

Samuels v. L. 1183, CWA, 73 OCB 1 (BCB 2004) [Decision No. B-1-2004 (IP)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

-----X
In the Matter of the Improper Practice Proceeding

-between-

ALVIN SAMUELS,

Decision No. B-1-2004 (ES)
Docket No. BCB-2376-04

Petitioner,

-and-

LOCAL 1183, CWA,

Respondent.

-----X

DETERMINATION OF EXECUTIVE SECRETARY

On January 15, 2004, Alvin Samuels, by his attorney, filed a verified improper practice petition pursuant to unspecified sections of the New York City Collective Bargaining Law (New York City Administrative Code, Title 12, Chapter 3) (“NYCCBL”). Petitioner alleges that Local 1183, Communications Workers of America (“CWA” or “Union”) breached its duty of fair representation when the Union’s President publicly disclosed private and confidential information about Petitioner, a black man, in order to defend the actions of other white Union members. Since Petitioner has failed to state a claim under the NYCCBL and because the Board of Collective Bargaining (“Board”) lacks jurisdiction to hear this particular claim, the petition must be dismissed.

BACKGROUND

From the petition, it appears that Petitioner is an employee of the New York City Board of Elections (“BOE”) and is a member of the Union. Petitioner alleges that in July 2003, a BOE receptionist, who is a white male member of the Union, uttered racist and sexist epithets against an Administrative Manager who is female. In September 2003 a BOE clerk, also a white male

Union member, was arrested on charges that he called the same Administrative Manager from his home and left threatening messages on her voice mail over a four day period. Petitioner alleges that on two separate occasions, the Union's President contended that the men's behavior may have been the aftermath of strokes each man had suffered in recent years.

According to Petitioner, the New York City Council held a public hearing on October 17, 2003, to review how BOE handles racial problems. Petitioner alleges that the Union's President defended the two members at the hearing by disclosing that Petitioner, a black Union member, was arrested in 1997 for assaulting a BOE employee and had been jailed for nine months and paid accrued leave while incarcerated. The Union's President allegedly testified that "people were afraid of [Petitioner] . . . and that . . . astonishingly [Petitioner] has since been promoted to an office manager post at that same office." These remarks as well as the other facts set forth in the petition were reported on October 24, 2003, in The Chief, a weekly newspaper for New York City employees.

Petitioner argues that it was discriminatory, arbitrary, and in bad faith for the Union's President to publicly disclose private and confidential information about Petitioner, a black man, in order to defend the actions of other white Union members. Petitioner seeks a finding from the Board that the Union breached its duty of fair representation under the NYCCBL.

DISCUSSION

Pursuant to § 1-07(c)(2) of the Rules of the Office of Collective Bargaining (Rules of the City of New York, Title 61, Chapter 1) ("OCB Rules"), a copy of which is annexed hereto, the undersigned has reviewed the petition and determined that the petition, on its face, does not contain facts sufficient as a matter of law to constitute a violation under the NYCCBL. Since Petitioner has failed to state a claim under the law administered by the Board and because the Board lacks jurisdiction to hear Petitioner's claim, the petition must be dismissed.

The NYCCBL's provisions and procedures are designed to safeguard the rights of public

employees such as the right to bargain collectively through certified public employee organizations; the right to organize, form, join and assist public employee organizations; and the right to refrain from such activities. It does not provide a remedy for every wrong or inequity. *Terry*, Decision No. B-42-99 at 6; *Siegel*, Decision No. B-23-91 at 8-9.

Pursuant to NYCCBL § 12-306(b)(3), it is an improper practice for a public employee organization “to breach its duty of fair representation to public employees under this chapter.” The duty of fair representation requires a union to refrain from arbitrary, discriminatory, and bad faith conduct in negotiating, administering, and enforcing collective bargaining agreements. *Minervini*, Decision No. B-29-2003 at 15; *Hug*, Decision No. B-5-91 at 14. This duty “does not reach into and control all aspects of a union’s relationship with its members. . . .” *Williams*, Decision No. B-48-97 at 9. Independent claims of discrimination and disparate treatment based on personal relationship, race, or religion are not related to rights protected under the NYCCBL and may not be addressed by this Board. *Id*; see also *Siegel*, Decision No. B-23-91 at 9.

Here, Petitioner claims that the Union President disclosed private and confidential information about Petitioner, a black man, in order to defend the actions of other white Union members. Since Petitioner’s claims of disparate treatment based on race do not relate to the negotiation, administration, or enforcement of a collective bargaining agreement, the Board is constrained, by its limited jurisdiction, from hearing this claim. Moreover, since the petition does not set forth an independent claim under the NYCCBL, it must be dismissed. Dismissal of the petition is without prejudice to any rights that Petitioner may have in another forum.

Dated: New York, New York
January 23, 2004

Alessandra F. Zorghiotti
Executive Secretary