

L.300, et. Al v. City, et. Al, 20 OCB 4 (BOC 1977) [Decision No. 4-77 (Cert.)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF CERTIFICATION

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In the Matter of

CIVIL SERVICE FORUM, LOCAL 300,
SEIU, AFL-CIO,

Petitioner

DECISION NO. 4-77

DOCKET NO. RU-585-76

-and-

THE CITY OF NEW YORK RELATED
PUBLIC EMPLOYERS

-and-

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

Intervenor

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DECISION AND ORDER

On December 3, 1976, Civil Service Forum, Local 300, SEIU, AFL-CIO, filed its petition herein, seeking certification as the exclusive collective bargaining representative of a unit consisting of the employees in the titles of Junior Building Custodian, Assistant Building Custodian, Building Custodian, Senior Building Custodian, and Supervisor of Building Custodians. City Employees Union, Local 237, International Brotherhood of Teamsters, the currently certified¹ union, and the City, through its Office of Labor Relations, have challenged the appropriateness of the unit sought and the timeliness of this petition.

Local 237 requests that "this petition be dismissed on the grounds that it is untimely and faulty as to unit composition." The City opposes the petition on the same grounds, pointing out that "The last contract covering these employees expired June 30, 1976." The City adds that "In Decision #62-75, the Board of Certification consolidated a number of separate units," and that the present petition seeks to fragment the consolidated unit.

Discussion

The petitioned titles were consolidated with many others on December 29, 1975, by Decision No. 62-75 (Docket No. RE-60-75². As we said in Matter of Local 1199³

"... a party having a bona fide interest in a proposed consolidated unit, or a segment thereof, should intervene during the pendency of the consolidation proceeding to set forth

The resultant unit was later further consolidated on December 9, 1976, with another unit (not pertinent here) by Decision No. 55-76 (Docket No. RE-66-76).

Decision No. 33-74, reaffirmed by Decision No. 50-74; also cited in Matter of BRAC (Decision No. 50-76) and Matter of Locals 300 and 733, SEIU, Decision No. 58-76.

its unit views. Such intervention will be limited solely to challenging the appropriateness of the unit, unless otherwise timely under Rule 2.7, Contract Bar.

"If a party intervening in a consolidation proceeding is successful in persuading the Board that the segment of the consolidated unit it seeks is an appropriate unit and should not be consolidated, it will be timely to file a representation petition for that segment during the sixth month prior to the expiration date of the contract for that segment. On the other hand, if consolidation is directed by the Board and the Union wishes to challenge the incumbent or incumbents for the consolidated unit, then ... a petition should be filed during the sixth month prior to the expiration date of the last-expiring contract in existence at the time consolidation was directed...."

Despite this clear indication of Board policy, Local 300 failed to intervene during the pendency of either Case No. RE-60-75 (generally, the month of December, 1975) or Case No. RE-66-76 (generally from February to November, 1976) for the purpose of challenging the appropriateness of the units sought by the City in those matters. Therefore, it cannot now be heard to petition for a part of a former consolidated unit nor will the Board fragment such a recently-consolidated unit. Accordingly, we shall dismiss the instant petition.

Moreover, even if the petitioned titles had not been consolidated, this petition would be untimely. Since Labor

Relations Order No. 76/43, covering the petitioned titles (as a separate unit), was issued on August 6, 1976, for a then expired 7/1/75-6/30/76 period, the time to file a petition for such a unit would have been during the month following the August 6th date.⁴ The present petition was not filed until nearly four months later.

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,¹ it is hereby

ORDERED that the petition filed herein by Civil Service Forum, Local 300, SEIU, AFL-CIO, be, and the same hereby is, dismissed.

Dated: New York, New York
January 27, 1977

ARVID ANDERSON
CHAIRMAN
WALTER L. EISENBERG
MEMBER

ERIC J. SCHMERTZ
MEMBER