

HHC PBA, 5 OCB2d 30 (BOC 2012)

(Rep) (Docket No. RU-1262-12).

Summary of Decision: HHC PBA appealed the dismissal of its petition to represent Special Officers and Supervising Special Officers employed at HHC, which was filed after the expiration of a collective bargaining agreement. The Board upheld the dismissal because the petition was untimely under the contract bar rule. (*Official decision follows.*)

**OFFICE OF COLLECTIVE BARGAINING
BOARD OF CERTIFICATION**

In the Matter of the Certification Proceeding

-between-

HHC PBA, Inc.,

Petitioner,

- and -

**CITY OF NEW YORK and
NEW YORK CITY HEALTH AND HOSPITALS CORPORATION,**

Respondents,

-and-

**CITY EMPLOYEES UNION, LOCAL 237,
INTERNATIONAL BROTHERHOOD OF TEAMSTERS,**

Intervenor.

DECISION AND ORDER

On July 5, 2012, HHC PBA, Inc. (“HHC PBA”) filed a petition to represent employees in the titles of Special Officer (Title Code No. 708100) and Supervising Special Officer Levels I and II (Title Code No. 103210 and 103220) employed at the New York City Health and Hospitals Corporation (“HHC”). These employees are

represented by the City Employees Union, Local 237, International Brotherhood of Teamsters (“Local 237”) and are covered by a collective bargaining agreement between the City of New York (“City”), HHC, and Local 237 that expired on September 25, 2010. On July 30, 2012, the Director of Representation dismissed the petition as untimely because the contract bar rule prohibits the filing of a petition after the expiration of a collective bargaining agreement. On August 9, 2012, HHC PBA appealed the dismissal of its petition. We uphold the dismissal since the petition was untimely.

BACKGROUND

The titles Special Officer and Supervising Special Officer are utilized by numerous City agencies as well as HHC. Special Officers, Supervising Special Officers, and employees in other titles are represented by Local 237 in a bargaining unit created by Certification No. 67-78. In 2009, the City, HHC, and Local 237 executed a collective bargaining agreement covering these employees for the period of September 13, 2008, to September 25, 2010 (“2008-2010 Agreement”). The 2008-2010 Agreement remains in *status quo* pursuant § 12-311(d) of the New York City Collective Bargaining Law (New York City Administrative Code, Title 12, Chapter 3) (“NYCCBL”).

On July 5, 2012, HHC PBA filed a petition to represent only those Special Officers and Supervising Special Officers who are employed at HHC.

On July 30, 2012, the Director of Representation dismissed the petition because § 1-02(g) of the Rules of the Office of Collective Bargaining (Rules of the City of New York, Title 61, Chapter 1) (“OCB Rules”) “sets forth the window periods in which a petition can be filed and provides that “[n]o petition for certification, decertification or

investigation of a question or controversy concerning representation may be filed after the expiration of a contract.”¹ See OCB Rule 1-02(j)(2) (providing that the Director of Representation may dismiss untimely petitions). HHC PBA appealed the dismissal.²

POSITIONS OF THE PARTIES

HHC PBA’s Position

HHC PBA does not address timeliness in its appeal. It argues that HHC’s Special Officers and Supervising Special Officers perform police-like functions and are submerged in a clerical union that cannot negotiate for uniformed service benefits as

¹ OCB Rule § 1-02(g) provides:

A valid contract between a public employer and a public employee organization will bar the processing of any petition filed outside of the window periods described below. The time period for filing a petition for certification, designation, decertification or revocation of designation pursuant to § 1-02(c), (d), or (e) of these rules shall be: for a contract of no more than three years’ duration, a petition can be filed not less than 150 or more than 180 calendar days before the contract’s expiration date; for a contract of more than three years’ duration, a petition can be filed no less than 150 or more than 180 calendar days before the contract’s expiration date, or not less than 150 or more than 180 calendar days before the end of the third year of that contract. No petition for certification, decertification or investigation of a question or controversy concerning representation may be filed after the expiration of a contract. However, in the event that a public employer and a public employee organization sign a successor contract after that contract has expired, then a petition for certification, decertification or question or controversy concerning representation may be filed in the 30-day period following the date the successor contract is signed by all parties. Moreover, if the Board finds that unusual or extraordinary circumstances exist, such as when there is reason to believe that a recognized or certified employee organization is defunct or has abandoned representation of the employees in the unit for which it was recognized or certified, the Board may process a petition otherwise barred by this rule.

² In its appeal, HHC PBA incorrectly named the Board of Collective Bargaining, which does not have jurisdiction over representation matters. See NYCCBL § 12-309.

stated as in the legislative intent of Local Law 56 of 2005 (“Local Law 56”).³ Citing the statutory provision giving the Board of Certification the power and duty to make bargaining unit determinations and the OCB Rule setting forth the factors to be considered in determining appropriate bargaining units, HHC PBA seeks a determination that Local 237’s bargaining unit is no longer appropriate on the grounds that HHC’s Special Officers and Supervising Special Officers are primarily responsible for law enforcement.

Local 237’s Position

Local 237 argues that the Director of Representation correctly determined that the petition, which was filed after the expiration of the 2008-2010 Agreement, was untimely and properly dismissed it. The dismissal was predicated on indisputable facts and is not affected by any error of law. Local 237’s objects to HHC PBA’s proposed determinations since they are irrelevant to the sole issue on appeal, which is the timeliness of the petition. Accordingly, Local 237 requests that the appeal be dismissed.

City’s Position

The City opposes HHC PBA’s petition and appeal. The contract bar doctrine precludes the filing of petitions after the expiration of the contract in light of the lengthy delays in the negotiation and execution of collective bargaining agreements with the City. The petition is untimely because it was filed well beyond the expiration of the 2008-2010 Agreement. The City notes that HHC PBA made no effort to challenge the timeliness

³ Local Law 56 addresses the scope of bargaining on behalf of Special Officers and Supervising Special Officers working only at specified City agencies. *See* NYCCBL § 12-307(a)(5) (as amended by Local Law 56); *see also* DC 37, 2 OCB2d 14, at 2 n. 1 (BOC 2009). It does not cover Special Officers and Supervising Special Officers employed by HHC.

grounds underlying the dismissal and instead raised substantive arguments to overcome the procedural bar. Citing several decisions in which the Board has found that Special Officers are appropriately placed in Local 237's bargaining unit, the City argues that HHC PBA has not presented any new issues that would warrant a hearing or justify deviating from the Board's policy against the fragmentation of bargaining units.

DISCUSSION

The issue before us is whether the Director of Representation erred in finding that HHC PBA's petition is untimely. We find that the petition is untimely under the contract bar rule set forth in OCB Rule § 1-02(g) and uphold the dismissal of the petition.

The contract bar doctrine "has been long and firmly established in the field of labor relations." *City Employees Union, Local 237, IBT*, 8 OCB 11, at 3-4 (BOC 1971). Its purpose is to "balance the statutory objective of stability in bargaining relationships with the statutory right of employees to freely designate or change their representatives." *Terminal Employees Local 832, Intl. Bhd. of Teamsters*, 10 OCB 27, at 5 (BOC 1972) (dismissing a petition filed after the expiration of a contract), *reconsideration denied*, 10 OCB 73 (BOC 1972).

OCB Rule § 1-02(g) provides that "[a] valid contract between a public employer and a public employee organization will bar the processing of any petition filed outside of the window periods described below." If the duration of the contract is three years or less, a petition can be filed "not less than 150 or more than 180 calendar days before the

contract's expiration date.”⁴ *Id.* The rule specifies that “[n]o petition for certification, decertification or investigation of a question or controversy concerning representation may be filed after the expiration of a contract.”⁵ *Id.*; see, e.g., *Patrolmen and Security Officers Section, Allied Services Div., BRAC*, 18 OCB 50, at 2 (BOC 1976) (dismissing a petition to represent Special Officers, Senior Special Officer, Supervising Special Officers, and Hospital Security Officers filed after the expiration of a contract).

Applying the contract bar doctrine to the facts presented here, the Director of Representation correctly found that HHC PBA's petition is untimely since it was filed after the expiration of the 2008-2010 Agreement. See OCB Rule 1-02(g).

Indeed, HHC PBA does not deny that its petition is untimely. Rather, HHC PBA requests that the Board reach the merits of its petition based on our statutory power and duty to determine appropriate bargaining units and the factors considered in such a determination. See NYCCBL § 12-309(b)(1); OCB Rule § 1-02(k). This argument is unpersuasive. While we are empowered to determine appropriate bargaining units, that authority in no way relieves a party of its obligation to file petitions in a timely manner. See *LEEBA*, 78 OCB 9, at 15 (BOC 2006) (upholding the dismissal of a petition to represent HHC's Special Officers, Senior Special Officers, and Hospital Security Officers filed outside the applicable window period).⁶ Moreover, we find that HHC PBA's

⁴ Pursuant to OCB Rule § 1-02(g), the window period to file a petition during the 2008-2010 term was March 29, 2010, through April 28, 2010.

⁵ OCB Rule § 1-02(g) provides an alternative window period in the event that a successor agreement is already expired at the time that it is signed. We note that the facts warranting such an exception are not present here.

⁶ HHC's Senior Special Officers and Hospital Security Officers were later reclassified as Supervising Special Officers Levels I and II. See *IBT Local 237*, 3 OCB2d 46, at 1 (BOC 2010).

factual assertions do not demonstrate “unusual or extraordinary circumstances” that warrant processing the petition despite the contract bar. OCB Rule 1-02(g); *see LEEBA*, 78 OCB 9, at 11 n. 6.

As HHC PBA’s petition was filed after the expiration of a contract, we uphold the dismissal of HHC PBA’s petition as untimely.

ORDER

Pursuant to the powers vested in the Board of Certification by the New York City Collective Bargaining Law, it is hereby

ORDERED, that the appeal filed by HHC PBA, Inc. challenging the dismissal of its petition, docketed as RU-1262-12, as untimely is hereby dismissed.

Dated: September 18, 2012
New York, New York

MARLENE A. GOLD
CHAIR

GEORGE NICOLAU
MEMBER

CAROL A. WITTENBERG
MEMBER