Spec. & Super. Officers Bene. Ass. V. City, et. Al, 12 OCB 23 (BOC 1973) [Decision No. 23-73 (Cert.)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF CERTIFICATION

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SPECIAL AND SUPERIOR OFFICERS
BENEVOLENT ASSOCIATION,

Petitioner

DECISION NO. 23-73

-and-

DOCKET NOS. RU-330-72
RU-351-72
RU-358-73

THE CITY OF NEW YORK

-and-

CITY EMPLOYEES UNION,
LOCAL 237, I.B.T.,

Intervenor

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DECISION AND ORDER

Under circumstances described below, Special and Superior Officers Benevolent Association (hereinafter SSOBA) has filed two petitions for certification (RU-351-72 and RU-358-73) and, in addition, has moved to reinstate and amend an earlier petition (RU-330-72) which it had withdrawn when it was affiliated with Allied with Allied Crafts Security Union of North America hereinafter (ACSUNA). No question exists with respect to the appropriateness of the bargaining unit which is the same sought by the Petitioner in all the cases. The unit, consisting of Special Officers, Senior Special Officers and Hospital Security Officers employed by the City and related public employers subject to the jurisdiction of the Board of Certification, is presently certified to City Employees Union. Local 237, I.B.T. (Decision No. 56-70)

The Motion to Reinstate RU-330-72

SSOBA (ACSUNA) filed its original petition (RU-330-72) on July 3, 1972, during the time period allowed under Rule 2.7 (Contract Bar) for the filing of a rival petition prior to the expiration date of an existing contract. The City and the incumbent union challenged the bona fides of Petitioner as a labor organization. I During the course of hearing, Local 237 made an offer of proof for the purpose of establishing that the officers of ACSUNA, the parent organization of Petitioner, and others associated with them in purported labor organizing activities, were persons with criminal records, and that the organizational activities of ACSUNA officers cast doubt as to whether the purposes of the parent organization and its affiliate were those of legitimate labor organizations. On November 28, 1972, in Interim Decision No. 72-72, the Board ruled that the intervenor could present evidence in support of its offer of proof. Thereafter, on December 7, 1972, before the hearing was to be resumed, SSOBA (ASCUNA) withdrew its petition, citing no reasons for the withdrawal. On December 4, 1972, the Board granted the request for withdrawal (Decision No. 74-72)

(Decision No. 74-72), now apparently no longer affiliated with ASCUNA, filed a new petition (RU-351-72) together with new proof of interest. On December 12, 1972, it moved to reinstate RU-330-72 and to amend it to delete the affiliation with ASCUNA. The motion is addressed to the discretionary power of the Board to reopen a proceeding under Rule 10.12 b. of the Consolidated Rules.

The City and the Intervenor oppose the motion. They contend that the precipitate disaffiliation of SSOBA from ACSUNA, coupled with the withdrawal of the petition in RU-330-72 after extended formal hearings, was "a transparent attempt to frustrate the investigative processes of the Board." In this connection, it is pointed out that the withdrawal occurred only two days after the Board had accepted Intervenor's offer of proof and had ordered that the record be developed to include testimony and evidence, if any, of the prior criminal records and questionalble trade union practices of officers if ACSUNA and its affiliate, SSOBA. The City and Intervenor further maintain that the disaffiliation and withdrawal are intended "to mask and disguise the participation of Allied Crafts" and "to prevent the inquiry mandated by the Board's Interim Decision No. 72-72."

SSOBA's president, James J. Pizzuli, maintains that the withdrawal he signed was advised and drawn by counsel for ACSUNA, who also served as counsel for SSOBA, and that he (Pizzuli) was erroneously persuaded by the representatives of ASCUNA that such a letter of withdrawal "was a necessary prerequisite to efforts to obtain recognition of the unaffiliated SSOBA." SSOBA's brief concedes that ASCUNA's reasons for advising SSOBA to withdraw the petition was "to avoid further inquiry into its officers' activities" and so to cut off possible derogatory testimony about itself. However, SSOBA maintains that in acceding to ASCUNA's advise to withdraw the petition, SSOBA did not intend to withdraw its request for certification as bargaining representative an to close the proceeding for all purposes. As proof of its continuing interest to achieve bargaining status, it cites the fact that three days after the Board approved the withdrawal, it filed a petition (RU-351-72) supported by a new showing of interest.

The facts as we ascertain them from all the papers do not convince us that SSOBA's withdrawal was a naive error of judgment resulting from the ignorance of SSOBA's officers of the statute and rules of the Office of Collective Bargaining or their trusting reliance upon the advice of ACSUNA and its counsel. Pizzulli, president of SSOBA, testified (R.p. 118) that he had been in on every negotiaition that the City ever had," and that he had even at one time assisted Local 237, I.B.T., in its organizing efforts. Pizzulli was the principal leader of a three-man "spearhead" group, which set up SSOBA and directed its organizing efforts.

It would be difficult to find in the City a group of employees with a longer history of organization and representation controversies than the Special Officers. Since 1959 there have been no fewer than six different labor organizations vying to represent the titles in the occupational group, and some twenty-two representation cases have been filed for the group.

In the light of this history, and the admitted involvement of the leaders of SSOBA therein we conclude that the withdrawal which we approved on December 2, 1972, was intended as a termination of the representation question and that nothing in the circumstances subsequent thereto justifies reinstatement of the original petition.

We come to this conclusion recognizing the fact that a major objective of labor relations law generally, and the New York City Collective Bargaining Law in particular, in addition to affording the right of self-organization, is to achieve stability in the bargaining relationship, assuring the citizens of the City the uninterrupted delivery of

public services. A multiplicity of withdrawals and filings, further motion to reopen -- as we have here -- defeat that objective, since it tends to keep the unit employees in constant turmoil and to defer needlessly the attainment of a collective bargaining agreement.

Our decision here does not deny the unit employees union representation. They are still represented by Local 237, I.B.T., the incumbent. The latest available records of the Comptroller and the Health and Hospital Corporation show that Local 237 I.B.T., has a majority of employees in the unit on checkoff. Thus, balancing the presentation rights of employees, the interests of sound and stable labor relations, and respect for the orderly processes of the Board, we shall deny the motion of SSOBA to reopen RU-330-72.

RU-351-72

A new petition was filed on December 7, 1972, shortly after SSOBA had disaffiliated from ASCUNA and withdrawn its original petition. Such petition is clearly in contravention of Rule 2.7 (Contract Bar) of the Consolidated Rules, since it was filed less than five months before December 21, 1972, the expiration date of the contract between the City and Local 237, I.B.T. Apparently, recognizing the untimeliness of the new petition filed after the expiration of the filing period under Rule 2.7, SSOBA requested leave to withdraw it. Such leave is hereby granted.

RU-358-73

When it withdrew the new petition of February 7, 1973, SSOBA simultaneously filed another petition (RU-358-73), addressed to the Board's discretion under Rule 2.18 of the Consolidated Rules to shorten the life of the certification when unusual or extraordinary circumstances require. At the time of this filing the contract between the City and

Local 237, I.B.T., had expired. In the meantime, however, the incumbent and the City were discussing the terms of a new contract.

We are not persuaded that the circumstances cited to us by Petitioner are unusual or extraordinary within an acceptable context justifying brushing aside our Rule 2.7 which precludes the filing of a rival petition subsequent to the expiration of the contract.

In one of our earlier cases, based upon precedents in the private sector, we ser forth the background and purpose leading to the promulgation of Rule 2.18. We said then, and we reaffirm now, that Rule 2.18 could be availed of to raise questions concerning the modification or clarification of an appropriate bargaining unit, or whether an existing certification should be terminated because of abandonment or disclaimer by the certified representative, or other "unusual or extraordinary circumstances" (In the matter of New York State Nurses Association, Decsion No. 68-68).[1] We also stated that:

> "Rule 2.18 was not intended to be used by unions as a substitute for representation petitions" because to permit the use of the Rule in that fashion

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[1] The case we cited in the private sector as authority was Brooks Bros. v. N.L.R.B., 348 U.S. 96, 98-99, which emphasized that the cases in which the Board found "unusual circumstances" were all representation cases in which a rival union sought a new election less than a year after certification. In the instant case, petitioner seeks to invoke Rule 2.18 to shorten the life of a certification which is more than a year old.

> "would subvert * * * the contract bar Doctrine (Rule 2.7)."

However, even if Rule 2.18 were applicable in the instant case, the unusual or extraordinary circumstances advanced by SSOBa for shortening the certification of Local 237, I.B.T., are not of the incumbent union.

We do not believe that Rule 2.18 was intended to encompass the circumstances herein as "unusual or extraordinary," thus permitting a union to file a petition after its time to do so has elapsed under the contract bar rule. Accordingly we dismiss SSOBA's petition to shorten the life of the incumbent's certification.

SSOBA requested leave to make oral presentations before the Board of the issues herein. However, the briefs of the parties are copious, replete with detailed information, and amply set forth the arguments of all sides. Under the circumstances, no purpose would be served by oral argument and we deny SSOBA's request.

0 R D E R

NOW, THEREFORE, pursuant to the powers vested in the Board of Certification by the New York City Collective Bargaining law, it is hereby

ORDERED, that the motion to reopen and amend the petition in RU-330-72 be, and the same hereby is, denied; and it is further

ORDERED, that the request to withdraw the petition in RU-351-72 be, and the same hereby is, granted; and it is further

ORDERED, that the petition in RU-358-72 be, and the same hereby is, dismisses.

DATED: New York, N.Y.

March 21, 1973

ARVID ANDERSON
CHAIRMAN

WALTER L. EISENBERG
MEMBER

ERIC J. SCHMERTZ
MEMBER