

L.246, SEIU v. CEU, L.237, IBT, et. Al, 14 OCB 9 (BOC 1974) [(Decision No. 9-74 (Cert.))]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF CERTIFICATION

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In the Matter of

NEW YORK CITY LOCAL 246, S.E.I.U.,
AFL-CIO,

DECISION NO. 9-74

Petitioner

DOCKET NO. RU-406-73

-and-

CITY EMPLOYERS UNION, LOCAL 237,
I.B.T.,

Intervenor

-and-

DI STRICT COUNCIL 37, AFSCME,
AFL-CIO,

Intervenor

-and-

THE CITY OF NEW YORK AND RELATED
PUBLIC EMPLOYERS

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DECISION AND ORDER

Positions of the Parties

By petition dated September 14, 1973, New York City Local 246, SEIU, AFL-CIO, requested to accrete the titles of Taxi and Limousine inspector and Senior Taxi and Limousine Inspector to Certification No.54-70 (as amended by Decisions 64-71 and 36773), presently covering various automotive trades titles, including Auto Mechanic and Auto Machinist.

City Employees Union Local 237, IBT, has applied to intervene herein requesting that its Certification MR-11/67, covering Transportation Inspectors, and its Certification (by reason of prior voluntary recognition) covering Senior Transportation Inspectors¹ be consolidated with its Certification No.10-72, covering various other inspectorial titles, and that the titles of Taxi and Limousine Inspector, Senior Taxi and Limousine Inspector, and the equivalent "EEA" titles of Commercial Vehicle Compliance Agent (EEA) and (FEA-6), and Senior Commercial Vehicle Compliance Agent (EEA) be added thereto. Local 237 submitted showing of interest for a majority of the employees in the petitioned titles.

District Council 37, AFSCME, AFL-CIO, also applied to intervene herein, requesting that the non-supervisory titles of Taxi and Limousine Inspector and Commercial Vehicle Compliance Agent (EEA) and (EEA-6) be added to its Certification No.15-72 (as amended by Decision No.12-73), covering the non-supervisory titles of Motor Vehicle Operator, Automotive Operator (EEA)

Transportation Inspectors and Senior Transportation Inspectors are employed solely by the Bureau of Franchises of the Board of Estimate, a Municipal Agency which is under the jurisdiction of the Office of Collective Bargaining, pursuant to the amended New York City Collective Bargaining Law

and Taxi and Limousine Dispatcher; and that the supervisory titles of Senior Taxi and Limousine Inspector and Senior Commercial Vehicle Compliance Agent (EEA) be added to its Certification No.11-73, covering a supervisory unit consisting of Motor Vehicle Foreman and Senior Taxi and Limousine Dispatcher. DC 37 submitted no showing of interest in the petitioned titles.

No objections thereto having been filed, the applications to intervene will be granted.

The City of New York opposes the petition of Local 246, SEIU, AFL-CIO, claiming that the unit sought is inappropriate. The City contends that the most appropriate unit consists of the following titles:

Taxi and Limousine Inspector,
Senior Taxi and Limousine Inspector,
Motor Vehicle Operator, Automotive
Operator (EEA), Taxi and Limousine
Dispatcher, Motor Vehicle Foreman,
Senior Taxi and Limousine Dispatcher,
Transportation Inspector and Senior
Transportation Inspector.

Discussion

We find that the City's position regarding the petition by Local 246, SEIU, is valid. Petitioner seeks to accrete Taxi and Limousine inspectors and Senior Taxi and Limousine Inspector

to a unit composed predominantly of prevailing rate employees, whose wages are determined by the City Comptroller, under 9220 of the Labor Law, on the basis of prevailing rates paid in private industry. There is no duty, under the NYCCBL, to bargain on matters subject to such determination. As we stated in our Decision No.98-70:

This important limitation of the permissible scope of collective bargaining for prevailing rate employees clearly differentiates their interests from those of other employees. Accordingly, in the absence of unusual circumstances, we shall place prevailing rate employees in a separate unit or units.

Accordingly, we shall deny the petition of Local 246 on the ground that the unit requested therein is inappropriate.

While the units proposed by District Council 37 have some merit, we find that the consolidated unit proposed by Local 237, IBT, is preferable. Not only do the employees therein have an overall community of interest because they all perform inspection functions, but there is an especially strong similarity of functions between taxi and limousine inspectors and transportation inspectors. Transportation Inspectors make inspections of bus operations to insure safety and adequacy of service, and Taxi and Limousine Inspectors make inspections of hired passenger vehicles for

serviceability and conformity with established standards and regulations. In addition, Local 237 has submitted evidence that a majority of the Taxi and Limousine Inspectors wish to be represented by it.

Accordingly, we shall consolidate Certification MR-11/67, Certification by reason of prior voluntary recognition covering the title of Senior Transportation Inspector, and Certification No.10-72, and shall add thereto, on the basis of majority dues check-off in the total unit, the titles of Taxi and Limousine Inspector Senior Taxi and Limousine Inspector, Commercial Vehicle Compliance Agent (EEA) and (EEA-6),and Senior Commercial Vehicle Compliance Agent (EEA).

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 the applications to intervene filed herein by City Employees Union, Local 237, IBT, and District Council 37, AFSCME, AFL-CIO, be, and the same hereby are, granted; and it is further

ORDERED that the petition filed by New York City Local 246, SEIU, AFL-CIO, be, and the same hereby is, denied; and it is further

ORDERED that Certification MR-11,67, the Certification by reason of prior voluntary recognition covering the title of Senior Transportation Inspector, and Certification No.10-72 be, and the same hereby are, merged and consolidated; and the consolidated unit shall consist of Transportation Inspectors, Senior Transportation Inspectors, Pipe Laying Inspectors, Senior Pipe Laying Inspectors, Blasting Inspectors, Senior Blasting Inspectors, Water Use Inspectors, Senior Water Use Inspectors, Supervising Water Use Inspectors, Principal Water Use Inspectors, and employees in restored Rule X titles equated thereto, employed by the City or New York and related public employers subject to the jurisdiction of the Board of Certification, and subject to existing contracts if any; and it is further

ORDERED that the titles of Taxi and Limousine Inspector, Senior Taxi and Limousine Inspector, Commercial Vehicle Compliance Agent (EEA) and (EEA-6), and Senior Commercial

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7.

Vehicle Compliance Agent (EEA) be, and the same hereby are,
added to the above consolidated unit.

DATED: New York, N.Y.

February 4, 1974

ARVID ANDERSON
CHAIRMAN

WALTER L. EISENBERG
MEMBER

ERIC J. SCHMERZ
MEMBER

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

Commercial Vehicle Compliance Agent (EEA)	03336
Commercial Vehicle Compliance Agent (EEA-6)	03593
Senior Commercial Vehicle Compliance Agent (EEA)	0337
Taxi and Limousine Inspector	35116
Senior Taxi and Limousine Inspector	35134
Transportation Inspector	35115
Senior Transportation Inspector	35135
Blasting Inspector	31815
Senior Blasting Inspector	31835
Pipe Laying inspector	33415
Senior Pipe Laying Inspector	33435
Water Use Inspector	34615
Senior Water Use Inspector	34635
Supervising Water Use Inspector	34655
Principal Water Use Inspector	34660