

Blackwood v. L.2021, DC37, 43 OCB 44 (BCB 1989) [Decision No. B-44-89 (ES)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the matter of

EDWARD S. BLACKWOOD,

Petitioner,

DECISION NO. B-44-89 (ES)

-and-

DOCKET NO. BCB-1187-89

LOCAL 2021, DISTRICT COUNCIL 37,
AFSCME, AFL-CIO,

Respondent.

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DETERMINATION OF THE EXECUTIVE SECRETARY

On July 26, 1989, Edward S. Blackwood (the "petitioner") filed a verified improper practice petition alleging that Local 2021, District Council 37, AFSCME, AFL-CIO (the "Union") deprived him of his rights granted under Section 12-306 [former Section 1173-4.2] of the New York City Collective Bargaining Law ("NYCCBL"). Specifically, petitioner alleges:

On July 10, 1989, I spoke with Sal Ferrari, union [representative] for [Off Track Betting] cashier employees and he informed me they will not represent me in a hearing/nor grant me a hearing as a union member. They take ... union dues [out of] every paycheck.¹

¹ The petition does not specify the relief sought.

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, the undersigned has reviewed the petition and has determined that it does not contain facts sufficient as a matter of law to constitute an improper practice within the meaning of the NYCCBL. The petition fails to allege that respondent has committed any acts in violation of Section 12-306b of the NYCCBL, which has been held to prohibit violations of the judicially recognized fair representation doctrine.²

The duty of fair 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

² 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 granted in Section 12-305 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-13-81; B-16-79.

bargaining agreements.³ In the area of contract administration, including the processing of employee grievances, it is well-settled that a union does not breach its duty of fair representation merely because it refuses to advance each and every grievance.⁴ The rule requires only that the union's decision not to advance a claim be made in good faith and not in an arbitrary or discriminatory manner.⁵

This petitioner has not alleged any facts to demonstrate that respondent treated him in an arbitrary, discriminatory or bad faith manner. Furthermore, he has not alleged that the Union's decision not to represent him in a hearing was improperly motivated or arbitrary, or that the treatment afforded him differed in any respect from that received by fellow employees in similar situations. While a claim that a union failed to process an employee's grievance or otherwise to represent a bargaining unit member might state a breach of the duty of fair representation and an improper practice under 12-306b of the NYCCBL if supported by evidence of improper motive rising to the level of bad

³ Decision Nos. B-24-86; B-14-83.

⁴ Decision Nos. B-58-88; B-30-88; B-32-86; B-25-84; B-2-84; B-13-82.

⁵ Decision Nos. B-58-88; B-30-88; B-9-88; B-2-84; B-13-82.

faith,⁶ the mere refusal to provide representation, without more, does not constitute a prima facie violation of the statute.

Accordingly, the petition herein is dismissed pursuant to Section 7.4 of the OCB Rules.

DATED: New York, N.Y.
August 30, 1989

Marjorie A. London
Executive Secretary
Board of Collective
Bargaining

⁶ Decision No. B-9-88.