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Supreme Court, New York County
Special Term, Part 1

Justice Gellinoff

MATTER OF RIOS (Anderson) -This is a proceeding brought by various individuals employed In t the New York City Work Relief Employment Program (WREP), and by the United WREP Yorkers, to review and annul a determination by respondents which recognized District Council 37, AFSCME, as collective bargaining representative for WREP workers.

WREP is a program designed to employ welfare recipients, by providing them with employment within City agencies on a part-time basis, at the same salary and benefit rate as other new employees, with hours based upon their level of welfare payments. District Council 37, which already represents the city workers doing the same tasks, working beside these WREP workers, made application to respondent to add the WREP workers to the already existing collective bargaining units, by accretion.

Accretion is one of the accepted methods by which a collective bargaining representative is certified for a new group of employees.

“The term ‘accretion’ means ‘increase by adhesion or inclusion’. In essence, this concept as applied in the private sector would permit the enlarging of a preexisting negotiating unit when the employer involved has expanded its operations by acquiring a functionally related facility. In such a situation, the employees at the acquired facility may be accreted to the employer’s original employees even though a question concerning representation with regard to the latter cannot be raised. As stated by the NLRB in a recent case: ‘In determining whether a newly acquired plant of an employer constitutes a separate unit or is an accretion to an existing unit of other employees of the same employer, all the relevant facts must be taken into account; including such matters as geographic proximity of the plants; the extent of functional integration and the job skills involved; the extent of control relating to the plant management and labor relations policies; the :extent of employee interchange: and, the history of collective bargaining’” (Niagara Frontier Transp. Auth, 3 PERB 4020 [1970]).

In making its application, District Council 37 did not produce evidence that there was interest in its representation by a specified number of the group sought to be accreted. No such evidence was necessary:

“Accretion is, in substance, the inclusion in an existing unit of new positions or titles which because of their similarity or close relationship to the unit titles, would have been included in the original unit if they had been in existence at that time. In such cases, proof of representation is not required.” (Local 384, D. C. 37 and The City University of New York, Office of Collective Bargaining, Decision Number 39-69, June 24, 1969).

Petitioners herein moved, to intervene in District Council 37's application for accretion. They argued that while they did not seek to have the United WREP Workers considered at that time as an alternative bargaining representative, they wished to appear In order to oppose accretion. Respondent, However, declined to entertain such opposition, unless it qualified as an application for certification. Petitioners submitted proof of interest in order to be considered for certification, but the proof of interest submitted was insufficient Inasmuch as the only application then before it was that of District Council 37 for accretion, respondents, finding accretion to be appropriate, granted the application.

In this proceeding, petitioners challenge the determination to treat the motion to intervene as a petition for certification. challenge the failure to conduct an evidentiary hearing, and challenge the determination granting the application for accretion.

Respondents were fully justified in treating petitioners’ opposition to accretion as itself an application for certifications. To do otherwise would not have effectuated the basic policies for which respondent Board was

created. If successful solely as intervenors, petitioners would have lect the WREP workers with no representation at all. While this any have served the organizational interests of petitioner United WREP workers, or of the Collective Bargaining Law. The determination ranting intervention solely as an application for certification was thus not arbitrary or capricious.

The facts shown upon the papers submitted demonstrate that, despite the claim to the contrary, petitioners were given ample time to obtain and submit proof of interest by sufficient of interests by sufficient numbers of WREP workers to qualify for consideration. And there is no dispute that they failed to do so.

Inasmuch as no other petition for representation was before respondents, respondents were not obligated to conduct evidentiary hearings, nor to considers whether any other possible unit might be appropriate, other than the one proposed by District Council 37. Respondents found, and the conclusion is fully supported by the record, that accretion was appropriate upon the facts presented.

The determination made by respondents is therefore not arbitrary, capricious or unreasonable, and was reached in accordance with due process. The application is accordingly denied and the petition dismissed.

Settle judgment.