

OFFICE OF COLLECTIVE BARGAINING
BOARD OF CERTIFICATION

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Civil Service Bar Association, Local 237, :
International Brotherhood of Teamsters, :
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Petitioners, : Decision No. 5-98
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And :
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City of New York and the New York City : Docket No. RU-1172-95
Department of Finance, :
 :
Respondents. :
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INTERIM DECISION AND ORDER

On February 28, 1995, Local 237 of the International Brotherhood of Teamsters and its affiliate, the Civil Service Bar Association ("Union"), filed a petition seeking certification of a bargaining unit composed of what it characterized as 330 Administrative Law Judges employed by the Parking Violations Bureau ("PVB"), along with the requisite showing of interest.¹ By letter dated April 17, 1995, the Union asked that the petition be amended by changing the name of the title in question to "Hearing Officer - PVB" in Title code #0667A. It again amended its petition on August 27, 1997, to request that the title be accreted to its existing unit, Certificate #CWR-44/67, which includes attorney titles.

On September 12, 1997, the City of New York ("City") and the Department of Finance ("Department") filed a motion to dismiss the Union's petition, on the grounds that PVB Hearing

¹ On the same day, the Union filed a separate petition seeking to represent Administrative Law Judges in other City agencies (Docket No. RU-1174-95). We have held a hearing in that matter and are awaiting post-hearing briefs.

Officers are not employees of the City. The Union filed an answer on September 26, 1997 and the City filed a reply on October 10, 1997.

In Interim Decision No. 6-97, we found that we had jurisdiction to decide whether persons in the title Hearing Officer - PVB ("Hearing Officer") are public employees within the meaning of Article 14 of the New York State Civil Service Law ("Taylor Law") and the New York City Collective Bargaining Law ("NYCCBL") and ordered the parties to produce evidence relevant to the criteria used by this Board to make such a determination. To that end, a hearing was held on November 17, 1997, November 24, 1997 and December 17, 1997.

At the hearing, the Union offered testimony about Hearing Officers and testimony about the supervisory duties and pay differential of attorneys whom the PVB calls Senior Hearing Officers. In addition, there was unrebutted testimony that attorneys known as Supervising Hearing Officers are members of a bargaining unit.

On February 12, 1998, the Board of Certification issued Decision No. 1-98, in which we found that PVB Hearing Officers are not City employees because of Section 236(2)(d) of the Vehicle and Traffic Law ("VTL").² The Union filed a motion requesting reconsideration of the

²VTL § 236(2)(d) provides:

The commissioner shall appoint hearing examiners who shall preside at hearings for the adjudication of charges of parking violations. Hearing examiners shall be appointed and shall serve for such number of sessions as may be determined by the commissioner and shall receive therefor, such remuneration as shall be fixed. Such hearing examiners shall not be considered employees of the city in which the administrative tribunal has been established. Every hearing examiner shall have been admitted to the practice of law in this state for a period of at least five years, except in cities having a population of one million or more persons where they shall have been admitted to such practice for a period of at least three years. Hearing examiners shall be appointed from a list of eligible candidates who have satisfied the standards established by a duly constituted committee of the bar association of the county in which the city is located or the (continued...)

decision on February 12, 1998, on the grounds that we did not distinguish the position of Senior Hearing Officer from the position of Hearing Officer, and thus have not rendered a decision on the entire petition. It contends that Senior Hearing Officers may be considered City employees by virtue of a different provision of the VTL,³ because they do not fall within the exclusionary language of VTL § 236(2)(d).

The City argues that we did not sustain the Union's arguments concerning a distinction between Hearing Officers and Senior Hearing Officers in Interim Decision 6-97 and that, because the Union did not raise the matter of Senior Hearing Officers again, it has abandoned its claim. This argument is without merit. We did not address the issue of Senior Hearing Officers in our interim decision, nor did we consider the Union's arguments with respect to Senior Hearing Officers in our final decision on the merits of its petition concerning Hearing Officers. In order to clarify the matter, we will reconsider the decision only with respect to Senior Hearing Officers. The record already contains the parties arguments about the relevant VTL

(...continued)
association of the bar of that city.

³VTL § 236(2)(c) provides:

The commissioner shall appoint supervising hearing examiners not to exceed six in number and senior hearing examiners, not to exceed six in number. Every supervising hearing examiner shall have been admitted to the practice of law in the state for at least seven years and every senior hearing examiner for at least six years. The duties of each supervising hearing examiner and senior hearing examiner shall include, but not be limited to: (1) presiding at hearings for the adjudication of charges of parking violations; (2) the supervision and administration of the work of the bureau; and (3) membership on the appeals board of the bureau, as herein provided.

provisions. They are now directed to submit, in writing, additional information and legal arguments. They are to include information about the duties and job descriptions of Senior and Supervising Hearing Officers; the identity of persons in the Senior and Supervising Hearing Officer titles; the bargaining unit in which Supervising Hearing Officers are claimed to be represented; whether the courts and administrative agencies who previously considered the employment status of Hearing Officers also addressed the status of Senior Hearing Officers and Supervising Hearing Officers and the outcome, if any, of such considerations; and any other information that will be helpful to us in reaching a decision. The parties are also directed to submit arguments as to whether, under all the circumstances present in this case, Senior Hearing Officers may be considered to be City employees.

ORDER

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

ORDERED, that the instant motion for reconsideration be, and the same hereby is, granted to the extent that it covers Senior Hearing Officers, and it is further,

DIRECTED, that the parties submit the information and legal arguments described above, in writing, no later than 30 days from the date this decision is issued.

Dated: New York, New York
April 16, 1998

STEVEN C. DE COSTA
CHAIRMAN

GEORGE NICOLAU
MEMBER

DANIEL G. COLLINS
MEMBER