

Arboleda v. Russell (Direc. of BSO), 45 OCB 64 (BCB 1990)
[Decision No. B-64-90 (ES)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of the Improper
Practice Proceeding

-between-

LEONOR ARBOLEDA,

Petitioner,

-and-

NANCY RUSSELL, Director,
B.S.O Personnel,

Respondent.

DECISION NO. B-64-90 (ES)

DOCKET NO. BCB-1316-90

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DETERMINATION OF EXECUTIVE SECRETARY

On August 9, 1990, Leonor Arboleda ("petitioner") filed a verified improper practice petition against Nancy Russell, Director, B.S.O. Personnel ("respondent")¹, in which she alleged that respondent violated Section 12-306 of the New York City Collective Bargaining Law ("NYCCBL").

Specifically, petitioner alleges:

"I was reclassified from Typist C.S. to Office Aide effective 3/24/88. I am not receiving the correct salary for my title as Office Aide III to date."

¹ Shortly after the petition was filed, the Office of collective Bargaining received a letter from Nancy E. Russell, Director, BAIS Labor Relations, stating that the petitioner is not an employee of Special Services for Adults ("SSFA"), a division of the Human Resources Administration, but rather, an employee of the Child Welfare Administration, Social Services, Foster Homes. Accordingly, Ms. Russell claimed, SSFA does not have jurisdiction over the matter referred to in the petition, and requested that the petition be vacated.

Petitioner does not request a specific remedy; she only requests that the Board indicate what her rights are.

Pursuant to Section 7.4 of the 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 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.

Petitioner has failed to allege that respondent committed any acts in violations of § 12-306a, which defines improper public employer practices.² If, as petitioner alleges, she is

² Section 12-306a of the NYCCBL provides as follows:

Improper public employer practices. 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 their rights granted in § 12-305 of this chapter;

(2) to dominate or interfere with the formation or administration of any public

(continued...)

not receiving the correct salary for her title, her right, if any, to address this claim is derived from sources other than the NYCCBL.

Since the instant petition does not allege that respondent's action were intended to, or did, affect any rights 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 12, 1990

Loren Krause Luzmore
Executive Secretary
Board of Collective Bargaining

2(...continued)
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.

**REVISED CONSOLIDATED RULES
OF THE OFFICE OF COLLECTIVE BARGAINING**

§ 7.4 Improper Practices. A petition alleging that a Public employer Or its agents or a Public employee organization or its agents has engaged in or is engaging in an improper practice in violation of Section 1173-4.2 of the statute may be filed with the Board within four (4) months thereof by one (1) or more public employees or any public employee organization acting in their behalf or by a public employer together with a request to the Board for a final determination of the matter and for an appropriate remedial order. Within ten (10) days after a petition alleging improper practice is filed, the Executive Secretary shall review the allegations thereof to determine whether the facts sufficient as a matter of law constitute a violation, or that the alleged violation occurred more than four (4) months prior to the filing of the charge, it shall be dismissed by the Executive Secretary and copies of such determination shall be served upon the parties by certified mail. If, upon such review, the Executive Secretary shall determine that the petition is not, on its face, untimely or insufficient, notice of the determination shall be served on the parties by certified mail, provided, however, that such determination shall not constitute a bar to the assertion by respondent of defenses or challenges to the petition based upon allegations of untimeliness or insufficiency and supported by probative evidence available to the respondent. Within ten (10) days after receipt of a decision of the Executive Secretary dismissing an improper practice petition as provided in this subdivision, the petitioner may file with the Board of Collective Bargaining an original and three (3) copies of a statement in writing setting forth an appeal from the decision together with proof of service thereof upon all other parties. The statement shall set forth the reasons for the appeal.

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§7.8 Answer - Service and Filing. Within ten (10) days after service of the petition, or, where the petition contains allegations of improper practice, within ten (10) days of the receipt of notice of finding by the Executive Secretary, pursuant to Rule 7.4, that the petition is not, on its face, untimely or insufficient, respondent shall serve and file its answer upon the petitioner and any other party respondent, and shall file the original and three (3) copies thereof, with proof of service, with the Board. Where special circumstances exist that warrant an expedited determination, it shall be within the discretionary authority of the Director to order respondent to serve and file its answer within less than ten (10) days.

OTHER SECTIONS OF THE LAW AND RULES MAY BE APPLICABLE.

CONSULT THE COMPLETE TEXT.