SUPREME COURT : NEW YORK COUNTY
IAS PART 25

In the Matter of the Application of

PHILIP SEELIG, as President of the Correction Officers Benevolent Association,

Petitioner,

For a Judgment Pursuant to Article 78 of the Civil Practice Law and Rules,

Index No. 5063/86

-against-

ARVID ANDERSON, Chairman of the Board of Collective Bargaining of the City of New York, MILTON FRIEDMAN, EDWARD SILVER, JOHN D. FEERICK, DANIEL COLLINS and CAROLYN GENTILE, as members of the Board of Collective Bargaining of the City of New York, and THE OFFICE OF MUNICIPAL LABOR RELATIONS FOR THE CITY OF NEW YORK,

Respondents.

GEORGE BUNDY SMITH, J.:

Petitioner, as president of the Correction Officers Benevolent Association ("COBA"), seeks to annul (CPLR 7801) the determination of respondent Board of Collective Bargaining of the City of New York ("the Board") dismissing the improper practice petition of the COBA, or in alternative, to remand the matter to the Board for an evidentiary hearing.

On November 20, 1985, petitioner, on behalf of COBA, filed with the Board an improper practice petition against the New York City Correction Department. The COBA alleged that the

Correction Department engaged in activity in violation of the New York City Collective Bargaining Law (NYCCBL) (Administrative Code of City of New York, §1173-4.2) by granting three correction officers, who allegedly are members of an anti-union organization, vacation leave and tour change requests "in order that they could attend an anti-union rally." The COBA also asserted in the administrative petition that these grants were in violation of Correction Department procedures because they resulted in the awarding of overtime.

In the administrative proceeding, the Correction Department moved to dismiss the improper practice petition for failure to state a cause of action. The COBA opposed the motion, arguing that the administrative petition sufficiently alleged the improper practice by the Correction Department of encouraging anti-union activity through the accommodation of vacation leave and tour change requests..

In a decision and order dated February 25, 1986, the Board dismissed the improper practice petition, determining that the COBA's allegations, even if true, would not constitute a violation under the law. The Board termed the allegations in the petition "conclusory," and insufficient to support a prima facie case of purposeful, assistance to COBA dissidents or of anti-COBA animus on the part of the Correction Department. The Board cited both the lack of any allegation of awareness by the Correction Department as to the claimed anti-union sentiments of the officers requesting leave and the purpose for which they

sought the leave, and any allegation of disparate treatment of COBA dissidents and supporters. It also indicated that in general, the scheduling of leave and its impact upon staffing and operational needs, was the concern of the Correction Department under the NYCCBL (Administrative. Code, §1173-4.3, subd. [b]) and not the union. Finally, it opined that the COBA, by filing the administrative petition, appeared to seek to require consideration by the Correction Department when passing upon leave requests, of an employee's opposition or allegiance to particular employee organization-which practice would itself be improper under the NYCCBL (Administrative Code, §1173-4.2).

The Board is the agency responsible for the enforcement and implementation of the NYCCBL (see Civil Service Law, §212; New York City Charter, §1171; Administrative Code, §1173-5.0, [subd. [a] [par. 4]). Its determinations in relation to the statute are entitled to be upheld so "Long as they are not affected by errors of law, are arbitrary or capricious, or constitute an abuse of discretion (see Administrative Code, §1173-4.4; CPLR 7803, subd. 131; accord, matter of Inc. Vil. of Lynbrook v. New York Public Employment Relations Board, 43 NY2d 398, 404).

In the instant case, the Board's decision that the administrative petition failed to state a cause of action for improper employer practice was reasonable and rational. The Board is not required to conduct a hearing on every claim of improper practice, but rather may determine that the petition

fails to state a cause of action. To the extent that petitioner now alleges preferential treatment, such allegation cannot form basis for annulling respondents' determination or remitting the matter to the Board, because the COBA failed to raise the issue before the Board, as the Board noted in its decision (see Matter of Levine v. New York State Liquor Authority, 23 NY2d 863, 864).

Accordingly, the application is denied and the petition dismissed. This decision constitutes the judgment of the Court.

DATED: September 18, 1986

J. S. C.