Rothberger v. L.1180, CWA, 49 OCB 3 (BCB 1993) [Decision No. B-3-93 (IP)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING
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In the Matter of the Improper Practice Proceeding

-between-

ELI ROTHBERGER,
Petitioner,

-and-

COMMUNICATIONS WORKERS OF AMERICA, LOCAL 1180,

Respondent.
----------X

DECISION NO. B-3-93
DOCKET NO. BCB-1526-92

DECISION AND ORDER

On September 18, 1992, Eli Rothberger ("petitioner") filed a verified improper practice petition against Local 1180, Communication Workers of America ("the Union"), alleging that the Union had violated Section 12-306[1] of the New York City Collective Bargaining Law ("NYCCBL"). The Union submitted a

[1] NYCCBL §12-306 provides, in relevant part, as follows:

b. Improper public employee organization practices. 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;

(2) to refuse to bargain collectively in good faith with a public employer on matters within the scope of collective bargaining provided the public employee organization is a certified or designated representative of public employees of such employer.

letter addressing the charges on October 29, 1992 and the petitioner submitted a letter in reply on November 12, 1992.

Background

By letter dated May 14, 1992, the petitioner, who is not a member of the Union, requested an agency fee reduction based on his objection to union expenditures in support of political and ideological causes. The petitioner also requested a copy of the rebate procedure, a "timetable" indicating when he would receive his rebate, and a confirmation of receipt of his letter. In a letter dated June 30, 1992, having received no response from the Union, the petitioner reiterated his requests. On August 26, 1992, still having received no response, the petitioner wrote to the president of the Union, explaining the situation and repeating his original requests. Finally, on September 18, 1992, the petitioner filed the instant improper practice petition.

By letter dated October 29, 1992, the Union responded to these charges. According to the Union, on July 24, 1992 the petitioner was sent an advance reduction check along with documents explaining how the advance reduction amount was calculated and outlining the appeal process. However, the address that the Union had for the petitioner was incorrect; the Union submitted documentary evidence that the package of materials, postmarked July 24, 1992, was returned to the Union by the U.S. Postal Service undelivered. The Union stated that it was sending a new check to the correct address.

Upon receiving the new refund check and supporting documentation, the petitioner submitted a reply letter on November 12, 1992. He indicated that while he was satisfied with the Union's calculation of the rebate, he did not believe that the Union acted responsibly when it sent the package to an address other than his. The petitioner requested that the Board order the Union to reimburse him for the $2.29 he spent when he served a copy of the improper practice petition on the Union via certified mail.[2]

Discussion

This Board has previously held that in reviewing improper practice petitions in which it is alleged that a union's agency fee refund procedure is inadequate, it will be guided by the following standards enunciated by the Public Employment Relations Board (PERB):

> 1. The union must maintain a procedure for the determination and payment of refunds to agency fee objectors that is reasonably expeditious. Generally, all steps of the refund procedure must be completed prior to the time for the objector to file a refund for the following year.
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> 2. At the point at which the union tenders its refund determination and refund payment to an objector, it must provide the objector with financial information as to the basis of the refund. The information provided should include an itemized, audited statement of the complete

[2] The petitioner, in a letter dated November 12, 1992, wrote to the Union requesting a $2.29 postage reimbursement. In a letter responding to this request, the Union stated that it had no legal obligation to reimburse the petitioner.

receipts and expenditures of both the union and any of its affiliates that receive, directly or indirectly, any portion of its revenues from agency shop fees or dues, together with a statement of the basis of the union's determination of the amount of the refund, including identification of those items of expense determined by the union and its affiliates to be refundable and those items that are claimed not to be refundable.

3. The union's internal appeal procedure may, but is not required to, culminate in submission of the dispute to an impartial arbitrator, provided that the objector is not required to bear any part of the cost of the arbitration.[3]

A union's failure to comply with these standards could constitute non-compliance with Section 208.3(b) of the Taylor Law[4], and an improper public employee organization practice under §12-306b(1) of the NYCCBL.

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[3] Decision Nos. B-32-91; B-25-86; B-44-82.

[4] Section 208.3(b) of the Taylor Law provides, in relevant part, as follows:

...(E)very employee organization that has been recognized or certified as the exclusive representative of employees within a negotiating unit of other than state employees shall be entitled to negotiate as part of any agreement entered into pursuant to this article to have deductions from the wage or salary of employees of such negotiating unit who are not members of said employee organization the amount equivalent to the dues levied by such employee organization and the fiscal or disbursing officer of the local government or authority involved shall make such deductions and transmit the sum so deducted to such employee organization. Provided, however, that the foregoing provisions of this subdivision shall only be applicable in the case of an employee organization which has established and maintained a procedure providing for the refund to any employee demanding the return of any part of an agency shop fee deduction which represents the employee's pro rata share of expenditures by the organization in aid of activities or causes of a political or ideological nature only incidentally related to terms and conditions of employment.

In the instant case, the petitioner challenges neither the sufficiency of the Union's agency fee rebate procedure nor the Union's computation of his refund; he claims only that the Union did not act responsibly when it mailed the rebate check and supporting evidence to the wrong address.

We find that evidence of a mere administrative error, such as the one made in this case, without more, does not rise to the level of an improper practice. The fact that the Union misaddressed the envelope containing the rebate check does not indicate bad faith on the part of the Union. Having so found, we are without authority to grant the petitioner's requested remedy, i.e., a reimbursement of $2.29. This Board is authorized to order a remedy only in cases in which it finds that an improper practice has been committed.[5] Accordingly, we shall dismiss the petition in its entirety.

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[5] Section 12-309a(4) of the NYCCBL provides as follows:

> **a. Board of collective bargaining.** The board of collective bargaining, in addition to such other powers and duties as it has under this chapter and as may be conferred upon it from time to time by law, shall have the power and duty:
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> (4) to prevent and remedy improper public employer and public employee organization practices, as such practices are listed in section 12-306 of this chapter. For such purposes, the board of collective bargaining is empowered to establish procedures, make final determinations, and issue appropriate remedial orders.

ORDER

Pursuant to the powers vested in the Board of Collective Bargaining by the NYCCBL, it is hereby,

ORDERED, that the improper practice petition filed herein by Eli Rothberger, be, and the same hereby is, dismissed.

DATED: New York, New York
January 12, 1993

Malcolm D. MacDonald
CHAIRMAN

George Nicolau
MEMBER

Daniel G. Collins
MEMBER

Jerome E. Joseph
MEMBER

George B. Daniels
MEMBER

Steven H. Wright
MEMBER