

***United Federation of Teachers, 80 OCB 12 (BOC 2007) [ Decision No. 12-2007]***  
(Rep) (Docket No. RU-1253-07).

***Summary of Decision:*** The UFT filed a petition to represent Hearing Officers (Per Session) in a separate bargaining unit. The City objected on the grounds that accretion to another union's bargaining unit would be more appropriate. As employees in the title at issue had previously voted out of the other union's bargaining unit and the other union did not seek to represent them, the Board found that a separate bargaining unit was appropriate and ordered an election to determine if the employees wish to be represented by the UFT. ***(Official decision follows.)***

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**OFFICE OF COLLECTIVE BARGAINING  
BOARD OF CERTIFICATION**

**In the Matter of the Certification Proceeding**

***-between-***

**UNITED FEDERATION OF TEACHERS,**

***Petitioner,***

***-and-***

**CITY OF NEW YORK,**

***Respondent.***

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**DECISION AND DIRECTION OF ELECTION**

On February 2, 2007, the United Federation of Teachers ("UFT") filed a petition to represent employees in the title Hearing Officer (Per Session) (Title Code No. 95937) in a separate bargaining unit. The employees at issue are part-time administrative law judges at the Department of Environmental Protection, the Department of Health and Mental Hygiene, and the Taxi and Limousine Commission. The City of New York ("City") argued that a separate bargaining unit was inappropriate and that the title should be accreted to Certification No. CWR-44-67, a bargaining unit represented by the Civil Service Bar Association, Local 237, International Brotherhood of Teamsters,

AFL-CIO (“CSBA”), which includes titles such as Agency Attorney. Some employees in CSBA’s bargaining unit function as full-time administrative law judges. *See Civil Serv. Bar Ass’n*, Decision No. 1-1999 at 14.

Hearing Officers (Per Session) had previously been added to CSBA’s bargaining unit. *Civil Serv. Bar Ass’n*, Decision No. 1-1999. However, when the Union discovered that an annual cap on the number of hours Hearing Officers (Per Session) could work limited their ability to receive benefits under the Citywide Agreement, the Union requested that the employees be given the opportunity to vote on whether they wished to continue to be represented by CSBA. *Local 237, I.B.T.*, Decision No. 9-1999. The employees voted to no longer be represented.

Notice of the UFT’s petition was published in the City Record and sent to directly to CSBA. CSBA did not express an interest in representing these employees. Further, no union other than the UFT expressed an interest in representing these employees. Under these limited circumstances, a separate bargaining unit is appropriate under the New York City Collective Bargaining Law (New York City Administrative Code, Title 12, Chapter 3) (“NYCCBL”). *See Fire Alarm Dispatchers Benevolent Ass’n*, Decision No. 57-78 at 5 (finding a separate bargaining unit of formerly represented employees appropriate when, among other things, “no other employee organization has expressed an interest in representing these employees”).

The City did not provide, and we did not find, any legal support for the proposition that a union should be certified to represent titles that it does not wish to represent. Such a proposition is inconsistent with the Board’s practice and prior decisions. In ordering elections between two or more unions, the Board has allowed any union that “does not desire to participate in the election” the opportunity to “decline to do so” even though accretion to its bargaining unit would be

appropriate. *Org. of Staff Analysts*, Decision No. 5-2006 at 51; *Local 371, Soc. Servs. Employees Union*, Decision No. 1-2005 at 32; *see District Council 37, AFSCME*, Decision No. 12-95 at 20; *Civil Serv. Technical Guild, Local 375, AFSCME*, Decision No. 27-80 at 21. Similarly, in certain cases, the New York Public Employment Relations Board (“PERB”) has found accretion to a bargaining unit represented by a non-party to be appropriate, but only where the non-party union was willing to represent the employees. *See New York Convention Center Operating Corporation*, 27 PERB ¶ 3034, at 3080 (1994); *Town of Cheektowaga*, 35 PERB ¶ 4020, at 4056 (2002); *Western Suffolk Bd. of Coop. Educ. Servs.*, 33 PERB ¶ 4039, at 4123 (2000). CSBA has not indicated that it wishes to represent Hearing Officers (Per Session). Accordingly, Hearing Officers (Per Session) are not appropriately placed in CSBA’s bargaining unit. *See Carr-Gottstein Foods Co.*, 307 N.L.R.B. 1316, 1318 (1992) (finding that accretion to a bargaining unit represented by a union that has disclaimed interest in representing the employees would be inappropriate).

Under these unique circumstances, a separate bargaining unit of Hearing Officers (Per Session) will “assure to public employees the fullest freedom of exercising the rights granted [under the NYCCBL] and under executive orders, consistent with the efficient operation of the public service, and sound labor relations.” NYCCBL § 12-309(b)(1); *see also* § 1-02(k) of the Rules of the Office of Collective Bargaining (Rules of the City of New York, Title 61, Chapter 1).

The Board is authorized “to determine the majority representative of the public employees in an appropriate collective bargaining unit by conducting secret-ballot elections or by utilizing any other appropriate and suitable method designed to ascertain the free choice of a majority of such employees.” NYCCBL § 12-309(b)(2). Therefore, we direct an election among the employees in the Hearing Officer (Per Session) title to determine whether the employees wish to be represented

by the UFT for purposes of collective bargaining.

**ORDER AND DIRECTION OF ELECTION**

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

ORDERED, that a separate bargaining unit for the title Hearing Officer (Per Session) (Title Code No. 95937) is appropriate; and it is further

DIRECTED, that as part of the investigation authorized by the Board, an election by secret ballot be conducted under the Board's supervision, at a date, time, and place to be fixed by the Board, among the employees in the Hearing Officer (Per Session) title employed by the City of New York and related public employers, to determine whether these employees wish to be represented by the United Federation of Teachers for the purposes of collective bargaining. Employees in the Hearing Officer (Per Session) title employed 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, are eligible to vote; and it is further

DIRECTED, that within 14 days after service of this Decision and Direction of Election, the City will submit to the Director of Representation an accurate list of the names and addresses of all the employees who are employed and who were employed during the payroll period immediately preceding the date of this Direction of Election.

Dated: July 11, 2007  
New York, New York

MARLENE A. GOLD  
CHAIR

GEORGE NICOLAU  
MEMBER