

CITY EMPLOYEES UNIT ON, LOCAL 237 V. CITY, 8 OCB 11 (BOC 1971)  
[Decision No. 11-71 (Cert.)]

OFFICE OF COLLECTIVE BARGAINING  
BOARD OF CERTIFICATION  
- - - - - X

In the Matter of

DECISION NO. 11-71

CITY EMPLOYEES UNI ON, LOCAL 237,  
I.B.T.

DOCKET NO. RU-147-69

-and-

THE CITY OF NEW YORK AND RELATED  
PUBLIC EMPLOYERS  
- - - - - X

In the Matter of

CITY EMPLOYEES UNION, LOCAL 237,  
I. B. T.

DOCKET NO. RU-205-70

-and-

THE CITY OF NEW YORK AND RELATED  
PUBLIC EMPLOYERS  
- - - - - X

**DECISION AND ORDER**

On November 17, 1969, Local 237, International Brotherhood of Teamsters, filed a petition (Case No. RU-147-69) seeking certification as collective bargaining representative of a city-wide unit of Letters. It later amended the petition to include Sign Painters in the unit.

On July 9, 1970, Local 237, International Brotherhood of Teamsters, filed a second petition (Case No. RU-205-70) requesting certification as the collective bargaining representative of the titles of House Painter and Foreman House Painter. This petition later was amended to include the titles of Painter and Foreman Painter.

District Council 9, Brotherhood of Painters, Decorators, and Paperhangers of America, AFL-CIO (hereinafter called D.C.9), and Local 246, Service Employees International Union, AFL-CIO, applied to intervene in Case No. RU-147-69, claiming to represent a majority in a city-wide unit of Sign Painters and Letterers.

D.C.9 also applied to intervene in Case No. RU-205-70, urging that a contract with the City, running from May 6, 1970 to July 31, 1971, barred the petition. No objections having been interposed thereto, the interventions will be granted.

On October 19, 1970, the Board of Certification issued an order consolidating the two proceedings for purposes of hearing.

A hearing was duly held before Ernest Doerfler, Esquire, Trial Examiner, on December 19, 1970. At the outset of the hearing Local 237, I.B.T., moved to withdraw its petition in Case No. RU-147-69 for the titles of Sign Painter and Letterer. A post-hearing statement in lieu of a brief was filed by Local 237, I. B. T., on January 21, 1971 in connection with Case No. RU-205-70.

Upon consideration of the entire record, herein and the above mentioned statement, and due deliberation having been had, the Board issues the following Decision and Order.

The Contract Bar

Section 2.7 of the Consolidated Rules of the Office of Collective Bargaining provides that a valid contract between a public employer and a public employee organization shall bar the filing of a petition for certification during a contract term not exceeding three years, and that a petition for certification shall be filed not less than five nor more than six months before the expiration date of a contract.

Local 237, I.B.T., contends that the contract between D.C.9 and the City is not a bar to the petition in Case No. RU-205-70, although that petition concededly was not timely filed within the period provided in Rule 2.7. In support of that contention, it urges that the employees covered by the contract are prevailing rate employee whose wages and supplements are determined by the City Comptroller under Section 220 of the State Labor Law; that the contract provisions accordingly are limited to non-economic matters, most of which are customarily granted to all certified employee organizations; and that a contract of such limited coverage cannot or should not constitute a bar to a representation petition.

The contract bar doctrine set forth in a Rule 2.7 has been long and firmly established in the field of labor relations. Its object is to accommodate two sometimes

conflicting-objectives: first, the freedom of employees to select or change, bargaining representatives; and, second, to give continuity and stability to an established, bargaining relationship. The essential stability is achieved by protecting the established-relationship from challenge during the term of a valid contract of reasonable duration.

To provide such stability, the contract must contain sufficient substantive terms "to chart with adequate precision the course of the bargaining relationship [so that] the parties can look to the actual terms and conditions of their contract for guidance in their day-to-day problems" (Appalachian Shale Products, 121 NLRB 1160).

The wages and supplements of the prevailing rate employees here concerned are set by the City Comptroller pursuant to Section 220 of the State Labor Law, and are expressly excluded from the scope of collective bargaining by Section 5a(1) of Executive Order 52. The exclusion of wages and supplements from bargaining does not render the non-economic matters, which are within the scope of bargaining, insubstantial or unimportant. To the contrary, many non-economic provisions in collective bargaining agreements are essential to the maintenance of a continuing stable relationship.

Our analysis of the terms of D.C.9's contract herein satisfies us that it contains substantial non-economic provisions that tend to stabilize the relationship between the parties. These provisions include such important and mandatory subjects of bargaining as grievance arbitration Procedures, seniority, released time for union representatives, and check-off of union dues. Even though some of the provisions may be "standard" or are provided by executive order or statute, we find and conclude that, in the context of the limited collective bargaining available to prevailing rate employees, the terms of the contract do, in sum, contribute substantially to stabilizing the day-to-day relations between the parties.

We further find and conclude, therefore, that the contract between D C.9 and the City barred the petition filed herein by Local 237, I.B.T. Accordingly we shall dismiss the petition in Case No. RU-205-70, without prejudice to the filing of a timely petition with appropriate proof of interest.

**O R D E R**

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

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Decision No. 11-71  
Docket Nos. RU-147-69  
RU-205-70

6.

ORDERED, that the applications of District Council 9, Brotherhood of Painters, Decorators and Paperhangers of America, AFL-CIO, and Local 246, Service Employees International Union, AFL-CIO, to intervene herein be, and the same hereby are, granted, and it is further

ORDERED, that the motion of Local 237, International Brotherhood of Teamsters, for leave to withdraw its petition in Case No. RU-147-69 be, and the same hereby is, granted; and it is further

ORDERED, that the petition filed by Local 237, International Brotherhood of Teamsters, in Case No. RU-205-70 be, and the same hereby is, dismissed, without prejudice, however, to the right to file a timely petition with appropriate proof of interest.

DATED: New York, N.Y.

February 23, 1971

ARVID ANDERSON  
CHAIRMAN

WALTER L. EISENBERG  
MEMBER

ERIC J. SCHMERTZ  
MEMBER