

State of New York Court of Appeals

Summaries of cases before the Court of Appeals are prepared by the Public Information Office for background purposes only. The summaries are based on briefs filed with the Court. For further information contact Gary Spencer at (518) 455-7711 or gspencer@nycourts.gov.

To be argued Tuesday, April 25, 2017 (in White Plains)

No. 53 Matter of City of New York v New York State Nurses Association

New York City's Human Resources Administration (HRA) brought disciplinary charges against two nurses in 2009, alleging they had violated its Code of Conduct by submitting falsified time sheets claiming they had worked on days when they had not. The New York State Nurses Association (NYSNA), the union that represented the nurses, responded by asking HRA to provide timekeeping records, witness statements, records of patient treatment on certain dates, copies of its attendance policies, and other information "relevant and necessary for its representation" of the nurses. HRA did not provide any of the requested information. An HRA hearing officer found some of the charges were established and recommended termination of both nurses. The nurses challenged the determinations through grievance proceedings under the collective bargaining agreement with HRA, waiving their rights to hearings under Civil Service Law § 75. And the NYSNA filed an improper practice charge with the City's Board of Collective Bargaining (the Board), arguing that HRA's refusal to provide the requested information violated the New York City Collective Bargaining Law (NYCCBL).

The Board ruled the City and HRA must disclose some of the information -- employee time sheets, witness statements, and patient records -- under NYCCBL § 12-306(c)(4), which requires a public employer "to furnish to [a union], upon request, data normally maintained in the regular course of business, reasonably available and necessary for full and proper discussion, understanding and negotiation of subjects within the scope of collective bargaining." The Board relied on several of its prior orders holding that section 12-306(c)(4) applies to information relevant to "contract administration," including the processing of grievances, and concluded that the statutory "obligation to provide information reasonably necessary for contract administration applies to requests made in the context of disciplinary grievances."

Supreme Court annulled the decision which, it said, "for the first time extends the acknowledged right of a union to obtain information relevant to contract interpretation grievances, to include employee disciplinary proceedings." It cited M/O Pfau v Public Empl. Relations Bd. (69 AD3d 1080 [3d Dept]), which said "there is no general right to disclosure in a disciplinary proceeding" and, due to "the starkly disparate roles of contractual grievances and employee disciplinary proceedings, it was arbitrary to import the established right to information in contractual grievances into ... disciplinary proceedings." Supreme Court said the Board's decision "amounts to a unilateral amendment" of the contract and was arbitrary and capricious.

The Appellate Division, First Department reversed, saying, "The Board based its decision on its own precedents and related jurisprudence, and its interpretation of the NYCCBL, a statutory provision within its purview and expertise, was sufficiently reasonable to preclude our 'substitut[ing] another interpretation'.... Critically, the agreement defines 'grievance' to include '[a] claimed wrongful disciplinary action taken against an employee.' Thus, the Board reasonably found that the underlying disciplinary matters were related to the Union's 'contract administration' or, in other words, 'subjects within the scope of collective bargaining' for purposes of NYCCBL § 12-306(c)(4).... [T]he Pfau court's determination that 'there is no general right to disclosure in a disciplinary proceeding' ... does not preclude the Board's finding that a limited right to certain information arises from the agreement and a related statute."

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No. 54 Matter of Avella v City of New York

In 1961, the State Legislature enacted New York City Administrative Code § 18-118 to authorize the construction of Shea Stadium in Flushing Meadows Park in Queens. Shea Stadium was demolished and a new stadium, Citi Field, was opened on adjacent property in 2009. In 2012, the City's Economic Development Corporation accepted a proposal by Queens Development Group, LLC, and related entities to build "Willets West" -- a retail mall and movie theater -- on the 30.7-acre Shea Stadium site, which was still mapped as parkland. The project also included remediation of environmental contamination and infrastructure improvements in Willets Point, a 61-acre industrial area with few paved roads and no sewers just west of the stadium sites, to prepare it for future development.

In 2014, opponents of the Willets West project -- including State Senator Tony Avella, The City Club of New York, New York City Park Advocates and other organizations, businesses and individuals -- brought this article 78 proceeding to block construction, contending the project would violate the public trust doctrine by alienating parkland without approval by the State Legislature. They argued that Administrative Code § 18-118 was enacted to authorize construction of a baseball stadium, not a shopping mall. The developers and the City argued that section 18-118 authorized use of the site for an array of public purposes that would be served by Willets West, including recreation, entertainment and commerce.

Supreme Court dismissed the suit, finding that Willets West was authorized under section 18-118(b), which permits use of the Shea Stadium site "for any purpose or purposes which is of such a nature as to furnish to ... or provide for the benefit of, the people of the city, recreation, entertainment, amusement..., and improvement of trade or commerce." The court said, "The legislative history of [section] 18-118 establishes that although the state legislature's initial intent for the parkland was Shea Stadium, other uses were acceptable for a public purpose." Section 18-118(b) "applies to the use of the property for a shopping mall, because it will serve the public purpose of improving trade or commerce. The legislature in designating other purposes for the use of the property has already resolved the issues related to the public trust doctrine. The development plan for 'Willets Point West' will also serve the public purpose of ultimately altering the blighted Willets Point into a mixed use community."

The Appellate Division, First Department reversed and declared that construction of Willets West would violate the public trust doctrine. "We find that the overriding context of [section] 18-118 concerns the stadium to be built in the portion of the park delineated therein.... Its focus is on the stadium, and on the stadium only," it said. Although "the general purposes laid out" in the statute, including improvement of trade or commerce, "are not necessarily related to a stadium," they "are followed by specific examples, to wit: 'professional, amateur and scholastic sports and athletic events, theatrical, musical or other entertainment presentations' that are 'traditionally associated with a stadium.'" It said, "No reasonable reading of [section] 18-118 allows for the conclusion that the legislature in 1961 contemplated, much less gave permission for, a shopping mall, unrelated to the anticipated stadium, to be constructed in the park."

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To be argued Tuesday, April 25, 2017 (in White Plains)

No. 55 People v Otis Boone

Otis Boone was charged with robbing two men at knife-point in Brooklyn in February 2011. In the first incident, a stranger approached a man on a sidewalk and gestured toward his wrist as if asking for the time. When the victim took out his cell phone, the robber snatched it and fled. The victim pursued him, but abandoned the chase when the robber turned and pulled out a knife. Ten days later, a teenager was texting on his cell phone when a stranger came up behind him and asked for the time. The boy turned to answer, the robber grabbed the phone, and a brief struggle ensued. The robber then stabbed the victim in the back and fled with the phone.

The victims, who are white, identified Boone, who is black, as the perpetrator in separate lineups and at trial. Boone asked Supreme Court to give the jury a cross-racial identification charge, instructing jurors that they may consider whether there is a difference in race between the defendant and the witness who identified him and, if so, whether that difference affected the accuracy of the witness's identification. New York's pattern jury instructions say, in part, "Ordinary human experience indicates that some people have greater difficulty in accurately identifying members of a different race..." The court denied Boone's request, saying, "There is no evidence before this jury regarding ... a lack of reliability of cross-racial identification. There was no expert testimony to that effect. There was no cross-examination as to that." Boone was convicted of two counts of first-degree robbery and sentenced to an aggregate term of 25 years.

The Appellate Division, Second Department reduced Boone's sentence to 15 years and otherwise affirmed. The trial court "properly declined to charge the jury on the unreliability of cross-racial identification, as the defendant never placed the issue in evidence during the trial..., and the court's charge correctly conveyed the applicable legal principles on witness credibility and identification testimony..." it said.

Boone cites scientific research on the difficulties witnesses have in accurately recognizing people of different races and he argues, "In light of the now-undeniable science, its nationwide legal recognition, and New York's own model charge, New York should adopt the same rule as New Jersey and Massachusetts: trial courts must include a cross-racial identification charge unless the parties agree that no cross-racial identification has occurred. Alternatively, trial courts must include the charge in that situation when requested by defense counsel. At a minimum, the charge must be given if the People's case relies on a cross-racial identification and there is little or no corroboration of it." Boone says he is entitled to the charge under any of these standards because the witnesses' encounters with the robber lasted no more than a minute and the prosecutor "offered no corroborating evidence" linking him to either crime.

The prosecution argues that, "where the trial court not only charged the jury on evaluating credibility and that identification had to be proven beyond a reasonable doubt, but also provided an expanded identification charge -- the court committed no error of law in failing to include in its expanded identification charge an instruction on cross-racial identification." In any case, it says, "there was no evidence presented at defendant's trial that would have enabled the jury to assess -- pursuant to the CJI cross-racial identification charge -- whether the cross-race effect might have impeded either victim's ability to identify the person who had robbed him or ... enhanced the probability that either victim's identification of defendant ... was mistaken: No testimony was elicited regarding either victim's history of contacts with black people."

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