

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of the Improper
Practice Proceeding

-between-

CORRECTION OFFICER'S BENEVOLENT
ASSOCIATION,

Petitioner,

DECISION NO. B-39-85

-and-

DOCKET NO. BCB-821-85

DEPARTMENT OF CORRECTION,
CITY OF NEW YORK,

Respondent.

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DECISION AND ORDER

This proceeding was commenced on October 29, 1985, with the filing of a verified improper practice petition by Philip Seelig, as President of the Correction officers Benevolent Association (hereinafter "petitioner" or "COBA") against the New York City Department of Correction (hereinafter "respondent" or "City"). On November 7, 1985, the City answered by filing a verified motion to dismiss on the ground that the petition fails to state a cause of action upon which relief may be granted under the New York City Collective Bargaining Law ("NYCCBL"), together with an affirmation in support of its motion. The petitioner filed a response on November 15, 1985 in the form of an affirmation in opposition to the City's motion.

The Petition

COBA's improper practice petition alleges, in its entirety:

On or about July 1, 1985, the Commissioner of Correction, Jacqueline McMickens, instituted an Equal Employment Counselor Program which encourages and/or permits EEO officers, appointed by the Commissioner, to exercise duties and functions which interfere with the administration of union matters and infringe upon the functions of union representatives, e.g., delegates.

The City's Position

The City admits that equal employment opportunity programs have been instituted in all mayoral agencies pursuant to Executive Order No. 61, dated July 27, 1981. Nevertheless, it is the City's position that the above charge does not conform to the requirements of Section 7.5 of the Revised Rules and Regulations of the Office of Collective Bargaining¹

¹ Rule 7.5 requires that an improper practice petition be verified and that it contain:

- a. The name and address of the petitioner;
- b. The name and address of the other party (respondent);
- c. A statement of the nature of the controversy, specifying the provisions of the statute, executive order or collective agreement involved, and any other relevant and material documents, dates and facts. If the controversy involves contractual provisions, such provisions shall be set forth;
- d. Such additional matters as may be relevant and material

(hereinafter "OCB Rules") in that it alleges merely conclusory statements unsupported by relevant and material documents, dates and facts. Thus, argues the City, the allegations are not sufficient to give notice of what is intended to be proved and do not set forth the material elements of a cause of action.

The Petitioner's Position

The petitioner asserts that the facts alleged, if true, constitute a cause of action. Petitioner states: "It is abundantly clear what the functions of union representatives are.... It is equally clear that if EEO officers ... are engaging in activities which infringe, interfere with or usurp in any matter [sic] the functions of the union representatives, then not only has a cause of action been stated, but a violation will have been proven." Petitioner argues that pleadings must be viewed in a light most favorable to the pleader. Finally, petitioner states that if respondents "believe they are in need of classification [sic] of the allegation contained in the Petitioner [sic], their remedy is to resort to the numerous discovery devices provided by law."

Discussion

It is well settled that on a motion to dismiss, the

facts alleged by the petitioner must be deemed to be true. Thus, the only question to be decided by the Board here is whether, on its face, this petition states a cause of action under the NYCCBL.²

The respondent's motion to dismiss presents an issue frequently raised before this Board: the question whether the allegations of a petition are sufficient to satisfy Section 7.5 of the OCB Rules.

This rule is designed to place the respondent on notice of the nature of the petitioner's claim so as to enable the respondent to frame a meaningful response thereto. It requires sufficient specificity to satisfy a respondent's right to due process and to permit the Board to determine its jurisdiction. Although it is a long established Board policy that the OCB Rules are to be construed liberally,³ a petition which fails to comply with the minimal standard set forth above deprives the responding party of a clear statement of the charges to be met and materially hampers the preparation of a defense.

Applying this test to the instant case, we find that the

² For this reason, we find it unnecessary to consider petitioner's assertion that the City is not acting within the mandate of Executive Order No. 61.

³ Decision Nos. B-8-77 and B-9-76.

petition herein does, indeed, fail to conform to the requirements of Rule 7.5 in that it does not specify what duties and functions of the EEO officers it finds objectionable and, more importantly, how they have interfered with or infringed upon those of the union delegates. Nor does the petition contain dates or locations at which the alleged acts of interference occurred.

We find further that the petition herein has failed to establish a prima facie case of an improper practice in that no fact has been alleged that would support the underlying theory of petitioner's case that the institution of an equal employment opportunity program adversely affects the continued enjoyment, by COBA and/or the employees it represents, of the rights recognized by Section 1173-4.1. The petitioner fails to cite even one instance of interference, and the record is devoid of any objective evidence that the City's action was intended to or did, in fact, interfere with or diminish the petitioner's or employees' rights under this section. Only one fact is alleged in the petition and it is undisputed: that the Department of Correction has instituted an equal employment opportunity program. The remainder - mere conclusory allegations based upon petitioner's speculation as to the effects upon its rights that it deems to be implicit in the circumstance complained of - is not enough to satisfy

the requirements of Rule 7.5.⁴

We also note that petitioner did not avail itself of the opportunity of filing a brief with its petition, as provided for in OCB Rule 7.10. Nor did it attempt to meet the City's objections and to correct the pleadings at the time that it replied to the City's motion to dismiss. Thus, it cannot complain that it did not have the opportunity to present the facts fully. Finally, we note that discovery is not available to the parties in proceedings before the Board.

Therefore, in view of the petition's lack of even the minimal level of specificity required by Section 7.5 of the OCB Rules and, further, in light of its failure to demonstrate interference or an intent to interfere with rights of employees under the NYCCBL, we find that no violation of the NYCCBL has been stated. For the reasons set forth above, the City's motion to dismiss is granted.

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

⁴ Decision Nos. B-12-85, B-14-83.

ORDERED, that the motion to dismiss filed by the City in Docket No. BCB-821-85 be, and the same hereby is, granted.

DATED: New York, N.Y.
December 6, 1985

ARVID ANDERSON
CHAIRMAN

MILTON FRIEDMAN
MEMBER

DANIEL G. COLLINS
MEMBER

JOHN D. FEERICK
MEMBER

DEAN L. SILVERBERG
MEMBER

EDWARD F. GRAY
MEMBER

CAROLYN GENTILE
MEMBER