Viscardi v. HRA, et. al, 29 OCB 5 (BCB 1982) [Decision No. B-5-82 (IP)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of the Improper Practice

-between-

DOMINICK VISCARDI,

Petitioner,

DECISION No. B-5-82
DOCKET NO. BCB-551-81

-and-

NEW YORK CITY HUMAN RESOURCES ADMINISTRATION, DEPARTMENT OF SOCIAL SERVICES, BUREAU OF CHILD SUPPORT,

Respondent.
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DECISION AND ORDER

This proceeding was commenced on December 4, 1981, by the filing of a verified improper practice petition by counsel for Mr. Dominick Viscardi (hereinafter "Petitioner"). Petitioner alleges that officials of the New York City Human Resources Administration, Department of Social Services, Bureau of Child Support (hereinafter "HRA" or "Respondent"), violated Sections 1173-4.2(a)(1) and (3) of the New York City Collective Bargaining Law (hereinafter "NYCCBL")[1] by improperly harassing, demoting and

[1] Sections 1173-4.2(a)(1) and (3) of the NYCCBL state:

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.

(3) to discriminate against any employee for the

transferring

him. On December 22, 1981, Respondent by its representative, the New York City Office of Municipal Labor Relations (hereinafter the City"), filed its Answer, in which it moved to dismiss on the grounds 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. A Motion to Amend Answer was filed by the City on January 6, 1982, in which it presented, as further ground for dismissal, the claim that the matters complained of are time-barred by the statute of limitations.

POSITION OF THE PARTIES

Petitioner's Position

Petitioner states that on July 27, 1981, he was unlawfully transferred from the Manhattan Family Court to the Bronx Borough Office No. 3. He maintains that this action was the culmination of a series of harassments to which he was subjected by Respondent's supervisors. Included in the events complained of is an "improper" demotion on July 24, 1981,[2] from the position of Supervisor II to Supervisor I.

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purpose of encouraging or discouraging membership in, or participation in the activities of, any public employee organization.

[2] Said date was not included in the Petition but was set forth in Respondent's Answer.

Although he does not specifically name any incidents other than the demotion and transfer, Petitioner alleges that he has been the victim of numerous retaliatory measures by Respondent on account of the fact that he complained to a representative of his union, Social Service Employees Union, Local 371 (hereinafter "Local 371") of violations of the collective bargaining agreement between the City and Local 371. Included in the complaints were accusations concerning supervisor Joyce Thaw's "hostility, unprofessional and disrespectful attitude toward her staff, and her failure to adequately communicate with the employees in her unit."

The City's Position

The City states that on July 24, 1981, HRA terminated Petitioner from his provisional position as Supervisor II and restored him to his permanent civil service title of Supervisor I. Consequently, Petitioner was assigned to Bronx Borough Office Number 3 on July 27, 1981.

The City argues that it has the right to terminate a provisional employee and return him to his permanent civil service title and that it may do so without giving any reason for this action. Furthermore, the City claims that the Petition herein fails to state a basis for the allegation that Petitioner's demotion and reassignment were motivated by anti-union animus. The City urges that the unsupported allegation of demotion

and transfer because Petitioner complained to his union representative does not constitute a prima facie improper practice charge since there is no nexus presented between Respondent's actions and Petitioner's complaints.

DISCUSSION

The instant petition is dismissed on several grounds. Petitioner alleges that the July 27, 1981 transfer was the "culmination" of a series of improper, retaliatory measures It is obvious then that the unspecified actions referred to must have occurred prior to that date.

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

[3] 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.

Relations Board.[4] The instant petition was not filed until December 4, 1981, a date beyond the statutory four-month period in which an improper practice charge may be filed. Thus, the allegations are time-barred and this Board is procedurally precluded from reaching the merits of the case.

In dismissing the present petition, we further find that Petitioner has failed to establish a prima facie cause of action against Respondent. Petitioner maintains that the allegedly retaliatory action taken against him by HRA emanates from the fact that he spoke to a Local 371 representative and complained about contract violations and about the conduct of supervisor Thaw. However, Petitioner has failed to allege any facts showing a causal link between his complaints to Local 371 and the actions of Respondent. The record in this regard is confined to conclusory allegations based upon Petitioner's speculations and suspicion and is devoid of any probative evidence to show that the demotion and transfer were taken in retaliation for Mr. Viscardi having complained to his union or to establish that HRA was even aware

[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.

of any interaction between Petitioner and his union representative. In the absence of any evidence that would indicate that the demotion and transfer came within the purview of any of the prohibited actions enumerated in Section 1173-4.2(a)[5], Respondent cannot be held to be guilty of an improper practice in this matter (Decision No. B-20-81).

Based on the foregoing reasons, we find that no violation of the NYCCBL has been stated herein and we shall dismiss the petition.

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] NYCCBL §1173-4.2(a) provides:

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.

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

DATED: New York, N.Y.
January 29, 1982

ARVID ANDERSON
CHAIRMAN

MILTON FRIEDMAN
MEMBER

DANIEL G. COLLINS
MEMBER

MARK J. CHERNOFF
MEMBER

CAROLYN GENTILE
MEMBER

FRANKLIN J. HAVELICK
MEMBER