

CWA, et. Al v. City, 28 OCB 18 (BOC 1981) [18-81 (Cert.)]

OFFICE OF COLLECTIVE BARGAINING  
BOARD OF CERTIFICATION

- - - - -x

In the Matter of

COMMUNICATIONS WORKERS OF  
AMERICA, AFL-CIO

-and-

CITY OF NEW YORK

- - - - -x

In the Matter of

LOCAL 237, TEAMSTERS

DECISION NO. 18-81

-and-

DOCKET NOS. RU-750-80

CITY OF NEW YORK

RU-754-80

- - - - -x

RU-755-80

In the Matter of

DISTRICT COUNCIL 37, AFSCME,  
AFL-CIO

-and-

CITY OF NEW YORK & RELATED  
PUBLIC EMPLOYERS

- - - - -x

APPEARANCES:

NEIL D. LIPTON, FSQ.  
FOR: COMMUNICATIONS WORKERS OF AMERICA

RICHARD J. FERRERI, ESQ.  
FOR: DISTRICT COUNCIL 37, AFSCME, AFL-CIO

TAKA IWASHITA, ESQ.  
FOR: THE CITY OF NEW YORK

DECISION AND ORDER

This matter concerns three petitions filed by different unions to add the title Legal Secretarial Assistant ("LSA") to units certified to each of the petitioning unions.

On February 25, 1980, the Communications Workers of America ("CWA") filed a petition (RU-750-80) to add by accretion employees in the LSA title to a unit it represents pursuant to Certification No. 41-73 (as amended).

On March 27, 1980, Local 237, International Brotherhood of Teamsters ("Local 237") filed a petition (RU-754-80) to add the LSA title to its Certification CWR-44/67 (as amended).

District Council 37, AFSCME, AFL-CIO ("DC 37") filed a petition (RU-755-80) on March 31, 1980 to add the LSA title to a unit certified to it under Certification 46C-75 (as amended).

The City of New York (the "City") answered the three petitions by letter dated June 4, 1980, stating that, inasmuch as the LSA is primarily a clerical position, the title should most appropriately be accreted to DC 37's clerical unit on the basis of a shared community of interest.

For purposes of unit determination, the three petitions were consolidated. There is no question in this matter that the employees are eligible for collective bargaining.

Hearings were held on September 10 and December 15, 1980 and on February 4 and 23, and March 6, 1981 before Catherine R. Nathan, Esq., Trial Examiner, at which the parties were given a full opportunity to present evidence and arguments relating to the unit placement of the LSA's. Local 237 failed to appear or to present any evidence at any of the hearings to substantiate its petition for certification of the LSA's. Therefore, we will dismiss the petition of Local 237.

At the close of the final hearing, CWA and DC 37 agreed to exchange and file briefs and reply briefs, the last of which was filed on May 5, 1981. The record in this case was then closed.

#### BACKGROUND

Because of its perceived need for more skilled "secretaries" the Law Department, in August 1979, established the new title of Legal Secretarial Assistant, prepared a job description for the title, and requested

The Department of Personnel ("DOP") to classify it. The classification request is still pending.

The LSA title consists of three assignment levels. The duties for each level are listed in the job description as follows:

LEVEL I

"[u]nder direct supervision, serves as general typist, secretary or stenographer in a Word Processing Center or a sublocation within the Law Department.

- TASK I Types from handwritten, printed, statistical, forms, letters, memoranda, reports, and legal documents.
- TASK II Operates dictation equipment.
- TASK III Takes dictation and transcribes notes (only for stenographers).
- TASK IV Performs secretarial and administrative duties, i.e. handles mail and files, arranges appointments, supplies, and other related tasks.
- TASK V Under training, develops proficiency in operating, entering and editing complex assignments on Word Processing machines.

LEVEL II

"[u]nder general supervision with some latitude for independent judgment, serves as a general typist, secretary or stenographer in a Word Processing Center or a sub-location within the Law Department."

In addition to Tasks I through V required of an LSA I, and LSA II also performs the following:

TASK VI Directs and monitors the work of subordinate employees.

LEVEL III

Performs same duties as Level II "with great latitude for independent judgment."

The job description does not specify either skill or educational qualifications. However, a 4/10/80 Job Vacancy Notice issued by the DOP (and posted in the Law Department) provides the following qualification requirements:

"Type 55 WPM with 5 errors  
Steno 80 WPM (optional)  
Steno Differential \$500  
1 year training in an accredited secretarial school or satisfactory completion of Specialize [sic] training in secretarial science; or  
2 years experience as a legal secretary, Executive or related secretarial experience; or 30 credits from an accredited college; or satisfactory combination of education and experience."

The salary ranges for the assignment levels, as of July 1, 1980, are as follows:

Level 1	\$12,420 (flat rate) (\$500 Steno Differential)
Level 11	\$13,500-\$14,580 (\$650 Steno Differential)
Level III	\$15,120-\$16,740 (\$650 Steno Differential)

Of the 39 LSA's employed by the Law Department (the only agency using the LSA title), 29 are LSA I's (5 of whom work part-time), 7 are LSA II's, and 3 are LSA III's. Twenty-nine LSA's were hired from outside the Department, while ten were qualified from within.

Historically, City secretarial titles have been divided, for representation purposes, between DC 37 and CWA. Less-skilled and experienced secretaries are included in DC 37's clerical unit, while more qualified secretaries, who work for higher level managers and executives are included in CWA's administrative unit. The assignment to the LSA title of a broad range of secretarial responsibilities prompted petitions for certification to represent LSA's by both DC 37 and CWA. At the time of filing of the petitions, there were 32 LSA's working in the Law Department. Twenty-five signed designation cards for CWA and 23 signed cards for DC 37.

Section 2.10 of the Revised Consolidated Rules of the Office of Collective Bargaining (the "Rules") sets forth the criteria to be applied by the Board in making determinations of appropriate unit placement of employees. The Rules provide:

In determining appropriate bargaining units, the Board will consider, among other factors:

a. Which unit will assure public employees the fullest freedom in the exercise of the rights granted under the statute and the applicable executive order;

b. the community of interest of the employees;

c. the history of collective bargaining in the unit, among other employees of the public employer, and in similar public employment;

d. The effect of the unit on the efficient operation of the public service and sound labor relations:

e. Whether the officials of government at the level of the unit have the power to agree or make effective recommendations to other administrative authority or the legislative body with respect to the terms and conditions of employment which are the subject of collective bargaining;

f. Whether the unit is consistent with the decisions and policies of the Board.

#### POSITIONS OF THE PARTIES

##### CWA

CWA seeks to add the LSA's to its unit which includes both administrative and clerical titles, most notably the title of Principal Administrative Associate ("PAA").

The job specification for the PAA title lists the following "Duties and Responsibilities"

"This class of positions encompasses responsible office, supervisory or administrative work of varying degrees of difficulty and with varying degrees of latitude for independent initiative and judgment. There are several assignment levels within this class of positions."

The Level I PAA is responsible for either supervision of a large office performing routine clerical functions, or a small office engaged in departmental administrative or management work, or for functioning as . . . secretary to a very high level executive." The Level II and Level III PAA's supervise still larger organizational segments performing either routine clerical work or more complicated and responsible administrative functions.

PAA's must have either a baccalaureate degree and two years' supervisory administrative or highly responsible secretarial experience or a combination of education and experience that is the satisfactory equivalent thereof. Various titles promote to the PAA title, including Office Associate and Stenographic/Secretarial Associate, both of which are included in the clerical unit represented by DC 37.



As of July 1, 1980, the salary ranges for the assignment levels of the PAA title were as follows:

PAA I	\$15,419 - \$19,832
PAA II	\$17,335 - \$22,097
PAA III	\$19,252 - \$25,813

In arguing that there is a strong community of interest between the LSA's and the PAA's, CTRA contends that its evidence proves that, at all three levels, the LSA's and PAA's perform the same type of work, have the same level of responsibility and match up "skill for skill" and "interest for interest." CWA presented over 20 witnesses, 4 of whom were LSA's, some 13 PAA's and 2 Administrative Assistants ("AA"), a title which has been broadbanded into the PAA title but continues to be used for those incumbents who chose not to take the reclassification examination for PAA. In addition, testimony was received concerning 8 additional PAA's and AA's.

In addition to the claimed similarity in job duties and responsibilities, CWA asserts that there is only a slight difference in educational requirements and salary between the LSA and PAA titles.

Finally, as an alternative to its outright certification as the bargaining agent for the LSA's, CWA urges that the Board hold an election. According to CWA, the holding of an election would enable the LSA's to choose their union representative; thus, the LSA's would be able to choose, albeit indirectly, the unit into which they would be included. CWA maintains that an election is the proper method for unit determination where the Board finds both units to be appropriate but neither unit to be conclusively the more appropriate. CWA concedes that DC 37's unit is "conceivably arguably" an appropriate unit for the inclusion of the Level I LSA's.

DC 37

DC 37 presented evidence to substantiate its claim that the LSA's should be certified to its clerical unit which includes, among others, the titles of Office Aide, Stenographer/Secretary ("Steno/Sec"), Stenographic/Secretarial Associate ("SSA") and Office Associate.

The Office Aide title encompasses entrance level clerical and typing activities and has no specific education or experience requirements. The salary ranges from \$9,141 to \$13,870 annually.

The Steno/Sec title, also an entry level position, entails low level stenographic, typing and related clerical duties. Like the Office Aide title, it has no formal education or experience requirements. However, a Steno/Sec must be able to take dictation at 80 WPM and type at a rate of 40 WPM to qualify for appointment. The Steno/Sec salary ranges from \$9,566 to \$13,870 annually.

The SSA title is claimed by DC 37 to be the most closely allied title to the LSA title.

Following are the "Duties and Responsibilities" listed in the job specification for SSA:

This is the basic supervisory class of positions in this Occupational Group. It encompasses supervision of stenographic and related activities, or serving as a secretary to a high level employee or taking and transcribing dictation involving the frequent use of legal terminology . . .

An SSA must show graduation from high school or its equivalent and two years stenographic experience in addition to satisfying skill requirements.

The SSA title is the promotional title from Steno/Sec and promotes directly to PAA. Salary range for SSA's is \$12,071 to \$15,740.

The Office Associate title encompasses "either office or administrative work of a moderate degree of difficulty and responsibility, or supervision of clerical or switchboard activities." The Office Associate must also be a high school graduate (or its equivalent) and have two years of clerical experience. This title is in a direct line of promotion from Office Aide, Steno/Sec, and Office Machine Aide. The title promotes directly to PAA.

The salary range for Office Associate is \$11,759 to \$16,280.

Of the four aforementioned DC 37 titles, there are currently employed within the Law Department 218 Office Aides, 11 Steno/Secs, 7 SSA's, and 40 Office Associates. In addition, there are 43 Office Aide (CETA) workers and 3 Typists.

DC 37 asserts that the LSA job specification reflects the need for the addition of qualified legal secretaries to the staff of the Law Department. According to DC 37, the stress is on basic secretarial skills (i.e. typing, filing, dictation, handling mail and arranging appointments). According to DC 37, the SSA title, together with its other certified titles, presents the community of interest required for certification.

DC 37's witnesses included one LSA, two Office Aides, no Steno/Secs, one SSA, one Supervising Clerk and four Office Associates.<sup>1</sup> These witnesses testified that they performed responsible secretarial duties at various levels and some supervisory work,

DC 37 maintains that it has not only proven that a community of interest exists between the LSA's and the clerical employees it represents, but also that it has shown that there is a long collective bargaining history of its representing the clerical/administrative employees of New York City.

Finally, DC 37 asserts that an election is not warranted in this case because it has established that it represents the unit most appropriate for inclusion of the LSA's.

#### The CITY

As previously mentioned, the City, by letter dated June 4, 1980, stated that it favored inclusion of LSA's in the DC 37 unit. During the hearings, the attorney for the City clarified the City's position by stating as follows:

---

<sup>1</sup> The title Supervising Clerk has been broadbanded into the Office Associate title.

"Our position is that given the three petitions filed, the D.C. 37 unit is the most appropriate unit. We are not saying it is the only appropriate unit conceivable." (Transcript at 30)

#### DECISION

We have noted at the outset that there is an historical dichotomy in the representation of secretaries City-wide. DC 37 represents over 30,000 clerical employees throughout the City, at least 2,000 of whom perform secretarial functions. CWA, on the other hand, is certified to represent over 3,900 PAA's, a sizeable number of whom serve as secretaries at high levels of skill and responsibility. In the Law Department itself, of approximately 1,000 employees, over 350 are clerical workers. Of these, 39 are LSA's.

We must decide to which of the two units requested by the petitioning unions these 39 will be added, and make that judgment in the context of the historical representation of secretaries City-wide.

The evidence presented leads us to conclude that both petitioning unions, DC 37 and CWA can justifiably claim that there is community of interest between the LSA's and the "secretaries" each represents. We must decide, therefore, under all of the criteria set forth above for Board determinations on unit placement of

employees, whether one or the other has established itself as the more appropriate bargaining agent for the LSA's.

Based on the evidence presented during the hearings in this matter, we find that DC 37 has shown that its clerical unit is more appropriate than the CWA administrative unit for inclusion of the LSA I positions. A significant number of LSA I's (at least 14 of the 29) are employed in the word processing center of the Law Department where they are under the direct supervision of an LSA II. The three LSA I's who testified spend the major part of their day typing. In addition, they perform functions no different from those specified in the job specifications for the Steno/Sec, SSA and lower level office Associate titles.

While CWA presented an array of witnesses who testified that PAA's perform basic secretarial duties, the Board notes that such individuals pursuant to the job specification, are required to work as secretaries ". . . to a very high level executive." However, as noted, at least 14 LSA I's work in the word processing center in the Law Department. The PAA

title, while allowing for highly trained secretarial functions, is basically administrative. Typically, LSA I's are pool stenographers/typists or word processing operators who do not function as secretaries at high levels of skill, responsibility and discretion; rather they spend all or virtually all of their time in the word processing center and work together with some thirty-three other employees, most of whom are Office Aides. CWA's two PAA witnesses who testified to working in pools either work in a small three person pool or, in addition to secretarial duties, perform responsible administrative functions. Based on the foregoing, we find that there is a stronger community of interest between the LSA I's and the secretaries certified in the clerical unit represented by DC 37.

At the Level II and III positions, CWA has satisfied us that there is a stronger community of interest of LSA's II and III with PAA's than with the secretaries certified to the DC 37 unit. The single LSA II who testified has high level supervisory responsibility for the word processing center and performs duties similar to those of CWA unit employees. At Level III, the LSA who testified performs not only secretarial duties but also has administrative responsibilities akin to those of the PAA.



None of the DC 37 witnesses perform duties comparable to those of the LSA II and III witnesses. While the SSA and Office Associate job specifications allow for fairly high level secretarial duties with supervisory responsibility, the single SSA and the Office Associate who appeared for DC 37 do not in fact do more than basic secretarial and low level administrative work. In addition, their immediate superiors are not high level City executives as are those of PAA's and LSA II and III.

After careful review of all of the evidence and legal arguments presented, we find that the appropriate outcome of this case rests in dividing the title between the two petitioning parties. DC 37 will be certified to represent the Level LSAs while CWA will be certified to represent the Level II and III LSAs.

Division of the LSA title satisfies the Board's criteria for unit placement. Dividing the title will assure that the LSA's will be part of units closely allied with the actual duties and responsibilities of the LSAs represented. The criterion concerning history of collective bargaining is satisfied in view of the prior existence of the two groups categorized as "Office Worker" represented by the petitioning parties.

We recognize that office workers performing secretarial duties, be they PAA's, SSA's or Office Associates, are certified to two different units. This decision does no more than recognize that fact. Because of this dichotomy of representation already in existence throughout the City, we foresee no ill effects on the "efficient operation of the public service and sound labor relations" by dividing the LSA title. City workers certified to two different units work efficiently without interfering in the operation of government. We are confident that the LSA's will be no exception. The power of government officials to deal with the terms and conditions of employment of the LSA's will not be affected by this determination, nor will the LSA's exercise of the rights granted by the NYCCBL.

Finally, we find our decision herein is consistent with our policies and prior decisions. Although we have been reluctant to "split" titles, we have not hesitated to do so when the pertinent circumstances warranted. In the past, we have split titles into different units based upon duties and responsibilities, qualification requirements and other pertinent factors.<sup>2</sup>

---

<sup>2</sup> See Decision 6-69.

When circumstances were compelling, we have also placed some incumbents of a title in an appropriate bargaining unit while barring others in the title because of their managerial or confidential status.<sup>3</sup> Here, our ruling is based primarily on the actual job duties and responsibilities and on the history of collective bargaining.<sup>4</sup> Division of the LSA title along the lines of the pre-existing division of City-wide clerical/administrative employees is both fair and justified.

**O R D E R**

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

ORDERED that the petition of Local 237, International Brotherhood of Teamsters, be, and the same hereby is, dismissed, and it is further

---

<sup>3</sup> See Decisions 21-80, 18-80, 35-77, and 19-75.

<sup>4</sup> In view of our findings, we will not order an election in this case. An election is a proper procedure where two or more units are equally appropriate but neither is more appropriate. (See Decision No. 27-80). Such is not the case here, since we have found at the three LSA levels one or the other unit to be the more appropriate.

Decision No. 18-81  
Docket Nos. RU-750-80  
RU-754-80, RU-755-80

20

ORDERED that employees in Level I of the Legal Secretarial Assistant title be, and the same hereby are, added to Certification 46C-75 (as amended), subject to existing contracts, if any, and it is further

ORDERED that employees in Levels II and III of the Legal Secretarial Assistant title be, and the same hereby are, added to Certification No. 41-73 (as amended), subject to existing contracts, if any, and it is further

ORDERED that, in all other respects, the petitions of District Council 37 and the Communications Workers of America be, and the same hereby are, denied.

DATED: New York, New York  
June 17, 1981

ARVID ANDERSON  
CHAIRMAN

WALTER L. EISENBERG  
MEMBER

DANIEL G. COLLINS  
MEMBER

Decision No. 18-81  
Docket Nos. RU-750-80  
RU-754-80, RU-755-80

The title and title code number of the employees  
affected by this decision are as follows:

Legal Secretarial Assistant                      05013  
(Temporary code no.)