

OFFICE OF COLLECTIVE BARGAINING  
BOARD OF CERTIFICATION

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In the Matter of

LOCAL 1070, DISTRICT COUNCIL 37  
AFSCME, AFL-CIO

DECISION NO. 101-73

-and-

THE JUDICIAL CONFERENCE  
OF THE STATE OF NEW YORK

DOCKET NO. RU-396-73

-and-

THE CITY OF NEW YORK

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DECISION AND ORDER

On August 6, 1973, Local 1070, District Council 37, AFSCME, AFL-CIO (hereinafter "Petitioner"), filed its petition herein, requesting that the employees in the title of Confidential Attendant be added to Unit "A" of Certification No. 44-73. This unit contains such titles as Principal Clerk, Principal Stenographer, and Court Assistant. Confidential Attendants are employed in the Unified Court System within the City of New York.

Confidential Attendants are currently covered by a certification (Decision No. 5-72) which also includes the titles of Senior Court Officer, Supervising Court Officer, Chief Court Attendant, and Warden, Grand Jury, in which Supreme Court Uniformed Officers Association (SCUOA) is certified as the collective bargaining agent. The SCUOA was given notice of the filing of the petition herein but has not intervened.

Prior to the filling of the petition herein, informal meetings were conducted by the Office of Collective Bargaining with representatives of the City, the Judicial Conference and the Confidential Attendants Association. The purpose of these meetings was to discuss the desire of Confidential Attendants to be removed from the SCUOA unit. The Confidential Attendants Association, which appeared on behalf of the affected employees at the aforementioned meetings, was the petitioner in the proceeding in which SCUOA, as intervenor, was certified as collective bargaining representative of the existing unit. At these meetings, it was stated by representatives of the Office of Collective Bargaining that the Board of Certification would be unable to act on a petition affecting the SCUOA unit unless all interested parties were in accord with the petition and waived the contract bar provisions of Section 2.7 of the Revised Consolidated Rules of the Office of Collective Bargaining which reads as follows:

“A valid contract between a public employer and a public employee organization shall bar the filing of a petition for certification, designation, decertification or revocation of designation during a contract term not exceeding three (3) years.

"A petition for certification, designation, decertification or revocation of designation shall be filed not less than five (5) or more than six (6) months before the expiration date of the contract, or, if the contract is for a term of more than three (3) years, before the third anniversary date thereof. Subject to the provisions of Section 2.18 of these rules, no petition for certification, decertification or investigation of a question or controversy concerning representation may be filed after the expiration of a contract."

Positions of the Parties

The employer's position in this case is set forth in a letter dated September 27, 1973, which reads as follows:

"Please be advised that the office of Labor Relations opposes the petition in tile captioned matter on the basis that the Office of Collective Bargaining has already determined the most appropriate unit in which these employees should be included and, in addition, there is currently in force and effect a collective bargaining agreement for tile term of 7/1/71 to 6/30/74 which bars the present petition under rule 2.7 of the Consolidated Rules of the Office of Collective Bargaining."

In a letter to the Chairman of this Board, dated October 3, 1973, the Confidential Attendants Association argued that the contract bar provisions of Rule 2.7 should not be applied in this case since the contract was only recently executed whereas the question of removal of Confidential Attendants from the SCUOA unit had been under discussion with the Office of Labor Relations and the Office of Collective Bargaining since January 1973.

District Council 37, the petitioner herein, also maintained, in a letter dated October 5, 1973, that Rule 2.7 should not be applied. In support of this contention, the union argued:

1. that where the parties agree, contract bar provisions may be waived;
2. that the affected employees, the current certificate holder, the petitioner and the Judicial Conference all agree that the affected employees should be represented by petitioner;
3. that the current certification was not issued on the basis that the unit certified was "the most appropriate unit" but merely that the unit then agreed upon by the parties was an appropriate unit; and

4. that the petitioner would be willing to accept certification subject to the terms of the current collective bargaining agreement covering Confidential Attendants.

We recognize the seriousness of the assertions made by the Confidential Attendants with regard to the alleged failure of fair representation of their interests under the certification currently defining their collective bargaining status. It is for this reason that the staff of the Office of Collective Bargaining has involved itself in extensive efforts to aid the parties in achieving a resolution of the problem. We are compelled, nevertheless, to find that in the circumstances of this matter, the employer's interposition of the provisions of Rule 2.7 constitutes an absolute bar to the petition before us and that we have no choice but to dismiss the petition on the ground that it is barred by reason of the existence of a contract between the employer and the certified representative of the affected employees.

O R D E R

NOW, THEREFORE, 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 filed herein by Local 1070, District Council 37, AFSCME, AFL-CIO be, and the same hereby is, dismissed.

DATED: New York, New York

December 31, 1973.

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