

OFFICE OF COLLECTIVE BARGAINING
BOARD OF CERTIFICATION

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In the Matter of

LOCAL 144, SEIU, AFL-CIO,

Petitioner

DECISION NO. 16-93

-and-

LOCAL 375, DC 37, AFSCME, AFL-CIO

DOCKET NO. RU-1074-90

Intervenor

-and-

THE CITY OF NEW YORK

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In the Matter of

LOCAL 375, DC 37, AFSCME, AFL-CIO,

Petitioner

DECISION NO. 16-93

-and-

LOCAL 144, SEIU, AFL-CIO,

DOCKET NO. RU-1075-90

Intervenor

-and-

THE CITY OF NEW YORK

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INTERIM DETERMINATION AND ORDER

On July 13, 1990, Local 144, Service Employees International Union, AFL-CIO ("SEIU") filed a petition to accrete the title Forensic Analyst to its Certification No. CWR 23/67, which covers other titles in the biological sciences. On August 6, 1990, the Civil Service Technical Guild, Local 375, DC 37, AFSCME ("CSTG") filed a motion to intervene, seeking to add this title to its Certification No. CWR 26/78. CSTG argues that the salaries received and the duties performed by the Forensic Analysts demonstrate that this title is more similar to the chemist titles

it represents. On September 28, 1990, SEIU responded to the motion to intervene, arguing that the Forensic Analysts are educated and have work experience in the biological sciences, making them more similar to the employees in the titles it represents.

On August 6, 1990 CSTG filed a petition to accrete the title Forensic Scientist to its Certification No. 26-78. On September 28, 1990, SEW filed a motion to intervene, arguing that Forensic Scientists have salaries, duties and educational requirements similar to employees it already represents. On November 30, 1990, CSTG responded to the motion to intervene, arguing that the educational requirements and pay scales for Forensic Scientists are more similar to the employees it currently represents.

The City had no objection to either title being represented by a union.

These cases were consolidated without objection by either party and a hearing was held on September 24, 1992.¹ After

¹ After several unsuccessful attempts to contact the person representing CSTG by telephone, a letter was written scheduling a pre-hearing conference for February 4, 1992. On February 4, 1992 the attorney for Local 144, SEIU appeared; no representative was present from Local 375, CSTG. At a subsequent pre-hearing conference on March 31, 1992, the parties were informed of what they needed to prove at an accretion proceeding and were advised of their right to object to the consolidation of RU-1074-90 and RU-1075-90. Hearing dates were scheduled for May 28th and 29th, 1992. Following a request to reschedule the hearing dates for July, a status conference was held, which was attended by union officials and attorneys from both unions. Although settlement was discussed at this status conference, no settlement occurred and a hearing was held on September 24, 1992.

several extensions of time, post-hearing briefs were filed on February 16, 1993.

There are four laboratories at the Office of the Chief Medical Examiner. Two of these laboratories, the Laboratory of Biochemistry and Hematology (commonly referred to as the "Serology" laboratory) and the Molecular Biology laboratory (commonly referred to as the "DNA" laboratory) are in the Department of Forensic Biology. The other laboratories are Toxicology and Histology. Local 375, CSTG currently represents the Research Scientist and Chemist titles working in the Toxicology laboratory. Local 144, SEIU currently represents the Microbiologist titles working in the Histology laboratory.

THE EVIDENCE

Local 144, SEIU's Evidence:

Marie Samples testified that she is a Forensic Scientist employed by the office of the Chief Medical Examiner ("OCME") since January 16, 1990. She has both bachelors and masters degrees in biochemistry and was previously employed as a criminalist with the California Department of Justice. She stated that there are three Forensic scientists in the Medical Examiner's office -- Larry Quarino, Dora Wolosin and herself.

She testified that the mission of the Department of Forensic Biology is to analyze the various types of physical evidence in order to aid the police and district attorney in solving

homicides. According to Ms. Samples, through the analysis of physiological fluids, such as blood, victims are tied to scenes or suspects and suspects are tied to scenes.

She further testified that there are two laboratories within the Department of Forensic Biology: the serology laboratory (which consists of biochemistry and hematology) and the molecular biology laboratory (commonly referred to as the "DNA lab"). She stated that there is also a toxicology laboratory and a histology laboratory. According to Ms. Samples, toxicology is responsible for analyzing body fluids and parts for drugs or other toxins or poisons. Ms. Samples characterized the analysis done in the toxicology laboratory as an effort to identify materials foreign to the human body. She stated that the employees who work in the toxicology laboratory are in Chemist titles and that CSTG, Local 375 represents those employees. She described the histology laboratory as responsible for taking tissue samples and preparing slides for the medical examiners to examine.

Ms. Samples further testified that of the two laboratories within the Department of Forensic Biology, the serology lab is larger than the DNA lab. She stated that she and Larry Quarino are in charge of the day-to-day operations of the serology lab. Four Forensic Analysts report to Ms. Samples; three Forensic Analysts report to Larry Quarino, as does one person in the title of Laboratory Helper. Ms. Samples testified that there was one other person within the serology laboratory, Larissa Shapiro, who

is a Laboratory Associate. The parties stipulated that Ms. Shapiro is represented by Local 144, SEIU.

Ms. Samples testified that the remaining person in the Forensic Scientist title, Dora Wolosin, works in the Department of Forensic Biology's DNA laboratory.

Ms. Samples further elaborated that the mission of the serology laboratory within the Department of Forensic Biology is to examine the physical evidence that has been submitted to the laboratory by the police or other agencies. Body fluids are identified and matched with victims or suspects. Ms. Samples described the DNA laboratory as a working group within the Department of Forensic Biology which is devoted to developing specialized DNA technologies, and once these technologies are sufficiently reliable and valid, they are incorporated into the case work of the serology laboratory.

Ms. Samples also elaborated on the work she performs as a Forensic Scientist. She stated that she and Larry Quarino work in a supervisory capacity, evaluating cases and the types of physical evidence present. After they discuss with detectives or district attorneys the probative value of the evidence and the types of analysis necessary, the case is assigned to a Forensic Analyst. She and Larry Quarino keep track of the cases as the Analysts are working on them, handle requests about the progress of the cases from detectives or district attorneys, and help Analysts who encounter any special technical problems. When an

Analyst has finished a case and written a report, she or Larry Quarino reviews the report to ensure that it accurately reflects the scientific tests performed and both the Forensic Analyst who performed the work and the Forensic Scientist who supervised the case sign the report.

Ms. Samples testified that she and Larry Quarino implement new methods to analyze bodily fluids in the laboratory, which are either adopted from literature in the field or developed by herself or Larry Quarino. They also administer proficiency tests to the Analysts. She stated that she and Larry Quarino occasionally perform case work or take proficiency tests themselves. She further stated that occasionally she or Larry Quarino will testify in court either on their own cases or when an Analyst is not available. Finally, she stated that she and Larry Quarino interact with the DNA laboratory, performing some of the techniques developed there.

Ms. Samples concluded that the serology laboratory and the DNA laboratory, which comprise the Department of Forensic Biology, identify substances of human origin.

Ms. Samples testified that in January of 1990 the name of the laboratory changed from serology to the Department of Forensic Biology and the titles of the people who worked there changed from Laboratory Associates to Forensic Analysts. Ms. Samples also detailed how the lab was updated. She explained that she and Larry Quarino trained the Forensic Analysts to use

new methods in analyzing bodily fluids. Ms. Samples concluded that the functions performed in the old serology laboratory and the current functions performed in the Department of Forensic Biology have the same purpose, although the sophistication or the technology used to fulfill that purpose has changed. For example, Ms. Samples elaborated that DNA tests have become more "individualized," narrowing the range of possible donors of a bodily fluid.

Ms. Samples testified that biochemistry, the study of proteins, enzymes and DNA, is practiced by the Department of Forensic Biology, whereas the toxicology department practices chemistry.

On cross examination, Ms. Samples testified that when the serology laboratory changed in January of 1990 to the Department of Forensic Biology, all but one of the Laboratory Associates became Forensic Analysts.

Patricia Ryan, a Forensic Analyst at OCME, then testified. She works in the serology laboratory of the Department of Forensic Biology and has worked continuously in the serology department since 1972. Before becoming a Forensic Analyst, Ms. Ryan was a Laboratory Microbiologist, and in that title was represented by Local 144, SEIU. Before becoming a Microbiologist, Ms. Ryan was a Laboratory Associate, and in that title was also represented by Local 144, SEIU. Ms. Ryan testified that other Forensic Analysts were formerly Laboratory

Associates or Microbiologists, and in those titles were represented by Local 144, SEIU.

Ms. Ryan testified that the purpose of the serology laboratory before it became part of the Department of Forensic Biology was to identify bodily fluids and match them to a particular individual, and that this purpose is the same now that it is part of the Department of Forensic Biology. She further testified that the only difference between the old serology laboratory and the serology lab that is part of the Department of Forensic Biology is that new techniques and new machinery are now being used.

Ms. Ryan stated that she testifies in court as part of her job duties as a Forensic Analyst, and that she testified in court before becoming a Forensic Analyst, although it was not part of her job duties. Ms. Ryan testified that she reports to either Marie Samples or Larry Quarino, as do her co-workers. She stated that she and the other Forensic Analysts identify bodily fluids, match them to a particular person, write reports based on their observations, and testify in court when necessary.

Ms. Ryan stated that she and the other forensic analysts have no day-to-day contact with the individuals working in the toxicology laboratory.

Ms. Ryan testified that the Forensic Scientist position did not exist before it was created in 1990 and that she and other Laboratory Associates and Microbiologists performed the case

analysis function in the old serology laboratory. Ms. Ryan stated that the work she is performing today and the work she performed before the creation of the Department of Forensic Biology is the same, except that the technology has changed and the Analysts have been given more responsibility in terms of having to write reports on their cases and having to testify in court about the results.

On cross examination, Ms. Ryan clarified that she was a Laboratory Microbiologist for slightly under a year and a Laboratory Associate for approximately seventeen years. Ms. Ryan testified that there have been no people in the Microbiologist titles since January 1990 in either the serology department or DNA lab. She further elaborated on the work performed in the histology lab, explaining that they place samples of tissues on slides for doctors to examine. Ms. Ryan testified that she believed at least one person in the histology laboratory held a Microbiologist title. She further stated that she was only familiar with the work of the toxicology laboratory to the extent she knew they did chemistry.

Edward Joseph then testified. He stated he is a Laboratory Microbiologist employed by the Department of Health and Environmental Bacteriology and is a union delegate for Local 144, SEIU. He testified that prior to holding the Laboratory Microbiologist title, he was a Laboratory Aide, a Junior Bacteriologist and an Assistant Bacteriologist and that in all of

these titles he was represented by Local 144, SEW or its predecessor organization, Local 300. After a foundation was laid for Mr. Joseph's familiarity with the operations at OCME, Mr. Joseph testified that Beverly Reynolds, an Associate Laboratory Microbiologist, is in charge of the histology laboratory and is a member of Local 144.

Mr. Joseph testified that Local 144's members worked in the old serology laboratory. He also testified that there was a time when the chemistry titles at OCME were represented by Local 144's predecessor organization. He stated that there was a separation because both groups, the Microbiologists and Chemists, wanted to maintain their "professionality." Mr. Joseph explained that the Chemists left the bargaining unit and joined Local 375, CSTG.

Mr. Joseph testified about a conversation he had with two OCME officials prior to the creation of the Department of Forensic Biology. Mr. Joseph stated they told him in this conversation that they were trying to create a broader title, the Forensic Analyst title, which would enable individuals to testify.

On cross examination, Mr. Joseph testified that there are no persons currently in his union who work in the Department of Forensic Biology at OCME. He also stated that there may be one member in his union who works in the toxicology laboratory. According to Mr. Joseph, all of the individuals in the histology laboratory are members of Local 144. He stated that those

members are in the titles of Laboratory Microbiologist, Associate Laboratory Microbiologist and Laboratory Associate. Mr. Joseph explained that individuals in the histology laboratory ensure that specimens are properly prepared on a slide for examination by a pathologist. He further stated that no individuals in the histology laboratory work with DNA.

On redirect examination, Mr. Joseph testified that Larissa Shapiro is a Laboratory Associate at OCME in the Forensic Biology Department and is a member of Local 144.

Local 375, CSTG's Evidence:

Brad Smith, the first vice president of Local 375, CSTG, testified. He stated he is employed by the Department of City Planning, but is on full release time to work for the union. Mr. Smith testified that the titles represented by CSTG are primarily technical titles, such as engineers, architects, chemists, and research scientists. According to Mr. Smith, CSTG represents Chemists and Research Scientists at OCME. Additionally, Mr. Smith stated that CSTG represents Chemists at other City agencies, including hospitals, the Police Department and the Department of Environmental Protection.

On cross examination, Mr. Smith clarified the type of work Chemists in the Police Department perform. He stated that they work mainly in the laboratories, testing the types of substances the police have seized at the scene of a crime, such as cocaine

or heroin. Mr. Smith testified that CSTG represents traffic control inspectors, fire protection inspectors and construction managers. He stated that engineers constitute the bulk of CSTG's membership.

Dr. Donald Hoffman, a Research Scientist Level II in the toxicology department of OCME, testified. Dr. Hoffman stated that, in addition to his current title, since joining the toxicology department in 1969, he has held the positions of Junior Chemist, Assistant Chemist, Senior Chemist and Research Scientist Level I. He stated that, unlike the Department of Forensic Biology, the toxicology department has not changed names. He testified that there are Chemists and Lab Helpers in the toxicology department, as well as one person who holds the title of Laboratory Microbiologist, but does toxicology. He stated that individuals in the toxicology laboratory analyze biological specimens for the presence of drugs and/or poisons.

Dr. Hoffman stated that there are no individuals with a Chemist, Forensic Analyst-or Forensic Scientist title in the histology department; they hold Microbiologist titles. Dr. Hoffman testified that individuals in the Microbiologist titles perform histology, serology, or toxicology related functions; they do not perform the work indicated for the Microbiologist titles -- determining types of bacteria -- because that function is carried out by laboratories in the Department of Health. Dr. Hoffman testified that Microbiologists in the histology

department prepare slides of tissue samples for pathologists to interpret.

Dr. Hoffman testified that the individual with a Microbiologist title who works in the toxicology laboratory tests blood and tissue for the presence of alcohol. Dr. Hoffman emphasized that all individuals at OCME analyze biological specimens, either for the presence of natural or foreign substances.

Dr. Hoffman testified that because of the developing technology, the field of forensic biology is highly sophisticated. Dr. Hoffman further stated that the tasks performed by Forensic Scientists and Analysts -- researching, designing experiments, testing, and interpreting the results -- would also fit the job descriptions of Chemists or Research scientists. According to Dr. Hoffman, Research Scientists, Chemists, Forensic Analysts and Forensic Scientists have a high degree of expertise in the medical-legal system because their work, which is done in accordance with scientific standards, also serves as evidence in legal cases. Thus, Dr. Hoffman concluded, the work described for the Forensic Scientist and Forensic Analyst positions is consistent with the type of work and level of expertise of the Chemists and Research Scientists represented by CSTG. Furthermore, Dr. Hoffman stated, their knowledge, background and sophistication differentiates Forensic Scientists and Analysts from individuals in the Microbiologist titles.

On cross examination, Dr. Hoffman testified that because he is the supervisor of the gas chromatography section, his job primary involves the review of work others perform; however, on occasion, he will analyze blood or tissue for the presence of drugs or poisons, including alcohol. Dr. Hoffman states that, as a Research Scientist, he seeks to improve the methods currently being used to test blood or tissue for the presence of drugs or poisons; he determines whether existing methods are suitable for the analysis of new drugs; and if existing methods are not suitable, he determines what new methods must be created. He further testified that, in general, Chemists in the toxicology department perform the tasks described in the job description for those employees, as they use various tests to determine the presence of substances foreign to the human body. Dr. Hoffman stated that the forensic biology laboratories do not test for the presence of substances foreign to the human body; thus, the tests performed in the toxicology laboratory are not performed in the forensic biology laboratories.

Dr. Hoffman testified that there is one Research Scientist in the toxicology laboratory (himself); there are also Chemists, Associate Chemists Levels I and II, and Assistant Chemists. Dr. Hoffman stated that all of these positions are represented by CSTG, Local 375. Dr. Hoffman testified that there is one person in the toxicology laboratory with a Microbiologist title who is represented by SEIU, Local 144.

Dr. Hoffman concluded he could not step into the shoes of a Forensic Scientist or a Forensic Analyst in the forensic biology laboratory and perform that person's duties without specific, specialized training.

Larry Quarino, a Forensic Scientist in the Department of Forensic Biology, testified. He stated that he has held the title of Forensic Scientist since January 30, 1990 and that he works in the serology laboratory. He testified that there are seven Forensic Analysts in the serology laboratory. Mr. Quarino stated that there is also one Forensic Scientist and one Forensic Analyst in the DNA laboratory. Prior to his employment with OCME, Mr. Quarino was employed by the New Jersey State Police as a forensic scientist.

Mr. Quarino stated that individuals in the serology laboratory examine physical evidence from homicide cases; they identify and individualize body fluid stains in order to link victims with crime scenes and suspects, thereby reconstructing the crime. Mr. Quarino testified that individuals in the histology department prepare slides for examination by the medical examiner.

Mr. Quarino testified that some of the equipment used in the toxicology laboratory, such as an ultraviolet or visible spectrophotometer, is also used in the serology and DNA laboratories. He testified that individuals in the toxicology laboratory analyze poisons or drugs present in body fluids. He

stated that most of the Forensic Scientists and Forensic Analysts who work for the Department of Forensic Biology have masters degrees and that some have PhDs. He further testified that the level of sophistication of the toxicology and forensic biology laboratories are comparable, noting that both require knowledge of instrumental analysis, a foundation in biochemistry, and the ability to evaluate data. In contrast, he testified, the level of sophistication is not comparable between the histology and forensic biology laboratories, as individuals in the histology laboratory have neither an understanding of instrumental analysis, nor the ability to evaluate data.

On cross examination, Mr. Quarino testified that the Department of Forensic Biology does not have a spectrophotometer -- the one in the toxicology laboratory was borrowed when it was needed. Although Mr. Quarino stated that the forensic biology laboratories have not had to borrow other toxicology equipment, they have had to borrow reagents. Mr. Quarino testified that, in general, different types of equipment are used by the toxicology laboratory and the forensic biology laboratories.

POSITIONS OF THE PARTIES

Local 144, SEIU's Position:

Local 144, SEW argues that its bargaining unit is the only appropriate bargaining unit for the Forensic Analyst and Forensic Scientist titles. Local 144 notes that all employees in the

various OCME laboratories were represented by Local 144, or its predecessor organization, until the Chemists in the toxicology laboratory decided to join Local 375, CSTG. Local 144 states that it continued to represent the employees in OCME's histology and serology laboratories. Local 144 explains that in early 1990, the serology laboratory was renamed the Department of Forensic Biology. According to Local 144, the Laboratory Associates and Microbiologists who were working in the former serology laboratory, and who had been represented by Local 144 for over 20 years, were given the newly created title of Forensic Analyst.

Local 144 emphasizes that the mission of the Department of Forensic Biology -- identifying substances of human origin -- is identical to the mission of the former-serology laboratory, but more sophisticated technology is used in fulfilling it. According to Local 144, the introduction of this more sophisticated technology was accomplished when three Forensic Scientists were hired in the beginning of 1990 in order to train the former Laboratory Associates and Microbiologists, now called Forensic Analysts, in the new techniques.

Local 144 emphasizes that the functioning of the Department of Forensic Biology and the toxicology laboratory are not integrated: employees are not interchanged; they do not perform the same work; and the equipment used in each laboratory differs from the other. Local 144 explains that the OCME employees with

chemistry titles work only in the toxicology laboratory, where they perform tests to analyze body fluid and tissues for the presence of drugs, alcohol, toxins and poisons. In contrast to the employees working in the toxicology laboratory, who identify substances foreign to the human body, Forensic Analysts and Scientists in the Department of Forensic Biology identify materials of human origin.

Citing § 2.10 of the Revised Consolidated Rules of the Office of Collective Bargaining, Local 144 argues that application of these principles to the facts of this case establishes that Local 144's unit is the only appropriate unit for the Forensic Analyst and Forensic Scientist titles. Local 144 contends that to hold otherwise would do great damage to the history of collective bargaining, the stability of labor relations, the efficiency of the Department of Forensic Biology and the freedom of these employees to exercise the rights granted them by statute.

Citing § 2.10 (c) of the Rules, Local 144 contends that the history of collective bargaining at OCME should be a key consideration in determining the appropriateness of accreting the titles at issue to a bargaining unit. Local 144 argues that since Local 144 represented the employees who are now Forensic Analysts for over twenty years, as well as representing other OCME employees, with the exception of the chemistry titles in the toxicology laboratory, for over twenty years, the history of

collective bargaining militates in favor of accreting the Forensic Analyst title to Local 144's unit. According to Local 144, this conclusion is reinforced by the fact that Forensic Analysts continue to work in the same place (the serology laboratory) and perform the same work (identifying body fluids and matching them to a victim or suspect) as they did when they were represented by Local 144.

Local 144 contends that the renaming of Laboratory Associates and Microbiologists to Forensic Analysts should be viewed as only a change in title and not a change in job duties. Citing Decision Nos. 31-74 and 41-73, Local 144 argues that failing to accrete this title to Local 144's existing unit would violate the Board's policy favoring the consolidation of units and disrupt stability in bargaining units. Local 144 notes that Local 375, CSTG has never represented employees holding the Forensic Analyst title or doing the work they did or now perform.

Local 144 contends that since the Forensic Analyst title must be accreted to Local 144's unit, it follows that under §§ 2.10 (b) and (d) of the OCB Rules, that the Forensic Scientist title must be accreted as well. Local 144 notes that the Forensic Analyst and Forensic Scientist titles were designed to and do function together in a completely integrated way. According to Local 144, there is a strong community of interest between these two titles, which under § 2.10 (b) of the OCB Rules, must be considered in deciding the appropriateness of

separate units. Furthermore, Local 144 contends that separating the titles into different bargaining units would lower the efficiency of the Department of Forensic Biology because the two titles must function as a team. Accordingly, Local 144 argues that since § 2.10 (d) of the OCB Rules requires consideration of how the efficient operation of the Department of Forensic Biology would be affected if the two titles were separated into different units, it is clear that both must be accreted to the same unit.

Local 144 emphasizes that the Forensic Scientist and Forensic Analyst titles do not share a community of interest with the chemistry titles in the toxicology laboratory, which are represented by Local 375, CSTG. Local 144 notes that Forensic Analysts and Scientists perform tests to determine the presence of human substances, whereas the Chemists represented by Local 375 perform tests to determine the presence of foreign substances. Local 144 also notes that the technology, technique and equipment used in each laboratory is different and that neither title could perform the other's work.

Local 144 contends that there is a fit between the Forensic Scientist and Forensic Analyst titles and those represented by Local 144. As Local 144 represents the staff of the histology laboratory at OCKE, which prepares biological specimens for examination, as well as other biological titles in the Health and Hospitals Corporation, Local 144 contends the employees it represents are more similar to the Forensic Scientist and Analyst

titles than the titles represented by Local 375, which consist mostly of engineers.

Local 375, CSTG's Position:

Citing Decision No. 39-69, Local 375 notes that accretion is the inclusion in an existing bargaining 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. Citing Decision No. 23-75, Local 375 explains that the Board employs a "community of interest" standard, which is judged by such factors as similarity of duties, benefits, and entry-level pay scales. Local 375 contends that the testimony presented at the hearing and the exhibits introduced therein demonstrate conclusively that there is a strong community of interest between the Forensic Analyst and Scientist titles and the titles currently represented at OCME by Local 375, whereas the link between the new titles and the titles currently represented by Local 144 is tenuous.

According to Local 375, ample testimony was presented as to the complex and difficult nature of the work being performed by the Forensic Analysts and Scientists, and of the high level of scientific training required. Local 375 notes the Forensic Analysts and Scientists perform complex scientific tests, write reports, and sometimes testify in court. Moreover, Local 375 states, the methodology used is frequently updated to reflect the

latest techniques and the Analysts/Scientists use complex equipment in the course of their work. According to Local 375, the work done by Local 375 members in the toxicology lab is analogous in that they also test samples with complex equipment. Local 375 insists that even though toxicology tests physiological samples for drugs or toxins, and the Analysts/Scientists conduct analyses of physiological samples to identify substances of human origin, the nature and complexity of the tasks are comparable. Local 375 notes that on occasion the Analysts and Scientists use some of the same equipment, such as the UV or visible spectrophotometer, as the Chemists in toxicology. By contrast, Local 375 contends the work done by members of Local 144 in the Microbiologist titles is far simpler and more limited, noting that its members in the histology lab essentially prepare slides.

According to Local 375, the job descriptions confirm a sharp distinction in background and educational requirements between the Forensic Analyst/Scientist titles and the Microbiologist titles. Local 375 notes that whereas a Laboratory Microbiologist need not have a college degree, a Forensic Analyst must at a minimum have a baccalaureate degree with specialization in one of the basic biological sciences. Local 375 points out that the requirements for the Chemist title are analogous to those for the Forensic Analyst title. Moreover, Local 375 states, witnesses testified that the work performed in the forensic biology and toxicology laboratories was comparable in level of sophistication

and difficulty, while the work done in the histology laboratory was not at the same level. Thus, Local 375 argues that it has demonstrated there is a strong community of interest between the titles it currently represents and the contested titles.

DISCUSSION

We must determine whether the newly created job titles of Forensic Analyst and Forensic Scientist 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 the unit titles, would have been included in the unit at the time of the original certification.²

Title 61, § 1-02(j) of the Rules of the City of New York, formerly §2.10 of the Revised Consolidated Rules of the Office of Collective Bargaining (hereinafter "OCB Rules") 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;

² Decision Nos. 15-87; 23-75; 39-69.

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.

As indicated by the arguments of the parties, two of these factors are of significance here: the community of interest of the employees and the history of collective bargaining in the unit.

We will first consider whether the new titles share a community of interest with one or the other of the existing units. When deciding whether there is a community of interest, we consider a number of factors, including but not limited to: the job duties and responsibilities of the employees; their qualifications, skills and training; interchange and contact; wage rates; lines of promotion; and organization or supervision of the department, office or other subdivision.³ We make determinations on a case-by-case basis and balance the various factors to determine where the greater community of interest lies.⁴

³ See, e.g., Decision No. 15-93 at 23 and the cases cited therein. See also, Decision Nos. 7-91; 11-90.

⁴ Decision Nos. 15-93; 7-91; 11-90.

In determining whether the titles of Forensic Analyst and Forensic Scientist should be added, by accretion, to either of the previously certified units, we first consider the job duties and responsibilities of the employees. As adduced from the testimony of the witnesses and the job descriptions, which were submitted jointly by the parties as evidence at the hearing, the following tasks are performed by employees in the relevant titles.

Forensic Analysts perform sophisticated scientific analyses of bodily fluids in order to match suspects with victims or crime scenes. Working under the direction of a Forensic Scientist, a Forensic Analyst prepares a report of the results of these tests and testifies in court about the results.

Forensic Scientists supervise Forensic Analysts in their case analysis work. The Forensic Scientists train the Forensic Analysts to use new equipment and methods of analysis as the technology in the field develops. Forensic Scientists also conduct research related to method development to ensure that the laboratory stays up-to-date.

Laboratory Associates prepare specimens and perform routine tests and analyses. Laboratory Microbiologists process specimens, prepare and examine slides and smears, perform routine

clinical laboratory tests and procedures, and record results.⁵

A Chemist (Toxicology) performs chemical tests on biological specimens in order to detect the presence of toxic substances. Research Scientists design, execute and interpret experiments and prepare reports on the results.

The testimony of the witnesses indicates that the job duties and responsibilities of Forensic Analysts and Forensic Scientists are more closely related to those of the Chemists and Research Scientists than the other biological titles. Witnesses characterized the work done in the histology laboratory by the Laboratory Associates and Laboratory Microbiologists as "slide preparation." In contrast, both the Forensic Analysts/Scientists and the Chemists Research Scientists use complex equipment and perform sophisticated tests on biological specimens to detect the presence of either natural (biological) or foreign (chemical) substances. Thus, consideration of this criterion suggests the appropriateness of Local 375, CSTG, which represents the more comparable Chemist/Research Scientist titles.

⁵ Associate Laboratory Microbiologists, the title into which Laboratory Microbiologists may be promoted, perform in a supervisory capacity. According to the job description, their duties include preparing reports and testifying in court. According to Patricia Ryan, who testified on behalf of Local 144, SEIU, there have been no individuals in any of the Microbiologist titles working in the Department of Forensic Biology since January of 1990, when the Forensic Analyst and Forensic Scientist titles were created (Tr. 50, 51). The only person in an Associate Laboratory Microbiologist title referred to in the testimony was Beverly Reynolds, the Director of the histology laboratory (Tr. 54, 59).

interchange of employees in these titles and that an interchange occurred in 1990 only because of circumstances peculiar to the creation of the Department of Forensic Biology. Moreover, because of the organizational structure at OCME, there is little contact between workers in the Department of Forensic Biology and the toxicology and histology laboratories. Thus, consideration of the organizational structure does not weigh in favor of either Local 375, CSTG, which represents the titles in the toxicology laboratory, or Local 144, SEIU, which represents the titles in the histology laboratory. Finally, as there was no testimony on the comparability of wage rates, this factor will not be considered in our determination of appropriateness.

Thus, consideration of community of interest favors the accretion of the Forensic Analyst/Scientist titles to the unit represented by Local 375, CSTG.

However, the history of collective bargaining in the unit is a factor which suggests that Local 144, SEIU is an appropriate unit for the Forensic Analyst title. Prior to the creation of the Department of Forensic Biology, Local 144 represented Laboratory Associates and Laboratory Microbiologists in the serology laboratory. When the Department of Forensic Biology was created, these Laboratory Associates and Laboratory Microbiologists became Forensic Analysts. The Forensic Analysts continue to work in the same place (the serology laboratory) and perform the same work (identifying body fluids and matching them

Moreover the qualifications, skills and training required for the Forensic Analyst and Forensic Scientist positions are more comparable to the Chemist/Research Scientist positions than the Laboratory Associate/Microbiologist positions. Whereas the Laboratory Associates and Laboratory Microbiologists do not need a college degree, a baccalaureate in an appropriate scientific area is a minimum qualification for the Forensic Analyst, Forensic Scientist and Chemist positions and a masters is necessary for a Research Scientist position. Thus, consideration of this criterion also weighs in favor of Local 375, CSTG.

The remaining criteria listed -- interchange, promotion, organizational structure and wage rates -- do not affect our finding that the Forensic Analyst/Scientist titles share a closer community of interest with the Chemist/Research Scientist titles than the Laboratory Associate/Microbiologist titles. Although there is no interchange of duties between the employees in the various laboratories at OCME -- for example, Dr. Hoffman, a Research Scientist, testified he could not step into the shoes of a Forensic Analyst/Scientist without specialized training (Tr. 144) -- there was an interchange of employees when the Laboratory Associates and Laboratory Microbiologists in old serology laboratory became Forensic Analysts in January of 1990. However, as the job descriptions do not indicate a line of promotion from the Laboratory Associate/Microbiologist positions into the Forensic Analyst title, we may infer that there is no regular

to a victim or suspect) as they did when they were represented by Local 144, although the technology they use has become more sophisticated and they are now required to write reports and testify in court. Accordingly, Local 144, SEIU's prior representation of these employees is a strong factor supporting the accretion of the Forensic Analyst title to its existing unit.

However, consideration of bargaining history does not support the accretion of the Forensic Scientist title to Local 144, SEIU's unit. The Forensic Scientists began work in January of 1990 in the Department of Forensic Biology, having acquired previous work experience outside the office of the Chief Medical Examiner. As the individuals in the Forensic Scientist title were not previously represented by Local 144, SEIU, there is no bargaining history supporting their accretion to its unit.

Accordingly, we conclude that the unit represented by Local 375, CSTG is the only appropriate unit for the Forensic Scientist title. We base this conclusion upon the community of interest between the Forensic Scientist title and the Chemist/Research Scientist titles represented by Local 375, CSTG and the fact that no bargaining history supports the accretion of this title to the unit represented by Local 144, SEIU.

Similarly, the community of interest between the Forensic Analyst title and the Chemist/Research*Scientist titles demonstrates that Local 375, CSTG is an appropriate unit for this title. However, consideration of bargaining history favors the

appropriateness of Local 144, SEIU. Consistent with its authority to determine appropriate units,⁶ the Board may "apportion whatever weight it deems wise" to the criteria set forth in OCB Rule 1-02(j).⁷ Thus, we find that as it would be appropriate to accrete the Forensic Analyst title to either unit, we direct that an election be held to determine the employees' preference.

ORDER AND DIRECTION OF ELECTION

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

ORDERED, that the title Forensic Scientist be added to Certification No. 26-78 (as amended), held by Civil Service Technical Guild, Local 375, District Council 37, AFSCME, AFL-CIO; and it is further

DIRECTED, that as part of the investigation authorized by this Board, an election by secret ballot be conducted among the employees in the title of Forensic Analyst 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 have been

⁶ NYCCBL §12-309b(1).

⁷ Decision No. 61-71.

discharged for cause before the date of election) shall be eligible to vote. The election 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 this election is to determine whether the employees desire to be represented for purposes of collective bargaining by Local 375, Civil Service Technical Guild, District Council 37, AFSCME, AFL-CIO, and thereby added to the bargaining unit covered by Certification No. 26-78 (as amended), or by Local 144, Service Employees International Union, AFL-CIO, and thereby added to the bargaining unit covered by Certification No. 23-67 (as amended); and it is further

DIRECTED, that either of these two 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: September 22, 1993
New York, NY

MALCOLM D. MacDONALD
CHAIRMAN

GEORGE NICOLAU
MEMBER

DANIEL G. COLLINS
MEMBER