

L.15, IUOE, et. Al v. City, 6 OCB 17 (BOC 1970) [Decision No. 17-70 (Cert.)]

OFFICE OF COLLECTIVE BARGAINING  
BOARD OF CERTIFICATION

In the Matter of  
TRACTOR OPERATORS UNION OF  
NEW YORK CITY

DECISION NO. 17-70

-and-  
LOCAL 15, I.U.O.E., AFL-CIO  
- and -  
LOCAL 246, S.E.I.U, AFL-CIO

DOCKET NO. RU-145-69

-and-  
THE CITY OF NEW YORK AND RELATED  
PUBLIC EMPLOYERS

A P P E A R A N C E S :  
Michael J. Horowitz, Esq.  
For Tractor Operators Union  
of New York City

Corcoran and Brady, Esqs.  
By: Robert D. Brady, Esq.  
For Local 15, I.U.O.E., AFL-CIO

Abrashkin & Krieger, Esqs.  
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For Local 246, S.E.I.U., AFL-CIO

Philip J. Ruffo, Esq.  
By Gerald Schilian, Esq.  
For Office of Labor Relations

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DECISION, ORDER and DIRECTION OF ELECTION

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Tractor Operators Union of New York City, herein called  
Petitioner, filed a petition requesting certification as the collec-  
tive bargaining representative of Tractor Operators and Motor Grader  
Operators, City-wide. Local 15, I.U.O.E., AFL-CIO and Local 246,  
S.E.I.U., AFL-CIO, herein called Intervenors, applied to intervene  
herein. Neither Petitioner nor the City opposed such applications.  
Accordingly, they will be granted.

A hearing on the petition was held on February 18, 1970, before Richard J. Horrigan, Esquire, Trial Examiner.

Upon consideration of the entire record herein and after due deliberation, the Board issues the following decision:

The Appropriate Unit

           Petitioner and the City contend that the appropriate unit should be Tractor Operators and Motor Grader Operators, City-wide.

Both Intervenors contend that the appropriate unit should be Tractor Operators, City-wide, although in a prior hearing, held in Case No. 38-68, Local 246 had urged a single unit including both titles .

Intervenors called no witnesses in support of their unit contention but relied on a certificate issued by the New York City Department of Labor to Local 246 covering Tractor Operators and Motor Grader Operators in the Department of Highways. As Motor Grader Operators are employed only in the Department of Highways, it is contended that Intervenor, Local 246, holds what is equivalent to a City-wide certificate for Motor Grader Operators, and that the Board should not disturb such certificate.

The job specification for Tractor Operator, under the heading "General Statement of Duties and Responsibilities" reads as follows:

"Under general supervision, operates and does minor maintenance on diesel powered tractors, dump wagon equipment and other tractor drawn equipment at landfills and other projects of the City of New York; performs related work."

The specification for Motor Grader Operator, under the same heading, reads:

"Under direction, operates a motor grader, and/or a payloador in the grading and leveling of excavation, fill, or streets and dirt roads; performs related work."

Both specifications require the potential employee to have five years of full-time, paid experience in the operation of his particular vehicle. There is no line of promotion for either job and the salary for each title is in the same range.

The undisputed evidence reveals that the Department of Sanitation operates both tractors and motor graders. Petitioner's witness, who has had twenty years' experience as a Tractor Operator, testified that they are basically the same machine and can be used to do the same type of work. The witness has operated a motor grader frequently and testified that all the Tractor Operators in his Department of Sanitation plant can operate motor graders. He estimated that ten to fifteen percent of the Tractor Operators frequently have operated motor graders and that an experienced Tractor Operator can adapt himself to a motor grader in three or four days.

The president of Intervenor, Local 246, called as a witness by the Trail Examiner, testified that the difference in the two titles is that Tractor Operators in the Department of Sanitation work on landfills moving debris and that Motor Grader Operators in the Department of Highways work on public streets moving asphalt.

We do not believe that such difference in any way affects the similarity of skills and community of interest shared by Tractor Operators and Motor Grader Operators. They perform the same general type of work and have similar interests in the determination of wages and working conditions.

We find no merit in Intervenor's contention based upon the certificate issued to Local 246 by the Department of Labor. That certificate, establishing a departmental unit, manifestly was based upon the community of interests and skills of the two titles. The same considerations are equally applicable where the unit is city-wide instead of departmental. In any event, §1173-10.0c of the New York City Collective Bargaining Law empowers this Board to find units different from those established by the Department of Labor.

We find and conclude, therefore, that Tractor Operators and Motor Grader Operators constitute a unit appropriate for the purposes of collective bargaining.

Intervenors having indicated their desire to appear on the ballot jointly, the Direction of Election will so provide.

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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

O R D E R E D, that the applications of Local 15, I.U.O.E., AFL-CIO and Local 246, S.E.I.U., AFL-CIO, to intervene herein, be, and the same hereby are, granted; and it is further

DIRECTED, that an election by secret ballot shall be conducted under the supervision of the Board, or its agents, at a time, place, and during hours to be fixed by the Board, to determine whether Tractor Operators and Motor Grader Operators, employed by the City of New York and related public employers subject to the jurisdiction of the Board of Certification, during the payroll period immediately preceding the date of this Direction of Election (other than those who have voluntarily quit or who have been discharged for cause before the date of the election) desire to be represented for the purposes of collective bargaining by Tractor Operators Union of New York City; by Local 15, I.U.O.E., AFL-CIO and Local 246, S.E.I.U., AFL-CIO, jointly; or by neither.

DATED:       New York, N.Y.

April 15, 1970.

Arvid Anderson  
C h a i r m a n

Eric J. Schmertz  
M e m b e r

Walter L. Eisenberg  
M e m b e r