

L. 371, SSEU, L. 1549 & L. 1180, CWA v. City & HRA,68 OCB 11 (BOC 2001) [11-2001 (Cert)]

OFFICE OF COLLECTIVE BARGAINING  
BOARD OF CERTIFICATION

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In the Matter of :  
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LOCAL 371, SOCIAL SERVICE : DECISION NO. 11-2001  
EMPLOYEES UNION, DISTRICT :  
COUNCIL 37, AFSCME :  
-and- :  
THE CITY OF NEW YORK, and THE : Docket No. RU-1239-01  
NEW YORK CITY HUMAN :  
RESOURCES ADMINISTRATION :  
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LOCAL 1549, DISTRICT :  
COUNCIL 37, AFSCME :  
-and- :  
THE CITY OF NEW YORK, and THE : Docket No. RU-1240-01  
NEW YORK CITY HUMAN :  
RESOURCES ADMINISTRATION :  
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LOCAL 1180, COMMUNICATION :  
WORKERS OF AMERICA, AFL-CIO :  
-and- :  
THE CITY OF NEW YORK, and THE : Docket No. RU-1242-01  
NEW YORK CITY HUMAN :  
RESOURCES ADMINISTRATION :  
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ORDER

On February 20, 2001, Local 371, Social Service Employees Union, District Council 37, AFSCME (“Local 371”) filed a Petition for Certification pursuant to §1-02(c) of the Rules of the Office of Collective Bargaining (Rules of the City of New York, Title 61, Chapter 1)(the “Rules”), requesting to add the newly created titles Job Opportunity Specialist (“JOS”) (Title Code 52314) and Associate Job Opportunity Specialist (“AJOS”) (Title Code 52316) to Certification No. 37-78, currently covering Caseworkers and Supervisors (Welfare)(“SUPs”), among other titles. On February 22, 2001, Local 1549, District Council 37, AFSCME (“Local

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1549") filed a Petition for Certification pursuant to §1-02(v)91) and (2) of the Rules, requesting to add the JOS title to Certification No. 46C-75, currently covering Eligibility Specialists ("ESs"), among other titles. On March 19, 2001, Local 1180, Communications Workers of America, AFL-CIO ("CWA"), filed a Petition for Certification pursuant to §1-02(c) of the Rules, requesting to add the AJOS title to its Certification No.41-73, currently covering Principal Administrative Associates ("PAAs"), among other titles. On April 5, 2001, the City filed its response to the above-described petitions and stated that it will take no position as to which union will represent the newly created titles.

BACKGROUND

Prior to May 2001, employees who staffed Human Resources Administration's ("HRA") Income Support Units included: PAAs, ESs, SUPs, and Caseworkers. In Fall 2000, the City decided to consolidate these job titles into the JOS and AJOS titles and in Spring 2001 began recruiting employees to fill the new titles. The AJOS title is being filled with SUPs and PAAs and the JOS title is being filled with ESs and Caseworkers. In addition, new employees are being hired to fill JOS positions. In sum, whereas there were four titles represented by three different unions in three different bargaining units, there will now only be two titles. The questions presented by the three petitions filed therefore concern what is the appropriate bargaining unit or units in which each of the titles should be placed, and which union will represent that unit.

A conference was held on May 3, 2001, at which time representatives of the City and all three Petitioners were present and representational issues raised by petitions were generally discussed. At the conference, the parties were requested to submit written positions concerning the consolidation of these three cases. Position letters were submitted by all parties on this

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issue on or before May 22, 2001.

POSITIONS OF THE PARTIES

The City's Position

The City urges the Board to consolidate the three petitions and asserts that because there are overlapping issues and common witnesses in these cases, consolidation will expedite the processing and provide all the parties an equal opportunity to present their positions.

Local 371's Position

Local 371 agrees that consolidation is the most effective and expeditious way to proceed in processing the three petitions.

Local 1549's Position

Local 1549 has no objection to the consolidation of the hearings in the three petitions described herein in order to avoid duplication of effort and expense by the Board and the interested parties. However, it does object to the consolidation of the cases and asserts that consolidation of the petitions themselves is not authorized by §1-02(v) of the Rules.

CWA's Position

CWA opposes the consolidation of the three cases because they involve different facts and circumstances, different legal issues and because consolidation would be more costly and time-consuming than separately processing each case. Generally, CWA asserts that there is no commonality of issues between the petitions seeking to represent the JOS title and those seeking to represent the AJOS title. Therefore, in consolidating these cases, CWA asserts that it (and Local 1549) will be forced to participate in the presentation of evidence and legal argument on issues for which it has no interest – a considerable time-loss and cost. For example, CWA

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argues there will be different witnesses testifying as to the JOS and AJOS titles, and there may be an issue concerning OCB's jurisdiction where there are competing claims for representation, but a common certificate holder – and CWA neither has an interest in or a position on these issues.

DISCUSSION

Section 1-13(g) of the Rules gives the Board the authority, upon notice to the parties, to consolidate two or more proceedings. We believe that the consolidation of the three petitions described herein is necessary to achieve a complete and expeditious resolution of the issues presented. Although there is not complete uniformity of parties or titles in all three of the petitions, the nearly simultaneous filing and overlapping of parties and titles sought creates an indivisible web of representational issues which could not be resolved by processing the cases separately. The main issue this Board will have to resolve will be what is the appropriate unit for bargaining. Although CWA has asserted that the AJOS is most appropriately placed in its existing unit under Certificate No.41-73, Local 371 asserts that title belongs with the JOS title in its existing unit under Certificate No.37-78. As a result, there are competing claims by the three labor organizations not only as to which employees they should represent, but also as to which bargaining unit the titles should be placed in, that make it impossible to resolve these issues in isolation from one another. We recognize that consolidation may compel one or all parties to bear witness to evidence on a title it does not seek to represent or to address an issue which does not concern it, and will make every effort to streamline the presentation of evidence and resolution of these cases with these concerns in mind.

NOW, THEREFORE, pursuant to the powers vested in the Board of Certification by the New York City Collective Bargaining Law- New York City Administrative Code, Chapter 3, §§12-301 et seq., it is hereby

ORDERED that the petitions for certification filed in Case Nos. RU-1239-01, RU-1240-01 and RU-1242-01 be, and hereby are, consolidated.

DATED: December 5, 2001  
New York, New York

MARLENE A.GOLD  
Chairperson

DANIEL G. COLLINS  
Member

GEORGE NICOLAU  
Member