Lee v. HRA, Dep't of Social Services, 39 OCB 44 (BCB 1987) [Decision No. B-44-87 (ES)]

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

-between-

GLORIA ANN LEE,

Petitioner, DECISION NO. B-44-87(ES)

-and- DOCKET NO. BCB-958-87

NEW YORK CITY HUMAN RESOURCES ADMINISTRATION, DEPARTMENT OF SOCIAL SERVICES,

Respondent.
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DETERMINATION OF EXECUTIVE SECRETARY

On may 15, 1987, Gloria Ann Lee ("Petitioner") filed a verified petition alleging that the New York City Human Resources Administration committed an improper practice in violation of the New York City Collective Bargaining Law ("NYCCBL") in that it reduced her salary when her services as a provisional office Associate were terminated and she was returned to her permanent civil service title of Office Aide III. Petitioner contends, inter alia, that said salary reduction was in derogation of promises made to her by her supervisor and was unjust in light of her superior work record.

Pursuant to Section 7.4 of the Revised Consolidated Rules of the Office of Collective Bargaining ("OCB Rules"),

a copy of which is annexed hereto, I have reviewed the instant petition and have determined that it does not allege facts sufficient as a matter of law to constitute an improper practice within the meaning of the NYCCBL. The petition does not allege that respondent has committed any act in violation of Section 1173-4.2a of the statute.[1] Nor does it appear that the acts complained of in the petition, under the circumstances detailed therein, would constitute employer action of the type prohibited by Section 1173-4.2a.

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[1]Section 1173-4.2a of the NYCCBL provides:

> a. Improper public employer practices. 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;
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> (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.

It must be emphasized that the employment rights of provisional employees are limited by law.[2] Unlike employees who hold permanent appointments, a provisional employee is not entitled to receive charges or a hearing prior to termination of the employment.[3]

The NYCCBL does not provide a remedy for every perceived wrong or inequity. It does provide procedures designed to safeguard employees' 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. Since the petition herein does not allege that the acts complained of were intended to or did affect any of these protected rights, I find that no improper employer practice has been stated. The petition, therefore, is dismissed pursuant to Section 7.4 of the OCB Rules.

DATED: New York,
September 24, 1987

William J. Mulry
Executive Secretary
Board of Collective
Bargaining

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[2]Civil Service Law §65.

[3]See, Civil Service Law §75; Matter of Albury v. New York City Civil Service Commission, 32 A.D. 2d 895, 302 N.Y.S. 2d 3, aff'd, 27 N.Y. 2d 694, 314 N.Y.S. 2d 13, 262 N.E. 2d 219 (1970).

§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. Within ten (10) days after a petition alleging improper practice is filed, the Executive Secretary shall review the allegations thereof to determine whether the facts as alleged may constitute an improper practice as set forth in section 1173-4.2 of the statute. If it is determined that the petition, on its face, does not contain facts sufficient as a matter of law to constitute a violation, or that the alleged violation occurred more than four (4) months prior to the filing of the charge, it shall be dismissed by the Executive Secretary and copies of such determination shall be served upon the parties by certified mail. If, upon such review, the Executive Secretary shall determine that the petition is not, on its face, untimely or in sufficient, notice of the determination shall be served on the parties by certified mail, provided, however, that such determination shall not constitute a bar to the assertion by respondent of defenses or challenges to the petition based upon allegations of untimeliness or insufficiency and supported by probative evidence available to the respondent. Within ten (10) days after receipt of a decision of the Executive Secretary dismissing an improper practice petition as provided in this subdivision, the petitioner may file with the Board of Collective Bargaining an original and three (3) copies of a statement in writing setting forth an appeal from the decision together with proof of service thereof upon all other parties. The statement shall set forth the reasons for the appeal.

§7.8 Answer-Service and Filing. Within ten (10) days after service of the petition, or, where the petition contains allegations of improper practice, within ten (10) days of the receipt of notice of finding by the Executive Secretary, pursuant to Rule 7.4, that the petition is not, on its face, untimely or insufficient, respondent shall serve and file its answer upon petitioner and any other party respondent, and shall file the original and three (3) copies thereof, with proof of service, with the Board. Where special circumstances exist that warrant an expedited determination, it shall be within the discretionary authority of the Director to order respondent to serve and file its answer within less than ten (10) days.

OTHER SECTIONS OF THE LAW AND RULES MAY BE APPLICABLE.
CONSULT THE COMPLETE TEXT.