Igielnik v. HRA, Office of Mun. Labor Rel., 43 OCB 22 (BCB 1989) [Decision No. B-22-89 (ES)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING
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In the Matter of

STEVEN IGIELNIK,

Petitioner,

Decision No. B-22-89(ES)
Docket No. BCB-1141-89

-and-

HUMAN RESOURCES ADMINISTRATION and
OFFICE OF MUNICIPAL LABOR RELATIONS,

Respondents.
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DETERMINATION OF EXECUTIVE SECRETARY

On February 6, 1989, Steven Igielnik ("the petitioner") filed a verified improper practice petition which the Office of Collective Bargaining ("OCB") did not accept for filing because petitioner failed to submit proof of service on the Office of Municipal Labor Relations and the Human Resources Administration ("HRA") (collectively referred to as "the respondents") as required by Section 7.6 of the Revised Consolidated Rules of the Office of Collective Bargaining ("the OCB Rules"). On February 16, 1989, the petition was resubmitted, together with proof of service and was accepted for filing at that time. By cover dated April 6, 1989, petitioner filed supplemental documentation in support of his petition.

Petitioner alleges a "lack of good faith bargaining" by respondents and denial of his "equal employment rights and promotional opportunities in violation of section 1173-4.2 of the [New York City Collective Bargaining Law ("NYCCBL")]", in that he alone among 47 similarly situated employees was denied reclassification from the title Principal Administrative Associate, Level II ("PAA-II") to the higher paying title of

Computer Associate (Technical Support), Level II ("CATS-II"), as well as subsequent certification as an Administrative Manager, and subsequently was subjected to an involuntary transfer.

Background

The petitioner was employed as a PAA-II (in-house title of "Site Monitor") in the Office of Systems Operations in the Department of Social services. As a result of a group grievance filed in March 1987, it was determined that tasks performed by PAA-IIs and PAA-IIIs were the same as those performed by employees in the CATS title. While HRA agreed to convert employees serving in the PAA title into the higher paid CATS title, it did not reclassify petitioner, who therefore remained classified as a PAA-II. Nevertheless, petitioner received the difference between the PAA-II and CA-II salary for the period covered by the grievance, i.e., March 8, 1987 through October 5, 1987.

On or about November 13, 1987, petitioner filed a grievance challenging the failure to reclassify him to CATS-II along with other Site Monitors. In denying his grievance in a memorandum dated November 16, 1987, HRA informed petitioner that he was not reclassified as a CATS-II because he had received an unsatisfactory performance evaluation.

In a Step II decision dated February 10, 1988, HRA found that the evaluation procedure applied to the petitioner was "technically flawed," but that there nevertheless was no basis for sustaining petitioner's out-of-title work claim or for

converting his title to the higher paying CATS-II title.

The grievance was pursued to Step III where a desk audit of petitioner's position was ordered. The audit stated that petitioner was, in fact, performing the duties of an employee in a CATS title, without however specifying the level of those duties. The auditor verbally advised the Step III Review Officer that petitioner was performing work at a CATS-I level. Since the salary level for CATS-I overlapped that for PAA-II, the Review Officer determined that although petitioner had been performing out-of-title work, he was not entitled to any monetary relief.

Petitioner alleges that an arbitration hearing, scheduled for March 8, 1989, did not take place.

Concurrently with the aforementioned grievance, petitioner appealed his unsatisfactory performance evaluation. On or about February 2, 1989, the HRA Evaluation Review Board granted petitioner's appeal and upgraded the overall evaluation to "satisfactory". Despite this, respondents declined to take any further action on petitioner's behalf.

It appears that on August 26, 1988, petitioner filed a complaint with the New York City Commission on Human Rights, to which HRA responded on March 15, 1989. No determination has issued in that matter.

Discussion

Pursuant to Section 7.4 of the OCB Rules, a copy of which is annexed hereto, the undersigned has reviewed the petition and has determined that the improper practice claim asserted therein must

be dismissed because it is untimely on its face. The City denied denied petitioner's reclassification request on or about November 16, 1987, which was more than fourteen months before the petition herein was filed. Petitioner's pursuit of his contractual remedies through the grievance procedure did not toll the four-month filing period prescribed by section 7.4, which commenced running at the time of the acts alleged to constitute the improper practice. Since the instant petition was filed well in excess of four months after the alleged wrongful acts by the City, it must be dismissed as untimely without consideration of its merits.

Even if some of the acts complained of in petitioner's extensive submissions in this matter are not untimely under section 7.4, the petition must be dismissed for failure to state any improper practice under section 12-306 (former section 1173-4.2) of the NYCCBL.[1] 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

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[1]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:
(1) to interfere with, restrain or coerce public employees in the exercise of their rights granted in section 1173-4.1 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.

created by the 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's allegations herein concern matters (reclassification, promotion, transfer) which are within management's reserved rights under section 12-307b of the statute. Absent an allegation that respondents' actions were intended to, or did, affect any of petitioner's rights that are protected by the NYCCBL, the petition cannot be entertained by the Board of Collective Bargaining.

Of course, dismissal of this petition is without prejudice to any rights petitioner may have in another forum.

Dated: New York, New York
May 9, 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 on 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.