L.832, IBT, et. Al v. City, et. Al, 10 OCB 73 (BOC 1972)
[Decision No. 73-72 (Cert.)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF CERTIFICATION
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In the Matter of

TERMINAL EMPLOYEES LOCAL 832,
INTERNATIONAL BROTHERHOOD OF
TEAMSTERS DECISION NO. 73-72

-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
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A P P E A R A N C E S:

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and for the City of New York

DECISION AND ORDER

On June 6, 1972 we issued our Decision and Order herein, denying Petitioner's application for certification as the collective bargaining representative of an existing unit of employees in the title Uniformed Court Officer employed by the Administrative,

Board of the Judicial Conference of the State of New York; the certified representative of the unit is Uniformed Court Officers Association, Local 598, Service Employees International Union which appears herein as Intervenor. Petitioner's application was denied on the ground that it was not timely filed; this determination was based upon our interpretation of Rule 2.7 of the Consolidated Rules of the Office of Collective Bargaining.

On July 28, 1972, Petitioner filed a request for reconsideration of our Decision and Order of June 6, 19729 asking that it be permitted to present oral argument in support of the request for reconsideration.

The Intervenor and the City opposed the request for reconsideration maintaining that no sufficient basis for such request had been established by petitioner and opposed the grant of oral argument on the same ground. We have heard oral argument on both the questions thus presented on September 27, 1972, and grant the request for oral argument so that our determination herein may deal directly with the merits of the request for reconsideration and that we may have before us all relevant material and arguments available to the Petitioner in support of its request.

The Petitioner's position, essentially, is that the Board, in its June 6, 1972 Decision, erred in "providing its own non-statutory time for filing" a petition for certification as the collective bargaining representative of an existing unit." Rule 2.7 of the Consolidated Rules of the Office of Collective

Bargaining which creates the contract bar here in question, 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 the contract."

Clearly the petitioner's filing on February 10, 1972, seven months after the expiration of the last contract cannot claim to be a statutory filing within the terms of Rule 2.7. The interpretation of Rule 2.7 urged by Petitioner, namely, that "a petition ... be considered timely filed if filed seven months or more after the expiration date of a contract in the circumstances where no new contract has been executed," is, to use petitioner's phrase, an alternative "non-statutory time for filing. As is fully set forth in our Decision No. 27-72 which is incorporated herein, our ruling balanced the interest of free representation and the maintenance. of stability in the collective bargaining process. We find that the alternative formula proposed by Petitioner places excessive emphasis upon the former consideration to the detriment of the latter. Be that as it may,

all that Petitioner has placed before us is an alternative solution which they ask us to substitute in place of the solution we had previously arrived at. Such a submission is insufficient to support the request for reconsideration.

> "The law is well settled that the purpose of a reargument is merely to demonstrate to the court that there is some decision or some principle of law, which would have had a controlling effect, and which has been overlooked; or that there has been a misapprehension of the facts."
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> (Hamilton Park Builders Corp. v. Francis A. Rogers, 156 N.Y.S. 2d. 891, 894; Doty v. Doty, 88 N.Y.S. 2d 328, 330)

No error or oversight as to controlling principles of law and no misapprehension of relevant facts having been cited to us by Petitioner as the cause of any defect in our Decision No. 27-72, we will deny the request for reconsideration of said decision.

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 request for reconsideration of our Decision No. 27-72 of Terminal Employees Local 832, International Brotherhood of Teamsters be, and the same hereby is, denied.

DATED,: New York, New York
November 27, 1972

ARVID ANDERSON
CHAIRMAN

ERIC J. SCHMERTZ
MEMBER

WALTER L. EISENBERG
MEMBER