

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

In the Matter of the Application

-of-

CAMILLO F. PENTA, as President of
Local 300, of the Service Employees
International Union, AFL-CIO, and
JOHN CONTINO, on behalf of himself
and all others similarly situated,

Petitioners,

for a Judgement under Article 78 of
the Civil Practice Law and Rules,

INDEX NO.
19045/70

-against-

ARVID ANDERSON, Chairman, and WALTER
L. EISENBERG and ERIC J. SCHMERTZ,
constituting the Board of Certification
of the Office of Collective Bargaining
of the City of New York,

Respondents

Carney, J. ((165 No. 45 NYLJ 3/9/71) p.2

"This is a proceeding pursuant to CPLR, article 78,
initiated by Local 300 of the Service Employees
Union to declare a decision of the Board of Certi-
fication of the Office of Collective Bargaining
(Board) to be illegal and void. Local 237, the
other union involved, has joined in this proceeding
as intervenor-respondent.

"Local 300 had petitioned the Board to be appointed
as the bargaining unit for all maintenance employees
excluding those employed by the New York City Hous-
ing Authority (Housing Authority). The first order
of the Board directed an election to be held with
regard to all maintenance employees excluding the
Housing Authority. Upon application of Local 237

the first order was rescinded. Local 237 was appointed
as the bargaining agent for all maintenance employees
including the Housing Authority. Petitioner argues
that the establishment of a collective bargaining unit
including the Housing Authority is in violation of the
Civil Service Law. Petitioner also argues that the
Board exceeded its authority in appointing Local 237
as majority representative.

"A determination of the status of the Housing Authority

for collective bargaining purposes requires an examination of the statutory definitions involved.

"The New York City Collective Bargaining Law (Administrative of the City of New York chapter 54, sec. 1173 -1.0 et seq., hereinafter referred to as CBL) includes in the definition of public employer " * * * (3) any public authority whose activities are conducted in whole or in part within the city" (,CBL, sec. 1173-3.0 [g]). This law governs public employers with regard to labor disputes. (CBL, sec. 1173-4.0[b]).

"The state equivalent of the CBL is the Public Employees Fair Employment Act, popularly known as the Taylor Law. Its definition of a "public employer: or "government" includes a "public authority" (Civil Service Law, sec. 201[7][e]), A state public authority is defined in part as a public corporation with a majority of its members appointed by the governor or by another state officer or body (Civil Service Law, sec. 201[9]). The Housing, Authority has its membership appointed by the Mayor of New York City (Public Housing Law, se. 402[2]) and therefore it is not within the definition of a state public authority. The Taylor Law authorizes all "governments" except "state public authorities" to establish procedures to resolve disputes concerning representative status of employee organizations (Civil Service Law, sec. 206. The Housing Authority therefore rightfully could and actually did elect to be governed by the CBL which election was approved by the mayor on July 3, 1968. Accordingly, the court finds that the Board properly included Housing Authority maintenance employees in the bargaining unit.

"Petitioner's other objection refers to the manner in which Local 237 was selected to be the majority representative. The Board is empowered to use elections or nay other suitable methods to ascertain the free choice of a majority of the employees (CBL, sec. 1173-5.0[b][2]). The Board's investigation revealed that 73

per cent of the 1433 maintenance employees involved had authorized dues checkoff to Local 237. The Board in its discretion decided that in such a situation it would be a wasteful expenditure of money as well as a futile gesture to conduct an election in this instance. The court finds that the decision of the respondent was amply supported by the record and that they were not arbitrary or unreasonable in reaching their conclusion. Accordingly, the petition is dismissed. Settle judgment."