
The Petition

The petition alleges that 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.

The Executive Secretary's Determination

In Decision No. B-14-91 (ES) , the Executive Secretary found that the petition failed to allege that Respondents committed any acts in violation of Section 12-306b of the NYCCBL, which prohibits violations of the judicially recognized fair representation doctrine.² The Executive Secretary held that the charges relate to an internal union matter not subject to the Board's jurisdiction absent a showing of an affect on the nature of the representation accorded to employees by the CEA with respect to negotiating and maintaining terms and conditions of employment.

The Executive Secretary explained:

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

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.

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.

The Appeal

Petitioner argues that the Board of Collective Bargaining has jurisdiction over the instant dispute and, accordingly, that his petition should not have been dismissed. Referring to the language in the Executive Secretary's determination which states that OCB lacks jurisdiction over internal union matters unless they affect the nature of the representation accorded to employees by their union with respect to negotiating terms and conditions of employment, Petitioner contends that the challenged election affects the nature of the representation accorded to employees.

Petitioner explains that the CEA has fifteen elected officers, nine of whom make up the Board of Directors. Since the CEA President's actions must be approved by the CEA Board, Petitioner argues that the "CEA Board plays a key role in negotiating and maintaining terms and conditions of employment" by serving as a check on the President's authority. Petitioner further argues that if the Board of Collective Bargaining were to invalidate the challenged election and order a new one, "a CEA Board more independent from the President" could be the result. Accordingly, "the outcome of future collective bargaining issues might be far different with such a CEA Board."

DISCUSSION

The Petitioner claims that the Executive Secretary erred in dismissing the petition for failure to state a cause of action. Petitioner submits that the way in which an election is conducted affects the nature of the representation accorded to employees. Therefore, Petitioner asserts that he has raised a matter within the Board's jurisdiction.

Section 12-306b of the NYCCBL, which identifies union improper practices, has been held to prohibit violations of the judicially recognized fair representation doctrine. This doctrine 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 It is well settled that 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 However, the Board of Collective Bargaining has no jurisdiction over internal union affairs, which do not affect the nature of the representation accorded to the employee by the union with respect to negotiating and maintaining terms and conditions of employment.⁵

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

⁴ Decision Nos. B-14-83; B-13-82.

⁵ Decision Nos. B-27-90; B-26-90; B-9-86; B-23-84; B-18-84; B-15-83; B-1-81; B-18-79; B-1-79.

We have reviewed the Petitioner's allegations of a breach of the duty of fair representation, and find them to be conclusory and unsupported by factual allegations sufficient to state a cause of action. The only facts offered in support of Petitioner's claim relate to the ability of the CEA Board to act as a check on the CEA President's authority. According to the Petitioner, were the challenged election to be invalidated and a new one held, a CEA Board more independent from the President could be the result, thus affecting the outcome of future collective bargaining negotiations. We find, however, that these allegations are too speculative and conclusory to support a claim of improper practice. As previously stated, in order for an internal union matter to constitute an improper practice it must affect the nature of the representation accorded to the employee by the union with respect to negotiating and maintaining terms and conditions of employment. In the instant case, Petitioner has not alleged how his terms and conditions of employment are affected by the challenged election. Nor has Petitioner alleged that the Union's representation of him is inadequate as a result of the challenged election.

In Decision No. B-1-79, Petitioner, who was a candidate in a union chapter election, alleged his union committed an improper practice by not furnishing mail ballots to certain members who requested them. Petitioner complained that the union's failure to furnish these mail ballots caused his defeat and resulted in the election of all of the union's choices. In refusing to find a

breach of the duty of fair representation, we stated:

Petitioner has not asserted that the conduct of the chapter election affected his terms and conditions of employment nor that the union's alleged actions had an effect on the union's representation of his interests as a member of the unit.

It appears that Petitioner misunderstands the extent to which a matter must impact on terms and conditions of employment and on the nature of the representation accorded to an employee before a finding of improper practice will result. Mere conclusory allegations that an internal union matter has such an effect, or speculation that it could have such an effect, will not suffice. The Petitioner has failed to supply specific and concrete facts in support of his allegation that the challenged election has affected his employment and the nature of the representation accorded to him, and, therefore, he has failed to provide any basis for this Board to inquire into what is otherwise an internal union matter.

In the instant matter, the gravamen of Petitioner's complaint is that the way in which the ballots were designed in an election for Captain's Representatives caused a disparate and unfair result. However, the Petitioner does not allege any effect on his terms and conditions of employment or on the Respondents' representation of him vis-a-vis his employer. Accordingly, because Petitioner has not alleged any basis for overturning the decision of the Executive Secretary, we shall deny the appeal and confirm the Determination of the Executive Secretary. We note, however, as did the Executive Secretary, that dismissal of the petition is without prejudice to

any rights the Petitioner may have in another forum.⁶

ORDER

Pursuant to the powers vested in the Board of Collective Bargaining by the New York City Collective Bargaining Law, it is hereby

ORDERED, that the Petitioner's appeal be, and the same hereby is, denied; and it is further

ORDERED, that the determination of the Executive Secretary be, and the same hereby is, confirmed.

Dated: New York, NY
April 24, 1991

MALCOLM D. MacDONALD
CHAIRMAN

GEORGE NICOLAU
MEMBER

DANIEL G. COLLINS
MEMBER

GEORGE DANIELS
MEMBER

ELSIE A. CRUM
MEMBER

⁶ Although this Board lacks jurisdiction in this matter, we note that the courts may assert jurisdiction over internal union affairs in certain situations. (See, Decision Nos. B-23-84; B-1-79; See also, Allen v. New York City Transit Authority, 109 Misc.2d 178, 439 N.Y.S.2d 811 (Sup. Ct., Kings Co., 1981); Watkins v. Clark, 85 Misc.2d 727, 380 N.Y.S.2d 604 (Sup. Ct., Rockland Co., 1976); Woodley v. Butler, 101 Misc.2d 670, 421 N.Y.S.2d 797 (Sup. Ct., New York Co., 1979).]