

L.1180, CWA v. Judicial Confer., 4 OCB 10 (BOC 1969) [Decision No. 10-69 (Amend. Cert.)]

OFFICE OF COLLECTIVE BARGAINING  
BOARD OF CERTIFICATION

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In the Matter of

LOCAL 1180, COMMUNICATIONS WORKERS  
OF AMERICA, AFL-CIO

DECISION NO. 10-69

-and-

DOCKET NO. RU-1-68

THE JUDICIAL CONFERENCE OF  
THE STATE OF NEW YORK

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DECISION AND AMENDMENT  
OF CERTIFICATION

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On January 10, 1968, Communications Workers of America, hereafter referred to as Petitioner, filed a petition with the Office of Collective Bargaining requesting certification as the exclusive collective bargaining representative for employees in the title of Administrator III employed by the Judicial Conference of the State of New York. The Conference and the City, hereafter collectively referred to as Employer, opposed such certification on the ground that the employees in the title of Administrator III perform managerial functions.

A hearing on the petition was held on October 24, 1968, before David I. Obel, Esquire, a Trial Examiner duly appointed by the Board of Certification. Thereafter, on December 20, 1968, Petitioner filed a brief in support of its position with the Board. The Employer did not file any brief.

Upon the entire record herein, including the report and recommendation of the Trial Examiner and the Petitioner's Brief, 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. Managerial Executive Status

### A. The Place of Administrator III in the Organization of Authority in the Unified Court System in the City of New York

The summit of policy making in the court system of New York State is the Administrative Board of the Judicial Conference. The Board establishes administrative standards of general application for the entire system. Each of the state's four appellate departments supervises the operation of the courts located therein pursuant to the standards adopted by the Administrative Board.

The Board consists of the Chief Judge of the Court of Appeals and the Presiding Justices of the four Appellate Divisions. The Board receives administrative support from its appointed State Administrator and four Directors of Administration, one for each appellate department. There are also Administrative Judges for each of the lower courts.

On a level beneath the Administrative Judge in each lower court is an employee holding the title of General Clerk or its equivalent. The General Clerk is charged with overall responsibility for the operation of a court or a court-related agency. The performance of employees in the regular clerical-administrative and court clerical series comes within the purview of the General Clerk. Supporting the General Clerk in the latter's responsibilities for the performance of work by employees in the clerical-administrative series is the Administrator III.

### B. The Job Responsibilities of Administrator III

In Matter of Local 154, D.C. 37, A.F.S.C.M.E., AFL-CIO  
Decision No. 73-68, we observed:

The criterion on which the greatest emphasis has been placed is the formulation, determination, and effectuation of an employer's policies; that is, regular exercise of independent judgment or discretion in the formulation and promulgation of policy . . . .The managerial role involves the broad and active participation associated with the formulation of objectives or the methods of fulfilling established purposes . . . .

Thus, we must measure the job responsibilities of an Administrator III against the test set forth above.

The duties of an Administrator III as described in general terms in the job specifications for the title are:

Under executive direction of a top-level administrative or executive officer, is responsible for all of the clerical-administrative and management activities of an auxiliary agency to the courts, including accounts and budgeting, personnel administration, records management, methods and procedures, office services and preparation of reports; plans, assigns and reviews the work of subordinates and is responsible for the satisfactory completion of the work assigned to the unit; represents the agency in contacts with fiscal authorities and the staff of the Judicial Conference.

**QUALIFICATIONS:** One year of permanent competitive service as an Administrator II.

The foregoing broad outline of duties was amplified substantially by uncontradicted testimony at the hearing. This testimony clearly reveals that the Administrator III exercises significant authority of a supervisory character in the administrative and clerical areas delineated in the job specifications. Thus, Administrators III may prepare reports of personnel changes for the central payroll division of the Comptroller's office., However, this work is frequently delegated to Administrators I and II, employees who have employed collective bargaining for over a year and a half.

Administrators III also participate in the implementation of personnel orders which result from collective bargaining between the employer and certain public employee organizations. The role of the Administrator III in this area is primarily administrative. He projects the salary changes for affected employees pursuant to the terms of the personnel order, places the new salaries on the appropriate forms, and computes the amounts of back pay to which employees covered by the personnel order are entitled. As is the case with the preparation of personnel changes, much of this work is delegated to employees in the titles of Administrator I and II.

Another major task of Administrator III is also performed in conjunction with Administrators I and II. This is the preparation of the budget, a vital data collection, data analyzing process in the life of many public and private organizations. The budget role of the Administrator III is data collection and analysis. He submits the results of his staff's inquiry to the General Clerk who bases his budget recommendations upon them. The General Clerk's recommendations may be accepted, modified, or rejected by the Administrative Judge. The last word in this area is, however, that of the Appellate Division and the Bureau of the Budget.

The Administrators III also perform or see to the performance of a variety of personnel record-keeping activities. They process employee requests for different kinds of leave and for credits against such leave accounts, but they have no authority to rule upon these requests. Some requests fall within the province of the General Clerk, others within the province of the Administrative Judge, and, ultimately, the Presiding Justice of the Appellate Division. In these situations, as in many others of a similar nature, the Administrator III merely follows the rules and regulations of the Administrative Board of the Judicial Conference and those of Civil Service. In the area of grievance

handling, an activity in which supervisors frequently participate in lower level efforts at adjustment,<sup>1</sup> the record did not show that Administrators III have any role to play. The customary procedure requires grievances to be taken by Administrators I and II directly to the General Clerk who is in charge of the Administrative Office. The record also failed to show that Administrators III played any part in the hiring, termination, disciplining, transfer or promotion of other employees.

In sum, the duties of Administrators III are, as the title suggests, administrative in nature. The record does show that Administrators III perform supervisory functions of a non-managerial character.<sup>2</sup> As the General Clerk testified, without contradiction, the Administrator III does not make policy but merely moves the agency in the direction that has already been set.

Upon all the evidence, we find that employees in the title of Administrator III are not managerial-executives. Their unit placement and Petitioner's representative status is discussed below.

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<sup>1</sup> See, e.g., Matter of Terminal Employees Local 832, I.B.T., Decision No. 75-68.

<sup>2</sup> Even the recommendation and institution of standard office procedures designed to promote efficiency in office operations is not sufficient to warrant the attribution of managerial status to Administrators III. This function is neither conclusive by virtue of its magnitude, nor persuasive in combination with other factors. In a case where we found similar functions indicative of managerial status, the functions were impressively set forth in the job specifications, and the record revealed that they were of a much larger order in terms of the scope of the agency activities affected and the number of employees embraced by the exercise of such authority. See Matter of City Employees Union, Local 237, I.B.T., Decision No. 79-68.

III. The Appropriate Unit and  
Representative Status

At the hearing the parties stipulated that, if the Board ruled against the position of the Employer, Administrators III should be included in the same supervisory bargaining unit with Administrators I and II. This unit is presently represented by the Petitioner.

The job specifications for employees in the titles of Administrators I, II, and III state that "positions in this series perform a broad range of duties in courts or auxiliary agencies." All of these employees perform the same kinds of administrative tasks, albeit on an ascending scale of supervising responsibility. All positions in the series are also on the same promotional ladder and, consequently, wage setting for them will occur in a narrow range of variation.

Thus, the parties agree and the record reveals with indisputable clarity that employees in the titles of Administrator I, II, and III share a substantial community of interest in the determination of their wages, hours, and working conditions. Accordingly, we shall include these titles in a single unit for the purposes of collective bargaining.

Our investigation establishes that both a majority of employees in the single title of Administrator III, and a majority of employees in the three title unit of Administrator I, II, and III have authorized dues check-off in favor of Petitioner. Accordingly, we shall amend the certificate issued to Petitioner in 9 NYCDL No. 41 to include the title of Administrator III.

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

O R D E R E D, that Certification 9 N.Y.C.D.L. No. 41, previously issued to Municipal Management Society, Local 1180, Communications Workers of America, AFL-CIO, be, and the same hereby is, amended to include the title of Administrator III.

DATED: New York, N. Y.  
March 13, 1969

ARVID ANDERSON  
CHAIRMAN

ERIC J. SCHMERTZ  
MEMBER

PAUL WALLEN  
MEMBER