

EPBA, 17 OCB2d 6 (BOC 2024)

(Rep) (Docket No. RU-1717-24)

Summary of Decision: EPBA filed a petition to represent Environmental Police Officers, currently represented by LEEBA. LEEBA argued that EPBA is not a *bona fide* labor organization and that some signatures collected for EPBA's showing of interest were invalid. The Board found that EPBA is a *bona fide* labor organization. Since EPBA filed a timely petition supported by a sufficient showing of interest, the Board ordered an election. (*Official decision follows.*)

**OFFICE OF COLLECTIVE BARGAINING
BOARD OF CERTIFICATION**

In the Matter of the Certification Proceeding

-between-

ENVIRONMENTAL POLICE BENEVOLENT ASSOCIATION,

Petitioner,

-and-

THE CITY OF NEW YORK,

Respondent,

and

LAW ENFORCEMENT EMPLOYEES BENEVOLENT ASSOCIATION,

Intervenor.

INTERIM DECISION AND DIRECTION OF ELECTION

On January 16, 2024, the Environmental Police Benevolent Association ("EPBA") filed a petition to represent employees in the title of Environmental Police Officer (Title Code No. 70811). Environmental Police Officers are employed by the City of New York ("City") in the Department of Environmental Protection and currently represented by the Law Enforcement Employees Benevolent Association ("LEEBA") in Certification No. 5-2005. LEEBA argued that

EPBA is not a *bona fide* labor organization because it had not presented information regarding membership meetings, by-laws, maintaining financial records, its purpose, and its founding documents. LEEBA also alleged that many of the signatures submitted for EPBA's showing of interest were likely not valid because they were signed by inactive or retired members and the signatories did not know what LEEBA had achieved in bargaining or had been led to believe they needed to start over with a different union. The Director of Representation determined that the petition was timely and supported by a sufficient showing of interest.¹ The Director of Representation requested that EPBA submit an affidavit and/or any other documents that would establish that it is a *bona fide* public employee organization within the meaning of the New York City Collective Bargaining Law (New York City Administrative Code, Title 12, Chapter 3) ("NYCCBL"). Based on that submission, the Board finds that EPBA is a *bona fide* labor organization and directs an election to ascertain the wishes of Environmental Police Officers as to their union representation.

NYCCBL § 12-303(j) defines a public employee organization as "any municipal employee organization and any other organization or association of public employees, a primary purpose of which is to represent public employees concerning wages, hours, and working conditions."² "The only qualification for standing that we require of an organization before us is that it qualify as a

¹ The petition was filed within 30 days of the signing of a memorandum of agreement between LEEBA and the City covering Environmental Police Officers for the period of October 1, 2017, through November 1, 2026. See § 1-02(g) of the Rules of the Office of Collective Bargaining (Rules of the City of New York, Title 61, Chapter 1) ("OCB Rules"); *LEEBA*, 9 OCB2d 26, at 9 (BOC 2016). The sufficiency of the showing of interest is administratively determined and not subject to review. See OCB Rule § 1-02(c)(3); *LEEBA*, 11 OCB2d 7, at 5 (BOC 2018); *LEEBA*, 11 OCB2d 6, at 5 (BOC 2018).

² Civil Service Law Article 14 ("Taylor Law" or "CSL") § 201.5 similarly defines an "employee organization" as "an organization of any kind having as its primary purpose the improvement of terms and conditions of employment of public employees."

labor organization within the meaning of the NYCCBL.” *DC 37, 52 OCB 25*, at 10 (BOC 1993). The Board has held that “the test of a *bona fide* labor organization is not a demanding one.”³ *Id.* “There are no hard and fast rules as to what constitutes a *bona fide* labor organization. Rather, this is a question of fact which must be decided on a case-by-case basis.” *United Fedn. of Law Enforcement Officers*, 40 OCB 11, at 4 (BOC 1987). The Board considers “such identifiable indices of *bona fide* labor organization status as a constitution and by-laws, recorded membership meetings, election of officers, collection of dues, and maintenance of financial records and bank accounts.” *DC 37, 52 OCB 25*, at 10-11.

In *United Fedn. of Law Enforcement Officers*, the Board found that the statement in the organization’s constitution that “the purpose of the organization is ‘to negotiate wages, hours, working conditions and other economic advantages through organization and collective bargaining’ . . . alone meets the requirements of our statute” and the Taylor Law. 40 OCB 11, at 5. However, the Board noted that it was relevant that the organization had a constitution and bylaws, which “contemplate[d] membership meetings, maintenance of bank accounts, and collection of dues,” and had elected officers. *Id.* at 5-6; *see CSTG, L. 375*, 34 OCB 21, at 7 n. 4 (BOC 1984) (noting that a union’s “submission of its [c]onstitution and [b]y-[l]aws, a list of its

³ The New York State Public Employment Relations Board (“PERB”) has similarly taken a “liberal approach to the definition of an employee organization.” *Ichabod Crane Cent. Sch. Dist.*, 33 PERB ¶ 3042, at 3107-3108 (2000) (finding that adopting a name, electing officers, establishing membership criteria, and adopting a statement of purpose of negotiating terms and conditions of employment is sufficient to demonstrate being an employee organization under the Taylor Law); *Connetquot Cent. Sch. Dist.*, 31 PERB ¶ 4017, at 4046 (Dir. 1998) (finding that adopting articles of incorporation setting forth that the organization’s purpose is to promote and improve terms and conditions of employment, maintaining an office and bank account, and holding meetings were sufficient indicia even in the absence of a constitution or bylaws), *affd.*, 31 PERB ¶ 3057 (1998); *Enlarged City Sch. Dist. of the City of Saratoga Springs*, 14 PERB ¶ 3080, at 3140 (1981) (affirming that adopting a name, electing an interim president, and discussing a constitution were sufficient indicia of an employee organization), *confirmed sub nom. Civ. Ser. Empls. Assn. v. Newman*, 90 A.D.2d 114, 116-117 (3d Dept. 1982).

officers, and an assertion that its primary purpose is to represent public employees concerning wages, hours and working conditions” satisfied the requirement of being a *bona fide* labor organization). Similarly, in *Detective Investigators Benev. Assn. of New York City, Inc.*, 16 OCB 16, at 7-8 (BOC 1975), the Board found that the petitioner had demonstrated that it was “established with a primary purpose to represent employees concerning wages, hours, and working conditions, that it has a constitution and by-laws, holds general membership meetings, elects officers, and has a bank account.” The organization’s purpose was stated in its constitution and certificate of incorporation. It had dues-paying members and a post office box to receive mail, but no office or telephone number.

In contrast, the Board has dismissed a representation petition when the *bona fides* were not clear. In *Police Benev. Assn. Mun. Special & Superior Officers*, 18 OCB 21, at 4 (BOC 1976), the incumbent union alleged that the petitioning organization was dominated by its attorney and that its primary purpose was to further the financial interests of its founders. In an interim decision, the Board noted that the evidence before it contained “a number of inconsistencies and contradictions ... as to the origin and status of the petitioner’s proposed constitution and by-laws ...” and directed the petitioner to submit a copy of its constitution along with any other evidence in support of its *bona fides*. *Id.* at 11. In a subsequent decision, the Board found that the petitioner had not adequately responded to its directives, leaving many of the incumbent union’s allegations “uncontested and questions unanswered with respect to such ‘identifiable indices’ as a constitution and by-laws, recorded membership meetings, election of officers, collection of dues, and maintenance of financial records and of bank accounts.” *Police Benev. Assn. Mun. Special & Superior Officers*, 18 OCB 24, at 7 (BOC 1976).

Here, EPBA submitted an affidavit from its president, Matthew R. Kruger, with supporting documentation including, among other things, its certificate of incorporation, constitution,

corporate by-laws, policies and procedures, and a list of its executive board members and committees. These documents demonstrate that EPBA was incorporated in New York State in November 2019 as a non-profit and has tax-exempt status pursuant to Internal Revenue Code § 501(c)(5), which covers labor, agricultural, or horticultural organizations. EPBA's certificate of incorporation indicates its specific purpose as:

[T]o protect and preserve the interests, welfare and improving working conditions for members of Water Supply Police under CPL 1.20 Section 34 Sub (o); hereinafter referred to as the City of New York Department of Environmental Protection Police possessing the rank of Environmental Police Officer I, II, & III. In addition, establishing a legal defense fund and to maintain a retirement benefits [sic] for its members and always continuing guidance of their retirement interest(s).

(Kruger Aff. Ex. A at 2). Similarly, its constitution provides that its purposes and objectives are:

[T]o promote the general welfare of its membership through moral, intellectual, and social cooperation, and to establish and maintain benefit programs and funds as provided for in this Constitution and By-Laws.

The Association shall act as representative and bargaining agent on behalf of all active, retired Board Water Supply Police, and Environmental Police Officers, of the Department of Environmental Protection Police Department - City of New York.

(Kruger Aff. Ex. D at 1). Among other things, EPBA's constitution defines its members as Environmental Police Officers and provides for the election of officers for four-year terms, an executive board, standing and special committees, delegates, funds, legal assistance, and the ratification of labor contracts.

The EPBA's by-laws were approved and adopted by its executive board in January 2021. Among other things, they provide for monthly and special meetings, membership by Environmental Police Officers, the payment of dues, fiscal expenses, an anti-discrimination policy, and a conflicts of interest policy. In his affidavit, Kruger avers that EPBA has a physical office,

approximately 171 members who pay monthly dues, four bank accounts that are audited monthly, and a website. On the website, employees can join and obtain information on subjects such as legal services and charitable events. In addition, Kruger states that EPBA files annual tax returns, holds monthly executive board meetings and quarterly general membership meetings via Zoom, keeps an attendance sheet and detailed minutes for its meetings, and provides members with legal services on a variety of matters.

We find that EPBA's submission is sufficient to establish that it meets the definition of a public employee organization, "a primary purpose of which is to represent public employees concerning wages, hours, and working conditions." NYCCBL § 12-303(j). It has the "identifiable indices of *bona fide* labor organization status." *DC 37, 52 OCB 25*, at 10; *see Pub. Serv. Prof. Assn.*, 30 OCB 17, at 2 (BOC 1982) (finding a *bona fide* labor organization based on "its constitution and by-laws; a list of its officers; an affidavit of its president, setting forth its history and purposes; proof of its incorporation under the not-for-profit laws of the State of New York; and other financial and related information"); *New York City Prof. Dietitians' Assn.*, 14 OCB 18, at 5 (BOC 1974) (finding that an organization was a public employee organization when the preamble to its constitution referred to "major improvements in the working conditions and status of employees" and it held monthly meetings, recorded minutes, collected dues, maintained a bank account, and had elected officers and an executive board); *see also Valley Cent. Sch. Dist.*, 50 PERB ¶ 4013, at 4103 (ALJ 2017) (finding that an organization that held meetings, appointed officers, and adopted a constitution and bylaws was formed for the primary purpose of improving terms and conditions of employment).

As the petition was timely and supported by a sufficient showing of interest, we order an election to determine whether the employees in Certification No. 5-2005 wish to be represented

for the purposes of collective bargaining by the EPBA, LEEBA, or neither.⁴ *See* NYCCBL § 12-309(b)(2); *UFA*, 4 OCB2d 17 (BOC 2011). If LEEBA does not desire to participate in the election, it may decline to do so by making a request in writing to the Director of Representation within 14 days after service of this Interim Decision and Direction of Election.

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

DIRECTED, that as part of the investigation authorized by the Board, an election by secret ballot be conducted under the Board's supervision, at a date, time, and place to be fixed by the Board, among the employees in the titles of Environmental Police Officer, Levels I, II & III (Title Code No. 70811) employed by the City of New York to determine whether these employees wish to be represented for the purposes of collective bargaining by the Environmental Police Benevolent Association, the Law Enforcement Employees Benevolent Association, or neither. Employees in the Environmental Police Officer title employed during the payroll period immediately preceding the date of this Interim Decision and Direction of Election, other than those who have voluntarily quit, retired, or who have been discharged for cause before the date of the election, are eligible to vote; and it is further

DIRECTED, that within 14 days after service of this Interim Decision and Direction of Election, the City of New York will submit to the Director of Representation an accurate list of the name, address, work email, and work cell phone, if any, of all the employees in the Environmental Police Officer title who are employed by the Department of Environmental Protection and who were employed during the payroll period immediately preceding the date of

⁴ If a majority of the valid votes counted are for EPBA, in order to be certified, EPBA will have to submit a no-strike affirmation in accordance with OCB Rule § 1-02(s)(2). *See* CSL § 207.3(b).

this Interim Decision and Direction of Election.

Dated: March 28, 2024
New York, New York

SUSAN J. PANEPENTO
CHAIR

ALAN R. VIANI
MEMBER