

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of

VICTOR PESHKIN,

Petitioner,

DECISION NO. B-30-81

DOCKET NO. BCB-526-81

-and-

ANTHONY BASILIO, SR., as Supervisor of
the Nevins income Maintenance Center
#71 and THE NEW YORK CITY DEPARTMENT
OF SOCIAL SERVICES,

Respondents.

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DECISION AND ORDER

This proceeding was commenced on September 10, 1981, by the filing of a verified improper practice petition by Mr. Victor Peshkin (hereinafter "Petitioner"). Petitioner alleges that Anthony Basilio Sr., Supervisor at the Nevins Income Maintenance Center #71 (hereinafter "IMC #71") and the New York City Department of Social Services (hereinafter "the Department"), jointly referred to as "Respondents," repeatedly violated Section 1173-4.2(a)(1) of the New York City Collective Bargaining Law (hereinafter "NYCCBL")¹ in a variety of ways, more fully discussed below. on October 5, 1981, Respondents, by their representative, the New York City Office of

¹ Section 1173-4.2(a)(1) of the NYCCBL states:

a. Improper public employer practices. It shall be an improper practice for a public employer or its agents:

(1) to interfere with, restrain or coerce public employees in the exercise of their rights granted in Section 1173-4.1 of this chapter.

Municipal Labor Relations (hereinafter "the City"), filed a Motion to Dismiss on the ground that the Petitioner failed to state a claim upon which relief could be granted in that no facts had been alleged which could form the basis of an improper employer practice pursuant to the NYCCBL. Petitioner filed papers in opposition to said Motion on November 4, 1981. An Amended Motion to Dismiss was filed by the City on October 26, 1981, in which it presents, as further ground for dismissal, the claim that the matters complained of are time-barred by the statute of limitations. Petitioner's Opposition to Amended Motion to Dismiss was filed on November 9, 1981. In it, Petitioner states that he was "unaware of any time limit" and that "some of the items in my petition continue to happen.

BACKGROUND

Petitioner has been a caseworker with the Department for over nine years. Complaints were lodged against Petitioner in October, 1980, to the effect that he had falsified field visit reports. A conference was held on October 15, 1980 to discuss this matter. Petitioner insists that at this meeting, he was told by a Department representative several times that disciplinary charges would not be forthcoming. He states that the Department "thereafter "deceived" him by referring the matter to the Inspector General's Office of the Human Resources Administration (hereinafter "HRA")², (infra).

According to the City, after the conclusion of the October 15, 1980 meeting, Peshkin told supervisor Basilio that Basilio was "going to get it" unless Basilio stopped "harassing" him. The next morning, Peshkin threatened to slit the throats of both Basilio and supervisor Leslie Allen if disciplinary action was taken. On October 24, 1980, Petitioner spoke to Basilio's secretary, Ida Lurie, disparaging Basilio and threatening that he "better watch out" when going home.

A Step 1 informal conference was held on December 9, 1980, concerning disciplinary charges which were lodged against Petitioner as a result of the above threats. A penalty of dismissal was recommended, which was appealed and modified to a fine of ten days' pay on October 23, 1981.

Petitioner argues that the Step 1 hearing was unfair. He states that both he and his mother testified that he was at home when the alleged threats were made, but that this testimony was ignored. He maintains that Basilio, who did not produce any witnesses, "used his influence to influence" the hearing officer.

Petitioner further states that on October 16, 1980, he submitted numerous requests to be transferred out of IMC #71. On October 21, 1980, Peshkin was told that, effective immediately, he was being transferred to another welfare center. According to Petitioner, supervisor Basilio told Peshkin that he had "used his influence" in order to effectuate the transfer. Petitioner claims

that Basilio thus violated his rights by improperly "exerting undue influence" to "have me transferred instead of letting the transfer requests go through normal channels," thereby bypassing Civil Service law and acting "without regard to my feelings or the proper way of doing things."

Petitioner further alleges that supervisor Basilio engaged in a "witch hunt" by subjecting him to an HRA hearing on February 9, 1981, over the falsification of records matter. Peshkin states that the charges brought against him were "ludicrous" and that witnesses who would have testified in his favor were not called. Nonetheless, Petitioner claims that he disproved all allegations by answering honestly and that his victory is borne out by the fact that no formal charges were instituted. The City, however, states that the record falsification matter is still open and that a determination has been held in abeyance pending final resolution of the October, 1980 disciplinary charges relating to threats.

Petitioner also maintains that the Department acted improperly when it denied him a promotion in approximately March, 1981. After "waiting and waiting" but not receiving notice of promotion, Peshkin enlisted the aid of his union, Local 371, Social Service Employees Union, District Council 37, AFSCME, AFL-CIO (hereinafter "Local 371") in order to ascertain his status. On May 1, 1981, Peshkin received written notification from HRA informing him that he was not selected for promotion. He recites at some

length the inconvenience caused him by the alleged delay in the transmission of this information.

Peshkin maintains that the Department acted improperly and violated Civil Service law and procedure by failing to call him down to their personnel office to inform him that he was not being promoted. Furthermore, he claims that the Department continues to act improperly "every time a new worker is promoted" from the eligibility list over himself. Petitioner surmises that Basilio "may have exerted his influence" to have the City skip over his name. He adds that the City refused to hear arguments from Local 371 on his behalf concerning the promotion denial in spite of the fact that Petitioner submitted a doctor's letter stating that he suffers from high blood pressure and cannot take much stress and tension. He does not indicate whether a formal grievance was ever filed.

Petitioner additionally alleges that on account of "bad notices" from Basilio and IMC #71, he is currently being denied merit increases despite numerous "outstanding evaluations." Petitioner maintains that the views and opinions of Basilio, whom he describes as a "power crazy bureaucrat" should be ignored.

Petitioner also argues that he is unjustly being banned from performing field work. He states that due to rumor and innuendo regarding the alleged field visit improprieties, he is not being

allowed to go out in the field, regardless of his experience in that area.

As part of the remedy, Petitioner requests an investigation into the conduct of both the Department and supervisor Basilio, the dropping of all disciplinary charges, retroactive promotion and merit increase plus a public apology from Respondents. Petitioner also requests that the hearing transcripts pertaining to the October, 1980 disciplinary charges (which were not submitted) be reviewed and that the OCB reverse the original decision.

DISCUSSION

The petition is dismissed for several reasons. The charges against-Petitioner relating to the falsification of records and the threats and harassment of supervisor Basilio took place in October, 1980, as did the transfer from IMC #71. These three events served to trigger the alleged on-the-job, improprieties Petitioner claims he is presently being subjected to, which is basically the continued denial of a promotion and merit increases.

Section 7.4 of the Revised Consolidated Rules of the Office of Collective Bargaining prescribes a four month statute of limi-

tations for the commencement of improper practice proceedings.³ An analogous rule is set forth in Section 204.1(a)(1) of the Rules and Regulations of the Public Employment Relations Board.⁴ The triggering events described in detail by Petitioner occurred well beyond the statutory four month period in which an improper practice charge may be filed. Thus, these allegations are time-barred and can be considered only in the context of background information rather than as specific violations of the NYCCBL presently being pleaded (Decision No. B-20-81).

Even if this Board were to assume, arguendo, that Respondents' conduct comprises a single ongoing course of action, insufficient facts have been pleaded to support the finding of an improper practice. Essentially, all of Petitioner's claims and allegations radiate from the central factor of the antipathy between

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Section 7.4 of the Revised Consolidated Rules provides as follows:

Improper Practices. A petition alleging that a public employer or its agents or a public employee organization or its agents has engaged in or is engaging in an improper practice in violation of Section 1173-4.2 of the statute may be filed with the Board within four (4) months thereof by one (1) or more public employees or any public employee organization acting in their behalf or by a public employer together with a request to the Board for a final determination of the matter and for an appropriate remedial order.

⁴ PERB Rule 204.1(a)(1) provides:

(a) Filing of Charge.

(1) An original and four copies of a charge that any public employer organization or its agents, has engaged in or is engaging in an improper practice may be filed with the Director within four months thereof by one or more public employees or any employee organization acting in their behalf, or by a public employer.

him and Basilio; such animosity in and of itself does not amount to a violation of the NYCCBL. It is not an improper practice for a supervisor to dislike a subordinate. Even where the supervisor allows his personal feelings to affect his treatment of the subordinate there can be no finding of improper practice unless it can be shown that the action complained of is in specific violation of the rights to organize and to bargain collectively (or to refrain from doing so) granted by Section 1173-4.1 of the NYCCBL and guaranteed and protected by Section 1173-4.2. Unless the conduct complained of was based upon motives prohibited by Section 1173-4.2, there cannot be a finding of improper practice (Decision No. B-24-81). Allegations of such improper motivation must be based upon statements of probative facts rather than recitals of conjecture, speculation and surmise. The record herein is devoid of any objective evidence that Respondents' actions were intended to or that they did, in fact, interfere with or diminish Petitioner's rights under Section 1173-4.1. There is not the slightest indication of discrimination against Petitioner relating to union activity or the absence of it nor any allegation that Respondents' treatment of Petitioner was inspired by pro- or anti-union animus. As stated in Decision No. B-38-80:

"While petitioner need not present irrefutable evidence that the employer's action discriminated against him as an individual or was designed to or did, in fact, interfere with union administration, he must make specific allegations of fact at least sufficient to demonstrate the need for a hearing in the matter."

The Petitioner herein has failed to meet this preliminary burden of proof. No causal link between the exercise of Petitioner's rights under Section 1173-4.1 and the actions of Respondents has been established. Thus, in the absence of a showing of discriminatory intent on the part of the employer, we find that no violation of the NYCCBL has been stated.

For the reasons set forth above, we will grant the City's Motions to Dismiss.

ORDER

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 improper practice petition filed in the instant case be, and the same hereby is, dismissed.

DATED: New York, N.Y.
December 2, 1981

ARVID ANDERSON
CHAIRMAN

MILTON FRIEDMAN
MEMBER

DANIEL G. COLLINS
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CAROLYN GENTILE
MEMBER

MARK J. CHERNOFF
MEMBER

EDWARD SILVER
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