PBA v. L. 237, IBT, 56 OCB 4 (BOC 1995) [4-95 (Cert)]
OFFICE OF COLLECTIVE BARGAINING
BOARD OF CERTIFICATION

In the Matter of	:	
		DECISION NO. 4-95
MUNICIPAL POLICE BENEVOLENT ASSOCIATION,	:	
	:	
-and-		DOCKET NO. RD-11-94
	:	
CITY EMPLOYEES UNION LOCAL 237, IBT.	:	

DECISION AND ORDER

On July 29, 1994, the Municipal Police Benevolent Association ("MPBA" or "the Association") filed a petition concerning approximately 2,000 employees currently serving in the titles of Special Officer (70810 and 708100), Senior Special Officer (70815 and 708150), Supervising Special Officer (70817) Hospital Security Officer (708300), and Principal Special Officer (70818) ("the Special Officer titles"). The petition seeks to "decertify" City Employees Union, Local 237, International Brotherhood of Teamsters, AFL-CIO ("Local 237" or "the Union") as the collective bargaining representative for this group of employees. The petition was accompanied by 745 valid Designation Cards authorizing MPBA "to be my exclusive bargaining agent on all matters pertaining to my employment but not limited to: wages, rules, working conditions, grievances and appeals."

Local 237 currently represents Special Officers under Certification No. 67-78 (as amended), a mixed unit composed of supervisory and non-supervisory employees in various stock, custodial, inspectional, maintenance, skilled craft, and related titles. Approximately 6,000 employees serving in over 60 job titles compose the entire bargaining unit.

According to current payroll data, there are 1,968 employees

(about 33% of the entire bargaining unit) serving in the Special Officer titles. The New York City Health and Hospitals Corporation employs a total of 806 Special Officers. Mayoral agencies (primarily the Human Resources Administration) employ 1,070, and the Off Track Betting Corporation employs 92. The contract covering Special Officers expired on December 31, 1994.

Petitioner's Position

The Association contends that this Board should remove the Special Officer series of titles from Certification No. 67-78 (as amended), on the ground that Local 237 does not sufficiently represent the interests of the employees in the unit. MPBA argues that Special Officers are considered peace officers, and their responsibilities include security and police duties. Because their position "requires the utmost in trustworthiness," these employees allegedly should not be associated with Local 237 because "[t]he public perception of (IBT) is not that of a law abiding, upstanding association."

Furthermore, according to the Association, Local 237 does not adequately represent the "unique" interests of Special Officers that are not applicable to other members of the existing bargaining unit, such as their desire for firearms, bulletproof vests, and better defensive equipment. Finally, MPBA asserts that there is an inherent conflict of interest when Special Officers allegedly are required to take police action against fellow members of the bargaining unit.

Discussion

The caption of the petition in Docket No. RD-11-94 designates it as a "decertification" petition. The filing is not a proper decertification petition, however, since MPBA does not seek to prove

that Local 237 "is no longer the representative of the public employees" in the entire unit.[1] Instead, the petition asks that we remove a limited number of employees (those holding Special Officer titles) from their current bargaining unit, and place them into a separate bargaining unit that does not now exist. The Association also seeks certification as the bargaining representative of these employees in their proposed new unit. We will evaluate the procedural and substantive aspects of MPBA's requests accordingly.

[1] See Section 1.02(e) of Title 61 of the Rules of the City of New York ("RCNY"), and Decision Nos. 10-87 and 18-77.

Proof of Interest

When a petitioner seeks to remove a title from an existing unit and represent employees in a new unit that it claims is appropriate, we have interpreted RCNY Section 1-02 (c)(2)(i) to require that the petition be accompanied by proof that at least thirty percent of the employees in the proposed unit desire the petitioner to represent them for purposes of collective bargaining.[2] This is a markedly less stringent threshold than would exist in a decertification proceeding, where RCNY Section 1-02 (e)(2)(i) would require proof of interest demonstrating that at least thirty percent of the employees in the entire currently-certified unit do not desire to be represented by the incumbent certified employee organization.

The reasoning behind this difference is apparent. In a representation proceeding seeking the removal of a title or titles from an existing unit, the appropriateness of the grouping of titles in the existing unit is the issue being raised. In such a case, it would be inequitable to require that the thirty percent showing of interest be made for the entire existing unit. If we were to require a showing of interest of thirty percent of the entire currently-certified unit in a such a proceeding, unit members serving in a minority title would seldom, if ever, be capable of attaining the thirty percent showing required to bring the removal issue before this Board. Certainly, there is no justification for such an inequitable result under the law.

In contrast, in a valid decertification proceeding, a petitioner is not contesting the make-up or appropriateness of the existing unit,

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[2] Decision Nos. 1-92 and 23-75.

but rather is claiming that the employees in that unit no longer desire to be represented by the currently-certified union. In this circumstance, the rule's requirement that the thirty percent showing of interest be for the entire currently-certified unit is entirely fair and reasonable.

In the instant case, the Association proposes that we approve a unit composed of public employees serving in Special Officer titles that will have approximately 2,000 members. RCNY Section 1-02 (c)(2)(i) thus would require MPBA to have filed at least 590 valid designation cards. In fact, the Association submitted 745 valid cards, which is more than sufficient to meet the threshold showing of interest that we require in a representation proceeding where the proposed removal of a group of titles is the issue before us.

Certification of MPBA as Bargaining Representative

The text on the Designation Cards purports to authorize the MPBA to be "my exclusive bargaining agent" on all employment matters. However, before we will certify MPBA, or any other employee organization, as bargaining representative for employees holding these titles, there are several preliminary matters that must be resolved.

First, we must decide whether the evidence demonstrates that it is no longer appropriate for the Special Officer titles to be included in Certification No. 67-78 (as amended). If we find that the current unit placement continues to be appropriate, then we shall go no further. On the other hand, should we find that it is appropriate to remove these titles from Certification No. 67-78 (as amended), our consideration of the appropriate unit in which to place the titles would not be limited to the one proposed by the Association. Another

alternative, for example, might be to place the Special Officer titles under a different pre-existing certification, if we determined that the inclusion in such pre-existing unit was more appropriate.[3]

Assuming, arguendo, that we find that it would be appropriate to remove the Special Officer titles from their current certification and place them into a separate unit as proposed by MPBA, we still would need to determine who the majority of the employees in this new unit want as their bargaining representative. The Association submitted 745 valid designation cards for a proposed unit that will have approximately 2,000 members. While these cards satisfy the proof of interest requirement under RCNY Section 1-02 (c)(2)(i), they would not necessarily guarantee the automatic certification of MPBA as the proposed unit's bargaining representative. We would investigate before deciding whether further proceedings were warranted, and we would order an election if we had any doubt about whether any employee organization enjoyed majority status.

Unit Placement of Special Officer Titles

The City of New York enacted the New York City Collective Bargaining Law ("NYCCBL")[4] pursuant to Section 212 of the Taylor Law,[5] which permits local governments to adopt their own provisions and procedures covering public employment relations matters, provided such provisions and procedures are substantially equivalent to the state law. The NYCCBL was specifically designed to deal with the City's

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[3] See, Decision No. 39-69.

[4] New York City Collective Bargaining Law, Local Law 1967, No. 53, July 14, 1967, effective Sept. 1, 1967.

[5] Civil Service Law, Article 14, §200 et. seq.

unique labor relations environment.[6]

Section 12-309b.(1) of the NYCCBL 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. . .

When the NYCCBL became effective, there were approximately four hundred existing bargaining units of municipal employees in the City. Although NYCCBL Section 12-314c. allows for the continued viability of pre-act certifications, it also allows this Board to change pre-existing units and certifications.[7]

Pursuant to NYCCBL Section 12-314c., we have established a policy that favors consolidation of bargaining units and discourages fragmentation whenever possible.[8] Through a process that encourages gradual change by ad hoc determinations rather than a sudden, and perhaps disruptive revamping of the City's bargaining structure, we have created larger units based on broad occupational groupings,

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[6] Decision Nos. 12-91 and 29-82.

[7] NYCCBL Section 12-314c. provides as follows:
> 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.

[8] Decision Nos. 1-92 and 12-91.

comprising as many employees and titles as can effectively operate as single entities.[9] This process has enabled us to reduce the number of units with which the City must negotiate from four hundred to less than one hundred.

As part of our analysis in making consolidation determinations, we balance public employees' freedom of choice in organizing and designating representatives, against the efficient operation of public services and sound labor relations.[10] Section 1-02 (j) of the RCNY, which is designed to implement NYCCBL Section 12-309b.(1), sets forth criteria that we apply in making determinations of appropriate unit placement of employees. The Rule provides that we must consider, among other factors:

> (1) Which unit will assure public employees the fullest freedom in the exercise of the rights granted under the [NYCCBL] and the applicable executive order;
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> (2) The community of interest of the employees;
>
> (3) The history of collective bargaining in the unit, among other employees of the public employer, and in similar public employment;
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> (4) The effect of the unit on the efficient operation of the public service and sound labor relations;
>
> (5) 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;
>
> (6) Whether the unit is consistent with the decisions and policies of the Board.

These criteria are substantially equivalent to the analogous

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[9] See Decision Nos. 1-92; 12-91 and 29-82.

[10] Decision Nos. 1-92; 29-82; 24-79; 55-76.

provisions of Section 207(1) of the Taylor Law, which governs unit determinations made by the New York State Public Employment Relations Board.[11] The instant case again requires us to attempt to harmonize these considerations.

According to the Association, the current certification for the Special Officer titles is not appropriate because the interests and rights of the petitioned-for employees are different or are not applicable to other members of the bargaining unit. In order to evaluate this claim properly, we first must review the historical bargaining structure of the Special Officer titles.

Before 1976, Special Officers, Senior Special Officers, Supervising Special Officers, and Hospital Security Officers were in a separate bargaining unit.[12] Local 237 held the bargaining certificate for this unit. On January 30, 1976, the City filed a petition requesting the consolidation of the Special Officer unit with another existing bargaining unit also represented by Local 237. In Decision No. 55-76, we evaluated the occupational duties and responsibilities of Special Officers. We found that the work of these employees was sufficiently similar to that of the various other custodial, general maintenance, inspectional and skilled craft titles in the second Local 237 unit, and in furtherance of the Board's policy favoring consolidation of units, so as to warrant granting the City's petition consolidating the two.

Three years later, in 1979, the Police Benevolent Association, Long Island Railroad Police, Inc. ("PBA-LIRR") attempted to reverse

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[11] Decision Nos. 1-92 and 29-82.

[12] Certification No. 56-70 (as amended).

Decision No. 55-76, by seeking again to place employees holding the Special Officer titles into a separate bargaining unit. In our decision dismissing the 1979 petition, we held that in the absence of any convincing proof that inclusion in the current unit prejudices the collective bargaining status of Special Officers, to create an additional unit with which the City must deal would be in derogation of both the public interest and the legislative intent of the drafters of the NYCCBL.[13] Our decision was confirmed unanimously by the Appellate Division, First Department the following year.[14]

The Court of Appeals denied leave to appeal Decision No. 24-79 on March 26, 1981. Four months later, the PBA-LIRR filed a new petition, once again seeking to place employees holding the Special Officer titles into a separate bargaining unit, claiming that there were new facts that could not have been presented to us in the 1979 proceeding. Based upon the hearing record, we accepted the fact the Special Officers have needs and goals, related to their specific duties, that may not be shared by other members of Local 237. We went on to hold, however, that we did not find the pursuit of these special benefits and goals to be inconsistent with the interests of other titles in the unit.[15]

The pivotal issue upon which Decision No. 29-82 focused was the fact that we were not dealing with an initial unit placement of all security and law enforcement titles that existed in the City of New York. We explained that because we were not writing on a clean slate,

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[13] Decision No. 24-79 at p.9.

[14] 78 A.D.2d 777, 435 N.Y.S.2d 200 (1980), Leave to Appeal Denied, 53 N.Y.2d 602, 439 N.Y.S.2d 1025 (1981).

[15] See Decision 29-82 at p.23.

in the absence of any convincing proof that inclusion in the current unit prejudices the collective bargaining status of the Special Officers, we were unwilling to disrupt a structure that had functioned effectively for many years. Following PERB precedent as well as our own, we held that fragmenting the existing unit and creating the new one proposed by the PBA-LIRR would have an adverse effect on the efficient operation of the public service and on sound labor relations, and would be inconsistent with our long-established policy of reducing the number of bargaining units with which the City must deal. We said that before we would seriously consider fragmenting the Local 237 bargaining unit, a petitioner would have to produce convincing proof that due to changed circumstances, the inclusion of Special Officers in the unit inherently prejudices their rights under the NYCCBL.

Our view has not changed during the intervening decade, and, in the instant case, the MPBA has not produced any such proof. Therefore, under the circumstances that exist currently, and lacking sufficient evidence of inconsistency between Special Officers and other titles in their current unit, we will not deviate from our established policy against unit fragmentation, and we shall dismiss the Association's petition.

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 for decertification (removal) of the Special Officer series titles from Certification No. 67-78 (as amended) filed by the Municipal Police Benevolent Association, Inc., docketed as RD-11-94, be, and the same hereby is, dismissed.

Dated: New York, New York
March 22, 1995

MALCOLM D. MacDONALD
CHAIRMAN

DANIEL G. COLLINS
MEMBER

GEORGE NICOLAU
MEMBER