

Braxton v. COBA, Seabrook & DOC, 59 OCB 9 (BCB 1997) [Decision No. B-9-97 (IP)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of the Improper
Practice Proceeding :

-between- : DECISION NO. B-9-97

TERESA BRAXTON, : DOCKET NO. BCB-1858-96

Petitioner, :

-and- :

CORRECTION OFFICER'S BENEVOLENT :
ASSOCIATION, NORMAN SEABROOK, :
PRESIDENT, and N.Y.C. DEPT. OF :
CORRECTION, :

Respondents. :

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DECISION AND ORDER

On September 24, 1996, Petitioner filed an Improper Practice Petition against the Respondents, the Correction Officers' Benevolent Association (COBA), Norman Seabrook, President of the COBA, and the New York City Department of Corrections (DOC), alleging: "(1) Discriminat[ion] against [her] for the purpose of encouraging or discouraging participation in public employer [sic] practices. (2) Refus[al] to bargain in good faith on matters within the scope of bargaining with certified representatives. (3) Interfer[ence] with public employees to coerce or restrain the exercising of rights." The petition seeks "Perform[ance] [of] the prescribed duties according to the COBA bylaws. In addition to represent [sic] the members of COBA

within the scope of bargaining, free of discrimination, coercion, restraints, discouragement and/or encouragement."

Attachments to the Petition include: (i) an undated explanatory note, signed by Petitioner, describing, in chronological order, the alleged sequence of events leading up to her filing of the Improper Practice Petition¹; (ii) an undated letter signed by Petitioner, addressed to Norman Seabrook, stating that she intended to fulfill her duties as Third Vice-President of the COBA, as enumerated in the COBA Constitution and Bylaws, Article V, §2, Part C, and that if the Executive Board wanted to remove her from office, it would have to be done pursuant to the COBA Constitution; (iii) a second undated letter signed by Petitioner, addressed to Norman Seabrook, allegedly summarizing a meeting between Petitioner and the COBA Executive Board on July 17, 1996; (iv) a letter dated June 30, 1996, signed by Petitioner, addressed to Norman Seabrook, responding to the COBA Executive Board's request for her resignation as Third Vice President, and that she not be allowed to address the Officers at Roll Call, nor represent Officers at Command Discipline Hearings

¹ The letter sequences the following alleged events: (i) the arrest of Quinton Blakes; (ii) Petitioner being told not to represent Mr. Blakes at the conference at which he was officially charged by the Department; (iii) Petitioner's accompanying Mr. Blakes to the conference; (iv) subsequent retaliation by the Union for Petitioner's accompanying Mr. Blakes: reassignment of Petitioner and confiscation of her weapon, threatened impeachment and disciplinary actions.

at the Correctional Institution For Men (CIFM); (v) a copy of Teletype Order No. 1991-0, dated May 1, 1996, which discusses procedures to be followed with regard to announcements being made at Roll Call by Union Executive Board Members/delegates²; (vi) a letter dated September 12, 1996, signed by Israel Rexach, First Vice-President of the COBA, addressed to Robert Seabrook, Recording Secretary of the COBA, filing formal charges against Petitioner; and (vii) two U.S. Postal Service return receipts from Norman Seabrook, dated September 11, 1996, and one U.S. Postal return receipt from the New York City Office of Labor Relations (OLR), dated September 13, 1996.

The COBA submitted a motion to dismiss the Petition together with a supporting affidavit by Norman Seabrook on September 20, 1996. Dismissal is sought on the ground that the Petition failed

² The Order states, in pertinent part:

1. Members of the Uniformed Union Executive Boards or facility delegates wishing to make announcements at the regularly scheduled Roll Calls at the Commands should be granted permission to do so unless the Commanding Officer believes that the content of the announcement is of an inflammatory nature that it would incite the audience or disrupt the good order and efficient operation of the facility.
2. A request by such an individual to make announcements at a specific roll call, accompanied with a copy of the intended message shall be submitted to the commanding officer twenty-four (24) hours in advance of the roll call audience targeted for the specific information.

to state a cause of action upon which relief may be granted under the New York City Collective Bargaining Law ("NYCCBL").³

BACKGROUND

On October 18, 1995, Norman Seabrook received an unsigned letter, purportedly from a fellow correction officer, 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, Correction Officer Quinton Blakes was arrested for its authorship. Criminal charges were filed against him by Mr. Seabrook, which were eventually dropped.

Departmental charges were levied against Blakes 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

³ The pleadings submitted by Respondent, DOC, pursuant to §209-a(3) of the Taylor Law, and Petitioner's un-verified response thereto, need not be considered here in light of our findings, infra.

statements regarding Officer Seabrook and his wife."⁴ It is uncontested that Petitioner attended this conference with Blakes despite being instructed not to do so by President Seabrook and the Executive Board of the COBA. On April 17, 1996, Petitioner was re-assigned to routine correction officer duties at the CIFM,⁵ and her firearm was confiscated.

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- ⁴ 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.

⁵ The duties of the Third Vice President are defined by the COBA Constitution and Bylaws as:

In charge of awards committee and all other duties assigned him by the President.

In accordance with the authority vested in the President, Petitioner's designated responsibilities involved health and
(continued...)

On September 10, 1996, Petitioner filed a Complaint with the City of New York Commission on Human Rights against the COBA, Norman Seabrook and the DOC. The complaint alleges that Norman Seabrook made "Unwelcome sexual advances toward [Petitioner]," and "Embarked on a course of harassing [Petitioner] in retaliation for her protests and rejections of his unwelcome advances." These accusations have been denied by Mr. Seabrook, who alleges that they were issued against him in an effort to make good on a promise made by Petitioner on December 6, 1995 (the day of the arrest of Quinton Blakes), that she would "Bring him down."

On September 12, the Union filed internal Union charges against Petitioner, claiming that, (i) on December 6 and 7, 1995, and March 19, 1996, Petitioner was abusive towards members of the Executive Board of the COBA, thereby engaging in insubordinate conduct; (ii) on April 12, 1996, Petitioner violated established procedures by accompanying a fellow COBA officer to a conference at 60 Hudson Street wherein said fellow officer was charged with certain violations of the DOC Rules; (iii) Petitioner used the COBA postage meter and stationery for personal business and without authority; (iv) on or about April 6, 1996, Petitioner

⁵ (...continued)
related benefits prior to being reassigned to routine duties at the CIFM.

failed to advise the Executive Board of a shooting incident of which Petitioner was aware, in violation of COBA procedures; (v) on or about May 30, 1996, Petitioner appeared at the 32nd Police Precinct with Blakes, improperly bringing him with her on official Union duty, thereby interfering with the performance of the duties of the COBA president, Norman Seabrook⁶; (vi) on or about May 30, 1996, Petitioner acted in an insubordinate manner by refusing to visit the family of a deceased COBA member; (vii) Petitioner took vacation without notifying COBA officials; (viii) Petitioner disclosed confidential information regarding the wife of a COBA member; (ix) Petitioner failed to conduct the duties of her office as assigned. Petitioner alleges that these charges were placed against her in retaliation for filing her sexual harassment suit against Mr. Seabrook. On September 24, 1996, Petitioner filed the instant Petition.

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 with the arrest of a fellow Officer, Quinton Blakes, who was scheduled

⁶ At this time, it was believed as fact by Norman Seabrook and the COBA Executive Board that Quinton Blakes had written the offensive letter to Norman Seabrook. It was deemed that Blakes' presence at the meeting was disruptive because of the unsettling and disturbing effect it had on Norman Seabrook.

to appear at a Departmental conference on April 12, 1996. Blakes was assigned to the CIFM, the command to which Petitioner was assigned prior to her election to the position of Third Vice-President of the COBA. Petitioner admits that she was directed not to represent/accompany Blakes to the conference at which he would be charged. However, Petitioner claims that, on the day of the conference, no one from the Executive Board was available to accompany Blakes; the Second Vice-President, who had been assigned to attend conferences of this nature, was not present, and no one from the Executive Board was assigned to attend in his absence. Therefore, despite being advised otherwise, Petitioner accompanied Blakes to this conference. As a result, Petitioner claims that she has been harassed and retaliated against by the Union in that she has been asked to resign her position as Third Vice-President and has been relieved of all her duties relating thereto, her personal firearm has been confiscated and she has been reassigned to the CIFM.

Petitioner further alleges that the Union, through its President, Norman Seabrook, acted in collusion with the Department of Corrections, discriminating against her in retaliation for accompanying Blakes to his Departmental conference. She claims that she has not been allowed to participate in Union activities, namely, addressing Officers at roll call or conducting Command Discipline Hearings at the CIFM,

where she has been assigned since April 16, 1996. She alleges that Deputy Warden for Administration, David Goodman, and Warden David Kalos, at the urging of Norman Seabrook, would not allow her to represent any Officer in the Command whatsoever. It is further alleged that Norman Seabrook admitted to urging Messrs. Goodman and Kalos to act on behalf of the Union, in a conversation between him and Petitioner on June 19, 1996.

Based on the foregoing, Petitioner does not believe that she will receive equal and fair Union representation in the future.

Union's Position

The Union seeks dismissal of the instant Petition, arguing that the allegations raised do not establish a violation under the NYCCBL. It claims that Petitioner's demands for relief are nothing more than an internal Union problem, raising issues pertaining to the COBA Constitution and Bylaws. To the Union, Petitioner's perceived inequities are founded in her inability to: (i) maintain civil relations with Norman Seabrook and the COBA Executive Board; (ii) separate her personal relationship with a fellow COBA Officer and official COBA business; and (iii) acknowledge the seriousness of the act committed by Officer Blakes by sending the threatening letter to Norman Seabrook and his family.

The Union maintains that all of the accusations proffered by Petitioner are merely retaliatory in nature, designed to get back

at Norman Seabrook and the COBA Executive Board for filing charges against, and seeking the termination of, Officer Blakes. In fact, it is asserted that, prior to discovering the alleged involvement of Blakes with regard to the anonymous letter, the relationship between Petitioner and Mr. Seabrook and the Executive Board of the Union was a healthy one.⁷

The Union makes reference to Petitioner's failure to mention in her pleading and attachments thereto that she and Quinton Blakes are involved in a relationship. This relationship is seen as the reason for Petitioner's accompanying Blakes to the Departmental conference despite being instructed not to, and her insubordinate and antagonistic behavior towards Norman Seabrook and the COBA Executive Board. The Union maintains that there is no rule or official policy which states that a member of the COBA Executive Board is supposed to be present when a Union member is being brought up on Departmental charges.⁸ However, the Union

⁷ The Union points to the fact that Petitioner was being touted at that time by the COBA as the most important female correction officer in New York State, and she was going to host a luncheon for Lieutenant Governor McCaughey.

⁸ The "Notice of Pleading and Hearing" submitted to Mr. Blakes reads as follows:

TAKE NOTICE that charges have been preferred against you to the Commissioner of Correction, City of New York, and that those charges, with specifications thereof, are as herein set forth. You are entitled to have legal counsel at all stages of this proceeding. Any attorney who represents you

(continued...)

states that it always has a lawyer present to assist a fellow officer at conferences of this type; a member of the COBA Executive Board will attend if requested by the attorney.

When Blakes was arrested, Petitioner allegedly went "berserk" in the offices of the Executive Board, threatening that she would "take [him] down," referring to Norman Seabrook. Thereafter, the Union claims that Petitioner's work performance became less than acceptable, resulting in her reassignment as a Correction Officer at the CIFM, at which time her personal firearm was confiscated by the DOC, and the Executive Board's decision to file formal charges against her, seeking her impeachment. The Union claims that in reaction to these steps,

⁸(...continued)

must file a notice of appearance with the Office of Administrative Trials and Hearings (OATH) located at 40 Rector Street, New York, NY 10006.

You have the right to file an answer to these charges within eight days of service to the undersigned, who has been designated as the Commissioner of the Trial Division by direction of the Commissioner of Correction at 60 Hudson Street, New York, NY 10013.

The OATH has rules of practice and procedure which are published in Title 48 of the Rules of the City of New York. Copies of OATH's rules are available at the address listed below.

Your legal rights regarding these charges may be covered under Section 75 of the New York State Civil Service Law.

Petitioner filed her Complaint with the City of New York Commission on Human Rights against the Respondents, making the allegedly false accusations against Mr. Seabrook.

The Union states that the confiscation of Petitioner's personal firearm was carried out by the DOC pursuant to DOC regulations against the carrying of firearms while on duty at a jail facility, and therefore the confiscation had no adverse affect on the terms and conditions of Petitioner's employment. The Union denies having orchestrated the confiscation in conjunction with the DOC as a retaliatory measure against Petitioner.

The Union further asserts that there is no basis upon which to make the claim that the COBA will not fairly and adequately represent Petitioner in the future. Such a claim is purely speculative and should be dismissed as such.

The Union continues by maintaining that this Petition must be dismissed because Petitioner has not exhausted her contractual remedies with regard to grieving a matter prior to seeking a judicial remedy. It states that Petitioner directly petitioned the Board of Collective Bargaining prior to availing herself of any internal Union remedies and grievance procedures, and for that reason, the matter should be dismissed.

Finally, it is asserted that the matter is untimely. The Union claims that the incident of which Petitioner is allegedly

aggrieved occurred on April 17, 1996, and the Petition was filed on September 10, 1996. This is greater than the four-month statute of limitations provided in the Rules, and therefore this action should be dismissed.

DISCUSSION

When evaluating a motion to dismiss, the facts alleged by Petitioner are deemed to be true. The only question is whether, on its face, the Petition states an arguable cause of action under the NYCCBL. In addition, the Petition is entitled to every favorable inference and will be taken to allege whatever may be implied by reasonable and fair intendment.⁹

The sole question to be addressed by this decision is whether the Petition, on its face, presents an arguable Improper Practice claim against the COBA. The COBA argues that this matter is strictly intra-union, that Petitioner has failed to exhaust all internal Union remedies and that the Petition is untimely.

With regard to the issue of timeliness, we find that the acts alleged to constitute improper practices which occurred prior to May 24, 1996, namely, harassment and retaliation by the

⁹ See, e.g., Decision Nos. B-15-94; B-15-93; B-4-93; B-17-92; B-36-91; B-34-91; B-33-91; B-32-91; B-6-91.

Union in the guise of reassigning Petitioner to routine guard duties at the CIFM, and relieving her of her Third Vice-Presidential duties, to be untimely, falling outside the four-month period within which to file a Petition as prescribed by 61 RCNY §1-07(d) ("Rules").¹⁰ It is true, that when a petition alleges a continuing course of conduct commenced more than four months prior to the date of filing, the allegation may not be time-barred in its entirety. In such cases, a specific claim for relief is time-barred to the extent a petitioner seeks damages for wrongful acts which occurred more than four months before the petition was filed, but evidence of the wrongful acts may be admissible for purposes of background information when offered to establish an on-going and continuous course of violative conduct.¹¹ Therefore, those matters cited in the instant petition which allegedly occurred before May 24, 1996, are considered only as background information, with the exception of the confiscation of Petitioner's personal weapon. Petitioner has not alleged facts from which we might infer a continuing course of conduct on the part of the Union, establishing a nexus between

¹⁰ 61 RCNY §1-07(d) states in pertinent part that, "A petition alleging that a public employer or its agents or a public employee organization or its agents has engaged in or is engaging in an improper practice in violation of the statute may be filed with the Board within four (4) months thereof ..."

¹¹ Decision Nos. B-21-93 and B-37-92.

the confiscation of the weapon and any other acts which have been timely pleaded. Petitioner merely states that her personal weapon was confiscated; no Union involvement was alleged or otherwise implied. For the foregoing reasons, the claim pertaining to the confiscation of Petitioner's personal firearm is dismissed.

Petitioner claims that her proposed impeachment from the position as Third Vice-President and the denial by the DOC, allegedly at the behest of Norman Seabrook, of her right to represent Officers at Command Discipline hearings and address them at Roll Call, were in further retaliation for her representation of Mr. Blakes at his conference. As the charges against Petitioner seeking her removal from office were formally presented in a letter from First Vice President Israel Rexach, dated September 12, 1996, we find this to be within the four-month limit set forth in the Rules. We also find that the claim regarding the alleged retaliatory act of denying Petitioner the right to address and represent Officers at the CIFM was timely filed. The Petition alleges the involvement of the Union with the issuance of a DOC directive from Deputy Warden for Administration David Goodman and Warden David Kalos which denied Petitioner the right to represent Officers at the CIFM and that Petitioner became aware of this involvement through an alleged conversation with Norman Seabrook on June 19, 1996. As this

claim is within four months of the filing of the Petition, it too, is timely. We shall deal first with the alleged denial of the right to represent and address Officers at the CIFM.

Petitioner has put forth no evidence suggesting that her right to act in a representational capacity within the COBA is one that is protected under the NYCCBL, nor do we view it as such; the NYCCBL does not ordain that the right of a Union member to represent another member is a protected activity. The collective bargaining agreement between the COBA and the DOC establishes the COBA as the designated collective bargaining agent for the members of that Union, as well as establishing rights and causes of action between the COBA and the DOC. The authority to determine who, among the officers and staff of the Union, shall provide representation for bargaining unit members is determined by the Union as an institution, guided by its Constitution and Bylaws, where relevant, and not by any person acting in an individual capacity.¹² Whether the Union was acting outside the confines of the defined relationship between it and Petitioner, it remains that the Union was not subverting any protected activity pursuant to NYCCBL §12-306b.(1).¹³ Any claim

¹² See, Decision No. B-29-86.

¹³ NYCCBL §12-306b.(1) states, in pertinent part:
b. It shall be an improper practice for a public employee organization or its agents:
(1) to interfere with, restrain or coerce

(continued...)

that Petitioner has with respect to her right to represent an individual is the result of a right conferred upon her by the Union, and shall remain an intra-Union issue.¹⁴ As such, the instant question is outside the jurisdiction of this Board and is therefore dismissed.

Petitioner further claims that she is being impeached in retaliation for her representation of Mr. Blakes. The Union claims that it is seeking the impeachment of Petitioner pursuant to its Constitution and Bylaws; that Petitioner has compromised the standards set forth in those documents and is being disciplined in accordance thereto. Assuming, arguendo, that Petitioner's assertion is true, it remains undisputed that Petitioner was expressly told not to attend the conference with Mr. Blakes and that she disobeyed that order, violating established Union procedure. Moreover, Petitioner has again failed to assert that her participation in the representation of Mr. Blakes is an activity which would warrant the Board's interjecting itself into the Union's impeachment proceedings

¹³ (...continued)

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 ...

¹⁴ We have long held that complaints concerning internal union matters are beyond the scope of the Board's jurisdiction. See, e.g., Decision Nos. B-21-94; B-22-93; B-11-93; B-5-92; B-22-91; B-26-90; B-23-84; B-18-84; B-15-83; B-18-79.

against her. The impeachment proceedings of a Union officer is strictly an internal Union matter and is one over which the Board does not have jurisdiction. Therefore, such complaints cannot constitute reasonable cause to believe that an improper practice has occurred.

Lastly, Petitioner claims that she believes that she will not be represented fairly in the future as a result of the discriminatory treatment she received as a result of this incident. The Union argues that there are no DOC charges filed or pending against her, therefore there are no grounds upon which to base such a claim. It is also stated that Petitioner has not alleged one instance where the Union has failed to represent her adequately on any given occasion. We agree. 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 Respondents' motion to dismiss the improper practice petition is granted; and it is further

ORDERED, that the petition docketed as BCB-1858-96 be, and the same hereby is, dismissed.

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

Steven C. DeCosta
CHAIRMAN

George Nicolau
MEMBER

Richard A. Wilsker
MEMBER

Carolyn Gentile
MEMBER

Robert H. Bogucki
MEMBER

Daniel C. Collins
MEMBER

MEMBER