

Lamotto v. L.831, Uniformed San. Ass., 45 OCB 9 (BCB 1990) [Decision No. B-9-90 (ES)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of the Improper
Practice Proceeding

-between-

RICHARD LAMOTTO,

DECISION NO. B-9-90 (ES)

Petitioner,

DOCKET NO. BCB-1238-89

-and-

LOCAL 831, UNIFORMED
SANITATIONMEN'S ASSOCIATION,

Respondent.

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DETERMINATION OF EXECUTIVE SECRETARY

On December 27, 1989, Richard Lamotto ("petitioner") filed a verified improper practice petition dated December 24, 1989 with the Office of Collective Bargaining against Local 831, Uniformed Sanitationmen's Association ("Union"). Petitioner alleges that he was hired by the New York City Department of Sanitation ("Department") on July 23, 1984. On December 28, 1987, he resigned to pursue other employment. Petitioner was reinstated with the Department on October 31, 1988, at which time he was told that he would not retain his seniority. Petitioner asserts that other similarly situated employees have retained their seniority upon reinstatement.¹ He further asserts that he spoke to "Local 831, Human Rights and the Department of Labor and they could not help [him]."

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 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

¹ Petitioner submitted documentation which purportedly demonstrates that three named individuals have been reinstated with seniority.

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 set forth therein, i.e., the right to bargain collectively through certified public employee organizations; the right to organize, form, join and assist public employee organizations; and the right to refrain from such activities.

Petitioner does not allege that respondent has committed any acts in violation of Section 12-306b of the NYCCBL, which defines improper practice public employee organization practices.² Apparently, petitioner would have the Board of Collective Bargaining ("Board") infer that the Union, in failing to assist petitioner regain his seniority, violated the duty of fair representation.

NYCCBL Section 12-306b has been recognized as prohibiting violations of the duty of fair representation owed by a certified employee organization to represent bargaining unit members with respect to negotiation, administration and enforcement of collective bargaining agreements.³ 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

² Section 12-306b of the NYCCBL provides:

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.

³ Decision No. B-14-83.

faith conduct.⁴ It is well-settled that a union does not breach its duty of fair represent-ation merely by refusing to advance a particular grievance. Rather, the duty of fair representation 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

It appears from the documentation submitted that other employees in the Department may have been reinstated with seniority. However, petitioner has not offered any evidence to show that the treatment the Union afforded him differed in any respect from that received by his fellow employees.

Furthermore, petitioner has not alleged that the Union's decision not to "help" him was arbitrary or in bad faith. In order to state a claim of breach of the duty of fair representation, it is not enough for the petitioner to allege that the Union failed to provide representation; it is necessary further to allege the existence of some improper motive for the failure to act.⁶

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 Section 12-306b of the NYCCBL, if supported by evidence of improper motive rising to the level of bad faith,⁷ 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 NYCCBL.

Dated: New York, New York
March 16, 1990

⁴ Decision Nos. B-9-88; B-9-86; B-2-84; B-12-82.

⁵ Decision Nos. B-58-88; B-9-88; B-25-84; B-2-84; B-16-83.

⁶ Decision No. B-58-88.

⁷ Decision No. B-9-88.

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Loren Krause Luzmore
Executive Secretary
Board of Collective
Bargaining