

SUPREME COURT : NEW YORK COUNTY
SPECIAL TERM : PART I

PATROLMEN'S BENEVOLENT ASSOCIATION, etc.,

Petitioner

-against-

Index No. 13079/78

ARVID ANDERSON, et al.,

Respondents.

MAX BLOOM, J.:

This is a proceeding by the Patrolmen's Benevolent Association of the City of New York, Inc., (PBA), to review a determination of the Office of Collective Bargaining of the City of New York (OCB), denying the application of the PBA to expand the unit of representation of that organization to include various civilian groups employed by the Police Department. With respect to some of the groups sought to be incorporated into the PBA unit of representation, District Council 37 of the American Federation of State, County and Municipal Employees (DC 37) intervened and sought the right to represent the workers involved in these groups. OCB cross-moves to dismiss the proceeding on the ground that it was no timely brought.

On May 15, 1978, OCB rendered its determination holding that, as a matter of law, the PBA was precluded from representing civilian employees of the Police Department. OCB then went on to determine the various appropriate units for these civilian employees. With respect to those units for which

DC 37 had sought representation, OCB found that DC 37 represented a majority of the workers involved and certified it as the collective bargaining representative.

With respect to one of units involved, the School Crossing Guards, another union, the School Crossing Guards Association (Association) intervened. However, it contended that the termination of employment of the workers represented by it in June, 1975, as a result of the fiscal stringency which confronted the City, and the subsequent hiring of new employees to perform the same duties after funding of the new jobs had been obtained from the federal government under the Comprehensive Employment and Training Act (CETA) constituted (1) a violation of CETA. regulation; (2) an unfair labor practice; and (3) the employment of this new personnel should in no way effect the prior certification of the Association. The Association asserts no claim to representation of the school crossing guards hired under the CETA program. OCB found that the issues raised by the Association -did not preclude the certification of DC 37 as the collective bargaining representative of the unit involved ("School Crossing Guards [CETA]") and accordingly, so certified it.

Copies of OCB's determination were received by counsel for the parties on May 17, 1978, as indicated by the certified mail return receipt. On May 31, 1978, counsel for the Association sought reconsideration of OCB's order on two grounds. One was the alleged reference to a document of which the Association had no notice and the other was the name accorded to the new unit. That request for reconsideration was denied on June 28, 1978. On July 28, the present proceeding was commenced by service of the order to show cause on OCB. OCB's cross motion to dismiss is bottomed on the contention that the law required that the proceeding be brought on or before June 16, 1978 and, by consequence of the PBA's failure to bring it on or before that date, the proceeding is time-barred.

The authority of local governments to bargain collective with their employees derives from the "Taylor Law" (Civil Service Law, Article 14). Among other things, it provides that when an order is made pursuant to Article 14, it may be reviewed or enforced (Civil Service Law, §213[a])

The PBA contends that the application of the Association for reconsideration tolled the statute and prevented it from starting to run until that application had been disposed of. The obvious answer is that the PBA never made any application to reconsideration. As to it, the order of May 15 became final when the PBA received it. Moreover, as a matter of law, the application to reconsider could not extend the time to appeal unless it was granted. It is analogous to a motion for leave to

reargue.

Inasmuch as this proceeding is time-barred (Matter of Davis v. Anderson, 51 A D 2d 528, 1v to app. den. 39 N Y 2d 707 the petition is denied. The cross motion to dismiss is granted.

Settle judgment.

Dated: New York, New York
November 6, 1978

HON. MAX BLOOM
JUSTICE OF THE SUPREME COURT