

L.237 & 832, IBT v. City, 26 OCB 14 (BOC 1980) [14-80 (Cert.)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF CERTIFICATION

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In the Matter of

LOCALS 237 and 832, IBT, jointly

-and-

LOCAL 300, SEIU, AFL-CIO

DECISION NO. 14-80

DOCKET NO. RU-737-80

-and-

THE CITY OF NEW YORK AND RELATED
PUBLIC EMPLOYERS

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DECISION AND CERTIFICATION

On January 7, 1980, City Employees Union, Local 237, I.B.T and Terminal Employees Local 832,, I.B.T., jointly, filed a timely petition requesting certification as the collective bargaining representatives of a supervisory institutional service unit currently jointly certified (Decision No. 7-78, as amended by Decision No. 58-78) to Locals 237 and 832, I.B.T., as well as Local 300, The Civil Service Forum, SEIU, AFL-CIO. A timely intervention was filed by Local 300.

POSITIONS OF THE PARTIES

Petitioners state that they wish to represent all titles in Certification No. 7-78 and base their proof of interest on the dues check-off authorizations of the unit employees to the two locals respectively. Local 300 replies that it has "historically" represented the unit titles of Supervising Laundry Worker, Laundry Foreman, Laundry Supervisor, Senior Laundry Supervisor, and Superintendent of Laundries, and that the employees in these titles are satisfied with their representation by Local 300. Intervenor adds that "there has been no show of interest attached to the petition concerning the workers . . . represented by Local 300 which would either justify or necessitate the holding of an election.

Local 300 characterizes the petition as "an attempt to invade membership of job titles represented by Local 300." Intervenor finally recommends that the above listed laundry titles "be deleted from the present certificate" and added to a residual I unit (Certification No. 64-78, as amended by Decision No. 20 79) represented exclusively by Local 300.

The City's Office of Municipal Labor Relations limits its comments to opposition to "fragmentation of the present unit" and

requests that this unit "be kept intact."

DISCUSSION

In Decision No. 18-74, the Board consolidated several bargaining units, including supervisory laundry employees, and certified the resultant unit to the three locals involved in this petition. Later, in Decision No. 7-78, the Board further consolidated that unit, thereby establishing basically, the current unit. Intervenor, pointing to the apparent dissatisfaction of petitioners with the tripartite status of the present certification, suggests, as previously mentioned, that laundry personnel be removed from the certification and added to a residual unit which, it currently represents. Nowhere, however does intervenor specifically express the belief that the unit itself is inappropriate. Rather, his objection appears based on petitioners' dissatisfaction with the status quo. Since intervenor is not requesting the establishment of a separate unit, we face here not a question of proliferation of units, but rather a matter of fragmentation of the current unit to which the City, as previously noted, objects. In view of the failure of intervenor to carry the burden of establishing that the present unit is inappropriate, or, in fact, of even asserting this, the Board finds no reason to disturb the present unit.

In regard to the showing of interest, our investigation shows that intervenor's allegation that petitioners have no showing of interest for laundry personnel is correct. All checkoff (26) among such personnel (a total of 30) is in behalf of Local 300. However, -this constitutes only 3.3% of the personnel in the current overall unit, whereas 85.5% of the total unit's employees are checked off in behalf of petitioners. Consequently, we find no need to hold an election to determine the majority representative of the appropriate unit.

In Decision No. 51-70 we set-, forth the applicable provisions of the law and rules in cases such as, this, as follows:

Section 1173-5.0b(2) of the New York City Collective Bargaining Law empowers the Board:

"to determine the majority representative of the public employees in an appropriate , , collective bargaining unit by conducting secret-ballot elections or by utilizing any other appropriate and suitable method designed to ascertain the free choice of

a majority of such employees ***"¹
(underlining added in original)

Decision No. 51-70 applies the foregoing principles as follows:

"It is . . . clear that an intervening public employee organization, with less than the thirty (30%) per cent showing of interest required of a petitioner under Rule 2.3b, is entitled to a place on the ballot only if the Board determines that an election is advisable or necessary, and the intervenor demonstrates 'a showing of interest, satisfactory to the Board, of at least ten (10% per cent of the employees. (underlining in original)

"Our investigation establishes that the overwhelming majority (approximately 73%) of the employees in the appropriate unit have authorized the check-off of union dues to Local 237, and that the proof of interest submitted by Local 300 is substantially less than the 30% required by Rule 2.3b.

Under such circumstances, we conclude that an election would be futile and an unnecessary expenditure of public funds. Accordingly, we shall . . . certify Local 237 as the collective bargaining representative of the employees in the appropriate bargaining unit."

Accordingly, we shall not order an election herein but certify Petitioners as joint representatives of the supervisory institutional service unit covered by Certification No. 7-78 (as amended).

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

DETERMINED that the employees covered by Certification No. 7-78 (as amended by Decision No. 58-78) continue to constitute an

¹ cf. §207.2 of the New York State Public Employees Fair Employment Law (Taylor Law) which provides for determination of majority representation "on the basis of dues deduction authorization and other evidences, or if necessary, by conducting an election." (underlining added)

appropriate bargaining unit, consisting of the titles-set forth in the Appendix to this Order; and it is hereby

CERTIFIED that Terminal Employees Local 832, I.B.T.; and City Employees Union, Local 237, I.B.T.; are the joint representatives for the purposes of collective bargaining of all employees in the consolidated unit, subject to existing contracts, if any.

DATED: New York, N.Y.
June 4, 1980

ARVID ANDERSON
CHAIRMAN

WALTER L. EISENBERG
MEMBER

DANIEL G. COLLINS
MEMBER

APPENDIX

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

Baker	90211
Butcher (CETA)	09368
Commissary Manager	54910
Cook (incl. CETA)	90210,09750
Food Service Supervisor	90238
Housekeeper	80710
Institutional Band Music Instructor	60310
Institutional Farming Instructor	60311
Institutional Instructor	60309
Institutional Seamstress	90112
Institutional Tailor	90113
Institutional Trades Instructor (incl. spec.)	90112
Laundry Foreman	60312/14
Laundry Supervisor	80810
Meat Cutter	80860
Senior Baker	90213
Senior Cook	90236
Senior Housekeeper	80735
Sr. Inst. Trades Instructor (incl. spec.)	60330/31
Sr. Laundry Supervisor	80861
Sr. Meat Cutter Shoemaker	90237
Superintendent of Laundries	90740
Supervising Housekeeper	80880
Supervising Laundry Worker	80760
Supervisor of Motor Transport	00115
Teacher (in Department of Correction)	00101