Trammell v. Goldstein, Velez, et. al, 39 OCB 38 (BCB 1987) [Decision No. B-38-87 (IP)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING
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HOMER L. TRAMMELL,

Petitioner,

-and-

HAROLD GOLDSTEIN, PETER VELEZ,
Dr. DeCATALOGNE, LEONARD AMATULLI,

Respondents.
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DECISION NO. B-38-87

DOCKET NO. BCB-880-86

DECISION AND ORDER

A verified improper practice petition has been filed by Homer L. Trammell (hereinafter "petitioner") in which he charges Harold S. Goldstein, Peter Velez, Dr. Jacques DeCatalogne, and Leonard Amatulli (hereinafter referred to collectively as "respondents") with committing certain actions which constitute improper practices within the meaning of the New York City Collective Bargaining Law (hereinafter "NYCCBL"). The New York City Health and Hospitals Corporation (hereinafter "HHC"), on behalf of the respondents, has submitted a motion to dismiss the improper practice petition. The petitioner has failed to submit any response to HHC's motion, although the Trial Examiner informed him, in writing, of his right to do so.

Background

The petitioner was employed by Elmhurst Hospital, a unit of HHC, in the "Group 11" title of Assistant Coordinating Manager[1] until April 11, 1986. On that date, his employment in that title was terminated and he reverted to his permanent civil service title of Addiction Counselor.

Respondents Goldstein, Velez, and Amatulli are management officials of Elmhurst Hospital. Respondent Dr. DeCatalogne is the Medical Director of the Methadone Maintenance treatment program at the Hospital.

Since at least August of 1984, the petitioner has complained, in writing, to the Hospital's management concerning his views of the character and conduct of Dr. DeCatalogne. The complaints, contained in memoranda dated August 20, 1984, March 11, 1985, March 12, 1985, April 25, 1985, and January 20, 1986, generally allege that Dr. DeCatalogne's actions have been disrespectful and arbitrary toward staff members as well as

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[1]This title has been classified by HHC as "managerial", pursuant to 7385(11) of the Unconsolidated Laws (the "HHC Act"); however, the collective bargaining status of this title is at issue in a proceeding pending before the Board of Certification (Docket No. RU-953-86) and hearings are continuing therein.

patients, and that patient care rendered by the doctor has been less than adequate. Numerous specific examples are described in several of the memorandum. Additionally, in memoranda dated January 17, 1986, and January 21, 1986, the petitioner complains that respondent Amatulli has harassed him for daring to challenge Dr. DeCatalogne.

Positions of the Parties

Petitioner's Position

The petitioner contends that the respondents have subjected him to harassment and abuse, culminating in his demotion from Assistant Coordinating Manager to Addiction Counselor, in retaliation for speaking out against the actions of Dr. DeCatalogne. He alleges that his demotion was accomplished without due process, and that no justification or written basis was provided for the action taken. He also alleges he was subjected to "inconsistencies in pay" while serving as Assistant Coordinating Manager.

As a remedy, the petitioner seeks reinstatement to the Assistant Coordinating Manager title; compensation for "hardship and suffering", and for "inconsistencies in pay"; and disciplinary action to be taken against the respondents.

Respondent's Position

The respondents move that the improper practice petition be dismissed for failure to state a claim subject to the jurisdiction of the Board under the NYCCBL. The respondents assert that, even assuming, arguendo, that the facts alleged by the petitioner are true, the petition fails to state how any of the acts complained of constitute any of the practices proscribed in §1173-4.2a of the NYCCBL. HHC points out that the petition does not allege how the respondents interfered with, restrained, or coerced public employees in the exercise of their rights to organize, form, join, or assist a public employee organization, or to refrain therefrom; how the respondents dominated or interfered with the formation or administration of a labor union; how the respondents discriminated against the petitioner or any public employee for the purpose of encouraging or discouraging membership in, or participation in the activities of any union; or how the respondents refused to bargain collectively in good faith on matters within the scope of collective bargaining.

The respondents observe that with respect to the petitioner's demotion, the "Group 11"[2] title of Assistant Coordinating Manager is not subject to the disciplinary procedures of the Civil Service Law, and that petitioner was given a review of an adverse managerial decision in accordance with HHC Operating Procedure 20-39. The respondents assert that the Court of Appeals has held that in the case of "Group 11" employees of HHC, there is no further obligation to provide any additional review or to provide a due process hearing.[3] The respondents submit that the adverse managerial decision against petitioner does not form the basis for an improper practice charge.

Finally, the respondents allege that the petitioner's vague reference to "inconsistencies in pay" is so non-specific as to make it impossible to determine whether the assertion of this claim is timely. In any event, submit the respondents, the petition fails to allege who was responsible for such "inconsistencies in pay" and how this is violative of the NYCCBL.

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[2]Unconsolidated Laws §7385(11).

[3]Burns v. Quinones, 68 N.Y. 2d 719, 506 N.Y.S. 2d 316 (1986).

For these reasons, the respondents and HHC ask that the improper practice petition be dismissed.

Discussions

On a motion to dismiss, the factual allegations of the petition must be deemed to be true, and the only question presented for adjudication is whether, taking the facts as alleged by the petitioner, a cause of action within the meaning of the NYCCBL has been stated.[4] In the present case, HHC, on behalf of the individual respondents,[5] argues that the facts alleged by the petitioner, even if assumed to be true, do not constitute any improper public employer practice as defined in §1173-4.2a of the NYCCBL. We are constrained to agree.

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[4]Decision No. B-25-81.

[5]The prohibition of improper practices set forth in NYCCBL 1173-4.2a is applicable only to the actions of public employers, such as HHC. It has no application to the actions of individuals, except to the extent that they act as representatives or agents of the public employer. In this case, the named individual respondents are all agents of HHC, and so we deem HHC to be a real party in interest even though it was not named as a party by the petitioner.

The NYCCBL does not give this Board jurisdiction to consider and attempt to remedy every perceived wrong or inequity which may arise out of the employment relationship. The law does mandate that we administer and enforce procedures designed to safeguard those employee rights created in that statute, i.e. the right to organize, to form, join, and assist public employee organizations, to bargain collectively through certified public employee organizations; and the right to refrain from such activities.[6] The petition herein does not allege that the employer's acts of harassment and/or retaliation were intended to affect the exercise of any of these rights.

The petition's conclusory allegations that the respondents' actions constitute improper practices are insufficient to state a legally recognizable claim. The petition fails to allege how harassment directed at the petitioner by his supervisors, allegedly in retaliation for his repeated complaints concerning the conduct and performance of another hospital employee, Dr. DeCatalogne, involves protected union activity or collective bargaining.

[6]NYCCBL §1173-4.1.

In this regard, we observe that at all times relevant to the petition herein, the title in which the petitioner served, Assistant Coordinating Manager, was not represented for collective bargaining purposes by any public employee organization.[7] There is no allegation that the petitioner was involved in attempting to organize this title, or to obtain certification to represent the employees in the title. Neither is there any issue of the petitioner attempting to enforce the contractual rights of Assistant Coordinating Managers, since that title is not covered by a collective bargaining agreement. Accordingly, we conclude that the actions of the petitioner are not protected activity within the meaning of the NYCCBL. Therefore, even harassment by the employer in retaliation for the petitioner's actions cannot constitute an improper practice under NYCCBL §1173-4.2a.

Since this Board lacks statutory authority to consider claims of denial of due process independently from a valid underlying improper practice charge, we may not rule upon the petitioners's

[7]HHC has taken the position that the employees serving in the title of Assistant Coordinating Manager are managerial and/or confidential, and should be excluded from collective bargaining. This issue is pending before the Board of Certification in another case (Docket No. RU-953-86).

claim that his demotion was accomplished without due process. However, we note that the decision of the Court of Appeals cited by HHC[8] does appear to support the respondents' contention that the due process rights of HHC's "Group 11" employees are quite limited, and that the adverse managerial decision review which petitioner was given satisfied HHC's obligation to petitioner in connection with his demotion back to his permanent civil service title.

For the reasons stated above, we will grant the respondents' motion to dismiss the improper practice petition herein.

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 respondents' motion to dismiss be, and the same hereby is, granted; and it is further

[8]Burns v. Quinones, 68 N.Y. 2d 719, 506 N.Y.S. 2d 316 (1986).

ORDERED, that the verified improper practice petition of Homer L. Trammell be, and the same hereby is, dismissed.

Dated: New York, N.Y.
August 27, 1987

ARVID ANDERSON
CHAIRMAN

DANIEL G. COLLINS
MEMBER

GEORGE NICOLAU
MEMBER

EDWARD SILVER
MEMBER

CAROLYN GENTILE
MEMBER