DC37 v. City, 18 OCB 34 (BOC 1976) [Decision No. 34-76 (Cert.)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF CERTIFICATION
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In the Matter of

DISTRICT COUNCIL 37, AFSCME, AFL-CIO

DECISION No. 34-76

DOCKET NO. RU-515C-75

-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 a petition seeking, in part,[1] to accrete the titles of College Counselor (CETA) and Remedial Assistant (CETA), to Certification No. 27-70, covering College Assistants.[2] In Decision No. 2-76 the Board of Certification accreted the title of Remedial Assistant (CETA) to Certification No. 27-70. At the same time the Board severed the portion of the petition relating to College Counselors (CETA) and ordered that a hearing be held to consider the circumstances surrounding this title.

The "draft guidelines" for the title of College Counselor (CETA) state that only full time students are eligible for this position and that employment is conditional upon continuance of student status. In Decision No. 7-74,

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

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

involving the College Workers Association and City University of New York, the Board of Certification determined that students therein were not public employees since the employment relationship was far subordinate to the primary educational purpose of the student's relationship with the institution.

A hearing was held on May 5, 1976, to afford DC 37, an opportunity to distinguish the instant case from the above-mentioned decision. At the hearing, DC 37 argued that the employees within the title College Counselors (CETA) should be considered municipal employees and accreted to the Certification containing College Assistants. The union argued that the legislation establishing the CETA program mandates that participants be treated similarly and be given the same rights as other public employees. Union counsel pointed out that the purpose of the CETA program, was IL--o alleviate unemployment, rather than provide students with financial aid, as was the case in Decision No. 7-74. DC 37 argued that there exists sufficient similarity of duties between the titles College Assistant and College Counselor (CETA) and that these individuals were no different from other CETA employees who had been accreted to existing bargaining units throughout the City. A representative of the Office of Labor Relations participated in the hearing, but took no position regarding the petition.

DISCUSSION

The purpose of the Comprehensive Employment and Training Act, (CETA), as stated in Title II of the Act, is,

> "to provide unemployed and underemployed persons with transitional employment in jobs providing needed public services in areas of substantial unemployment and, wherever feasible, related training and manpower services to enable such persons to move into employment or training not supported under this title."

The Board of Certification in Decision No. 9-72 examined and defined the status of persons who are recruited through federal programs which seek to reduce the impact of poverty conditions and unemployment. This decision involved the Emergency Employment Act (EEA) of 1971 and the Board determined that it was the "Congressional intent to establish an employer - employee status between a local government and a participant in the program."[3]

Three factors contributed to the Board's conclusion that the EEA participants should be considered municipal employees:

> 1. The provisions of the federal act which mandate that all participants be assured of workmen's compensation, health insurance, unemployment insurance, working conditions, promotional opportunities and other benefits, neither more or less favorable than such other public employees enjoy;

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[3] See Board Decision No. 9-72, page 4.

2. The direct jurisdiction of the Civil Service Commission over the provisional appointments of the participants in the EEA program; and

3. The presence of such participants on a regular city payroll pf a municipal agency.

The Board in Decision 9-72 also discussed the provisional nature of employment under such a program and determined that "Provisional status does not affect the fundamental employer-employee relationship."

On the basis of these factors the Board recognized, EEA participants as municipal employees and initiated the policy of processing petitions concerning such participants according to the same standards applied to traditional city employees. The CETA program is the successor to the EEA program and its. provisions and goals are similar to those of its predecessor. The characteristics of the CETA program conform, to the factors cited in Decision 9-72 as contributing to public employee status, a fact demonstrated by the Board's previous decisions involving other CETA titles.

The Board's policy regarding accretion is that new titles which would have been included in the original certification, had they been in existence at the time, may be added to the unit because of their similarity or close relationship to the bargaining unit titles. In accordance with this standard the Board accreted approximately 24 EEA titles to existing

bargaining units throughout City departments and agencies.[4] The Board has continued this policy, summarily adding CETA titles to existing bargaining certifications where the standards for accretion have been met.[5]

The petition for accretion in the instant case is complicated by the fact that normal Board policy regarding CETA trainees appears to conflict with a previous decision concerning the status of student employees. There exist many factors which compel the Board to distinguish the instant case from the circumstances surrounding the Board's Decision No. 7-74. In ruling on the status of participants in the college work-study program, the Board stated that "where an employment relationship exists solely for the purpose of futhering an educational" or correctional goal, the employment relationship is different from that contemplated in the labor relations statute." it is not the purpose of the CETA program to enable participating, individuals to continue their education. The employment of College Counselors (CETA) is part of an effort by the federal government to reduce unemployment and provide opportunities for training.

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[4] See Board Decision Nos. 9-72, 15-72, 16-72, 17-72-, 18-72, 19-72, 23--72, 32-72, 47-72, 48-72, 49-72, 50-72, 51-72, 52-72f, 53-72, 53-72, 55-72, 56-72, 57-72, 1-73, 2-73, 5-73, 53-73, 35-75.

[5] See Board Decision Nos. 61-74, 70-74, 15-75, 31-75, 33-73, 36-75, 37-75, 43-75, 44-75, 57-75, 77-75, 60-75, 2-76, 3-76, 4-76, 5-76, 7-76, 8-76, 10-76, 12-76, 1-1-76, 14-76, 15-76, 20-76, 22-76.

The student employment in the earlier case was a form of financial aid which the university would have had to provide in an alternative form had the work-study program not existed. The number of hours a student worked was dependent upon financial need and was calculated subsequent to the applicant's submission of a person al budget. The employees within the title College Counselor (CETA) initially qualify for their positions due to their status as unemployed persons. The CETA program is not related to personal budget or educational expenses and is not a form of financial aid.

The cases cited in Decision No. 7-74 all relate to the issue of whether students should be included in bargaining units containing permanent employees. In these cases differences in wages, working conditions, supervision and the temporary nature of employment were all noted as factors warranting a denial of any effort to add students to existing units. In the instant case these factors are noticeably absent. Participants in the CETA program, as required by law, receive wages and benefits which are equivalent to those received by city employees performing similar duties. They are subject to the same working conditions and supervision as comparable employees within their department. Moreover, the Board has standing policies regarding community of interest and accretion of CETA titles to existing units. The issue at hand is whether students are inherently not public employees within the meaning of the New York City Collective Bargaining Law.

In Decision No. 52-75 the Board of Certification added, by accretion, the title of Student Legal Assistant to Certification CWR-44/67 covering various attorney and law library titles.[6] While Student Legal Assistants were not employed by the educational institutions they attended, unlike the individuals in Decision 7-74 and in the instant case, their accretion indicates the Board's recognition that under certain circumstances students may properly be considered public employees. In the instant case the employment relationship between the City University and College Counselors (CETA) is distinctly separate from the educational objectives of the involved individuals.

Although there is no exact "civil service counterpart" of the title College Counselor (CETA), there exists sufficient similarity between the duties of these employees and those of the employees in the unit title of College Assistant to warrant the requested unit placement. Accordingly, we shall grant this portion of the petition.

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

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Certification CM~-44/67 as amended by Decisions 83-73, 11-74, 69-74 and 1-75.

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 College Counselor (CETA),, subject to existing contracts, if any.

DATED: New York, N.Y.
July 28, 1976

ARVID ANDERSON
CHAIRMAN

ERIC J. SCHMERTZ
MEMBER

MEMBER

N.B. Member Eisenberg did not participate in this decision.