Albino, 35 OCB 12 (BCB 1985) [Decision No. B-12-85 (IP)], aff'd, Albino v. Anderson, No. 11131/85 (Sup. Ct. N.Y. Co., Aug. 30, 1985).

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING
- X
In the Matter of the Improper
Practice Proceeding

-between- DECSION NO. B-12-85

THOMAS ALBINO,

Petitioner, DOCKET NO. BCB-755-85

-and-

THE CITY OF NEW YORK,

Respondent
- X

DECISION AND ORDER

This proceeding was commenced on January 8, 1985, with the filing of a verified improper practice petition byThomas Albino (hereinafter "petitioner"), against the City of New York Department of Parks and Recreation (hereinafter "respondent" or "the City"). On January 17, 1985, the City answered by filing a verified motion to dismiss on the ground that the petition failed to state a cause of action upon which relief may be granted under the New York City Collective Bargaining Law (NYCCBL), together with an affirmation in support of its motion. The petitioner filed a response on January 25, 1985, in the form of a motion for summary judgment.

Background

The petitioner is employed by the respondent and holds the title of Park Supervisor in the Department of Parks and Recreation. He is a member of a bargaining unit consolidated by order of the Office of Collective Bargaining, Board of Certification, on August 9, 1978.[1] This unit, the Uniformed Park Officers, Local 1508 (hereinafter "UPO"), is comprised of twenty-nine (29) job titles of various supervisory positions. The petitioner contends that the presence of Principal Park Supervisors in the UPO poses a threat to subordinate members and dominates the administration of the public employee organization.

Position of the Parties

Petitioner's Position

The petitioner alleges that the respondent has violated Section 1173-4.2 of the New York City Collective Bargaining Law ("NYCCBL"), by allowing Principal Park Supervisors to be members of the UPO. [2] It is claimed

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[1]Board of Certification Decision No. 38-78.

[2] Section 1173-4.2(a) of the New York City Collective Bargaining Law, provides that it shall be an improper practice for a public employer or its agents:

> (1) to interfere with, restrain or coerce public employees in the exercise of their rights granted in section 1173-4.1 of this chapter;

that Principal Park Supervisors are "agents for the employer" since they "effectuate the [employer's] policies by directing the [subordinate] employee," including the petitioner, to "perform his duties as the employer wishes." The petitioner argues that it "stands to reason" that the employer and Principal Park Supervisors are one in the same and therefore the mere presence of these "agents pose[s] a threat, real or imagined, against other members who are subordinate employees."

Respondent's Position

The City asserts in its motion to dismiss that the mere fact that Park Supervisors, being first line supervisors, and Principal Park Supervisors, being second

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(more)

(Footnote 2/ continued)

(2) to dominate or interfere with the formation or administration of any public employee organization;

(3) to discriminate against any employee for the purpose of encouraging or discouraging membership in, or participation in the activities of, any public employee organization;

(4) to refuse to bargain collectively in good faith on matters within the scope of collective bargaining with certified or designated representatives of its public employees.

line supervisors, are in the same bargaining unit, is insufficient to establish a prima facie case of an improper practice within the meaning of the NYCCBL. Since the petition is not based on any specific facts or circumstances, and does not "allege any probative facts which demonstrate domination, interference or an intent to interfere and/or dominate in violation of the NYCCBL," it deprives the respondent of a clear statement of the charges. The City also asserts that if the petitioner is dissatisfied with his collective bargaining unit or believes it to be inappropriate, he must seek changes in a different forum.

Discussion

It is well settled that on a motion to dismiss, the facts alleged by the petitioner must be deemed to be true. Thus, the only question to be decided by the Board here is whether, on its face, this petition states a cause of action under the NYCCBL.

The respondent's motion to dismiss presents, initially, an issue frequently raised before this Board: the question of whether the allegations of a petition are sufficient to satisfy Section 7.3 of the Revised Consolidated Rules of the Office of Collective Bargaining

(hereinafter "OCB Rules") which requires that an improper practice petition be verified and contain:

> a. The name and address of the petitioner;
> b. The name and address of the other party (respondent);
> c. A statement of the nature of the controversy, specifying the provisions of the statute, executive order or collective agreement involved, and any other relevant and material documents, dates and facts. If the controversy involves contractual provisions, such provisions shall be set forth;
> d. Such additional matter as may be relevant and material.

This rule is designed to place the respondent on notice of the nature of the petitioner's claim so as to enable the respondent to frame a meaningful response thereto. Essentially, Section 7.3 is a rule of notice pleading. It requires sufficient specificity to satisfy a respondent's right to due process and to permit the Board to determine its jurisdiction. Thus, although it is a long established Board policy that the OCB Rules are to be construed liberally,[3] a petition which fails to comply with the minimal standard set forth above deprives the responding party of a clear statement of the charges to be met and materially hampers the preparation of a defense. Applying this balance to the instant case, we

[3] Decision Nos. B-5-74, B-9-76, and B-8-77.

find that the petition herein does, indeed, lack the requisite level of specificity in that it contains no reference to dates and places on which incidents of domination occurred.

We find further that the petition herein has failed to establish a prima facie case of an improper practice in that no fact has been alleged that would support the underlying theory of petitioner's case that the presence of Principal Park Supervisors in the UPO adversely affects his continued enjoyment of rights under Section 1173-4.1. The petitioner fails to cite even one instance of interference or domination, and the record is devoid of any objective evidence that the City's actions were intended to or that they did, in fact, interfere with or diminish the petitioner's rights under this section. Mere conclusory allegations based upon petitioner's surmise as to the effects upon h is rights that he deems to be implicit in the circumstance complained of is not enough.

Finally, we note that to the extent that petitioner seeks to question the appropriateness of the UPO as it is presently constituted, it is an issue not within our jurisdiction. matters relating to the appropriate unit placement of employees are solely within the province of the Board of Certification.

Therefore, in view of the petition's lack of even the minimal level of specificity as required by Section 7.3 of the OCB Rules and, further, in light of its failure to demonstrate interference or an intent to interfere with rights of employees under the NYCCBL, we find that no violation of the NYCCBL has been stated. For the reasons set forth above, the City's motion to dismiss is granted.

O R D E R

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

ORDERED, that the motion to dismiss filed by the City in Docket No. BCB-755-85 be, and the same hereby is, granted.

DATED: New York, N.Y.
April 24, 1985

ARVID ANDERSON
CHAIRMAN

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