

L.832, Ibt, et. Al v. City, 10 OCB 27 (BOC 1972) [Decision No. 27-72 (Cert.)]

OFFICE OF COLLECTIVE BARGAINING  
BOARD OF CERTIFICATION

-----X

In the Matter of the  
Petition of  
TERMINAL EMPLOYEES LOCAL 832,  
INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS,

DECISION NO. 27-72

-and-

DOCKET NO. RU-299-72

THE ADMINISTRATIVE BOARD OF  
THE JUDICIAL CONFERENCE OF  
THE STATE OF NEW YORK

-and-

THE CITY OF NEW YORK

-----X

DECISION AND ORDER

By petition dated February 10, 1972, Terminal Employees Local 832, International Brotherhood of Teamsters (hereinafter "IBT") requested certification as exclusive representative of a unit of employees in the title of Uniformed Court Officer employed by The Administrative Board of the Judicial Conference of the State of New York (hereinafter "Employer") in the Unified Court within New York City. Subsequently, by letter dated February 22, 1972, IBT, amended its petition so as to add and include in the unit employees in the title of Court Assistant (Trial Part)

Thereafter, by petition dated March 15, 1972, Uniformed Court Officers Association, Local 598, Service Employees International Union, AFL-CIO (hereinafter "Intervenor") , moved to intervene in the proceeding. There being no opposition and since intervenor is the currently certified incumbent, we shall, accordingly, grant the petition to intervene.

Simultaneously with the petition to intervene, SEIU moved to dismiss the representation petition on the ground that there was a subsisting valid collective bargaining agreement between the Employee and Intervenor which terminated June 30, 1971, and the petition, having been filed subsequent to the expiration of the contract, was not timely filed. Petitioner~ thus claims that the proper filing time should have been the month of January, 1971. In this connection, Intervenor cites Rule 2.7 which reads as follows:

"2.7 Petitions - Contract Bar; Time to file. A valid contract between a public employer and a public employee organization shall bar the filing of a petition for certification or decertification during a contract term not exceeding three (3) years. A petition for certification or decertification shall be filed not less than five (5) or more than six (6) months before the expiration date of the contract, or, if the contract is for a term of more than three (3) years, before the third anniversary date of the contract or any subsequent anniversary date thereof. Subject to the provisions of Section 2.18 of these rules and regulations, no petition for certification, decertification or investigation of a question or controversy concerning representation may be filed after the expiration of a contract."

(Emphasis ours)

Through no answer was interposed by IBT or the City to Intervenor's contention of contract bar and its urging of the dismissal of the representation petition, the Board, nevertheless, pursuing its own independent investigation, and based upon a consideration of the entire record, renders the following disposition.

I  
Undisputed Matters

It is undisputed, and we find and conclude, that Terminal Employees Local 832, International Brotherhood of Teamsters and Uniformed Court Officers Association, Local 598, Service Employees International Union, AFL-CIO, are public employee organizations in fact and within the meaning of the New York City Collective Bargaining Law.

II  
Bargaining Unit

We have heretofore certified a unit consisting of Uniformed Court Officers and Court Assistants (Trial Part) for bargaining purposes.<sup>1</sup>

---

<sup>1</sup> In Decision No. 13-71, dated February 23, 1971, this Board amended Labor Department Certification 8 N.Y.C.D.L. No. 4 by accreting Court Assistant (Trial Part) to Uniformed Court Officers.

III  
Contract Bar

The Intervenor and the Employer have had a bargaining history which dates from 1966.<sup>2</sup> The first agreement, reflected in Court System Personnel Order (CSPO) 6/66, was dated and issued November 16, 1966, covering a period of two years from July 1, 1965 to June 30, 1967. The second agreement, reflected in CSPO 7/69, was dated and issued June 11, 1969, covering a period of three years from July 1, 1967 to June 30, 1970. The third and most recent agreement, reflected in CSPO 1/71, was dated and issued April 5, 1971, covering a one-year period from July 1, 1970 to June 30, 1971. Since the latter date and to the present, following the Intervenor's bargaining request to the City dated April 21, 1971, the parties have been, and are, engaged in collective negotiations for a renewal and fourth agreement. This Board is cognizant that the bargaining process between the City and various unions often has involved, as in this case, an extended period of time starting prior to and extending well beyond the expiration date of a contract.<sup>3</sup> The

---

The Intervenor, then known as Joint Council of Uniformed Court Officers' Associations was certified as the exclusive representative of Uniformed Court Officers by the former New York City Labor Department on January 20, 1966 (8 N.Y.C.D.L. No. 4).

"The provision in Rule 2.7 which extends the Contract Bar Doctrine to preclude petitions 'filed after the expiration of the contract,' was inserted because all parties concerned recognized and were aware of the lengthy delays in the negotiation and execution of collective agreements with the City." See footnote 2, In the Matter of New York State Nurses Association - and - The City of New York, Decision No. 68-68.

maintenance of the status quo in bargaining relationships for a statutory time period subsequent to the expiration of an agreement is provided by the NYCCBL (§1173-7.0d). It is this continued status which differentiates this Board's policy of contract bar, under the NYCCBL, from the policy adopted by the National Labor Relations Board which prescribes predictable time intervals available for the filing of rival representation petitions both before and after the expiration of an agreement.<sup>4</sup>

Our purpose in applying the contract bar principle is the same, namely, to bring into balance the statutory objective of stability in bargaining relationships with the statutory right of employees to freely designate or change their representatives.<sup>5</sup>

As noted, our Rule 2.7 clearly precludes the filing of a rival petition after the expiration of an agreement but permits filing between the sixth and fifth month prior to the expiration of an agreement.

---

Deluxe Metal Furniture Co., 121 NLRB No. 135, 42 LRRM 1470; Pacific Coast Assn. of Pulp & Paper Mfrs. 121 NLRB No. 134, 42 LRRM 1477; General Cable Corp., 139 NLRB No. 111, 51 LRRM 1444.

In the Matter of District Council 37, AFSCME, AFL-CIO - and - The City of New York, Decision No. 42-70, and City Employees Union, Local 237, IBT -and - The City of New York and Related Public Employers, Decision No. 11-71.

When the prior contract expired June 30, 1970, the parties were at that time entitled to conduct their negotiations for a renewal agreement effective July 1, 1970. This they did. As a result, a renewal agreement was consummated which expired June 30, 1971. In the circumstances of this case, however, although the most recent agreement between the parties expired June 30, 1971, we do-not agree with Intervenor's position that the representation petition herein would have been timely filed had it been filed in January, 1971.

Rule 2.7 presupposes the existence of a contract with a definite terminal date at the time the rival petition is filed. Here, there was no contract in existence in January, 1971, and, obviously, the rule prescribing the time period within which a rival petition could be filed could not be applicable. By the time the Court System Personnel Order was issued on April 5, 1971, reflecting the agreement between the parties, the agreement, being retroactive in effect, had run most of its one year term with less than three months remaining to its expiration date. In such circumstances, it is our view that the proper time period for filing a rival petition would have been during the one month period after the issuance of the CSPO. We recognize that in some instances Personnel orders or collective bargaining contracts are not immediately published or made generally known on the date of issuance.\* However, in the instant matter, the rival petition was not filed until over ten months after April 5, 1971, and more than seven months after June 30, 1971, the expiration date of the most recent agreement.

---

The CSPO in this matter was dated April 3, 1971. Notice of the Mayor's approval of the CSPO was received by the Judicial Conference on April 6, 1971, and a copy thereof was received by the Office on Collective Bargaining on April 12, 1971.

In the interim, the parties are in the process of negotiations for a renewal agreement. Under such circumstances, the Board finds no merit in extending a rival union's opportunity to file a representation petition merely because the parties have engaged in bargaining beyond the contract expiration period. It is our view that to entertain a rival petition at this time would constitute an unwarranted intrusion upon the collective bargaining process.

It is our view that a postponement of the employees' statutory right to change representatives is justified only if the statutory objectives of encouraging and protecting stability in the conduct of labor relations is thereby effectuated (see "Statement of Policy," §1173-2.0; "Rights of public employees and certified employee organizations," §1173-4.1; Scope of Collective Bargaining (the duty to bargain in good faith), §1173-4.3; "Improper practices" §1173-4.2, which is the guarantee against any infringement of and "Preservation of status quo," §1173-7.0d)

In applying the contract bar rule as we do, we have set no time limitations on negotiations or on the right of the parties to invoke impasse procedures. On the other hand, we do not believe that the contract bar rule should be used as an indefinite or unreasonable bar to the representation rights of employees. Hence, it is conceivable that there will be circumstances in which the contract bar rule may not apply.

For all of the foregoing reasons the representation petition herein is dismissed.

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

O R D E R E D , that the petition of Terminal Employees Local 832, International Brotherhood of Teamsters be, and the same hereby is, denied.

DATED: New York, N.Y.  
June 6, 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