

OFFICE OF COLLECTIVE BARGAINING  
BOARD OF CERTIFICATION

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In the Matter of  
LOCAL 32B, SERVICE EMPLOYEES  
INTERNATIONAL UNION, AFL-CIO,

Petitioner,

DECISION NO. 23-71

-and-

DISTRICT COUNCIL 37, AFSCME,  
AFL-CIO,

DOCKET NO. RU-178-70

Intervenor,

-and-

THE BOARD OF HIGHER EDUCATION  
OF THE CITY OF NEW YORK

-and-

THE CITY OF NEW YORK

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

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Board of Higher Education

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for Local 237, I.B.T.

DECISION AND  
DIRECTION OF ELECTION

On March 31, 1970, Local 32B, Service Employees International Union, AFL-CIO (SEIU), filed a petition for certification claiming representative status, among employees in a unit of "porters, matrons, housekeepers, housemen [and] custodial assistants" employed by Bernard M. Baruch College, City University of New York, at its student center building, 137 East 22<sup>nd</sup> Street New York City.

Hearings were held on September 14, October 6, and October 19, 1970, before Oscar Geltman, Esquire, Trial Examiner. Counsel for SEIU and for the Office of Labor Relations ("City"). appeared and participated, the latter also appearing on behalf of the Board of Higher Education,

District Council 37, AFSCME, AFL-CIO (DC 37) and City Employees Union, Local 237, IBT, moved to intervene, The Trial Examiner's rulings permitting the interventions are hereby affirmed.

DC 37 appeared and participated in the proceedings, but Local 237 participated only on the first day of the hearing, subsequently advising this Board by letter that it has no interest in this proceeding unless the employees involved are found to be Civil Service employees, Since we find that the employees assigned to work at the separate student centers who are involved in this proceeding, are not Civil Service employees. Local 237's request to withdraw from the proceeding is hereby granted.

Upon consideration of the record herein, and the oral arguments of the parties, and due deliberation having been had, the Board issues the following decision:

I. Public Employee Organizations  
Involved

It is undisputed, and we find and conclude, that SEIU and DC 37 are public employee organizations in fact and within the meaning of the New York City Collective Bargaining Law (§1173-3.0j).

## II. Background

SEIU's counsel stated at the hearing herein that SEIU withdrew a representation petition previously filed with the New York State Labor Relations Board because: "The State Labor Relations Board indicated to us that in their view they [the employees involved] were public employees . . ." Further, in explaining the purpose in filing the present petition, SEIU's counsel stated:

" . . . we have to go somewhere to get a determination as to what a correct unit is as to where an election should be conducted."

## III. Positions of the Parties

### A. Jurisdiction

Although SEIU is the petitioner herein, it claims that the Office of Collective Bargaining lacks jurisdiction over the employees involved, essentially, for two reasons:

"We think the Board should find that these people are not public employees, essentially because they are not paid out of public moneys, and also because the work of the student centers, in our view, is not actually a direct necessity to the instructional process."

The City, Board of Higher Education and DC 37 assert that OCB has jurisdiction based upon the fact that the Board of Higher Education, with Mayoral approval, elected in 1968, to come within OCB's jurisdiction pursuant to the NYCCBL, for its non-instructional employees. Their position, as stated by counsel for the City and for the Board of Higher Education, is that the employees here involved "are ultimately employees of the Board of Higher Education, that they are public employees within the meaning of the New York City Collective Bargaining Law [and] that the election of the Board of Higher Education to come within the jurisdiction of the Office of Collective Bargaining for certain employees covers the employees under considering here . . ."

B. The Appropriate Unit

All the parties, other than SEIU, are in agreement that the employees at six student centers perform similar work and constitute a single appropriate unit. The student centers are located at the following colleges: Baruch, Brooklyn, City, Hunter, Queens, and Borough of Manhattan Community College.

The duties of employees at the Baruch College Student Center were described by a witness for the City who was not contradicted. Such duties may be described as the performance of custodial, cleaning, pantry and related work. However, SEIU argues that Baruch College Student employees belong in a separate unit because of variations in wages paid in fringe benefits and in vacation policies as compared with similar employees in the other student centers. SEIU concedes, however: "We don't claim a great difference in function as between Baruch College Student Center employees and similar, employees in the other student centers.

All the parties are in agreement that employees performing custodial, cleaning, pantry and related work at the various college student centers have interests different from those of Civil Service employees at the various colleges and that any unit found appropriate should exclude Civil Service employees.

None of the parties has taken a position as to the inclusion or exclusion of mechanics two of whom are employed by Brooklyn College Student Center.

IV. The Facts: Student Center  
Employees

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All of the colleges referred to in this proceeding are under the jurisdiction of the Board of Higher Education. There are six colleges with separate student center buildings having employees who perform custodial and related work, as described above, limited to those buildings. These employees do not interchange with the Civil Service employees who work in instructional areas, are hired and discharged without regard to Civil Service rules, have no job titles, and are paid out of student center funds at rates fixed by the different colleges for which they work.

In colleges which have no separate student center buildings, but do have student center areas, the civil Service employees work in both the instructional and student center areas and are paid out of student center funds for overtime if they work overtime for student center functions.

A supervisor oversees the work of the employees at Baruch College Student Center the supervisor, who also recruits the employees, is himself a student center employee, he, in turn, is supervised by the Dean of Students and by Dr. Florence W. Siegel, an assistant professor in the Department of Student Personnel Services at Baruch College, who acts as assistant to the Dean of Students in the management of the student center. In order to hire a new employee, the supervisor must obtain formal authorization from the Dean of Students.

The different colleges maintain their student center funds in various forms of accounts: student center employees at Bernard M. Baruch College are paid by check of "Baruch College Student Center"; at Queens College they are paid by

check of Queens College; at Hunter College they are paid by check of John H. Finley Student Center; and at Brooklyn College they are paid by check of Brooklyn College Student Services Corp. At each college named above, the administration of the student center funds rests with the Dean of Students of the college. Although the handling of the details of hire, of supervision, of fixing of rates of pay and of related matters, differ from college to college, responsibility for hire and supervision of student center employees lies with the Dean of Students of each college.

In community colleges, such as Borough of Manhattan Community College, administration of student center funds is handled through faculty-student associations. However, even in these colleges, the record indicates there is substantial involvement on the part of the Deans of Students.

The Deans of Students are employees of the Board of Higher Education engaged in, and in charge of, the performance of administrative services in their respective colleges. A Board of Higher Education "minute." dated January 27, 1969, introduced into evidence by the City to explain "the situation with respect to employees of the student activity centers in the various schools." It clarifies the reasons for the involvement of the Deans of Students in the administration of student center funds and the hiring and supervision of employees paid from those funds. The "minute" records a resolution specifying that monies received for student activity from student activity fees "are earmarked and must be so disbursed by the college, which is merely a trustee and disbursing agent for such monies . . . "

V. Findings and Conclusions

A. Jurisdiction

The student center employees are hired, supervised, have the amounts of their pay fixed, and are paid under the direction of the respective Deans of Students.

The several Deans perform a management function, their conduct being consistent with the authority exercised by an agent of the employer in the context of labor relations. Since the Board of Higher Education is aware and has knowledge of the role played by the several Deans with respect to the employees involved, and has assented to that role, we find and conclude that the several Deans were empowered by the Board of Higher Education, as employer, to exercise the authority the Board could and did exercise in maintaining a crew of employees in the various student centers in furtherance of the Board's overall educational objectives and responsibilities.

We conclude, therefore, that the employees here involved are employees of the Board of Higher Education within the meaning of the New York City Collective Bargaining Law and, accordingly, we exercise jurisdiction.

We do not agree that, as urged by SEIU, the employees here involved "are not public employees . . . because they are not paid out of public moneys . . ." inasmuch as we find that under the NYCCBL that requirement is applicable solely to a "municipal agency" and not a public employer."<sup>1</sup>

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The term "municipal agency," the employees of which, by statutory definition, are paid in whole or in part from the City Treasury, does not include the Board of Education, the Board of Higher Education, nor the Administrative Board of the Judicial Conference. These agencies, by statutory definition, are "public employers" without the condition that their employees be paid from the City Treasury. (See §1173-3.0d, g, and h.)

Nor do we agree with SEIU's second contention that we should refuse to assert jurisdiction over these employees "because the work of the student centers . . . is not actually a direct necessity to the instructional process." It is our view that this contention is without merit and irrelevant as to the issue of jurisdiction.

B. The Appropriate Unit

The SEIU contends that, a unit of employees is appropriate at Baruch College because wages and benefits of student center employees at Baruch College are somewhat different from those at other student centers. We do not regard such contention as significant, particularly since, as SEIU concedes, there is no substantial difference with respect to the functions of the employees. (See Matter of Local 300 SEIU, Decision No. 12-70.)

We, therefore find and conclude that the student center employees engaged in the tasks described herein at the student centers named below constitute a single appropriate unit: Baruch College Student Center, Brooklyn a College Student Center, City College (John H. Finley) Student Center, Queens College Student Center, Hunter College (Roosevelt House) Student Center, and Borough of Manhattan Community College Student Center.

In view of the various differences indicated by the record herein including, inter alia, differences in recruitment, immediate supervision, payment, and source of funds for payment, and in accord with the position taken by all of the parties herein we find and conclude that the interest of employees performing custodial, cleaning, pantry, and related work at college student centers are different from those of Civil Service employees at the various colleges. We shall, therefore, exclude Civil Service employees from the unit herein found appropriate.



We have heretofore noted that none of the parties has expressed a position with respect to the inclusion or exclusion of mechanics employed at student centers. In view of the normally close working relationship between mechanical employees and those engaged in operations relating to maintenance, we find and conclude that mechanics in non-Civil Service categories should be included in the bargaining unit.

Since it appears that DC 37 and SEIU each has a sufficient showing of interest in the unit which we find appropriate, we will conduct an election in which both unions may appear on the ballot. If either union does not desire its name to appear on the ballot, it may so advise the Board, in writing, within ten (10) days after service of this Direction of Election,

#### VI. Summary

We find and conclude that the exercise of jurisdiction is appropriate in this case and that all employees of the colleges and community colleges of the Board of Higher Education who are engaged in performing custodial, cleaning, pantry, and related work, including mechanics in non-Civil Service categories, but excluding all employees in Civil Service categories constitute a unit appropriate for the purposes of collective bargaining in fact and within the meaning of the NYCCBL.

DIRECTION OF ELECTION

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

DIRECTED, that as part of the investigation authorized by the Board, 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, among the employees in the unit heretofore found appropriate in Section V above who were employed at college student centers under the jurisdiction of the Board of Higher Education during the payroll period immediately preceding this Direction of Election (other than those who have voluntarily quit or who have been discharged for cause before the date of election), to determine whether they desire to be represented for the purposes of collective bargaining by Local 32B, Service Employees International Union, AFL-CIO, by District Council 37. AFSCME, AFL-CIO, or by neither, and it is further

DIRECTED, that either of said employee organizations may have its name removed from the ballot in the aforementioned election, by filing with the Board within ten (10) days after service of this Direction of Election a written request that its name be removed from said ballot

DATED: New York, N.Y.

March 24 , 1971.

ARVID ANDERSON  
C h a i r m a n

WALTER L. EISENBERG  
M e m b e r

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ERIC J. SCHMERTZ  
M e m b e r