

CWA v. DC37, L.237, DOT,46 OCB 11 (BOC 1990) [11-90 (Cert.)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF CERTIFICATION

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In the Matter of

THE COMMUNICATIONS WORKERS
OF AMERICA, AFL-CIO,

Petitioner,
-and-

DECISION NO. 11-90

DOCKET NO. RU-1045-89

DISTRICT COUNCIL 37, AFSCME, AFL-CIO,
and LOCAL 237, IBT, AFL-CIO,

Intervenors,
-and-

NEW YORK CITY DEPARTMENT OF
TRANSPORTATION,

Employer,
-----x

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In the Matter of

THE COMMUNICATIONS WORKERS
OF AMERICA, AFL-CIO,

Petitioner,
-and-

DOCKET NO. RU-1046-89

DISTRICT COUNCIL 37, AFSCME, AFL-CIO,
and LOCAL 237, IBT, AFL-CIO,

Intervenors,
-and-

NEW YORK CITY DEPARTMENT OF
TRANSPORTATION,

Employer,
-----x

INTERIM DETERMINATION AND ORDER

On August 14, 1989, Local 1181 of the Communications Workers of America, AFL-CIO ("CWA") filed a petition seeking to accrete the job title of Associate Parking Control Specialist, Assignment Levels I and II, to Certification Number 26-74 (as amended) (supervisory unit). The petition was docketed as

RU-1045-89. Also on August 14, 1989, Local 1182 of the CWA filed a petition seeking to accrete the job title of Parking Control Specialist to Certification Number 25-74 (as amended) (non-supervisory unit). The petition was docketed as RU-1046-89.

On August 17, 1989, the Director of Representation of the Office of Collective Bargaining mailed "interest letters" to District Council 37, AFSCME, AFL-CIO ("District Council 37" or "DC 37"), to Local 237, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO ("Local 237" or "IBT"), and to Local 375, Civil Service Technical Guild, AFSCME, AFL-CIO ("Local 375").

On August 30, 1989, District Council 37 filed a motion to intervene in docket RU-1046-89, requesting that the Parking Control Specialist title be added to a unit that it represents pursuant to Certification Number 38B-78 (as amended) (non-supervisory blue collar unit). On October 10, 1989, District Council 37 filed a second motion to intervene, in docket RU-1045-89, requesting that the Associate Parking Control Specialist title be added to a unit that it represents pursuant to Certification Number 38A-78 (as amended) (supervisory blue collar unit).

On October 31, 1989, IBT Local 237 filed a joint motion to intervene in both dockets RU-1045-89 and RU-1046-89. In its motion, the Union requested that the titles of Parking Control Specialist and Associate Parking Control Specialist be added to a unit that it represents pursuant to Certification Number 67-78 (as amended), a mixed unit of supervisory and non-supervisory employees covering various stock, custodial, inspectional, maintenance,

skilled crafts, and related titles.

The New York City Department of Transportation, represented by the City's Office of Labor Relations ("the Department" or "the City") stated that it did not oppose union representation of either title; it took no position on the question of appropriate unit placement.

Thereafter, the Board of Certification ordered a hearing to permit the resolution of factual questions raised in the initial petitions filed by the CWA, and in the motions to intervene filed by DC 37 and Local 237. Because the petitions and motions involved common questions of law and facts, the two cases were consolidated for a single hearing and determination. Accordingly, a hearing was held that began on August 1, 1990; was continued on September 6 and September 7, 1990; and was concluded on October 22, 1990. The parties agreed that post-hearing briefs would be filed by Friday, November 30, 1990. The CWA requested and was granted a filing extension until close of business December 3, 1990.

The CWA and DC 37 submitted post-hearing briefs on December 3, 1990. On December 6, 1990, Local 237 submitted its post-hearing brief. Thereupon, the record was closed.

BACKGROUND

In June of 1989, the New York City Department of Personnel issued job specifications for the newly created job titles of Parking Control Specialist and Associate Parking Control Specialist. Parking Control Specialists have four general duties and responsibilities:

Make inspections of traffic conditions and regulate and control parking;

Perform minor repairs on parking control devices, such as clearing jams and removing slugs from the upper housing of meters;

Test parking control devices for timing defects; and

Prepare and issues summonses for violations.

Examples of typical tasks for Parking Control Specialists

include:

Patrol an assigned area to enforce parking laws, rules and regulations and issuing summonses for violations;

Report missing or inoperative meters and those requiring more than minor repairs; report other defective parking control devices and traffic conditions requiring immediate attention;

Test parking meters for timing defects; perform minor repairs and maintenance on parking meters and other parking control devices;

Conduct traffic surveys and collect data on parking meter characteristics; and

Testify at hearing offices and in court.

Parking Control Specialist candidates are required to have:

Two years experience issuing traffic summonses and/or directing traffic; or

Two years experience in conducting surveys of traffic conditions and completion of an approved course in issuance of traffic summonses; or

Two years experience in repair of traffic control devices and completion of an approved course in issuance of traffic summonses; or

A high school diploma and one year experience in any of the above categories.

Appointees must maintain peace officer status. The lines of promotion for the Parking Control Specialist title are from "None" to "Associate Parking Control Specialist. According to a report of the City Payroll Management System, there were forty-eight (48) incumbents in the title as of November 20, 1990.

Associate Parking Control Specialists have the general duty and responsibility of performing "supervisory work in the parking control area." There are two assignment levels. Employees in Assignment Level I are required to:

Supervise a squad of Parking Control Specialists and other subordinate personnel;

Plan and schedule deployment of the squad;

Prepare reports and maintain personnel records including absence control and performance evaluations; and

May perform some of the duties normally assigned to Traffic Control Specialists

Employees in Assignment Level II are required to:

Supervise more than one squad of Parking Control Specialists, and supervise a large office of the Parking Control Unit;

Monitor performance and productivity of field and office personnel and take disciplinary action;

Make field inspections and special field surveys; and

Attend community board meetings to inform residents of parking control activities.

To qualify for the position of Associate Parking Control Specialist, a candidate must have three years experience in one of the categories required of Parking Control Specialists. Appointees also must maintain peace officer status. The lines of promotion for the Associate Parking Control Specialist title are from "Parking Control Specialist" to "To be determined." According to a report of the City Payroll Management System, there were nine (9) incumbents in the title as of November 20, 1990. All Parking Control Specialists and Associate Parking Control Specialists wear "French blue" uniforms.

THE EVIDENCE

CWA's Evidence

The CWA began by introducing job specifications for the titles of "Traffic Enforcement Agent (TEA)" and "Associate Traffic Enforcement Agent" into the record.¹ The Union also introduced pay scales for the job titles of Parking Control Specialist and Associate Parking Control Specialist, together with a partial list of incumbents.

Two witnesses testified for the CWA. They described the work of Traffic Enforcement Agents and compared them with work performed by Parking Control Specialists.

Sam Rock, an Associate Traffic Enforcement Agent, Level I, also is the president of CWA Local 1181. He detailed the job duties of his subordinates

¹ Traffic Enforcement Agents are required to enforce laws, rules and regulations relating to movement, parking, stopping and standing of vehicles. TEAs wear brown uniforms.

and superiors in the Traffic Enforcement Agent job series titles. He said that as a Level I Associate TEA, he is assigned a squad of between ten and fifteen Traffic Enforcement Agents, and he must make post assignments and monitor the work of his squad members. Officer Rock said that the squad may be composed of TEAs in Level I, Level II and Level III.

According to the witness, Level I Traffic Enforcement Agents primarily issue parking summonses for violations including standing and stopping, parking meters, fire hydrants, and double parking. They also report broken meters, traffic light outages, missing or damaged traffic signs, and unusual traffic conditions to the Department. Occasionally Level I TEAs work on special assignments, such as surveying traffic or sign conditions in a specific area. They may work on a foot patrol post or they may cover a larger area in a motor vehicle.

Officer Rock testified that Traffic Enforcement Agents, Level II do the same work, except that they direct traffic and are authorized to issue moving violations as well. They use universal traffic summonses to cite both parking and moving violators. The same form also is used by Police Officers and Parking Control Specialists. He explained that Level III Traffic Enforcement Agents operate the Department's tow trucks and place "boots" on scofflaws' automobiles.

The witness said that to become a Traffic Enforcement Agent, a candidate must possess a valid driver's license and must complete nine weeks training in the academy learning the traffic laws and how to deal with the public. He said that while most TEAs are not peace officers, two small special squads of

Associate TEAs do hold peace officer status: the Assault Squad, which investigates assaults on Traffic Enforcement Agents by members of the public, and the Investigation squad, which investigates allegations of corruption by TEAs. According to the witness, there are approximately 2,200 Traffic Enforcement Agents and 359 Associate TEAs currently working for the City.

Officer Rock then testified about his knowledge of the work of Parking Control Specialists. He said that their work consists primarily of issuing parking meter summonses, and that Associate Parking Control Specialists give work assignments to subordinates and go into the field to monitor their work. According to Officer Rock, nine Associate TEAs became Associate Parking Control Agents without receiving any additional training.

Under cross examination, Officer Rock explained the difference between the types of summonses issued by City traffic enforcement personnel for various classifications of vehicle and traffic infractions. Type "A" summonses are given to parking violators, and they can be issued by all parking enforcement personnel. Type "B" summonses are given for non-criminal moving violations, and they can be written only by Level II Traffic Enforcement Agents or their superiors. Type "C" summonses are given for criminal vehicle and traffic violations. Traffic Enforcement Agents are not authorized to issue type "C" summonses, whereas Parking Control Specialists are authorized to issue them. Officer Rock also acknowledged that Traffic Enforcement Agents receive no training in parking meter repair.

John Torres also is an Associate Traffic Enforcement Agent, Level I, with approximately two years experience in that title. He also has held the

positions of Traffic Enforcement Agent (approximately seven years), and Associate Parking Control Specialist, Level I (approximately nine months, from July 1989 to Spring of 1990).

As Associate Parking Control Specialist, Officer Torres supervised between twenty and twenty-five Parking Control Specialists. He said that he made sure the officers "wrote good summonses," and that he filled out normal paperwork and personnel reports. According to Officer Torres, the Parking Control Specialists he supervised primarily wrote parking summonses in metered areas and filled out broken meter report forms. He said that Traffic Device Maintainers,² not Parking Control Specialists, fixed the broken meters.

The witness said that neither he nor his subordinates received additional training when they became Parking Control Specialists beyond their training as Traffic Enforcement Agents. He also said that the daily activity report forms and the parking meter defect cards used by Parking Control Specialists and TEAs were essentially the same.

Officer Torres acknowledged, however, that he had received instruction on meter repair from a Supervising Traffic Device Maintainer during his tenure as an Associate Parking Control Specialist. He admitted that he been issued keys to open, and tools to unjam broken meters, and he acknowledged that several Parking Control Specialists who worked with him during time he served as Associate Parking Control Specialist repaired meters as part of their daily

² Traffic Device Maintainers are responsible for installing, maintaining and repairing traffic control devices such as signs, stanchions, supports, pavement markers and traffic counters. Installing, maintaining and repairing parking meters also is part of their job description.

activity.

DC 37's Evidence

District Council 37 presented four witnesses in its behalf. Thomas Monza is a Traffic Device Maintainer (TDM) who specializes in garage and maintenance work throughout the city. He described the general job duties of TDMs, and he said that he observed several "traffic enforcement" agents directing traffic and repairing meters while he was cleaning debris from the Leonard Street lot in Manhattan, although he was uncertain of their exact job titles. He said that he personally does not repair meters, although that is part of his job description.

William Fenty, a Traffic Device Maintainer, also is president of the District Council 37 local that represents TDMs. He said that TDMs maintain, repair, inspect, and test timing device accuracy of parking meters. He stated that TDMs also report on traffic conditions, make surveys of parking meters, and fill out daily activity sheets and field reports. The witness acknowledged that Traffic Device Maintainers are not involved in law enforcement, and that they do not issue traffic summonses. He said that standard tools necessary for repairing meters in the field would include tweezers, pocket knife, screw driver, and pliers.

John Calendrillo is a Senior Council Representative of DC 37. He serves six blue collar locals, including Local 983, which represents Level III Traffic Enforcement Agents. Mr. Calendrillo said that Level III TEAs mostly tow cars and write summonses for the cars that they tow. They are not peace

officers. He said that they also record data about parking conditions, and occasionally they may perform the work of Level I and Level II TEAs while working overtime.

Frank Burns is Assistant Director of Research and Negotiations for District Council 37. He negotiates contracts for various bargaining units, including the blue collar supervisory and blue collar non-supervisory units. Two of the titles he represents, Fraud Investigator and Air Pollution Inspector, have peace officer status.³

According to Mr. Burns, District Council 37 has been concerned for some time that the work of Traffic Device Maintainers and Traffic Control Inspectors⁴ is being given to Parking Control Specialists. He said that although DC 37 has received assurances to the contrary from the Department, his members continue to complain that "[Parking Control Specialists] are being required to do major repair on the meters and we have also received reports from that local that [Parking Control Specialists] have keys to open the housing of the meters."

Mr. Burns admitted that none of the supervisors whom he represents supervise personnel authorized to issue summonses. He also acknowledged that Traffic Control Inspectors are not peace officers and that they do not issue

³ Neither of these titles are listed under Certification Nos. 38B-78 (as amended) or 38A-78 (as amended), the units to which DC 37 proposes adding the Parking Control Specialist titles.

⁴ Traffic Control Inspectors study and survey traffic flow and parking conditions and facilities. Their title is part of a bargaining unit currently represented by Local 375, Civil Service Technical Guild, a DC 37 affiliate with its own certificate not a party to this proceeding.

summons.

Local 237's Evidence

Local 237 presented six witnesses in its behalf, five of whom currently are employed as Parking Control Specialists. Michael Raykowski is an Associate Parking Control Specialist, Level I. Previously he worked as a Supervising Traffic Device Maintainer. He said that his supervisory duties as a TDM, which included training new hires on meter repair, assigning and evaluating personnel, and keeping daily activity logs, basically was the same as his present work. Officer Raykowski said that besides his regular duties as Associate Parking Control Specialist, he shows other supervisors how to repair parking meters during three to four hour training sessions that he conducts. According to Officer Raykowski, the Department issues tweezers and pliers to all Parking Control Specialists to "fix meters on the spot if they could." They fill out reports on broken meters that they cannot repair themselves, which are then repaired by Traffic Device Maintainers.

Officer Raykowski also explained the current legal standing of Parking Control Specialists. He said that they all were required to be eligible for peace officer status, and, as far as he knew, all but six had such status. The situation is confused, however, because, although most Parking Control Specialists have been sworn in as "special patrolmen" by the Police Commissioner, they have yet to complete forty hours of peace officer training at John Jay College. Officer Raykowski said that as far as he knows, although Parking Control Specialists carry I.D. cards designating them peace officers,

currently they do not have the power to make arrests.

Robert Humes is an Associate Parking Control Specialist, Level I. Previously he worked as Supervising Inspector for the New York City Taxi and Limousine Commission. He said that Taxi and Limousine Inspectors are peace officers. They issue parking summonses, check the timing of taxi meters, and make airport cab traffic surveys. He said that their peace officer status permits them to issue type "C" summons for criminal violations.

According to Officer Humes, his present supervisory duties are almost the same as those of a Supervising Taxi and Limousine Inspector: "[Parking Control Specialists] do more foot patrols and we have to track them down a little harder, but other than that, the work is basically the same." He confirmed that Officer Raykowski gave him approximately four hours training in parking meter repair, and he said that he was taught how to open and remove the internal mechanism while working at the Leonard Street lot. The witness understood that upon receiving the requisite peace officer training, Parking Control Specialists would be authorized to make arrests and issue type "C" summonses; meanwhile, he said, police officers issue these summonses whenever the need arises.

Gwen Bradley is a Parking Control Specialist. Previously she worked as a Traffic Enforcement Agent, Level II, directing traffic and issuing parking summonses. Explaining the differences between the two jobs, the witness said that as a TEA, she spent about twenty-five percent of her time writing summonses, and the rest directing traffic. Now, however, besides issuing summonses, she does surveys and makes minor repairs on parking meters. She

stated that the biggest difference was foot patrol: as a TEA she did almost no walking, whereas she now walks at least two miles per day.

Officer Bradley said that when she first began working as a Parking Control Specialist she reported broken meters to the Department, but she did not repair them herself. Later, however, the Department issued pliers to her, and Officer Raykowski gave her four hours training on how to clear jammed parking meter slots. The witness estimated that out of the six hours per day that she spends in the street, she devotes about one hour to meter repair and another half hour writing reports on meters that she cannot fix herself. She spends the remainder of her time issuing summonses.

Roy Atkinson became a Parking Control Specialist in January 1989. Previously, he worked as an Inspector in the Taxi and Limousine Commission. He said that during his first week of employment as a Parking Control Specialist he received four days training from Officer Raykowski on parking meter repair: "[Officer Raykowski] removed the housing and showed us foreign objects usually found in the meters. Then we did it individually, one by one, after he showed us." According to Officer Atkinson, Parking Control Specialists presently issue summonses and make "minor" repairs on meters with Department-issued tweezers and pliers. He said that he is not permitted to open the housing on meters nor does he make major repairs. During a typical day, he spends four hours writing summonses and one hour repairing meters. In comparing his previous work with his present job, Officer Atkinson said that Taxi and Limousine Commission Inspectors work out of automobiles, whereas parking patrol is done on foot, "but basically it's the same job."

Aurea Rosa is a Parking Control Specialist who worked previously as a Level I Traffic Enforcement Agent. She estimated that on an average day, she spends about five hours in the field. During that time, she spends about one hour unjamming meters, about forty-five minutes writing reports on broken meters, and three to three and one-half hours writing summonses. The witness said that she writes about sixty summonses per day - the same number that she wrote when she worked as a Traffic Enforcement Agent.

John Perez, the Business Agent for officers in the law enforcement group represented by Local 237, was the Union's final witness. When asked about the significance of blue uniforms worn by Parking Control Specialists, Mr. Perez stated that practically all peace officers in the State of New York wear uniforms of some shade of blue.

Positions of the Parties

CWA's Position

The CWA maintains that the newly created Parking Control Specialist series titles share a strong community of interest with the Traffic Enforcement Agent series titles that it already represents. Any differences between the two groups of titles, in its view, are minimal.

Comparing the duties of Parking Control Specialists with those of Traffic Enforcement Agents, the Union notes that employees in both titles issue about sixty summonses per day; both record the summons numbers and broken meter information on forms that are essentially the same; and both conduct surveys of traffic parking problems. It asserts that the same holds

true for employees in the Associate titles: Associate Parking Control Specialists and Associate TEAs both assign work to subordinates; both go into the field to check subordinates' performance; and both review forms and other paperwork submitted by subordinates for correctness. The Union notes further that the salaries, qualifications, and skills for the two titles are related closely, and it argues that TEA training, with little more, is sufficient to qualify a candidate for work as a Parking Control Specialist.

The CWA also contends that the "interchange and contact" between employees in titles within the two series is "extraordinary." According to the CWA, "the employer has made it a practice, if not a clearly defined policy," to recruit most of the current Parking Control Specialists and Associate Parking Control Specialists from the ranks of Traffic Enforcement Agents and Associate TEAs.

The CWA concedes that there are some "slight differences" in job tasks in the two series, and that there are no direct lines of promotion. It argues, however, that these minor differences are no bar to consolidation, and can be dealt with adequately in collective bargaining.

The CWA then discounts any community of interest that Parking Control Specialists may have with other City employee titles or work groups. It argues that Traffic Device Maintainers perform major repairs on broken meters. "That is the essence of their job." The Union points out that TDMs do not issue summonses, and it asserts that there is no overlap between TDM duties and those of Parking Control Specialists.

Similarly, the CWA contends that none of the titles put forth by Local

237 share a substantial community of interest with the Parking Control Specialist titles. According to the Union, Supervisor of Traffic Device Maintenance is a "craft-oriented" title, whereas Associate Parking Control Specialists' primary duty is to supervise employees who mainly issue summonses and make only "minor repairs" on parking meters. The Union also contends that Parking Control Specialists' duties are dissimilar to those of either Transportation Inspectors or Taxi and Limousine Inspectors, because allegedly the duties of the former are oriented toward enforcing parking and traffic laws, whereas the Inspector titles allegedly are aimed at enforcing livery and commercial vehicle laws.

In the CWA's view, a major purpose in creating the existing CWA-represented units and other public employee units has been to establish broad occupational groups.⁵ It asserts that, because Locals 1181 and 1182 already represent employees whose duty is the enforcement of parking laws, and because enforcement of parking laws is the function of the Parking Control Specialists, the new titles should be accreted to the existing CWA-represented units. The Union discounts Local 237's contention that peace officer status prevents their inclusion in CWA units, by pointing out that this Board previously has permitted units of peace officers and non-peace officers to be mixed.⁶ Additionally, the CWA notes that some Associate Traffic Enforcement Agents already have peace officer status, and, therefore, Local 1181 already represents a mixed unit of peace officers and non-peace officers.

⁵ The Union cites Decision No. 46-75 in support of this proposition.

⁶ Citing Decision No. 14-87.

DC 37's Position

District Council 37 maintains that its existing supervisory and non-supervisory blue collar units share the strongest community of interest with "the hybrid nature" of the new Parking Control Specialist titles.

Alternately, however, DC 37 suggests that, because of the closeness of the question, this may be a case where employees in the new titles "should be allowed to determine their own destiny." The Union states that it "would fully support the call for such an election."

With respect to its main argument, DC 37 contends that the only criteria pertinent in determining the community of interest issue in this case are duties, training and qualifications. According to the Union, the job duties of Traffic Control Inspectors (study and survey traffic flow and parking conditions and facilities)⁷ match many duties of Parking Control Specialists, and their task of performing minor repairs on parking meters is identical with that of Traffic Device Maintainers. In District Council 37's view, once Parking Control Specialists received training in parking meter repair and were issued needle-nose pliers to work on the meters, they were, in fact, doing the work of Traffic Device Maintainers. The Union adds that neither the CWA nor Local 237 represents any bargaining unit whose members repair parking meters.

With respect to the new supervisory titles, DC 37 notes that witnesses testifying for the other two unions made no distinction between their previous supervisory duties in other titles and their present work as Associate Parking Control Specialists. It notes that a witness for the CWA said that

⁷ A title currently not represented by DC 37 (see note 4).

"supervisory experience of some sort" was the only experience necessary, and other witness for Local 237 said that his work as a supervisor of Parking Control Specialists was "basically exactly what I did when I was a supervisor at TDM." Thus, according to District Council 37, since already there are at least six or seven locals represented in its supervisory blue collar unit, and since the supervisory duty allegedly is identical, it is DC 37 who should represent the Associate Parking Control Specialist titles.

In conclusion, DC 37 argues that of the three unions in this proceeding, it is the only one that presently represents employees with all the qualifications necessary for the new job titles. These titles and qualifications include Traffic Control Inspector (conduct traffic surveys),⁸ Level III Traffic Enforcement Agents (issue summonses) and Fraud Investigators (peace officer status),⁹ Traffic Device Maintainers (repair and maintain parking meters), and District Supervisors in the Highway Department (experience in supervising). Thus, in District Council 37's view, it shares the only requisite community of interest with regard to qualifications in the new titles.

Local 237's Position

Local 237 points out that the Department of Personnel has classified all the Parking Control Specialist titles within the "Public Health and Safety

⁸ See notes 4 and 7.

⁹ Neither of these titles are listed under Certification Nos. 38B-78 (as amended) or 38A-78 (as amended), the units to which DC 37 proposes adding the Parking Control Specialist titles.

Inspectional Occupational Group," whereas it classified the Traffic Enforcement titles in the "Traffic Enforcement Occupational Group" and the Traffic Device Maintainers titles in the "Traffic Device Maintenance Occupational Group." The Union then points out that the Taxi and Limousine Inspector titles, already represented by Local 237, also are classified within the "Public Health and Safety Inspectional Occupational Group." The Union argues that this is not merely fortuitous. Rather, it is grounded upon the requirement that both Taxi and Limousine Inspectors and Parking Control Specialists maintain peace officer status in order to retain their respective positions; a requirement that is critical because it authorizes Parking Control Specialists to make arrests and issue type "C" summonses. According to Local 237, this Board has held that when only one competing union already represents other titles in the same occupational group, that factor "strongly militates" in favor of accretion to that union's existing certification.¹⁰

The Union next argues that the desire of the employees, while not determinative of unit placement, is a relevant criterion under Section 2.10a. of the OCB Rules. It contends that, by signing authorization cards for Local 237, incumbent Traffic Control Specialists and Associate Traffic Control Specialists already have expressed an "overwhelming" desire to be represented by the IBT. Conversely, the Union maintains that the CWA made no showing of interest whatsoever. It recognizes that DC 37 also submitted authorization cards, but it argues that there is only a "tenuous" community of interest between Parking Control Specialists and Traffic Device Maintainers, and none

¹⁰ Local 237 cites Decision No. 13-81 in support of this position.

between Associate Parking Control Specialists and any title covered by DC 37's blue collar supervisory bargaining certificate.

Finally, Local 237 recognizes that this Board, "on rare occasion," has ruled that where more than one petitioned-for unit would be appropriate, and where the evidence does not single out the most appropriate unit, the NYCCBL would best be served by ascertaining the wishes of the employees before making a unit placement determination.¹¹ The Union stresses that neither of the other parties allegedly can equal the employees' interest and the community of interest that Local 237 has shown. Nevertheless, it suggests that, in the event that this Board should decide not to add the Parking Control Specialist titles directly to Local 237's unit certificate, a representation election should be held to decide the employees' unit placement preference.

Discussion

Section 2.10 of the Revised Consolidated Rules of the Office of Collective Bargaining ("OCB Rules") sets forth criteria to be applied by the Board in making determinations of appropriate unit placement of employees.

The Rule provides that the Board must consider, among other factors:

- a. Which unit will assure public employees the fullest freedom in the exercise of the rights granted under the [NYCCBL] 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

¹¹ The Union cites Decision Nos. 27-80 and 29-79 in support of this contention.

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 or 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 collective bargaining;

f. Whether the unit is consistent with the decisions and policies of the Board.

The issue that we must decide in this case is whether the two newly created titles of Parking Control Specialist and Associate Parking Control Specialist should be accreted to one or more previously certified units, and, if so, which unit or units are the most appropriate. Of the various factors set forth in Section 2.10 of the OCB Rules that we use in making determinations of appropriate unit placement of employees, only three are of significance here: which unit will assure public employees the fullest freedom in the exercise of their rights granted under the New York City Collective Bargaining Law; where the community of interest of the employees lies; and which unit is consistent with the decisions and policies of the Board. Among these factors, we will give first consideration to the question of whether either of the new titles shares a community of interest with one or more of the pre-existing units.¹²

In making unit determinations in the past, we have considered a number of factors such as: the job duties and responsibilities of the employees

¹² Decision No. 15-87.

involved;¹³ employee qualifications, skills and training;¹⁴ wage rates;¹⁵ lines of promotion;¹⁶ and the organization or supervision of the department, office, or other subdivision.¹⁷ This list is not exclusive. Not all these considerations are relevant in every case, nor are they necessarily controlling. Rather, we make unit determinations on a case-by-case basis after balancing the various factors to decide which unit finding is supported by the greatest weight of factors relevant to the matter at issue.¹⁸

After carefully evaluating the testimony of the witnesses presented here, many of whom had first-hand knowledge of the work of Parking Control Specialists, we are unable to conclude that any one unit is more appropriate than the units sought by the other two unions. Our determination of such a preferable unit amongst the three that have been put forward by the unions herein has been frustrated by a number of factors which we now briefly review.

In the words of DC 37, the new titles are of a "hybrid nature." Parking Control Specialists do some work of Traffic Enforcement Agents (issue parking summonses), some work of Traffic Device Maintainers (repair parking meters),

¹³ Decision Nos. 16-86; 13-85; 18-81; 13-81; 34-80; 6-69; and 44-68.

¹⁴ Decision Nos. 13-85; 13-81; 34-80; and 46-75.

¹⁵ Decision Nos. 13-85; 41-82; 41-73; 45-72; 4-69; and 44-68.

¹⁶ Decision Nos. 34-80; 22-75; 42-74; 45-72; 26-70 and 4-69.

¹⁷ Decision Nos. 55-76; 65-73; 61-71; 31A-71; 31B-71; 19-71; and 31-69.

¹⁸ Decision No. 15-87.

and some work of law enforcement officers (peace officers authorized to investigate and make arrests for criminal vehicle and traffic offenses.) They do not perform all the work of any of these titles, however. Parking Control Specialists issue summonses, but they do not direct traffic, a major responsibility of TEAs; they make limited repairs on parking meters, but they do not install or repair other types of traffic control devices, which are the main functions of TDMs; and although they are peace officers, the arrest authority of Parking Control Specialists is limited to enforcement of the Vehicle and Traffic Law. Thus, they do not investigate taxi meter fraud, for example, a major responsibility of Taxi and Limousine Commission Inspectors who also are peace officers. Employee qualifications, skills and training, wage rates, lines of promotion, and organization and supervision are not different enough, either alone or in combination, to allow us to identify a clear line of distinction or demarkation between Parking Control Specialists and any of the other titles before us.

In this same regard, Local 237 is correct in pointing out that when one competing union already represents other titles in the same occupational group, that factor favors accretion to that union's existing certification. However, occupational group is only one factor among many that we must consider. For example, in Decision No. 13-81, which Local 237 cites, our policy against fragmentation, and the existence of an already appropriate unit, were the primary reasons for our unit placement determination. The fact that the new title was within the same occupational group as the other titles in the certification was an additional factor underlying our decision. It was

by no means of controlling significance, however. Equally important were the facts that the new title was in a direct line of promotion and involved duties similar to those of other employees already in the unit. In this case, Parking Control Specialists' combination of duties is unique, and their titles are not in a direct line of promotion with any other title outside the Parking Control Specialist series.¹⁹

The changing nature of the Parking Control Specialist job is both a problem in itself and compounds some of the other issues we have mentioned above. Although the job description clearly requires Parking Control Specialists to maintain peace officer status, they have not yet received the training necessary for them to function in that capacity. Thus, there is no way to know precisely how the Department will use their authority when they eventually are accorded powers of criminal investigation, enforcement and arrest. Similarly, their parking meter repair responsibility has undergone much change. At first, Parking Control Specialists did almost no repair. Later, they received several hours of instruction and were issued first tweezers, and then needle-nose pliers, to repair jammed meters. Thus, what began as a somewhat minor job task has evolved to the point where parking meter repair occupies a significant portion of some Parking Control Specialists' productive work day. There is no way for us to anticipate where this trend will end.

We conclude that each union involved in this case represents a

¹⁹ See Decision Nos. 64-73; 34-71; 26-70; 64-68; and 44-68, where occupational group was but one of several factors that were considered before making a unit placement decision.

bargaining unit that could be appropriate for the Parking Control Specialist titles. Similarly, there is nothing of such compelling force in the record before us as to justify our singling out any one of the units as being clearly more appropriate than either of the others. Under these circumstances, placing the petitioned-for employees in any one of the three units would be appropriate and entirely consistent with the decisions and policies of the Board.

We do not reach this same conclusion with respect to the Associate Parking Control Specialist titles, however. We found that any of the three proposed bargaining units could represent Parking Control Specialists appropriately because there was a three-way overlap in Parking Control Specialists' principal job tasks (issuing summonses, meter repair, and peace officer duties), and because each of the three competing unions already represents employees doing some of this work.

This does not hold true for the Associate Parking Control Specialist titles, however. While the supervisory tasks and responsibilities of Associate Parking Control Specialists and of Associate Traffic Enforcement Agents, Senior Taxi and Limousine Inspectors, and Foreman of Traffic Device Maintainers appear to be similar, there is no evidence in the record of any title in the District Council 37 supervisory blue collar unit (Certification Number 38A-78 [as amended]) that is responsible for performing this work. Traffic Enforcement Agents are supervised by Associate TEAs, represented by the CWA supervisory unit (Certification Number 26-74 [as amended]); and Local 237 represents all supervisory Taxi and Limousine Inspectors in addition to

other titles where peace officer status is required (Certification Number 67-78 [as amended]). However, Foremen of Traffic Device Maintainers are represented, not by DC 37, but by Local 237 under Certification Number 67-78 (as amended). Thus, the District Council 37 supervisory blue collar unit (Certification Number 38A-78 [as amended]) currently does not contain any title which shares any substantial community of interest with Associate Parking Control Specialists, and is not an appropriate unit for placement of that title.

We will, therefore, direct that an election be held among employees in the titles Parking Control Specialist and Associate Parking Control Specialist (Assignment Levels I and II).²⁰ There will be two ballots. CWA Local 1182 (non-supervisory unit), District Council 37 (non-supervisory blue collar unit), and IBT Local 237 will be named on the ballot for Parking Control Specialists. CWA Local 1181 (supervisory unit) and IBT Local 237 will be named on the ballot for Associate Parking Control Specialists. We will add the employees to the bargaining unit represented by the union that receives a majority of the ballots cast in each election.

We will not require authorization cards or other showing of interest from the unions involved. We note that this proceeding began with a petition filed by the CWA seeking the accretion of two job titles. As such, neither the CWA nor either of the two intervening parties were required by law to make

²⁰ We have directed elections in several past cases involving unit placement. See, for example, Decision Nos. 29-79 and 12-70. See especially, Decision No. 27-80, which involved circumstances similar to this case.

a showing of interest.²¹ In other types of representation cases, we have regularly followed the policy of the Public Employment Relations Board (PERB) and the National Labor Relations Board (NLRB) by requiring, as a matter of administrative efficiency, a minimum showing of interest beyond the requirements of Rule 2.3b. to determine whether further proceedings are warranted. The purpose of this policy is to prevent the needless expenditure of public funds in the processing of frivolous applications.²²

Having satisfied ourselves that each unit involved in this case has a current community of interest sufficient to justify the holding of an election, it cannot be said that their participation in the election would be frivolous. Therefore, we will not require any additional showing of interest by any of them. To do so at this point would be to delay the process unduly and to no useful purpose. On the other hand, if any of the unions does not desire to participate in the election, it may have its name removed from the ballot upon written request filed with this Board within ten days after service of this Determination and Direction of Election.

DIRECTION OF ELECTION

Pursuant to the powers vested in the Board of Certification by the New

²¹ Section 2.3b. of the OCB Rules requires a showing of interest by a petitioning labor organization only for specific types of certification cases.

²² See, NLRB v. J.I. Case Co., 31 LRRM 2330 (1953); Northport-East Northport Union Free School District v. UFT, 19 PERB 3016 (1986); Union of School Lunch Managers, Local 74 v. Terminal Employees Local 832, 15 PERB 3138 (1982); and State of New York v. Fraternal Order of New York State Troopers v. PBA, 15 PERB 3014 (1982).

York City Collective Bargaining Law, it is hereby

DIRECTED, that as part of the investigation authorized by this Board, two elections by secret ballot shall be conducted simultaneously among the employees in the title of Parking Control Specialist and among employees in the title of Associate Parking Control Specialist (Assignment Levels I and II) employed by the City of New York and related public employers subject to the jurisdiction of the Office of Collective Bargaining. All such employees whose names appear on the payroll for the period immediately preceding this Direction of Election (other than those employees who have voluntarily quit, retired or who have been discharged for cause before the date of election) shall be eligible to vote. The elections shall be held under the supervision of the Board, or its agents, at a time, manner, place, and hours to be fixed by the Board. The purpose of the Parking Control Specialist title employees' election is to determine whether they desire to be represented for the purposes of collective bargaining by CWA Local 1182, AFL-CIO (non-supervisory unit), and thereby be added to the bargaining unit covered by Certification No. 25-74 (as amended), or by District Council 37, AFSCME, AFL-CIO (non-supervisory blue collar unit), and thereby be added to the bargaining unit covered by Certification No. 38B-78 (as amended), or by Local 237, IBT, AFL-CIO, and thereby be added to the bargaining unit covered by Certification No. 67-78 (as amended). The purpose of the Associate Parking Control Specialist title employees' election is to determine whether they desire to be represented for the purposes of collective bargaining by CWA Local 1181, AFL-CIO (supervisory unit), and thereby be added to the bargaining unit covered by

Certification No. 26-74 (as amended), or by Local 237, IBT, AFL-CIO, and thereby be added to the bargaining unit covered by Certification No. 67-78 (as amended); and it is further

DIRECTED, that any of the employee organizations may have its name removed from the ballot in the aforementioned election by filing with the Board, within ten (10) days after service of this Direction of Election, a written request that its name be removed from said ballot.

DATED: New York, N.Y.
December 12, 1990

MALCOLM D. MacDONALD

CHAIRMAN

GEORGE NICOLAU

MEMBER

DANIEL G. COLLINS

MEMBER