

DC37, City v. OTB, 22 OCB 54 (BOC 1978) [Decision No. 54-78
(Cert.)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF CERTIFICATION

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In the Matter of

DISTRICT COUNCIL 37, AFSCME,
AFL-CIO

DECISION NO. 54-78

DOCKET NO. RU-663-78

-and-

THE CITY OF NEW YORK

-and-

NEW YORK CITY OFF-TRACK BETTING
CORPORATION

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DECISION AND DESIGNATION OF
REPRESENTATIVE

On May 31, 1978, District Council 37, AFSCME, AFL-CIO, filed a petition for designation as the collective bargaining representative for all employees of the New York City Off-Track Betting Corporation for matters which must be uniform for all such employees.

We find and conclude that the New York City Off-Track Betting Corporation is a "department" for the purposes of Section 1173-4.3a(3) of the New York City Collective Bargaining Law. (Cf. Decisions 92-70, 2-72 and 6-74)

Our investigation establishes that District Council is the certified representative of bargaining units which include a majority of the employees of the New York City Off-Track Betting Corporation.

Local 803, I.B.T., has applied to intervene herein "on the basis of its status as the exclusive collective bargaining representative of employees in the title branch Office Manager (OTB)." In support of its application, Local 803 states only that it "has no knowledge of which matters District Council 37 contends must be uniform for all OTB employees."

Section 1173-4.3a. of the NYCCBL reads, in pertinent part, as follows:

"... public employers and certified or designated employee organizations shall have the duty to bargain in good faith on wages (including but not limited to wage rates, pensions, health and welfare benefits, uniform allowances and shift premiums), hours (including but not limited to overtime and time and leave benefits) and working conditions, except that:

* * *

"(3) matters which must be uniform for all employees in a particular department shall be negotiated only with a certified employee organization, council or group of certified employee organizations designated by the board of certification as being the certified representative or representatives of bargaining units which include more than fifty per cent of all employees in the department."

The law thus clearly contemplates the coexistence of occupational and departmental units.

The point raised here by Local 803, I.B.T., is immaterial to the question of departmental representation before us. The respective rights and duties of occupational unit and departmental unit representatives are defined by the statute. Each has the right and duty to oppose incursions upon its area of

jurisdiction. Local 803 makes no affirmative allegation of any such incursion here; rather it appears to speculate or anticipate that such an incursion might occur if the instant petition were granted. This does not constitute a basis for denial of the petition. The law affords adequate protection to the interests of the unit represented by Local 803, I.B.T., but these safeguards may not be invoked on the basis of speculation or anticipation of possible harm. Accordingly, we deny Local 803's application to intervene herein.

City's Position

The City's Office of Municipal Labor Relations opposes this petition on the ground that "'departmental' bargaining certificates are an archaic relic of the formative years of collective bargaining". In support of this position, the City alleges that

"... there are no longer subjects that are appropriate for bargaining at a department level. Either matters are of common concern to all municipal employees, in which case they are resolved on a City-wide basis, or they are of particular interest to an appropriate bargaining unit, in which case they are dealt with by the representative of that unit."

The City concludes that

"The existence of department certificates ... by adding another level of bargaining ... will only serve to increase litigation on questions of proper bargaining levels and increase opportunities for labor organizations to, in effect, get at a department level, that which they cannot achieve elsewhere..."

Discussion

The Board can only reiterate what it said in its Decision No. 19-78, granting D.C. 37's petition for amendment of a previous departmental designation to cover all employees of the Department of Parks and Recreation:

"... section (1173-4.3a(3)] remains a part of the law, and petitions for designations thereunder must be processed by this Board. To agree with the City's position would require this Board to ignore the clear provisions of the City law which the Board is charged with the responsibility to administer. The claims made by the City of New York in support of its position herein would more appropriately be addressed to the City Council. We recommend to the parties that the question raised by the City as to the viability of departmental bargaining certificates be jointly considered by the office of Municipal Labor Relations, the Municipal Labor Committee and this Office in contemplation of possibly recommending to the City Council an amendment to the NYCCBL."

Accordingly, we shall grant the instant petition.

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

ORDERED that District Council 37, AFSCME, AFL-CIO, be, and it hereby is, designated as the representative for collective bargaining purposes of all employees of the New York City Off-Track Betting Corporation on matters which must be uniform for all such employees.

DATED: New York, N.Y.
September 27, 1978

ARVID ANDERSON
CHAIRMAN

ERIC J. SCHMERTZ
MEMBER