

Law Assis. Ass v. City, 2 OCB 62 (BOC 1968) [Decision No. 62-68 (Cert.)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF CERTIFICATION

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In the Matter of

LAW ASSISTANTS ASSOCIATION OF THE
CITY OF NEW YORK,

DECISION NO. 62-68

-and-

DOCKET NO. R-58-66

THE CITY OF NEW YORK

-and-

ADMINISTRATIVE BOARD OF
THE JUDICIAL CONFERENCE

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DECISION AND DIRECTION OF ELECTION

The petition filed herein by Law Assistants Association of the City of New York, herein called Petitioner, sought certification as the collective bargaining representative of a single unit consisting of Law Assistants II and Chief Law Assistants. On March 27, 1968, Petitioner was certified as the collective bargaining representative of the Law Assistants II. So much of the proceeding as relates to Chief Law Assistants was severed, and a hearing thereon was duly held before Richard J. Horrigan, Esq., Trial Examiner, on June 17, 1968.

Upon consideration of the entire record herein and the brief of Petitioner, the Board renders the following decision:

I. Alleged "Managerial" Status

The City contends that the Chief Law Assistants are "managerial" employees, and hence are not entitled to collective bargaining rights. The City produced no witnesses in support of its contention, and the testimony of Petitioner's witnesses is uncontroverted.

Chief Law Assistants are employees of the Administrative Board of the Judicial Conference, herein called Administrative Board, which administers the Unified Court System. The Administrative Board consists of the Chief Judge of the Court of Appeals and the Presiding Justices of the four Appellate Divisions. The Judicial Conference consists of the five members of the Administrative Board and ten other judges representing the various courts in the Unified Court

System.¹

¹One Trial Justice from each of the four departments,
1 Surrogate, 1 County Judge, 1 Judge of the Court of Claims,
1 Family Court Judge, 1 New York City Civil Court Judge, and
1 New York City Criminal Court Judge.

Article VI, §28, of the State Constitution, vests in the Administrative Board: "The authority and responsibility for the administrative supervision of the unified court system . . ." It provides that the Administrative Board "in consultation with the judicial conference, shall establish standards and administrative policies for general application throughout the state" and that "the appellate divisions shall supervise the administration and operation of the courts in their respective departments" in accordance with the standards and administrative policies established by the Administrative Board.

The Administrative Board is assisted by a State Administrator, appointed by it, an Administrative Officer, and four Directors of Administration, one for each department. At lower levels, each Appellate Division has an Administrative Judge, and below them, there is an Administrative Judge for each of the lower courts.

The duties of Chief Law Assistants, as set forth in the specifications, are as follows:

"These positions supervise a group of Law Assistants in the conduct of legal research and the preparation of reports and memoranda of law; discuss assignments with Law Assistants and review work as necessary; provide guidelines to assure uniformity of interpretation on motions which frequently come before the court; research and prepare reports on more complex questions originating in trial parts or special terms; may prepare interpretation of statutes and rules for distribution to judicial or non-judicial personnel, confer with Judges on matters pending before them; may be assigned as a Special Referee to hold hearings, take evidence, and report to Judge."

The Chief Law Assistants here concerned render services in the Supreme and Surrogate's Courts. They are in the non-competitive class, and receive salaries ranging from \$18,000 to \$20,000 per annum.

The basic functions of Chief Law Assistants, and the Law Assistants II² whom they supervise, is legal research and the preparation of legal memorandum to assist the judges in

²Law Assistants I are employed in the lower courts.

cases pending before them. Chief Law Assistants make assignments in two ways. In some courts, a Law Assistant II is assigned to a particular judge who assigns cases to him. In other courts, the Assistant is not assigned to any particular judge, but researches cases assigned to him by the Chief Law Assistant. Under either method, the Law Assistant thereafter consults and works directly with the Judge, who supervises and evaluates the quality of the research and memoranda submitted. The Chief Law Assistants, themselves, also do research and prepare memoranda for the judges, usually in the more complex cases.

Petitioner's witnesses testified that they do not formulate policy, do not hire, discharge or discipline employees, do not represent management in collective bargaining and have had no occasion to handle or process employee grievances.³ The testimony further indicates that insofar as the Chief Law Assistants transmit instructions or policy formulated by their superiors, their actions are purely ministerial.

The New York City Collective Bargaining Law, herein called NYCCBL, contains no express exclusion of "managerial employees" and no definition of that term. All supervisory employees represent management to some extent, and both court decisions and literature in the field of labor relations frequently refer to them as "part of management" or "arms of management." The NYCCBL, however, grants collective bargaining rights to supervisory employees (see §1173-3.01). The City's contention, therefore, manifestly must refer, and be limited, to employees who possess and exercise powers other than those of ordinary supervision. For purposes of clarification and distinction, we shall refer to them as "managerial-executive" employees.

Assuming that managerial-executive employees are excluded from the coverage of the NYCCBL, the basic, and difficult, problem is to ascertain and specify those additional powers and duties which distinguish them from ordinary supervisory employees, and to draw the line which divides the two groups. That line, however, is one which can be finally drawn only after "elucidating litigation." Nor is it necessary or possible, in the instant case, to determine all the varied criteria of managerial-executive status.

³The rules of the Administrative Board apparently provide that the immediate supervisor of an employee shall handle the first step in the grievance procedure.

Chief Law Assistants are the lowest rung in the supervisory ladder, for there are no supervisory levels between them and the non-supervisory Law Assistants. On the other hand, they are not only outranked by, or subordinate to, the Chief Clerk of the Court in which they are employed, but there are numerous levels of administrators and administrative judges between them and the Administrative Board in which the ultimate power to establish policy resides. Moreover, the record discloses that Chief Law Assistants do not formulate, or effectively participate in the formulation of, policy, and do not act as a representative of management in collective bargaining, or in labor-management relations generally. Their primary and basic function is limited to legal research and the supervision of other employees similarly engaged.

Accordingly, we find and conclude that Chief Law Assistants are not managerial-executive employees, and that they are entitled to collective bargaining rights under the NYCCBL.

II. Representative Status and Unit

As noted above, the Petition herein seeks a single bargaining unit of both, Chief Law Assistants and Law Assistants II. Section 1173-3.01 of the NYCCBL prohibits the placement of supervisors in a unit of non-supervisory employees "without the consent of a vote of a majority of the * * * supervisory employees involved." our formal unit finding, therefore, will await the outcome of a self-determination election to be conducted among the Chief Law Assistants.

The record herein contains testimony concerning an employee in Surrogate's Court, New York County, who has the title " Chief Clerk and Chief of Law Division," and an employee in the Surrogate's Court, Bronx County, with the title "Law Secretary to Justice." As these employees are not employed in the title petitioned for herein, we shall exclude them from the unit, and do not pass upon their alleged status as managerial-executive employees. We do so on procedural grounds only, and without prejudice to the filing of a separate petition. We also exclude from the unit various Law Assistants II, referred to in the record, who are serving as "acting" Chief Law Assistants. Their regular employment is in the title of Law Assistant II, and they are included in the unit of employees in that title, for which Petitioner was heretofore certified as the collective bargaining representative (Decision No. 6-68).

Decision No. 62-68
Docket No. R-55-66

Our investigation discloses that a majority of the Chief Law Assistants leave authorized dues check-off in behalf of Petitioner. The question remains whether these supervisory employees desire to be represented as a separate bargaining unit or to be included in the previously certified unit of Law Assistants II. Accordingly, we shall direct a self-determination election in which the Chief Law Assistants may express their choice on that question. If a majority of the Chief Law Assistants voting in the election favor inclusion in the previously certified unit, we shall amend that certification to include the title of Chief Law Assistant. If a majority of the said employees do not vote in favor of inclusion in the previously certified unit, we shall find a separate unit of Chief Law Assistants to be appropriate.

DIRECTION OF ELECTION

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

DIRECTED, that 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, to determine whether or not the Chief Law Assistants Specified in Section II above, 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 discarded for cause before the (late of the election) desire a separate unit for the purposes of collective bargaining limited to Chief Law Assistants.

DATED: New York , N. Y.

October 29, 1968

ARVID ANDERSON
C h a i r m a n

ERIC SCHMERTZ
M e m b e r

SAUL WALLEN
M e m b e r