Igielnik v. HRA, Mun. Labor Rel., 43 OCB 33 (BCB 1989) [Decision No. B-33-89 (IP)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

In the Matter of	:	
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STEVEN IGIELNIK,	:	
	:	Decision No. B-33-89
Petitioner,	:	Docket No. BCB-1141-89
-and-	:	
HUMAN RESOURCES ADMINISTRATION and	:	
OFFICE OF MUNICIPAL LABOR RELATIONS,	:	
Respondents.	:	

DECISION AND ORDER

Steven Igielnik ("petitioner") filed a verified improper practice petition on February 16, 1989[1] alleging that the Human Resources Administration ("HRA") had violated New York City Collective Bargaining Law ("NYCCBL") §12-306 by a "lack of good faith bargaining" and denying petitioner promotional opportunities based upon the fact 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").

The Executive Secretary of the Office of Collective Bargaining reviewed the petition pursuant to the Revised Consolidated Rules of the Office of Collective Bargaining ("OCB Rules"), §7.4 and determined in Decision No. B-22-89 (ES) that

[1]The petitioner originally submitted a verified improper practice petition on February 6, 1989, but it was not accepted for filing because petitioner failed to submit proof of service on the respondents. It was subsequently accepted for filing.

the petition was untimely on its face.[2] Furthermore, she found that even if all of the acts complained of were not untimely, the petition failed to state a claim under NYCCBL §12-306. Thus, she dismissed the petition in its entirety. Petitioner, by letter dated May 19, 1989, appealed the Executive Secretary's decision to this Board pursuant to OCB Rule §7.4.

Background

Facts Alleged in the Original Petition

Petitioner was employed as a PAA-II by HRA. As a result of a group grievance filed in March, 1987, it was determined, inter alia, that tasks performed by PAA-IIs were the same as those performed by employees in the CATS titles. HRA agreed to reclassify employees serving in the PAA titles to the CATS title but failed to reclassify petitioner.

Petitioner pursued his contractual remedies and filed a grievance on or about November 13, 1987 challenging HRA's failure to reclassify him. HRA denied his grievance in a memorandum dated November 16, 1987, which stated that he was not

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[2]OCB Rule §7.4 provides, in relevant part:

> 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 improprer practice in violation of Section 1173-4.2 (now known as §12-306] 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.

reclassified, because he had received an unsatisfactory performance evaluation.

In a Step II decision dated February 10, 1988, HRA subsequently found that although the evaluation procedure was technically flawed, there was no basis for sustaining petitioner's out-of-title work claim. At Step III of the grievance procedure, a desk audit of petitioner's grievance was conducted and it was found that petitioner had been performing out-of-title work, although not in the higher paying CATS II title but, rather, in a lower title which had a salary scale comparable to the title in which petitioner was already assigned. Thus, HRA declined to award petitioner monetary relief. Petitioner also alleges that an arbitration hearing to review the Step III determination, which was scheduled for March 8, 1989, has never taken place.

Concurrently with pursuing his contractual remedies, petitioner sought review of his performance evaluation before the HRA Evaluation Review Board ("the Review Board.") On February 2, 1989, the Review Board granted his appeal and upgraded his overall evaluation from "unsatisfactory" to "satisfactory." Petitioner also filed a complaint, on or about August 26, 1988 with the New York City Commission on Human Rights.

The Executive Secretary's Determination

The Executive Secretary dismissed the petition, on the ground that it was untimely on its face. She found that the City denied petitioner's reclassification request on or about November

16, 1987, more that fourteen months before the petition was filed.

The Executive Secretary also found that even if some of the acts alleged were not untimely, the petition failed to state any improper practice under NYCCBL §12-306. She determined that there were no allegations that HRA's actions were intended to, or did, affect any of petitioner's rights protected by the NYCCBL.

The Appeal

By letter dated May 19, 1989, the petitioner sought to appeal Decision No. B-22-89 (ES) on three grounds. First, petitioner alleges that despite the Executive Secretary's determination that his petition was untimely, "timely documents which were submitted" were not considered.
Second, he alleges that the Executive Secretary erred in applying NYCCBL §12-307b.[3] He contends that pursuant to the

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[3]Section 12-307b provides that:

[i]t is the right of the city, or any other public employer, acting through its agencies, to determine the standards of services to be offered by its agencies; determine the standards of selection for employment; direct its employees; take disciplinary action; relieve its employees from duty because of lack of work or for other legitimate reasons; maintain the efficiency of governmental operations; determine the methods, means and personnel by which government operations are to be conducted; determine the content of job classifications; take all necessary actions to carry out its mission in emergencies; and exercise complete control and discretion over its organization and the technology of performing its work. Decisions of the city or any other public employer on those matters are not within the scope of collective

(continued...)

statutory reservation of management's rights, management's "standards for selection of employment must be for a legitimate reason, . . ." and that no such reasons were proffered by HRA.

Finally, he alleges that the Executive Secretary erred in finding that he did not state a claim under NYCCBL §12-306c.[4] He alleges that he has made sufficient allegations with respect "to

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(... continued)

> bargaining, but, notwithstanding the above, questions concerning the practical impact that decisions on the above matters have on employees, such as questions of workload or manning, are within the scope of collective bargaining.

[4] Section 12-306c (formerly known as §1173-4.2c) provides the following:

> The duty of a public employer and certified or designated employee organization to bargain collectively in good faith shall include the obligation:
>
> (1) to approach negotiations with a sincere resolve to reach an agreement;
> (2) to be represented at the negotiations by duly authorized representatives prepared to discuss and negotiate on all matters within the scope of collective bargaining;
> (3) to meet at reasonable times and convenient places as frequently as may be necessary, and to avoid unnecessary delays
> (4) to furnish to the other party, upon request, data normally maintained in the regular course of business, reasonably available and necessary for full and proper discussion, understanding and negotiation of subjects within the scope of collective bargaining.
> (5) if an agreement is reached, to execute upon request a written document embodying the agreed terms, and to take such steps as are necessary to implement the agreement.

the hearing processes" which were conducted in conjunction with his failure to be reclassified to establish a claim under NYCCBL §12-306c.

Discussion

We are limited in our review of an Executive Secretary's determination to the facts and record which were before the Executive Secretary.[5] We have reviewed the record before the Executive Secretary, and we agree that the facts alleged in the petition, as a matter of law, are insufficient to establish an improper practice. Therefore, we dismiss the instant appeal.

First, as the Executive Secretary found, the precipitating act which forms the basis for the improper practice petition was HRA's denial of petitioner's request to be reclassified as a CATS-II on or about November 16, 1987. The petition was filed on February 16, 1989. Although some documents submitted and reviewed, such as correspondence relating the Review Board's evaluation of petitioner's ratings and correspondence from HRA were, as petitioner alleges, dated within four months of the filing of the improper practice petition, the act of the City which gave rise to the alleged improper practice occurred on or about November 16, 1987, when the City denied petitioner's reclassification request. The later correspondence alluded to by petitioner does not demonstrate the existence of separate, timely improper acts by the City.

As the Executive Secretary correctly found, the petitioner's

[5]See Decision No. B-29-88.

pursuit of his contractual remedies through the grievance procedure and through other channels did not toll the running of the four-month period prescribed by OCB Rule §7.4 which commenced running when the City failed to reclassify him. Thus, the Executive Secretary properly dismissed the petition as untimely.

Petitioner also claims that he has alleged an improper practice pursuant to NYCCBL §12-307b. He asserts that the City's right to "determine the standards of selection for employment" must be for, what he terms, "legitimate reasons" and that his failure to be reclassified was not for any legitimate reasons.

Section 12-307b is a statutory reservation of management's rights; it provides that, with respect to the enumerated rights, the "[d]ecisions of the city or any other public employer on these matters are not within the scope of collective bargaining." The limitation on management's rights which petitioner seeks to impose is not contained in the statute.

Moreover, an improper practice is defined NYCCBL §12-306a, and is limited to the commission of the acts set forth therein which include actions by 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 known as §12-305] of this chapter;
>
> (2) to dominate or interfere with the formation or administration of any public employee organization;
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> (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; and
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> (4) to refuse bargain collectively in good faith on matters within the scope of

> collective bargaining with certified or designated representatives of its public employees.

None of the City's actions, as alleged by petitioner, can be deemed to constitute an improper practice as defined by the NYCCBL. As the Executive Secretary found, the NYCCBL does not provide a remedy for every perceived wrong or inequity arising out of the employment relationship; it is only designed to safeguard the rights of public employees that are created by the statute.

Finally, we find that petitioner has no standing to raise a claim pursuant to NYCCBL §12-306c. We have held that individuals have no standing to allege an unlawful refusal to bargain.[6] The duty to bargain in good faith runs only between an employee organization and the public employer. It governs the relationship between those two parties and not the relationship between an employer and third parties regardless of whether the third parties are members of the bargaining unit.[7]

Thus, we find that petitioner has not alleged any basis for overturning the Executive Secretary's ruling. Accordingly, we shall dismiss petitioner's appeal and confirm the determination of the Executive Secretary.

Order

Pursuant to the powers vested in the Board of Collective Bargaining by the New York City Collective Bargaining Law, it is

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[6] Decision No. B-2-82.

[7] See Decision No. B-29-86.

hereby

ORDERED, that the appeal filed by Steven Igielnik be, and the same hereby is, denied; and it is further

ORDERED, that the determination of the Executive Secretary in Decision No. B-22-89 (ES) be, and the same hereby is, confirmed.

Dated: New York, New York
June 29, 1989

MALCOLM D. MacDONALD
CHAIRMAN

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