

L.2, SEIU, et. Al v. City, Related Public Employers, 36 OCB 13 (BOC 1985) [13-85 (Cert.)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF CERTIFICATION

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In the Matter of

WINDOW CLEANERS' UNION, LOCAL No.
2, SEIU, AFL-CIO

-and-

LOCAL 300, THE CIVIL SERVICE
FORUM, SEIU, AFL-CIO

DECISION NO. 13-85

DOCKET NO. RU-944-85

-and-

THE CITY OF NEW YORK AND RELATED
PUBLIC EMPLOYERS

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DECISION AND ORDER

On July 22, 1985, Window Cleaners' Union, Local No. 2, SEIU, AFL-CIO (herein Local 2), filed a petition, accompanied by an appropriate showing of interest, requesting certification as the collective bargaining representative of a unit consisting of the employees of the New York City Health and Hospitals Corporation in the title of Window Washer (Health Care Facilities). A timely intervention was filed by Local 300, The Civil Service Forum, SEIU, AFL-CIO (herein Local 300), on the ground that it is currently certified for a unit containing the title of Window Cleaner, a title whose duties are practically identical to those of the requested title. The City's Office of Municipal Labor Relations opposes this petition on the ground that it would result in an additional, unnecessary bargaining unit.

Background

Local 300 has been certified as City-wide representative of employees in the title of Window Cleaner since 1966.¹ Through successive consolidations, this title is now² part of a "residual" unit covering approximately five hundred employees serving in forty titles (plus specialties) and still represented by Local 300.

The title of Window Cleaner, which has been in existence since before 1954, is used for agencies under the jurisdiction of the City's Department of Personnel. The title of Window Washer (Health Care Facilities) was created by the New York City Health and Hospitals Corporation (HHC), effective August 20, 1984, for use in the facilities of the Corporation. The duties and qualification requirements of these two titles are nearly identical. The salaries were also identical, except for discrepancies in effective dates.

There are three employees in the "City" title of Window Cleaner and seven in the HHC title of Window Washer (H.C.F.).

¹ A predecessor of Local 100 was certified for this title in 1964.

² Decision No. 3-85.

Positions of the Parties

Local 2 seeks a separate unit limited to Window Washers (Health Care Facilities). Local 300 states that the Board of Certification has a long-standing policy of placing similar titles in the same bargaining units, and that "[t]he duties and typical tasks of Window Cleaner [represented by Local 300] and Window Washer are synonymous and the title of Window Washer is merely a play on words...."

The City's Office of Municipal Labor Relations (hereinafter OMLR) points out that it "has repeatedly opposed the proliferation of bargaining units," and the Board of Certification has likewise "discouraged" such proliferation. The City requests "that the Board follow that precedent in the instant matter." Finally, OMLR states that "because of the community of interest which exists between the titles, there is clearly no necessity for two separate bargaining units."

Local 2 replies that OMLR's letter "is improper due to the fact that OMLR is not, nor has it attempted to become a party to the instant proceeding." In addition, Local 2 alleges that

a craft unit of window cleaners
or washers is the common practice in
New York City and vicinity. Window
cleaning is a technical and highly

complicated industry. There are countless safety laws that are applicable strictly to window cleaners. It is therefore clear that a unit limited to window washers would constitute a separate appropriate unit due to the disparity in interest between said employees and any other employees employed by the various health care facilities.

Discussion

It is well settled that the employer is entitled to be a party to any representation proceeding. The employer's position is not only permitted but actively sought by the Board in such matters. Numerous Board decisions have made this clear. OMLR appears here, as usual, on behalf of HHC.

It is also well settled that the Board has "followed a policy of creating larger units based on broad occupational grouping comprising as many employees and titles as can effectively operate as an entity."³ We see no reason to depart from this policy here, especially since Local 300 already represents a title which differs from the subject title mainly in being classified in the Competitive Class in the City service, while the requested title is classified in the Non-Competitive Class in the

³ Decision No. 25-79. See also, e.g., Decisions 77-71 and 13-81.

NYC Health and Hospitals Corporation.

Finally, in regard to the "common practice" of separate units for window washers, it should be pointed out that neither Local 2 nor any other specialized union has ever sought to represent the older title of Window Cleaner in the twenty-seven years during which such a petition could have been filed.

Accordingly, all the conditions for accretion having been satisfied, we shall add the requested employees to the unit covered by Certification No. 8-8-11, held by Local 300.

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 application by Local 300 to intervene herein be, and the same hereby is, granted; and it is further

ORDERED that the petition filed herein by Local 2 be, and the same hereby is, denied; and it is further

ORDERED that Certification No. 8-85 be, and the same hereby is, amended to include the title of Window Washer

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(Health Care Facilities), subject to existing contracts,
if any.

DATED: New York, N.Y.
 October 16, 1985

ARVID ANDERSON
CHAIRMAN

MILTON FRIEDMAN
MEMBER

DANIEL G. COLLINS
MEMBER

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

Window Washer (Health Care Facilities) 00442