

Wilson v. James, 43 OCB 16 (BCB 1989) [Decision No. B-16-89 (ES)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of the Improper
Practice

-between-

Jacob Wilson,

DECISION NO. B-16-89 (ES)

Petitioner,

DOCKET NO. BCB-1134-89

-and-

Alfred James,

Respondent.

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DETERMINATION OF EXECUTIVE SECRETARY

On February 1, 1989, the Office of Collective Bargaining ("OCB") received from Jacob Wilson (hereinafter referred to as "petitioner") a verified improper practice petition dated January 30, 1989 which it did not accept for filing because petitioner failed to submit proof of service of the petition on Alfred James (hereinafter referred to as "respondent"), as required by Section 7.6 of the Revised Consolidated Rules of the Office of Collective Bargaining ("OCB Rules"). Respondent is a Business Agent of Local 237 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO. On February

6, 1989, the petition was resubmitted, together with proof of service, and was accepted for filing at that time.

The petitioner states that on December 14, 1987, because of illness, he was unable to attend a Step 1 hearing scheduled for that morning. He alleges that because the union "was not able to" postpone the hearing, his rights were not protected. Petitioner states that he was fired on August 2, 1988. He further alleges that no grievance appeal was filed.

Pursuant to Section 7.4 of the OCB Rules, a copy of which is annexed hereto, the undersigned has reviewed the petition and has determined that the improper practice claim asserted therein must be dismissed because 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 12-306b(1) of the NYCCBL, which has been recognized as prohibiting violations of the judicially recognized fair representation doctrine.¹ The duty of fair

¹ Section 12-306b of the NYCCBL provides:

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

representation has been defined as the obligation owed by a certified employee organization to represent bargaining unit members with respect to the negotiation, administration and enforcement of collective bargaining agreements.² In order to state a claim of breach of the duty of fair representation, moreover, the petitioner must show that the respondent's conduct toward him was arbitrary, discriminatory or in bad faith.³ It is well-settled that a union does not breach its duty of fair representation merely by refusing to bring a grievance to arbitration.⁴

This petitioner has not alleged any facts to support his claim that respondent failed to protect his rights at or subsequent to a hearing in December of 1987, nor has he offered any evidence that respondent treated him in an arbitrary, discriminatory or bad faith manner. Therefore, his allegations cannot form the basis of an improper practice claim under the NYCCBL.

Furthermore, it appears that the petition is untimely on its face. Section 7.4 provides, in relevant part, as

granted in Section 12-305 of this chapter, or to cause, or attempt to cause, a public employer to do so;....

² Decision Nos. B-24-86; B-14-83.

³ Decision Nos. B-9-88; B-9-86; B-2-84.

⁴ Decision Nos. B-50-88; B-30-88; B-32-86; B-25-84.

follows:

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 the Section 12-306 of the statute may be filed with the Board within four (4) months thereof....

Whether petitioner's complaint arises from an alleged failure of the union to act on or about the date of his termination on August 2, 1988, or on the December 14, 1987 hearing date, it is clear that he has failed to file this petition within four months of the inaction complained of.

Therefore, the instant petition is time-barred and must be dismissed.

DATED: April 3, 1989
New York, N.Y.

Marjorie A. London
Executive Secretary
Board of Collective

Bargaining