

State Court Clerks Assn., et. Al v. City, et. Al, 4 OCB 21 (BOC 1969)
[Decision No. 21-69 (Cert.)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF CERTIFICATION

DECISION NO. 21-69

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In the Matters of
NEW YORK STATE COURT CLERKS ASSN.,
Petitioner

DOCKET NOS:

-and-
ASSOCIATION OF COURT CLERKS III AND
IV IN THE CITY OF NEW YORK,
Petitioner

RU-3-68
RU-32-68
RU-42-68

-and-
COURT CLERKS BENEVOLENT ASSN.,
Petitioner

-and-
JUDICIAL CONFERENCE OF THE STATE OF
NEW YORK, AND THE CITY OF NEW YORK

-and-
COURT CLERKS ASSOCIATION, and
LOCAL 1070, DISTRICT COUNCIL 37,
AFSCME, AFL-CIO, Intervenors

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DECISION AND ORDER

On January 24, 1969, the Association of Court Clerks III and IV in the City of New York (herein called the Association) requested reconsideration of, and oral argument upon, the Board's decision in the above-entitled matters (Decision No. 4-69). Oral argument was heard on February 25, 1969, by Chairman Anderson and Member Schmertz.

Upon consideration of the proceeding heretofore had herein, the request for reconsideration, the papers in opposition thereto, and the transcript of the oral argument, the Board adheres to its prior decision.

In our prior decision, we found that:

Court Clerks I and II, and Surrogate's Court Clerks I and II (and Court Clerks III and IV, and Surrogate's Court Clerks III, unless determined to be managerial) constitute a unit appropriate for the

purposes of collective bargaining.

The decision provides that Court Clerks III and IV may cast challenged ballots in the directed election, pending determination of their alleged managerial status.

The thrust of the Association's application for reconsideration is that Court Clerks III and IV should be found to constitute a separate bargaining unit.

In support of its application, the Association urges that the prior decision erroneously states that the Judicial Conference joined the City in urging a single unit, whereas the Judicial Conference took no position on that issue. Since the New York City Office of Labor Relations appeared for, and represented, the Judicial Conference, the position urged by the Office of Labor Relations properly is attributable to the Judicial Conference. In any event, the purported error is of no significance, for the unit question was clearly presented and litigated by all parties, including the Association.

The Association further contends: (1) that Court Clerks III and IV are supervisory employees who may not, without their consent, be placed in the same unit with Court Clerks I and II, who, the Association asserts, are non-supervisory employees; (2) that even if Court Clerks I and II are supervisory employees, Court Clerks III and IV should be placed in a separate bargaining unit because of the differences in the "levels" and "quality" of supervision involved; and (3) that the Board's unit determination fails to take into account the wishes of the incumbent Clerks III and IV and deprives them of their statutory right "to full freedom of choice."

These same contentions, or variations thereof, were urged in the brief filed by the Association prior to the Board's decision herein, and were fully considered.

By stipulation of the parties, including the Association, the Board was authorized to decide the issues herein on the basis of the job specifications for the titles involved, and such other matters of which the Board might take administrative notice. A number of the Association's arguments turn on alleged facts beyond the scope of the stipulation.

Although the job specifications set forth various non-supervisory duties of Court Clerks I and II, they also specify various supervisory functions. Thus, the specifications for Court Clerks I include:

supervising courtroom personnel ***;
may supervise a number of trial parts
or a section of a court office; may
have charge of an administrative ser-
vice function for the court.

Similarly, the specifications for Court Clerk II state:

acts as the supervisor of a large
general office within the court with
responsibility for co-ordinating the
work of the various sections in the
processing of legal papers * * *;
reviews work of subordinates who make
the initial examination of papers sub-
mitted to the court; * * * may direct
an important central or administra-
tive service function for the court.

The job specifications, which by stipulation of the parties constitute the basic record herein, thus clearly include the performance of supervisory duties by both Court Clerks I and Court Clerks II. Assuming, as contended by the Association, that some incumbents in either title may be assigned to non-supervisory services, the duties of each title include supervisory functions to which such employees may be assigned at any time. To split the title on the basis of particular assignments could only lead to chaos and confusion.

As stated in our prior decision:

Court Clerks I and II are supervisory positions with overlapping salary ranges. They are in the same occupational series and promotion line, and perform related legal-technical services requiring good or specialized knowledge of court procedures and practices. They have a substantial mutuality of interest, and we find and conclude that they should be placed in the same bargaining unit.

The Association's remaining contentions, based upon purported differences in the levels and quality of supervision, and the alleged deprivation of full freedom of choice, are equally without merit.

The Association argues that the pay differential between two levels of supervision creates "an inherent conflict in interest" between the two groups. The argument, if accepted, would require a separate bargaining unit for each level of supervision, including Court Clerks III and IV whom the Association would join in a single unit.

Section 1173-3.0(1) of the New York City Collective Bargaining Law prohibits the placement of supervisory and non-supervisory employees in the same unit without the "consent of a vote of a majority" of the former. It does not require a separate unit for each level of supervision, nor does it require a separation of competitive and non-competitive titles. Again, as stated in our prior decision herein:

Although the NYCCBL, Sec. 1173-5.0b(1) provides that bargaining units shall be such 'as shall assure to public employees the fullest freedom of exercising the rights granted hereunder,' it also provides that the bargaining units established shall be 'consistent with the efficient operation of the public service, and sound labor relations.' If the Association's contention were to be accepted, extent of organization would be the controlling factor in all cases. The Association's request would create two super-

visory bargaining units in a single occupational series. We believe it would not contribute to either the efficient operation of the public [service] or sound labor relations to so fragment the bargaining structure. (Matter of District Council 37, A.F.S.C.M.E., Decision No. 44-68; Matter Of Supreme Court Probation Officers Association, Decision No. 58-68).

The Association's application, accordingly, is denied. In view of the lapse of time since we directed an election herein, we shall set a new eligibility date and extend the time to submit a showing of interest.

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 the application of Association of Court Clerks III and IV in the City of New York for reconsideration of Decision No. 4-69 be, and the same hereby is, denied; and it is further

O R D E R E D , that the Direction of Election contained in said Decision No. 4-69, dated January 22, 1969, be, and the same hereby is, amended to read as follows:

DIRECTED, that an election by secret ballot shall be conducted under the supervision of the Board of Certification, or its agents, at a time, place and during hours to be fixed by the Board among all Court Clerks I and II and Surrogate's Court Clerks I and II employed within the City of New York by the Judicial Conference of the State of New York and the City of New York during the payroll period immediately preceding the date of this amended "Direction of Election (other than those who have voluntarily quit or who have been discharged before the date of the election), to determine whether or not they desire to be represented for the purposes of collective

bargaining by Court Clerks Benevolent Association, New York State Court Clerks Association, any other public employee organization which files proof of interest, consisting of either (a) ten (10) per cent of Court Clerks I, II, III and IV, or (b) ten (10) per cent of Court Clerks I and II within ten (10) days from the date of service of this amended Direction of Election, or none of said organizations, and it is further

DIRECTED, that Court Clerks III and IV, and Surrogate's Court Clerks III may cast challenged ballots in said election, said challenged ballots to be impounded pending determination of the alleged managerial status of said employees.

DATED: New York, N.Y.

April 9 , 1969

ARVID ANDERSON
C h a i r m a n

ERIC J. SCHIME RT Z
M e m b e r

SAUL WALLEN
M e m b e r