

Chapter 30, Grant v. L.375, Albano, 57 OCB 17 (BCB 1996)
[Decision No. B-17-96 (ES)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of the Improper
Practice Proceeding

-between-

CHAPTER 30, DAVID E. GRANT,

Petitioner,

-and-

LOCAL 375, LOUIS ALBANO,

Respondent.

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DECISION NO. B-17-96 (ES)

DOCKET NO. BCB-1814-96

DETERMINATION OF EXECUTIVE SECRETARY

On February 29, 1996 David E. Grant ("petitioner") filed a verified improper practice petition against Local 375, Louis Albano ("respondent"). Therein, the petitioner alleges that the respondent violated the International Constitution, the District Council Constitution, the Local Constitution, the New York City Collective Bargaining Law ("NYCCBL"), and Executive Order 75.

The petitioner has been the President of Chapter 30, Local 375, since 1993. He alleges that after he was elected to that position he was told by the respondent that he should not handle grievances because he did not have enough experience and had not been trained at "the local's seminar." The petitioner notes that he received a "certificate from [the] DC 37 Grievance Seminar" and alleges that, in any event, the Local Constitution does not require the local's seminar. Moreover, the petitioner asserts, other presidents and delegates have not been required to

attend the local's seminar. As for the "experience" aspect of the respondent's alleged remark, the petitioner maintains that in 1995 the local hired two staff members with no prior experience to handle grievances.

The petitioner further alleges that at a Chapter 30 meeting held in the Spring of 1995 it was determined that an accurate "membership count" was needed. Accordingly, the petitioner asserts, he asked the Department of Transportation ("Department") to provide a list of the names and work locations of the members of Chapter 30. That request, according to the petitioner, was denied. In mid-October of 1995, the petitioner alleges, he made a second request of the Department for a list of members. The petitioner maintains that this time the request was granted and a list was provided with a promise that an updated list was forthcoming. The petitioner seems to question the accuracy of the head count in the list provided given the "hiring freezes, redeployments, early outs, and manpower shortages." The petitioner alleges that while he was waiting for the updated list, the respondent asked the Department to withhold the information on the ground that the union already had it. The petitioner alleges that he questioned the respondent about the matter and was told "I am the head of the local and as long as I am the head, I'll run it the way I like it...".

In late October of 1995, the petitioner alleges, he asked the respondent to provide a list of Chapter 30's members. He

alleges that the list was not provided. The petitioner requests that the Board of Collective Bargaining ("Board") investigate the allegations set forth in his petition.

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 Section

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

(continued...)

12-306b(1) of the NYCCBL, which has been held to prohibit violations of the judicially recognized fair representation doctrine, 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 in a nonarbitrary manner in negotiating, administering and enforcing collective bargaining agreements.³

The petition herein is devoid of any allegations of union improper practice. Rather, the allegations concern internal union matters which do 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 unless it is shown that they affect the employee's terms and conditions of employment or the nature of

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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 representation accorded to the employee by the union with respect to his employment.⁴

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

DATED: New York, New York
June 14, 1996

Wendy E. Patitucci
Executive Secretary
Board of Collective Bargaining

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 (CSEA and Bogack, 9 PERB ¶3064 [1976]; UFT and Dembicer, 9 PERB ¶3018 [1976]; Capalbo and Council 82, Security and Law Enforcement Employees, 21 PERB ¶4556 [Dir.1988]; CSEA and Michael, 13 PERB ¶4522 [H.O.1980]; and Lucheso and Deputy Sheriff's Benevolent Ass'n 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."