

DC37 v. City, 20 OCB 7 (BOC 1977) [Decision No. 7-77 (Cert.)]

OFFICE OF COLLECTIVE BARGAINING  
BOARD OF CERTIFICATION

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In the Matter of

DISTRICT COUNCIL 37, AFSCME,  
AFL-CIO

-and-

DECISION NO. 7-77

DOCKET NO. RU-587-76

THE CITY OF NEW YORK

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DECISION AND ORDER

On December 15, 1976, District Council 37, AFSCME, AFL-CIO, filed its petition herein, seeking to add the title of Principal Consumer Affairs Inspector to Certification No. 46E-75 (as amended by Decisions 47-75 and 35-76), covering various business inspection and related titles (including all of the other titles in the Consumer Affairs Inspection Occupational Group). Petitioner requests the Board to "reconsider Decision No. 8-72 in which it found ... the title of Principal Consumer Affairs Inspector ... as performed by the incumbent employee to be managerial." Petitioner alleges "that circumstances have changed substantially since 1972," pointing out that there are now "... four incumbents ... where there was previously one employee in the title."

Our investigation confirms this and shows, moreover, that the employee who was previously found managerial no longer serves in the petitioned title.

Petitioner further alleges that "None of the present incumbents participate in the formulation of policy, and any suggestions initiated by them may be rejected by the Assistant Commissioner who communicates directly-with the Commissioner or the Deputy." The City's Office of Municipal Labor Relations does not dispute these allegations and "takes no position" in this matter.

In Decision No. 8-72, the Board stated that

"A significant portion of [the then-incumbent's] actual duties and activities are not precisely within the examples of typical tasks set forth in his job description. Thus the record established his orientation toward management interests and his importance to the department as a, managerial employee.

Having found that the title of Principal Consumer Affairs Inspector . . . as performed the incumbent employee is managerial, it is our conclusion that he be excluded from the . . . unit . . . "[Emphasis added]

In the instant case, neither party has contended that the present incumbents are performing significantly different functions than are found in the specification for the relevant title. Therefore, absent evidence to the contrary, the Board must conclude that, -unlike the then-incumbent covered by our Decision No. 8-72, the present incumbents

are not performing, outside the job specification, managerial functions. Moreover, there is no indication that present incumbents continue the "orientation toward management interests. . ." and "importance to the Department as a management employee" which characterized the services of the prior incumbent. We also note that present Principal Consumer Affairs Inspectors are being paid salaries of \$16,685 to \$17,185, well below the minimum (\$22,243) of the City's Managerial and Executive Pay Plans.

We do not hold that the City has a continuing burden of proving the managerial status of a title once that determination has been made. We do believe, however, that the City has a responsibility to comment on a union petition asserting that the nature and circumstances of a title previously found to be managerial have substantionally changed. In the absence of a City refutation to the union contention, the Board may act, upon substantial evidence supplied by the union, to amend or reverse its prior ruling. In the instant case, we find that the four incumbents in the title of Principal Consumer Affairs Inspector are not managerial employees and are eligible to engage in collective bargaining.

A majority of the Principal Consumer Affairs Inspectors have demonstrated their desire to be represented by Petitioner by having authorized check-off of dues in behalf of said organization.

Accordingly, we shall grant the petition. In so doing, we are aware that Section 1178 of the New York City Charter, as added by referendum in 1975, provides, in pertinent part, that supervisory . . . employees shall not belong to the same collective bargaining units . . . as employees supervised by them." We believe, however, that the addition of only four employees to an already mixed supervisory/non-supervisory unit containing over four employees does not change the complexion of this unit and is, therefore, not inconsistent with the policy expressed by the amendment to Section 1178 enacted by the City Council in Local Law No. 11 of 1977.<sup>1</sup>

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,

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ORDERED that Certification No. 46E-75 (as previously amended) be, and the same hereby is, further amended to include the title of Principal Consumer Affairs Inspector, subject to existing contracts, if any.

DATED: New York, New York  
March 21, 1977

ARVID ANDERSON  
CHAIRMAN

WALTER L. EISENBERG  
MEMBER

ERIC J. SCHMERTZ  
MEMBER

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

Principal Consumer Affairs Inspector      33994