

currently represented by Local 237 in labor matters with the City. Local 237 also represents many other city employees.

Defendant OCB is a labor relations agency established pursuant to the New York City Charter. OCB is responsible for enforcing and administering New York City's Collective Bargaining Law (NYCCBL), Title 12, Chapter 3 of the New York City Administrative Code, §12-301 et seq.

Pursuant to NYCCBL § 12-309(b)(1), the OCB Board of Certification has both the power and the duty to make certification determinations that are consistent with the goals of maintaining sound labor relations and efficient operation of the public service. The Board has adopted rules in order to carry out its powers, including rules relating to the standards for determining bargaining units. The Board has both the power and the duty to promulgate such rules. NYCCBL § 12-309(b)(5).

In July 1991 MEWA petitioned OCB to decertify Local 237 as the exclusive bargaining representative for its members because of the union's alleged inadequate representation. At the same time, MEWA petitioned OCB that it be certified as its members' bargaining representative.

In January 1992 OCB dismissed both petitions on the grounds that MEWA failed to show the requisite inadequate

representation resulting from conflicting interests between the elevator mechanics and other members of the bargaining unit, and that OCB's long-standing policy encourages consolidation of bargaining units and discourages fragmentation wherever possible in order to reduce the number of contracts that the City must negotiate with its employees.

OCB suggested two remedies to MEWA. First it suggested that MEWA file a duty of fair representation charge against Local 237, and second that MEWA commence decertification proceedings against Local 237. MEWA had previously petitioned to decertify Local 237 as to the MEWA members. The suggestion of OCB was that MEWA attempt to decertify Local 237 with respect to the entire bargaining unit. MEWA contends that these proposed remedies were inadequate.

MEWA alleges that the City and OCB have deprived its members of their First Amendment right to pick the bargaining representative of their choice. MEWA further alleges that the City and OCB have denied its members their right to membership in the bargaining unit of their choice without due process of law.

MEWA seeks an injunction ordering OCB and the City to decertify Local 237 as the bargaining representative for its members and to recognize MEWA as their exclusive bargaining representative, or alternatively to allow MEWA's members to join

any existing bargaining unit of their choice. MEWA also seeks \$10 million in compensatory damages.

DISCUSSION

The issue before this court is whether the First Amendment guarantee of freedom of association entitles MEWA's membership to have Local 237 decertified as their bargaining representative and to select the bargaining representative of their choice.

The complaint acknowledges that the Board of Certification based its decision on the OCB rules which set forth criteria to be considered in making certification determinations. The Board of Certification has both the power and duty to promulgate such rules. Moreover, these rules specify that the employees' freedom in choosing their bargaining representatives is only one factor involved in certification decisions. OCB Rules § 1-02(j)(1).

MEWA maintains, however, that when a group of employees chooses to be represented by a particular union, or chooses not to be represented by a particular union, the First Amendment's protection of freedom of association mandates that the group's choice be controlling.

MEWA cites no authority supporting its position.

It is settled that laws which deny the benefit of certification to a labor union based on the union's failure to meet specific criteria do not inherently violate the First Amendment. See Brennan v. Koch, 564 F. Supp. 322 (S.D.N.Y. 1983).

In Brennan the court held that such laws impinge only indirectly or insubstantially on associational rights, and as such a plaintiff bears the burden of proving that the law authorizing the challenged action is irrational or arbitrary.

In United Federation of Law Enforcement Officials v. New York City Office of Collective Bargaining, et al., No. 87 Civ. 7407, 1990 U.S. Dist. LEXIS 9435 (S.D.N.Y. July 30, 1990), the court applied the test articulated in Brennan to a First Amendment challenge to OCB's refusal to allow New York City's Urban Park Rangers to switch bargaining representatives.

The United Federation court rejected the plaintiff's First Amendment claim and found that the certification criteria set forth in the OCB rules, as well as OCB's consolidation policy, were neither arbitrary nor irrational.

In the present action MEWA's complaint does not even allege that the OCB rules governing certification or OCB's consolidation policy are arbitrary or irrational. In fact, MEWA acknowledges the rationality of the consolidation policy and instead argues that the policy would not be undermined by certifying MEWA as a bargaining representative, or alternatively, by allowing MEWA's members to join another bargaining unit of their choice.

The conclusion is that MEWA has alleged no valid claim under the First Amendment.

MEWA contends that defendants have denied its members of their "property, liberty and freedom of association" without due process of law.

In light of the court's decision that defendants have not infringed upon MEWA's freedom of association, MEWA has failed to identify any liberty or property interest of which its members were deprived. Such a showing is required in order to state a claim under the due process clause. MEWA's due process claim must be dismissed.

CONCLUSION

Defendants' motions to dismiss are granted and the action is dismissed in its entirety.

SO ORDERED.

Dated: New York, New York
June 16, 1993

THOMAS P. GRIESA
U.S.D.J.