

**BEFORE THE STATE BOARD OF MEDIATION
STATE OF MISSOURI**

INSTITUTIONAL & PUBLIC EMPLOYEES)
UNION, LOCAL 410, AFSCME, AFL-CIO,)
)
Petitioner,)
)
vs.)
)
CITY OF ST. LOUIS, WATER DIVISION,)
)
Respondent,)
)
INTERNATIONAL UNION OF OPERATING)
ENGINEERS, AFL-CIO, LOCAL 2)
)
and)
)
ST. LOUIS MUNICIPAL EMPLOYEES)
UNION, LOCAL 675, AFSCME, AFL-CIO,)
)
Intervenors.)

Public Case No. R 87-006

JURISDICTIONAL STATEMENT

This case appears before the State Board of Mediation upon the filing by Institutional and Public Employees Union, Local 410, AFSCME, of a Petition for Certification as Public Employee Representative of certain employees of the Water Division of the Department of Public Utilities of the City of St. Louis. A hearing was held on November 20, 1986, in St. Louis, Missouri at which representatives of Local 410, and the City of St. Louis were present. Also present were representatives of the intervenors, International Union of Operating Engineers, Local 2, AFL-CIO, and St. Louis Municipal Employees Union, Local 675, AFSCME, AFL-CIO. The case was heard by State Board of Mediation Chairman Mary Gant, employer member Milton Talent and employee member James O'Mara.

The State Board of Mediation is authorized to hear and decide the issues concerning appropriate bargaining units by virtue of Section 105.525, RSMo. 1978.

At the hearing, the parties were given full opportunity to present evidence. The Board, after a careful review of the evidence, sets forth the following findings of fact and conclusions of law.

FINDINGS OF FACT

Local 410 has filed a Petition to be certified as public employee representative in the following described unit:

All civil service employees of the City of St. Louis working in the Water Division of the Department of Public Utilities, excluding managers, supervisors and confidential employees; and those who have traditionally been represented by Craft unions, to-wit: electricians, carpenters, stationary engineers, construction equipment operators II.

Local 2 has intervened because they contend that the unit sought by Local 410 includes two classifications of employees, mechanical maintenance worker and water treatment plant operator, which have traditionally been represented by Local 2 as a part of a trade group. Local 675 has intervened seeking a place on the ballot. The issue before the Board is whether there exists a contract bar which would preclude Local 410 from representing the sought unit.

The City of St. Louis has categorized its employees in various schedules according to the employee's type of job. The G-Schedule is the largest group of employees, referred to as general employees. There are other more specialized schedules such as the F-Schedule (firefighters), P-Schedule (professional employees), M-Schedule (managerial employees), and T-Schedule which refers to a wide range of skilled or trade employees including electricians, plumbers and other craftsmen. Local 410 has petitioned to represent approximately 286 employees working in the Water Department. Of those employees there are approximately 55 persons who work as

mechanical maintenance workers or water treatment plant operators. Those two positions have been designated by the City as T-Schedule or trade group positions.

Although all city employees work under the same civil service rules and regulations, trades group or T-Schedule employees are treated differently from other employees in some respects. Testimony adduced at the hearing indicated that historically the City has voluntarily recognized various trade groups and has met and conferred with them concerning the terms and conditions of employment. The latest such negotiations resulted in the trade group employees receiving a 7% pay increase in 1986 whereas the G-Schedule or general employees only receiving a 2% pay increase. Also, the T-Schedule employees retained a four-step pay range but the G-Schedule employees have an open range pay scale.

The record as a whole indicates that there is a substantial history of bargaining between the various trade unions and the City. The mechanical maintenance workers have long been represented by various trade unions and the water treatment plant operators have been so represented since 1983. The present terms and conditions of employment of the T-Schedule employees are the result of negotiations which took place from November, 1985 until July, 1986. Those negotiations were conducted by the City and representatives from seven different trade unions. The unions involved in negotiations were IUOE, Local 2, IBEW, Local 1, Journeymen Plumbers, Local 35, Carpenters District Council of St. Louis, IUOE, Local 513, Painters District Council No. 2, and IBEW, Local 2. Negotiations resulted in a Memorandum of Understanding dated August 8, 1986, by which the trade unions and the City agreed on several matters including salaries, holidays, sick leave policy and vacation time. Testimony from both the business representative from Local 2, and the Director of Personnel of the City of St. Louis indicates that the meet and confer sessions were geared substantially toward the terms and conditions of employment of the T-Schedule employees rather than the G-Schedule employees even though some of the provisions of the memorandum affected

the G-Schedule employees. Subsequent to the execution of that Memorandum of Understanding, the City of St. Louis enacted Ordinance No. 59985, thereby adopting the provisions as agreed upon in the Memorandum of Understanding.

CONCLUSIONS OF LAW

Local 410 has petitioned to be certified as public employee representative of a bargaining unit comprised of all civil service employees of the City of St. Louis working in the Water Division of the Department of Public Utilities, excluding managers, supervisors, confidential employees, and those employees who have traditionally been represented by trade unions, such as electricians, carpenters, stationary engineers, and construction equipment operators. The parties have stipulated that limited term employees and professional employees shall be excluded from any appropriate bargaining unit. Further, the parties have stipulated that the position of trades helper would be included in the appropriate bargaining unit and that the position of Clerk IV be excluded from the unit because said position is supervisory. Local 2 has intervened, arguing that the positions of water treatment plant operator and mechanical maintenance worker are a part of the T-Schedule employees historically represented by trade unions and therefore should be excluded from the appropriate bargaining unit of the other G-Schedule or general employees. Local 675 has intervened asking only that the Board find a sufficient showing of interest so as to allow Local 675 to appear on the ballot.

Since all parties are in agreement that the employees in the petitioned for bargaining unit share a community of interest, the only issue remaining before the Board is whether there exists a contract bar which would prohibit Local 410 from representing those employees working as mechanical maintenance workers or water treatment plant operators. The Board has long recognized that an agreement between an employer

and an incumbent union will make untimely any certification or decertification petition filed by another union unless the petition is filed during the thirty day period commencing on the 90th day and ending on the 61st day preceding the termination of the agreement. See American Federation of Teachers, Local 420, v. St. Louis Board of Education, Case No. 79-055 (SBM 1980); Association of Probation and Parole Employees v. Dept. of Corrections and Human Resources, Case No. 81-028 (SBM 1982). The Board will recognize a contract bar if an employer (1) meets, confers and discusses proposals concerning customary terms and conditions of employment with the employee's bargaining representative; (2) reduces those discussions to writing; (3) presents such proposals to the appropriate governing body; and (4) the governing body adopts those proposals. Additionally, the terms of the agreement must clearly encompass the employees sought in the petition.

In the present case, it is undisputed that seven trade unions met and conferred with the City of St. Louis from November, 1985 until July, 1986 concerning the customary terms and conditions of employment. Those negotiations were reduced to writing in the Memorandum of Understanding signed by representatives of each of the seven unions and the City. Additionally, the Memorandum of Understanding was presented to the City of St. Louis and adopted by ordinance. Accordingly, it is clear that a contract bar does exist which would preclude Local 410 from seeking to represent mechanical maintenance workers and the water treatment plant operators. However, the record as a whole does not indicate that the Memorandum of Understanding executed by the parties clearly encompassed those G-Schedule employees sought in Local 410's Petition. To the contrary, testimony of both the business agent for Local 2 and the Director of Personnel of the City of St. Louis, indicates that the meet and confer sessions largely concerned only T-Schedule employees and not the G-Schedule

employees. Further substantiating the Board's conclusion is that all the signatories of the Memorandum of Understanding were trade unions and not unions which have typically represented G-Schedule employees.

As stated in Association of Probation and Parole Employees v. Dept. of Corrections and Human Resources, supra, the Board will recognize a contract bar only when the contract, by its terms, clearly encompasses the employees sought in the petition in that to require anything less would be an unreasonable bar to the employees right to free choice of bargaining representative. In this case, the record as a whole does not sufficiently show that those G-Schedule employees were represented at the bargaining table by the various trade unions. To accept Local 410's argument would be to allow that union to arbitrarily carve out two classifications of T-Schedule employees within the Water Department notwithstanding the long history of bargaining between the trade unions and the City of St. Louis. Therefore, the Board rules that no contract bar exists for the G-Schedule employees petitioned for by Local 410.

The remaining issue concerns whether Local 675 has established a "legitimate interest" authorizing its inclusion on the ballot for election. Board Rule 40.2.130 provides that an intervenor has a "legitimate interest" if the Union can prove it is authorized to represent at least 10% of the employees within the proposed bargaining unit. Local 675 has made this showing of interest and, therefore, shall be included on the ballot.

DECISION

It is the decision of the State Board of Mediation that an appropriate bargaining unit of employees is as follows: All employees of the City of St. Louis working in the Water Division of the Department of Public Utilities as set out in Board Exhibit No. 3, but

specifically excluding the positions of Mechanical Maintenance Worker, Water Treatment Plant Operator and Clerk IV.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the Chairman of the State Board of Mediation among the employees in the unit found appropriate, as early as possible, but not later than thirty days from the date below. The exact time and place will be set forth in the notice of election to be issued subsequently, subject to the Board's rules and regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during the period because of vacation or illness. Ineligible to vote are those employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election. Those eligible to vote shall vote whether or not they desire to be represented for the purposes of exclusive recognition by Institutional and Public Employees Union, Local 410, AFSCME, AFL-CIO or St. Louis Municipal Employees Union, Local 675, AFSCME, AFL-CIO.

It is hereby ordered that the City shall submit to the Chairman of the State Board of Mediation, as well as to Local 410 and Local 675, within seven days from the date of receipt of this decision an alphabetical list of names and addresses of employees in the unit determined above to be appropriate were employed during the payroll period immediately preceding the date of this decision.

Signed this 5th day of February, 1987.

STATE BOARD OF MEDIATION

(SEAL)

/s/ Mary L. Gant
MARY L. GANT, Chairman

/s/ James O'Mara
JAMES O'MARA, Employee Member

/s/ Milton O. Talent
MILTON TALENT, Employer Member

CLASSES IN THE BARGAINING UNIT AS PROPOSED BY 410

Water Division Union Representation

| Class Code | Class Title | Inc. | Locals | | | |
|------------|----------------------------|------|--------|-----|-----|-----|
| | | | 2A | 410 | 513 | 675 |
| 1141 | Account Clerk I | 2 | 0 | 0 | 0 | |
| 1142 | Account Clerk II | 3 | 0 | 0 | 0 | |
| 1112 | Clerk I | 1 | 0 | 1 | 0 | 0 |
| 1113 | Clerk II | 1 | 0 | 0 | 0 | 0 |
| 3711 | Custodian | 9 | 0 | 7 | 0 | 0 |
| 1185 | Dispatcher | 7 | 0 | 1 | 0 | 0 |
| 4422 | Drafter II | 4 | 0 | 0 | 0 | 0 |
| 3285 | Elect Instrument Tech. | 2 | 0 | 0 | 0 | |
| 4222 | Engineering Aide II | 1 | 0 | 1 | 0 | 0 |
| 3321 | Equipment Operator | 9 | 0 | 5 | 0 | 2 |
| 3325 | Heavy Equip. Op. I | 7 | 0 | 1 | 0 | 0 |
| 5424 | Lab Assistant | 3 | 0 | 2 | 0 | 0 |
| 3111 | Laborer | 1 | 0 | 1 | 0 | 0 |
| 3233 | Machinist | 4 | 0 | 1 | 0 | 0 |
| 3242 | Painter | 6 | 0 | 0 | 0 | 0 |
| 3511 | Plant Operations Asst. | 12 | 0 | 5 | 0 | 1 |
| 1131 | Secretary I | 0 | 0 | 0 | 0 | 0 |
| 1212 | Storekeeper II | 2 | 0 | 2 | 0 | 0 |
| 3281 | Trades Helper | 3 | 0 | 0 | 0 | 0 |
| 3117 | Utility Worker | 68 | 0 | 42 | 0 | 0 |
| 3523 | Water Meter Repair Worker | 11 | 0 | 5 | 0 | 0 |
| 5481 | Water Quality Tech | 1 | 0 | 1 | 0 | 0 |
| 3514 | Water Service Inspector | 4 | 0 | 0 | 0 | 3 |
| 3521 | Water Service Worker | 18 | 0 | 1 | 0 | 2 |
| 3512 | Water Systems Maint Worker | 24 | 0 | 12 | 0 | 5 |
| 1121 | Typist Clerk I | 4 | 0 | 2 | 0 | 0 |
| 1122 | Typist Clerk II | 22 | 0 | 0 | 0 | 0 |
| TOTALS | | 229 | 0 | 90 | 0 | 21 |

Inc. Incumbents

Data appearing in this Table is a combination of the Dues Checkoff report and Exam's GPCLASS data table