

Lrosa v. L..237, HHC, 25 OCB 7 (BCB 1980) [Decision No. B-7-80
(IP)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

In the Matter of

ANTHONY LaROSA,

DECISION NO. B-7-80

Petitioner

DOCKET NO. BCB-374-79

-and-

THE HEALTH AND HOSPITALS CORPORATION
and LOCAL 237, I.B.T.,

Respondents.

DECISION AND ORDER

This proceeding was commenced on December 7, 1979 by the filing of a verified improper practice petition by Mr. Anthony LaRosa (hereinafter "petitioner"). This petition names as respondents the Health and hospitals Corporation (hereinafter "HHC") and Local 237, I.B.T. (hereinafter "the Union"). The nature of the controversy is described as having to do with the City's alleged obligation, under certain circumstances, to save harmless and indemnify a "member" from financial loss resulting from a proceeding brought in federal court for damages arising out of a negligent act or omission or other tort which occurred in the course of the "member"'s discharge of his duties within the scope of his employment. No specific relief is requested in the petition.

On December 17, 1979 HHC, by its representative, the Office of Municipal Labor Relations (hereinafter "OMLR"), filed a letter which asserted that the petition:

" . . . fails to state any facts of dates detailing a dispute or controversy, or any activities which might form the basis for an improper practice. In addition, the Petitioner fails to state what section, if any, of the New York City Collective Bargaining Law has allegedly been violated. Finally, the Petition makes no specific prayer for relief."

Therefore, OMLR requested that the petition be dismissed unless the petitioner were to file a more specific statement of his claim.

In a letter dated December 21, 1979 and filed on December 28, 1979, the union similarly alleged that the petition failed to state any specifics which might constitute an improper practice, and requested that the petition be dismissed.

The petitioner filed an additional submission on December 26, 1979, addressed "to whom it may concern", which consisted of a letter from petitioner and several attachments. This submission partially clarified the nature of petitioner's claim, to the extent that the following summary of his allegations may be made:

Petitioner, a Special Officer employed by HHC at the Queens Hospital Center, was the recipient of criminal charges arising from an incident involving a patient who had been temporarily in petitioner's custody. After lengthy legal proceedings, petitioner was acquitted of the criminal charges. However, in the course of defending himself against

the charges, he incurred legal fees amounting to approximately \$15,000.

Petitioner alleges that his actions which resulted in the filing of criminal charges were in the course of his performance of his duties and within the scope of his responsibilities as a Special Officer for HHC. He states that his employer never suspended him nor charged him with any misconduct in connection with the above incident.

Petitioner contends that the City (and impliedly, HHC) has an obligation, pursuant to a quotation taken from a document entitled "Civil Liability of Police Officers", the source of which is not identified, to reimburse him for the legal fees he incurred in defending against the criminal charges. It is the employer's failure to so reimburse him which he complains of in this proceeding.

On February 8, 1980, the Office of Collective Bargaining wrote to petitioner, by certified mail, to request that he submit a reply by February 19, 1980, in which he was to state which provisions of the New York City Collective Bargaining Law (hereinafter "NYCCBL") he believed had been violated. He was also requested to specify the relief which he was asking the Board of Collective Bargaining to grant. The certified return receipt shows that the letter was received at petitioner's home on February 13, 1980. As of March 3, 1980, no reply had been received from petitioner.

DISCUSSION

This Board must initially face the threshold question of whether, assuming the truth of petitioner's allegations, facts constituting an improper practice have been alleged. As applied to petitioner's allegations, the question presented is whether the employer's failure to provide reimbursement for the legal fees incurred by petitioner, constitutes an improper employer practice¹ within this Board's jurisdiction.

In attempting to determine whether any of the improper practices enumerated in NYCCBL §117-4.2a have occurred by reason of the employer's failure to reimburse legal fees incurred by an employee, this Board is hindered by the petitioner's failure to specify which of the enumerated practices he alleges as the basis of his claim. However, based upon our review of the record before us, it does not appear that petitioner's claim falls within the purview of any of the categories enumerated in §1173-4.2a.

Petitioner alleges that his claim of an improper practice is supported by a section quoted from "Civil Liability of Police Officers". A reading of the document bearing that title, included as an attachment to petitioner's December 28, 1979 submission, indicates that the quotation relied upon by

¹ The record contains no allegation that the union was requested to reimburse the legal fees or that it had any obligation to do so. In fact, no allegations are made concerning the union, and so we shall dismiss the petition as to it with out further consideration of the merits of petitioner's claim.

petitioner is in fact a quotation of part of §50-k of the General Municipal Law. We take administrative notice of the fact that the text of §50-k, quoted by petitioner, was repealed and reenacted in substantially different form, effective July 13, 1979, prior to the filing of the petition herein.²

Even if we were to find that the employer had failed to carry out an obligation imposed by §50-k of the General Municipal Law, such failure would not constitute an improper employer practice within the meaning of NYCCBL §1173-4.2a, in the absence of evidence that the failure was motivated by the intention to cause, or actually had the effect of causing, any of the prohibited actions enumerated in §1173-4.2a. No such evidence is present in the record in this matter.

Therefore, under the circumstances present here, is not within our jurisdiction to render an opinion as to the applicability of General Municipal Law §50-k to the Petitioner in this case, or whether the employer has failed to conform to the terms of that section. The petition fails to allege facts constituting an improper practice and must be dismissed. However, such dismissal is without prejudice to whatever other remedies petitioner may possess under any applicable law, including §50-k.

² 1979 Laws of N.Y., Ch.673.

O R D E R

Pursuant to the powers vested in the Board of Collective Bargaining by the New York City Collective Bargaining Law, it is hereby

ORDERED, that the petition filed herein by Anthony LaRosa, alleging that an improper practice has been committed by the Health and Hospitals Corporation and by Local 237, International Brotherhood of Teamsters, be dismissed in its entirety, without prejudice to whatever other remedies the petitioner may possess under any applicable law.

DATED: New York, N.Y.
March 20, 1980

ARVID ANDERSON
CHAIRMAN

WALTER L. EISENBERG
MEMBER

VIRGIL B. DAY
MEMBER

EDWARD SILVER
MEMBER

EDWARD F. GRAY
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EDWARD J. CLEARY
MEMBER