

L.803, IBT v. OTB, 14 OCB 63 (BOC 1974) [(Decision No. 63-74
(Cert.)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF CERTIFICATION

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In the matter of

LOCAL 803, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS

DECISION NO. 63-74

DOCKET Nos. RU-433B-74
RU-434B-74

-and-

NEW YORK CITY OFF-TRACK
BETTING CORPORATION

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DECISION

District Council 37, AFSCME, AFL-CIO and Local 803, I.B.T.

filed petitions on March 29, 1974 and April 3, 1974, respectively, seeking certification for a unit of Area Managers (OTB) and Branch Office Managers (OTB). The employer objected to the inclusion of Area Managers in the bargaining unit on the ground that their duties "are managerial in nature...." On May 8, 1974, we issued our Decision and Direction of Election (Decision No. 20-74). We determined that Area Managers could vote challenged ballots.

Subsequently, by motion dated May 30, ' 1974, the O.T.B. Managers' Association, Division of Shoreside Supervisors Union, Affiliated with District 2, MEBA-AMO, AFL-CIO, sought to intervene by having its name placed on the ballot. In Decision No. 21-74, dated June 10, 1974, we granted the Association's motion to intervene, and on June 26, 1974 an election was conducted among Branch Managers (OTB) and Area Managers (OTB) to determine whether they desired to be represented for collective bargaining purposes.

The election results indicated that a sufficiently large majority of the Branch Office Managers (OTB) casting ballots voted for representation by Local 803, I.B.T. so that inclusion of challenged ballots cast by the allegedly managerial Area Managers (OTB) could not affect the outcome of the election.

In Decision 27-74, the Board certified Local 803, I.B.T., as the exclusive representative of all Branch Office Managers (OTB) and ordered that a hearing be held regarding the alleged managerial status of the title of Area Manager. In light of Local 803's certification, D.C. 37, AFSCME, and the OTB Managers' Association, Division of Shoreside Supervisors Union, Affiliated with District 2, MEBA-AMO, AFL-CIO, did not participate further in the processing of the instant case.

A hearing was held on August 27, 1974 before Joan Weitzman, Trial Examiner.*

BACKGROUND

The Off-Track Betting Corporation is a municipal corporation which administers off-track betting operations for the City.

There are ten employees in the title of Area Manager. All ten are assigned to the Branch Operations department of the O.T.B., which handles 95% of the revenues coming into the corporation. Each is in charge of one of the ten geographic areas into which the City is divided. Collectively, they direct a work force of 1500 employees comprising approximately 80% of the O.T.B.'s entire work force.

There are 132 local branch offices with approximately thirteen offices in each area. The Area Manager is responsible for the operations, revenue, and personnel in his or her area. There are approximately 150 employees in each Area Manager's area. The monthly revenue for a single area was estimated to vary between \$6,000,000 and \$10,000,000.

*The Trial Examiner's ruling, objected to by the City, excluding from evidence a letter signed by seven Area Managers and stating their opinion that Area Managers are managerial employees, is upheld. It is the sole function of this Board to render opinions as to managerial status. It is the function of the parties and of the testimony and evidence they introduce to furnish to the Board facts upon which such an opinion can be soundly based.

Within Branch Operations, all but the Area Managers, their secretaries, their Field Managers, and the Executive Director and his staff are assigned to specific local OTB branch offices. The area managers report to the Executive Director of Branch Operations, who is in charge of all 132 local branch offices. There are three O.T.B. officers who are directly superior to the Executive Director: the Senior Vice President for Betting Operations, who is responsible for Branch Operations, Manpower, Operations Control and Telephone Bets; the Senior Vice President; and the President of the Corporation.

The Area Manager's immediate office consists of the area manager, a field manager, and a secretary. Each area manager also has an area staff pool composed of supervisors, cashiers, and shift and branch managers, who are assigned from his office to relieve managers in the field on vacation, sick leave, etc. Each branch office is managed by a Branch Manager and is staffed by supervisors and cashiers.

Area Managers are in the O.T.B. Managerial Pay Plan and Welfare Fund. Their annual salary ranges between \$18,200 and \$20,700. The salary ranges of other Branch Operations employees subordinate to the Area Managers are as follows:

Branch Office Manager*	\$11,700 - \$18,100
Branch Supervisor (Head Clerk)	\$10,000 - \$13,550
Cashier (Full Time)	\$ 7,800 - \$10,400
Cashier (Part Time)	\$4.27 - 5.69/hr.
Cashier Trainee (Part Time)	\$3.52/hr.

O.T.B.'s Position

Essentially, the O.T.B. maintains that Area Managers are managerial because (1) they participate in the making of policy

*Within the category of Branch Office Manager are two designations: Branch Manager 1 and Branch Manager 2. The latter is an office title, which is generally referred to as Shift Manager. The Shift Manager is responsible for the operation of a branch during a particular shift whereas the Branch Manager 1 is responsible for an entire office. With respect to salary, the range for shift managers is included within that of Branch Managers.

and (2) because they assist in the employer's preparation for

collective bargaining and have a major role in the administration of collective agreements.

The Area Manager and Policy Forumulation

Area Managers participate in the formulation of O.T.B. policies and procedures. They represent Branch Operations at OTB policy meetings and are responsible for recommending changes in existing policies and for developing new ideas aimed at improving the profitability of Branch Operations. They also attend procedures review committee meetings where they participate, along with the directors of other O.T.B. departments, in devising new procedures and improving existing ones.

It was testified that at O.T.B., two types of policy are formulated. "Some policy expresses itself in a written document (the Policies and Procedures Manual) and other policy is just arrived at as a result of management consultations and meetings" (T.p.93-94). Policy and procedures meetings are held regularly and involve high level managerial representatives from the various subdivisions. Area Managers represent Branch Operations at these meetings. They attend in order to provide top management with "raw data" from the field "and with the recommendations for change in policy and procedures." (T.p.30). Specifically, they report on customer relations, equipment problems, and personnel matters; they also present their evaluations of pilot programs and new equipment.

All Area Managers participate in the formulation of recommendations on policies and procedures for these higher level managerial meetings. At bi-monthly Area Manager meetings, presided over by the Executive Director of Branch Operations, problems are discussed, so that the Area Managers who are to attend the policy meetings, as Branch Operations representatives, may report on the reactions of the Area Managers to particular issues and present their collective suggestions for any policy changes.

Responsibilities and Initiative of Area Managers

The Area Manager is directly responsible for the branches

under his direction. He has full responsibility for the betting revenues, or "handle" in his area, as well as the attractiveness of the branch offices, the quality of service, and the courtesy exhibited by the personnel in the branch offices. The Area Manager is directly responsible for every aspect of the operations of the branches under his direction. He is answerable for the efficiency, productivity, and quality of all O.T.B. offices within his area, including the levels of profit and loss.

In connection with their responsibility for profitability, Area Managers are free to devise and implement their own methods and means of improving profitability. From time to time, they report on their experiences in this regard in the form of profit improvement plans for possible use by higher management and fellow Area Managers in the interest of improving profitability of O.T.B. operations generally.

The Area Manager also has independent responsibility for assignments, staffing, and scheduling in the branch offices in his area. Through his area staff pool, substitutes are assigned to replace employees who are absent in the local offices. No superior reviews the schedules or assignments which the Area Manager makes. The Area Manager is also authorized to reduce the staff within his area and to transfer employees from one branch office to another.

The Labor Relations Role of Area Managers

Area Managers directly participate in the employer's preparation for collective bargaining and have an important role in personnel administration.

With respect to the O.T.B.'s negotiations, the Area Managers review the demands made by the Union and make effective recommendations to the O.T.B.'s negotiating team concerning management proposals. It was shown that the Area Managers' evaluations of the impact on O.T.B. operations of Union demands are of vital importance in the development of management bargaining policies.

Area Managers are also responsible for the administration of collective agreements in their areas. It was testified that they may use "independent judgment" in such administration as long as it conforms to the terms of the agreement.

Area Managers serve as the first step in the grievance procedure. Approximately 80-90 per cent of all branch operation grievances are resolved by Area Managers at the Step I level. At Steps II and III, the Area Managers present management's version of the particular grievance at issue.

Area Managers also have authority to discipline employees under their jurisdiction to the extent of issuing written reprimands. They initiate the process of discipline in more serious cases by issuance of complaint forms, through which official charges are preferred against an employee. The Area Managers make effective recommendations for disciplinary action to be taken. In a large percentage of cases, their recommendations are adopted at the informal conference level, where 90% of all disciplinary matters are resolved.

The Union's Position

The Union contends that Area Managers (O.T.B.) are not managerial employees within the meaning of Section 201.7(a) of the Taylor Law. It maintains that Area Managers do not formulate policy, but rather, "merely implement policy, and perhaps determine procedural aspects of their duties." With respect to contract negotiations, the Union argues that the Area Managers' role is "peripheral at best" because they do not appear at the bargaining table. The Union also argues that they do not "assist directly in the preparation for and conduct of" bargaining. Their involvement in personnel and contract administration, the Union claims, may not be categorized as "major".

It is the Union's position that the Area Manager's function is "strikingly similar" to that of Branch Manager, who is considered non-managerial. The Union argues that "the only

difference is one of degree and not of kind, in that the Area Manager has more branches under his ultimate authority.'

Discussion

Article XIV, Section 201.7 of the Civil Service Law states that

"...Employees may be designated managerial only if they are persons (a) who formulate policy or (b) who may reasonably be required on behalf of the public employer to assist directly in the preparation for and conduct of collective negotiations or to have a major role in the administration of agreements or in personnel administration provided that such role is not of a routine or clerical nature and requires the exercise of independent judgement."

The record in the instant case establishes that Area Managers are the employees chiefly responsible for the maintenance of O.T.B. line functions. They are the chief field officers of the single largest O.T.B. department in terms of the numbers of employees, and each is responsible for the receipt and handling of \$6,000,000 to \$10,000,000 per month. They are consulted frequently by the Executive Director of Branch Operations, and they participate effectively in regular high level policy committee meetings. They are charged with testing and evaluating policies and procedures in their areas and with recommending necessary changes. It is clear that the Area Managers perform a sensitive and vital role in O.T.B. operations and are necessarily vested with a high degree of discretion and authority.

While it may be true that Area Managers perform on a broader scale many of the same duties performed by non-managerial Branch Managers in their individual offices, the wider scope of the Area Managers' functions and the greater degree of responsibility and

authority which they exercise significantly elevates their status above that of Branch Managers. When one considers the range of services under their direction and their close relationship with O.T.B. top management, it is manifest that they have a far greater impact on O.T.B. operations than do Branch Office Managers.

Moreover, the Area Manager is at the second level of the single most important division of the Corporation. In the total corporate hierarchy, there are four levels of authority above him, including the president, and at least six levels of authority, encompassing 150 employees, under his direction. Were Area Managers included in collective bargaining, the Executive Director and his two person staff, who are located in central headquarters, would be the only managerial employees in Branch Operations. This would be an unworkable situation in a corporation so dependent on the proper management of its field operations.

Although Area Managers do not represent management at the bargaining table, they significantly participate in developing the employer's bargaining demands and in shaping the O.T.B.'s response to Union bargaining demands. Their recommendations are consistently sought and adopted by the O.T.B. negotiation team, and it is clear that they are an integral component of the employer's negotiating structure. They are responsible for day to day personnel management and for the administration of collective agreements in their areas. In the exercise of these responsibilities, they are vested with significant authority to make independent judgments. Additionally, they play a key role in the O.T.B. disciplinary and grievance procedures.

In a case involving Borough Superintendents in the Department of Sanitation, we held that an employer's right to have assistance in the performance of managerial duties, "including representatives capable of furnishing meaningful advice and assistance in the collective bargaining process necessarily is implicit in any law

which requires the employer to bargain collectively with its employees." (Service Employees International Union, Local 444, AFL-CIO and the City of New York, Decision No. 43-69). The Area Managers in the instant case perform precisely this function; were they to be included in a bargaining unit, the O.T.B. would be deprived of the above-quoted right. The necessity recognized in Decision No. 43-69 to provide a management group unaffected by divided loyalties would be ignored. As we also said in City of New York and Hospital Administrators Association, Decision No. 6-70, "There is an obvious conflict of interest when the representative of management is, himself, a union member or represented by a union."

In previous decisions, we have designated employees in a title to be managerial where they exercise "extensive supervisory authority at the highest level of field operations in the department, ... have a significant role in labor relations in which their function is identical with the interests of the employer; and ... constitute a vital and essential component in the system whereby departmental policy is formulated and effectuated" (Local 371, District Council 37, AFSCME, AFL-CIO and Senior Social Service Administrator's Association and the City of New York and related Public Employers, Decision No. 46-72).

In Parks Policy Committee, D.C. 37, AFSCME, AFL-CIO and City of New York, Decision No. 53-70, we indicated additional criteria which we would consider in evaluating the managerial status of employees. In finding that Supervisors of Recreation (Department of Recreation) were managerial employees, the Board noted:

They regularly and significantly participate in the central planning and formulation of department programs and policies, and are responsible for implementation thereof within their respective boroughs, including effective recommendation of the allocation of funds, the development of operating methods and procedures, and the assignment and transfer of personnel. Although they do not participate in collective bargaining negotiations, they represent management in the processing of second-step grievances, and preside at

disciplinary hearings and submit their recommendations to the administrator.

In considering participation in policy formulation as a criterion of managerial status, we stated in Decision 43-69:

Our concern is not limited to the final act, which changes a document from a proposal to a directive or policy statement, but covers the essential process which produces the decision. Significant and responsible participation in that process is probative evidence of managerial status.

As the highest level of field employee in the O.T.B., the Area Managers form a vital link in the Corporation's operations. They are essential in the process of obtaining, evaluating, and transmitting information upward and of receiving, interpreting, and implementing the policies of higher management in their downward flow. These functions when coupled with Area Managers' significant participation in the policy making process itself, as well as their important role in labor relations and personnel management, it is manifest that Area Managers are managerial employees. They do not, therefore, collectively or severally, constitute a unit appropriate for purposes of collective bargaining.

ORDER

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

DETERMINED, that the title Area Manager (OTB) is managerial within the meaning of the New York City Collective Bargaining Law

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and may not be included in a unit appropriate for collective bargaining.

DATED: October 28, 1974

New York, N.Y.

ARVID ANDERSON

C h a i r m a n

WALTER L. EISENBERG

M e m b e r

ERIC J. SCHMERTZ

M e m b e r