

OFFICE OF COLLECTIVE BARGAINING  
BOARD OF CERTIFICATION

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

DECISION NO. 19-71

-and-

THE CITY OF NEW YORK AND  
RELATED PUBLIC EMPLOYERS

DOCKET NO. RU-193-70

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In the Matter

COMMUNICATIONS WORKERS OF AMERICA  
AFL-CIO

DOCKET NO. RU-202-70

-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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DECISION, ORDER AND DIRECTION OF ELECTION

Communications Workers of America, AFL-CIO (CWA) filed a petition with PERB seeking certification as the collective bargaining representative of employees of the Board of Elections in the City of New York (PERB Case No. C-0508). Hearings were held on May 8 and May 15, 1970, before PERB.

By letter dated April 24, 1970, addressed to

Mayor Lindsay, the Board of Elections elected, pursuant to the New York City Collective Bargaining Law (NYCCBL), §1173-4.0(b), to have said law apply to its employees, and said election was approved by Mayor Lindsay on May 8, 1970.

Thereafter, on May 22, 1970, PERB issued an order, dated June 29, 1970, granting OLR's motion to transfer CWA's petition for certification, including the transcript of hearings, together with all other papers and documents constituting the record of that proceeding, to OCB.

District Council 37, AFSCME, AFL-CIO (DC 37) then filed a motion with the Office of Collective Bargaining, seeking clarification of CWR-35-67 (covering Attendants and Senior Attendants) and CWR-52-67 (covering non-supervisory clerical and related employees), maintaining that various clerical titles, including Clerk to the Board, should be added to its non-supervisory clerical unit (CWR-52-67); that Attendants and Voting Machine Custodians should be added to its unit of Attendants (CWR-35-67); and that Inspectors should be added to its unit of investigational titles (Decisions 76-68 and 7-69). DC 37 urged that accretion of the Board of Elections titles to the existing units represented by it was appropriate. No showing of interest was made by DC 37.

Following issuance of the PERB order of June 29, 1970, transferring the matter of CWA's application (PERB Case No. C-0508) to OCB, CWA filed a petition with OCB on July 2, 1970, seeking representative status among all Board of Elections employees up to and including Chief Clerks.

The City's position, both in the proceeding before PERB and in the matter before this Board, is that certain Board of Elections titles are essentially clerical and should be added to CWR-52-67; that others are basically custodial and should be added to CWR-35-67; that Inspectors should be added to an existing unit of investigational titles; and that the remainder of the titles eligible to engage in collective

bargaining are in the administrative category and should be added to the unit of administrative titles for which CWA is the certified representative under Board Decision No. 48-69. The City maintained, further, that certain of the titles covered by CWA's petition are either managerial or confidential and are, therefore, excludable from collective bargaining.

The Board ordered consolidated hearings, which were held on September 23, 24, 25 and October 7, 1970, before Malcolm D. MacDonald, Esquire, Trial Examiner.

At the outset of the hearings it was stipulated by the parties that the record of hearings before PERB should be made a part of the record in the instant proceeding.

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

I. The Facts

Following is a list of all the titles employed by the Board of Elections and the number of persons employed in each title:

<u>TITLE</u> <sup>1</sup>	<u>NO. OF EMPLOYEES</u>
Commissioner	4
Senior Administrator	3
*Senior Administrator's Asst.	1
*Chief Clerk	5
*Deputy Chief Clerk	5
Secretary to Commissioner	2
Stenographer	1
Administrative Associate	9
Administrative Assistant	30
*Director of Equipment	1
Inspector	18
Voting Machine Custodian	67
Attendant	10
Typist	1
*Finance Officer	1
*Assistant Finance Officer	2
Clerk to Board	151

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The titles marked with an asterisk are those which the City alleges are managerial.

Key Punch Operator	4	
Tab Operator Senior	5	
Tab Operator	<u>6</u>	Total 326

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All titles have been sought for certification except Commissioner and Senior Administrator, The parties stipulated that certain employees-perform essentially supervisory duties and that the duties of certain others are of a confidential nature, These employees were individually identified by name and title and a list of said employees is appended to this decision (Appendix A (Supervisories) and Appendix B (Confidentials)).

The Board of Elections was created pursuant to Article 2 of the New York State Constitution and has as its function the implementation of the purposes and provisions of that Article and of the Election Law. The Board is constitutionally and statutorily mandated to maintain absolute political balance so that the representation of the two major political parties is reflected in the personnel of the Board of Elections. Thus, the law provides that the Board of Elections shall be headed by four Commissioners, two each from the parties which obtained the highest and the next highest number of votes in the last general election. This pattern must be Maintained throughout the staff, down to and including the lowest title on the Board's roster, Where there is a single title such as Chief Clerk or Finance Officer, there must be a corresponding Deputy or Assistant title held by a person of the opposite party and with as nearly equal powers as possible.

The Board of Elections is also unique in its mission. It performs the, singular function of conducting two elections (primary and general) each year and of registering the persons eligible to vote in them. In recent years, the Board has also occasionally conducted elections for such agencies as the Board of Education and for various community organizations. It also conducts special elections from time to time as part of its regular duties where the

courts find that there have been irregularities in an ordinary election. The year-round operation of the agency thus calls for the actual performance of the agency's chief function on only a few days of the year, the rest of the time being given to preparation and to routine internal administrative tasks. This, in turn, means that relatively great demands are made upon the staff during a few short periods of peak activity. The result is that staff assignments are fluid and that any title may be called upon to perform the duties of almost any other title in the organization; and that, in practice, no employee works throughout the year without spending a significant portion of his time working at tasks of titles other than his own.

The four Commissioners are designated by the county committees of their respective political parties and are then appointed by the New York City Council. They have absolute and final decision-and-policy-making powers in all matters concerning the Board. They have complete discretion in the hiring, firing, assignment and discipline of all Board employees. They establish the titles, ranks, duties and salaries of these employees all of whom are in the Unclassified Civil Service. The approval of the Bureau of the Budget is required only for expenses which include employees' wages.

The candidate for employment is interviewed by the Commissioners, the Administrative Manager, one of the Secretaries to the Commissioners, or one of the Senior Administrators. He is given a test which requires about five minutes to complete and which is corrected on the spot. The candidate is then invariably hired. The ease with which he is hired is balanced, however, by the ease with which he may be fired or disciplined without right of appeal. He is without benefit of tenure, and no job specifications exist for any of the titles employed by the Board.

The Administrative Manager is next in the chain of command beneath the Commissioners. A number of titles below him report both to him and to the Commissioners. These include the Senior Administrator's Assistant, the five Borough Chief Clerks, some of the nine Administrative Assistants, the Director of Equipment, and the Finance Officer.

The two Senior Administrators who rank immediately below the Administrative Manager report only to the Commissioners as do three of the nine Administrative Assistants who serve as Confidential Assistants to the Commissioners; some of the Administrative Assistants are assigned to borough offices, and they report to the Chief Clerks in charge of their respective offices.

Some employees have additional organizational titles which relate either to their actual functions or to City-wide titles. Examples of the former are Voting Machine Custodians, Finance Officer, etc. With regard to the latter group, the relationship to City-wide titles is, in some cases, a negative one. It was shown, for example, that Attendants are actually manual laborers and that they were

formerly called Laborers but that because of the similarity to a City-wide title, the name was changed; as a result, these employees are now called Attendants, Another instance of the informality with which titles and work assignments are treated is in the matter of chauffeurs, of whom there are two at the Board. The chief duty of one of these employees is to drive a Commissioner's staff car; the other drives the station wagon assigned to the Board's IBM unit. They are not listed as Motor Vehicle Operators, however, but as Voting Machine Custodians.

Example after example of this kind of ad hoc assignment of employees appears in the record. It is, in fact so much an essential and constant factor in the employment practices of the Board that the application of the terms "in title" and "out of title" work to Board employees is inappropriate. It is the nature of all Board of Elections jobs that incumbents are subject to shifts in work assignments depending upon work loads.

The unique qualities of the Board of Elections personnel policies and practices, the hiring procedures, the political aspects of the recruitment and tenure of employees, the wide discretion reposed in the Commissioners, and the lack of employee recourse in matters of grievance and discipline, many of which are specifically mandated by or easily traceable to requirements of the Election Law, are matched by the unusual nature of the jobs provided by the Board. Employees are extensively interchangeable both laterally and vertically. Their salaries were not fixed by the Career and Salary Plan when it was in effect, and even the policy of equating them to various City titles for salary purposes is no assurance that they will receive the increases granted to such titles but only a means of fixing and rationalizing the limits within which an increase will be granted if and when the Commissioners exercise their statutory power to make an adjustment in an employee's salary



Promotions and assignments to supervisory duties are made upon the basis of criteria which are the antithesis of those which prevail in City agencies. There are no examinations, prerequisites, or prescribed standards. The chief factor is one of political considerations. The fact that personnel practices and policies are the result not of mere accident but of statutory mandate involving political considerations is significant.

It is equally clear that the practice of shifting employees from job to job, of making ad hoc assignments to supervisory duties without regard to title or salary, the fact that all employees are Clerks to the Board in addition to their functional titles and that there are no job specifications, all argue most compellingly for a single unit of all Board employees entitled to engage in collective bargaining.

The factors which argue against inclusion of Board employees in a unit or units with City employees also demonstrate that a community of interest exists among all of the employees here under consideration. Much of the structuring and compartmentalization which is found in most organizations, and which generally tends to set one title or group of employees and its interests apart from others, does not exist in the Board of Elections. The constant shifting of work load and the corollary exchange of work assignments requires, and is in fact, proof of the existence of, a unique homogeneity in the work force. This homogeneity, so necessary to the proper performance of the Board's function, is best preserved by including all of the employees involved in a single unit, rather than by dividing them into separate groups. Thus, both the interest and express desires of the majority of the employees under consideration and the interests of efficient operation of the public service and sound labor relations support the establishment of a single unit for Board of Elections employees.

A further factor relevant to the unit question is the fact that almost two-thirds of all Board employees have indicated their desire to be represented in one unit.

The officials of government at the level of the unit proposed here are the Commissioners of the Board of Elections. Their authority to set -- or in a bargaining context to agree to -- terms and conditions of employment is specifically set forth in the Election Law. They have long used City pay scales, time and leave regulations, and other standards as guidelines in setting policies and practices for the Board. They have elected to make the Board and its employees subject to the provisions of the New York City Collective Bargaining Law, and the Board will be represented by the OLR in bargaining with any unit or units the Board of Certification creates.

The unit proposed is consistent with unit findings heretofore made by this Board. In several non-Mayoral agencies, notably the New York City Housing Authority and the Judicial Conference, the uniqueness of titles, working conditions and duties of the employees involved has prompted the creation of units separate and apart from units of City employees. The uniqueness applies not only to those Board titles, such as Voting Machine Custodians, which clearly have no City counterparts, but also to such titles as Tabulator Operators and Attendants, which, despite the superficial similarity of names, are seen to differ substantially from similarly named City titles in terms of duties, work assignments and other working conditions,

II. The Appropriate Unit

A. Supervising Employees

Some of the employees involved are in a supervisory status which necessitates the holding of a self-determination election pursuant to §1173-3.0(1) of the New York City Collective Bargaining Law.

Our unit findings, therefore, will await the outcome of a self-determination election to be conducted among employees stipulated by the parties to be supervisory employees and who are listed by name and title in Appendix A to this decision. If a majority of the supervisory employees voting in the election vote in favor of a combined unit of supervisory and non-supervisory employees, we shall find a single unit of all Board employees entitled to engage in collective bargaining to be appropriate. If a majority of the supervisory employees voting in the election do not vote in favor of a combined unit, we shall find separate supervisory and non-supervisory units appropriate.

B. Confidential Employees

The parties have stipulated which of the Board employees perform confidential duties. No rational pattern is discernible in this area and the actual work assignments of the individual employees involved are the only indicia of their confidential status. We will be guided by the stipulation of the parties and will direct that the employees designated by the parties, listed by name and title in Appendix B to this decision, shall not be included in the collective bargaining unit which is ultimately certified in this matter.

C. Managerial Employees

Of the titles for which certification is sought in the petitions before the Board, the City maintains that the Chief Clerk, Deputy Chief Clerk, Finance Officer, Assistant Finance Officer, Director of Equipment, and Senior Administrator's Assistant titles are managerial executives.

Immediately below the Commissioners in the chain of command of the Board is the Administrative Manager. The Administrative Manager has no policy making powers nor does he participate directly in the formulation of policy. He is, however, the single employee of the Board, including the Commissioners, most thoroughly familiar with all operations of the Board. It is also clear that the Commissioners seek and rely heavily upon the advice and recommendations of this employee in connection with almost all decisions that they make. He is thus both an expert advisor to the Commissioners and an essential link in the process of implementing their decisions, and as such he is a managerial-executive employee. Neither party herein has requested certification for this title, and his status as a managerial-executive employee is discussed here only for purposes of placing the status of his assistant, a Senior Administrative Assistant, in the proper context. The latter employee is involved in, and familiar with, all functions and activities of the Administrative Manager and, in fact, at various times performs all of the duties of the Administrative Manager and fully replaces him when he is absent. We, therefore, find that the Senior Administrative Assistant is a managerial-executive employee.

The Chief Clerks are in full charge of borough offices but have little discretion and no policy making functions. Their participation in the policy making process is limited but not insignificant particularly in view of the impact that their actions -- in the absence of formal hiring, promotion, grievance and disciplinary policies and practices -- may have on personnel relations. On balance, therefore, it is appropriate to classify them as managerial-executive employees. The Deputy Chief Clerk performs all of the functions listed for the Chief Clerk. The Deputies not only act in place of the Chief Clerks when they are absent, but would exchange places with them in the event that the Democratic Party received the highest number of votes in the next gubernatorial election. We, therefore, find that Deputy Chief Clerks are managerial-executive employees. It is claimed that the Director of Equipment is a managerial employee. However, even if we accept the explanation that his lack of important duties and functions is attributable to the fact that the present incumbent has been in the job only a short time, and if we ignore the fact that many of the duties ascribed to the title in normal circumstances are said elsewhere to be among the regular duties of such other titles as the Chief Clerks, the Senior Administrator's Assistant, and the Administrative Manager, we still have an employee whose powers, duties and responsibilities are confined to the area of purchase and procurement and, who even in that area, makes no policy decisions and whose actions are either directly dictated by or subject to approval by higher authority. He plays no role in the broad, over-all functioning of the Board as does the Administrative Manager, nor does he have charge of a complete self-contained unit as does the Chief Clerk; he does not even have the responsibility

of directing or supervising a staff. In short, and considering the evidence in support of the contention that the Director of Equipment is a managerial-executive employee in the most favorable possible light, it must be found insufficient to support the proposition.

Like the Director of Equipment, the Finance Officer's duties are confined to a single area, and her powers are narrowly circumscribed. Her duties are essentially ministerial and mechanical, but even granting them quasi-professional or professional status and treating her services as those of an expert in the area of finance and fiscal matters, her lack of involvement in the general operations of the Board puts her outside the managerial-executive category. Essentially, she reports at various times and in various ways upon the fiscal situation of the Board and maintain, the records upon which her reports are based. These reports may be actual written or oral reports to the Commissioners as to the current financial position of the Board and its ability to sustain a given expense; the proposed budgets which she prepares are really reports of expected expense based upon current expenditures and projections of future operations by the Administrative Manager, the Chief Clerks, etc. The Finance Officer keeps such employee records as payroll records, health insurance records and the like, but, that is the limit of her involvement in personnel matters; the Board has no Personnel officer, as such, and the Administrative Manager handles the matters which would ordinarily be the functions of a Personnel Officer. We find, therefore, that the Finance Officer is not a managerial-executive employee. It follows that her two assistants, neither of whom, according to the record, is involved in or familiar with all areas of the Finance Officer's work, are not managerial-executive employees.

ORDER AND DIRECTION OF ELECTION

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

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

DIRECTED:

1. That separate elections 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 among:

- A. Employees in the titles of SECRETARY TO COMMISSIONER, STENOGRAPHER, ADMINISTRATIVE ASSOCIATE, ADMINISTRATIVE ASSISTANT, DIRECTOR OF EQUIPMENT, INSPECTOR, VOTING MACHINE CUSTODIAN, ATTENDANT, TYPIST, FINANCE OFFICER, ASSISTANT FINANCE OFFICER, CLERK TO BOARD, KEY-PUNCH, OPERATOR, TABULATOR OPERATOR, SENIOR TABULATOR OPERATOR, (excluding those employees listed in Appendices A and B to this decision) who were employed by the Board of Elections during the payroll period immediately preceding the date of this Direction of Election, other than those who have voluntarily quit or who have been discharged for cause before the date of the election.
- B. Supervisory employees listed in Appendix A to this decision, employed during the payroll period immediately preceding the date of this Direction of Election; other than those who have voluntarily quit or who have been discharged for cause before the date of the election.

2 The question to be voted on in the election directed in paragraph "1A" above, shall be:

"Do you desire to be represented for the purposes of collective bargaining by Communications Workers of America, AFL-CIO?"

3. The questions to be voted on in the election directed in paragraph "1B" above, shall be:

"(a) Do you desire to be represented for the purposes of collective bargaining (1) as a separate unit limited to the supervisory employees of the Board of Elections or (2) in a combined unit of the supervisory and non-supervisory employees of the Board of Elections.

"(b) Do you desire to be represented for the purposes of collective bargaining by Communications Workers of America, ALF-CIO?"

4. If a majority of the employees casting valid ballots in the election directed in paragraph "1B" above:

(a) vote favor of a combined unit, the votes cast by such employees on question 3(b), above, shall be counted and tabulated with the votes cast by the non-supervisory employees.

(b) do no vote in favor of a combined unit, the votes of such employees on question 3(b); above, shall be counted and tabulated separately.

DATED: New York, N.Y.

March 12 , 1971.

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



**APPENDIX A**

**Supervisory Employees**

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<b><u>Name</u></b>	<b><u>Title</u></b>
Joseph Wiseman	Senior Tabulator Operator
James Nitolo	Administrative Assistant
Robert Kelly	Administrative Assistant
Edward Ginberg	Administrative Assistant
M. Siegel	Administrative Assistant
N. Nittoly	Administrative Assistant
Mariette Liguori	Administrative Assistant
Bea Berger	Administrative Assistant
William Carman	Senior Voting Machine Custodian
Louis Ameduri	Voting Machine Custodian
Agnes Johnson	Administrative Associate
Frederick Muller	Administrative Associate
Frank Armagno	Senior Voting Machine Custodian
Charles Carnival	Inspector
Katherine Petrocelli	Administrative Associate
Angelo Chiavaro	Senior Voting Machine Custodian
Stanley Ferris	Administrative Assistant
Ivy Frazer	Administrative Assistant
Frank Tirica	Administrative Assistant
James Siket	Senior Administrative Assistant
Albert Meyers	Administrative Assistant
Anthony Crisalli	Administrative Assistant
Leonard Wertheim	Administrative Assistant
Patricia Cortez	Administrative Assistant
Aaron Schlanger	Administrative Associate

APPENDIX B

Confidential Employees

<u>Name</u>	<u>TITLE</u>
Beatrice Dolen	Administrative Associate (Confidential Asst. to Commissioner)
Vincent Fanelli	Administrative Associate (Confidential Asst. to Commissioner)
Sally Murray	Administrative Associate (Confidential Asst. to Commissioner)