

Danz v. HRA, Crises Intervention Services, 43 OCB 1 (BCB 1989)
[Decision No. B-1-89 (IP)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of the Improper
Practice Proceeding :

-between- : DECISION NO. B-1-89

WALTER DANZ, : DOCKET NO. BCB-1062-88
Petitioner, :

-and- :

NEW YORK CITY HUMAN RESOURCES
ADMINISTRATION, CRISES :
INTERVENTION SERVICES, :

Respondent. :

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DECISION AND ORDER

On June 8, 1988, Walter Danz ("the Petitioner") filed a verified improper practice petition against the New York City Human Resources Administration Crises Intervention Services ("the HRA"). The Petitioner alleges that the HRA committed an improper practice when it prevented him from earning overtime in retaliation for filing a grievance or grievances, in violation of Sections 12-306a.(1) and 12-306a.(3) [formerly §§1173-4.2a.(1) and (3)] of the New York City Collective Bargaining Law

("NYCCBL").¹ The Petitioner asks that the alleged retaliation cease, that certain derogatory information be removed from his personnel file, and that he be awarded "damages in the amount of the overtime compensation he would have received from May 2, 1988 to the date hereof had HRA not refused to permit him to perform overtime work since said date."

The HRA, appearing by the City of New York Office of Municipal Labor Relations ("the City") filed a verified answer to the improper practice petition on September 29, 1988. The Petitioner, by his attorney, filed a verified reply on November 30, 1988.

BACKGROUND

The Petitioner has been employed by the Human Resources

¹ NYCCBL §§12-306a.(1) and (3) provide as follows:

Improper practices; good faith bargaining.

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 (now renumbered as section 12-305) of this chapter;

* * *

(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.

Administration since 1961. He presently holds the civil service title of Supervisor II, and the functional position of Director of Social Services at the East Third Street Family Shelter Facility, where he has worked since October of 1986. The Family Shelter Program is a component of the HRA and has approximately 350 staff members located in five shelter sites throughout the City. Because of short staffing in these sites, staff members are often required to work overtime.

In an effort to regulate the earnings of overtime by New York City employees, the City has established a cap on salary that can be earned as a result of overtime.² Employees are not permitted to exceed the overtime cap limitation unless they obtain waivers from the Office of Municipal Labor Relations.

According to HRA records, between January 1, 1988 and March 31, 1988, the Petitioner earned \$9,915 in overtime, an amount \$6,498 in excess of the allowable overtime cap.

On April 29, 1988, the Petitioner was informed by an assistant to the Director of the Family Emergency Services Program that his hours of work were being rescheduled in order to eliminate the three hours of overtime work that he had regularly performed on Monday mornings before his normal work hours began. At about the same time, the Petitioner was also informed that he

² INTERPRETIVE MEMORANDUM NO. 70, issued by the Office of Municipal Labor Relations on February 29, 1988, re~yses the over|yo

was to perform no further overtime work because he had exceeded the overtime limit. Up until that point, the Petitioner had been the highest overtime earner among the 350 employees of the Family Shelter Program.³

On May 2, 1988, the next business day, the Petitioner informed his supervisor that he would be unable to finish a statistical report that he had been working on by the end of his regular work day. He estimated that it would take approximately one and one-half hours of overtime work to complete the task. His supervisor instructed him to stay and finish the job.

On or about May 5, 1988, the Petitioner received a memorandum from his supervisor concerning the May 2 overtime work, which reads as follows:

Subject: INSUBORDINATION

It seems apparent that you clearly have a problem with following directives. As the Social Service Director, you are to have the ability to practice time management. Meaning, that in the course of your day to day duties, you should be able to complete specific job tasks that are routine week after week.

The 21 day report is supposed to be complete, accurate and ready for my perusal at the end of each Monday. However, on May 2, 1988 at approximately 5:50 p.m., you sent a message by A.S.W., Gertrude Michelson, that the report would not be completed because you have to leave at your scheduled time, because you no longer could do

³ Based upon HRA payroll and timekeeping records, and not in dispute.

overtime. A.S.W., Michelson is not your supervisor or messenger. If you were having problems in completing the report, you had ample time to let me know.

I then came directly to Social Service and asked if the report was complete. You stated it was not going to be completed because you had to leave at 6:00 p.m. Clearly, I am aware of you [sic] 10-6 schedule, however, you had sufficient time to complete the required report.

Therefore, this is clearly insubordination and the inability to manage your time.

Henceforth, I am now requesting a daily work sheet of "things to do today" from you. Also, a weekly report of all job tasks for the specific week.

The Petitioner, by memorandum dated May 5, 1988, rebutted his supervisor's charges. The memorandum reads as follows:

Subject: Rebuttal to Insubordination Charge

On Monday 5/2/88 I reported to work at 9:33 A.M. instead of 7:00 A.M. which I was ordered to do because my car became disabled. You then had a meeting with me which lasted more than 1/2 hour. After 10:00 A.M. I prepared the statistical report and checked the on-site list for errors. This process was completed by approximately 11:00 A.M. Under normal circumstances I usually begin working on the 21 day report at 10:00 A.M., 1 hour earlier.

I also know you were aware that Ms. Cortez the Supervisor I was absent and therefore I also had to administer the Social Services Section, which caused numerous delays and interruptions to my progress in the report preparation.

You have misstated the facts when you state at 5:50 P.M. I sent a message by ASW Gertrude Michaelson that I couldn't complete the report because I had to leave at my scheduled time. I also informed your secretary at 5:30 P.M. that I could not finish the report by 6:00 P.M.

It was your order earlier that morning informing me that I will no longer be allowed to do anymore

overtime. As you should be aware I am always ready, willing and able to do overtime to complete any task assigned. Only because you ordered me not to do overtime was I ready to leave at 6:00 P.M. prior to the completion of the report.

You should recall at 6:15 P.M. you then reversed your order and allowed me to do overtime til 7:30 P.M., at which time the report was completed.

I take exception to your statement that I had sufficient time to complete the report, especially when I had to supervise the Social Service Section as well as respond to calls from the Hero Section.

I have no problem in following directives when they are reasonable and can be carried out within the time allotted. However it was impossible to complete this report due to its lengthiness and time consumption especially when I had no Sup I present to assist me in the operation of the Social Service Section.

I am therefore requesting that you withdraw this insubordination charge as it is unwarranted and without foundation.

On or about May 11, 1988, the Petitioner's supervisor disapproved his request for overtime compensation for the work he performed on May 2. The Petitioner filed a Step I grievance, dated May 11, 1988, contending that the HRA "has acted arbitrarily, capricious and unreasonable in failing to authorize (one and one-half hours) of mandatory overtime worked between 6:00 P.M. - 7:30 P.M. on 5/2/88." The grievance also alleged that the refusal was part of a larger pattern of retaliation against the Petitioner for exercising union rights. That portion of the grievance reads as follows:

Worker contends that Director's refusal to sign and authorize worker's O.T. is part of a clear pattern of agency retaliation against worker for exercising union rights under the City-wide contract.

On 4/29/88 worker complained to Gerry Landry, Union Grievance Representative, about agency's plan to

change his Monday schedule from 10:00 A.M. - 6:00 P.M. to 7:00 A.M. - 3:00 P.M. for the purpose of avoiding the payment of overtime, a contractual violation. Gerry Landry took this complaint to Labor Relations and got Agency's plan reversed on 5/2/88.

Since 4/29, worker was informed by his Director he would no longer be assigned O.T. He has been written up on charges of Insubordination, which have no basis of truth, and now Agency refused to authorize payment of overtime after he was ordered to work.

Worker has complained to his Union re: the processing of an Unfair Labor Practice Complaint on the above harassment and retaliatory activity by the Administration.

On or about June 22, 1988, the HRA Office of Labor Relations issued a Step II determination reflecting a previous resolution of the grievance. The determination reads, in pertinent part, as follows:

In the Step I grievance response, Ms. Gaut, Deputy Director of the East 3rd Street Shelter, informed grievant that his request for overtime on 5/2/88 had been reviewed and approved.

Accordingly, this grievance has been resolved.

On July 18, 1988, the Deputy Commissioner of the Crisis Intervention Services submitted a written request to the HRA Office of Personnel, in behalf of the Petitioner, for a waiver of the overtime cap for the period January 3, 1988 to March 5, 1988.

POSITIONS OF THE PARTIES

Petitioner's Position

The Petitioner contends that during the past year he has filed approximately 20 payroll grievances in his own behalf for claims involving night differential, unpaid overtime, and holiday premium pay. Some have already been resolved in his favor and