

Bermudez v. DEP, Dep' of Personnel, 45 OCB 48 (BCB 1990) [Decision No. B-48-90 (ES)]

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

DECISION NO. B-48-90 (ES)

-between-

DOCKET NO. BCB-1299-90

RAYMOND BERMUDEZ

Petitioner,

-and-

DEPARTMENT OF ENVIRONMENTAL
PROTECTION SUB-DIVISION WATER
SUPPLY - DEPARTMENT OF PERSONNEL,

Respondent.

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DETERMINATION OF EXECUTIVE SECRETARY

On June 28, 1990, Raymond Bermudez ("the Petitioner") filed a verified improper practice petition against the New York City Department of Environmental Protection Sub-Division Water Supply - Department of Personnel ("the respondent") in which he alleges that he was unfairly terminated from his position as a Construction Laborer with the Department of Water Supply (the Department") on July 5, 1989. The petitioner claims that he was singled out and charged with misconduct because he was a shop steward and because he was a substance abuser prior to the time in question. Petitioner further maintains that he was found guilty of misconduct by the Department without being given a chance to prove his innocence, and should be given an opportunity to be heard.

In a letter attached to the improper practice petition, dated June 26, 1990, the petitioner explained that in 1988 he voluntarily entered a drug

rehabilitation clinic. Upon his release from the clinic, petitioner was required to sign a stipulation in which he agreed to a one year probationary period. Petitioner signed the stipulation and was returned to his job on June 30, 1988.

In May 1989, while still serving his probationary period, the petitioner was brought up on charges of misconduct for leaving his work location during working hours to get breakfast at a donut shop. Petitioner states that it was necessary for him to eat breakfast so that he could take medication prescribed by his doctor for the treatment of ulcers. Although there were 14 other Construction Laborers in the donut shop at the time in question, the petitioner contends that he was the only one singled out and brought up on charges because he was a shop steward. Petitioner alleges that in early June 1989 his union representative met with a representative of the Department to discuss the charges against him, and agreed that the penalty for those charges - termination - would be reduced to a five day deduction in salary. Thereafter, on July 5, 1989, however, the petitioner was notified that he was terminated from his position with the Department.

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 petition and has determined that the improper practice claim asserted therein must be dismissed because it is untimely on its face. Section 7.4 of the OCB Rules provides that an improper practice petition must be filed within four months of the acts alleged to constitute a violation of Section 12-306 of the New York City Collective Bargaining Law ("NYCCBL").

Since the instant petition was filed almost 12 months after the alleged wrongful acts by the Department, it must be dismissed as untimely without consideration of its merits.

I note that the petitioner herein was the grievant in a recent decision of the Board of Collective Bargaining ("the Board"), Decision No. B-21-90, which denied the request for arbitration filed by the Union, District Council 37, Local 376, on behalf of Mr. Bermudez. Contrary to the petitioner's assertion that he was singled out and charged with misconduct, I note that in Decision No. B-21-90 it was not disputed that the other employees involved in the donut shop incident were docked one day's pay as a penalty for their misconduct. Moreover, while the petitioner was the only one that was terminated as a result of the incident, it also seems that he was the only one who violated the express terms of an agreement, i.e., the stipulation signed by the petitioner in 1988 setting forth the requirements for successful completion of his probationary period.

Dismissal of the instant improper practice petition is, of course, without prejudice to any right the petitioner may have in another forum.

Dated: New York, New York
August 17, 1990

Loren Krause Luzmore
Executive Secretary
Board of Collective Bargaining