

OFFICE OF COLLECTIVE BARGAINING  
BOARD OF CERTIFICATION

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In the Matter of :  
DISTRICT COUNCIL 37, AFSCME, :  
AFL-CIO, and its affiliated :  
Locals 375, 1219, and 1414 :  
-and- :  
THE CITY OF NEW YORK AND RELATED :  
PUBLIC EMPLOYERS :  
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DECISION NO. 68-74  
DOCKET NO. RB-40B-73

DECISION AND ORDER

In August 1973, the Board of Certification initiated a proposed consolidation of 24 inspectorial titles, classified (with one exception - Safety Officer) in two closely related Occupational Groups. The projected consolidation involved twelve certificates (including one based on voluntary recognition) issued to three local unions affiliated with D.C. 37, AFSCME, AFL-CIO, to wit, Locals 375, 1219 and 1414.

All three locals, as well as D.C. 37 itself, opposed the inclusion in the proposed consolidated unit of four titles (3 units):

- Watershed Inspector - certified to Local 1414
- Demolition Inspector and Senior Demolition Inspector certified to Local 1219
- Supervising Demolition Inspector - certified to Local 1219

In Decision No. 96-73, the Board combined 20 "technical" inspector titles represented by Civil Service Technical Guild, Local 375 D.C. 37 AFSCME, AFL-CIO into a single unit, no objection having been posed to this much of the proposed consolidation. The Board reserved decision as to whether the four disputed watershed and demolition inspector titles should be joined with the consolidated unit, and ordered a hearing to take evidence concerning the unit placement of the disputed titles. Such a hearing was held before Ernest Doerfler, Esq., Trial Examiner, on March 13 and March 19, 1974.

#### Burden of Proof

At the outset of the hearing, the unions raised the question as to who has the burden of proof to show that a Board-proposed consolidated unit is (or is not) appropriate. They contended that the Board of Certification, as the moving party, has the obligation to establish that the proposed unit is appropriate, i.e. that it meets the statutory standards governing the determination of bargaining units.

However, a representation hearing is not an adversary proceeding but rather is part of a continuing investigation by the Board (Rule 1.5). The Board of Certification is not an interested party in the sense that it represents either public employees or the public employer. Its authority and its statutory reason for being are to determine the groupings

of employees appropriate for bargaining (§1173-5.0 b. of NYCCBL). Indeed, this statutory responsibility embraces not only the certification of new representatives in appropriate bargaining units, but also entails a duty to monitor and reexamine on a continuing basis all existing bargaining units with a view to promoting efficient operation of the public service and sound labor relations. In practice, this has been found to require continuing efforts to reduce the number of bargaining units in a manner compatible with statutory criteria, i.e., full freedom of public employees to exercise their rights under the New York City Collective Bargaining Law, community of interest among the employees, the history of collective bargaining, the effect of the unit(s) on the efficient operation of the public service and sound labor relations, and the effective authority of the relevant government officials to bargain. For all the foregoing reasons, therefore, the suggestion that the Board has a duty to prove or defend the appropriateness of a proposed consolidation is ill-conceived. Whether consolidation is upon stipulation of all the parties, or on the motion of a party or group of parties, or is being considered upon the Board's own motion, the Board is, nonetheless, the arbiter of the issue, not a disputant.

Moreover, a Board-initiated consolidation proceeding is simply a proposal, and not a final determination or statement of a fixed position. Notwithstanding the Board's general commitment to the policy of reducing the number of bargaining units through consolidation, it will weigh the unique considerations in given cases that may argue against consolidation. After hearing all the parties, the Board will review and reevaluate its consolidation proposal in the light of counter-proposals and objections put forward by the parties, if any. In making its final determination the Board may amend its proposed consolidation by adopting the parties' responses in whole or in part, if it believes that they would better serve the collective bargaining process; or the Board may reject such responses and effectuate the consolidation as proposed.

Appropriate Unit

In the instant case, after preliminary consideration of the positions of the parties, as set forth at the hearing, the Board of Certification instructed Director of Representation McNamara to explore with the parties alternative possibilities which would result in the reduction of the number of appropriate bargaining units. During such discussions the parties agreed on the following consolidations:

- A. Certification No. 36-71, covering Demolition Inspector and Senior Demolition Inspector, with Certification 9 NYC DL No. 28, covering Supervising Demolition Inspector;
- B. Certification MR-9/65, covering Watershed Inspector, with Certification CWR-111/67, covering Water Plant Operator.

Insofar as the foregoing proposals also have merit, and would serve to promote the collective bargaining process at this time, we hereby adopt them, with the proviso, however, that the Board may in future advance other proposals for further consolidations affecting these units.

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

ORDERED that Certification No. 9 NYCDL No. 28 and Certification No. 36-71 be and the same hereby are, combined and consolidated so as to constitute one bargaining unit, and, with respect to such consolidated unit, it is hereby

CERTIFIED that Local 1219, District Council 37, AFSCME, AFL-CIO, is the exclusive representative for the purposes of collective bargaining of all employees in the consolidated unit, to wit: Demolition Inspector, Senior Demolition Inspector, and Supervising Demolition Inspector 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; and it is further

ORDERED that Certifications MR-9/65 and CWR-111/67 be, and the same hereby are, combined and consolidated so as to constitute one bargaining unit, and, with respect to such consolidated unit, it is hereby

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7.

CERTIFIED that Local 1414, District Council 37, AFSCME, AFL-CIO, is the exclusive representative for the purposes of collective bargaining of all employees in the consolidated unit, to wit: Watershed Inspector and Water Plant Operator 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.

December 2, 1974.

ARVID ANDERSON

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C h a i r m a n

ERIC J. SCHMERTZ

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M e m b e r

WALTER L. EISENBERG

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M e m b e r

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

Unit A

Demolition Inspector	32415
Senior Demolition Inspector	32435
Supervising Demolition Inspector	32455

Unit B

Watershed Inspector	34415
Water Plant Operator	91010