Velez v. L.237, IBT, 23 OCB 1 (BCB 1979) [Decision No. B-1-79 (IP)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING
---------- x

In the Matter of

JOSE VELEZ, DECISION NO. B-1-79

Petitioner DOCKET NO. BCB-306-78

-and-

LOCAL 237, IBT

Respondent
---------- x

DECISION AND ORDER

On December 18, 1978, Special Officer Jose Velez served the improper practice petition herein alleging that Local 237, IBT, the certified representative of a unit including Special Officers, had violated NYCCBL Sections 1173-4.1 and 4.2.

In a statement attached to the petition, Mr. Velez set forth his allegation that in November, 1978, he was a candidate in a Union chapter election in which the Union did not furnish mail ballots to certain members who requested them and that as a result Velez was defeated but "all the union's choices were elected." A list of 21 employees who allegedly were not given ballots by the Union is appended to the statement.

The response of Local 237, received January 10, 1979, asserts that the allegation of improper practice is unfounded and frivolous. The Union states that its constitution provides a procedure for charges such as the one brought by Mr. Velez and "for appeals that go beyond the authority of Local 237," and the Union argues that Petitioner should exhaust his remedies under the Union constitution before resorting to any other forum.

Further, Local 237 asserts that the Board of Collective Bargaining has no jurisdiction over the internal affairs of a union, and in support of this argument it relies on the fact that both the PERB and NLRB have been found to be without authority in internal union affairs.

APPLICABLE STATUTORY PROVISIONS

§1173-4.1-RIGHTS OF PUBLIC EMPLOYEES AND CERTIFIED EMPLOYEE ORGANIZATIONS. Public employees shall have the right to self-organization, to form, join or assist public employee organizations, to bargain collectively through certified employee organizations of their own choosing and shall have the right to refrain from any or all of such activities. However, neither managerial nor confidential employees shall constitute or be included in any bargaining unit, nor shall they have the right to bargain collectively. A certified or designated employee organization shall be recognized as the exclusive bargaining representative of the public employees in the appropriate bargaining unit.

§1173-4.2-IMPROPER PRACTICES: GOOD FAITH BARGAINING....

b. IMPROPER PUBLIC EMPLOYEE ORGANIZATION PRACTICES. It shall be an improper practice fora public employee organization or its agents:

(1) to interfere with, restrain or coerce public employees in the exercise of rights granted in section 1173-4.1 of this chapter, or to cause, or attempt to cause, a public employer to do so;

(2) to refuse to bargain collectively

> in good faith with a public employer on matters within the scope of collective bargaining provided the public employee organizational is a certified or designated representative of public employees of such employer.

JURISDICTION OF THE BOARD

No prior case has presented the question whether the Board has jurisdiction to find an improper public employee organization practice based on allegations concerning an internal union election.

Section 1173-4 of the NYCCBL does not, on its face, purport to regulate internal union affairs. Subsection 4.1 defines the rights of public employees and subsection 4.2 proscribes certain acts which constitute improper practices; however, no reference is made to internal union procedures or elections. Therefore, we look to other sources to determine whether, notwithstanding the absence of specific reference to internal union conduct, such conduct was nevertheless meant to be included within the purview of §1173-4 of the NYCCBL.

The structure of labor relations statutes applicable to public sector employees in New York State differs markedly from the Federal administrative scheme established by the Congress. Although the State Legislature has enacted a labor relations statute applicable to private sector employees not engaged in interstate commerce[1] and a labor relations statute applicable

[1] Article 20, Labor Law.

to public sector employees,[2] the Legislature has not enacted any provisions regulating internal union affairs.[3] The federal laws, by contrast, contain a labor relations statute administered by the National Labor Relations Board[4] and the Landrum-Griffin amendments of 1959 regulating the internal affairs of unions, including union elections, administered by the U.S. Secretary of Labor. A parallel structure has recently been established in the federal, public sector by the Civil Service Reform Act of 1978:[5] The neutral Federal Labor Relations Authority administers labor relations provisions including unfair labor practice provisions, pursuant to §7105 of the Act, and the Assistant Secretary of Labor administers the regulation of internal union affairs, pursuant to §7120 of the Act.

In NLRB v. Allis Chalmers Mfg. Co., 388 U.S. 175, 65 LRRM 2449 (1967), the Supreme Court considered whether the NLRB could find a union guilty of restraint and coercion in violation of §8 (b)(1) as a result of imposing fines on its members who crossed a picket line during a strike. The Court examined the legislative history of the 1947 Taft-Hartley Amendments, including §8(b)(1),and found that Congress intended that the NLRB should not have

---

[2] Article 14, Civil Service Law, known as the Taylor Law.

[3] We note that "a bill of rights of members of labor organizations" is pending in the Senate as §560, January 3, 1979.

[4] The provisions relevant to this discussion are at 29 USC §§157 and 158(b)(1).

[5] 5 USC 7101 et seq.

jurisdiction over internal union matters. The legislative history, as quoted by the Supreme Court in Allis Chalmers, is replete with remarks made by Senator Taft during the debate which indicated to the Court that "the section was not meant to regulate the internal affairs of unions."[6] 65 LRRM at 2453. The Court observed that it had fashioned the duty of fair representation[7] and that state courts had established a body of law governing internal union conduct, but that it was not until the passage of the 1959 Landrum-Griffin amendments that Congress sought "to protect union members in their relationship to the union by adopting measures to insure the provision of democratic processes in the conduct of union affairs...." 65 LRRM at 2456.

In summary, it is clear that the petition herein would notbe within the jurisdiction of the NLRB if the case involved private sector employment. Although precedents from the private sector are instructive, they are by explicit provision of statute not conclusive, and we must therefore look to our state law for guidance.[8]

The NYCCBL was enacted by the City Council pursuant to authorization of Section 212 of the Taylor Law (Civil Service

---

[6] The court remarked that §8 (b) (2) had the effect of "barring enforcement of a union's internal-regulations to affect a member's employment." 65 LRRM at 2451.

[7] Citing, Vaca v. Sipes, 64 LRRM 2369. This case held that the long established rule that the "exclusive agents' statutory authority to represent includes a stutory obligation to serve the interests of all members" was enforceable in both state and federal courts but governed solely by federal law. 64 LRRM 2371. The Court observed that the "NLRB did not until Miranda Fuel interpret a breach of a union's duty of fair representation as an unfair labor practice" (64 LRRM at 2371), and it held that the NLRB assumption of jurisdiction did not preempt the courts from considering cases of alleged union breaches of the duty of fair representation. 64 LRRM 2373.

[8] Taylor Law §209-a provides. "... no body of federal or state law applicable wholly or in part to private employment, shall be regarded as binding or controlling precedent."

Law, Article XIV), which provides that local governments may enact procedures "substantially equivalent" to those contained in the Taylor Law. Section 212 provides that the improper practice provisions of the Taylor Law shall apply to local governments such as the City of New York; however, pursuant to Taylor Law §205.5(d), the PERB does not exercise exclusive nondelegable improper practice jurisdiction in the City of New York. Instead, the procedures of NYCCBL §1173-4.2 apply and are administered by the Board of Collective Bargaining subject to review by PERB on questions of law.

From this brief description of the interrelation between the NYCCBL and the Taylor Law with respect to jurisdiction over improper practices, it is clear that the State Legislature has made a finding, inherently expressed in Taylor Law §205.5(d), that NYCCBL 1173-4.2 is substantially equivalent to the improper practice provisions of Taylor Law §209-a. In addition, the Legislature has provided a review mechanism to insure that the continuing implementation of the NYCCBL by the Board of Collective is substantially equivalent to the PERB's, administration of §209-a.

Thus, In administering NYCCBL §1173-4.2, we find that we should be guided by available interpretations of the improper practice provisions of Taylor Law §209-a as well as by our own views as to the administration of the NYCCBL.

PERB has ruled on questions concerning internal union affairs twice;[9] in each case, PERB decided that it had no jurisdiction to find an improper practice based on allegations relating to internal union activities.

In CSEA and Bogack, the charging party had been divested of his union offices and suspended from membership by CSEA after inviting an outside union to solicit the support of CSEA members in challenging the CSEA status as certified representative. PERB held in its decision:

> "The action taken by CSEA related to its internal affairs ... The Board is not the forum to regulate the internal affairs of an employee organization ... There is a distinction between actions taken by an employee organization to discipline a member, and action taken against that member as an employee which would have an adverse effect upon the terms and conditions of his employment or upon the nature of the representation accorded him by CSEA as a member of the negotiating unit."
>
> "We do not here consider or decide whether the act of CSEA, as such, in suspending [the charging party] was proper, either substantively or procedurally; we find only that the act of CSEA herein complained of was not, under the circum stances here, violative of CSL section 209-a.2(a)."

PERB concluded that it had not been shown that the union's action "adversely affected the rights of fair representation owed by the employee organization to an employee as a member of a negotiating unit," and it dismissed the charge.

In UFT and Dembicer, the charging party alleged that his expulsion from an internal union caucus constituted an improper

---

[9] CSEA and Bogack, 9 PERB 3064 (1976); UFT and Dembicer, 9 PERB.

public employee practice. PERB, noting that "there is no claim that UFT ever failed to properly represent Dembicer in any matter involving his terms and conditions of employment" held that it had no jurisdiction in the case and dismissed the charge.

We note that the New York State courts have asserted jurisdiction in cases where a public employee complaint relates to an internal union election. In CSBA and City of New York,[10] the Appellate Division, First Department considered a dispute relating to a union ratification vote, and in Watkins v. Clark,[11] the Supreme Court, Rockland County, decided a case relating to a union chapter election and provisions for absentee balloting by mail.

The cases cited above show that PERB consistently finds it is without authority in internal union disagreements and that the State Courts have taken jurisdiction over such disputes, where appropriate, in cases relating to union elections.

The Petitioner herein contends that the alleged denial of his rights in a chapter election constitutes interference with rights guaranteed by NYCCBL §1173-4.1 to "assist" a public

---

[10] _____App. Div. 2d_____(1978).

[11] 380 NYS 2d 604 (1976).

employee organization and to bargain through an organization of the employee's own choosing. As the cases discussed above illustrate, there is no violation of statutory rights such as those guaranteed by §1173-4.1 where the alleged union conduct does not affect the employee's terms and conditions of employment and has no effect on the nature of the representation accorded to the employee by the union. In the instant case, Petitioner has not asserted that the conduct of the chapter election affected his terms and conditions of employment nor that the union's alleged actions had an effect on the union's representation of his interests as a member of the unit. Therefore, the conduct of the chapter election must be deemed an internal union matter not subject to the jurisdiction of the Board but rather a matter for internal union procedures, and after exhaustion of these, perhaps for the courts.[12]

0 R D E R

Pursuant to the power vested in the Board of Collective Bargaining by the New York City Collective Bargaining Law it is hereby

[12] The NYCCBL refers to intra union matters in two sections: §1173-9.0 relating to the rules of the Municipal Labor Committee and §1173-10.0 relating to unions which practice illegal discrimination based on race, color, creed or national origin; the specific mention of these two subjects in the Statute supports our finding that the Legislature did not intend the Board to have jurisdiction over subjects not specified in the Law.

ORDERED, that the petition herein be, and the same hereby is, dismissed for lack of jurisdiction.

DATED: New York, N.Y.
April 17, 1979

ARVID ANDERSON

WALTER L. EISENBERG

ERIC J. SCHMERTZ

FRANKLIN J. HAVELICK

EDWARD SILVER

EDWARD J. CLEARY

MARK J. CHERNOFF