Robinson v. COBA, 47 OCB 11 (BCB 1991) [Decision No. B-11-91 (ES)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING
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In the Matter of

CLEVELAND ROBINSON,

Petitioner,

DECISION NO. B-11-91(ES)

-and-

DOCKET NO. BCB-1361-91

CORRECTION OFFICERS BENEVOLENT ASSOCIATION,

Respondent.

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DETERMINATION OF EXECUTIVE SECRETARY

On January 25, 1991, Cleveland Robinson ("the Petitioner"), filed a verified improper practice petition against the Correction Officers Benevolent Association ("COBA" or "the Respondent"). The petition alleges that the Respondent has interfered with, coerced and restrained public employees in the exercise of their rights granted in Section 12-305 of the New York City Collective Bargaining Law ("NYCCBL"),[1] by refusing to provide the Petitioner with copies of COBA's by-laws, financial statements, and the most recently negotiated collective bargaining agreement between COBA and the City of New York.[2]

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

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

> **Rights of public employees and certified employee organizations.** Public employees shall have the right to 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.
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> * * *

[2] It seems that Petitioner's request was among 300 such requests that were served upon the Respondent on October 16, 1990.

have reviewed the petition herein 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 NYCCBL. The petition fails to allege that the 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.[3]

The Board of Collective Bargaining ("the Board") has determined that 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.[4] A union breaches its duty of fair representation if it fails to act fairly, impartially and non-arbitrarily in negotiating, administering and enforcing collective bargaining agreements.[5] While a union's failure to inform its members concerning matters affecting terms and conditions of their employment may constitute a breach of the duty of fair representation,[6] charges which relate to internal union matters are

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[3] 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:
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> (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.

[4] Decision Nos. B-15-83; B-39-82; B-12-82.

[5] Decision Nos. B-24-86; B-14-83; B-13-82; B-11-82.

[6] Decision Nos. B-9-86; B-15-83.

not subject to the Board's jurisdiction unless it can be shown that they affect the nature of the representation accorded to employees by the union with respect to negotiating and maintaining terms and conditions of employment.[7]

In the instant matter, the Petitioner claims that COBA's alleged refusal to provide the information he requested has:

> ... in effect, prohibited the members, thereby interfering with and prohibiting the ascertaining of impeachment proceedings, accounting proceedings and general rules for participation in union activities.

Clearly, the Petitioner's allegation does not involve any activities on the part of the Respondent relating to the negotiation, administration or enforcement of a collective bargaining agreement. Furthermore, the Petitioner presents no evidence of any effect on his terms and conditions of employment or on COBA's representation of him vis-a-vis the employer. Instead, this claim relates to an internal union matter, redress of which is beyond the purview of the Board.

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 the statute, i.e., the right to organize, to form, join or assist public employee organizations, to bargain collectively through certified employee organizations, and the right to refrain from such activities. Inasmuch as the conduct complained of concerns an internal union matter, and in the absence of an allegation that the Respondent's action (or inaction) was intended to, or did, affect any of the Petitioner's rights that are protected by the NYCCBL, I find that the petition fails to state a cause of action for which relief may be granted under the NYCCBL.

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[7] In Decision No. B-26-90, the Board held that "unlike the federal laws protecting the rights of union members in the private sector, neither the NYCCBL nor the Taylor Law regulate internal affairs of unions." See also, Decision Nos. B-23-84; B-18-84; B-15-83; B-18-79; B-1-79.

Accordingly, this matter cannot be considered by the Board. I note, however, that dismissal of the petition is without prejudice to any rights the Petitioner may have in any other forum.

DATED: New York, New York
March 11, 1991

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LOREN KRAUSE LUZMORE
Executive Secretary
Board of Collective
Bargaining