

City v. DC37, L.375, Civil Ser. Tech. Guild,26 OCB 38 (BOC 1980)
[38-80 (Cert.)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF CERTIFICATION

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In the Matter of the Application of

THE CITY OF NEW YORK,

Petitioner,

For an Order declaring employees in the
title Principal Urban Designer managerial
or confidential pursuant to Section 2.20
of the Revised Consolidated Rules of the
Office of Collective Bargaining

DECISION NO. 38-80

DOCKET NO. RE-123-80

-and-

DISTRICT COUNCIL 37, AFSCME, AFL-CIO

-and-

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

Respondents.

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INTERIM DECISION AND ORDER

On September 23, 1980, the City of New York, appearing by its Office of Municipal Labor Relations (hereinafter the City), petitioned the Board of Certification (hereinafter the Board) for an order declaring that employees in the title Principal Urban Designer are managerial or confidential employees within the meaning of section 1173-4.1 of the New York City Collective Bargaining Law (hereinafter NYCCBL). The City states that it is filing the petition at this time pursuant to Board Decision No. 28-80. The City claims that employees in the Principal Urban Designer title "participate in the formulation and effectuation of policy or assist in

the preparation for and conduct of collective negotiations, contract administration and personnel administration" and, therefore, should be excluded from collective bargaining. on October 6, 1980, Civil Service Technical Guild, Local 375, AFL-CIO (hereinafter the Union) filed an answer to the City's petition. The Union asserts that it is certified to represent the title Principal Urban Designer and not District Council 37, as is alleged by the City. The Union denies that employees in the title are managerial or confidential and argues that the petition was not timely filed under the Revised Consolidated Rules of the Office of Collective Bargaining (hereinafter OCB Rules).

The Union notes that in Decision No. 28-80, the Board dismissed an earlier petition concerning the title Principal Urban Designer because it had been filed less than two years after a Board determination in 1978 that employees in this title were not managerial or confidential¹ and, therefore, was untimely under section 2.20g of the OCB Rules. The Union recognizes that the Board provided in Decision No. 28-80 that, under section 2.20g, the City might refile a petition seeking managerial or confidential designation for employees in the Principal Urban Designer title during a one-month period commencing August 23, 1980. The Union

¹ Decision No. 45-78.

believes, however, that section 2.20g of the OCB Rules should be interpreted to bar the filing of a managerial or confidential petition until the month of January 1982. The Union states that section 2.20g prohibits the filing of another petition for a period of two years after a Board determination of the managerial or confidential status of employees in a title or until the next contract open period, of "whichever is later" (emphasis supplied by the Union). Principal Urban Designers, the Union claims, continue to be covered by the July 1, 1978 to June 30, 1980 collective bargaining agreement between the parties and will be covered by the subsequent agreement which will be in effect from July 1, 1980 to June 30, 1982. Therefore, the Union maintains, the next contract open period under section 2.20b(1) of the OCB Rules will be January 1982. Since this period is later than two years after the Board last ruled on the title, the Union concludes that the instant petition is untimely and cannot be filed timely until January 1982 pursuant to sections 2.20g and 2.20b(1) of the OCB Rules.

In a letter filed October 15, 1980, the City disputes the Union's assertions. The City contends that the Union's argument is based on an erroneous interpretation of section 1173-7.0d of the NYCCBL, the status quo provisions, which, according to the City, provides only for continuation of

terms and conditions of employment beyond a contract expiration date and does not extend the contract beyond its agreed upon term. The City notes that it filed a petition concerning Principal Urban Designer on January 30, 1980 and maintains that it refiled the petition during the time period specified by the Board in Decision No. 28-80.

DISCUSSION

The sole issue before us in this proceeding, at this time, is the timeliness of the City's petition; we do not consider, in this Interim Decision, the merits of the City's claim that Principal Urban Designers are managerial or confidential employees.

In Decision No. 28-80, we dismissed a similar City petition concerning these employees which had been filed during a contract open period as defined in section 2.20b(1) of the OCB Rules. The dismissal was based on section 2.20g which bars the filing of a petition seeking a determination of managerial or confidential status of employees for a period of two years after the Board makes such a ruling concerning employees in the same title. We interpreted the rule to allow a managerial or confidential petition during the contract open period and at least two years after a prior Board determination concerning the title, whichever is later. In this case, the later period is two years after our prior determination

and we therefore specified a one-month period during which the City might timely petition to designate employees in the title Principal Urban Designer managerial or confidential.

The Union has failed to convince us that our interpretation of section 2.20g in Decision No. 28-80 was wrong. The Union's reading of the Rule would foreclose the City, in this case, from filing a managerial or confidential petition for a period of three years and four months. It is conceivable that, were we to adopt the Union's rationale herein, petitions concerning the managerial or confidential status of employees in other cases would be barred for periods of up to four years.² This is clearly a perversion of the Rules and, we believe, an erroneous interpretation. The Rules permit the filing of a managerial or confidential petition during the contract open period and at least two years after a prior Board determination, whichever is later. If it were intended to create the long insulated period suggested by the Union, the Rules would have expressly and clearly provided for that.

We therefore deny the Union's objections to the City's petition herein.

² Under the arguments presented by the Union herein, if the Board had rendered its prior decision in February 1978 and the City again petitioned for the titles in January 1980, as it did in this matter, the Union would claim that the petition could not be filed timely until January 1982, the next available contract open period.

We note that, in Decision No. 28-80, the Board indicated, with regard to employees in titles on which the Board has previously made a determination concerning managerial or confidential status, that it is the policy of the Board to require a party seeking to reverse a prior Board determination to state the change in circumstances which has taken place since the prior Board determination that is sufficient to warrant a different determination. In Decision No. 28-80, we directed that, prior to commencement of hearings on several titles, the City plead the change in circumstances since the past Board adjudication of the status of the titles, and we continue the pleading requirement with regard to the City's petition to exclude Principal Urban Designers from collective bargaining.

Previously, we had ordered consolidation for purposes of hearing of the City's petition to have employees in several titles declared managerial or confidential (docketed as RE-109D-80) with the Union's Petition to represent, and the City's objections on the grounds of manageriality or confidentiality, employees in the titles Administrative Graphic Artist (Docket No. RU-776-80) and Administrative Landmarks Preservationist (Docket No. RU-779-80). Because the parties and issues in all these cases are identical, we now order consolidation of the present petition with the above cases for purposes of hearing.

O R D E R

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

ORDERED, that the motion by Civil Service Technical Guild, Local 375, AFL-CIO to dismiss the petition of the City of New York herein be, and the same hereby is, denied; and it is further

ORDERED, that the petition herein be consolidated for purposes of hearing with the petitions docketed as RE-109D-80, RU-776-80 and RU-779-80; and it is further

DIRECTED, that prior to commencement of hearings in this matter, the City of New York file with the Office of Collective Bargaining a statement indicating that a change in circumstances has taken place since the previous Board determination sufficient to warrant a determination different from the Board determination in Decision No. 45-78 that employees in the title Principal Urban Designer are not managerial or confidential.

DATED: New York, New York
November 5, 1980

ARVID ANDERSON
CHAIRMAN

DANIEL G. COLLINS
MEMBER

WALTER L. EISENBERG
MEMBER