

L.621, SEIU v. DOS, City, 40 OCB 2 (BOC 1987) [2-87 (Cert.)]

OFFICE OF COLLECTIVE BARGAINING  
BOARD OF CERTIFICATION

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In the Matter of

DECISION NO. 2-87

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

DOCKET NOS. RU-973-86

RU-974-86

Petitioner,

-and-

DEPARTMENT OF SANITATION,  
CITY OF NEW YORK,

Respondent.

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#### INTERIM DECISION

On February 9, 1987, Local 621, S.E.I.U., AFL-CIO (herein "Local 621"), pursuant to Section 10.11 of the Revised Consolidated Rules of the Office of Collective Bargaining, appealed to the Chairman-the ruling of the trial examiner in the above-captioned proceeding, set forth in her letter to the parties of January 21, 1987, that evidence concerning work performed prior to May 1984 by employees in alleged predecessor titles to those of Director and Deputy Director is not relevant to a determination of the managerial and/or confidential status of the disputed titles and hence will not be admitted. On February 11, 1987, the New York City Office of Municipal Labor Relations submitted a letter in opposition to Local 621's appeal, to which Local 621 responded on February 18, 1987.

Having duly considered the submissions of the parties, the Board of Certification hereby denies Local 621's appeal of the trial examiner's ruling.

Local 621 contends that, in determining the managerial/confidential status of the titles at issue, "the Board should take into account the similarity between the work now performed by Directors and Deputy Directors as compared

with the work previously performed by Chiefs and Assistant Chiefs." However, the Board has consistently held that it is the duties actually performed by employees in disputed titles that are determinative of the employees status.<sup>1</sup> Contrary to Local 621's assertions, Decision No. 97-73 does not stand for the proposition that former - rather than current - duties of comparable titles are relevant to a managerial/confidential determination.

Whether employees are performing work which is the same as or different from work previously performed by employees in the same or alleged predecessor titles is only relevant where a prior determination has been made under Section 2.20 of the Revised Consolidated Rules as to the managerial/confidential status of the titles at issue. Inasmuch as no determination has previously been made pursuant to Section 2.20 concerning Directors and Deputy Directors or any alleged predecessor title, evidence concerning duties performed in the past by Chiefs and Assistant Chiefs is not relevant.

Accordingly, we find that the ruling of the trial examiner is within the powers granted by Section 10.3 of the Revised Consolidated Rules and is free of error.

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<sup>1</sup> Decision Nos. 73-71, 8-72, 76-72.

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O R D E R

Pursuant to the powers vested in the Board of Collective Bargaining by the New York City Collective Bargaining Law, it is hereby

ORDERED, that the ruling of the trial examiner herein be, and it hereby is affirmed.

DATED: New York, New York  
February 18, 1987

ARVID ANDERSON  
CHAIRMAN

GEORGE NICOLAU  
MEMBER

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DANIEL G. COLLINS  
MEMBER