

L.375, et. Al v. City, 26 OCB 27 (BOC 1980) [27-80 (Cert.)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF CERTIFICATION

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In the Matter of

CIVIL SERVICE TECHNICAL GUILD,
LOCAL 375, AFSCME, AFL-CIO,

DECISION NO. 27-80

-and-

DOCKET NOS. RU-736-80

ALLIED BUILDING INSPECTORS, LOCAL
211, I.U.O.L., AFL-CIO,

RU-753-80

RU-764-80

-and-

DISTRICT COUNCIL 37, AFSCME,
AFL-CIO,

-and-

THE CITY OF NEW YORK AND
RELATED PUBLIC EMPLOYERS.

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APPEARANCES:

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FOR CIVIL SERVICE TECHNICAL GUILD, LOCAL 375, AFL-CIO

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MARK SAROKA, ESQ. OF COUNSEL
FOR ALLIED BUILDING INSPECTORS, LOCAL 211, I.U.O.E., AFL-CIO

JOEL GILLER, ESQ.
FOR DISTRICT COUNCIL 37, AFSCME, AFL-CIO

TAKA IWASHITA, ESQ.
FOR THE CITY OF NEW YORK

DECISION AND ORDER

This matter concerns three petitions filed by different unions to add titles recently classified as the Building Maintenance Supervisory Occupational Group to units certified to each of the unions. The titles involved are Supervisor of Building Maintenance, with

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three specialties (Construction, Electrical and Mechanical), and General Supervisor of Building Maintenance (same specialties). The titles were classified in the Competitive Class, subject to Rule XI, by City Personnel Director Resolution No. 79-50, dated December 19, 1979.

On January 7, 1980, Civil Service Technical Guild, Local 375, AFSCME (hereinafter Local 375), filed a petition to add by accretion, employees in the titles to a unit it represents pursuant to Certification No. 26-76 (as amended). This petition was docketed as RU-736-80.

Allied Building Inspectors, Local 211, IUOE (hereinafter Local 211) filed on March 6, 1980 a petition to add, by accretion, employees in the same titles to a unit certified to the Union as Certification No. 71-73 (as amended). Local 211's petition was docketed as RU-753-80.

On June 6, 1980, District Council 37, AFSCME (hereinafter D.C. 37), representing one of its affiliated locals (Local 1219), also filed a petition to add, by accretion, employees in the Building Maintenance Supervisory Occupational Group to unit Certification No. 46K-75 (as amended). D.C. 37's petition was docketed as RU-764-80.¹

The City of New York answered RU-736 and RU-753 by letter dated April 26, 1980, stating that it was not appropriate for the City to take a position as to which union should represent the

¹ A fourth union, Local 300, SEIU had moved to intervene in the proceedings, but later withdrew its motion.

employees and that employees in tile titles should be placed in an existing bargaining unit without increasing the number of bargaining units.

The three petitions were consolidated by order of the Board of Certification (hereinafter the Board) for purposes of determination of the issue raised by the petitions. There is no question in this matter that the employees are eligible for collective bargaining; the issue herein concerns appropriate unit placement of employees in the titles.

Hearings were held on June 27 and July 2, 7 and 11, 1980 before John F. O'Reilly, Esq., Trial Examiner at which the parties were given a full opportunity to present evidence and arguments relating to the unit placement of the employees. At the request of the parties, who pointed out that the employees were suffering harm as a result of not being in a certified bargaining unit and therefore were not receiving supplemental welfare fund coverage, the matter was treated expeditiously. The record in this case was closed at the end of the last hearing, the parties having agreed not to file briefs.

BACKGROUND

The job specifications for the Supervisor of Building Maintenance (Construction, Electrical, Mechanical) titles provide, as a "General Statement of Duties and Responsibilities," that:

Under direction, is responsible for initiating and supervising work in the [construction; electrical; heating, ventilating, air conditioning, and sanitary] field, necessary for

maintaining in good condition the school buildings, grounds and equipment in assigned district; performs difficult and responsible technical work in determining needs, analyzing feasibility of jobs and overseeing contractual agreements with private contractors and/or vendors to implement necessary [construction; electrical; mechanical] work including repairs, alterations and equipment installations for proper maintenance of publicly owned, subsidized or regulated residential buildings; performs related work.

Under "Examples of Typical Tasks" the specifications state, inter alia, that:

In the Board of Education: Surveys buildings and grounds at regular intervals to ascertain maintenance needs with regard to [construction; electrical; mechanical] equipment and materials and determines method to be utilized in accomplishing each repair; also recommends a priority rating for each repair.

In the Department of Housing Preservation and Development: Authorizes the issuance of repair jobs to vendors. Maintains logs and records date issued, type of work and responsibility to insure systems security control. Acts as liaison with the Central Maintenance Section, contractors and vendors to insure timely completion of repair work. Makes periodic spot checks of work in progress. Resolves differences between inspectors and contractors/vendors. Reports on job repair discrepancies and/or unsatisfactory performance. Monitors time expended to complete repairs and amount of materials used to complete jobs. Prepares reports on productivity. Provides technical assistance to Property Managers. May supervise subordinates.

The lines of promotion for the titles are from "None" to "General Supervisor of Building Maintenance (Construction) (Electrical) (Mechanical)." The salary range of the titles is \$17,278 to

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\$22,740. OCB records indicate that, as of 7) ., .ne 30, 1980, there are 42 incumbents in the titles Supervisor of Building Maintenance (all specialties).

The job specifications for the titles General Supervisor of Building Maintenance (Construction, Electrical, Mechanical) provide, as a "General Statement of Duties and Responsibilities," that:

Under general direction, supervises Supervisors of Building Maintenance and has overall responsibility for the maintenance of school buildings, grounds and equipment assigned to them, performs highly responsible supervisory and/or technical work in overseeing contractual agreements with private contractors and vendors to implement necessary [construction; electrical; mechanical] work including repairs, alterations and installations of equipment for proper maintenance of publicly owned, subsidized or regulated residential buildings; performs related work.

As "Examples of Typical Tasks" the specifications for the Construction and Mechanical specialties state, inter alia, that:

In the Board of Education: Conducts final inspection with Supervisors of Building Maintenance of contract work of a large or complex nature.

The related provision of the General Supervisor of Building Maintenance (Electrical) title provides:

In the Board of Education: Surveys schools for adequacy and proper operating condition of the electrical facilities such as lighting, power distribution, signal and communication and recommends action; Supervisor conducts final inspection with Supervisors of Building Maintenance of contract work of a larger or more complex nature.

The specifications for General Supervisor of Building Maintenance (all specialties) state, as a "Typical Task", that:

In the Department of Housing and Preservation and Development: Prepares the more complex

building surveys and cost estimates;
provides technical assistance to management
with regard to highly technical repair jobs;
authorizes the issuance of repair jobs of
a more costly nature; confers with contractors
regarding more difficult repair jobs to ensure
correct interpretation of specifications,
acceptability of specific materials, and that
they are in compliance with appropriate City and
Federal rules and regulations and safety standards.
May supervise staff in the electrical and mechanical
specialties.

All of the General Supervisor of Building Maintenance specialties
promote to the title Assistant Area Manager of School
Maintenance. The titles in the direct line of promotion from
which employees can promote to the General Supervisor of Building
Maintenance title differs for each specialty as indicated in the
following table:

Construction

From: Supervisor of Building Maintenance
(Construction)

Assistant Superintendent of
Construction

Senior Construction Inspector

Assistant Civil Engineer

Assistant Architect

Electrical

From: Supervisor of Building Maintenance
(Electrical)

Senior Electrical Inspector

Assistant Electrical Engineer

Mechanical

From: Supervisor of Building Maintenance
(Mechanical)

Senior Heating and Ventilation

Inspector
Senior Plumbing Inspector

Assistant Mechanical Engineer

The salary range for the General Supervisor title is \$20,630 to \$26,147. OCB records indicate that as of June 30, 1980 there were ten employees in the title, all working in the Department of Housing Preservation and Development (herein after HPD) .

Section 2.10 of the Revised Consolidated Rules of the office of Collective Bargaining sets forth criteria to be applied by the Board in making determinations of appropriate unit placement of employees. The Rule provides:

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;

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.

POSITIONS OF THE PARTIES

LOCAL 375

Local 375 seeks to add employees in the Building Maintenance Supervisory Occupational Group to a unit it represents, Certification No. 26-78, which includes approximately 200 titles in which there are 2651 employees working in various engineering, scientific, inspectional, mechanical and construction-related fields.

Local 375 relies on several factors to support its claim that adding Building Maintenance Supervisors to Certification No. 26-78 is an appropriate unit and a more appropriate unit than is sought by Local 211 or D.C. 37. Local 375 contends that it represents employees of the Board of Education in the Supervisor of School Maintenance Occupational Group, which was the model for the Building Maintenance Supervisory Occupational Group as indicated by the close similarity in the language of the job specifications for the two groups. Local 375 presented evidence that the Board of Education requested and authorized the City to negotiate with Local 375 a collective bargaining agreement covering the Supervisor of School Maintenance titles inasmuch as Local 375 also represents and was negotiating with the City an agreement to cover employees in, what the Board of Education termed, the "equivalent" City titles Assistant Engineer and Engineer. Local 375 points out that it

reached a unit agreement with the City which includes, in the listing of covered titles, the Board of Education General Supervisor and Supervisor of School Maintenance titles. Moreover, the titles are grouped, in the section of the contract dealing with salaries, in the same salary ranges as Engineer and Assistant Engineer. Local 375 urges that the similar, petitioned for titles in the Building Maintenance Supervisory Occupational Group should be added to the unit covered by this contract in the interest of sound labor relations.

Local 375 also notes that it represents, under Certification No. 26-78, five of the titles that are in the direct line of promotion to General Supervisor of Building Maintenance (all specialties). The titles are: Assistant Superintendent of Construction, Assistant Civil Engineer, Assistant Electrical Engineer, Assistant Mechanical Engineer and Assistant Architect. The Union also presented a letter, dated December 14, 1979, from the HPD Personnel Officer to the Office of the Mayor, which, in relevant part, sets forth a list of titles whose duties will in part be taken over by employees in "converted" General Supervisor and Supervisor of Building Maintenance titles. Local 375 notes that all of the approved eligible titles, Superintendent of Construction, Assistant Superintendent of Construction, Mechanical Engineer, Assistant Mechanical Engineer and Assistant Superintendent of Mechanical Installations, are part of Certification 26-78. However, there was testimony that of the 40 provisional employees serving in the General Supervisor and Supervisor of Building Main-

tenance titles, only approximately four formerly held the "approved titles" set forth in the letter.

Local 375 contends that the job specifications for seven titles it represents contain functions and duties similar to the functions and duties in the job specifications for the General Supervisor and Supervisor of Building Maintenance titles.² Like the latter titles, employees in the titles cited by Local 375 are generally responsible for overseeing and coordinating construction, mechanical and electrical installations, which includes allocating personnel to work projects, reviewing and inspecting the work of contractors, interpreting contract specifications, issuing change orders, and recommending for approval bills for payment submitted by contractors. However, the opposing unions argue that employees in the cited titles are primarily involved with new construction and public housing and school buildings and not maintenance and up-keep of existing City-owned structures which is the primary work, they contend, of employees in the Building Maintenance Supervisory Occupational Group.

LOCAL 211

Local 211 seeks to add, by accretion, employees in the Building Maintenance Supervisory Occupational Group to Certification No. 71-73 (as amended) which covers 814 employees in forty building

² The titles are: Construction Manager; Superintendent of Construction; General Superintendent of Construction; Senior Supervisor of Mechanical Installations; Chief Supervisor of Mechanical Installations; General Superintendent of Construction and Repairs; and Super visor of Mechanical Installations.

inspection and related titles.

Local 211 argues that employees in the Building Maintenance Supervisory Occupational Group are concerned with coordinating and overseeing inspection, maintenance, and rehabilitation of both City-owned and privately owned buildings. The Union claims that the employees are involved with existing structures and not with new construction of structures, which is the work of employees in the titles represented by Local 375. In addition, Local 211 notes that the employees who are the subject of the instant proceeding work for HPD and not for the Board of Education.

Local 211 relies on testimonial evidence by a former Building Rehabilitation Specialist and a former Senior Building Rehabilitation Specialist who are now a Supervisor of Building maintenance and General Supervisor of Building Maintenance, respectively. The Supervisor of Building Maintenance testified that, as had been the case when he served as a Building Rehabilitation Specialist, his work now involved neighborhood preservation. His duties include coordinating and writing scopes of work for maintenance and rehabilitation work performed on privately owned buildings in a particular area under several housing loan and tax abatement programs administered by the City. The General Supervisor of Building Maintenance testified that, while he was no longer involved with neighborhood preservation and privately owned buildings, his job duties now concern supervising a unit of forty to fifty maintenance workers and a staff of eight civil servants involved with coordinating the same kind of rehabilitation work.

This witness also testified that of the twenty to twenty-five Supervisors of Building Maintenance that he knew, twelve to fifteen had been Senior or Building Rehabilitation Specialists and that of the nine General Supervisors of Building Maintenance that he knew, six were Senior or Building Rehabilitation Specialists. Both witnesses stated that the duties of the Supervisor of Building maintenance are very similar to the duties of Senior Building Rehabilitation Specialists, noting that employees in both titles are responsible for inspection of real property to determine required improvements, preparation of work write-ups, scopes of work and specifications to be used by contractors, development and review of cost estimates and work completion estimates, review of plans for conformance with established standards and work write-ups, and coordination of various building rehabilitation activities. The Building Rehabilitation Specialist titles are certified to Local 211.

Local 211 claims that none of the employees working in the General Supervisor or Supervisor of Building Maintenance titles are working in the Board of Education. The Union also contends that despite the omission of the Building Rehabilitation Specialist and Senior Building Rehabilitation Specialist titles from the list of titles eligible for conversion to the Building Maintenance Supervisory Occupational Group, which is set forth in the December 1979 letter from HPD to the Mayor's Office, there are a number of former Building Rehabilitation Specialists now employed in the new occupational group. Local 375 notes, however, that the Building Rehabilitation

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Specialist titles are not in the lines of promotion for the Building Maintenance Supervisory titles. Local 375 also points out that the specifications for the titles at issue herein do not include duties in connection with the neighborhood preservation, housing loan and tax abatement programs.

Local 211 points out that it is certified for employees in the Senior Construction, Heating and Ventilation, and Plumbing Inspector titles which are in the direct line of promotion to the General Supervisor of Building Maintenance titles. The Union claims that it has 500 to 600 members working in HPD. Local 211 argues that the job duties of Building Maintenance Supervisors contain parts of, and represent a conglomeration of, the duties of Construction Inspector, Housing Inspector and Building Rehabilitation Specialist. The Union asserts that the new occupational group was created as a way of recruiting new personnel and paying more money to employees in the Building Rehabilitation Specialist titles as evidenced by the large number of persons formerly in the title who are now in the new occupational group.

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D.C. 37

D.C. 37 seeks to add employees in the Building Maintenance Supervisory titles to Certification No. 46K-75 which covers 44 real estate and related titles held by 1137 employees. D.C. 37 argues that employees in the Building Maintenance titles perform work, like Real Estate Managers, involving maintenance and up-keep of City-owned residential property. D.C. 37 claims that, like employees in the Real Estate Manager titles, Building Maintenance Supervisors are responsible for evaluation of work that is needed on City-owned property and make determinations as to whether maintenance men or outside contractors should perform the job.

D.C. 37 relies on testimonial evidence that 27 of the Building Maintenance Supervisors, including General Supervisors, work in a unit in HPD -(Contract Compliance Unit of the Office of Property Management) that includes employees in six real estate titles certified to D.C. 37, two employees in the title of General Superintendent of Construction, which is certified to Local 375, and two

Purchase Inspector titles.³ Of those 27 Building Maintenance employees and three other Building Maintenance Supervisors working in the Central Office, 14 formerly held titles in the Real Estate Manager Occupational Group. The Supervising Real Estate Manager also testified that the Supervisors of Building Maintenance are responsible, as are Real Estate Managers and Senior Real Estate Managers, for evaluating work that needs to be done and deciding whether the job can be performed by regular maintenance men or by outside contractors. The Building Maintenance Supervisor, like the Real Estate Manager or Senior, also inspects the work performed and materials used for compliance with the work order and specifications. The witness maintained that HPD does not do rehabilitation work, which he defined as changing the physical structure of a building as in a modernizing job, but is responsible for maintenance and up-keep of the City-owned properties, such as residential property that the City has acquired in an in-rem proceeding for non-payment of taxes. It is in connection with the residential property that employees in the Real Estate Manager Occupational Group and the Building, Maintenance Supervisory Occupational Group work side-by-side and are basically performing the same tasks, D.C. argues.

In support of this position, D.C. 37 points out that the specification for Supervisor of Building Maintenance titles refers

³ These titles are certified to Local 300, SEIU, AFL-CIO, a union not involved in this proceeding.

to providing "technical assistance to Property Managers." The Union submitted documentary evidence indicating that the City has proposed to broadband Real Estate Manager titles to a new Property Manager Occupational Group. D.C. 37 contends that the job duties of the Real Estate titles will not change. The Union compares the duties of Senior Real Estate Manager and its proposed equivalent title Property Manager (Level II) to coordinate "efforts of staff engaged in repair work of City-owned property" and to monitor "the performance of contractors to insure adherence to contract specifications" with the duties of a Supervisor of Building Maintenance to "authorize the issuance of repair jobs to vendors ... [a]ct as liaison with the Central Maintenance Section, contractors and vendors to insure timely completion of repair work [m]ake periodic spot checks of work in progress [and to] [r]eport on job repair discrepancies and/or unsatisfactory performance."

A second Supervising Real Estate Manager, who oversees a maintenance shop of 94 people, testified that his deputy, who had held the title Senior Real Estate Manager, was promoted to Supervisor of Building Maintenance but that the employee's job duties did not change. In addition, a General Supervisor of Building Maintenance, who had held the title Supervising Real Estate Manager, testified that his duties are the same as under his former title - - to supervise a maintenance shop consisting of maintenance personnel of Gotham Contracting, which has a contract with the City, and Civil

Servants with the titles Office Aide, Real Estate Manager, Supervisor of Building Maintenance and, occasionally, Senior Real Estate Managers.

The other unions noted, however, that the Real Estate Manager titles are not included in the titles in the direct lines of promotion to the Building Maintenance Supervisory Occupational Group nor in the list of titles "approved" for "conversion" contained in the December 1979 letter from HPD to the Mayor's Office. They also argue that several of the duties of the Real Estate Manager titles, such as collection of rents, relocation of tenants, and buying or selling property for the City, are dissimilar to the duties of Building Maintenance Supervisors.

DISCUSSION

We have set forth in detail the positions of the parties in this decision to illustrate that it would be appropriate to add, at last count, the 52 employees in the Building Maintenance Supervisory Occupational Group to any one of the units represented by the unions herein. Much of the detailed evidence presented concerned proper job classification of the employees rather than appropriate bargaining unit determination. While job classification is a function of the City Personnel Director, such evidence is relevant in matters of unit determination. Each of the unions has presented evidence of a community of interest between employees in its unit and Building Maintenance Supervisor employees

or that it represents employees of an agency other than HPD who are charged with performing functions almost identical to the duties of Building Maintenance Supervisors. Moreover, placing the petitioned-for employees in any one of the three units would be entirely consistent with the decisions and policies of the Board.

However, while any one of the three petitioned-for units would be appropriate, none of the unions has persuaded us that the unit it seeks is more appropriate than the units sought by the other two unions. A determination of the more appropriate unit has been hampered by two factors. The employer believes that it should not take a position on the unit placement of the Building Maintenance Supervisors except to ask that the Board not certify a unit of only General Supervisors and Supervisors of Building Maintenance, thereby creating an additional bargaining unit.

Secondly, while there is evidence, presented at the hearings and contained in OCB records, that each of the unions possesses a showing of interest on the part of employees who desire to be represented by the organization, the record does not contain conclusive evidence of the desires of the employees as to the preferred bargaining representative. The NYCCBL assures public employees the fullest freedom of exercising their right of self-organization and authorizes the Board to conduct elections to determine the majority representative in an appropriate unit.

Each of the unions has a sufficient showing of interest among the petitioned-for employees. Under the circumstances of the instant case, where any of the petitioned-for units would be appropriate, but the evidence before us does not single out the most appropriate unit, we believe that it would best serve and effectuate the purposes and policies of the NYCCBL to ascertain the wishes of the employees in making a determination of their unit placement.⁴

Therefore, we direct an election among employees in the titles Supervisor of Building Maintenance (all specialties) and General Supervisor of Building Maintenance (all specialties) and that Local 375, Local 211 and D.C. 37 be named on the ballot. We will add the employees to the bargaining unit represented by the union which receives a majority of the ballots cast. If any of the unions does not desire to participate in the election, it may have its name removed from the ballot upon written request filed with the Board within ten days after service of this Decision and Direction of Election.

DIRECTION OF ELECTION

Pursuant to the powers vested in the Board of Certification by the New York City Collective Bargaining Law, it is hereby

⁴ We have directed elections in several past cases involving unit placement. See, for example, Decisions Nos. 12-70 and 29-79.

DIRECTED, that as part of the investigation authorized by the Board, an election by secret ballot shall be conducted under the supervision of the Board, or its agents, at a time, place, and during hours to be fixed by the Board, among the employees in the titles Supervisor of Building Maintenance (Construction), (Electrical) and (Mechanical) and General Supervisor of Building Maintenance (Construction), (Electrical) and (Mechanical) employed by the City of New York and related public employers subject to the jurisdiction of the Office of Collective Bargaining during the payroll period immediately preceding this Direction of Election (other than those employees who have voluntarily quit, retired, or who have been discharged for cause before the date of election), to determine whether they desire to be represented for the purposes of collective bargaining by the Civil Service Technical Guild, Local 375, AFSCME, AFL-CIO, and thereby be added to the bargaining unit covered by Certification No. 26-78 (as amended), or by Allied Building Inspectors, Local 211, I.U.O.E., AFL-CIO, and thereby be added to the bargaining unit covered by Certification No. 71-73 (as amended), or by District Council 37, AFSCME, AFL-CIO, and thereby be added to the bargaining unit covered by Certification No. 46K-75 (as amended); and it further

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DIRECTED, that any of the employee organizations may have its name removed from the ballot in the aforementioned election by filing with the Board, within ten (10) days after service of this Direction of Election, a written request that its name be removed from said ballot.

DATED: New York, New York
August 18, 1980

ARVID ANDERSON
Chairman

WALTER L. EISENBERG
Member

DANIEL G. COLLINS
Member

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The title and title code number of employees affected by this decision are as follows:

Supervisor of Building Maintenance (Construction)	91670
Supervisor of Building Maintenance (Electrical)	91671
Supervisor of Building Maintenance (Mechanical)	91672
General Supervisor of Building Maintenance (Construction)	91673
General Supervisor of Building Maintenance (Electrical)	91674
General Supervisor of Building Maintenance (Mechanical)	91675