

OFFICE OF COLLECTIVE BARGAINING
BOARD OF CERTIFICATION

- - - - - X

In the Matter of

DISTRICT COUNCIL 37, AFSCME, AFL-CIO

DECISION NO.13-71

-and-

THE COURT OFFICERS AND COURT CLERKS
COUNCIL, COURT CLERKS BENEVOLENT
ASSOCIATION, UNIFORMED COURT OFFICERS
ASSOCIATION, SUPREME COURT UNIFORMED
COURT OFFICERS ASSOCIATION, and
NEW YORK STATE COURT CLERKS ASSOCIATION,

DOCKET NO. RU-154-70

Intervenors

-and-

THE CITY OF NEW YORK AND RELATED
EMPLOYERS

- - - - - X

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

NAT LINDENTHAL
for Petitioner

SZOLD, SCHAPIRO & COSTER, ESQS.
by John, Coster, Esq.
for Intervenors

PHILIP J. RUFFO, ESQ.
by Gerald Schillian, Esq.
for the Employer

DECISION AND ORDER

On January 21, 1970, District Council 37, AFSCME, AFL-CIO (D.C.37) filed a Notice of Motion with the office of Collective Bargaining requesting amendments of Certificate No.9 N.Y.C.D.L. 42, whereby D.C.37 was certified by the New York City Department of Labor as the collective bargaining representative of a unit consisting of Court Assistants (CA), to add to that unit, by accretion, the title of Court Assistant (Trial Part) (CATP).

By Petition dated March 13, 1970 the Court Officers and Court Clerks Council and its component member organizations (Intervenors) requested permission to intervene.

A hearing in the matter was held on June 22, 1970 before Malcolm D. MacDonald, Esq., Trial Examiner.

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

Intervenor's Preliminary Motion

Intervenors contend that by reason of the alleged "illegality" of the Court Assistant (Trial Part) title this Board is without jurisdiction to entertain or continue a certification proceeding relating to the title. The allegation of illegality is based upon two elements: first, that the Judicial Conference failed to give notice and hold a hearing prior to establishing the title as allegedly required by Section 212 of the Judiciary Law; and, second, that the title, since it is restricted to males, is illegal by reason of violation of the Human Rights Law.

Intervenors assert that the Board should either declare itself without jurisdiction of this matter by reason of the foregoing or, at least and in the alternative, should hold all proceedings in abeyance "until a forum of competent jurisdiction finally determines the legality or illegality of the proposed new title as now constituted."

The Intervenors do not claim, nor is it otherwise shown, that any proceeding is now pending before any court or other competent forum, to test the legality of the title in contemplation of Section 212 of the Judiciary Law. The record does show, however, that a proceeding is now pending before the State Division of Human Rights with regard to the allegedly illegal restriction of the title to males. D.C.37, the petitioner herein, represents the complainant in the Human Rights proceeding; its representative stated for the record herein that the proceeding does not challenge the legality of the Court Assistant (Trial Part) title and that it attacks only the policy of restricting hiring for the title to males.

It is undisputed that at present there are approximately 40 persons actually employed in the new title. These persons are public employees as defined in the New York City Collective Bargaining Law and, as such, are entitled under the terms of that law to organize and to be represented and to obtain certification of their chosen representative in order to facilitate the processes of collective bargaining. None of the arguments advanced by Intervenors appear sufficient to warrant the suspension of these rights. At most it may be supposed that in the event that the complaint in the above mentioned Human Rights proceeding is upheld, the Judicial Conference may be forced to amend its hiring policy

with regard to the new title. There is no indication that in this proceeding or in any other now pending, the title itself might be declared illegal as is suggested by Intervenor's in support of their motion. Accordingly, we will grant the motion to intervene-and will deny Intervenor's motion to terminate or, in the alternative, to suspend this proceeding.

Unit Placement of Court Assistants(Trial Part)

D.C 37 is the certified representative of Court Assistants and here seeks the accretion of the new CATP title to the Court Assistant unit. Prior to the reorganization of the courts, Court Assistants had the title Supervising, Clerk in the Municipal Court and Principal Clerk in the City Court. These were non-unique, city-wide titles and some of the persons serving in those titles in the courts had been transferred from city agencies.

The Intervenor's took the position that in the event the motion to terminate is denied, the Court Assistant (Trial Part) title should be added by accretion to the unit of Uniformed Court Officers represented by Uniformed Court Officers Association under Certificate No.8 N.Y.C.D.L. No.4.

Prior to the reorganization of the courts in the 1960's, including the merger of the Municipal and City Courts to form the present Civil Court, Uniformed Court Officers (UCO) worked under Court Clerks. Following the reorganization, Clerks were not assigned to each court and UCO's were required to perform court clerical duties in addition to the security duties which had formerly, constituted the bulk of their work. Approximately half of a Uniformed Court Officers' work currently is in the security area and one half consists of court clerical duties. At the beginning of this process of change, the UCOA protested and sought the appointment of clerks to all trial parts in the courts. There followed a series of grievances based upon allegations of out-of-title work assignments of court officers and spurred by a steadily increasing proportion of clerical duties in their workload.

An outgrowth of this problem was the decision by the Judicial Conference to create a new title the duties; of which would include the performance of both security and court clerical work. This new title was called Court Assistant (Trial Part), was assigned a salary range of \$7300 - 9850, and was restricted to males because of the security work which constituted an important part of its duties.

The duties and functions of the new title are identical with those of UCO's. The Court Assistant (Trial Part) is employed interchangeably with the UCO, reports to a Senior Court Officer as does the UCO, and, like the UCO, he is involved in security work about 50% of the time and in court clerical duties during the balance of his working time. The only difference between them is that the UCO wears a uniform and the CATP does not.

According to the job specifications for the title, Court Assistants are essentially office workers performing clerical functions and with no suggestion of security work amongst the duties specified. This is borne out by the testimony herein which shows that in practice, Court Assistants do not participate in courtroom activities of any kind and perform no security duties. Whereas UCO's and CATP's (the title here involved) report to Senior Court Officers, the Court Assistant reports to a general clerk or to the Clerk in charge of the office in which he is employed.

All of the titles which have been discussed here share a common line of promotion. Thus UCO's, Court Assistants and Court Assistants (Trial Part) may be promoted to the title Assistant Court Clerk; the UCO may follow another line of promotion, however, the next step in which is Senior Court officer.

The points at which the Court Assistant (Trial Part) and Court Assistant titles axe most closely parallel are in the areas of salary and job specification. The pay range for both titles is the same: \$7300 - \$9850.

Although CATP's have characteristics some of which are similar to UCO's and some of which are similar to those of Court Assistants, the parallels with UCO's are of substantially greater significance. The CAT title was created for the purpose of relieving the burden on UCO's and the two titles perform identical duties and are in fact used interchangeably. They are subject to the same operational chain of command and share a common line of promotion. We find, therefore, that the interests of the employees as well as the purposes of sound labor relations will best be served by including the new title of Court Assistant (Trial Part) in the existing unit of Uniformed Court officers of which Uniformed Court Officers Association is the certified representative.

The unit to which we have determined that the new title should be added currently covers 538 employees. There being only 40 persons employed in the newly created Court Assistant (Trial Part) title, accretion of the new title to the existing unit without proof of representation is appropriate. (Matter of Local, 384, District Council 37, AFSCME, AFL-CIO, Decision No.39-69). Accordingly, we shall amend certification 8 N.Y.C.D.L. No.4 to include the title Court Assistant (Trial Part),

O R D E R

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

ORDERED, that the application of Intervenors to intervene herein be, and the same hereby is granted; and it is further

ORDERED, that the motion of Intervenor to terminate this proceeding, or, in the alternative, to suspend all further proceedings herein, be, and the same hereby is, denied; and it is further

ORDERED, that the petition of District Council 37, AFSCME, AFL-CIO be, and the same hereby is denied; and it is further

ORDERED, that the title Court Assistant (Trial Part) be and the same hereby is, added by accretion to the collective bargaining unit consisting of Uniformed Court Officers certified heretofore under certification 8 N.Y.C.D.L. No.4 and that the said certification be, and the same hereby is, amended accordingly.

DATED: New York, N.Y.

February 23, 1971

ARVID ANDERSON
CHAIRMAN

WALTER L. EISENBERG
MEMBER

ERIC J. SCHMERTZ
MEMBER