Mamet v. Kelly (Pres. of CEA), et. al, 47 OCB 14 (BCB 1991) [Decision No. B-14-91 (ES)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING
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In the Matter of DECISION NO. B-14-91 (ES)

CAPTAIN EDWARD MAMET, DOCKET NO. BCB-1358-91
Petitioner,

-and-

CAPTAIN WILLIAM P. KELLY, PRESIDENT
CAPTAINS ENDOWMENT ASSOCIATION and
the BOARD OF THE CAPTAINS ENDOWMENT
ASSOCIATION,
Respondents.
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DETERMINATION OF EXECUTIVE SECRETARY

On January 15, 1991, Captain Edward Mamet ("the Petitioner") , filed a verified improper practice petition against Captain William P. Kelly, President of the Captains Endowment Association (“CEA”) , and the Board of the CEA (collectively referred to as "the Respondents") . The petition alleges that the Respondents unfairly conducted an internal union election.

Specifically, Petitioner alleges that the ballots in an election for Captain's Representatives "were deliberately designed by the CEA President to give the incumbent members of his board an unfair advantage over the challengers." Petitioner explains that there were six captains competing for four positions; he was one of the two losing challengers. Petitioner notes that all four incumbents received approximately the same number of votes, and that the number of votes the incumbents received was more than three times the number received by either challenger.

Petitioner contends that the design of the ballot produced the above-referenced disparate results. In support of his

contention, Petitioner notes that the names and positions of all of the union officers appeared on the ballot, not just the names of those running for the Captain's Representative positions. Additionally, the names of the incumbent Captain's Representatives appeared next to the names of the other union officers; the names of the two challengers appeared on the line below. As a remedy, Petitioner requests that the election for Captain's Representatives be declared "null and void ... [and that] a new election administered outside of the CEA using a ballot designed for only the positions being contested" be conducted.

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 New York City Collective Bargaining Law ("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.[1]

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[1] 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

(continued...)

The Board of Collective Bargaining ("the Board"), has determined that the doctrine of f air 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.[2] 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.[3] 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,[4] 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

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1(... continued)
to do so;

(2) to refuse to bargain collectively in good f aith 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.

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

[3] Decision Nos. B-14-83; B-13-82.

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

conditions of employment.[5]

In the instant matter, Petitioner alleges that the way in which the ballots were designed caused a disparate and unfair result in the election for Captain's Representatives. 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 his employer resulting from the alleged improper conduct of the Captain's Representatives election. 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,

[5] 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 the internal affairs of unions." See also, Decision Nos. B-23-84; B-18-84; B-15-83; B-18-79; B-1-79.

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 the dismissal of the petition is without prejudice to any rights the Petitioner may have in another forum.

DATED: New York, New York
March 20, 1991

LOREN KRAUSE LUZMORE
Executive Secretary
Board of Collective Bargaining

§7.4 Improper Practices. A petition alleging that a public employer or its agents or a public employee organization or its agents has engaged in or is engaging in an improper practice in violation of Section 1173-4.2 [12-306] of the statute may be filed with the Board within four (4) months thereof by one (1) or more public employees or any public employee organization acting in their behalf or by a public employer together with a request to the Board for a final determination of the matter and for an appropriate remedial order. Within ten (10) days after a petition alleging improper practice is filed, the Executive Secretary shall review the allegations thereof to determine whether the facts as alleged may constitute an improper practice as set forth in section 1173-4.2 [12-306] of the statute. If it is determined that the petition, on its face, does not contain facts sufficient as a matter of law constitute a violation, or that the alleged violation occurred more than four (4) months prior to the filing of the charge, it shall be dismissed by the Executive Secretary and copies of such determination shall be served upon the parties by certified mail. If, upon such review, the Executive Secretary shall determine that the petition is not, on its face, untimely or insufficient, notice of the determination shall be served on the parties by certified mail, provided, however, that such determination shall not constitute a bar to the assertion by respondent of defenses or challenges to the petition based upon allegations of untimeliness or insufficiency and supported by probative evidence available to the respondent. Within ten (10) days after receipt of a decision of the Executive Secretary dismissing an improper practice petition as provided in this subdivision, the petitioner may file with the Board of Collective Bargaining an original and three (3) copies of a statement in writing setting forth an appeal from the decision together with proof of service thereof upon all other parties. The statement shall set forth the reasons for the appeal.

§ 7.8 Answer - Service and Filing. Within ten (10) days after service of the petition, or, where the petition contains allegations of improper practice, within ten (10) days of the receipt of notice of finding by the Executive Secretary, pursuant to Rule 7.4, that the petition is not, on its face, untimely or insufficient, respondent shall serve and file its answer upon the petitioner and any other party respondent, and shall file the original and three (3) copies thereof, with proof of service, with the Board. Where special circumstances exist that warrant an expedited determination, it shall be within the discretionary authority of the Director to order respondent to serve and file its answer within less than ten (10) days.

**OTHER SECTIONS OF THE LAW AND RULES KAY BE APPLICABLE.
CONSULT THE COMPLETE TEXT**