

City, et. Al v. L.437, IBT, et. Al, 14 OCB 18 (BOC 1974) [( Decision No. 18-74 (Cert.)]

OFFICE OF COLLECTIVE BARGAINING  
BOARD OF CERTIFICATION

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In the Matter of

THE CITY OF NEW YORK,

DECISION NO. 18-74

-and-

DOCKET NO. RE-33-73

(RB-25-72)

Petitioner

LOCAL 437, INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS and LOCAL 832 INTERNATIONAL  
BROTHERHOOD OF TEAMSTERS, and LOCAL 300  
SERVICE EMPLOYEES INTERNATIONAL UNION,  
AFL-CIO,

Respondent

-----X

NEW YORK CITY PROFESSIONAL DIETITIANS'  
ASSOCIATION,

Petitioner

DOCKET NO. RU-393-73

-and-

LOCAL 237, INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS,

Intervenor

-and-

THE CITY OF NEW YORK,

Respondent

-----X

LOCAL 237, INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS and LOCAL 832, INTERNATIONAL  
BROTHERHOOD OF TEAMSTERS and LOCAL 300,  
SERVICE EMPLOYEES INTERNATIONAL UNION,  
AFL-CIO,

DOCKET NO. RU-417-73

Petitioners

-and-

THE CITY OF NEW YORK,

Respondent

----- X

Decision No. 18-74

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2.

#### DECISION AND ORDER

On July 12, 1973, the New York City Professional Dietitians' Association (hereinafter the Association) filed its petition herein requesting certification as the exclusive collective bargaining representative of a unit consisting of the titles Dietitian, Head Dietitian, Chief Dietitian, Senior Chief Dietitian and Principal Chief Dietitian. The Dietitian title and supervisory dietitian titles are presently certified to Local 237 under CWR-60/67 and CWR-61/67 respectively, both certificates issuing August 25, 1967. On August 17, 1973, Local 237 filed its intervention. A hearing was held on November 27, 1973 before Michael C. Gilman, Esquire, a Trial Examiner duly appointed by the Board of Certification at which time the bona fides of the Association was inquired into. Thereafter, on December 12, 1973, a motion to consolidate units was filed jointly by Local 237 and Local 832, International Brotherhood of Teamsters and Local 300, Service Employees International Union. The motion (RU-417-73) seeks to consolidate into a single unit those dietitian titles petitioned for in RU-393-73 along with institutional service titles encompassed by petitions in RB-25-72 and RE-33-73. On December 14, 1973, by order of the Board, the above-mentioned petitions and motion were consolidated for hearing purposes and a hearing was held on January 21, 1974.

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3.

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

I. Bona Fides of the New York  
City Professional Dietitians'  
Association

Local 237, in its letter of intervention filed in RU-393-73, states, among other things, "There is no proof that the petitioning organization is a bona fide labor organization." The Constitution and By-laws of the Association provide in Article II and XV respectively, as follows:

"The Association shall be open to membership by dietitians and other professional employees of public and private hospitals, correctional institutions, and social welfare organizations of any type, both public and private."

"No member shall engage in any strike without a majority vote of approval of the Executive Board. Any strike without such approval is without authorization of this Association."

At the hearings, Local 237 stressed these provisions as indicative of the Association not being a "Public employee organization." Ella J. Allen, President of, the Association, testified that at this point in time no member of the Association is employed in the private sector.

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4.

We find that the fact that an organization seeks to represent employees in both the public and private sectors in no way makes it strictly a private sector employee organization. And, we further find that nothing in the NYCCBL prohibits a public sector employee organization from having a dual function and also being a private sector employee organization.

Since the Association does contemplate a dual function in both the private and public sectors, we find the strike authorization language of the Constitution to be innocuous in these proceedings where the Association has filed with this Board a no-strike affirmation dated June 8, 1973 and signed by the president of the organization. Similarly, the Labor Organization Information Report (LM-1) filed with the U.S. Department of Labor, as required of private sector unions pursuant to the Labor Management Reporting and Disclosure Act, does not detract from the Association's public employee organization role.

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5.

The preamble to the Association's Constitution refers to "major improvements in the working conditions and status of employees" and Ella J. Allen testified that the purpose of the Association is to represent the employees in question in collective bargaining. The Association holds regular monthly meetings, records minutes of meetings, collects dues and maintains a bank account, and has elected officers and an executive board.

Based on all the foregoing we find that the Association is a "public employee organization" within the meaning of the NYCCBL.

## II. The Appropriate Unit

The titles in question herein are employed city-wide by the Department of Social Services, Department of Correction, and the Health and Hospitals Corporation. There are approximately 184 employees in the title of Dietitian and some 135 employees in the supervisory dietitian titles. All of the positions are in the same promotional line and involve the same type of work related to the reparations of diets. Duties, responsibilities and authority are increased as an employee advances through the promotional chain. Manifestly, a community of interest exists among all of the titles in question.

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6.

Although the entry level position and higher supervisory positions are presently covered by separate certificates, the history of bargaining indicates that all positions have been bargained for together and are covered by a single agreement between the City and Local 237. Local 237's intervention dated August 17, 1973 alleges, in part, that the petition asks for an improper unit, however, its motion to consolidate units filed in RU-417-73 on December 12, 1973 coupled with the collective bargaining history shows that a combined unit of supervisory and non-supervisory dietitians is appropriate. The City in its letter of position dated November 30, 1973 does not allege that a combined unit of supervisory and non-supervisory dietitians is improper, but rather that the titles "properly belong in Docket Nos. RB-25-72 and RE-25-73 [sic], the pending institutional services consolidation." Local 237 by its motion to consolidate units and letter of intervention agrees with the City position on consolidating dietitian titles with the institutional service titles encompassed by RB-25-72 and RE-33-73. We find no reason not to combine supervisory and non-supervisory dietitians, covered by CWR-61/67 and CWR-60/67 respectively, in a single unit where no one objects and a de facto single unit has always existed.

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7.

The Board further finds that based upon the dietitians' history of bargaining, a separate unit of all dietitian titles is appropriate at this time.

The consolidation of institutional services titles into a single unit, as proposed by this Board in RB-25-72, and as originally petitioned for by the City in RE-33-73, we also find appropriate.

This decision in no way prevents this Board from considering petitions for broader units at some future date.

#### 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

ORDERED, that the motion to consolidate units filed jointly by Local 300, SEIU, AFL-CIO, Local 237, IBT and Local 932, IBT be, and the same hereby is, denied as in-appropriate; and it is further

ORDERED, that the consolidated unit proposed by the Board is appropriate and that the petition of the City as originally filed be, and the same hereby is, granted; and it is further

ORDERED, that the petition of the New York City Professional Dietitians' Association be, and the same hereby is, granted; and it is further

ORDERED, that an election be conducted among Dietitians, Head Dietitians, Chief Dietitians, Senior Chief Dietitians, and Principal Chief Dietitians and the question to be voted on shall be:

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8.

Do you desire to be represented  
for the purposes of collective bargaining  
by Local 237, IBT, or by the New York  
City Professional Dietitians' Association,  
or by no union?

DATED: New York, New York  
April 3 , 1974

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ARVID ANDERSON  
Chairman

ERIC J. SCHMERTZ  
Member

WALTER L. EISENBERG  
Member



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The units consolidated in Decision No.18-74 and certified jointly to Local 237, 1BT; Local 832, IBT; and Local 300, SEIU, are as follows:

<u>Former Certification No.</u>	<u>Title</u>	<u>Title Code No.</u>
MR- 7/67	Commissary Manager	54910
83-71	Teacher [in Dept. of Correction]	00101
	Institutional In- structor	60309
	Institutional Band Music Instructor	60310
	Institutional Farming Instructor	60311
	Institutional Trades Instruc. (inc. spec.)	60312/13/14
	Shoemaker	90740
8 NYCDL No.27	Sr. Institutional Trades Instructor (incl. spec.)	60330/31
MR-10/66	Housekeeper	80710
	Sr. Housekeeper	80735
	Supvg. Housekeeper	80760
	Food Service Super- Visor	90238
MR- 8/67	Laundry Foreman	80810
	Laundry Supervisor	80860
	Sr. Laundry Supervisor	80861
5 NYCDL No.75	Superintendent of Laundries	80880
CWR-95/67	Institutional Seam- Stress	90112
	Institutional Tailor	90113



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<u>Former Certification No.</u>	<u>Title</u>	<u>Title Code No.</u>
Voluntary Recognition	Cook	90210
	Senior Cook	90235
MR-15/64	Baker	90211
MR-1/66	Senior Baker	90236
MR-2/67	Meat Cutter	90213
	Senior Meat Cutter	90237