

OFFICE OF COLLECTIVE BARGAINING
BOARD OF CERTIFICATION

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In the Matter of
DISTRICT COUNCIL 37, AFSCME, AFL-CIO
-and-
THE CITY OF NEW YORK

DECISION NO. 42-70

DOCKET NO. RU-123-69

- - - - -x

D E C I S I O N

and

O R D E R

On July 7, 1969, District Council 37, AFSCME, AFL-CIO, filed its petition herein requesting certification as the exclusive collective bargaining representative of Senior Economists and Supervising Economists employed by the City of New York. Petitioner subsequently amended the petition to request that the petitioned titles be added to an existing certification covering Research Assistants, Rent Research Associates, and Senior Rent Research Associates.

Upon consideration of its investigation, and after due deliberation, the Board of Certification issues the following decision:

I. Undisputed Matters

_____ It is undisputed, and we find and conclude, that Petitioner is a public employee organization in fact and within the meaning of the New York City Collective Bargaining Law.

II. The Appropriate Unit and Representative Status

_____ Senior Economists and Supervising Economists are part of the Economist Occupational Group which also includes Economists and Assistant Economists.

Petitioner seeks to add the petitioned titles to an existing unit of Research Assistants, Rent Research Associates, Senior Rent Research Associates, Assistant Director of Rent Research and Director of Rent Research (9 N.Y.C.D.L. No. 44, Decision No. 65-69). The last two titles are supervisory, and the employees therein voted in favor of a combined unit of supervisory and non-supervisory employees.

The City urges that the petitioned titles should be added to a unit consisting of various accountant titles (CWR-2-67).

Employees in the Economist Occupational Group, as do employees in the research titles, engage in economic research and studies. The basic qualifications for each group require a baccalaureate degree. Employees in the accountant titles render accounting and auditing services, are not involved in economic research studies, and a baccalaureate degree is not essential. It is clear, therefore, that the duties, skills and interests of employees in the economist series of titles are more closely related and allied to those of the employees in the research titles.

The only incumbent in the supervisory titles in the Economist Occupational Group has submitted an affidavit stating that he desires to be included in the same bargaining unit with the non-supervisory employees here concerned. Where, as here, there is only one supervisory employee, there can be no secret ballot, and in such cases, we accept an affidavit in lieu of a self-determination election under §1173-3.0 1 (see Matter of District Council 37, AFSCME, Decision No. 2-70).

As a majority of the employees in the Economist Occupational Group have authorized check-off of dues to the Petitioner, we shall amend certification 9 N.Y.C.D.L. No. 44, as amended, to include the titles Assistant Economist, Economist, Senior Economist and Supervising Economist.

There are four other titles, in the Investment Analysis Occupational Group, which engage in economic research and studies; namely, Investment Analysis Trainee, Investment Analyst, Senior Investment Analyst and Supervising Investment Analyst. All of these titles were established subsequent to certification 9 N.Y.C.D.L. No. 44. The duties, interests and skills of employees in these titles are closely related and allied to those of the employees discussed above, and, since the titles were created subsequent to the original certification, properly may be accreted thereto (Matter of Local 394, District Council 37, AFSCME, Decision No. 39-69).

The only supervisory title in this group -- Supervising Investment Analyst -- was established on February 10, 1970 (Personnel Order No. 9-70) approximately three months after the self-determination election mentioned above.

We do not read §1173-3.0 1 as requiring a further self-determination election as a condition precedent to the accretion of a newly established supervisory title to a combined supervisory and non-supervisory unit under the circumstances here present.

The basic purpose of all labor relation acts, including the New York City Collective Bargaining Law, is the maintenance of stable labor relations, and the procedures provided must be construed and applied in consonance with that purpose. It is this principle which underlies the established rule that the statutory right of employees to bargain collectively through representatives of their own choosing is not absolute. That right may be exercised only at appropriate times, for absolute freedom to change representatives at any time would disrupt the stability of labor relations and stultify the basic purpose of the legislation. [Local Lodge No. 1424, I.A.M., v. N.L.R.B., 362 U.S. 411, 428]

Thus, newly hired employees, by operation of law, are represented by the bargaining representative previously chosen by a majority of the employees in the bargaining unit. Similarly, in more complicated applications of the principle, labor boards may set a minimum "life" of a certification [N.L.R.B. V. Brooks, 348 U.S. 96; N.Y. State Labor Relations Act, §702(7); New York City Collective Bargaining Law, §1173-5.0 b (2)], and a change of bargaining representatives is barred during the term of a collective agreement of reasonable duration [Local 1545, Carpenters etc. v. Vincent (N.L.R.B.), 286 F.2d 127, 130-131); N.Y. State Public Employees' Fair Employment Law, §208(c); Office of Collective Bargaining Rule 2.7].*

Accretion of a newly created title to an existing certified unit is a variation of the principle that newly hired employees become part of an established unit. In Matter of Local 384, District Council 37, A.F.S.C.M.E., AFL-CIO, Decision No. 39-69, we pointed out:

"Accretion is, in substance, the inclusion in an existing unit of new positions or titles which, because of their similarity or close relation-

The ban against conducting a second election within twelve months after a valid election is another application of the same principle. See, e.g., Taft Hartley Act, §9(c)(3); OCB Rule 2.12b.

ship to the unit titles,
would have been included
in the original unit if
they had been in existence
at that time. In such
cases, proof of representa-
tion is not required."
(emphasis in original)**

The principle discussed above manifestly is equally applicable where a newly created title is added by accretion to an existing unit of supervisory and non-supervisory (or professional and non-professional) employees. The right to a self-determination election is no more absolute than the right to select or change bargaining representatives. Its exercise, too, must be limited to appropriate times and occasions, for to hold otherwise would permit the fragmentation of units, disrupt the stability of labor relations and prevent effective collective bargaining.

As a self-determination election was conducted only three months prior to the establishment of the new title, we hold that accretion thereof to the existing unit does not, under the circumstances herein, require or warrant another self-determination election.

As noted in that decision, the comparative sizes of the two groups is an additional factor.

O R D E R

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 certification No. 9 N.Y.C.D.L. No. 44, as amended by Decision No. 65-69, be, and the same hereby is further amended to include the titles Assistant Economist, Economist, Senior Economist, Supervising Economist, Investment Analysis Trainee, Investment Analyst, Senior Investment Analyst, and Supervising Investment Analyst.

DATED: New York, N.Y.
July 1 , 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

The titles and title code numbers of the employees affected by this decision are as follows:

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|--------------------------------|-------|
| Supervising Economist | 40920 |
| Senior Economist | 40915 |
| Economist | 40910 |
| Assistant Economist | 40905 |
| Supervising Investment Analyst | 40927 |
| Senior Investment Analyst | 40926 |
| Investment Analyst | 40925 |
| Investment Analysis Trainee | 40924 |