Blakes v. COBA, Seabrook & DOC, 59 OCB 11 (BCB 1997) [Decision No. B-11-97 (IP)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

In the Matter of the Improper Practice Proceeding	:	
-between-	:	DECISION NO. B-11-97
QUINTON BLAKES,	:	DOCKET NO. BCB-1857-96
Petitioner,	:	
-and-	:	
CORRECTION OFFICER'S BENEVOLENT ASSOCIATION, NORMAN SEABROOK, PRESIDENT, and N.Y.C. DEPT. OF CORRECTION,	:	
Respondents.	:	

DECISION AND ORDER

On September 24, 1996, Quinton Blakes ("Petitioner") filed an Improper Practice Petition against Respondents, the Correction Officer's Benevolent Association ("COBA" or "Union"), Norman Seabrook, the COBA President and the New York City Department of Corrections ("DOC"). The Petition alleges that Respondents have,

> "Refuse[d] to bargain in good faith on matters within the scope of bargaining with certified representatives. Interference with public employees to coerce, restrain the exercising of rights."

The Petition seeks,

> "Representation on a non-bias basis, free of interference, restraints, coercion, encouragement or discouragement. To approach negotiations with a sincere resolution to reach an agreement. To be represented only by authorized representatives capable of discussing and negotiating on all matters

within the scope of collective bargaining."

The Union and Norman Seabrook filed their Answer on October 21, 1996. The DOC, appearing through the New York City Office of Labor Relations, filed its Answer on November 7, 1996, and on January 30, 1997, Petitioner submitted a Reply.[1] On February 27, 1997, the City sought to Amend its answer, submitting a copy of the Office of Administrative Trials and Hearings ("OATH") decision rendered against Petitioner on February 5, 1997.

BACKGROUND

On October 18, 1995, Norman Seabrook received an unsigned letter, purportedly from Petitioner, which contained base and explicit violent sexual threats against him and his wife. The letter was reported to the Police and, pursuant to a criminal investigation, on December 6, 1995, Petitioner was arrested for its authorship.

Petitioner was charged with aggravated harassment by Norman Seabrook. He was given a Desk Appearance ticket for January 8, 1996, and was assigned an attorney to represent him by Israel Rexach, COBA First Vice-President, at the Union's expense. This Appearance was adjourned to February 21, 1996, prior to which, the criminal charges filed against him by Mr. Seabrook were

[1] Petitioner's reply was returned to him as it was neither verified, nor did it demonstrate that Respondents were served with a copy. The reply was never re-submitted.

dropped. Petitioner was placed on modified duty pending Departmental charges, which were levied against him for his alleged involvement with the aforementioned letter, and were officially served him at a conference at 60 Hudson Street on April 12, 1996. The charges stated that, "Said officer on or about October 18, 1995, did engage in conduct unbecoming an officer and conduct of a nature to bring discredit upon the Department in that he mailed a letter to Correction Officer Norman Seabrook which contained threats, insults, and derogatory statements regarding Officer Seabrook and his wife."[2] At this conference, Petitioner was accompanied by COBA Third Vice-

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[2] The DOC Rules cited for violation were as follows:

3.15.030: A member of the Department found guilty of any violation of the rules and regulations, or a failure to abide by the provisions of any order, or of disobedience of orders, or of conduct unbecoming an officer, or of making a false official statement, or of having been convicted in a court of criminal jurisdiction, may be dismissed from the Department, or suffer such other punishment as the Commissioner may direct.

3.15.250: Though not specifically mentioned in these rules and regulations, all disorders and neglects to the prejudice of good order and discipline and all conduct of a nature to bring discredit upon the Department shall be taken cognizance of by the Department according to the nature and degree of the offense and punished at the discretion of the Commissioner.

8.050.030: A member of the Department, either individually, collectively or through an organization, shall not issue any verbal or written statement embodying misleading, false, erroneous or defamatory information, either expressly or impliedly, concerning the Department or any member thereof.

President, Teresa Braxton.

POSITIONS OF THE PARTIES

Petitioner's Position

Petitioner claims that the series of events leading up to the alleged improper practice on the part of the Union began on January 8, 1996, when Petitioner was scheduled for his Desk Appearance. He claims that the Union supplied him with legal representation, Bruce Smirti, Esq., but on January 8, 1996, he was never contacted by Mr. Smirti. Petitioner states that he placed a call to Mr. Smirti and was informed that, since there was a major snow storm that day, Court would be closed. Petitioner claims that he called the Court himself and was informed that Court was in session; Petitioner himself managed to have his matter adjourned until February 21, 1996. In the interim, the charges were dropped by Mr. Seabrook.

Petitioner still faced Departmental charges, and was scheduled for a conference on April 12, 1996. Petitioner states that he called his Union appointed attorney, Mr. Smirti, to inform him of this hearing and request his presence, but was informed by Mr. Smirti that he was unavailable, and asked Petitioner to seek to have it postponed. Petitioner then called the Union office and asked to have someone from the Executive Board accompany him in a representative capacity at this

conference, and Third Vice-President Teresa Braxton volunteered. After appearing with petitioner, Ms. Braxton was told that she could no longer represent Petitioner, was relieved of all her Vice-Presidential duties and asked to resign.[3]

Petitioner claims that he has since been unable to speak with anyone from the Executive Board when he calls the Union office: when it is discovered that it is Petitioner on the phone, they refuse to speak with him. Petitioner claims that he is not receiving adequate representation from the Union, and feels that he will not receive proper representation in the future, as the result of collusive efforts between Norman Seabrook and the DOC.

Union's Position

The Union raises the issue of timeliness, stating that the alleged inadequate representation, which took place on January 8, 1996, and the lack of representation, which occurred on April 12, 1996, happened more than four months prior to the filing of the instant Petition, September 24, 1996, and should therefore be dismissed.

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[3] Subsequent to appearing with Petitioner at the conference, the COBA claimed that Ms. Braxton's work performance deteriorated greatly, in conjunction with her ability to maintain professional and civil relationships with the COBA Executive Board. Ms. Braxton filed an Improper Practice Petition against the COBA and the DOC, BCB-1858-96, alleging a breach in the COBA's duty of fair representation. The Petition was dismissed based on its untimeliness in part, and because Ms. Braxton alleged no violation of the NYCCBL: her alleged complaints were found to be strictly intra-union. See, B-9-97.

With regard to the assertion that the Union failed to adequately represent Petitioner, the Union states that it always has an attorney at 60 Hudson Street to represent COBA officers being served DOC charges, and at OATH trials. It claims that on April 12, 1996, Timothy Lewis, Esq., was present at 60 Hudson Street and duly represented Petitioner; it was not necessary for, nor was it within the purview of the duties of Teresa Braxton to represent Petitioner.

The Union maintains that, at this conference, Petitioner was informed that the DOC would accept nothing less than Petitioner's termination; if an accommodation could not be reached on this point, the matter would be scheduled for an OATH trial, which it was. At the OATH trial, Petitioner would be furnished representation by an attorney designated by the law firm of Dienst & Serrins, courtesy of the COBA. In light of these facts, the Union claims Petitioner has failed to state a cause of action, and therefore the Petition should be dismissed.

City's Position

The City claims that, because there are disciplinary hearings scheduled before an OATH Law Judge involving the Departmental charges against Petitioner, this matter should be held in abeyance pending the outcome of those hearings. The City views the Departmental charges against Petitioner as parallel to the matter before the Board, and that a decision upholding the

Departmental charges against Petitioner would be admissible as evidence against Petitioner.

The City states that the Petition fails to state a cause of action, failing to make out a prima facie case of discrimination pursuant to New York City Collective Bargaining Law ("NYCCBL") §12-306. The City cites City of Salamanca, 18 PERB 3012 (1985), arguing that Petitioner must show that: (1) the employer's agent responsible for the alleged discriminatory action had knowledge of the employee's union activity; and (2) the employee's union activity was a motivating factor in the employer's decision. The City contends the Petitioner fails to satisfy either step of the Salmanca test.

In any event, the City believes that the Departmental charges against Petitioner were justified, based on legitimate reasons: the criminally offensive letter sent to Norman Seabrook.[4]

DISCUSSION

It is apparent that the instant proceeding, initiated on September 24, 1996, was commenced in excess of four months after what Petitioner perceived to be a failure on the part of the

[4] At OATH hearing, held on November 25, 1996, Petitioner admitted that he mailed the offensive letter to Mr. Seabrook. A decision was issued on February 5, 1997, which found that Petitioner was guilty of misconduct, further recommending that he be terminated.

Union to provide him with adequate legal representation. In the absence of any evidence that Petitioner's alleged grievance has been on-going and continuous, up to a point in time which falls within four months of the date of the filing of the Petition, or argued that the four month limitation period should be measured from a subsequent date within the four month filing period, we must dismiss the petition as time-barred, pursuant to 61 RCNY §1-07(d). In light of the finding of untimeliness, we will not consider the merits of the controversy.

Lastly, Petitioner claims that he believes that he will not be represented fairly in the future. Such a claim by Petitioner at this point is pure conjecture and devoid of any factual base, failing to allege any violation of the NYCCBL and we therefore dismiss the claim.

ORDER

Pursuant to the powers vested in the Board of Collective Bargaining by the New York City Collective Bargaining Law, it is hereby,

ORDERED, that the improper practice petition docketed as BCB-1857-96 be, and the same hereby is, dismissed.

DATED: March 25, 1997
New York, N.Y.

Steven C. DeCosta
CHAIRMAN

Daniel G. Collins
MEMBER

George Nicolau
MEMBER

Carolyn Gentile
MEMBER

Robert H. Bogucki
MEMBER

Saul A. Kramer
MEMBER

MEMBER