

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 50E

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In the Matter of INDEPENDENT LABORERS
UNION OF NEW YORK CITY,

Petitioner,

Decision and Judgement

Index No.: 118937103

For a Judgment pursuant to CPLR

-against-

OFFICE OF COLLECTIVE BARGAINING, BOARD OF
CERTIFICATION, DISTRICT COUNCIL 37, AMERICAN
FEDERATION OF STATE, COUNTY AND MUNICIPAL
EMPLOYEES, AFL-CIO, T CITY OF NEW YORK, OFFICE

Respondents.

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William A. Wetzel, J.:

Petitioner, a municipal employee organization brings this proceeding pursuant to CPLR Article 78 seeking to nullify the determination of respondent, Office of Collective Bargaining Board ("OCB") which denied its application to be certified as the exclusive bargaining representative of approximately 425 municipal employees in the categories of Construction Laborers and Apprentice Construction Laborers. Petitioner alleges that this decision is arbitrary and capricious or illegal because it denies them the right to select the bargaining representative of their own choosing and to end their association with District Council 37 which has a sordid history of corruption.

Respondents, OCB, the City of New York, and the Office of Labor Relations argue that the underlying determination is consistent with the facts of the case, the law, and precedents and therefore not arbitrary and capricious but rather a reasonable exercise of OCB's discretion. They argue for dismissal because the petitioner has failed to demonstrate that the current bargaining unit is no longer appropriate.

Petitioner, in January of 2002, applied to OCB to represent these municipal employees and to serve their duties from the two existing units of DC37 that currently represent them. Petitioner contended that the proposed new unit would be appropriate because it would give the members the opportunity to choose their own representatives. Petitioner argues that the members share a community of interest with regard to their job functions and lastly, that the change would benefit sound labor relations without effecting the efficient operation of public service because the interest of these employees would no longer be submerged into the larger bargaining unit which renders them unrepresented.

DC-37 also a respondent herein opposes their withdrawal arguing that it would violate the policy against unit fragmentation and lead to a proliferation of units thereby disrupting collective bargaining.

In substance, the decision of OCB concluded that although petitioner has established a community of interest amongst employees in those two categories, it had failed to demonstrate that the existing bargaining units were no longer appropriate. In addition, the decision holds that even if the allegations of corruption and fraud on the part of DC37 were correct, there is insufficient evidence that such corruption has affected their ability to represent these titles effectively.

The standard of review of this administrative determination is limited to analysis of whether the decision is arbitrary and capricious or a reasonable exercise of discretion on the part of the agency. See Pell v. Board of Ed., 34 NY2d 222 (1974). It is well established that this is not a de novo review and this court may substitute its judgement for that of the administrative agency. Indeed, where an administrative agency such as OCB is charged with enforcing the various rules and regulations, courts should defer to the

agency's expertise and judgment in that regard. (Citations omitted) This is the case with regard to OCB. See Levitt v. Board of Collective Bargaining, 79 NY2d 120 (1992).

OCB in reaching its determination carefully analyzed whether the current unit is no longer appropriate with regard to the petitioner's employees. This is where the petitioner and OCB part ways. The petitioner emphasizes the compatibility and the appropriateness of having the 425 employees represented in one bargaining unit. OCB however, correctly concludes that the threshold issue is whether the preexisting unit is no longer appropriate and their conclusion that it is still appropriate in this case cannot be said to be arbitrary or capricious. The determination here is fully consistent with agency precedent. To follow the reasoning urged by petitioner would obviously conflict with the policy of fragmentation. On the record here the petitioner has failed to meet its burden of showing the determination to be arbitrary, capricious, unreasonable, or illegal.

While this Court is most sympathetic to the petitioner's argument based upon DC-37's history of continued and pervasive corruption and fraud even with regard to the ratification of contracts, this does not provide a basis for certification of the proposed unit. Petitioner's sole remedy with regard to fraud is to demonstrate that it has resulted in changed circumstances which render the structure of the current bargaining units no longer appropriate. This it has failed to do. There are other remedies available such as a petition to the Board of Collective Bargaining to the effect that DC-37 has breached its duty of fair representation. See §12-306(b) of NYCCBL.

It is unfortunate that given the record of embezzlement, fraudulent elections, fraudulent ratification and nepotism within DC-37 that has been widely publicized over recent years that these, petitioners are captives of DC-37. Unfortunately, however this

does not entitle them under the existing statutes, regulations, and precedents to form the proposed bargaining unit and withdraw from DC-37.

For the reasons stated above the petition is in all respect denied and the proceeding is dismissed. This constitutes the Decision and Judgment of this Court.

Dated: New York, NY
April 13, 2004