PBA, et. Al v. City, CEU, L.237, IBT, 18 OCB 21 (BOC 1976) [Decision No. 21-76 (Cert.)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF CERTIFICATION
----------X

In the Matter of

POLICE BENEVOLENT ASSOCIATION
MUNICIPAL SPECIAL AND SUPERIOR OFFICERS

-and- DECISION No. 21-76

THE CITY OF NEW YORK AND RELATED PUBLIC EMPLOYERS DOCKET NO. RU-524-75

-and-

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

INTERIM DECISION

On July 18, 1975, the Police Benevolent Association Municipal Special and Superior Officers (petitioner) filed a petition seeking certification as the exclusive collective bargaining representative of a unit comprised of approximately 1500 employees in the titles of Special Officer, Senior Special Officer, Supervising Special Officer, and Hospital Security Officer. City Employees Union, Local 237, International Brotherhood of Teamsters, the currently certified[1] and incumbent union, and the City, through the Office of Labor Relations, have challenged the bona fides of petitioner as a labor organization, contending that petitioner is not a public employee organization within the meaning of the New York City Collective Bargaining Law (NYCCBL).[2]

Local 237 also contends that the certification petition should be dismissed because of alleged improprieties surrounding the securing of designation cards and lack of legitimate "proof of interest." Section 2.3 of the Revised Consolidated Rules of the Office of

---

[1] Certification No. 56-70, as amended by Decision No. 97-73.

[2] Section 1173-3-0j of the NYCCBL defines "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."

Collective Bargaining, which deals with the form and content of petitions for certification, specifically states that "Sufficiency of interest shall not be a litigable matter." This rule is consistent with the limited purpose of the proof of interest requirement which is to prevent the filing of frivolous and unfounded requests for certification. The rule also corresponds to the policy and practice followed by all labor relations agencies and approved by courts in numerous jurisdictions including our own.[3] The representative of Local 237 was informed by the Trial Examiner that if his organization wished to pursue the issue of alleged improprieties, a motion, supported by affidavits, should be filed with the Board of Certification requesting it to inquire into the methods used by the petitioner to secure its designation cards;[4] no such motion is before us.

Pursuant to the Board's direction, hearings were held on November 1, December 1, and December 10, 1975, for the purpose of making and developing a record concerning all of the relevant facts as to whether the petitioner is a bona fide labor organization within the meaning of the NYCCBL.

The Positions of the Parties

In its Summary Statement, submitted after the completion of hearings, Local 237 argues that basic requirements for a bona fide organization, all of which petitioner allegedly lacks, include "a Constitution and/or By-laws, a Treasury, Members, and Membership participation." Local 237 points to the origin and content of the

---

Suffolk Chapter, C.S.E.A. V. Helsby, 312 NYS 2d 386 (1970); N.L.R.B. v. J.I. Case Co., 201 F. 2d 59-7, 31 LRRM 2330 (9 Cir. 1953); Kearney and Trecker Corp. v. N.L.R.B., 209 F. 2d 782, 33 LRRM 2151 (7 Cir. 1953).

Transcript, page 4, lines 1-10.

proposed constitution and by-laws, as well as petitioner's financial records, as suspect and worthy of investigation. Local 237 also contends that the minutes of the meetings of the petitioning organization indicate many procedurel irregularities, little, if any, membership participation, and further demonstrate that the organization is dominated by its attorney. Local 237 concludes that the certification petition should be dismissed because the petitioner's primary purpose is not to represent public employees in collective bargaining, but rather to further the financial interests of its founders.

The City, in its brief, agrees with Local 237 that the dismissal of the petitioner's certification petition is warranted. The City contends that testimony by members of the petitioning organization standing alone is not sufficient to prove that it is a public employee organization within the meaning of the NYCCBL. The City asserts that in the past the Board has looked for such "identifiable indices" of an organization's purpose as the existence of a constitution and by-laws, the holding of regular meetings at which minutes are taken, the election of officers, and the collection of dues in order "to assure that groups of employees seeking exclusive bargaining rights meet at least minimum standards of organization and dependability." The City finds the petitioner wanting in all of the criteria that the City asserts the Board has established in the past when dealing with the issue of bona fides. The transcript is used by the City to show the confusing and often contradictory statements made by petitioner's witnesses concerning

the origin, the current status, and the meaning and purpose of several provisions of the constitution and by-laws. The City claims that Article 9 of the proposed constitution and by-laws would more aptly be entitled "Emoluments" than "Expense Accounts" because no proof of expenditures or any documentation whatever is required of recipients of union funds. The City submits that, having failed to "exhibit sufficient objective indices of purpose to qualify as a bona fide public employee organization" as that term is defined in the NYCCBL, the Petitioner's instant certification petition should be dismissed.

The petitioner, in its brief, counters that neither the Taylor Law nor the NYCCBL establishes hard and fast rules concerning the evidentiary showing required of a group attempting to prove that it is a bona fide labor organization. The only criterion specified is that an organization have as one of its primary purposes the improvement of terms and conditions of employment of public employees. Proof of such a purpose, petitioner claims, is evident from an examination of its newly approved Certificate of Incorporation, which provides that the organization will "use all legal means to improve the members' conditions of work, including, but not limited to wages, fringe benefits and hours of employment...." In answer to allegations concerning its constitution and by-laws, petitioner states that such documents are not required to establish the bona fides of an employee organization and furthermore, on the basis of Board Decision No. 64-72, the Board is not bound by formal statements contained in an organization's constitution and by-laws. Concerning some of the other charges leveled at it by the City and Local 237,

petitioner responds:

> "That although no dues have been collected and no officers elected by a general membership and there is no fixed post office address or telephone available to the organization other than that of the organization's attorney, nevertheless these matters will be attended to upon certification."

In summary, petitioner characterizes itself as a new, independent union which enjoys the support of a majority of unit employees, with purposes no different from those of the incumbent union, and thus, a bona fide labor organization under the NYCCBL.

Discussion

The function of this Board, like that of the National Labor Relations Board (NLRB), is to provide "the machinery whereby the desires of employees may be ascertained, and the employees may select a 'good' organization, a 'bad' organization or no labor organization...."[5] The Board has neither the duty nor the right, in dealing with a petition for certification, to base its determination upon opinions as to the petitioner's ability to advance the interests of affected employees. We do have the duty to refuse to process the certification petition of a petitioner which does not qualify as a labor organization within the meaning of the NYCCBL, however. We are mindful, moreover, that our direction of an election upon a representation petition or our certification of a petitioning organization may be perceived by some unit employees as an endorsement of the fitness and ability of the organization to represent employees in collective bargaining. It is thus essential that where issues as to bona fides are raised, as in the instant case, all allegations of opposing parties as well as questions

---

[5] Alto Plastics Mfg. Corp., 13 NLRB 70, 49 LRRM 1867, (1962).

raised by the Board's investigation be fully resolved.

In order to meet the bona fides test in the private sector, 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, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work."[6] In Stewart Warner Corporation, the NLRB held that although a newly-organized independent union had been functioning informally and had not yet presented its constitution and by-laws to its membership for approval, it nevertheless was a labor organization within the meaning of the Labor Management Relations Act (LMRA) since it had been organized for the purpose of bargaining collectively for its membership.[7] Similarly, in Butler Manufacturing Co., the NLRB found the union in question to be a labor organization within the meaning of the LMRA, although it did not have a constitution and collected no dues or initiation fees, since it admitted employees to membership, was established for the purpose of representing employees, and it intended to do so if certified.[8]

See Section 2(5) of the Labor Management Relations Act. It is noteworthy that in the private sector an organization in order to meet the bona fides standard need only exist "for the purpose, in whole or in part of representing employees in collective bargaining, whereas the NYCCBL requires that the collective bargaining function be one of the "primary" purposes of a public employee organization.

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

Butler Manufacturing Co. 167 NLRB 39, 66 LRRM 1043, (1967).

The wide latitude accorded employee organizations in the private sector has been applied in the public sector as well. In the Matter of Forestville Transportation Association, the Public Employment Relations Board (PERB) 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 offhand 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."[9]

This holding is consistent with the policy of the Taylor Law which is to protect the rights of public employees while promoting a "harmonious and cooperative relationship between the government and its employees,"[10] by, in part, permitting them to select and negotiate through "any employee organization of their own choosing."[11] The right of employees to be represented by an organization of their own choice, has been referred to by PERB as "a right basic to all labor relations acts, whether it be in the public or private sector."[12]

---

4 PERB 8295, 8297 (1971) Hearing Officer's Report adopted by the Board at 4 PERB 3673, 3675 (1971)

See Section 200 of the Taylor Law.

See Section 202 of the Taylor Law.

State of New York and New York State Employees Council 50 and C.S.E.A., 1 PERB 3226 (1968).

The NYCCBL is no exception to this rule; section 1173-4.1 provides that public employees shall have the right to bargain collectively through certified employee organizations of their own choosing. In the instant case, most of the arguments raised by Local 237 and the City with respect to the bona fides of petitioner are of the type which our Decision No. 16-75 has previously classified as matters relating to the internal affairs of a union. In that case we said that we will not consider such issues as long as the organization in question has as a primary purpose the representation of public employees in collective bargaining.

The petitioner herein is an organization not only covering public employees but more particularly public employees performing a critical security function in regard to the public safety and welfare. We think therefore that further inquiry to establish its propriety and integrity is warranted. To date it has not demonstrated through the pleadings or by testimony and evidence submitted in the hearings the measure of bona fides which such an organization should demonstrate under those circumstances. But it should be accorded an opportunity to do so.

As is clear from decisions cited herein, both in the private and public sectors and including our own earlier decisions,[13] the criterion of bona fides in the context of interest here, is one of fact and must be dealt with on a case by case basis. It is for this reason that, as petitioner points out, there are no hard and fast rules as to what constitutes a showing that a petitioner is a bona fide labor organization. Boards which rule on representation issues and on questions of bona fide labor organization status, generally employ such "identifiable indices" as a constitution and bylaws, recorded membership meetings, election of officers, collection

[13] See Board Decisions Nos. 73-71, 48-73, 18-74 and 16-75.

of dues, and maintenance of financial records and of bank accounts; such is our practice. The record in the instant case is unique, not for any lack of testimony and evidence on these matters, but for the equivocal nature of the evidence before us. There are, for instance, a number of inconsistencies and contradictions in the testimony of various witnesses for petitioner as to the origin and status of petitioner's proposed constitution and by-laws. There is considerable confusion as to the time, place and conduct of certain meetings which, taken together with such provisions of the proposed constitution and by-laws as Article IX "Expense Accounts," are matters of some concern to us. At page 8 of its brief herein, petitioner makes mention of a constitution and by-laws which will be presented to the membership of petitioner in the event certification is granted. In the expectation that some of the questions presented by the record before us may be resolved by this document, we will direct that a copy of it be filed in support cf the petition. Any additional information which petitioner wishes to furnish in support of its claimed bona fide status will be examined with interest by the Board.

The Board realizes that further investigation of bona fides in this case may be viewed as a departure from its own practices as well as those of the NLRB and PERB. However, the Board feels it is essential, before it seriously entertains a certification petition or directs a representation election, that it be certain

of the bona fides of the organization involved. Regardless of whether the procedures utilized to carry out this investigation are looked upon as a break from past practice, the Board wishes to be on record to the effect that all future cases involving questions of bona fides will be subject to appropriate inquiry and examination.

O 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 petitioner, within ten days after receipt of this Interim Decision, file with the Board, a copy of the constitution and by-laws it intends to submit to its membership for their approval if it should receive the bargaining certificate, and any additional information which would support its claimed bona fide status. Petitioner shall simultaneously serve copies of said documents on the City and City Employees Union, Local 237, I.B.T. and it is further ordered that the City and Local 237 shall have ten days after receipt of such documents to file material and statements in reply. The aforementioned ten day time limits shall not be extended.

DATED: New York, New York
May 14, 1976

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