

Fabbricante&NYFDE, et.al. v. Viciari, L.3,IBEW,et.al, 55 OCB 22
(BCB 1995) [Decision No. B-22-95(ES)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of the Improper
Practice Proceeding

-between-

JOHN J. FABBRICANTE AND THE N.Y.C.
FIRE DEPARTMENT ELECTRICIANS
BRIAN C. COLELLA, RALPH SAPIENZA,
RAY MANETTA, STEVEN LALINO AND
FRANK DELGAUDIO

DECISION NO. B-22-95(ES)

DOCKET NO. BCB-1717-95

Petitioners,

-and-

JOSEPH VICARI, BUSINESS AGENT,
LOCAL 3, I.B.E.W. AND AL SOMMA,
SHOP STEWARD, F.D.N.Y. ELECTRIC
SHOP

Respondents.

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DETERMINATION OF EXECUTIVE SECRETARY

On January 20, 1995 John J. Fabbricante and New York City Fire Department Electricians Brian C. Colella, Ralph Sapienza, Ray Manetta, Steven Lalino and Frank Delgaudio ("petitioners") filed a verified improper practice petition against Joseph Vicari as Business Agent, Local 3, I.B.E.W. ("Union") and Al Somma as Shop Steward, F.D.N.Y. Electric Shop.

The allegations contained in the petition are related to the petitioners' dissatisfaction with Somma as the Shop Steward. The petitioners allege that "in recent times", when they have attempted to bring grievances, Somma has either "ignored" the grievances or has provided representation that "[went] against"

the grievant. The Union has condoned this behavior, the petitioners allege, by naming Somma a trustee.

According to the petition, on January 3, 1995, Fabbricante met with Vicari to inquire about "the proper procedure for the election of a Shop Steward" and to inform him that "a majority of the shop wants an election." The petitioners allege that Vicari responded by stating that, pursuant to the Union bylaws, Shop Stewards are appointed rather than elected, and that Somma had been appointed and "[was] staying regardless." The petitioners further allege that Vicari promised to provide Fabbricante with a copy of the bylaws.

On January 5, 1995, a shop meeting was held and was attended by all of the electricians. At the end of the meeting, the petitioners allege, a petition calling for a shop steward election was circulated, was signed by all of the electricians but one, and was mailed to Vicari and the Union. According to the petitioners, the Union has taken no steps towards holding an election and has not provided them with a copy of the bylaws as promised.

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 it does not allege facts sufficient as a matter of law to constitute an improper practice within the meaning of Section 12-306b of the

New York City Collective Bargaining Law ("NYCCBL"),¹ which has been held to prohibit violations of the judicially recognized fair representation doctrine. This doctrine requires a union to

¹ NYCCBL §12-306 provides, in relevant part, 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 in of such employer.

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

In the instant case, the Petitioners' allegations that Somma did not to resolve their grievances because of "his allegiance to his friend and Supervisor Electrician Anthony Bianchino [or] due to laziness, neglect and caring only about his own self interest," are entirely conclusory and lacking in any detail. In order to state a claim of breach of the duty of fair representation, Petitioners must allege facts sufficient to show that Somma's conduct was arbitrary, discriminatory or in bad faith. In the absence of sufficient specificity concerning this claim, it is impossible for us to find that the petition states a claim sufficient as a matter of law to constitute an improper public employee organization practice within the meaning of §12-306b of the NYCCBL.

Moreover, we find that at the heart of the petition is the allegation that, despite a request by the majority of the Fire Department electricians, the Union has neither conducted a shop steward election nor provided them with the bylaws which outline

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

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

the procedure for conducting such an election. This alleged conduct concerns 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.⁴

For these reasons, the petition herein shall be dismissed. Such dismissal is, of course, without prejudice to any rights

⁴ Decision Nos. B-22-91; B-26-90; B-23-84; B-15-83; B-18-79. 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 ¶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 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."

that the petitioners may have under an applicable collective bargaining agreement or in any other forum.

DATED: New York, New York
November 28, 1995

Wendy E. Patitucci
Executive Secretary
Board of Collective Bargaining