

DC 37 V. CITY, 8 OCB 42 (BOC 1971) [Decision No. 42-71 (Cert.)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF CERTIFICATION

----- X

In the Matter of

DISTRICT COUNCIL 37, AFSCME, AFL-CIO

-and-

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

DECISION NO. 42-71

Petitioners

DOCKET NO. RU-99-69

-and-

THE CITY OF NEW YORK AND RELATED PUBLIC
EMPLOYERS

----- X

DECISION AND ORDER

On February 14, 1969, District Council 37, AFSCME, AFL-CIO (D.C. 37) filed a petition with the Office of Collective Bargaining requesting certification as the collective bargaining representative "of all civilian employees employed by the Department (of Corrections) in matters which must be uniform for such employees." The petition was thereafter amended by letter dated June 9, 1969 to constitute a request for designation pursuant to Section 5a(3) of Executive order 52 rather than for certification. By letter dated February 18, 1971, Local 237, I.B.T. which had earlier intervened in the matter, joined with D.C. 37 in support of the amended petition and the two unions requested that they be designated jointly to represent "all non-uniformed employees of the Department of Corrections on matters which must be uniform for such employees."

Section 5a of Executive Order 52 defines the various types of collective bargaining units with which the City is obligated to bargain; it also fixes the various levels at which bargaining may take place.

Section 5a(1) relates to bargaining on wages, hours and working conditions for an occupational group of employees.

Section 5a(2) deals with bargaining on matters affecting all Career and Salary Plan employees.

Section 5a(4) is concerned with bargaining for employees in the uniformed forces.

Section 5a(5) covers bargaining on pensions for employees other than those in the uniformed forces.

Section 5a(3), with which we are concerned here, deals with a separate and limited level of bargaining for a unit confined to a single department; it reads as follows:

"§5. MATTERS WITHIN THE SCOPE OF
COLLECTIVE BARGAINING.

"a. Subject to the provisions of paragraph (c) below the City shall have the duty to bargain in good faith:

"(3) with an employee organization, council or group of employee organizations designated by the Board of Certification as representing more than 50 per cent of all employees within a department on matters which must be uniform for all employees in the department, but only if such organization, or in the case of a group or council, each organization in such group or council, has been previously certified as a City-wide bargaining representative for an appropriate bargaining unit. The fore-

going shall not prevent the City from meeting with any other employee organization representing such employees for the purpose of hearing the views and requests of its members on such matters, provided that the organization, council or group designated as representing 50 per cent of such employees is informed in advance of the meeting and any changes in the terms of such department-wide matters is effected only through the negotiations with it."

The foregoing language requires the City to negotiate with one union or a group of unions representing more than 50% of all employees in a department on matters in the department which must be uniform for all such employees.

The interpretation of Sec. 5a of Executive Order 52 was discussed at length in Matter of District Council 37 -and- N.Y.C. Health and Hospitals Corp., Decision No. 92-70, where we said:

"The collective bargaining structure provided in Executive order 52 for mayoral agencies thus divides the subjects of collective bargaining into ...areas in which the necessities of a vast and complex civil service system, and efficiency of operation, mandate uniformity. The 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)."

While Section 5a(4) distinguishes between uniformed and non-uniformed employees for certain bargaining matters, the

language of Section 5a(3) makes no distinction warranting the designation of a representative for non-uniformed employees alone within a particular department. The designation authorized by Section 5a(3) embraces all categories of employees, both uniformed and non-uniformed.

The unit requested here is limited to "non-uniformed employees" of the Department of Corrections and is consequently significantly narrower in scope than the type of unit authorized by Section 5a(3) and would create at least two bargaining units within the Department of Corrections, one of uniformed and the other of non-uniformed employees.

In a similar case, where the union sought designation as the collective bargaining representative of all employees of the City University of New York subject to the Career and Salary Plan but excluding employees in nineteen specified titles we held that the requested exclusions were "inconsistent with the claimed right to negotiate on matters which must be uniform for all Career and Salary Plan employees employed by the Board of Higher Education." (Matter of District Council 37 -and- City University of New York, Decision No. 40-69).

We find and conclude in the instant matter that the unit requested is inappropriate by reason of the fact that it would be comprised of less than "all employees within (the Department of Corrections)"; moreover, our investigation reveals

that the various certifications held by petitioners in the Department of Corrections cover less than fifty per cent of all the employees in that Department. Accordingly we find that the requested designation is not warranted.

ORDER

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

ORDERED, that the petition filed herein, be and the same hereby is, dismissed.

Dated: New York, N.Y.

May 17, 1971

ARVID ANDERSON
CHAIRMAN

WALTER L. EISENBERG
MEMBER

ERIC J. SCHMERTZ
MEMBER