

DC37 v. City, 6 OCB 65 (BOC 1970) [Decision No. 65-70 (Cert.)]

OFFICE OF COLLECTIVE BARGAINING  
BOARD OF CERTIFICATION

In the Matter of

DISTRICT COUNCIL 37, AFSCME, AFL-CIO

DECISION NO-65-70

-and-

DOCKET NO. RU-143-69

THE CITY OF NEW YORK

A P P E A R A N C E S

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DECISION AND CERTIFICATION

District Council 37, AFSCME, AFL-CIO ("the Union") herein seeks certification as collective bargaining representative of Principal Public Health Sanitarians and equated Health Inspectors, Grade 4 and requests that the Board "amend Certificate No. MR-20-64" by adding the said titles.

The New York City Office of Labor Relations (OLR) has opposed the requested certification on the ground that the said titles are managerial.

Hearings on the question of the alleged managerial status of the titles Principal Public Health Sanitarian and

equated Health Inspector, Grade 4 were held on April 23 and 28, 1970 before Malcolm D. MacDonald, Esq., Trial Examiner.

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

Managerial Status of the Employees

A. The Facts

                    The titles here under consideration are unique to the Department of Health as are the other Sanitarian titles covered by MR-20-64. In fact, they are unique to a single section - the Environmental Health Service section - within the Department of Health.

The Department of Health is one of four components of the Health Services Administration (HSA), the others being the Department of Hospitals, the Office of Chief Medical Examiner and the New York City Community Mental Health Board. HSA provides certain centralized services to its component agencies and sets broad general policies for their guidance.

To a considerable extent, however, the Department of Health and its Commissioner are fully responsible for maintaining the City's public health program in its various forms and are vested with the authority and discretion appropriate to this significant mission. Commissioner McLaughlin's staff includes a First Deputy Commissioner, a Deputy Commissioner, one Administrative Assistant Commissioner and six other Assistant

Commissioners each of whom has charge of a number of Bureaus Assistant Commissioner Frederick S. Kent has charge of five Bureaus: Sanitary Engineering, Radiation Control, Food and Drugs, Sanitary Inspections, and Pest Control. Collectively, these bureaus are referred to as the Environmental Health Service (EHS) and it is in the three last named bureaus that all persons in the titles here under consideration are employed.

Below Assistant Commissioner Kent is a Deputy Assistant Commissioner who is second in command of EHS. At present this post is filled by the same employee who is Director of one of the component bureaus of EHS: the Bureau of Food and Drugs. His Civil Service title is Public Health Inspector, Grade 4 (Rule X) equated to Chief Public Health Sanitarian (Rule XI). The Bureau of Sanitary Inspections is headed by a Chief Public Health Sanitarian and the Bureau of Pest Control by a Public Health Director, an exempt title. Next in rank in the bureaus are the Assistant Directors: one each in the Bureaus of Food and Drugs and Pest Control and two in the Bureau of Sanitary Inspections. All of the Assistant Directors are Principal Public Health Sanitariums. The only other Principal Public Health Sanitariums, or equated Health Inspectors, Grade 4 are at the next descending level in the table of organization of Environmental Health Services. They are Health Inspector, Grade 4, Bade, who is Chief of the Wholesale Division in the Bureau of Food and Drugs, and Principal Public Health Sanitarian (provisional) Katin who is Chief of the Milk Division in the same Bureau.

The total number of persons employed in EHS fluctuates almost from day, to day as a result of the employment of sizeable numbers of temporary and per-diem workers. The range is from approximately 600 to approximately 900 employees of whom 350 to 400 are at various levels of the Sanitarian series of titles below the level of Principal Public Health Sanitarian. There is one Chief Public Health Sanitarian and one Health Inspector, Grade 4, equated to the Chief title. There are five Principal Public Health Sanitarians and one Health Inspector, Grade 4, equated to the Principal title. It is the latter group of six employees whose status is here under consideration. Of these, the four who serve as Assistant Bureau Directors are at the sixth descending level of supervision, and the two who serve as Division Chiefs are at the seventh descending level. The levels of supervision above them, within the Department of Health, are Commissioner, Deputy Commissioner, Assistant Commissioner (EHSI), Deputy Assistant Commissioner, Bureau Director. In terms of supervisory titles below them these employees are at the third ascending level of supervision<sup>1</sup>; in terms of unit organizations below them, they are at the second or third ascending levels of supervision respectively.<sup>2</sup>

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The supervisory titles below them are Supervising Public Health Sanitarian and Senior Public Health Sanitarian.

Two of the three Divisions in the Bureau of Food and Drugs have one level of "sections" or sub-units as do the Borough Services in the Bureau of Sanitary Inspections. There is only one level of sub-units in the Bureau of Pest Control. Except as noted above, all other Division, Section or sub-unit heads are Supervising or Senior Public Health Sanitarians.

S.

The pay range for Principal Public Health Sanitarians is \$12,700 - \$15,500. Each of the five incumbents in the title presently receives \$13,725. The sixth employee, whose status is here under consideration, is a Health Inspector, Grade 4, equated to Principal Public Health Sanitarian; his present salary is \$14,450. All work a regular 9-5, Monday to Friday schedule with compensatory time off for extra work.

As is indicated both by the job specifications for their titles and by the nature of their work, employees in the Sanitarian line of titles are skilled technicians whose services are of a specialized nature. EHS, in which they serve, is one of a number of services provided by the Department of Health. On the other hand, their functions are insulated from those of the other areas of the Department of Health; at no level does the Sanitarian become involved with the total mission of the Department. Within the narrower confines of EHS, there is no call for the type of service which generally has been identified with managerial status.

The record shows that the Assistant Bureau Director - the functional title in which most of the Principal Public Health Sanitarians are employed and the highest level at which they are employed - functions chiefly as liaison between the Bureau Director and those engaged in field operations. When a policy decision to institute a particular program is made and transmitted to the bureau concerned, the Bureau Director decides how the program shall be organized and executed by his bureau. The Assistant Director's function is to obtain the material and information needed by the

Director in setting up the program, and to assist in implementing the program once it is instituted. Thus, the Assistant Director passes along the policy and directions given him by the Director, but does not give specific orders as to deployment and utilization of the work force; that is done by the Division Chiefs and Borough Directors: The directions and orders which the Assistant Director gets from the Bureau Director are essentially the same as those he gives to the Borough and Division heads; he does not perform any significant supervisory functions in the implementation of the program.

Neither as Assistant Directors nor in the lower posts to which they are assigned do Principal Public Health Sanitarians participate in labor-management negotiations on behalf of management or otherwise. They play no part in the grievance or disciplinary machinery of the Department of Health, other than that of any supervisory employee. In fact, there is no labor-relations officer within EHS itself, and formal grievances and disciplinary matters are dealt with by the central administrative staff of the department. In disciplinary matters, a supervisor having a complaint against a subordinate would take it up with the Bureau Director who is one civil service rank and at least one functional rank higher than the employees here under consideration. The Bureau Director decides whether or not the matter should be set for hearing, in which case it is referred to higher authority. The Bureau Director does not have authority to hold such a hearing or to impose any type of fine, loss of wages, demotion or other such penalty as is imposed in disciplinary cases.

On three prior occasions, in 1960, 1964 and 1966, Principal Public Health Sanitarians were denied certification for collective bargaining by the New York City Department of Labor on the ground that, as Assistant Bureau Directors, they were managerial employees.

In 1968, steps were taken by the Department of Health to have the Principal title included in the Managerial Pay Plan. That application was denied. The process was repeated in 1969 but the matter was tabled when the petition in the instant proceeding was filed with OCB.

B. Discussion

There can be no question as to the vital nature of the service rendered by EHS in the overall public health program of the city; nor of the fact that the work of Sanitarians is essential to the performance of that service. However, neither the importance of the service, nor the technical knowledge and expertise of those who render the service is a controlling factor in determining whether the employees are in the managerial-executive category. (Matter of Local 1359, D.C. 37, Decision No. 59-69). Nothing in the evidence developed in the hearings in this matter supports the contention that Principal Public Health Sanitarians are in that category. The record shows, on the contrary, that they are essentially staff aides to the Bureau Directors under whom they serve and that their basic function is to provide a liaison between the Bureau Directors and the persons engaged in field operations.

Accordingly, and upon consideration of the entire record herein., we find and conclude that Principal Public Health Sanitarians and Health Inspectors, Grade 4 equated to Principal Public Health Sanitarians are supervisory employees but are not managerial-executives.

#### THE APPROPRIATE UNIT

There are two titles in the Sanitarian series of titles below the level of Principal Public Health Sanitarian which also perform supervisory duties; they are Senior Public Health Sanitarians and Supervising Public Health Sanitarians. The basic qualifications and educational background required for all three titles are similar. They exercise identical skills and expertise in the performance of duties which differ only in the fact that the degree of supervisory responsibility increases with each advance in title. The three titles constitute a functionally distinct and homogeneous group sharing a community of interest, and we find that the interests of the employees as well as the purposes of sound labor relations will best be served by the formation of a single collective bargaining unit representing all three of these titles.

#### MAJORITY STATUS

                  District Council 37, the petitioner herein, is the certified collective bargaining representative of Senior Public Health Sanitarians (2 NYCDL 14) and of Supervising Public Health Sanitarians (2 NYCDL 39). A majority of employees in each of these



titles has authorized the check-off of dues to the petitioner. Our investigation shows that a majority of employees in the title Principal Public Health Sanitarian and equated Health Inspector, Grade 4 also have authorized the check-off of dues to petitioner. The petitioner thus represents not only a majority of employees in the unit which we have found to be appropriate but majorities of the employees in each of the titles comprising the unit.

Accordingly, we find, conclude and determine that District Council 37 is the exclusive representative, for purpose of collective bargaining, of all employees of the City of New York in the supervisory titles of Senior Public Health Sanitarian, Supervising Public Health Sanitarian and Principal Public Health Sanitarian and equated Health Inspector Grade \$; and we shall issue a certification for a unit comprised of the said issue and supersending the prior certifications 2 NYCDL 14 (Senior Public Health Sanitarian) and 2 NYCDL 39 (Supervising Public Health Sanitarian).

#### CERTIFICATION

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

CERTIFIED, that District Council 37, AFSCME, AFL-CIO, is the exclusive representative for the purposes of collective bargaining of all Senior Public Health Sanitarians, Supervising Public Health Sanitarians and Principal Public Health Sanitarians and equated Health Inspectors, Grade 4 employed by the City of New York.

DATED: New York, N.Y.

Sept. 2, 1970

CHAIRMAN

MEMBER

MEMBER