

Arakel v. L.237, IBT, Feinstein (Pres. of IBT), 41 OCB 17 (BCB 1988)
[Decision No. B-17-88 (ES)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of the Improper
Practice Proceeding

-between-

JOHN ARAKEL,
Petitioner,

DECISION NO. B-17-88 (ES)

-and-

DOCKET NO. BCB-1034-88

BARRY FEINSTEIN, President,
LOCAL 237, I.B.T.,
Respondent.

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DETERMINATION OF EXECUTIVE SECRETARY

On February 24, 1988, John Arakel ("petitioner") filed a verified improper practice petition in which he alleged that on September 14, 1987, he was serving as a hearing officer in a disciplinary matter at the Elliot-Chelsea Houses location of the New York City Housing Authority, when Felton Wright, a representative of Local 237, I.B.T. ("respondent") called him a "faggot." On October 7, 1987, petitioner alleges, a similar incident involving Mr. Wright took place at another Housing Authority location. On November 2, 1987, it is alleged, petitioner was to meet with Mr. Torres of Local 237 to discuss the incidents involving Mr. Wright and to "make a grievance" against him. However, shortly before the

meeting was scheduled to take place, Mr. Torres canceled the appointment and failed to call petitioner to reschedule the meeting. Thereafter, petitioner asserts, he learned that Mr. Torres had referred to him as a "sicko."

In a letter dated November 24, 1987, addressed to Barry Feinstein, President of respondent union, petitioner set forth the above-detailed incidents and questioned whether there was any point making a grievance or being represented by Local 237. Petitioner contends that "despite repeated requests.... respondent and his representatives have failed to respond to [his] complaint and resolve the incident in good faith." As a remedy for this failure, petitioner seeks a response to his complaint as well as corrective action "to prevent any future act of prejudicial harassment and bigotry."

Pursuant to Section 7.4 of the Revised Consolidated Rules of the Office of Collective Bargaining ("OCB Rules"), a copy of which is annexed hereto, I have reviewed the instant petition and have determined that it does not allege facts sufficient as a matter of law to constitute an improper practice within the meaning of the New York City Collective Bargaining Law ("NYCCBL"). The petition fails to allege that respondent has committed any acts

in violation of Section 1173-4.2b of the NYCCBL, which has been held to prohibit violations of the judicially recognized fair representation doctrine.¹

The doctrine of fair representation requires a union to treat all members of the bargaining unit in an evenhanded manner and to refrain from arbitrary, discriminatory and bad faith conduct.² However, the duty of fair representation is limited by, and is co-extensive with, the union's authority to act with respect to matters involving the employment relationship. Allegations of discrimination by the union on account of sexual preference, which form the basis for the instant peti-

¹ Section 1173-4.2b of the NYCCBL provides as follows:

Improper public employee organization practices. It shall be an improper practice for a 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 organization is a certified or designated representative of public employees of such employer.

See, Decision Nos. B-16-79; B-13-81.

² E.g., Decision No. B-12-82.

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tion, and which do not involve petitioner's relationship with the employer or the terms and conditions of his employment, constitute an internal union matter which is not within the jurisdiction of the Board of Collective Bargaining.³ The petition is hereby dismissed, therefore, without prejudice to any rights that petitioner may have in another forum.

DATED: New York, N.Y.
May 27, 1988

Marjorie A. London
Executive Secretary
Board of Collective
Bargaining

³ See. e.g., B-1-79.

REVISED CONSOLIDATED RULES OF THE
OFFICE OF COLLECTIVE BARGAINING

§7.4 Improper Practices. A petition alleging that a public employer or its agents or a public employee organization or its agents has engaged in or is engaging in an improper practice in violation of Section 1173-4.2 of the statute may be filed with the Board within four (4) months thereof by one (1) or more public employees or any public employee organization acting in their behalf or by a public employer together with a request to the Board for a final determination of the matter and for an appropriate remedial order. Within ten (10) days after a petition alleging improper practice is filed, the Executive Secretary shall review the allegations thereof to determine whether the facts as alleged may constitute an improper practice as set forth in section 1173-4.2 of the statute. If it is determined that the petition, on its face, does not contain facts sufficient as a matter of law to constitute a violation, or that the alleged violation occurred more than four (4) months prior to the filing of the charge, it shall be dismissed by the Executive Secretary and copies of such determination shall be served upon the parties by certified mail. If, upon such review, the Executive Secretary shall determine that the petition is not, on its face, untimely or insufficient notice of the determination shall be served on the parties by certified mail, provided, however, that such determination shall not constitute a bar to the assertion by respondent of defenses or challenges to the petition based upon allegations of untimeliness or insufficiency and supported by probative evidence available to the respondent. Within ten (10) days after receipt of a decision of the Executive Secretary dismissing an improper practice petition as provided in this subdivision, the petitioner may file with the Board of Collective Bargaining an original and three (3) copies of a statement in writing setting forth an appeal from the decision together with proof of service thereof upon all other parties. The statement shall set forth the reasons for the appeal.

§7.8 Answer-Service and Filing. Within ten (10) days after service of the petition, or, where the petition contains allegations of improper practice, within ten (10) days of the receipt of notice of finding by the Executive Secretary, pursuant to Rule 7.4, that the petition is not, on its face, untimely or insufficient, respondent shall serve and file its answer upon petitioner and any other party respondent, and shall file the original and three (3) copies thereof, with proof of service, with the Board. Where special circumstances exist that warrant an expedited determination, it shall be within the discretionary authority of the Director to order respondent to serve and file its answer within less than ten (10) days.

OTHER SECTIONS OF THE LAW AND RULES MAY BE APPLICABLE.

CONSULT THE COMPLETE TEXT.

