

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

JOSEPH ROGOFF as President of
Local 371, American Federation of
State, County and Municipal
Employees AFL-CIO,

Plaintiff,

-against-

ARVID ANDERSON, as Director of the
Office of Collective Bargaining of
The City of New York and THE CITY
OF NEW YORK,

Defendants

LEVEY, J. (160 NYLJ (11/15/68 p. 15)

"Plaintiff, as president of Local 371, American Federation of State, County and Municipal Employees, seeks a judgment declaring unconstitutional section 207 (3)(b) of the Civil Service Law of New York State (the "Taylor Law"), and Rule 2.17 (b) of the Consolidated Rules of the Office of Collective Bargaining of the City of New York, as well as a judgment directing the respondent, director of said board, to process plaintiff's request for a collective bargaining certificate. The controversy arises out of the requirement of said statute and rule that, before a union may obtain a collective bargaining certificate, or be recognized as a collective bargaining agent, it file an affirmation that it does not assert the right of public employees to strike. Plaintiff does not argue that the prohibition against strikes by public employees contained in the statute is improper. Rather, it urges that the requirement of an affirmation is unconstitutional for it purports to preclude the union from arguing that public employees have, or should have, such right. In so far as the statute and rule affect and inhibit the right to lawfully advocate change (cf. Hosack v Smiley, 276 F. Supp. 676), they are an improper restriction on the right of free speech (Elfbrandt v. Russell, 384 U.S. 11; Scales v. U.S., 367 U.S. 203; NAACP v. Alabama, 357 U.S. 449), and are unconstitutional. The motion is granted and the cross-motion denied. Settle order."

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Levey, J. (161 NYLJ No. 70 4/10/69 p.2)

Motion is granted to the extent that
respondent is prohibited from requiring from
petitioner an affirmation that it does not assert
the right to strike against any government, to
assist or participate in any such strike, or to
impose an obligation to conduct, assist or parti-
cipate in such a strike.

Settle order.