

SUPREME COURT OF THE STATE OF NEW YORK
KINGS COUNTY (Special Term, Part I)

In the Matter of the
Application of

HENRY S. RANDOLPH, Officer and Member
of the DETECTIVE INVESTIGATORS
BENEVOLENT ASSOCIATION, for an Order
Pursuant to Article 78 of the CPLR,,
Vacating a Decision and Order of the
OFFICE OF COLLECTIVE BARGAINING,

Index No. 4964-70

Petitioner,

-against-

THE OFFICE..OF COLLECTIVE BARGAINING,
CITY EMPLOYEES UNION, LOCAL 237, I.B.T.,

Respondents.

Schwartzwald, J., Dated April 30, 1970.
163 NYLJ No. 88 P. 16 5/7/70)

Petitioner, acting on behalf of the Detective Investigators Benevolent Association (hereinafter referred to as DIBA) brings this proceeding pursuant to Article 78 of the CPLR. for (a) an order vacating a determination of the Office of Collective Bargaining (herein after referred to as OCB) which set aside an election held to determine the collective bargaining representative of certain public employees and directed that a new election be held, and (b) a further order directing that the OCB certify DIBA as the duly designated collective bargaining representative of the employees here involved.

The respondent, OCB, cross-moves, pursuant to CPLR 7804(f) for dismissal of the petitioner's proceeding upon the ground that the petitioner as a matter of law is not entitled to the relief sought.

The facts briefly are these: The election in question was conducted on December 16, 1969 by the Board of Certification of the OCB under the authority granted it by Chapter 54, Section 1173-5.0(b) of the Administrative Code of the City of New York, which reads in part as follows:

"The board of' certification * * * shall have
the power and duty; * * *

(2) to determine the majority representative
of the public employees in an appropriate collec-
tive bargaining unit by conducting secret-ballot

elections or by utilizing any other appropriate and suitable method designed to ascertain the free choice of a majority of such employees,
* * *."

The election was held for the purpose of determining whether the employees desired to be represented for collective bargaining purposes by DIBA or by the City Employees Union Local 237, I.B.T., or by neither organization. On March 23, 1970 the Board of Certification issued its decision vacating and setting aside the election, and directed a new election, because of the inadvertent failure, prior to the election, to notify the parties and the employees eligible to vote that absentee ballots were permitted. The actual vote in the election was sufficiently close to permit the conclusion that Local 237, which had received two votes less than DIBA, might conceivably have been prejudicially affected by the failure to give notification that absentee ballots were permitted.

Turning now to the basis for the instant proceeding, I find a lack of merit in the suggestion made by the petitioner that the OCB was without power to set aside the results of the prior election and to order a new election. The inherent authority to do so is found in the provisions of Section 1173-5.0(b) hereinabove quoted; which confers on the Board of Certification of the OCB the power and duty to determine the majority representative of the employees either through the device of an election or by utilization of any other appropriate and suitable method designed to ascertain the free choice of a majority of the employees. There is implicit in the authority conferred on the Board of Certification the power to set aside the result of an election which may not represent or reflect the wishes of the majority if the employees.

In so far as the instant proceeding constitutes a challenge to a determination involving the exercise of Judgement or discretion, the determination in question cannot be deemed a final one. Thus Section 1173(b)1 of the Administrative Code speaks of the power and duty of the Board of Certification "to make final determinations of the unions appropriate for purposes of collective bargaining between public employers and public employee organizations. (Emphasis supplied.) No such final determination has yet been made in the instant matter.

As no final determination affecting the rights of the parties is under challenge herein, the petitioner has no standing which would entitle him to maintain this Article-78 proceeding. (CPLR 7801 see Matter of Carville. v. Allen, 13 A D 2d 866; Matter of Van Patten v. Ingraham, 51 Misc 2d 244, 247.) Accordingly, the cross motion of the respondent OCB is granted. The petitioner's application is denied and the petition is dismissed.

Settle order on notice.