

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 police service titles of CAPTAIN
and CAPTAIN DETAILED AS DEPUTY
INSPECTOR, INSPECTOR and DEPUTY CHIEF
INSPECTOR and SURGEON and SURGEON DE-
TAILED AS DEPUTY CHIEF SURGEON and
CHIEF SURGEON,

DECISION NO. 3-87

DOCKET NO. RE-132-82

- 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" or "the City"),
filed a petition pursuant to Section 2.20 of the Revised
Consolidated Rules of the Office of Collective Bargaining
("OCB Rules"), requesting that:

an order be entered declaring that employ-
ees in the titles of Captain, Captain
Detailed as Deputy Inspector, Inspector
and Deputy Chief Inspector, Surgeon and
Surgeon Detailed as Deputy Chief Surgeon,
and Chief Surgeon are managerial or con-
fidential employees . . .

On March 16, 1982, the Captains' Endowment Association

("CEA"), the certified bargaining representative for these titles,¹ filed a motion, pursuant to Section 13.11 of the OCB Rules, asking the Board of Certification ("the Board") to dismiss the petition. In an interim decision which issued on June 10, 1982, the Board found there to be no basis for a dismissal of the petition.²

On June 22, 1982, the CEA filed its second motion to dismiss. On January 18, 1983, the Board denied CEA's second motion to dismiss and directed that hearings be forthwith commenced.³

On February 9, 1983, the CEA, by its then attorney of record, John P. Schofield, filed a petition in the Supreme Court of the State of New York, pursuant to Article 78 of the CPLR. In papers which it submitted to the Court on March 15, 1983, the Office of Collective Bargaining sought dismissal of the petition on the grounds that the Board determination challenged by CEA was not a final determination within the meaning of Section 7801(1) of the CPLR, and that judicial review was, in any event, time-barred by the 30-day statute of limitations applicable to the commencement of Article 78 review of Board decisions. In a judgment signed

¹ CEA is the sole and exclusive bargaining representative for the unit consisting of the employees of the New York City Police Department serving in the titles which are the subject of this petition.

² Decision No. 29-82.

³ Decision No. 3-83.

on May 9, 1983, the Court granted the OCB's cross-motion and dismissed the CEA's petition "without prejudice to renewal upon completion of respondent's administrative review of the City's application."

Further delays in this matter were occasioned by Mr. Schofield's insistence that the matter be held in abeyance pending the appeal which he intended to file, and then, by scheduling problems which were encountered after it was determined by the OCB that the matter would proceed notwithstanding the possibility that an appeal might be filed by the CEA. Hearings commenced on November 29, 1983, and continued through June 17, 1985, the last hearing date prior to the death of the Trial Examiner, the late Professor Joseph R. Crowley.⁴

Between June 17, 1985 and July 1986, the parties had, from time to time, explored the possibility of settlement and Vincent D. McDonnell substituted for John P. Schofield as CEA's attorney of record. On July 15, 1986, Marc Z. Kramer, the City's attorney, advised the OCB that discussions between the parties had failed to produce a settlement, and requested that the matter be returned to the calendar and noticed for hearing.

⁴ It should be noted that delays which occurred between November 29, 1983 and June 17, 1985, were attributable primarily to the preoccupation of the parties with the introduction and consideration by the State Senate and Assembly of a bill affecting the status of employees serving in the titles under consideration in this proceeding.

In a letter dated July 25, 1986, the OCB's General Counsel, Malcolm D. MacDonald, advised the parties that a notice of hearing would issue shortly but "that the existing record of hearings before the late Professor Crowley [would] be preserved and that they shall constitute part of the record upon which determination of this matter shall be based."

In response to the CEA's letter of July 17, 1986, requesting that the City's petition be dismissed, this Board concluded, at its August 20, 1986 meeting, that there exists no basis for dismissal of the action. The CEA's attorney has, nevertheless, persisted in the view that the matter is stale and that the City's petition should be dismissed. We wish to state unequivocally that (1) the issues raised in the City's petition have not yet been decided by this Board; (2) these issues have not been shown to be moot; and (3) there has not been a demonstrated failure on the part of the City to prosecute its claims herein. Furthermore, much of the delay in advancing this matter to the point of resolution has, in fact, been caused by the CEA.

We find, therefore, that there exists no basis for dismissal of the action and direct that hearings in this matter be forthwith commenced. We wish to add, however, that in view of the concerns expressed by the parties, it has been agreed that the matter will proceed de novo so as to safeguard the rights of the parties against any prejudice to

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them from proceeding on the basis of a record compiled some years ago by individuals no longer involved in this proceeding.

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 Captains' Endowment Association's motion to dismiss be, and the same hereby is, denied; and it is further

ORDERED that the instant matter be set for hearing immediately, and without further delay, for the purpose of establishing a record upon which a Board determination may be based.

Dated: New York, New York
February 18, 1987

ARVID ANDERSON
Chairman

GEORGE NICOLAU
Member

DANIEL G. COLLINS
Member