Ramcharan v. Limousine Commission, 33 OCB 24 (BCB 1984) [Decision No. B-24-84 (IP)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING
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In the Matter of the Improper
Practice Proceeding

-between-

PRAIMADIP RAMCHARAN, DECISION NO. B-24-84

Petitioner, DOCKET NO. BCB-698-84

-and-

NEW YORK CITY AND LIMOUSINE
COMMISSION,

Respondent.
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DECISION AND ORDER

This-proceeding was commenced on February 12, 1984, by the filing of an improper practice petition by Praimadip Ramcharan ("petitioner") , against the New York City Taxi and Limousine Commission ("respondent" or "TLC") On March 9, 1984, respondent filed an answer, to which petitioner replied on April 5, 1984. In a post-reply submission dated April 24, 1984, the TLC responded to "several new allegations" raised by petitioner in its reply. A hearing was held on July 9, and 24, 1984.

Background

On or about June 28, 1982, petitioner was appointed provisionally , as a Taxi and Limousine Inspector in the

Enforcement Branch of the TLC. On or about January 5, 1984, petitioner was transferred, along with three other inspectors to the Safety/Emissions Unit. The transfer, respondent claims, was a temporary assignment by which inspectors were routinely rotated among the different units which comprised the Enforcement Branch of the TLC. Petitioner, on the other hand, viewed the transfer as a permanent assignment, intended to isolate him from fellow employees which he represented in his capacity as shop steward for Local 237, IBT. The parties do not disagree that petitioner was dissatisfied with this transfer. Respondent, however, maintains that petitioner's performance and attitude changed significantly in the period which followed.

> Specifically, Respondent received (in less than a four-week period) numerous written and oral complaints from fellow employees, supervisors and outside parties concerning Petitioner's improper conduct. Such improper conduct included, inter alia, failing and refusing to participate in training exercises and to perform assigned duties; disrespecting outside parties and their property. (Petitioner was accused by two [independent] station owners of urinating on the bathroom walls and floors in their establishments.) [1]

On the basis of these complaints, and the recommendation of the Director of Enforcement, a decision was made, by respondent's Deputy Director of Administration, to terminate

[1] Paragraph 5 of respondent's answer to the improper practice petition.

petitioner's employment effective February 3, 1984.

Positions of the Parties

Petitioner's Position

in his pleadings, and throughout this proceeding, petitioner has maintained that his termination was based not on his refusal to work, but rather on his refusal to heed the warnings that he curb his union activities. Respondent, it is charged, interfered with petitioner's freedom of expression and his rights pursuant to the New York City Collective Bargaining Law ("NYCCBL").[2] Mr. Ramcharan sought to substantiate this allegation by the further assertions that: (1) he had been neither charged nor counselled in any way prior to his termination; and (2) the various complaints and reports upon which his termination was allegedly based were manufactured and produced only after he had already been terminated.

At the hearing, petitioner, appearing pro se, testified in his own behalf. In his testimony, Mr. Ramcharan

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[2] Section 1173-4.1 of the NYCCBL provides, in pertinent part:

> §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 chossing and shall have the right to refrain from any or all of such activities...

described the events, as perceived by him, which preceded his termination. Petitioner also made several observations about the manner in which he had been terminated. Key references in his testimony were the following:

1. On or about December 8, 1983, prior to his transfer, Mr. Ramcharan was summoned to Mr. Mari's office, Director of Enforcement, whereupon he was advised to "cool down" his union activities, "take it easy," and "let things take time."

2. Immediately following the transfer, petitioner became ill and was on sick leave for a period of approximately one week to ten days. After his return on or about January 13, 1984, the Director of Enforcement allegedly questioned the validity of petitioner's medical excuse and ordered an investigation and verification of the basis for the absence. This inquiry, petitioner maintains, constituted harassment.

3. The numerous complaints and reports from fellow employees, supervisors and outside parties concerning petitioner's conduct were,petitioner alleges, manufactured "after my termination to make it look good, to prevent me from collecting unemployment as well as to present a case to this [Office of Collective Bargaining] agency."

Furthermore, reports written by Inspector Venezia on January 16, and 17, 1984, related to his performance on January 5, and 6, 1984. Clearly, petitioner maintains, these reports are not credible records but the mere recollections of their writer.

4. There was discrepancies in dates which, petitioner maintains, further establishes that respondent falsified and manufactured documents. For example, the January 30, 1984 letter from the Director of Enforcement to the Deputy Director of Administration, purportedly recommended termination on the basis of certain letters which, petitioner claims, were not received until January 31, and February 1, 1984.

> 5. Petitioner, it is alleged, was terminated without (a) the presentment of charges, (b) the opportunity to prepare a reasonable defense, or (c) a full and fair hearing as guaranteed by the City-wide Collective Bargaining Agreement.

In his closing statement, Mr. Ramcharan concluded that he had been terminated on account of his activities as shop steward. For a remedy, petitioner has requested reinstatement with full back pay and benefits from the date of termination to the date of reinstatement, as well as an order of the Board of Collective Bargaining directing that all documents submitted as exhibits to respondent's answer herein be removed from his permanent personnel folder.

Respondent's Position

The New York City's Office of Municipal Labor Relations ("OMLR") , has maintained, on respondent's behalf, that petitioner has failed to show that his discharge would not have occurred when it did but for his union activity. Nor, it is alleged, has the petitioner demonstrated that the employer's agent, who was responsible for discharging him, harbored anti-union animus.[3]

Petitioner was hired as a provisional employee on June 28, 1982. In January of 1984, he was transferred to the Safety/Emissions Unit along with three other inspectors.

[3] The reference is to Daniel Mari, Director of Enforcement

In fact, from August 1983, through June 1984, over fifty percent of the seventy-one employees in the Enforcement Branch were rotated among its units. Mr. Daniel Mari, Director of Enforcement, testified that the Safety/Emissions Unit had been previously under a wide-scale investigation for corruption. The Inspector General had, for this reason, encouraged a constant rotation of employees through that unit. Mr. Ramcharan's transfer was a temporary assignment for which he had not been singled out.

Furthermore, it is claimed, petitioner was never advised to "cool down" his union activities. In his own testimony, petitioner admitted that he had occasionally consulted Mr. Mari on a list of proposed demands which he and other rank and file members had planned to submit to the union in connection with contract negotiations. In this context, petitioner had been advised that "a lot of them [demands] looked realistic but a lot needed more time and that ... you wouldn't accomplish everything overnight." In no other context, it is claimed, was petitioner told to either "take it easy," or "let things take time."

> It is highly specious for Petitioner to argue that he was threatened, then to state he sought Mr. Mari's advice on issues which clearly did not have to be presented to any management official. Petitioner's own testimony demonstrates that he had an ongoing working relationship with Mr. Mari. This evidence totally contradicts his allegations of union animus.

Petitioner, it is claimed, has similarly misrepresented and misconstrued other facts relating to his transfer and discharge.

1. As a provisional employee, it is alleged, Mr. Ramcharan was not entitled nor, it is conceded, did he get counselling in connection with his termination. Petitioner, it is alleged, has no contractual rights or "guarantees" in this matter and "cannot transform this [improper practice] proceeding into a contract action questioning respondent's actions under the City-wide agreement or challenging his termination as excessive discipline."

2. The fact that the reports and complaints had been placed in his permanent file after his termination does not establish that they were fabricated "to make it look good." Respondent, it is alleged, was forced to produce these documents following the commencement of this proceeding in order to demonstrate that it had acted reasonably and not in violation of the NYCCBL as alleged in the petition.

3. There are no discrepancies in dates as alleged by petitioner. The letter recommending termination, although dated January 30, 1984, was not sent out until the letters upon which it relied had been received by the Director of Enforcement.

4. The reports of Inspector Venezia, although dated January 15, and 16, 1984, were based on previously recorded notes and were not therefore based, as petitioner alleges, on mere recollections.

5. Petitioner was not a shop steward at the time of his termination. He had been removed from that position on January 23, 1984.

Discussion

The instant improper practice proceeding was instituted by petitioner following the termination of his employment with the Taxi and Limousine Commission where he had been provisionally employed since June 28, 1982. Petitioner, who had served as shop steward from September 1983, when he was elected, to January 23, 1984, when he was removed by the union, has charged that his termination had been motivated by anti-union animus, as evidenced by respondent's refusal to follow, in his case, the contract provisions relating to disciplinary actions. Petitioner has also alleged that respondent transferred him to the Safety/Emissions Unit to make him inaccessible to employees whom he had, as shop steward, represented.

Petitioner's charges are both conclusory and unsubstantiated and we believe based, in large part, on a misconception of his rights as a provisional employee. For example, petitioner maintains that he had never seen the letters and complaints upon which his termination was based prior to the commencment of the instant improper practice proceeding. This, he claims, is a violation of Article X of the City-wide collective bargaining agreement, pursuant to which statements not shown to anemployee "may not be used in a disciplinary action."

Petitioner's termination, however, was not, as he himself admits, accomplished through a disciplinary action.[4]

Article VI of the unit contract between the City of New York and Local 237, International Brotherhood of Teamsters, plainly provides that the grievance procedure shall only apply to

> [a] claimed wrongful disciplinary action taken against a permanent employee covered by Section 75(l) of the Civil Service Law or a permanent competitive employee covered by the Rules and Regulations of the Health and Hospitals Corporation upon whom the agency head has served written charges of incompetency or misconduct while the employee is serving in the employee's permanent title or which affects the employee's permanent status. [emphasis supplied]

Petitioner was a provisional employee to whom the protections of the cited contract provisions, and Section 75 of the Civil Service Law [5] simply do not apply. By failing to

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[4] "Respondent discriminated against Petitioner by terminating him for misconduct without first giving Petitioner a copy of written specific charges; giving Petitioner a reasonable time to prepare a defense; and affording Petitioner a full and fair hearing as guaranteed by articles of the City-Wide Collective Bargaining Agreement." (Paragraph "6" of petitioner's reply)

[5] Section 75 provides that the only persons who "shall not be removed or otherwise subjected to any disciplinary penalty provided in this section except for incompetency or misconduct shown after a hearing upon stated charges. . . are:

> (a) a person holding a position by permanent appointment in the competitive class .... or

(more)

acknowledge the distinction in status between permanent and provisional employees, Mr. Ramcharan has erroneously concluded that the disparate treatment afforded him is probative of bad faith and constitutes an improper practice.

Petitioner has also failed to establish, to our satisfaction, that his transfer to the Safety/Emissions Unit was improperly motivated. Respondent offered the unrefuted testimony of Mr. Mari, who stated that the assignment was a routine one and that large numbers of employees in the Enforcement Branch had been similarly rotated in that period. Although petitioner has also alleged that Mr. Mari advised him to "cool down" his union activity, he admits that he had, from time to time, asked for Mr. Mari's advice concerning proposed contract demands which he planned to submit to the union. It is, we agree, somewhat contradictory to maintain that the man whose advice he voluntarily sought harbored anti-union animus. Mr. Mari

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(Footnote 5/ continued)

(b) a person holding a position by permanent appointment ... who is an honorable discharged member of the armed forces .... or

(c) an employee in the state service who. . . has completed at least five years of continuous service ... or

(d) an employee in the service of the City of New York holding a position as Homemaker or Home Aide

testified that any comments which have been attributed to him were made, if at all, in the context of these discussions and were intended solely as the expression of his views on the demands.

Mr. Ramcharan has also alleged that respondent "manufactured" documents to make his termination "look good." Again, he has offered no proof that the documents had been either altered or fabricated. Four witnesses testified on respondent's behalf and stated, under oath, that they had written the reports, and verified their contents. Having scrutinized the documents, we find no discrepancies in dates and are satisfied, based on the testimonial corroboration of the documents, that they are genuine and, therefore, admissible.

It is important to stress, as we did earlier, that this is an improper practice petition concerning allegations of anti-union animus and not a disciplinary action. We are not, therefore, concerned with the quantum of evidence supporting respondent's decision to terminate petitioner for claimed poor job performance and misconduct. our jurisdiction extends solely to the issue of whether the decision to terminate was motivated by anti-union animus so as to constitute an improper practice within the meaning of Section 1173-4.2(a) of the New York City Collective Bar-

gaining Law, which provides that 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.

For all the reasons stated above, we find that petitioner has not met the burden of proving an improper practice as contemplated by our law and the petition must, therefore, be dismissed.

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 herein be, and the same hereby is, dismissed.

DATED: New York, N.Y.
October 25, 1984

ARVID ANDERSON
CHAIRMAN

MILTON FRIEDMAN
MEMBER

DANIEL G. COLLINS
MEMBER

CAROLYN GENTILE
MEMBER

EDWARD F. GRAY
MEMBER

JOHN D. FEERICK
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