

Jones-Dillard v. L.1181, CWA, 51 OCB 42 (BCB 1993) [Decision No. B-42-93 (ES)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of

Katherine Jones-Dillard,

 Petitioner,

- and-

Decision No. B-42-93 (ES)

Local 1181, Communications
Workers of America,

Docket No. BCB-1602-93

Respondent.

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DETERMINATION OF EXECUTIVE SECRETARY

On August 19, 1993, Katherine Jones-Dillard ("petitioner") filed a verified improper practice petition against Local 1181 of the Communications Workers of America ("Union"). Petitioner claims that the Union committed improper labor practices in violation of the New York City Collective Bargaining Law ("NYCCBL")¹ because she was "not properly protected or

¹ Section 12-306 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

represented" by the Union "during the entire promotional process, beginning in 1989 until present."

Petitioner states that she has been employed by the Department of Transportation for fourteen years. In the past eight years, she has been employed in the title Lieutenant.

Petitioner's complaint is as follows:

In 1989, after an interview was held for promotions to captain, I met all the criteria needed to be qualified. But, the listing showed ineligible placed next to my name. A copy of this list was forwarded to Local 1181 to question the eligibility, they never supplied me with an answer. I made the eligibility list for 1993 and was denied the promotion because false allegations instituted that open charges were pending against me. Which I have no knowledge of. Therefore, I feel that Local 1181 has no interest in my promotion.

Pursuant to Title 61, Section 1-07(d) of the Rules of the City of New York, a copy of which is annexed hereto, the undersigned has reviewed the petition and has determined that the improper practice claim asserted therein must be dismissed. The claim concerning the alleged failure to promote petitioner in 1989 is untimely on its face. Under Section 1-07(d), an improper practice petition must be filed within four months of the alleged violation of the statute. In the instant case, petitioner claims

such employer.

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 of such activities....

that the Union did not respond to a request to review her eligibility for promotion in 1989, a claim which clearly does not fall within the time limit prescribed in the statute.

As to petitioner's alleged denial of promotion in 1993, it is not clear what, if anything, petitioner asked the Union to do on her behalf. Thus, I note that even if the petition were timely filed, the improper practice petition would be dismissed because 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 Union has 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.

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.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

The petition herein is devoid of any allegations of union improper practice. Petitioner has failed to allege any facts in

² Decision Nos. B-5-91; B-51-90; B-15-83; B-12-82.

³ Decision Nos. B-56-90; B-27-90; B-72-88, B-13-82.

support of a finding of arbitrary, discriminatory or bad faith conduct on the part of the Union.

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, and the right to refrain from such activities. Since the petition contains no allegations of fact which would support a claim that the Union breached its duty of fair representation, I find that the petition fails to state a cause of action for which relief may be granted under the NYCCBL.

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
October 5, 1993

Loren Krause Luzmore
Executive Secretary
Board of Collective Bargaining