Parks Enforcement Officers v. DC 37 & Dep't of Parks, 59 OCB 39 (BCB 1997) [Decision No. B-39-97 (IP)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

In the Matter of the Improper Practice Proceeding	
-between-	
PARKS ENFORCEMENT OFFICERS,	DECISION NO. B-39-97
Petitioners,	DOCKET NO. BCB-1892-97
-and-	
DC 37 and the DEPARTMENT of PARKS and RECREATION,	
Respondents.	

DECISION AND ORDER

On March 14, 1997, the Parks Enforcement Patrol ("Rangers")[1] filed an improper practice petition against District Council 37, Local 983 ("DC 37" or "Union") and the Department of Parks and Recreation ("DOP" or "City"),[2] alleging that the Union has breached its duty of fair representation. The Rangers seek "Adaptation of [their] Patrol Guide and [a] change of title to Parks Police."

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[1] Parks Enforcement Patrol is neither a certified employee representative nor a public employee. It is a group of employees including Edward Blassingame, who signed the petition allegedly on their behalf. *See* note 3, *infra.*

[2] The Petition was originally filed on February 20, 1997, but the Petitioners failed to include the DOP as a party respondent, pursuant to Section 209-a(3) of the Taylor Law. The petition was re-filed, naming the DOP as a party, on March 14, 1997.

The Union filed an answer on April 14, 1997. The City, through its Office of Labor Relations ("OLR"), filed an answer on April 15, 1997.

BACKGROUND

DC 37 has represented Rangers working at the DOP in the title of "Urban Park Rangers" and "Associate Urban Park Rangers" for nearly twenty years. The Rangers allege that their responsibilities were enlarged from the mere enforcement of Parks Rules and Regulations to the policing of parks, after having been granted "Twenty-Four Hour Peace Officer Status," and being issued mace, PR-24 batons and bullet proof vests. The Rangers claim that, when confronted with this unilateral increase in their duties, the Union's response was inadequate:

> [T]he union stood by and said nothing. (The union did not protest on our behalf.) ... Even though we are twenty-four-hour Peace Officers, the union refuses to help us seek a solution to protecting ourselves while off duty or to protect us in the event a felony is committed. ... [T]he union contends that '(We) do not police parks. We are merely role playing.'

Through their Union, the Rangers filed a group grievance against the DOP, dated January 14, 1997, alleging out of title work and seeking official recognition of the Rangers' "Patrol Guide," and that they be officially recognized as "Park Police." This was followed by submission of an informal petition, dated January 30, 1997, signed by seventy-six Rangers, in further support of the aforementioned group grievance.[3] A Step III hearing was held at OLR on March 28, 1997, at which

[3] Attached to the instant improper practice petition were copies of the January 14, 1997 group grievance and the seventy-six signatures which were affixed to the informal grievance petition of January 30, 1997. Because of the order in which the papers are attached to the petition, the impression is given that the seventy-six persons whose signatures appear, support the instant improper practice petition. However, this is misleading. As the Union correctly points out, the signatures attached to the improper practice petition are copies taken from the informal grievance petition and non-notarized. Accordingly, they are of no

the Rangers were represented by the Union. The OLR issued a decision, dated April 8, 1997, denying the grievance. In response, DC 37 filed a request for arbitration dated April 10, 1997.

On March 26, 1997, a second grievance was filed by the Union on behalf of the Rangers, alleging out of title work. According to the Union, this grievance is still pending.

POSITIONS OF THE PARTIES

Rangers' Position

In the petition, the Rangers allege that the Union has breached its duty of fair representation by "refus[ing] to recognize Parks Enforcement Officers for sixteen (16) years[.]" and by refusing to bargain in good faith. The Rangers claim that they remain on call throughout their tours, often having to work through meal breaks. They state that they have submitted grievances with respect to their weekly tours, but during contract talks, the Union refused to negotiate a forty hour work week. Moreover, the Rangers maintain that the Union has negotiated a rank structure for employees in Maintenance and Operations, but failed to negotiate in good faith with regard to a rank structure for the Rangers.

The Rangers assert that the Union has never formally addressed the fact that the Rangers have had their responsibilities increased from enforcing Park Rules and Regulations to that of performing actual police duties. When presented with this issue, the Rangers claim that the Union response was to treat it as an out-of-title grievance, and that the Union has otherwise failed to represent the Rangers.

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consequence in this proceeding. The only signature which is notarized on the instant petition is that of Edward Blassingame, the individual who filed the petition.

The Rangers also claim that "the union has voided two years worth of minutes which have been requested by members of [our] Local 983, so that we have no proof of grievances. To this day they refuse to produce these minutes."

The Union's Position

The Union states that the Rangers' petition fails to state a cause of action; there are no allegations that DC 37 acted in bad faith or in an arbitrary or discriminatory manner: a mere allegation of bad faith is not enough. The Union claims that the petition also fails to allege facts with sufficient particularity to establish a *prima facie* improper practice, and therefore does not meet the minimum standard established in the Rules of the City of New York (RCNY) §1-07.[4]

The Union claims that the Rangers have failed to exhaust the grievance procedure established in the collective bargaining agreement. The Union states that the allegations raised herein are pending at this time in two grievances: one has been submitted for arbitration and the other is still awaiting a decision from OLR.

The Union states that the Rangers do not have a contractually based "rank structure," nor does the Union direct the DOP as to what ranks it should use with respect to employees. However, the Union claims that it represented the Petitioners with respect to the acquisition of "Twenty-four Hour Peace Officer Status," and is negotiating to obtain a step pay plan for them. Furthermore, the

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[4] RCNY §1-07, states, in pertinent part:

> A petition ... shall contain ...
> A statement of the nature of the controversy, specifying the provisions of the statute, executive order or collective bargaining agreement involved, and any other relevant and material documents, dates and facts.

Union asserts that the collective bargaining agreement which covers the Rangers calls for a thirty-five hour work week with a paid lunch break. According to the Union, if individuals are working during paid breaks, it is a violation of the collective bargaining agreement, and those individuals should be compensated or they should file grievances. The Union states that it is unaware of any such grievance at this time.

The Union states that the minutes of meetings are an internal Union matter, and not within the jurisdiction of the Office of Collective Bargaining (OCB). The Union also claims that the instant petition is not timely, having been filed more than four months after the alleged improper practice.

The City's Position

The City states that the Rangers have failed to establish that the employer's agent responsible for the alleged discriminatory activity had knowledge that the employee was engaged in union activity and that the employee's union activity motivated the employer to act discriminatorily. Hence, the City states the petition should be dismissed because Rangers have failed to meet the threshold standards necessary to maintain a charge of employer discrimination pursuant to City of Salamanca.[5]

The City further claims that the Ranger's petition fails to state a *prima facie* claim under the NYCCBL. The City states that the Rangers have failed to proffer any facts in support of their contention that the Union failed to protest on their behalf, because there was no event or activity which rises to the level of an improper practice. The City states that the Union's role in this matter

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[5] 18 PERB 3012 (1985).

was discretionary, and its failure to act on behalf of the Rangers does not breach its duty of fair representation.

DISCUSSION

As a preliminary matter, we shall address the Union's timeliness argument. Section 1-07 (d) of the Rules of the City of New York provides:

> Improper Practices. A petition alleging that a public employer or its agents. .. has engaged in or is engaging in an improper practice in violation of Section 12-306 of the statute may be filed with the board within four (4) months thereof by one (1) or more public employees or any public employee organization acting in their behalf. ..

We note that neither party has put forth any relevant dates as to the occurrence of the events alleged in the petition. The petition states that the Rangers have been neglected in the negotiating process, but it is unclear when any negotiations, or events precipitating the alleged neglect with respect to unit negotiations took place. The Union raises the issue of timeliness in it answer as an affirmative defense, but fails to specify what the relevant dates are, which would thereby render this matter untimely. We further note that the prior unit agreement covering the Rangers expired on March 31, 1995, establishing a twenty-eight month time span within which the alleged events could have occurred. However, assuming, *arguendo*, that the allegations are timely, we find the instant find the instant petition, filed on March 14, 1997, to be timely filed. However, we find the Rangers' claims to be without merit.

The allegations in the petition raise the issue of whether the Union has breached its duty of fair representation with respect to its representation of those individuals listed in the petition. The duty of fair representation has been recognized as an obligation on the part of a union to act fairly,

impartially and non-arbitrarily in negotiating, administering and enforcing collective bargaining agreements.[6] A wide range of reasonableness must be allowed to statutory bargaining representatives serving the unit they represent; absent a showing of hostile discrimination, the Union does not breach its duty simply because all employees are not satisfied with the results of representation.[7] The Board will not second-guess a union's seemingly non-arbitrary business decisions, or evaluate or pass judgment upon its bargaining tactics and strategy.[8]

Here, the petition alleges that the Union failed to adequately represent and negotiate on behalf of certain individuals. However, we find that the Petitioners have failed to allege facts which would establish that the Union's handling of the matters were done arbitrarily, in bad faith, or in a way that discriminates against them insofar as their rights under the NYCCBL are concerned. Moreover, the Union has presented evidence indicating that it has represented the Petitioners with respect to the acquisition of "Twenty-four Hour Peace Officer Status," as well as attempting to obtain Step pay plans.

We also find no actions which rise to the level of bad faith with regard to the alleged failure by the Union to protest assigning of policing duties, in conjunction with the issuance of mace, PR-24 batons and bullet proof vests to the Rangers. A union is entitled to broad discretion in determining how to administer and enforce a collective bargaining agreement, provided that its actions are not

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6 Decision Nos. B-8-94; B-44-93; B-29-93; B-21-93.

7 Decision No. B-15-83.

8 Decision No. B-21-94.

arbitrary, discriminatory, or in bad faith.[9] Moreover, we note that the Union currently is pursuing two grievances on behalf of the Rangers which assert, *inter alia*, that the assignment of policing duties constitutes out-of-title work. We find this conduct by the Union to be a non-arbitrary response to the Petitioners' complaints.

In sum, we find that the Petitioners have not satisfied the requirements for a successful claim of a breach of the duty of fair representation against the Union. Additionally, for the foregoing reasons, since the DOP was named as a party Respondent to this action pursuant to §209-a(3) of the Taylor Law[10], we dismiss the improper practice petition against it.

As to Petitioners' allegations that the Union "voided two years worth of minutes" and "refused to produce these minutes," these complaints concern an internal union matter which, under the circumstances of this case, is outside the purview of this Board. We have no jurisdiction over an internal union matter that does not otherwise constitute an improper practice under the NYCCBL.[11]

Accordingly, the instant improper practice petition is dismissed in its entirety.

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[9] Decision No. B-53-87.

[10] The Taylor Law §209-a(3) provides,

> The public employer shall be made a party to any charge filed under subdivision two of this section which alleges that the duly recognized or certified employee organization breached its duty of fair representation in the processing or failure to process a claim that the public employer has breached its agreement with such employee organization.

[11] *See*, Decision No. B-15-83 (an alleged violation of a union's constitution, *per se,* is beyond our jurisdiction to hear or remedy).

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 petition docketed as BCB-1892-97 be, and the same hereby is, dismissed.

DATED: October 10, 1997
New York, N.Y.

Steven C. DeCosta
CHAIRMAN

Daniel G. Collins
MEMBER

George Nicolau
MEMBER

Thomas J. Giblin
MEMBER

Jerome E. Joseph
MEMBER

Saul G. Kramer
MEMBER

Richard A. Wilsker
MEMBER