

OFFICE OF COLLECTIVE BARGAINING
BOARD OF CERTIFICATION

- - - - -X
In the Matter of
COMMUNICATIONS WORKERS OF AMERICA
LOCAL 1184, AFL-CIO

DECISION NO. 6-70

-and-
THE CITY OF NEW YORK
- - - - -X
THE CITY OF NEW YORK

DOCKET NOS. RU-49-68
RU-69-68

and

-and-
HOSPITAL ADMINISTRATORS ASSOCIATION OF
THE DEPARTMENT OF HOSPITALS OF THE
CITY OF NEW YORK

DOCKET NO. RE-11-68

- - - - -X

A P P E A R A N C E S :
Cooper, Ostrin, DeVarco & Ackerman, Esq.
by Philip D. Tobin, Esqs.
for the Union

Philip J. Ruffo, Esq.
by John P. Finneran, Esq.
for the Employer

DECISION AND ORDER

_____ On June 10, 1968, Local 1184, Communications Workers of America, AFL-CIO (herein referred to as Local 1184) filed a petition with the Office of Collective Bargaining requesting certification as the collective bargaining representative for Hospital Administrators, Hospital Administrators (Medical)¹ and Junior Hospital Administrators; this matter was assigned Docket No. RU-49-68.

By Notice of Motion filed on October 8, 1968, Hospital Administrators Association, the certified collective bargaining representative for Assistant Hospital Administrators and Assistant Hospital Administrators (Medical)¹ (Department of

_____ The "(Medical)" signifies only that the employee is a physician. This creates no distinction in functions or assignments but is the basis for slight salary differentials. Repetition of both titles is therefore dispensed with.

Labor Certificate 7 NYCDL No. 93 (CWR-26-67), dated October 15, 1965) sought an order of this Board transferring that certification to Local 1184; this matter was assigned Docket No. RU-69-68.

By letter dated August 7, 1968, the New York City Office of Labor Relations (OLR) raised objection to the certification requested in Docket No. RU-49-68 on the ground that the titles involved - Hospital Administrator and Junior Hospital Administrator - were managerial. OLR thereafter broadened its objection to include the request for transfer of the existing certification for Assistant Hospital Administrator. On November 19, 1969, the City filed a motion to shorten the life of the certification and representative status of Assistant Hospital Administrator in Certificate 7 NYCDL No. 93 (CWR-26-67) pursuant to Rule 2.18 of the Consolidated Rules of the Office of Collective Bargaining, on the ground that the title was managerial. This matter was assigned Docket No. RE-11-68.

Consolidated hearings on the question of the alleged managerial status of the titles Hospital Administrator, Hospital Administrator (Medical), Assistant Hospital Administrator, Assistant Hospital Administrator (Medical), and Junior Hospital Administrator were held on November 19 and 21, December 12, 30, and 31, 1968, February 6 and 7, and April 21, 1969, before Malcolm D. MacDonald, Esquire, Trial Examiner.

At the hearing, the parties stipulated that the status of Junior Hospital Administrators would be governed by the Board's decision on the Assistant Hospital Administrators.

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

Managerial Status of the Employees

A. The Facts

The Department of Hospitals is one of several New York City agencies grouped under the general authority of the Health Services Administration (HSA); the other agencies in this group are the Department of Health, the Chief Medical Examiner's Office, and the Community Mental Health Board. HSA functions chiefly as a coordinating force amongst its component departments and maintains certain centralized functions such as Public Relations, Professional Audit and Legal Services. There is no evidence that HSA has any significant role in the formulation of the internal policies or in the actual operations of its component agencies. The authority exercised over the Department of Hospitals by HSA is very broad and indirect and the Commissioner of Hospitals, as the Department head, exercises considerable authority and discretion.

The Department of Hospitals operates eighteen hospitals and also provides licensing and inspectional services to regulate the operation of proprietary hospitals and nursing homes in New York City. It has approximately 39,000 employees. The hospitals operated by the Department range in size from small 200 bed units to large complexes such as Bellevue Hospital Center and Kings County Hospital, housing as many as 2,600 beds.

In 1966, the Department of Hospitals embarked upon a program of extensive reorganization and decentralization. The then existing structure of the Department of Hospitals was considered to be outmoded and incapable of coping with the constantly increasing demands placed upon it. The Commissioner of Hospitals was convinced that the community was faced with an emergency in the field of hospital care and that only a program for rapid change and growth would avert it. The program which he instituted has involved, inter alia, organizational restructuring, changes in the status and functions of existing job titles, and the creation of entirely new titles; all three of these factors in the reorganization program have impact upon the matter before us.

The conventional pyramidal organizational structure formerly employed in the Department of Hospitals was abandoned in favor of one in which the line of direct authority between the central office of the Department and the local individual hospital runs from the Office of the Commissioner to the chief executive officer of the hospital without intervening command levels or areas of authority. The central office staff of the Commissioner consists of a First Deputy Commissioner, a Deputy Commissioner (Operations), a Deputy Commissioner (Supporting Services), and six Assistant Commissioners each of whom is in charge of one of the following bureaus in central office: Personnel, Business Administration, Engineering and Maintenance, Ambulatory Care, Affiliation Contract, Facilities Planning.

In addition, central office maintains a number of programs and services which deal with individual hospitals mainly in a consultative and advisory capacity. Thus, there is a Director of Pharmacy Service in central office who reports to the Assistant Commissioner for Business Administration; he deals with the recruitment of pharmacists and in setting standards for pharmaceuticals used by the Department of Hospitals. However, he has no direct supervisory authority over the hospitals or their pharmacy departments; he functions chiefly as a resource person, an advisor and coordinator. He may recommend changes in the standards or procedures of a pharmacy in a given hospital but cannot direct that they be made. Similarly, consultants in such fields as Nursing, Personnel Relations, Security, and others are available to assist the hospitals with their expertise but they serve in an advisory capacity. Orders in such matters are issued by the Office of the Commissioner.

At the hospital level, there is a chief executive officer who has overall responsibility for the hospital's administration. Prior to the reorganization of the Department, the chief executive officer at each hospital was a Hospital Administrator, a civil service title. At present, there are only four incumbents in that title, one of whom is the chief executive officer at Seaview Hospital and Home in Staten Island. In all of the other hospitals operated by the Department the chief executive officers now are Assistant Commissioners or Deputy Assistant Commissioners. The latter two titles are among the newly created titles introduced as part of the reorganization program. Below them are the Hospital Administrators, Assistant Hospital Administrators and Junior Hospital Administrators, the three titles here involved; and two newly created titles: Superintendents of Buildings and Grounds and Managers of Building Services.

Hospitals are organized in operating divisions and services, each directed by a division or service head; there are between forty and sixty such divisions and services in each hospital. Administrative responsibility for the operations of several such divisions or services is assigned by the chief executive officer of the hospitals to each Hospital Administrator, Assistant Hospital Administrator, and Junior Hospital Administrator. There are fifty-one Assistant Hospital Administrators, of whom thirty-two are provisional and nineteen are competitive employees,

There is no fixed pattern as to the number and types of divisions assigned to a given individual nor is there any distinction between the assignments given to Hospital Administrators and those given to Assistant Hospital Administrators. Junior Hospital Administrators, in some cases, work under an Assistant Hospital Administrator; they work in this title during a two-year training period, upon completion of which they

automatically advance to the Assistant Hospital Administrator title. The functions of these administrators include: the interpretation and implementation of departmental and hospital policy as it applies to divisions under their supervision; maintaining performance levels of such divisions; making recommendations with regard to matters of policy and procedure; coordinating the activities of departments under their direction; and maintaining liaison with the administrators of other divisions.

Prior to the reorganization of the department, an Assistant Hospital Administrator served as Labor Relations Officer in each hospital. This is still true generally, although in several cases since the reorganization, this function has been assigned to Deputy Assistant Commissioners. This assignment requires the handling of second step grievances, and disciplinary proceedings not involving competitive civil service employees or veterans.

B. Discussion

The most significant aspect of the reorganization program, as it applies to this proceeding, is the process of decentralization of authority from central office to the individual hospitals. Prior to reorganization, the Hospital Administrator was the chief executive officer in the hospital to which he was assigned; and some Assistant Hospital Administrators were second in command in their respective hospitals. Under the then existing system, however, little or no authority or discretion was exercised at the hospital level and the chief function of these titles was to oversee the execution of orders, directives, and policies which originated exclusively at the central office level. The purpose of the reorganization is to replace this rigid and inflexible system with one more capable of dealing promptly and appropriately with the diverse problems of individual hospitals in various parts of the city. The means employed in accomplishing this end has been to shift authority from

central office to the individual hospitals and to give to the people operating the hospitals the power to make decisions and to formulate policies which will promote maximum effectiveness of the hospital service. Thus, while the three titles here involved are lower in the hierarchy of the hospital because of the superimposition of the Assistant Commissioner and Deputy Assistant Commissioner titles, the nature and function of the hierarchy itself has been greatly enhanced. Instead of being at the first (Hospital Administrator), second (Assistant Hospital Administrator), and third (Assistant Hospital Administrator and Junior Hospital Administrator) local levels of what was, essentially, a centralized city-wide administrative structure, these titles are now all at the third level of a managerial group invested with the responsibility and authority which that term implies. They administer and effectuate policies at the highest level of actual implementation; they make recommendations affecting policy which may be acted upon at two levels above their own and within the same complete, self-contained operating entity. Assistant Hospital Administrators traditionally have served as Labor Relations Officers and still do. The three titles are so closely inter-related as to make unrealistic a determination which would, in effect, at all times limit labor relations functions to only one of the titles.

The authority of this Board in matters such as the one before us is defined in the New York City Collective Bargaining Law, Section 1173-5.0b(1) as follows:

"to make final determinations of the units appropriate for purposes of collective bargaining between public employers and public employee organizations, which units shall be such as shall assure to public employees the fullest freedom of exercising the rights granted hereunder and under executive orders, consistent with the efficient operation of the public service, and sound labor relations;"
(emphasis supplied)

The efficient operation of the public service in the area of hospital care has been found by those charged with the ultimate responsibility for providing that service, and particularly the Commissioner of Hospitals, to require a complete restructuring of the department in which individual hospitals will ultimately be made as completely autonomous as is possible. Although the program for accomplishing this end is by no means fully performed, the fact of its existence and of the considerable progress already made in the process is beyond dispute. It would be unreasonable to suggest that an organization so complex as a city hospital, operating on an autonomous or even a semi-autonomous basis could fulfill its administrative responsibilities with a managerial staff limited to the two titles Assistant Commissioner and Deputy Assistant Commissioner. It was held in Matter of S.E.I.U., Local 444, AFL-CIO, Decision No. 43-69 that:

"Management functions, such as policy formulation and the development of operational procedures and production standards, can be carried out only through the services of high level personnel. Such personnel, of necessity, are required to make, or significantly assist in reaching, decisions essential to the managerial function and which, in many instances, relate to subjects, or potential subjects, of collective bargaining."

It follows that the hospital managerial group extends beyond the Assistant Commissioner and the Deputy Assistant Commissioner and that it must and does include the three titles here involved. See also Matter of Civil Service Forum, Local 300, Decision No. 52-69; Matter of Professional Public Health Nurse Association, Decision No. 6-69; Matter of City Employees Union, Local 237, I.B.T., Decision No. 79-68.

It is of particular significance in light of the decisions cited above that a substantial proportion of the employees and, potentially, all of the titles here involved

play an important role in the labor relations program of the employer. The Labor Relations Officers interpret and implement the labor relations policies of the employer, and in connection with the grievance handling function necessarily are concerned with the interpretation and application of any labor relations agreement which may exist between the employer and its employees. There is an obvious conflict of interest when the representative of management is, himself, a union member or represented by a union.

We find and conclude, therefore, that Hospital Administrators, Assistant Hospital Administrators, and Junior Hospital Administrators employed by the City of New York are managerial-executive employees and do not, collectively or severally, constitute a unit appropriate for purposes of collective bargaining in fact or within the meaning of the New York City Collective Bargaining Law. Accordingly, we shall dismiss the petition in Case No. RU-49-68, deny the motion in Case No. RU-69-68, and grant the application in Case No. RE-11-68.

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 petition filed by Communications Workers of America, Local 1184, AFL-CIO, in Case No. RU-49-68, for certification as the collective bargaining representative of Hospital Administrators, Hospital Administrators (Medical), and Junior Hospital Administrators, be and the same hereby is dismissed; and it is further

_____ O R D E R E D , that the motion filed by the City of New York, in Case No. RE-11-68, to terminate Certificate 7 NYCDL No. 93 (CWR-26-67) be and the same hereby is granted; and it is further

O R D E R E D , that Certificate 7 NYCDL No. 93 (CWR-26-67) be and the same hereby is terminated; and it is further

O R D E R E D , that the motion filed by Hospital Administrators Association of the Department of Hospitals of the City of New York, in Case No. RU-69-68, to transfer Certificate 7 NYCDL No. 93 (CWR-26-67) to Communications Workers of America, Local 1184, AFL-CIO, be and the same hereby is denied.

DATED: New York, N.Y.

February 2 , 1970.

ARVID ANDERSON
M e m b e r

WALTER L. EISENBERG
M e m b e r

ERIC J. SCHMERTZ
M e m b e r