

Foye v. DOT, Traffic Control Divi., Sandier (Comm.), 43 OCB 21  
(BCB 1989) [Decision No. B-21-89 (ES)]

OFFICE OF COLLECTIVE BARGAINING  
BOARD OF COLLECTIVE BARGAINING

----- x

In the Matter of

Beverly Johnson Foye,

DECISION NO. B-21-89 (ES)

Petitioner,

DOCKET NO. BCB-1159-89

-and-

New York City Department of  
Transportation, Traffic Control  
Division and Ross Sandier,  
commissioner,

Respondent.

----- x

DETERMINATION OF EXECUTIVE SECRETARY

On April 19, 1989, the Office of Collective Bargaining ("OCB") received from Beverly Johnson Foye (hereinafter referred to as "petitioner") a verified improper practice petition dated April 17, 1989, which it did not accept for filing because petitioner failed to submit proof of service of the petition on the New York City Department of Transportation, Traffic Control Division and Ross Sandier, Commissioner (hereinafter referred to as "respondents") as required by Section 7.6 of the Revised Consolidated Rules of the Office of Collective Bargaining ("OCB Rules"). On April 26, 1989, the petition was resubmitted, together with proof of service, and was accepted for filing at that time.

The petitioner, a probationary employee, alleges that she was forced to resign from her job because of false information given to her by an Inspector in the Traffic Control Division. In a letter addressed to Commissioner Sandler, a copy of which is attached to the petition, petitioner asserts the following. She was appointed as a Traffic Enforcement Agent on October 31, 1988. During the first week of the Traffic

Enforcement Training Program, petitioner informed her instructor, Lt. E. Arsenec, that she, along with everyone else living in the Louis Armstrong Houses, had to be relocated because the housing complex was going to be renovated. On several occasions in November and December, representatives of the New York City Housing Authority contacted petitioner and requested that she come to their offices for an interview, and be available to look at apartments. Petitioner claims that before she attended any meetings at the Housing Authority, she notified Lt. Arsenec that she would have to miss class days for this purpose. Lt. Arsenec, according to petitioner, stated that he spoke to Inspector M. Hall "about [her] situation" and that "Inspector Hall said it was alright as long as [she] brought in documents stating why [she] was not in class on November 30, December 2, December 6, 1988."

Petitioner claims that she was willing to remain after class to do whatever was necessary to make up the time that she missed; but that "there was nobody in authority that was willing to help." Petitioner contends that on December 30, 1988, she was forced to resign because "[Inspector Hall] stated that if I didn't resign I would not be able to receive any other city job."

Pursuant to Section 7.4 of the OCB Rules, a copy of which is annexed hereto, I have reviewed the 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 New York City Collective Bargaining Law ("NYCCBL").<sup>1</sup> Even assuming

---

<sup>1</sup>Section 12-306a of the NYCCBL provides as follows:

- a. Improper public employer practices. It shall be an improper practice for a public employer or its agents:

(continued...)

the truth and accuracy of the allegations in the petition and the letter appended thereto, it does not appear that petitioner resigned from her position because of any action taken by the respondents which is proscribed by the NYCCBL.

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 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. Petitioner does not allege that respondents' actions were intended to, or did, affect any of these protected rights. Therefore, her claim does not involve a matter within the jurisdiction of the OCB. Accordingly, pursuant to Section 7.4 of the OCB Rules, the petition must be, and hereby

---

(...continued)

(1) to interfere with, restrain, or coerce public employees in the exercise of their rights granted in section 12-305 of this chapter;

(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.

DECISION NO. B-21-89(ES)  
DOCKET NO. BCB-1159-89

4

is, is dismissed.

DATED:     New York, N.Y.  
           May 5, 1989

---

Marjorie A. London  
Executive Secretary  
Board of Collective  
Bargaining

REVISED CONSOLIDATED RULES OF THE  
OFFICE OF COLLECTIVE BARGAINING

§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 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.

CONSULT THE COMPLETE TEXT.