

City v. DC37, 14 OCB 31(BOC 1974) [(Decision No. 31-74 (Cert.)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF CERTIFICATION

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In the Matter of
THE CITY OF NEW YORK

DECISION NO. 31-74

-and-

DOCKET NO. RE-48-74

DISTRICT COUNCIL 37, AFSCME,
AFL-CIO and/or its affiliated
locals

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DECISION AND ORDER CONSOLIDATING
CERTIFICATIONS

On April 11, 1974, the Office of Labor Relations of the City of New York filed its petition herein, requesting the consolidation of the following certifications held by District Council 37, AFSCME, AFL-CIO, and/or its affiliated locals: Certification No. 27-69 covering Title Examiner, Senior Title Examiner, Principal Title Examiner, and Title Examiner, Grade 4 (Rule X); and Certification No. 79-73 as amended by Decision No. 88-73, covering Appraiser (Real Estate), Assessor, Mortgage Analyst, Right of Way Negotiator, and related titles. The certification for the Title Examiners covers some 39 persons and the certification for the Real Estate Assessors, Appraisers et al covers approximately 330 persons.

District Council 37 objects to the proposed consolidation on the grounds that the petition herein is untimely and in violation of Section 2.7, contract bar, of the Consolidated Rules of the Board. The Union alleges that the parties are

currently engaged in collective bargaining and that the processing of the petition during such period of negotiations is directly contrary to the purposes of the contract bar rule.

District Council 37 further argues that the petition does not come within the exceptions stated in Section 2.18 of the Rules requiring "unusual or extraordinary circumstances before the Board can modify the certification." Lastly, District Council 37 asserts that the differences in functions between the titles represented by the two units evidence the lack of community of interest of the two units.

The City of New York states that the contract bar rule is not intended to impede the Board's policies of consolidation of collective bargaining units. Furthermore, the City argues that there is no basis for invoking the contract bar rule since District Council 37 is the certified bargaining representative of both units that the City proposes be consolidated and since one of the purposes of the contract bar rule is to insulate a certified union from a petition by a rival union. The City also states that another purpose of the contract bar rule is to protect the certified union from a decertification petition by employees or the employer, neither of which is pending here.

DISCUSSION

The statutory authority, Section 1173-5b of the New York City Collective Bargaining Law, empowers the Board of Certification to make final determination of appropriate units for the purposes of collective bargaining and provides, among other things, that units "shall be such as shall assure to public employees the fullest freedom of exercising the rights granted (under the statute) consistent with the efficient operation of the public service and sound labor relations...."

The criteria to be employed in unit determinations are set forth in Rule 2.10 of the Consolidated Rules of the Office of Collective Bargaining. In addition to community of interest of affected employees, it is prescribed that the Board shall also consider the history of bargaining, the effect of the unit on the efficient operation of the public service and sound labor relations, the authority of the employer to make decisions and whether the unit is consistent with the decisions and policies of the Board. ¹ Having considered all of these criteria, we have concluded that application of our policy

"The Board has found that such policy objectives [consolidations] are justified by the need to simplify and reduce the task of negotiations, and the desirability of achieving greater uniformity of conditions among similar classes of employees whose community of interests are similar and not diverse."
(Decision No. 44-68 and Decision No. 41-73)

favoring the consolidation of bargaining units of employees engaged in similar or closely related occupations in the instant matter will enhance the efficient operation of the public service and sound labor relations. At the same time, we are convinced that such consolidation will not deny the employees herein freedom in the exercise of their right to choose a bargaining representative, since the employees of both units herein are represented by the same bargaining representative, District Council 37.

We find that the contract bar rule is not applicable in the circumstances of this case for the following reasons. First, the collective bargaining representative for both of the units sought to be consolidated by the City's petition is the same, District Council 37. Certification No. 27-69 Title Examiner, et al, was issued to District Council 37, AFSCME, AFL-CIO. Certification No. 79-73, Real Estate Assessors and Appraisers, et al, was issued in the name of District Council 37, AFSCME, AFL-CIO and/or its affiliated locals. While the employees of both units are members of locals of District Council 37, there is no identifiable local of the District Council in the certifications and, in fact, bargaining for both units is conducted by District Council 37 staff representatives.

We also find that while the petitions were not timely filed, such time rule does not apply in the circumstances herein where bargaining, although commenced, is conducted between the same employer and union representatives, the Office of Labor Relations and District Council 37. Thus, there is no threat to the status of the certified bargaining representative in either unit.

The contract bar rule was established to enhance and protect the orderly process of bargaining by insulating a certified union from a challenge by a rival organization or from dissident employees seeking decertification or from the decertification petition of the employer. None of these factors are present here. To invoke the contract bar rule in these circumstances would be to obstruct the consolidation of bargaining units unnecessarily and inappropriately. Since it is the announced policy of this Board, consistent with the purposes of the New York City Collective Bargaining Law, to promote sound labor relations by favoring the consolidation of units, we will allow the obstruction of this process only where there is compelling reason for doing so and not on the basis of essentially technical considerations.

As for the issue of community of interest, while there are differences in job duties and no common line of progression

or transfer from among the various job titles in Title Examiner series to the Assessor and Appraiser titles and vice versa, we find such differences no bar to consolidation herein since employees in both units are involved with various aspects of real estate transactions. The significance of differences and similarities in job duties can be fully and adequately dealt with in collective bargaining.²

ORDER

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 Certification No. 27-69 and Certification No. 79-73 (as amended by Decision No. 88-73) b, and the same hereby are, combined and consolidated so as to constitute one bargaining unit consisting of the titles set forth below; and it is hereby

CERTIFIED that District Council 371 AFSCME, AFL-CIO, and/or its affiliated locals is the exclusive representative for the purposes of collective bargaining of all employees in the consolidated unit, to wit: Title Examiners, Senior

Title Examiners, Principal Title Examiners, Appraisers (Real Estate), Assessors, Assistant Assessors, Mortgage Analysts, Right of Way Negotiators, Supervising Appraisers (Real Estate), Supervising Assessors, and employees in restored Rule X titles serving in positions equated thereto, employed by the City of New York and related public employers subject to the jurisdiction of the Board of Certification, and, further, subject to existing contracts, if any, covering any or all of said employees.

DATED: New York, N.Y.
July 15, 1974

ARVID ANDERSON
CHAIRMAN

ERIC J. SCHMERTZ
MEMBER

WALTER L. EISENBERG
MEMBER

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Docket No. RE-48-74

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

Appraiser (Real Estate)	40410	
Assessor		40210
Assistant Assessor	40205	
Principal Title Examiner	30820	
Right of Way Negotiator	40430	
Senior Appraiser (Real Estate)	40415	
Senior Assessor	40215	
Senior Right of Way Negotiator	40431	
Senior Title Examiner	30810	
Supervising Appraiser (Real Estate)	40420	
Supervising Assessor	40220	
Title Examiner		30805