

52 OCB 15 (BOC 1993) [Decision No. 15-93]
OFFICE OF COLLECTIVE BARGAINING
BOARD OF CERTIFICATION

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In the Matter of the Petition of :
Local 375 of District Council 37, :
AFSCME, AFL-CIO, :

Petitioner, :

-and-

Local 211, International Union of
Operating Engineers and Local 237, :
International Brotherhood of
Teamsters, AFL-CIO, :

Intervenors,
:

-and-

The City of New York and Related
Public Employers, :
Employer.

-----x Decision No. 15-93
In the Matter of the Petition of Docket Nos. RU-1064-89
RU-1091-91

Local 237, International
Brotherhood of Teamsters, AFL-CIO, :
Petitioner,

-and- :

District Council 37, AFSCME,
AFL-CIO and Local 211, :
International Union of Operating
Engineers, :

Intervenors,
:

-and-

The City of New York and Related
Public Employers, :
Employer.

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DECISION AND ORDER

The titles Asbestos Handler ("AH"), Asbestos Handler supervisor ("AHS") and Asbestos Hazard Investigator ("AHI") were created by the New York city Department of Personnel in July 1989 pursuant to Resolution No. (89-14). The titles were classified in the Competitive Class under Rule XI and were included in the Public Health and Safety Operational Occupational Group. compensation for the titles is based on a 40-hour work week.

On December 8, 1989, District Council 37, AFSCME, AFL-CIO ("D.C. 37") filed a petition docketed as RU-1062-89, requesting that the AH title be added by accretion to Certification No. 38-78B (as amended), which covers non-supervisory custodial, maintenance and related titles.¹ On the same date, D.C. 37 filed a petition docketed as RU-1063-89 requesting that the AHS title be added by accretion to Certification No. 38-78A (as amended), which covers supervisory custodial, maintenance and related titles. Also on December 8, 1989, the Civil Service Technical Guild, Local 375, District 37, AFSCME, AFL-CIO ("Local 375") filed a petition docketed as RU-1064-89, requesting that the AHI title be added by accretion to certification No. 26-78 (as amended), which covers engineering, scientific and related titles.

1 In Decision No. 39-69, we defined the term "accretion" as the inclusion in an existing unit of new positions or titles which, because of their similarity or close relationship to the unit titles, would have been included in the original unit if they had been in existence at that time."

On January 12, 1990, Allied Building Inspectors, Local 211, International Union of Operating Engineers, AFL-CIO ("Local 211") filed a motion to intervene, requesting that the three titles be added by accretion to its certification No. 71-73 (as amended), a unit of 720 employees in 50 titles covering building inspectors and related titles. On January 24, 1990, City Employees Union, Local 237 of the International Brotherhood of Teamsters, AFL-CIO ("Local 237") filed a motion to intervene, requesting that the three titles be added by accretion to its Certification No. 67-78 (as amended). The unit is composed of 5,000 supervisory and non supervisory employees serving in 65 stock, custodial, inspectional, maintenance, skilled craft and related titles. It contains both prevailing and non-prevailing wage rate titles.

Although seven City agencies anticipated using the titles, there were no employees in the titles at the time that the motions were filed. By letter dated February 2, 1990, the New York City Office of Labor Relations ("OLR") requested, and was granted, an extension of thirty days in which to state its position. On April 9, 1990, the City advised that it did not oppose the motions. It maintained, however, that "a petition requesting certification of a vacant title is improper" under the New York City Collective Bargaining Law ("NYCCBL"). The Director of Representation of the Board of Certification concurred with the City's argument.

By letter dated May 9, 1990, D.C. 37, on behalf of Local 375, advised the Board that one employee had been hired in the AHI title. It requested, and was granted, an extension of thirty days so that it could determine whether the City planned to hire employees in the AH and AHS titles. By letter dated August 6, 1990, D.C. 37 withdrew petitions RU-1062-89 (CAH title) and RU-1063-89 (CAHS title) "without prejudice . . . should the City make use of these titles at a future date." At the request of the Director of Representation, D.C. 37 also clarified its position on community of interest in RU-1064-89 (CAHI title) on August 24, 1990.

Employees subsequently were hired into the AH and AHS titles.² On June 14, 1991, Local 237 filed a petition docketed as RU-1091-91 to add the AH and AHS titles by accretion to Certification No. 67-78. On June 14, 1991 and August 6, 1991, respectively, Local 211 and D.C. 37 filed motions to intervene.

In September 1991, RU-1064-89 and RU-1091-91 were assigned to a Trial Examiner. By letter dated October 16, 1991, OLR informed the Board that the City did not oppose the representation of the AH and AHS titles by a union, and that it would not take a position as to appropriate unit placement.

A pre-hearing conference scheduled for January 16, 1992 was adjourned to April 1, 1992 at the request of the parties.

² The New York City Housing Authority employs eleven AH's and one AHS. They are the only individuals presently in the title citywide.

Hearing dates were scheduled for July 1992, but were adjourned at the request of the parties to October 1992 and then to November 1992. On November 17, 1992 and November 24, 1992, the parties presented evidence and arguments in support of their respective positions. In January 1993, Local 211 notified the Trial Examiner that it had not received a copy of the transcript of the hearings. To give Local 211 adequate time to prepare a brief, the Trial Examiner granted an extension of time in which to file post-hearing briefs until February 11, 1993. D.C.37 requested an additional extension of time, which was granted, and all parties submitted post-hearing briefs on February 19, 1993.

By letter dated February 3, 1993, Local 375 and D.C. 37 submitted results of an election held by the American Arbitration Association for AH and AHS titles at the New York city Board of Education, and requested that the record be reopened to present additional evidence concerning this election. By letter dated February 16, 1993, the Trial Examiner informed the parties that, absent objection from Local 211 and Local 237, the document would be appended to the record in the case, but that no additional evidence concerning the election or any other matter would be heard.

In their post-hearing briefs, Local 211 and Local 375 did not contest certification for some of the titles in question. Local 211 has submitted a brief which it says is "limited to a discussion of the merits of [its] claim that it should represent

Asbestos Hazard Investigators ... " Local 237's brief only claims intervention for the AH and AHS titles.

In its original motion to intervene, D.C. 37 requested that the AH title be added to its certification No. 38-78B (Blue Collar - Non-Supervisory) and that the AHS title be added to its certification No. 38-78A (Blue Collar - Supervisory). During the hearings, it introduced testimony and documentary evidence to show that what it characterized as its "Laborers unit" also would be appropriate for these titles. In its post-hearing brief, D.C. 37 stated that it had:

amended its motion to intervene in response to Local 237's attempt to accrete non-prevailing rate titles to a bargaining unit of prevailing rate titles. While District Council 37 has demonstrated that accretion to the Laborer title ... would be the most appropriate unit for those titles ... it has also made an alternative argument for accretion to the bargaining unit covered by OCB certification [Nos. 38-78A and 38-78B]."

There is no record of D.C. 37 having amended its motion to intervene to include addition of the AH and AHS titles to its Laborer units. If we considered D.C. 37 to have made such an amendment, Local 237 and the City would be prejudiced by their inability to respond at such a late stage in the proceedings. For this reason, we will not consider D.C. 37's evidence and arguments concerning its Laborer units, and will only consider its arguments for adding the AH and AHS titles to its certification Nos. 38-78A and 38-78B •

Asbestos Handler and Asbestos Handler Supervisor

The AH title requires a high school diploma and two years of satisfactory experience in asbestos removal, or the equivalent thereof; a valid certificate as a Certified Asbestos Handler; and a New York State Class III driver's license. The salary for the title is a flat rate of \$42,800. The title promotes to AHS (Ex. J-8).

Under supervision, an AH inspects, removes, encapsulates or encloses asbestos contained in pipe, boiler breeching, duct insulation and spray-on insulation. The AH also performs related work such as loading and unloading materials, setting up decontamination chambers, cleaning, and restoring the job site to its original condition (Ex. J-8).

The AHS title requires a high school diploma and four years of experience in asbestos abatement and removal, or the equivalent thereof. At least one year of experience must have been in a supervisory capacity. A valid certificate as a certified Asbestos Handler Supervisor and a New York State Class III driver's license are required. The salary for the AHS title is a flat rate of \$44,940. There is no line of promotion from this title (Ex. J-9).

The AHS supervises, inspects and participates in removing, encapsulating or enclosing asbestos contained in pipe, boiler breeching, duct insulation, spray-on insulation and plaster. The AHS also supervises and assists in related work such as loading

and unloading materials, cleaning, setting up decontamination chambers, and restoring the job site to its original condition (Ex. J-9).

Ernest Tricomi is an AHS who is employed by the New York city Housing Authority ("NYCHA"). He testified that before becoming an AHS, he was employed by the NYCHA in the titles of Maintenance Worker and Assistant Superintendent (tr. 71). As an Assistant Superintendent, he conducted asbestos surveys of NYCHA buildings throughout the city, with four Maintenance Workers assigned to assist him (tr. 72). When the NYCHA created asbestos titles in March 1991, Mr. Tricomi was offered the position of AHS (tr. 71). The four Maintenance Workers assigned to the survey were offered AH positions and now report to him (tr. 74-75). Mr. Tricomi reports to the Administrative Superintendent and Superintendent, both of whom are certified asbestos investigators (tr. 92-94). Ten Maintenance Workers and an Assistant Superintendent who are assigned to work with employees in the AH and AHS titles also report to to the Administrative Superintendent and the superintendent (tr. 94). Mr. Tricomi earns \$44,940 a year and earns compensation for overtime worked (tr. 100). Mr. Tricomi stated that employees in the asbestos titles at the NYCHA do surveys for asbestos contamination, use the glove-bag method of removal, including use of a hepavac, but do not do decontamination work (tr. 101, 103-109).

Mr. Tricomi testified that a five-day course and examination are required for certification as an AH and a six-day course and examination are required for certification as an AHS. Mr. Tricomi also received four days of training in asbestos abatement from the NYCHA (tr. 87-89).

Phil Cioffi is a business agent for Local 237. Mr. Cioffi testified that employees in many of the titles currently represented by Local 237, such as maintenance workers, plasterers and boilermen,³ encounter asbestos and asbestos-related problems while performing their job duties (tr. 31, 41-43). He stated that some employees in NYCHA in-house designated Maintenance Worker titles have licensing requirements and receive training similar to employees in the AH and AHS titles (tr. 36-37, 39-41). As an example, he noted that Maintenance Workers in the refrigeration departments must take courses and acquire licenses in refrigeration (tr. 39-40). Mr. Cioffi testified that, beginning in 1993, Maintenance Workers in refrigeration will be required to attend courses and obtain licenses to remove freon, a dangerous chemical (tr. 40).

Local 237 entered into evidence an exhibit which shows that for the title Maintenance Worker with the NYCHA in-house designation Oil/Gas Burner Repair, the qualification requirement may be satisfied by a course in commercial burner maintenance and

3 "Boilerman" is a designation formerly used for the title now called Heating Plant Technician.

one year of experience in servicing such equipment (Ex. 237-7). Mr. Cioffi testified that Maintenance Workers employed in the heating divisions require special training, which includes overhauling and preventive maintenance of oil and gas burners, plumbing and electrical equipment (tr. 28). Similar training and licensing are required of other trade titles represented by Local 237, such as Elevator Mechanics, Elevator Supervisors, and Exterminators (tr. 37, 39, 40). Mr. Cioffi noted that Local 237 has instituted training programs to prepare employees in its skilled trades titles for examinations and licensing (tr. 44).

John Calendrillo is a council representative for the Blue Collar Division of D.C. 37. Mr. Calendrillo testified that, in his opinion, the AH title most closely resembles the titles City Debris Remover, Pest Control Aide and Custodial Assistant, which are titles certified to D.C. 37 units (tr. 218).⁴ He also stated that the AHS title most closely resembles the titles of Crew Chief (Pest Control), Custodial Foreman, Supervisor (Pest Control) and Senior Custodial Foreman, which are also certified to D.C. 37 (tr. 219, 220).⁵ In his opinion, the blue collar

4 The salary ranges for these titles are as follows (Ex. DC 37-36):

City Debris Remover	\$22,345
Pest Control Aide	\$18,272 - \$19,654
Custodial Assistant	\$19,184 - \$23,2205

5 The salary ranges for these titles are as follows (Ex. DC 37-36):

Crew Chief (Pest Control) \$19,855 - \$23,264

(continued ...)

units covered by certification Nos. 38-78A and B are the most appropriate units for the AH and AHS titles (tr. 218).

Mr. Cioffi testified that among the skilled titles represented by Local 237, Bricklayers earn an annual salary of \$42,441, Plasterers make \$48,235 a year, Elevator Mechanics make \$44,574 a year, and Elevator Supervisors earn \$45,614 a year (tr. 36). He stated that Local 237 represents NYCHA titles of Assistant Superintendent and Superintendent, which earn between \$40,000 and \$60,000 a year. (tr. 66).

Asbestos Hazard Investigator

The AHI title requires a professional engineer's license or registration as an architect, certified industrial hygienist or certified safety professional; or a graduate degree in engineering, architecture, environmental health science or a related field and six months of experience performing hazard/toxic substance assessments and/or administration of engineering or technical contracts; or a bachelors' degree in a related field and one year of related experience; or an associates' degree in a related field and one year of related experience; or two years of professional experience in asbestos

5 (... continued)

Custodial Foreman	\$20,825 - \$27,103
Supervisor (Pest Control)	\$19,855 - \$28,534
Senior Custodial Foreman	\$22,456 - \$29,708

assessment plus three years of other building survey experience. The salary range for the title is \$30,921 to \$40,346 (Ex. J-3).

Employees in the AHI title prepare task orders, supervise consultants, prepare asbestos abatement "scopes" and design documents, coordinate asbestos abatement projects in conjunction with ongoing construction and renovation projects, and act as liaison with agencies, contractors and construction inspectors. The most recent Notice of Exam also requires experience with building inspections and assessment and evaluation of corrective measures for removal, repair, maintenance and encapsulation of contaminated materials (Ex. J-3).

At the time that hearings were held, Richard Morrison was the only employee in the AHI title.⁶ He testified that he is a graduate engineer (tr. 112) who has been employed in the title at the New York City Department of Corrections since January 1992 (tr. 112). He was previously employed by the Board of Education as an AHI and was a member of Local 375 (tr. 118).

Mr. Morrison testified that he responds to emergency reports of contamination, inspects sites, takes samples for analysis and assesses the amount and condition of asbestos to be removed (tr. 199, 120, 121). After inspection, he writes a report and a "scope" of work to be performed, and specifications for contractors to follow for asbestos removal (tr. 122). Mr.

⁶ Three employees were subsequently hired into the title by the New York City Department of Housing Preservation and Development.

Morrison specifies whether asbestos should be removed or the site repaired or encapsulated (tr. 122, 140). He then selects the lowest bidder and prepares and files Department of Environmental Protections forms (tr. 139, 140).

Mr. Morrison stated that he usually visits a job site every two hours to ensure compliance with procedures (tr. 132). He works flex time, a 40-hour shift, and often works beyond his normal shift (tr. 145). His annual salary is \$30,921. He receives compensation for overtime in the form of cash or compensatory time, depending on the nature of the overtime work (tr. 145, 14S).

Louis Albano, President of Local 375, testified that the work now performed by the AHI title at the Board of Education had previously been performed by employees in titles certified to Local 375 (tr. 16S, 173, 174, 175, 1S0). Local 375 represents other titles in the Public Health and Safety Group, including Associate Fire Protection Inspector, Air Pollution Inspector, and Industrial Hygienist.⁷ It represents titles which require a bachelor's degree in engineering or an engineer's license, such as Assistant Architect (Ex. DC 37-20), Assistant Mechanical Engineer (Ex. DC 37-21), Assistant Electrical Engineer (Ex. DC

7 The salary ranges for these titles are as follows (Ex. DC 37-2):

Associate Fire Protection Inspector	\$38,085 - 45,423
Air Pollution Inspector	\$26,867 - 33,274
Industrial Hygienist	\$27,875 - 35,909

37-22) and Engineering Technician (Ex. DC 37-27). Mr. Albano stated that, in his opinion, the job duties and responsibilities of the AHI title are most similar to those performed by titles represented by Local 375 (tr. 181, 183, 185-186, 189-191).

Local 375 also represents titles in which employees supervise inspection of building and safety projects, such as Supervising Air Pollution Inspector (Ex. DC 37-4), Supervising Traffic Control Inspector (Ex. DC 37-5), Principal Air Pollution Inspector (Ex. DC 37-6), Senior Hull and Machinery Inspector (Ex. DC 37-7), Senior Air Pollution Control Engineer (Ex. DC 37-8), supervisor of Building Maintenance (Mechanical) (Ex. DC 37-18), Assistant Architect (Ex. DC 37-20), Assistant Mechanical Engineer (Ex. DC 37-21), Assistant Electrical Engineer (Ex. DC 37-22), Assistant Supervisor of Electrical Installations (Ex. DC 37-24), and Assistant scientist (Ex. DC 37-25).⁸ Mr. Albano stated that the Fire Protection Inspector title represented by Local 375 requires a design function similar to the AHI title which is

⁸ The salary range for these titles is as follows (Ex. DC 37-2) :

Supervising Air Pollution Inspector	\$34,116 - \$41,380
Supervising Traffic Control Inspector	\$32,313 - \$39,578
Principal Air Pollution Inspector	\$37,851 - \$45,423
Senior Hull and Machinery Inspector	\$30,386 - \$37,345
Senior Air Pollution Control Engineer	\$44,346 - \$56,519
Supervisor of Building Maintenance	\$33,908 - \$44,242
Assistant Architect	\$33,908 - \$44,242
Assistant Mechanical Engineer	\$33,908 - \$44,242
Assistant Electrical Engineer	\$33,908 - \$44,242
Ass't Supervisor, Electrical Install .	\$33,908 - \$44,242
Assistant Scientist	\$33,908 - \$44,242

normally associated with engineering, architectural and technician titles represented by Local 375 (tr. 183, 189).

Local 211 offered into evidence documents which show that employees in the title of Inspector (Heating and Ventilation), which it represents, inspect and check materials to insure that they meet approved standards and requirements.⁹ In addition, employees in this title check contractors' change orders, assess and evaluate corrective actions, prepare inspection reports, and recommend design and construction improvements (Ex. 211-6).

In another title represented by Local 211, Rehabilitation Specialist (HPD), employees make inspections to determine conformance with standards, controls or construction contracts and write "scopes" of work for contracts for alterations or repairs (Ex. 211-4).¹⁰ Multiple Dwelling Specialists, also represented by Local 211, examine and approve plans and applications for construction, alteration and repair of multiple dwellings (Ex. 211-8).¹¹

Qualifications for the inspector series of titles represented by Local 375 and the titles represented by Local 211 are similar. Each requires previous experience; in some of the

⁹ The salary range for this title is \$28,490 - \$36,189) (Ex. 211-11).

¹⁰ The salary range for this title is \$28,490-\$36,189 (Ex.211-11).

¹¹ The salary range for these titles is \$31,045 - \$44,959 (Ex. 211-11).

titles, education may be substituted for some amount of experience. A bachelors degree is required for the scientific and engineering titles represented by Local 375.

Positions of the Parties

Local 237's Position

Local 237 maintains that the testimony of Phil Cioffi and Ernest Tricomi supports its contention that the AH and AHS titles would have been included in its certification if the titles had existed at the time of original certification. It asserts that all individuals who have ever held the AH and AHS titles in the NYCHA held titles represented by Local 237. It states further that it represents all but one of the remaining 13 employees working in asbestos removal for the NYCHA, including the Assistant Superintendent and Superintendent.¹²

Local 237 argues that testimony and documentary evidence establish that the job description and qualifications of the Maintenance Worker title represented by Local 237 are most similar to those of AH and AHS. It states that Maintenance Workers are responsible for maintaining and repairing every area of a building in which asbestos is likely to be found. It contends that the levels of skills, qualification and training

¹² The title to which Local 237 is referring is Resident Building Superintendent, which is held by the individual to whom the AH's and AHS's at the NYCHA report .

required for the AH and AHS titles are similar to those of existing Local 237 titles. It cites Decision No. 34-80, in which the Board found that a significant factor in its decision to certify a new title to an existing bargaining unit was that "[w]hile the [titles under consideration] do not perform identical duties, they both require similar technical backgrounds and experience." Local 237 also asserts that the salaries paid to employees in the AH and AHS titles are in the same range as salaries paid to various titles represented by Local 237 in the NYCHA and in Citywide divisions.

Local 237 argues that an indication of community of interest is the degree of "interchange and contact" between the titles. It notes that the NYCHA employees in the AH and AHS titles and the other employees assigned by NYCHA to asbestos removal were previously employed in titles represented by Local 237, and that the "lines of supervision intersect the asbestos titles and the existing Local 237 titles." It cites Decision No. 9-88, in which the Board considered significant the fact that new telecommunications titles either "worked side by side or share[d] a great deal of contact" with existing computer titles, and that "lines of supervision intersected" both titles.

Local 237 cites Decision No. 67-78, in which the Board consolidated a unit of section 220 employees with another unit comprised of section 220 and prevailing rate employees. In that case, Local 237 asserts, the Board found a community of interest

because employees in both units were engaged generally in maintenance, operation and repair of facilities owned and operated by the City.

D.C. 37's Position

D.C. 37 maintains that it has demonstrated that accretion of the AH and AHS titles to its Blue Collar Division bargaining units would be appropriate. It argues that although an AH must be certified as an asbestos handler, Mr. Tricomi's testimony shows that an employee may qualify by taking a course with a private agency. It notes that the position of Crew Chief (Pest Control) requires a qualifying certificate or permit, and involves the same kind of work as performed by the AHS title. In addition, it maintains, the certification requirement does not change the fact that AH job duties are essentially similar to those of the titles represented by D.C. 37.

D.C. 37 states that it has won an election and will be certified as the representative for the AH and AHS titles at the Board of Education. It argues that it is logical, and consistent with the Board's previous decisions, to extend recognition to D.C. 37 for the AH and AHS titles to avoid "fractionalizing the title among more than one union."

Local 375's Position

Local 375 cites Decision No. 15-87 for the proposition that the Board considers factors such as wage rates, lines of promotion and supervision, interchange and contact between the affected employees as well as qualifications, skills and training in determining community of interest between contending Union titles. It argues that the AHI title should be accreted to Local 375 because the AHI title shares the greatest community of interest with other Local 375 titles; the qualifications, skills and training for the AHI title most closely resembles those for other Local 375 titles and the wage rate is similar to Local 375 titles. Local 375 contends that it has been certified by the New York city Board of Education as the exclusive collective bargaining representative for the AHI title at the Board. It argues further that qualifications for AHI closely parallel those for a number of Local 375 titles, such Senior Air Pollution Control Engineer, Assistant Architect, Assistant Mechanical Engineer, Assistant Electrical Engineer and Engineering Technician.

Local 375 maintains that although none of the titles it represents contain identical duties and none contain all the duties of the AHI title, its titles contain duties which are similar in nature, scope and complexity. It contends that the testimony of the only employee currently in the title supports this assertion .

Local 211's Position

Local 211 maintains that an examination of the duties of the AHI title reveals a strong community of interest between that title and titles which it now represents. It contends that the titles of Inspector (Heating and Ventilation), Rehabilitation Specialist (HPD) and Multiple Dwelling Specialist encompass tasks and duties that are analogous to those of the AHI, and that the qualifications and skills required are similar.

Local 211 asserts that the duties engaged in by employees in the titles cited by D.C. 37 have only a tenuous connection to the work performed by an AHI. It contends that Mr. Albano testified about the title of Fire Prevention Inspector despite the fact that D.C. 37 admitted that it had offered the job specification for that title in error, and that the title is not presently included in certification No. 26-78.

Local 211 also argues that the fact that D.C. 37 represents some titles in the Public Health and Safety Occupational Group does not distinguish its petition to represent the AHI title. It maintains that it represents a number of titles in the Building and Construction Inspection occupational Group, which it asserts is virtually identical to the Public Health and Safety occupational Group. Moreover, it states, the title of Inspector (Housing), which is represented by Local 211, is classified as part of the Public Health and Safety Occupational Group.

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DISCUSSION

The issue before the Board is whether each newly created job title should be added, by accretion, to one of two previously certified units. In making such determinations, we consider 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. We also consider the comparative size of the two groups.¹³ Since all units to which the petitioners request accretion include substantially more employees than the number of employees in the titles sought to be added, we turn our attention to a determination of the appropriateness of each unit.

While the function of this Board generally is to provide the machinery whereby the desires of employees may be ascertained, we do not base our determination of an appropriate unit solely on an employee's right to self-determination.¹⁴ In a particular case, employees' wishes may be considered as one factor in determining the issue. Such consideration, however, is balanced against considerations of efficiency of operations of the public service and sound labor relations. It is our practice first to make determinations of appropriate bargaining units and then to allow

13 Decision Nos. 15-87; 23-75; 30-71; 39-69 .

14 Decision Nos. 1-91: 54-75, 46-75.

expressions of employee preference if more than one unit has been found to be appropriate.¹⁵

Title 61, § 1-02(j) of the Rules of the City New York states:

In determining appropriate bargaining units, the Board will consider, among other factors:

1. Which unit will assure public employees the fullest freedom in the exercise of the rights granted under the statute and the applicable executive order;
2. The community of interest of the employees;
3. The history of collective bargaining in the unit, among other employees of the public employer, and in similar public employment;
4. The effect of the unit on the efficient operation of the public service and sound labor relations;
5. 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;
6. Whether the unit is consistent with the decisions and policies of the Board.

The parties have not offered evidence concerning § 1-02(j)1, 3, 4, or 5.

We will first consider whether the new title shares a community of interest with one or the other of the existing

¹⁵ Decision Nos. 1-91; 15-87; 14-87.

units. When deciding whether there is a community of interest, we consider a number of factors, particularly:

1. the job duties and responsibilities of the employees;¹⁶
2. their qualifications, skills and training;¹⁷
3. interchange and contact;¹⁸
4. wage rates;¹⁹
5. lines of promotion;²⁰
6. organization or supervision of the department, office or other subdivision.²¹

This list is not exclusive and none of the factors necessarily is controlling. We make determinations on a case-by-case basis and balance the various factors to determine where the greater community of interest lies.²²

Regarding the AH and AHS titles, Local 237 has demonstrated a significant similarity in job duties and responsibilities

16 See, e.g., Decision Nos. 16-86; 13-85; 18-81; 13-81; 34-80; 6-69; 44-68.

17 See, e.g., Decision Nos. 13-85; 13-81; 34-80; 46-75.

18 See, e.g., Decision Nos. 29-77; 23-76; 23-75; 38-74; 65-73; 61-71; 19-71; 20-70; 6-69.

19 See, e.g., Decision Nos. 13-85; 41-82; 41-73; 45-72; 4-69; 44-68.

20 See, e.g., Decision Nos. 34-80; 22-75; 42-74; 45-72; 26-70; 4-69.

21 See, e.g., Decision Nos. 55-76; 65-73; 61-71; 31A and B-71; 19-71; 31-69.

22 See, e.g., Decision Nos. 9-88; 15-87.

between these titles and titles already certified to its existing unit. The NYCHA in-house title designations that it cites, such as Maintenance Worker (Oil/Gas), Maintenance Worker (Heating Divisions) and Maintenance (Refrigeration) require training and licensing similar to those required by the AH and AHS titles. One of the titles, Refrigeration Maintenance Worker, is responsible for removing a hazardous substance. All of the Local 237 titles require maintenance of real property and the systems and machinery therein.

In comparison, D.C. 37 has not demonstrated as significant a similarity between the job duties and responsibilities of the contested titles and the titles already certified to its proposed units. It cites city Debris Worker and Pest Control Worker as comparable to the AH title, and Pest Control Chief and Custodial Foreman as comparable to the AHS title. While it is true that employees in the Pest Control titles handle hazardous materials, this is the only similarity shown by D.C. 37 among the titles. The wage rates of comparable titles in Local 237's unit range from about \$30,000 to \$48,000 while the wages of comparable titles in D.C. 37's proposed units range from \$20,000 to \$30,000.

It is clear that individuals in the AH and AHS titles either work side by side, or share a great deal of contact, with employees in Maintenance Worker and supervisory titles represented by Local 237. Furthermore, lines of supervision now intersect, and will continue to intersect, these titles. D.C. 37

has not demonstrated a degree of interaction between its bargaining unit employees and employees in the AH and AHS titles under our jurisdiction.

D.C. 37 and Local 375 have stressed the fact that at the New York City Board of Education, the three titles in question have been certified to their units. The Board of Education titles fall within the jurisdiction of the New York state Public Employment Relations Bureau (lfPERBIf) and are covered by collective bargaining agreements other than those relevant in this case. While it is true that D.C. 37 was chosen by election to represent the AH and AHS titles, the election was not ordered by PERB as the result of an investigation or evidentiary hearing. Rather, it was conducted by the American Arbitration Association pursuant to an agreement reached among the attorneys for the Board of Education and the two unions involved. The AHI title was voluntarily recognized by the Board of Education in the absence of competing unions.

We are not bound by the certification decisions of other jurisdictions when making determinations as to the appropriateness of a bargaining unit. We must make our own investigation for public employees under our own jurisdiction. Moreover, in the instant case, we do not find the Board of Education certification decisions to be dispositive, since they were made without a full investigation into the merits of each

party's claim by the agency authorized to undertake such investigations.

We have stated previously that it is our policy not to certify a combined supervisory and non-supervisory unit where there are other, appropriate units containing a full range of supervisory titles.²³ In the instant case, however, the titles would be added by accretion to an existing unit in which supervisory and non-supervisory titles are already mixed.

The parties have each made arguments concerning the appropriateness of adding non-prevailing wage rate employees to units of prevailing wage rate workers. As Local 237 correctly states, in Decision No. 67-78 we consolidated a unit of section 220 employees with another unit comprised of Section 220 and non-prevailing rate employees. In that case, we found a community of interest because employees in both units were engaged generally in maintenance, operation and repair of facilities owned and operated by the City. Here, Local 237 asks us to add nonprevailing wage rate employees to a unit composed of prevailing and non-prevailing wage rate employees. We find that Local 237 has shown that it has satisfactorily represented both groups of employees in the unit.

For all of the above reasons, we find that the AH and AHS titles should be added by accretion to Certification No. 67-78 (as amended), held by Local 237.

23 Decision Nos. 15-87; 54-75.

In the case of the AHI title, there are factors which argue for accretion to each of the contending units. Each union has presented evidence of a community of interest between employees in its unit and employees in the title, and that it represents employees who have job responsibilities similar to the duties of those titles.

Both unions represent employees in titles whose functions are similar to those of an AHI. In the titles cited by Local 375, employees supervise inspections of building and safety projects. For example, Fire Protection Inspectors conduct inspections to detect violations; Senior Hull and Machinery Inspectors supervise inspection of construction and repair of vessels and equipment; Assistant Mechanical Engineers supervise design and construction and prepare specifications and estimates; and Supervisors of Mechanical Installations evaluate electrical and mechanical work.

Employees in the titles cited by Local 211 inspect and check materials to insure conformance with standards, prepare reports and "scopes" of work, and recommend design and construction improvements. For example, Housing Construction Inspectors check materials, inspect construction work and demolition and prepare reports; Rehabilitation Specialists (H.P.D.) inspect real property, and prepare "scopes" of work and cost projections; Inspectors (Heating and Ventilation) inspect equipment for conformance with codes, make reports and recommendations and work

with contractors; and Multiple Dwelling Specialists examine construction plans to ensure compliance with codes.

Where 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.²⁴ The salary range for employees in Local 375's titles is approximately \$27,000 to \$58,000, while the salary range for Local 211's titles is approximately \$28,000 to \$45,000. The salary range for the AHI title is approximately \$30,000 to \$42,000. At present, AHI's earn \$30,921.

No evidence has been offered by Local 375 or Local 211 concerning interchange with other titles or lines of supervision.

Another factor in making unit determinations is the qualifications, skills and training required for the various titles. Local 375 has presented evidence that shows that employees in some of its cited titles are required to possess a bachelors' degree in engineering or a professional engineer's license. The requirement for employees in comparable Local 211 titles is some years of education leading to a degree in engineering or other, related field. Since all other factors regarding the Investigator title render Local 375 and Local 211 equally appropriate, we find that the similarity of educational background between Investigators and other members of Local 375 make it the more appropriate unit for this title .

24 Decision No. 15-87.

Accordingly, we find that the unit proposed by Local 375 is the appropriate unit for collective bargaining for employees in the Asbestos Hazard Investigator title.

ORDER

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

DIRECTED, that the titles Asbestos Handler (Title Code No. 31313) and Asbestos Handler Supervisor (Title Code No. 31314) be certified to Certification No. 67-68 (as amended), held by City Employees Union, Local 237, International Brotherhood of Teamsters, AFL-CIO, and it is further

DIRECTED, that the title Asbestos Handler Investigator (Title Code No. 31312) be certified to Certification No. 26-78 (as amended), held by Civil Service Technical Guild, Local 375, District Council 37, AFSCME, AFL-CIO.

Dated: New York, New York
July 29, 1993

MALCOLM D. MACDONALD
CHAIRMAN

GEORGE NICOLAU
MEMBER

DANIEL C. COLLINS
MEMBER