

CIVIL SERVICE FORUM LOCAL 300, SEIU V. CITY, 8 OCB 70 (BOC 1971)
[Decision No. 70-71 (Cert.)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF CERTIFICATION

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In the Matter of

CIVIL SERVICE FORUM LOCAL 300,
SEIU, AFL-CIO

-and-

DECISION NO. 70-71

DISTRICT COUNCIL 37, AFSCME,
AFL-CIO

DOCKET NOS.

-and-

RU-173-70

RU-228-70

RU-229-70

CITY INSPECTORS GUILD

RU-262-71

-and-

THE CITY OF NEW YORK AND
RELATED PUBLIC EMPLOYERS

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

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DECISION, ORDER, AND
DIRECTION OF ELECTIONS

A hearing on the respective representation petitions filed by Civil Service Forum Local 300, SEIU, AFL-CIO (Local 300); by District Council 37, AFSCME, AFL-CIO (DC 37) and by City Inspectors Guild (The Guild) was held on April 8 and 19, 1971, before Oscar Geltman, Esquire, Trial Examiner. Local 300, DC 37, The Guild, and The City of New York appeared and participated.

Upon consideration of the entire record herein, and after due deliberation, the Board of Certification issues the following Decision, Order, and Direction of Elections.

I. Unit Positions of Parties¹

The respective positions of the parties and the units sought by them are as follows:

Local 300 seeks a unit of supervising employees comprised of Principal Consumer Affairs Inspectors, Supervising Consumer Affairs Inspectors, Principal Inspectors of Ports and Terminals and Supervising Inspectors of Ports and Terminals.² (Docket No. RU-173-70).

DC 37 seeks a unit comprised of the titles described in the preceding paragraph including the additional titles of Senior Inspectors of Consumer Affairs and Senior Inspectors of Ports and Terminals. (Docket. No. RU-228-70). Local 300 opposes the inclusion of the additional titles asserting that Senior Inspectors are not supervisory employees, and hence should be excluded from a supervisory unit.

DC 37 also seeks a separate unit non-supervisor employees comprised only of Consumer Affairs Inspectors and Inspectors of Ports and Terminals, (Docket No. RU-229-70).

The proceedings under the petition filed by Local 300 (Docket No. RU-173-70), and under petitions filed by DC 37 (Docket Nos. RU-228-70 and RU-229-70), were consolidated by Board order. Motions by the Guild (a) to intervene and (b) to consolidate the proceedings under its petition (Docket No. RU-262-71), with the other proceedings described above, are granted.

Originally, Local 300 sought a narrower supervisory unit, but at the hearing and in its brief it urged the position noted above.

The Guild seeks a unit of Consumer Affairs titles, including both supervisory and non-supervisory employees, requesting that supervisory employees be permitted to vote as to whether or not they desire to be included in a single unit with non-supervisory employees, (Docket No. RU-262-71).³

The City urges that the titles of Principal Consumer Affairs Inspector and Principal Inspector of Ports and Terminals are managerial and, therefore, should be excluded from any unit found appropriate. No other position with respect to inclusion or exclusion of particular titles was urged by the City, except that inspectorial titles in both the Consumer Affairs Department and the Department of Ports and Terminals belong in the same unit.

II. Status of Organization

It is undisputed, and, we find and conclude, that Local 300 and DC 37 are public employee organizations within the meaning of the New York City Collective Bargaining Law.

The City made inquiry as to The Guild's purposes and as to steps taken by The Guild in connection with its founding, but the City does not seriously question the status of The Guild as a labor organization. Based upon our investigation and upon consideration of the record herein, we find and conclude that The Guild is a public employee organization within the meaning of the New York City Collective Bargaining Law.

Originally The Guild also sought inclusion of employees in the title of Principal Inspector but at the hearing declared that it would not urge any position as to whether that title should be included.

III. The Facts Adduced at the Hearing

A. Reorganization and Shifts of Personnel and Duties.

Within the Department of Consumer Affairs of the City of New York which was created in 1968, were consolidated functions of the Department of Licenses and of Markets and other functions. Some inspectorial employees of the Department of Markets, employed in the Bureau of Weights and Measures, were transferred to the newly created Department of Consumer Affairs while others, employed in the Bureau of Markets, were transferred to the Department of Ports and Terminals under the administrative jurisdiction of the Economic Development Administration. In addition, there were transferred to the Department of Consumer Affairs employees of the former Department of Licenses.

The inspectorial employees transferred from the Bureau of Weights and Measures and the Department of Licenses to the Department of Consumer Affairs have continued to perform, essentially, the same functions as in the past; namely, the inspection of weighing and measuring devices, the issuance of summonses for maintaining faulty devices, and carrying out duties relating to the issuance of licenses. Similarly, employees transferred from the Bureau of Markets to the Department of Ports and Terminals have continued to perform, essentially, the same functions as in the past; namely, checking on complaints concerning practices in the various public markets throughout the city and issuing summonses for violations of standards designed to protect consumers. In all instances, the duties of such employees, whether employed in the Department of Consumer Affairs or in the Department of Ports and Terminals, are of an inspectional nature with common mission of assuring fair practices by merchants who deal with the consuming public.

B. Duties and Responsibilities by Title in the
Departments of Consumer Affairs and Ports
and Terminals

Senior Inspectors, next in rank over Inspectors both in the Department of Consumer Affairs and in the Department of Ports and Terminals perform the same functions as do Inspectors, except that the more complicated investigations normally are assigned to Senior Inspectors. In both Departments, in the absence of Supervising Inspectors, Senior Inspectors occasionally are assigned to act as Supervising Inspectors.

Supervising Inspectors, next in rank over Senior Inspectors, perform supervisory functions. Principal Inspectors, next in rank over Supervisory Inspectors, likewise perform supervisory functions.

The one Principal Inspector now in the Department of Consumer Affairs was transferred from the Bureau of Weights and Measures, and the one Principal Inspector now in the Department of Ports and Terminals, was transferred from the Bureau of Markets. As in the case of the transferees in the other titles referred to, the Principal Inspectors continue to perform, essentially, the same functions as they performed in their former respective departments.⁴

Neither of the Principal Inspectors is in the City's managerial pay plan.

The title of each, while in the Department of Markets, was Chief Inspector. Early in 1970, each title was changed to Principal Inspector.

The Department of Consumer Affairs hierarchy, in descending order above the Principal Inspector title, is as follows: Commissioner, First Deputy Commissioner, Director of Operations Division and Director of Field Operations; The Department of Ports and Terminals hierarchy, in descending order above the Principal Inspector title, is as follows: Administrator of Economic Development Administration, Commissioner of Department of Ports and Terminals, Deputy Commissioner and Director of Property Management Services.

In the Department of Consumer Affairs, policy decisions are made by those who are above the Principal Inspector. The Principal Inspector then is informed of the decisions made and is asked to prepare procedures for implementing the decisions.⁵ After the Principal Inspector has prepared a plan of implementation, he must clear it with his superior before putting it into effect. He is occasionally called on to participate in conferences with his superiors in connection with matters involving his expertise in the field of weights and measures.

In the Department of Ports and Terminals, similarly, decisions on policy matters are made by those in positions superior to that of Principal Inspector. The Principal Inspector in the Department of Ports and Terminals testified that he is not consulted when an appointment is being made from the Civil Service list, that he has never made any recommendations concerning the termination of employees who are unsatisfactory, that although he

The Consumer Affairs Director of Field Operations testified: "If a new program is decided upon by Mr. Sack or by Commissioner Stern or by Commissioner Meyerson, after discussing the program with me usually, I will give [the Principal Inspector] the results of our discussions, the higher level discussions, and ask him to implement both by personnel, and if necessary, by equipment, the decisions that had been reached by Mr. Sack and myself."

makes evaluations of performance by his subordinates for the Deputy Commissioner, the latter does not always act on the evaluations, and that he has never instituted or conducted departmental disciplinary proceedings. No testimony was adduced with respect to any involvement of the Principal Inspector in the Department of Consumer Affairs in matters of this kind.

IV. The Appropriate Unit

A. Inspectional Titles (Consumer Affairs and Ports and Terminals Inspectorial Titles)

We take administrative note of the fact that the Department of Consumer Affairs and the Economic Development Administration were products of the employer's (City) reorganization of its governmental functions. The overall objective of such reorganization was the centralization of authority and jurisdiction within a small number of multi-functional administrations and, concomitantly, the elimination of a variety of legally autonomous departments possessing specific Charter functions.

The record clearly shows that inspectorial employees formerly in the Bureau of Weights and Measures and in the Bureau of Markets of the Department of Markets are engaged in the performance of closely related functions. The record establishes that though transferred to the Departments of Consumer Affairs and Ports and Terminals, they have continued to perform substantially the same functions.

Under the circumstances, we find that employees in the entire range of inspectorial titles, in both the Departments of Consumer Affairs and Ports and Terminals, are in similar occupational groups, sharing a community of interest common to employees characterized by the same basic function in the performance of a mission whose end purpose is to protect the

consuming public.

However, the consolidation and reorganization of the employer's operations resulted in employees, whose functions had not changed, being represented by different and rival employee organizations.

Thus, the integration of operations under one overall supervision and the centralization of administrative authority impels a dissolution of the prior smaller bargaining units, giving rise to a question of representation requiring resolution.

Equally compelling, is the need to structure a unit whose scope is co-extensive with the City-wide functions of the agencies involved. Accordingly, we find and conclude, under the circumstances of this case, that a City-wide unit as hereinafter delineated, is appropriate for bargaining purposes.

B. Senior Inspectors:

The record establishes that these employees perform the same functions as do Inspectors, but are assigned to more complicated investigations. The fact that occasionally they are assigned to act as Supervising Inspectors, but are themselves closely supervised when so assigned, does not in our opinion, constitute a sufficient basis for finding them to be supervisory employees. Accordingly, we find and conclude that Senior Inspectors in the Departments of Consumer Affairs and Ports and Terminals are not supervisory employees and for the same reasons that we have set forth in connection with employees in the inspectional titles, they should be grouped, for unit purposes, with Inspectors.

C. Principal Inspectors:

The record establishes that Principal Inspectors, although consulted and relied upon for their expertise, do not engage as participants in the higher level discussions which result in the establishment of departmental policy; that they

are informed of the decisions reached in such discussions and are asked to prepare procedures for implementing those decisions, but that they do not have authority to execute the implementing procedures without first obtaining approval of those in higher echelons. It appears, moreover, that the Principal Inspector in the Department of Ports and Terminals has had no part in the appointment, discharge or discipline of other employees; and there is no indication in the record of any involvement of the Principal Inspector in the Department of Consumer Affairs in such matters.

Accordingly, and upon consideration of the entire record herein, we find and conclude that Principal Inspectors in the Departments of Ports and Terminals and Consumer Affairs, are not managerial-executive employees and that they are supervisory employees.⁶

D. Summary:

Based upon the entire record, for the reasons hereinabove set forth, we find and conclude that each of the units described below is appropriate for the purposes of collective bargaining within the meaning of the New York City Collective Bargaining Law. We further find that the unit described as "Unit (1)" is a non-supervisory unit and that the unit described as "Unit (2)" is a supervisory unit:

Unit (1)

All employees in the titles of Consumer Affairs Inspector, Senior Consumer Affairs Inspector, Inspector of Ports and Terminals, Senior Inspector of Ports and Terminals.

See Matter of District Council 37, AFSCME, AFL-CIO, Decision No. 65-70 (Principal Public Health Sanitarians); Matter of Local 154, District Council 37, AFSCME, AFL-CIO, Decision No. 73-68 (Principal Human Rights Specialists).

Unit (2)

All employees in the titles of supervising Consumer Affairs Inspector, Principal Consumer Affairs Inspector, Supervising Inspector of Ports and Terminals, Principal Inspector of Ports and Terminals.

V. Request for Self-Determination Election

The Guild has requested that supervisory employees be afforded an opportunity to vote as to whether they desire to be placed in the same unit as non-supervisory employees. Since the New York City Collective Bargaining Law, Sec. 1173-3.01 provides for and authorizes such an election to ascertain the desires of the supervisory employees as to whether they prefer to bargain in a separate unit, If in a larger unit including the non-supervisory employees, we shall direct such election. The procedure for holding such an election will be described more fully below. Our formal unit findings will be determined by the outcome of that election.

VI. Preliminary Conclusions

As stated above, our final unit determination herein will be determined by the outcome of the self-determination election to be conducted among all eligible supervisory employees in the titles described in IV D (2) above. If a majority of the supervisory employees voting in the self-determination election decide to bargain in a separate unit, we shall find such a unit appropriate.

If a majority of the supervisory employees voting in the self-determination election do not signify a desire to bargain separately, we shall find appropriate a single unit comprised of both non-supervisory and supervisory employees, and their ballots will be mingled.

VII. The Elections

The elections provided for herein will be conducted simultaneously.

The non-supervisory employees will be furnished the Board's usual form of ballot upon which they will be asked to indicate whether they desire to be represented for the purposes of collective bargaining by Civil Service Forum, Local 300, SEIU, AFL-CIO; by District Council 37, AFSCME, AFL-CIO; by City Inspectors Guild; or by none.

The supervisory employees will be furnished the Board's usual form of ballot upon which they will be asked to indicate whether they desire to bargain separately from or together with non-supervisory employees, and whether they desire to be represented for the purposes of collective bargaining by any of the labor organizations named above, or by none.

ORDER AND DIRECTION OF ELECTIONS

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

DIRECTED:

1. That as part of the investigation authorized by the Board, elections by secret ballot shall be conducted under the supervision of the Board, or its agents, at a time or times, place or places, and during hours to be fixed by the Board, among:

A. Consumer Affairs Inspectors, Senior Consumer Affairs Inspectors, Inspectors of Ports and Terminals and Senior Inspectors of Ports and Terminals employed by the City of New York and related public employers subject to the jurisdiction of the Board of Certification during the payroll period immediately preceding this Direction of Election, other than those who have voluntarily quit, retired, or who have been discharged for cause before the date of the election.

B. Supervising Consumer Affairs Inspectors, Principal Consumer Affairs Inspectors, Supervising Inspectors of Ports and Terminals and Principal Inspectors of Ports and Terminals employed by the City of New York and related public employers subject to the jurisdiction of the Board of Certification during the payroll period immediately preceding this Direction of Election, other than those who have voluntarily quit, retired, or who have been discharged for cause, before the date of election.

2. The question to be voted on in the election directed in paragraph "1A," above, shall be: "Do you desire to be represented for the purposes of collective bargaining by Civil Service Forum, SEIU, AFL-CIO; by District Council 37, AFSCME, AFL-CIO; by City Inspectors Guild, or by none of the foregoing?"

3. The questions to be voted on in the election directed in paragraph "1B," above, shall be:

(a) Do you desire to be represented for the purposes of collective bargaining (1) in a separate unit limited to the supervisory titles of Supervising Consumer Affairs Inspector, Principal Consumer Affairs Inspector, Supervising Inspector of Ports and Terminals and Principal Inspector of Ports and Terminals, or (2) in a combined unit of Consumer Affairs Inspectors Senior Consumer Affairs Inspectors, Supervising Consumer Affairs Inspectors, Principal Consumer Affairs Inspectors, Inspectors of Ports and Terminals, Senior Inspectors of Ports and Terminals, Supervising Inspectors of Ports and Terminals and Principal Inspectors of Ports and Terminals?"

"(b) Do you desire to be represented for the purposes of collective bargaining by Civil Service Forum Local 300, SEIU, AFL-CIO; by District Council 37, AFSCME, AFL-CIO; by City Inspectors Guild; or by none of the foregoing?"

4. If a majority of the supervisory employees casting valid ballots in the election:

(a) vote in favor of a combined unit, the votes cast by such employees on question 3(b), above, shall be counted and tabulated with the votes cast by Consumer Affairs inspectors, Senior Consumer Affairs Inspectors, Inspectors of Ports and Terminals, and Senior Inspectors of Ports and Terminals.

(b) do not vote in favor of a combined unit, the votes of such employees on question 3(b), above, shall be counted and tabulated separately;

and it is further

ORDERED, that any of said employees organizations may have its name removed from either or both ballots in the aforementioned elections by filing with the Board within ten (10) days after service of this Direction of Election a written request that its name be removed.

DATED: New York, N.Y.

September 28, 1971

ARVID ANDERSON
C h a i r m a n

WALTER L. EISENBERG
M e m b e r

ERIC J. SCHMERTZ
M e m b e r