

Local 300, Service Employees International Union, 6 OCB 12 (BOC 1970) [Decision No. 12-70], af'd, Penta v. Anderson, N.Y.L.J., Mar. 9, 1971, at 2 (Sup. Ct. N.Y. Co.).

OFFICE OF COLLECTIVE BARGAINING
BOARD OF CERTIFICATION

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In the Matter of

LOCAL 300, SERVICE EMPLOYEES INTERNATIONAL DECISION NO. 12-70
UNION, AFL-CIO

-and-

<u>THE CITY OF NEW YORK AND RELATED PUBLIC</u>	<u>DOCKET NOS.: RU-41-68</u>
<u>EMPLOYERS</u>	<u>RU-108-69</u>
	<u>RU-116-69</u>

-and-

CITY EMPLOYEES UNION, LOCAL 237 INTERNATIONAL
BROTHERHOOD OF TEAMSTERS
- - - - -X

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

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DECISION, ORDER AND DIRECTION OF ELECTION

On May 10, 1968, Local 300, Service Employees International Union, AFL-CIO, herein called Local 300, filed a petition for certification as exclusive collective bargaining representative of Maintenance Men employed by the Department of Hospitals (Case No. RU-41-68). Local 300 amended its petition by motion granted at the Hearing. It now describes the unit it seeks to represent as consisting of "Maintenance

Men employed in the Mayoral agencies of the City of New York on a city-wide basis"

On May 9, 1969, City Employees Union Local 237, International Brotherhood of Teamsters, herein called Local 237, filed a petition for certification as the collective bargaining representative of employees in the title of Maintenance Man Trainee employed by: "City of New York and related public employers under the Office of Collective Bargaining jurisdiction" (Case No. RU-108-69).

On June 5, 1969, Local 237 filed a petition to enlarge the unit specified in a city-wide certificate of representation covering Maintenance Men (CWR-109/67) previously issued to it, by adding the title: Housing Maintenance Helper (Case No. RU-116-69).

A hearing was held in Case No, RU-41-68 on September 3, 4, and 5 and October 1 and 2, 1969, before Oscar Geltman, Esquire, Trial Examiner. Thereafter the proceedings under all three petitions were consolidated by Board Order dated October 20, 1969, and a further hearing was held on November 18, 1969, respecting all three petitions. Both unions and the City appeared and participated.¹ The City moved to dismiss the petition filed by Local 300 in Case RU-41-68 on the ground that the unit sought is inappropriate. Local 237 joined in the motion. Decision thereon was reserved and the motion was referred to the Board.

Background

On August 25, 1967, the New York City Department of Labor issued its certificate CWR-109/67 to Local 237, certifying that union as exclusive bargaining representative of Maintenance Men "employed by

District Council 37, AFSCME moved to intervene in Case No. RU-41-68, but subsequently withdrew its motion.

the City of New York and by those non-mayoral agencies as defined in Executive Order No. 40 which have elected to come under the provisions of said Executive Order".

When certificate CWR-109/67 was issued, the New York City Department of Labor had before it a petition filed by Local 300 in December, 1966, by which Local 300 sought certification as representative of the Maintenance Men employed in the Department of Hospitals. Local 300 commenced a proceeding under Article 78 of the Civil Practice Law and Rules to enjoin the City's Department of Labor from issuing the city-wide certificate for Maintenance Men to Local 237 and to compel the Labor Department to hold an election among those Maintenance Men employed in the Department of Hospitals. The proceeding was dismissed by Justice Irving L. Levy "without costs and without prejudice to petitioners to seek relief in the proper administrative forum". Justice Levey's opinion, issued in February, 1968, noted that the New York City Collective Bargaining Law (Local Law 53 of 1967, effective September 1, 1967) created the Office of Collective Bargaining which "has the power to determine bargaining units different from those determined by the Department of Labor". He held: Respondent's determination, of which petitioners complain, is not final and conclusive but may be terminated by the Board of Certification..."²

Local 300 thereupon filed with this Board its petition for certification as representative of the Maintenance Men employed in the Department of Hospitals,

In Matter of N.Y. City Local 246, S.E.I.U., AFL-CIO, Decision No. 45-69, dated July 14, 1969, this Board held, for reasons stated therein, that it deems departmental units no longer appropriate;

that it will not entertain petitions filed for such units, and will terminate all outstanding departmental certificates. The subsequent amendment of Local 300's petition herein, to include all Mayoral agencies, stemmed from that decision.

In this proceeding, Local 300 complains that "the city-wide bargaining certificate was issued to Local 237 by including Maintenance Men of the New York City Housing Authority as part of the city-wide bargaining unit", It contends, that for purposes of issuance of CWR-109/67 and for the purposes of the present proceeding it was and is improper to include employees of the New York City Housing Authority, (herein called Housing Authority) in the same city-wide unit with New York City employees. Local 300 alleges that because of the inclusion of Housing Authority Maintenance Men under CWR-109/67, that certificate is fatally defective.

The City and Local 237 assert that the certificate was validly issued. While they do not contend that it constitutes a bar to the processing of Local 300's present petition, they assert that the petition, by seeking to limit the unit to employees of Mayoral agencies, represents an attempt to fragment the existing unit as established by CWR-109/67.

The prior certification is not urged as a bar to this proceeding, and any certification which may be issued herein will have prospective effect only.³ Moreover, there has been a substantial change in the relevant facts, including the election of the Housing Authority to come under the jurisdiction of this Board and the amendment enlarging

the bargaining unit originally sought by Local 300. Under these circumstances, and since we are directing an election with both unions on the ballot, resolution of the conflicting contentions concerning the validity of the prior certification is not necessary.

The Appropriate Unit

Local 300 asserts that the appropriate unit consists of Maintenance Men employed by mayoral agencies only, on a city-wide basis. It would exclude Maintenance Men employed by non-mayoral agencies. It would also exclude from the unit the titles of Maintenance Man Trainee and Housing Maintenance Helper. The City and Local 237 assert that the appropriate unit is comprised of Maintenance Men employed both by mayoral agencies and by qualifying non-mayoral agencies i.e., those which have elected coverage under the NYCCBL. The City and Local 237 would include Maintenance Man Trainee in the unit. Local 237 would include, and the City would exclude, the title of Housing Maintenance Helper, a title unique to the Housing Authority.

The Housing Authority

Section 1173-3.0 g of the NYCCBL defines the term "public employer, as used therein, to include "(3) any public authority whose activities are conducted in whole or in substantial part within the city." Section 1173-4.0 b provides that the provisions of the NYCCBL shall be applicable to "any other municipal agency or public employer, and to the municipal or public employees and employee organizations thereof, but only to the extent to which the head of such agency or employer elects to make such provisions applicable, in whole or in part, upon such terms and conditions as the Mayor may approve."

On June 26, 1968, the Housing Authority elected coverage under the NYCCBL for representation and other matters. Mayor Lindsay approved the Housing Authority's election of coverage on July 3, 1968.

Local 300 asserts that the Housing Authority could not effectively elect coverage under Local Law No. 53-1967 because it is named as a public corporation in the Public Housing Law, and therefore is a "government" within the meaning of the New York State Public Employees' Fair Employment Law (Taylor Law). Local 300 contends that the Housing Authority, as a "government" is required by Section 206 of the Taylor Law to submit any representation dispute to the State Public Employment Relations Board, unless it has established "its own" procedures to resolve disputes concerning representation.

Section 206 of the Taylor Law provides:

1. Every government (other than the state or a state public authority), acting through its legislative body, is hereby empowered to establish procedures, not inconsistent with the provisions of section two hundred seven of this article and after consultation with interested employee organizations and administrators of public services, to resolve disputes concerning the representation status of employee organizations of employees of such government.
2. In the absence of such procedures, such disputes shall be submitted to the board in accordance with section two hundred five of this article.

At the outset, we note that the Housing Authority is not a "state public authority" within the meaning of the Taylor Law. A "state public authority" as defined in §201.9 of that law, is a public corporation "a majority of the members of which are (i) appointed by the Governor or another state officer or body, (ii) designated as members by virtue of their state office, or (iii) appointed or designated by any combination of the foregoing". The members of the

Housing Authority, to the contrary, are appointed by the Mayor of the City of New York. Hence, it is not barred from establishing the procedures provided in §206, quoted above,

Nor do we find anything in the provisions of §206 which bars the Housing Authority from electing to adopt the established NYCCBL procedures.

Local 300 further contends that, in any event, the Housing Authority's election to be covered under the NYCCBL does not include its Maintenance Men. Pointing out that Maintenance Men are "prevailing rate" employees whose wage rates and supplements are fixed by the City Comptroller, pursuant to Section 220 of the Labor Law, Local 300 argues that "the Authority was not consenting to anything concerning its prevailing rate of wage employees" when it elected coverage under the NYCCBL.

The Housing Authority's election of coverage does not exclude prevailing rate employees. Prevailing rate determinations are limited to wages and supplements. They do not include numerous other matters which clearly are proper and appropriate subjects for collective bargaining or negotiation under both the NYCCBL and the Taylor Law. We find no basis, and Local 300 has pointed to none, for distinguishing prevailing rate employees employed by the Housing Authority from its other employees, or from those employed by Mayoral or other municipal agencies. Indeed, we consistently have certified various public employee organizations as the exclusive bargaining representatives of units consisting of prevailing rate employees of both mayoral and non-

mayoral agencies, including the Housing Authority.⁴

Maintenance Men

Finally, Local 300 argues that there is no community of interest between the Maintenance Men employed in City departments and those employed in the Housing Authority because (a) their work is different, (b) after the Comptroller's determination is made "Local 237 enters into collective bargaining negotiations with the Housing Authority and obtains additional substantial benefits for only the Maintenance Men employed in the Housing Authority", and (c) only Housing Authority Maintenance Men, and not City department Maintenance Men, are eligible for examinations leading to promotion.⁵

The City and Local 237, on the other hand assert that there is a close community of interest between City-employed Maintenance Men and Housing Authority Maintenance Men, warranting their inclusion in a single unit.

There are approximately 1425 Maintenance lien employed in New York City, in almost 20 mayoral and non-mayoral agencies. The Housing Authority employs over 750; the Department of Hospitals employs over

Matter of Bricklayers N.Y. Exec. Comm., Dec. No. 66-69 (Bricklayers);
Matter of City Employees Union, Local 137, I.B.T., Dec. No. 63-69

(Roofers and Foreman Roofers)

Matter of Dist. Council 37, AFSCME, AFL-CIO, Dec. No. 42-69

(Cement Masons and Masons' Helpers)

Matter of City Employees Union, Local 237, I.B.T. (Painters, House
Painters, Foreman Painters and Foreman House Painters)

Matter of Int'l. Union of Operating Engineers, Local 30, AFL-CIO,
Dec. No. 33-69 (Stationary Engineers and Sr. Stationary Engineers)

Although Local 300's unit position is that Maintenance Men employed by any non-mayoral agency should be excluded, its arguments in this connection did not go beyond its assertion that Housing Authority Maintenance Men should be excluded. It presented no witnesses and has made no argument with respect to Maintenance lien employed by any other non-mayoral agency, as, for example, the Board of Higher Education, a non-mayoral agency which has elected coverage under Local Law 53-1967 for its non-teaching employees.

400; other agencies employ from 1 to approximately 45.

All Maintenance Men are appointed from a single Civil Service list established after a competitive examination conducted by the City Civil Service Commission. Appointments are made from this list to both mayoral and non-mayoral agencies. The Civil Service job specifications for Maintenance Men are the same whether they work for the Housing Authority or any other non-mayoral or mayoral agency. A Maintenance Man may transfer from a mayoral to a non-mayoral agency, where both agencies consent in writing and the transfer is approved by the City Civil Service Commission.

Maintenance Men are "prevailing rate" employees for whom wages and certain supplemental benefits are set by a determination of the City Comptroller. The determination applies to both mayoral and non-mayoral agencies. The most recent Comptroller's determination affecting Maintenance Men, dated March 18, 1969, fixed wages and supplements for the period from July 1, 1967 to December 31, 1969.

The work performed by Maintenance Men employed by the City in various departments and by Maintenance Men employed by the New York City Housing Authority, was described by witnesses called by Local 300. From their testimony, it appears that Maintenance Man work performed in a number of City departments (Police, Fire, Marine and Aviation, Traffic) is as described in the job specification for the title:

"Under direct supervision, assists in the routine maintenance, operation and repair of buildings and structures and equipment therein operated and maintained by the agencies and authorities of the City of New York, performs related work (emphasis added).

Examples of Typical Tasks

Maintains, adjusts and makes minor repairs to building hardware.

Replaces broken window and door glass,

Repairs windows and sash,

Makes minor repairs to woodwork, flooring and walls.

Makes minor repairs to building electrical, plumbing and heating systems.

Assists in relocating building equipment as directed.

Keeps job and other records".

The witnesses' descriptions of Maintenance Man work as performed in the Parks and Hospitals departments were to the effect that there the work is confined within specialized areas. With respect to the Parks Department, a witness testified:

"We have Maintenance Men working with the Electrician . We also work with the Mason.

We have some working with the Iron Workers, putting up these chain link fences.

We have one boy working with the Plumbers".

* * *

"They stay working with the same group all the time. They work with the Electrician and they stay with the Electricians".

In the Department of Hospitals, some Maintenance Men are engaged in power plant operations and maintenance, involving care of and minor repairs to boilers, pumps, steam lines and related equipment. They work under a Stationary Engineer. Other Maintenance Men are engaged in hospital and hospital equipment maintenance. Those work out of various shops; an electrical shop, plumbing shop, carpentry shop, painting shop, and so on. Most shops are run by journeyman craftsmen, whom the Maintenance Men assist. Generally, the Maintenance Men assigned to a shop work only in the specialty of the particular shop. The Maintenance Men engaged in power plant operations, after gaining

experience can advance, if they pass a test, to the title of Stationary Engineer. The Maintenance Men who work with journeymen in the various crafts have had their time on the job reduced by cutting their lunch period to a half hour, in order to bring their working day into line with that of the journeymen.

New York City Housing Authority Maintenance Men, for the most part, perform a variety of minor repairs, substantially in accord with the descriptions in the job specification. Some have particular specialities: some specialize in power plant operation and maintenance, involving care of and minor repairs to boilers, pumps and the heating system in general; some specialize in the repair of refrigerators; some make repairs to motors; one does locksmith work. However, even those who specialize do general maintenance work as well. They are eligible for promotion to Assistant Superintendent or Superintendent.

Maintenance Men employed by the Housing Authority receive a number of benefits beyond those received by city-employed Maintenance Men; they work "on a per annum basis, just like any other employee" whereas city-employed Maintenance Men are restricted, due to budgetary limitations, to 250 days per year, Housing Authority Maintenance Men also are granted "summer hours", i.e., during the summer they leave an hour earlier, whereas the Comptroller never has established a summer schedule.

The Housing Authority also provides its Maintenance Men with free uniforms. It gives special leave and insurance benefits under certain circumstances, and resident Maintenance Men pay reduced rents.

From the evidence adduced, we find that there is great similarity between the work performed by Maintenance Men who work for City agencies

and the work performed by Maintenance Men who work for the Housing Authority. We find no such pronounced differences in duties and interests as were present in Matters of Professional Public Health Nurse Association et al, Decision No. 6-69, cited by Local 300.

With respect to wages and supplements, inasmuch as the same Comptroller's determination applies to all Maintenance Men, there clearly is a close community of interest in taking such steps as may best produce a favorable determination, As for Local 300's assertion that only Housing Authority Maintenance Men are eligible for examination leading to promotion, it overlooks credible and undenied testimony as to permissible interchange of positions and that in the City's Department of Hospitals, Maintenance Men who are engaged in power plant operations can be promoted to the title of Stationary Engineer.

Nor do we regard as significant the additional benefits received by Housing Authority Maintenance Men. Bargaining units frequently include numerous titles in one or several related occupational groups despite differences in salary ranges, and variations in duties and promotional lines.⁶ Indeed, it has been the consistent and firm policy of this board that consolidation of occupationally related titles in one bargaining unit, wherever possible, "is essential to the effectuation of the purposes and policies of the Statute and the proper functioning of the collective bargaining process".⁷

See, e.g., Matter of District Council 37, CWR No. 52-67, which include over 40 clerical and office titles. See also, Matter of New York State, 2 PERB 3307, in which the New York State Public Employment Relations Board included Maintenance Men and Maintenance Helpers in a broad "Occupational Services Unit" including a wide variety of disparate job titles and duties. That unit was upheld as appropriate in C.S.E.A. v Helsby, 25 N.Y. 2d 842, 303 N.Y.S. 2d 690, aff'g 32 A.D. 2d 131, 300 N.Y.S. 2d 424.

Matter of District Council 37, Dec. No. 44-68; Matter of New York City Local 246, S,E,I,U,, Dec. No. 45-69.

We conclude from the foregoing that Housing Authority Maintenance Men have such a substantial community of interests with City Agency Maintenance Men as to make inappropriate a separation of the two groups.

Maintenance Man Trainee

The job specification for this title lists the same examples of typical tasks as are listed in the job specification for Maintenance man, with the qualification that the employee "performs beginning level work", and that there is promotion from this title to that of Maintenance Man.

Employees in this title consist of approximately 8 employed in the Department of Hospitals and approximately 17 employed by the New York City Housing Authority.

Whereas Maintenance Men are paid a prevailing wage rate fixed by the Comptroller, Maintenance Man Trainees are paid a fixed wage on a per annum basis.

The only opposition to such inclusion comes from Local 300, which argues that the Trainees have different interests because they are paid on a per annum rather than a "prevailing rate" basis. We find no merit in this contention, which we have previously rejected (Matter of New York City Local 246, S.E.I.U., Decision No. 45-69). The basic purposes and policies of the NYCCBL, and the mutuality of interests stemming from the similarity of duties and promotion to the Maintenance Man title far outweigh this single difference.

We conclude, therefore, that the title of Maintenance Plan Trainee should be included in the same unit with Maintenance Men.

Housing Maintenance Helper

The job title "Housing Maintenance Helper" is unique to the Housing Authority; it is not found in any mayoral or municipal agency. There are no incumbents in the title and the position is transient, for training purpose, not permanent. It was established to designate those employees in the title of Housing Caretaker who are selected for training as Maintenance Men. At the end of the training period, those employees are either promoted to Maintenance Man, or revert to their permanent title of Housing Caretaker.

Moreover, in its election of coverage under the NYCCBL, the Housing Authority distinguished between "unique" and "non-unique" titles. Negotiations concerning "non-unique" titles (those common to both City agencies and the Housing Authority) are conducted by the City's Director of Labor Relations. Negotiations on "unique" titles are conducted by the Housing Authority itself.

In view of the transient nature of the position, and the present differences in the authorized bargaining representative of the employer, we conclude that inclusion of this unique title in the same bargaining unit with the non-unique titles of Maintenance Man and Maintenance Man Trainee would not effectuate the purposes of the NYCCBL. Accordingly, we shall sever the proceeding which relates to this title (Case No. RU-116-69).

CONCLUSIONS

Upon the entire record, we find and conclude that Maintenance Men and Maintenance Man Trainees employed by the City of New York and other related public employers under the jurisdiction of this Board, including the New York City Housing Authority, constitute a unit appropriate for the purposes of collective bargaining in fact and within the meaning of the New York City Collective Bargaining Law.

It appearing that Local 300 has a sufficient showing of interest in the unit which we found appropriate, we believe that the purposes and policies of the NYCCBL will best be served and effectuated by conducting an election in which both unions may appear on the ballot. If either union does not desire its name to appear on the ballot, it may so advise the Board, in writing, within ten (10) days after service of this Direction of Election.

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 Case No. RU-116-69 be, and the same hereby is, severed herefrom; and it is further

DIRECTED, that as part of the investigation authorized by the Board, 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, among the employees in the titles of Maintenance Man and Maintenance Man Trainee employed by the City of New York and related public employers subject to the jurisdiction of the Office of Collective Bargaining, including the New York City Housing Authority, during the payroll period immediately preceding this Direction of Election (other than those who have voluntarily quit or who have been discharged for cause before the date of election), to determine whether they desire to be represented for the purposes of collective bargaining by City Employees Union, Local 237, International Brotherhood of Teamsters, by Local 300 Service Employees International Union, AFL-CIO, or by neither; and it is further

DIRECTED, that either of said employee organizations may have
its name removed from the ballot in the aforementioned election,
by filing with the Board within ten (10) days after service of
this Direction of Election a written request that its name be
removed from said ballot.

DATED: New York, N.Y.

March 23, 1970

ARVID ANDERSON
CHAIRMAN

WALTER L. EISENBERG
MEMBER

ERIC J. SCHMERTZ
MEMBER

TO: Hon. Philip J. Ruffo
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DECISION NO. 12-70
DOCKET NOS. RU-41-68
RU-108-69
RU-116-69

The title and title code number of the employees affected by
this decision are as follows:

<u>Maintenance Plan</u>	<u>90726</u>
<u>Maintenance Man Trainee</u>	<u>90784</u>