

CEU, L.237, Ibt v. City, 2 OCB 79 (BOC 1968) [Decision No. 79-68 (Cert.)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF CERTIFICATION

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In the Matter of

DECISION NO. 79-68

CITY EMPLOYEES UNION, LOCAL 237,
I.B.T.

DOCKET NOS. R-83-67;
R-84-67;
R-85-67

-and-

THE CITY OF NEW YORK

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DECISION AND ORDER

On October 5, 1967, City Employees Union, Local 237, I.B.T., herein called Petitioner, filed petitions with the New York City Department of Labor for certification as the collective bargaining representative of the Director of Hospital Housekeeping and Laundry Services (Docket R-84 - 67) , the Assistant Director of Hospital Laundry Services (Docket R- 83-67) and the Assistant Director of Hospital Housekeeping Services (Docket R-85-67), all employed in the Department of Hospitals.

The proceedings were transferred to the Board of Certification pursuant to Rule 13.13 of the Consolidated Rules of the office of Collective Bargaining.

A consolidated hearing was held before David I. Obel, Esquire, Trial Examiner, on September 19 and October 1, 1968.

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

I. Managerial or Confidential
Status of the Employees

The City contends that the employees here concerned are managerial and/or confidential employees and hence are not entitled to bargain collectively.

The Department of Hospitals, now a part of the Health Services Administration, is headed by the Commissioner of Hospitals, who is directly assisted by a First Deputy Commissioner, the chief executive officer of the Department.

The Department of Hospitals is organized into three bureaus and twelve Services, one of which is Housekeeping and Laundry Services. The Director of

Housekeeping and Laundry Services is subordinate, and reports, to the Deputy Commissioner of Hospitals and through him to the First Deputy Commissioner. The

Director, in turn, is supported by two Assistant Directors, in charge of Laundry and Housekeeping operations, respectively.

The Laundry Section operates five laundries requiring the services of almost 900 employees.

Approximately 2500 employees are engaged in the housekeeping services provided in the City's municipal hospitals.¹

Director of Hospital Housekeeping and Laundry Services

The Director of Hospital Housekeeping and Laundry Services "administers and coordinates the laundry and housekeeping programs of the Department of Hospitals." He "plans, develops, implements and reviews policies and procedures governing the [Department's] housekeeping and laundry services."

To qualify for the position, the Director must have had "ten years of . . . experience as manager of a complete process laundry, or supervisor of a housekeeping unit consisting of 100 rooms or more." The position is in the competitive class, Salary Grade 30 (\$12,100 to \$14,500). The title is on the list of titles compiled by the City as eligible for participation in the City-administered Management-Welfare Fund.

Assistant Director of Hospital Laundry Services

The Assistant Director of Hospital Laundry Services is "responsible for administering the laundry program of the Department of Hospitals." He "plans, develops, implements and reviews policies and procedures governing the laundry service * * " and "works with laundry supervisors for effective utilization of personnel, for formulation and application of workload and production standards - for review and evaluation of latest laundry techniques, " and "plans for, and may participate in training programs for both supervisory and auxiliary personnel."

To qualify for the position, the Assistant Director must have had "eight years of . . . experience in a complete process laundry, five years of which shall have been in a managerial capacity." The position is in the competitive class, Salary Grade 23 (\$9000 to \$11,100), and is on the City's list of titles eligible for participation in the City-administered Management-Welfare Fund.

¹ The 1968 Official City Directory lists 20 hospitals under the jurisdiction of the Department.

Assistant Director of Hospital Housekeeping Services

This Assistant Director "acts as liaison between [the] Director of Hospital Housekeeping and Laundry Services and [the] hospital administrators." He "is responsible for development and implementation of supervisory and employee training programs and standardization of operating procedures in the housekeeping program of the Department of Hospitals." In this connection, he "initiates and develops standard operating procedures for Housekeeping Service Manuals to achieve departmental standardization of activities concerned with: environment sanitation, pest and infection control, equipment usage, care, operation and replacement; procurement, storage and issuance of supplies, cleaning methods and procedures." He "works with supervisory Housekeeper personnel at individual hospitals for effective utilization of staff and application of workload and production standards.

To qualify for this position, the Assistant Director must have had "one year of permanent service in the title of Supervisory Housekeeper. The position is in the competitive class, Salary Grade 23 (\$9,000 to \$11,100), and has been listed by the City as eligible for the City-administered Management-Welfare Fund.

There is no history of collective bargaining for any of these three titles.

We have pointed out, heretofore, that the terms "managerial employee" and "confidential employee" are not contained or defined in the New York City Collective Bargaining Law (herein NYCCBL), but that each has an established meaning in the field of labor relations. (Matter of Municipal Statisticians, Decision No. 69-68; Matter of Local 154, D.C. 37, Decision No. 73-68; Matter of Local 188, District Council 37, Decision No. 70-68). We noted that since the NYCCBL contemplates the exercise of collective bargaining rights by supervisory employees, the responsibilities of so-called "managerial" employees necessarily must be different, broader and of a higher level; that "the managerial role involves the broad and active participation associated with the formulation of objectives or the method of fulfilling established purposes." (Matter of Local 154, D.C. 37, Decision No. 73-68).

In Matter of Local 188, D.C. 37 (Decision No. 70-68), we held that the term "confidential employee" refers to those employees who regularly assist and act in confidential capacities to persons who formulate, determine and effectuate management policies in the field of labor relations, and who regularly have access to confidential information in labor relations and personnel

matters.

The three employees here concerned manifestly meet both tests. Their functions and responsibilities clearly are different, broader, and of a higher level, than those ordinarily described as "supervisory. Their duties include policy, formulation and effectuation, initiation and development of standard operating procedures, the utilization of personnel and the application of workload and production standards. All three positions are high in the Department's organizational hierarchy. The Assistant Directors are in charge of services with 900 and 2,500 employees, respectively, and there are several tiers of supervision between each of the Assistant Directors and the non-supervisory employees. Although their salary grade levels are not indicative of managerial status (cf. Matter of Terminal Employees Local 832, I.B.T., Decision No. 75-68), that factor here is out-weighed by other criteria.²

It is equally apparent that these three employees have regular access to confidential information concerning labor relations and personnel practices.

Accordingly, upon consideration of the entire record herein, we find and conclude that the Director of Hospital Housekeeping and Laundry Services, the Assistant Director of Hospital Housekeeping Services, and the Assistant Director of Hospital Laundry Services are both managerial-executives and confidential employees.

II. Status of Managerial-Executives and Confidential Employees under the NYCCBL

In Matter of Local 188, D.C. 37, Decision No. 70-68, we held that Personnel Examiners in the Department of Personnel were confidential employees, and that they do not constitute a unit appropriate for the purposes of collective bargaining in fact or within the meaning of the NYCCBL. Our decision was grounded upon the conflict of interests involved; the "right of the employer to formulate, determine and effectuate its labor policies with the assistance of employees not

² Conversely, in Matter of Law Assistants Assn., Decision No. 62-68, the higher salaries paid to Chief Law Assistants were outweighed by other criteria of non-managerial status. As noted above, the three titles here concerned, have been listed by the City as eligible for the City-administered Management-Welfare Fund, and, presumably, will be eligible for the proposed Management Pay Plan.

represented by the union with which it deals;" and the disruption of managerial procedures, interference with the efficient operation of the City in personnel matters, and the impediment to collective bargaining which would result from a contrary determination.

Those reasons are equally applicable in the present proceeding, both as to the confidential and the managerial-executive status of the employees concerned. These employees not only have regular access to confidential information in the field of labor relations and personnel management, but are executives who formulate policies and determine operating procedures which become or may become the subjects of collective bargaining or grievances.

The New York City Department of Labor, under Executive Order 49 (Mayor Wagner, 1.958), denied collective bargaining rights to managerial employees. (See, e.g., Assn. of Wardens, Department of Correction, Case No. R-42-64). Section 1173-3.01 Z;-f the NYCCBL provides that supervisory employees may not be placed in the same bargaining unit with non-supervisory employees "without the consent of a vote of the majority of the * * * supervisory employees involved." In view of the clear and long-established distinction between managerial and supervisory personnel, limitation of this right to supervisory employees indicates legislative adoption of the antecedent policy of the Department of Labor concerning managerial employees. If the City Council had intended that managerial employees were to exercise collective bargaining rights, they undoubtedly would have granted them the same rights as supervisory employees concerning unit placement.

The basic purpose and policy of the NYCCBL is to encourage and protect collective bargaining by City employees. Collective bargaining, however, is a bilateral process. Participation by representatives of the employer is as essential as representation of the employees.

The City, one of the world's largest, is a vast and complex organization, with some 300,000 employees, which operates through various types of agencies, some responsible to the Mayor, others to elected officials, and still others created as public authorities or corporations. Although the Office of Labor Relations is the primary negotiator for the City, that Office manifestly requires the assistance and

cooperation of the managerial-executives in charge of the policies and operations of the myriad components of the City. Without such assistance and cooperation by managerial-executives with undivided loyalties, the procedures of collective bargaining cannot operate efficiently or successfully.

We find and conclude, therefore, that the Director of Hospital Housekeeping and Laundry Services, the Assistant Director of Hospital Housekeeping Services, and the Assistant Director of Hospital Laundry Services, together or separately, do not constitute a unit or units appropriate for the purposes of collective bargaining in fact or within the meaning of the NYCCBL. Accordingly, we shall dismiss the petitions herein.

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

ORDERED, that the petitions in Cases Nos. R-83-67, R-84-67, and R-85-67, be, and the same hereby are, dismissed.

DATED, New York, N.Y.

December 17, 1968

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