

DC 37 v. City & FDNY, 72 OCB 4 (BOC 2003) [4-2003 (Cert)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF CERTIFICATION

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In the Matter of

DISTRICT COUNCIL 37,

Petitioner,

Decision No. 4-2003

Docket No. RU-1246-02

-and-

THE CITY OF NEW YORK and THE CITY OF
NEW YORK FIRE DEPARTMENT,

Respondents.

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DECISION AND ORDER

On January 30, 2002, District Council 37 (“DC 37” or “Petitioner”) filed a Petition for Certification seeking to remove approximately 2900 Emergency Medical Services (“EMS”) employees in the New York City Fire Department (“FDNY”) from their current certified bargaining unit and to create a separate unit for them. Petitioner requests that the titles Emergency Medical Specialist - EMT (Title Codes 53053, 002220), Emergency Medical Specialist - Paramedic (Title Codes 53054, 002240), Emergency Medical Services Specialist (Title Codes 96321, 96322), Supervising Emergency Medical Services Specialist - Levels I and II (Title Codes 53005, 96331, 96332), EMS - Cadet (Title Codes 53056, 005030), Emergency Medical Specialist-Trainee (Title Code 53052), be removed from its Certification No. 62D-75 and a new bargaining unit be created for these titles.¹

¹ The petitioned-for unit does not include certain employees in the title Supervising Emergency Medical Services Specialist - Levels I and II, detailed as Deputy Chiefs and Division

The Union argues that certification of a new and separate unit is mandated by § 12-307(a)(4) of the New York City Collective Bargaining Law (City of New York Administrative Code, Title 12, Chapter 3) (“NYCCBL”) as amended by Local Law 19/2001. The City of New York (“City”) opposes the petition, asserting that the statutory amendment does not mandate a separate bargaining unit, and a separate unit for the petitioned-for employees would result in the fragmentation or proliferation of bargaining units. In addition, the City asked that the Board of Certification (“Board”) stay all proceedings in the matter until such time as the City’s challenge to Local Law 19 is resolved. Finally, the City asserted that EMS Superior Officers Association was a necessary party to the proceeding.

The preliminary issue in this case concerning the establishment of a separate bargaining unit was resolved by the Board in *District Council 37*, Decision No. 1-2003. There the Board held that because Local Law 19, now allows the petitioned-for employees the right to bargain independently, their inclusion in the existing bargaining unit was no longer appropriate. The Board referred the matter to the Director of Representation for further processing of the petition.

The remaining issue is whether the petitioned-for unit is appropriate. Initially, the City objected to the petitioned-for unit by asserting that the EMS Superior Officers Association was a necessary party to the proceedings. However, on May 15, 2003, the City notified the Director of Representation that it was withdrawing its assertion as to the EMS Superior Officers Association, but was again requesting that the Board’s decision on the matter be stayed pending the result of litigation challenging Local Law 19 in Supreme Court, New York County, which was initiated in

Commanders who are represented by the EMS Superior Officers Association pursuant to Certification No. 10-01.

August 2001.² Although we are mindful that the City's challenge to Local Law 19 raises the possibility that the Court could overturn that legislation, we will not stay the issuance of this decision pending the outcome of that litigation. Rather, we derive our authority from the NYCCBL and are bound to follow that statute, as amended, unless or until it is overturned.

The Appropriate Unit

Since the Board has found that inclusion of the petitioned-for employees in their current bargaining unit is no longer appropriate and there having been no other objections to the newly petitioned-for unit, or any alternative unit(s) proposed, we find that a separate unit of EMS personnel as sought in the petition is appropriate.

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

ORDERED, that Certification No. 62D-75 (as previously amended) be, and the same hereby is, further amended to delete the titles: Emergency Medical Specialist - EMT (Title Codes 53053, 002220), Emergency Medical Specialist - Paramedic (Title Codes 53054, 002240), Emergency Medical Services Specialist (Title Codes 96321, 96322), Supervising Emergency Medical Services Specialist - Levels I and II (Title Codes 53005, 96331, 96332), EMS - Cadet (Title Codes 53056, 005030), Emergency Medical Specialist-Trainee (Title Code 53052); and

ORDERED, that the petitioned-for bargaining unit of: Emergency Medical Specialist -

² The parties were not able to indicate when the litigation will be concluded.

EMT (Title Codes 53053, 002220), Emergency Medical Specialist - Paramedic (Title Codes 53054, 002240), Emergency Medical Services Specialist (Title Codes 96321, 96322), Supervising Emergency Medical Services Specialist - Levels I and II (Title Codes 53005, 96331, 96332), EMS - Cadet (Title Codes 53056, 005030), Emergency Medical Specialist-Trainee (Title Code 53052), is an appropriate bargaining unit, and it is further,

CERTIFIED, that District Council 37 is the exclusive representative for the purposes of collective bargaining for the unit found appropriate.

DATED: May 28, 2003
 New York, New York

MARLENE A. GOLD
CHAIR

CAROL A. WITTENBERG
MEMBER

GEORGE NICOLAU
MEMBER

NOTICE OF CERTIFICATION

This notice is to acknowledge that the Board of Certification has issued a Decision and Order as follows:

DATE: May 28, 2003

DOCKET #: RU-1246-02

DECISION NUMBER: 4 -2003

EMPLOYER: The City of New York and the New York City Fire Department, c/o City of New York Office of Labor Relations, 40 Rector Street, New York, New York 10006

CERTIFIED/RECOGNIZED BARGAINING

REPRESENTATIVE: District Council 37, 125 Barclay Street, New York, New York 10007-2179.

BARGAINING UNIT: Certification No. 4-2003 includes the following title(s)/codes:

Emergency Medical Specialist - EMT (Title Codes 53053, 002220)

Emergency Medical Specialist - Paramedic (Title Codes 53054, 002240)

Emergency Medical Services Specialist (Title Codes 96321, 96322)

Supervising Emergency Medical Services Specialist - Levels I and II (Title Codes 53005, 96331, 96332)

EMS - Cadet (Title Codes 53056, 005030)

Emergency Medical Specialist-Trainee (Title Code 53052)