

LOCAL 237 I.B.T. V. CITY, 8 OCB 75 (BOC 1971) [Decision No. 75-71 (Cert.)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF CERTIFICATION

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In the Matter of

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

DECISION NO.75-71

Petitioner

DOCKET NO. RU-256-71

-and-

DISTRICT COUNCIL 9 OF NEW YORK CITY,
INTERNATIONAL BROTHERHOOD-OF-PAINTERS
AND ALLIED TRADES, AFL-CIO, and LOCAL
246, SERVICE EMPLOYEES INTERNATIONAL
UNION, AFL-CIO,

Joint Intervenors

-and-

THE CITY OF NEW YORK AND RELATED
PUBLIC EMPLOYERS

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DECISION, ORDER, AND AMENDED
DIRECTION OF ELECTION

On August 16, 1971 the Board of Certification issued Decision No.61-71 directing an election among a unit of Painters, Foreman Painters, House Painters, Foreman House Painters, Sign Painters and Letterers employed by the City of New York and related public employers subject to the jurisdiction of the Board of Certification, to determine whether they desired to be represented for purposes of collective bargaining by Local 237, International Brotherhood of Teamsters or by District Council 9, Brotherhood of Painters, Decorators and Paper Hangers of America, AFL-CIO, or by neither union. At the same time the Board dismissed the petition of Local 246,

Service Employees International Union, AFL-CIO, for a unit of Sign Painters and Letterers only.

Subsequently, on August 18, 1971, City Employees Union Local 237, I.B.T., moved to reopen the proceedings to present evidence of additional facts alleged not to have been in the record when the Board made its decision. This motion was denied, and Decision 61-71 was reaffirmed by the Board of Certification in Decision 68-71 on September 27, 1971.

On October 15, 1971, District Council 9, which has altered its name to District Council 9 of the City of New York, International Brotherhood of Painters and Allied Trades, AFL-CIO, moved for an order to place it and Local 246, S.E.I.U., AFL-CIO, on the ballot, jointly, to represent the employees in the bargaining unit found to be appropriate by the Board in Decision 61-71. The time to respond to the motion has expired, and no answering papers have been received from the City or from Local 237, I.B.T., in opposition to the motion.

District Council 9's motion seeks, in effect, to amend its intervention in RU-256-71, nunc pro tunc, to include as a joint intervenor with it Local 246, Service Employees International Union, AFL-CIO. Read in this light the motion requests that District Council 9 and Local 246 be placed on the ballot as a joint collective bargaining agent, and cites as the reason for the request the desire of the two unions,

both AFL-CIO affiliates, "to avoid any possibility of violating Article XX," the no-raiding provision of the Federation's Constitution. In a letter dated October 12, 1971 the two unions had formally requested that they be permitted to appear on the ballot jointly as a single collective bargaining agent.

Section 13.8 of the Rules and Regulations of the Office of Collective Bargaining sets forth that "upon motion of any party, parties may be added, dropped, or substituted at any stage of the proceedings, upon such terms as may be deemed proper." Since a certification has not as yet been issued, the proceedings herein are deemed pending and, therefore, the motion of District Council 9 is proper.

Local 246 and District Council 9 submitted a sufficient showing of interest (although separately) through dues checkoff authorizations, and in our view whether such dues checkoff indicates a desire for individual or joint representation by the unions constituting the joint bargaining agent is not significant, since proof of interest may be pooled to support a petition for representation (Bailey Department Stores Co., 120 NLRB No.118). Moreover, in the final analysis, the representation election will determine the employees' desires either for or against joint representation.

In seeking a joint bargaining representative status the unions are deemed to have impliedly represented to the Board that they will represent jointly all the employees in the unit, and, if certified, the City-employer may insist that they do in fact bargain jointly for all the employees in the unit (Allied Chemical & Dye Corp., 120 NLRB 63).

The Board has heretofore entertained petitions by unions seeking certification as joint bargaining agent of employees in an appropriate bargaining unit prior to a direction of election (Decisions Nos.50-70; 75-70; 77-70), and in the private sector precedent exists which, under similar circumstances, upholds the authority of a labor relations agency to certify a joint collective bargaining agent (N.L.R.B. v. National Truck Rental, CA (DC), 38 LRRM 2781; certiorari denied, 39 LRRM 2453). There appears to us, therefore, to be no sound reason why any distinction should be made with respect to the joinder of unions on the ballot as a single bargaining agent whether before or after a decision has been rendered directing an election.

We find and conclude, therefore, that District Council 9's application to amend its intervention nunc pro tunc to allow Local 246, S.E.I.U., to participate in the election herein as a joint intervenor, should be granted, that the name of Local 246, S.E.I.U., should appear on the ballot jointly with District Council 9, and that if they are

successful in the election hereinafter directed that they be certified jointly as the representative of the employees in the appropriate unit.

ORDER AND AMENDED DIRECTION
OF ELECTION

By virtue of and pursuant to the power vested in the Board of Certification by the New York City Collective Bargaining Law, it is hereby

ORDERED, that the application of District 9 to amend its intervention nunc pro tunc, be, and the same hereby is, granted, and it is further

ORDERED, that Local 246, Service Employees International Union, AFL-CIO, and District Council 9 of the City of New York, International Brotherhood of Painters and Allied Trades, AFL-CIO, be, and the same hereby are, placed on the ballot, jointly, in the election herein directed, and it is further

DIRECTED, that 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, to determine whether Painters, Foreman Painters, House Painters, Foreman House Painters, Sign Painters, and Letterers 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

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the date of this Direction of Election (other than those who have voluntarily quit or who have been discharged for cause before the date of the election) desire to be represented for purposes of collective bargaining by City Employees Union, Local 237, I.B.T., or by District Council 9 of New York City, International Brotherhood of Painters and Allied Trades, AFL-CIO and Local 246, S.E.I.U., AFL-CIO, jointly; or by neither.

DATED: New York, N.Y.

November 5, 1971

ARVID ANDERSON
CHAIRMAN

ERIC J. SCHMERTZ
MEMBER

WALTER L. EISENBERG
MEMBER