

City v. L.1199, et. Al, 22 OCB 66 (BOC 1978) [Decision No. 66-78 (Cert.)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF CERTIFICATION

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In the Matter of

THE CITY OF NEW YORK,
Petitioner,

Decision No. 66-78

To Consolidate certain Certifications
Issued to

Docket No. RE-89-78

DISTRICT 1199, NATIONAL UNION OF
HOSPITAL AND HEALTH CARE EMPLOYEES,
RWDSU, AFL-CIO,

Respondent.

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DECISION AND ORDER

On January 30, 1978, the City of New York, appearing by its office of Municipal Labor Relations (hereinafter OMLR), filed a petition requesting consolidation of Certification No. 35-69 (as amended), which covers 353 employees in the Pharmacist series of titles (hereinafter Unit I), with Certification No. 24-74 (as amended), which covers 259 employees in the Dietitian series of titles (hereinafter Unit II). Both Certifications are held by District 1199, National Union of hospital and health Care Employees, RWDSU, AFL-CIO (hereinafter the Union), which opposes the requested consolidation of bargaining units.

In a letter dated March 29, 1978, the Union set forth its opposition to the proposed consolidation and requested a hearing on issues it raised before the Board of Certification (hereinafter the Board). Duly noticed oral argument was held before the Board at its offices on October 4, 1978, at which time representatives of OMLR and the Union appeared

and were heard, respectively, in support of and in opposition to the unit consolidation requested in the petition.

Six petitions in opposition to the proposed consolidation, signed by persons purportedly employed as pharmacists in facilities operated by the Health and Hospitals Corporation, were filed with the Office of Collective Bargaining during March and April 1978. Our determination herein considers the positions of the parties as argued by their representatives.

Positions of the Parties

OMLR, in its petition, alleges that the consolidation of Units I and II will further the efficient operation of the public service and enhance sound labor relations by reducing the number of negotiations and contracts into which the City must enter, "which will result in a considerable economy of time, money and effort." The City also maintains that, as a result of consolidation, "the opportunity for small units to 'leapfrog' and 'whipsaw' one another will be reduced, and (the City] will be better able to implement a uniform labor relations policy." OMLR alleges, further, that the proposed consolidation is consistent with the policy expressed in the New York City Collective Bargaining Law (NYCCBL) and consistently applied by the Board of favoring larger bargaining units over small fragmented units.

The City claims that there exists a community of interest between pharmacists and dietitians, since both groups of employees work, for the most part, for the health and Hospitals Corporation and because both have selected the same bargaining agent. OMLR further notes that all title employees involved herein are health professionals with similar training, i.e., college level training in a professional capacity, and are part of an integrated scheme of patient care. In addition, OMLR alleges that employees in both units are covered by the same salary plan, they have substantially the same fringe benefits and the same pattern of personnel practices ,governs both groups.

Union opposes consolidation because, it argues, there is no mutuality of interest between the two groups of employees and, therefore, collective bargaining will not be facilitated by permitting the proposed consolidation. The Union contends that pharmacists and dietitians have little or no work contact with each other; their job duties are unrelated; their supervision is different; and their wages, fringe benefits, hours and working conditions are not the same. The Union also points out that pharmacists are paid several thousand dollars a year more than dietitians; that the educational, licensing and hiring qualifications for pharmacists and dietitians differ greatly; and that there is no interchange of positions from one unit to the other.

The Union further argues that consolidation is not appropriate because it, as the representative of both units involved herein, opposes the proposed consolidation. The Union points out that pharmacists and dietitians have separate and different bargaining histories and the City has negotiated, without any apparent problems, more than one contract with each unit.

The Union concludes that the sole basis for the proposed consolidation of the two units is greater efficiency for the City. The Union argues, however, that the lack of community of interest between the two units and their differing bargaining histories outweigh any consideration of greater efficiency for the City and, indeed, militate against consolidation.

OMLR, in reply, agrees that the job duties, type of responsibilities, working conditions and job qualifications are not identical for the two groups of employees, but argues that such factors concern job classification, a matter within the jurisdiction of the Department of Personnel. The Board of Certification, the City notes, groups employees by a different set of criteria. Under the Board's criteria, the City continues, the differences between the two groups of employees cited by the Union are not considerable, do not involve conflicts of interest and can be dealt with in collective bargaining.

The City contends, moreover, that the Board in the past has consolidated pre-existing units with individual bargaining histories where consolidation was, as in the instant matter, consistent with statutory guidelines and Board policy.

Discussion

Section 1173-5.0b(1) of the NYCCBL gives the Board of Certification the power and duty "to make final determinations of the units appropriate for purposes of collective bargaining between public employers and public employee organizations."

The criteria employed by the Board of Certification in unit determination are set forth in Rule 2.10 of the OCB Consolidated Rules:

- §2.10 Appropriate Units--Determination.
In determining appropriate bargaining units, the Board will consider, among other factors:
- a. Which unit will assure public employees the fullest freedom in the exercise of the rights granted under the statute and the applicable executive order;
 - b. The community of interest of the employees;
 - c. The history of collective bargaining in the unit, among other employees of the public employer, and in similar public employment;
 - d. The effect of the unit on the efficient operation of the public service and sound labor relations.

* * *

Since early 1968, the Board has pursued a policy of developing a coherent and viable bargaining structure by consolidating units along broad occupational lines and curbing the proliferation of bargaining units by accreting new titles to existing units where appropriate. In Decision 44-68, we held that the policy of reducing the number of bargaining units "is essential to the effectuation of the purposes and policies of the statute and the proper functioning of the collective bargaining process, and should be applied wherever it is possible to do so without severe dislocation or inequities." Since that 1968 decision, the Board has consistently adhered to the policy therein stated.

Our investigation reveals that the instant case concerns two groups of employees of fairly comparable levels of education and training both performing professional duties in the health care service. The employees in both groups primarily work for the Health and Hospitals Corporation. Pharmacists and dietitians are represented by the same union.

The differences and distinctions between the two groups which the Union advances in support of its opposition to the petition are not sufficient to bar the consolidation of these units. The Union opposes the proposed consolidation primarily on the grounds that the differences between the two groups in job duties, working conditions, wages, hours, etc., indicate there is little or no community of interest for the employees

concerned. As we stated in Decision 12-70:

Bargaining units frequently include numerous titles in one or several related occupational groups despite differences in salary ranges, and variations in duties and promotional lines. indeed, it has been the consistent and firm policy of this board that consolidation of occupationally related titles in one bargaining unit, wherever possible 'is essential to the effectuation of the purposes and policies of the Statute and the collective bargaining process.'¹

Furthermore, in Decision 60-69 we stated:

Combining the titles herein in a single unit on the basis of similar job duties, should not be understood as a conclusion that the jobs are interchangeable or that we have made a determination as to the appropriate job classification for the employees. Job classification is the responsibility of the Civil Service Commission. Our task is to establish appropriate bargaining units of similar or related titles in a manner that will enhance sound labor relations.

Both this Board and PERB have constructed bargaining units consisting of several health-service-related occupational groups. For example, we have consolidated into a single unit such health-service titles as Public Health Nurse, Anaesthetist, Medical Record Librarian, Institutional Inspector, Nutritionist, Psychologist and Physical

This decision was upheld by the New York State Supreme court in Matter of Penta (Anderson), N.Y.L.J. March 9, 1971, p.2. (New York City., Spec. I, Carney, J.).

Therapist, among others.² In constructing the professional, scientific and technical services unit, PERB included in the one unit dietitians and pharmacists, as well as many other occupations.³

Therefore, having considered both criteria established by statute and by rule, and relevant previous decisions, we conclude that, in the instant matter, application of the policy favoring the consolidation of bargaining units of employees engaged in closely related occupations will enhance the efficient operation of the public service and sound labor relations. In addition, we are convinced that such consolidation will not deny the employees herein freedom in the exercise of their right to choose a bargaining representative, especially in view of the fact that the employees of both units herein are represented by the same bargaining representative, District 1199. The significance of differences in job duties between the two groups of employees can be fully and adequately dealt with in collective bargaining.

Decision 46-75 (Certification No. 46F-75).

State of New York, 2 PERB §3044.

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 No. 35-69 (as amended) and Certification No. 24-74 (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 1199, National Union of Hospital and health Care Employees, RWDSU, AFL-CIO, is the exclusive representative for purposes of collective bargaining of all employees in the consolidated unit, subject to existing contracts, if any, covering any or all of said employees.

DATED: New York,, N.Y.
December 20, 1978

ARVID ANDERSON
CHAIRMAN

WALTER L. EISENBERG
MEMBER

N.B. Board Member Eric Schmertz did not participate in this decision.

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APPENDIX A

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

Chief Dietitian	50370
Dietitian	50310
Head Dietitian	50335
Pharmacist	50610
Pharmacist interne	00241
Principal Chief Dietitian	50373
Principal Pharmacist	50660
Senior Chief Dietitian	50372
Senior Pharmacist	50635
Supervising Pharmacist	50650