

City v. L.300, SEIU, 28 OCB 35 (BOC 1981) [35-81 (Cert.)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF CERTIFICATION

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In the Matter of the Application of

THE CITY OF NEW YORK,

Petitioner,

DECISION NO. 35-81

DOCKET NO. RE-109A-80

For an Order declaring employees
managerial or confidential pursuant
to Section 2.20 of the Revised
Consolidated Rules of the Office
of Collective Bargaining,

-and-

LOCAL 300, SERVICE EMPLOYEES
INTERNATIONAL UNION, AFL-CIO

Respondent.

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DECISION AND ORDER

On January 30, 1980, the City of New York, appearing by its Office of Municipal Labor Relations (the "City") filed its petition with the Board of Certification (the "Board") seeking a determination that the 55 titles enumerated in Exhibit A thereto be declared managerial

or confidential within the meaning of Section 1173-4.1¹ of the New York City Collective Bargaining Law (the "NYCCBL"). The City sought to exclude employees in these titles from coverage in any subsequent collective bargaining agreement on the theory that:

[E]mployees of petitioner in the titles listed in Exhibit A participate in the formulation and effectuation of policy or assist in the preparation for and conduct of collective negotiations, contract administration and personnel administration.²

In an Interim Decision, No. 28-80, issued on August 18, 1980, the Board ruled that:

(1) the petition would be dismissed as to those titles presently vacant unless the City furnished the Office of Collective Bargaining ("OCB") with information to the contrary prior to the commencement of hearings in the proceeding;

¹ Section 1173-4.1 of the NYCCBL reads as follows:

§1173-4.1 Rights of public employees and certified employee organizations. Public employees shall have the right to self-organization, to form, join or assist public employee organizations, to bargain collectively through certified employee organizations of their own choosing and shall have the right to refrain from any or all of such activities. However, neither managerial nor confidential employees shall constitute or be included in any bargaining unit, nor shall they have the right to bargain collectively; provided, however, that nothing in this Chapter shall be construed to: (i) deny to any managerial or confidential employee his rights under section 15 of the New York Civil Rights Law or any other rights; or (ii) prohibit any appropriate official or officials of a public employer as defined in this Chapter to hear and consider grievances and complaints of managerial and confidential employees concerning the terms and conditions of their employment, and to make recommendations thereon to the Chief Executive Officer of the public employer for such action as he shall deem appropriate. A certified or designated, employee organization shall be recognized as the exclusive bargaining representative of the public employees in the appropriate bargaining unit.

² Paragraph 14 of the Petition herein.

(2) the petition would be dismissed as to 6 titles which the Board had previously adjudicated non-managerial unless the City supplied a statement of a change in circumstances prior to the commencement of the hearings; and

(3) in the interest of facilitating the hearing and processing of the case, the petition would be severed "along the lines of the certification in which the titles are included," and each part would be duly assigned a letter, from A to N, appended to a uniform docket number, i.e. - Docket No. RE-109-80.

With respect to the third ruling, the letter "A" identified the portion of the petition covering the following titles, which are included in Certification No. 64-78 (as amended), held by Local 300, Service Employees International Union, AFL-CIO ("Local 300"):

Supervising Buyer
Principal Purchase Inspector
Supervising Auditor of Accounts.

On July 15, 1980, Local 300 petitioned to add the title of Principal Buyer to the same certification (see Docket No. RU-783-80). On October 16, 1980, the City objected to said petition on the ground that the title is managerial. The City withdrew the titles of Supervising Buyer and Principal Purchase Inspector from its petition on October 6, 1980. On November 10, 1980, the two remaining titles, Supervising Auditor of Accounts and Principal Buyer, were consolidated for purposes of hearing.

Said hearing was held on February 6, 1981 and March 5, 1981. At the hearing, the parties agreed that the City would amend its petition in the above-captioned matter to have only Hector Flores, rather than all seven employees in the title, declared a confidential employee. The amendment was to be made upon confirmation that Flores is actually serving as Supervising Auditor of Accounts in the Department of Employment of the Human Resources Administration. On June 18, 1981, the City supplied such information and amended its petition accordingly. Local 300 had no objection to the amendment.

On October 20, 1981, Local 300 requested withdrawal of its petition in Docket No. RU-783-80, which withdrawal was approved by this Board on October 27, 1981.

CONFIDENTIAL STATUS OF HECTOR FLORES

On November 17, 1981, both the City and Local 300 entered into a written stipulation agreeing, inter alia, that Hector Flores is a confidential employee within the meaning of NYCCBL Section 1173-4.1. With regard to Mr. Flores' duties and responsibilities in the Supervising Auditor of Accounts position, the Stipulation states:

"The parties agree that Hector Flores' duties and responsibilities in the above-mentioned title include but are not limited to the preparation of the personnel service line controls for the Department of Employment 1981 personnel service budget totaling approximately 15 million dollars; preparation of budget modifications to process approved personnel actions and salary adjustments for Staff of the Department of Employment; maintenance of line controls and salary control cards for all employees in the Department of Employment in addition to participants hired under the Summer Youth Programs; liaison between the Department of Employment and the Human Resources Administration in all personnel service budgetary and payroll matters; monitoring of bi-weekly payroll runs to insure accuracy of payroll action, i.e. salaries, budget codes, lines, and distribution numbers; control of all DOE budget modifications and verifications that mods have been accepted into the system; review of the Quarterly Financial Status Report for all CETA titles submitted to U.S. Department of Labor; review of the Monthly Expenditures Report for all CETA titles submitted to the Comptroller's Office, act as liaison between the Assistant Commissioner for Budget and Fiscal Affairs and the Comptroller's Office and Office of Management and Budget of New York City."

The parties further agreed that Flores is privy to confidential information.

In light of the foregoing, the Board is persuaded that Hector Flores is a confidential employee within the meaning of the NYCCBL. of particular significance is the fact that Flores appears to play a major role in the personnel

administration of the Department of Employment. Furthermore, by virtue of the inherent nature of his duties, Flores must exercise independent judgment in the performance of his responsibilities. In addition, the financial data with which he comes in contact is traditionally not disseminated among rank and file employees.

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 request for the withdrawal from this petition of the titles Supervising Buyer and Principal Purchase Inspector be, and the same hereby is, granted; and it is further

ORDERED, that the request herein for a determination that Hector Flores, Supervising Auditor of Accounts in the Department of Employment of the Human Resources Administration, is a confidential employee within the meaning of Section 1173-4.1, be, and the same hereby is, granted.

DATED: New York, N.Y.
November 19, 1981

ARVID ANDERSON
CHAIRMAN

DANIEL G. COLLINS
MEMBER

WALTER L. EISENBERG
MEMBER