CWA v. City, Board of Elections,40 OCB 26 (BOC 1987) [26-87 (Cert.)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF CERTIFICATION
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In the Matter of

COMMUNICATIONS WORKERS OF
AMERICA, AFL-CIO

DECISION NO. 26-87

-and-

DOCKET NO. RU-992-87

THE CITY OF NEW YORK AND ITS
BOARD OF ELECTIONS
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DECISION AND ORDER

On August 18, 1987, Communications Workers of America, AFL-CIO (hereinafter CWA), petitioned the Board of Certification to add to Certification No. 45-71 (as previously amended) those Temporary Clerks employed by the Board of Elections who are not presently included in that Certification because they do not work the requisite number of hours. The cited Certification covers all of the employees of the Board of Elections who are eligible for collective bargaining, including

> Temporary Clerks to the Board of Elections who have been in a paid employment status for at least one half of the regularly scheduled hours of work in each of the two immediately preceding twelve-month periods or who have been in a paid employment status for all of the regularly scheduled hours of work in the immediately preceding twelve-month period, provided that reasonable allowances for absence from payroll for illness or vacation leave shall be made comparable to such leave times granted to full time employees in the Board of Elections ....[1]

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[1] Decisions 1-77 and 5-77.

The Board of Certification found that the remaining Temporary Clerks (Board of Elections) "do not constitute, either alone or together with any other group, an appropriate unit for collective bargaining" because of their "ephemeral" or "casual" status.[2]

The City's Office of Municipal Labor Relations opposes this petition and urges that the previous decisions be affirmed.

Positions of the Parties

CWA states that "there have been substantial changes" since the issuances of the pertinent decisions. "At the time of those Decisions, Temporary Clerks were paid considerably less. Since then, however, [they] have received every raise negotiated by CWA even though they are not paying for this representation."

The City replies that "Petitioner has failed to demonstrate the requisite change in circumstances that would require a re-evaluation of the Board's previous... determinations [which] were not predicated on the wages of the respective employees but rather were grounded in the transitory nature of the employment relationship for

[2] Decision No. 1-77.

certain of the temporary clerks .... It is the City's position that the standards for inclusion ... in the unit ... in ...Decisions 1-77 and 5-77 ... [were] correctly determined and should continue to [be] followed."

Discussion

As stated by the City, CWA has failed to demonstrate the kind of changed circumstances that would cause the Board to come to a different conclusion than it did in 1977. Decision No. 1-77 dealt only briefly and tangentially with the wage question; the exclusion of certain Temporary Clerks from the bargaining unit was based entirely on their "ephemeral" or "casual" employment status. If it is true, as CWA alleges, that Temporary Clerks who are excluded from the bargaining unit receive the same wage adjustments as those who are included in the unit, this would have no bearing on our determination here. The City has a general policy of paying identical wage rates where incumbents of the same title have been "split" by the Board of Certification into groups eligible and ineligible for collective bargaining. Such divisions have usually been made for reasons of confidentiality or manageriality, but the principle is the same. There are many instances of such distinctions,[3]

[3] E.g., Decisions 97-83, 75-74, 19-75, 11-76, 35-77, 18-80, 21-80, 35-81, 32-82, 35-82, 23-83, 7-84, 11-84 and 6-86.

including some in the unit sought to be amended by the present petition.[4]

Accordingly we shall dismiss this petition.

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 petition filed herein by Communications Workers of America, AFL-CIO, be, and the same hereby is, dismissed.

DATED: New York, N.Y.
December 22, 1987

ARVID ANDERSON
CHAIRMAN

DANIEL G. COLLINS
MEMBER

GEORGE NICOLAU
MEMBER

[4] Decisions 19-71 and 45-71.