L.1, et. Al v. CEU, L.237, IBT,24 OCB 25 (BOC 1979) [25-79 (Cert.)]

Office of Collective Bargaining
Board of Certification
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In the Matter of

Local 1, International Union of Elevator Constructors

Decision No. 25-79

Docket No. RU-717-79

AFL-CIO

-and-

The City of New York

-and-

City Employees Union, Local 237, International Brotherhood of Teamsters
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DECISION

On July 30, 1979, Local 1, International Union of Elevator Constructors, AFL-CIO (Local 1), filed a petition with the Office of Collective Bargaining seeking certification for a bargaining unit consisting of 433 employees in the following titles:

Elevator Mechanic's Helper
Elevator Mechanic
Foreman Elevator Mechanic.

This was followed by letters dated August 3, 1979, and August 30, 1979, in which Local 1 stated why it believed that a unit composed solely of the three above-listed titles is appropriate.

The Elevator Mechanic series of titles is currently part of a unit of 4750 employees serving in 68 titles represented by City Employees Union, Local 237, I.B.T. (Local 237). The collective bargaining agreement covering the unit expires on December 31, 1971

Local 237, by letter dated August 10, 1979, moved to intervene in the proceeding on the basis of its current status as the

exclusive bargaining representative of the petitioned-for titles. Local 237 filed a second letter on August 20, 1979, in which it stated its position that the unit petitioned-for by Local 1 is "wholly inappropriate."

The City of New York, by its office of Municipal Labor Relations, also expressed opposition to the appropriateness of the proposed unit, in a letter dated August 27, 1979.

POSITIONS OF THE PARTIES

An investigatory hearing was held concerning the appropriate unit issue on September 25, 1979. During the course of its presentation, the City made a motion, which was subsequently joined in by Local 237, to dismiss Local 1's petition based on Section 2.18 of the Revised Consolidated Rules of the Office of Collective Bargaining, which provides that when an employee organization has been certified by the Board, the certification shall remain in effect for at least one year. The City contends that, since the unit to which the Elevator Mechanic series of titles now belongs was created by Decision No. 67-78, issued on December 22, 1978, the petition of Local 1, filed in July 1979, is untimely.

As local 1 responded in its brief filed on October 22, 1979, Section 2.18 has no application to the facts of this case, since Decision No. 67-78 did not involve the certification of a new representative but rather a consolidation of two units previously certified to Local 237. The intent of Section 2.18 is to afford a newly certified employee organization a fair opportunity

(at least one year) to establish itself as a successful bargaining representative, without being subject to challenges from competing unions. Local 237 was certified as the exclusive bargaining representative of the Elevator Mechanic series of titles in July 1977, by which date it already held the bargaining certificates for the other titles that comprise the current unit. Therefore, Section 2.18 was not violated by the filing of Local l's petition in July 1979.

On the question of the appropriateness of the proposed unit, Local 1 contends that a unit of the three Elevators Mechanic titles "highly skilled employees," all of whom are engaged in the performance of identical functions and duties. At the hearing, Local 1 demonstrated that no one other than workers employed in the Elevator Mechanic series performs work on elevators and that workers in the series do not work other than elevator service, maintenance and repair. It is the position of Local 1, as stated at the hearing and as expressed in its brief, that no other City employees have the skills, qualifications or abilities to perform such work, and that the uniqueness of this group employees is further evidenced by the fact that they receive separate supervision from other skilled workers.

Local 1 also argues that the Elevator Mechanic series of titles was, prior to July 1977, recognized by the Board to constitute a separate appropriate unit. Local 1 claims that the employees

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[1]See Decision No. 16-77

in the unit sought were never advised that their voting in favor of Local 237 in 1977 would result in their being consolidated with other titles to form one large bargaining unit. Local 1 coninues that the employees in the Elevator mechanic series

> "...did not know that they would lose their identity and that these highly skilled craftsmen would be submerged in a bargaining unit consisting largely of unskilled employees who have no relationship, contact or homogeneity with the employees in the classfications sought to be represented by petioner. Local 1 submits that to perpetuate this consolidated bargaining unit without giving these employees in the affected classfications the right to express their preerence as to such a result is inequitable, unfair and contrary to the purposes of the statute." (Local l's brief, p.9)

In response, the City claims that, if it granted the relief sought by Local 1, the Board would necessarily be in violation of its long-standing policy against fragmenting existing units. The City adds that, since the Board recently found, in Decision No. 67-78, that the petitioned-for unit was no longer appropriate ,the burden falls on Local 1 to show why the unit created by the Decision "no longer serves a viable bargaining objective." The City concludes that Local 1 has failed to meet this burden because all of the witnesses who testified at the hearing admitted that the factual situation has not changed since Decision No. 67-78 was issued in December 1978.

Local 237 characterizes the evidence introduced by Local 1 at the hearing as simply showing that employees in the Elevator Mechanic series do not work "out-of-title, "but rather in accordance

with the duties and functions listed in their respective job specifications. Local 237 argues that Local 1 has failed to show why the current unit should now be deemed inappropriate when it was found appropriate less than one year ago, despite the objections raised at the time by Local 237. Finally, the fact that the employees in the petitioned-for titles have their wages determined by the City Comptroller, pursuant to Section 220 of the New York State Labor Law, leads Local 237 to conclude that their inclusion in the current unit does not interfere with the employees' "rights of choice or self-expression."

DISCUSSION

The Board of Certification is empowered by Section 1173-5.0b(l) of the NYCCBL:

> "to make final determinations of the units appropriate for purposes of collective bargaining between public employees and public employee organizations, which units shall be such as shall assure to public employees the fullest freedom of exercising the rights granted hereunder and under executive orders, consistent with the efficient operation of the public service, and sound labor relations.... "

Section 2.10 of the Revised Consolidated Rules of the Officeof Collective Bargaining, which is designed to implement Section 1173-5.0b(l) of the NYCCBL, provides that the Board, in determining appropriate bargaining units, consider, among other factors, the following:

" 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;

e. Whether the officials of government at the level of the unit have the power to agree or make effective recommendations to other administrative authority or the legislative body with respect to the terms and conditions of employment which are the subject of collective bargaining;
f. Whether the unit is consistent with the decisions and policies of the Board."

The analogous provisions of section 201, subdivision 1 of the Taylor Law set forth similar criteria for application by the New York State Public Employment Relations Board; the statute reads, in pertinent part, as follows:

"(a) the definition of the unit shall correspond to a community of interest among the employees to be included in the unit;

(b) the officials of government at the level of the unit shall have the power to agree, or to make effective recommendations to other administrative authority or the legislative body with respect to, the terms and conditions of employment upon which the employees desire to negotiate; and

(c) the unit shall be compatible with the joint responsibilities of the public employer and public employees to serve the public."

Examination of the two sets of standards demonstrates the substantial equivalence of the Taylor Law and the NYCCBL on the criteria to be considered in deciding unit determination questions.

The City and Local 237 point out, this Board has established a policy favoring consolidation of bargaining units and discouraging fragmentation of units whenever possible. As we discussed in Decision Nos. 28-78 and 67-78, the rationale for this policy is rooted in the purposes underlying public sector labor law. Because of the importance of this case to the employees supporting the petition of Local 1 we will again review the history of the development of this policy.

The NYCCBL was enacted pursuant to Section 212 of the Taylor Law, which gives local government the option of adopting their own provisions and procedures which must be "substantially equivalent" to the provisions and procedures of the Taylor Law. Section 212 gave the City of New York an opportunity to enact a statute specifically designed to deal with its unique labor relations considerations. For example, the City had approximately 400 bargaining units of municipal employees at the time the Taylor Law became effective. Thus, unlike the New York State Public Employment Relations Board, the Office of Collective Bargaining did not start with a clean slate; OCB from its inception had to develop a policy for dealing with a large number of existing bargaining units.

This situation was eased somewhat by the foresight of the drafters of the NYCCBL who, in Section 1173-10. 0c, allowed for the continued viability of the inherited certifications but also provided for Board action to change pre-Act units and certifications. The statutory authority to review and revise existing bargaining units 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, we have, over the past 10 years, reduced the number of units with which the City must negotiate from approximately 400 to the current 80.

We have followed a policy of creating larger unit based on board occupational grouping comprising as many employees and titles as can effectively operate as an entity. In making consolidation determinations, including those affecting the Elevator Mechanic titles, we have balanced considerations of public employee freedom of choice in organizing and designating representatives on the one hand, and efficient operation of the public service and sound labor relations on the other (See NYCCBL Section 1173-5. 0b(1). In harmonizing those considerations in the

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[2]Section 10.Oc provides that: "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."

[3]See Decision No. 67-78.

instant case, while giving due weight to the wishes of the affected employees, we hold that the current unit is still appropriate and, therefore, the petition of Local 1 must be dismissed.

The Board is cognizant of the policy in the private sector in favor of separate units for craft employees but believes that, given the factual situation presented by the instant case, the policy should not be applied herein. As the drafters of the Taylor Law and of the NYCCBL recognized, public sector conditions, especially those facing the City of New York, are significantly different from those prevailing in the private sector and both this Board and the PERB have repeatedly and consistently held that principles and precedents established and followed in private sector labor relations have no automatic or blanket applicability to labor relations between governments and their employees. Secondly, as Local 237 pointed out at the hearing, employees in the Elevator Mechanic series have their wages determined pursuant to Section 220 of the Labor Law rather than through the traditional collective bargaining process. The salaries of Section 220 employees are set by determinations of the City Comptroller; these determinations are based on the prevailing wage rate received by comparably skilled craftsmen in the private sector. Thus, the salaries of the employees in the disputed titles are indepen-ently set, without any consideration of the wage rates accorded to other titles in the consolidated unit. With respect to other terms and conditions of employment, there would seem to be a strong community of interest between employees in the three

Elevator Mechanic titles and the other Section 220 employees who comprise nearly 48% of the over-all unit.

In the absence of any convincing proof that inclusion in the current unit prejudices the collective bargaining status the employees involved, we find that the creation of an additional bargaining unit with which the City must deal would be in derogation of both the public interest and the legislative intent of the drafters of the NYCCBL. As the Board stated in Decision No. 67-78, 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,- interpretations and arbitrations.

Local 1 claims that it is unfair that the employees involved were ignorant of the fact that, by voting for Local 237 as their certified representative in 1977, they were destined to be consolidated with various unrelated titles to form the unit created by Decision No. 67-78. This argument suggests that the consolidation brought about by Decision No. 67-78 was planned and intentionally kept secret so as not to sway the election lost by Local 1 in June 1977. Local 237 filed a petition, with an appropriate showing of interest, to consolidate the Elevator Mechanic series of titles, then represented by Local 1, with Certification No. 9-77, a unit represented by Local 237 and consisting of custodial, general

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[4]Docket No. RU-596-77

maintenance, inspectional and skilled craft employees. Notice of this petition was duly posted on the public docket maintained by the Board and on employees' bulletin boards and advertised in the City Record on March 16, 1977 as required by section 2.8 of the OCB Consolidated Rules. In ordering the election solely among employees in the Elevator Mechanic series of titles, the Board, in Decision No. 12-77, dismissed the petition for consolidation if [Local 237] is certified [for the Elevator Mechanic's unit]." Consequently, there is no question that all parties herein and the employees concerned were duly noticed, before the June 1977 election lost by Local 1, that there existed a possibility that the Elevator Mechanic series titles would be consolidated with another unit. There is nothing in the record, nor are we aware of any facts, that even suggests the possibility that information was withheld from the employees in the Elevator Mechanic series which, if made available, would have affected the outcome of the election. Moreover, it should be noted that, even if Local 1 had been victorious over Local 237 in the 1977 election, this would not have guaranteed the Elevator Mechanic series immunity from the consolidation process.

Decision No. 65-79 was cited by the City at the hearing and referred to in Local 1's brief as supportive of both parties'

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[5]The Decision was issued in May 1977, one month before the election.

[6]Subsequently, a petition seeking a consolidated unit involving the Elevator Mechanic series of titles was filed by the City in January 1978. The ruling in favor of the City's petition, Decision No. 67-78, was issued on December 22, 1978.

positions. The Board at pages 3 and 4 of the Decision stated:

> "The Board is mindful of its expressed policy against fragmentation of units and notes the City's contention that the unit requested is inconsistent with that policy. The policy referred to is a policy and not a hard and fast rule; it is subject to exceptions in appropriate cases and must give way in a given case, such as the instant matter, to other considerations, the ultimate aim being the promotion of sound labor relations and efficiency of governmental operations. The policy against fragmentation is thus not simply a rule mandating large units nor does it even establish a rule that the best or most appropriate unit in all cases is the largest possible unit. A more accurate description of the effect of the policy is that where relevant factors in a given case have no particular bearing upon the size or scope of the unit to be formed, the largest possible unit will be preferred by the Board." (emphasis supplied)

The Board does not find that the arguments presented by Local 1, either at the hearing or in its brief, raise any significant "factors" that have a "particular bearing upon the size or scope of the unit to be formed" to warrant our deviating from our established policy against fragmentation. Therefore, as we held in Decision No. 65-73, the largest possible unit, in this case the unit created by Decision No. 67-78, will be preferred. Accordingly, the petition of Local 1 seeking a unit composed solely of the titles in the Elevator Mechanic series must be dismissed.

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[7]Although Local 1 submitted more than enough authorization cards to have its petition processed (30%of the employees in the proposed unit), it failed to provide a sufficient showing of interest in the unit found appropriate by the Board in Decision No. 67-78, and upheld herein, to warrant an election.

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 the petition of Local 1 be, and the same hereby is, dismissed

DATED: New York, N.Y.
December 11, 1979

ARVID ANDERSON
CHAIRMAN

WALTER L. EISENBERG
MEMBER

ERIC J. SCHMERTZ
MEMBER