

L.32B-32J, et. Al v. City, 22 OCB 61 (BOC 1978) [Decision No. 61-78 (Cert.)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF CERTIFICATION

-----X

In the Matter of

LOCAL 32B-32J and LOCAL 144, SERVICE
EMPLOYEES INTERNATIONAL UNION, AFL-CIO,
Petitioners,

-and-

DECISION NO. 61-78

DOCKET NO.

RU-669-78

COMMUNITY AND SOCIAL AGENCY EMPLOYEES
UNION, DISTRICT COUNCIL 1707, AFSCME,
AFL-CIO,

Intervenor,

-and-

DISTRICT COUNCIL 37, AFSCME, AFL-CIO,

Intervenor,

-and-

THE CITY OF NEW YORK AND RELATED
PUBLIC EMPLOYERS

-----X

In the Matter of

LOCAL 32B-32J and LOCAL 144, SERVICE
EMPLOYEES INTERNATIONAL UNION, AFL-CIO,

Petitioners,

-and-

DOCKET NO.

RU-673-78

DISTRICT COUNCIL 37, AFSCME, AFL-CIO,

Intervenor,

-and-

THE CITY OF NEW YORK AND RELATED
PUBLIC EMPLOYERS

-----x

ORDER OF DISMISSAL

On June 22, 1978, Local 32B-32J, SEIU, AFL-CIO (herein-
after Local 32B-32J), filed a petition seeking certification as
the collective bargaining representative of 162 persons working
as Home Attendants for the Human Resources Administra-

tion (hereinafter HRA).

On June 29, 1978, Local 32B-32J filed a petition seeking certification as the collective bargaining representative of 30 persons working as Housekeepers in the Home Care Program of Harlem Hospital, a facility of the Health and Hospitals Corporation (hereinafter HHC).

On November 16, 1978, the petitions in the two cases were amended, at the request of Local 32B-32J, to add Local 144, SEIU, AFL-CIO (hereinafter Local 144) as a petitioner.

On September 20, 1978, the City of New York, appearing by its Office of Municipal Labor Relations (hereinafter OMLR), filed an objection to the petitions. OMLR argued that the petitions seek representation of individuals who are independent contractors and not employees as contemplated by the New York City Collective Bargaining Law (hereinafter NYCCBL) and, therefore, the Board of Certification is without jurisdiction to grant the relief requested in the petitions.

On September 20, 1978, Community and Social Agency Employees Union, District Council 1707, AFSCME, AFL-CIO (hereinafter D.C. 1707), moved to intervene in RU-669-78 (Home Attendants).

On September 26, 1978, District Council 37, AFSCME, AFL-CIO (hereinafter D.C. 37), filed a motion to intervene in RU-669-78 (Home Attendants), requesting that the title be accreted to its Certification 37-79. On October 6, 1978,

D.C. 37 filed a motion to intervene in RU-673-78 (Housekeepers), requesting accretion to its Certification No. 37-78 of the Housekeeper in the Home Care Program title on a city-wide basis. D.C. 37 stated it was not seeking representation of individuals in the title working only in Harlem Hospital, as specified in the petition, but was seeking to represent all individuals working in the title city-wide.

On November 8, 1978, OMLR pursuant to an informal agreement of the parties informed the Office of Collective Bargaining (OCB) and the parties that HRA had determined that as of November 2, 1978, there were 11,783 individuals working as Home Attendants. OMLR also informed OCB and the parties that HHC had determined that there were 72 individuals working as Housekeepers in the Home Care Program in Harlem Hospital and that a total of 179 individuals work as Housekeepers in the six HHC facilities which presently conduct home care programs.

By November 15, 1978, Local 32B-32J and Local 144 had filed a total of 4071 cards signed by persons allegedly employed as Home Attendants, authorizing petitioners to represent the signatories for purposes of collective bargaining. The authorization cards were submitted to the Board as proof of interest in RU-669-78 (Home Attendants) as required by the Revised Consolidated Rules of the OCB, section 2.3. The rule specifies a 30% proof of interest which, in this

case, requires 3535 valid authorization cards based on the number of persons working as Home Attendants on November 2, 1978.

Because a majority of the authorization cards were filed late in the day on November 15, 1978, the Board of Certification on November 17, 1978 ordered the hearing scheduled for November 20, 1978 in these matters adjourned to allow the OCB Representation Division time to conduct a preliminary investigation of whether petitioners had filed a valid and sufficient proof of interest in each proceeding.

The OCB Representation Division has reported to the Board that from a preliminary examination of the 4071 authorization cards filed in RU-669-78 (Home Attendants), 748 cards are invalid on their face as being duplicates or unsigned. In addition, 156 other cards either do not conform to the dating proviso of Rule 2.6 or appear to be otherwise invalid. Thus, petitioners have failed to submit the required 30% proof of interest (3535 valid cards) and we, accordingly, dismiss the petition filed in RU-669-78.

Local 32B-32J had filed on June 29, 1978 a total of 13 representation authorization cards signed by persons allegedly working as Housekeepers in the Home Care Program of Harlem Hospital. The submission of 13 apparently valid authorization cards by petitioner in RU-673-78 fails to satisfy the required 30% Proof of interest in the unit Petitioned for,

Housekeepers in a single hospital (Harlem Hospital). Therefore, we dismiss the petition filed in RU-673-78 for failure to satisfy the proof of interest requirement.

Our dismissal of the petitions in each proceeding is without consideration of whether the units petitioned for are appropriate or whether the individuals petitioned for are employees as contemplated by the NYCCEL. In addition, we have not considered whether all the individuals, even if found to be within the statutory definition of employees, work with sufficient regularity that their employment relationship is not of such a casual nature as to make them ineligible for representation under the NYCCBL.¹

As the petitions herein are dismissed, the motions to intervene in the proceedings filed by D.C. 1707 and D.C. 37 are accordingly dismissed.

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

¹ See, for example, Decision 1-77, CWA and Board of Elections.

Decision No. 61-78
Docket Nos. RU-669-78
RU-673-78

6

ORDERED that the petitions filed herein by Local 32B-32J and Local 144, SEIU, AFL-CIO be, and the same hereby are, dismissed, and it is further

ORDERED that the motion to intervene in RU-669-78 filed by Community and Social Agency Employees Union, District Council 1707, AFSCME, AFL-CIO be, and the same hereby is, dismissed, and it is further

ORDERED that the motion to intervene in RU-669-78 filed by District Council 37, AFSCME, AFL-CIO be, and the same hereby is, dismissed, and it is further

ORDERED that the motion to intervene in RU-673-78 filed by District Council 37 be, and the same hereby is, dismissed.

DATED: New York, N.Y.
November 30, 1978

ARVID ANDERSON
CHAIRMAN

WALTER L. EISENBERG
MEMBER

ERIC J. SCHMERTZ
MEMBER