

L.3, IBEW v. City, 4 OCB 36 (BOC 1969) [Decision No. 36-69 (Cert.)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF CERTIFICATION

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In the Matter of the Petition

-of-

Local Union No. 3, I.B.E.W., AFL-CIO

-and-

The City of New York

DECISION NO. 36-69

-and-

District Council 37, AFSCME, AFL-CIO,

DOCKET NO. RU-50-68

Intervenor

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DECISION AND ORDER

On June 10, 1968, Petitioner, Local Union 3, I.B.E.W., AFL-CIO, filed a motion alleging that Independent Traffic Employees Union (ITEU) had merged with it, and requesting that certain certifications issued to ITEU be transferred to it.

On June 19, 1968, District Council 37 advised the Board, by letter, that it had filed a charge with the AFL-CIO alleging that the requested transfer of certifications constitutes raiding in violation of Article XX of the AFL-CIO constitution. The Board, on June 28th, advised George Meany, president of the AFL-CIO, it would hold Petitioner's application in abeyance until July 30th, pending determination of the raiding charge. In response to a request from Mr. Meany, the Board agreed to withhold further action on the transfer until August 30th.

On December 11, 1968, no request for a further extension of time having been received, the Board issued its decision substituting Petitioner for ITEU in the pertinent certifications. [Decision No. 78-68].

Thereafter, on December 20, 1968, D.C. 37 filed a motion to re-open the proceeding, alleging that the no-raiding charge was still pending, and that a hearing thereon had been held on December 18th.

On December 24, 1968, Howard W. Kleeb, an Impartial Umpire for the AFL-CIO, sustained the charge of raiding. A copy of the decision was filed with the Board on January 9, 1969. Petitioner appealed from the ruling, but its appeal was disallowed by a subcommittee of the AFL-CIO Executive Council.

On April 24, 1969, a letter was received from Harold Stern, Esq., attorney for Petitioner, stating, in substance, that collective bargaining negotiations were being conducted concerning the affected employees; that it would be "most detrimental" to the interests of those employees if Petitioner were to abandon them; and that Petitioner "will continue to act as the bargaining agent for the Traffic Employees until a collective bargaining agreement is consummated".

Local 1455, D.C. 37, AFSCME, had been certified by the New York City Department of Labor on January 25, 1959, as the collective bargaining representative of Traffic Device Maintainers [9 NYCDL No. 91 and on July 20, 1960, as the representative of Foremen (T.D.M.) (2NYCDL No. 32)].

On February 24 and June 6, 1967, respectively, after elections, ¹ the Department of Labor certified ITEU as the collective bargaining representative of Traffic Device Maintainers [9 N.Y.C.DL No. 10] ² and Foremen (T.D.M.) [9 NYCDL No. 35].³

¹ Local 1455, D.C. 37, appeared on the ballot in the election among the Traffic Device Maintainers.

² This certification was amended on Sept. 1, 1967 to include T.D.M. Trainees.

³ On May 28, 1968, this Board certified ITEU as the representative of Foremen (T.D.M.) and Sr. Foremen (T.D.M.) [Decision No. 16-68], and on December 11, 1968, added the title of Supervising Superintendent of Maintenance [Dec. No. 78-68].

Petitioner's application to transfer the ITEU certifications was filed with the Board on June 10, 1968, and granted on December 11, 1968.

The AFL-CIO's Impartial Umpire held that the evidence submitted did not warrant a conclusion that ITEU was the "brain child" of Petitioner, or a front for it. His decision held, however, that the 22 month interval since Local 1455 had represented the employees was immaterial, and the rule to be followed is that stated in Midwest Handbag Co. 68-69, to wit:

"No affiliate is exempted because it believes its charter gives it jurisdiction over operations of the kind in question, because it has been urged by the employees to take over their representation, or because there is danger that otherwise the employees may go no-union or transfer their support to some non-Federation union."

The no-raiding pact contained in Article XX of the AFL-CIO Constitution is designed to eliminate jurisdictional disputes and maintain stable labor relations. These are salutary purposes, but, as evidenced by the decision of the Impartial Umpire, they are to be achieved by maintenance of the status quo and exclusive rights granted to an incumbent, or former incumbent, union.

Although Article XX may constitute a binding contract between affiliates of the AFL-CIO, it is not binding on third parties. In the State of New York, public employees have the statutory right to bargain collectively through representatives of their own choosing [N.Y. State Public Employees Fair Employment Law, §§202, 203, N.Y.C.C.B.L., §1173-2.0, Executive Order 52 (1967), §3, New York State Constitution, Article 1, §17]. That statutory right manifestly is paramount to the contract between AFL-CIO affiliates, and must be recognized and effectuated by this Board.

In the instant case, the employees concerned rejected representation by D.C. 37, and a vast majority in each of the appropriate bargaining units are dues paying members of Petitioner and desire to be represented by it. Petitioner has stated that it is representing them and will continue to negotiate on their behalf. Under such circumstances, the paramount right of the employees to select a bargaining representative cannot and should not be stultified by the fact that a rival union had represented the employees in the past.⁴

Accordingly, we shall deny the motion filed by D.C. 37.

ORDER

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 filed herein by District Council 37 on December 20, 1968, be and the same hereby is denied.

Dated, New York, New York

June 24 , 1969

ARVID ANDERSON
CHAIRMAN

ERIC J. SCHMERTZ
MEMBER

SAUL WALLEN
MEMBER

⁴ It should also be noted that subsequent to D.C. 37's representative status, the titles of Traffic Device Maintainer Trainee, Senior Foreman (T.D.M.) and Supervising Superintendent of Maintenance have been added to the respective bargaining units. See footnotes 2 and 3, supra. All of the titles are in the same occupational group.