

City v. L.300, SEIU, L.1070, DC37, Civil Ser. Forum, 14 OCB 36 (BOC 1974) [(Decision No. 36-74 (Cert.)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF CERTIFICATION

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In the Matter of

THE CITY OF NEW YORK AND
RELATED PUBLIC EMPLOYERS

DECISION NO. 36-74

-and-

DOCKET NO. RE-38-73

CIVIL SERVICE FORUM, LOCAL 300,
SEIU, AFL-CIO

-and-

LOCAL 1070, DISTRICT COUNCIL 37,
AFSCME, AFL-CIO

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A P P E A R A N C E S:

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for District Council 37

Israelson & Streit, Esqs.
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for Local 300, SEIU

DECISION AND ORDER

On May 13, 1974, Local 1070, District Council 37, AFSCME, AFL-CIO served and filed its motion for re-opening and reconsideration of the Board's Decision and Order consolidating certifications in the above entitled proceeding issued on January 14, 1974.

The Board's Decision No. 1-74, consolidated Certification No. 10-71 held by Civil Service Forum, Local 300, SEIU, AFL-CIO covering Fingerprint Technician Trainee, Fingerprint Technician, Senior Fingerprint Technician, Principal Fingerprint Technician, and restored Rule X equivalent and Certification No. 33-73 held by Local 1070, District Council 37, AFSCME, AFL-CIO covering Identification Officer, Senior Identification Officer and Principal Identification Officer.

The Board stated:

"The parties have been notified of the pendency of this motion, and no valid objection has been raised.

"Our investigation shows that such a consolidated unit would be appropriate for collective bargaining purposes and that a majority of the employees in the combined unit have authorized dues check-off in behalf of Local 300."

The affidavit of counsel in support of the motion alleges, inter alia, that:

[T]hrough an inadvertence and by reason of faulty communication between the persons comprising the Identification Officer titles and their authorized Union representatives, certain facts critical to a proper determination by the Board were not before the Board and therefore not considered by the Board in arriving at its determination. "The reason this application is made at this time is that subsequent to the Board's determination, the Identification Officers complained that they had not been consulted with respect to the above entitled proceeding and that they had several valid objections to the consolidation which had not been presented to the Board.

* * *

"These employees, all of whom are members of Local 1070, District Council 37, AFSCME, AFL-CIO and who desire the said Union to represent them have demonstrated that their skills, duties and interests are substantially different from those of the Fingerprint series; ..."

"Furthermore, these interested employees have effectively demonstrated that by reason of the consolidation, there has been created a unit ineffective and inappropriate for collective bargaining purposes and one lacking a community of interest."

The City's answering affidavit opposes the motion to reopen and reconsider and asserts that the Union's stated grounds for reconsideration are not legally sufficient, and that the motion is barred by laches.

The Board heard oral argument on June 24, 1974.

The grounds set forth by*the Union rest on the allegation that although the certified public employee representative of the Identification Officer titles had notice of the consolidation proceeding, certain individual employees in those titles were not aware of the proceeding and therefore could not present to their representative, and to the Board, "facts crucial to a proper determination." These "facts" are alleged to be certain differences among the duties of the employees in the consolidated unit.

It is not alleged that Local 1070, the certified representative of employees in Identification Officer titles did not have notice of and did not participate fully in the consolidation proceeding. The facts which the motion would have the Board consider are not facts which were unavailable to the Union during the pendency of the consolidation.

No extraordinary circumstances have been alleged which would require the Board to inquire into the internal functioning of Local 1070, including the means whereby it communicates with its members. Furthermore there has been no showing that the Union did not perform its statutory duty fairly to represent the employees. Under these circumstances, the employees are bound by the prior consolidation proceeding.

Therefore, we shall deny the motion to reopen and reconsider our Decision No. 1-74.

While we have formally denied the motion to reconsider we wish to note, however, that none of the differences in job duties alleged by counsel for Local 1070 at the oral argument before us were of a nature or magnitude that would have persuaded us to reach a different conclusion had we decided to reconsider our consolidation decision. Our finding that "such a consolidated unit would be appropriate for collective bargaining purposes" was not based on a belief that all of the employees in the consolidated unit performed identical tasks. Rather, it was a finding based on the community of interest and similarities among the employees. A Board decision finding a bargaining unit which includes

different titles is not a determination that the positions are interchangeable or identical. Job classification is the responsibility of the Civil Service Commission whereas this Board is charged with the determination of appropriate units for collective bargaining. ¹ We have found, upon investigation, that the employees in the titles consolidated are an appropriate unit for collective bargaining. As we have stated before: "The significance of the differences in job duties can be fully and adequately dealt with in collective bargaining." ²

O R D E R

Pursuant to the powers vested in the Board of Certification by the New York City Collective Bargaining Law, it is hereby

Local Union No.3, IBEW, AFL-CIO, et al,
Decision No.62-71.

City of N.Y. and DC 37, AFSCME, AFL-CIO,
Decision No.8-74.

Decision No. 36-74
Docket No. RE-38-73

7.

ORDERED, that the Motion for reopening and reconsideration of Local 1070 herein be, and the same hereby is, denied.

DATED: New York, N.Y.

AUGUST 5, 1974.

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