

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

In the Matter of the Application of

THE CITY OF NEW YORK; THE MAYOR'S OFFICE  
OF LABOR RELATIONS; JAMES F. HANLEY, as  
Commissioner of the Mayor's Office of Labor Relations

Petitioner,

-against-

THE BOARD OF CERTIFICATION OF THE OFFICE  
OF COLLECTIVE BARGAINING OF THE CITY OF  
NEW YORK; MARLENE GOLD, as Chair of The  
Board of Certification of The Office of Collective  
Bargaining of the City of New York; DISTRICT  
COUNCIL 37, AFSCME, AFL-CIO, VERONICA  
MONTGOMERY-COSTA, as President of District  
Council 37, AFSCME, AFL-CIO,

Respondents.

For a Judgment and Order Pursuant to Article 78 of the  
Civil Practice Law and Rules.

WILLIAM A. WETZEL, J.:

Petitioners bring this proceeding pursuant to Article 78 of the CPLR seeking to annul a portion of the determination of the respondent, Board of Certification of the Office of Collective Bargaining of the City of New York ("Board") dated September 1, 2006, which held that the title Investigator (Employee Discipline) was not managerial or confidential and was therefore eligible to be unionized. In addition, the Board ordered that a previous certification No. 37-78 be amended to include the title. The decision of September 1, 2006 also reached the same conclusion as to the title Investigator (Discipline).

The petitioners argue that the title Investigator (Employee Discipline) performs job duties and responsibilities that make them confidential employees pursuant to the Taylor Law and the New York City Collective Bargaining Law, and therefore are not eligible for unionization. More

DECISION AND ORDER

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specifically, petitioners claim that individuals in the title assist managerial employees by conducting misconduct investigation, interviewing witnesses, preparing disciplinary charges and stipulations of settlements, and other related duties.

Hearings were conducted over a 7 day period and testimony was elicited from numerous employees in the title of Investigator (Discipline) as well as the title of Investigator (Employee Discipline) concerning their job functions. Ultimately, the Board found both titles eligible for certification and therefore unionization. Petitioners' challenge is limited to the title Investigator (Employee Discipline). The relevant statutes provide as follows:

Civil Service Law §201(7)(a)(ii):

“Employees may be designated as confidential only if they are persons who assist and act in confidential capacities to managerial employees....”

The New York City Collective Bargaining Law, Administrative Code §12-305 provides in part:

“However, neither managerial nor confidential employees shall constitute or be included in any bargaining unit, nor shall they have the right to bargain collectively; ...”

It is blackletter law that the petitioners have the burden of demonstrating that the decision of the respondent is arbitrary and capricious, or affected by error of law, or an abuse of discretion or completely lacking in merit. This court must affirm the agency's decision if it determines the existence of a rational basis to support that decision. See Pell v. Bd. of Educ., 34 N.Y.2d 222 (1974). Further, it is well established that it is not for the court to substitute its judgment for that of the administrative agency if it concludes that the agency's determination was rational. See Medical Malpractice Insurance Association v. Superintendent of Insurance, 72 N.Y.2d 753 (1988).

In Levitt v. Board of Bargaining of the City of New York, 79 N.Y.2d 120 (1992), the Court of Appeals emphasized that courts must give deference to the judgment of the impartial body charged with implementation of the regulatory scheme given its expertise in the subject area. This principle applies to the case at bar.

At the relevant time, April 6, 2006, there were 41 employees in the title Investigator (Employee Discipline), there were also 30 employees in the title Investigator (Discipline). They received salaries in the range of \$30,000 to \$60,000.

Undermining the petitioners' argument is the fact that it concedes that the title Investigator (Discipline) is not confidential and is eligible for certification. The respondent in its detailed and well-documented 45 page decision rejects the argument that there is any substantial distinction to be made between that title and Investigator (Employee Discipline) and this court would be hard put to find the decision rational as to Investigator (Discipline) but failing the Pell standard with regard to Investigator (Employee Discipline).

A careful reading of the subject decision leads to the inescapable conclusion that it is soundly based on the evidence adduced at the hearing, and carefully analyzed with respect to the statutory and regulatory scheme with an effort to act consistent with precedent. For this reason, this court concludes that the petitioners have failed to meet their burden and the petition must be denied and the cross-motion to dismiss granted.

This constitutes the Decision and Judgment of this court.

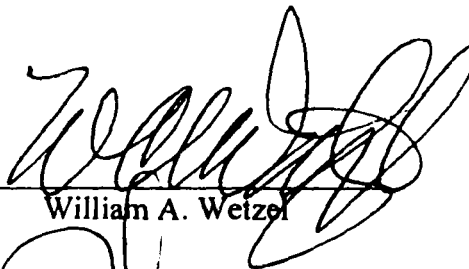
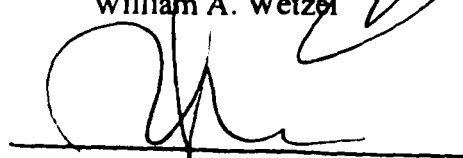
Dated: September 19, 2007  
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William A. Weizer  
  
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