

Ray v. Kings County Hospital, et. al, 45 OCB 44 (BCB 1990)
[Decision No. B-44-90 (ES)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of the Improper
Practice Proceeding

-between-

FEDERICO RAY,

Petitioner,

DECISION NO. B-44-90 (ES)

DOCKET NO. BCB-1309-90

-and-

FELIX CAPPADONA, Director of Labor
Relations, Kings County Hospital,

Respondent.

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DETERMINATION OF EXECUTIVE SECRETARY

On July 9, 1990, the Office of Collective Bargaining ("OCB") received from Federico Ray ("petitioner") a verified improper practice petition dated June 22, 1990, which it did not accept for filing because petitioner failed to submit proof of service of the petition on Felix Cappadona, Director of Labor Relations, Kings County Hospital ("respondent"), as required by Section 7.6 of the Revised Consolidated Rules of the office of Collective Bargaining ("OCB Rules"). On July 30, 1990, the petition was resubmitted, together with proof of service on respondent, and was accepted for filing at that time.

The petitioner alleges that:

1. he was returned to the Civil Service title Housekeeping Aide without a ten-day warning;
2. he was sent to work in a hazardous area of the hospital; and,
3. he was not paid maintenance and vacation pay that was due him.

Petitioner further alleges, "I would have been treated differently if I were Caucasian or of another national origin."

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 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 § 12-306 (a), which defines improper public employer practices.¹ If, as petitioner alleges, he has a right to

¹ Section 12-306(a) of the NYCCBL provides as follows:

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.

a ten-day warning before demotion, or the right to pay that allegedly has been withheld improperly, these rights derive from sources other than the NYCCBL. Respondent's alleged failure to grant those rights to petitioner does not constitute a violation of § 12-306 of the NYCCBL. To the extent petitioner alleges that he was the victim of discrimination based on his race and national origin, he has failed to present any evidence that the alleged discrimination involved any rights granted to employees under the NYCCBL.

Since the instant petition does not allege that respondent's action were intended to, or did, affect rights protected under the NYCCBL, it must be dismissed in its entirety. Such dismissal is, of course, without prejudice to any rights the petitioner may have in another forum.

Dated: New York, New York
August 13, 1990

Loren Krause Luzmore
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 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.