

L.832, IBT, et. Al v. City, 2 OCB 75 (BOC 1968) [Decision No. 75-68
(Amend. Cert.)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF CERTIFICATION

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TERMINAL EMPLOYEES LOCAL 832,
INTERNATIONAL BROTHERHOOD OF
TEAMSTERS,

Petitioner

DECISION NO. 75-68

-and-

CIVIL SERVICE FORUM,
LOCAL 300, S.E.I.U, AFL-CIO,

DOCKET NO. RU-10-68

Intervenor

-and-

THE CITY OF NEW YORK

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DECISION AND AMENDMENT
OF CERTIFICATION

On January 26, 1968, Terminal Employees Local 832, I.B.T., petitioned for certification as the collective bargaining representative for a City-wide unit consisting of Junior Building Custodians, Assistant Building Custodians, Building Custodians, Senior Building Custodians and Supervisors of Building Custodians.

Civil Service Forum, Local 300, S.E.I.U., AFL-CIO, intervened on the basis of the City-wide certificate issued to it by the New York City Department of Labor (CWR 20/67). This certificate covered all of the titles embraced by the petition.

On March 4, 1968, Petitioner, Intervenor, and the City entered into a "Consent Election Agreement" wherein all parties stipulated that Junior Building Custodians, Assistant Building Custodians, Building Custodians and Senior Building Custodians constitute a unit appropriate for the purposes of collective bargaining. The parties also agreed that employees in the title of Supervisor of Building Custodians would cast challenged ballots in the election pending determination of the City's contention that they are managerial employees not entitled to collective bargaining.

On April 24, 1968, a secret ballot election was conducted and, Intervenor, having received a majority of the ballots cast, was certified on May 13, 1968, as the exclusive collective bargaining representative of all Junior Building Custodians, Assistant Building Custodians, Building Custodians, and Senior Building Custodians employed by The City of New York

(Decision No. 10-68).

On August 19, 1968, a hearing was held before David I. Obel, Esquire, Trial Examiner, to receive evidence concerning the Supervisors of Building Custodians. Prior to the hearing, Petitioner notified the Trial Examiner that it was withdrawing from this proceeding. Thereafter, Petitioner did not appear at the hearing, nor did it take any position on the issues before the Board in this matter.

Upon consideration of the entire record in this case, and after due deliberation, the Board of Certification issues the following decision:

I. Undisputed Matters

It is undisputed, and we find and conclude, that in fact and within the meaning of the New York City Collective Bargaining Law (NYCCBL), Civil Service Forum, Local 300, S.E.I.U., AFL-CIO, is a public employee organization.

II. The Alleged Managerial Status of the Supervisors of Building Custodians

The City opposes the certification of the title of Supervisor of Building Custodians on the ground that the employees in this position perform managerial functions. The title is in the competitive class and is found in the Custodian occupational Group. The titles in this group', and the most recent salary range for each title, are set forth below:

Custodial Occupational Group

<u>Title</u>	<u>Salary Range</u>
Junior Building Custodian	\$ 5,150 - \$ 6,590
Assistant Building Custodian	5,750 - 7,190
Building Custodian	6,400 - 8,200
Senior Building Custodian	7,450 - 9,250
Supervisor of Building Custodians	8,400 - 11,500

The civil service job specification contains the following general statement of duties and responsibilities, and illustrations of typical tasks relevant to the managerial issue:

"Under general direction, performs executive work of a highly difficult and responsible nature in connection with cleaning, operating and maintaining public buildings and their immediate grounds.

". . . is responsible for managing and coordinating the custodial work in and around public buildings, other than public schools and colleges, in all boroughs . . .

"Develops operating procedures . . .

"Approves standards and regulations covering custodial services . . ."

The title of Supervisor of Building Custodians is not on the list of titles deemed eligible, by the City, for participation in the City-Administered Management-Welfare Fund.

The evidence produced at the hearing concentrated on the Supervisors of Building Custodians in the Departments of Health and Public Works.

Department of Health

The top executive level of the department includes, in addition to the Commissioner of Health, a First Deputy Commissioner, Deputy Commissioner, Executive Assistant Commissioner, five Assistant Commissioners, Senior Administrator, Administrative Assistant to Commissioner, Counsel, Public Relations Advisor and Consultants in Public Health Engineering and Radiation.¹

The Department consists of twenty bureaus, each headed by a Director. The Director and Assistant Director of the Bureau of Maintenance are responsible to the Assistant Commissioner for Administration. The Bureau is divided into four divisions: Purchase, Building Services, Building Construction and Repairs, and Transportation. The Supervisor of Building Custodians is Chief of the Building Services Division.

The Building Services Division performs custodial work in 42 City-owned and 62 leased buildings operated by the Department, and maintenance for 106 dental clinics located in public schools. It has about 240 employees and close to \$2,000,000 is budgeted for the Division's work.

¹ The Department of Health recently became part of the Health Services Administration together with the Department of Hospitals, the office of the Chief Medical Examiner, and the New York City Community Mental Health Board. As a result, there now is an additional executive level over and above the Commissioner of Health. (Local Law No. 127, 1967)

The Director of the Bureau of Maintenance, the City's only witness, testified that the Supervisor of Building Custodians is responsible to him for planning, directing, staffing and controlling the operation of the Division. More specifically, he testified that the Supervisor of Building Custodians makes up work and vacation schedules, assigns personnel, plans the type and priority of cleaning, screens new employees, orients new employees to their jobs by, for example, telling them how boilers work and what soap is best for a particular kind of cleaning job; hires and fires provisionals; maintains, through subordinates, records regarding probationary periods; recommends discipline; and handles grievances.

In preparing budget estimates, in hiring and firing provisionals, and in authorizing overtime within the Division, the Supervisor may propose action to the Director in the form of a recommendation. The Director reviews these proposals and may accept or reject them.

Department of Public Works

Although Intervenor produced as a witness, a Senior Building Custodian in the Department of Public Works, the heart of its presentation is contained in a dozen exhibits relating to the table of organization and the job structure within the Department. The witness, who identified the entire manual from which all of Intervenor's exhibits were extracted, testified, without contradiction, that he received the manual in the course of his duties; that he still has the manual and has not been asked to return it; that he has not received any changes or addenda to insert in the manual; and that he uses the section of the manual applicable to him as a guide in the performance of his duties.

The Department's table of organization lists at the top the Commissioner, Deputy Commissioners, and four offices, each headed by a Director: Personnel Relations, Management Planning, Legal Affairs, and Public Information. A General Manager and Deputy General Manager, responsible directly to the Commissioner, have under them an office of Civil Defense, Engineering Services, and five bureaus. One of these bureaus -- the Bureau of Operating Services -- is composed of four divisions: Building Management, Motor Vehicles, Shops, and Administration. The Administration Division, in turn, is subdivided into four units, each headed by a "Chief." Custodial Services is one of these units. Its function is to "provide custodial services for [buildings] under DPW jurisdiction." The Supervisors of Building Custodians are employed in this unit.

Another exhibit is the job description for Supervising Custodians contained in the Department's Manual for Custodians. The description states that there shall be two positions in the title; that one "shall be in charge of all buildings in the Boroughs of Brooklyn, Queens and Richmond . . . the other . . . shall be in charge of all buildings in the Boroughs of the Bronx and Manhattan." The description states further that:

"Supervising Custodians shall be responsible for the general operation of the buildings assigned to them. It will be the duty of the Supervising Custodian to see that each building custodian is faithfully following his duties and responsibilities as outlined in 'The Manual for Custodians.'"

The job description directs the Supervisor to make no change of any kind in the assignment of certain personnel, including Senior Custodians, Custodians, Assistant Building Custodians, Senior Cleaners and Matrons. Recommendations for such changes may be submitted to the Chief of Custodial Services and the Director of the Bureau. Apart from the foregoing, the Supervisor may "make temporary changes in assignments of custodial personnel between their buildings to meet unusual conditions."

After depicting the Supervisor's role in the areas of employee training, payrolls, time sheets, protection, and repairs, the job description states: "Supervising Custodians will devote their entire time to the inspection and supervision of all buildings under their jurisdiction."

Conclusion

In Matter of Local 154, D.C. 37, Decision No. 73-68, we said:

"Since the New York City Collective Bargaining Law *** contemplates the exercise of collective bargaining rights by supervisory employees (§1173-3.01), the responsibilities and functions of managerial-executives necessarily must be different and broader. Although not defined, or referred to, in the Act, the term 'managerial employee' as used in labor relations, has been the subject of considerable litigation and numerous decisions. The criterion on which the greatest emphasis has been placed is the formulation, determination and effectuation of an employer's policies;

"that is, the regular exercise of independent judgment or discretion in the formulation and promulgation of policy. (American Federation of Labor, 120 N.L.R.B. 969, 973, 42 LRRM 1075, I.L.G.W.U. v. N.L.R.B., 339 F.2d 116, 57 LRRM 2540, 2545). Discretion, however, 'is not the touchstone if it must conform to the employer's established policy.' (R.C.I.A. v. N.L.R.B., 366 F.2d 642, 62 LRRM 2837-2839). The managerial role involves the broad and active participation associated with the formulation of objectives or the methods of fulfilling established purposes.

Here, Supervisors of Building Custodians are well down in the Departmental organization. They play no part in the formulation, determination, and effectuation of Departmental policy, and no significant, if any, role at the Bureau level.

Clearly, the Supervisor in Public Works has no policy-making role at all, regardless of how broadly one may define policy and an employee's contribution to its formulation. As the Department's job description states "Supervising Custodians will devote their entire time to the inspection and supervision on of all buildings under their jurisdiction." (Emphasis supplied)

The record view is not significantly different for the job performed by the Supervisor of Building Custodians in the Department of Health. Although he is the Chief of the Department's Building Services Division, the testimony of the Director of the Bureau of Maintenance reveals no more than a supervisory role for this employee. Certainly, he makes no general policy for the department, and his activity at the Bureau level is confined to the planning and direction of cleaning operations. While he participates in the Department's grievance procedure, this, alone, is not sufficient to support the attribution of managerial status. The first steps in grievance procedures customarily are handled by supervisory employees, see, e.g., Executive Order No. 52, 98a(1) (A). Supervisory employees, however, as noted above, clearly are entitled to collective bargaining rights under the Act.

Other considerations also support the conclusion that Supervisors of Building Custodians are not managerial-executives. Their salary range (\$8,400 - \$11,500) is not itself indicative of such status. Further, the City's contention is inconsistent with its omission of Supervisors of Building Custodians from the list of titles eligible for the City-Administered Management-Welfare Fund.

Finally, the right of Supervisors of Building Custodians to bargain collectively was recognized by the City's Department of Labor under Executive order No. 49 (1958), the predecessor of the New York City Collective Bargaining Law. (CWR 20/67; 7 NYC DL No. 30)

Accordingly, we find and conclude that Supervisors of Building Custodians are not managerial-executives.

III. The Appropriate Unit and Representative Status

Intervenor had been the exclusive bargaining representative for a City-wide custodial occupational unit consisting of Junior Building Custodians, Assistant Building Custodians, Building Custodians, Senior Building Custodians, and Supervisors of Building Custodians (CWR 20/67). The official job specifications for all of these titles except Supervisor of Building Custodians contain explicit though general statements of supervisory responsibilities, In Decision No. 10-68, the Board certified Intervenor as the exclusive bargaining representative for a unit consisting of all titles in the custodial occupational group except the Supervisor of Building Custodians whose status, at that point, was undetermined. In view of the foregoing, and because we have found that the title of Supervisor of Building Custodians is supervisory rather than managerial, we find that the title properly belongs in the City-wide custodial occupational unit presently represented by Intervenor. At the time of the election referred to previously, the unit consisted of approximately 172 employees. The margin of victory for Intervenor was such that the votes of the Supervisors of Building Custodians could not have affected the outcome of the election, even if all had voted against Intervenor. Consequently, Intervenor's majority status continues even when the title of Supervisor of Building Custodians is added to the unit.

Accordingly, we shall amend the certificate previously issued to Intervenor to include the title of Supervisor of Building Custodians.

AMENDED CERTIFICATION

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

ORDERED, that the certification in Decision No. 10-68 be, and the same hereby is, amended to include the title of Supervisor of Building Custodians.

DATED: New York, N.Y.

December 11, 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