

Leahey v. P. Caruso (Pres. of PBA), et. al, 47 OCB 12 (BCB 1991) [Decision No. B-12-91 (ES)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of

CHARLES LEAHEY,

Petitioner,

DECISION NO. B-12-91(ES)

-and-

DOCKET NO. BCB-1362-91

PHIL CARUSO, PRESIDENT, PATROLMEN'S
BENEVOLENT ASSOCIATION and BOARD
TRUSTEES OF THE PATROLMEN'S
BENEVOLENT ASSOCIATION,

Respondents.

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DETERMINATION OF EXECUTIVE SECRETARY

On January 28, 1991, Charles Leahey ("the Petitioner"), filed a verified improper practice petition against Phil Caruso, President of the Patrolmen's Benevolent Association ("PBA") and the Board Trustees of the PBA (collectively referred to as "the Respondents"). The Petitioner alleges that:

\$2,000,000 was stolen from the cop's fund by [a] PBA attorney who is still employed by the PBA as a consultant. My union, the PBA, refuse[d] to supply me with their financial records and proof that other PBA Trustees were not looting the fund, and proof that stolen money was returned.¹

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 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 Respondents have 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

¹ The Petitioner contends that a written request for this information was sent to the Respondents on October 31, 1990.

² Section 12-306b of the NYCCBL provides:

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.³ 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.⁴ 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,⁵ charges which relate to internal union matters are 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.⁶

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.

³ Decision Nos. B-15-83; B-39-82; B-12-82.

⁴ Decision Nos. B-24-86; B-14-83; B-13-82; B-11-82.

⁵ Decision Nos. B-9-86; B-15-83.

⁶ 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;

In the instant matter, the Petitioner alleges that a union attorney has misused PBA funds and that the Respondent's are "covering up this criminal act." The Petitioner also alleges that the Respondents have breached their fiduciary duty to supply him with copies of the PBA's financial records.

Clearly, the Petitioner's allegations do not involve any activities on the part of the Respondents 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 the Respondents' representation of him vis-a-vis the employer resulting from the alleged failure to provide him with the requested information. Instead, the Petitioner's improper practice 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 Respondents' actions (or inactions) were 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.

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 12, 1991

LOREN KRAUSE LUZMORE
Executive Secretary

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Board of Collective
Bargaining