Brooks v. Center for Child. & Family, 45 OCB 66 (BCB 1990)
[Decision No. B-66-90 (ES)]

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

-between-

DECISION NO. B-66-90 (ES)
ROSALIE BROOKS, DOCKET NO. BCB-1324-90
Petitioner,

-and-

THE CENTER FOR CHILDREN AND FAMILY,
Respondent.
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DETERMINATION OF EXECUTIVE SECRETARY

On September 24, 1990, Rosalie Brooks ("petitioner") filed a verified improper practice petition against The Center For Children and Family ("the Center" or "respondent"), in which she alleged that respondent. terminated her unjustly in violation of Section 12-306a of the New York City Collective Bargaining Law ("NYCCBL"). As a remedy, petitioner seeks to be returned to work.

In a letter attached to her improper practice petition, petitioner explains that she was "terminated for the loss of $8.00 dollars," and contends that the charges against her are false. Petitioner claims that since she was promoted to the position of Assistant Supervisor, she has been harassed. "On many occasions," petitioner states, "I have been wrongly accused of things that I am not guilty of. I have been branded a thief indirectly and also of other things that are counter productive to the function of D.R.C. which in my opinion stems from [a] personal vendetta."

Although petitioner filed her improper practice claim with this office, it is not apparent from the petition and the letter attached thereto that the Center is a public employer, or that petitioner is a public employee, as those terms are defined in the NYCCBL[1]. Thus, on September 24, 1990, I wrote to the petitioner and requested that she clarify her status and the status of her employer so that I could determine whether the Office of Collective Bargaining has jurisdiction over her improper practice petition. Petitioner has failed to respond to my letter.

Accordingly, we make no determination on the question of whether petitioner is a public employee within the meaning of

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[1] Under Section 12-303(g) of the NYCCBL, a "public employer" is defined as follows:

> (1) any municipal agency; (2) the board of education, the New York city health and hospitals corporation, the New York city board of elections and the public administrator and the district attorney of any county within the city of New York; (3) any public authority other than a state public authority as defined in subdivision eight of section two hundred one of the civil service law, whose activities are conducted in whole or in substantial part within the city; and (4) any public benefit corporation, or any museum, library, zoological garden or similar cultural institution, which is a public employer or government within the meaning of article fourteen of the civil service law, employing personnel whose salary is paid in whole or in part from the city treasury.

Under section 12-303(h) of the NYCCBL, the term "public employees" is defined as:

> municipal employees and employees of other public employers.

NYCCBL. Assuming, arguendo, that petitioner is a public employee, however, her petition still would be dismissed.

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 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 has committed an act in violation of §12-306a of the NYCCBL[2], which

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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:

(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;

(continued...)

defines improper public employer practices. Since the instant petition does not allege that respondent's actions were intended to, or did, affect any rights protected under the NYCCBL, it must be dismissed. I note, however, that dismissal of the petition is without prejudice to any rights the petitioner may have in another forum.

Dated: New York, New York
October 17, 1990

Loren Krause Luzmore
Executive Secretary
Board of Collective Bargaining

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2 (... continued)
(3) to discriminate against any employee for the purpose of encouraging or discouraging membership in, or employee 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 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.

* * * *

§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) 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 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.