

O'Loughlin v. PBA, 43 OCB 41 (BCB 1989) [Decision No. B-41-89 (ES)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of

BRIAN T. O'LOUGHLIN,

Petitioner,

DECISION NO. B-41-89 (ES)

DOCKET NO. BCB-1172-89

-and-

PATROLMEN'S BENEVOLENT ASSOCIATION,
Respondent.

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DETERMINATION OF EXECUTIVE SECRETARY

On June 6, 1989, Brian T. O'Loughlin ("petitioner") filed a verified improper practice petition against the Patrolmen's Benevolent Association ("respondent" or "the PBA"), alleging as follows:

Involuntary check-off deduction of \$20.00 for a charitable contribution. Violation of Chapt. 54 sec. 1173-4.2b1 NYCCBL.¹

As a remedy, petitioner requests the refund of all deductions made in violation of the New York City Collective Bargaining Law ("NYCCBL").

Pursuant to Section 7.4 of the OCB Rules, a copy of

¹ The New York City Administrative Code has been renumbered. Accordingly, Section 1173-4.2b(1), referred to above, is now properly cited as Section 12-306b(1).

which is annexed hereto, the undersigned has reviewed the petition and has determined that it must be dismissed because, on its face, it does not contain facts sufficient as a matter of law to constitute an improper labor practice in violation of the NYCCBL.

It is well-established that a union owes a duty of fair representation to the members of the bargaining unit it represents and is required, pursuant to this duty, to fairly represent the interests of all bargaining unit members with respect to the negotiation, administration and enforcement of the collective bargaining agreement.² The Board of Collective Bargaining ("Board") has held that a breach of the duty of fair representation may constitute an improper public employee organization practice within the meaning of Section 12-306b(1) of the NYCCBL.³ In order to state a

² International Brotherhood of Electrical Workers v. Foust, 442 U.S. 32, 101 LRRM 2365 (1979). See, Decision No. B-16-79.

³ See, Decision Nos. B-14-83; B-39-82; B-18-82; B-13-81; B-16-79.

Section 12-306b(1) of the NYCCBL provides as follows:

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

Section 12-305 of the NYCCBL provides, in relevant part:

Public employees shall have the right to

prima facie violation of the statute, however, petitioner must allege that the specific acts complained of relate to the negotiation, administration or enforcement of a labor agreement between the union and employer, and that they constitute interference, restraint, or coercion of the petitioner relating to the exercise of his rights under Section 12-305 of the law.

In the instant matter, it does not appear that petitioner's allegation involves any activities on the part of respondent relating to the negotiation, administration or enforcement of a collective bargaining agreement. All that petitioner alleges is that there was an involuntary deduction from his paycheck of \$20.00 for a charitable contribution. He claims that this deduction constitutes a violation of Section 12-306b(1), but he does not allege any facts which arguably support a finding of union interference, restraint or coercion with respect to the exercise of rights protected by the statute. Instead, petitioner's claim relates essentially to an internal union matter. It has long been held that complaints concerning

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.

internal union matters are not subject to the jurisdiction of the Board in the absence of a showing that they affect the employee's terms and conditions of employment or the nature of the representation accorded to the employee by the union with respect to his employment.⁴ Here, no evidence of any effect on petitioner's terms and conditions of employment or on the PBA's representation of him vis-a-vis the employer has been proffered.⁵

The NYCCBL does not provide a remedy for every perceived wrong or inequity. Its provisions and procedures are designed to safeguard the rights of public employees that are created by statute, i.e., the right to organize, to form, join and assist public employee organizations, to bargain collectively through certified employee organizations, and the right to refrain from such

⁴ Decision Nos. B-1-79. See also, Decision Nos. B-9-86; B-23-84; B-1-81; B-18-79.

⁵ I note that in Decision No. B-18-84, the Board held that a dispute over a refund of union dues is an internal union matter and, therefore, outside of its jurisdiction. Similarly, in Civil Service Technical Guild, Local 374 and Prasad, 15 PERB ¶4520 (1982), a Hearing Officer of the New York State Public Employment Relations Board ("PERB") pointed out that the Taylor Law, the state analogue to the NYCCBL, protects only employees' rights to engage in union activity or to refrain from such activity. It does not enforce the union's constitution and/or bylaws or interfere in its internal management. Accordingly, the Hearing Officer determined that since the amount of dues is not a basic organizational or collective bargaining right, it is not covered by the law.

activities. It is clear that in the instant matter, petitioner's allegations concern internal union matters, which are not within the purview of the NYCCBL. Thus, in the absence of an allegation that respondent's actions were intended to, or did, affect any of petitioner's rights that are protected by the NYCCBL, I find that petitioner has failed to state a cause of action for which relief may be granted under the NYCCBL. Accordingly, this matter cannot be considered by the Board. I note, however, that dismissal of the petition is without

prejudice to any rights petitioner may have in any other
forum.

Dated: New York, New York
July 31, 1989

Marjorie A. London
Executive Secretary
Board of Collective
Bargaining