City v. L.1181, CWA, et. Al, 2 OCB 74 (BOC 1968) [Decision No. 74-68 (Cert.)]

OFFICE OP COLLECT1VE BARGAINING
BOARD OF CERTIFICATION
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In the Matter of

THE CITY OP NEW YORK — DECISION NO. 74-68

-and-

MUNICIPAL SUPERVISING EMPLOYEES, LOCAL 1181, COMMUNICATION'S WORKERS OF AMERICA, AFL-CIO — DOCKET NO. RE-9-68
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DECISION AND ORDER

The City has served and filed a motion, pursuant to Rule 2.18, to terminate a certification dated August 25, 1967, issued by the New York City Department of Labor to Municipal Supervising Employees, Local 1181, Communications Workers of America, AFL-CIO, herein called Local 1181, as City-wide collective bargaining representative of Senior Shorthand Reporters, Supervising Shorthand Reporters and Supervising Photostat Operators (CWR No. 51-67).

Local 1181 served and filed papers in opposition.

The basis of the City's motion is that collective bargaining in public employment "is enhanced by structuring the largest practical viable unit;" that District Council 37, A.F.S.C.M.E., AFL-CIO, present1v is the certified collective bargaining representative of a comprehensive unit of super-visory clerical and related titles (CWR NO. 51-67); and that Local 1181's certification, therefore, should be terminated and the titles presently covered thereby should be added to D.C. 37's certification "by accretion."

District Council 37, although served with a copy of the City's motion papers, has not appeared herein.[1]

Local 1181, in its opposing papers, points out that any attempt by it, or by D.C. 37, to seek certification as the collective bargaining representative of employees repre-sented by the other, would violate Article XXI, Section 2 Internal Disputes Plan) of the AFL-CIO Constitution. Included among its opposing papers are copies of decisions rendered by David L. Cole, Impartial Umpire under the AFL-CIO

[1] The filing of the motion was published in the City Record on October 10, 1968, and posted on the Board's public docket.

Internal Disputes Plan, which find, inter alia:

(1) that District Council 37 had violated the no-raiding agreement by seeking to represent supervisory clerical employees represented by C.W.A. (Case No. 66-133, dated April 3, 1967) and

(2) that C.W.A. was guilty of a similar violation in seeking to represent supervisory clerical employees represented by A.F.S.C.M.E. Case No. 65-74, dated July 25, 1967).

In Matter of New York State Nurses Association, Decision No. 68-68, the Association moved under Rule 2.18 to terminate a certification issued to another organization and to add the titles included in that certification to a unit represented by the Association. We dismissed the motion, on the ground that Rule 2.18 could not be used as a substitute for a representation petition. The reasons underlying that decision are equally applicable here.

The consolidated Rules of the office of Collective Bargaining were promulgated after a series of meetings with representatives of the City and of public employee organizations. Provision for the filing of representation petitions by employers was deliberately omitted (with one exception not here pertinent[2]), with the consent and agreement of the City. It was understood, however, that the City, or any other public employer, could avail itself of Rule 2.18 to raise questions concerning the clarification or modification of appropriate bargaining units, or whether an existing certification should be terminated or shortened because of abandonment or disclaimer by the certified representative, or other "unusual or extraordinary circumstances."

The City's motion herein exceeds the Permissible area. It is not limited to clarification or modification of the certification, but seeks to terminate it and substitute a new collective bargaining representative. Its application thus is tantamount to a representation petition, which it may not file under the Rules. Nor are there here present any "unusual or extraordinary circumstances" of the type contemplated when Rule 2.18 was adopted. Local 1181 has not abandoned or disclaimed its status as representative of the employees here concerned. To the contrary, it emphatically asserts its right to continue to act as their collective bargaining representative.

Our policy favoring the consolidation of occupationally related titles is set forth in Matter of District Council 37, A.F.S.C.M.E., AFL-CIO, Decision No. 44-68. It was there pointed out that consolidation, based upon mutuality of interests, the history of collective bargaining and other factors, was highly desirable "wherever it is possible to do so without severe dislocations or inequities."

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[2]Rule 2.4

In the present case, the history of collective bargaining is in separate units. Moreover, in view of the decisions of the Impartial Umpire under the AFL-CIO Internal Disputes Plan and the failure of District Council 37 to appear herein, the result of the City's application, if granted, well might be to leave the employees without representation. Such a result manifestly would not effectuate the purposes of the statute.

Accordingly, we shall dismiss the motion.

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

O R D E R E D , that the motion filed by the City herein be, and the same hereby is, dismissed.

DATED, New York, N.Y.

November 25, 1968

ARVID ANDERSON
C h a i r m a n

ERIC J. SCHMERTZ
M e m b e r

SAUL WALLEN
M e m b e r