

L.333, et. Al v. City, 4 OCB 58 (BOC 1969) [Decision No. 58-69 (Cert.)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF CERTIFICATION

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In the Matter of

LOCAL 333, UNITED MARINE DIVISION,
NATIONAL MARITIME UNION, AFL-CIAO,
Petitioner,

DECISION NO. 58-69

-and-

THE CITY OF NEW YORK
(ECONOMIC DEVELOPMENT ADMINISTRATION)

DOCKET NO. RU-104-69

-and-

NATIONAL MARINE ENGINEERS BENEFICIAL
ASSOCIATION, DISTRICT NO. 1, AFL-CIO,
Intervenor.

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DECISION AND ORDER

On March 24, 1969, Local 333, United Marine Division, N.M.U., AFL-CIO (herein called Petitioner), filed its petition herein with the Office of Collective Bargaining, requesting certification as the exclusive collective bargaining representative of marine employees of the Economic Development Administration. On June 27, 1969, National Marine Engineers Beneficial Association, District No. 1, AFL-CIO (herein called Intervenor), applied to intervene herein. Neither Petitioner nor the City has opposed the application. Accordingly, the application is granted.

Upon consideration of its investigation, and after due deliberation, the Board of Certification issues the following decision:

I. Undisputed Matters

It is undisputed, and we find and conclude, that Petitioner and Intervenor are public employee organizations in fact and within the meaning of the New York City Collective Bargaining Law; and that a question or controversy concerning representation exists.

II. The Appropriate Unit

The petition herein seeks certification as the collective bargaining representative of the employees of the Economic Development Administration who are assigned to the tugboat "Brooklyn" and the launch "Marav." Petitioner states that the civil service titles of these employees are Captain, Deckhand, Marine Engineer, Marine Oiler, Marine Stoker, and Gasoline Engineman (Marine). The Economic Development Administration reports that it has no employees in the title of Captain but that it does employ a Mate not mentioned in the petition.

In or about April, 1968, the tugboat and launch, and the crews thereof, were transferred from the Department of Marine and Aviation to the Economic Development Administration. Prior to such transfers, the New York City Department of Labor had certified Intervenor as the exclusive bargaining representative of the Marine Engineers, Chief Marine Engineers, Captains, Assistant Captains, Mates, and Pilots employed in the Department of Marine and Aviation [9 N.Y.C.D.L.No. 49].

Prior to the transfers, the City Department of Labor also had certified Petitioner as the exclusive bargaining representative of Deckhands, Marine Oilers, Marine Siokers, and Water Tenders [7 N.Y..C.D.L. No. 79] and the Gasoline Enginemen (Marine) [4 N.Y.C.D.L. No. 23] in the Department of Marine and Aviation.

Petitioner urges that because the employees here concerned "were transferred out of the Department of Marine and Aviation, and into the Economic Development Administration, there should be a new certification issued."

Intervenor contends that the licensed personnel so transferred "still continue to be covered by the * * * certificate issued to us for the Department of Marine and Aviation."

The City contends that the petition should be dismissed on the basis of the existing certifications and its unexpired contracts with the unions.

There has been a long history of collective bargaining between the unions herein and the City on wages, hours, and other terms of employment¹ of maritime employees. When the above-mentioned certifications were issued by the City Department of Labor, the City and the unions continued to negotiate terms and conditions of employment, thus construing and accepting the certifications as "City-wide" rather than "departmental" certifications which would not have accorded such bargaining rights. (See Matter of District Council 37, Decision No. 44-68.) The current contracts between the City and the unions cover the period from July 1, 1967 to June 30, 1970.

The term "certified employee organization," as defined in the NYCCBL, includes any public employee organization "(3) recognized by a municipal agency * * * as such exclusive bargaining representative prior to the effective date of this chapter, unless such recognition has been or is revoked * * *." Here, there has been no revocation; indeed, the City urges the current contracts as a bar to this proceeding.

The history of collective bargaining between Petitioner and the City antedates Executive Order 49 of 1958.

In view of the pre-Act recognition of the unions as City-wide representatives of the titles certified, the transfer of personnel from one City agency to another did not remove them from the bargaining unit, and the current contracts, as urged by the City, are applicable and bar the petition herein.²

The petition herein would fragmentize existing City-wide units, contrary to our declared policies of consolidating and enlarging units (Matter of District Council 37, AFSCME, AFL-CIO, Decision No. 44-68), and of declining to find departmental units appropriate for purposes of collective bargaining (Matter of New York City Local 246, S.E.I.U., AFL-CIO, Decision No. 45-69).

Accordingly, we shall dismiss the petition.

ORDER

By virtue of and pursuant to the powers vested in the Board of Certification by the New York City Collective Bargaining Law, it is hereby

Rule 2.7 provides: "A valid contract between a public employer and a public employee organization shall bar the filing of a petition for certification or decertification during a contract term not exceeding three (3) years. A petition for certification or decertification shall be filed not less than five (5) or more than six (6) months before the expiration date of the contract, or, if the contract is for a term of more than three (3) years, before the third anniversary date of the contract or any subsequent anniversary date thereof."

ORDERED, that the application of National Marine Engineers Beneficial Association, District No. 1, AFL-CIO, to intervene herein be, and the same hereby is, granted; and it is further

ORDERED, that the petition filed herein be, and the same hereby is, dismissed.

DATED: New York, N.Y.

October 20 , 1969.

ARVID ANDERSON
C h a i r m a n

WALTER L. EISENBERG

M e m b e r

ERIC J. SCHMERTZ
M e m b e r