

L.375, DC37, et. al v. City, 46 OCB 10 (BOC 1990) [10-90 (Cert.)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF CERTIFICATION

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In the Matter of

CIVIL SERVICE TECHNICAL GUILD,
LOCAL 375, District Council 37,
AFSCME, AFL-CIO

DECISION NO. 10-90

-and-

DOCKET NO. RU-981-87

THE CITY OF NEW YORK

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ORDER

On October 26, 1990, the parties hereto stipulated, in writing, to designate all Industrial Hygienists working in the Mayor's Office of Safety and Health, a part of the Mayor's Office of Operations, as Managerial and/or Confidential pursuant to Decision No. 7-84 and, therefore, exempt from collective bargaining.

The parties hereto further stipulated to designate the Industrial Hygienist working in the Department of Sanitation, and the Industrial Hygienist in the Department of General Services as of the date of the signing of the Stipulation as Managerial and/or Confidential based upon the duties assigned to each of them.

Thirdly, the parties agreed to stipulate that all Industrial Hygienists assigned to the Asbestos Control Program of the Bureau of Air Control of the Department of Environmental Protection are subject to collective bargaining based upon the duties assigned to them. They are to be accreted to Certification No. 26-78 (as amended), covering Engineering, scientific and related titles. The

Certification is held by Civil Service Technical Guild, Local 375, District Council 37, AFSCME.

Lastly, the parties agreed to stipulate to the following procedure in the event that the City fills an Industrial Hygienist position, other than the ones referred to above, in the Mayor's Office of Safety and Health, and those assigned to the Asbestos Control Program of the Bureau of Air Control at the Department of Environmental Protection. The procedure provides that if the Office of Labor Relations ("OLR") is informed by the employing agency prior to the date of hire that a new Industrial Hygienist position is to be filled, OLR shall notify the Union within two (2) weeks subsequent to the individual's hire whether it wishes the position to be designated Managerial and/or Confidential. If the parties are unable to agree upon the position's designation, OLR shall file a petition pursuant to §2.20 of the Revised Consolidated Rules of the Office of Collective Bargaining ("OCB Rules") within three (3) weeks of the hire of the employee. Failure by OLR to file the aforesaid petition within the prescribed time frame shall result in the accretion of the position to Certification No. 26-78 (as amended).

Should an employing agency fail to notify OLR of the filling of a new Industrial Hygienist position prior to the individual's hire, OLR may file a petition pursuant to §2.20 of the OCB Rules outside the normal time limitations outlined in the Rules, but in no instance may such a petition be filed later than thirty (30)

days after OLR learns of the new position. During the pendency of such a proceeding, the position shall remain accreted to the Engineering and Scientific title series certification.

The Stipulation does not preclude the parties from extending the time limitations referred to above. Neither is the Stipulation to be deemed a waiver of any other rights or obligations which the parties may have under the New York City Collective Bargaining Law or the OCB Rules. Moreover, it shall not constitute a precedent for the determination of any other dispute between the City of New York and the Union, nor shall it be offered in evidence for any purpose or for any administrative, judicial or other proceeding except for the purpose of enforcing the obligations contained in the parties' Stipulation.

The Stipulation having been agreed to by the parties thereto, and it appearing to the satisfaction of the Board that the terms of the Stipulation are consistent with the rights established under applicable law,

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 Industrial Hygienists employed in the Mayor's Office of Safety and Health in the Mayor's Office of Operations are designated Managerial and/or Confidential pursuant to Decision No. 7-84 and are exempt from collective bargaining.

ORDERED that the Industrial Hygienists employed in the Department of Sanitation and Department of General Services as of October 26, 1990 are Managerial and/or Confidential based upon the duties assigned them.

ORDERED that Industrial Hygienists assigned to the Asbestos Control Program of the Bureau of Air Control of the Department of Environmental Protection are subject to collective bargaining and are accreted to Certification No. 26-78 (as amended).

ORDERED that the procedures described above for the filling of additional Industrial Hygienist positions and other described limitations are deemed implemented.

DATED: New York, N.Y.
November 7, 1990

MALCOLM D. MacDONALD
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 is as follows:

Industrial Hygienist

31305