

Green, Jr. v. HHC, Stevens, Jr., 29 OCB 14 (BCB 1982) [Decision No. B-14-82 (IP)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of

MOSES L. GREEN, JR.,

DECISION NO. B-14-82

DOCKET NO. BCB -574-82

Petitioner,

-and-

NEW YORK CITY HEALTH & HOSPITALS
CORPORATION; RICHARD STEVENS, JR.,
Captain, Emergency Medical Services,

Respondent(s).

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DECISION AND ORDER

On March 4, 1982, Moses L. Green, Jr. ("petitioner") instituted this improper practice proceeding against Richard Stevens, Jr., in his capacity as Captain, Emergency Medical Services, New York Health and Hospitals Corporation ("respondents") On March 12, 1982, respondents, by the Office of Municipal Labor Relations ("OMLR") filed a motion to dismiss, which was received by the Board of Collective Bargaining (the "Board") in lieu of an answer. Petitioner filed a reply on March 23, 1982.

BACKGROUND

According to petitioner, Captain Stevens had been his supervisor at Greenpoint Hospital prior to their staggered arrival at the Emergency Medical Service ("EMS") in Maspeth, New York. Petitioner maintains that his own departure from Greenpoint was necessitated by the unbearable working conditions he experienced there on account of Captain Stevens.

Petitioner contends that he was harassed by respondent at Greenpoint and, since respondent's arrival at EMS in November of 1981, continues to be so harassed. The petitioner charges

the respondent as follows:

- (1) improper procedures and conduct unbecoming a superior officer;
- (2) job discrimination;
- (3) coercion;
- (4) malicious slander;
- (5) open and above board harassment;
- (6) entrapment; and
- (7) extortion.

More particularly, petitioner alleges that he had, on several occasions, expressed to Stevens his concern that critical patient safety procedures were being disregarded by the technician on the team to which petitioner was assigned. Petitioner urges that he had the right, pursuant to the Health and Hospitals Corporation Handbook, to challenge any order which he believed would cause harm, either to a patient or to himself. This right, Green maintains, was undermined by Stevens' repeated threats to Green to "back off the tech." Petitioner alleges that because he had questioned the manner in which the "tech" had been performing her duties, his 8 - 4 tour was changed to 4 - 12.

Captain Stevens is using the shift changes and manipulating the schedules as a punitive measure.

and,

I have explained to Capt. Stevens our role in transporting the patients, but he has totally ignored what I have said to him. He insist [sic] that I work with said tech. In so doing he is causing me to break the rules and regulations of the Corporation and the training I have received. He has changed my tour of duty against every thing [sic] I have said about the communication problem with the tech. Captain Stevens in spite of everything now has me working 5 days with said tech, instead of the previous 3 or 2 days.

In addition to the above, petitioner has cited violations of the

following City-Wide contract provisions: Article II, Section 2 Work Week; Article IV, Section 2 -Overtime; and Article XI, Sections 1 and 2 - Civil Service, Career Development. These provisions, it is alleged, were violated by Captain Stevens purposefully and with the intent to harass petitioner.

OMLR, on behalf of respondents, submitted a motion to dismiss on the ground that petitioner's allegations, even if true, do not constitute an improper practice as contemplated by Section 1173-4.2(a) of the New York City Collective Bargaining Law ("NYCCBL").

DISCUSSION

Section 1173-4.2(a) of the NYCCBL provides as follows:

§1173-4.2 Improper practices; good faith bargaining.

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;

(2) to dominate or interfere with the formation or administration of any public employee organization;

(3) to discriminate against any employee for the purpose of encouraging or discouraging membership in, or participation in the activities of, any public employee organization;

(4) to refuse to bargain collectively in good faith on matters within the scope of collective bargaining with certified or designated representatives of its public employees.

Each of the subdivisions of Section 1173-4.2(a) is intended to prohibit acts by a public employer or its agents which would have the effect, in one way or another, of interfering with, preventing or discouraging the full enjoyment by public employees of the rights granted them under Section 1173-4.1 of the New York City Collective Bargaining Law. It is thus, not the function of Section 1173-4.2(a) to proscribe all allegedly wrongful acts of a public employer but only such acts as would have adverse impact upon Section 1173-4.1 rights.

Petitioner's complaints, if proven, might constitute basis for some form of redress in another forum. They do not relate in any way, however, to acts proscribed by Section 1173-4.2(a). Thus, even if proven, petitioner's allegations would not constitute basis for a finding of improper practice as that term is contemplated in Section 1173-4.2. The record herein is devoid of any allegations that the acts complained of were intended to interfere with, diminish or otherwise impair petitioner's exercise of his rights under Section 1173-4.1 Accordingly, we find that no violation of the NYCCBL has been stated or demonstrated.

ORDER

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

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5.

ORDERED, that the improper practice petition be, and the same hereby is, dismissed

DATED: New York, New York
April 21, 1982.

ARVID ANDERSON

CHAIRMAN

MILTON FRIEDMAN

MEMBER

DANIEL G. COLLINS

MEMBER

JOHN D. FEERICK

MEMBER

FRANKLIN J. HAVELICK

MEMBER

EDWARD J. GRAY

MEMBER

CAROLYN GENTILE

MEMBER