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State of New York Public Employment Relations Board Decisions from November 14, 1974

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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of COUNTY OF SULLIVAN, Employer, -and- SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO, Petitioner-Intervenor, -and- NEW YORK COUNCIL 66, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO, Petitioner-Intervenor, -and- SULLIVAN COUNTY CHAPTER, CIVIL SERVICE EMPLOYEES ASSOCIATION, INC., Intervenor.	BOARD DECISION AND ORDER CASES NO. C-1065, C-1074, C-1075

On May 3, 1974 the Service Employees International Union, AFL-CIO (SEIU) filed a representation petition with this Board seeking decertification of the Sullivan County Chapter, Civil Service Employees Association, Inc. (CSEA), and its certification as the exclusive negotiating representative of an overall unit of employees of the County of Sullivan (County). A few days thereafter, New York Council 66, American Federation of State, County and Municipal Employees, AFL-CIO (AFSCME) filed a representation petition seeking decertification of CSEA and its certification as the exclusive negotiating representative of a unit of blue-collar employees and a unit of supervisory personnel.

A hearing was held and, prior to the close thereof, SEIU, AFSCME and the County took the position that the existing overall unit should be split into three units -- one made up of the blue and white-collar employees of the

Department of Public Works (DPW), one of supervisory employees in that department, and a third residual unit of all other employees of the County. CSEA maintained its position for an overall unit.

The Director of Public Employment Practices and Representation (Director) determined that there should be two units of employees of the County: Unit I - all regular full and part-time employees, except those in Unit II, which included all regular full and part-time senior engineers, civil engineers, auto and equipment coordinators, auto shop foremen, sign painter foremen, district road maintenance foremen, road construction foremen, and bridge foremen. Excluded from both units by the Director were: elected and appointed officials; registered and public health nurses; employees of the Sheriff's Department; Tax Map Supervisor; Probation Director; Sealer of Weights and Measures; Motor Vehicle Supervisor; Deputy Commissioner DPW; General Foreman; Assistant General Foreman; Office Manager DPW; Secretary to the Commissioner DPW; Director of Social Services; Director of Administrative Services; Nursing Home Director; Secretary-Deputy Clerk, Board of Supervisors; Personnel Assistants; Confidential Secretary to the Budget Director; Confidential Secretary to the Administrative Assistant to the Board of Supervisors; Confidential Secretary to the County Attorney; Sullivan County Community College administration and faculty; Secretary to the President of the College; Secretary to the Vice-President/ Dean of Faculty of the College; Secretary to the Dean of Administration of the College; Secretary to the Special Projects Coordinator of the College; employees who work less than 20 hours a week and those employed solely on a seasonal basis.

SEIU and AFSCME both filed exceptions to this determination. The AFSCME exceptions requested this Board to reverse the decision of the Director and to find that a unit consisting of DPW blue-collar employees is the appropriate unit for the purposes of collective negotiations under the Act or, in the alternative, that there be a unit of both non-supervisory blue and white-collar

employees of the DPW. SEIU's exceptions only sought reversal of that part of the decision of the Director which permitted AFSCME to participate in an election among employees in Unit I as defined by him. The basis of this exception was that the Director's unit contained many more employees than the unit for which AFSCME had petitioned and that AFSCME's showing of interest was less than 30% of the larger unit.

Responses to the exceptions were received from CSEA, AFSCME and the County. In its response, CSEA objected to the jurisdiction of this Board to hear the exceptions because they were filed after the expiration of the time during which exceptions may be filed under the Rules of this Board. An extension had been granted for the filing of the exceptions, but CSEA contends that the manner in which the extension was granted did not comply with the Rules. CSEA also opposed AFSCME's exceptions on the merits and endorsed those of SEIU. In its response to SEIU's exceptions, AFSCME argued that the determination of the sufficiency of the showing of interest of an employee organization is a ministerial act that is not reviewed by this Board and that its sole purpose is to avoid needless dissipation of the Public Employment Relations Board's resources and frivolous representation claims. The County's response took no position on the SEIU exceptions. With respect to the unit determination, it stated that AFSCME may indeed have the better of the argument, but it nevertheless urged that the decision of the Director be sustained in the interest of expedition so that an election may be held in sufficient time to permit negotiations before the existing contract expires.

In the past it has been decided that blue-collar employees may properly constitute a separate unit where there is a showing of terms and conditions of employment unique to the blue-collar employees and not shared by white-collar employees, such as shift differentials, job security, work schedules, safety factors and wage bases. Because of these differences in terms and conditions

of employment, the interests of the white-collar and blue-collar workers at the negotiating table might be so disparate that combining them in one unit would deprive the employees of effective, meaningful negotiations and the interest of one group might be submerged in favor of the other (see decision by the Director In the Matter of Town of Islip, 3 PERB 4213). There has been greater reluctance to separate a group of some blue-collar employees from all of the remaining blue-collar employees. This has not been done unless it were established that the group of blue-collar employees of an employer had such unique working conditions that effective and meaningful negotiations required a separate unit and the employer, recognizing the uniqueness of this group, did not oppose and perhaps even supported this fragmentation (see decision of the Director In the Matter of City of Oswego, 6 PERB 4009). The evidence in this case is such as to warrant the creation of a separate unit of DPW employees in the light of the Oswego decision. The hours of both blue-collar and white-collar employees of the DPW are different from other County employees; they are paid on an hourly basis, whereas the other employees of the employer are paid on an annual basis. Decisions on such personnel concerns as hiring, terminations and promotions and the issuance of work rules are the responsibility of the Commissioner of DPW. He has independent authority with respect to the establishment of terms and conditions of employment of his employees. The employees of the DPW are subject to emergency callbacks at night, holidays, and even while on vacation, a burden not shared by other employees; there are safety considerations not present in the case of other employees, such as working with explosives, flammable liquids, exposure to electrical current and, further, there is a degree of interchange in the DPW between white-collar and blue-collar employees and, conversely, no interchange between employees of the DPW and other departments of the County.

The Director, recognizing the established policy pointed out that the decisions, such as in Oswego and City of White Plains (3 PERB 3591 affirming Director in 3 PERB 4246) involved situations where unique terms and conditions of employment shared by a small group of employees were such that would appear to give rise to a conflict of interest at the negotiating table if they were joined with the remaining employees with whom they did not share their unique conditions of employment. However, the Director points out that there has been a history of negotiations here and it does not appear from the record that the employees of the DPW were denied effective and meaningful negotiations. Rather, many separate provisions in the contract relate only to employees in the DPW, indicating that the uniqueness of their terms and conditions of employment were recognized and dealt with at the negotiating table.

There is merit in this position of the Director. However, the County, as employer, stated at the hearing that it would support a separate unit for employees of DPW. The stated reason for the employer's position was it would be more "...convenient for the County's operation with respect to the Department of Public Works and with respect to other Departments in the County..." and if the department were granted separate units it would make "its administration much more convenient both in terms of scheduling, vacations and other things..." We feel that this stated position of the employer is such as to overcome the Director's reliance on negotiating history. Further, the very negotiating history upon which the Director relies indicates a self-felt community of interest on the part of DPW employees.

In summary, we have a group of employees whose terms and conditions of employment are clearly unique, and who have a special interest in safety considerations not shared by other employees, seeking a separate unit, and an employer stating that it would be more convenient administratively to deal with such employees in a separate unit. This combination is most compelling and,

indeed, is dispositive here. This is not to say that in all cases where an employer agrees with one of the competing employee organizations as to a unit determination that the employer's position will be the determining factor. We only decide here that where there are compelling reasons for the creation of a separate unit fragmented out of an overall unit and the employer says that the establishment of such a unit would permit greater administrative convenience, we will grant the unit sought.

In view of our decision that a negotiating unit of non-supervisory employees of the DPW is appropriate, the SEIU objection that AFSCME does not have a sufficient showing of interest is moot and we need not evaluate it.[1]

Finally, we reject the position of CSEA that we lack jurisdiction to reconsider the unit determination because the exceptions were not timely filed.[2] It is true that under our Rules a request for an extension of time within which to file exceptions should have been made in writing by October 1, 1974[3] indicating the position of the other parties with regard to the request, and should have been served simultaneously on all the other parties. In the instant situation, the request was made by telephone and did not indicate the position of the other parties. Nevertheless, it was granted in a letter that

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1 The dissenting opinion of Chairman Robert D. Helsby expresses some sympathy for the SEIU exception. Our silence on the matter does not imply our agreement with him.

2 Chairman Robert D. Helsby concurs in this part of the decision.

3 Section 201.12 of our Rules provides in part "(a) Within ten working days after receipt of the decision of the Director, a party may file with the Board...a statement in writing setting forth exceptions thereto...(d) A request for an extension of time within which to file exceptions and briefs shall be in writing and filed with the Board at least three working days before the expiration of the required time for filing, shall indicate the position of the other parties with regard to such request, and copies of such request shall simultaneously be served upon each party to the proceeding." The parties received the decision of the Director on September 20, 1974.

was mailed on September 25, 1974, which was in sufficient time to reach the parties by October 1, 1974. We find that there was substantial compliance with our Rules[4] and that it would not effectuate the purposes of the Act to reject the exceptions of AFSCME.

NOW, THEREFORE, WE DETERMINE that there shall be two units of employees of the Department of Public Works of Sullivan County, as follows:

UNIT I: All regular full and part-time employees in the Department of Public Works except those in UNIT II, as set forth below.

UNIT II: All regular full and part-time senior engineers, civil engineers, auto and equipment coordinators, auto shop foremen, sign painter foremen, district road maintenance foremen, road construction foremen and bridge foremen.

Excluded from both units and the residual unit referred to on the bottom of p. 8, infra, are: elected and appointed officials; registered and public health nurses; employees of the Sheriff's Department; Tax Map Supervisor; Probation Director; Sealer of Weights and Measures; Motor Vehicle Supervisor; Deputy Commissioner DPW; Secretary to the

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4 CSEA's reliance upon Cattaraugus County Chapter CSEA v. Helsby (Sup.Ct.1970) 3 PERB 7056, is misplaced because the circumstances herein constituted substantial compliance with our Rules. Moreover, we reject the principle of law enunciated in the Cattaraugus case to the extent that it would prevent this Board from waiving its Rules under circumstances that do not prejudice any party. CSEA was not prejudiced by the extension of time granted to AFSCME to file exceptions.

Commissioner DPW; General Foreman; Assistant General Foreman; Office Manager DPW; Director of Social Services; Director of Administrative Services; Nursing Home Director; Secretary-Deputy Clerk, Board of Supervisors; Personnel Assistants; Confidential Secretary to the Budget Director; Confidential Secretary to the Administrative Assistant to the Board of Supervisors; Confidential Secretary to the County Attorney; Sullivan County Community College administration and faculty; Secretary to the President of the College; Secretary to the Vice-President/Dean of Faculty of the College; Secretary to the Dean of Administration of the College; Secretary to the Special Projects Coordinator of the College; employees who work less than 20 hours a week and those employed solely on a seasonal basis; and all other employees of Sullivan County.

IT IS ORDERED that an election by secret ballot shall be held to determine whether the employees in Units I and II desire to be represented by CSEA, SEIU, AFSCME, or none of them.

With regard to the balance of the employees in the unit determined to be appropriate by the Director and not included in the above two units, we are unclear as to whether SEIU presently desires to represent these employees. If SEIU, within four working days from the date of receipt of this decision, notifies the Director that it does seek to represent these employees, then

WE FURTHER ORDER that an election be held to determine whether these employees desire to be represented by CSEA, SEIU, or neither.

Dated: Albany, New York
November 14, 1974

Joseph R. Crowley

Joseph R. Crowley

Fred L. Denson

Fred L. Denson

DISSENTING OPINION OF ROBERT D. HELSBY

I would confirm the unit determination of the Director. Longstanding negotiating units ought not be altered without either the consent of all interested parties or a very clear demonstration that the negotiating unit has proved to be inconsistent with one of the three statutory standards (CSL §207.1).

Neither circumstance pertains in this case. CSEA, the currently certified employee organization, objects to the creation of a separate unit for DPW employees. The history of negotiations as revealed by the record indicates that the negotiating unit has been consistent with the statutory standards and I concur with the reasoning of the Director in this regard. The Director has found, on the basis of ample support in the record, that the existing unit satisfies the first standard, that is, it corresponds to a community of interest among the employees included in it. There is no question but that the second statutory standard -- that officials of the government at the level of the unit have the power to agree or to make effective recommendations with respect to terms and conditions of employment upon which the employees desire to negotiate -- is met. My two associates rely upon a position of the County in support of a separate unit for DPW employees for the conclusion that such a change will serve the administrative convenience of the County. I am not so persuaded. At most the County position is a statement of preference not supported by evidence. Moreover, I find ambivalence in the County's posture. After endorsing continuation of the existing unit during much of the hearing, the County entered into a stipulation with SEIU and AFSCME that it would support a separate DPW unit. However, in its post-hearing brief, the County asserted that it would not oppose the continuation of the existing unit.[1] Its brief

[1] I do not believe that the so-called stipulation prevents the County from modifying or reversing its position regarding the unit that it wants. I would distinguish between statements of position and allegations of fact. It is the latter that are normally the subject of binding stipulation.

to this Board states that "the County requests that the decision of the Director be sustained."[2]

In view of the majority decision sustaining the AFSCME unit position, I need not determine the validity of the exception of SEIU, supported by CSEA, that an employee organization which submits a showing of interest for a particular unit that is found to be inappropriate should not be permitted to participate in an election in a larger unit that is found to be appropriate unless its showing of interest comes to 30% of that larger unit. However, I do wish to note that I am concerned that to permit an employee organization to do so may encourage employee organizations lacking sufficient support at the time when a petition is timely to file representation petitions in inappropriately small units.

Dated: Albany, New York
November 14, 1974

Robert D. Helsby, Chairman

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2 I am also not unmindful of the fact that SEIU, an advocate of an overall unit for DPW employees, filed no exceptions to the unit determination of the Director. AFSCME did; it preferred two units for the DPW -- one for blue-collar and another for white-collar -- but indicated that it would not object to a combined blue-collar, white-collar DPW unit.