

PBA, et. Al v. City, CEU, L.237, IBT, 18 OCB 24 (BOC 1976)
[Decision No. 24-76 (Cert.)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF CERTIFICATION

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In the Matter of
POLICE BENEVOLENT ASSOCIATION
MUNICIPAL SPECIAL AND SUPERIOR
OFFICERS

DECISION NO. 24-76

DOCKET NO. RU-524-75

-and-

THE CITY OF NEW YORK AND RELATED
PUBLIC EMPLOYERS

-and-

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

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DECISION AND ORDER

On May 14, 1976, the Board of Certification issued Interim Decision No. 21-76 which dealt with the bona fide status of the Police Benevolent Association Municipal Special and Superior Officers (petitioner), an organization seeking certification as the exclusive 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 (Local 237), the currently certified¹ and incumbent union, and the City, through the Office of Labor Relations, had 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

The criterion of bona fides, as the Board noted in the Interim Decision, being dependent for its establishment on factual determinations, must of necessity be dealt with on a case by case basis. In making these determinations in the past, this Board has relied on such "identifiable indices" as a constitution and by-laws, recorded membership meetings, election of officers, collection of dues, and maintenance of financial records and of bank accounts. Upon examination of the record with a view to the abovementioned indices the Board at page 9 of the Interim Decision stated:

"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."

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."

This concern, heightened by the sensitive nature of the job function involved, served to persuade the Board of the need for additional information.

"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." ³

Accordingly, the Board ordered the petitioner to submit a copy of the constitution and by-laws referred to in its brief and intended to be submitted to petitioner's membership for their approval if it should receive the bargaining certificate. The Board also enumerated "identifiable indices" of bona fides in its Interim Decision and directed the petitioner to supply any additional information which would support its claimed bona fide status.

On May 26, 1976, petitioner submitted a document described in the accompanying cover letter as "the Constitution and By-laws of the Police Benevolent Association, Municipal Special and Superior Officers." No explanation of whether this document had been adopted, how it was adopted, or if it was going to be proposed for adoption was given. An examination of the document revealed that but for one substitution

it was exactly the same Constitution and By-laws which was already a part of the record.⁴ This document constituted the entire response of petitioner to the Board's Order in the Interim Decision.

Local 237 responded to petitioner's submission with the filing on June 4, 1976, of an extensive memorandum summarizing its position in this matter. The City chose to rely on its post-hearing brief rather than respond to petitioner's latest filing.

Article IX - Expense Accounts as it appeared in the original submission.

"Section 1 - The President and Vice President shall receive an expense account. The President shall receive sixty dollars a month; the Vice-President shall receive forty dollars a month. This shall continue until the Association receives the bargaining certificate. Then the Board shall vote on a permanent expense account.

"Section 2 - If charter members are defeated in an election they shall receive fifty dollars a month from the Association for as long as they are in one of the titles of special, senior special officer, supervising senior officer, or security officer.

"Section 3 - If President or Vice President of the Association are not charter members and they are defeated, they shall receive twenty-five dollars a month for as long as they are in their permanent titles.

DISCUSSION

Petitioner was put on notice by the Interim Decision that whenever issues of bona fides are raised, it is essential that all allegations of opposing parties as well as questions raised by the Board's investigation be fully resolved.⁵ Petitioner also was given a unique opportunity by the Board's Interim Decision to develop a record as to its bona fides which the Board found wanting upon first examination. Despite the Board's clear delineation in its Interim Decision of the issues and areas as to which serious questions had been raised concerning bona fides, particularly of an organization claiming to represent employees performing a critical security function in regard to the public safety and, welfare, petitioner was either unwilling or unable to supply the needed information to establish its propriety and integrity as a bona fide labor organization, to clear up the inconsistencies in the record, or to allay the Board's feeling of uncertainty in this matter.

(over)Footnote 4/ continued

"Section 4 - All charter members shall remain in their titles that they are holding at the present time for a three year term after we receive the bargaining certificate from the City of New York."

Article IX - Expense Accounts as it appears in the May 26th submission.

"Section 1 - The President and Vice President shall be reimbursed for any and all reasonable expenses incurred in maintaining their

Decision No. 24-76
Docket No. RU-524-75

6

office, upon a submission of such bills
and disbursements."

Petitioner's inadequate response to the directives in the Interim Decision left many allegations uncontested and questions unanswered with respect to such "identifiable indices" as a constitution and by-laws, recorded membership meetings, election of officers, collection of dues, and maintenance of financial records and of bank accounts. Thus, the Board finds itself in the same uncertain position with respect to petitioner's bona fides as before the issuance of the Interim Decision. This continued uncertainty leaves the Board with no choice but to dismiss the petition for all the reasons set forth herein and in our Interim Decision, namely, that petitioner has failed to demonstrate in the circumstances of this case the degree of bona fides required of a labor organization under the NYCCBL.

O 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 petition RU-524-75 filed herein by Police Benevolent Association Municipal Special and Superior Officers, be, and the same hereby is, dismissed.

DATED: New York, New York
July 1, 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