Marrow v. HRA, et. al, 45 OCB 54 (BCB 1990) [Decision No. B-54-90 (IP)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING
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In the Matter of

STEVEN MARROW,

DECISION NO. B-54-90

Petitioner,

DOCKET NO. BCB-1263-90

-and-

PETER C. STANFORD, DIRECTOR
SUPPORT COLLECTION UNIT,
HUMAN RESOURCES ADMINISTRATION and
FRANK OLTON, SUPPORT COLLECTION
UNIT, HUMAN RESOURCES ADMINISTRATION,

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

DECISION AND ORDER

On March 19, 1990, Steven Marrow ("petitioner") filed verified improper practice petitions against Peter Stanford, Director of the Support Collection Unit, Office of Child Support Enforcement, Human Resources Administration ("HRA") and Frank Olton, also in the HRA Support Collection Unit ("respondents"), alleging "false information of charge at Child Support Unit" and that he was "terminated on false discrepancies [b]ecause he was out sick for four days with a Doctor's note."

Pursuant to Section 7.4 of the Revised Consolidated Rules of the Office of Collective Bargaining ("OCB Rules"), the petition was reviewed by the Executive Secretary of the Board of Collective Bargaining who determined that the petition did 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"). Accordingly, in a

determination dated July 10, 1990, the petition was dismissed.[1] On August 1, 1990, pursuant to Section 7.4 of the OCB Rules, the petitioner filed a written appeal of the Executive Secretary's determination.

The Executive Secretary's Determination

In Decision No. B-40-90(ES), the Executive Secretary determined that:

> [the petition] 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 New York City Collective Bargaining Law ("NYCCBL").[2]

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[1] Decision No. B-40-90(ES).

[2] 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.

The Executive Secretary explained that:

> 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 of petitioner's rights that are protected by the NYCCBL, the petition cannot be entertained by the Board of Collective Bargaining.

The Appeal

In his appeal, petitioner asserts that the decision of the Executive Secretary states that "the charge I made against Peter C. Stanford and Frank Olton is without facts, but this decision I know, is false." In support of his assertion, petitioner claims that he has "proof and evidence and [a] Doctor's Note [for] the days [he] was out sick." Petitioner attached to his written appeal a copy of the Doctor's note which he maintains he gave to Peter Stanford upon his return to work. Petitioner contends that he asked Mr. Stanford to sign the Doctor's note, thereby acknowledging receipt of the note, but Mr. Stanford refused. Petitioner further alleges that respondents gave the New York State Department of Labor false information in that they stated that the petitioner did not call in sick and did not bring a Doctor's note upon his return to work.

In addition to the above-stated reasons for his appeal, petitioner alleges, for the first time, that he had a court hearing scheduled on June 28, 1990 which was dismissed because respondents did not appear in court. Finally, petitioner also raises the issue of racial discrimination, alleging that he was terminated because Peter Sanford and Frank Olton did not like having a black man working there who did a good job and that they were afraid that "blacks are going to take their job title[s].” Petitioner asks that his case be reopened and "a better investigation [be] granted."

DISCUSSION

After carefully reviewing the matters raised in the petitioner's submissions to the OCB and after carefully considering the arguments on this appeal, we find that the petitioner has failed to present any basis for overturning the Executive Secretary's determination.

The purpose of an appeal of the Executive Secretary's determination is to review the correctness of the determination based upon the facts that were available to her in the record as it existed at the time of her ruling. New facts may not be alleged at a later date to attack the basis for her determination.[3] Based upon the record that was before the Executive Secretary in this case, we agree entirely with her

[3] Decision Nos. B-26-86; B-55-87.

finding that no facts were alleged which tended to demonstrate the basis for any improper practice as defined in Section 12-306a of the NYCCBL. Accepting the truth and accuracy of the allegations set forth in petitioner's improper practice petition, nothing more was shown than that the petitioner, a provisional Office Aide III, was terminated because of his alleged failure to call in sick or to present his supervisor with a Doctor's note upon his return to work. Regardless of whether petitioner's termination under those circumstances was justifiable, it did not constitute an improper practice within the meaning of the NYCCBL. Accordingly, we find that no improper employer practice has been stated within the meaning of Section 12-306a of the NYCCBL.

Moreover, even if we were to consider the new "facts" alleged for the first time on this appeal, we would not find any basis for a charge under Section 12-306a. The new matter concerns a court proceeding, the relevance of which is not apparent to us, and a claim of a racial discrimination, which is beyond the scope of our jurisdiction. Consequently, our dismissal of the appeal herein is without prejudice to any rights which the petitioner may possess in another forum with regard to his discrimination claim.

For all of the reasons stated above, we shall dismiss the petitioner's appeal; and confirm the determination of the Executive Secretary in Decision No. B-40-90 (ES).

O R D E R

Pursuant to the powers vested in the Board of Collective Bargaining by the New York City Collective Bargaining Law, it is hereby,

ORDERED, that the appeal filed by Steven Marrow be and the same hereby is, denied and it is further

ORDERED, that the determination of the Executive Secretary in Decision No. B-40-90(ES) be, and the same hereby is, confirmed.

DATED: New York, New York
September 17, 1990

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