

Lyons v. DC37, et. al, 31 OCB 24 (BCB 1983) [Decision No. B-24-83 (IP)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of

WILLIAM P. LYONS,
Petitioner,

DECISION NO. B-24-83
DOCKET NO. BCB-661-83

-and-

DISTRICT COUNCIL 37, AFSCME, AFL-CIO;
ANDREW LETTIERI, Division Director; and
LOUIS ADDESSO, Union Representative,

Respondents.

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DECISION AND ORDER

This proceeding was commenced on July 11, 1983, by the filing of an improper practice petition by William P. Lyons ("petitioner") charging District Council 37, AFSCME, AFL-CIO; Andrew Lettieri, Division Director; and Louis Addesso, Union Representative ("respondents") with a breach of the duty of fair representation in violation of Section 1173-4.2b of the New York City Collective Bargaining Law ("NYCCBL").¹ On August 3, 1983, respondents

¹ §1173-4.2 Improper practices; good faith bargaining.

* * *

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

(1) to interfere with, restrain or coerce public employees in the exercise of rights granted in section 1173-4.1 of this chapter, or to cause, or attempt to cause, a public employer to do so;

(2) to refuse to bargain collectively in good faith with a public employer on matters within the scope of collective bargaining provided the public employee organization is a certified or designated

representative of public employees of such employer.

submitted an answer asserting untimeliness as a defense to the petition in its entirety. A reply was filed with the Office of Collective Bargaining ("OCB") on August 9, 1983,

Background

Petitioner served as a lifeguard with the New York City Department of Parks and Recreation (the "Department") for a number of years. Following a break in service which occurred during the 1981 season, petitioner's name was removed from the lifeguard seniority list. Various complaints by Mr. Lyons, registered with the New York City Commission on Human Rights, the City of New York ombudsman, the National Labor Relations Board, and Senators Moynihan and D'Amato, allegedly produced an interview with Parks Personnel Director Anthony Concellieri. Despite this rigorous campaign for reinstatement, Mr. Lyons was denied a position at any level.

The City's 1980-82 collective bargaining agreement with its lifeguards provides, at Article V(A), that a break in service results in the loss of all prior seniority, with two exceptions: (1) time served as a member of the military service; and (2) temporary physical disability. According to petitioner, his absence was attributable to a temporary physical disability. Mr. Lyons contends that medical records

confirming the circumstances of his leave, had been submitted to the Department but had either been lost or misplaced.

It is petitioner's position that DC 37 breached its duty of fair representation by refusing to process a grievance on his behalf and by conspiring with the Department to oust him from his position as lifeguard. Petitioner also charges respondents with the failure to: (1) hold regular lifeguard union meetings; (2) bargain in good faith; and (3) fairly and equitably represent all its constituent members.

In its answer, respondents maintain that petitioner had resigned his lifeguard position on August 24, 1980. Respondents further maintain that although petitioner returned to City employment in 1981, he has "not been so employed since March 1981, nor has he been a member of respondent union, nor has he paid agency shop fees since that date." It is argued, therefore, that whatever claim petitioner might have against respondent arose on or before March 1981. The respondent union concludes that since the petition herein was filed on July 11, 1983, it is time-barred by the four-month statute of limitations set by Section 7.4 of the Revised Consolidated Rules of the office of Collective Bargaining ("Rules").

Discussion

The petition by which the instant proceeding was commenced was filed with the office of Collective Bargaining on July 11, 1983; by any calculation, this far exceeds the four-month statute of limitations provided in Section 7.4 of the Rules.

§7.4 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.

Petitioner has stated that he had attempted to return to his former position on June 25, 1982. He further alleges that in August 1982, on one of his many visits to the Department, he was "under guard evicted from the Arsenal Headquarters." Although petitioner contacted various public officials and agencies, it was not until July 11, 1983, that a claim was filed with the office of Collective Bargaining.

Petitioner's failure to comply with the filing requirements relating to timeliness mandated by the New York City Collective Bargaining Law precludes us from reaching the merits of petitioner's claim.

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 improper practice petition filed by Mr. Lyons be, and the same hereby is, dismissed.

DATED: New York, N.Y.
September 21, 1983

ARVID ANDERSON
CHAIRMAN

MILTON FRIEDMAN
MEMBER

DANIEL G. COLLINS
MEMBER

EDWARD SILVER
MEMBER

JOHN D. FEERICK
MEMBER

EDWARD F. GRAY
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MARK J. CHERNOFF
MEMBER