Sharon, R.N. v. NYSNA, et. al, 27 OCB 1 (BCB 1981) [Decision No. B-1-81 (IP)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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THOMAS A. SHARON, R.N.,

Petitioner,

DECISION NO. B-1-81

-and-

DOCKET NO. BCB-462-80

THE NEW YORK STATE NURSES ASSOCIATION and GLORIA CAPPELLA, R.N., as representative,

Respondents.

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DECISION AND ORDER

This proceeding was commenced by the filing on November 3, 1980 of a Verified Improper Practice Petition by Thomas A. Sharon, R.N. (hereinafter "petitioner"). The petitioner names as respondents the New York State Nurses Association (hereinafter the "Union") and Gloria Cappella, R.N. (hereinafter "Nurse Cappella") as its representative (hereinafter jointly referred to as "respondents").

The nature of the controversy as stated in the petition involves the allegation that on Wednesday, October 29, 1980, at a union meeting held in Draper Hall at Metropolitan Hospital Center, the petitioner, having been given the floor, was "harassed, abused, and otherwise prevented from speaking, and also was threatened with reprisals" by Nurse Cappella, regional representative of the Union, "because I was critical of recent official union activities."

Petitioner asserts that he has been denied his rights to participate in union activity and has been unable to assert and enjoy his rights as a public employee under Section 1173-4.1 of the New York City Collective Bargaining Law (hereinafter "NYCCBL") .

The remedy requested includes the right to speak freely at union meetings without fear of harassment or reprisals and the issuance of a public apology to petitioner in writing by Nurse Cappella or another Union representative.

The respondents filed their Answer on November 17, 1980, denying the allegations of the petition and asserting three defenses, namely, (i) that all Union activity was and is protected activity under NYCCBL §1173-4.1; (ii) that the petition fails to state a cause of action or any violation of the NYCCBL; and (iii) that the petition lacks sufficient particularity to advise respondents of the nature and substance of the petitioner's allegations.

Petitioner did not file a reply.

DISCUSSION

As raised by the respondent's Answer, the threshold question for Board determination in this case is whether, assuming the truth of petitioner's allegations, the Board has jurisdiction to find an improper practice based on allegations concerning the conduct of a union meeting.

Section 1173-4.1 of the NYCCBL reads in relevant part as follows:

> "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."

Section 1173-4.2(b)(1) provides that it shall be an improper practice for any public employee organization or its agents,

> "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."

Subsection 4.1 therefore defines the rights of public employees with respect to self-organization and collective bargaining and subsection 4.2(b)(1) proscribes certain acts which constitute improper practices. No reference is made, however, to the conduct of union meetings. The Board finds that such meetings generally are internal union procedures.

Whether or not such internal union procedure is subject to Board jurisdiction under §1173-4.1 is the issue for determination.

In a prior Board decision, the Board declined to exercise jurisdiction where the allegations concerned the conduct of a union election, Jose Velez and Local 237, IBT, B-1-79. In that decision, the Board considered at great length the issue here presented and referred to decisions

of both the NLRB and New York State PERB. The Board stated with respect to the NLRB "it is clear that the petition herein would not be within the jurisdiction of the NLRB if the case involved private sector employment."

With respect to PERB decisions the Board cited two PERB cases in which jurisdiction was declined. In the first, Civil Service Employees Association, Inc., 9 PERB 3064 (1976), 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. In denying jurisdiction, PERB stated:

> "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."

In United Federation of Teachers, 9 PERB 3018 (1976), a case more closely analogous to the instant matter, the charging party alleged that his expulsion from an internal union caucus constituted an improper public employee organization 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.

In three more recent decisions, PERB has reaffirmed its refusal to assert jurisdiction where the charge essentially involves the conduct of internal union activity. In

Deputy Sheriff's Benevolent Association of Onandaga County, 11 PERB 4589 (1978), a PERB hearing officer ruled that PERB had no jurisdiction over a dispute involving the expulsion of a union member since such action did not affect either the terms and conditions of employment or the representation owed to the individual but rather involved the union's "internal affairs." In New York City Transit Authority, 13 PERB 4576 (1980), a similar decision was reached over an allegation involving the union's refusal to designate certain members as grievance representatives. See also, Civil Service Employees Association, Inc., 13 PERB 4523 (1980).

The cases cited above indicate that PERB has consistently found that it is without authority in internal union disagreements. Such has also been the rule we have applied and that we adhere to in the instant matter. This is not to say that every internal union action is immune from Board scrutiny. Any denial of rights guaranteed by the Taylor Law and the NYCCBL, whether effected by internal union procedures or otherwise, will receive our attention. By the same token, however, no action against a municipal employee is subject to our jurisdiction unless it is in violation of rights within the purview of the Taylor Law and the NYCCBL.

Consistent with the NLRB, PERB and the Board's prior decision in B-1-79, we therefore find that

> "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. B-1-79 at 9.

In the instant case, petitioner has not asserted that the denial of his right to participate in a union meeting without harassment affected his terms and conditions of employment or that the respondents' alleged actions had an effect on the union's representation of his interests as a member of the unit. Therefore, the conduct of union meetings must be deemed an internal union matter not subject to the jurisdiction of the Board; and petitioner's allegations of inappropriate or objectionable incidents at such a union meeting, even if deemed to be true, consequently cannot constitute a basis for a finding of improper practice as contemplated by §1173-4.1 of the NYCCBL.

O 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

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

DATED: January 6, 1981
New York, New York

ARVID ANDERSON
CHAIRMAN

DANIEL G. COLLINS
MEMBER

WALTER L. EISENBERG
MEMBER

JOHN D. FEERICK
MEMBER

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