Falcon v. DOT, et. al, 45 OCB 61 (BCB 1990) [Decision No. B-61-90 (ES)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of the Improper Practice Proceeding

-between-

JOSEPH FALCON,

Petitioner,

DECISION NO. B-61-90(ES)

-and-

DOCKET NO. BCB-1312-90

A/C EPIFANO CASTILLO, LABOR RELATIONS, NEW YORK CITY DEPARTMENT: OF TRANSPORTATION, BUREAU OF HIGHWAY OPERATIONS,
Respondent.

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DETERMINATION OF EXECUTIVE SECRETARY

On August 2, 1990, Joseph Falcon ("petitioner") filed a verified improper practice petition against the New York City Department of Transportation, Bureau of Highway Operations ("the Department"). The petition asserts that the Department violated § 65 of the Civil Service Law[1] when it failed to conduct an

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[1] Section 65 of the Civil Service Law provides, in relevant part:

> 2. **Time limitation on provisional appointments.** No provisional appointment shall continue for a period in excess of nine months. The civil service department shall for competitive positions within its jurisdiction, and a municipal civil service commission shall for competitive positions within its jurisdiction, order a civil service examination for any position held by provisional appointment for a period of one month and such department or commission shall conduct a civil service examination, or see that such an examination is conducted, as soon as practicable thereafter, in order

(continued...)

examination for the title Associate Staff Analyst within the time period prescribed by law. Petitioner alleges that because the Department failed to conduct such an examination, he was deprived of an opportunity to become a permanent employee. As a remedy, he seeks "an order preventing [his] termination at the end of the work day -- August 3, 1990, and that a civil service examination be scheduled."

Pursuant to § 7.4 of the Revised Consolidated Rules of the Office of Collective Bargaining, 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.

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1(...continued)
to prevent the provisional appointment from continuing for a period in excess of nine months.

Petitioner has failed to allege that the Department has committed any acts in violation of § 12-306 of the NYCCBL[2] The authority of the Board of Collective Bargaining ("the Board") does not extend to the interpretation or administration of any statute other than the NYCCBL.[3] Thus, petitioner's allegation that the Department violated § 65 of the Civil Service Law when it failed to conduct an examination for Associate Staff Analyst within the time period prescribed by law may not be raised in a proceeding before the Board.

Since the instant petition does not allege that the Department's actions were intended to, or did, affect rights

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[2] Section 12-306 of the NYCCBL provides 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 § 12-305 of this chapter;
>
> (2) to dominate or interfere with the formation or administration of any public employee organization;
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> (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.

[3] Decision Nos. B-20-83; B-2-82.

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
October 4, 1990

Loren Krause Luzmore
Executive Secretary
Board of Collective Bargaining