

OSA v. City, Related Public Employers, 44 OCB 11 (BOC 1989) [11-89 (Cert.)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF CERTIFICATION

----- x
In the Matter of the Petition of

ORGANIZATION OF STAFF ANALYSTS

DECISION NO. 11-89

and

DOCKET NO. RU-1021-88

CITY OF NEW YORK and RELATED
PUBLIC EMPLOYERS.

----- x

INTERIM DECISION AND ORDER

By petition filed with this Board on October 11, 1988, the Organization of Staff Analysts ("OSA") sought to add the titles of Training Development Specialist Assignment Level I and Training and Development Specialist Assignment Level II (collectively referred to herein as "the TDS titles") to Certification No. 3-88. District Council 37, American Federation of State, County and Municipal Employees ("DC 37") initially sought to intervene in the instant proceeding by letter dated November 18, 1988 which, as set forth in greater detail herein, was followed by further letters from DC 37 to the Director of Representation of the Office of Collective Bargaining.

OSA has asked this Board to dismiss DC 37's attempt to intervene on two grounds. First, it alleges that DC 37 has failed to comply with the strictures of Revised Consolidated Rules of the Office of Collective Bargaining ("OCB Rules") §13.9¹

¹OCB Rule §13.9 provides the following:

Intervention - Procedure; Contents; Filing; Service. A person, public employer or public employee organization desiring to intervene in any proceeding shall file a verified written application and three (3) copies thereof, setting forth the facts upon which
(continued...)

by submitting an unverified letter in lieu of a verified application. Second, OSA alleges that DC 37's application to intervene is substantively defective, because the request does not adequately set forth a basis entitling it to intervene. Therefore, before proceeding further in the instant matter, we must address DC 37's request to intervene.

Background

OSA is the certified bargaining representative for employees in the titles of "Staff Analyst" and "Associate Staff Analyst" pursuant to Certification No. 3-88. By petition dated October 6, 1988, OSA requested that the TDS titles be added to its certification.

After OSA filed its petition, the Director of Representation of the Office of Collective Bargaining ("the Director"), by letter dated October 25, 1988, notified DC 37 that:

[i]nformation secured in relation to [the OSA petition] indicates that this matter may be of interest to your organization. If you desire to intervene in this case, your attention is called to Section 13.9 of the Consolidated Rules of the Office of Collective Bargaining. [emphasis in original]

(...continued)

such person, employer or organization claims an interest in the proceeding. Such application must be timely made, served on all parties and filed with proof of service. Failure to serve or file such application, as above provided, shall be deemed sufficient cause for the denial thereof, unless good and sufficient reason exists why it was not served or filed as herein provided.

By letter dated November 18, 1988, from the attorney for DC 37 to the Director, DC 37 noted that it was the certified representative:

... for many titles which share a community of interest with the subject titles of Training Development Specialist and, in fact, employees in titles currently represented by District Council 37 are being converted to the Training Development Specialist Titles because their duties more closely apply to the tasks and standards of the Training Development Specialist title.

In its letter, DC 37 asked to intervene.

Subsequently, by letter to the Director dated November 28, 1988, counsel for DC 37 further contended that the TDS titles share a "community of interest with the Social Service bargaining unit for which District Council 37 is the certified collective bargaining unit."²

In a letter dated November 29, 1988, but apparently mailed before receipt of DC 37's letter of the preceding day, counsel for OSA, wrote a letter to the Director opposing DC 37's request to intervene. Counsel argued that DC 37's request to intervene was procedurally defective, because OCB Rule §13.9 requires that a party who wishes to intervene file a verified, written application. She also contended that the letter was substantively defective, because it only conclusorily alleged that DC 37 "represents employees in unnamed titles which share a community of interest with the subject title." She suggested

²The unit to which counsel for DC 37 apparently referred is the social service unit encompassed in Certification No. 37-78, as amended. The unit consists of nearly two hundred titles.

that a request to intervene should at least name the title or titles which allegedly share a community of interest.

By letter dated December 8, 1988 to the Director in response to DC 37's November 28, 1988 letter, counsel for OSA noted that DC 37's request to intervene was still not verified. Moreover, counsel argued that DC 37's allegations that employees in TDS titles share a community of interest with those in the Social Service titles was insufficient, because DC 37's certification covers a variety of titles. OSA contended that the burden was on DC 37 to name the specific Social Service titles with which the TDS titles share a community of interest and to explain the basis for its assertion that a community of interest is present.

In a letter dated January 13, 1989 to the Director, the Office of Municipal Labor Relations ("OMLR") stated that it did not oppose representation of the titles. However, OMLR indicated that in light of the intervention by DC 37, it would "maintain a position of neutrality regarding the unit placement" of the title.

In a letter dated February 24, 1989, to the Director, counsel for DC 37 argued that the specific titles in the social service bargaining unit to which it referred in its previous letter included, but were not limited to Supervisor I, II and III (Welfare) and Caseworker. The letter noted that individuals employed as "Caseworker" perform the training functions included within the TDS job specification.

Finally, in response to the last DC 37 communication, by letter dated March 6, 1989 to the Director, counsel for OSA

reiterated her objection to the request to intervene on the grounds that it was still procedurally defective in that it failed to be verified and did not set forth sufficient facts for to establish a showing of interest pursuant to OCB Rule §13.9.

The letter also noted that while employees in the "Supervisor" and "Caseworker" titles may train employees, training is not among the responsibilities and duties encompassed in the TDS titles job specification. Counsel also noted that the qualification for TDS includes a baccalaureate degree and two years full-time professional experience and training. The titles recited by DC 37 do not require such specialized experience.

Moreover, counsel for OSA pointed out that the Supervisor and Caseworker titles are only located within the Department of Social Services; the TDS titles, however, are located in many different departments.

Discussion

OCB Rule §13.9 clearly mandates that a "verified, written application" be served and filed in order for a party properly to intervene in a proceeding.³ In the past, we have dismissed a request to intervene which was made in an unverified letter.⁴

We note that DC 37, which is undoubtedly familiar with the procedures to be followed before this Board, had several opportunities to correct its failure to submit a verified

³We note that pursuant to OCB Rule §2.2, it is not necessary to verify a representation petition which need only be "in writing and signed." See Decision No. 22-73.

⁴Decision No. 26-71.

request.

Initially, the letter from the Director dated October 25, 1988 to DC 37 called its attention to OCB Rule §13.9's applicability to requests to intervene. Subsequent letters from counsel for OSA to the Director dated November 29, and December 8, 1988, as well as March 6, 1989, copies of which were sent to DC 37, indicated that DC 37 had failed to comply with the requirement that requests to intervene be verified and that OSA would seek to have DC 37's motion to intervene denied.

DC 37 has failed to verify its request. Thus, as OSA argues, DC 37's request to intervene fails to comply with the verification requirement of OCB Rule §13.9 and, accordingly, should be dismissed.

However, we find that taken together, the letters offered by DC 37 satisfy the minimal threshold requirement of specificity set forth in OCB Rules §13.9. DC 37 need not prove conclusively that the subject titles should be added to its certification and we make no such finding herein. It need only plead enough to establish that it has an interest in the proceeding.

In part, DC 37 argues in support of its contention that there is a community of interest between employees in the TDS titles and employees in the Social Service titles that employees in both titles perform training functions. OSA contends that "[w]hile supervisors and caseworkers may do some training of persons whom they supervise, that is not the kind of duties and responsibilities encompassed in the" specifications for the TDS titles.

We note that the job specification for "Training Development Specialist Assignment Level II," which states that one of the title's duties is to train agency trainers includes, in part, the following examples of typical tasks:

Supervises professional staff on training projects.

Assesses training needs through surveys, interviews, etc.; analyzes agency performance problems and develops training plans for solving these needs; provides technical assistance to agencies in all aspects of training development

Delivers training to New York City managers and employees using a range of appropriate adult learning approaches to impart knowledge and skills, researches, develops, and conducts a training program of specific courses on New York City systems/policies for New York City managers.

We find that DC 37 has made an arguable, showing of interest in the instant proceeding. In contrast to the letter request to intervene which we denied in Decision No. 26-71, cited supra, DC 37 has satisfied the substantive pleading requirements of OCB Rule §13.9.

The record also fails to demonstrate prejudice to OSA, and more importantly, prejudice to the employees in the TDS titles which would result by permitting DC 37 to intervene. Indeed, the interests of the employees are superior to any interest the competing bargaining representatives may have in seeing that the procedural requirements of pleading be strictly and blindly enforced.

OCB Rule §2.10 sets forth the five factors that we must consider in determining appropriate bargaining units,⁵ and they include the factor of community of interest which is proffered by DC 37 as its basis for intervention. In order to fully consider these factors, it is important to have potentially interested parties participate in the certification process. Proceedings before this Board are investigatory rather than adversarial in nature,⁶ and the substance of DC 37s' request indicates that it may arguably be able to offer facts which could help guide this Board in making its decision. Thus, the interests of the

⁵These factors are:

- a. Which unit will assure public employees the fullest freedom in the exercise of the rights granted under the statute and the applicable executive order;
- b. The community of interest of the employees;
- c. The history of collective bargaining in the unit, among other employees of the public employer, and in similar public employment;
- d. The effect of the unit on the efficient operation of the public service and sound labor relations;
- e. Whether the officials of government at the level of the unit have the power to agree or make effective recommendations to other administrative authority or the legislative body with respect to the terms and conditions of employment which are the subject of collective bargaining;
- f. Whether the unit is consistent with the decisions and policies of the Board.

⁶OCB Rule §2.2 refers to the filing of petitions for the "investigation of a question or controversy concerning the representation of public employees."

employees are served by permitting DC 37 an opportunity to cure the procedural defect in its pleadings.

We have in the past applied our "rules liberally and in such fashion as will promote the resolution of real issues rather than the application of technical rules of procedure more appropriate to the courts."⁷ Indeed, we are instructed by OCB Rule §15.1 to construe our rules in such a fashion,⁸ and where prejudice to another party was minimal, we have permitted pleadings which have not complied with all of the requirements of the OCB Rules.⁹ Nonetheless, in the present circumstances, we cannot ignore the instant violation of OCB Rules. Accordingly, we deny DC 37's motion to intervene, unless it files a verification with the Office of Collective Bargaining within ten days of service of a copy of this Interim Decision and Order. Intervention will be granted, and a hearing before a trial examiner to investigate the representation question will be ordered if DC 37 verifies its request within the stated time.

ORDER

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

⁷Decision No. 21-82.

⁸OCB Rule §15.1 states, in relevant part, that "[t]hese rules shall be liberally construed..."

⁹See Decision No. 21-82.

ORDERED that the request of District Council 37 of the American Federation of State, County and Municipal Employees to intervene in the instant matter be, and the same hereby is denied; and it is further

ORDERED that should District Council 37 of the American Federation of State, County and Municipal Employees file with the Office of Collective Bargaining a verified application or a verification for its request to intervene within ten (10) days of the date of service of this Decision and order, then its request to intervene will be granted, and that a hearing before a trial examiner designated by this Board be held to determine the appropriate bargaining unit placement for the titles of "Training Development Specialist, Assignment Level I" and "Training Development Specialist, Assignment Level II."

Dated: New York, New York
June 29, 1989

MALCOLM D. MacDONALD
CHAIRMAN

GEORGE NICOLAU
MEMBER

DANIEL G. COLLINS
MEMBER