

DC37 v. City, Dep't of Health, et. al, 33 OCB 7 (BCB 1984)
[Decision No. B-7-84 (IP)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

In the Matter of

DISTRICT COUNCIL 37, AFSCME,

DECISION NO. B-7-84

Petitioner,

DOCKET NO. BCB-692-84

-and-

THE CITY OF NEW YORK; THE DEPARTMENT
OF HEALTH; ELLIOT GROSS, CHIEF MEDICAL
EXAMINER; and THE OFFICE OF CHIEF
MEDICAL EXAMINER,

Respondents.

INTERIM DECISION AND ORDER

This proceeding was commenced on January 24, 1984, by the filing of a verified improper practice petition by District Council 37, AFSCME, AFL-CIO ("DC 37" or "the Union") against the City of New York ("the City"), the Department of Health ("the Department"), Elliot Gross in his capacity as Chief Medical Examiner, and the office of Chief Medical Examiner ("OCME"), jointly referred to as "respondents." DC 37 alleges that the Chief Medical Examiner and other management representatives repeatedly violated the New York City Collective Bargaining Law ("NYCCBL") by discriminating against employees on account of their union activities and support for Chapter Chairperson Shirley Latimer. On February 17, 1984, respondents, by their representative, the New York City Office of Municipal

Labor Relations ("OMLR") filed an answer in which it sought dismissal of the instant petition. The Union replied on March 12, 1984. On March 19, 1984, OMLR amended its answer to correct an error it had made in computing the statute of limitations period.

Background

_____The Union cites a number of incidents involving alleged "discriminatory and harassing treatment" of DC 37 proponents, especially Chapter Chairperson Shirley Latimer. DC 37 asserts that OCME officials have discriminated against Latimer since her election to the position of Chapter Secretary in the Spring of 1982. The acts complained of include, inter alia, transfer to a less desirable work location, poor evaluations, and the use of abusive language. Furthermore, DC 37 asserts that since becoming Chapter Chairperson in February, 1982, Latimer has been required to document all sick leave and special leave, a requirement allegedly not imposed upon other OCME employees. The Union also states that in October, 1983, respondents unlawfully objected to Latimer's presence at a labor-management meeting.

Additionally, the Union claims that in 1982 and 1983, four probationary employees, one of whom was a Shop Steward, were terminated "for no reason other than their

assertion of their right to ask questions, and their support for their Union, Chapter Chairperson, and for each other."

The Union also argues that OCME violated the Law in the Spring of 1983 by setting time limits on prearranged labor-management meetings and by threatening the President of Local 375 with arrest if he continued a safety inspection he was in the process of making.

OMLR seeks dismissal of the petition on several grounds. It denies that any of its actions were based upon motives proscribed by NYCCBL Section 1173-4.2 and argues that D.C. 37 has failed to allege sufficient facts to state a cause of action. OMLR further maintains that the incidents which occurred prior to September 24, 1983 are untimely raised pursuant to Section 7.4 of the Revised Consolidated Rules of the office of Collective Bargaining ("the Rules")¹ and must therefore be dismissed.

¹ Section 7.4 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.

Discussion

The record before us clearly establishes that all but two of the numerous acts complained of herein occurred beyond the statutory four month period in which an improper practice charge may be filed. These allegations are therefore time-barred and can be considered only in the context of background information rather than as specific violations of the NYCCBL presently being pleaded.²

With regard to the two remaining allegations, the Union first asserts that since February, 1982, Chapter Chairperson Latimer has been, and currently is, required to document her leave time while other employees are not required to do so. D.C. 37 maintains that Latimer has been singled out because of her union activities. The City denies any improper conduct and claims that all OCME employees are subject to the same documentation requirement.

An issue of fact has thus been raised over an allegation which, if proven true, could amount to a violation of the NYCCBL. Even though the course of conduct alleged as violative commenced more than four months prior to the date of filing the instant petition, the allegation is not time-barred in its entirety, since the action is purported to be ongoing and continuous.

² Decision Nos. B-20-81, B-2-82.

Disputed facts also exist as to whether OCME unlawfully attempted to exclude Latimer from a labor-management meeting held in November, 1983. This allegation is also timely.

Issues of fact in the context of an improper practice proceeding are best resolved by a hearing and we shall order accordingly. Those allegations which relate to events that occurred prior to September 24, 1983 are untimely and shall 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 in accordance with the foregoing discussion, a hearing take place to resolve existing issues of fact created by the two allegations which have*been raised in a timely manner; and it is further

ORDERED, that the remaining allegations contained in the improper practice petition herein be, and the same

Decision No. B-7-84
Docket No. BCB-692-84

6.

hereby are, dismissed.

DATED: New York, N.Y.
May 2, 1984

ARVID ANDERSON
CHAIRMAN

MILTON FRIEDMAN
MEMBER

DANIEL G. COLLINS
MEMBER

CAROLYN GENTILE
MEMBER

EDWARD F. GRAY
MEMBER

EDWARD SILVER
MEMBER

JOHN D. FEERICK
MEMBER
