

DC37 v. City, 6 OCB 64 (BOC 1970) [Decision No. 64-70 (Cert.)]

OFFICE OF COLLECTIVE BARGAINING  
BOARD OF CERTIFICATION

In the Matter of

DISTRICT COUNCIL 37, AFSCME, AFL-CIO  
Petitioner

DECISION NO.64-70

-and-

DOCKET NO. RU-174-70

INDEPENDENT TRAFFIC EMPLOYEES UNION  
Intervener

-and-

THE CITY OF NEW YORK

A P P E A R A N C E S:

JULIUS TOPOL, ESQ.  
For Petitioner

NORMAN ROTHFELD, ESQ.  
For Intervener

PHILIP J. RUFFO, ESQ.  
By Patrick J. O'Shea, Esq.  
For The City of New York

DECISION ORDER AND DIRECTION OF ELECTION

\_\_\_\_\_ District Council 37, AFSCME, AFL-CIO (herein DC37)  
petitioned for certification as the representative of Traffic  
Device Maintainers and Traffic Device Maintenance Trainees,  
City-wide.

Independent Traffic Employees Union (herein ITEU) moved to intervene herein and to dismiss the petition. Neither DC37 nor the City opposed the application to intervene and, accordingly, it will be granted

A hearing on the petition was held on June 23, 1970, before Richard J. Horrigan, Esquire, Trial Examiner. A brief was filed by ITEU on July 13, 1970.

Upon consideration of the entire record herein and the above-mentioned brief, and due deliberation having been had, the Board issued the following decision.

1. Background

\_\_\_\_\_ In December, 1968 the Board granted an application of Local 3, IBEW, to transfer to it the certificate previously issued to ITEU covering the employees involved herein (Decision No.77-68). Local 3 subsequently negotiated a collective bargaining agreement with the City covering these employees. Thereafter, because of an AFL-CIO finding that Local 3 had raided DC37, Local 3 disclaimed further representation of the employees.

2. The Appropriate Unit

\_\_\_\_\_ All parties stipulate that the appropriate bargaining unit is Traffic Device Maintainers and Traffic Device Maintenance Trainees employed by the City of New York. This is the same unit previously certified and we find it to be appropriate.

### 3. The Contract

\_\_\_\_\_The City at first urged that the contract between it and Local 3, which expires December 31, 1970, bars the filing of the petition herein (Rule 2.7). However, the City withdrew this contention when both DC37 and ITEU agreed that, if the Board directs an election herein, the winner of such election will assume the existing contract between the City and Local 3.

### 4. Majority Status

\_\_\_\_\_It is undisputed that Local 3 has disclaimed representation of the employees and renounced its certification and the administration of the collective bargaining agreement.

We find no merit in the contention, urged by ITEU, that the certification automatically reverted to it upon the disclaimer by Local 3.

After such disclaimer, a substantial number of employees in the appropriate unit designated DC37 as their representative. Thus Local 3's action, followed by said designations of DC37, raised a real and substantial question or controversy concerning representation which precludes automatic reversion of the certifications to ITEU. Basically, the question is whether these employees now desire to bargain again through ITEU, through DC37, or through neither.

The certification originally issued to ITEU, and later transferred to Local 3, is over three years old. We are not dealing, therefore, with the certification-year rule (Rule 2.18). Moreover, when a certified union has become defunct or, ipso facto, when it renounces its certification, such facts constitute unusual or extraordinary circumstances which require shortening the life of the certification (Brooks v NLRB, 348 U.S. 96, 35 LRRM 2158; Rocky Mt. Phosphates, Inc., 138 NLRB No.35, 51 LRRM 1019).

Accordingly, we shall conduct an election by secret ballot among the employees in the appropriate unit to determine whether or not they desire to be represented for the purposes of collective bargaining and shall place the names of ITEU and DC37 on the ballot.

ORDER AND DIRECTION OF ELECTION

\_\_\_\_ Pursuant to the power vested in the Board of Certification by the New York City Collective Bargaining Law, it is hereby

ORDERED, that the application of Independent Traffic Employees Union to intervene herein be, and the same hereby is, granted; and it is further

ORDERED, that the motion of Independent Traffic Employees Union to dismiss the petition herein be, and the same hereby is, denied; 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 Traffic Device Maintainers and Traffic Device Maintenance Trainees employed by the City of New York, who were employed 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 District Council 37, AFSCME, AFL-CIO; by Independent Traffic Employees Union; or by neither.

DATED: New York, N.Y.

September 2 , 1970

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ARVID ANDERSON  
CHAIRMAN

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WALTER L., EISENBERG  
MEMBER

\_\_\_\_\_  
ERIC J. SCHMERTZ  
MEMBER