L.333, et. Al v. City, 12 OCB 22 (BOC 1973) [Decision No. 22-73 (Cert.)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF CERTIFICATION
- - - - - - - - - - - - - - - - - - - x

In the Matter of

LOCAL 333, UNITED MARINE DIVISION,
NATIONAL MARITIME UNION, AFL-CIO, DECISION NO. 22-73

Petitioner

-and-

DOCKET NO.

THE CITY OF NEW YORK,
Employer, RU-356-73
RU-360-73

-and-

DISTRICT NO. 1 - PACIFIC COAST
DISTRICT, MARINE ENGINEERS
BENEFICIAL ASSOCIATION, AFL-CIO,
Intervenor
- - - - - - - - - - - - - - - - - - - x

A P P E A R A N C E S
For Petitioner
Newman & Schlau, Esqs.
17 Battery Place
New York, N.Y. 10004
By: Richard L. Newman, Esq.
For Employer
Office of Labor Relations
250 Broadway
New York,, N.Y. 10007
By: William Babiskin, Esq.
Assistant Counsel
For Intervenor
Joel Glanstein, Esq.
50 Broadway
New York, N.Y. 10005

DECISION, ORDER AND
DIRECTION OF ELECTION

I

Position of Parties

By petition dated February 1, 1973, Local 333, United Marine Division, National Maritime Union, AFL-CIO (hereinafter referred to as "petitioner"), requested certification as exclusive representative of a unit of employees in the titles of Captain, Assistant Captain, Mate, Chief Marine Engineer and Marine Engineer.(RU-356-73)

Thereafter, by separate applications, each dated February 22, 1973, District No. 1, Pacific Coast district, Marine Engineers Beneficial Association, AFL-CIO (herein referred to as "Intervenor"), moved, simultaneously, to intervene in the proceeding and to dismiss the representation petition on the groub that said petition was not timely filed within the requirement of Rule 2.7 of the Consolidated Rules of the Office of Collective Bargaining. The Intervenor contends that there is a valid and subsisting collective bargaining agreement between it and the Employer for the period July 1, 1970 through August 31, 1973, and that the representation petition should have been filed "not less than five (5) or more than six (6) months before the third anniversary dated of the contract in question (July 1, 1973) which is for a term of more than three (3) years." Thus, the Intervenor argues that the "appropriate period for the filing of the Petition for Certification in this matter would have been during the month of January 1973," and that the filing of the petition on the following day, and February 1, 1973, is untimely, requiring a dismissal of the petition. The Petitioner and the Employer contend that the petition, filed on February 1, 1973, was timely under Rule 2.7 since it was filed exactly on the day commencing five (5) months before July 1, 1973, the third anniversary date of the agreement and, in any event, and alternatively, a fair construction of the Rule should, in the instance of a contract exceeding three (3) years, permit the filing of a rival petition during the permissible filing period as though measured with respect to the expiration date of a contract with a definite term of three (3) years.

In the instant matter, it is argued that the rival petition would be timely if filed any time during the month of March 1973, which would be "not less than five (5) or more than six (6) months before the expiration date of the contract." The Petitioner, in support of its alternative position, has filed a further petition on March 6, 1973.[1] (RU-360-73)

II

Undisputed Matters

It is undisputed, and we find and conclude that Petitioner and Intervenor are public employee organizations in fact and within the meaning of the New York City Collective Bargaining Law.

III

Bargaining Unit

The Intervenor was originally certified, on October 31, 1967 (Case No. 9 NYCDL #49) by the New York City Department of Labor for a unit of Captains, Assistant Captains, Mates, Marine Engineers, Chief Marine Engineers and Pilots employed in the Department of Marine and Aviation. Later, this certification was construed by the Board of Certification to also include employees in the aforementioned titles who had been transferred, in a reorganization, to the Economic Development Administration.[2] Under the NYCCBL said certification remains in effect "until terminated by the board of certification pursuant to

---

[1] The Petitioner has advanced other contentions, which, in substance, are equitable in nature urging a liberal interpretation of Rule 2.7, underscoring reasons why in the instant matter the rights of employees to change representatives predominate over any other consideration. In view of our disposition we need not reach or consider such contentions.

[2] Decision No. 58-69 stated ". . . the transfer of personnel from one city agency to another did not remove them from the bargaining unit...."

its rules" (§1173-10.0c.). We note the Employer's position concerning the consolidation of the existing unit with other units represented by the Petitioner should we direct an election in this matter and the petitioner win the election. We find that consideration of that question should be deferred until after the question of representation herein has been resolved.

IV

Contract Bar

The existing agreement between Petitioner and the Employer is for a term of three (3) years and two (2) months beginning July 1, 1970, and ending August 31, 1973. The instant matter is novel as we are called upon, for the first time, to determine the timeliness of a rival representation petition with respect to an agreement in excess of three (3) years. Insofar as pertinent hereto, Rule 2.7 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, designation, decertification or revocation of designation during a contract term not exceeding three (3) years. A petition for certification, designation, decertification or revocation of designation 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 thereof."

All of the parties take the position that July 1, 1973, is the third "anniversary date" of the current agreement. Under the circumstances we find and conclude that the filing of the petition herein is timely since the filing occurred on February 1, 1973, which date is not less than five (5) or more than six (6) months before the "third anniversary date" of the current agreement. On its face, the language in Rule 2.7 admits of a distinction between the "expiration" and "anniversary" dates of an agreement, the former term relating to a contract with a definite duration of three (3) years or less and the latter relating to a contract exceeding three (3) years. It is our view that this distinction requires us to treat the filing periods and dates differently.

However, we find it unnecessary in this proceeding to determine the alternative position urged by the Petitioner and the Employer, and opposed by the intervenor, namely, that a reasonable construction of Rule 2.7 would also render the filing of a rival petition timely if filed during the month of March 1973.

The interpretation we have made in the instant case balances the interest of employee freedom to choose and change representatives, and the interest of maintaining stability in the bargaining process, thus fulfilling the parallel objectives of the NYCCBL. (In the Matter of the Petition of Terminal Employees Local 832. I.B.T. and The Administrative Board, etc., Decision No. 27-72, reconsideration d'n'd., Decision No. 73-72.)

MEBA has also questioned the veracity of the Petitioner's allegations in the verified representation petition and subsequent averments that Petitioner represents a majority of the employees in the unit. In this respect, MEBA points to the continuous check-off it enjoys, asserting that this factor "completely negates" Petitioner's assertion of majority representation.

Verification of a representation petition is no longer necessary since our Rule only requires a petition to be "in writing and signed" (Rule 2. 2)

In this instance, having preliminarily determined that there is a sufficient showing of interest in support of the petition and that the contract is not a bar, we decide that the desires of the employees as well as the majority representatives status of either union is best determined, and will be revealed, by a secret ballot election.

0 R D E R
and
DIRECTION OF ELECTION

By virtue of and pursuant to the powers vested in the Board of Certification by the New York City Collective Bargaining Law, it is hereby

ORDERED, that the application of District No. 1, M.E.B.A., to intervene be and the same hereby is, granted; and it is further

ORDERED, that the Intervenor's application to dismiss the representation petition herein, dated February 1, 1973, be, and the same hereby is, denied; and it is further

ORDERED, that the representation petition herein, dated March 6, 1973, be, and the same hereby is, dismissed; and, further, it is

DIRECTED, that as part of the investigation authorized by the Board, an election by secret ballot shall be conducted under the supervision of the Board of Certification or its agents, at a time, place, and during hours to be fixed by the Board, among the Captains, Assistant Captains, Mates, Chief Marine Engineers and Marine Engineers employed by the City of New York and related public employers, subject to the jurisdiction of the Board of Certification, who were employed during the payroll period immediately preceding the date of this Direction of Election (other than those who have voluntarily quit or who have been discharged for cause before the date of election), to determine whether they desire to be represented for the purposes of collective bargaining by Local 333, United Marine Division, National Maritime Union, AFL-CIO, by District No. 1-Pacific Coast District, Marine Engineers Beneficial Association, AFL-CIO, or by neither,.

DATED: New York, N.Y.

March 23 , 1973.

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