

Pickett v. Agnes Dixon, Walton Day Care Center, 43 OCB 66 (BCB 1989) [Decision No. B-66-89 (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-66-89 (ES)
Docket No. BCB-1210-89
VERNA PICKETT,

Petitioner,
-and-

AGNES DIXON, WALTON DAY CARE CENTER

Respondent.
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DETERMINATION OF EXECUTIVE SECRETARY

On June 8, 1989, the Office of Collective Bargaining ("the OCB") received a verified improper practice petition dated May 31, 1989 from Verna Pickett ("the Petitioner"). The OCB did not accept the petition for filing at that time because the Petitioner had failed to submit proof of service on the Respondent as required by Section 7.6 of the Revised Consolidated Rules of the Office of Collective Bargaining ("the OCB Rules"). Thereafter, on September 25, 1989, the petition was resubmitted to the OCB together with proof of service, and was accepted for filing.

In her improper practice petition, the Petitioner alleges that she is being harassed and mentally abused by her Director, Agnes Dixon. She asserts that Ms. Dixon is assigning her work to "outsiders, family and friends" and that Ms. Dixon "mentally abused" her by raising her fist twice in March of 1989, and once

on May 25, 1989. Although the Petitioner states that Ms. Dixon never actually hit her, she contends that Ms. Dixon is trying to instigate a physical altercation. She also alleges that Ms. Dixon continues to harass her, even though the Union has interceded on her behalf on several occasions.

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 Section 12-306 of the New York City Collective Bargaining Law ("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 to organize,

¹Section 12-306 of the NYCCBL provides in relevant part 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 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.

form, join, and assist public employee organizations and to refrain from such activities.

In the instant case, the Petitioner contends that she is being harassed by her Director. However, she fails to allege that the harassment did, or was designed to deprive her of any of the rights prescribed by the NYCCBL. Although the acts which allegedly took place in the instant case are not to be condoned, the Board of Collective Bargaining can consider allegations of wrongdoing only insofar as they involve a violation of provisions of the NYCCBL. Since the Petitioner does not allege that the Respondent's actions were intended to, or did affect any rights protected by the NYCCBL, the petition must be dismissed in its entirety.²

²I also note that section 7.4 provides in relevant part as follows:

A petition alleging that a public employer or its agents . . . has engaged in or is engaging in an improper practice in violation of Section 12-306 of the statute may be filed with the Board within four (4) months thereof

To the extent that the Petitioner protests incidents which allegedly took place in March of 1989, she complains of events which occurred more than four months prior to the filing of the instant petition; therefore these allegations are time-barred. The Petitioner's allegations are timely only to the extent that they complain of improper practices which continued during the four-month period prior to the filing of the petition.

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

Dated: New York, N.Y.
October 25, 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 reason; 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.