Rothberger v. L.1180, CWA, 57 OCB 19 (BCB 1996) [Decision No. B-19-96 (ES)]

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

        - between -   :

Eli Rothberger,
                                   :   DECISION NO. B-19-96 (ES)
                Petitioner,
                                   :   DOCKET NO. BCB-1792-95
           and
                                   :
Local 1180, Communications Workers
of America,   :

                Respondent.   :
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DETERMINATION OF EXECUTIVE SECRETARY

On October 30, 1995, Eli Rothberger ("petitioner") filed a verified improper practice petition against respondent Local 1180 of the Communications Workers of America ("the Union"). The petition concerns the Union's agency shop fee procedures. It states:

> In accordance with CWA refund procedure for agency shop members, I filed a request on April 3, 1995. After several follow-up phone calls to Ms. Helen Gibson, I was advised by her that there was a data processing problem and my refund would be in early October. This is the third year I have requested a refund (CWA states it is an advance payment) and there always seems to be a delay.
>
> I am requesting the following from OCB:
>
> 1 - A review of the CWA procedure to insure that it is expeditious and in accordance with the NYS Taylor Law Etc.
>
> 2 - A timetable from CWA on when an agency shop member can expect an expeditious refund.

    3 - A breakdown of Local 1180 political/ideological
expenses and other non political/ideological expenses
to be published in the local's newsletter annually so
that members are aware of the local's expenditures. I
have not been receiving the newsletter for several
months. Ref: U.S. Supreme Court in Chicago Teachers
Union Local 1, AFT, AFL-CIO et al v. Hudson et al.

Pursuant to Title 61, § 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 a claim of
improper practice within the meaning of §12-306b(1) the New York
City Collective Bargaining Law ("NYCCBL"),[1] which has been held
to provide that failure of a union to establish and maintain an
agency shop fee rebate procedure may constitute an improper
public employee organization practice under Section 12-306b(1) of
the NYCCBL.[2]

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[1] NYCCBL §12-306b(1) provides, in relevant part:

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;...

Section 12-305 of the NYCCBL provides, in relevant part:
    Public employees shall have the right to self-
organization, to form, join or assist public employee
organizations, to bargain collectively through certified
employee organizations of their own choosing and shall have
the right to refrain from any or all of such activities....

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[2] See Decision Nos. B-3-93; B-32-91; B-25-86; B-44-82.

The petition herein does not allege that an agency fee
rebate procedure has not been established and/or maintained; nor
does it allege that the Union's procedure is legally
insufficient. Rather, it asks the Board to examine whether the
procedure is in accordance with the law. The Board does not have
authority under applicable law to conduct a general review of an
agency fee rebate procedure absent a specific allegation that an
identified element of the current procedure, or the procedure in
its entirety, fails to satisfy the standards established by the
applicable caselaw on this subject. No such allegation is
contained in the instant petition.

Accordingly, the instant petition must be dismissed. Of
course, dismissal is without prejudice to the any rights that the
petitioner may have in another forum or to the filing of timely
improper practice petition which alleges facts sufficient
to constitute a cognizable claim of improper practice.

Dated: New York, New York
          June 18, 1996

                                    Wendy E. Patitucci
                                    Executive Secretary
                              Board of Collective Bargaining