Walz v. L.461, DC37 & L. Perlmutter (as Pres.), 49 OCB 1 (BCB 1992) [Decision No. B-1-92 (ES)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of the Improper Practice Proceeding

DECISION NO. B-1-92 (ES)

-between-

DOCKET NO. BCB-1422-91

HERMANN WALZ,

Petitioner,

-and-

LOCAL 461, DISTRICT COUNCIL 37, AFSCME, AFL-CIO and LEO PERLMUTTER, PRESIDENT,

Respondents.
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DETERMINATION OF EXECUTIVE SECRETARY

On September 30, 1991, the office of Collective Bargaining ("OCB") received a verified improper practice petition from Hermann Walz ("the Petitioner") in which he alleges that Local 461 (New York City Lifeguards) and its President, Leo Perlmutter, violated Sections 12-306a(l) and (3) of the New York City Collective Bargaining Law ("NYCCBL").[1] In support of his claim, Petitioner contends that Leo Perlmutter has refused to hold a

[1]NYCCBL §12-306 (formerly §1173-4.2) provides as follows:

> **Improper practices: good faith bargaining.**
>
> **a. Improper public employer practices.** It shall be an improper practice for a public employer or its agents:
>
> (1) to interfere with, restrain or coerce public employees in the exercise of their rights granted in Section 12-305 (formerly §1173-4.1) of this chapter;
>
> (3) to discriminate against any employee for the purpose of encouraging or discouraging membership in, or participation in the activities of, any public employee organization;

union election during the last eight years. The petition further alleges that there has never been a union election open to the membership, and that the President canceled a scheduled election two hours before it was due to be held, claiming in part that the cancellation was due to a subway accident. The Petitioner complain that "Leo Perlmutter has refused my telephone calls for 10 weeks and refused to turn over a copy of the [Local 461] constitution."

According to the Petitioner, President Perlmutter currently holds an elected office in Local 508 (Now York City Lifeguard Supervisors), a position that allegedly places him in direct conflict with the interests of the members of Local 461.[2] As a remedy, the Petitioner requests that: 1) Local 461 be directed to turn over a copy of its constitution; 2) Leo Perlmutter resign as President of Local 461, along with other officers; 3) a union election be held immediately; and 4) evidence be made available of a past union election open to the membership.

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

[2]Both City Lifeguards and Lifeguard supervisory titles have been certified for union representation by District Council 37 under a common bargaining certificate. [See Certification No. 25-80 (as amended).]

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. The NYCCBL does no t 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 has failed to allege that Local 461 or its President, Leo Perlmutter, has committed any act in violation of the applicable provisions of the NYCCBL, §12-306b.[3] It is not

[3]Section 12-306b of the NYCCBL provides as follows:

> **b. 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.

apparent, nor does petitioner explain, how his allegations relate to anything other than purely internal union affairs.

The Board of Collective Bargaining has long held that complaints concerning internal union matters are not subject to its jurisdiction unless it can be shown that they affect the employee's terms and conditions of employment or the nature of the representation accorded to the employee by the union with respect to his employment.[4] In this case, the Petitioner has offered no evidence of any effect on his terms and conditions of employment or on District Council 37's representation of him vis-a-vis the employer. 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. Thus, any cause of action for challenging internal union conduct that does not have any of the effects stated above is beyond the jurisdiction of this Office.

Since none of the allegations set forth in the petition involve a matter within the jurisdiction of the OCB, the petition must be dismissed. I note, however, that dismissal is without

[4]See Decision Nos. B-23-84; B-15-83; B-18-79; and B-1-79. These holdings are consistent with the view of the state Public Employment Relations Board (Civil Service Employees Association and Bogack, 9 PERB ¶3064 [1976]; United Federation of Teachers and Dembicer, 9 PERB ¶3018 [1976]; Capalbo and Council 82, Security and Law Enforcement Employees, 21 PERB ¶4556 [Dir. 1988); Civil Service Employees Association, Inc. and Michael, 13 PERB ¶4522 [H.O. 1980]; and Lucheso and Deputy Sheriff's Benevolent Association of Onondaga County, 11 PERB ¶4589 [H.O. 1978]).

prejudice to any rights that the Petitioner may have in another forum.

DATED: New York, New York
January 23, 1992

Loren Krause Luzmore
Executive Secretary
Board of Collective
Bargaining

REVISED CONSOLIDATED RULES
OF THE OFFICE 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 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 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 MAY BE APPLICABLE.
CONSULT THE COMPLETE TEXT.