

Matter of LaSonde v Seabrook
2011 NY Slip Op 30842(U)
April 6, 2011
Sup Ct, NY County
Docket Number: 114818/10
Judge: Alice Schlesinger
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: ALICE SCHLESINGER

IA PART 16
PART

Index Number : 114818/2010
LASONDE, CHANDRA
 vs.
SEABROOK, NORMAN
 SEQUENCE NUMBER : 001
 ARTICLE 78

INDEX NO. _____
 MOTION DATE _____
 MOTION SEQ. NO. _____
 MOTION CAL. NO. _____

this motion to/for _____

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, It is ordered that this ~~motion~~ ^{Article 78}

proceeding is granted in accordance with the accompanying memorandums decision. The Clerk shall enter judgment accordingly.

UNFILED JUDGMENT

This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).

APR 06 2011

Dated: APR 06 2011

Alice Schlesinger
ALICE SCHLESINGER J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
 Check if appropriate: DO NOT POST REFERENCE
 SUBMIT ORDER/JUDG. SETTLE ORDER /JUDG.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

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

-----X
In the Matter of CHANDRA LASONDE, TOBY COLES,
HECTOR MALDONADO, ALISON BUSH, CHERYL
LEVY, RICHARD REUTER, CHARLES WILLIAMS,
RAYMOND CAMPBELL, MARK LONG and
TATUM SHEEHAN,

Petitioners,

Index No. 114818/10
Motion Seq. Nos. 001 & 002

-against-

Norman Seabrook, in his capacity as President
of the Correction Officers' Benevolent
Association, Inc., Karen Belfield in her capacity
as Recording Secretary of the Correction
Officers' Benevolent Association and the
Correction Officers' Benevolent Association, Inc.,

UNFILED JUDGMENT

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and notice of entry cannot be served based hereon. To
obtain entry, counsel or authorized representative must
~~appear~~ appear in person at the Judgment Clerk's Desk (Room
1418).

Respondents.

-----X
SCHLESINGER, J.:

Before this Court is an Article 78 proceeding brought by various members of the
Correction Officers' Benevolent Association, Inc. ("COBA" or "the Association"), but
primarily by one, Chandra LaSonde. The respondents are COBA itself, but primarily its
President Norman Seabrook and its Recording Secretary Karen Belfield.

The petitioners challenge the refusal by respondents to call a Special Meeting of the
Association. They claim now before this Court and explicitly in a letter signed by
Ms. LaSonde, a Correction Officer, on August 17, 2010, that pursuant to Articles of the
COBA By-laws, they are entitled to such a meeting. The petition cites to two particular
Articles of the Constitution and By-laws, Article IX, Section I, entitled "Charges of
Misconduct" and Article IV, Section IV, referenced in Article IX, entitled "Officers". The
petition asserts that these Articles mandate the procedures to be followed when an officer

of COBA is charged with not fulfilling the obligations of his/her position. Such procedure in these circumstances, pursuant to Article IV, is that "a Special Meeting of the general membership shall be called promptly for the purpose of resolving the charges."

Article IX directs the procedure that is to be followed "whenever charges of misconduct, misfeasance, non-feasance or malfeasance are preferred against any member of the Association or Officers." The accuser is to file charges with the Recording Secretary who is then directed to serve them upon the accused. Following that, the charges "will follow same producers (sic) as in Article IV, Section IV."

The respondents originally opposed the petition by filing a motion to dismiss, which was responded to by the petitioners. The Court then heard oral argument on March 2, 2011. At that time, I directed the respondents to answer, indicating my belief that it would be more efficient dealing with all the defenses at one time. After all, this was a relatively straightforward demand for a Special Meeting. I also invited the petitioners, other than Chandra LaSonde who clearly had standing, to amplify why they believed they should be able to participate in the litigation.

Following argument, I received statements dated March 8, 2011 from other members of the Union/Association who are named petitioners. All of these individuals specifically stated that they wished to be included as petitioners and gave their reasons why. Those were a need for the leadership to comply with "legitimate requests" of the membership (Hector Maldonado), the Executive Board's "usurping of the membership authority" (Charles Williams), because the "authority of the membership has been monopolized by one person", who does not respect union democracy and member participation (union delegate, Alison Bush), who has lost faith in the current union

leadership (referring to Seabrook and his Executive Board) and who have “not abided by many legitimate requests for a special hearing on their many questionable activities” (Tatum Sheehan), who makes a plea for “democratic process (to) be restored” (Toby Coles), who expresses “deep concern for compliance with the Constitution and By-laws” (union delegate, Richard Reuter), who, because of support for Ms. LaSonde and belief that Norman Seabrook’s crusade to besmirch her character and reputation is unprecedented (Raymond Campbell), who is disturbed in her belief that the union leadership has “issues and accusations” regarding women Correction Officers (Cheryl Levy), and finally who believes that the democracy of the union has been severely compromised in that the “general membership has no say” (Mark Pearson, perhaps incorrectly identified in the caption as Mark Long).

Following this submission, I received an Answer, a Reply and a Sur-Reply. In the interests of a better understanding of the relief sought here and the specific objections/defenses to that relief, I will refer again to the August 17, 2010 letter in greater detail. Before doing that, however, it should be noted that earlier letters by Ms. LaSonde preceded this one, in December 2009 and January 2010, (and followed it as well, in September and October of 2010), all addressed to Recording Secretary Belfield. Further, all of these letters were responded to by Ms. Belfield before August 17, 2010 to the effect that Ms. LaSonde’s charges “can not be processed” for a variety of reasons.

But it was the letter of August 17, 2010, where Ms. LaSonde made it absolutely clear by beginning the letter rather than ending it (as she does in her December and January letters), that this is an “official” request for a Special Meeting pursuant to the Constitution and By-laws. It was also not until the August 17, 2010 letter that Ms. LaSonde

specifically charged each of the members of the Executive Board with misconduct, malfeasance and non-feasance. And finally, it was not until the August 17, 2010 letter that Ms. LaSonde itemized nine specific allegations or charges. Most of these dealt with misconduct by Union officials not directly or exclusively affecting Ms. LaSonde, such as violating their fiduciary responsibility to represent all COBA Members (item #6), misleading membership on COBA legal guidelines/restrictions..." (item #4), misappropriation of union dues (item #8), as well as item #3, "refusing to reinstate Chandra LaSonde... back to her... elected position". This was the only allegation that specifically dealt with LaSonde.

Respondents, specifically Karen Belfield and Norman Seabrook, never answered this letter or two subsequent ones until March 10, 2011, after this Article 78 was commenced on November 8, 2010 and after oral argument was held on March 2, 2011. This response was simultaneous to the filing of respondent's Answer. For the first time, Ms. Belfield specifically denied Ms. LaSonde's demand for a Special Meeting (the subject matter of this Article 78). She says, "the charges contained in your letters will not be presented to a special meeting". The next two paragraphs refer to allegations not found in the August 17 letter, although they are addressed in two subsequent letters of September 14 and October 13, 2010. Ms. Belfield does begin her response by stating that it dealt with all three letters, August 17, September 24 and October 13, 2010. The last paragraph, the final one, states that:

Your charges are incoherent, unsupported by facts and vague. Specifically, you fail to include dates and specific events or name the involved union members and you also fail to specify which charges apply to which Executive Board members.

* 6]

Respondent's defenses and arguments presented in both its motion to dismiss and Answer are as follows. First, that the verified Petition is time barred. Second, and certainly related to the first, or rather its converse, that the charges are not ripe for judicial review. I will deal with these two defenses together. However, it is my understanding of the respondent's position, at least for these purposes, that the claims in letters and responses up through January 2010 should be separated from the August, September and October letters. This is consistent with their argument that the time to ask for relief had expired, with the four months beginning to run in January 2010 and ending in May. The petition was commenced on November 8, 2009.

The third defense is that the charges are barred by res judicata. Specifically here, there is reference to a Memorandum Order by U.S. District Court Judge Jed S. Rakoff of July 26, 2010, disposing of Ms. LaSonde's claims asserted in federal court. In the discussion of this defense, some background will be given to explain why federal court had some involvement in this controversy.

The fourth defense is that all petitioners, other than Ms. LaSonde lack standing. The fifth is that the Petition fails to join a necessary party, the Department of Corrections, because in the "wherefore" clause, petitioners ask for relief which includes the conspicuous posting of notices announcing a special meeting.

The sixth defense is that Article 78 relief is not appropriate here as the controversy is a private one. Finally, the seventh defense is that the relief called for here is not a proper subject matter of an Article 78 proceeding. Specifically, it is alleged that petitioners have failed in their burden to prove that COBA's decision not to call a special meeting was a failure to perform a lawful duty or was in violation of lawful procedure, or was affected by

[* 7]
an error of law or was arbitrary, capricious or an abuse of discretion.

Before discussing the merits or lack thereof of the asserted defenses, some background on the circumstances of this controversy should be given. However, this background is useful only to put the conflict into a proper context. It does not affect the merits of the controversy.

Chandra LaSonde was an elected member of COBA's Executive Board as of July 2006. On November 20, 2009, she and co-Executive Board member Allen Blake were confronted by COBA's President Norman Seabrook with charges that they had committed insurance fraud by submitting a claim for death benefits on Mr. Blake's former wife, from whom he was recently divorced. As a result of this confrontation, Ms. LaSonde and Mr. Blake resigned from their executive positions. Ms. LaSonde states the resignations were coerced but respondents insist they were not. Events then escalated. Ms. LaSonde, within a short time requested to withdraw her resignation. This was denied. Mr. Seabrook then reported the insurance issue to the City's Department of Investigation, who conducted an investigation. Meanwhile toward the end of December, Mr. Blake and Ms. LaSonde were put on modified duty. In January, Ms. LaSonde commenced a federal civil rights suit against Mr. Seabrook, COBA and others, alleging First Amendment violations and Civil Conspiracy. The defendants counterclaimed. On March 31, Mr. Blake and Ms. LaSonde were arrested and charged in federal court with one count each of mail fraud, involving the insurance claim.

A trial was held in June wherein Mr. Blake was convicted and Ms. LaSonde was acquitted. As to the federal lawsuit, Judge Rakoff, in late July 2010, dismissed all relief sought by Ms. LaSonde and dismissed all of her federal claims with prejudice and her state

claims, which “the Court declines to exercise supplemental jurisdiction over,” without prejudice. Ms. LaSonde’s appeal was dismissed by the Second Circuit in December 2010.

Discussion

As stated earlier, the federal lawsuit and its resolution by dismissal is the predicate for respondent’s Fourth Affirmative Defense, that this proceeding is barred by res judicata. I find that it is not. As stated above, the federal suit initiated by Ms. LaSonde and Mr. Blake¹ sounded primarily in First Amendment retaliation under 42 U.S.C. §1983 and conspiracy involving the City’s Department of Corrections. Judge Rakoff held that both claims failed as a matter of law and that the complaint’s “barebones allegations” were insufficient to survive a motion to dismiss.

Since the primary purpose of res judicata is public policy concerns, intended to ensure finality and promote judicial economy, a too strict application of this may result in unfairness. As the Court said in *Matter of Reilly v. Reid*, 45 NY2d 24, 28 (1978) “in properly seeking to deny a litigant two days in court, courts must be careful not to deprive the litigant of one.”

While it is true here that the insurance claim fraud allegation and its aftermath formed a predicate for the federal suit and forms the predicate for Ms. LaSonde’s allegation of unfairly forcing her off the Executive Board, that is the only similarity between the lawsuits. In the federal claim, Ms. LaSonde was asking for monetary damages and claimed that COBA and the Department of Corrections had violated her First Amendment rights and conspired to injure her.

¹After Mr. Blake’s conviction, his counsel at oral argument on June 25, 2011 asked to withdraw the case and the Court then dismissed his claims with prejudice.

No such claims appear here. Nor is the Department of Corrections a respondent. Petitioner did not designate them as such and while respondents claim they are a necessary party, they have chosen not to implead them.

Also, while Ms. LaSonde, in her December 2009 and January 2010 letters to Belfield did accuse Seabrook of acting improperly toward her, in the August 17, 2010 more formal letter, asking officially for a Special Meeting, this claim vis-a-vis her treatment was merely one of many claims of impropriety against COBA's President and Board. Finally, when the federal case was dismissed in July 2010, Petitioners had not formally even asked for a Special Meeting (and had it denied) so that the sole cause of action here, in this proceeding, had not yet even occurred.

Therefore, since I find that the type of actions and the purposes behind them are quite different, res judicata principles do not apply. Finally, it should be noted that whatever state claims were asserted in federal court, (not ones asserted here) the judge there said he declined to even consider and so dismissed without prejudice.

As to the Statute of Limitations defense and its related defense of ripeness, I find that they both fail. When considering the validity of a four-month statute of limitations bar pursuant to CPLR 217(1), it is the respondents' burden to show that a final, unambiguous determination on an issue has been made and communicated to the other party before the time actually begins to run. *Raffaele v. Town of Orangetown*, 224 AD2d 430 (Second Dep't, 1996).

Here as stated earlier, all of the letters written before August 17, 2010, on December 21, 2009, January 5, 2010 and January 12, 2010, as well as their responses by Karen Belfield, lack the kind of clarity of actual determination that is required to begin the

time to run for statute of limitations purposes. Also, the pre-August 17, 2010 letters fail to make any specific requests on behalf of the union membership.

For example, the December 21, 2009 letter, in its five alleged violations of the Articles of the Constitution and By-laws, exclusively concerns Mr. Seabrook's illegal refusal to reinstate Chandra LaSonde. In its last line, it requests a Special Meeting. Ms. Belfield, in her December 28, 2009 response to this letter, deals not at all with the substance of the letter and responds that the charges "can not be processed" because they do not comply with filing requirements.

Similarly, in Ms. LaSonde's January 5, 2010 letter, she cites to two Articles from the Constitution and By-laws, then gives her own personal background, then discusses "the event" of November 20, 2009, and then the charges against Mr. Seabrook personal to her.

In the "conclusion" part, she urges Ms. Belfield to do her duty and charge the accused. Then she deals with the alleged non-compliance in her earlier letter. There is no request for a Special Meeting, nor any general allegations of misconduct against Mr. Seabrook or anyone else.

The January 12, 2010 letter seems to be an exact replica of the December 21st one. That one is responded to by Ms. Belfield on January 22, 2010. There again Ms. Belfield states that the "charges... can not be processed" for a number of reasons. She says nothing at all about the request for a Special Meeting. She concludes her letter by saying that:

As a result, the facts alleged in your letter cannot be deemed misconduct, misfeasance, non-feasance or malfeasance under the Constitution and By-laws and there is no basis for further proceedings.

In contrast but of significance, in the letter finally written by Ms. Belfield on March 10, 2011, responding for the first time to the August 17, the September 24, and the October 13, 2010 letters and written after oral argument before the Court, she states at the outset: "The charges contained in your letters will not be presented to a Special Meeting." She then gives her reasons for that determination.

So clearly, it is only in this last letter, in response to the August 17, 2010 letter and later communications, which sets forth multiple allegations of misconduct vis-a-vis the general membership and asks at the outset and officially for a Special Meeting to consider these allegations, is there a clear request for specific relief and a clear refusal. Therefore, this proceeding is not barred by the Statute of Limitations since I find that the four months never began to run before the commencement of the petition.

Which leads me to the companion defense, the ripeness argument. Consistent with what this Court has just found in the paragraph above, counsel acknowledges on page 4 of his brief in opposition to the Verified Petition, "as of the date the Verified Petition was filed and served, no COBA official had yet determined whether to call the special meeting or what other action, if any, should be taken." Therefore, counsel argues, the Petition was not ripe. However, it was and is clear to the parties, their counsel and the Court, that respondents determined not to hold a Special Meeting and agree to the relief sought. The petitioners then waited from August 17 through November 8, 2010 to bring this Petition.

I find under these circumstances that the claim was ripe when the Petition was filed because it was unreasonable for the respondents to not decide on the Special Meeting issue for months. This would lead to the reasonable conclusion by the petitioners, particularly in light of the earlier responses, that the respondents would not in fact accede

to their request. Therefore, Court intervention was necessary.

I also find, contrary to respondents' arguments, that this controversy is not simply a private contractual one, wherein members of the Union are precluded from going to court to seek compliance with their Union's Constitution and By-laws. Courts have regularly intervened in disputes between union members and their leaders when controversies concerning their Constitution and By-laws are concerned. Particularly here, where the petitioners are union members and delegates, in addition to Ms. LaSonde, the issues are not simply private matters, immune to court intervention.

Also, the incidental relief sought by petitioners here vis-a-vis posting of notices by the Department of Corrections does not compel the joining of the latter. If the Court does direct the respondents to call a Special Meeting, obviously notices to the membership will follow pursuant to the rules and customs of the union and the Department.

As to the issue of standing, respondents argue here that only Ms. LaSonde has standing. Counsel points out that no other petitioner filed charges and demanded a Special Meeting. Further, these others are not injured in fact.

However, I disagree for several reasons. First, the August 17 letter referred to here several times charges the union leadership with refusal to comply with Articles of the COBA Constitution and By-laws, as regards the rights of the membership, not just Ms. LaSonde. Her issue is referred to in only one of the nine items.

Second, the other petitioners, union members and delegates, have submitted to the Court their desire to be included in this lawsuit. The reasons given all display a dissatisfaction with their Executive Board who they assert is not listening to the members or respecting their views.

The two-part test for standing to challenge an action, such as against the officers of a non-profit association as COBA, are first that a plaintiff must show "injury in fact" and second that the plaintiff must assert that he/she falls into a zone of interest dealt with by the Association. *Matter of Colella v. Board of Assessors*, 95 NY2d 401 (2000). To establish injury in fact, the claimants must show that they have an actual legal stake in the matter in dispute. *New York State Assn of Nurse Anesthetists v. Novello*, 2 NY3d 207 (2004).

Here, despite the fact that only Ms. LaSonde signed the August 17, 2010 letter, the misconduct it asserts, such as the misappropriation of Union dues (#8) and the refusal to provide the membership with documentation as to services provided to COBA members (#5), speaks to issues that clearly affect the members in a concrete fashion. In the examples cited above, Union members pay dues and thus if those dues are "misappropriated" each member can be said to suffer injury. Similarly, the alleged refusal to obtain written statements as to member benefits can also be said to affect a member adversely.

With regard to being in the zone of interest, I find that does exist here vis-a-vis the non-LaSonde petitioners. They are dues-paying members of COBA and have made it clear that they do have an interest in making sure its leadership complies with its governing documents, the Constitution and By-laws.

Therefore, I do find that the named petitioners, in addition to Ms. LaSonde, have standing to remain parties to this proceeding.

Finally, does this proceeding have merit? Does it state a proper cause of action deserving of relief? I find that it does. I make that finding pursuant to the unambiguous

wording of COBA's Constitution and By-laws, specifically Article IV, Section 4, and Article IX, Section 1. Clearly what they mandate overrules Section 3 of Article X, which respondents at one point relied upon to argue that petitioners had no right to have a Special Meeting called. Section 3 of Article X titled "Special Meetings" (a) says the following "special meetings of the Association may be called by the President at his/her discretion."

But when the President himself is accused of charges of "misconduct, misfeasance, non-feasance or malfeasance", as is the case here, Article IX, Section 1, provides the procedure for bringing those charges "against any member of the Association or Officers." These provisions state that the charges will follow the procedures described in Article IV, Section 4. There, "if the individual is an Executive Board member", which is the case here, "a special meeting of the general membership shall be called promptly for the purpose of resolving the charges."

Neither that Article nor any other part of the Constitution and By-laws exempts the President from its dictates. Nor is there any place where it is stated that the Recording Secretary can decide that the charges proffered do not meet the criteria for calling a Special Meeting. No discretion on this is given to anyone. Further, the language used in Article IX is all encompassing applying "whenever charges of misconduct, misfeasance, non-feasance or malfeasance..." are asserted. This casts a wide berth and includes misdeeds of both omission and commission. I find the above language includes the charges proffered in at least some, if not necessarily all, of the items addressed in the August 17 letter.

Therefore, in conclusion, I do find that the decision by Ms. Belfield in refusing to call a Special Meeting violates the provision mandating that "a special meeting of the general membership shall be called promptly for the purpose of resolving the charges". Further, her explicit refusal to call a Special Meeting, as evidenced in her March 10, 2011 letter, is a clear abuse of discretion, was unreasonable and also violative of the governing laws. Since Ms. Belfield acted within the scope of her official position and on behalf of the COBA Board, I find that all the respondents acted in such a manner.

I am therefore denying the motion to dismiss and am granting the Petition. In doing so, I am directing the Executive Board to promptly call a Special Meeting for "the purpose of resolving the charges." Notice and scheduling of the meeting shall conform to the rules and customs of the Association.

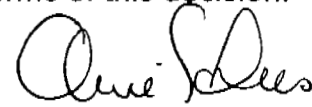
Accordingly, it is hereby

ORDERED that respondents' motion to dismiss is denied; and it is further

ADJUDGED that this Article 78 petition is granted and respondents are directed to proceed to call a Special Meeting in accordance with the terms of this decision.

Dated: April 6, 2011

APR 06 2011



J.S.C.

ALICE SCHLESINGER

UNFILED JUDGMENT

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