L.1199, et. Al v. City, 14 OCB 33 (BOC 1974) [(Decision No. 33-74 (Cert.)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF CERTIFICATION
- - - - - - - - - - - - - - - - - X

In the Matter of

LOCAL 1199, DRUG AND HOSPITAL UNION, RWDSU, AFL-CIO,

DECISION NO. 33-74

Petitioner,

DOCKET NO. RU-426-74

-and-

DISTRICT COUNCIL 37, AFSCME, AFL-CIO; CITY EMPLOYEES UNION, LOCAL 237, IBT; and LOCAL 144, HOTEL, HOSPITAL, NURSING HOME AND ALLIED SERVICE EMPLOYEES UNION, SEIU, AFL-CIO, jointly,

Intervenors,

-and-

THE CITY OF NEW YORK and RELATED PUBLIC EMPLOYERS
- - - - - - - - - - - - - - - - - X

DECISION AND ORDER

Local 1199, Drug and Hospital Union, RWDSU, AFL-CIO, hereinafter "Petitioner", filed a petition for a unit of X-ray, electroencephalograph, electrocardiograph and radiation technicians, including 8 titles and 302 employees, on January 28, 1974. On December 15, 1973, the Board of Certification, in Decision No. 98-73, had consolidated these medical technicians with two other technician units - a unit of hospital technicians consisting of 11 titles and 1322 employees, and a unit of laboratory technicians consisting of 4 titles and 452 employees - into a single unit represented

jointly by three petitioning unions: DC 37, AFSCME, AFL-CIO, Local 237, IBT, and Local 144, Hotel, Hospital, Nursing Home and Allied Service Employees Union, SEIU, AFL-CIO.

Prior to the consolidation of the units and the filing of the instant petition by Local 1199, the medical technicians were represented by Local 237 and were covered by a contract expiring June 30, 1974; Local 144 had been certified for the laboratory technicians an 1972 and its last contract had expired on December 31, 1973; and DC 37 had been certified on July 17, 1973 and had filed a request for bargaining on August 29, 1973

The three joint representative's contend that Local 1199's petition is untimely and for an inappropriate unit, and, therefore, should be dismissed. They maintain that Petitioner should have intervened in the proceeding which led to the consolidation, and that it is improper to permit the taking of evidence designed to dismember the merged unit for which they were jointly certified only a short time before.

The City objects to the appropriateness of the medical technician unit sought by Local 1199, arguing that the consolidated unit established by Decision No. 98-73 is the appropriate unit.

The Board authorized a hearing as to timeliness of filing and appropriateness of unit on Local 1199's petition for the medical technician unit. Following a hearing on March 27, 1974, Local 1199 submitted a brief.

We shall take up seriatim the questions of timeliness, notice, appropriateness of unit, and the related matter of the proof of interest.

TIMELINESS

Because two of the now jointly certified unions had different contract expiration dates in their old units, and, hence, different intervention dates? a novel question of timeliness of filing is here presented. As relates to the previous medical technician unit held by Local 237, Local 1199's petition was timely filed under Rule 2.7, Contract Bar, but was barred by the same rule as to the laboratory technician unit previously held by Local 144, and barred by Rule 2.18; Life of Certification, as to the hospital technician unit previously held by DC 37. Rule 2.18 would also appear to bar the request by Local 1199 for an election in the consolidated unit.

Essentially at issue is the question as to when a union having an interest in a segment of, or the whole of, a

proposed or recently-consolidated unit may appropriately assert such interest in the segment, or in the overall, consolidated unit.

In the instant case, the appropriate time for filing for the previous medical technician unit was the month of January, 1974. As set forth later in this decision, this was also the appropriate time to file a petition for the consolidated unit. Local 1199's original petition named only the medical technician segment; not until the hearing in March, 1974 did it indicate a willingness to participate in an election for the consolidated unit. Thus, even if we were to construe Local 1199's expression at the hearing as a petition seeking an election in the consolidated unit, such petition for the consolidated unit would be untimely under the rule announced herein for future cases. However, because the Board has not had occasion previously to enunciate a policy in respect to timeliness of filing in consolidation cases, and because of the recentness of the consolidation herein, we shall consider the union's "request" for an overall unit, in this proceeding, to have been timely filed.

NOTICE

Petitioner maintains that it and the unit employees were unaware of the consolidation proceeding which changed the representation of unit employees from that by a single

union to joint representation by three unions. In point of fact, the following notice of the consolidation proceeding was given by the Board pursuant to Rule 2.18, (Petitions - notice of filing):

On November 26, 1973, there was published in the City Record a Notice of Motion to Consolidate Certificates which had been filed with OCB on November 5, 1973. The Notice set forth the three certificates and the titles encompassed by each.

On November 27, 1973, OCB sent to the labor relations officers of each of the seven agencies employing titles embraced by the proposed consolidated unit copies of a Notice setting forth that a joint petition had been filed. The agencies were requested to post the Notice for ten days on bulletin boards and other appropriate places, and then to inform OCB that the posting had in fact occurred. The Health and Hospitals Corporation which employs the overwhelming number of the employees in the consolidated unit confirmed that the notices had been posted as instructed, copies having been sent to each of the nineteen City hospitals.

At the time of filing of the joint petition, notice thereof was posted on the public docket maintained by the Board. Pursuant to Rule 2.17 a Notice of the certification of the joint representatives by Decision No. 98-73 was published in the City Record on January 5, 1974.

It is clear, therefore, that the unit employees and Local 1199 had proper and adequate notice of the consolidation proceeding, and that all interested parties, including the employer, the labor organizations, and the employees, had opportunity to voice their views as to the consolidation. Yet no objection to the consolidation petition was filed by Local 1199 or any other interested party. It is noted that the designation cards submitted by Local 1199 show that the union was actively organizing at the time the consolidation proceeding was pending before the Board. About half of the designation cards were obtained by the union in October and November, 1973, that is, shortly before the notice was published in the City Record that the joint petition for consolidation had been filed.

Local 1199 argues that the Notice in the City Record and on the Board's docket is inadequate notice of a change of certification. The Administrative Code [NYCCBL, §1173-5.0b(5)) authorizes the Board of Certification to adopt rules and regulations for the conduct of its business and the carrying out of its powers and duties. All the notices mandated by the rules - publication in the City Record, posting on employee bulletin boards, posting on the Board's docket - were given. This notice procedure has operated well for the more than six years of Board operation.

APPROPRIATE UNIT AND PROOF OF INTEREST

Local 1199 offers no testimony in support of its contention that a separate medical technician unit is more appropriate than the consolidated unit created by the Board in Decision 98-73. It argues that a medical technician unit in one form or another has existed and has been separately represented for over twelve years. It concedes the authority of the Board of Certification to change an appropriate bargaining unit, and acknowledges the Board's long-standing effort to reduce by consolidation the number of bargaining units in City employment. Its attack on the consolidated unit is collateral - that the

Board should not have consolidated the formerly separate medical, hospital and laboratory units without first conducting an election among the employees, or that the Board, before certifying the three unions as joint representatives of the consolidated unit, should have inquired whether the unions, and particularly Local 237, IBT, had notified the employees of the requested joint certification and had received their prior assent thereto. Petitioner argues that past decisions of this Board support the allegation that an election should have been held on the question of consolidation.

The three joint representatives maintain that the steps leading to their joint certification are irrelevant to this proceeding, although a representative of Local 237 asserted at the hearing that unit employees of his union had in fact voted for joint representation. They also maintain that a Board election was not required at the time of consolidation.

It is true that certain chancres in certification require proof of majority status and may require elections. There are numerous instances where such proof is not required, however. For example, where newly-created titles are added to an existing unit of titles with which they

share a community of interest, no proof of majority status is required (Decision Nos. 39-69, 42-70, 26-71). The transfer of certification where the certificate holder merges or affiliates with another union is permitted upon a showing that procedures prescribed in the rules of the certified union have been complied with and that the day-to-day relationship between unit employees and the employer will be maintained and that contractual obligations will be honored. (Decision Nos. 65-68, 6-69, 13-72, 25-72, 21-73). Consolidations of units, all of which are represented by a single union, and joint consolidations on consent of all affected certificate holders, have regularly been permitted without the requirement of elections (Decision Nos. 76-70, 41-73). In our Decision No. 31-71, which Petitioner cites in support of its contentions on this point, an election was required for two reasons which do not apply here. First, a number of previously uncertified titles covering 1,279 employees were included in the consolidated unit in that case; they comprised nearly half of the new unit. Moreover, the certified representative of one block of employees covered by the decision opposed the consolidation. The facts of that case are clearly distinguishable from those in the matter before us.

The Board's decision consolidating the medical, hospital and laboratory technician units, Decision No. 98-73, was a case involving consent consolidation. Having determined that the consolidated unit was appropriate, no true question of representation was involved since the petitioning unions, the separate certificate holders, consented to the consolidation. No transfer of certificate was involved. There was plainly no need to conduct an election. The Board's policies mandated, in these circumstances, only that proper notice of the change of certification be given the employees. Moreover, the Board's records indicated that in late 1973, shortly before the consolidation of technician units was ordered, an overwhelming number of unit employees were checked off to the three joint representatives.

Although, as previously mentioned, Local 1199's original petition called for a unit of medical technicians only, it assumed two other alternative positions during the course of the hearing and in its brief.

First, it maintains that if the Board declines to find a separate medical technician unit and reaffirms its finding of a consolidated unit, Petitioner is willing to participate in joint bargaining with Local 144, SEIU,

and DC 37, and that the Board should, therefore, conduct an election among the medical technicians to ascertain whether or not Local 1199 should replace Local 237 in the joint bargaining triad. It justifies this position on the ground that although the Board created a single consolidated unit by Decision No. 98-73, employees in the medical technician group still pay dues only to Local 237, IBT, still have grievances processed only by it, and still are members of the Local 237 Welfare Fund.

To accept this "substitution" theory is, however, in effect, to dismember the consolidated unit. Its acceptance would also erroneously imply that the Board can, or would, compel joint certificate holders to accept another union representative as a substitute for one of their joint coalition. We do not accept such a proposal as a matter of law or policy since it is tantamount to a request for a separate unit, which we find to be inappropriate and is predicated on the notion, which we reject, that the consolidation created a confederation of separately represented autonomous parts.

As a second alternative, the Union suggests that the Board now conduct in the consolidated unit an election in which Local 1199 would appear on the ballot against

the present jointly certified unions. Although we have previously decided to treat this request as timely, we find that Local 1199 did not present with its petition the statutorily required proof of interest, Rule 2.3, which would justify its request for an election in the consolidated unit.

Accordingly, upon the entire record herein, we shall re-affirm our unit finding in Decision 98-73 that a consolidated unit consisting of medical, hospital and laboratory technician titles is appropriate, and dismiss as inappropriate Local 1199's petition for a separate medical technician unit. We further deny Petitioner's alternative request for an election among the employees of the consolidated unit on the ground that although the request was timely made in this case, the petitioner has not submitted adequate proof of interest to justify the holding of an election in the consolidated unit.

As a guideline for the future we hold that henceforward, absent unusual and extraordinary circumstances, Rule 2.18, a party having a bona fide interest in a proposed consolidated unit, or a segment thereof, should intervene during the pendency of the consolidation proceeding to set forth its unit views. Such intervention

will be limited solely to challenging the appropriateness of the unit, unless otherwise timely under Rule 2.7, Contract Bar.

If a party intervening in a consolidation proceeding is successful in persuading the Board that the segment of the consolidated unit it seeks is an appropriate unit and should not be consolidated, it will be timely to file a representation petition for that segment during the sixth month prior to the expiration date of the contract for that segment. On the other hand, if consolidation is directed by the Board and the Union wishes to challenge the incumbent or incumbents for the consolidated unit, then, absent unusual or extraordinary circumstances, Rule 2.18, a petition should be filed during the sixth month prior to the expiration date of the last-expiring contract in existence at the time consolidation was directed. In the latter case, the showing of interest which accompanies the filing must be sufficient to establish the right to, participate in an election for the entire consolidated unit.

0 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 1199, RWDSU, AFL-CIO, be, and the same hereby is, dismissed.

DATED: New York, N.Y.
July 22, 1974

ARVID ANDERSON
CHAIRMAN

ERIC J. SCMERTZ
MEMBER

WALTER L. EISENBERG
MEMBER