

L.237, IBT, et. Al v. HHC, City, et. Al, 26 OCB 34 (BOC 1980) [34-80 (Cert.)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF CERTIFICATION

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In the Matter of

LOCAL 237, INTERNATIONAL BROTHERHOOD
OF TEAMSTERS

-and-

HEALTH-AND-HOSPITALS-CORPORATION

DECISION NO. 34-80

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In the Matter of

CIVIL SERVICE TECHNICAL GUILD,
LOCAL 375, AFL-CIO

DOCKET NOS. RU-723-79

RU-729-79

RU-731-79

-and-

CITY OF NEW YORK AND RELATED
PUBLIC EMPLOYERS

-----X

In the Matter of

DISTRICT COUNCIL 37, AFSCME, AFL-CIO

-and-

THE CITY OF NEW YORK AND RELATED
PUBLIC EMPLOYERS
(HEALTH AND HOSPITALS CORPORATION)

-----X

APPEARANCES:

BERT ROSE, DIRECTOR OF ORGANIZATION
RICHARD BROOKS
FOR LOCAL 237, I. B. T.

JOEL GILLER, ESQ.
FOR LOCAL 375, AFSCME, AFL-CIO AND
FOR DISTRICT COUNCIL 37, AFSCME, AFL-CIO

TAKA IWASHITA, ESQ.
FOR THE CITY OF NEW YORK

Decision No. 34-80
Docket Nos. RU-723-79, RU-729-79,
RU-731-79

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DECISION AND ORDER

This matter concerns petitions filed by three unions to add the title Medical Equipment Repair Technician (hereinafter

"MERT") to units certified to each union.

The MERT title, classified by the City Civil Service Commission in the Competitive Class, Rule XI, Miscellaneous Occupational Group, is used only in the New York City Health and Hospitals Corporation (hereinafter "HHC"). All of the units to which the respective petitioners seek to add the title likewise contain titles that are unique to HHC.

On October 1, 1979, Local 237, I.B.T. , filed a petition to add the MERT title to certification 67-78 (as amended by Decision No. 10-79), covering maintenance, inspection, skilled crafts and related titles. The petition of the union was supported by a showing of interest consisting of four dues deduction authorization cards. The petition was docketed as RU-723-79.

On November 30, 1979, Civil Service Technical Guild, Local 375, AFL-CIO, filed a petition seeking to add, by accretion, the MERT title to Certification No. 26-78 (as amended by Decisions 45-78, 45A-78, 50-78, 7-79, 26-79, 2-80, 7-80 and 31-80), covering approximately two hundred titles in various engineering, scientific, inspectional, mechanical, and construction-related fields. The petition was docketed as RU-729-79.

A third petition was filed on December 7, 1979 by District Council 37, AFSCME, AFL-CIO, seeking to add the MERT title to Certification No. 62D-75 (as amended by Decision Nos. 32-77, 2-79 and B-79). This certification is represented jointly by

Local 237, I.B.T.; D.C. 37, AFSCME; and Local 144, SEIU and covers various medical, hospital and laboratory technicians in 37 titles.¹ The petition was docketed as RU-731-79.

The City by its Office of Municipal Labor Relations (hereinafter the "City") filed a letter on January 21, 1980 indicating that "there is a real question concerning representation" that should be resolved by the Board. The City, therefore, takes no position in this matter.²

The three petitions were consolidated by order of the Board of Certification (hereinafter the "Board") for purposes of determination of the sole issue raised by the petitions, namely, the appropriate unit placement of employees in the MERT title.

Hearings were held on July 16 and 23, 1980 before Catherine R. Nathan, 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 hearing, D.C. 37, over the objection of co-certificate holder, Local 237, unilaterally moved the Board to allow it to withdraw petition RU-731-79. After consideration, and noting that the petition

¹ Locals 237 and 144 consented in writing to the filing of this petition.

² Subsequent to the filing of RU-723-79 but prior to the filings of RU-729-79 and RU-731-79, the City, by letter dated October 12, 1979, had indicated that it had no objection to RU-723-79.

was initiated by D.C. 37 with the subsequent consent of Locals 237 and 144, the Board grants the motion of D.C. 37. With the withdrawal of the petition of D.C. 37, the Board in this decision will consider only the petitions of Locals 237 and 375.

The record in this matter was closed at the end of the last hearing, the parties having agreed not to file briefs. BACKGROUND

BACKGROUND

According to the specification for the petitioned title, a Medical Equipment Repair Technician under supervision installs, inspects, repairs, calibrates and modifies to specifications, medical, laboratory, X-Ray and dental equipment in the Inhalation Therapy Service or a Medical Equipment Repair Unit. In addition, the MERT reviews and advises on problems of equipment function, maintenance, standardization, and repair and performs related work. The job specification lists as major duties fourteen different tasks related to maintaining equipment and establishing programs of maintenance. In particular, a major duty of an MERT is to perform "repairs on such pieces of medical equipment as X-Ray, orthopedic, suction, anesthesia, inhalation, basal metabolism, electroencephalographic, electrocardiographic and diathermy apparatuses, steam pressure and electric sterilizers, dental units and chairs, operating lamps and tables."

The knowledge and skill required of an MERT include the following:

- "1. High school graduation, or possession of high school equivalency diploma, and, preferably, including a one year course in electronic equipment repair, shop, general science, or physics. This course or series of courses should include a minimum of six months education in a vocational, associate degree, trade or armed service school in the nature of electronic or medical equipment; and
- "2. Two years satisfactory paid experience in repair of electronic equipment, at least 6 months of which should be specifically in the repair of medical equipment; or
- "3. A satisfactory equivalent combination of education and experience."

The job specification shows that there is a direct line of promotion from MERT to Medical Equipment Specialist but there is no direct line of promotion to MERT. The salary range for MERT's is from \$10,500 to \$13,750 per year.

OCB records indicate that there are twelve MERT's employed by the City.

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 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 237 (PETITION RU-723-79)

Local 237 asserts that the title MERT should be added to Certification 67-78 (as amended) which includes the title Maintenance Man,⁴ alleging that of the first five MERT's, three were New York City Maintenance Men and two were hired from other

⁴ The certification also includes the following unit titles among Ethers: Elevator Mechanic, Helper and Foreman; Bricklayer and Foreman; Cement Mason and Helper; Plasterer and Foreman; Roofer and Foreman; Harness Maker and Horseshoer.

hospitals where they had been maintenance men. (7/16-Tr. 23).⁵

Local 237's evidence included the job specification for Maintenance Man which specifies that a maintenance man, "under direct supervision, assists in the routine maintenance, operation and repair of buildings and structures and equipment therein operated and maintained by the agencies and authorities of the City of New York; [and] performs related work." The "Typical Tasks" of a maintenance man involve, maintenance and repair of building hardware, windows, doors, floors and walls and minor repairs to building electrical, plumbing and heating systems. In addition, a maintenance man assists in relocating building equipment as directed and "keeps job and other records."

In order to qualify as a maintenance man, it is necessary to show three years of full-time paid experience of a nature to qualify for the duties of the position; or two years of such experience and sufficient approved vocational or trade school training.

There is a direct line of promotion from Maintenance Man Trainee to Maintenance Man. There is no direct line of promotion from Maintenance Man. Maintenance men are paid by the hour at a rate of \$7.11.

Local 237 relies principally on the fact that five of the original MERT's were maintenance men. In this regard, Local 237

⁵ "7/16-Tr.-" refers to the transcript of the hearing conducted on July 16, 1980; "7/23-Tr.-" refers to the transcript of the hearing held on July 23, 1980.

called as a witness an MERT employed for twenty-three years in the maintenance group at Goldwater Memorial Hospital. He testified that his job duties have not changed even though since July 1979 he has had the title MERT while previously his title was that of Maintenance Man. (7/23-Tr. 11).

The witness explained that the change in title occurred because over the years certain medical equipment maintained by HHC became too sophisticated for the maintenance men to deal with. Some specialized training was available to these men, mainly at their own expense, and after getting this additional training and performing on a higher level, the men protested to HHC that they should receive additional compensation. HHC then created the higher title Medical Equipment Repair Technician. (7/16-Tr. 22-23; 7/23-Tr. 65-66). Local 237 asserts that this change in title should not result in a change in certification. This new title "springs from the title Maintenance Man" and hence should be in the same unit as Maintenance Man. (7/16-Tr. 23).

The opposing union, Local 375, however, argues that the witness's duties are not similar to those of a Maintenance Man. Indeed, the witness testified that his job duties include re-designing certain medical equipment "to suit patient needs," in particular rocking beds and machines to help patients breathe. (7/23-Tr. 18, 34). In this regard he stated, "If a patient is very sensitive, we change his equipment to reach his sensitivity." (7/23-Tr. 40). In addition, Local 375 points to the fact that, by the witness's own admission, the "maintenance men" are not

qualified to handle the repair, modification and redesign of certain of the more sophisticated equipment that the MERT's are asked to handle. With regard to a redesign of "the oscilloscope to use in the ICU unit," (7/23-Tr. 31), the witness testified that,

"There was no one we know of in the complex of the hospital that did the electronic equipment. So they had to come to us to repair it. The maintenance men are doing other activities in the hospital and it took up a lot of their time." (7/23-Tr. 33).

Local 375 also asserts that the specialized training received by employees in the MERT title from manufacturers of new hospital equipment, (7/23-Tr. 36-38; 44-45; 62), is more akin to the training received by the Medical Equipment Specialist whom it represents, than to the training received by a Maintenance Man. In fact, Local 375 argues, the MERT testified that he considers himself to be a "specialist." (7/23-Tr. 40).

Local 237 asserts however, that the MERT is a blue collar worker who works with his hands, as does the Maintenance Man, while the Medical Equipment Specialist is more akin to a white collar worker since he is a "supervisor." (7/16-Tr. 39). LOCAL 375 (PETITION RU-729-79)

Local 375 maintains that the MERT title should be accreted to Certification 26-78 (as amended) primarily because that certification includes the title Medical Equipment Specialist, a direct line of promotion from Medical Equipment Repair Technician.

OCB records indicate that there are seventeen Medical Equipment Specialists employed by the City.

The job specification for Medical Equipment Specialist states in part the following:

"Under... direction ... with latitude for independent action...initiates and completes work assignments in the Instrumentation and Inhalation Therapy Service or a medical equipment repair unit; as a specialist, is an integral team member in planning ... and directing hospital medical equipment inventory, control, distribution, preventive maintenance repair and spare part services for a center, borough or city-wide program."

"Typical Tasks" of the Medical Equipment Specialist include planning and operating a spare parts center, and coordinating all aspects of equipment spare parts maintenance, implementing methods of supply management, directing and supervising repair technicians and evaluating their performance, participation in studies and research projects, conducting in-service educational activities, assisting with developing policies and procedures for new equipment and standardization, and maintenance of optimum safety standards of equipment use for hospital staff and patients.

The educational qualifications for a Medical Equipment Specialist are high school graduation including one year in electronic equipment repair, shop, general science, or physics and a course in electronic equipment repair and medical equipment repair in a vocational, trade, or armed service school or college. In addition,

each Medical Equipment Specialist must have five years experience as a medical equipment repair technician, installing, repairing and performing preventive maintenance on medical equipment, three years of which must be in a supervisory or administrative capacity. Finally, each Medical Equipment Specialist must have three years experience as a medical equipment specialist or equivalent.

The job specification for the MERT title provides a direct line of promotion to Medical Equipment Specialist. The salary range for the Medical Equipment Specialist is from \$12,500 to \$16,500 per annum.

In stating its position Local 375 asserts that

"the duties in the Medical Equipment Specialist title are similar and in fact parallel to the duties of the Medical Equipment Repair Technician, that the two jobs are close to being identical with the only difference being that the Medical Equipment Specialist is considered to be a somewhat higher title, to which a Medical Equipment Repair Technician may be promoted... (7/16-Tr. 35).

Local 375 also points out that the Specialist is a supervisory position to the MERT and that Local 375 titles include both professional and technical titles. (7/16-Tr. 35).

Local 375 relies on the testimonial evidence of a Medical Equipment Specialist in the Biomedical Engineering Department at Kings County Hospital Center for the past seven years, whose background includes aircraft maintenance while in the armed service, an associate degree in mechanical technology, two years of

pre-engineering industrial courses at Grumman and experience working in "environmental support systems for aerospace." (7/23-Tr. 46-47). The witness testified as follows with regard to his current job functions:

"Medical Equipment Specialist is responsible for the medical equipment used both on the biological side of the house and the clinical engineering side of the house.

Biological being patient-related equipment and the clinical engineering end of it is lab diagnosis equipment other than the one that is in direct patient utilization." (7/23-Tr. 48).

Local 375 points to the similarity of job function between the duties required of the MERT and those required of the Specialist. in addition it asserts that the specific type of work performed on the equipment and the training necessary to work with the equipment are similar since the Medical Equipment Specialist testified that

"we look at the equipment from the time it comes in the door until the time we discard it, essentially. There is an exception--acceptance test evaluation safety rundown. We evaluate it to what kind of tests are necessary to maintain it. That is all included in the purchase order and so on. Then we actually tear the equipment down. We evaluate its function, whether or not it does what it is set to do. Then we will be trained by the vendor and we will, in turn, train the staff in the operation of the equipment." (7/23-Tr. 48).

Local 375 also asserts that like the Medical Equipment Repair Technician, the Medical Equipment Specialist is responsible for the repair and maintenance of the equipment that comes into his

department. (7/23-Tr. 48). Significantly, the Medical Equipment Specialist testified that the Bennett respirator, one of the machines that the MERT testified about at length, is "relatively complex." (7/23-Tr. 51). Finally, Local 375 argues that even the Medical Equipment Specialist agrees that he performs many of the duties of the MERT and that specialized training would be needed to function as an MERT. (7/23-Tr. 53-54).

Local 237, however, points out that the Medical Equipment Specialist testified that the MERT's at Kings County Hospital Center work in the "Maintenance Department," rather than in the same department as the Medical Equipment Specialists. (7/23-Tr. 57).

DISCUSSION

After reviewing the evidence and particularly the testimonial evidence concerning the repair, modification, and maintenance of certain of the more sophisticated medical machines testified to by both witnesses, the Board concludes that Local 375 has satisfied the criterion that requires a showing of community of interest of employees.

While the Board accepts Local 237's assertion that the MERT title "springs from" the Maintenance Man title, such a showing, without more, is insufficient to satisfy the requirements specified in OCB Rule 2.10. The fact that a job may through necessity have evolved into a more highly skilled and, therefore, more highly paid job is not enough by itself to justify a finding that the two job titles belong in the same unit.

To the contrary, the Board in this case finds that the MERT title is a skilled job, requiring training, experience and the performance of duties beyond those described in the job specification for Maintenance Man.

We find that whatever claim of community of interest might be derived from the MERT's origins in the maintenance Man title is outweighed by the direct and close relationship between the work of MERT's and that of Medical Equipment Specialists. Accordingly, we conclude that placement of the MERT's in the unit representing the latter title would constitute a more appropriate unit than that sought by Local 237

While the MERT and the Medical Equipment Specialist do not perform identical duties, they both require similar technical background and experience, they both are responsible for the proper functioning of relatively sophisticated hospital equipment, whether for doctor or patient use, and they both are often trained by the equipment manufacturer. In addition, the fact that the Medical Equipment Specialist is a direct line of promotion from the MERT title, while not dispositive, does enhance the finding of community of interest, one of the statutory criteria. our consideration of the evidence submitted in regard to the other statutory criteria for unit determination leads us to make the judgment that, in this

case, these criteria are, at best, of minimal assistance in enabling us to choose between the petitioned units. To the extent that they are helpful, however, we believe that they tend to support the position that the MERT's be placed in the same unit as the Medical Equipment Specialists.

Certifying them in the same unit is consistent with Board decisions and policies and is in the best interest of achieving efficient operation of public service and sound labor relations. The Board, therefore, finds that Local 375 has satisfied the criteria specified in OCB Rule 2.10 and will order accretion of the title Medical Equipment Repair Technician to Certification No. 26-79 (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

ORDERED that Certification No. 26-78 (as amended by Decisions 45-78, 45A-78, 50-78, 7-79, 26-79, 2-80, 7-80, 31-80 and 33-80) be, and the same hereby is, further amended by adding thereto the title of Medical Equipment Repair Technician; and it is further

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ORDERED, that the petition of Local 237, I.B.T., be, and the same hereby is, denied.

DATED: October 29, 1980
 New York, New York

ARVID ANDERSON
CHAIRMAN

DANIEL G. COLLINS
MEMBER.

WALTER L. EISENBERG
MEMBER

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

Medical Equipment Repair Technician	90690
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