

Public Safety & Mun. Employees, Inc. v. City, et. Al, 40 OCB 10 (BOC 1987) [10-87 (Cert.)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF CERTIFICATION

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In the Matter of

PUBLIC SAFETY AND MUNICIPAL EMPLOYEES,
INC.

DECISION NO. 10-87

-and-

DOCKET NOS. RD-8-86
RU-979-86
RU-980-86
RD-9-87
RU-984-87
RU-985-87

THE CITY OF NEW YORK AND RELATED
PUBLIC EMPLOYERS

-and-

CITY EMPLOYEES UNION, LOCAL 237, IBT

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DECISION AND ORDER

On December 30, 1986, Public Safety and Municipal Employees, Inc. (hereinafter "PSME") filed three petitions with the Office of Collective Bargaining concerning 1765 employees in the following titles (hereinafter referred to collectively as "Special Officers"):

- Special Officer
- Senior Special Officer
- Supervising Special Officer
- Hospital Security Officer.

Docket No. RD-8-86 requests that City Employees Union, Local 237, International Brotherhood of Teamsters be "decertified" as collective bargaining representative of these employees, who are now included in a larger unit. Docket No. RU-979-86 requests that Petitioner be certified as collective bargaining agent for a unit consisting of employees in the above-listed

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four titles. Docket No. RU-980-86 requests that the employees in these four titles be added to an unspecified unit "which has similar interests

On January 28, 1987, PSME re-filed the same petitions, for reasons concerning contract bar,¹ which were docketed as RD-9-87, RU-984-87, and RU-985-87.

These titles are currently part of a bargaining unit composed of approximately five thousand employees serving in sixty-one titles. The certified representative of this existing unit is City Employees Union, Local 237, International Brotherhood of Teamsters (hereinafter "Local 237"). The collective bargaining agreement covering the unit is due to expire on June 30, 1987.

Local 237, by letter dated February 2, 1987, moved to intervene in the proceeding and requested the dismissal of the petition on the ground that the unit placement issue had previously been determined by the Board and re-affirmed in two subsequent Board decisions. On February 24, 1987, Local 237 submitted a further detailed response to PSME's claims.

¹ §2.7 of the Revised Consolidated Rules of the Office of Collective Bargaining (hereinafter "Rule 2.7")

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On February 23, 1987, the City of New York, by its Office of Municipal Labor Relations, submitted a letter opposing PSME's petitions on the ground that they were untimely filed under Rule 2.7.

Background

It is appropriate to repeat here the summary of the representation efforts on behalf of Special Officers which appeared in our Decision No. 29-82.²

The representation status of the Special Officer series of titles has had a long and varied history, dating back to the first organizational efforts in the early 1960's. The first City-wide certification for the Special Officer title was issued in 1964. During 1965-1966, Local 237 first achieved City-wide certification for the titles of Special Officer and Senior Special Officer. In 1968, Local 237 was further certified to represent the new title of Hospital Security Officer. In 1969, upon the petition of another union, an election was held and was won by Local 237, which was then recertified by this Board for a unit of all three titles.³ The new titles of Supervising

² Several minor revisions were made in order to update this account and adapt it to the present case.

³ Decision No. 56-70.

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Special Officer and Principal Special Officer (HRA) were later added to Local 237's certification.⁴

During the period from 1972 through 1976, the Police Benevolent Association Municipal Special and Superior Officers, the Special and Superior Officers Benevolent Association, and the Patrolmen & Security Officers Section, Allied Services Division, BRAC, AFL-CIO, filed various petitions for certification for the above unit. All of these petitions were dismissed or withdrawn for reasons concerning contract bar and bona fides.

In 1976, the City petitioned for the consolidation of the Special Officers unit with another unit represented by Local 237, covering various custodial, maintenance inspection, skilled crafts, and related titles. The consolidation was opposed at that time by Local 237. In Decision No. 55-76, this Board granted the City's petition and consolidated the units. Subsequently, in 1977 and 1978, upon the City's petitions, the Board further consolidated the unit created in Decision No. 55-76 with two other units represented by Local 237.⁵ This new

⁴ Decisions 97-73 and 49-82, respectively.

⁵ Decisions 9-77 and 67-78.

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unit is the presently existing unit, except for minor amendments⁶ which are not pertinent herein.

On July 12, 1979, Police Benevolent Association, Long Island Railroad Police, Inc. ("PBA-LIRR") petitioned for certification of almost the same unit sought in the present petition.⁷ The City and Local 237 opposed the petition, contending, inter alia, that the requested unit was inappropriate. After a hearing was held, the Board issued Decision No. 24-79, in which it found that the petition should be dismissed because it failed to show that the existing unit was no longer appropriate and because the creation of the requested unit would present an unwarranted deviation from the Board's established policy against fragmentation of units.

The PBA-LIRR challenged the Board's determination in the courts. In late 1980, the Appellate Division, First Department, unanimously confirmed the Board's decision, and the Court of Appeals denied permission for further appeal.⁸

⁶ Decisions 10-79, 31-80, 36-81, 14-82, 26-82, 50-82, 15-83, and 9-85 (also see footnote 4).

⁷ The only difference between the unit sought in the petition in 1979 and the one proposed in the present petition is the inclusion in the former of the now-obsolete title of Special Officer (CETA)

⁸ Police Benevolent Association, Long Island Railroad Police, Inc. v. Anderson, 78 A.D.2d 777, 435 N.Y.S. 2d 200 (1st Dept. 1980), leave to appeal denied, 53 N.Y. 2d 602, 439 N.Y.S. 2d 1025 (1981).

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On July 14, 1981, PBA-LIRR filed another petition, based, at least in part, upon new facts which allegedly could not have been presented to the Board in the proceeding in 1979. That petition was likewise dismissed⁹ for reasons similar to those in Decision No. 24-79.

Positions of the Parties

PSME's Position

PSME contends that the Board should reconsider the unit placement of the Special Officer series of titles because Local 237 "no longer sufficiently represents the interests of the employees in the unit...Special Officers ... are considered peace officers, and their responsibilities include security and police duties. Therefore, as their position requires the utmost in trustworthiness, said employees should not be associated with the International Brotherhood of Teamsters [IBT] ... The public perception of [IBT] is not that of a law abiding, upstanding association."

PSME also alleges that "Local 237 does not adequately represent the interests" of the Special Officers, "unique interests not applicable to other members of the existing bargaining unit... for example: their desire for firearms, bullet proof vests, and better defensive equipment."

⁹ Decision No. 29-82.

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Finally, PSME claims that "there is an inherent conflict of interest arising from the fact that Special Officers [are] required to take police action against fellow members of their bargaining unit."

Local 237's Position

Local 237 asserts that these petitions are untimely under the provisions of Rule 2.7. Citing this Board's; Decision No. 22-73 and applying its findings to the 3½-year contract covering these employees and expiring June 30, 1987, Local 237 concludes that the only proper period for filing these petitions was July 2, 1986 to August 1, 1986.

Local 237 also alleges that PSME lacks the indicia of a public employee organization and that its showing of interest is inadequate.

Finally, Local 237 contends that the Board's reasons for placing and maintaining Special Officers in the present unit have been repeatedly and consistently enunciated in Decisions 55-76, 9-77, 67-78, 24-79 and 29-82; and that PSME has failed to allege any change in circumstances warranting the requested fragmentation.

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Employer's Position

The City's Office of Municipal Labor Relations takes the same position with respect to contract bar as Local 237 (see above) and "reserves its right to comment upon the petitions" if the Board finds them timely filed.

Discussion

Rule 2.7 reads, in pertinent part, as follows:

§2.7 Petitions-Contract bar; Time to file.

A valid contract between a public employer and a public employee organization shall bar the filing of a petition for certification, designation, decertification or revocation of designation during a contract term not exceeding three (3) years. Any such petition shall be filed not less than five (5) or more than six (6) months before the expiration date of the contract, or, if the contract is for a term of more than three (3) years, before the third anniversary date thereof.

(Emphasis added)

We interpret this as permitting alternative filing dates in cases involving contracts of longer than three years' duration -- either during the sixth month before the third anniversary date of the contract or during the sixth month before the expiration of the contract, at the option of the petitioner. Local 237's reliance on Decision No. 22-73 is misplaced. In that case, the

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Board was called upon to decide whether a petition was late when it was filed exactly on the day commencing five months before the third anniversary date of the agreement. In addition, the Board said that "we find it unnecessary in this proceeding to determine the alternative position urged by the Petitioner and the Employer ... that a reasonable construction of Rule 2.7 would also render the filing of a rival petition timely if filed during the month of March 1973", the sixth month preceding the contract expiration date.¹⁰

Therefore, we find that the petitions docketed as RD-9-87, RU-984-87, and RU-985-87 were timely filed. The first of these, however, is not a proper decertification petition since it does not seek to demonstrate that Local 237 "is no longer the representative of the public employees" in the entire unit.¹¹

Local 237's allegations concerning bona fides and showing of interest need not be considered here because we shall dismiss the remaining petitions on other grounds.

In Decisions 55-76, 24-79, and 29-82, we dealt at length with the allegedly unique interests of Special Officers, such as

¹⁰ Decision No. 22-73 at p. 5

¹¹ See §2.5 of the Rules and Decision No. 18-77.

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their peace officer status, their security functions, and their desire for firearms and bullet-proof vests. We found that these interests did not create "such an exceptional situation... as to warrant our deviating from our established policy against fragmentation of units."¹² PSME has not presented any new issues of this nature that would justify a hearing.

PSME's remaining allegation concerns the "impropriety" of allowing Local 237 to represent Special Officers because of the "notorious reputation" of the International Brotherhood of Teamsters for "its questionable activity." PSME does not attribute this "reputation" to Local 237 itself nor does it offer to demonstrate whether the "reputation" is justified. This Board cannot concern itself with such vague accusations but confines itself to facts. Petitioner's estimate and characterization of "the public perception" of the parent organization of the unit representative herein cannot form a basis for our decision.

Accordingly, we shall dismiss all of the petitions filed by PSME.

¹² Decision No. 29-82 at p. 30

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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 the petitions of Public Safety and Municipal Employees, Inc. be, and the same hereby are, dismissed.

DATED: New York, N. Y.
 May 12, 1987

ARVID ANDERSON
CHAIRMAN

DANIEL G. COLLINS
MEMBER

GEORGE NICOLAU
MEMBER