

Clemett v. HHC, Bellevue Hospital Center, 45 OCB 60 (BCB 1990) [Decision No. B-60-90 (ES)]

OFFICE OF COLLECTIVE BARGAINING  
BOARD OF COLLECTIVE BARGAINING

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In the Matter of the Improper  
Practice Proceeding

-between-

LLOYD E. CLEMETT,

DECISION NO. B-60-90 (ES)

DOCKET NO. BCB-1319-90

Petitioner,

-and-

NEW YORK CITY HEALTH & HOSPITALS  
CORPORATION and BELLEVUE HOSPITAL  
CENTER,

Respondents.

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**DETERMINATION OF EXECUTIVE SECRETARY**

On August 30, 1990, Lloyd E. Clemett (the "petitioner") filed a verified improper practice petition with the Office of Collective Bargaining, in which he alleged that the New York City Health & Hospitals Corporation and Bellevue Medical Center (the "respondents") violated Section 12-306 of the New York City Collective Bargaining Law ("NYCCBL").

Specifically, petitioner alleges that the respondents, through their agent Mr. Don Middendorf, Coordinating Manager of respondents' Psych-Ambulatory Care Unit, wrongfully refused to accept medical documentation in support of petitioner's claimed disability (May 14, 1990); brought false charges against petitioner (May 14, 1990); harassed and coerced petitioner into submitting his resignation (June 4, 1990); and wrongfully refused to allow petitioner to rescind his resignation and return to work (an alleged

continuing violation). As a remedy, petitioner seeks an order from the Board of Collective Bargaining ("Board"), directing respondents to:

- "1) have all charges dropped;
- 2) award back pay
- 3) reinstate employment, but relocated in a similar capacity to another department at Bellevue Hospital."

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 claims 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 the NYCCBL.<sup>1</sup>

The NYCCBL does not provide a remedy for every perceived wrong or inequity. Its provisions are designed to safeguard the rights of public employees that are created by the statute, i.e., the right to organize, to

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<sup>1</sup> Section 12-306a of the NYCCBL, entitled "Improper public employer practices," provides:

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 the 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.

form, join and assist public employee organizations, and the right to refrain from such activities. Petitioner herein does not assert that respondents' acts were motivated by reasons prohibited by the NYCCBL; nor does petitioner claim that his "forced" resignation was intended to, or did, affect any of these protected rights. Even assuming the truth and accuracy of the allegations of the petition, it does not appear that petitioner resigned from his position because of any action taken by respondents which is proscribed by the NYCCBL.

Accordingly, because the acts complained of do not appear to be, nor does the petitioner suggest that they are, in any way related to statutorily protected rights, the petition does not involve a matter within the jurisdiction of the Board and must be dismissed. Of course, dismissal is without prejudice to any rights that the petitioner may have in another forum.

DATED: New York, New York  
October 3, 1990

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LOREN KRAUSE LUZMORE  
Executive Secretary  
Board of Collective  
Bargaining