

OFFICE OF COLLECTIVE BARGAINING  
BOARD OF CERTIFICATION

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In the Matter of

LOCAL 621, S.E.I.U., AFL-CIO,

Petitioner,

-and-

INTERNATIONAL UNION OF OPERATING  
ENGINEERS, LOCAL 15C, AFL-CIO,

DECISION NO. 15-87

DOCKET NO. RU-904-84

Intervenor,

-and-

DEPARTMENT OF SANITATION, CITY  
OF NEW YORK,

Respondent.

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Appearances:

Gordon & Gordon, P.C.  
by Kenneth E. Gordon, Esq.  
For: Local 621, SEIU, AFL-CIO

Corcoran & Brady, P.C.  
by Robert D. Brady  
For: International Union of Operating Engineers,  
Local 15C, AFL-CIO

Office of Municipal Labor Relations  
City of New York  
by Ian T. Davies, Esq.  
For: Department of Sanitation, City of New York

DECISION AND ORDER

On January 9, 1984, Local 621, Service Employees' International Union, AFL-CIO ("Local 621") filed the petition herein seeking to add the new title of Supervisor of Ironwork to Certification No. 55-70, as amended, covering a unit of employees in the titles of Supervisor of Mechanics (Motor Vehicles) ("SMMV"), Supervisor of Auto Mechanics, Supervisor of Machinists, and Supervisor of Auto Machinists.

On January 17, 1984, Local Lodge No. 5, International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers ("Local 5") filed a request to intervene on the basis that the new title should be added to its Certification No. 80-70, covering various blacksmith and boilermaker titles. Local 5's request to intervene was withdrawn on March 3, 1987, at the start of the hearing.

On January 25, 1984, International Union of Operating Engineers, Local 15C, AFL-CIO ("Local 15C") filed a request to intervene on the basis that the new title should be added to Certification No. 15-70, covering a unit of employees in the titles of Welder and Welder (Electric).

This matter was held in abeyance pending settlement of improper practice charges filed by Local 621 in Cases No. BCB-693-84 and BCB-842-86. We take administrative notice herein of the Stipulation of Settlement and Discontinuance in those matters. Paragraph 4 of the Stipulation provides, in essence, that the respondent New York City, by its Office of Municipal Labor Relations ("City") would take the position that Local 621 is the most appropriate representative of the title of Supervisor of Ironwork. on October 15, 1986, the City submitted a letter to the Board stating that the new title should be added to the unit certified to Local 621.

A hearing was held on March 3 and 4, 1987 and May 11 and 12, 1987 before a trial examiner designated by the Board of Certification ("Board") at which the parties were given a full opportunity to present evidence relating to the unit placement of employees in the Supervisor of Ironwork title.

The unit certified to Local 621 consists of approximately 150 employees in four supervisory titles: Supervisor of Mechanics (Motor Vehicles) ("SMMV"), Supervisor of Auto Mechanics, Supervisor of Machinists, and Supervisor of Auto Machinists. These supervisors

work in eight City departments and agencies, although the majority of the approximately 70 SMMVs are in the Department of Sanitation. The Local 621 unit members supervise employees in 20-30 titles in various trades, including blacksmiths and welders, in both shop and field locations.

The applicable job descriptions show that SMMVs and Supervisors of Auto Mechanics are responsible for directing the work of personnel engaged in maintenance and repair of motor vehicles; the Supervisor of Machinists directs the work of personnel assigned to fabricate and repair tools and machine components; the Supervisor of Auto Machinists directs the work of personnel engaged primarily in vehicle maintenance and repair. All are required to schedule and assign work, make decisions with respect to work methods, keep records and make reports. The record indicates that they also evaluate the employees they supervise. The line of promotion for the Local 621 supervisors is from the journeyman position of the same craft.

The unit certified to Local 15C is a nonsupervisory unit consisting of approximately 100 welders in nine City departments and agencies; 70 are employed in Sanitation. These employees generally work in shops

with employees in titles other than Welder, and are supervised by employees in a variety of different titles and trades. The applicable job description shows that the duties of welders include performing welding and related work under supervision, reading from blueprints, etc, preparing materials for welding. Five years of welding experience, or the equivalent, are required, well as a valid Class I Welder's license.

The Supervisor of Ironwork job description provides that these employees supervise and direct the work of blacksmiths, welders, and others engaged in building, repairing and maintaining both buildings and motor equipment. Among the tasks described are: directing employees in forging, shaping, and repairing structural shapes or automotive parts; directing employees using welding equipment, laying out from blueprints, sketches, and drawings, cutting and fitting; establishing work procedures, evaluating employees, keeping records and making reports. The qualifications are seven years as a blacksmith or welder with some supervisory experience or equivalent education and/or experience. Although the lines of promotion are from blacksmith and welder titles, currently all Supervisor of Ironwork positions are filled by former

journeyman welders. Although the line of promotion up is to Supervisor of Mechanics (not the same title certified to Local 621), one Supervisor of Ironwork was promoted to Deputy Director of Sanitation's Bureau of Building Management (the individual to whom two Supervisors of Ironwork report), and one to Superintendent of Construction of the department's Resource Recovery Division.

The testimony tends to show that the Supervisor of Ironwork title was established, at least in part, to provide promotional opportunities for blacksmiths and welders.

The City currently employs five Supervisors of Ironwork, all in the Department of Sanitation. The Department of Sanitation is composed of six major divisions, each headed by a Deputy Commissioner. There are Supervisors of Ironwork in two of these divisions: operations and support operations. The Division of Operations is composed of the Bureau of Cleaning and Collection and the Bureau of Waste Disposal. Two Supervisors of Ironwork serve in the Division of Operations' Bureau of Waste Disposal. Within the Division of Support Operations, there are three Supervisors of Ironwork: two in the Bureau of Building Management and one in the Bureau of Motor Equipment.

The Bureau of Building Management is ("BBM") is responsible for maintenance and repair of all Department of Sanitation buildings. The Supervisors of the 12 BBM shops report to a Deputy Director of BBM. The two Supervisors of Ironwork share responsibility for the Iron Shop, which employs approximately 27 employees in boilermaker, welder, machinist and laborer titles. The supervisors survey jobs to be done, order materials, assign employees to do the work, inspect the results, and evaluate employees. They work both in the field and in the shop, rotating the responsibilities. Before creation of the new title, the BBM Iron Shop was under the direction of a foreman of blacksmiths. The other BBM shops are not supervised by Local 621 unit members, but by employees in the shop trade.

One of the Bureau of Waste Disposal ("BWD") Supervisors of Ironwork is assigned to the Facilities Maintenance Unit ("FMU"); the other to the Fresh Kills Maintenance Operation. The FMU is staffed by ten employees in the titles of boilermaker and laborer, and is responsible for maintenance and repair of BWD buildings, incinerators, and marine collection equipment. The Supervisor of Ironwork in this unit performs the same tasks, both in the field and in the shop, as those in BBM.

The Fresh Kills Maintenance, or "bucket" shop, staff includes machinists, who work primarily on the maintenance and repair of crane engines, and ironworkers, who perform structural iron work on other portions of the cranes, and on the shop building itself. This shop was supervised by a SMMV from approximately 1978 until early 1984. At that time, the SMMV was replaced by a provisional, later permanent, Supervisor of Ironwork. In February 1987, the Supervisor of Ironwork was promoted and replaced by an SMMV.

The Bureau of Motor Equipment ("BME") is responsible for maintenance and repair of all motor equipment and vehicles used by the Division of operations in cleaning and collection. It operates both field garages in all boroughs, and a central repair shop, within which a number of specialized shops are located, including the Body Shop. The record shows that prior to the assignment of a Supervisor of Ironwork to the Body Shop, this shop was supervised by one or more SMHVs. The current Supervisor of Ironwork was appointed provisionally in January 1984<sup>1</sup> and since that time has shared supervisory responsibilities with an SMMV. There

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<sup>1</sup> Permanently appointed October 1986.



are currently approximately 36 employees in the Body Shop, primarily blacksmiths, welders and their helpers, but also auto mechanic and other titles. The record shows that on instructions from the BME Deputy Director to whom they report, the Supervisor of Ironwork spends most of his time on the shop floor directing and inspecting work done by the blacksmiths and welders, while the SMMV spends the majority of his time in the shop office working on administrative matters such as keeping department records, monitoring time and attendance, and preparing production reports. Both supervisors participate in the evaluation of Body Shop employees, and when the Supervisor of Ironwork is not present or on vacation the SMMV is in sole charge.

The record shows that none of the Supervisors of Ironwork does any hands-on welding beyond that necessary to instruct employees in the use of equipment or techniques.

The Supervisor of Ironwork is subject to the Career and Salary Plan; the employees in the units represented by Local 621 and Local 15C are "prevailing rate" employees subject to Section 220 of the Labor Law. Effective July 1, 1986, the annual salary for

the Supervisor of Ironwork was \$44,479. At the same time, the salaries of the Local 621 employees ranged from approximately \$41,927 for Supervisors of Auto Mechanics, Auto Machinists, and Machinists, through \$42,762 for SMMVs, to \$46,600 for the highest supervisory designation within these titles. The welders' annual rate was \$40,539 per year.

The record indicates that prior to the creation of the Supervisor of Ironwork title, welding job assignments, direction and expertise with respect to technical aspects of welding, and inspection tasks were often performed by journeyman referred to as a "snapper" even where the official supervisor was a SMMV. It is clear, however, that even where snappers were employed, only the official supervisor performed the duties of evaluating employees,<sup>2</sup> granting time off, setting vacation schedules, keeping attendance and other records.

#### Positions of the Parties

Local 621 takes the position that accretion to its unit is appropriate because the Supervisors of Ironwork

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<sup>2</sup> One witness testified that when he served as a snapper, he was consulted by the SMMV in preparing evaluations, but that the evaluation was written by the SMMV.

and supervisors in the Local 621 unit have similar salaries, duties and responsibilities, and because these titles are used interchangeably in the Department of Sanitation.

Local 15C contends that its members share a greater community of interest with the Supervisors of Ironwork because they share the same welding skills and similar work experience, and because welders are in a direct promotional line to the supervisory position. Local 15C argues that employees with welding skills are better qualified to act as supervisors over welders and blacksmiths than employees in the Local 621 unit, and that, in any case, Local 621 members never actually supervised the work of welders and blacksmiths; this function was performed by snappers.

The City takes the position that the duties of the Supervisors of Ironwork are supervisory in nature and that the "sole link" between the Supervisors of Ironwork and employees represented by Local 15C is the fact that the latter actually perform several types of ironwork and the Supervisors of Ironwork have specialized knowledge of ironwork which enables them to supervise such work effectively. Thus, the City argues, Local 15C has made no showing of a community of interest. The City also cites Decision No. 54-75 for the proposition that it is Board policy not to certify

combined units where there is an appropriate existing unit containing a full range of related supervisory titles.

### Discussion

In this instance the issue before the Board is whether a newly created job title should be added, by accretion, to one of two previously certified units. In making accretion determinations, the Board considers two factors:

- 1) whether the new title -- because of its similarity or close relationship to unit titles -- would have been included in the unit at the time of original certification; and
- 2) the comparative size of the two groups.<sup>3</sup>

The first determination is, in essence, a finding as to the appropriate unit. Section 2.10 of the Revised Consolidated Rules of the office of Collective Bargaining ("OCB Rules") sets forth the factors which the Board must consider in each of the different procedural settings in which it is asked to make a unit determination, whether in the context of a request for

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<sup>3</sup> Decisions No. 39-69, 30-71, 23-75.

initial certification, severance from an existing unit, or as in this instance, accretion. These factors are as follows:

- a. Which unit will assure public employees the fullest freedom in the exercise of the rights granted under the statute and the applicable executive order;
- b. The community of interest of the employees;
- c. The history of collective bargaining in the unit, among other employees of the public employer, and in similar public employment;
- d. The effect of the unit on the efficient operation of the public service and sound labor relations;
- e. Whether the officials of government at the level of the unit have the power to agree to make effective recommendations to other administrative authority or the legislative body with respect to the terms and conditions of employment which are the subject of bargaining;
- f. Whether the unit is consistent with the decisions and policies of the Board.

Before all the factors set forth in the OCB Rules can be weighed, we must consider whether the new title shares a community of interest with one or the other of the original units. In making unit determinations in the past, the Board has considered a number of factors, particularly:

- the job duties and responsibilities of the employees involved;<sup>4</sup>
- their qualifications, skills and training;<sup>5</sup>
- interchange and contact;<sup>6</sup>
- wage rates;<sup>7</sup>
- lines of promotion;<sup>8</sup>
- organization or supervision of the department, office, or other subdivision.<sup>9</sup>

This list is not exclusive; there is a variety of other factors that do not necessarily exist in every case, and that the Board will consider if appropriate. However, none of these factors is necessarily controlling. Rather, the Board makes the determination on a case-by-case basis and balances the various factors to determine where the greater community of interest lies.

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<sup>4</sup> See, e.g. Decisions No. 44-68, 6-69, 34-80, 13-81, 18-81, 13-85, 16-86.

<sup>5</sup> See, e.g., Decisions No. 46-75, 34-80, 13-81, 13-85.

<sup>6</sup> See, e.g., Decisions No. 6-69, 20-70, 19-71, 61-71, 65-73, 38-74, 23-75, 23-76, 29-77.

<sup>7</sup> See, e.g., Decisions No. 44-68, 4-69, 45-72, 41-73,

<sup>8</sup> See, e.g., Decisions No. 4-69, 26-70, 45-72, 42-74, 22-75, 374-80.

<sup>9</sup> See, e.g., Decisions No. 31-69, 19-71, 31A & B-71, 61-71, 63-73, 55-76.



As in most cases of this type, there are factors which militate for accretion to each of the contending units. The Supervisors of Ironwork and the supervisors represented by Local 621 perform no hands-on work; their duties are administrative and supervisory in nature, directing the work of employees who do perform hands-on work in a variety of skilled and unskilled trades. The welders, on the other hand, perform only welding and related tasks generally under the direction of a Supervisor of Ironwork, a Local 621 unit member, or a supervisor at an equivalent level. It appears that both the Ironwork and Local 621 supervisors generally report to employees at the Deputy Director level of their respective bureaus. There has also been considerable interchange between the Supervisors of Ironwork and SMMVs. Employees in the two categories now share supervision of the BME Body Shop, which was formerly supervised by two SMMVs. Although the supervision of this shop is currently divided along administrative and technical lines, when the Supervisor of Ironwork is on vacation, the SMMV is in sole charge. Moreover, the supervision of the Fresh Kills Maintenance shop has gone from SMMV to Supervisor of Ironwork back to SMMV. The Supervisors of Ironwork do



share the same skills and training in the technical sense, but the supervisors are required to have, beyond the technical attributes, some experience or equivalent qualification which has prepared them to direct the work of others. Moreover, we have observed elsewhere that similarities in job function are more indicative of a community of interest than prerequisite experience.<sup>10</sup> Although Welder is one of the two titles in the line of promotion to that of Supervisor of Ironwork, we have previously found that the fact that one title springs from another, without more, is insufficient to establish a community of interest.<sup>11</sup>

Based on the above, we conclude that the Supervisors of Ironwork share a greater community of interest with the supervisors represented by Local 621 than the welders represented by Local 15C.<sup>12</sup>

Turning to the other factors relevant to a unit determination set forth in OCB Rule 2.10, we note that although there is no collective bargaining history for the Supervisor of Ironwork title, Local 15C has not, in

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<sup>10</sup> Decision No. 34-80.

<sup>11</sup> Decision No. 16-86.

<sup>12</sup> Where, as here, the annual wage rates of the various groups are well within the same range, this particular factor does not weigh in favor of either union.

the past, represented any supervisors, while Local 621 has represented only supervisors. And, as the City emphasizes, the Board has stated that its policy is not to certify a combined supervisory/nonsupervisory unit where there are other appropriate units containing a full range of supervisory titles.<sup>13</sup> Although it has been our policy not to include Section 220 employees in a unit with non-prevailing rate employees absent unusual circumstances,<sup>14</sup> we note that in this case both contending unions represent Section 220 employees, and that to exclude the Supervisors of Ironwork would either leave them unrepresented or require the creation of a separate unit, which would, of course contravene the Board's long-standing and preeminent policy against the proliferation of units.<sup>15</sup> No evidence was presented with respect to OCB Rule 2.10(a), (d), and (e). Local 15C did make an offer of proof that all current supervisors of Ironwork have designated Local 15C as their collective bargaining representative. This offer of proof was rejected by the trial examiner. We

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<sup>13</sup> Decision No. 54-75.

<sup>14</sup> Decisions No. 9-74, 98-70.

<sup>15</sup> E.g., Decisions No. 12-70, aff'd Matter of Penta, NYLJ March 9, 1987, p. 2, N.Y. Co.; 13-85, 41-82.

hereby affirm her ruling. In doing so we note that blacksmiths represented by Local Lodge No. 5 are also in line for promotion to this position, although there is none currently in the title. Moreover, as we have observed in the past:

An employee's right to self-determination is not an unqualified one but is limited to the selection of a desired collective bargaining representative for the unit deemed appropriate by the Board.<sup>16</sup>

Although Local 621 argues in its brief that awarding the contested title to it will avoid inevitable controversy and contribute to efficient operations of government, we find this argument to be mere speculation.

On balance, however, self-determination, collective bargaining history, community of interest, and policy considerations lead us to conclude that the Supervisors of Ironwork would have been included in the unit certified to Local 621 had the title been in existence at the time of certification. Furthermore, we believe that the addition of five individuals to a unit of some 150 will have minimal impact on this unit. Accordingly, we find that the title of Supervisor of

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<sup>16</sup> Decision No. 54-75

Ironwork should be added, by accretion, to Certification No. 55-70, as amended.

O R D E R

NOW THEREFORE, 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 of International Union of Operating Engineers, Local 15C, AFL-CIO to intervene herein be, and the same hereby is, granted, and it is further

ORDERED that the request by International Union of operating Engineers, Local 15C, AFL-CIO, upon its intervention, that Certification No. 15-70 be amended to include the title of Supervisor of Ironwork be, and the same hereby is, denied; and it is further

ORDERED that the petition of Local 621, S.E.I.U., AFL-CIO, be, and the same hereby is, granted; and it is further

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20.

ORDERED that Certification No. 55-70 (as amended) be, and the same hereby is, further amended to include the employees in the title of Supervisor of Ironwork subject to existing contracts, if any.

DATED: New York, N.Y.  
August 19, 1987

ARVID ANDERSON  
CHAIRMAN

DANIEL G. COLLINS  
MEMBER

GEORGE NICOLAU  
MEMBER

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

Supervisor of Ironwork    92376