

ASSOCIATION OF NYC ASSISTANT DISTRICT ATTORNEYS IN THE CITY OF NEW YORK V. CITY, 8 OCB 80 (BOC 1971) [Decision No. 80-71 (Cert.)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF CERTIFICATION

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In the Matter of

ASSOCIATION OF NEW YORK CITY
ASSISTANT DISTRICT ATTORNEYS
IN THE CITY OF NEW YORK

DECISION NO. 80-71

-and-

THE CITY OF NEW YORK AND
RELATED PUBLIC EMPLOYERS
(THE DISTRICT ATTORNEYS IN
THE FIVE COUNTIES WITHIN
THE CITY OF NEW YORK

DOCKET NO. RU-281-71

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DECISION AND ORDER

By motion, filed and dated October 22, 1971, the City seeks dismissal of the Petition for certification filed herein on August 31, 1971, by "Association of New York City Assistant District Attorneys in the City of New York" (Association). The employees sought to be represented by the Association are Assistant District Attorneys and Criminal Law Investigators employed in several or all five of the District Attorneys' offices throughout the City of New York.

By Notice of Intervention, dated September 29, 1971, the "Civil Service Bar Association" (Bar Association) set forth its interest in the matter as representative of attorneys employed by the City and other public employers within the City alleging that the attorneys' range of "duties and responsibilities covers just about the entire spectrum of the practice of law, appearing in almost every court within this jurisdiction."

The City's motion to dismiss is based upon three grounds which, in substance, are:

1. That the Association is neither a municipal employee organization nor a public employee organization within the meaning of §1173-3.0 of the New York City Collective Bargaining Law;

2. That the constitution and by-laws of the Association show the organization to be a humanitarian and educational one rather than a labor organization;

3. That it does not appear that the Association has filed reports with the New York State Industrial Commissioner as required by §726 of the New York State Labor Law which indicates that the Association does not deem itself to be labor union within the meaning of Article 20-A of the Labor Law, nor, in consequence, of the NYCCBL.¹

The City also moves, in the alternative, to hold the entire proceeding in abeyance in the event its main motion is denied on the ground that there is a proceeding pending before PERB involving the appropriateness of a unit of New York State Assistants Attorney General. Conceding that this Board "need not await the outcome" of the PERB proceeding, the City points to the exempt status of the Assistants Attorney General, the confidentiality of their duties, and, in this respect, stresses the comparability with the status of the employees sought to be represented by the Association.²

Since a new enactment effective April 1, 1971, eliminates the requirement of filing such reports (Chap. 329 Laws of 1971), the third ground need not be considered.

It is of interest to note that the exempt status of some attorneys in the Corporation Counsel's office is presently undergoing challenge in court, the claim being that they should be classified in the competitive class and that the exempt classification is arbitrary and unreasonable. The court directed a hearing with respect to the propriety of such exempt classification. (Matter of Grossman (Rankin) Spec. Term, Part I, Supreme Court, N.Y. County, Silverman, J., NYLJ 12/8/71, pp. 24-25)

We are persuaded, based upon the papers submitted, that an inquiry is warranted concerning the preliminary issue of whether the Association is or is not a public employee organization within the meaning of the NYCCBL and will direct a hearing for such purpose. In doing so, however, we note that the Bar Association's Notice of Intervention does not dispute the status of the Association as a labor organization. Consequently, our disposition on that issue relates to and involves solely the Association and the City. However, the Bar Association does, in our view, set forth sufficient facts to warrant the conclusion that as the incumbent organization representing attorneys employed by the City and other public employers, it has a representative interest in this matter and, accordingly, intervention is granted except as to the preliminary issue involving the status of the Association as a public employee organization.

In view of the disposition we make with respect to the City's main motion we need not reach or dispose of the City's alternative motion.

O R D E R

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

ORDERED, that this proceeding, be, and the same hereby is, directed to proceed to hearing on the preliminary disputed issue of the Association's status as a labor organization under the NYCCBL, the hearing to take place at a time and place to be fixed by a Trial Examiner of the Board; and it is further

ORDERED, that the participants in said hearing shall be the City of New York and the Association of New York City Assistant District Attorneys in the City of New York, and it is further

ORDERED, that the Civil Service Bar Association be, and it hereby is, permitted to intervene in this proceeding except with respect to the preliminary issue concerning the status of Association of New York City Assistant District Attorneys in the City of New York.

DATED: New York, N.Y.

December, 13, 1971

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