Detective Invest. Bene. Ass. V. City, 12 OCB 35 (BOC 1973) [Decision No. 35-73 (Cert.)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF CERTIFICATION
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In the Matter of the
Petition of
DETECTIVE INVESTIGATORS
BENEVOLENT ASSOCIATION OF
NEW YORK CITY, INC.,

Petitioner, DECISION NO. 35-73

-and-
LOCAL 237, INTERNATIONAL DOCKET NO. RU-357-73
BROTHERHOOD OF TEAMSTERS

Intervenor,

- and-

THE CITY OF NEW YORK and
RELATED PUBLIC EMPLOYERS,
Employer.
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DECISION AND ORDER

By petition dated February 7, 1973, Detective Investigators Benevolent Association of New York City, Inc. (hereinafter "Petitioner"), requested certification as exclusive representative of a unit of employees in the following titles: Detective Investigator, Senior Detective Investigator, Rackets Investigator and Senior Rackets Investigator. The employees in the foregoing titles are employed in the offices of the District Attorneys for each of the five counties within the City of New York.

Local 237, International Brotherhood of Teamsters (hereinafter "Intervenor"), is currently certified to represent a unit of employees which includes not only the employees in the titles petitioned for, but also employees in the titles of Supervising Rackets Investigator, County Detective and Chief County Detective.

Both Intervenor and Employer urge dismissal of the petition on two grounds, 1) that the petition is not timely filed as required by Consolidated Rule 2,7 relating to contract bar; and 2) that the unit requested is inappropriate,

I

Contract Bar

The Intervenor was certified by this Board as exclusive representative for a City-wide unit of employees consisting of Detective Investigators, Rackets Investigators, County Detectives, Senior Detective Investigators, Senior Rackets Investigators. Supervising Rackets Investigators, and Chief County Detectives(Decision No. 58-70). In certifying such unit as appropriate, this Board gave careful consideration to the several factors forming the basis for its determination when it made its decision directing an election among the employees in such unit and, moreover, granting the supervisory employees the right to determine for themselves whether or not they desired to be in one unit with the non-supervisory employees (Decision No. 60-69).

Subsequent to the certification of Intervenor on August 4, 1970, the Intervenor and the Employer engaged in collective bargaining the results of which are reflected in Implementing Personnel Order (IPO) No. 72/4, dated January 31, 1972.

Confirming an agreement between the parties, the IOP provided for a term of three and one-half (3-1/2) years commencing July 1968, and terminating December 31, 1971, for retroactive wage adjustments as set forth and prescribed in the IPO; a basic work week consisting of thirty-five (35) hours; annual wage increases for the employees in each of the titles comprising the unit certified to the Intervenor, commencing on January 1, 1968, and on each anniversary date thereafter up to and including January 1, 1971; a minimum and maximum salary range for the employees in each of titles comprising the unit certified to the Intervenor; and contributions to the union Welfare Fund. Under these circumstances and for the purposes of resolving questions of representation we conclude that the provisions of an Implementing Personnel Order are sufficient to constitute a contract whose terms expired on December 31, 1971. (In the Matter of City Employees Union, Local 237 I.B.T., Decision No. 11-71)

Our investigation discloses that on September 13, 1971, prior to the expiration of the agreement, Intervenor filed a notice requesting bargaining with the City and that the first bargaining session between Intervenor and the City was held on March 15, 1972. Thereafter, numerous bargaining sessions were held but with no apparent success, resulting in an impasse and the appointment of an impasse panel on February 6, 1973 (Case No. I-98-73). The first hearing before the panel was held on March 23, 1973.

The filing of the instant petition requires us to construe and apply the contract bar rule in the light of the uniqueness of the bargaining process between the City and its unions. In a recent decision, we had occasion to reaffirm the Board's policy of balancing the statutory right of employees to select, or change at appropriate time intervals, a collective bargaining representative. (In the Matter of 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).

The facts before us reveal that while the agreement was due to terminate on June 30, 1971, the Personnel Order which reflected the agreement between the parties was not issued until April 5, 1971, scarcely less than three (3) months prior to the expiration of the agreement, Under the circumstances, we ruled that since the requirement to timely file a rival petition presupposes the existence of a contract, and since the earliest time that the existence of the contract could have come to the knowledge of the Petitioner was the time the Personnel Order was issued, a literal reading of the Rule, requiring the filing of a petition between the sixth and fifth month before the expiration date of the contract, was not applicable, Therefore, while we decided that a rival petition could be filed within one-month after the issuance of the Personnel Order, we dismissed the petition since it was not filed until over ten months after the issuance of the Personnel Order and, in the interim, the City and the incumbent were in the process of negotiations for a renewal agreement. We found "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." And in

applying the contract bar rule, we further stated that while it should not be used as an indefinite or unreasonable bar to the representation rights of employees, we would "set no time limitation on negotiations or on the rights of the parties to invoke impasse procedures." Though the facts in the Local 832 case differ somewhat from this case, we are persuaded that the expiration date of the agreements in both cases does not necessarily control the timely filing of a petition. Depending upon the facts of each case, the issuance date of a Personnel Order may control. We find that the policy considerations enunciated by us in that case are indistinguishable from the instant case, the underlying reasons in both cases prompting the same conclusion. In this case, the Personnel Order was issued in January 1972 — one month after the expiration of the contract. Though the Petitioner in the instant matter could not have known of the contract until the issuance of the Personnel Order, just as in the Local 832 case, the Petitioner, upon issuance of the Personnel Order in January 197, could have filed its petition within a period we view as reasonable, i.e., not exceeding one month after the issuance of the Personnel Order. In the Local 832 case, because the City and the incumbent union were well along in negotiations for a renewal agreement, we would no entertain the rival petition because to do so "would constitute an unwarranted intrusion upon the collective bargaining process." In the instant matter, the incumbent union and the City are actually before an impasse panel. The appointment of the panel was approved by the Board the day before the rival

petition was filed, To entertain a representation petition at this time would constitute an unwarranted intrusion upon the collective bargaining process and would have a debilitating effect upon the finality procedure. We do not find any unusual or special circumstances in this case warranting a different result.

It is our view that employees and their representatives who intend to timely challenge the status of an incumbent have a responsibility to ascertain the existence of agreements and to be aware of the current status of the bargaining for renewal agreements and their execution or of Personnel Orders which evidence such agreements. The Petitioner in this case was a rival and participant in the prior representation case, having been placed on the ballot. Petitioner was, therefore, aware of the Board's processes and proper procedure for challenging existing certifications and is changeable with the knowledge that a bargaining relationship would eventually be evidenced by some document.

For all of the reasons mentioned above, the petition is dismissed for lack of timely filing.

II

The Appropriate Unit

The Petitioner, we have noted, requests a unit narrower in scope than the existing unit we have previously certified. Petitioner apparently overlooks the fact that our final determination of the unit was predicated upon a self-determination election among the supervisory employees who voted for a combined unit which is the existing unit. Aside from any other policy determination previously made by us, we would not, under the circumstances, direct an election in a new unit which would include only some of the supervisory employees and omit others, though all voted in the prior election. Thus, even in the context suggested

by Petitioner, the separation of supervisory employees, based upon the record, is unsupportable. We have in numerous decisions set forth the policy of this Board favoring broad viable bargaining units as against small and fragmented units. We are not persuaded that the existing unit, in light of the bargaining history, no longer serves a viable bargaining objective and that it should be displaced by the unit requested in the petition. Thus, even had we found that the agreement did not constitute a bar, we would. for the reasons mentioned, still be constrained to dismiss the petition because the unit requested is inappropriate for bargaining purposes, Since we find no reason to disturb the existing unit we shall, accordingly, dismiss the petition,

0 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 petition filed herein by Detective Investigators Benevolent Association of New York City, Inc., be, and the same hereby is, dismissed,

DATED. New York, N.Y.

April 9, 1973.

ARVID ANDERSON
C h a i r m a n

ERIC J. SCHMERTZ
M e m b e r

WALTER L. EISENBERG
M e m b e r