

OFFICE OF COLLECTIVE BARGAINING
BOARD OF CERTIFICATION

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In the Matter of the Application of

THE CITY OF NEW YORK,

Petitioner,

For an order declaring employees
in the title of DEPUTY PRESS
SECRETARY in the Office of the
District Attorney, Kings County,
managerial or confidential
pursuant to Section 2.20 of the
Revised Consolidated Rules of
the Office of Collective
Bargaining,

DECISION NO. 16-87

DOCKET NO. RE-158-87

-and-

LOCAL 237, INTERNATIONAL BROTHER-
HOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN, and HELPERS OF
AMERICA,

Respondent.

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INTERIM DECISION AND ORDER

On January 30, 1987, the City of New York, appearing by its Office of Municipal Labor Relations ("City") filed the instant petition pursuant to Section 2.20 of the Revised Consolidated Rules of the Office of Collective Bargaining ("OCB Rules") seeking a determination that employees in the title of Deputy Press Secretary in the Office of the District Attorney of Kings County are managerial and/or confidential within the meaning of Section 1173-4.1 of the New York City Collective Bargain-

ing Law ("NYCCBL"). These employees serve in the Civil Service title of Associate Public Information Specialist, one of several titles covered by Certification No. 62C-75 (as amended by Decisions 45-76 and 3-77), which is held by Local 237, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America ("Local 237" or "Union"). The Board of Certification ("Board") has made no prior finding with respect to the managerial/confidential status of the employees who are the subject of this petition.

On April 14, 1987, Local 237 filed an answer and cross-motion to dismiss the petition on two grounds: first, that the petition is untimely; and second, that the petition does not supply the information required by Rule 2.20(a)(7). The City did not respond to this motion.

The petition was filed with the OCB on January 30, 1987, together with an affidavit of service by mail on January 29, 1987 to Local 237. The Union contends that pursuant to OCB Rules 2.20(b)(1) and 13.5, the petition

is untimely.¹ Specifically, Local 237 argues:

Allowing three days for mailing pursuant to OCB Rule 13.5, the petition is deemed to have been served on the first business day after the examination [sic] of the third day from the date of mailing ... February 2, 1987. The petition is therefore untimely as same was served upon respondent Local 237 less than five months before the expiration date of its current collective bargaining agreement

The current contract covering the employees herein expired on June 30, 1987. In this case, the open period was the month of January, 1987. Rule 2.20 requires only that the petition be filed with proof of service and not that it be received by other parties during the open period. Thus, the petition, filed on January 30, 1987, was timely under Rule 2.20 (b) (1). We note, moreover that the January open period ended on Saturday, January 31, and that the first business day thereafter was Monday,

¹ Rule 2.20(b)(1) requires that a petition seeking managerial or confidential determination be filed:

Not less than five (5) or more than six (6) months before the expiration date of the contract covering the employees sought to be designated managerial or confidential.

Rule 13.5 states:

Where a period of time is measured from the service of a paper, and service is by mail, three (3) days shall be added to the prescribed period.

February 2, the day on which Local 237 acknowledges receipt of the petition, which under Section 13.4 of the OCB Rules, constitutes timely service.² In any event, it is within the general discretion of the Board to shorten and extend time limits (OCB Rule 13.6) and to permit commencement of proceedings under 52.20 outside the one month open period (OCB Rule 2.20(b)(3)).

Accordingly, we deny the motion to dismiss the petition on grounds of untimeliness.

Turning to the question of the sufficiency of the petition, the City alleges the basis of its petition as follows:

The duties of the Deputy Press Secretary include, inter alia: assisting and acting in a confidential capacity to the District Attorney who has a major role in the formulation and effectuation of policy, personnel and labor relations.

Local 237 takes the position that the City has not complied with OCB Rule 2.20(a)(7), which requires that the petition contain, inter alia:

A statement of the basis of the allegation that the titles and employees are managerial or confidential.

² We point out that Rule 13.5 applies only where "a period of time is measured from the service of a paper." It refers to the time allowed to respond to a paper served by mail; it does not refer to the time for filing an initial petition.

Local 237 asserts:

The question whether an employee is managerial or confidential depends upon the actual duties performed ... The petition is devoid of any factual allegations as to what duties are actually performed by the employees for whom managerial and/or confidential status is sought...the petitioner's parroting of the statutory criteria for confidentiality and unsubstantiated allegation that these employees' duties involved same ... are insufficient

A proceeding to determine whether designated employees are managerial or confidential, and therefore excluded from collective bargaining by §201(7)(a) of the Taylor Law is commenced by the filing of a petition by the public employer. The required contents of such a petition, and the only limitations upon its filing, are contained in §2.20 of the OCB Rules. It is not disputed that, with one exception, the City's petition in the instant matter satisfies the terms of §2.20. However, Local 237 contends that the City's petition fails to satisfactorily state the basis of its claim, as required by Rule 2.20(a)(7), and is thus irreparably defective. We do not agree.

The primary purpose of the petition is to put all parties and this Board on notice as to which employees

are alleged to be managerial, which are alleged to be confidential, and which of the statutory criteria are claimed to be relevant to the functions of the designated employees so as to render them managerial and/or confidential. This is the Board's understanding of the requirement of a statement of the "basis" of a petitioner's claim.³ The City's statement of the basis of its claim, quoted supra, clearly alleges that the duties performed by the employees are confidential in nature. For the purposes of filing a petition it is unnecessary that greater factual detail be alleged. Thus, we find that the basis of petitioner's claim has been adequately alleged in the petition herein. Accordingly, we will deny the Union's motion to dismiss in its entirety.

This is not to say that an abbreviated statement of a petitioner's claim is, in all cases, sufficient to warrant the holding of a hearing upon such claim. To the contrary, in many cases further clarification and substantiation of petitioner's claim may be required, as part of the Board's investigatory process, before a determination can be made that a hearing is necessary. Moreover, a petitioner's failure timely to submit such clarification and substantiation, when requested by the Board, may result in dismissal of the petition.⁴

³ Decision 3-81.

⁴ Decisions 3-81, 29-81.

In the instant case, however, the City has also alleged the individual to whom the two Deputy Press Secretaries allegedly act in a confidential capacity, i.e., the District Attorney, Kings County, who holds a managerial position, although he is not an employee within the meaning of the Taylor Law.⁵ Thus, we find that the City has alleged sufficient information to justify a hearing on the issue of the confidential status of these employees.

We emphasize that the question of the legal sufficiency of a petition is separate and distinct from the question of the nature and quantum of evidence required to be produced in support of a petition as a prerequisite to the holding of an investigatory hearing. We do not, at this time, rule on the issue of what level of clarification and substantiation may be required of the City prior to the holding of any investigatory hearing in any other matter.

⁵ The District Attorneys, as elected officials, do not fall within the definition of the term "public employee" in Section 201(7)(a) of the Taylor Law: "any person holding a position by appointment or employment...." County of Wayne v. Local 859, CSEA 16 PERB 4634 (1983). In Decision No. 13-74 we found that Assistant District Attorneys below the level of Bureau Chief were not managerial employees within the meaning of the Taylor Law at that time. We take administrative notice of our finding therein that "policy making is effected by those at or above the Bureau Chief level...."

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

ORDERED, that the motion to dismiss the petition in Docket No. RE-158-87 by Local 237, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America be, and the same hereby is, denied; and it is further

ORDERED, that this matter be referred to a Trial Examiner designated by the Board of Certification for the purpose of conducting a hearing and establishing a record upon which this Board may determine whether the employees serving in the title of Deputy Press Secretary are confidential employees within the meaning of Section 201(7)(a) of the Taylor Law.

DATED: New York, N.Y.
August 19, 1987

ARVID ANDERSON
CHAIRMAN

DANIEL G. COLLINS
MEMBER

GEORGE NICOLAU
MEMBER