

OFFICE OF COLLECTIVE BARGAINING  
BOARD OF CERTIFICATION

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In the Matter of

LOCAL 154, DISTRICT COUNCIL 37,  
A.F.S.C.M.E., AFL-CIO

DECISION NO. 67-68

-and-

DOCKET NO. R-50-67

THE CITY OF NEW YORK

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DECISION AND ORDER

On June 20, 1967, Local 154, District Council 37, A.F.S.C.M.E., AFL-CIO, herein called Petitioner, petitioned the New York City Labor Department certification as the collective bargaining representative of Senior Consultants (MHSS), Senior Consultants. (Psychiatric Nursing) and Assistant Chief Consultant, all employed by the Community Mental Health Board. The proceeding thereafter was transferred to the Board of Certification pursuant to Rule 13.13 of the Consolidated Rules of the Office of Collective Bargaining.

On June 26, 1968, Petitioner was certified as the exclusive representative for the purposes of collective bargaining of all Senior Consultants (MHSS), Senior Consultants (Psychiatric Nursing) and Mental Health Education Specialists employed by the City (Decision No. 35-68). So much of the proceeding as relates to Assistant Chief Consultant (MHSS) was severed, and a hearing thereon was duly held before Richard J. Horrigan, Esquire, on August 22, 1963.

Upon consideration of the entire record herein, the Board of Certification renders, the following decision:

I. Alleged "Managerial" Status

The City contends that the Assistant Chief Consultant (MHSS) is a "managerial" employee and hence is not entitled to collective bargaining rights.

The Community Mental Health Board, herein called CMH Board, consists of seven members appointed by the Mayor and the Commissioners of Health and Social Services, who serve ex officio. One of the members, designated by the Mayor, serves as chairman. The CMH Board has general responsibility for the planning and supervision of mental health services in the City, and meets bi-monthly and on call of the Chairman.

The Commissioner of Mental Health Services is the chief executive officer of the CMH Board. He has two assistants, one of whom acts as liaison with Directors of Psychiatry on the CMH Board's payroll, but assigned to the Departments, of Health, Hospitals and Social Services, the courts, and the Board of Education. Other top personnel are an Executive Secretary, a General Counsel and a Public Relations Advisor.<sup>1</sup>

Administratively , the CMH Board is divided into five divisions, including research and Planning; Fiscal; Mental Health divisions. A fourth division, headed by a Deputy Director contains two sub-units; Administrative Services Unit and Personnel. The fifth division, headed by a Director of Psych-Psychiatry (CMBH ) has five sub-units; Geriatrics, Child Psychiatry, Mental Retardation, Comprehensive Services, and Standards and Services. The last of these, headed by a Chief Consultant, is the unit in which Eng, the employee here concerned, is employed. It provides consultant services to agencies receiving or applying for funds under City's mental health program. Eng assists the Chief Consultant in the administration and supervision of the sub-unit, and supervises staff members.

All policy decisions. are made by the nine member CMH Board. The Commissioner recommends policy to the CMH Board. The Chief Consultant (MHSS), in Standards and Services, Eng's immediate superior, submits policy recommendations, to the Commissioner which he may or may not, pass on to the CMH Board. Eng may suggest policy, to his superior, but it is not part of his responsibilities. Eng supervises several non-supervisory senior consultants, and advises them of policies determined by the Board and passed on to him by the Chief Consultant.

Eng's position is in the competitive class. His salary is \$12,000 a year, and he receives compensatory time off for overtime. He has no authority to appoint, discharge, discipline, transfer or promote subordinate employees , and has never represented management in collective bargaining, as a member of a joint management labor committee, or in the processing of employee grievances.

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<sup>1</sup> The budget of the CMH Board lists 8 Directors and 2 Assistant Directors of Psychiatry, 2 Assistants to the Commissioner, an Executive Assistant, and 3 Special Assistants.

The New York City Collective Bargaining Law does not expressly exclude "managerial" employees, nor does it define that term. Supervisory employees frequently are referred to as "part of management" or "arms of management." Since supervisory employees are within the coverage of the statute (see §1173-3.01), the term "managerial," as used by the City manifestly must refer to more than supervisory status. For purposes of distinction, such employees will be referred to as "managerial executives."

In the instant case, it is clear from, the job specifications, from Eng's position in the organizational hierarchy, and the testimony of the witnesses, that Eng's functions are supervisory only, and that he does not possess any additional or boarder powers which would warrant describing him as managerial-executive. Indeed, both the Commissioner of Mental Health Services and Eng's immediate supervisor testified that, in their opinions, Eng is not a "managerial" employee.

We find and conclude, therefore, that the position of Assistant Chief Consultant (MHSS) is not managerial-executive and is entitled to collective bargaining rights under the statute.

## II. The Appropriate Unit and Representative Status

Eng has authorized dues checkoff in favor of Petitioner, and we find and conclude that he has designated Petitioner as his representative for the purposes of collective bargaining. He concededly is a supervisory employee, and, therefore, under §1173-3.01 of the statute, may not be included in the same collective bargaining unit with non-supervisory employees without "the consent of a vote of the majority of the supervisory employees involved." As Eng is the sole employee in the title, a secret ballot vote is not possible. At the hearing, Eng was asked, and testified, that he desires to be included in the unit of Senior Consultants (MHSS) , Senior Consultants (Psychiatric Nursing) and Mental Health Education Specialists hertofore certified.

Accordingly, we shall amend that certification to include the title of Assistant Chief Consultant (MHSS).

O R D E R

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

O R D E R E D , that Certification No. 35-08 be, and the same hereby is, amended to include the title of Assistant Chief Consultant (MHSS) .

DATED: New York, N.Y.

November 18, 1960

ARVID ANDERSON  
C h a i r m a n

ERIC J. SCHMERTZ  
M e m b e r

SAUL WALLEN  
M e m b e r