Hampton, Jr. v. City & Detec. Endowment Ass., 55 OCB 25 (BCB 1995) [Decision No. B-25-95 (ES)]

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

-between-

DECISION NO. B-25-95 (ES)

EDDIE HAMPTON, JR.

DOCKET NO. BCB-1743-95

Petitioners,

-and-

DETECTIVES ENDOWMENT ASSOCIATION AND THE CITY OF NEW YORK

Respondents.
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DETERMINATION OF EXECUTIVE SECRETARY

On April 28, 1995 Eddie Hampton Jr. ("petitioner") filed a verified improper practice petition against the Detectives Endowment Association ("Union") and the City of New York ("City") (collectively referred to as "respondents"). On May 31, 1995, the Union filed an answer to the petition and on June 5, 1995, the petitioner filed a reply.

In his improper practice petition, the petitioner makes the following allegations against the respondents:

> I am a retired New York City detective of the New York City Police Department. I retired on December 16, 1993. I was promoted to the rank of detective on October 31, 1991. When I was promoted to the rank of detective, the contract between the DEA and the City had expired as of February 1990.[1] However, I worked 26

[1] The most recent contract between the Union and the City (continued...)

> months under the provisions of the new contract. The contract as passed and ratified by the DEA excluded me from receiving any compensation for the 2 years and 2 months I worked as a detective under the expired contract.

As a remedy, the petitioner requests that he "be compensated for the period in question in the same manner as other detectives have or will be compensated."

In its answer, the Union maintains that while it is clear that the petitioner "does not agree" with the negotiated contract that was ratified by the full union membership, his petition fails to state a claimed violation of the New York City Collective Bargaining Law ("NYCCBL"). The Union contends that not only did it comply with its duty to bargain in good faith, it achieved the best result possible given "the hard city negotiating position." In his reply, the petitioner responded by stating that "it is the responsibility of the Union to treat all of its dues paying members the same."

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

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[1](...continued)
covers the period from October 1, 1992 through February 21, 1996. This contract was executed on March 6, 1995. The two contracts which proceeded this one covered the period from July 1, 1991 through September 30, 1992 and the period from July 1, 1987 through June 30, 1991, respectively.

an improper practice within the meaning of Section 12-306 of the New York City Collective Bargaining Law ("NYCCBL").[2]

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[2] 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 Section 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 section 12-305 of this chapter, or to cause, or

(continued...)

As to the petitioner's claim against the Union, the petition fails to allege any facts to show that the Union has committed any acts in violation of §12-306b of the NYCCBL, which has been held to prohibit violations of the judicially recognized fair representation doctrine.

The Board of Collective Bargaining ("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.[3] In the area of contract negotiation, a union does not breach its duty simply because all the employees in a bargaining unit are not satisfied with a negotiated agreement.[4] The duty to represent all employees impartially does not necessarily prevent

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[2](...continued)

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.

[3] Decision Nos. B-7-94; B-5-91; B-51-90; B-15-83.

[4] Decision Nos. B-21-94; B-2-90; B-9-86; B-13-81.

a union from making a contract that is disadvantageous to some members of the unit in relation to others.[5] Consequently, the existence of contract terms that affect individual employees differently does not mean that the bargaining agent has failed to meet its legal obligations, since the Union is allowed considerable latitude in this respect.[6] The central question is whether the bargaining representative has acted in bad faith. The petitioner in this case merely alleges, it appears, that the terms of the contract are disadvantageous to retirees. He has not alleged any facts in support of a finding of bad faith conduct on the part of the Union.

As to the petitioner's claim against the City, I note that he has failed to allege any facts in support of his claim that the City violated §12-306a of the NYCCBL. 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; and the right to refrain from such activities. Since the instant petition does not allege that the City's actions in agreeing to the relevant contract were intended to, or did, affect any rights protected under the NYCCBL, it must be dismissed.

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[5] Decision Nos. B-21-94; B-26-81.

[6] Decision No. B-21-94; B-26-81; B-13-81.

For the aforementioned reasons, the petition herein shall be dismissed. Such dismissal is, of course, without prejudice to any rights that the petitioner may have in any other forum.

DATED: New York, New York
December 11, 1995

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Wendy E. Patitucci
Executive Secretary
Board of Collective Bargaining