CWA, DC37 v. City,30 OCB 1 (BOC 1982) [1-82 (Cert.)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF CERTIFICATION
----------X

In the Matter of

COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO

-and-

THE CITY OF NEW YORK
----------X

DECISION NO. 1-82

DOCKET NOS.
RU-749-80
RU-752-80

In the Matter of

DISTRICT COUNCIL 37, AFSCIIE, AFL-CIO

-and-

THE CITY OF NEW YORK,
----------X

APPEARANCES:

Neil D. Lipton, Esq.
For: Communications Workers of America, AFL-CIO

Richard J. Ferreri, Esq.
For: District Council 37, AFSCMF, AFL-CIO

Helena E. Gillman, Esq.
For: The City of New York

DECISION AND ORDER

This matter arises out of the City's decision to transfer its towing operation from the Police Department, where it was performed by Motor Vehicle Operators (hereinafter MVOs), to the Department of Transportation and to create a new level (Level III) within the broadbanded title Traffic Enforcement Agent (hereinafter TEA) to perform both

ticketing and towing duties in the Bureau of Traffic.

On January 30, 1980, the Traffic Enforcement Agents' Benevolent Association (hereinafter TEABA) filed a petition for certification as the collective bargaining representative for a unit including the entire TEA title. TEABA submitted dues authorization cards in excess of the required thirty percent of the petitioned unit.[1] This petition was docketed as RU-740-18-0.

On February 14, 1980, the Communications Workers of America (hereinafter CWA) filed a petition to add employees in the title Traffic Enforcement Agent - Level III (hereinafter TBA III) to a unit it represents pursuant to Certification No. 25-74 (as amended), covering TEA and related titles. This petition was docketed as RU-749-80.

On February 20, 1980, in a letter to the Chairman of the Board of Certification, CWA requested that its petition be withdrawn on the ground that it was unnecessary. CWA contends that it is already the certified bargaining representative for TEA Levels 1, 11, and III.

On March 11 1980, District Council 37, AFSCME (hereinafter D.C. 37) filed a petition to add employees in the

[1] Since this petition was the first filed by TEABA with the Office of Collective Bargaining, the no-strike affirmation required by Section 2.17(b) of the Revised Consolidated Rules of the Office of Collective Bargaining and a copy of the Association's constitution were duly filed.

title TEA III to a unit it represents pursuant to Certification No. 46L-75 (as amended), covering various motor vehicle operation and related titles. This petition was docketed as RU-752-80.

At its meeting on March 11, 1980, the Board of Certification (hereinafter the Board) declined to approve CWA's request to withdraw its petition docketed RU-749-80 and ordered the (three) aforementioned petitions consolidated for investigation.

The City of New York (hereinafter the City) answered the three petitions by letter dated April 22, 1980, stating that it was not appropriate for the City to take a position as to which union should represent the employees in the disputed title. However, the City urged that any decision on the three petitions should not result in an increase in the number of existing bargaining units.

On June 9, 1980, TEABA requested ~permission to withdraw its petition for certification. This request was approved by the Board at its meeting on June 24, 1980.

On June 30, 1980, D.C. 37 filed a second petition seeking to add employees in the entire TEA title to its Certification No. 46L-75 (as amended) covering motor vehicle operators. This petition, docketed as RU-774-80, was subsequently withdrawn with the approval of the Board.[2]

[2] D.C. 37 indicated by letter of July 10, 1980 that the petition for the TEA title had been filed inadvertently.

The Board ordered that the two remaining petitions, Docket Nos. RU-749-80 and RU-752-80, be consolidated and noticed for hearing on the issue of appropriate unit placement of employees in the disputed level.

A hearing scheduled to be held on August 18, 1980, was adjourned when the subject of the dispute was submitted to the Internal Disputes Procedure of the AFL-CIO upon charges and cross-charges of "raiding" filed by the two unions. In line with the Board's practice in such circumstances, the cases were held in abeyance pending the outcome of this proceeding.

In a decision dated October 28, 1980,[3] the Impartial Umpire determined that neither CWA nor D.C. 37 had violated the Article XX raiding prohibition of the AFL-CIO Constitution. in light of this decision, the proceedings before this Board were reactivated.

Hearings were held on February 6, April 6 and June 18, 1981 before Marjorie London, Trial Examiner, at which times the parties were given a full opportunity to present evidence

[3] Communications Workers of America v. American Federation of State, County and Municipal Employees, AFL-CIO Case No. 80-44, October 28, 1980 (Gomberg, Impartial Ump.).

and argument relating to the unit placement of TEA IIIs. At the close of the final hearing, both petitioning unions expressed a desire to file briefs. Briefs were filed on or about August 28, 1981[4] at which time the record in this case was closed.

BACKGROUND

On July 12, 1978, the City Personnel Director adopted Resolution 78-29 broadbanding titles in the Parking Meter Enforcement and Traffic Control occupational Group to create the titles Traffic Enforcement Agent (with two levels) and Associate Traffic Enforcement Agent (with three levels). Both of these titles are certified to CWA.[5]

In August 1979, the City transferred the function of towing illegally parked vehicles, previously a function performed within the Police Department, to the Department of Transportation, which was already responsible for the summonsing and ticketing of such vehicles. In October 1979, to implement this change, the City created a third level in the TEA title to handle both the ticketing and the towing functions. D.C. 37 has historically represented all tow

[4] A letter brief was filed by the City reiterating its neutral position vis-a-vis the two unions, but urging that any decision should not result in an increase in the number of existing bargaining units.

[5] Certification 25-74 (as amended) covers TEAs. Certification 26-74 (as amended) covers ATEAs.

truck operators (MVOs)[6] in the City's Tow-Away Traffic Relief Program, while CWA has historically represented traffic enforcement personnel, whose duties included the issuance of traffic summonses but never the operation of tow trucks.[7]

Traffic Enforcement Agent

The job specification for the TEA title describes typical assignments for each level of the title, follows:

> LEVEL I
>
> "Patrols ans assigned area in order to enforce laws, rules and regulations relating to parking meters, movement, parking, stopping and standing of vehicles, prepares and issues summonses for violations; prepares and issues summonses to pedestrians when required; testifies at hearing offices and court; reports inoperative or missing meters and traffic conditions requiring attention; prepares required reports; operates portable and vehicle radios; operates a motor vehicle.
>
> LEVEL II
>
> "In addition to the above, directs and controls traffic at assigned locations to maintain efficient and safe flow of vehicles and pedestrians."

[6] Certification No. 46L-75 (as amended) covers MVOs.

[7] These facts were recognized by AFL-CIO Impartial Umpire Gomberg and formed the basis for his determination that neither union had been guilty of "raiding".

LEVEL III

"Affixes and/or removes restraining or immobilizing devices to prevent operation of scofflaw-owned vehicles; operates a tow truck to remove illegally parked vehicles which are impeding traffic flow."

Under the caption "Duties and Responsibilities", the job specification states that "[a]ll personnel perform related work"

While there are no formal educational or experience requirements for any assignment level, a valid New York State motor vehicle driver's license is required for all levels. In addition, assignment to Level III is specifically contingent upon possession of a valid Class 4 license.[8]

The salary ranges for the assignment levels in the TBA title, as OIL July 1, 1981, are as follows:

Level I: $12,001 - $13,047
Level II: $12,991 - $13,731
Level III: $14,463 - $15,951.

The line of promotion for the TEA title is from "None" to "Associate Traffic Enforcement Agent."

As of September 30, 1981, there were 1351 Traffic

[8] A Class 4 driver's license is valid for the operation of "any passenger vehicle, any taxicab, or any truck having a maximum gross weight of eighteen thousand pounds or less." Vehicle and Traffic Law, §501 (Mckinney, Supp. 1980-81).

Enforcement Agents employed by the Department of Transportation (the only agency employing TEAs). Of these, 50 are employed at Level III.

Motor Vehicle Operator

The job specification for the MVO title provides, under the caption "General Statement of Duties and Responsibilities", that and Responsibilities", that an MVO:

> "[u]nder supervision, operates motor vehicles and equipment such as passenger cars, ambulances, hearses, trucks and wreckers used by City departments...."

As "Examples of Typical Tasks" of MVOs, the specification includes:

> "Operates one or more types of motor vehicles such as passenger car, ambulance, hearse, truck or wrecker.
>
> Drives a truck carrying employees and material to and from work location.
>
> Acts as a chauffeur to an official.
>
> Checks the tires, oil and fuel of the vehicle, and checks vehicle to see that lights, horn and brakes appear to be operating properly.
>
> Reports any noticeable mechanical defects in the vehicle.
>
> Cleans the windows and interior and exterior of vehicle.
>
> Changes tires or wheels.
>
> Assists in loading and unloading of materials, equipment, and passengers.

Reports any accidents in which the vehicle may have been involved.

Operates motor equipment mounted on, or transported by, the vehicle.

Watches for traffic hazards while labor force is engaged in making emergency repairs.

Transports collectors and cases of coin boxes to and from collection areas.

Is responsible for tools, supplies, materials, and equipment carried in or on the assigned vehicle.

Prepares trip reports.

In a small garage, may dispatch personnel, motor vehicles and equipment

There are no formal educational or experience requirements for MVOs, but there are certain physical requirements, and a "valid operator's license or a higher license" is required.

The salary range for MVOs, as of July, 1 1981, is $14,020 to $15,295. The line of promotion is from "None" to either Motor Vehicle Foreman or Basin Machine Operator.

As of September 30, 1981, there were 818 MVOs employed by the City of New York (located in 28 departments).

Applicable Statute

Section 2.10 of the Revised Consolidated Rules of the office of Collective Bargaining (hereinafter OCB Rules) sets forth the criteria to be applied by the Board in making determinations of appropriate unit placement. This section provides:

> "Appropriate Units - Determination. 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

CWA's Position

CWA, in seeking to add employees in Level III to its Certification 25-74 (as amended), relies upon several factors to support its claim that the traffic enforcement unit would be more appropriate than that urged by D.C. 37.

CWA contends that if already represents the entire TEA title, without regard to assignment level, by virtue of its Certification No. 25-74. As further evidence of this fact, CWA points out that the job specifications for the TEA title cover all three levels and that Level I and Level II duties may be assigned to Level III TEAs. In addition, CWA notes that all levels of the TEA title are in a direct line of promotion to the supervisory title of Associate Traffic Enforcement Agent, which is also certified by CWA.

CWA asserts and relies upon the fact that the City bargained with CWA as the exclusive representative of TBAs, specifically including those assigned to Level III, for the two contract periods from July 1, 1978 through June 30, 1980 and July 14, 1980 from Harry Karetzky, Deputy Director of the City's Office of Municipal Labor Relations (hereinafter OMLR) to Donna Brunner, Director of the Civil Service Division of CWA, stating the salary terms to be applied to TEA IIIs (CWA Exhibit 9 in evidence).

CWA notes that all non-wage terms of the 1978-1980 collective bargaining agreement covering TEAs were applied to TEA IIIs and that salary increases for the 1980-1982 contract period were negotiated for and paid to TEA IIIs, although this agreement has not yet been reduced to writing.

These facts demonstrate, according to CWA, that there was no reason for it to file a representation petition for Level III as it is already the recognized exclusive representative for the entire title.

Related to the above claim is CWA's argument that the principle of "contract bar" should be applied to defeat D.C. 37's petition.[9] Under this principle, CWA maintains a petition by D.C. 37 to represent employees in the TEA title ought to have been filed in January of 1980, "not less that five (5) or more than six (6) months before the expiration date....." of the 1978-1980 contract. The filing of D.C. 37's petition on February 29, 1980 was untimely, according to CWA. Further, CWA notes that D.C. 37 has offered no showing of interest, as is required by OCB Rules.

CWA describes at length its activities on behalf of TEA IIIs, including negotiation of salary increase

[9] Section 2.7 of the OCB Rules provides as follows: "A valid contract between a public employer and a public employee organization shall bar the filing of a petition for certification, designation, decertification or revocation of designation during a contract term not exceeding three (3) years. Any such petition shall be filed not less than five (5) or more than six (6) months before the expiration date of the contract, ..."

(Tr. 70-71),[10] handling of grievances (Tr. 90-92, 103, 106), and meetings with City officials to discuss unsafe working conditions of TEA IIIs (Tr. 92, 102). CWA also notes that TEA IIIs have attended union meetings and are eligible to vote on all union matters (Tr. 65).

CWA relies upon this Board's decision in Detectives' Endowment Association v. Patrolmen's Benevolent Association,[11] where we dismissed the Detectives' Endowment Association's petition for unit clarification with respect to the so-called "white shield" detectives.[12] CWA cites this decision for the principle that a petition for certification, which the Board said would have been more appropriate in that case, will be dismissed where no showing of interest is made by the petitioning union. CWA noted that the Board's decision was also based upon the facts that the Patrolmen's Benevolent Association's contract specifically referred to the "white shields", and that the salary rates set forth therein were applied to "white shields".

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[10] References to the official transcript in this case are indicated parenthetically by "Tr." and a page number or numbers.

[11] Decision No. 15-80.

[12] "White shield" detectives are police officers, not officially designated as Detectives, who are assigned to investigative detective duties.

CWA notes that, as of August 1980, forty-five out of forty-eight TEA IIIs were on dues checkoff to CWA, while none was on checkoff to D.C. 37.

As further evidence of the appropriateness of the TEA unit, CWA cites the following factors:

> 1. Interchangeability between assignment levels within the TEA title but the absence of interchangeability between TEAs and MVOs. That is, TEA IIIs may be assigned to perform the ticketing and traffic-directing duties of levels I and II but may not be assigned to operate dump trucks or to perform other MVO duties. Nor may MVOs be assigned to perform TEA functions;
>
> 2. Similarity of uniforms of TEAs I, II and III;
>
> 3. Common supervision by and common line of promotion to the title ATEA;
>
> 4. Overlapping job specifications among the three levels, same civil service examination for all levels, and appointment from a single civil service list.

CWA concludes, on the basis of the aforementioned factors, that a bargaining unit consisting of fewer than all TEAs is an inappropriate unit. CWA emphasizes that it is already the exclusive bargaining representative for all employees in the TEA title, regardless of level, and requests that the Board, in dismissing the petitions of both D.C. 37 and CWA, reaffirm this fact.

D.C. 37's Position

D.C. 37 contends that, based upon the criteria enumerated in section 2.10 of the OCB Rules, the TEA III title is most closely related to the MVO title, for which D.C.. 37 is the certified bargaining representative, and that this level should be added to its Certification No. 46L-75 (as amended).

D.C. 37 maintains that the abilities required and duties performed by TEA IIIs are most closely related to MVO qualifications and duties. Most significant, according to D.C. 37, is the requirement that TEA IIIs possess a Class 4 license, which qualifies them to operate a tow truck. This is not a requirement for TEAs Level I or II.

D.C. 37 relies upon the testimony of a MVO (who is also a union official) to the effect that towing comprises the largest part of the TEA III job and approximately ninety percent of the workday. (Tr. 145) D.C. 37 also relies upon the testimony of the TEA II who, on cross-examination, stated that the summonsing part of the TEA III job is "brief enough: (Tr. 171) and the vouchering procedure[13] takes from 15 to 35 minutes (Tr. 169). Thus

[13] Testimony revealed that the TEA III's job involves four functions:

1. seeking out illegally parked cars
2. ticketing or writing summonses
3. towing
4. vouchering

"Vouchering" involves making a list of articles found in the towed vehicle once that vehicle has been delivered to the pound.

D.C. 37 maintains, CWA's own witness corroborated the testimony of D.C. 37's witness that seeking illegally parked vehicles and actual towing comprise the major portion of the workday.

D.C. 37 offered testimony to the effect that MVOs continue to drive tow trucks in the Departments of Transportation and General Services, among others (Tr. 149-150). D.C. 37 also notes that, pursuant to a 1968 arbitration award,[14] MVOs have the exclusive right to operate tow trucks in the Police Department. According to this witness, MVOs in the Police Department tow disabled police cars, abandoned vehicles and that they issue summonses in the Department of Sanitation.

D.C. 37 argues that the TEA III duties of issuing summonses and vouchering illegally parked vehicles are only incidental to the towing function. In this way, too, D.C. 37 asserts, the TEA III duties are more closely related to MVO duties than to the functions of TEA I and TEA II employees who are primarily concerned with enforcement of parking meter rules and regulations and with directing traffic.

[14] American Arbitration Association Case #1330-0501-67, September 10, 1978 (Berkowitz, Arb.).

To refute CWA's contract bar argument, D.C. 37 points to the proceeding before the AFL-CIO wherein the Impartial Umpire determined that neither party had violated the Article XX prohibition against raiding. Such a determination could not have been made, argues D.C. 37, if CWA were already the certified representative of TEA IIIs. D.C. 37 also cites in this regard a letter dated August 4, 1980, from Harry Karetzky, Deputy Director of OMLR, to D.C. 37, confirming that "the issue of representation of these employees is correctly pending before the Office of Collective Bargaining," notwithstanding the City's discussions and agreement with CWA concerning salary rates for TEA IIIs. D.C. 37 maintains that CWA has not been recognized as the exclusive representative of TEA IIIs and that only this Board has the authority to make decisions as to unit placement.

D.C. 37 characterizes CWA's acts in negotiating salaries, handling grievances, and placing on dues checkoff employees in the TEA III position, as "gratuitous" and argues that assuming the duties of A certified collective bargaining representative does not confer legal authority to do so.

Finally, D.C. 37 contends that the certification of TEA III to D.C. 37, which would "split a broadbanded title, is not

without precedent, and that this fact should be *a consideration in the Board's decision.

City's Position

The City, has, throughout this proceeding, stated that it would be inappropriate for it to take a position as to which of the two petitioning unions should represent the TEA III title. OMLR desires only that the decision of the Board not result in an increase in the number of existing bargaining units.

DISCUSSION

As we noted above, D.C. 37 represents 818 MVOs (and related titles) who work in 28 City agencies, including the Department of Transportation. CWA represents about 1300 TEAs (Levels I and II), all of whom work in the Department of Transportation. In contention here are 50 TEA IIIs, also employed in the Department of Transportation.

It is the Board's duty to decide which of the two units requested by the petitioning unions is the more appropriate for inclusion of these 50 employees. This judgment must take into account the criteria for determinations on unit placement prescribed by Section 2.10 of the OCB Rules.

Before discussing the application of the statutory criteria, however, we shall dispose of CWA's threshold claims: 1) that it is already the exclusive bargaining representative for all TEAs regardless of level, and 2) that D.C. 37's petition is contract barred.

The Board must reject CWA's argument that its Certification No. 25-74 (as amended) includes all levels of the TEA title. As mentioned above, when the TEA title was created (by broadbanding), it included only two levels. This two-level title was added to CAW's certification for Parking Enforcement Agents and Traffic Control Agents hy Decision No. 3-710. While it is true that this certification makes no explicit exclusions, a certification is not deemed to cover a level of a title which was not in existence at the time the title was certified. OCB Rules and policy require the amendment of a certification when a specialty designation or a new level is added to the title subsequent to the original certification.

Nor does the fact that the City participated in negotiations and entered into agreements with CWA on behalf of TEA IIIs constitute "recognition" by the City of CWA as the exclusive bargaining representative of Level III TEAs The City does not claim to have recognized CWA and, in effect,

admits as much in its August 4, 1980 letter from Harry Karetzky to D.C. 37. In that letter, Mr. Karetzky acknowledged that "...the issue of representation of [Level III] employees is currently pending before the office of Collective Bargaining."[15]

Even if the City did claim to recognize CWA, however, we would reject this claim. In accordance with the statutory definition of "certified employee organization," the Board of Certification does not permit voluntary recognition by a municipal agency except where the union was recognized before the effective date of this provision.[16]

For the above-stated reasons, we find that the agreement between the City, and CWA covering TEA Ills is not binding with respect to the question of representation. Accordingly, we find that CWA's reliance upon the principle of contract bar is inappropriate and, therefore, shall dismiss this claim

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[15] This letter is not part of the record in this case but is quoted in the decision of AFL-CIO Impartial Umpire William Gomberg. See note 3 supra.

[16] Section 1173-3.0 (1) of the NYCCBL defines the term "certified employee organization" as:

> any public employee organization: (1) certified by the board of certification as the exclusive bargaining representative of a bargaining unit determined to be appropriate for such purpose; (2) recognized as such exclusive bargaining representative by a public employee other than a municipal agency; or (3) recognized by a municipal agency, or certified by the department of labor, as such exclusive bargaining representative prior to the effective date of this chapter, unless such recognition has been or is revoked or such certificate has been or is terminated.

Having resolved these threshold issues, we turn our attention to the merits of the respective unions' claims in light of the prescribed criteria for unit placement.

Based on the evidence presented during the hearings in this case and summarized in the parties' briefs, we find that both CWA and D.C. 37 have shown that there is some community of interest between TEA IIIs and the employees each represents. However, we conclude that D.C. 37's MVO unit is more appropriate than CWA's TEA unit for inclusion of the TEA III position.

Most significant in our determination is the insufficiently rebutted evidence that the major part of a TEA III's day is spent in the performance of MVO - type duties, namely, operating a tow truck. While a CWA witness testified that there is no way to measure how much time a TEA III spends performing the various aspects of the job (Tr. 163), on cross-examination of this witness, D.C. 37 established that non-towing functions take a minimal amount of time, thus leading inevitably to the conclusion that seeking out illegally parked vehicles and towing comprise the largest part of the job. This conclusion is consistent with the estimation of D.C. 37's

own witness, if not in degree, at least in kind.[17]

We are not unmindful of the similarities between Levels I and II and the Level III position in dispute. That all applicants take the same civil service examination for appointment, are appointed from a single list, wear similar uniforms, and may be called upon to perform most of the duties of the title does not, in our view, outweigh the significance of the extra requirement for TEA IIIs, namely, possession of a Class 4 driver's license which qualifies them to operate a tow truck. Neither TEA I nor TEA II employees are qualified to perform this task, and, we have found that the towing function comprises the major part of the TEA III job.

Nor are we unmindful of -%he fact that the supervisory title of ATEA, which is the promotional title for TEAs, is certified to CWA. However, after careful review of the evidence and arguments presented, we find that division of the TEA title satisfies the Board's criteria for unit placement. Splitting the title will result in TEA IIIs being included in a horizontal and broad occupational unit of motor vehicle operators, whose actual duties and responsibilities are most closely allied with their own.

[17] We do not base our determination on the testimony of D.C. 37's witness to the effect that MVO duties constitute 90% of a TEA III's workday. lie find only that the allegation that towing and towing-related functions comprise a major part of a TEA III's actual duties is corroborated by CWA's own witness and will therefore be taken as true.

The criterion concerning the history of collective bargaining is satisfied in that D.C. 37 (Local 983) has been the exclusive representative for employees in motor vehicle operations titles for twenty years. CWA has represented and continues to represent employees in the Traffic Enforcement Occupational Group, whose duties involve the enforcement of traffic rules and regulations by ticketing and summonsing vehicles, testifying in court, directing traffic and related tasks, but not operating tow trucks.

We see no ill effects on the "efficient operation of the public service and sound labor relations" in dividing the TEA title. All employees performing mainly towing duties are already certified to a separate unit (MVOs) from those who perform ticketing functions. This decision does no more than recognize this division and its propriety. Nor will this determination affect the power of government officials at the level of the unit to. deal with the terms and conditions of employment of TEA IIIs.

With respect to the statutory criterion of assuring public employees the fullest freedom in the exercise of their rights under the New York City Collective Bargaining Law (hereinafter NYCCBL), we note that the freedom to "bargain collectively through certified employee organizations of

their own choosing" (NYCCBL Section 1173-4.1) is not an unqualified right; this freedom can be exercised only within a bargaining unit which the Board has determined to be appropriate.

We have considered the fact that as of August 1980, forty-five out of forty-eight TEA IIIs had authorized dues check-off in behalf of CWA. However, this is only one actor in our decision. We will not grant certifications solely on the basis of extent of organization but will consider all the relevant statutory criteria.[18]

While CWA has submitted proof of its majority representation among the employees in the position it seeks to add to its Certification 25-74 (CWA Exhibit 22 in evidence), D.C. 37 has a valid showing of interest because it will be the majority representative in a combined unit of MVOs (818 employees) and TEA IIIs (50 employees).[19]

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[18] The record in this case contains testimony by a CWA witness, which testimony is not contested, that the majority of the new Level III positions were filled by TEAs in Levels I and II, who were already members of CWA and who continued their membership in the union (Tr. 63). It is also alleged that some new employees were hired for the Level III position. (Tr. 52)

[19] See Decision No. 39-69. We note that "accretion" is not appropriate in this case. Even though TEA III is a new "title," which did not exist at the time either the TEA title or the MVO title was certified, it cannot be said that the similarity of TEA IIIs either to TEAs I and II or to MVOs would necessarily have warranted their inclusion in one unit as opposed to the other if TEA IIIs had been in existence at the time of either certification. If accretion were appropriate, proof of representation would not be required.

Finally, we note that this decision is consistent with the past decisions and policies of the Board. While we have been reluctant to "split" titles, we have not hesitated to do so where the duties and responsibilities, qualifications, interest, history and other pertinent factors warranted it.[20]

As we have noted in prior decisions, classification of employees for civil service purposes is the responsibility of the Civil Service Commission.[21] This Board's statutory function is to determine units appropriate for collective bargaining purposes. our policy has been and is to certify units of occupationally related titles.[22] Adding TEA Ills to D.C. 37's MVO unit is consistent with this policy. To do otherwise, that is, to include TEA Ills in a unit of TEA I and TEA II employees because they share the designation and external features of TEAs, would be to exalt form. over substance. Division of this title along functional lines is, in our view, both fair and justified.

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[20] See Decisions Nos. 6-69, 2-78, 18-81.

[21] Decisions Nos. 60-69; 62-71.

[22] See, e.g., Decision No. 12-70.

0 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 the Communication Workers of America be, and the same hereby is, denied, and it is further

ORDERED, that the petition of District Council 37 be, and the same hereby is, granted, and it is further

ORDERED, that employees in Level III of the Traffic Enforcement Agent title, be and the same hereby are, added to Certification 46L-75 (as amended), subject to existing contracts, if any.

DATED: New York, N.Y.
January 29, 1982

ARVID ANDERSON
CHAIRMAN

MILTON FRIEDMAN
MEMBER

DANIEL G. COLLINS
MEMBER