

City v. DC37, CWA, 18 OCB 261 (BOC 1976) [Decision No. 26-76  
(Cert.)]

OFFICE OF COLLECTIVE BARGAINING  
BOARD OF CERTIFICATION

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In the Matter of

THE CITY OF NEW YORK,

DECISION NO. 26-76

Petitioner

DOCKET NO. RE-24D-72

-and-

DISTRICT COUNCIL 37, AFSCME  
AFL-CIO

-and-

COMMUNICATION WORKERS OF AMERICA

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DECISION AND ORDER

In Decision No. 19-75, the Board made findings on the manageriality/confidentiality of many titles which the City had petitioned to have excluded from collective bargaining. The Board made no findings, however, on the title of Administrative Manager because of objections that had been filed by certain individual employees who held that title and who claimed that they were not managerial within the meaning of the New York City Collective Bargaining Law. These employees were allowed to intervene pursuant to the Board's rule 2.20, which gives individuals affected by such a City petition the right to intervene in the proceedings. The Communication Workers of America had filed a petition (RU-506-7S) seeking to represent Administrative Managers not paid

pursuant to the Managerial and Executive Pay Plan. That petition was subsequently withdrawn when the City agreed to place all Administrative Managers in the Managerial Pay Plan. Administrative Managers (OTB) are the subject of a petition filed by Local 803, International Brotherhood of Teamsters (ZU-509-75) OTB and Local 803 are currently attempting to resolve informally the question of the manageriality/confidentiality of those employees.

On September 17, 1975, a hearing was held by Joan Weitzman, Trial Examiner, at which three individual Administrative Managers, who had filed objections to the City's petition in RE-24-72, presented testimony as to why the Board should not find them to be managerial employees.

The three Administrative Managers are employed by the Department of Social Services, two as Directors of Income Maintenance Centers., and the third as a Director of the Office of Case Intake and Management. The thrust of their testimony was that they implement rather than formulate policy, exercise limited authority in personnel administration, do not participate in collective negotiations and, in some instances, earn a lower salary than subordinates with the titles of Supervisor II and Supervisor III.

On cross-examination, it was established that all three witnesses are paid pursuant to the Managerial Pay Plan at the M-1 level and are covered by the Managerial Welfare Fund. Their duties closely parallel those of other Administrative Managers with the

same office titles. They also represent management at the first step of the grievance procedure.

The testimony of these witnesses reflected the frustration of experienced employees who, despite their managerial titles and salary levels, have been denied an effective role in policy-making. They have also been demoralized, to some extent, by the fact that their subordinates, who are under collective bargaining, in some instances earn higher salaries than their own.<sup>1</sup>

It is the Board's policy, however, not to split titles by finding some employees managerial and others eligible for bargaining. Nor should the Board allow "the tail to wag the dog," so to speak, by finding an entire title to be non-managerial on the basis of testimony by a few witnesses.

In Decision No. 19-75, the Board clearly found that all employees paid pursuant to the Managerial and Executive Pay Plan (M-1: \$20,568) are managerial within the meaning of the New York City Collective Bargaining Law. The some two hundred persons in the title of Administrative Manager, including the three individuals who intervened in these proceedings, are paid pursuant to the Managerial Pay Plan. In the absence of compelling evidence which would dictate an exception to the general rule, the Board will adhere to its policy of not breaking up a title. In the

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We note, however, that this problem will be partially remedied by the salary raise of \$1,675 which has recently been approved by the Mayor for all employees paid -pursuant to the Managerial Pay Plan.

instant case, although the experience of the intervenors underscores the need for either reclassifying certain titles of for bolstering the morale of managerial employees, the evidence does not compel a finding that any Administrative Managers be declared eligible for collective bargaining. Were the would be beseiged in the future with requests for individual hearing on every challenged title.

DETERMINATION AND ORDER

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

DETERMINED, that all employees in the title of Administrative Manager are managerial employees and therefore for collective bargaining, and it is

ORDERED, that the objections of the intervenors herein to the City's petition, docketed RE-24-72, with respect to the title Administrative Manager be, and the same hereby are, dismissed.

DATED: New York, N.Y.  
July 28, 1976

ARVID ANDERSON  
CHAIRMAN

WALTER L. EISENBERG  
MEMBER

ERIC J. SCHMERTZ  
MEMBER