

City v. CEU, L.237, IBT, 22 OCB 67 (BOC 1978) [Decision No. 67-78  
(Cert.)]

OFFICE OF COLLECTIVE BARGAINING  
BOARD OF CERTIFICATION

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In the Matter of

CITY OF NEW YORK

DECISION NO. 67-78

-and-

DOCKET NO. RE-94-78

CITY EMPLOYEES UNION, LOCAL 237,  
I.B.T.

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DECISION AND ORDER

On January 30, 1978, the Office of Municipal Labor Relations of the City of New York (Petitioner) filed its petition herein with the Office of Collective Bargaining, requesting consolidation of the following certifications held by City Employees Union, Local 237, International Brotherhood of Teamsters (Respondent):

Certification No. 9-77

(as amended)

Various general maintenance, inspection, stock, custodial, skilled crafts, and related titles.

Certification No. 16-77

Elevator Mechanic's Helper, Elevator Mechanic, and Foreman Elevator Mechanic.

The unit certified in No. 9-77 is composed of over four thousand employees in approximately fifty titles, covering a wide variety of job classifications. Thirty-eight percent of the employees are subject to Section 220 of the labor law of the State of New York. Unit 16-77 consists of a little over four hundred employees in three titles, all subject to Section 220.

Positions of Parties

The City urges consolidation as a means of furthering the policy of the New York City Collective Bargaining Law to foster sound labor relations by decreasing the number of units with which the City must bargain. Both units are certified to Local 237, and maintaining two separate entities will involve an unnecessary duplication of the bargaining process. Because all 9-77 and 16-77 employees are engaged generally in maintenance, operation and repair of facilities owned and/or operated by the City,,the employees enjoy a community of interest. Therefore, their terms and conditions of employment should be basically consistent. Petitioner notes that if the units are to remain separate, each one will continually attempt to obtain terms superior to those given the other. This spiralling "leapfrog" effect is cited by the City as a major cause of the fiscal crisis. Finally, petitioner points out that the consolidation of units subject to Section 220 with units that are not, has a solid basis in Board precedent. In fact, 9-77 is one such unit. Thus, the City concludes, it is not controlling in the matter of unit determination that the wages of the Section 220 employees are subject to a determination by the Comptroller (and that they are entitled to receive the prevailing rate of wage in the locality where they work) while the other employees have their wage rates set by collective bargaining.

Local 237, on the other hand, contests the proposed consolidation on the ground that this case presents a unique situation deserving of exemption from the general Board policy favoring consolidation of units. Respondent argues that the employees in Cert.16-77 possess such a variety of highly developed skills that no community of interest exists between them and the employees in 9-77. The Union also contends that it would be inappropriate to combine Section 220 and non-Section 220 units in an effort to save time because individual Section 220 determinations by the Comptroller are still required by law. Furthermore, "me-tooism" is not a threat, according to Respondent, inasmuch as Section 220 employees are guaranteed by law the prevailing wage rate.

#### Discussion

As Petitioner points out, this Board has established a policy favoring consolidation of bargaining units. As we discussed in our Decision No. 28-78, the rationale for this policy is deeply rooted in the purposes underlying public sector labor law.

The New York City Collective Bargaining Law (NYCCBL) was enacted pursuant to Section 212 of the Taylor Law under which local governments can adopt provisions "substantially equivalent" to those of the Taylor Law. One reason the Taylor Law allowed for a distinct New York City public

sector law was to give the City an opportunity to adopt a statute specifically designed to deal with its unique labor relations problems. For example, at the time of enactment of the Taylor Law, New York City had approximately 400 bargaining units of municipal employees.

Thus, unlike the State Public Employment Relations Board, the Office of Collective Bargaining was unable to start with a clean slate: OCB from its inception had to deal with a huge number of existing bargaining relationships. The drafters of the NYCCBL, in Section 1173-10.0c,<sup>1</sup> responded to this situation by allowing the inherited certifications to stand pending possible revision by the Board. This continuing power of revision contemplated the preferability of gradual change by ad hoc determinations rather than a sudden, perhaps disruptive, revamping of the City's bargaining structure. Pursuant to this statutory mandate, in the period since this Office's inception, we have reduced the number of units with which the City must negotiate from approximately 400 to the current 81.

Our practice has been to create larger units based on broad occupational groupings comprised of as many employees

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Section 10.0c. "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."

and titles as can effectively operate as an entity. In making-consolidation determinations, we have tempered the statutory guarantee to public employees of the freedom of exercising the rights of organization and choice of representative by the proviso that it be exercised in a manner "Consistent with the efficient operation of the public service, and sound labor relations." (See NYCCBL §11735.0b(1)). In balancing those two considerations, while giving due weight to the wishes of affected employees, we hold that a unit composed solely of the three titles in Cert. No. 16-77 is no longer appropriate.

Each unit is yet another entity with which the City must bargain, requiring a separate contract to be negotiated and administered, and generating its separate grievances, interpretation and arbitration. Maintaining two units in this case, both represented by Local 237, might engender dissimilar terms and conditions for basically similar employees. We find this to be in derogation of both the public interest and the legislative intent of the drafters of the NYCCBL.

Local 237 has not sufficiently demonstrated that the employees in Cert. No. 16-77 are lacking a requisite community of interest with the employees in Cert. No. 9-77. The fact that all of the employees in Cert. No. 16-77 are covered by Section 220 of the Labor Law does not argue

against the proposed consolidation, for Cert. No. 9-77, as previously noted, is already a mixed unit of Section 220 and non-Section 220 employees. Consolidation herein would result in a unit of approximately 4,920 employees, forty-four per cent of whom fall under the Section 220 heading. We, therefore, remain unconvinced that there is such an exceptional situation presented in this case as to warrant our deviating from our established policy of consolidation.

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. 9-77 (as amended) and Certification No. 16-77 be, and the same hereby are, combined and consolidated so as to constitute one bargaining unit consisting of the titles set forth in the Appendix to this Decision and Order; and it is hereby

CERTIFIED that-City Employees Union, Local 237, I.B.T. is the exclusive representative for the purposes of collective bargaining of all employees in the consolidated unit.

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

ARVID ANDERSON  
CHAIRMAN

WALTER L. EISENBERG  
MEMBER

ERIC J. SCHMERTZ  
MEMBER

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APPENDIX

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

Assistant Bridge Operator	91105
Assistant Bridge Operator (CETA)	09503
Assistant Building Custodian	80605
Assistant Stockman	12205
Blasting Inspector	31815
Bricklayer	92205
Bridge Operator	91110
Bridge Operator-in-Charge	91135
Building Custodian	80610
Cement Mason (incl. CETA)	92210,09454
Commercial Vehicle Compliance Agent (CETA)	03593
Elevator Mechanic	90710
Elevator Mechanic's Helper	90711
Firearms Control Inspector	33976
Foreman Bricklayer	92271
Foreman Elevator Mechanic	90769
Foreman Plasterer	92272
Foreman Roofer	90775
Foreman (Traffic Device Maintenance)	90935
Handyman (CETA)	03487
Harness Maker	90719
Horseshoer	92320
Hospital Security Officer	70830
Hostler (incl.,CETA)	81901,09800
Junior Building Custodian	80601
Maintenance and Control Planner	03977
Maintenance Man	90726
Maintenance Man Trainee	90784
Maintenance Planning and Control Supervisor	03978
Mason's Helper	92225

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Pipe Laying Inspector	33415
Plasterer	92235
Preventative Maintenance Inspector	00017
Principal Storekeeper	12225
Principal water Use Inspector	34660
Refrigeration Service Helper	00065
Refrigeration Service Mechanic	00066
Roofer	90735
Senior Blasting Inspector	31835
Senior Building Custodian	80635
Senior Commercial vehicle Compliance Agent (CETA)	03337
Senior Foreman (Traffic Device Maintenance)	90960
Senior Pipe Laying Inspector	33435
Senior Special Officer	70815
Senior Storekeeper	12220
Senior Taxi and Limousine Inspector	35134
Senior Transportation Inspector	35135
Senior Water Use Inspector	34635
Special officer	70810
Special Officer (CETA)	09450
Stockman	12210
Storekeeper	12215
Supervising Blasting Inspector	31840
Supervising Special Officer (except one employee)	70817
Supervising Taxi and Limousine Inspector	35140
Supervising Water Use Inspector	34655
Supervisor of Bridge Operations	91160
Supervisor of Building Custodians	80660
Taxi and Limousine Inspector	35116
Transportation Inspector	35115
Warehouse Aide (CETA)	09358
Water Meter Reader	34600
Water Use Inspector (incl. CETA)	34615,09795



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and restored rule X equivalents