Thomas v. Bronx Mun. Hospital Center, Carrington, 41 OCB 22 (BCB 1988) [Decision No. B-22-88 (ES)]

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

-between-

LILLIAN THOMAS, DECISION NO. B- 22-88(ES)

Petitioner, DOCKET NO. BCB-1007-87

-and-

BRONX MUNICIPAL HOSPITAL CENTER and BEVERLY AUGUSTUS CARRINGTON,

Respondents.

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DETERMINATION OF EXECUTIVE SECRETARY

On November 18, 1987, Lillian Thomas, formerly employed as an Office Aide III at Bronx Municipal Hospital Center ("respondent"), filed a verified improper practice petition complaining of (a) retaliatory discharge, (b) lack of training, supervision and evaluations, and (c) out-of-title work assignments, all in violation of section 1173-4.2a(l) and (3) of the New York City Collective Bargaining Law ("NYCCBL"). Specifically, petitioner contends that she was terminated on October 8, 1987 in retaliation for exercising her right as a union member [1] to request a transfer. Petitioner alleges

[1] Petitioner was a member of Local 1549 of District Council 37. A separate improper practice petition (Docket No. BCB-1008-87) alleging that District Council 37 breached its duty of fair representation in connection with petitioner's termination is under consideration by the Board of Collective Bargaining.

that, on October 5, 1987, Barbara Augustus Carrington approved her request for a transfer out of the Messenger Service Department but then recommended that petitioner be terminated, which she was three days later.

Although petitioner insists that her work was satisfactory and gave no cause for the discharge, she also contends that she was given inadequate training and supervision and received no performance evaluations during the period of her employment. Accordingly, petitioner alleges that she "was deprived of an opportunity to prove [her] fitness as a new employee, in violation of the collective bargaining agreement and applicable Civil Service law and rules." Petitioner also asserts that, during her employment, Ms. Carrington assigned her to perform duties which were not appropriate to her Office Aide-Typist position, including the performance of personal errands.

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 petition herein 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 collective bargaining agreement covering employees in petitioner's

title,[2] includes at Article XXIV ("Special Provisions Applicable to the Health and Hospitals Corporation"), Section 3, provisions and procedures relating to a transfer policy. However, that section expressly excludes from coverage a provisional employee with less than one year of in-title service. I note that petitioner was appointed as a provisional Office Aide on June 8, 1987. Therefore, it appears that, at the time of her transfer request and termination, on October 5, 1987 and October 8, 1987, respectively, petitioner had no right to the benefit of the transfer provisions of the applicable collective bargaining agreement. In any event, petitioner has failed to allege any facts to support the assertion that "as a union member I had a right to request a transfer" or to support the conclusory allegation that her discharge was in retaliation for the exercise of any such right.

Furthermore, to the extent that the petition complains of a denial of rights prescribed by a collective bargaining agreement and by the Civil Service Law and Rules, which I deem to include the allegation relating to out-of-title

[2] The most current clerical agreement was executed on May 6, 1987 and covers the period July 1, 1982 to June 30, 1984. Since a successor agreement has not been concluded, the terms of the 1982-84 contract continue in full force and effect pursuant to the status quo provisions of NYCCBL §1173-7.0d.

work, it must be dismissed because the Board of Collective Bargaining ("Board") lacks jurisdiction to consider such claims. Section 205.5d of the Taylor Law,[3] which applies to the City of New York, provides:

> the board shall not have authority to enforce an agreement between a public employer and employee organization and shall not exercise jurisdiction over an alleged violation of such an agreement that would not otherwise constitute an improper employer or employee organization practice.

As no basis has been alleged for finding that the alleged contract violations constitute independent improper practices under the NYCCBL, petitioner is left to her contract remedies, if any exist, with respect to these claims. Additionally, it is well-settled that alleged violations of laws external to the NYCCBL, such as the Civil Service Law, are not within the jurisdiction of the Board and must be raised in the courts or other appropriate forums.[4]

It should be noted that the NYCCBL does not provide a remedy for every perceived wrong or inequity. Its provisions and procedures are designed to safeguard the rights of public employees that are created by the statute, i.e., the right to organize, to form, join and assist public

[3] New York State Civil Service Law, Article 14.

[4] Decision Nos. B-14-86(ES); B-14-83.

employee organizations, to bargain collectively through certified public employee organizations, and the right to refrain from such activities. Since the instant petition does not allege that respondents' actions were intended to, or did, affect any of these protected rights, it must be dismissed in its entirety.

DATED: New York, N.Y.
May 27, 1988

Marjorie A. London
Executive Secretary
Board of Collective
Bargaining

§7.7 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 insufficient 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.

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