

OFFICE OF COLLECTIVE BARGAINING
BOARD OF CERTIFICATION

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In the Matter of

RAYMOND C. SHIELS, Acting President,
UNIFORMED MARINE WIPERS BENEVOLENT
ASSOCIATION,

DECISION NO. 9-90

-and-

LOCAL 333, UNITED MARINE DIVISION,
ILA, AFL-CIO,

DOCKET NO. RU-1072-90

-and-

THE CITY OF NEW YORK.

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DECISION, ORDER AND DIRECTION OF ELECTION

On May 30, 1990, a petition accompanied by an appropriate showing of interest, requesting the decertification of Local 333, United Marine Division, ILA, AFL-CIO ("Local 333"), as the collective bargaining agent for the unit of Wipers (Uniformed), covered by Certification No. 7 NYC DL No. 60 (as amended by Decision No. 11-68A), and the certification of the Uniformed Marine Wipers Benevolent Association ("UMWBA"), was filed by Raymond C. Shiels, Acting President of UMWBA.

Local 333, in its request to intervene in the proceeding dated June 5, 1990, argues that the petition is untimely filed. Therefore, it maintains that the Board of Certification ("Board") should dismiss the petition and direct that Local 333 continues to represent employees in the title Wipers (Uniformed).

In a letter dated June 29, 1990, the City of New York, by its office of Labor Relations ("City"), states that it will maintain a position of neutrality in this matter.

Discussion

It is undisputed, and we find and conclude that UMWBA and Local 333 are public employee organizations in fact and within the meaning of the New York City Collective Bargaining Law. The only issue presented herein is whether a rival representation petition was timely filed.

The relevant collective bargaining agreement covering the unit consisting of Wipers (Uniformed) provides for a contract term of July 1, 1987 through October 31, 1990 and, thus, has a duration of three (3) years and four (4) months.¹ Local 333 maintains that, pursuant to Section 2.7 of the Revised Consolidated Rules of the Office of Collective Bargaining ("OCB Rules"), the petition filed by UMWBA on May 30, 1990, must be dismissed because it is untimely.

Section 2.7 of the OCB Rules provides, 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

¹ We note that the 1987-90 contract term was agreed upon in a document entitled "Memorandum of Interim Understanding," and was executed by Local 333 and the City on January 4, 1990. This document has not been superseded by any other agreement between the parties.

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.

This is not the first time we have been called upon to determine the timeliness of a petition with respect to an agreement in excess of three (3) years duration. In a recent case, Decision No. 7-90, we noted our prior interpretation of Section 2.7 of the OCB Rules to provide for alternate filing periods in cases involving contracts of longer than three years' duration. In such cases, the two possible filing periods are:

"... 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."²

In Decision No. 7-90, we also held that "[a] petitioner may file during either one open period or the other; it may not choose both effectively."

In the instant matter, UMWBA exercised its option under Section 2.7, to file its petition during the second possible open period, i.e., during the sixth month before the expiration of the contract. Accordingly, we find that the petition docketed as RU-1072-90 was timely and effectively filed.

² Decision No. 7-90, at 7, citing Decision No. 10-87.

ORDER and, DIRECTION OF ELECTION

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 application of Local 333, United Marine Division, ILA, AFL-CIO, to intervene be, and the same hereby is, granted; and it is further

DIRECTED that an election by secret ballot be conducted under the supervision of the Board or its agents, at a time, manner, place, and during the hours to be fixed by the Board, among the Wipers (Uniformed) employed by the City of New York, who were employed-during the payroll period immediately preceding the date of this Direction of Election (other than those who have voluntarily quit or who have been discharged for cause before the date of election), to determine whether or not they desire to continue to be represented for the purposes of collective bargaining by Local 333, United Marine Division, ILA, AFL-CIO or by the United Marine Wipers Benevolent Association.

DATED: New York, New York
 October 10, 1990

MALCOLM D. MacDONALD
CHAIRMAN

GEORGE NICOLAU
MEMBER

DANIEL G. COLLINS
MEMBER