

DEA, City v. PBA, 26 OCB 15 (BOC 1980) [15-80 (Cert.)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF CERTIFICATION

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In the Matter of

DETECTIVES' ENDOWMENT ASSOCIATION
OF THE CITY OF NEW YORK

-and-

THE CITY OF NEW YORK

DECISION NO. 15-80

-and-

DOCKET NO. RU-741-80

PATROLMEN'S BENEVOLENT ASSOCIATION
OF THE CITY OF NEW YORK

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DECISION AND ORDER

On January 31, 1980, the Detectives' Endowment Association of the City of New York (hereinafter "DEA"), filed a petition seeking clarification of the bargaining unit included within its Certificate (5 NYCDL No. 77). Specifically, the DEA asks the Board of Certification to find that:

"...employees of the New York City Police Department in the titles of Patrolman and Policewoman who are assigned as Investigators or so-called 'White Shield Detectives'"

are included within the bargaining unit for which the DEA is certified as the exclusive bargaining representative. The DEA further requests this Board to amend its Certificate to reflect the above finding.

The Patrolmen's Benevolent Association of the City of New York (hereinafter "PBA") filed an answer to the DEA's petition on March 3, 1980. The DEA submitted a reply on March 18, 1980.

Additional correspondence was received from both unions, including letters dated March 3 and April 9, in which the DEA requested that an election be held to determine this representation issue, and April 15, in which the PBA argued that an election would be improper and that the DEA's petition should be dismissed.

On March 14, 1980, the Office of Collective Bargaining (hereinafter "OCB"), wrote to the City's Office of Municipal Labor Relations to request that the City advise OCB of its position concerning the DEA's petition, particularly as to the appropriateness of the unit proposed by the DEA. The City responded in a letter received on April 30, by stating:

"...the City does not believe that it would be appropriate for it to take a position in this matter."

The OCB also wrote to the Commanding Officer of the Police Department's Office of Labor Policy on March 14, 1980, requesting the number of Patrolmen and Policewomen assigned as "Investigators or so-called 'White Shield Detectives'", and a breakdown showing the number of dues check-off authorizations currently filed by such employees for any employee organizations. On March 28, the Police Department replied by alleging:

"There is no rank nor designation 'Investigator'. Therefore, the information sought is not available."

However, after further oral and written inquiry by OCB, the Police Department submitted a letter dated May 23, 1980 in which

it stated that a total of 985 police officers were assigned to designated commands as "Investigators" or so-called "White Shield Detectives." The Police Department further indicated that no one in these positions was on dues check-off to the DEA.

POSITIONS OF THE PARTIES

The DEA's claim to represent the "White Shield Detectives" is based upon the contention that employees in these positions have a clear community of interest with First, Second and Third Grade Detectives who are in the unit represented by the DEA. In support of this claim of community of interest, the DEA alleges that "White Shield Detectives" are assigned to the Detective Bureau where they work in an investigatory role; they perform the same traditional investigatory functions as Detectives; they are assigned to work out of uniform, as are Detectives; their positions are part of a "career path" toward designation to the position of Detective; they receive overtime compensation in a manner similar to Detectives and unlike members of the unit represented by the PBA; and they share working conditions closer to those of Detectives than those of Patrolmen and Policewomen in the PBA unit.

The DEA further alleges that inclusion of the "White Shield Detectives" in its unit would enhance the efficient operation of the Police Department and would promote sound labor relations by placing employees of similar expertise, responsibility and experience into a single bargaining unit.

Finally, as justification for the filing of their petition for unit clarification, the DEA asserts that there exists a substantial question regarding the representation of "White Shield Detectives.." To resolve this question, the DEA requests that this Board conduct an election.

The PBA submits that the clear and unambiguous language of its certificate states that the PBA is the exclusive bargaining representative of all employees in the titles of Patrolman and Policewoman, except those assigned as First, Second and Third Grade Detectives- The PBA argues that inasmuch as Patrolmen and Policewomen assigned as "White Shield Detectives" are not First, Second or Third Grade Detectives, they are clearly within the scope of the PBA's Certificate. The PBA notes that the Administrative Code of the City of New York provides that in order for an individual to become a Detective, he must be designated as such by the Police Commissioner. It is alleged that the "White Shield Detectives" have not been so designated.

The PBA explains that there is no special job classification of "Investigator"¹; rather, the so-called "White Shield Detectives" are merely police officers, spread throughout the Department, who have been assigned investigatory responsibilities. The PBA alleges that investigatory duties have always been within the range of duties prescribed for all police officers.

¹ It appears that the Police Department agrees with this contention by the PBA.

It is observed by the PBA that police officers assigned to duties as "White Shield Detectives" serve in such assignments solely at the discretion of the Police Commissioner and may be reassigned to routine patrol duty at any time. The PBA argues that this situation differs from that of Detectives, who allegedly may only be reduced to routine patrol status for cause established after a full adversarial hearing.

The PBA further argues that "White Shield Detectives" do not receive a detective shield, nor do they receive the wages and benefits established by the contract negotiated by the DEA on behalf of the Detectives. Rather, the "White Shield Detectives" receive only the salaries and benefits provided for under the contract negotiated by the PBA on behalf of Patrolmen and-Patrolwomen.

In conclusion, the PBA contends that there is no need to clarify the existing Certificates, since they are clear and unambiguous. Therefore, the PBA requests that the petition filed by the DEA be dismissed.

In its reply to the PBA's answer, the DEA takes the further position that the terms of the DEA's Certificate, which grant exclusive representation status to the DEA for police officers:

" ... assigned as First, Second and
Third Grade Detective..."

actually is intended to grant such certification for all police officers:

"... assigned to investigative
detective duties."

The DEA contends that the "White Shield Detectives" are police officers who are assigned to such investigative detective duties, and therefore, they are included within the DEA's Certificate.

The DEA also alleges in reply that it has always considered the "White Shield Detectives" to be members of the DEA. As evidence of this belief, the DEA states that in 1977 and again in 1980, in the course of negotiations with the City, it has presented a bargaining demand on behalf of the "White Shield Detectives."

Finally, the DEA reiterates its request that this representation question be resolved by the holding of an early election.

DISCUSSION

A. BACKGROUND

Consideration of the merits of the petition should be prefaced by a review of the status of detectives, as it has been defined by statute and by the courts. Section 434a-3.0 of the Administrative Code of the City of New York authorizes the Police Commissioner to organize a division for detective purposes and to:

"...detail to service in said division as many members of the force as he may deem necessary..."

The Administrative Code further provides that:

"Of the members of the force so detailed the commissioner may designate..."

specified numbers of Patrolmen and Policewomen as detectives of the First, Second and Third Grade. (Emphasis added).

It thus appears that not all police officers "detailed" to perform detective duty are given the title of First, Second or Third Grade Detective. While the Police Commissioner may "detail" an unlimited number of police officers to detective duty, only the limited number who are "designated" by the Police Commissioner as First, Second or Third Grade Detectives receive the title and salary² of those positions.

The so-called "White Shield Detectives" are not mentioned in the Administrative Code, but seem to fall into the category of police officers who have been "detailed" to detective duty but who have not been "designated" by the Police Commissioner as one of the three grades of detective. The courts have held that the assignment of a Patrolman to perform detective duties does not constitute a promotion or a transfer to a higher position, and that the performance of such duties does not constitute out-of-title work, since such duties are within the scope of the job specification and description of duties for the position of Patrolman.³ Furthermore, the courts have refused to grant an injunction (sought by the DEA) enjoining the Police Commissioner from assigning Patrolmen to perform the duties of detectives for

² The Administrative Code provides that First Grade Detectives are to receive the same salary as Lieutenants; Second Grade Detectives, the same salary as sergeants; and Third Grade Detectives, such salary as may be determined by the Mayor.

³ Detective Endowment Association v. Leary, 36 A.D. 2d 289 (1st Dept. 1971), aff'd 30 N.Y. 2d 577 (1972).

extended periods of time without appointing them as one of the enumerated grades of detectives.⁴ As noted by the courts, the Administrative Code provides that all police officers assigned to perform detective duties, whether as First, Second or Third Grade Detectives, or otherwise, retain their underlying civil service titles of Patrolman or Policewoman. It is in the context of this statutory and decisional framework that this Board of Certification must examine the contentions of the parties in this proceeding.

B. CLARIFICATION OF UNIT

The DEA's petition is based upon the proposition that there exists a real uncertainty as to whether the "White Shield Detectives" are included within the bargaining unit which the DEA is certified to represent, or whether they are within the unit certified to the PBA, as claimed by that union. The DEA has alleged several grounds which it contends demonstrate why the "White Shield Detectives" are included in its unit. These grounds principally concern the alleged close community of interest between the "White Shield Detectives" and the First, Second and Third Grade Detectives represented by the DEA. However, the DEA concludes that there is a substantial question concerning the representation of the employees in question, and upon this basis, it requests that an election be held.

⁴

Id.

The facts presented in the record before this Board do not support the DEA's conclusion that the representation of the "White Shield Detectives" is in doubt. We are convinced that the record before us shows that the "White Shield Detectives" are clearly included within the unit which the PBA is certified to represent. The grounds upon which we base this conclusion are as follows:

1. The collective bargaining agreement entered into between the PBA and the City makes specific reference to employees⁵ who are assigned as "White Shield Detectives":

"Notwithstanding anything to the contrary herein, employees assigned to the Detective Bureau as so-called 'white shield detectives' shall receive over-time compensation in accord with the arbitrator's award in O.C.B. Docket No. A-148-70, dated September 8, 1971."
PBA contract, Article III, section 2.

This contractual reference clearly indicates that "White Shield Detectives" are employees within the PBA's unit and that they receive benefits under the PBA contract.. Moreover, it is undisputed that the employees in question are paid the salary rate specified in the PBA contract.

2. A reading of the arbitrator's opinion and award referred to in the PBA contract is quite informative (although the holding of the arbitrator is not relevant, and certainly not bind-

⁵ Article I, section 2 of the PBA contract defines the term "employees" as being interchangeable with the terms "Patrolmen" and "Policewomen" and states that this term relates solely to employees in the unit for which the PBA is the exclusive collective bargaining representative.

ing in the determination of the instant matter). The opinion and award demonstrates that as long ago as 1971, the PBA asserted that it represented the "White Shield Detectives", that the City acquiesced in that assertion, and that the PBA in fact arbitrated grievances on behalf of the "White Shield Detectives."

3. The respective certifications issued to the PBA and the DEA are not ambiguous. The PBA has been certified as the exclusive bargaining representative for:

" ... all employees employed by the City of New York in the titles of Patrolman and Policewoman, excluding those assigned as First, Second and Third Grade Detectives."⁶

Conversely, the DEA has been certified as the exclusive bargaining representative for:

"...employees assigned as First, Second and Third Grade Detective in the Police Department...."⁷

Thus, the decisive issue is whether the "White Shield Detectives" are assigned as First, Second or Third Grade Detectives.

The record indicates that the employees in question do not possess the indicia of these specified detective positions so as to satisfy the definition contained in section 434a-3.0 of the Administrative Code. These employees have not been "designated" by the Police Commissioner as First, Second or Third Grade De-

⁶ Decision No. 54-68.

⁷ 5 N.Y.C.D.L. No. 77

tectives and, significantly, they do not receive the salary of these positions. Rather, they are paid in accordance with the salary rate for Patrolmen and Policewomen, contained in the PBA contract.

The DEA asserts strenuously that the phrase, "assigned as First, Second and Third Grade Detective", really means, "assigned to investigative duties".⁸ (It is not disputed that the "White Shield Detectives" are assigned to investigative duties.) However, there is no basis for this contention. No reason is given for reading the terms of the certificate in a manner broader than the clear meaning of the language used. Also, we note that in a recent similar case, the DEA argued that its certificate included employees in the position of Detective Specialist, who admittedly are not assigned to investigative duties.⁹ The DEA's assertion in the present case thus appears to be inconsistent with its position in the earlier case.

Moreover, the courts, in a case brought by the DEA, have distinguished between mere assignment to detective duties and actual appointment or designation by the Police Commissioner to the positions of First, Second or Third Grade Detective.¹⁰ Clearly, the two categories are not the same.

⁸ DEA Reply, paragraphs 1 and 2.

⁹ Docket No- RU-718-79; Decision No. 29-79.

¹⁰ Detective Endowment Association v. Leary, 36 A.D. 2d 289 (1st Dept. 1971), aff'd 30 N.Y. 2d 577 (1972).

4. There is no evidence in the record that the employees in question have formally expressed any desire to be represented by the DEA. There is no allegation concerning the extent to which "White Shield Detectives" are dues paying members of the DEA, or the extent to which they have signed dues authorization cards. The Police Department's May 23, 1980 letter indicates that no one in the positions in question are on dues check-off to the DEA.

5. The bargaining demands presented by the DEA, both in 1977 and in 1980, as well as the so-called "180 day bill" for which the DEA lobbied in the Legislature in 1978, acknowledge that not all police officers assigned to investigative duties are detectives. The DEA's 1977 bargaining demand specifically recognized that "White Shield Detectives" are not presently designated as detectives, and that some police officers perform detective duties without being designated as such. The demand reads:

"All so called 'white shield detectives' who have been so assigned for two years or more shall be designated as detectives and the Department shall discontinue the practice of assigning police officers to detective duties."

Rather than being an attempt to bargain on behalf of the "White Shield Detectives", as alleged by the DEA, we read this demand to be an attempt to increase the size of the DEA's bargaining unit by requiring that, after two years of service outside the DEA unit as "White Shield Detectives", employees be

added to the DEA's unit through their designation as detectives. Consequently, we find that this and the other demand do not strengthen the DEA's case herein.

For these reasons, we find that there is no substantial question concerning the unit placement of the "White Shield Detectives". They clearly fall within the unit which the PBA is certified to represent.

In reaching the above conclusion, we have been cognizant of our ruling in the recent case of Matter of Patrolmen's Benevolent Association and Detectives' Endowment Association, Decision No. 29-79, which also was a petition for unit clarification involving the same two unions who are parties herein. In that earlier matter, we found that a real question existed concerning the representation of the employees at issue therein. As an aid in determining that question, the Board ordered that an election be conducted. We find that the present case differs from that earlier case in several important respects:

1. In the earlier case, the contracts between the City and each of the unions did not mention any of the Specialist titles at issue therein. In the present matter, the PBA contract specifically refers to the "White Shield Detectives" and indicates that they are employees within the bargaining unit.

2. In the earlier case, no evidence was presented as to which union, if either, had undertaken to present grievance and/or arbitrations on behalf of the Specialists. In the present case, the record shows that as long ago as 1971, the PBA engaged in arbitration to protect asserted rights of the "White Shield Detectives".

3. In the earlier case, the Administrative Code did not offer any guidance, since its provisions deal with employees assigned "for detective purposes" and the evidence in that case showed that the Specialists were not assigned to the Detective Bureau and did not perform the same duties as detectives. In the instant matter, "White Shield Detectives" are assigned to the Detective Bureau and allegedly perform detective duties. Under these circumstances, the provisions of the Administrative Code, which differentiate between a "detail" to detective duties and "designation" as a First, Second or Third Grade Detective, are clearly relevant.

4. In the former case, there did not appear to be any decisions of the courts regarding the status of the Specialists. In the present case, the decisions of the courts in Detectives' Endowment Association v. Leary, discussed supra deal specifically with the question of the status of "White Shield Detectives".

In the earlier case, this Board found that there existed a real question as to which unit the Specialists were included in. We stated:

"[W]e have not been able to establish conclusively which union has represented the Specialists in bargaining. None of the contracts negotiated with the DEA and PBA since 1973 mention Specialists nor do any applicable Labor Relations Orders."¹¹

¹¹ Decision No. 29-79 at page 15.

In the present case, inasmuch as the "White Shield Detectives" are referred to in the PBA contract, are paid in accordance with said contract, and have been represented by the PBA in the course of arbitrations, we are satisfied that the "White Shield Detectives" have been shown to be included within the PBA's unit. Accordingly, there is no necessity to conduct an election to assist in our investigation and determination of this matter.

Rather than constituting a question of unit clarification, the DEA's petition appears to be a challenge to the PBA's clear and present representation of the employees in question. As such, the DEA's application would more appropriately have been brought as a petition for certification, pursuant to sections 2.2 and 2.3 of the OCB Rules. However, we note that even if we deemed the DEA's petition to constitute or be the equivalent of a petition for certification, we would dismiss said petition because of the DEA's failure to submit any proof of interest as required by the OCB Rules in all such representation proceedings.

ORDER

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

ORDERED, that the Detective Endowment Association's petition be, and the same hereby is, denied.

Dated: New York, N.Y.
June 4, 1980

ARVID ANDERSON
Chairman

WALTER L. EISENBERG
Member

DANIEL G. COLLINS
Member