

OFFICE OF COLLECTIVE BARGAINING  
BOARD OF COLLECTIVE BARGAINING

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In the Matter of the Improper  
Practice Proceeding

-between-

COMMUNICATIONS WORKERS OF  
AMERICA, LOCAL 1180,

DECISION NO. B-13-88

DOCKET NO. BCB-927-86

Petitioner,

-and-

NEW YORK CITY HUMAN RESOURCES  
ADMINISTRATION,

Respondent.

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SUPPLEMENTAL DECISION AND ORDER

On December 22, 1987, this Board rendered a decision and interim order in this matter<sup>1</sup> in which we held that the New York City Human Resources Administration (hereinafter "HRA" or "the City") committed an improper practice, in violation of Sections 1173-4.2a (1) and (3)<sup>2</sup> of the New York City Collective Bargaining Law (hereinafter "NYCCBL"), by instituting disciplinary charges against Cynthia Peele in retaliation for her filing of a grievance. In that decision, we granted the improper practice petition filed by the Communications Workers of America, Local 1180

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<sup>1</sup> Decision No. B-58-87.

<sup>2</sup> Recodified as §12-306a (1) and (3).

(hereinafter "the Union"), on behalf of Ms. Peele.

However, since neither party had addressed the issue of the appropriate remedy, our order granted the parties twenty days to submit written statements of their positions on this issue. A letter stating HRA's position was submitted on January 11, 1988. A statement of the Union's position was received on January 12, 1988.

#### Background

The management action challenged by the Union in its improper practice petition consisted of the filing and prosecution of disciplinary charges against Ms. Peele, a Principal Administrative Associate employed by HRA. The Union alleged, and this Board found, that Ms. Peele's supervisor was aware that Ms. Peele had submitted a grievance concerning allegedly unfair distribution of work and a lack of administrative guidance and sufficient staffing, and that he was motivated by a desire to retaliate against her for having filed the grievance when he requested the institution of disciplinary charges against her. We further found that HRA failed to establish that it would have filed disciplinary charges against Ms. Peele even in the absence of her submission of the grievance referred to above.

Accordingly, we held that HRA had committed an improper practice.

While the proceeding before this Board was pending, HRA scheduled and conducted a hearing pursuant to §75 of the Civil Service Law on the disciplinary charges filed against Ms. Peele. Following the hearing, in a report dated June 24, 1987, the hearing officer employed by the Employee Discipline Division of HRA found Ms. Peele guilty of three of the five Specifications of the disciplinary charges, and recommended a penalty of suspension without pay for five working days. This penalty was adopted by HRA and was imposed upon Ms. Peele.

The issue for determination herein is what the remedy shall be for the violation of Ms. Peele's protected rights under the NYCCBL.

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Positions of the Parties

Union's Position

The Union relies upon the decisions of the Public Employment Relations Board (hereinafter "PERB") in cases in which that body has issued remedial orders after finding the commission of an improper practice, in requesting the following relief:

- "1. that a cease and desist order be issued barring the City from interfering with, restraining, coercing or discriminating against Cynthia Peele or any other employee for exercising their rights protected under the NYCCBL. County of Erie Board of Elections, 19 PERB 3069 (1986);
2. that the City withdraw the October 10, 1986 disciplinary charges and any disciplinary penalty resulting therefrom filed against Ms. Cynthia Peele. New York City Transit Authority, 19 PERB 3021 (1986);
3. that the City remove and destroy all documents and reports maintained in their files relating to the October 10, 1986 disciplinary charges and any proceedings thereafter resulting therefrom. New York City Transit Authority, 19 PERB 4618 (1986);
4. that the City make Ms. Cynthia Peele whole for any loss of pay and benefits suffered as a result of the October 10, 1986 disciplinary charges brought against her. ibid., 19 PERB 4618;
5. that the City post a notice of the decision and award at all locations customarily used to post communications to employees who are union members. ibid., 19 PERB 3021, 19 PERB 3069, 19 PERB 4618."

The Union notes that the PERB decisions it has cited all involve Sections 209a(1) (a) and (c) of the Taylor Law, which are almost identical to the sections of the NYCCBL found to have been violated in the present case. Therefore, the Union submits that the remedies awarded by PERB for viola-

tions of these sections should serve as "controlling authority" for the remedy to be awarded by the Board herein.

City's Position

The City points out that a Section 75 hearing officer found Ms. Peele guilty of the disciplinary charges which were at issue in the improper practice proceeding. The City argues that the decision in the Section 75 hearing was, thus, "...in direct contravention of the Board's finding in this matter." Consequently, the City submits that as two completely independent hearings have resulted in two disparate factual outcomes, the Board should limit its remedy to an order directing HRA to refrain from further retaliatory action against Cynthia Peele.

Discussion

This Board is expressly authorized, pursuant to NYCCBL §1173-5.0a(4),<sup>3</sup> to "prevent and remedy improper public employer and public employee organization practices" (emphasis added) and to "issue appropriate remedial orders." The parallel provision of the Taylor Law, to

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<sup>3</sup> Recodified as §12-309a(4).

which the NYCCBL is required to be substantially equivalent,<sup>4</sup> is §205.5(d), which empowers PERB:

"To establish procedures for the prevention of improper employer and employee organization practices .... and to issue a decision and order directing an offending party to cease and desist from any improper practice, and to take such affirmative action as will effectuate the policies of this article (but not to assess exemplary damages), including but not limited to the reinstatement of employees with or without back pay...."

In fulfilling its mandate under the applicable law, this Board possesses broad discretion to order a remedy which is appropriate under the facts of a given case. This is a matter which must be determined on a case by case basis.

In the present case, the City's request that we limit the remedy to an order to refrain from further retaliatory action against Ms. Peele is based upon a faulty premise. The City believes that the HRA hearing officer's finding of guilt in the Section 75 hearing is in "direct contravention" of the Board's finding in this matter. This is not correct, however, for the question of Ms. Peele's guilt was not in issue before this Board. The issue before this Board was whether the filing of disciplinary charges against Ms. Peele was improperly motivated, and, if so, whether the employer established that it would have brought the charges

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<sup>4</sup>Civil Service Law §212.

in the absence of improper motivation. Here, we found that HRA, through its agent, Ms. Peele's supervisor, was improperly motivated by a desire to retaliate against Ms. Peele for having filed a grievance when it prosecuted the disciplinary charges. Further, we found that HRA failed to establish, to our satisfaction, that it would have filed and prosecuted the charges in the absence of an improper motive. This finding is not open to re-litigation at this time. Neither is it entirely dependent upon Ms. Peele's innocence of all of the charges.<sup>5</sup>

We have reviewed the remedy requested by the Union and have found each element thereof to be supported by the PERB cases cited therein. The City has failed to cite any decision by this Board or by PERB which would preclude the granting of the requested remedy. However, as we stated above, the appropriate remedy in any case will depend upon the facts and circumstances of that case. For this reason, the PERB decisions cited by the Union, although instructive,

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<sup>5</sup> We also observe that the objectivity of the Section 75 hearing officer must be viewed in the context of the fact that he was designated and employed by Ms. Peele's employer, HRA, rather than by an apparently neutral agency, such as the City's Office of Administrative Trials and Hearings.

are not controlling. Therefore, we will issue the order set forth below which we consider to be an appropriate remedy in the present case. We note that we will not require the City to post the notice requested by the Union. We have determined that that remedy, although within our power to order, is not warranted under the circumstances of this case. Of course, we are aware that in any event, the Union has the ability to publicize our decision herein if it desires to do so.

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 HRA cease and desist from interfering with, restraining, coercing or discriminating against Cynthia Peele or any other employee for exercising their protected rights under the NYCCBL; and it is further

ORDERED, that HRA rescind the October 10, 1986 disciplinary charges against Cynthia Peele and expunge any record of those charges and any disciplinary penalty resulting therefrom, from her personnel file(s); and it is further



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9.

ORDERED, that HRA make Cynthia Peele whole for any loss of pay and benefits imposed as a penalty as a result of the October 10, 1986 disciplinary charges.

Dated: New York, N.Y.  
April 28, 1988

MALCOLM D. MacDONALD  
CHAIRMAN

GEORGE NICOLAU  
MEMBER

DANIEL G. COLLINS  
MEMBER

EDWARD F. GRAY  
MEMBER

CAROLYN GENTILE  
MEMBER