

OFFICE OF COLLECTIVE BARGAINING
BOARD OF CERTIFICATION

----- x

In the Matter of

DISTRICT COUNCIL 37, AFSCME, AFL-CIO,
Petitioner,

DECISION No. 12-94

-AND-

COMMUNICATIONS WORKERS OF AMERICA, L.1180,
Intervenor,

Docket No. RU-710-79

-AND-

ORGANIZATION OF STAFF ANALYSTS,
Intervenor,

-AND-

THE CITY OF NEW YORK,
Respondent.

----- x

In the Matter of

COMMUNICATIONS WORKERS OF AMERICA, L.1180,
Petitioner,

-AND-

DISTRICT COUNCIL 37, AFSCME, AFL-CIO,
Intervenor,

Docket No. RU-730B-79

-AND-

ORGANIZATION OF STAFF ANALYSTS,
Intervenor,

-AND-

THE CITY OF NEW YORK,
Respondent.

----- x

ORDER AMENDING CERTIFICATION

On June 4, 1979, pursuant to the New York City Collective Bargaining Law ("NYCCBL"), § 12-305,¹ and Title 61 of the Rules of the City of New York ("OCB Rules"), §§ 1-02(c)² and 1-02(j),³

¹ Section 12-305 of the NYCCBL provides, in relevant part:

Rights of public employees and certified employee organizations. Public employees shall have the right to self-organization, to form, join or assist public employee organizations, to bargain collectively through certified employee organizations of their own choosing and shall have the right to refrain from any or all of such activities

² Section 1-02(c) of the Rules provides, in relevant part:

Petition by public employees or their representatives.

(1) A petition filed by public employees or their
(continued...)

District Council 37, AFSCME, AFL-CIO, ("D.C. 37") filed a petition, docketed as RU-710-79, seeking to add by accretion the titles of Systems Analyst,⁴ Senior Systems Analyst,⁵ and Supervising Systems Analyst⁶ to Certification No. 46D-75, covering various accounting, statistical and computer-related titles. The petition was amended on July 13 to add the title of Assistant Systems Analyst.⁷ On August 27, the City of New York, by its Counsel, the Office of Municipal Labor Relations, ("OMLR" or "City"), stated that these four titles in the Systems Analyst series, exclusive to the Health and Hospitals Corporation ("HHC"), met criteria for Group 11 Management Employees.

The parties were noticed as to the hearing date scheduled

(... continued)

representative shall contain:

* * *

(vii) A request that the board certify or designate the petitioner as the exclusive bargaining representative of the employees in the appropriate unit or units or for other appropriate action.

³Section 1-02(j) of the Rules provides, in relevant part:

Appropriate units -- determination. In determining appropriate bargaining units, the board will consider, among other factors:

* * *

(2) The community of interest of the employees

⁴ Title Code No. 00069C.

⁵ Title Code No. 03927E.

⁶ Title Code No. 00068G.

⁷ Title Code No. 03936B.

for October 2, 1979. A one-month postponement was granted at the request of D.C. 37 until November 9.

In October, 1979, the Social Service Employees Union, Local 371, ("L. 371") sought to add the titles of Systems Analyst, Assistant Systems Analyst and Senior Systems Analyst, by accretion; to its Certification No. CWR 70-67, covering various welfare titles. L. 371 later included the title of Supervising Systems Analyst in its request. The OCB deemed the petitions by L. 371 as an application to intervene in RU-710-79.

On November 23, OCB Chairman Arvid Anderson directed that the hearing on RU-710-79 be held in abeyance pending determination of the managerial/confidential question as it related to the Staff Analyst series of titles at issue in other petitions pending before the OCB.⁸

In December, the Communications Workers of America, Local 1180, ("L. 1180"), filed a petition, docketed as RU-730-79, seeking to accrete the titles of Systems Analyst, Assistant Systems Analyst and Senior Systems Analyst to its certifications numbered 41-73 and 4-79 covering Principal Administrative Associate and related titles. This petition was amended to include the Supervising Systems Analyst title. In February, 1980, the International Brotherhood of Teamsters, Local 237, ("L. 237"), filed an objection to the petition of L. 1180. Also, OMLR

⁸ Docketed as RU-702-79, RU-704-79, RU-707-79, RU-533-75 and RU-521-75.

opposed the intervention by L. 1180 on the grounds that the titles are Group 11 managers and that a separate application to intervene should be filed instead to intervene in the proceeding docketed as RU-710-79.

The Service Employees International Union, Local 300, ("L. 300"), filed a petition on February 13, 1980, to represent, inter alia, three of the four titles in the Systems Analyst series. This petition was docketed as RU-746-80. The Trial Examiner advised the parties that the portion of the petition docketed as RU-730-79 which concerned the Systems Analyst titles would be consolidated with the petition docketed as RU-710-79 for determination of both managerial/confidential status and, if necessary, unit determination.⁹ On April 14, 1980, the Board ordered that RU-746-80 be consolidated with the two other cases involving the same titles.

Decisions were rendered in the Staff Analyst Series of proceedings from 1980 through 1988.¹⁰ In November, 1988, the Organization of Staff Analysts ("OSA") filed an application to intervene in RU-710-79, RU-730B-79 and RU-746-80, seeking to accrete the titles in the Systems Analyst Series to its Certification No. 3-88 representing Staff and Associate Staff Analysts. The Board granted OSA's application to intervene on

⁹ Designation of RU-730-79 was changed to RU-730B-79.

¹⁰ Decision Nos. 39-80, 20-82, 36-82, 21-84, 5-85, 8-86, 14-86, 21-87 and 3-88.

December 16, 1988.

A prehearing conference was held on February 4, 1993, with counsel for D.C. 37, L. 1180, L. 371, OSA, HHC, and the City by its Office of Labor Relations ("OLR") in attendance. In June, 1993, L. 371 and L. 300 disclaimed interest and sought withdrawal of their respective petitions. Later that month, on consent of all parties, D.C. 37 requested adjournment of the hearing scheduled for June, pending settlement negotiations. On July 8, OLR requested further adjournment.

On the first day of hearing, July 13, 1993, appearances were made by D.C. 37, OAS and OLR for the City. Local 1180 did not appear. At the request of OSA, the second day of hearing was adjourned to August 10. The hearing was continued on August 17 and 18 and September 30. Adjournments were granted, upon request, for October 25 and 27, November 18 and December 20, pending settlement discussions.

On March 9, at the request of counsel for D.C. 37, the hearing, scheduled to continue on March 14 and 15, was adjourned for medical reasons. At the hearing, continued on June 24, a stipulation was offered and accepted into evidence on condition that all parties including L. 1180 signify their agreement to the text as amended at the hearing and to the supporting exhibits amended post hoc and filed nunc pro tunc. Thereupon, the hearing and the record were closed, subject to the aforesaid condition.

The stipulation was amended further at the request of L.

1180, signed by all parties thereto, subject to the aforesaid supporting exhibits, and filed on December 1, 1994.

Background

On November 6, 1978, pursuant to §12-306 of the NYCCBL,¹¹ and §1-07(d) of the OCB Rules,¹² Local 1407, D.C. 37, ("L. 1407") filed an improper practice petition, docketed as BCB-305-78, with the OCB, alleging that HHC was engaged in the practice of appointing members of the L. 1407 bargaining unit to provisional management positions in violation of the NYCCBL. In Decision No. B-4-79, the Board of Collective Bargaining granted a

¹¹ Section 12-306 of the NYCCBL provides, in pertinent part:

a. Improper public employer practices. It shall be an improper practice for a public employer or its agents:

(1) to interfere with, restrain or coerce public employees in the exercise of their rights granted in Section 12-305 of this chapter;

(2) to dominate or interfere with the . . . administration of any public employee organization;

(3) to discriminate against any employee for the purpose of . . . discouraging membership in, or participation in the activities of, any public employee organization. . . .

¹² Section 1-07(d) of the Rules provides, in relevant part:

Improper practices. A petition alleging that a public employer or its agents . . . has engaged in or is engaging in an improper practice in violation of §12-306 of the statute may be filed with the board within four (4) months thereof by . . . any public employee organization . . . together with a request to the board for a final determination of the matter and for an appropriate remedial order. . . .

notion by HHC to dismiss the improper practice petition, finding that there was no evidence to support the claim by L. 1407 that employees were being promoted out of and later back into the unit with a Systems Analyst title serving as an interim step. The Board's decision was rendered without prejudice to the right of L. 1407 to file a certification petition for the Systems Analyst series or to the right of HHC to seek Board determination on the managerial/ confidential status of the employees involved.

Discussion

The Systems Analyst titles were created in the early 1970's. There are approximately 500 employees in the titles at issue herein. The stipulation presented by the parties provides, in pertinent part, as follows:

1. The parties jointly request that the Board of Certification amend the collective bargaining certificates of D.C. 37 and OSA in accordance with this stipulation:

2. The parties agree that the employees listed in Exhibit "A" perform duties and responsibilities similar to those duties and responsibilities performed by employees in the unit referred to in Certification No. 3-88 as amended, covering staff analysts and related titles, and otherwise share a community of interest with such employees. The employees listed in Exhibit "A" and their successors shall continue to hold the titles of Assistant Systems Analyst, Systems Analyst and Senior Systems Analyst.

3. The parties agree that the employees listed in Exhibits "B1" and "B2" perform duties and responsibilities similar to those performed by employees covered by Certification No. 46D-75, as amended, the accounting/EDP bargaining unit represented by D.C. 37 and its constituent Locals 1407 and 2627, respectively, and otherwise share a

community of interest with such employees. The employees listed in Exhibit "B1" and their successors shall hold the title of Assistant Systems Analyst (finance), Systems Analyst (finance) and Senior Systems Analyst (finance). The employees listed in Exhibit "B2" and their successors shall hold the titles of Assistant Systems Analyst (EDP), Systems Analyst (EDP) and Senior Systems Analyst (EDP).

4. The parties further agree that the employees listed in Exhibit "C" perform duties and responsibilities which would be found to be confidential within the meaning of the New York City Collective Bargaining Law, the New York City Health and Hospitals Corporation Act and the New York Public Employees Fair Employment Act, and therefore should not be included in the bargaining unit so long as they continue to perform those duties.

5. OSA and D.C. 37 further agree that insofar as the petitions and interventions seek representation of employees in the title of Supervising Systems Analyst, that part of each petition will be withdrawn, upon approval of this stipulation by the Board of Certification, and the unions further agree that they will not seek representation of employees in the titles of Supervising Systems Analyst for a period of two years from the date of execution of this stipulation.

6. CWA disclaims any further interest in this proceeding and hereby withdraws its petition in RU-730B-79 and its intervention in RU-710-79, and OSA agrees that if it appears that any employee in a systems analyst title is performing the duties of a Principal Administrative Assistant or Assistant Coordinating Manager, OSA will support any appropriate procedure to have such employee transferred to the PAA title.

ORDER

Therefore, the parties hereto having agreed, and it appearing to the satisfaction of the Board that the terms of the stipulation are consistent with the record adduced herein and with the rights established under applicable law,

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

DETERMINED, that the employees serving in the titles of Assistant Systems Analyst, Systems Analyst and Senior Systems Analyst, listed in Exhibit "A" of the stipulation herein, should be placed in the bargaining unit represented by the Organization of Staff Analysts; and therefore

ORDERED, that the employees serving in the titles of Assistant Systems Analyst, Systems Analyst and Senior Systems Analyst, listed in Exhibit "A" of the stipulation herein, are accreted to Certification No. 3-88, as amended; and it is further

DETERMINED, that the employees serving in the titles of Assistant Systems Analyst (finance), Systems Analyst (finance) and Senior Systems Analyst (finance), listed in Exhibit "B1" of the stipulation herein, and in the titles of Assistant Systems Analyst (EDP), Systems Analyst (EDP) and Senior Systems Analyst (EDP), listed in Exhibit "B2" of the stipulation herein, should be placed in the bargaining unit represented by D.C. 37; and

therefore

ORDERED, that the employees serving in the titles of Assistant Systems Analyst (finance), Systems Analyst (finance) and Senior Systems Analyst (finance), listed in Exhibit "B1" of the stipulation herein, and in the titles of Assistant Systems Analyst (EDP), Systems Analyst (EDP) and Senior Systems Analyst (EDP), listed in Exhibit "B2" of the stipulation herein, are accreted to Certification No. 46D-75, as amended; and it is further

DETERMINED, that employees serving in the title of Supervising Systems Analyst, listed in Exhibit "C" of the stipulation herein, are confidential within the meaning of the New York City Collective Bargaining Law, the New York City Health and Hospitals Act and the New York Public Employees Fair Employment Act, and are exempt from collective bargaining; and therefore

ORDERED, that employees serving in the title of Supervising Systems Analyst, listed in Exhibit "C" of the stipulation herein, are excluded from collective bargaining; and it is further

ORDERED, that the request of the Communications Workers of America, Local 1180, for withdrawal of its petition in the proceeding docketed as RU-730B-79 and its intervention in the proceeding docketed as RU-710-79 are granted hereby.

**Dated: New York, New York
December 13, 1994**

MALCOLM D. MacDONALD
CHAIRMAN

GEORGE NICOLAU
MEMBER