

DC37 v. City, 4 OCB 31 (BOC 1969) [Decision No. 31-69 (Cert.)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF CERTIFICATION

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In the Matter of

DISTRICT COUNCIL 37, AFSCME, AFL-CIO,
Petitioner

-and-

THE CITY OF NEW YORK

-and-

PAVERS AND ROADBUILDERS DISTRICT
COUNCIL, AFL-CIO,

Intervenor

DECISION NO. 31-69

DOCKET NO. RU-46-68

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DECISION AND ORDER

In its prior decision herein (Decision No. 59-68), the Board directed that an election be held in a unit of Cement Masons and Mason's Helpers, with both Petitioner and Intervenor on the ballot.

Thereafter, by notice of motion and affidavit filed with the Board on November 22, 1968, Intervenor moved for reconsideration of the Board's decision, a hearing on the question of the appropriate unit, and a stay of the directed election. Petitioner opposed such motion by an affidavit of Joan Stern Kiok, Esq., filed November 29, 1968. On December 3, 1968, the Board issued an order granting reconsideration of the decision and a hearing thereon. The Board denied the request to stay the election, but directed that the ballots cast therein should be sealed and impounded pending further order of the Board.

On December 5, 1968, the election was held and the ballots were sealed and impounded.

On February 27, 1969, a hearing was held before Richard J. Horrigan, Esq., a Trial Examiner duly designated by the Board.

Upon consideration of all of the proceedings heretofore had herein, including the application for reconsideration, the affidavit in opposition thereto, and the transcript of the hearing, the Board adheres to its prior decision.

In our prior decision, we pointed out that it long has been customary to include craftsmen and helpers in a single bargaining unit, and found that Cement Masons and Mason's Helpers constitute an appropriate bargaining unit. Nothing in the evidence produced at the subsequent hearing warrants a different conclusion.

Cement Masons and Mason's Helpers do the same type of work and use the same tools of the cement mason's trade. When a Cement Mason is absent from the job for any reason, the Mason's Helper does the same work he would do if the Cement Mason was present.

The testimony reveals that no employee has ever been promoted to Cement Mason except a Mason's Helper. A 1967 notice of a promotion examination to Cement Mason, issued by the New York City Civil Service Commission, provides that the examination is open only to Mason's Helpers, and to Laborers who have had three years' recent experience in cement mason work. The notice states, however, that the inclusion of Laborers is limited to this particular examination and is not a precedent for future examinations.

Cement Masons and Mason's Helpers are supervised by Foremen Bricklayers. The Foreman Bricklayer is their immediate supervisor and assigns the work to be done. The Cement Mason is responsible for the job, but he is not the supervisor of the Mason's Helper.

Having adhered to our conclusion that Cement Masons and Mason's Helpers constitute an appropriate bargaining unit, we shall direct that the impounded ballots be counted and tabulated.

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

O R D E R E D, that the ballots cast at the election held herein on December 5, 1968, be opened, comingled and counted at the Office of Collective Bargaining, 250 Broadway, New York, N.Y., 10007, on the 16th day of June, 1969, at 11:00 o'clock in the forenoon, by an agent of the Board; and that the parties hereto, or their representatives, have the right to be present thereat.

DATED: New York, N.Y.

June 6 , 1969

ARVID ANDERSON
C h a i r m a n

ERIC J. SCHMERTZ
M e m b e r