Sicular v. B. Croghan (Pres. of OSA), 49 OCB 33 (BCB 1992) [Decision No. B-33-92 (ES)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING
---------- X
In the Matter of the Improper
Practice Proceeding

-between-

Roy Sicular,
Petitioner,

-and-

Decision No. B-33-92(ES)
Docket No. BCB-1518-92

Bob Croghan, President,
Organization of Staff Analysts,

Respondent.
---------- X

DETERMINATION OF EXECUTIVE SECRETARY

On August 24, 1992, Roy Sicular ("petitioner") filed a verified improper practice petition against Bob Croghan as President of the Organization of Staff Analysts ("the Union"). Petitioner states that he is the duly elected chapter chairperson of the New York City Housing Authority Chapter of the Union and has served in that capacity for four years.

As the basis of his complaint, petitioner alleges as follows:

> I have always sent out letters and newsletters to the analysts in our chapter, but recently Mr. Croghan took issue with some material that I had sent out and made an issue that he wanted to review all the material that I sent out. He called a meeting, without me, of the OSART and OSA Boards and tried to bully these Boards into having me step down from my post. These organizations are by law supposed to be separate since OSART employees are not eligible for collective bargaining. In addition persons were invited to these Board meetings who were not really on those Boards. For example, Lou Levy, grievance officer of OSA, was not ever elected, nor is Roxana Calinescu a member of OSART, since she is in OSA. Only the OSA membership should have the right to "throw me out."

As a remedy, petitioner requests that respondent "be ordered to stop and desist from his efforts to illegally depose [him]" and "respect the democratic right of a local to elect their own leadership....”

Pursuant to Title 61, § 1-07(d) of the Rules of the City of New York (formerly § 7.4 of the Revised Consolidated Rules of the Office of Collective Bargaining), a copy of which is annexed hereto, the undersigned has reviewed the petition and has determined that it does not allege facts sufficient as a matter of law to constitute a claim of improper practice against the Union or its agent within the meaning of § 12-306 of the New York City Collective Bargaining Law (“NYCCBL").[1] The NYCCBL does not provide a remedy for every perceived wrong or inequity. Its provisions and procedures are not designed to protect public

[1] Section 12-306 of the New York City Collective Bargaining Law 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.

employees from all forms of wrongdoing, but to safeguard the rights of public employees set forth in § 12-305.[2]

In the instant case, petitioner has failed to demonstrate that the Union committed any act which may constitute an improper public employee organization practice under the NYCCBL. The conduct alleged in the petition herein constitutes an internal union matter which does not come within the purview of the statute. 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. Complaints concerning internal union matters are not subject to the jurisdiction of the Board of Collective Bargaining unless it is 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.[3]

---

[2] 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 such activities ... A certified or designated employee organization shall be recognized as the exclusive bargaining representative of the public employees in the appropriate bargaining unit.

[3] Decision Nos. B-22-91; B-26-90; B-23-84; B-15-83; B-18-79; B-1-79. These holdings are consistent with the view of the U.S. Supreme Court (NLRB v. Allis Chalmers Mfg, Co., 388 U.S. 175, 65 LRRM 2449 [1967]), and with that of the New York State Public Employment Relations Board (Civil Service Employees Association and Bogack, 9 PERB 13064 [1976]; United Federation of Teachers and Dembicer, 9 PERB 13018 [1976); Capalbo and Council 82.

(continued...)

Here, petitioner has offered no evidence of an effect on the terms and conditions of his employment or on the Union's representation of him vis-a-vis the employer. However respondent's acts may be characterized, there has been no showing that respondent affected any rights protected by the NYCCBL. For this reason, the instant petition is dismissed, without prejudice to any rights that petitioner may have in any other forum.

Dated: New York, New York
September 30, 1992

Loren Krause Luzmore
Executive Secretary

3(... continued)
Security-and Law Enforcement Employees, 21 PERB ¶4556 [Dir.1988]; Civil Service Employees Association 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]).

In Decision No. B-1-79, the Board noted that the NYCCBL refers to internal union matters in § 12-313 (rules of the Municipal Labor Committee) and § 12-314 (illegal discrimination based on race, color, creed or national origin) . It held that "the specific mention of these two subjects in the Statute supports our finding that the Legislature did not intend the Board to have jurisdiction over subjects not specified in the Law."

TITLE 61 OF THE RULES OF THE CITY OF NEW YORK (FORMERLY REFERRED TO AS THE REVISED CONSOLIDATED RULES OF THE OFFICE OF COLLECTIVE BARGAINING)

Section 1-07(d) (formerly § 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 12-306 (formerly 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 as alleged may constitute an improper practice as set forth in section 12-306 (formerly 1173-4.2) 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. It, 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.

Section 1-07(h) (formerly § 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 the Executive Secretary, pursuant to Title 61, Section 1-07(d) of the Rules of the City of New York (formerly 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 part 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

7/92