CEU, L.237, IBT, et. Al v. City, 6 OCB 51 (BOC 1970) [Decision No. 51-70) (Amend. Cert.)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF CERTIFICATION

In the Matter of
CITY EMPLOYEES UNION, LOCAL 237,
INTL. BROTHERHOOD OF TEAMSTERS — DECISION NO. 51-70
-and-
LOCAL 300, SERVICE EMPLOYEES — DOCKET NOS.
INTERNATIONAL UNION, AFL-CIO — RU-41-68
-and- — RU-108-69
THE CITY OF NEW YORK AND RELATED — RU-116-69
PUBLIC EMPLOYERS

DECISION, AMENDED ORDER AND CERTIFICATION

On April 8, 1970, City Employees Union, Local 237, International Brotherhood of Teamsters (hereinafter Local 237) filed with the Board of Certification a motion for reconsideration, in part, of the Board's decision No. 12-70. The cited decision, dated March 23, 1970, included a finding that Maintenance Men and Maintenance Men Trainees employed by the City of New York and other related public employers under the jurisdiction of the Board of Certification constitute a unit appropriate for the purposes of collective bargaining, Local 237 does not challenge this finding. In the aforementioned decision, the Board also directed, as part of its investigation, that an election by secret ballot be held to determine whether the employees in the appro-

priate bargaining unit desired to be represented for the purposes of collective bargaining by Local 237 or Local 300, Service Employees International Union, AFL-CIO (hereinafter Local 300) or by neither union. It is to this portion of the Board's decision that the Local 237 motion directs itself.

In its motion, Local 237 contends that Local 300 is the petitioner herein, and, upon information and belief, that Local 300 has failed to demonstrate the thirty (30%) percent proof of interest required by Rule 2.3b of the Consolidated Rules of the Office of Collective Bargaining. It requests the Board to reconsider Local 300's proof of interest and take appropriate action.[1]

Local 300, in its answering affidavit, asserts that it is not the petitioner herein since it did not petition for the larger unit found appropriate by the Board; that its petition was consolidated with two petitions filed by Local 237,[2] and that "the effect of the consolidation of the three petitions and the resultant decision of the Board had the simultaneous effect of termination of all existing certifications affecting

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Rule 2.3b also provides: "Sufficiency of interest shall not be a litigable matter."

Case No. 108-69, a petition for certification as representative of Maintenance Man Trainees, that title being included by the Board in the unit found appropriate herein; and Case No. 116-69, a petition to add Housing Maintenance Helpers to the unit of Maintenance Men for which Local 237 was the certified representative (CWR-109-67), that petition having been severed in the Board's prior decision herein.

the title of Maintenance Man and the establishment by original jurisdiction of a new appropriate unit. . ."[3]

The City Office of Labor Relations did not file an answering affidavit to the motion, nor did Local 237 file a reply to Local 300's answering affidavit.

Upon all the proceedings and papers herein, and after due deliberation, the Board grants the motion for reconsideration and issues the following Decision, Amended Order and Certification:

Local 300 concedes and states in its answering affidavit that "At no time did Local 300 petition for the unit finally found appropriate by the Board." As the petitioned unit was inappropriate, and since Local 300 has not demonstrated the thirty (30%) percent showing of interest in the larger unit, as required of a petitioner by Rule 2.3b, its petition should be dismissed.

The question then presented is whether an election with Local 300 on the ballot, is required under the circumstances here presented.

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[3] In its prior decision herein, the Board did not pass upon the validity of the prior certification of Local 237 (CWR-109-67) because, inter alia, it had not been urged as a bar to Local 300's petition.

Section 1173-5.0b(2) of the New York City Collective Bargaining Law (hereinafter NYCCBL) empowers the Board:

> "to determine the majority representative of the public employees in an appropriate collective bargaining unit by conducting secret-ballot elections or by utilizing any other appropriate and suitable method designed to ascertain the free choice of a majority of such employees.* * *(underlining added)

Rule 2.12a provides:

> "If the Board determines, as part of its investigation, to conduct an election, it shall determine who may participate-in the election and appear on the ballot,* * * . An intervening public employee organization, other than the certified public employee organization, shall not be entitled to appear on the ballot except upon a showing of interest, satisfactory to the Board of at least ten (10)per cent of the employees in the unit found to be appropriate." (underlining added)

The NYCCBL clearly does not mandate elections.[4] The Board is empowered to determine representation by "any other appropriate and suitable method."[5]

The sole exception is on a petition to decertify a previously certified representative. NYCCBL, §1173-5.0b(3).

cf. §207.2 of the New York State Public Employees Fair Employment Law (Taylor Law) which provides for determination of majority representation "on the basis of dues deduction authorization and other evidences, or, if necessary, by conducting an election." (underlining added)

It is equally clear that an intervening public employee organization, with less than the thirty (30%) per cent showing of interest required of a petitioner under Rule 2.3b, is entitled to a place on the ballot only if the Board determines that an election is advisable or necessary, and the intervener demonstrates. "a showing of interest, satisfactory to the Board, of at least ten (10%) per cent" of the employees.

Our investigation establishes that the over-whelming majority (approximately 73%) of the employees in the appropriate unit have authorized the check-off of union dues to Local 237, and that the proof of interest submitted by Local 300 is substantially less than the 30% required by Rule 2.3b.

Under such circumstances, we conclude that an election would. be futile and an unnecessary expen-diture of public funds. Accordingly, we shall amend out prior decision, dismiss the petition filed by Local 300, rescind the direction of an election, and certify Local 237 as the collective bargaining representative of the employees in the appropriate bargaining unit.

AMENDED ORDER

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 motion for reconsideration filed by City Employees Union, Local 237, I.B.T., be, and the same hereby is, granted; and it is further

O R D E R E D , that the petition filed by Local 300, S.E.I.U., AFL-CIO, in Case No. RU-41-68, be, and the same hereby is, dismissed, and it is further

O R D E R E D , that the direction of election contained in our prior decision herein (Decision No. 12-70) be, and the same hereby is, rescinded; and it is further

C E R T I F I E D , that City Employees Union, Local 237, I.B.T., is the exclusive representative for the purposes of collective bargaining of all Maintenance Men and Maintenance Men Trainees employed by the City of New York and related public employers subject to the jurisdiction of the Board of Certification.

DATED: New York, N.Y.
July 14 , 1970.

ARVID ANDERSON
C h a i r m a n

WALTER L. EISENBERG
M e m b e r

ERIC J. SCHMERTZ
M e m b e r

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

Maintenance Man	90726
Maintenance Man Trainee	90784