

DC37 v. City, 34 OCB 6 (BOC 1984) [6-84 (Cert.)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF CERTIFICATION

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In the Matter of

DISTRICT COUNCIL 37, AFSCME, AFL-CIO

DECISION NO. 6-84

-and-

DOCKET NO. RU-887-82

THE CITY OF NEW YORK

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APPEARANCES:

Linda M. Nelson, Esq.

For: District Council 37, AFSCME, AFL-CIO

Carmen Suardy, Esq.

For: The City of New York

DECISION AND ORDER

On December 29, 1982, District Council 37, AFSCME, AFL-CIO (hereinafter "D.C. 37" or "the Union") filed a petition to add the newly established title of Superintendent of Water and Sewer Systems to its Certification No. 38A-78 (as amended). On January 12, 1983, the City's Office of Municipal Labor Relations (hereinafter "OMLR" or "the City") was notified by the Office of Collective Bargaining (hereinafter "OCB") of D.C. 37's petition and was requested to advise OCB of the City's position in this matter. In a letter dated March 18, 1983, OMLR opposed the petition on the grounds that the duties of the position are managerial in nature and the salary is within the managerial pay plan. On March 25, 1983, D.C. 37 requested that any hearing on this matter not be scheduled for a date prior to May, 1983, due to current commitments. On May 5, 1983, the Board of Certification (hereinafter "the Board") assigned this matter for a hearing to determine whether the employees serving in this new title are managerial employees within the meaning of section 1173-4.1 of the New York City Collective Bargaining Law (hereinafter "NYCCBL").

Hearings were held on June 10, June 28, July 6 and September 15, 1983, at which time the parties were given full opportunity to present evidence and arguments relating to their respective positions on the managerial issue. Time for submission of briefs, originally scheduled for October 28, 1983, was extended, at the request of D.C. 37 and with the consent of OMLR, to November 3, 1983. Briefs were submitted by both parties and the record was closed on November 3, 1983.

On December 16, 1983, the City requested that the record be reopened to permit the introduction of additional

evidence. Upon review of the record and the briefs submitted by the parties, the Board directed that this matter be reopened for additional testimony to enable it to make an informed decision.

Hearings were conducted on March 9 and March 19, 1984, at which the parties were given full opportunity to present additional evidence and arguments relating to their positions. Time for submission of briefs was scheduled for April 17, 1984, at which time the record was closed.

BACKGROUND

The City Personnel Director, in Resolution No. 82-40 dated December 8, 1982, established the new title of Superintendent of Water and Sewer Systems in the competitive class of the classified service. In addition to establishing this new title, the Personnel Director, in the same Resolution, deleted from the classified service two existing Competitive Class titles, Superintendent of Repairs to Distribution and Superintendent of Sewer Service, and reclassified the incumbents serving in these two titles to the newly established one. Twelve employees are now serving in this new title. The two deleted titles were certified to D.C. 37, in Certification No. 38A-78 (as amended), covering the unit to which D.C. 37 now seeks to add the new title. The Resolution also deleted the title of Administrative Superintendent of Water and Sewer Systems from the Managerial Service. There were no incumbents serving in this title.

The pertinent parts of the job specifications for the petitioned-for title and its two predecessor titles are as follows:

SUPERINTENDENT OF WATER AND SEWER SYSTEMS

General Statement of Duties and Responsibilities:

Under direction, with considerable latitude for independent judgment, is responsible for all activities in an assigned area within New York City in the construction, operation, maintenance and repair of the water supply distribution system and the sewage and drainage system, including related appurtenances, equipment and structures; the maintenance of water courses and related structures; and the maintenance of buildings, lands, grounds, reservoirs and aqueducts; performs related work.

Examples of Typical Tasks:

Supervises personnel, including District Supervisor (Water and Sewer Systems), in an assigned area, who are engaged in the construction, operation, repair and maintenance

of water mains, valves, low and high pressure hydrants, sewers, drainage systems, related equipment, appurtenances, and facilities.

Reviews programs and policies as applied to the assigned area and is responsible for their implementation.

Is in responsible charge of the inspection of and work performed in the replacement or repair of sewer and drainage systems; water supply systems; operation of equipment, use of supplies and materials used in sewer and drainage systems and water supply systems; and maintenance of lands, structures and roads.

Takes corrective action, reviews and supervises the investigation of problems and complaints relating to sewer and drainage systems and in water supply systems, and approves actions taken or makes recommendations to the Division Chief.

Schedules shutdowns of large water mains.

Supervises the arrangement of work and leave schedules; makes or recommends assignments and transfers of personnel within assigned area; directs relocation of equipment in emergencies; maintains records.

Reads and interprets maps, blueprints, sketches, specifications, etc.

Reviews and/or approves requisitions for tools, supplies, materials and equipment.

Operates radio telephone equipment.

Enforces the administrative code and other appropriate laws, codes, rules, regulations and procedures as they apply to Department functions and responsibilities.

May act in place of the Division Chief as directed.

May operate a motor vehicle in carrying out duties and responsibilities.

SUPERINTENDENT OF REPAIRS TO DISTRIBUTION

General Statement of Duties and Responsibilities:

Under direction, supervises the maintenance and repair of the water distribution system within an assigned borough; performs related work.

Examples of Typical Tasks:

Supervises and coordinates the work of repair crews in the

repairing of breaks and leaks in water mains, hydrants, valves and other appurtenances, and in the laying of new mains and offsetting and relocation of old mains.

Supervises the arrangement of work and leave schedules; makes assignments and transfer of personnel to the several repair companies as required; directs the relocation of equipment in case of emergencies.

Advises and instructs subordinate supervisory personnel in the proper use and care of equipment and adherence to safety regulations.

Schedules shutdown of mains for repair and alteration and personally supervises the shutdown of large mains; coordinates repair work with public utility work forces.

Supervises yard foremen in the storage and distribution of materials and in the maintenance of proper stock records.

Supervises the maintenance of department buildings within the borough and makes recommendations for repair and improvement to departmental facilities.

Responds to multiple alarm fires and cooperates with the fire fighting forces.

Reads and interprets maps and specifications.

SUPERINTENDENT OF SEWER SERVICE

General Statement of Duties and Responsibilities:

Under general supervision, with considerable latitude for independent judgment, supervises all activities of an assigned area, or performs functions requiring unusual knowledge or experience, in carrying out the Sewer Maintenance and Repair program as directed by the Division of Sewer Maintenance; performs related work.

Examples of Typical Tasks:

Performs administrative tasks and furnishes supervision of District Foremen whose assigned personnel are engaged in maintenance and/or repair of the system under the jurisdiction of the Division of Sewer Maintenance.

Instructs District Foremen in methods and procedures and reviews field inspection reports prepared by districts.

Supervises and/or conducts inspections, investigations, and examinations of unusual, difficult, or hazardous problems encountered.

Supervises the preparation of work assignment schedules, vacation schedules, and assignment of shifts for special work and emergencies.

Supervises the enforcement of agency regulations, preparation of disciplinary reports, and attends disciplinary hearings.

Researches records, such as connection permits, drainage plans, record drawings, private drains, easement agreements and deeds in connection with investigation and analysis of special sewer or drainage related problems.

Prepares reports concerning matters within his assigned area and submits recommendations to the Division.

When assigned, supervises city-wide night shift operations.

May be directed to act in place of the Chief of Operations in his absence.

Operates vehicle assigned in the performance of his duties.

POSITIONS OF THE PARTIES

D.C. 37

D.C. 37 contends that the individuals employed in the title of Superintendent of Water and Sewer Systems (hereinafter "Superintendent") are not managerial employees based upon the guidelines established in Section 201.7(a) of the Taylor Law and within the meaning of Section 1173-4.1 of the NYCCBL.

D.C. 37 noted that the City's sole objection to the petition is that the title should be designated as managerial because the "duties are managerial" and "the salary for the position is in the managerial pay plan."

D.C. 37 alleges that the testimony of the City's witnesses indicates that the Superintendent could not independently discipline, hire or fire employees. Although they pass along written grievances or discuss grievances informally, they do not participate in any formal steps of the grievance procedure. Superintendents cannot change posted work-or vacation schedules nor can they order overtime, except in emergencies, and even then it is policy to attempt to obtain prior approval. They cannot independently approve promotions, transfers or changes in employees' shift assignments. The Superintendents do not set budget or department goals, and, except for sporadic and casual input, they have no relationship to the budget process but are merely resource people for those with budget responsibilities.

D.C. 37 indicated that, while the Superintendents cover for the Chief and Section Heads during their absence and on weekends, this is done on a rotating basis and schedules are posted every three months. When covering, the Superintendent is on call, and if there is an emergency he handles the situation. If he has to go in to work, he is paid overtime.

D.C. 37 contends that the job specification of the Superintendent is "literally almost identical" to those of its predecessor titles, and that the Superintendents are "either involved in decision-making of a purely technical or material nature only or in providing resource information to bureau chiefs, neither of which are indicia of managerial status."

D.C. 37 argues that the Superintendents' ability to earn substantial overtime in predecessor titles and their designation in the list of physically taxing positions would be adversely affected by a change in classification must also be addre