

City v. CEU, L.237, IBT, 10 OCB 10 (BOC 1972) [Decision No. 10-72
(Cert.)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF CERTIFICATION

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In the Matter of

THE CITY OF NEW YORK

DECISION NO. 10-72

-and-

DOCKET NO. RE-20-71

CITY EMPLOYEES UNION, LOCAL 237,
I.B.T.

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DECISION AND ORDER

On October 28, 1971, the City of New York filed its motion herein requesting the merger and consolidation of the following certifications previously issued to City Employees Union, Local 237, International Brotherhood of Teamsters: Decision No.85-70 covering Pipe Laying Inspector and Senior Pipe Laying Inspector; 4 NYCDL No.60 (MR-20-67) covering Blasting Inspector and Senior Blasting Inspector; 7 NYCDL No.73 (MR-11-67) covering Transportation Inspector; CWR-90/67 covering Water Use Inspector and Senior Water Use Inspector; and CWR-91/67 covering Supervising Water Use Inspector and Principal Water Use Inspector. The Union has consented to the City's motion.

Employees in the title of Transportation Inspector are employed by the Bureau of Franchises of the Board of Estimate. Section 1173-4.0 of the New York City Collective Bargaining Law states that the provisions of the law shall apply to mayoral agencies and "any other municipal agency or public employer ... to the extent to which the head of such

agency or employer elects to make such provisions applicable ..."
As no such election has been made by the Board of Estimate, it is not under the jurisdiction of this Office. Accordingly the Transportation Inspectors shall not be included in the consolidated unit.

It may be noted that the City's motion included a request for a self-determination election among the supervisory employees to ascertain their desires with respect to their inclusion in a combined unit consisting of supervisory and non-supervisory employees. The City's request was consistent with the requirement of the NYCCBL at the time the motion was made. (NYCCBL Section 1173-3.01) (cf. In the Matter of Municipal Association of Electronic Data Processing Personnel and The City of New York, Decision No. 40-68).

However, effective January 1.2, 1972, the NYCCBL was amended and, in so far as it is pertinent hereto, the requirement of a self-determination election for the purpose of securing a combined unit of supervisory and non-supervisory employees is conditioned upon the employer interposing an objection to such a unit (see Int. No. 162-A, March 24, 1970, Section 5 subd. 1, omitting the requirement of a self determination election and Section 12 subd. b (1) requiring a self-determination election when a petition for a combined unit is filed "and the public employer objects thereto ...")

As noted, the public employer (the City) has not only not objected to a combined unit of supervisory and non-supervisory employees but has, in fact, initiated the proceeding for the attainment of such a unit and the union, as representative of all of the employees concerned, has consented. Under the circumstances we decide this case on the basis of the law as it exists today and we hold that the unit requested is appropriate and that there being no objections there is no need for a self-determination election.¹

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.

In deciding the effect of a regulation of an Administrative Agency upon a party which had been amended subsequent to the commencement of action in the lower court and on the day following the argument of the appeal in the Court of Appeals of New York State, the court ruled: "We decide the case, as it must be decided [citing cases] on the basis of the law as it exists today." (our emphasis) (Strauss v. University of State of N.Y., 2 N.Y. 2d 464, 161 N.Y.S. 2d 97, 98).

ORDERED, that Certifications No.85-70, 4 NYCDL No.60 (MR-20-67), CWR-90/67 and CWR-91/67 be, and the same hereby are, merged and consolidated; and the consolidated unit shall consist of Pipe Laying inspectors, Senior Pipe Laying Inspectors, Blasting Inspectors, Senior Blasting Inspectors, Water Use Inspectors, Senior Water Use Inspectors, Supervising Water Use Inspectors, Principal Water Use Inspectors, and employees in restored Rule X titles equated thereto, employed by the City of New York and related public employers subject to the jurisdiction of the Board of Certification, and subject to existing contracts if any.

DATED: New York, N.Y.
March 20, 1972

ARVID ANDERSON
CHAIRMAN

ERIC J. SCHMERTZ
MEMBER

WALTER L. EISENBERG
MEMBER

Decision No. 10-72
Docket No. RE-20-71

The titles and title code numbers of employees
affected by this decision are as follows

Pipe Laying Inspector	33415
Senior Pipe Laying Inspector	33435
Blasting Inspector	31815
Senior Blasting Inspector	31535
Water Use Inspector	34615
Senior Water Use Inspector	34535
Supervising Water Use Inspector	34655
Principal Water Use Inspector	34660