

CEA v. NYPD, 48 OCB 15 (BOC 1991) [15-91 (Amend. Cert.)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF CERTIFICATION

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In the Matter of the Application of

CAPTAIN'S ENDOWMENT ASSOCIATION OF
THE CITY OF NEW YORK,

Petitioner,

DECISION NO. 15-91

-and-

NEW YORK CITY POLICE DEPARTMENT,

DOCKET NO. RU-1080-91

Respondent.

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ORDER AMENDING CERTIFICATION

On January 18, 1991, the Captain's Endowment Association of the City of New York ("CEA") filed a petition seeking to add the title Police Surgeon (Title Code No. 53051), a position in the Non-Competitive Class under the heading of "Police Department" in the City's Classification and Compensation Schedules, to Certification No. 5 NYCDL No. 122. The certification currently covers Captains and Surgeons in the New York City Police Department, which are positions in the Competitive Class under the heading of "Police Service." On June 6, 1991, the City of New York ("City"), by its Office of Labor Relations, stated that it does not oppose CEA's petition.

Background

On March 3, 1989, the City Personnel Director adopted Resolution No. 89-2, which amended the Classified Service of the City of New York in the Non-Competitive Class, by creating the

title Police Surgeon. By a letter that was received on November 18, 1991, the Police Department informed the Office of Collective Bargaining that the position was no longer vacant and urged that Certification 5 NYCDL No. 122 be amended to include the instant title.

Discussion

There is no dispute that employees of the Police Department serving in the title of Police Surgeon are eligible for collective bargaining. Additionally, there is no dispute that a community of interest exists between employees hired as Police Surgeons (classified in the Non-Competitive Class under the heading "Police Department"), and employees hired as Surgeons (classified in the Competitive Class under the heading "Police Service"). An intervening concern, however, arises from the fact that the City's Classification and Compensation Schedules, subject to the rules of the Civil Service Commission (Rule X, §§II and IV), do not place Police Surgeons in the "Police Service."

In a case docketed as RU-163-70, the Uniformed Fire Officers Association, Local 854, IAFF ("UFOA") sought to represent all Chaplains employed in the Fire Department, by adding the title to the certification which covers fire officer titles.¹ In that case, we denied UFOA's petition for the following reasons:

¹ Fire Department regulations provided that Chaplains be accorded a rank equivalent to that specified for Deputy Chiefs.

Two important and relevant consequences flow from the fact that these Chaplains are not now classified as part of the Fire Service. First, they and the other Chaplains are members of the City Employees Retirement System whereas employees in the Fire Service are members of one of the Fire Department Pension Funds. Second, the scope of collective bargaining for Chaplains is limited by [NYCCBL §12-307a(2), (3) and (5)], whereas collective bargaining for employees in the Fire Service is governed by [NYCCBL §12-307a(4)].²

² NYCCBL §12-307 provides, in pertinent part:

Scope of collective bargaining; management rights.

a. Subject to the provisions of subdivision b of this section and subdivision c of section 12-304 of this chapter, public employers and certified or designated employee organizations shall have the duty to bargain in good faith on (wages, hours and working conditions] except that:

* * *

(2) matters which must be uniform for all employees subject to the career and salary plan, such as overtime and time and leave rules, shall be negotiated only with a certified employee organization, council or group of certified employee organizations designated by the board of certification as being the certified representative or representatives of bargaining units which include more than fifty per cent of all such employees, but nothing contained herein shall be construed to deny a public employer or certified employee organization the right to bargain for a variation or a particular application of any city-wide policy or any term of any agreement executed pursuant to this paragraph where considerations special and unique to a particular department, class of employees, or collective bargaining unit are involved;

(3) matters which must be uniform for all employees in a particular department shall be negotiated only with a certified employee organization, council or group of certified employee organizations designated by the board of certification as being the certified representative or representatives of bargaining units which include more than fifty per cent of all employees in the department;

(4) all matters, including but not limited to pensions, overtime and time and leave rules which affect employees in the uniformed police, fire, sanitation and correction services, shall be negotiated with the certified employee organizations representing the employees involved;

(5) matters involving pensions for employees other than those in the uniformed forces referred to in paragraph four

(continued...)

Code, to make eligible for membership in the police pension fund, "all persons in city-service ... who hold the position of surgeon of police in the non-competitive class of the civil service [emphasis added]." ⁴ Therefore, unlike Chaplains in the Fire Department, Police Surgeons are members of the same pension fund as the other members of the proposed unit.

Second, §14-102 of the New York City Administrative Code provides that the police force in the police department shall consist of the followings ranks of members, to wit: Captains, Lieutenants, Sergeants, Surgeons and Police Officers. Thus, by operation of law, employees serving in the title at issue are members of the police force. ⁵ Although there may be meaningful distinctions between the terms "service" and "force" under Civil Service Commission parlance, we find that for purposes of interpretation and application of the NYCCBL, these terms are interchangeable. Indeed, in Decision No. 22-78, we explained that §12-307a(4) of the NYCCBL contemplates "the practice of dealing separately with labor relations issues affecting members of the Police Force," in contrast with the framework applicable to employees who are not members of the police force and subject to §12-307a(2), (3) and (5) of the NYCCBL. We further note in

⁴ Laws of 1988, Ch. 229.

⁵ Compare with, Decision No. 20-71, where we held that although the Fire Department's regulations name Chaplains as part of the "Fire Force," departmental regulations cannot alter or overrule a determination of the Civil Service Commission which, by statute, has exclusive jurisdiction over the classification of employees under Civil Service Law §20(1).

this connection, that on May 6, 1991, the City's Department of Personnel ("DOP11) issued proposed, revised class specifications for the titles Police Surgeon and Fire Medical Officer. This was done, the Director of Classification and Compensation of DOP explained in a covering memorandum, "to insure that both titles are considered part of the uniformed services" for purposes of certification and related matters.

Third, §12-314 of the New York City Collective Bargaining Law ("NYCCBL") provides, in pertinent part:

b. No organization seeking or claiming to represent members of the police force of the police department shall be certified if such organization (i) admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than members of the police force of the police department....

Unlike the situation in Decision No. 20-71, wherein we stated that a petition for a unit which includes Chaplains employed by all City agencies would be entertained, here, a unit which includes Surgeons employed by all City agencies (including Police Surgeons) would be inconsistent with and prohibited by §12-314 of the NYCCBL.⁶

Therefore, under the circumstances of this case, were we to conclude that the proposed unit was inappropriate, we would be

⁶ The fact that §12-314 of the NYCCBL refers to the certification of members of "the police force," together with the previously-noted fact that pursuant to §14-102 of the Administrative Code, Surgeons in the Police Department are members of "the police force," reinforces our conclusion at page 5, supra, that the omission of the Police Surgeon title from the civil service classification of the "Police Service" is of no significance for purposes of the NYCCBL.

constrained to create a separate unit limited to Police Surgeons. Such a result would be contrary to our policy against the proliferation of units and would constitute a regression to the fragmentation which this Board has sought to eliminate and avoid.

For all these reasons, we shall amend Certification 5 NYCDL No. 122 to include the title of Police Surgeon.

ORDER

Pursuant to the powers vested in the Board if Certification by the New York City Collective Bargaining Law, it is hereby

ORDERED, that Certification 5 NYCDL No. 122 be, and the same hereby is, amended to include the title of Police Surgeon.

DATED: New York, New York
 November 25, 1991

MALCOLM D. MacDONALD
CHAIRMAN

DANIEL G. COLLINS
MEMBER

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The title and title code number of the employees affected by this decision are as follows:

Police Surgeon

53051