



273 A.D.2d 104, 710 N.Y.S.2d 324, 166
L.R.R.M. (BNA) 2384, 2000 N.Y. Slip Op. 05685

In the Matter of Kenneth Levitt et al., Appellants,
v.

Board of Certification of the Office of
Collective Bargaining et al., Respondents.

Supreme Court, Appellate Division,
First Department, New York
1459
(June 15, 2000)

CITE TITLE AS: Matter of Levitt v Board of
Certification of Off. of Collective Bargaining


HEADNOTE

LABOR UNIONS COLLECTIVE BARGAINING

(1) Judgment which granted respondents' cross motion to dismiss petition for failure to state cause of action affirmed; determination of respondent that petitioners, four Hearing Officers of Parking Violations Bureau, are not eligible to collectively bargain with City as part of existing unit is rationally based on Vehicle and Traffic Law § 236 (2) (d); that provision states that hearing examiners shall not be considered employees of City; given this clear statutory language, Hearing Officers cannot be considered City employees entitled to collectively bargain with City

under Civil Service Law article 14 even if, as Board found after hearing, in all other respects they meet criteria for public employment.

Judgment, Supreme Court, New York County (Beverly Cohen, J.), entered on or about April 16, 1999, which, in a CPLR article 78 proceeding seeking certification of the right to collectively bargain, granted respondents' cross motion to dismiss the petition for *105 failure to state a cause of action, unanimously affirmed, without costs.

The determination of respondent Board of Certification of the City of New York Office of Collective Bargaining that petitioners, four Hearing Officers of the Parking Violations Bureau (PVB), are not eligible to collectively bargain with the City as part of an existing unit is rationally based on  Vehicle and Traffic Law § 236 (2) (d). That provision states, in pertinent part, that “[s]uch hearing examiners shall not be considered employees of the city in which the administrative tribunal has been established.” Given this clear statutory language, PVB Hearing Officers cannot be considered City employees entitled to collectively bargain with the City under Civil Service Law article 14 even if, as the Board found after a hearing, in all other respects they meet the criteria for public employment (*see, Matter of Scheurer v New York City Employees' Retirement Sys.*, 223 AD2d 379). Petitioners' remedy, if any, is with the Legislature.

Concur--Rosenberger, J. P., Tom, Mazzarelli, Andrias and Saxe, JJ.

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