority." It may not properly be concluded that if the Center Director is managerial, the Lieutenant must be so also. The Center Director's jurisdiction embraces a large number of responsibilities flowing from the essential mission of the agency; the Supervising Special Officer's only the limited responsibility for security. If there is a sharing of responsibility at a center, it is a very limited one on the part of the Center Director. In this regard it is noteworthy that the Sergeant or Lieutenant is a member of the Center Director's cabinet, not the reverse.

It is true that the Board has held that "the regular effectuation, initiation, and development of standard operating procedures is an indicium of manageriality (Decisions 79-68, 52-69, 53-70), but such operating procedures should be importantly related

to the mission of the agency. Otherwise any employees formulating procedures in a narrow functional area only incidentally related to the basic mission of the agency would be considered managerial. In the instant case the principal mission of HRA and its component agencies is the provision of various welfare services and benefits to needy or eligible persons. The security or patrol function-- the handling of crowds, the preservation of peace, and the protection of property - is ancillary to the delivery of such services and benefits. Although an important function in itself, it is, in this context, a subordinate one, and the design of procedures associated with it can hardly be deemed policy-making in achievement of the agency's basic mission.

Further, the City has failed to establish that the Supervising Special Officer performs a function materially different from that of the Hospital Security Officer, a title accorded bargaining rights. The fact that the security problems in some HRA locations may be fraught with violence, and hence are more hazardous than those of hospitals, does not establish the manageriality of the Lieutenants. All one can say is that each agency - the HRA and the Hospitals Corporation - faces a different type of security problem.

If the HRA is confronted with problems of greater violence, the Hospitals Corporation has its own peculiar problems - for example, the theft of drugs and valuable equipment. Both agencies have a vast common problem of "security." HRA has 76 locations to patrol, the Hospitals Corporation 19 hospitals and the Central Office. HRA has a total of 606 security employees, the Hospitals Corporation 855. The two agencies together account for 95% of all the Special Officers and Senior Special Officers employed by City agencies.

We find and conclude, therefore, that the Supervising Special Officers assigned to the office title of Lieutenant are not managerial employees but are second-level supervisors. Our view is supported by the determination by the N.Y.S. Public Employment Relations Board that a closely analogous State job title, Chief Security Officer (\$9,501 - \$11,931) be included in the Security Services unit of State employees along with the subordinate titles of Security Officer and Senior Security Officer (2 PERB 3037). The Security Officers are assigned to the largest and busiest offices of the Division of Employment, or the Department of Motor Vehicles at the State Office Building, or the Workmen's Compensation Board Building. Supervisory positions exist only in the Division of Employment which, like HRA, dispenses transfer payments. As the job specifications state:

"The daily volume of visitor traffic in these buildings is very large. Although Security Officers do not have Peace Officer status and are not armed, they have the power to arrest. They are frequently called upon to deal with problem situations arising from agency determinations regarding Unemployment Insurance and Workmen's Compensation benefits, motor vehicle licenses and tax delinquencies ..." (Emphasis added)

None of the titles in the Security Officers series has been designated as managerial by PERB. The Chief Security Officer, the State analogue of Supervising Special Officer, is under the direction of the Chief Unemployment Insurance Investigator, a managerial title. The Chief Security Officer "supervises and coordinates the activities of subordinate Security Officer staff in the New York City metropolitan area; assists in the planning and direction of the security program, including in-service and out-service training of subordinate staff; selects and assigns subordinate staff and evaluates their performance; confers with subordinate staff and local office managers regarding the effectiveness of the security program and reports results to the Chief Unemployment Insurance Investigator; reports complaints concerning Security Officer staff and conflicts between local office managers and Security Officer staff, to the Chief Unemployment Insurance Investigator for his resolution, etc."



THE SPECIAL CASE OF CAPTAIN BASS

Although he holds the same civil service title as the Lieutenants, i.e., Supervising Special Officer, Captain Bass is not merely first among equals. He is the highest ranking officer in the Division of Patrol Operations, a rank above the Lieutenants who report to him and are subject to his command. He is not chosen by the Lieutenants but by his superiors, the Deputy Director or Assistant Deputy Director of HRA having jurisdiction over the security function. He receives a higher wage scale than the others in the Supervisory Special Officer title. Civil Service Commission Resolution #73-5 which created the title makes it clear that the Commission regards the assignment now held by Captain Bass to be somewhat like a separate title, since it provides a \$1600 differential above the flat salary paid the other Supervising Special Officers - a differential "paid solely to the one incumbent when serving as the director of the security staff of the HRA" Captain Bass is a third-level supervisor, whereas the Lieutenants are second-level supervisors. He reports personally to Shanhouse, the assistant Deputy Director of HRA; the other Supervisory Special Officers do not. He thus has a substantial direct input in the formulation and implementation of policy decisions made by the Assistant Deputy Director in the patrol area. Operating

and Security Procedures issue over his signature to all security personnel. Although all the Lieutenants have an input in the formulation of the Operating Procedures and Policy Statements touching on the agency's security program, Captain Bass must approve these before passing them on to the Assistant Deputy Director. Moreover, Captain Bass, alone of all the Supervisory Special Officers, is a member of the Shanhouse six-member advisory group, all the other members which are in the Managerial Pay Plan. Through his membership in this advisory group Captain Bass also participates in the formulation of general policy for the Office of Management and Planning.

A clear distinction can therefore be drawn between Captain Bass and the Lieutenants, and a finding that the Supervisory Special Officers assigned to the office title of Lieutenant are not managerial is not determinative of the status of the Supervisory Special Officer assigned to the office title of Captain. We find and conclude that Captain Bass is a managerial employee whose expertise in the security area and pre-eminent position in the Division of Patrol Operations regularly involve him in the formulation and implementation of policy decisions affecting the 600 man security operation of HRA.

O R D E R

NOW, THEREFORE, pursuant to the power vested in the Board of Certification by the New York City Collective Bargaining Law it is hereby

ORDERED, that the Union's motion to dismiss the City's raising of the managerial issue is denied; and it is further

ORDERED, that the Supervising Special Officers assigned to the office title of Lieutenant be, and the same hereby are accreted to and included in Certification No. 56-70, subject to existing contracts, if any; and it is further

ORDERED, that the Supervising Special Officer who serves as Director of the Security Staff of the Human Resources Administration and who has the office title of Captain, be, and the same hereby is, designated a managerial employee and excluded from Certification No. 56-70, as amended.

DATED: New York, N.Y.  
December 17, 1973

ARVID ANDERSON  
Chairman

WALTER L. EISENBERG  
Member

ERIC J. SCHMERTZ  
Member