

State Court Clerks Ass., et. Al v. City, 4 OCB 61 (BOC 1969) [Decision No. 61-69 (Cert.)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF CERTIFICATION

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In the Matter of
NEW YORK STATE COURT CLERKS ASSOCIATION

-and-

DECISION NO. 61-69

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

-and-

DOCKETS NOS. RU-3-68,

RU-32-68

JUDICIAL CONFERENCE OF THE STATE OF
NEW YORK,

-and-

THE CITY OF NEW YORK

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A P P E A R A N C E S :

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Court Clerks III and IV in the
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Court Clerks Association

DECISION AND ORDER

In a prior decision herein, we directed that an election be conducted among all Court Clerks I and II, and Surrogate's Court Clerks I and II, employed in the courts within the City of New York, to determine their desires concerning representation for the purposes of collective bargaining. We further directed that Court Clerks III and IV and Surrogate's Court Clerks III could cast challenged ballots pending determination of the employers' contention that they are managerial employees and thus not entitled to collective bargaining rights.

In the election, conducted on May 13, 1969, a substantial majority of the valid ballots were cast in favor of representation by New York State Court Clerks Association, and that organization accordingly was certified as the exclusive bargaining representative of Court Clerks I and II, and Surrogate's Court Clerks I and II. (Decision No. 29-69)

A hearing on the challenged ballots cast by Court Clerks III and IV, and Surrogate's Court Clerks III, was held before Oscar Geltman, Esquire, Trial Examiner, on September 9 and 11, 1969.

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

I. Alleged Managerial Status

The parties stipulated on-the record that the organization of the Judicial Conference is as described in our prior decision in Matter of Local 1180, Communication Workers of America, Decision No. 10-69. It was there said:

"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.

A motion for reconsideration of that decision subsequently was denied, and the Direction of Election was amended for reasons not here pertinent (Decision No, 21-69).

"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."

The parties further stipulated, inter alia:

"Subject to the rules and regulations, the policies and programs, and supervision and direction of the Judicial Conference, the Administrative Board, the State Administrator, the Appellate Division, the Administrative Judge of the court involved, and the Chief or Deputy Chief Clerk, or General or Assistant General Clerk of the Court, a Court Clerk IV is either in charge of a major part of a court in a major county or is in charge of several or all of the parts of a court in a smaller county or of the Family, Civil or Criminal Court.²

"Likewise subject to the rules and regulations, policies and programs, supervision and direction of the Judicial Conference, Administrative Board, State Administrator, Appellate Divisions, Administrative Judges, Chief or Deputy Chief Clerk of the Court, General or Assistant General Clerk of the Court, and in appropriate cases Court Clerk IV, Court Clerk III's assist some of the Court Clerk IV's in the duties performed by Court Clerk IV.

The Supreme Court in each county consists of a Special Term and a Trial Term, each of which is divided into a number of "Parts." A justice of the Supreme Court is assigned to each Part. In New York County, for example, Special Term is divided into twelve parts and Trial Term into forty-five parts.

"In other cases, Court Clerk III's are in charge of some minor parts in the Supreme Court in a major county and in other cases, Court Clerk III's are in charge of a major part in the Supreme Court in a smaller county or in the Family, Civil or Criminal Court.

* * *

"Subject to the rules and regulations, policies and programs, supervision and direction of the Judicial Conference, Administrative Board, State Administrator, Appellate Divisions, Surrogate and Chief Clerks of the Surrogate's, Courts, and Deputy Chief Clerks, the incumbents of the Surrogate's Court Clerk III title perform the duties and have the responsibilities outlined in the specifications for those titles adopted by the Administrative Board, and in evidence as City's Exhibit 1-B, and they pertain to the responsibility for administrating the activities of either a probate department, an accounting department or administration department of a Surrogate's Court in a large or a very large county in the City of New York, as the case may be.

". . . to the date hereof in no instance has any Court Clerk III or Court Clerk IV participated in any collective bargaining function or labor relations function on behalf of the Judicial Conference,, Administrative Board, State Administrator, Appellate Division, Administrative Judge, or Surrogate, and it is further stipulated that to the date hereof in no instance has a grievance been processed before a Court Clerk III or Court Clerk IV pursuant to the grievance rules which are in evidence as City Exhibit 4,

"It is also stipulated that while the Court Clerks III and IV are subject to the ultimate supervision and direction of the Judicial Conference, Administrative Board, State Administrator and Appellate Division, in their day-to-day operations, they are subject to the direct and immediate supervision and direction of the Surrogate or Administrative Judge, as the case may be, or the Chief or Deputy Chief Clerk or General Clerk or Assistant General Clerk of the particular court to which such Court Clerk III or IV is assigned.

* * *

" . . . no Court Clerk III or IV has or exercises the appointive power with respect to the court personnel.

* * *

" . . . no Court Clerk III or IV has the power to transfer or promote any court personnel.

* * *

" . . . no Court Clerk III or IV has the power to make, adopt or amend any rule, and regulation or policy governing the parts to which any such Court Clerk III or IV is assigned."

Court Clerks III and IV are in the non-competitive class. Surrogate's Court Clerks III are in the competitive class. There is no prior history of collective bargaining by employees in these titles.

With regard to policy formulation, it was stipulated, in substance, that Court Clerks III and IV³ may initiate recommendations and are consulted by the Administrative Judge or Chief or General Clerk concerning problems of the particular Part in which the Court Clerk III or IV is employed, but such consultations are not on a regular basis. It was further stipulated that in all instances the judge makes his own independent judgment and frequently will consult with bar associations, lawyers or fiscal authorities. If the problem extends beyond a particular Part, the judge may consult with the Appellate Division, the State Administrator or with the Administrative Board.

Concerning the implementation of policy by Court Clerks III and IV, the parties stipulated:

Hereinafter, references to Court Clerk III include Surrogate's Court Clerk III unless otherwise noted.

"It is our understanding that they do not implement general, broad, or vague policies or rules, but that to the contrary, the Administrative Judge, or the Surrogate, if it is in the Surrogate's Court, or the State Administrator or the Appellate Division, or the Administrative Board, as the case may be, in one manner or fashion, lays out the rules, regulations and policies governing every aspect of the work performed in the particular part involved.

"We ask you to join us in a stipulation that these men are in charge of the implementation of policy, but that such implementation of policy does not involve policy-making or decision making other than the application of the policy in and of itself."

The authority to formulate policy for the Unified Court System is vested in the Administrative Board of the Judicial Conference. The downward hierarchical line passes through the four Appellate Divisions, each with its administrative assistant, the Administrative Judges of the Supreme, Surrogate's and lower Courts, to the Chief and Deputy Chief Clerk, or General Clerk and Assistant General Clerk of the court, who are the immediate supervisors of Court Clerks IV.

Court Clerks III and IV are in charge of the various Parts of a court, and, concededly, do not formulate policy. Although they may be consulted by the Judge or Chief Clerk on limited policy problems, such consultation is not regular. Others are consulted as well, and the policy decisions are the independent judgment of the Judge. On broad policy matters, the decision is made by the Appellate Division or by the Administrative Board. Such remote and irregular consultations with the Court Clerks concerned fall far short of the regular and significant participation in policy formulation which is indicative of managerial executive status. (Matter of Local 154, D.C. 37, Decision No. 73-68)

Nor does it appear that Court Clerks III and IV exercise significant independent judgment and discretion in the implementation, administration or effectuation of policy, As stipulated by the parties:

" . . . the Administrative Judge, or the Surrogate, if it is in the Surrogate's Court, or the State Administrator or the Appellate Division, or the Administrative Board, as the case may be, in one manner or fashion, lays out the rules, regulations and policies governing every aspect of the work performed in the particular part involved."

As we previously noted in Matter of Local 154, District Council 37, A.F.S.C.M.E., Decision No. 73-68:

"Discretion, however, 'is not the touchstone if it must conform to the employer's established policy.'"⁴

The work of these Court Clerks is "more concerned with the day to day routine * * * of following policy rather than establishing it."⁵

The titles here concerned concededly do not represent management in collective bargaining or labor relations and "in no instance has a grievance been processed before a Court Clerk III or Court Clerk IV pursuant to the grievance rules. . . ." They have no appointive power and no power to transfer or promote court personnel. While they are covered by the Managerial Welfare Plan, such coverage concededly was by the unilateral act of the employers.

RCIA v. N.L.R.B., 366 F.2d 642, 62 LRRM 2837, 2839.

I.L.G.W.U. v. N.L.R.B., 339 F.2d 116, 57 LRRM 2540, 2545.

Under all the circumstances, we find and conclude that Court Clerks III and IV, and Surrogate's Court Clerks III, are not managerial-executives.

II. The Appropriate Unit
and Representative Status

Inasmuch as we have determined that Court Clerks III and IV and Surrogate's Court Clerks III do not have managerial status, it follows that the challenges to the ballots by the employees in these titles must be overruled. However, it is not necessary to open and count such ballots as it appears from the Report Upon Secret Ballot that the challenged ballots are insufficient in number to affect the results of the previous election.

Accordingly, we find, conclude and determine that New York State Court Clerks Association is the exclusive representation for the purposes of collective bargaining of all employees of the Judicial Conference of the State of New York employed within the City of New York in the supervisory titles of. Court Clerk I, II, III and IV, and Surrogate's Court Clerk I, II and III (including specialties); and we shall amend the certification issued to New York State Court Clerks Association in Decision No. 29-69 to include the titles of Court Clerks III and IV and Surrogate's Court Clerks III (including specialties),

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 certification issued to New York State Court Clerks Association in Decision No. 29-69, be, and the same hereby is, amended to include the titles of Court Clerks III and IV and Surrogate's Court Clerks III (including specialties).

DATED: New York, N.Y.

November 10 , 1969.

ARVID ANDERSON
C h a i r m a n

WALTER L. EISENBERG
M e m b e r

ERIC J. SCHMERTZ
M e m b e r