OFFICE OF COLLECTIVE BARGAINING
BOARD OF CERTIFICATION

In the Matter of the Application

-of-

THE CITY OF NEW YORK,
Petitioner,

To Consolidate certain Certifications issued to

DISTRICT COUNCIL 37, AFSCME, AFL-CIO

-and-

NURSES ASSOCIATION OF THE DEPARTMENT OF HEALTH

DECISION NO. 28-78

DOCKET NO. RE-88-78

DECISION AND ORDER

This matter was commenced with the filing of the petition of the City of New York, by its Office of Municipal Labor Relations, on January 30, 1978. The petition seeks an order of this Board consolidating a collective bargaining unit of approximately 1,800 employees in some fifty-seven public health service titles covered by Certification 46F-75 (as amended), (hereinafter "Unit I"), with a collective bargaining unit of approximately ninety-one public health nurses - Registered Nurses (Per Session) - covered by Certification 9 NYCDL No. 38 (as amended), (hereinafter "Unit II"). Unit I is represented by District Council 37, AFSCME, AFL-CIO (hereinafter "D.C. 37"); Unit II is represented by Nurses Association of the Department of Health of the City of New York (hereinafter "the Association").

D.C. 37 has taken no position with regard to the petition. The Association filed its Answer on February 10, 1978, opposing the petition and demanding that the Association be afforded an "opportunity . . . to be heard."

Duly noticed oral argument was held before the Board at its offices on May 1, 1978, at which representatives of the City of New York and of the Association appeared and were heard, respectively, in support and in in opposition to the unit consolidation requested in the petition.

Positions of the Parties

The City maintains that employees in Units I and II perform related work, have similar education, experience and skills, and thus share a community of interest. The petition alleges, moreover, that the proposed consolidation, by reducing the number of units with which the City must bargain and the number of contracts it must negotiate and administer, would foster the implementation of a uniform labor relations policy, effect economies of time, money and effort, promote efficiency in the operation of the public service and further sound labor relations.

The Association argues that it has acted as collective bargaining representative of its members in full conformity with all requirements of the New York City Collective Bargaining Law (the "NYCCBL") and the Revised Consolidated Rules of the Office of Collective Bargaining; that the proposed consolidation would wrongfully deprive the "Association of its right to continue to function"; would contravene the policy underlying the NYCCBL as set forth in §1173-2.0 thereof; and would violate the provisions of §1173-4.1 of the NYCCBL granting to public employees rights of self-organization and the right to bargain collectively through representatives of their own choosing. It is claimed by the Association that the petition herein "attempts to deprive the respondent" of "the fullest freedom of exercising the rights" granted under the NYCCBL, and claims that the term "community of interest of the employees" as used in Rule 2.10 of the Rules of the OCB, which deals with determination of appropriate units, refers to employees not yet certified and not to employees, such as those represented by respondent, "who have already obtained certification" and whose "interests . . . have for years been fully and duly protected . . . " The Association alleges that it "has large vested interests" which would be disrupted by the grant of the City's petition and claims that Association members would be deprived of property rights without due process of law.

Discussion

The New York City Collective Bargaining Law was enacted pursuant to the option created by Section 212 of the Taylor Law under which local governments are permitted to adopt provisions and procedures "substantially equivalent" to the Taylor Law.

It is the clear purpose of both laws to promote collective bargaining as the preferred means of regulating the relationships between governments and public employees; and, in furtherance of this purpose, to grant rights of organization, choice of representatives and other protections of public employee exercises of their rights (NYCCBL §1173-2.0; Taylor Law §200). There is, however, no evidence of legislative intent to protect unions, as such, or to vest unions with special rights or prerogatives as a result of certification. In other words, the essential concerns in the issuance of any certification relate to protection of public employee rights of organization and collective bargaining on the one hand, and, on the other, to the protection of the public interest, of efficiency in government and the maintenance of a sound system of municipal labor relations NYCCBL §1173-5.0 b). Any benefit which may redound to a union in the process is incidental. A union may thus

validly maintain any given position, argue effectively for any particular resolution of a question of representation, only to the extent that the end which it seeks corresponds both with the wishes of a majority of the affected employees and with the maintenance of a rational and workable labor-management relationship.

One of the reasons for the inclusion in the Taylor Law of provision for a separate and different, albeit "substantially equivalent," New York City public sector labor relations law, was the recognition that New York City was far in advance of the rest of the state in the introduction of collective bargaining practices in public sector employer-employee relations. Mayoral executive orders predating the Taylor Law and the NYCCBL, for instance, had permitted New York City employees to organize and join labor unions for more than ten years prior to enactment of those laws. That right had been exercised to such a degree that by the time the Taylor Law was enacted, mandating that all public employees in New York State be afforded the right to organize and join unions and to bargain collectively with their employers, there were already in New York City approximately 500 bargaining units of municipal employees. Some of these units were affiliates of unions representing other municipal employee units;

others were purely ad hoc, independent associations. Certification by the New York City Department of Labor in the pre-Taylor Law period was based to a considerable degree on the building block policy of encouraging union organization. Thus, extent of organization by title and department was a major factor in unit determinations. Representative status was thus achieved, not on the basis of any such comprehensive criteria as in the present statute, but upon the degree of success enjoyed by a union seeking formal representation status in its organizational efforts up to the time of certification. Thus, whereas PERB, the agency which administers the Taylor Law, was able to decree, shortly after the law came into effect, that collective bargaining at the state level would be conducted with six bargaining units,[1] the Office of Collective Bargaining commenced its administration of the NYCCBL with an existing bargaining structure of many hundreds of bargaining units. Two things were apparent to the drafters of the New York City law: first, that this patchwork structure must be set in order both in terms of reduction of the number of units and of the composition of units; and, second, that the restructuring would necessarily be a slow and gradual process.

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[1] Employees of the State of New York, excluding professional employees of the State University and members of the State Police were initially dealt with in New York State, AFSCME -and- CSEA, 1 PERB 424, and the Court of Appeals affirmed the finding in CSEA v Helsby, 25 NY 2d 842 (1969).

The legislative intent as to both points is evidenced in the provisions of Section 1173-10.0 of the NYCCBL, which reads, in pertinent part, as follows:

> c. Certificates or designations issued by the department of labor prior to the effective date of this chapter and in effect on such date shall remain in effect until terminated by the board of certification pursuant to its rules. Nothing contained in this subdivision shall limit the power of the board of certification to determine bargaining units differing from those determined by the department of labor.

The quoted language clearly contemplates changes in the pre-act bargaining structure and authorizes this Board to make such changes;[2] the provision also recognizes the need for an orderly adaptation of existing structures and relationships to the conditions created by enactment of the new laws, and, instead of mandating the immediate and chaotic invalidation of all pre-act certifications, directs that existing certifications continue in effect until changed by the Board.

We have acted in pursuance of this mandate and have reduced the number of units with which the City must negotiate from the approximately 500 which existed when the NYCCBL became effective to 87 units at this time.

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[2] Decisions Nos. 17-70, 62-71.

In our earliest decisions, we recognized the legislative mandate for a rationalization of unit composition. We then commenced a policy of reducing the great number of units and created new units based on broad occupational groups. We have constantly resisted fragmentation of units and have favored the certification of large comprehensive units including as many employees and titles as may practicably and effectively be expected to bargain as single entities. Our well-settled policy favoring the consolidation of units is clearly consistent with these ends and in conformity with the legislative intent.[3]

Unit II, the unit represented by the respondent Association, was certified by the New York City Department of Labor in 1967, prior to enactment of the NYCCBL. No finding as to the appropriateness of that unit pursuant to §1173-10.0c has ever been made by this Board. The City of New York, as public employer under the terms of the NYCCBL and of the Taylor Law, is entitled to a finding as to the appropriateness of the unit here in question, and by its petition herein now seeks such a finding. The authority and duty of this Board to make such findings in conformity with §1173-10.0c is in no way diminished by any of the arguments advanced by respondent Association. We will there-

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[3] District Council 37, AFSCME - and - City of New York, Decision No. 68-74:

"Indeed, this statutory responsibility embraces not only the certification of new representatives in appropriate bargaining units, but also entails a duty to monitor and reexamine on a continuing basis all existing bargaining units with a view to promoting efficient operation of the public service and sound labor relations."

fore proceed to consideration of the unit finding sought in the petition.

All of the employees represented by the respondent Association are Registered Nurses (Per Session) employed by the New York City Department of Health.

Unit II, the unit with which the City seeks to have Unit I consolidated consists of various health care titles such as Medical Record Librarians, Institutional Inspectors, Psychologists, Anaesthetists, Public Health Sanitarians, and other Public Health titles, including Public Health Nurses (Session). The latter are in almost every detail, identical with the Registered Nurses (Per Session), who comprise the unit represented by respondent Association.

The respective job specifications for the two titles read, in pertinent part, as follows:

REGISTERED NURSE (PER SESSION)

Under supervision, performs professional nursing duties in a public health nursing program in a school or clinic setting.

Qualification Requirements

New York State Registered Professional Nurse License.

Lines of Promotion

None, non-competitive.

PUBLIC HEALTH NURSE (SESSION)

Under supervision, performs public health nursing functions in a general public health nursing program.

Qualification Requirements

New York State license as a Registered Nurse and certification as a Public Health Nurse (Grade III).

Lines of Promotion

None, non-competitive.

The similarities between the Registered Nurse (Per Session) and Public Health Nurse (Session) titles approach the point of identity. Both require candidates to be licensed Registered Nurses; the duties and functions are almost identical; both are in the non-competitive class of the Civil Service. Far more disparate titles are included in single units as a matter of regular practice by this Board as well as by analogous labor relations agencies such as the National Labor Relations Board and the New York State Public Employment Relations Board.[4] We find that the employment of these titles in the City's health services, their similar public health nursing functions and duties, their identical educational backgrounds and licensed professional status constitute a community of interest such as to warrant their inclusion in a single unit.

Historically, the title Registered Nurse (Per Session) has bargained as a separate, single title unit. Intervenor - Association maintains that the majority of these employees would favor a continuation of this condition as certified by the Department of Labor; assuming, arguendo, that the

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[4] In one such case, City of New York - and - D.C. 37, AFSCME, Decision No. 31-74, we said:

> "As for the issue of community of interest, while there are differences in job duties and no common line of progression or transfer from among the various job titles . . . we find such differences no bar to consolidation . . . "

Intervenor - Association is correct that such would be the choice of a majority of Registered Nurses (Per Session), we do not accept the further contention of the Association that this preference on the part of its members is a bar to the grant of the petition herein. The Association recognizes that the statutory guarantee to public employees of "the fullest freedom of exercising the rights granted" under the NYCCBL is coupled in §1173-5.0 b(1) with the proviso that it be "consistent with the efficient operation of the public service and sound labor relations" but simply denies that there is any inconsistency with the terms of the proviso in the separate certification of the unit of Registered Nurses (Per Session). With this we do not agree. Applying this reasoning on a general basis rather than in the single case now before us, we would have left largely undisturbed the more than 500 units in existence when we began our stewardship of municipal labor relations. Each collective bargaining unit is one more entity with which the City of New York must bargain collectively; as to each there is a separate contract which must be administered by the City; each such contract generates separate grievances and requires discrete interpretation and arbitration; all of which tends to produce dissimilar terms and conditions of employment for essentially similar employees.

It is our view that it is precisely this kind of duplicate activity and disparate result which is intended to be eliminated by the quoted proviso of §1173-5.0 b (1). It is this view which has informed our well-settled policy of favoring the consolidation of pre-act bargaining units, and the effort we have consistently maintained throughout our administration of the NYCCBL by reducing the number of bargaining units, resisting the fragmentation of units and seeking the development of broad, comprehensive multi-title units.[5] In the formulation and implementation of this policy, while giving due weight to issues of community of interest and the wishes of affected employees, we have also maintained the balance, as mandated by our statute, between these considerations and those of promoting the efficient operation of the public service and sound labor relations. In contemplation of this policy and practice as well as the underlying legislative intent of the drafters of the NYCCBL, units such as the single-title unit represented by the Intervenor are clearly inappropriate.

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5 As we said in Decision No. 31-74, supra:
"The Board has found that such policy objectives (consolidations) are justified by the need to simplify and reduce the task of negotiations, and the desirability of achieving greater uniformity of conditions among similar classes of employees whose community of interests are similar and not diverse (Decisions Nos. 44-68 and 41-73)."

We find that Certification No. 46F-75 (as amended), covers approximately 1,800 employees of whom approximately 1,400 are on voluntary dues checkoff to D.C. 37. Therefore, D.C. 37 represents a majority of the employees in the unit, as consolidated herein, including the 91 Registered Nurses (Per Session).

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 Certification 9 NYCDL No. 38 (as amended) and Certification No. 46F-75 (as amended) be, and the same hereby are, combined and consolidated so as to constitute one bargaining unit (to be cited by the present Decision Number), consisting of the titles set forth in the Appendix to this Order; and it is hereby

CERTIFIED that District Council 37, AFSCME, AFL-CIO, is the exclusive representative for the purposes of collective bargaining of all employees in the consolidated unit.

DATED: New York, New York

May 31 , 1978.

ARVID ANDERSON
Chairman

WALTER L. EISENBERG
Member

ERIC J. SCHMERTZ
Member

Appendix

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

Anaesthetist	53101
Assistant Director of Rehabilitation	60385
Assistant Public Health Adviser(C.D.C.)	51190
Audiologist	51238
Chief Psychologist	52170
Communicable Disease Case Finder (CETA)	09363
Consultant Public Health Nurse (including specialties)	51012/21
Dental Assistant	50101
Dental Hygienist (including CETA)	50102, 09446
District Supervising Public Health Nurse	51065
Doctor's Aide (CETA)	09226
Environmental Health Technician	51380
Health Aide	51102
Institutional Inspector	31415
Junior Public Health Nurse	51008
Medical Record Librarian	50811
Medical Utilization Review Analyst	00121
Nutritionist (including JOP)	50410, 09534
Nutritionist Trainee	50405
Occupational Therapist	51210
Patient Care Review Analyst (CETA)	00266
Pediatric Nurse Associate	95440
Physical Therapist	51211
Physician Assistant	00173
Physician's Assistant (incl. CETA)	52700, 09297

Principal Institutional Inspector	31465
Principal Nutritionist	50465
Principal Public Health Sanitarian	31260
Psychologist	52110
Public Health Adviser (C.D.C.)	51191
Public Health Assistant (incl. CETA)	81805, 09451
Public Health Epidemiologist	51181
Public Health Nurse	51011
Public Health Nurse (Session)	51006
Public Health Sanitarian	31215
Public Health Sanitarian Trainee	31211
Registered Nurse (Per Session)	51003
Rehabilitation Counselor	51213
Senior Anaesthetist	00124
Senior Institution l Inspector	31435
Senior Medical Record Librarian	50836
Senior Medical Utilization Review Analyst	00275
Senior Occupational Therapist	51235
Senior Physical Therapist	51236
Senior Psychologist	52135
Senior Public Health Adviser (C.D.C.)	51192
Senior Public Health Sanitarian	31235
Senior Rehabilitation Counselor	51215
Senior Speech and Hearing Therapist	00195
Speech and Hearing Therapist	51212
Supervising Audiologist	51240
Supervising Dental Assistant	00221
Supervising Institutional Inspector	31455
Supervising Medical Record Librarian	50837
Supervising Nutritionist	50460
Supervising Public Health Nurse	51060
Supervising Public Health Sanitarian	31255
Supervising Therapist	51241