***Patrolmen's Benevolent Ass'n*,24 OCB 24 (BOC 1979) [Decision No. 24-79], *aff'd*, *Patrolmen's Benevolent Ass'n v. Anderson*, 78 A.D.2d 777, 435 N.Y.S.2d 200 (1st Dep't 1980), *leave denied*, 53 N.Y.2d 602, 439 N.Y.S.2d 1025 (1981).**

OFFICE OF COLLECTIVE BARGAINING
BOARD OF CERTIFICATION
----------X
In the Matter of

POLICE BENEVOLENT ASSOCIATION, LONG ISLAND RAILROAD POLICE, INC. — DECISION NO. 24-79

-and- — DOCKET NO. RU-713-79

THE CITY OF NEW YORK

-and-

CITY EMPLOYEES UNION, LOCAL 237, I.B.T.
----------X

DECISION AND ORDER

On July 12, 1979, the Police Benevolent Association, Long Island Railroad Police, Inc. (PBA-LIRR),filed a petition with the Office of Collective Bargaining[1] seeking certification of a bargaining unit consisting of 1362 employees in the following titles:

Special Officer
Special Officer (CETA)
Senior Special Officer
Supervising Special Officer
Hospital Security Officer.

The above-listed titles are currently part of a unit composed of 4750 employees serving in 68 titles represented by City Employees Union, Local 237, International Brotherhood of Teamsters (Local 237). The collective bargaining agreement covering the unit expires on December 31, 1979. There is no dispute that the petition herein was timely filed.

Local 237, by letter received by this office on August 2, 1979, stated that it believed that the PBA-LIRR is not a bonafide labor organization and, thus, the petition should be dismissed. Local 237 amended its position by letter dated August 16, 1979 to include the contention that the petitioned-for unit is "wholly inappropriate."

---

[1] The PBA-LRR petition was amended by letter dated July 31, 1979.

The City of New York, by its Office of Municipal Labor Relations (OMLR), also expressed opposition to the appropriateness of the proposed unit, in a letter dated September 10, 1979.

POSITIONS OF THE PARTIES

An investigatory hearing was held concerning the issues raised by the parties to the instant case on September 20, 1979. At the commencement of the hearing, Local 237 moved to dismiss the petition because of alleged violations by the PBA-LIRR of New York City Collective Bargaining Law (NYCCBL) Section 1173-10. 0b.(i) and (ii).

> "Section 1173-10. 0b. 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, or (ii) advocates the right to strike."

This section of the NYCCBL has no application to organizations like the PBA-LIRR which do not seek to represent members of the New York City Police Department. The scope of this provision does not extend to employee organizations like the PBA-LIRR which might represent members of police forces in other jurisdictions and do not represent police employees subject to the NYCCBL. With respect to the alleged failure of the PBA-LIRR to file a "no-strike affirmation," a check of the case file reveals that such a document was filed simultaneously with the petition for certification on July 12, 1979. Therefore, Local 237's motion to dismiss is denied.

Local 237 also failed to produce any evidence in support of its contention that the PBA-LIRR is not a bonafide labor organization. A review of the documents submitted by the PBA-LIRR with its petition, including the organization's constitution and by-laws, its Certificate of Incorporation, and several certificates of representation issued to it by the National Mediation Board, together with the testimony of the organization's President, clearly demonstrate that the PBA-LIRR is a bonafide employee organization as that term is defined by the NYCCBL.

On the question of the appropriateness of the proposed unit, the PBA-LIRR argues that the right of employees to choose their own bargaining representative is "paramount" to all other considerations which are involved in the unit determination process. The PBA-LIRR asserts that no other employees in the City perform the same or similar duties as those assigned to employees

in the Special Officer titles and,therefore, such employees are unique and the establishment of a separate bargaining unit consisting solely of the five petitioned-for titles is justified. In support of this assertion, the PBA-LIRR claims that other groups of employees, specifically Detective Investigators, Dietitians, and Triborough Bridge and Tunnel Officers have been permitted by the Board of Certification to get "away from the parent, the so-called parent union" and establish separate bargaining units. The PBA-LIRR questions how the City will be adversely affected by the creation of a new unit for Special Officers and ,finally, points to the history of these employees' attempts "to extricate themselves from their present bargaining unit" as warranting the formation of a new unit and the holding of an election to allow Special Officers the opportunity to vote for a representative of their own choosing.

In response, the City, citing several Board Decisions,[2] contends that the creation of a new unit for Special Officers "would violate the long-standing Board policy against fragmenting existing units." The City emphasizes that, in Decision No. 67-78, the Board created the unit in question despite objections by Local 237, which raised the same arguments that are now being advanced by the PBA-LIRR. The City argues that in the absence of any showing by the PBA-LIRR that "the existing unit in light of the bargaining history no longer serves a viable bargaining objective," the Board should adhere to its policy of not fragmenting existing units.

Adherence to the policy against fragmentation is also requested by Local 237 but for reasons different from those on which the City relies. In 1976, when the Special Officer titles were first combined with other titles in a consolidated unit, Local 237 unsuccessfully opposed the consolidation.[3] Local 237 continued to oppose further consolidations affecting the unit containing the Special Officer titles, but to no avail.[4] Now Local 237 is arguing that the Board is estopped from fragmenting the existing unit created by Decision No. 67-78, for nothing has changed since that decision was issued in December 1973 to warrant a reversal in policy.

DISCUSSION

The Board of Certification is empowered by Section 1173-5.0.b(l) of the NYCCBL:

> "to make final determinations of the units

---

[2] Decisions 45-69, 22-71, 25-71 and 65-73.

[3] See Decision No. 55-76.

[4] See Decision Nos. 9-77 and 67-78.

> appropriate for purposes of collective bargaining between public employees 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...."

Section 2.10 of the Revised Consolidated Rules of the Office of Collective Bargaining, which is designed to implement Section 1173-5.0b(l) of the NYCCBL, provides that the Board, in determining appropriate bargaining units, consider, among other factors, the following:

> "a. Which unit will assure public employees the fullest freedom in the exercise of the rights granted under the statute and the applicable executive order;
>
> b. The community of interest of the employees;
>
> c. The history of collective bargaining in the unit, among other employees of the public employer, and in similar public employment;
>
> d. The effect of the unit on the efficient operation of the public service and sound labor relation;
>
> e. 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;
>
> f. Whether the unit is consistent with the decisions and policies of the Board."

The analogous provisions of section 201, subdivision 1 of the Taylor Law set forth similar criteria for application by the New York State Public Employment Relations Board; the statute reads, in pertinent part, as follows:

> "(a) the definition of the unit shall correspond to a community of interest among the employees to be included in the unit;

> "(b) the officials of government at the level of the unit shall have the power to agree, or to make effective recommendations to other administrative authority or the legislative body with respect to, the terms and conditions of employment upon which the employees desire to negotiate; and
>
> "(c) the unit shall be compatible with the joint responsibilities of the public employer and public employees to serve the public."

Examination of the two sets of standards demonstrates the substantial equivalence of the Taylor Law and the NYCCBL on the criteria to be considered in deciding unit determination questions.

As the City and Local 237 point out, this Board has established a policy favoring consolidation of bargaining units and discouraging fragmentation of units whenever possible. As we discussed in Decision Nos. 28-78, and 67-78, the rationale for this policy is rooted in the purposes underlying public sector labor law. Because of the importance of this case to the employees supporting the petition of the PBA-LIRR, we will again review the history of the development of this policy.

The NYCCBL was enacted pursuant to Section 212 of the Taylor Law, which gives local governments the option of adopting their own provisions and procedures which must be "substantially equivalent" to those of the Taylor Law. Section 212 gave the City of New York an opportunity to enact a statute specifically designed to deal with its unique labor relations considerations. For example, the City had approximately 400 bargaining units of municipal employees at the time the Taylor Law became effective. Thus, unlike the New York State Public Employment Relations Board, the Office of Collective Bargaining was unable to start with a clean slate; OCB from its inception had to deal with a large number of existing bargaining units.

This situation was eased somewhat by the foresight of the drafters of the NYCCBL, who, in Section 1173-10.0c,[5] allowed for the continued viability of the inherited certifications but also provided for Board action to change pre-Act units and

---

[5] Section 10.Oc provides that: "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."

certifications. The statutory authority to review and revise existing bargaining units contemplated the preferability of gradual change by ad hoc determinations rather than a sudden, perhaps disruptive, revamping of the City's bargaining structure. Pursuant to this statutory mandate, we have, over the past 10 years, reduced the number of units with which the City must negotiate from approximately 400 to the current 80.

We have followed a policy of creating larger units based on broad occupational groupings, comprising as many employees and titles as can effectively operate as an entity. In making consolidation determinations, including those which have affected the Special Officer titles,[6] we have balanced considerations of public employee freedom of choice in organizing and designating representatives on the one hand, and efficient operation of the public service and sound labor relations on the other (See NYCCBL Section 1173-5.0b(i)). In harmonizing those considerations in the instant case, while giving due weight to the wishes of affected employees, we hold that the current unit is still appropriate and, therefore, the petition of the PBA-LIRR must be dismissed.

In the absence of any convincing proof that inclusion in the current unit prejudices the collective bargaining status of-the employees involved, we find that the creation of an additional bargaining 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. As the Board stated in Decision No. 67-78, each unit is yet another entity with which the City must bargain, requiring a separate contract to be negotiated and administered, and generating its separate grievances, interpretations and arbitrations.

The occupational similarities between the Special Officer titles and the other titles in the existing bargaining unit were discussed for the first time in Decision No. 55-76, wherein Special Officers were consolidated with various custodial, general maintenance, inspection and skilled craft titles. The Board, in pertinent part, therein stated:

> "... it should be noted that the building custodians ... enforce 'safety requirements' and protect buildings and grounds from vandalism, while special officers likewise are concerned with the observance of adequate safety precautions' and 'safeguard life and property against fire, vandalism, theft, etc.' It is also significant that in the Department of Social Services, the largest employer of building custodians and

[6] See Decision Nos. 55-76 and 67-78.

> second largest employer of special officers, and the only agency employing significant numbers of both groups, both are organizationally part of Plant Management, as are stockmen and other unit employees.
>
> "Similarly, many of the inspectors ... issue summonses for violations of the regulations which they enforce and testify at proceedings relating to these violations, while special officers issue summonses to law violators and testify in court in relation thereto."

As previously mentioned, Detective Investigators, Dietitians, and Triborough Bridge and Tunnel Officers were I cited by the PBA-LIRR as examples of titles which were allowed by the Board to "get away from the parent, the so-called parent union" and form separate bargaining units. First of all, the Board has no jurisdiction over the Triborough Bridge and Tunnel Officers; this series of titles is subject to the State Public Employment Relations Board. Examination of the bargaining history of the other two series of titles does not support the arguments advanced by the PBA-LIRR.

The Detective Investigators were, for several years prior to 1975, represented by Local 237. In June 1975, the Detective Investigators Benevolent Association replaced Local 237 as the certified representative of this series of titles.[7] In other words, the only change effected by our decision in that case was that the election we ordered resulted in the replacement of the incumbent unit representative by another union; there was no change in the composition of the unit and no increase in the total number of units with which the city must bargain. The Detective Investigators and related titles have always been in a separate unit. There is thus no parallel either between their bargaining history and that of Special Officers nor between the effect of the resolution of that case and the result sought by petitioner herein.

Similarly, the Dietitian titles were at one time represented by Local 237, until a new employee organization was voted in by a majority of the workers in 1974.[8] Not only was this series of titles never removed from a larger unit, but in 1978 these titles were consolidated with the Pharmacist series of titles despite the objections of the union which held both bargaining

---

[7] See Decision No. 30-75.

[8] See Decision No. 24-74.

certificates.[9]

Based on a review of the entire record, we remain unconvinced that there is such an exceptional situation presented in this case as to warrant our deviating from our established policy against fragmentation of units. Therefore, the petition of the PBA-LIRR seeking a unit composed solely of the titles in the Special Officer series must be dismissed.[10]

---

[9] See Decision No. 66-78.

[10] Although the PBA-LRR submitted more than enough authorization cards to have its petition processed (30% of the employees in the proposed unit), it failed to provide a sufficient showing of interest in the unit found appropriate by the board in Decision 67-78, and upheld herein, to warrant an election.

0 R D E R

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 of the PBA-LIRR be, and the same hereby is, dismissed.

DATED: New York, N.Y.
December 11, 1979

ARVID ANDERSON
CHAIRMAN

WALTER L. EISENBERG
MEMBER

ERIC J. SCHMERTZ
MEMBER