

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,

--and--

DOCKET NO. RU-1102-91

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

DECISION NO. 5-94

Proposed Intervenor,

--and--

THE CITY OF NEW YORK.

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DECISION AND ORDER

Pursuant to the New York City Collective Bargaining Law ("NYCCBL"), § 12-305,<sup>1</sup> and pursuant to Title 61 of the Rules of the City of New York ("Rules"), §§ 1-02(c)<sup>2</sup> and 1-02(j),<sup>3</sup>

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<sup>1</sup> 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 . . . .

<sup>2</sup> 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 representative shall contain:

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(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.

District Council 37, American Federation of State, County and municipal Employees, AFL-CIO, ("D.C. 37") filed the instant petition, on November 22, 1991, to add the new title of Telecommunications Associate, Assignment Level III ("TA III"), to a unit represented by Electronic Data Processing Personnel, D.C. 37, L. 2627 ("L. 2627"), under Certification No. 46D-75, as amended, covering accounting, computer and related titles. On January 9, 1992, the City, by its counsel, the Office of Labor Relations ("City"), stated that it did not oppose the accretion of the TA III position to Certification No. 46D-75. On January 29, 1992, the Civil Service Technical Guild, D.C. 37, AFSCME, L. 375 ("L. 375"), filed a Motion to Intervene in the proceeding. D.C. 37 filed a Motion to Dismiss the application to intervene on March 3, 1992, and a Supplemental Affirmation in support on March 10, 1992. An Affirmation in Opposition was served by L. 375 on March 26, 1992, and on February 10, 1993, this Board denied the Motion to Dismiss.<sup>4</sup>

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<sup>3</sup> Section 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:

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(2) The community of interest of the employees . . . .

<sup>4</sup> Decision No. B-4-93.

After prehearing conferences on April 29 and September 28, 1993, and after several requests by the parties for adjournments pending, inter alia, settlement attempts, a hearing was held on October 26, 1993, at which all parties made an appearance. Counsel for all parties to the instant proceeding proposed to offer a stipulation of settlement on the issue of community of interest.<sup>5</sup> On February 25, 1994, the Trial Examiner advised the parties that, unless objections were heard by the close of business on March 7, 1994, the Board would take administrative notice of the job descriptions of the Telecommunications Associate and Telecommunications Specialist titles and that the Board would accept the stipulation as offered at the hearing on October 26, 1993, supported by the job descriptions incorporated by reference to enable the Board to make a factual determination as to unit placement. No objections, timely or otherwise, were heard. As the matter of community of interest is thus submitted for decision based upon a stipulation of facts, the question of unit placement of the at-issue employees now comes before this Board for determination.

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<sup>5</sup> The City has maintained a neutral position on the issue of unit placement and has made no claim that the TA III title is managerial and/or confidential.

Background

Assignment Level III was added to the Competitive Class, under Rule XI, in the Telecommunications Occupational Group (312) by Personnel order No. 91/13, dated September 30, 1991. The job description promulgated by the Department of Personnel on March 7, 1986,<sup>6</sup> and revised on June 12, 1991,<sup>7</sup> specifies the duties and responsibilities under the TA III title<sup>8</sup> as follows:

Under general supervision, with latitude for the exercise of independent judgment and initiative: (1) supervises the activities of one or more functionally defined voice and/or data telecommunications units; or (2) is responsible for performing highly difficult and complex voice and/or data telecommunications operations in a large-scale environment; or (3) serves as a technical resource person in the selection and/or operation and a planning of highly complex voice and/or data telecommunications services in a large scale environment; or (4) acts as a project leader of a project team or task force.

Typical tasks under the TA III title include planning, analytical, research, operational, and administrative functions; installation, troubleshooting, repair and maintenance of network hardware; supervision of field data reception; and preparation of regular reports regarding the above activities, as well as budgetary compliance. Tasks also include assisting management with development and solicitation of bid specifications;

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<sup>6</sup> Doc. ID No. 0633Y.

<sup>7</sup> Doc. ID No. 1407Y.

<sup>8</sup> Title Code No. 20243.

oversight of large contracts; monitoring contract compliance and making recommendations on contract renewals, as well as assessing liquidated damages. The TA III also substitutes for the supervisor when the supervisor is temporarily absent.

To be qualified for the TA III position, an applicant must have completed satisfactorily at least one year of full-time experience in a related field plus either (i) a baccalaureate degree from an accredited college or (ii) an associate degree from an accredited college, or (iii) three years of experience in a related field and a four-year high school diploma or its equivalent, or (iv) education or experience equal to any of the above. The TA III position promotes to Telecommunications Specialist.<sup>9</sup>

On October 2, 1991, the Department of Personnel added responsibility for data communications to all levels of the TA and TS titles which had heretofore been voice-only titles.<sup>10</sup> The addition of the data function to the TA title does not appear to have changed the nature of the job functions. The TA title at

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<sup>9</sup> Title Code No. 20245.

<sup>10</sup> Data telecommunications is the transmission of information between computers and/or computer-operated equipment, e.g., remote operation of a printer by a computer-generated signal. It has been described as dialogue between computers. By contrast, voice telecommunications uses telephone lines to communicate via computers, making possible "dialogue between people."

all levels continues to be concerned with computers and their application to telecommunication functions.

Discussion

The roots of the instant representation matter date back to Decision No. 9-88<sup>11</sup> in which this Board amended Certification No. 46D-75, held by D.C. 37, to include the titles of Telecommunications Associate, Levels I and II, and Telecommunications Specialist. When the Department of Personnel added Level III to the title of Telecommunications Associate, D.C. 37 sought to amend the certification by accretion of the new level. When L. 375 sought to intervene in the proceeding, D.C. 37 moved unsuccessfully to dismiss the intervention. On September 30, 1993, L. 375 filed both a Motion to Stay the instant proceedings and a Verified Petition to Set Aside or Terminate the certification awarded in Decision No. 9-88. The motion to stay was denied on October 23, 1993.<sup>12</sup> The petition to set aside Decision No. 9-88 and to terminate certification of D.C. 37 as the exclusive collective bargaining representative for

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<sup>11</sup> In the Matter of Communications Workers of America, Local 1180, AFL-CIO, Petitioner, and Civil Service Technical Guild, Local 375, District Council 37, AFSCME. AFL-CIO. Intervenor. and Local 2627, District Council 37, AFSCME, AFL-CIO, Intervenor. and the City of New York, Respondent, docketed as RU-972-86.

<sup>12</sup> Decision No. 25-93.

the titles of Telecommunications Associate, Levels I and II, and of Telecommunications Specialist is dealt with separately from the instant proceeding, which determines only unit placement.

The stipulation proposed by the parties herein to settle the heretofore disputed issue of appropriate unit placement represents their agreement not to split the levels of the Telecommunications series into separate bargaining units. As it was read into the record at the hearing on October 26, 1993, with no objections heard, the stipulation provides as follows:

Whereas Local 375 has filed a petition to terminate or set aside Decision No. 9-88 accreting certain telecommunications titles to Certification No. 46D-75 held by District Council 37, AFSCME, AFL-CIO; and

Whereas the parties are interested in ensuring that employees in the titles in question in this proceeding are not denied representation in the interim or otherwise disadvantaged by any delay in determining representational questions;

It is hereby stipulated and agreed among the parties to the above-captioned proceeding as follows:

1. In the interim and pending a final determination of Local 375's petition which has been docketed as RD-10-93, the title of Telecommunications Associate, Assignment Level III, shall be placed in the unit certified to District Council 37 pursuant to Certificate 46D-75, as amended.

2. Following a final determination of Local 375's petition, the title of Telecommunications Associate, Assignment Level III, shall be placed in whichever bargaining unit is ultimately determined to represent the titles of Telecommunications Specialist and Telecommunications Associate, Assignment Levels I and II.

At the direction of the Trial Examiner, counsel for each party to the stipulation stated on the record at the hearing the parties' respective reasons for entering into the agreement and for offering the stipulation as a basis for the Board's determination of unit placement. Counsel for D.C. 37 observed that the stipulation was a practical solution to obviate indeterminate delay for the at-issue employees to be part of a collective bargaining unit, inasmuch as it could not be determined, she said, when a decision would be issued either by this Board on the decertification matter (RD-10-93) or by a court, in contemplation of judicial review. She declared that it was her understanding:

that both parties [D.C. 37 and L. 375] agree that whatever the outcome of RD-10-93, it is the intention not to have the Telecommunications Associate, Level III, in a different bargaining unit from the other Telecommunications titles, that the community of interest clearly lies with them, and that is the purpose and only purpose of the stipulation that we have agreed to today and that we ask the Board to confirm.

Counsel for L. 375 stated that she "would basically second what (Counsel for D.C. 37) said," adding that it was the joint intention of the parties:

not to have at this juncture the placement of Telecommunications Associate, Level III, separately litigated apart from the question of the proper placement of Telecommunications Associate, Level I and II, and Telecommunications Specialist. Therefore, if ultimately L. 375 were to be successful in Petition RD-10-93 . . . and were Telecommunications Associate, Level I and II, and Telecommunications Specialist as a result placed in L. 375's unit pursuant to this stipulation, the position of Telecommunications



Associate, Level III, would also be placed in L. 375's unit. By the same token, and I want to be clear about this as well, if L. 375 is ultimately unsuccessful in Petition RD-10-93 and it is ultimately confirmed that the titles of Telecommunications Associate, Level I and II, and Telecommunications specialist are appropriately within D.C. 37's unit as part of Certification [No.] 46D-75, then at that point it would be confirmed pursuant to this stipulation that the position of Telecommunications Associate, Level III, would also be permanently placed in that same unit.

Counsel for L. 375 stated further the joint intention of the union parties to the stipulation:

to avoid needless expenditure of the resources of the three parties as well as . . . the Board in making a separate determination of the placement of Telecommunications Associate, Level III, when a determination of Petition RD-10-93 might ultimately require a redetermination. Therefore . . . at this point we have decided to make clear that a determination on Petition RD-10-93 will basically result in a determination of all the Telecommunications titles that have been created in the City of New York under OCB jurisdiction.

Counsel for OLR stated the City's position thusly:

OLR . . . has remained neutral in this proceeding. However, it would seem that the intention of the parties here is to resolve this matter in a way that is really expeditious to all rather than proceed with a lengthy proceeding. The parties have agreed to put all the titles together. OLR agrees this is consistent with the policy the Board generally follows which is not to break up title series and the City has no objection. We agree this is the appropriate way to go in this proceeding.

As the parties hereto have agreed to the above-stated stipulation, without amendment, and as no objection has been heard to the Board's taking administrative notice of the job descriptions of the titles of Telecommunications Associate, Levels I, II and III, and of Telecommunications Specialist, and,

further, as no objection has been heard to the Board's conditioning its acceptance of the above-stated stipulation on agreement by all the parties hereto to incorporate by reference the above-referenced job descriptions as substantially representative of the actual duties performed by the employees whose representational rights under the NYCCBL are sought by D.C. 37 and L. 375 in the instant proceeding; and it appearing to the satisfaction of the Board that the title of Telecommunications Associate, Level III, shares a community of interest with the titles of Telecommunications Associate, Levels I and II;

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

**ORDERED,** that Certification No. 46D-75, as previously amended, be, and the same hereby is, further amended to include the title of Telecommunications Associate, Level III, subject to existing contracts, if any, pending a final determination of the petition docketed as RD-10-93; and it is further

**ORDERED,** that, upon a final determination by this Board and/or by a court of competent jurisdiction of the issue of unit determination of the title of Telecommunications Associate,

Levels I and II, and of the title of Telecommunications Specialist, as raised in the petition docketed as RD-10-93, the title of Telecommunications Associate, Assignment Level III, shall be certified to the bargaining unit which is ultimately determinated to represent the titles of Telecommunications Associate, Assignment Levels I and II, and Telecommunications Specialist.

**Dated:           New York, New York**  
**June 9, 1994**

MALCOLM D. MacDONALD  
CHAIRMAN

GEORGE NICOLAU  
MEMBER

DANIEL G. COLLINS  
MEMBER