

Canty v. Corr. Captains Ass'n, 57 OCB 1 (BCB 1996) [Decision No. B-1-96 (ES)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of the Improper
Practice Proceeding

-between-

ELEASE CANTY

DECISION NO. B-1-96 (ES)

DOCKET NO. BCB-1796-95

Petitioner,
-and-

NEW YORK CITY CORRECTION CAPTAINS
ASSOCIATION AND THEIR AGENTS

Respondent.

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DETERMINATION OF EXECUTIVE SECRETARY

On November 14, 1995 Elease Canty ("petitioner") filed a verified improper practice petition against the Correction Captains Association ("Union" or "respondent"). Therein, the petitioner alleges that the Union failed to bargain in good faith, in violation of Section 12-306 of the New York City Collective Bargaining Law ("NYCCBL"), "with respect to the rights of now retired members of the organization who were public employees for part of the time covered by the negotiated employment agreement." As a result of this violation, the petitioner alleges, she and other retirees "who worked for a significant period of time without benefit of a [contract] ... sustained substantial economic losses..."

As a remedy, the petitioner requests an order from the Board of Collective Bargaining ("Board") directing "appropriate pay for the time each retired employee worked without a contract, the

sign up bonus or lump sum bonus for a period prior to 1/1/92 [totaling] \$3000, pension benefits from the appropriate salary increase, and longevity."

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 the NYCCBL.¹ 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 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

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
(1) to interfere with, restrain or coerce public

(2) to refuse to bargain collectively in good faith

organization or its agents: 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; 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.

arbitrary, discriminatory and bad faith conduct.² 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.³ The duty to represent all employees impartially does not necessarily prevent a union from making a contract that is disadvantageous to some members of the unit in relation to others.⁴ 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.⁵ 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. She has not alleged any facts in support of a finding of bad faith conduct on the part of the Union.

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 under an applicable collective bargaining agreement or in any other forum.

DATED: New York, New York

² Decision Nos. B-7-94; B-5-91; B-51-90; B-15-83.

³ Decision Nos. B-21-94; B-2-90; B-9-86; B-13-81.

⁴ Decision Nos. B-21-94; B-26-81.

⁵ Decision No. B-21-94; B-26-81; B-13-81.

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January 23, 1996

Wendy E. Patitucci
Executive Secretary
Board of Collective Bargaining