

PBA, NYC Water Supply v. L.300, SEIU, 48 OCB 12 (BOC 1991) [12-91 (Cert.)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF CERTIFICATION

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In the Matter of

NEW YORK CITY WATER SUPPLY
POLICE BENEVOLENT ASSOCIATION,

DECISION NO. 12-91

Petitioning to decertify Local 300,
Civil Service Forum, Service
Employees International Union as
the representative of Special
Officers (Aqueduct Patrol).

DOCKET NO. RU-1069-90

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DECISION AND ORDER

On January 30, 1990, the New York City Water Supply Police Benevolent Association ("the Association") filed a timely petition concerning employees in the title Special Officer (Aqueduct Patrol). The petition seeks the decertification of the Civil Service Forum, Local 300, Service Employees International Union ("the Union"), as the collective bargaining representative of Special Officers (Aqueduct Patrol), and the certification of the Association as the bargaining representative of the twenty-two employees currently serving in the title. The Association submitted a No Strike Affirmation on March 2, 1990.

The Union's attorney, in a letter dated March 20, 1990, stated that "in lieu of a formal intervention application, I am hereby notifying your office... that Local 300 has been representing the Aqueduct Police and wishes to continue to represent them." The City, by letter dated April 20, 1990, advised that it was taking no position in the matter.

The Trial Examiner assigned to the case requested a brief from petitioner on October 1, 1990, stating its compelling

reasons for having its request granted. By letter dated April 1, 1991, the Trial Examiner advised the Association that if a brief was not received by May 1, 1991, the file would be considered complete and a decision would be issued. Petitioner did not respond.

Background

Special Officer (Aqueduct Patrol) is part of a larger and residual collective bargaining unit represented by Local 300. The unit consists of approximately 700 employees in more than 50 job titles. The only title that the decertification petition seeks to affect is Special Officer (Aqueduct Patrol).

Under supervision, Special Officers (Aqueduct Patrol) protect the watershed areas and water supply systems of the City of New York by patrolling, investigating suspicious persons and occurrences and making arrests upon reasonable cause. They collect evidence; consult with superior officers about preparation of evidence for presentation in court; protect local residents during periods of construction and repair; and perform duties and special assignments at the direction of the Department of Environmental Protection. There are no formal education or experience requirements for the position.

The Association was incorporated on February 27, 1990, but had operated prior to that date as an unincorporated association. In a letter dated March 2, 1990, the Association's attorney stated that "the current representative, Local 300, will not

oppose the decertification." By letter dated March 20, 1990, however, the attorney for Local 300 notified the Board that, "Local 300 has been representing the Aqueduct Police and wishes to continue to represent them. Local 300 ... sees no reason why such representation should not be continued."

Attached to the petition were copies of signature cards signed by 21 of the 22 Special Officer (Aqueduct Patrol) employees. These cards state that the employees elect to be represented by the Association in all contractual and disciplinary matters.

Petitioner's Position

Petitioner states that it seeks decertification for the following reasons:

1. No representative of Local 300 has ever appeared at the work site where Special Officers (Aqueduct Patrol) are employed.
2. The President of Local 300 has told the Association that he would not bargain on their behalf as police officers.
3. Salary grades and steps have been eliminated by Local 300 in favor of a merit system plan which would take an employee 125 years to reach top pay.
4. No member of the Association is employed within the City of New York, and some members of the Association are employed in Delaware County. Members employed in Delaware County work approximately 200 miles from the Union's office.
5. Local 300 is not able to address grievances and issues of

equipment, health and safety because there is nothing in the current agreement that pertains to Special Officers (Aqueduct Patrol).

For these reasons, petitioner seeks decertification of Local 300 and the certification of the Association as the collective bargaining representative of Special Officers (Aqueduct Patrol).

Discussion

Special Officers (Aqueduct Patrol) belong to a bargaining unit which also represents employees in other job titles. Petitioner has submitted a request to "decertify" its bargaining unit. Decertification is not the appropriate term for the kind of relief sought by the petitioner, since it does not propose an action that would affect the entire unit. The relief requested by petitioner is actually the removal of all individuals in the Special Officer (Aqueduct Patrol) title from the bargaining unit. In this decision, we will discuss petitioner's request in that light.

Section 12-309b (1) of the New York City Collective Bargaining Law provides that this Board shall have the power and duty:

to make final determinations of the units appropriate for purposes of collective bargaining between public employers and public employee organizations, which units shall be such as shall assure to public employees the fullest freedom of exercising the rights granted hereunder and under executive orders, consistent with the efficient operation of the public service, and sound labor relations ...

Section 2.10 of the Rules of the Office of Collective Bargaining provides that, in determining appropriate bargaining units, the Board will consider, among other factors, the following:

- 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.

The NYCCBL was enacted pursuant to Section 212 of the Taylor Act.¹ This section gives local governments the option of adopting their own provisions and procedures, which must be "substantially equivalent" to those of the Taylor Act. Section 212 gives the City of New York an opportunity to enact a statute that is responsive to its unique labor relations environment.

When the Taylor Law became effective, New York City had approximately four hundred existing bargaining units of municipal

¹ Civil Service Law, Article 14, §200 et. seq.

employees. Section 12-314 of the NYCCBL allows for the continued viability of inherited certifications, but also allows the Board to change pre-Act units and certifications.² The statutory authority to review and revise existing bargaining units encourages gradual change by ad hoc determinations rather than a sudden, and perhaps disruptive, revamping of the City's bargaining structure. Pursuant to this statutory mandate, we have reduced the number of units with which the City must negotiate from four hundred to under one hundred.

This Board has established a policy favoring consolidation of bargaining units and discouraging fragmentation whenever possible. We have followed a policy of creating larger units based on broad occupational groupings, comprising as many employees and titles as can effectively operate as an entity. In making consolidation determinations, we must weigh public employees' freedom of choice in organizing and designating representatives against the efficient operation of public services and sound labor relations.³

In the instant matter, petitioner argues that certification

² Section 12-314c states:

Certificates or designations issued by the department of labor prior to the effective date of this chapter and in effect on such date shall remain in effect until terminated by the board of certification pursuant to its rules. Nothing contained in this subdivision shall limit the power of the board of certification to determine bargaining units differing from those determined by the department of labor.

³ Decision Nos. 29-82; 24-79; 55-76.

of Special Officers (Aqueduct Patrol) to Local 300 is not appropriate because of deficiencies in representation by the Union. The Association alleges that the incumbent is not skilled in areas of law enforcement representation which are essential to proper labor representation of its members.⁴

Community of interest is one of the criteria required to be considered by the Board in determining appropriate bargaining units. Petitioner implies that Special Officers (Aqueduct Patrol) perform duties nearly identical to those performed by Police Officers, and, consequently, have needs and goals that are different from those of other employees in their bargaining unit. Special Officers (Aqueduct Patrol) may be dissatisfied and frustrated because their present representative is unable or unwilling to obtain these benefits for them. Petitioner has not made the requisite showing, however, that the community of interest among its members conflicts or is inconsistent with the interests of other titles in the unit. Performance of police duties and responsibilities is not a dispositive factor when the fragmentation of an existing overall unit is at issue.⁵ As we held in Decision No. 29-82, "the significant consideration is whether the special interests of the petitioned-for employees have been submerged." Here, petitioner has not presented any

⁴ Decision No. 29-92.

⁵ Decision No. 29-82; Ontario County Sheriff and Security and Law Enforcement Employees Council 82, AFSCME, AFL-CIO, 9 PERB 4038 (1976).

evidence that this is the case.

This Board, and the New York State Public Employment Relations Board, have adhered to the policy of refusing to fragment an existing unit if there has been a history of meaningful and effective negotiations on behalf of all employees in the unit.⁶ Petitioner has failed to produce evidence that the Union has not provided effective representation of the entire existing unit.

Petitioner further asserts that the Union has failed to make representatives available to discuss the concerns of its members, that it has failed to recognize a representative elected by its members, and that it has instituted a merit raise system which makes it difficult for its members to reach top pay. These allegations may amount to a claim that the Union has breached the duty of fair representation that it owes to its members. Such a claim, if proven to be true, might constitute an improper public employee organization practice within the meaning of Section 12-306 of the NYCCBL and fall within the jurisdiction of the Board of Collective Bargaining. Dissatisfaction with the present representation, however, is not relevant to a determination of the issue before the Board, unless petitioner shows that the alleged inadequate representation is a consequence of conflicting

⁶ Decision No. 29-82; Town of Smithtown and Local 342, Long Island Public Service Employees, United Marine Division, NMU, AFL-CIO, 8 PERB 3015 (1975).

interests within the unit.⁷

Beyond the allegations contained in the petition, the Association has presented no evidence that would compel us to consider decertification or fragmentation of the unit. We remain unconvinced that there is such an exceptional situation presented in this case as to warrant deviating from our established policy against fragmentation of units. Therefore, the petition of the Association seeking a unit comprised solely of Special Officers (Aqueduct Patrol) is dismissed.

⁷ These allegations might also be construed to be complaints relating to internal union decisions. Such complaints are subject to the jurisdiction of the Board of Collective Bargaining if petitioner can show that they affect terms and conditions of employment, or the nature of the representation accorded employees by a union with respect to employment. (BCB Decision Nos. B-23-84; B-15-83; B-18-79; B-1-79.)

ORDER

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 petition of the New York City Water Supply Police Benevolent Association be, and the same hereby is, dismissed.

Dated: New York, New York
July 30, 1991

MALCOLM D. MacDONALD
CHAIRMAN

DANIEL COLLINS
MEMBER