

Ass. of Mun. Stat. V. City, 2 OCB 69 (BOC 1968) [Decision No. 69-68 (Cert.)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF CERTIFICATION

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In the Matter of

DECISION NO. 69-68

ASSOCIATION OF MUNICIPAL STATISTICIANS

-and-

DOCKET NO. R-91-67

THE CITY OF NEW YORK
(COMMUNITY MENTAL HEALTH BOARD)

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In the Matter of

ASSOCIATION OF MUNICIPAL STATISTICIANS

-and-

DOCKET NO. R-92-67

THE CITY OF NEW YORK
(DEPARTMENT OF HEALTH)

----- x

In the Matter of

ASSOCIATION OF MUNICIPAL STATISTICIANS

-and-

DOCKET NO. R-93-67

THE CITY OF NEW YORK
(DEPARTMENT OF HOSPITALS)

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DECISION AND DIRECTION OF ELECTION

On November 17, 1967, the Association of Municipal Statisticians, herein called Petitioner, filed its petitions, in the three cases captioned above, with the New York City Department of Labor. In each case, Petitioner seeks certification as the collective bargaining representative of Principal Statistician.

The cases were transferred to the Board of Certification pursuant to Rule 13.13 of the Consolidated Rules of the Office of Collective Bargaining. On I-lay 28, 1968, the Board of Certification directed that the cases be Consolidated.

Upon consideration of the investigation made by the Department of Labor, and of its own investigation, and after due deliberation, the Board of Certification issues the following Decision and Direction of Election.

I. Undisputed Matters

It is undisputed, and we find and conclude, that Petitioner is a public employee organization in fact and

within the meaning of the New York City Collective Bargaining Law, herein called the Act.

II. Alleged Managerial Status

The City contends that Principal Statisticians are "managerial" employees and are not entitled to collective bargaining rights.

Both the City and Petitioner have waived the holding of a hearing herein.

The Act 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." However, since supervisory employees clearly are within the coverage of the Act (see §1173-3.01), the term "managerial," as used by the City, necessarily must refer to more than supervisory status. For clarity, we shall refer to such employees as managerial-executives.

The title "Principal Statisticians" is in the competitive class and is third in the series of six titles comprising the Statistical occupational Group. Above it are Assistant Director of Statistics and Director of Statistics. Subordinate to it are Assistant Statistician, Statistician and Senior Statistician. In this series, the absence of a Supervising Statistician title, typically found between the Senior and Principal titles, places Principal Statistician closer to the journeyman title.

Petitioner presently is the certified collective bargaining representative of a City-wide unit of Assistant Statisticians, Statisticians and Senior Statisticians (CWR No. 39/67).

Principal Statisticians, "under general direction," are responsible for "program evaluation, statistical operations and research studies." They do not formulate policy. Although they are called upon to exercise judgment and discretion, they do so in a professional, rather than managerial, capacity. (I.L.G.W.U. v. N.L.R.B. 339 F2d 116, 57 LRRM 2540; R.C.I.A. v. N.L.R.B. , 366 F2d 642, 62 LRRM 2839.) That they may supply information used in the formulation of policy by higher personnel, or analyze and interpret the results of research "in relation to overall policy," does not constitute them managerial-executives (see e.g. Westinghouse Electric Corp. v. N.L.R.B., _____ F2d _____ 68 LRRM 2850, State Farm Ins. Co. v. N.L.R.B., _____ 68 LRRM 3029, 3035).

The duties of the :title do not include representation of management in collective bargaining or related procedures. The title is in a salary range entitled to overtime credits.

Considering all the foregoing, we find and conclude that Principal Statisticians are not managerial-executives, and that they are entitled, to collective bargaining rights.

III. Representative Status and The Appropriate Unit

All of the Principal Statisticians employed by the City have authorized check-off of dues in favor of Petitioner, and we find and conclude that Petitioner has been designated by a majority of the Principal Statisticians as their representative for the purposes of collective bargaining.

The employees in the various Statistician titles all are engaged in specialized work of a professional nature, and have a manifest community of interests. However, as Principal Statisticians are supervisory employees, they may not be placed in a unit with non-supervisory employees without "the consent of a vote of the majority of the supervisory employees concerned." (Act, §1173-3.01). Accordingly, we shall conduct a secret ballot election among the Principal Statisticians to determine whether they desire to bargain collectively as a separate unit, or whether they desire to be included in the existing unit unit for which Petitioner is the certified collective bargaining representative. if a majority of the employees casting valid ballots in the election favor inclusion in the existing unit, we shall amend that certification accordingly.

DIRECTION OF ELECTION

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

DIRECTED, that as part of the investigation authorized by the Board, 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

to be fixed by the Board, among the employees in the title of Principal Statistician 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 discharged for cause before the date of the election), to determine whether they desire to bargain collectively as a separate unit, or whether they desire to be included in the existing unit for which Petitioner is the certified collective bargaining representative (CWR 39/67).

DATED: New York, N.Y.

November 18, 1968

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