

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

OFFICE OF COLLECTIVE BARGAINING  
BOARD OF CERTIFICATION

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In the Matters of

DECISION NO. 4-69

NEW YORK STATE COURT CLERKS ASSN.,  
Petitioner

DOCKET NO. RU-3-68

-and-

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

DOCKET NO. RU-32-68

Petitioner

-and-

COURT CLERKS BENEVOLENT ASSN.,  
Petitioner

DOCKET NO. RU-42-68

-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, CERTIFICATION  
AND DIRECTION OF ELECTION

The petitioners in this consolidated proceeding seek certification as the collective bargaining representative of various units of Court Clerks and some allegedly related titles. The parties waived a hearing and stipulated that the Board may determine the questions presented on the basis of the job specifications and any other matters of which the Board may take administrative notice.

On August 19, 1968, the Board granted an application by Court Clerks Association to intervene herein.

On November 8, 1968, Local 1070, District Council 37, renewed an application to intervene which previously had been denied by the Board. The application is granted to the extent that Local 1070 will be permitted to appear on the ballot in the election hereinafter directed,

upon condition that it file a proper showing of interest,  
as provided in the order issued herein.

Upon consideration of the memoranda and statements filed by the parties, and all relevant and material facts, the Board of Certification renders the following decision:

I. The Issues and Background

The basic issues presented herein are:

1. The unit or units of Court Clerks appropriate for the purposes of collective bargaining; and,

2. should the positions of Court Clerk III and Court Clerk IV be excluded from any unit because they are managerial in nature.

involved:

Two "Court Clerical Series" are here

A. Court Assistant, Assistant Court Clerk, and Court Clerks I, II, III and IV; and,

B. Assistant Surrogate's Court Clerk, and Surrogate's Court Clerks I, II and III.

Also involved are the additional titles of Executive Assistant, Executive Assistant to the Administrative Judge, Deputy Director of Administration (Municipal Court), and Deputy Clerk of District.

A number of the titles here concerned are included in certifications previously issued by the New York City Department of Labor:

<u>TITLE</u>	<u>CERTIFIED UNION</u>	<u>CITATION</u>
Court Assistant	Local 1070, D.C. 37	9 NYCDL No. 42
Assistant Court Clerk	Joint Council of Court Clerks' Associations <sup>4</sup>	8 NYCDL No. 112
Assistant Surrogate's Court Clerk <sup>1</sup>		
Deputy Clerk of District		
Court Clerk I	Supreme and Surrogate's Court Attaches Assn., and Joint Council of Court Clerks' Assns. <sup>4</sup>	9 NYCDL No. 27
Surrogate's Court Clerk I		
Court Clerk II <sup>2</sup>	Supreme and Surrogate's Court Attaches Association	8 NYCDL No. 95
Surrogate's Court Clerk II <sup>3</sup>		

## II. Positions of the Parties

New York State Court Clerks Association seeks to represent Court Clerks I and II as a single unit or in separate units of Clerks I and II (RU-3-68)<sup>5</sup>. It opposes inclusion in the unit of Assistant Court Clerks or managerial positions.

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<sup>1</sup> Formerly Assistant Guardian Clerk, Recording Clerk and Senior Surrogate Clerk.

<sup>4</sup> Now the Court Clerks Benevolent Association

<sup>2</sup> Formerly Senior Court Clerk, Deputy Clerk and Special Deputy Clerk.

<sup>3</sup> Formerly Court Clerk, Administration Clerk, Clerk of the Trial Term, Financial Clerk, Guardian Accounting Clerk, Head Surrogate Clerk, Record Clerk and Accounting Clerk.

<sup>5</sup> Unless otherwise noted, references to Court Clerks hereafter include the corresponding positions in the Surrogate's Court clerical series.

Association of Court Clerks III and IV in the City of New York seeks to represent Court Clerks III and IV in a single unit (RU-32-68). It denies that these positions are managerial, but asserts that the duties of these employees involve a higher type of supervisory function which differentiates their interests from Court Clerks I and II.

The Court Clerks Benevolent Association seeks to represent all employees in the titles of Assistant Court Clerk through Court Clerk IV in a single unit, or, if an overall unit is deemed inappropriate, it urges the establishment of, and separate units of (a) Assistant Court Clerks and Court Clerks I and (b) a supervisory unit consisting of Court Clerks II, III and IV. It also seeks to represent Executive Assistant, Executive Assistant to the Administrative Judge, Deputy Director of Administration (Municipal Court), and Deputy Clerk of District, but its position on the unit placement of these titles is not clear.

The City and the Judicial Conference urge a single unit consisting of Assistant Court Clerks and Court Clerks I and II. They contend that Court Clerks III and IV are managerial and should be excluded from any bargaining unit. If Court Clerks III and IV are found not to be managerial employees, they would include them in the same bargaining unit with the other Court clericals. If supervisors are to be placed in a separate unit, the City and the Judicial Conference urge a non-supervisory unit of Assistant Court Clerks, and a supervisory unit of Court Clerks I and II, with Court Clerks III and IV to be added thereto if they are found not to be managerial employees.<sup>6</sup>

Intervenor, Local 1070, D.C. 37, urges establishment of a unit limited to Court Clerks I and II.

Intervenor, Court Clerks' Association, submitted a memorandum which apparently supports the claim of the New York State Court Clerks Association for certification as collective bargaining representative of a unit of Court Clerks I and II.

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<sup>6</sup> Section 1173-3.01 of the NYCCBL provides: "Supervisory ... employees shall not be included in the same bargaining unit as non-supervisory... employees without the consent of a vote of a majority of the supervisory ... employees involved."



The Supreme and Surrogate's Court Attaches Association, on May 15, 1968, advised the Board, in writing, that it had no objection to the unit of Court Clerks III and IV sought by Association of Court Clerks III and IV in case No. RU-32-68, and withdrew its petition (R-47-67) for certification as the representative of Court Clerks III. On May 16, 1968, that Association further advised the Board, in writing, that it "withdraws any objection" to the petition (Docket No. RU-3-68) filed by New York State Court Clerks Association for certification as representative of Court Clerks I and II.

III Alleged Managerial Status  
Court Clerks III and IV

The City and the Judicial Conference contend that Court Clerks III and IV are managerial employees. The Association of Court Clerks III and IV and Court Clerks Benevolent Association deny that these positions are managerial, but disagree as to the unit in which they should be placed.

Court Clerks III are employed in all the courts and in one County Clerk's office.<sup>7</sup> Court Clerks IV are employed in all courts except the Surrogate's Courts, but are not employed in the County Clerks' offices.

General statements of the duties and responsibilities of Court Clerks III and IV, and Surrogate's Court Clerk III (with specialties in Administration, Probate and Accounting), are contained in the job specifications for the respective titles. Employees in these titles, however, serve in a wide variety of positions, such as Clerk of a Special Term of the Supreme Court, Calendar Clerk, Central Jury Clerk, Clerk of Criminal Term, etc.

Our investigation, moreover, fails to disclose any symmetry or consistency in the types of services rendered by employees in these titles. To the contrary, the functions and classifications appear to vary from county to county and in the three Judicial Districts involved.

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<sup>7</sup> In the City of New York, each County Clerk also is the Clerk of the Supreme Court for that county.

The list of positions filled by Court Clerks III and IV indicates that a particular function, such as Clerk of a Special Term, may be filled by a Court Clerk IV in one county, by a Court Clerk III in another county, and by an employee in a lower or different title in a third county.

These variations may be accounted for, and justified by, differences in function, workload, the size of the staff supervised, or other considerations. It would not be appropriate or proper, however to determine managerial status on the basis of speculation. Accordingly, we shall reserve decision on that issue pending a hearing to receive evidence thereon.

#### IV. The Appropriate Bargaining Units

##### Court Assistant

Local 1070, D.C. 37, presently is the certified representative of Court Assistants<sup>8</sup> who are covered in an existing contract with employees in certain office clerical titles. None of the other unions herein seeks to represent the Court Assistants or urges their inclusion in any of the units sought herein. Accordingly, we shall exclude them from the units found appropriate herein.<sup>9</sup>

##### Assistant Court Clerk and Deputy Clerk of District

Assistant Court Clerks basically are non-supervisory employees and presently are included in a unit with Deputy Clerk of District for which the Court Clerks Benevolent Association (formerly the Joint Council of Court Clerks Association), is the certified representative.<sup>10</sup> The title of Deputy Clerk of District is for incumbents only. Its former promotional line was from Assistant Court Clerk, and to Clerk of District (now Court Clerk I).

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<sup>8</sup>

9 NYCDL No. 42.

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A majority of the Court Assistants currently have authorized dues check-off in favor of Local 1070, D.C. 37.

<sup>10</sup>

8 NYCDL No. 112



No other union seeks or claims to represent these employees, the vast majority of whom are on dues check-off to Court Clerks Benevolent Association, their present representative for purposes of collective bargaining. The nature of their duties, and their past history of collective bargaining demonstrate a manifest community of interests. Accordingly, we find and conclude that they continue to constitute an appropriate unit for purposes of collective bargaining, and shall exclude them from the unit hereinafter found.

#### Court Clerks I and II

The primary contention of the City and the Judicial Conference, and of each union which claims to represent these titles, would place these titles in the same bargaining unit. The sole exception is found in the secondary request of Court Clerks Benevolent Association, which would place Court Clerk I in a unit with Court Assistants.

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

#### Court Clerks III and IV

As noted in Section III above, the stipulated record herein is insufficient to enable a determination as to the alleged managerial status of these titles. The record is sufficient, however, to establish that these positions, if they are not managerial, involve interests and skills closely allied

to those of Court Clerks I and II. All are supervisory employees in the same occupational series. One year of permanent competitive service as Court Clerk II or III is a required qualification for Court Clerk III <sup>11</sup>, and Court Clerk IV, respectively.

We reject the request of the Association of Court Clerks III and IV to establish a separate unit for those titles only. Although the NYCCBL, §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 supervisory bargaining units in a single occupational series. We believe it would not contribute to either the efficient operation of the public sector 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.

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<sup>11</sup> In the Surrogate's Courts, the qualification requirement is one year of competitive service in the particular Surrogate's Court Clerk II specialty. There is no Surrogate's Court Clerk IV title.

We shall provide, therefore, that Court Clerks III and IV may cast challenged ballots in the election hereinafter directed, pending determination of their status.

#### Other Titles

Court Clerks Benevolent Association also seeks to represent, and to include in the unit, the titles of Executive Assistant, Executive Assistant to the Administrative Judge, and Deputy director of Administration.

The duties of employees in these titles, as stated in the job specifications, are substantially different from those of Court Clerks. There is no history of collective bargaining for these titles, and no apparent mutuality of interests with the Court Clerks. Accordingly, we shall exclude them from the bargaining unit. In view of this determination, we do not pass upon the contention, raised by New York state Court Clerks Association, that these positions are managerial.

We find and conclude, therefore, that Court Clerks I and II, and Surrogate's Court Clerks I and II, (and Court Clerks III and IV, and Surrogate's Court Clerk III, unless determined to be managerial), constitute a unit appropriate for the purposes of collective bargaining.

#### V. The Election

Court Clerks Benevolent Association and New York State Court Clerk Association heretofore have demonstrated to the Board proof of interest which entitles them to be named on the ballot in the election to be conducted herein.

In view of the unusual and extraordinary circumstances presented in this consolidated proceeding, we also shall place on the ballot any of the public employee organizations which are parties hereto or intervenors herein provided that such public employee organizations file with the Board, within ten (10) days after service of this Decision and Direction of Election, proof of interest consisting of either (a) ten (10) per cent of the Court Clerks I, II, III and IV, or (b) ten (10) per cent of Court Clerks I and II.

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DOCKET NOS. RU-3-68, RU-32-68, RU-42-68

DIRECTION OF ELECTION AND ORDER

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

ORDERED, that decision is reserved on the alleged managerial status of Court Clerks III and IV, and Surrogate's Court Clerk III pending a hearing to receive evidence on that issue; and it is hereby

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 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 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.

January 22, 1969.

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