Sup. Court Prob. Off. Ass. v. City, 2 OCB 58 (BOC 1968) [Decision No. 58-68 (Cert.)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF CERTIFICATION

In the Matter of

SUPREME COURT PROBATION OFFICERS ASSOCIATION

DECISION NO. 58-68

-and-

DOCKET NO. RU-13-68

JUDICIAL CONFERENCE OF THE STATE OF NEW YORK and THE CITY OF NEW YORK

DECISION AND ORDER

On May 28, 1968, the Board dismissed a petition filed by Supreme Court Probation Officers Association (herein called Petitioner) for certification as the collective bargaining representative of the Probation Officers employed in the Supreme Courts within the City of New York. The petition was dismissed on the ground that a unit consisting of the Probation Officers employed in both the Supreme and lower courts previously had been certified, and that the unit sought by Petitioner was not appropriate. (Decision No. 15-68)

Thereafter, Petitioner filed the present motion for reconsideration of said dismissal and for reversal thereof, or, in the alternative, for a hearing on its petition.

We grant the motion for reconsideration, and, upon reconsideration, adhere to our original decision.

Petitioner urges a number of contentions, which we shall discuss seriatim.

1. It is urged that our failure to grant Petitioner a hearing on its petition violates, and is incompatible with Article 14 of the Civil Service Law (the Taylor Law) and the rules and regulations of the New York State Public Employment Relations Board (PERB). Section 212 of the Taylor Law contemplates substantial equivalence between the procedures and provisions set forth therein and those in the New York City Collective Bargaining Law. Neither Law, however, mandates a hearing in representation proceedings, and, under Section 205.6b of PERB's Rules, a hearing is dis-cretionary with the Director of Representation. It is well-established, moreover, that a hearing is not required where there are no substantial issues of fact.(NLRB v Tennessee Packers, 379 F. 2d 172, 65 LRRM 2619).

2. Petitioner disputes the statement in our prior decision that the qualifications for appointment as a Probation Officer are the same for all courts, yet elsewhere in its moving papers concedes that to be the fact. It then argues that many Probation Officers were appointed at a time when the qualifications for Probation Officers in the Supreme Court were higher than those required for appointment in the lower courts, and that the work of Supreme Court Probation Officers deals with persons charged with major crimes, while Probation Officers in the Family and Criminal Courts deal only with misdemeanors, domestic matters and juveniles.

Since 1966, a single civil service examination has been given for all Probation Officers; the qualifications are the same for all; and a single civil service list is established and used for appointments to both the Supreme Court and the lower courts.

The contention that the work in the Supreme Court is different and more difficult was fully considered by the Department of Labor in the case which resulted in the establishment of one unit for all the Probation Officers. (Case No.-R 199-65). The report of the Trial Examiner therein, issued after a full hearing, states "that for the year July 1, 1964, to June 30, 1965, approximately 60% of the criminal sentences in four of five Supreme Courts in the City of New York ... were for misdemeanors." The report also found that Probation Officers in the lower courts deal with juveniles charged with acts which, if committed by adults, would constitute felonies. The record in that case also included evidence that the qualifications for Probation Officers in all Courts had been almost identical for fifteen years.

Although Petitioner was not a party to that proceeding, it was as hereinafter discussed, the unsuccessful petitioner in a court proceeding to vacate the determination made therein.

3. Petitioner next asserts that "the history of collective bargaining, except for one collective bargaining agreement, has been exclusively on the basis of separate court units." The fact is that the Supreme Court Probation Officers, whom Petitioner claims to represent, have had no history of separate collective bargaining. It was not until 1965, that the Judicial Conference elected to grant limited collective bargaining rights to some of its non-judicial employees. The history of collective bargaining thus is limited to the one collective agreement covering the over-all unit which Petitioner seeks to fragment.

4. Petitioner asserts there is no community of interest among, and no interchange between, Probation Officers in the Supreme Court and in the lower courts. As stated above, the qualifications and examinations are the same for both, appointments for all courts are made from the same civil service list, the specifications of job duties are the same, and the services rendered are substantially similar.

5. Petitioner attacks the wisdom., propriety and legality of the establishment by the Judicial Conference of a classification which includes Probation Officers in both the Supreme and lower courts. In support of this contention, we are referred to the recent decision in Augello v McCoy, Supreme Court, New York Go., Backer, J., Vol. 160 N.Y.L.J. (9/13/68) p 14, in which the court found that a classification merging Supreme Court Clerks and lower court clerks in one title was improper and illegal.

Petitioner's argument as to classification may, or may not, have merit, but addressed to this Board, and cited in support of its contention concerning the appropriateness of a bargaining unit, it is without relevance. If the classification established by the Judicial Conference is illegal, arbitrary and capricious, as Petitioner alleges, there are forums and remedies available to it. This Board, however, is without jurisdiction to determine that issue or to reclassify the employees. and the collateral attack here made is not a proper procedure to challenge that classification,

[1]Moreover, even if it were determined, by an appropriate forum, that there should be separate classifications or titles for Supreme Court and lower court Probation Officers, it does not follow that separate bargaining units would be appropriate. The Labor Department, prior to the establishment of this Board, consistently placed related titles in a single bargaining unit. We also do so, for our policy favors the establishment of larger units, and opposes fragmentation of established units (Matter of District Council 37, AFSCME and the City of New York, Decision No. 44-68).

6. Finally, Petitioner contends that the existing unit denies Probation Officers "the fullest freedom in the exercise of the rights guaranteed to them by (the Taylor Law)." Petitioner alleges that the interests of the Supreme Court Probation Officers were not adequately protected in the negotiations which eventuated in the collective agreement between the Administrative Board of the Judicial Conference and the certified bargaining representative. Examination of the contract discloses no support for that contention. Moreover, even if true, the facts alleged would not establish the inappropriateness of the unit, but only a breach of duty on the part of the certified representative.

As previously noted,, the Labor Department's determination of the appropriateness of a single unit was made after a lengthy and full hearing. Although Petitioner was not one of the three employee organizations which participated therein., it was the moving party, and was represented by its present counsel, in an Article 78 proceeding to vacate that determination. (Kleinman v McCoy , 51 Misc 2d 607, revd. 27 A.D. 2nd 19., revd. 19 N.Y. 2d 292, reargt. den. 20 N.Y. 2d 8930 285 NYS 2nd 1028).

---

[1]The decision in the Augello case indicates that the qualifications for Court Clerk 1 in the Supreme Court were substantially higher than those required of lower court clerks at the time of the reclassification. As previously noted, the record in the Labor Department hearing indicates that the qualifications for all Probation Officers had been substantially the same for many years.

In that proceeding, Petitioner urged (1) that the Judicial Conference could not delegate unit determination to the Department of Labor, and (2) that the unit determination was arbitrary and capricious. Both contentions were rejected at Special Term, Mr. Justice McCaffrey holding that there was "abundant evidence and experience in support of the conclusions reached in the proceeding to determine the appropriate bargaining unit." The Appellate Division's reversal was based solely on the ground that the Judicial Conference could not delegate its power to determine bargaining units. This holding, in turn, was reversed by the Court of Appeals, which reinstated the judgment of the Special Term. Petitioner's subsequent application to the Court of Appeals for reargument on the unit question, or to remand that question to the Appellate Division, was denied. (20 NY 2d 893, 285 N.Y.S. 2d 1028.)

Petitioner's attack on the unit determination made by the Department of Labor thus has been rejected by the courts. Although §1173-10.9c of the NYCCBL permits this Board to determine bargaining units differing from those established by the Department of Labor, we find no reason to do so in the instant case. That determination, made after a full hearing, is wholly consistent with the policies of the NYCCBL and this Board.

O R D E R

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

ORDERED, that Petitioner's motion for reconsideration of Decision No. 15-68 be, and the same hereby is, granted; and it is further

ORDERED, that Petitioner's request, in the alternative, for a hearing herein be, and the same hereby is, denied; and it is further

ORDERED, that upon reconsideration, Decision No. 15-68, dismissing the petition herein, be and the same hereby is, adhered to.

DATED: New York, N.Y.

November 18, 1968

ARVID ANDERSON
CHAIRMAN

ERIC J. SCHMERTZ
MEMBER

SAUL WALLEN
MEMBER