

L.1359, DC37 v. City, 4 OCB 59 (BOC 1969) [Decision No. 59-69  
(Cert.)]

OFFICE OF COLLECTIVE BARGAINING  
BOARD OF CERTIFICATION

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In the Matter of  
  
LOCAL 1359, DISTRICT COUNCIL 37,  
AFSCME, AFL-CIO

DECISION NO. 59-69

-and-

DOCKET NO. RU-31-68

CITY OF NEW YORK

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A P P E A R A N C E S

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for the Employer

DECISION AND DIRECTION OF ELECTION

On April 5, 1968, Local 1359, District Council 37, AFSCME, AFL-CIO (herein called "Local 1359") filed a petition with the Office of Collective Bargaining requesting certification as the collective bargaining representative for the titles Director of Rent Research and Assistant Director of Rent Research.

The City objected to the requested certification alleging that the titles are managerial and not entitled to bargain collectively. A hearing on that question was held on February 5, 1969, before Malcolm D. MacDonald, Esq., Trial Examiner.

Upon consideration of the entire record herein, the Board renders the following decision:

These titles are employed in the New York City Office of Rent Control (ORC), a component of the New York City Housing and Development Administration (HDA). HDA, which is headed by an Administrator, consists of four operating departments: Department of Development, Department of Relocation and Management Services, Department of Buildings, and Department of Rent and Housing Maintenance.' Each operating department is headed by a Deputy Administrator/Commissioner.

The Department of Rent and housing Maintenance consists of three offices, each headed by a Deputy Commissioner, of which the Office of Rent Control is one.

ORC maintains four programs: Accounting, Field Operations, Legal, and Rent Research. It employs about 900 persons, the majority of whom are assigned to District Offices (2 in Manhattan and 1 in each of the other boroughs) operated by the Field Operations Program. The other units or programs of ORC, including the Rent Research Program, are located at the central office of ORC. The titles here under consideration are first and second in command, respectively, of the Rent Research program which also employs eight other professionals and three clerical workers. These employees are supervised by the Director of Rent Research and, in his absence, by the Assistant Director of Rent Research.

Neither of these titles represents management in collective bargaining nor do they serve on any labor-management committees. They have no duties relating to the grievance procedure.

It is the function of ORC to regulate rents and evictions in connection with certain categories of buildings specified by law. Its jurisdiction currently extends to approximately 1,400,000 dwelling units. The Rent Research Program prepares the surveys, studies, cost analysis, economic analysis and other statistical reports used by ORC in performing its function. These studies and reports are prepared at the direction of higher authority and are never initiated by the Director of Rent Research or by any other employee in the Rent Research Program, itself.

The professionals in the Rent Research Program, and particularly the two titles involved here, determine to a large extent the methodology used in making the studies and reports they are called upon to prepare but even here, higher authority - the Commissioner or Deputy Commissioner - in directing that a study be made, prescribes the degree of statistical reliability to which a given project must conform.

A report or study prepared by the Research Program is only one of many factors considered in initiating action or making final decisions. The relative weight to be given a report or study prepared by the Rent Research Program in any given matter dealt with by ORC, is decided by higher authority.

In addition to his regular duties, the Director of Rent Research serves on the ORC Executive Committee, the main function of which is to hear reports of the heads of the four programs on the work of their respective units. He has also served, since January 1969, on ORC's Internal Policy Committee. This committee meets regularly to discuss issues before ORC, members express opinions within their areas of competence and an effort is made to arrive at a consensus on each issue considered. This opinion or recommendation is not binding on the Deputy Commissioner but

may serve as an aid to him in arriving at a decision on a given issue. As a member of this committee, the Director of Rent Research does not offer opinions and recommendations broadly based on concepts and considerations covering the range of the ORC's problems and goals; his role is to provide technical information when it is needed. It is not his function and he does not, in fact, formulate policy or solutions to agency problems; he simply supplies data which higher authority employs in the policy and decision making processes. In this sense, his work as a committee member is essentially the same as his ordinary work.

In their work in the Rent Research Program, the titles here under consideration thus function for the most part as highly skilled technicians. Their work is important to the agency and its performance requires skills of a professional or semi-professional level. It is, however, only one of a number of ORC functions all of which are necessary to its effective operation. These titles have no part in nor significant contact with the other operating components of the agency; they have no broad involvement with the total agency and all of its operations.

The functions of the titles here concerned are similar to those of Principal Statisticians, who, we held, in Matter of Association of Municipal Statisticians, Decision No. 69-68, are not managerial-executives. We there pointed out:

"They do not formulate policy. Although they are called upon to exercise judgment, and discretion, they do so in a professional rather than managerial, capacity. (I.L.G.W.U. v N.L.R.B. 339 F.2d 116, 57 LRRM 2549 R.C.I.A. v N.L.R.B. 3667.2d 642, 62 LRRM 2839.) That they may supply information used in the

formulation of policy by higher personnel or analyze and interpret the results of research in relation to overall policy,' does not constitute them managerial-executives (see e.g. Westinghouse Electric Corp. v N.L.R.B., \_\_\_\_ F.2d \_\_\_\_, 68LRRM 2850; State Farm Ins. Co. v N.L.R.B.; \_\_\_\_ F.2d \_\_\_\_, 68LRRM3029 , 3035)

Accordingly, and upon consideration of the entire record herein, we find and conclude that the Director of Rent Research and the Assistant Director of Rent Research are supervisory employees but are not managerial-executives.

THE APPROPRIATE UNIT AND REPRESENTATIVE STATUS

There is one person employed in the title Director of Rent Research and one person employed in the title Assistant Director of Rent Research. Both of these employees have demonstrated their desire to be represented by Petitioner by having authorized check-off of dues in behalf of said organization. Accordingly, we find and conclude that said employees have designated and selected Local 1359, AFSCME, AFL-CIO as their Collective bargaining representative.

The parties stipulated that in the event that the titles, or either of them, were found not to be managerial-executive they should be added to a unit, for which Local 1359 is the collective bargaining representative, consisting of Senior Rent Research Associate, Rent Research Associate and Research Assistant. These are the lower titles in the same Occupational Group as the two here under consideration. All of these titles perform related tasks and, apart from the fact that some of the titles in the existing unit are non-supervisory, there is a patent community of interest among them.

Section 1173-3.01 of the New York City Collective Bargaining Law provides that 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." Accordingly, we shall conduct a self-determination election in which the Director of Rent Research and the Assistant Director of Rent Research may elect to be represented separately, by the Petitioner or to be grouped with the Senior Rent Research Associate, Rent Research Associate and Research Assistant titles in the unit presently certified to the Petitioner.

DIRECTION OF ELECTION

Pursuant to the power vested in the Board of Certification by the New York City Collective-Bargaining Law, 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, to determine whether or not employees in the titles of Director of Rent Research and Assistant Director of Rent Research employed during the payroll period immediately preceding the date of this Direction of Election (other than those who have voluntarily quit or have been discharged for cause before the date of the election) desire to be represented for the purposes of collective bargaining in a separate bargaining unit, or whether they desire to be included in the existing unit of Senior Rent Research Associates, Rent Research Associates, and Research Assistants for which Petitioner is the certified collective bargaining representative.

DATED: New York, N.Y.

October 20, 1969

ARVID ANDERSON  
Chairman

ERIC J. SCHMERTZ  
Member

WALTER L. EISENBERG  
Member