

City, et. Al v. DC37, 22 OCB 51 (BOC 1978) [Decision No. 51-78 (Cert.)]

OFFICE OF COLLECTIVE BARGAINING  
BOARD OF CERTIFICATION

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In the Matter of

CITY OF NEW YORK

DECISION NO. 51-78

-and-

DOCKET NOS. RE-98-78  
RU-676-78  
RU-679-78  
RU-680-78

SCHOOL CROSSING GUARDS ASSOCIATION  
OF THE CITY OF NEW YORK, INC.

-and-

DISTRICT COUNCIL 37, AFSCME,  
AFL-CIO

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DECISION  
AND  
DIRECTION OF ELECTION

On June 30, 1978, the City of New York filed a petition in Docket No. RE-98-78, requesting the termination of Certification No. 26-75, covering School Crossing Guards, held by Crossing Guards Association, on the ground that

"About July 1, 1976, as a result of the fiscal emergency, all incumbents in this non-competitive title were terminated. Since the title is non-competitive, the incumbents retained no rights to be recalled. Under these unusual circumstances, it seems inappropriate to continue the status of SCGA as certified representative of the title."

On August 4, 1978, the School Crossing Guards Association filed a petition in Docket No. RU-679-78, requesting the amendment of Certificate No. 46A-75 (as amended), held by District Council 37, AFSCME, AFL-CIO, by deleting School Crossing Guards (CETA) therefrom, on the ground that

"This [CETA] program was of a temporary nature ... incumbents in this non-competitive title were terminated at the end of the school year June 1978. Since this title is noncompetitive, the incumbents retained no rights to be recalled..."

On July 28, 1978, District council 37 filed a petition in Docket No. RU-676-78, requesting certification to represent School Crossing Guards. The School Crossing Guards Association intervened in this matter.

On August 14, 1978, the School Crossing Guards Association filed a petition in Docket No. RU-680-78, requesting certification to represent "new" School Crossing Guards.

The above mentioned cases were consolidated by Decision No. 44-78, issued August 18, 1978. On the same date, the Board requested that the parties express their views to the Board on the following question:

"Should the Board order an election in a separate unit of School Crossing Guards to determine the desires of the majority as to the choice of the exclusive collective bargaining representative? ... In addition, any other issues the parties may wish to raise should be brought before the Board at this time."

In response to the Board's request, the School Crossing Guards Association, by letter of August 30, 1978, declared, that "it is urgent that collective bargaining negotiations be commenced immediately" and "it is imperative that the issue of representation be settled with dispatch." The Association

stated that "we will consent to an immediate election in order to give all the school crossing guards an equal opportunity to freely select the representative of their choice."

The City of New York, by letter of August 29, 1978, stated:

"Given the circumstances and history surrounding the creation and organization of the titles of School Crossing Guard and School Crossing Guard (CETA) it would seem appropriate for the Board to direct an election in a unit composed of both titles."

District Council 37 asserted, by letter of September 7, 1978, that "no election is warranted" and that "it seems logical to accrete [newly hired school crossing guards] into the unit representing the employees who most recently performed the function of that position, the unit represented by District Council 37." However, D.C. 37 also stated:

"If the Board should determine that an election should be ordered in this matter, D.C. 37 would be willing and able to participate."

### Background

The complex labor relations history of employees performing school crossing guard duties is set forth at length in Board Decision No. 22-78. For purposes of this decision we need only restate the facts that for a number of years School Crossing Guards were represented by the School Crossing Guards Association pursuant to Certification CWR 106/67, that

in 1975 all School Crossing Guard were laid off as a result of the fiscal crisis, that after a time federally-funded School Crossing Guards (CETA) were hired and these employees were accreted to a large unit represented by D.C. 37 in Certification 46A-75 (as amended), and, most recently, because tax levy funds became available, School Crossing Guards (CETA) have been reappointed in the title of School Crossing Guard and additional School Crossing Guards have been hired. As of the date of this decision, there are approximately 2,250 School Crossing Guards employed by the City.

From this brief summary it is manifest that a fluid situation exists with respect to the appointment and nomenclature of School Crossing Guards. Furthermore, School Crossing Guards have no reappointment rights upon layoff, and their employment has varied over recent years, depending on budget exigencies of the City of New York and the availability of federal funds. Clearly, School Crossing Guards are a unique group of employees in that they are most unusually circumstanced. Therefore, there seems to be ample justification, at this time, for maintaining School Crossing Guards in a separate bargaining unit.

All three parties to this proceeding have indicated their willingness to have the School Crossing Guards decide in a secret ballot election whether they wish to be represented by the School Crossing Guards Association, by District Council 37, or by neither. Therefore, we shall direct an election in a unit of School Crossing Guard and School Crossing Guard (CETA).

DIRECTION OF ELECTION

Pursuant to the powers vested in the Board of Certification by the New York City Collective Bargaining Law, it is hereby

DIRECTED that an election by secret ballot shall be conducted under the supervision of the Board or its agents, at a time, place, and during hours to be fixed by the Board, among School Crossing Guards and School Crossing Guards (CETA) employed or hired by the City of New York as of September 22, 1978, other than those employees who have voluntarily quit, retired, or who have been discharged for cause, before the date of the election, to determine whether they desire to be represented for the purposes of collective bargaining by District Council 37,

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AFSCME, AFL-CIO; by School Crossing Guards Association of the  
City of New York, Inc.; or by neither.

DATED:       New York, N.Y.  
              September 22, 1978

ARVID ANDERSON  
CHAIRMAN

ERIC J. SCHMERTZ  
MEMBER