Assis. District Att. V. City, et. Al, 10 OCB 24 (BOC 1972)
[Decision No. 24-72 (Cert.)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF CERTIFICATION
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In the Matter of
ASSOCIATION OF NEW YORK CITY
ASSISTANT DISTRICT ATTORNEYS
IN THE CITY OF NEW YORK DECISION NO. 24-72

-and-

DOCKET NO. RU-281-71

THE CITY OF NEW YORK AND
RELATED PUBLIC EMPLOYERS (THE
DISTRICT ATTORNEYS IN THE FIVE
COUNTIES WITHIN THE CITY OF
NEW YORK)
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DECISION AND ORDER

On August 31, 1971, the "Association of New York City Assistant District Attorneys in the City of New York" (Association) filed a petition requesting certification as the exclusive collective bargaining representative of Assistant District Attorneys and Criminal Law Investigators employed by the District Attorneys whose offices are located in the City of New York.

On October 22, 1971, the City moved to dismiss the petition on the ground that the Association is not a labor organization under the New York City Collective Bargaining Law (NYCCBL).

This Board, in Decision No. 80-71, directed that a hearing be held on the preliminary issue of the Association's status as a labor organization. The hearing was held on March 6, 1972, before Oscar Geltman, Esq., Trial Examiner. The City and the Association appeared and participated, and thereafter each submitted a brief.

Upon consideration of the entire record herein and the briefs of the parties, the Board makes the Findings and Conclusions and issues the Order set forth below.

Findings and Conclusions

A preliminary meeting for the purpose of forming an organization of Assistant District Attorneys and Criminal Law Investigators employed by the District Attorneys whose offices are located in the City of New York, was held on or about April 21, 1971. Approximately 125 persons attended. It was followed by an organizational meeting, held June 3, 1971, at which a constitution was adopted and officers were elected. The constitution specifies that the Association's objectives are:

> "To promote the material and educational interests of the Assistant District Attorney and Criminal Law Investigator."

Since its inception, the Association has utilized, to enroll applicants for membership, a membership application/union authorization form which, in addition to noting that the signer requests membership in the Association, specifies as follows:

> "this application shall serve as my authorization to the Association to represent me for collective bargaining purposes before the City Budget Commission or any other City or State agency before which such representation may be required.
>
> (emphasis added)

Signed copies of the above-described form, dated June 4, 1971, and thereafter, were filed by the Association as its proof of interest in connection with its petition herein.

During the period April 1971 to November 1971, the Association conducted a publicity campaign consisting of five newsletters sent to all Assistant District Attorneys and Criminal Law Investigators in the City. Two of these contained reprints of a New York Law Journal article quoting the Association's president as stating that formation of the Association was chiefly prompted by discontent with pay levels, with physician conditions of court rooms, and with workloads.

Citing our decision in the case of Manpower Directors Association, Decision No. 76-71, the City argues that because the Association has no prior bargaining history or established labor union affiliation, a "formal" statement is required that one of the primary purposes of the organization is to represent public employees concerning wages, hours and working conditions (see page 2, City's brief). In the Manpower decision we did refer to the lack of a formal statement in the organization's Constitution and by-laws with respect to a collective bargaining purpose. But far more pertinent was the fact that in the Manpower case the organization completely defaulted in responding to the challenge to its status though given every opportunity to do so. Under the circumstances, because of the patent lack of interest to respond to such challenge, the conclusion made by this Board was the only one it could make. In contrast is the record in this case where the present petitioner at all times has maintained that it is in fact a public employee organization, and at the hearing herein adduced oral and documentary evidence in support of that position.

Moreover, we view the Association's stated purpose of improving the material interests of the employees sufficiently broad in purpose so as to include an economic objective and, therefore, consistent with a collective bargaining purpose. In any event, the short answer to the alleged infirmity in the status of the Association is that a formal stated collective bargaining purpose is not necessary where, as in this case, other factors persuade us that the Association has manifested a willingness to represent the employees in the proposed bargaining unit. ("It is Petitioner's willingness, rather than its constitutional ability to represent these employees which is the controlling factor." F. C. Russell Co., footnote 5, 116 NLRB 1015 (1956)8 38 LRRM 1389.) Nor does the objection, implied in the City's brief, that the Association lacks experience in representing employees, contain merit [cf. Trenton Foods, Inc., 101 NLRB 1769 (1952), 31 LRRM 12661.

We find that since its inception, the Association has required those who apply to join it to sign a form authorizing the Association to represent them for collective bargaining purposes. In addition, the newsletters sent by the Association to those eligible for membership quoted the Association's president as stating that formation of the Association was chiefly prompted by discontent with pay levels, with physical conditions of courtrooms, and with workloads.

We conclude, therefore, that the Association is a public employee organization having as a primary purpose the representation of public employees concerning wages, hours and working conditions and that it is therefore a public employee organization within the sense and meaning of §1173-3.0j of the NYCCBL.

As we stated at the outset, this decision deals solely with the preliminary issue concerning the status of the Association as a public employee organization. Other essential issues necessary for a resolution of this proceeding such as the appropriateness of unit, its composition and scope, and, ultimately, the rights of the employees to collective bargaining, remain to be decided.

O R D E R

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

ORDERED, that the City's motion to dismiss the petition herein be, and the same hereby is, denied, and it is further ORDERED, that this proceeding be, and the same hereby is directed to proceed to hearing at a time and place to be fixed by a Trial Examiner of the Board.

DATED: New York, N.Y.
May 24 , 1972.

ARVID ANDERSON
C h a i r m a n

WALTER L. EISENBERG
M e m b e r

ERIC J. SCHMERTZ
M e m b e r