

OFFICE OF COLLECTIVE BARGAINING  
BOARD OF COLLECTIVE BARGAINING

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In the Matter of

LOCAL 1407, DISTRICT COUNCIL 37,  
AFSCME, AFL-CIO,

DECISION NO. B-4-79

-and-

DOCKET NO. BCB-305-78

THE NEW YORK CITY HEALTH AND  
HOSPITALS CORPORATION

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**DECISION AND ORDER**

On November 6, 1978, Local 1407 of District Council 37, AFSCME, AFL-CIO, which represents a unit including the Accounting Series of titles, filed a petition alleging that the New York City Health and Hospitals Corporation has committed and is continuing to engage in an improper practice by appointing bargaining unit employees to provisional management positions. Local 1407 claims that this HHC policy has undermined the collective bargaining unit and that there has been no appreciable change in the job function of the employees so appointed; thus, the union claims, they have been granted salary increases, have had their dues check-off suspended and have been removed from the unit by unilateral action of the employer.

The HHC contends that the appointments are a proper exercise of managerial discretion and that the new positions are within the management class of titles and therefore the appointed employees are appropriately excluded from

bargaining. The Corporation concedes that employees in both the Accounting and Systems Analyst series are required to have accounting backgrounds and that the work of persons in the two series is interrelated. It maintains, however, that the Systems Analyst series was created in response to mandates under State and Federal law for changes in reporting and accounting procedures in relation to various forms of third party reimbursement programs such as Medicare and Medicaid.

After several postponements, a hearing was held in this matter on March 28, 1979. The union detailed its charges claiming that the Systems Analyst title, to which most of the employees involved have been appointed, has a salary range between that of the Accountant and the Associate Accountant titles, and has been used as an interim step for people advancing within the Accounting series. Thus, the union alleges that bargaining unit employees are promoted out of the unit and then promoted once again back into the unit and that this situation constitutes an improper practice.

The union's affirmative case consisted of the testimony of four witnesses. The first witness was the Director of Personnel - Program Evaluation for the HHC. It is his responsibility to maintain the Corporation's classification system and conduct audits of existing positions to

determine whether employees are working within the boundaries established by the job specifications for their titles. The witness testified that there is a certain degree of overlap between the Accounting and Systems Analyst series so that when a desk audit of employees in the Systems Analyst series is undertaken, it is necessary to:

" . . . look at the major thrust, the major purposes, what the overall objectives of their (the employees) particular functions happen to be - essentially, whether it is to serve primarily as an Accountant or to serve primarily in the Systems Analyst Series, we take a look at the preponderance of their activity.

(Transcript, p. 60)

According to the witness, such audits are done frequently enough to guarantee that most employees are working at the functions listed in the relevant job specifications.

The second witness called by Local 1407 was an Associate Accountant. He testified that he was never in a Systems Analyst title but that prior to 1970 he performed some of the same functions which today are the responsibility of Systems Analysts to perform.

The third witness testified that he is currently a Senior Systems Analyst and stated that there is a certain degree of overlap between his present functions and those that he was responsible for as an Associate Accountant. He also

testified that his work location and his unit assignment remained the same when his title changed. However, the witness did testify to a substantial change in the nature of his duties upon receiving his new title. He stated that in addition to increased responsibility, his duties as a Senior Systems Analyst differed from his duties when he was an Associate Accountant in that, as well as processing affiliate hospital expense reports by verifying mathematical accuracy and accumulating and organizing the data for use by the costing section in the preparation of uniform financial reports, he now must analyze the data to determine how it compares with data for the previous year, and how significant changes may impact upon rates at the Corporation's hospitals. His testimony established that his skills in accounting are thus applied not only to the gathering, verification and organization of fiscal data but that as a Senior Systems Analyst he is also expected to analyze and apply the data in light of the special requirements of State and Federal programs for the establishment of third party reimbursement rates.

The fourth and final witness called by Local 1407 was an Associate Accountant working in the Accounts Payable Division of the Corporation. He testified that he has never held a Systems Analyst series title but only that

he transacts business with someone he thinks is a Systems Analyst. He also testified that the position he once held as a Supervising Accountant at Queens General Hospital is now filled by a Systems Analyst. He added that he believed that the Systems Analyst now in the position was performing out-of-title work.

After the fourth witness had concluded his testimony, the union rested. Counsel for the Corporation then made a motion to dismiss alleging that Local 1407 had failed to present sufficient evidence to establish a prima facie case.

### **Discussion**

Examination of the record reveals that Local 1407 presented no evidence to support its claim that employees have been promoted out of and, later, back into the unit, with a Systems Analyst title serving as an interim step. The only witness called who is currently serving in a Systems Analyst series title, or, for that matter, who has ever served in such a title, testified that there are distinct differences between the functions which a Senior Systems Analyst is required to perform and those which an Associate Accountant might be responsible for.

There is no question that the Corporation, acting in good faith, is free to create titles and promulgate appropriate job specifications for the performance of new functions.

Such action may result in an overlap of functions between an existing title and a newly created one such as appears to exist between the Accountant and Systems Analyst series. The functions of the two series are related and an accounting background is a prerequisite for appointment to a Systems Analyst series title.

The mere fact of such a similarity between an existing title and a newly created one, where the exercise of management's clear right to establish new titles and positions has not been shown to have been improperly motivated, is not the basis for a finding of improper practice. The testimony in the record before the Board, all of it elicited from witnesses called by the union, establishes beyond a doubt that there was a sound business basis for the Corporation developing a service within its fiscal organization for the proper development, capture, analysis and application of information required to assure to the Corporation full and fair reimbursement from the various State and Federal government funding programs. It was shown that accurate and adequate analysis and evaluation of relevant fiscal data is directly related to the establishment of rates of reimbursement to the Corporation for medical services in programs such as Medicaid and Medicare.

Even if Local 1407's case had shown (and it did not) that the Corporation's efforts to accomplish these ends had been inefficient or misguided, it would not detract from the fact that they had been undertaken for proper and permissible purposes. Moreover, while the union's case establishes that there was a legitimate reason for the action taken by the Corporation, there is no evidence or testimony to support the contention that the Corporation acted in bad faith or with anti-union animus. It cannot even be said that any line of inquiry taken by the union in examining its witnesses or that any single question, if it had been answered' actions were calculated and intended to "undercut the union's representation of employees" or to "encourage individual bargaining."

It is obvious that the promotion of an employee from a unit title to a non-unit title - whether or not it is a newly created title - will remove the employee from the unit, deprive the union of dues check-off as to that employee, and may prevent the union from representing the employee for any purpose. Depending upon the circumstances, a promotion may place the employee in another existing bargaining unit represented by the same union or a different union; it may place him in a title which has already been found managerial and thus permanently remove him from collec-

tive bargaining; or it may place him in a title where, as here, there has been no determination by the Board of Certification as to bargaining status and thus remove him from collective bargaining at least until such a determination is made. In none of these circumstances is promotion an improper practice.

The union, in this matter, had the burden of proving not only that there was no sound basis for the creation of the Systems Analyst series but that the employer had an improper, anti-union motive in taking such action. Instead, the record clearly contains what the Corporation right otherwise have been require to prove, namely, that there was a sound business reason for its action. The testimony offered failed even to address the issue of improper motive. On the record, as it stands, it would be pointless to require that the Corporation add to the existing body of evidence that Systems Analysts perform a function which, while related to that of Accountants, is distinct and is essential to the proper conduct of the Corporation's business. Therefore, the Board will grant the Corporation's motion to dismiss Local 1407's petition herein.

The Board notes that this decision is without prejudice to the right of Local 1407 to file a certification petition for the Systems Analyst series nor does the holding herein prejudice the Corporation's right to a Board determination on the managerial/confidential status of the employees involved.



**O R D E R**

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

ORDERED, that the New York City Health and Hospitals Corporation motion to dismiss the improper practice petition filed against it by Local 1407 be, and the same hereby is, granted.

DATED: New York, New York  
May 21 , 1979

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C h a i r m a n

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