Bethel v. HRA, Montalvo, et. al, 45 OCB 46 (BCB 1990) [Decision No. B-46-90 (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-46-90(ES)

EARLENE BETHEL,

DOCKET NO. BCB-1292-90

Petitioner,

-and-

MARINA MONTALVO AND EDWIN RASQUIN,
Human Resources Administration,
Community Development Agency

Respondents.
- - - - - - - - - - - - - - - - - - - X

**DETERMINATION OF EXECUTIVE SECRETARY**

On June 11, 1990, Earlene Bethel ("petitioner") filed a verified improper practice petition against Marina Montalvo and Edwin Rasquin of the Human Resources Administration, Community Development Agency. The petitioner alleges a violation of Section 12-306a(3) (formerly Section 1173-4.2a(3)) of the New York City Collective Bargaining Law ("NYCCBL") but does not state the nature of the controversy alleged to have caused the improper practice. The petitioner attached the notice of a nomination meeting held on May 14,1990 with the heading Social Service Employees Union, Local 371, District Council 37, AFSCME, AFL-CIO, and a notice of an election held on June 22, 1990. Petitioner did not explain what significance these documents have to her improper practice petition.

Pursuant to Section 7.4 of the Revised Consolidated Rules of the Office of Collective Bargaining ("the OCB Rules"), a copy of which is annexed hereto,

the undersigned has reviewed the petition and has determined that the 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 Section 12-306a of 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 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. Absent any allegations that the respondents' actions were intended to, or did, affect any those rights, the petition cannot be entertained by the Board of Collective Bargaining.

Accordingly, I find that no improper public employer practice has been stated. Therefore, the petition is dismissed pursuant to Section 7.4 of the

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1 Section 12-306a of the NYCCBL states as follows:

> Improper public employer practices. It shall be an improper practice for a public employer or its agents:
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> (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.

OCB Rules. Such dismissal is, of course, without prejudice to any rights petitioner may have in any other forum.

Dated: New York, New York
August 17, 1990

Loren Krause Luzmore
Executive Secretary
Board of Collective Bargaining