

OFFICE OF COLLECTIVE BARGAINING  
BOARD OF CERTIFICATION

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In the Matter of

DISTRICT COUNCIL 37, AMERICAN FEDERATION  
OF STATE, COUNTY AND MUNICIPAL EMPLOYEES

Petitioner,

DECISION NO. 4-93

--and--

CIVIL SERVICE TECHNICAL GUILD, LOCAL 375,  
DISTRICT COUNCIL 37, AMERICAN FEDERATION  
OF STATE, COUNTY AND MUNICIPAL EMPLOYEES,

DOCKET NO. RU-1102-91

Proposed Intervenor,

--and--

THE CITY OF NEW YORK.

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**INTERIM DECISION AND ORDER**

Pursuant to Section 1-02(s) of the Revised Consolidated Rules of the Office of Collective Bargaining, formerly Rule 2.19, District Council 37, American Federation of State, County and Municipal Employees, AFL-CIO, (hereinafter, "DC 37" or "AFSCME") filed a certification petition on November 22, 1991, seeking to add the new Assignment Level III of the title Telecommunications Associate (hereinafter, "TA III") to Certification No.46D-75, as amended. That certification covers a unit of accounting, computer and related titles represented by Electronic Data Processing Personnel, DC 37, AFSCME, L.2627.

On January 29, 1992, the Civil Service Technical Guild, L.375, DC 37, AFSCME, (hereinafter, "L.375"), filed an application to intervene in the proceeding. DC 37 served a motion to dismiss the application to intervene on March 3, 1992,

and on March 10, 1992, DC 37 served supplemental papers. L-375 filed its response on March 26, 1992.

POSITIONS OF THE PARTIES

DC 37's Position

DC 37 grounds its motion to dismiss L.375's application to intervene upon the doctrine of collateral estoppel. The union contends that Board Decision No. 9-88 determined with finality the issue of which certification should cover all assignment levels of the Telecommunications Associate title. DC 37 also argues that Decision No. 8-84, interpreting the New York City Collective Bargaining Law (hereinafter, "NYCCBL") permits placement of all assignment levels under the same certification which directed the placement of Levels I and II of this title. According to DC 37, that case holds that, where levels are not specifically listed in a certification decision, all assignment levels are generally subsumed under the title listing.<sup>1</sup>

L.375's Position

L.375 opposes DC 37's motion to dismiss the application to intervene. L.375 argues that collateral estoppel, which

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<sup>1</sup> The case concerned Stenographer/Secretaries and Stenographic/Secretarial Associates represented by DC 37. The original certification did not specify assignment levels for the titles at issue. It was held that no amendment was required to accrete a later-created level.

precludes an issue from further adjudication if it has been disposed of by final judgment, does not apply here. L.375 states that the placement of the TA III title was not at issue in Decision No. 9-88, contrary to DC 37's contention. Furthermore, L.375 argues that the case law which DC 37 cites as controlling the underlying certification matter is inapposite. L-375 contends that Decision No. 1-82 controls. It submits that this decision holds that a certification is not deemed to cover a level of a title which was not in existence at the time the title was certified.<sup>2</sup> Accordingly, L.375 argues that OCB Rules and policy require the amendment of a certification when a specialty designation or a new level is added to the title subsequent to the original certification.<sup>3</sup>

#### DISCUSSION

The collateral estoppel issue raised by movant DC 37 is a threshold question in the instant motion to dismiss. Under the doctrine of collateral estoppel, an issue found to have been fully and fairly litigated and necessarily decided in a previous proceeding involving the same party against whom it now is asserted is precluded from reconsideration. However, we do not

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<sup>2</sup> The case concerned a later-created level of tow-truck operators whose representation was won by DC 37 over opposition from the CWA.

<sup>3</sup> Section 1-02(s) of the Revised Consolidated Rules of the Office of Collective Bargaining.

find the doctrine to be applicable in the certification matter before us.

DC 37 contends unit placement of all assignment levels of the Telecommunications Associate title, including Assignment Level III, was litigated and decided with finality in Decision No. 9-88. Relying on wording in Decision No.8-84,<sup>4</sup> DC 37 alleges that Decision No. 9-88 did not specify assignment levels which were to be included in the certification at issue there; therefore, the union concludes, all levels, including Level III at issue here, should be subsumed under one certification. However, we find that the union's apparent belief that omission of specified assignment levels from the order portion of the Decision constitutes omission of levels from the entire Decision is mistaken. An Order of this Board is deemed to include the findings of fact upon which the Order is based. The Background portion of Decision No. 9-88 specifically refers to Levels I and II of the Telecommunications Associate title, making no reference to a Level III.<sup>5</sup>

Since Decision No. 9-88 concerned only Levels I and II of the Telecommunications Associate title, not Level III, which

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<sup>4</sup> Decision No. 8-84, in pertinent part, reads:

[W]here Levels are not specifically listed in our Decisions, all Assignment Levels are generally subsumed under the title listing.

<sup>5</sup> See Decision No. 9-88 at p.4, Footnote 2.

had not yet been created when Decision No. 9-88 was issued, we find that Decision No. 9-88 did not decide the placement of Level III of the Telecommunications Associate. Inasmuch as the placement of Level III was not at issue in the earlier case, collateral estoppel does not apply to prohibit consideration of Assignment Level III at this time.

Furthermore, under these circumstances, we find this case to be governed by the principle set forth in Decision No. 1-82: since Level III was not in existence at the time the other levels of the title were certified, Level III is not deemed to have been included within that certification. It has been our practice liberally to permit intervention by interested parties in any such representation proceeding. Therefore, it is appropriate that we entertain a separate petition seeking the certification of Level III. Because we find that the application to intervene in this representation proceeding is in order, we shall deny DC 37's motion to dismiss and grant L.375's application to intervene. However, permission for L.375 to intervene is not to be taken as an invitation to relitigate the unit placement of Levels I and II. In Decision No. 9-88, placement of those levels was necessarily decided fully and fairly. The parties to the instant proceeding were parties to the earlier proceeding. They litigated the matter at issue then without appealing the outcome, which granted certification of Levels I and II to L.2627. Further, our denial of DC 37's

instant motion is not to be understood as a proceeding to decertify L.2627 as the current bargaining agent for personnel in Levels I and II. In any hearings held to determine the proper employee organization to represent personnel in Level III of the Telecommunications Associate title, no evidence concerning the appropriateness of the placement of Levels I and II will be admitted.

**ORDER**

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

ORDERED, that District Council 37's motion to dismiss the application to intervene filed by the Civil Service Technical Guild, Local 375, be, and the same hereby is, denied, and it is further

ORDERED, that the application by the Civil Service Technical Guild, Local 375, to intervene in the certification petition of District Council 37 with regard to placement of personnel in Assignment Level III of the title of Telecommunications Associate be, and the same hereby is, granted.

**Dated:           New York, New York**  
**February 10, 1993**

MALCOLM MacDONALD  
**Chairman**

GEORGE NICOLAU  
**Member**

DANIEL G. COLLINS  
**Member**