Igielnik v. HRA, Office of Mun. Labor Rel., 43 OCB 37 (BCB 1989) [Decision No. B-37-89 (ES)]

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

Decision No. B-37-89 (ES)
STEVEN IGIELNIK, Docket No. BCB-1168-89

Petitioner,

-and-

N.Y.C. HUMAN RESOURCES ADMIN.,
and OFFICE OF MUNICIPAL LABOR
RELATIONS,

Respondents.
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DECISION AND ORDER

On May 22, 1989, Steven Igielnik ("the petitioner") filed a verified improper practice petition with the Office of Collective Bargaining ("OCB"). In that petition he alleged that the Human Resources Administration ("HRA") violated New York City Collective Bargaining Law ("NYCCBL") §1173-4.2c (now known as NYCCBL §12-306c)[1] by negotiating in bad faith with

[1]Section 12-306c provides the following:

Good faith bargaining. 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 the 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.

respect to

grievance proceedings arising out of his failure to be reclassified from the civil service title of Principal Administrative Associate, Level II ("PAA-II") to Computer Associate (Technical Support), Level II ("CATS-II") after receiving a satisfactory evaluation as a PAA-II. [2]

Background

Petitioner is a PAA-II who was not reclassified as a CATS-II when other members in his title were so reclassified. The HRA initially based its refusal to reclassify petitioner on his evaluation rating as a PAA-II which was "unsatisfactory."

[2] In reviewing a previous petition filed by Mr. Igielnik (Docket No. BCB-1141-89), the undersigned found that his claims were untimely and that, in any event, his petition had failed to state an improper practice under the NYCCBL. Decision No. B-22-89 (ES). Petitioner subsequently appealed this determination to the Board of Collective Bargaining which affirmed the undersigned's determination. Decision No. B-33-89.

Petitioner refers to his prior petition and attempts to incorporate it into the instant petition. To the extent that he is merely reasserting the same claims pleaded in the earlier petition, those claims will not be considered herein.

Petitioner subsequently requested a reevaluation from the HRA Evaluation Review Board which changed his evaluation from "unsatisfactory" to "satisfactory." When HRA again failed to reclassify him, petitioner filed a grievance pursuant to the operative collective bargaining agreement[3] with respect to his performing out-of-title work and his failure to be reclassified.

In the instant petition, he alleges that the HRA failed to hold any form of a hearing with respect to a Step II grievance which arose out of HRA's failure to reclassify him. He asserts that the Union was never notified of a hearing. He also suggests that the HRA hearing officer was a friend of the supervisor who had initially evaluated him from which he concludes that the hearing officer's determination was prejudiced.

Petitioner also states that the arbitration hearing that was scheduled to take place on March 3, 1989, with respect to a grievance arising out of his failure to be reclassified and his out-of-title work claim was not held. He suggests that it was not held because the parties wanted to "close out" his case without his knowledge.

Finally, he argues that an arbitration hearing scheduled for May 18, 1989, which appears to be the same hearing as was previously scheduled for March 3, 1989, was canceled at the

[3]The relevant agreement was the 1984-1987 collective bargaining agreement between Local 1180 of the Communications Workers of America ("CWA") and the City of New York.

request of HRA because it was interested in settling the case.[4] He also alleges that the Human Rights Commission Investigator who was assigned to investigate a related claim filed by petitioner with that agency was told by HRA that it would report his activities on petitioner's behalf to the investigator's supervisors.

Discussion

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, the undersigned has reviewed the instant petition and has determined that it does not allege facts sufficient as a matter of law to constitute an improper practice under NYCCBL §12-306c.

Petitioner has no standing to raise a claim pursuant to NYCCBL §12-306c. As the Board of Collective Bargaining has held in the past, individuals have no standing to allege an unlawful refusal to bargain.[5] 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

[4]We note that a hearing on the request for arbitration over petitioner's out-of-title grievance, Docket No. A-2930-88, filed on November 2, 1988, was scheduled for May 18, 1989 but was adjourned until August 9, 1989.

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

whether the third parties are members of the bargaining unit.[6] Thus, the instant petition cannot be entertained by the Board of Collective Bargaining.

Moreover, petitioner's allegations that HRA failed to hold a formal Step II grievance hearing, that arbitration hearings were either canceled, postponed or adjourned, and that HRA may have intimidated an investigator do not otherwise state a claim of improper practice against HRA. The NYCCBL does not provide a remedy for every perceived wrong or inequity arising out of the employment relationship. 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 employee organizations, to bargain collectively through certified public employee organizations, and the right to refrain from such activities. The instant petition does not allege that HRA's actions were intended to, or did, affect or implicate any of these protected rights. It must,

[6]Decision No. B-29-86.

therefore, be dismissed in its entirety.

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

Dated: New York, New York
June 30, 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 mcre 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 im proper practice as set forth in section 1173-4.2 of the statute. If it is determined 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 de termination 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 in sufficient, 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.