

L.3, IBEW v. City, 2 OCB 78 (BOC 1968) [Decision No. 78-68 (Cert.)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF CERTIFICATION

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In the Matter of

LOCAL UNION NO. 3, I.B.E.W., AFL-CIO

DECISION NO. 78-68

-and-

THE CITY OF NEW YORK

DOCKET NO. RU-15-68

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DECISION AND CERTIFICATION

Local Union No. 3, I.B.E.W., AFL-CIO, herein called Petitioner, filed its petition herein for certification as the collective bargaining representative of a unit of Supervising Superintendents of Maintenance, all employed in the Department of Traffic.

A hearing on the petition was held on October 9, 1968, before David I. Obel, Esquire, Trial Examiner.

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

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.

II. Alleged Managerial Status

The City contends that Supervising Superintendents of Maintenance are managerial employees and hence are not entitled to collective bargaining rights.

In 1966, Mayor Lindsay established the Transportation Administration and Transportation Council of the City of New YORK (Executive Orders 4 and 30).

The Transportation Administration is headed by a Transportation Administrator, with Deputy Administrators for Administration and organization Management, and for Planning, Research, Development and Coordination. The Commissioners of Highways, Marine and Aviation, and Public Works are additional Deputy Administrators.

The Transportation Council, in addition to the Transportation Administrator, includes the Deputy Mayor-City Administrator, Director of the Budget, Corporation Counsel, Chairman of the City Planning Commission, the Commissioners of Highway, Marine and Aviation, Police, Public Works, Traffic, and other top level city officials.

The Transportation Administrator:

" . . . shall have with respect to the Departments of * * * *, Traffic, * * * * the power and duty to review, evaluate, initiate, conduct and coordinate the transportation activities."
(City of New York, Official Directory, 1968, p. 236).

The Department of Traffic

The Commissioner of Traffic is assisted at the top level by a Deputy Commissioner and Chief Engineer, a Deputy Commissioner, and Assistants to the Commissioner for Special Activities and for Transportation. The Department is organized into nine bureaus: Administration, Enforcement, Parking, Plans and Surveys, Plant and Material, Public Relations and Traffic Safety Education, Signs and Communications, Signs and Markings, and Transportation, each headed by a Chief.

Supervising Superintendents of Maintenance are employed in the Bureau of Signs and Markings and the Bureau of Parking. The title is in the competitive class, with a salary range of \$9,850 to \$12,250, and is not among the titles listed by the City as eligible for the City-Administered management Welfare Fund.

The "General Statement of Duties and Responsibilities" contained in the job specification states that employees in the title:

"under direction, perform[s] highly responsible administrative and technical work in assisting in the organization and direction of the city-wide program for the fabrication, installation and maintenance of traffic control devices and markings; . . ."

Petitioner called as witnesses the two Supervising Superintendents of maintenance employed in the Bureau of Signs and Markings. The Supervising Superintendent in the Bureau of Parking was not called because he was on jury duty. The other witnesses testified, however, that the jobs are interchangeable, having the same duties and responsibilities. No witnesses were called by the City.

Supervising Superintendents of Maintenance supervise Senior Foremen (TDM), Foremen (TDM), Traffic Device Maintenance Men, Laborers and Clerks. They do not participate in the formulation of policy, and have no authority to make job assignments, which are selected by employees according to seniority. They, and the employees they supervise, receive overtime credits from which lateness debits are deducted.

The first step in the Department's grievance processing procedures is handled by the Chief of the Bureau. One of the Supervising Superintendents has made no recommendations concerning the hiring, discharge or disciplining of employees. The other testified he had made occasional recommendations, but none had been acted upon by his superior.

Conclusion

The testimony establishes that the basic function of the Supervising Superintendents who testified is the supervision of the installation and maintenance of traffic signs. Their positions are well down in the departmental organization, and their starting salaries are below that of Senior Foremen (TDM). They play no part in the establishment of departmental, or even bureau, policy, nor do they represent management in collective bargaining or related procedures.

Accordingly, we find and conclude that Supervising Superintendents of Maintenance are not managerial-executives, and are entitled to collective bargaining rights. (Matter of Local 154, D.C. 37, Decision No. 73-68; Matter of Terminal Employees Local 832, I.B.T., Decision No. 75-68.

III. The Appropriate Unit and
Representative Status

At the hearing, the parties stipulated that Supervising Superintendents of maintenance constitute an appropriate bargaining unit. Since that time, however, we have approved the transfer to Petitioner of a prior certification issued to Independent Traffic Employees Union as collective bargaining representative of Foremen (TDM) and Senior Foremen (TDM) [Decisions Nos. 16-68 and 77-68].

Senior Foremen (TDM) and Foremen (TDM), like Supervising Superintendents of Maintenance, are supervisory employees in the Department of Traffic. They are in the same promotional line, and the salary range of the Supervising Superintendents overlaps that of the Senior Foremen. They perform the same type of work, and there is manifest mutuality of interests.

We find, and conclude, therefore, that Supervising Superintendents of Maintenance, Senior Foremen (TDM) and Foremen (TDM) constitute a unit appropriate for the purposes of collective bargaining.

Our investigation discloses that a substantial majority of the employees in the aforementioned unit have authorized the check-off of dues in favor of Petitioner. Accordingly, we find and conclude that Petitioner has been designated and selected as their collective bargaining representative by a majority of the employees in said unit.

CERTIFICATION

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

CERTIFIED, that Local No. 3, I.B.E.W., AFL-CIO is the exclusive representative for the purposes of collective bargaining of all Supervising Superintendents of Maintenance, Senior Foremen (TDM), and Foremen (TDM) employed by the City of New York.

DATED: New York, N.Y.
December 11, 1968.

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