

CEU, et. Al v. City, 16 OCB 16 (BOC 1975) [Decision No. 16-75 (Cert.)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF CERTIFICATION

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In the Matter of

DETECTIVE INVESTIGATORS BENEVOLENT
ASSOCIATION OF NEW YORK CITY, INC.

-and-

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

DECISION NO. 16-75

DOCKET NO. RU-462-74

-and-

THE CITY OF NEW YORK AND RELATED
PUBLIC EMPLOYERS

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DECISION AND DIRECTION
OF ELECTION

Detective Investigators Benevolent Association of New York City, Inc. filed a timely petition, accompanied by an appropriate showing of interest, requesting certification as the collective bargaining representative of a unit consisting of Detective Investigators, Senior Detective Investigators, Rackets Investigators, Senior Rackets Investigators, Supervising Rackets Investigators, County Detectives, and Chief County Detectives. City Employees Union, Local 237, I.B.T., which was

certified as the collective bargaining representative of the identical unit in Decision No. 58-70 intervened in timely manner.

Local 237 and the City through the Office of Labor Relations, have challenged the status of Petitioner as a labor organization under the New York City Collective Bargaining Law (NYCCBL.) Section 1173-3.0j of the New York City Collective Bargaining Law defines a "public employee organization" as,

"any municipal employee organization and any other organization or association of public employees, a primary purpose of which is to represent public employees concerning wages, hours, and working conditions."

Hearings on the question of the status of the Petitioner as a labor organization under the NYCCBL were held before Eleanor Sovern Mac Donald, Esq., Trial Examiner, on January 30 and February 14, 1975. All parties submitted briefs after the close of the hearings.

POSITIONS OF THE PARTIES

The City's challenge is based on four principal contentions, the substance of which is: (1) the constitution and by-laws submitted into evidence were adopted by the members of DIBA when the Petitioner was an unincorporated association, and consequently the corporation has no constitution or by-laws; (2) the purposes of the organization, as stated in the certificate of incorporation,

appear to be primarily social and fraternal, rather than those of a labor organization; (3) the language in the certificate of incorporation which does relate to the purpose of DIBA to represent its members in matters relating to wages, hours, and working conditions refers only to representation of members of DIBA, not all public employees within the unit, and even this is a secondary purpose of the organization; and (4) there is no evidence that Petitioner has complied with Section 726 of the Labor Law relating to financial reporting by labor organizations.

Local 237's challenge is based on the contention that the Board should look to the internal workings of the Petitioner, and that such an examination would result in a finding that DIBA is not a bona fide labor organization. Specifically, it is argued that the following facts preclude bona fide status: (1) the practice of the Petitioner of ignoring its constitutional prohibition against dual membership in DIBA and another labor organization at the same time; (2) the election of a Mr. Contratti as an officer of the petitioning organization although his name does not appear on the membership rolls; (3) the failure to enforce a constitutional provision that only members in good standing may vote at meetings of the DIBA; (4) the acceptance of proxy votes, although there is no constitutional provision or by-law which specifically allows them; (5) the failure of the Treasurer to post \$10,000 bond as required by the constitution; (6) the use by the organization of the term "Incorporated" in its title prior to actual

incorporation; and, (7) the inability of the Association's officers to locate the minutes and attendance records of meetings of the DIBA held between March 1973 and October 1974.

The Petitioner contends that it has met the requirements of the NYCCBL in that one of the primary purposes of the organization is to deal with its members' employers in regard to wages, hours and other terms and conditions of employment, and that employees participate in the organization by attending meetings, paying dues, and communicating their problems formally and informally through an organized structure. The Petitioner argues that "allegations that certain activities are contrary to the Petitioner's constitution and by-laws or certificate of incorporation are ... meaningless since such claims relate to the internal affairs of the organization, which are beyond the scope of inquiry of the Board in determining bona fides."¹

THE EVIDENCE

Mr. Joseph Tarantola, president of DIBA, testified that the purpose of the Association is to represent the men for bargaining purposes. The constitution and by-laws of the DIBA were adopted at a general membership meeting on November 1, 1972 and were subsequently readopted by the DIBA executive Board when the Association was incorporated in late 1973. Article I, Section 1A thereof

provides that an object of the Association is:

"To act as bargaining agent on behalf of all of the Detective Investigators; Racket Investigators; Senior Detective Investigators and Senior Racket Investigators of the City of New York, in matters of policy, salaries, hours of employment and general welfare of the members thereof."

The certificate of incorporation, sets forth the purposes of the corporation to be:

- a. "To extend and uphold the principles of merit and fitness in public employment, to promote efficiency in public service and to advance generally the interests of the Civil Service Employees of the Detective Investigators Benevolent Association of New York City."
- b. "To foster, create and promote better social fraternal and benevolent feeling among the members ..."
- c. "To use all legal means to improve the members' condition of work, including, but not limited to wages, fringe benefits, and hours of employment; to secure adequate remuneration for its member's work; to elevate the standards of service of the members to the public and to advance the general welfare of its members ..."
- d. "...the corporation will act as the collective bargaining agent for employees and will generally function as a labor union."

DIBA began to use the term "Incorporated" in its title in 1972. Mr. Tarantola testified, "the first thing we wanted to do was incorporate, but because we are not a large outfit.... it was hard to get a committee started for the incorporation... finally back in the end of 1973 we did have the association

incorporated."

At the present time, Petitioner has approximately seventy (70) dues paying members. Mr. Tarantola testified that the meetings are publicized and generally attended by about one-third of the membership.

The DIBA stationery has a general post office box listed for the receipt of mail, and also lists the home phone numbers of the officers. Mr. Tarantola testified that DIBA lacked sufficient funds to maintain an office or telephone. Additionally, "They know I can be reached at the District Attorney's Office. I don't put down the D.A.'s office as the business phone, but everybody knows I am at the Brooklyn District Attorney's office and I can be reached at that."

DIBA meetings have been held at various rented clubs and fraternal halls; they have also on occasion been held in the various D.A.'s offices throughout the city. Petitioner is now listed in the office lobby directory at 250 Broadway where it may use the facilities of its attorney's office for meetings.

Prior to its incorporation, Petitioner maintained a savings account at the Brooklyn Savings Bank. Subsequent

to incorporation, this was changed to a checking account in the name of Detective Investigators Benevolent Association of New York City, Inc. at the Bank of Commerce, where a moderate balance is continually maintained.

Petitioner is a member of the Metropolitan Police Conference, and is recognized by that organization as being a standing police benevolent association. Petitioner is also a recognized member of the International Conference of Police Associations and the State of New York District Attorneys' Investigators Police Benevolent Association.

Petitioner as currently operating under its present constitution has no history of bargaining in an official capacity; however, its officers have unofficially handled grievances for their members on various occasions. For instance, DIBA has unofficially dealt with the Fiscal Office of the District Attorneys with respect to increasing car allowances, and with supervisors with respect to lateness problems.

DISCUSSION

From all the evidence in the record, DIBA has shown that it was established with a primary purpose to represent employees concerning wages, hours, and working conditions, that it has a constitution and by-laws, holds general mem-

bership meetings, elects officers, and has a bank account. We held in Association of Deputy Wardens, Decision No. 73-71:

"The record establishes that the primary purpose of Petitioner is to represent employees concerning wages, hours, and working conditions. Petitioner has a constitution and by-laws, holds regular meetings, elects its officials, has a bank account... Accordingly, we find and conclude that Petitioner is a public employee organization in fact and within the meaning of the New York City Collective Bargaining Law."

The record indicates some laxity on the part of the Petitioner in the conduct of its internal affairs. This can, in large part, be attributed to the fact that the constitution currently in use was drafted without the benefit of legal counsel or anyone else familiar with labor law, and was in fact, largely excerpted from the constitution of the Patrolmen's Benevolent Association of the City of New York. This was perhaps not the most appropriate model for the DIBA to choose since the PBA is a much larger organization, but its use is not fatal to the bona fides of the Petitioner.²

It is well established that in order to meet the bona fides test, a union need not follow a rigidly prescribed course of action so long as it meets the requirements of admitting to membership employees of an employer, and exists for the purpose of dealing with that employer on matters

Prior to the instant proceeding, the DIBA retained an attorney and is currently in the process of drafting a new constitution.

relating to wages, hours, and working conditions.³ A bona fide labor organization need not even have a written constitution.⁴

In the Matter of Forestville Transportation Assoc., the Public Employment Relations Board held that informality does not defeat bona fide status:

"In the instant case, it is clear that the respondent is some kind of organization, for it has a written 'charter', albeit an informal one, stating it was 'organized' in 1967. It presently has a president and it appoints a team which conducts its 'negotiations.' The fact that it lacks a constitution, a meeting room, or a financial structure indicates that it is a rather loose-knit, or informal organization. Similarly, its off-hand method of choosing a president viz 'handing it to the women' does not indicate the lack of organization, but merely that this particular organization does not take itself as seriously as do many unions or associations in public employment." (4 PERB 8020 at P. 8297; hearing examiner's report adopted by the Board at 4 PERB 3036 at p. 3675.)

Most of the arguments raised by both the City and Local 237, relate to the conduct of the internal affairs of the petitioning union. The Board's only concern is the threshold question whether the Petitioner meets the statutory requirements; once that determination is made, it is up to the employees to decide in a secret ballot election whether or not they wish the union to represent them in collective bar-

Stewart Warner Corp., 123 NLRB 52, 43 LRRM 1147, (1959).

Yale University v NLRB, 184 NLRB 101, 74 LLRM 1637, (1970).

gaining negotiations with their employer. The relative merits of the organizations on the ballot are to be judged by the affected employees through the election process. The National Labor Relations Board. has held:

"if the Petitioner herein qualifies as a 'labor organization,' then clearly the Board may not refuse to process the petition. For it must be remembered that, initially, the Board merely provides the machinery whereby the desires of the employees may be ascertained...."
Alto Plastics Mfg. Corp. 136 NLRB 850, 41 LRRM 1867, (1962).

Similarly, the Public Employment Relations Board has made its position clear in Matter of Board of Education of the City of Syracuse, 7 PERB 4539 (1974), that it will not decide questions regarding the conduct of the internal affairs of a labor organization:

"Neither the Committee Report nor the Act describes the internal working or structure of the 'employee organization' to be formed ... The silence on these topics was obviously deliberate ... As long as employee organizations and employers do not impinge upon basic organizational or collective negotiation rights in dealing with employees as union members, their conduct is not within the purview of the Act." (7 PERB 4535, at p. 4626 [1974]).

Thus, questions raised by local 237 and the City with respect to the method of adoption of the DIBA constitution and the adherence of the Association to certain of the requirements therein are all matters relating to the internal affairs of the union. These are questions which this Board

will not consider so long as we find that DIBA has as a primary purpose the representation of public employees concerning wages, hours and working conditions. We recognize that adherence to formal requirements of their constitution may be of concern to individual members of the DIBA; if the members wish their organization to conduct its business in a more rigid manner, they may employ the internal mechanisms of the Association to achieve such a goal.

Section I, Article II of the DIBA constitution does not include the titles of Supervising Rackets Investigator, County Detective, and Chief County Detective as those employees are not eligible to become members, and the Certificate of Incorporation has language which states that the purpose of DIBA is to represent the "members" of the Association in collective bargaining. This defect is not fatal to the bona fides of the Petitioner; however, if certified as the collective bargaining agent, the DIBA as a condition of that certification must fairly represent the employees in the unit as certified and admit all employees in the unit to membership on the same terms.

In its closing brief, the City challenged DIBA's bona fides on the ground that there had been no testimony that DIBA had filed financial reports with the Industrial Commissioner under the provisions of Section 726 of the Labor Law. This issue was raised for the first time in the closing

brief; therefore, there is no evidence in the record to indicate that the Petitioner has failed to fulfill the provisions of Section 726, or related Sections 727 and 728.⁵

Upon a consideration of the evidence and the briefs of the parties, the Board finds that the DIBA exists for the purpose of representing public employees concerning wages, hours and working conditions, that it holds meetings to conduct business, that it attempts to resolve problems of individual employees, and that it wishes to represent the employees in the unit herein. Therefore, we find that Petitioner is a "public employee organization" in fact and within the meaning and intent of Section 1173-3.0j of the NYCCBL. Accordingly, we shall direct an election among the employees in the appropriate unit placing the names of Petitioner and Intervenor herein on the ballot.

Previously, Section 726 of the Labor Law required the filing of certain financial reports with the Industrial Commissioner; however, this Section was amended effective April 1, 1971 and it now provides, in substance:

"Every labor organization... shall make available to each of its members, a copy of its annual financial report, or such portions thereof as the industrial commissioner shall find relevant and appropriate..." (Article 20-A, Labor and Management Improper Practices Act, Section 726.)

Sections 727 and 728 set forth accounting requirements and enforcement provisions.

DIRECTION OF ELECTION

Pursuant to the powers vested in the Board of Certification by the New York City Collective Bargaining Law, it is hereby

DIRECTED that an election by secret ballot shall be conducted under the supervision of the Board, or its agents, at a time, place, and during hours to be fixed by the Board, among Detective Investigators, Senior Detective Investigators, Rackets Investigators, Senior Rackets Investigators, Supervising Rackets Investigators, County Detectives, and Chief County Detectives employed by the offices of the District Attorneys of the five counties comprising the City of New York during the payroll period immediately preceding this Direction of Election, other than those employees who have voluntarily quit, retired, or who have been discharged for cause, before the date of the election, to determine whether they desire to be represented for the purposes of collective bargaining by Detective Investigators Benevolent Association of New York City, Inc. or by City Employees Union, Local 237, I.B.T., or by neither.

DATED: New York, N.Y.
 April 14, 1975

ARVID ANDERSON
CHAIRMAN

WALTER L. EISENBERG
MEMBER

ERIC J. SCHMERTZ
MEMBER