

Engstrom v. EMS Div. NYC Health and Hospitals Corp., 31 OCB 17
(BCB 1983) [Decision No. B-17-83]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of
GEORGE ENGSTROM,
Petitioner,
-and-

DECISION NO. B-17-83
DOCKET NO. BCB-641-83

EMERGENCY MEDICAL SERVICES DIVISION
OF NEW YORK CITY HEALTH AND HOSPITALS
CORPORATION,
Respondent.

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INTERIM DECISION AND ORDER

This proceeding was commenced on March 21, 1983, by the filing of a verified improper practice petition by George Engstrom (hereinafter "Petitioner"). Petitioner alleges that agents of Emergency Medical Services (hereinafter "EMS"), a division of the New York City Health and Hospitals Corporation (hereinafter "HHC"), discriminated against him in violation of Section 1173-4.2 of the New York City Collective Bargaining Law (hereinafter "NYCCBL") by interfering with his bid for reelection as shop steward of Local 2507, District Council 37, AFSCME (hereinafter "Local 2507").

Respondent submitted a motion to dismiss the petition on April 21, 1983, on the grounds that this Board

lacks jurisdiction over the subject matter of the dispute, and that Petitioner has failed to state a cause of action under the NYCCBL. Petitioner filed an affidavit in opposition to Respondent's motion on May 16, 1983.

Background

Petitioner's employment status as an EMS Ambulance Corpsman or Paramedic Ambulance Corpsman has been the subject of prior litigation.¹ Engstrom has not been on the EMS payroll since September, 1981. In March, 1982 Justice Edwin Kassoff ordered HHC to reinstate Petitioner to the position of Ambulance Corpsman pending determination of whether or not his termination of employment was due to failure to perform in a satisfactory manner.² EMS sent Petitioner a mailgram on April 1, 1982, ordering him to report to work at the EMS Maspeth location on April 5, 1982. Petitioner responded via telegram the next day, stating that he was available for work at Lincoln Hospital (which is where he worked prior to being transferred to Maspeth)³ and did not report to Maspeth.

¹ See Decision No. B-7-83.

² This issue is presently pending before the HHC Personnel Review Board.

³ In the case docketed as BCB-609-82, presently pending before this Board, Engstrom alleges that this transfer amounts to "punitive" action in violation of NYCCBL Section 1173-4.2.

A letter from Engstrom's attorney, dated May 10, 1983, states that Engstrom is now willing to work at any EMS location pending outcome of the various proceedings pertaining to his termination. HHC apparently believes that it is not required to recall Engstrom again.

It is undisputed that Engstrom became a Local 2507 shop steward for bargaining unit employees at Lincoln Hospital in August, 1980. New elections for that position were held on February 10, 1983. Engstrom sought to retain office. He arrived at the Lincoln Hospital facility on the morning of February 10th to campaign at change of shift times (7a.m. and 9a.m.) and remained in the emergency yard and public access areas. At approximately 9:15a.m., Engstrom was informed by Local 2507 members that at the 9a.m. roll call, two EMS supervisors, Captain Law and Lieutenant Hendricks, "officially advised" employees not to be seen "talking or associating in any fashion with Petitioner who had 'no business being at Lincoln'."

Engstrom left the Lincoln Hospital facility shortly thereafter, returning at 3p.m., half an hour before balloting was to take place. He was met by EMS Inspectional Services Captain Cervo and an unnamed EMS Lieutenant.

Cervo and the Lieutenant informed Engstrom that the following restrictions had been placed on his participation in the election:

- a) Petitioner must remain outside the Lincoln Hospital Emergency Yard until 3:30 p.m.,
- b) Petitioner would be permitted to vote, under escort, at 3:30p.m., and
- c) After voting, Petitioner was to leave the EMS garage area, under escort.

Petitioner states that he did campaign and vote, subject to the aforementioned restrictions, but that he was "not permitted to talk to any (Local 2507) member." Furthermore, the EMS Chief of Operations was at the Lincoln facility that day (alleged to be unusual in and of itself) and appeared to ,be "observing any member who so much as spoke to Petitioner." Engstrom lost his bid for reelection.

In addition to referring to threats of arrest and an HHC memorandum concerning Petitioner's "persona non grata status" at Lincoln Hospital, Engstrom argues that although Cervo, Law, Hendricks and the unnamed Lieutenant are members of Local 2507, eligible to vote in the February 10th election, they are also supervisors who acted to create a "chilling of dissent environment"

by restricting his "freedom of access to the voting area" as well as his "freedom of speech to Local 2507 members." Both Captains Law and Cervo have been named in prior improper practice proceedings as having been "used by Respondent to harass and intimidate Local 2507 members."⁴ Engstrom maintains that questions relating to whether supervisors Law, Hendricks and Cervo acted as agents of EMS during the February 10th election are factual and must be resolved at an OCB hearing.

HHC argues that Petitioner is not an employee at the Lincoln Hospital EMS garage; upon information and belief, only members of Local 2507 employed at the Lincoln Hospital EMS garage were eligible to participate in the February 10th election.

HHC further states, upon information and belief, that the four supervisors whose conduct is alleged as violative of the Law are all members of Local 2507. HHC urges that Petitioner has failed to state a nexus between the actions of these union members and the claim of employer domination or interference with the administration of an employee organization or with Petitioner's alleged rights under the NYCCBL. Moreover, Petitioner's allegations relate to interference by union members in an

⁴ See pending cases docketed as BCB-499-81, BCB-501-81 and BCB-602-82.

internal union election. HHC maintains that the Board has no jurisdiction over internal union matters where the complained of conduct does not affect terms and conditions of employment and has no effect on the nature of representation accorded employees. Therefore, Respondent concludes that Engstrom has failed to state a cause of action under the NYCCBL.

Discussion

A motion to dismiss concedes the truth of the allegations of the pleading to which it is addressed.⁵The only question presented on the motion to dismiss is whether a cause of action has been stated. Assuming, as we must, that the allegations of the petition are true, we must reject Respondent's claim that no prima facie cause of action has been stated herein for it must be accepted, for purposes of this motion, that agents of Respondent actively campaigned against Petitioner in his bid for shop steward reelection. Thus, in the context of the instant motion we must conclude that the issue as prescribed by the petition deals not with internal union matters as Respondent argues but with alleged interference with public employee rights to engage in union activity by agents of the Respondent employer.

⁵ Decision No. B-9-82.

In view of our finding that Petitioner has stated a prima facie claim of improper practice under NYCCBL section 1173-4.2 and the unresolved issues raised by the pleadings, we will deny Respondent's motion to dismiss.

We will grant Respondent's request, made in the event that we deny its motion, that HHC be permitted to file and serve an answer within ten days after receipt of our decision.

Upon joinder of issue, we will ascertain whether disputed material acts exist which warrant the holding of a hearing.

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 Respondent's motion to dismiss be, and the same hereby is, denied; and it is further

ORDERED, that Respondent serve and file its answer to the petition within ten days after receipt

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8.

of this Interim Decision and Order.

DATED: New York, New York
July 20, 1983

ARVID ANDERSON
CHAIRMAN

DANIEL G. COLLINS
MEMBER

MILTON FRIEDMAN
MEMBER

JOHN D. FEERICK
MEMBER

PATRICK F.X. MULHEARN
MEMBER

CAROLYN GENTILE
MEMBER