

OFFICE OF COLLECTIVE BARGAINING
BOARD OF CERTIFICATION

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In the Matter of

ASSOCIATION OF DEPUTY WARDENS
AND DEPUTY SUPERINTENDENTS,

DECISION NO. 73-71

Petitioner,

DOCKET NO. RU-204-70

-and-

THE CITY OF NEW YORK,

Respondent.

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

ALBERT GLICK
for Petitioner

JOHN E. SANDS, ESQ.,
for Respondent

DECISION AND ORDER

The Petitioner (Association) filed a petition request-
ing certification as the exclusive bargaining representative
of Deputy Wardens and Deputy Superintendents. The City
opposed the petition on the ground that the employees were
managerial and, therefore, not entitled to bargaining repre-
sentation.

Hearings on the question of the alleged managerial
status of the titles were held before Richard J. Horrigan,
Esq., Trial Examiner, on March 4, March 11, and May 19, 1971.

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

I. Labor Organization

The record establishes that the primary purpose of
Petitioner is to represent employees concerning wages, hours,
and working conditions. Petitioner has a constitution and

by-laws, holds regular meetings, elects its officials, has a

bank account, and has filed required reports with the New York State Department of Labor. Accordingly, we find and conclude that Petitioner is a public employee organization in fact and within the meaning of the New York City Collective Bargaining Law.

II. Evidence Concerning Managerial Status of Employees

All Deputy Wardens (herein DW) and all Deputy Superintendents (herein DS) are employed by the Department of Correction, except for one DW who is employed in the Sheriff's Office. However, the parties stipulated that the DW in the Sheriff's Office was, basically, in the same category as the DW in the Correction Department. Likewise, there is no dispute that the DW is, basically, in the same category as the DS even though the latter works in women's institutions (the Correction Department.) Thus, while an analysis and discussion of the evidence will mention only the DW, the sense of our analysis and discussion also includes the DS and the conclusion we reach in this decision necessarily and inextricably incorporates the DS. Therefore, our decision affects all Deputy Wardens and Deputy Superintendents wherever they may be employed.

There are nineteen DW and three DS who are in the competitive class with a salary range of \$18,053 to \$22,288. They participate in the City-Administered Management Welfare Fund.

According to the official job description, a DW serves as Executive Officer to a Warden in the management of a larger institution "or serves as head of a smaller institution, or commands a central office division." The testimony also refers to institutions as major or minor instead of larger or smaller institutions.

Examples of typical tasks which may be required to be performed under the official job description include clarification of policies and procedures relating to institutional operations, preparation and maintenance of controls to insure compliance with Institutional policies and procedures, assumption of the duties of Warden in the latter's absence, and assumption of the duties of Warden when assigned to a minor institution.

The record establishes that the DW is charged with a high degree of responsibility and independent judgment in carrying out the mission of the Correction Department. Such responsibility and judgment are substantially more than routine and are significantly exercised in the various component structures of the Correction Department relating to the administration of personnel and policy in several of the following ways:

A Major Institutions (Nature of Responsibility)

The Brooklyn House of Detention and the Queens House of Detention are major institutions and although it is undisputed that a Warden should be in charge of each of those institutions, actually, due to the small number of Wardens, a DW is in charge. In the Queens House, the DW, in the exercise of discretion and judgment, placed into effect a rotating ten-hour shift of personnel for each day constituting a four day workweek. The DW in charge of the Brooklyn House, in the exercise of discretion and judgment, set up a court room within the institution for the purpose of expediting the judicial handling of prisoners, thereby diminishing the time for case dispositions. The high caliber of responsibility in accomplishing the structuring of court room facilities in the Brooklyn House reflects the joint efforts of the DW together with certain judges of the Appellate Division, Second Department, and the Administrative Judge of the Supreme Court, Kings County.

We do not regard as dispositive, for the purpose of this decision, Petitioner's contention that the DW in charge of a major institution is working out-of-title and, therefore, is still entitled to bargaining rights. The only issue before us concerns the managerial status of the DW and, in that respect, we regard as germane and dispositive evidence of the employees' duties in the performance of the job.

Minor Institutions (Nature of Responsibility)

All minor institutions, including central office divisions, are in the charge of a DW. Minor institutions are characterized as large or small depending on the number of personnel employed. The largest minor institution has seventy uniformed employees and several civilian employees; the smallest minor institution has thirty to fifty uniformed employees. The DW is in charge of the personnel in each of the minor institutions, exercising effective supervision over their work performance. The DW is, in fact, the highest supervisory official, there being several levels of supervision between him and the non-supervisory employees. The responsibility of the DW includes not only personnel but, in addition, the preparation of the budget for the institution of which he is in charge. Whenever there is occasion for a Warden to be in charge of a minor institution, the DW serves as Executive Officer in charge of Personnel. In that capacity, he effectively recommends policy in the management of the institution, is regularly consulted by the Warden on all matters pertaining to procedures affecting personnel and inmates of the institution, and implements all policies and procedures affecting the personnel and inmates of the institution.

C. Other Operations

The Transportation Division of the Correction Department is a significant operation having a central repair shop and one hundred and eighty motor vehicles which are used in most instances to transport inmates to and from the institutions and the various courts throughout the city. A DW is in charge of the Division and, moreover, his responsibility extends not only to scheduling the movements of the inmates but also the supervision of one hundred uniformed Correction Department employees and several civilians. The DW is regularly consulted on policy applicable to the Division, effectively recommends such policy, and is then held responsible for effectuating policy controlling the operations of the Division.

The Correction Academy serves as a facility to train Correction Officers. The DW is in charge of the Academy, He is responsible for instituting a training program and a curriculum to effectuate the training program. The DW also is in charge of the pistol range, The DW is regularly consulted on policy applicable to the Academy, and is responsible to implement policy controlling the operations of the Academy.

D. Policy Involvement

In addition to the specific instances where the DW is virtually, for all practical purposes, a policy maker in the institution in his charge, the record establishes that as a general matter the DW is significantly involved in over-all policy affecting the mission of the entire Department. A DW, as head of an institution, regularly attends and participates in policy meetings held at the central office with the Commissioner, Assistant Commissioners, and the Director of Operations. The record estab-

lishes that the participation of the DW in such policy meetings is consensual in nature and that the outcome discloses an effective contribution by the DW. The DW's, for example, are consulted about matters concerning labor relations and Department personnel, the methods which should be invoked and utilized to cope with labor relations problems; and, above all, the relationship between the several DW's and union personnel are a constant source of consultation with the Commissioner. It is obvious that substantial reliance is placed upon the DW in his handling of job complaints and their effective resolution designed to have minimal effect upon a function as sensitive and important as the one for which the Correction Department bears responsibility under the law.

It appears that the DW -ranks high in the hierarchy of the Department of Correction, being superseded only by the Commissioner, the Director of Operations, and by the Warden only on those occasions when a Warden is present at the institution. But even on those occasions, the stature of the DW in the decision making process is borne out by the record.

III. Conclusion

The central issue in this case is whether or not Deputy Wardens are "managerial-executive employees." In our prior representation proceedings, individuals found to fall within that category have been consistently excluded by the Board from bargaining units of other classes of employees. In such cases our concern has been whether such individuals have a sufficient community of interests with other classes of employees so that they may be included in

a unit for bargaining purposes. Where the interests of certain employees seemed to lie more with those persons who significantly participate in decisions leading to the formulation, determination, and direction of departmental policy than with other classes of employees who merely carry out the resultant policy (such as 'supervisory employees), we have held them to be excluded, and have commonly referred to such excluded persons as "managerial-executive employees." (Matter of Service Employees International Union, Local 444, AFL-CIO, Decision No. 43-69) Because a realistic assessment was essential to evaluate the role of certain employees in City employment we were convinced of the need to focus our attention upon whether some employees had real or apparent authority to speak as an "employer" in a labor relations context. Although we reserved authority to make specific determinations on a case-by-case basis, we prescribed and set forth general guidelines for determining whether particular individuals are "managerial-executive employees." For example, in Matter of Service Employees International Union, etc., supra, we said:

"But whatever his background, the department head's decisions are, and ordinarily must be, based upon the information, advice and recommendations furnished by his associates. Our concern is not limited to the final act, which changes a document from a proposal to a directive or policy statement, but covers the essential process which produces the decision. Significant and -responsible participation in that process is probative evidence of managerial status."

Further, in the above cited case we referred to standards in the following language which would characterize managerial-executive employees;

"* * * the responsibilities of so-called 'managerial' employees necessarily must be different, broader and of a higher level; that 'the managerial role involves the broad and active participation associated with the formulation of objectives or the method of fulfilling established purposes"
(Matter of Local 154, D.C. 37, Decision No. 73-68)"

and:

"Their duties include policy, formulation and effectuation, initiation and development of standard operating procedures, the utilization of personnel and the application of workload and production standards."

Since the time we rendered our decisions, the State Legislature in mending the Taylor Law, provided for the exclusion of employees from bargaining rights who may reasonably be designated as "managerial" (Chaps. 503 and 504, Laws of 1971). The amendment pertaining to managerial employees became effective August 16, 1971. and reads as follows:

"Employees may be designated as managerial only if they are persons (a) who formulate policy or (b) who may reasonably be required on behalf of the public employer to assist directly in the preparation for and conduct of collective negotiations, or to have a major role in the administration of agreements or in personnel administration provided that such role is not of a routine or clerical nature and requires the exercise of independent judgment."

It is our view, and we so conclude, that the criteria set forth in our decisions are substantially equivalent to those set forth above and, further, that the criteria set forth in the Taylor amendment and in our decisions are designed to accomplish the same end.

In view of the evidence, and the record as a whole, we find that the Deputy Wardens clearly speak for management, convey and implement departmental policy, and have substantial discretion and authority in connection with the performance of their duties. Accordingly, because the record as a whole supports a finding that the Deputy Wardens are managerial employees within the guidelines of our cited decision, we conclude that their interests are more closely allied with management than with unit employees and we shall dismiss the petitioning union's request for their inclusion in a bargaining unit (Matter of SEIU, Local 444, Decision No. 43-69; Matter of City Employees Union, Local 237., Decision No. 79-68; Matter of Professional Public Health Nurse Assn., Decision No. 6-69; and Matter of CWA, Local 1184, Decision No. 6-70).

We note the petitioner's contention that DW's should have bargaining rights inasmuch as they are equated for salary purposes with Police Captains who do have such rights. A unit determination necessarily involves an evaluation of all factors and while the factor of salary similarity is relevant it is not controlling (Matter of City Employees Union) Local 23-7 supra).

We also note that the New York City Labor Department previously dismissed a representation petition filed on behalf of DW's on the ground that they were managerial employees. (Assn. of Wardens, Department of Correction, Case No. R-42-64).

We have thus fully assessed all arguments and contentions of the parties and for the reasons set forth herein have concluded that the DW's are managerial employees excludable from a unit for bargaining purposes.

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

ORDERED, that the petition herein be, and the same hereby is, dismissed,

DATED: New York, N.Y.

November 5, 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