

City v. DC37,34 OCB 11 (BOC 1984) [11-84 (Cert.)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF CERTIFICATION

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In the Matter of the Application

-between-

THE CITY OF NEW YORK, on its own
behalf and on behalf of

THE NEW YORK CITY OFF-TRACK
BETTING CORPORATION,

Petitioner,

DECISION NO. 11-84

For an Order declaring certain employees
of the New York City Off-Track Betting
Corporation Managerial or Confidential
pursuant to Section 2.20 of the Revised
Consolidated Rules of the Office of
Collective Bargaining,

DOCKET NO. RE-151-84

-and-

DISTRICT COUNCIL 37, AFSCME, AFL-CIO,

Respondent.

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DETERMINATION AND ORDER

On January 31, 1984, the City of New York ("the City"), on its own behalf and on behalf of the New York City Off-Track Betting Corporation ("OTB"), appearing by the Office of Municipal Labor Relations ("OMLR"), filed the petition herein, seeking a determination that certain individuals employed by OTB serving in the titles of Associate Attorney, Attorney, Attorney Trainee and Office Associate are managerial and/or confidential within

the meaning of Section 1173-4.1¹ of the New York City Collective Bargaining Law ("NYCCBL").

District Council 37, AFSCME, AFL-CIO ("D.C. 37")² filed its answer on March 16, 1984. A Notice of Hearing issued on April 26, 1984.

¹ Section 1173-4.1 of the NYCCBL reads as follows:

§1173-4.1 Rights of public employees and certified employee organizations. Public employees shall have the right to self-organization, to form, join or assist public employee organizations, to bargain collectively through certified employee organizations of their own choosing and shall have the right to refrain from any or all of such activities. However, neither managerial nor confidential employees shall constitute or be included in any bargaining unit, nor shall they have the right to bargain collectively; provided, however, that nothing in this Chapter shall be construed to: (i) deny to any managerial or confidential employee his rights under section 15 of the New York Civil Rights Law or any other rights; or (ii) prohibit any appropriate official or officials of a public employer as defined in this Chapter to hear and consider grievances and complaints of managerial and confidential employees concerning the terms and conditions of their employment, and to make recommendations thereon to the Chief Executive Officer of the public employer for such action as he shall deem appropriate. A certified or designated employee organization shall be recognized as the exclusive bargaining representative of the public employees in the appropriate bargaining unit.

² See Certification No. 46C-75 (as amended) and Certification No. 46-75 (OTB) (as amended).

At the commencement of the hearing on May 24, 1984, the City amended its petition by withdrawing the names of the two individuals employed in the Attorney and Attorney Trainee titles. Similarly, on July 2, 1984, the City withdrew the name of the individual serving in the Office Associate title.

Also on July 2, 1984, the parties stipulated that, Stevan Sloan, who serves in the OTB Associate Attorney title, is a confidential employee. The parties' concurrence is based upon "Mr. Sloan's professional relationship with the Deputy General Counsel of the Off-Track Betting Corporation and his advocacy on behalf of the Corporation in arbitrations concerning union matters."

In light of the foregoing, the Board is persuaded that Stevan Sloan is a confidential employee within the meaning of the NYCCBL.

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 request for permission to withdraw from this petition the individuals in the OTB titles Attorney, Attorney Trainee and Office Associate

bell and the same hereby is, granted; and it is further

ORDERED, that the request herein for a determination that Stevan Sloan, Associate Attorney (OTB), is a confidential employee within the meaning of Section 1173-4.1, be, and the same hereby is, granted.

DATED: New York, N.Y.
 July 9, 1984

ARVID ANDERSON
CHAIRMAN

DANIEL G. COLLINS
MEMBER

MILTON FRIEDMAN
MEMBER