

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

-----x
In the Matter of the Improper Practice

--between--

WILLIAM CANNON, SR.,

Petitioner,

DECISION NO. B-19-94 (ES)

--and--

DOCKET NO. BCB-1658-94

LOCAL 237, INTERNATIONAL BROTHERHOOD
OF TEAMSTERS,

Respondent,

--and--

NEW YORK CITY HOUSING AUTHORITY,

Respondent.

-----x

DETERMINATION OF EXECUTIVE SECRETARY

On June 13, 1994, William Cannon, Sr. ("Petitioner"), who is employed in the title of Caretaker "J," filed a verified improper practice petition against Local 237, International Brotherhood of Teamsters ("Union"), and the New York City Housing Authority ("Housing Authority").

Petitioner alleges, inter alia, an "underpayment of wages" and attaches documentation purportedly to show that wages were wrongfully withheld for days on which a medical leave-of-absence was requested and approved. In other attachments, Petitioner states that while he was experiencing physical pain, blackouts and seizures, he was instructed by his supervisor(s) to perform certain duties, some of which were not customarily assigned to him, under threat of discipline. Finally, Petitioner alleges "harassment, failure of employer to seek emergency medical care, and failure of union to file grievance on behalf of employee and to pursue employer misconduct."

As relief, Petitioner asks the Board of Collective Bargaining ("Board") to "direct employer and Local Union 237 to abide by the collective bargaining agreement, direct employer to pay the employee the proper wages due, etc., and to direct the Local Union 237 to file the appropriate grievance on behalf of

the named employee William Cannon, Sr."

Based on my review, I have determined, pursuant to Title 61, Section 1-07(d) of the Rules of the City of New York, a copy of which is annexed hereto, that the petition must be dismissed as it fails to allege facts sufficient as a matter of law to constitute an improper practice within the meaning of §12-306 of the New York City Collective Bargaining Law ("NYCCBL").¹

As to the charges against the Housing Authority, Petitioner has failed to allege facts to support a claim that the employer committed any acts in violation of §12-306a of the NYCCBL, which defines improper public employer practices. With regard to Petitioner's wage claims, it is well-established

¹ NYCCBL §12-306 provides, in relevant part, as follows:

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 § 12-305 [formerly § 1173-4.1] of this chapter;

(2) to dominate or interfere with the formation or administration of any public employee organization;

(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;

(4) to refuse to bargain collectively in good faith on matters within the scope of collective bargaining with certified or designated representatives of its public employees.

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 § 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.

that the jurisdiction of this Board may not be invoked if the claimed statutory violation derives solely from an alleged violation of a collective bargaining agreement.² The Board is without authority to enforce the terms of a collective bargaining agreement and may not exercise jurisdiction over an alleged violation of an agreement unless the acts constituting such a violation would otherwise constitute an improper practice.³ These principles flow from §205.5(d) of the Taylor Law which states:

[The Public Employment Relations Board, hereinafter "PERB"] shall not have authority to enforce an agreement between an employer and an employee organization and shall not exercise jurisdiction over an alleged violation of such an agreement that would not otherwise constitute an improper employer or employee organization practice.

Even assuming the truth and accuracy regarding Petitioner's allegations of employer misconduct, it does not appear that the Housing Authority "harassed" Petitioner for any of the proscribed reasons set forth in the NYCCBL. There is no allegation that the Housing Authority's actions were connected in any way with the Petitioner's exercise of his right to form, join, assist, or participate in the activities of a public employee organization; or to refrain therefrom. There is no suggestion of retaliation for engaging in protected union activity (i.e., the filing of grievances).

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 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. The petition herein does not allege that the Housing Authority's actions were intended to effect the exercise of any of these rights.

As to Petitioner's charge against the Union, the petition fails to

² Decision Nos. B-60-88; B-55-88; B-36-87.

³ Decision Nos. B-36-87; B-29-87; B-8-85.

allege facts to show that the Union has committed any acts in violation of NYCCBL § 12-306b, which has been held to prohibit violations of the judicially recognized fair representation doctrine. 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.⁴ A union breaches its duty of fair representation if it fails to act fairly, impartially and in a non-arbitrary manner in negotiating, administering and enforcing collective bargaining agreements.⁵

Petitioner's claims against the Union for failure to file a grievance are entirely conclusory. In order to state a claim of breach of the duty of fair representation, the Petitioner must allege facts sufficient to show that the Union's conduct toward him was arbitrary, discriminatory or in bad faith. Here, the Petitioner has failed to allege when he requested the Union to file a grievance, to whom the request was made, and what the basis of the grievance was. He also has not alleged what the Union's response was. In the absence of sufficient specificity concerning this claim, it is impossible for us to find that the petition states a claim of arbitrary, discriminatory or bad faith conduct by the Union which would be sufficient as a matter of law to constitute an employee organization improper practice within the meaning of §12-306b of the NYCCBL.

Accordingly, inasmuch as the petition, as pleaded, has failed to state a claim of improper practice under the NYCCBL under any applicable section of the law, the petition cannot be entertained by the Board. Dismissal of this petition is without prejudice to any rights that the Petitioner may have under an applicable collective bargaining agreement or in another forum.

DATED: New York, New York
October 11, 1994

⁴ Decision Nos. B-5-91; B-51-90; B-15-83.

⁵ Decision Nos. B-56-90; B-27-90; B-72-88.

Decision No. B-19-94 (ES)
Docket No. BCB-1658-94

5

Wendy E. Patitucci
Executive Secretary
Board of Collective Bargaining