

DC37 v. HHC, 6 OCB 92 (BOC 1970) [Decision No. 92-70 (Cert.)]

OFFICE OF COLLECTIVE BARGAINING  
BOARD OF CERTIFICATION

In the Matter of  
DISTRICT COUNCIL 37, AFSCME,  
AFL-CIO

DECISION NO. 92-70

-and-

DOCKET NO. RU-96-69

NEW YORK CITY HEALTH AND  
HOSPITALS CORPORATION

DESIGNATION OF REPRESENTATIVE

On February 3, 1969, District Council 37, AFSCME, AFL-CIO, filed a petition for designation as the collective bargaining representative of all employees in the Department of Hospitals on matters which must be uniform for all employees in that department.

Subsequent to the filing of the petition herein, the New York City Health and Hospitals Corporation Act was enacted (Laws of 1969, Ch. 1016). Pursuant to that Act, the operations of the Department of Hospitals were transferred to the New York City Health and Hospitals Corporation. Section 9, subdivision 5, of the Act expressly provides that the New York City Collective Bargaining Law, and Executive order 52 [with two exceptions not here pertinent]: "shall apply in all respects to the corporation, its officers and employees."

We find and conclude, therefore, that the New York City Health and Hospitals Corporation is a "department" within the meaning and intent and for the purposes of, §5a(3) of Executive Order 52.

Section 1173-3.0m of the New York City Collective Bargaining Law provides, in substance, that the scope of collective bargaining shall be fixed by Executive Order. The scope of collective bargaining for employees of mayoral agencies is specified in §5 of Executive Order 52 (1967), with special provisions, not here pertinent, concerning the uniformed forces [subdivision a.(4)] and a management rights clause [subdivision c.].

Subdivision a.(1) provides generally for collective bargaining on wages, hours and working conditions by certified employees' organizations. However, this general provision is limited by subsequent subdivisions dealing specifically with matters which must be uniform for all employees subject to the Career and Salary Plan [subdivision a.(2)]; for all employees in a department [subdivision a.(3)]; or for all employees in a pension system [subdivision a.(5)]. As to these matters, the Executive Order provides that collective bargaining negotiations shall be conducted only with a certified employee organization or organizations, or a council or group of certified organizations, designated by the Board of Certification as representing more than 50 percent of all employees" subject to the Career and Salary Plan, or within the particular department or included in the pension system.

The collective bargaining structure provided in Executive Order 52 for mayoral agencies thus divides the subjects of collective bargaining into four segments: the general area of bargaining on salaries and other terms of employment applicable to particular titles, and three special areas in

which the necessities of a vast and complex civil service system, and efficiency of operation, mandate uniformity. These separate areas of negotiation do not overlap, and the Board of Collective Bargaining has had occasion, in the past, to determine in which of these areas particular subjects of negotiation fall. (See Matter of Social Service Employees Union, Decision No. B-11-68; Matter of City of New York and District Council 37, Decision No. B-4-69; Matter of District Council 37, Decision No. B-1-70).

Executive Order 52, §5, also differentiates between "certified" employee organizations which negotiate salaries and other terms of employment for particular titles, and the representatives of employees on matters which must be uniform. The latter, under §5, may be a certified employee organization or organizations, or a council or group of certified employee organizations "designated by the Board of Certification as representing more than 50%" of the employees concerned. "Designations" thus are based upon certifications as representative of bargaining units which include a majority of the employees, as distinguished from "certifications," which are based upon the choice of a bargaining representative made by a majority of the employees in a particular bargaining unit. A "designation, therefore, is not a "certification" and does not supersede check-off rights of certified employee organizations under Executive Orders 98 and 99 (1969).

Our investigation establishes that District Council 37, AFSCME, AFL-CIO, is the certified representative of bargaining units which include a majority of the employees of the New York City Health and Hospitals Corporation and is the designated representative of such employees on matters which must be uniform for all such employees.

DATED: New York, N.Y.  
December 28, 1970.

ARVID ANDERSON  
C h a i r m a n

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