City v. CEA, et. Al,30 OCB 21 (BOC 1982) [21-82 (Cert.)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF CERTIFICATION
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In the Matter of the Application of

THE CITY OF NEW YORK, Decision No. 21-82

Petitioner Docket No. RE-132-82

For an Order declaring employees in the police service titles of CAPTAIN and CAPTAIN DETAILED AS DEPUTY INSPECTOR, INSPECTOR AND DEPUTY CHIEF INSPECTOR AND SURGEON AND SURGEON DETAILED AS DEPUTY CHIEF SURGEON AND CHIEF SURGEON, managerial or confidential pursuant to Section 2.20 of the Revised Consolidated Rules of the Office of Collective Bargaining,

-and-

CAPTAINS' ENDOWMENT ASSOCIATION OF THE POLICE DEPARTMENT OF THE CITY OF NEW YORK,

Respondent.
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INTERIM DECISION

On February 1, 1982 the City of New York by its Office of Municipal Labor Relations (OMLR) filed its Petition in this matter seeking a finding by this Board that employees in certain titles specified therein are managerial employees within the meaning of Section 1173-4.1 of the New York City Collective Bargaining Law -(NYCCBL).

On March 16, 1982 respondent Captains Endowment Association filed a Motion to Dismiss the Petition in this matter based upon two grounds as follows:

The City has failed to satisfy the condition precedent to the commencement of this action.

The petition is untimely and not served within the time limited by the statute.

As to the first ground for the motion, we find that nothing in the law or rules, in the fact that there have been a number of similar petitions filed by the City in the past but not prosecuted, or in our Decision and Order No.29-81 dated October 21, 1981, dismissing a petition of the City similar to the petition herein, creates a condition precedent to the filing of the instant petition such an is alleged by respondent Union and, accordingly, that on that ground there is no basis for dismissal of the petition.

As to the second ground for the motion, we note that by affirmation of Frances Milberg in opposition to the motion to dismiss dated May 14, 1982 and filed with the Board on the same date, ONLR maintained that the service and filing of its petition was timely. In this connection the affirmation alleges, inter alia that the one month filing period from January 1, 1982 to January 31, 1982 was extended by operation of law to February 1, 1982, the first business day after January 31, 1982 which was a Sunday; that 0MLR's petition was duly filed on February 1, 1982; and that "the petition was filed with an affidavit of service by mail indicating that January 29, 1982." Examination of the Board's copy of the, petition verifies that an affidavit of service by mail on January

29, 1982 is attached. the Reply affidavit of John P. Schofield, attorney for respondent Union, dated May 27, 1982 and filed with the Board on the same date, shows that the OMLR envelope in which the petition was served by mail on the Union bears a metered mail postage stamp dated February 2, 1982, indicating that the petition could thus not-have been deposited in a post office depository before that date and that the affidavit of service is therefore false and the service of the petition untimely and defective. Finally we note that no response or comment on these allegations has been received by the Board from OMLR.

We do not condone the filing of false affidavits even if, as is probably the case here, the inaccuracy is attributable to inadequate office procedures. We are reluctant, however, to allow law office error to bar the adjudication of serious issues on the merits unless such error is so egregious as to cause detriment to the interests of a party. No such harm has been done here. The filing of the petition was timely and the delay in serving the petition on respondent Union was short. It is within the general discretion of the Board to shorten and extend time limits, invoke expedited procedures and " ... prescribe such times and conditions for the service of notices, filing of pleadings and appearances of-parties as the circumstances require and as considerations of due process permit." (Rule 13.6). With specific regard to proceedings on issues of managerial status of public employees, it is within the discretion of the Board under Rule

2.20 b.3 to permit commencement of such proceedings outside of the one month so-called "contract bar" period prescribed by Rule 2.20 b.l.

As is true of most quasi-judicial administrative agencies, the Board has discretion, with due regard for considerations of due process, to apply its rules liberally and in such fashion an will promote the resolution of real issues rather than the application of technical rules of procedure more appropriate to the courts. In this context we find that there has been no harm to the interests of respondent Union except in the most technical sense and that dismissal of the petition for untimeliness and/or failure of proper service on respondent would-be unwarranted.

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 Union's motion to dismiss the petition herein be, and the same hereby is, denied.

DATED: New York, N.Y.
June 10, 1982

ARVID ANDERSON
CHAIRMAN

MILTON FRIEDMAN
MEMBER

DANIEL G. COLLINS
MEMBER