

Mayer, Jr. v. Emergency Medical Service Divi., 29 OCB 29 (BCB 1982)
[Decision No. B-29-82 (IP)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

-----X

In the Matter of

MARTIN J. MAYER, JR.,

Petitioner,

Decision No. B-29-82

-and-

Docket No. BCB-592-82

EMERGENCY MEDICAL SERVICE DIVISION
OF NEW YORK CITY HEALTH AND HOSPITALS
CORPORATION,

Respondent(s).

-----X

DECISION AND ORDER

On May 17, 1982, Martin J. Mayer, Jr., commenced the instant improper practice proceeding against the Emergency Medical Service ("EMS"), Division of Health and Hospitals Corporation ("HHC"). On June 4, 1982, HHC responded by filing a motion to dismiss for failure to state an improper practice under the New York City Collective Bargaining Law ("NYCCBL").

BACKGROUND

Petitioner maintains that because of his cooperation in an investigation conducted pursuant to Executive Order No. 16, dated July 26, 1978, and dealing with corruption in City agencies, he was "harassed, discriminate against and coerced." [emphasis added] Executive Order No. 16 provides, in pertinent part:

§8. Dissemination of Information.

(a) All agency heads shall distribute to each officer and employee of their respective agencies within 90 days of the effective date of this Order and to each officer and employee

_____ appointed thereafter, a statement prepared by the Commissioner explaining the responsibilities of the Commissioner, Inspectors General, agency heads and all City officers and employees under this Order.

(b) Knowledge of the responsibilities of the Commissioner of Investigation and the Inspectors General and of relevant provisions of Articles 195 and 200 of the Penal Law, the City Charter, the Code of Ethics and this Order shall constitute an employment responsibility which every officer and employee is expected to know and to implement as part of their job duties and is to be tested in promotional examinations beginning January 1, 1979.

Petitioner seeks an order directing EMS to:

1. Cease and desist from all forms of harassment and/or other forms of intimidation against me, Martin J. Mayer, Jr.
2. Transfer me to another EMS facility in the Borough of Queens so that I can work in peace.

HHC, in its motion to dismiss, neither admits nor denies the charges contained in the petition. Instead, it examines, in detail, Section 1173-4.2(a) of the NYCCBL which provides:

§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.

HHC concludes that no wrong within the reach of this section has been alleged.

DISCUSSION

It is not the function of Section 1173-4.2(a) to proscribe all wrongful acts of a public employer. Only acts of an employer which would have an adverse effect on public employees in the exercise of their Section 1173-4.1 rights¹ are covered by the act and within the Board's jurisdiction.

Petitioner's complaints, if proven, might constitute a 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 a basis for a finding of an improper practice as that term is contemplated in Section 1173-4.2(a).² The record herein is devoid of any allegations

¹ §1173-4.1 Rights of public employees and certified employee organizations. Public employees shall have the right to self-organization, to form, join or assist public employee organizations, to bargain collectively through certified employee organizations of their own choosing and shall have the right to refrain from any or all of such activities.

² Decision No. B-14-82.

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

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

DATED: New York, New York
July 13, 1982.

ARVID ANDERSON
CHAIRMAN

MILTON FRIEDMAN
MEMBER

DANIEL G. COLLINS
MEMBER

EDWARD SILVER
MEMBER

JOHN D. FEERICK
MEMBER

CAROLYN GENTILE
MEMBER