CSBA v. City,64 OCB 9 (BOC 1999) [9-99 (Cert)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF CERTIFICATION

In the Matter of	:	
LOCAL 237, I.B.T., AFL-CIO and its affiliate THE CIVIL SERVICE BAR ASSOC.,	:	
- and -	:	DECISION NO. 9-1999
THE CITY OF NEW YORK AND RELATED PUBLIC EMPLOYERS	:	DOCKET NO. RU-1236-99

INTERIM DECISION AND ORDER

On June 23, 1999, City Employees Union Local 237, IBT and its affiliate the Civil Service Bar Association ("Unions")filed a motion pursuant to Rule 1-02(c)[1] seeking an election among employees in the title Hearing Officer (Per Session). Employees in the title are currently represented by the Unions as the joint certificate holders pursuant to Decision No. 1-1999 (amending Certificate CWR 44/67). The proposed election would be to determine whether the joint certificate holders will continue to serve as the collective bargaining representative of employees in the title Hearing Officer

[1] Title 61 of the Rules of the City of New York

(Per Session).

Positions of the Parties

Unions' Position

The Unions argue that information discovered after the close of the prior Representation proceeding, docketed as RU-1174-95, creates "a question or controversy . . . concerning representation" within the meaning of Rule 1-02(c). Specifically, a rule promulgated by the City in December of 1998, unknown to the union until April of 1999, would cap the total hours worked by Hearing Officers at one thousand hours per annum. The Unions state that as a consequence of this, " as long as the City continues to (and is able to) limit the number of hours a Hearing Officer (Per Session) may work, Hearing Officers (Per Session) will not be eligible for any health, vacation, and sick leave benefits under the Citywide

collective bargaining agreement."[2]

The Union does not concede that the City has a right to maintain the cap of hours, however, it believes that a question or controversy exists concerning whether these employees wish to be represented under the circumstances. The Unions submit that this question would best be resolved by giving the Hearing Officers (Per Session)the opportunity to decide through a vote whether, under the circumstances presented, they desire to continue to be represented by the Unions.

City's Position

The City has no objection to the Unions' motion.

Discussion

Any attempt to modify a certification in its first year is subject to scrutiny under a concept borrowed from private sector

[2] Apparently, the cap of hours would keep Hearing Officers (Per Session) below the threshold amount of hours necessary for eligibility for under the Citywide agreement.

labor law known as the "certification year".[3] This is the time period during which a duly certified union is presumed to have majority support of unit employees. The private sector case law has been made part of our rules, specifically Rule 1-02(r) which provides, in pertinent part, as follows:

> Certification; designation -- life; modification. When a representative has been certified by the board, such certification shall remain in effect for one year from the date thereof and until such time thereafter as it shall be made to appear to the board, through a secret ballot election conducted in a proceeding under §§ 1-02(c), (d) or (e) of these rules, that the certified employee organization no longer represents a majority of the employees in the appropriate unit . . . In any case where unusual or extraordinary circumstances require, the board may modify or suspend, or may shorten or extend the life of the certification or designation. . . .

Rule 1-02(r) does not prevent our consideration of the Unions' motion because it is inapplicable in the instant case.[4] The purpose of the certification year is to prevent outside attacks on a newly certified unit until the unit representative has had an opportunity to establish itself and to negotiate its first contract. In this

---

[3] Decision No. 6-95 at 15-16.

[4] If the certification year rule were applicable, it is possible that the unusual or extraordinary circumstances exception might be met. In this case, however, we need not reach that issue.

case the instant petition does not come from an outside source, but rather, it is the certificate-holder seeking to ascertain the free choice of a majority of the affected employees,[5] as a means of resolving the question or controversy.

Pursuant to Rule 1-02(c), where a bona fide question or controversy exists a party may seek a decision of this Board to answer or clarify the question or controversy. Here, there is no dispute between the parties that such a question or controversy exists. Further, after the requisite posting and publication, no interested party has sought to intervene or object to the unions' motion.[6] Under the unique circumstances of this case, we find that the Unions' motion seeking an election should be granted and an election ordered. The results of this election shall either ratify or modify the unit placement in our Decision No. 1-1999.

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 request in the case docketed as RU-1236-99

---

[5] See NYC Collective Bargaining Law, Section 12-309(b)

[6] Rule 1-02(h)

be, and the same hereby is granted, and it is further

DIRECTED, that as part of the investigation authorized by the Board, an election by secret ballot be conducted under the supervision of the Board, or its agents, at a time, place, and during the hours to be fixed by the Board, among the employees in the title Hearing Officer (Per Session)to determine if they desire to be represented for purposes of collective bargaining by Local 237, IBT, AFL-CIO and its affiliate the Civil Service Bar Association, or if they prefer to have no representative for purposes of collective bargaining.

DATED: New York, New York
August 30 , 1999

Steven C. DeCosta
Chairman

Daniel G. Collins
Member

George Nicolau
Member