

**Brown v. Correction Captains Association, Inc. & Corrections, 75 OCB 4 (BCB 2005)
[Decision No. B-4-05 (IP)]**

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of the Improper Practice Petition

-between-

DONNEZZETTA BROWN,

Petitioner,

Decision No. B-4-2005 (ES)

Docket No. BCB-2459-05

-and-

CORRECTION CAPTAINS ASSOCIATION, INC.,
and NEW YORK CITY DEPARTMENT OF CORRECTIONS,

Respondents.

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DETERMINATION OF EXECUTIVE SECRETARY

On February 15, 2005, Donnezzetta Brown filed a *pro se* verified improper practice petition against the Correction Captains Association (“Union”). The New York City Department of Correction (“DOC” or “City”) was joined pursuant to § 12-306(d) of the New York City Collective Bargaining Law (New York City Administrative Code, Title 12, Chapter 3) (“NYCCBL”).¹ The petition alleges that the Union breached its duty of fair representation in violation of NYCCBL § 12-306(b)(1) and (3) when its president selected a temporary alternate

¹ NYCCBL § 12-306(d) provides:

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

delegate to represent members at Petitioner's work location.² Petitioner claims that the alternate selected by the Union is unsuitable and that the selection was inconsistent with the rights granted by an unidentified collective bargaining agreement and the Union's constitution concerning vacancies in elected offices. The petition is dismissed because it concerns complaints about internal union matters which are outside the purview of the NYCCBL and thus, beyond the jurisdiction of this Board.

BACKGROUND

Petitioner is a DOC Captain assigned to the Eric M. Taylor Center ("EMTC") on Rikers Island and is a member of the Union. Petitioner claims that on June 1, 2004, a Union delegate assigned to EMTC began sick leave. According to the petition and an excerpt of the Union's constitution annexed thereto, the Union president has the authority to assign a temporary delegate when a delegate is out sick for a period of 90 days or more.³

² NYCCBL § 12-306(b)(1) and (3) provide:

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;

* * *

(3) to breach its duty of fair representation to public employees under this chapter.

NYCCBL § 12-305 provides:

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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³ Section 3 of the Union's constitution entitled "Vacancy in Elective Office" provides in relevant part:

Delegate

On October 6, 2004, Union President Peter Meringolo directed that a memorandum be sent to all EMTC Captains advising them that the Union intended to fill the vacant delegate position with a temporary delegate and that interested members should make their candidacy known by October 22, 2004. By letter dated October 20, 2004, Petitioner notified the Union of her interest in the position.

Petitioner alleges that in late November 2004, the members were told that Meringolo had chosen Captain Kate Williams as the temporary delegate. Petitioner alleges that Williams had been voted out of the position of alternate delegate in June 2003, due to poor performance. According to Petitioner, an example of Williams' poor performance occurred on December 3, 2004, when an EMTC Deputy Warden was belligerent towards her in Williams' presence. According to Petitioner, the Deputy Warden ordered Petitioner to sign an acknowledgment of service of Charges and Specifications and that "the numbers did not match." Petitioner was unable to sign due to a recent hand injury. Williams asked if Petitioner wanted her to sign and Petitioner said yes but only after the numbers were corrected. When the Deputy Warden told Williams to sign on Petitioner's behalf, she refused. Petitioner was forced to sign an "X" with her left hand and was unable to state her concerns about why the numbers were different. According to Petitioner, "throughout this ordeal, Williams said nothing."

Petitioner argues that the selection of Williams as the temporary delegated violated the NYCCBL because the Union is obligated "to maintain integrity and ensure" that it does not

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Whenever a Delegate body is out sick, or assigned for another reason outside their facility/command for a period of ninety days or more, they shall be relieved of their position until such time that they return and a temporary Delegate will be assigned by the President.

interfere with or restrain or coerce public employees in the exercise of rights granted by the unidentified collective bargaining agreement and § 3 of the Union's constitution. Petitioner complains that it took 136 days for the Union to take action on the alternate delegate and that it should have acted in a more timely fashion. Petitioner seeks to have the Union adhere to the contract and the Union's constitution, to endeavor to "advance and protect the interests of all of the uniformed force not just some," to pledge to be an effective organization, and to institute a high standard of working conditions.

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 it must be dismissed because it fails to state a claim that the Union committed acts in violation of § 12-306(b) of the NYCCBL.

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." This duty 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. Petitioner has the burden of pleading and proving that a union has engaged in prohibited conduct. *Barry*, Decision No. B-38-2001 at 8.

It is well established that complaints concerning internal union matters are not actionable under the NYCCBL unless it is shown that they affect the employee's terms and conditions of employment or the nature of the representation accorded by the union with respect to the

employee's employment. *Fabbricante*, Decision No. B-46-98 at 8; *Gilmore*, Decision No. B-14-84 at 7; *Velez*, Decision No. B-1-79. In cases concerning complaints about internal union matters, the Board of Collective Bargaining has declined to entertain claims of the breach of the duty of fair representation finding that the duty does not reach into and control all aspects of a union's relationship with its members. *Harmon*, Decision No. B-49-93 at 12; *Fortunato*, Decision No. B-23-84 at 7-8.

The Board has stated in a variety of contexts that issues concerning the selection of union delegates is an internal union matter. *Cf. Uniformed Firefighters Ass'n*, Decision No. B-43-86 at 19 (scope petition wherein Board noted that the selection of delegates is an internal union matter but found that the assignments, privileges, and release times for those delegates is bargainable); *see also Archibald*, Decision No. B- B-12-95(INJ) (claim that union intentionally interfered with and illegally interrupted a union election, concerned an internal union matter which was beyond the scope of the Board's jurisdiction); *Velez*, Decision No. B-1-79 (claims arising out of the election of union delegates found to be an internal union manner which was not subject to Board's jurisdiction). Moreover, an alleged violation of a union's constitution has been deemed an internal union matter which is beyond the jurisdiction of the Board to hear or to remedy. *Harmon*, Decision No. B-49-93 at 17; *McAllan*, Decision No. B-15-83 at 25.

Here, Petitioner's claims of the breach of the duty of fair representation arise out of the Union's actions concerning the selection and filling of a temporary delegate position. This alleged conduct concerns an internal union matter which does not come within the purview of the NYCCBL. Petitioner has not offered any evidence that the terms and conditions of her employment were affected, or that subsequent to the appointment of the temporary delegate her

representation by the Union, vis-a-vis her employer, was deficient. The allegations that the Union selected an unsuitable temporary delegate and that the selection took too long, without a showing that such actions relate to the Petitioner's status as an employee, do not state a cause of action under the NYCCBL.

The NYCCBL does not provide a remedy for every perceived wrong or inequity. Its provisions and procedures are designed to safeguard the rights of public employees that are created by the statute, *i.e.*, the right to organize, to form, join or assist public employee organizations, to bargain collectively through certified employee organizations, and the right to refrain from such activities. Inasmuch as the conduct complained of concerns an internal union matter, and in the absence of an allegation that the Union's actions were intended to, or did, affect any of the Petitioner's rights that are protected by the NYCCBL, they must be dismissed for failure to state a cause of action for which relief may be granted. *Leahey*, Decision No. B-12-91(ES), *aff'd*, Decision No. B-22-91.

Dismissal of the petition is without prejudice to any rights that the Petitioner may have in another forum.

Dated: New York, New York
March 1, 2005

Alessandra F. Zorgniotti
Executive Secretary

Section 1-07(c)(2) of the Rules of the Office of Collective Bargaining (Rules of the City of New York, Title 61, Chapter 1):

Executive Secretary Review of Improper Practice Petitions.

(i) Within 10 business days after a petition alleging improper practice is filed, the Executive Secretary shall review the petition to determine whether the facts as alleged may constitute an improper practice as set forth in § 12-306 of the statute. If, upon such review, the Executive Secretary determines that the petition is not, on its face, untimely or insufficient, notice of such determination shall be served upon the parties by mail. Such determination shall not constitute a bar to defenses of untimeliness or insufficiency which are supported by probative evidence available to the respondent. If it is determined that the petition, on its face, does not contain facts sufficient as a matter of law to constitute a violation, or that the alleged violation occurred more than four months prior to the filing of the charge, the Executive Secretary may issue a decision dismissing the petition or send a deficiency letter. Copies of such decision or deficiency letter shall be served upon the parties by certified mail.

(ii) Within 10 business days after service of a decision of the Executive Secretary dismissing an improper practice petition as provided in this subdivision, the petitioner may file with the Board an original and three copies of a written statement setting forth an appeal from the decision with proof of service thereof upon all other parties. The statement shall set forth the reasons for the appeal.

(iii) Within 10 business days after service of a deficiency letter from the Executive Secretary as provided in this subdivision, the petitioner may serve an amended petition upon each respondent and file the original and three copies thereof, with proof of service, with the Board. The amended petition shall be deemed filed from the date of the original petition. The petitioner may also withdraw the charge. If the petitioner does not seek to amend or withdraw the charge, but instead wishes to file objections to the deficiency letter, the petitioner may file with the Executive Secretary an original and three copies of a written statement setting forth the basis for the objection with proof of service thereof upon all other parties. If the petitioner does not timely file an amendment or otherwise respond, the charge will be deemed withdrawn and the matter closed. Upon review of the amended petition or written objection filed by the petitioner, the Executive Secretary shall issue either a notice that the petition is not on its face untimely or insufficient or a written decision dismissing the improper practice petition.