

L.300, SEIU v. Dep't of General Services, 45 OCB 29 (BCB 1990)  
[Decision No. B-29-90 (ES)]

OFFICE OF COLLECTIVE BARGAINING  
BOARD OF COLLECTIVE BARGAINING  
- - - - - X

In the Matter of the Improper  
Practice Proceeding

-between-

LOCAL 300, SERVICE EMPLOYEES  
INTERNATIONAL UNION,

DECISION NO. B-29-90 (ES)

DOCKET NO. BCB-1271-90

Petitioner,

-and-

NEW YORK CITY DEPARTMENT OF  
GENERAL SERVICES,

Respondent.

- - - - - X

**DETERMINATION OF EXECUTIVE SECRETARY**

On April 11, 1990, Local 300 of the Service Employees International Union ("the petitioner") filed a verified improper practice petition against the New York City Department of General Services ("the respondent") in which it alleged that one of its members, Mr. Krumholz, "a permanent civil service employee entitled to all protections under § 75 of the Civil Service Law of New York State was disciplined without benefit of either a hearing or counsel."

Pursuant to § 7.4 of the Revised Consolidated Rules of the Office of collective Bargaining ("the OCB Rules"), a copy which is annexed hereto, I have reviewed the petition and have determined that the improper practice claim asserted therein must be dismissed because 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"). 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 set forth therein, i.e., the right to bargain collectively through certified public employee organizations; the right to organize, form, join, and assist public employee organizations; and the right to refrain from such activities.

Petitioner has failed to allege that respondent has committed any acts in violation of § 12-306a of the NYCCBL, which defines improper public employer practices.<sup>1</sup> The right to be served with disciplinary charges and the right to be afforded a due process hearing derive, if at all, from sources other than the NYCCBL.

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<sup>1</sup> §12-306a of the NYCCBL states 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 § 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.

Therefore, respondent's alleged failure to grant those privileges to the petitioner cannot be deemed to constitute a violation of § 12-306a of the NYCBBL.

To the extent the petitioner alleges a violation of § 75 of the Civil Service Law, I note that such an allegation may not be considered in the improper practice forum. It is well settled that the alleged violation of laws external to the NYCCBL may not be raised in a proceeding before the Board of Collective Bargaining.<sup>2</sup>

Accordingly, I find that no improper public employer practice has been stated. Therefore, the petition is dismissed pursuant to § 7.4 of the OCB Rules. Such dismissal is without prejudice to any rights petitioner may have in any other forum.

Dated: New York, New York  
June 25, 1990

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Loren Krause Luzmore  
Executive Secretary  
Board of Collective Bargaining

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<sup>2</sup> Decision Nos. B-20-83; B-2-82

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 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 sufficient as a matter of law 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) 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.