Civil Service Technical Guild, 56 OCB 6 (BOC 1995) [Decision No. 6-95, aff'd, **Civil Service Technical Guild v. MacDonald, No. 116355/95 (Sup. Ct. N.Y. Co. Jan. 10, 1997), aff'd, 249 A.D.2d 74, 669 N.Y.S.2d 1017 (1st Dep't 1998).]**

OFFICE OF COLLECTIVE BARGAINING
BOARD OF CERTIFICATION
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In the matter of

CIVIL SERVICE TECHNICAL GUILD,
LOCAL 375, DISTRICT COUNCIL 37,
AFSCME, AFL-CIO,

DECISION No. 6-95

--and--

DISTRICT COUNCIL 37, AFSCME, AFL-CIO, DOCKET No. RD-10-93

--and--

CITY OF NEW YORK.
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DECISION AND ORDER

On September 30, 1993, the Civil Service Technical Guild, Local 375, D.C. 37, AFSCME, ("L. 37511 or "Petitioner"), filed with the office of Collective Bargaining ("OCB") a verified "Petition to Set Aside or Terminate" the certification directed in Decision No. 9-88 with respect to the titles of Telecommunications Associate ("TA"), Levels I and II,[1] and Telecommunications Specialist (ITS").[2] Petitioner also filed an affidavit in support of the Petition. The certification which Petitioner seeks to terminate designates District Council 37, AFSCME, AFL-CIO, ("D.C. 37"), as the collective bargaining representative of the TA and TS titles.

On October 15, 1993, the OCB's Director of Representation wrote to the Office of Labor Relations ("OLR") and to D.C. 37, soliciting their respective positions on the instant Petition.

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[1] Title Code Number 20243.

[2] Title Code Number 20245.

Verified Answers were filed by D.C. 37 and by OLR for the City on November 18, 1993. On January 13, 1994, L. 375 submitted a Reply Memorandum, and two supporting affirmations by counsel as well as an affidavit by L. 375 President Louis G. Albano and an affidavit of Anthony Davis, Esq.

On February 25, 1994, D.C. 37 filed a surreply affirmation and memorandum of law. On March 14, 1994, counsel for L. 375 requested an extension of time to move to strike the surreply. By letter dated March 21, 1994, the Trial Examiner denied the motion and advised counsel for L. 375 that, while the Rules of the Office of Collective Bargaining ("Rules")[3] do not provide specifically for the filing of a surreply, in the past, the Board has accepted such a filing, determining after the fact whether special circumstances would warrant consideration of the material in question.[4]

For the first time, Petitioner's Reply raised an allegation of conflict of interest in the prosecution of an Article 78 proceeding to review Decision No. 9-88. We permitted the

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[3] Rules of the City of New York, Title 61.

[4] The Board of Collective Bargaining ("BCB") has considered written responses to a reply in several instances in which it found that new facts or legal theories were raised for the first time in the reply which warranted a response by the opposing party (Decision No. B-27-80, n. 1) and where such a response helped clarify the record in a particularly complex case (Decision No. 23-82, n. 2).

Respondent Union's surreply to become part of the record insofar as it relates to the question of conflict of interest.

Although the request of L. 375 for more time to move to strike the surreply was denied, it was deemed a request for time to submit a written statement concerning whether the Board of Certification ("Board") should consider or disregard the surreply in whole or in part, which request was granted by the Trial Examiner. Such a statement was filed on April 1, 1994.

Background

On July 8, 1986, a petition docketed as RU-972-86 was filed with the OCB by the Communications Workers of America ("CWA"), Local 1180 ("L. 1180"), seeking to accrete the TA and TS titles to Certification No. 41-73, covering various administrative and related titles including Principal Administrative Associate, held by L. 1180. On August 8, 1986, L. 375, represented by the Office of the General Counsel of D.C. 37, moved to intervene, seeking to accrete the titles to Certification No. 26-78, held by L. 375, covering various engineering, architectural, scientific, mechanical, inspectional and related titles. A hearing on the issue of unit determination of the eleven employees in the titles at issue commenced on June 19, 1987. On September 9, 1987, the City of New York ("City") filed a letter with the OCB in which it stated its position that L. 1180 was the appropriate unit. The

hearing resumed on October 1, 1987.

On October 30, 1987, Local 2627, D.C. 37, ("L. 2627"), represented by independent counsel, filed a motion to intervene for the purpose of demonstrating that:

> [t]he appropriate bargaining unit for the titles of Telecommunications Associate and Telecommunications Specialist is the unit consisting of various computer titles, as more fully described in certification 46D-75, as amended.

No objection was raised by any party either before or after the Trial Examiner granted the Local's intervention on November 6, 1987. Nor was any objection heard during the hearing when it resumed on November 24 and continued on February 8, 1988, at which time the hearing was concluded and the record was closed. On July 27, 1988, the Board issued Decision No. 9-88, finding that the most appropriate unit for the titles in question was the unit proposed by L. 2627, and, therefore, adding the two levels of the Telecommunications Associate title and the title of Telecommunications Specialist to Certification No. 46D-75 held by D.C. 37. D.C. 37 assigned internal jurisdiction over the titles to L. 2627.

On September 6, 1988, L. 375 sought judicial review of Decision No. 9-88 pursuant to Article 78 of the Civil Practice Law and Rules ("CPLR").[5] L. 375 argued that the Decision was

[5] CSTG, L. 375, D.C. 37. AFSCME, v. MacDonald et al., Index No. 17609-88 (Sup.Ct. NY County, Oct. 19, 1988).

arbitrary and capricious, contrary to law, an abuse of discretion and unsupported by the evidence.

It contended that the Board had relied on "criteria different from those mandated under the New York State Civil Service Law, §§ 200 et seq." Specifically, it said the Board disregarded any similarity between job descriptions for the new titles and the work performed by some of the union's members. It also said that the Decision made no reference to the designation cards filed by the union purporting to indicate majority status among workers in the new titles.

L. 375 was represented in Supreme Court by outside counsel; L. 2627 was represented by the General Counsel's Office of D.C. 37. All other parties in the representation proceeding also made appearances by counsel. A Stipulation of Discontinuance with prejudice, signed by all parties to the representation proceeding, was entered in Supreme Court on October 19, 1988, and filed on December 8, 1988.

Two years later, when the Department of Personnel added a new assignment level to the title of Telecommunications Associate,[6] D.C. 37 filed a petition[7] to add this Level III by accretion to Certification No. 46D-75, as amended. on January

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[6] Assignment Level III, created by Department of Personnel Memorandum, dated September 30, 1991.

[7] Docket No. RU-1102-91, filed on November 22, 1991.

29, 1992, L. 375 filed an application to intervene. The Board denied a motion by D.C. 37 to dismiss the application to intervene.[8] After prehearing conferences, numerous requests by the parties for adjournments, and an unsuccessful motion by L. 375 to stay the proceeding docketed as RU-1102-91 pending the outcome of the instant Petition,[9] a hearing was held on October 26, 1993, at which time counsel for all parties proposed a stipulation of settlement on the issue of community of interest. Upon its acceptance by the Board on June 9, 1994,[10] Certification No. 46D-75, as previously amended, was further amended to include the title of Telecommunications Associate, Level III, pending a final determination of the instant Petition; thereupon, Level III will be certified to the bargaining unit which will ultimately represent all of the titles at issue in the instant Petition.

The Public Employment Relations Board ("PERB") has considered a parallel proceeding under its jurisdiction. L. 375 petitioned PERB's Director of Representation to represent the same titles within the employ of the New York City Board of Education. L. 2627 was also a party to the PERB proceeding. L.

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[8] Interim Decision No. 4-93.

[9] Interim Decision No. 25-93.

[10] Decision No. 5-94.

375 moved to deny intervenor status to L. 2627 based on the latter's alleged lack of standing to participate in a representation proceeding. L. 375 asserted that L. 2627 did not possess its own bargaining certificate and therefore, arguably, was not a recognized or certified public employee organization within the meaning of PERB's Rules of Procedure, § 201.2(b). The Director denied the motion on the ground that the motion and response to it were supported by documents which were not part of the record and were devoid of evidentiary value.

At the conclusion of ten days of hearing over a span of eighteen months, PERB's Director of Representation determined that the most appropriate unit for the Board of Education's Telecommunications titles at issue was the unit for which L. 2627 petitioned. The basis of his determination was that the unit for which L. 2627 petitioned shared the greater community of interest with the jobs as performed by the Telecommunications employees. The Director reasoned that it was also "significant" that "L. 2627 has been certified by OCB as the collective bargaining agent for the titles in issue in this proceeding."[11] L. 375 filed an exception to the Director's reliance in part on the OCB's determination. PERB affirmed the Director's determination.[12] In

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[11] 26 PERB ¶4049 (Dir., Oct. 18, 1993).

[12] 27 PERB ¶3026 (May 31, 1994).

addition to affirming his unit determination based upon community of interest grounds, PERB observed that the Director's reliance in part upon the OCB determination was not an abuse of his discretion. PERB noted, "The action of the OCB was a unit determination made after hearing by a neutral agency. In any event," PERB went on to say, "without regard to . . . the OCB decision, we find that the record in this case fully supports the Director's determination." PERB also upheld the Director's determination that L. 2627 is an employee organization under the Public Employees' Fair Employment Act, § 201.5, notwithstanding the fact that the-local engages in coalition bargaining with other constituent locals of D.C. 37.

Positions of the Parties

Position of L. 375

L. 375 argues that the certification ordered in Decision No. 9-88 must be set aside or terminated for two alternative reasons. The first is that, because L. 2627 possessed no bargaining certificate in its own right, it lacked standing to petition to represent the employees in the titles at issue and the Board thus lacked jurisdiction to rule in favor of L. 2627. The second is that the proceeding upon which the Board based its determination in Decision No. 9-88 was tainted by a conflict of interest in the legal representation of L. 375.

In making its first alternative argument, Petitioner does not contest the bona fides of L. 2627 as an employee organization under NYCCBL § 12-303(j). It argues that such status alone does not confer standing to intervene in an accretion proceeding. It continues, as D.C. 37 was the certified collective bargaining agent for the unit of employees to which accretion was sought in RU-972-86, L. 2627 could not also be certified for that same unit. (At the same time, Petitioner acknowledges that the unit to which L. 2627 sought to have the titles at issue accreted was one certified to its parent D.C. 37, rather than to L. 2627 itself.)

In its alternate theory, Petitioner states that, if D.C. 37 is determined to have been the actual intervenor in RU-972-86, then there was a conflict of interest by way of the legal representation given to L. 375 by the General Counsel's Office of D.C. 37 on the one hand and, on the other, by the action of D.C. 37 in opposing L. 375 in the representation proceeding. Decision No. 9-88 should be set aside, Petitioner argues, because the Board did not inquire into the alleged conflict of interest.

Because of this purported conflict, Petitioner maintains that it could not have objected to the earlier proceeding and cannot now be precluded from challenging the Decision which issued therefrom. Petitioner maintains that neither collateral estoppel nor res judicata is applicable. In fact, Petitioner

says, when § 1-02(r) of the Rules, under which it proceeds, is invoked, the validity of a Board decision is necessarily and always at issue. Petitioner argues that § 1-02(r) expressly authorizes and specifically provides for such a challenge.

Petitioner maintains that the Stipulation of Discontinuance with Prejudice in the 1988 Article 78 proceeding was not a decision on the merits and does not preclude this challenge. Petitioner also maintains that the Stipulation barred resumption only of that Article 78 proceeding.

Petitioner argues that neither does § 1-02(r) prescribe any limitations period nor does the contract bar under § 1-02(g) apply here because, arguably, no valid contract was negotiated under the certification ordered in Decision No. 9-88.

As to unit placement, in Petitioner's view, certification of the titles at issue "must be awarded to either CWA Local 1180 or Local 375, i.e., one or another of the two unions that were legitimately party to the [earlier] proceedings."

Position of D.C. 37

Respondent D.C. 37 asserts that, in the proceeding docketed as RU-972-86, L. 2627 sought the accretion of the titles at issue, not under any pretense that it was applying for certification of a unit to itself, but to Certification No. 46D-75 held by D.C. 37. Respondent also asserts that the motion by

L. 2627 to intervene was supported by the requisite proof of interest and standing to participate by virtue of its contention that it would be injured by certification of the titles at issue in favor of another contending union.

D.C. 37 argues that L. 375 should be precluded from challenging Decision No. 9-88 because it had an opportunity to participate -- and did participate actively -- in the earlier proceeding, as well as in the Article 78 review of the determination that issued therefrom, without raising any jurisdictional issues.

The Respondent union denies the allegation of a conflict of interest between the Office of its General Counsel and Petitioner L. 375 during the time alleged in the Petition. It takes issue with Petitioner's assertion that D.C. 37 was an adversary of an "undisclosed" nature, contending that it is "common knowledge" and "well understood" by officers of L. 375 that that local holds its own bargaining certificate and that L. 2627 does not. The District Council argues that it has no vested interest in the accretion of the titles at issue to a certificate held by D.C. 37. rather than to a unit certified to L. 375 because, either way, the titles fall under the jurisdiction of the District Council.

Moreover, the Respondent union describes the Petition as an unfounded attempt to recast an inter-local union dispute as an attorney-client conflict of interest. D.C. 37 asks for dismissal

of the Petition in its entirety.

City's Position

The City reiterates its neutrality on the merits of the issue in RU-972-86 but opposes the instant Petition, contending that the appropriate method of challenging Decision No. 9-88 is under Article 78 of the CPLR, rather than the instant Petition, and noting that Petitioner is well beyond the limitations period for doing so. The City also maintains that, by entering into a Stipulation of Discontinuance with prejudice in the 1988 Article 78 proceeding in this same matter, and by taking no further judicial or administrative action for more than five years, L. 375 has effectively accepted Decision No. 9-88 as final and binding on all parties.

The City further argues that the instant Petition should be barred under the doctrine of laches. It notes that, in the intervening years, the City has concluded two unit contracts with D.C. 37, on behalf of L. 2627, covering the Telecommunications titles over a period of four years, from July 1, 1987, through December 31, 1991. At the time the City's Answer was filed, the City and D.C. 37, on behalf of L. 2627, were involved in negotiations for a unit agreement covering non-economic issues for the period covered by the Municipal Coalition Economic

Agreement, which expired on March 31, 1995.[13] To grant the instant Petition at this time, the City argues, would unfairly disrupt that bargaining relationship and would interfere with the representation rights of the affected employees. Thus, the City argues that the contract bar rule prohibits the filing of the instant Petition.

The City maintains that L. 2627 had standing to intervene in the proceeding docketed as RU-972-86, because of its status as a bona fide public employee organization under NYCCBL § 12-303(j).

The City also maintains that the question of standing of L. 2627 has been resolved in favor of that union in a "comparable, if not identical case" before PERB involving Telecommunications titles at the New York City Board of Education. The City requests dismissal of the Petition in its entirety.

Discussion

For administrative purposes, the instant Petition was docketed as a decertification petition. We note, however, that a decertification petition filed pursuant to OCB Rule § 1-02(e) must allege that a union which was previously certified "is no longer the representative of the public employees" in the unit. We have interpreted "unit" to mean, for purposes of § 1-02(e),

[13] The City states that the parties are in status quo pending the outcome of current bargaining.

the "entire" existing unit rather than a fragmented title or titles.[14]

Petitioner herein does not seek to prove that D.C. 37 is no longer the representative of the public employees in the entire unit. Rather, it asks that we "terminate" the certification of D.C. 37 in Certification No. 46-D-75 with respect to the Telecommunications titles as directed in Decision No. 9-88 "and/or set aside" that Decision.

Certification Year

Petitioner cites § 1-02(r)[15] as the section of the OCB Rules under which it proceeds. We find this section inapplicable to the facts of the instant proceeding.

Section 1-02(r) provides, in pertinent part, as follows:

> Certification; designation -- life; modification. When a representative has been certified by the board, such certification shall remain in effect for one year from the date thereof and until such time thereafter as it shall be made to appear to the board, through a secret ballot election conducted in a proceeding under §§ 1-02(c), (d) or (e) of these rules, that the certified employee organization no longer represents a majority of the employees in the appropriate unit . . . In any case where unusual or extraordinary circumstances require, the board may modify or suspend, or may shorten or extend the life of the certification or designation. . . .

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[14] Decision No. 4-95.

[15] Previously codified as Rule 2.18.

Prior to adoption, this section of the Rules was the subject of lengthy discussions and careful consideration during a series of meetings between the staff of the OCB and representatives of labor and management regarding the formulation and promulgation of the Board's Rules.[16] The original draft of the proposed rules contained a provision permitting public employers to file representation petitions.[17] Because of union objections, this provision was deleted with the City's consent but with the understanding that since the City would not be able to file representation petitions,[18] it could avail itself of § 1-02(r) to raise questions concerning the modification or clarification of an appropriate bargaining unit, or whether an existing certification should be terminated because of abandonment or disclaimer by the certified representative, or other "unusual or extraordinary circumstances."

Section 1-02(r) is based upon private sector case law which recognized the so-called "certification year."[19] This is the time period during which a duly certified union is presumed to have majority support of unit employees. The certification is

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[16] Decision No. 68-68.

[17] Cf. § 1-02(d), a provision for the filing of petitions by non-municipal public employers, not applicable here.

[18] See, e.g., Decision Nos. 6-69 and 74-68.

[19] Kimberly-Clark Corp., 61 NLRB 90, 16 LRRM 77 (1945).

insulated for this duration so that the certified union can fashion a labor agreement free from interferences by rival unions and free from an employer's challenge to the employer's duty to bargain.[20]

Citing Brooks v. NLRB[21] which spelled out "unusual circumstances" which could constitute an exception to the certification-year bar, our early decisions also recognized that, under § 1-02(r) of our Rules, previously codified as Rule 2.18, there are exceptions to the certification-year bar.[22] The "unusual circumstances" which Brooks cited as exceptions are those in which (1) the certified union dissolved or became defunct, (2) as a result of a schism, substantially all the members and officers of the certified union transferred their affiliation to a new local or international, and (3) the size of the bargaining unit fluctuated radically within a short time.

In our own cases, we have specifically declined to permit the "unusual or extraordinary circumstances" exception under our Rule to be applied beyond the certification year.[23] While some

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[20] NLRB v. Paper Manufacturers Co., 786 F.2d 163, 121 LRRM 3278 (3rd Cir., 1986) see, also, Van Dorn Plastic Machinery Co. v. NLRB, 939 F.2d 402, 138 LRRM 2102 (6th Cir., 1991).

[21] 348 U.S. 96, 35 LRRM 2158 (1954).

[22] Decision Nos. 16-74, 23-73 and 68-68.

[23] Decision Nos. 16-74, 23-73 and 68-68.

of our early decisions may have implied that a finding of unusual or extraordinary circumstances outside of the certification-year context could constitute an exception to the contract bar rule,[24] that implication is inconsistent with both the intent of the drafters of our Rules and with the policy espoused in the private sector case law which our Rules adopted. The "unusual or extraordinary circumstances" to which § 1-02(r) refers applies to facts arising in the context of the certification year and not to facts arising in the context of the contract bar, i.e., outside the certification year period.

Applying these established principles to the instant case, we find that, because the Petition was filed more than four years beyond the certification year in the instant proceeding, § 1-02(r) is inapplicable and unavailing to Petitioner herein. Even if the facts of the instant proceeding were to have occurred within a certification-year context, Petitioner's complaints herein would not fall into any of the recognized "unusual and extraordinary circumstances" which would permit shortening the life of a certification under the Rules. We have not been presented with any facts suggesting that the incumbent has dissolved, become defunct, renounced its certification, or abdicated its representation duty under the NYCCBL. There has

[24] Section 1-02(g) of the Rules.

been no showing of a schism within the incumbent such that substantially all the members and officers have transferred their affiliation to a new local or international, nor have we seen evidence that the size of the bargaining unit fluctuated radically within a short time such that the collective bargaining rights of the employees at issue have been compromised.

Nor do the facts as alleged constitute any unusual or extraordinary circumstances, heretofore unrecognized, which now warrant shortening the life of the certification ordered in Decision No. 9-88. Petitioner maintains that reconsideration is warranted by what it asserts were material omissions in the earlier proceeding: (1) that we did not understand the certification status of the petitioning parties before us, specifically, the asserted invalidity of L. 2627 as a legal representative of its members' interests and (2) an alleged conflict of interest in its legal representative in the earlier proceeding.

As to the first point, we find that Petitioner has offered nothing more than a highly conclusory assertion that we failed to understand the certification status of L. 2627 in RU-972-86. We reiterate our longstanding doctrine, that for an exclusive bargaining representative to be certified, the NYCCBL requires only that it be an organization having as its primary purpose the representation of public employees with respect to matters

concerning wages, hours, and working conditions; we have held that test of such a bona fide labor organization is not a demanding one.[25] L. 2627 satisfied that test, as did its parent organization, D.C. 37, to whose unit the titles at issue were certified in Decision No. 9-88. Moreover, the determination of which entity within D.C. 37 will prosecute a representation question before us is an internal union matter into which we will not inquire.[26]

Petitioner claims that a conflict of interest tainted its legal representation in RU-972-86 and in the Article 78 proceeding because of the fact that the General Counsel of D.C. 37 represented L. 2627 in the Article 78 proceeding after it had represented L. 375 in the earlier representation proceeding. Petitioner has presented nothing more than a conclusory allegation that this configuration of legal representation constitutes a conflict of interest. Further, we observe that the locals were not represented at the same time by the same office.

As to Petitioner's claim that D.C. 37 was an undisclosed adversary in the proceeding vis-a-vis L. 2627, we note that the certification to which L. 2627 sought to add the titles was Certification No. 46D-75 which was held by D.C. 37, not by L.

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[25] Decision Nos. 11-87 and 21-76.

[26] Decision No. 17-82.

2627. Our review of the record in the earlier representation proceeding reveals that there never was a question raised by any party as to which unit was the unit for which L. 2627 had petitioned. For these reasons, we find that, in making these allegations of conflict of interest, Petitioner has stated no cognizable claim under the NYCCBL.

Contract Bar

Rule § 1-02(g)[27] provides, in pertinent part, as follows:

> A valid contract between a public employer and a public employee organization shall bar the filing of a petition for certification, designation, decertification or revocation of designation during a contract term not exceeding three (3) years. Any such petition shall be filed not less than five (5) months or more than six (6) months before the expiration date of the contract, or, if the contract is for a term of more than three (3) years, before the third anniversary date thereof. Subject to the provisions of § 1-02(r) of these rules, no petition for certification, decertification or investigation of a question or controversy concerning representation may be filed after the expiration of a contract.

The contract bar doctrine has been long and firmly established in the field of labor relations. Although it was neither statutorily or judicially mandated, it was formulated in the private sector in an effort to reconcile the National Labor Relations Act's goals of promoting industrial stability and

[27] Previously codified as Rule 2.7.

employee freedom of choice[28]; thus, the National Labor Relations Board has substantial discretion in deciding whether to apply the rule in a particular case and in formulating the contours of the rule.[29]

We early observed that the object of the contract bar rule within our jurisdiction is to accommodate both the freedom of employees to select or change their bargaining representatives and to give continuity and stability to an established bargaining relationship.[30] This is accomplished by protecting the established relationship from challenge during the term of a valid contract of reasonable duration.

We have held that the provision which extends the contract bar doctrine to preclude petitions filed after the expiration of a contract was inserted because all parties recognized and were aware of the lengthy delays in the negotiation and execution of

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[28] NLRB v. Dominick's Finer Foods, 146 LRRM 2784 (1994) ; see, also, El Torito-La Fiesta Restaurants, Inc. v. NLRB, 929 F.2d 490 , 136 LRRM 2908 (9th Cir. 1991), and Bob's Big Boy Family Restaurants v. NLRB, 625 F.2d 850, 104 LRRM 3169 (9th Cir. 1990).

[29] NLRB v. Mississippi Power and Light Co., 769 F.2d 276, 120 LRRM 2302 (5th Cir. 1985), and NLRB v. Circle A & W Products Co., 647 F.2d 926, 107 LRRM 2923 (9th Cir.), cert. den. 454 U.S. 1054, 108 LRRM 3016 (1981).

[30] Decision Nos. 42-70 and 11-71; accord, Matter of Public Employees Federation, AFL-CIO and Civil Service Employees Association, 10 PERB ¶ 4063 (1977); see, also, Decision Nos. 7-90 and 35-73.

collective agreements with the City.[31] Inasmuch as the parties' unit agreement expired on December 31, 1991, (the terms of which continued in effect pursuant to the status quo provisions of NYCCBL § 12-311(d) at the time the instant Petition was filed[32]), this provision of the contract bar rule pertains to the unit agreement applicable here. Thus, the Petitioner was prohibited by the contract bar rule from submitting the instant Petition at the time it was filed.

Notwithstanding the fact that Petitioner in the instant proceeding describes its application as a "Petition to Set Aside or Vacate" the certification in Decision No. 9-88,[33] L. 375 in actuality is seeking removal of the Telecommunications titles from its current certification and simultaneous certification of itself as the exclusive bargaining representative of the

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[31] Decision Nos. 17-88, 4-88, 35-73 and 68-68.

[32] The terms of the separate unit agreement which is applicable here were modified only as to economic issues by the Municipal Coalition Economic Agreement executed in March, 1993, (for the term commencing on January 1, 1992, through March 31, 1995) between the Coalition of Municipal Unions (including D.C. 37 on behalf of its constituent locals) and the City of New York and related public employers. Because the Coalition Agreement only supplements economic terms of the existing unit agreement and does not constitute an independent or successor unit agreement, it does not raise an additional contract bar issue separate and apart from that raised under the unit agreement. See, e.g., Decision No. 4-88.

[33] OCB Rules make no provision for a "Petition to Set Aside or Terminate" certification.

Telecommunications employees. Such a filing, however, requires a showing of interest in the unit alleged to be appropriate, under § 1-02(c)(2).[34] As Petitioner has offered no showing of interest, we find that it is attempting to use § 1-02(r) as a substitute for a representation petition under § 1-02(c).[35] As we have held, "To permit a union to use . . . [§ 1-02(r)] as a means of challenging a rival certified union would subvert the requirements of proof of interest . . . and the contract bar doctrine . . . ."[36] We find no basis, in the instant proceeding, to make an exception to this time-honored rule.

Accordingly, we shall dismiss the Petition in its entirety. We note that, in doing so, we have considered and rejected all of the arguments raised in Petitioner's submissions to the Board, including those not specifically discussed in this opinion.

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[34] Decision No. 4-95.

[35] Petition by Public Employees or their Representative: Contents; Proof of Interest.

[36] Decision No. 68-68.

O R D E R

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 to Set Aside and/or Terminate" the certification ordered in Decision No. 9-88 submitted by CSTG, L. 375, for reconsideration of Decision No. 9-88 be, and the same hereby is, denied.

New York, New York
Dated: May 10, 1995

MALCOLM D. MacDONALD
CHAIRMAN

GEORGE NICOLAU
MEMBER

DANIEL G. COLLINS
MEMBER