

DC 37 v. City, 56 OCB 8 (BOC 1995) [8-95 (Cert Amend)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF CERTIFICATION

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In the Matter of	:	
DISTRICT COUNCIL 37,	:	
AFSCME, AFL-CIO,	:	
-and-	:	DECISION NO. 8-95
THE CITY OF NEW YORK	:	DOCKET NO. RU-1006-88
AND RELATED PUBLIC	:	
EMPLOYERS.	:	
- - - - -	:	
	:	X

ORDER AMENDING CERTIFICATION

On June 15, 1988, District Council 37, AFSCME ("DC 37" or "the Union") filed a petition requesting that the title, Investigator (Discipline) be added, by accretion, to its certification. In the petition docketed as Case No. RU-1006-88, DC 37 sought to add the title to Certification No. 37-78 (as amended), covering various social service, investigative and related titles. By letter dated August 2, 1988, the City of New York ("the City"), through its Office of Labor Relations, indicated that it opposed the petition for representation on the grounds that incumbents in the title were "confidential" employees as defined in the Taylor Act.

The Board of Certification ("the Board") directed that an investigatory hearing be held before a Trial Examiner to determine whether the petitioned-for title should be added, by accretion, to the bargaining unit proposed by petitioner or if

the employees in the petitioned-for title are confidential and should be excluded from bargaining as contended by the City. On notice to the parties, the petition was consolidated by the Trial Examiner with another matter docketed as Case No. RU-1040-89, for purposes of the investigatory hearing.¹

After numerous adjournments of scheduled days of hearing for the purpose of, inter alia, allowing the parties to engage in settlement discussions, the parties informed the Trial Examiner that they had reached agreement regarding the petition docketed as Case No. RU-1006-88, and would be submitting a stipulation for approval by the Board. The stipulation was submitted on April 14, 1995.

The stipulation provides, in pertinent part, as follows:

* * *

IT IS HEREBY STIPULATED AND AGREED, by and between the parties, hereto, that:

FIRST: The parties jointly request that the Board of Certification amend the collective bargaining certificate of DC 37 in accordance with this Stipulation.

SECOND: The parties agree that employees in the title of Investigator (Discipline) [Title Code 06316] employed in the agencies specified in this Paragraph Second perform duties and responsibilities similar to those performed employees in the unit referred to in Certification No. 37-78 (as amended), and otherwise share a community of interest with such employees. The

¹ The petition docketed as Case No. RU-1040-89, District Council 37, AFSCME, AFL-CIO and The City of New York and Related Public Employers, which requests that the title Investigator (CCRB Police Department) also be added, by accretion, to Certification No. 37-78 (as amended), is still pending.

following agencies employ employees who share a community [of] interest with those in Certification No. 37-78 (as amended):

Department of Sanitation;
Human Resources Administration;
Department of Juvenile Justice;
Department of Correction;
Department of Health;
Department of Parks and Recreation.

THIRD: Effective upon the date of execution of this Stipulation, the City agrees that those employees currently serving in the title Investigator (Discipline) [Title Code 06316], employed in the agencies designated in Paragraph Second, herein, shall be accreted to Certification No. 37-78.

FOURTH: The parties further agree that those employees currently serving in the title Investigator (Discipline) [Title Code 06316] in all other agencies, as of the date of execution of this Stipulation, perform duties and responsibilities which would be found to be confidential within the meaning of the New York City Collective Bargaining Law 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. The parties agree that the New York City Mayor's Office of Labor Relations shall recommend that the New York City Personnel Director convert those employees currently serving in the title Investigator (Discipline) [Title Code 06316], other than those specified in Paragraph Second herein, to the title Confidential Investigator [Title Code 31143]. The modification of these employees' titles shall be undertaken without any loss in salary and benefits to incumbent employees.

FIFTH: DC37 hereby agrees that insofar as its petition seeks representation of employees in the title Investigator (Discipline) [Title Code 06316], in all agencies using the title as of the date of execution of this Stipulation, other than those designated in Paragraph Second, that that part of its petition will be withdrawn, upon the approval of this Stipulation by the Board of Certification.

SIXTH: The Union hereby releases the City of New York from any and all claims, whether at law, in equity or arising by the virtue of the collective bargaining

agreement between the City of New York and the Union which they may have had in connection with the underlying dispute in RU-1006-88.

SEVENTH: The entering into of this Stipulation of Settlement shall not be deemed to constitute a precedent for the determination of any other dispute between the City of New York and the Union. In this regard, it is expressly understood that the arrangement herein is predicated exclusively upon the special circumstances of this matter and shall not be construed to represent any policy or procedure of the City of New York.

EIGHTH: This Stipulation shall not be offered as evidence, nor introduced for any other purpose, in any other forum, including but not limited to, judicial, administrative, and/or any other proceeding except for the purpose of enforcing the obligations and restrictions, as contained herein, which pertain to the parties to this Stipulation of Settlement.

* * *

The parties hereto having agreed, and it appearing to the satisfaction of the Board that the terms of the stipulation are consistent 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

ORDERED, that Certification No. 37-78 (as previously amended) be, and the same hereby is, further amended to include the title Investigator (Discipline) [Title Code 06316], employed in the agencies specified herein, subject to existing contracts, if any.

DATED: New York, New York

MALCOLM D. MACDONALD
Chairman

GEORGE NICOLAU

Decision No. 8-95
Docket No. RU-1006-88

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Member

DANIEL G. COLLINS
Member

The title and title code number of the employees affected by this decision is as follows:

Investigator (Discipline)	06316
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