

CWA, et. Al v. City, 14 OCB 16 (BOC 1974) [(Decision No. 16-74 (Cert.)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF CERTIFICATION

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In the Matter of

INDEPENDENT TRAFFIC EMPLOYEES
UNION

DECISION NO. 16-74

-and-

DOCKET NOS. RU-422-74

COMMUNICATIONS WORKERS OF
AMERICA, AFL-CIO

RU-425-74

RU-427-74

-and-

DISTRICT COUNCIL 37, AFSCME,
AFL-CIO

-and-

THE CITY OF NEW YORK

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DECISION, ORDER AND
DIRECTION OF ELECTIONS

On January 10, 1974, Independent Traffic Employees Union (hereinafter ITEU) filed its petition (Docket No. RU-422-74) for certification as collective bargaining representative of a non-supervisory unit consisting of Parking Enforcement Agents and Traffic Control Agents (herein Unit #1), presently certified to Communications Workers of America, AFL-CIO, (herein CWA) in Decision No.43-71 (as amended by Decision No.91-73). CWA has moved to dismiss ITEU's petition, claiming that it was filed untimely pursuant to Rule 2.18 of the Revised Consolidated Rules of the Office of Collective Bargaining.

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Thereafter, CWA and District Council 37, AFSCME, AFL-CIO (herein DC 37), filed separate petitions on January 24, 1974 (Docket No. RU-425-74) and January 31, 1974 (Docket No. RU-427-74), respectively, for certification as collective bargaining representative of a supervisory unit consisting of Senior Parking Enforcement Agents, Supervising Parking Enforcement Agents and Principal Parking Enforcement Agents (herein Unit #2), presently certified to ITEU in Decision No. 29-68 (as amended by Decision No. 3-71). ITEU has applied to intervene in both cases.

The Office of Labor Relations of the City of New York takes the position that the most appropriate unit would consist of a combination of Units "1" and "2."

CWA's Motion to Dismiss

Rule 2.18 states, in pertinent part, that

"When a representative has been certified by the Board, such certification shall remain in effect for one year from the date thereof and until such time thereafter as it shall be made to appear to the Board, through a secret ballot election ... that the certified employee organization no longer represents a majority of the employees in the appropriate unit In any case where unusual or extraordinary circumstances require, the Board may modify or suspend, or may shorten or extend the life of the certification...."

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C.W.A., relying on the fact that Traffic Control Agents were accreted to Certification No.43-71 (then covering the single title of Parking Enforcement Agent) on December 3, 1973 (Decision No.91-73), appears to contend that the one-year period provided by Rule 2.18 should be measured from December 3, 1973, and, in effect, that this period should also cloak the Parking Enforcement Agent title, even though the latter title was certified on May 27, 1971, and in spite of the fact that I.T.E.U. filed its petition in timely fashion pursuant to the Board's contract-bar rule (Rule 2.7). Rule 2.7 reads, in pertinent part, as follows:

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

The thrust of the one year-portion of Rule 2.18 is to provide for a newly-certified representative a reasonable period during which it may consummate a collective bargaining agreement for unit employees. Rule 2.7 seeks to strike a balance between stable labor relations and the right of employees to change their collective bargaining representative,

by permitting an incumbent union to limit potential rivals, via contract, for a maximum period of three years to a single opportunity to submit challenges to its exclusive bargaining status.

To grant C.W.A.'s motion would be tantamount to permitting it to insulate itself from challenge, as regards Parking Enforcement Agents, for a period well beyond the prescribed three-year maximum (possibly extending as long as six years), a clear violation of both the spirit and the letter of Rule 2.7. On the other hand, to deny its motion would deprive C.W.A. of an opportunity to conduct contract negotiations with all due deliberation, as provided by Rule 2.18. Thus, the Board must seek to harmonize its application of these two rules. The factual circumstances in these cases make such reconciliation readily possible. Under Rule 2.7, we find the ITEU petition timely-filed and, therefore, we shall deny C.W.A.'s motion to dismiss the petition. Rule 2.18 contains not only the aforementioned one-year language, but also a provision for shortening the life of a certification in unusual or extraordinary circumstances. We find that the circumstances

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herein are unusual and warrant the action we take of shortening the life of C.W.A.'s certification to a period ending no later than June 30, 1974.

City's Position

The City recommends a combination of supervisory and non-supervisory employees in one unit. In this regard, §1173-5.0(b)l of the amended New York City Collective Bargaining Law states, in pertinent part, that

if ... where supervisory ... employees petition to be represented for purposes of collective bargaining separate and apart from non-supervisory ... employees ... the board of certification shall not include such supervisory ... employees in a bargaining unit which includes non-supervisory ... employees ... unless a majority of the supervisory ... employees voting in an election vote in favor thereof."

As both C.W.A. and DC 37 have petitioned for a separate supervisory unit ("Unit #2"), we shall direct a self-determination election for the affected supervisory employees to ascertain whether they desire to be certified in a combined (supervisory and non-supervisory) unit or in a separate unit limited to supervisors. Thereafter, we

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shall conduct the appropriate representation election(s), as indicated in the Order and Direction of Election listed below.

All petitioners have filed the required 30% showing of interest for the respective supervisory and non-supervisory units sought.

In addition, as current certified representatives, ITEU and CWA have a right to participate in a representation election for a combined supervisory and non-supervisory unit, if such a unit results from the aforementioned self-determination election. However, DC 3.7, not currently so certified, is ineligible to participate in such an election, since it has not submitted the requisite minimum proof of interest in such a unit. However, DC 37 will be permitted to participate in the representation election for a separate unit of supervisors, if the outcome of the self-determination election indicates such a unit is appropriate.

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

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ORDERED that the applications to intervene by Independent Traffic Employees Union and by Communications Workers of America are hereby granted; and it is further

DIRECTED that, as part of the investigation authorized by the Board, a self-determination election 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 the employees in "Unit #2" who were 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 election), to determine whether they desire to be represented for the purposes of collective bargaining (1) in a separate unit limited to the supervisory titles in "Unit 2" or (2) in a combined unit consisting of the titles in Units "1" and "2". If a majority of the employees in Unit #2 casting valid ballots in the election vote in favor of a combined unit, then it is further

DIRECTED that an election by secret ballot shall be conducted among the employees in Units "1" and "2", under the same conditions as stated above, to determine whether

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they desire to be represented, for the purposes of collective bargaining by Communications Workers of America, AFL-CIO; Independent Traffic Employees Union; or by neither.

If a majority of the employees in "Unit 2" do not vote in favor of a combined unit, then it is further

DIRECTED-that separate-elections by secret ballot shall be conducted under the same conditions stated above, as follows:

(1) Among employees in Unit #1, to determine whether they desire to be-represented for the purposes of collective bargaining by Communications Workers of America, AFL-CIO; Independent Traffic Employees Union; or by neither;

(2) Among employees in Unit #2, to determine whether they desire to be represented for the purposes of collective bargaining by Independent Traffic Employees Union; Communi-
cations Workers of America, AFL-CIO; District Council 37, AFSCME, AFL-CIO; or by none of the foregoing.

DATED: New York, N.Y.

March 20, 1974

Arvid Anderson
CHAIRMAN

Eric J. Schmertz
MEMBER

Walter L. Eisenberg
MEMBER