

DC37, et. Al v. City, 18 OCB 2 (BOC 1976) [Decision No. 2-76 (Cert.)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF CERTIFICATION

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In the Matter of

DISTRICT COUNCIL 37, AFSCME, AFL-CIO

DECISION NO. 2-76

-and-

PROFESSIONAL STAFF CONGRESS/CITY

Docket No. RU-515B-75

UNIVERSITY OF NEW YORK

-and-

THE CITY OF NEW YORK AND RELATED

PUBLIC EMPLOYERS

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DECISION AND ORDER

On June 23, 1975, District Council 37, AFSCME, AFL-CIO, filed its petition herein, seeking, in part¹ to add the titles of College Counselor (CETA) and Remedial Assistant² (CETA), to Certification covering College Assistants. The Office of Labor Relations supports this portion of the petition.

Professional Staff Congress/City University of New York (PSC) applied to intervene herein on the ground that "...the granting of the petition may infringe upon our unit [certified by Public Employment Relations Board and covering an instructional and related unit] and if such is the case, said petition should be denied." In Decision No. 60-75, the Board severed this portion of the case for further investigation of the issues raised by this request to intervene.

The Issues

In Matter of United WREP Workers, Decision 23-75, the Board of Certification "found... that it would not effectuate the purposes of the NYCCBL to permit [an intervention] for the purpose of challenging

The remainder of the petition, covering the titles of Engineering Assistant (CETA) and Planning Assistant (CETA), was disposed of in Decision No. 60-75.

Decision No. 46-75 later consolidated this unit with others to form Certification No. 46C-75.

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[a representation petition] without, at the same time, finally determining the representation rights of the... workers involved." In the instant case, PSC did not claim to represent the petitioned employees nor did it submit any showing of interest among these employees. It did, however, point out that it "is certified by the Public Employment Relations Board to represent a unit consisting of full and part-time employees of the City University of New York in the various titles related to instruction and the support of instruction including those who perform counseling functions." From this we infer that PSC might, if the petitioned titles were found to be "instructional", petition PERB to have them added to the cited unit. This, in turn, raises the issue of the jurisdiction of the Board of Certification over the petitioned titles.

As may be inferred from the certification by the Board of Certification (United Federation of College Teachers-and-City University of New York, Decision No. 6-71) of certain CUNY employees performing pedagogical functions, the Board's jurisdiction does not derive from the non-performance of such functions but, rather, from the election, dated June 24, 1968, of the Board of Higher Education "to be bound by the Rules of the Office of Collective Bargaining ... for employees of the University who are not members of the Instructional Staff...". This election was approved on September 10, 1968, by the Mayor of the City of New York, who reiterated its application to "certain categories of non-instructional employees...". These terms are based on Article VI of the By-Laws of the Board of Higher Education, which defines the Instructional Staff of the University.

Our jurisdiction in a given case is thus not based upon a finding as to whether or not the affected employees perform pedagogical functions but upon their designation by the employer as Instructional or non-Instructional. The petitioned titles have been specifically categorized by the City University as "non-instructional" and, by the terms of the election, are therefore under our jurisdiction.

Having established our jurisdiction over the petitioned titles, we need no longer consider PSC's request to intervene.

Student Status

The "draft guidelines" for the title of College Counselor (CETA) state that "Only candidates who are full-time, registered undergraduate or graduate students are eligible for this position. Employment is conditional upon continuance as a student in a college."³ In our Decision No. 7-74 (College Workers Association -and-City University of New York), we found that certain "student workers" were "not 'public employees' within the meaning and intent of the New York City Collective Bargaining Law." Petitioner requests "an opportunity to ... demonstrate" that Decision No. 7-74 is inapplicable in the instant case. Accordingly, we shall sever so much of the petition as relates to the title of College Counselor (CETA) and order a hearing thereon.

Status Appropriate Unit and Representative

Although there is no exact "civil service counterpart" of the title of Remedial Assistant (CETA), we find sufficient similarity between the duties of these employees and those of the employees in

No such condition applies to the employment of Remedial Assistants (CETA).

the unit title of College Assistant to warrant the requested unit placement. It further appears to the satisfaction of the Board that a majority of the employees in the unit as amended herein have demonstrated their desire to be represented by District Council 37, AFSCME, AFL-CIO, by having authorized check-off of dues in behalf of said organization. Accordingly, we shall grant this portion of the petition.

O 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 so much of the instant petition as relates to the title of College Counselor (CETA) be, and the same hereby is, severed, and a hearing on the student status of such title is hereby directed; and it is further

ORDERED that Certification No. 46C-75 (as amended by Decisions 47-75 and 48-75) be, and the same hereby is, further amended to include the title of Remedial Assistant (CETA), subject to existing contracts, if any.

DATED: New York, N.Y.
January 22, 1976

ARVID ANDERSON
CHAIRMAN

ERIC J. SCHMERTZ
MEMBER

Note: Member Eisenberg did not participate in this decision.

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

Remedial Assistant (CETA)	09423
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