

NYSNA, et. Al v. City, 2 OCB 68 (BOC 1968) [Decision No. 68-68 (Cert.)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF CERTIFICATION

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In the Matter of

NEW YORK STATE NURSES ASSOCIATION

-and-

DECISION NO. 68-68

THE NURSES ASSOCIATION OF THE
DEPARTMENT OF HEALTH OF THE
CITY OF NEW YORK

DOCKET NO. RU-68-68

-and-

THE CITY OF NEW YORK

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On September 25, 1968, New York State Nurses Association filed a motion under Rule 2.18 of the Consolidated Rules of the office of Collective Bargaining, seeking in effect: (1) to cancel a Department of Labor certification of the Nurses Association of the Department of Health of the City of New York as collective bargaining representative of Staff Nurses, Per Session (9 NYCDL No. 38) and, (2) to include Staff Nurses, Per Session, within the Staff Nurse title for which the State Nurses Association is the City-wide collective bargaining representative (MR-11-65).

Opposing papers were submitted by the Nurses Association of the Department of Health.

District Council 37 applied to intervene herein. In view of our disposition of the motion, it is not necessary to pass on that application.

The motion is made under Rule 2.18 which provides:

"Certification-Life; Modification. When a representative has been certified by the Board, such certification shall remain in effect for one year from the date thereof and until such time thereafter as it shall be made to appear to the Board, through a secret ballot election, conducted in a proceeding under Section 2.3 or 2.5 of these rules, that the certified employee organization no longer represents a majority of the employees in the appropriate unit. In any case where unusual or extraordinary circumstances require, the Board may modify or suspend, or may shorten or extend the life of the certification. The provisions of this section shall apply to certifications issue by the New York City Department of Labor prior to the effective date of the

statute, or issued in a case or matter which was pending on such effective date and in which an election has been held."

The Board's Rules were formulated and promulgated as the result of a series of meetings to which representatives of the City and unions representing City employees were invited, and in which they fully participated.

The purpose and scope of Rule 2.18 was the subject of lengthy discussion and careful consideration during these meetings. The original draft of the proposed rules contained a provision permitting the filing of employer petitions. Because of union objections, this provision was deleted,¹ with the City's consent, but with the understanding that since the City would not be able to file representation petitions, it could avail itself of Rule 2.18 to raise questions concerning the modification or clarification of an appropriate bargaining unit, or whether an existing certification should be terminated because of abandonment or disclaimer by the certified representative, or other "unusual or extraordinary circumstances." (See Brooks Bros. v. N.L.R.B., 348 US 96, 98-99.)

Rule 2.18 was not intended to be used by unions as a substitute for representation petitions, which they may file under Rule 2.3. To permit a union to use Rule 2.18 as a means of challenging a rival certified union, would subvert the requirements of proof of interest (Rule 2.3b) and the contract bar doctrine (Rule 2.7).

In the instant case, moreover, there has been no showing of unusual or extraordinary circumstances. To the contrary, it appears that the negotiations between the City and the Nurses Association of the Department of Health were delayed to permit the conclusion of negotiations between the City and New York State Nurses Association.² It is a firmly established principle of labor relations that a bargaining relationship, once established, "must be endowed with longevity sufficient to accomplish its essential purpose."

¹ The sole exception is in the case of a non-municipal public employer (Rule 2.4). This exception was made because the Act permits voluntary recognition of a union by a non-municipal employer. See Act, §1173-3.01(2).

² The provision in Rule 2.7 which extends the Contract Bar Doctrine to preclude petitions "filed after the expiration of the contract," was inserted because all parties concerned recognized and were aware of the lengthy delays in the negotiation and execution of collective agreements with the City.

(N.L.R.B. v. Appalachian Electric P. Co., 140 F.2d 217, 221; Brooks v. N.L.R.B., 348 U.S. 96.7 under the circumstances herein, the period of the delay in the negotiations manifestly should be excluded in computing the life of the certification issued to The Nurses Association of the Department of Health.

Accordingly, we shall dismiss the petition.

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

O R D E R E D, that the motion made by New York State Nurses Association be, and the same hereby is, dismissed.

DATED: New York, N.Y.

November 18, 1968.

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