L.2461, SEIU v. City, 4 OCB 45 (BOC 1969) [Decision No. 45-69(Cert.)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF CERTIFICATION

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In the Matter of the Petition of

DECISION NO. 45-69

DOCKET NO. RU-93-69

NEW YORK CITY LOCAL 2461, S.E.I.U., AFL-CIO

-and-

THE CITY OF NEW YORK

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DECISION AND ORDER

On March 21, 1969, New York City Local 246, S.E.I.U., AFL-CIO herein called the Petitioner, filed its petition herein with the Office of Collective Bargaining, requesting certification as the exclusive collective bargaining representative of employees in the title of Automotive Serviceman.

I. Undisputed Matters

It is undisputed, and we find and conclude, that, in fact and within the meaning of the New York City Collective Bargaining Law, the Petitioner is a public employee organization.

II. The Appropriate Unit

Petitioner requests certification as the exclusive collective bargaining representative of a unit of Automotive Servicemen employed by the City of New York. The City recommends that the title "be placed in an existing unit of allied titles" but has not specified any particular unit.

In the past, the City Department of Labor and this Board found appropriate "automotive trades units" consisting of Machinists, Machinist's Helpers, Auto Machinists, Auto Mechanics, Auto Mechanics (Diesel), and Batterymen employed in various City departments.

Employees in these automotive trades units service, repair, and overhaul motor vehicles and other equipment. Automotive Servicemen (a new title) work with the other automotive employees, changing tires and lubricating, cleaning and inspecting such vehicles. Their duties, working conditions, and interests manifestly are similar and related to those of the other automotive personnel.

Outstanding certifications of automotive trades units in various departments are held by two unions: N.Y.C. Local 246, S.E.I.U. and District 15, I.A.M., both AFL-CIO affiliates. Neither union will petition for a City-wide automotive trades unit because to do so exposes it to a charge of "raiding" in violation of Article XX of the AFL-CIO constitution. The same fear of a "raiding" charge has deterred other unions from petitioning for City-wide certifications.

Federal Executive Order No. 10988, which governs labor relations in federal employment, provides for different types of certifications involving varying degrees of recognition and bargaining rights. The Executive Council of the AFL-CIO has declared that Article XX does not bar an affiliate from seeking "the highest, most advanced form of certification and recognition" available under Executive Order 10988, even though another affiliate has a "lower" form of certification. (Matter of-International Union of operating Engineers and International Brotherhood of Firemen & Oilers, Decision of David L. Cole, Impartial Umpire, Decision No. 68-85). The New York City bargaining structure similarly provides different types of certifications, and there is no logical reason why the same principle should not be applied to representation proceedings here. As yet, however, the Executive Council has declined to do so. (Matter of Local 704, I.U. Firemen & Oilers, Docket No. RU-61-68; Matter of International Union of Operating Engineers and I.U. Firemen & Oilers, AFL-CIO Case No. 68-85).

We recently had occasion to note (Matter of Local Union No. 3, I..B.E.W., Decision No. 36-69):

> "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.
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> "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 I, §17]. That statutory right manifestly is paramount to the contract between AFL-CIO affiliates, and must be recognized and effectuated by this Board."

In Matter of District Council 37, Decision No. 44-68, we traced the evolution of collective bargaining units in New York City, and stated:

> "Under Mayor Wagner's Executive Order 49 (1958), organization of City employees for collective bargaining began with the certification of representatives of departmental units. Because of the necessity for uniformity in any title (class of positions) common to departments throughout the City's personnel structure, the authority of departmental representatives was substantially restricted. Except for titles unique to a particular department, their primary-function was the processing of employee grievances. As organization progressed, unions representing departmental units which, in the aggregate, included a majority of the employees in a

City-wide title were certified as the exclusive

> representative of all employees in the title. The scope of collective bargaining thus was expanded to include wages and other terms and conditions of employment which are applicable to that title only.
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> "In the summer of 1967, the Department of Labor began consolidating and combining titles into City-wide units of occupationally related titles. In our opinion, such a policy, based upon mutuality of interest among occupationally related titles, the history of collective bargaining and other factors is essential to the effectuation of the purposes and policies of the Statute and the proper functioning of the collective bargaining process, and should be applied wherever it is possible to do so without severe dislocations or inequities."

Previously, in accord with that same policy, we found that a unit of Batterymen in the Fire Department, excluding other automotive employees, was not appropriate (Matter of City Employees Union, Local 237, I.B.T., Decision No. 4-68).

Unit determination cannot, and should not, be controlled and dictated by private agreements. They must be based upon the criteria set forth in the NYCCBL and must be such as will best effectuate its purposes and policies.

A City-wide automotive trades unit, including the Automotive Servicemen here petitioned for, manifestly is appropriate -- effectuating the purposes of the New York City Collective Bargaining Law and the Board policy referred to above. On the other hand, continued fragmentation in departmental units, represented by different unions, interferes with the "efficient operation of the public service, and sound labor relations" [NYCCBL, §1173-5. Ob (1)], and deprives employees of their full bargaining rights (Matter of D.C. 37, Decision No. 44-68).

Since we find that the unit sought by Petitioner, is not appropriate, we shall dismiss the petition herein.

The problem presented obviously is broader than the issue in this particular proceeding. The purpose of the NYCCBL is to encourage and protect collective bargaining. Departmental-units of the type here involved,[1] with their minimal representational rights, originally were considered "building blocks" which, as organization progressed. would be combined into, or superseded by City-wide units with substantially greater representational rights. The use or availability of the no raiding pact as a means to prevent the certification of rival unions as City-wide representatives, frustrates that original purpose, denies employees their full bargaining rights, defeats the purposes and policies of the NYCCBL, and renders such departmental units no longer appropriate.

In the future, therefore, we-shall deem departmental units inappropriate for the purpose of collective bargaining, and shall dismiss petitions filed for such units.[2] Upon appropriate application or-upon our own motion, we shall also terminate any outstanding departmental certification at the expiration of a period of one year from the date of certification or, at the expiration of the current collective bargaining agreement, whichever occurs later.

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[1] Our use of the term "departmental units" does not include "designations" of representatives on matters which must be uniform for an entire department, as provided in §5a(3) of Executive Order 52, nor does it cover certifications for titles unique to a particular department and which therefore are City-wide in effect.

[2] But see Matter of International operating Engineers Local 30, AFL-CIO, Decision No- 46-69, issued simultaneously herewith.

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 petition herein be, and the same hereby is, dismissed.

DATED: New York, N. Y.

July 14 , 1969

ARVID ANDERSON
CHAIRMAN

ERIC J. SCHMERTZ
MEMBER

SAUL WALLEN
MEMBER