

Cotov v. Bellevue Hospital, Quarless, et. al, 45 OCB 78 (BCB 1990) [Decision No. B-78-90 (IP)]

OFFICE OF COLLECTIVE BARGAINING  
BOARD OF COLLECTIVE BARGAINING

-----X

In the Matter of the Improper  
Practice Proceeding

-between-

MARIO COTOV,

Petitioner,

-and-

BELLEVUE HOSPITAL CENTER, DUNCAN  
QUARLESS, GERALD MILLER, and  
ALAN CHANNING,

Respondents.

-----X

**INTERIM DECISION AND ORDER**

On August 27, 1990, Mario Cotov ("petitioner") filed a verified improper practice petition, in which he charged Bellevue Hospital Center, Duncan Quarless, Gerald Miller and Alan Channing (collectively referred to as "respondents") with committing the following improper labor practices:

"Commencing on or about September 1, 1989 and continuing until the present, Bellevue Hospital Center and the individual respondents\* have engaged in continuing violations of Sections [12-306a (1) & (3)] of the New York City Collective Bargaining Law ["NYCCBL"]<sup>1</sup> by: (i) barring petitioner from doing any union work;

---

<sup>1</sup> Section 12-306 of the NYCCBL provides, in pertinent part,

a. **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 section 12-305 of this chapter;

\* \* \*

(continued...)

(ii) refusing to permit petitioner time to carry out his union work; and (iii) harassing petitioner in a clear effort to discourage and prevent petitioner from doing his union work.

\*on information and belief"

Several documents, including the sworn statements of three individuals attesting to alleged events which form the basis of the charges, were appended to the petition.

On October 5, 1990, respondents, by the New York City Health and Hospitals Corporation ("HHC"), filed a motion to dismiss the improper practice petition for failure to state a cause of action under the NYCCBL. Petitioner chose not to submit an answer to respondent's motion.

#### **Background**

Petitioner has been employed at Bellevue Hospital Center, a division of HHC, since January 22, 1973, as an Office Aide in the In-Patient Accounts Receivable Department. It is apparent from the documentation submitted by petitioner that he has been a Shop Steward for the Clerical Division of Local 1549, District Council 37, AFSCME, AFL-CIO ("Union") throughout the period of time covered by the instant petition.

Among the attachments to the petition are items which either refer to events which predate the alleged continuing course of conduct complained of,<sup>2</sup>

---

<sup>1</sup> (...continued)

(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;

\* \* \*

<sup>2</sup> Several documents were submitted concerning a grievance  
(continued...)

or appear to be submitted for the purpose of background material.<sup>3</sup> The gravamen of petitioner's complaint and the remainder of the supporting documentation submitted, however, concerns an incident which allegedly occurred on September 12, 1989, and its aftermath.

On this date, according to the attached sworn statements of two witnesses,<sup>4</sup> a grievance hearing was held in the office of Mr. Duncan Quarless, the Director of Labor Relations at Bellevue Hospital Center. At the hearing, the petitioner and Ms. Espendez were successful in achieving a reversal of the employer's decision to terminate Ms. Iyesi. Both Ms. Espendez and Ms. Iyesi

---

<sup>2</sup> (...continued)  
filed by the Union in 1986 on behalf of the petitioner and other employees of the In-Patient Accounts Receivable Department, alleging out-of-title assignments.

<sup>3</sup> These documents include:

1) Petitioner's performance evaluation covering the period of July 1988 to June 1989, which reflects an overall evaluation of "Outstanding;"

2) The minutes of a Joint Labor/Management Productivity Committee meeting held on January 19, 1990, showing that petitioner "expressed concerns for the lack of hiring minorities (Blacks, Latinos, etc.) in key positions and balancing the Executive Cabinet members with same;" and

3) Two complaints petitioner filed with HHC's Office of Equal Employment Opportunity ("EEO"), dated June 21, 1990 and July 25, 1990, in which he charges several HHC superiors with discrimination based on Race and National Origin. It is noted that these complaints also refer to events which form the basis of the allegations which are the subject of the instant petition, as described infra.

<sup>4</sup> See the sworn statements of Ms. Rosa Espendez, a Shop Steward of Local 1549, and Ms. Ena N. Iyesi, the grievant who was the subject of the hearing, dated June 6, 1990 and April 20, 1990 respectively.

attest that at the conclusion of the meeting, Mr. Quarless allegedly acted in a disrespectful and threatening manner toward petitioner.<sup>5</sup>

Since that time, petitioner complains that he has been unlawfully barred by respondents from performing any of his duties as a Shop Steward. As proof of this allegation, petitioner submits twenty forms entitled "Release for Union Business," all dated between January 31, 1990 to May 31, 1990, which, for the most part, state that petitioner's request is "denied per Labor Relations." Petitioner maintains that:

Ever since January 1990, when by the order of Mr. Channing, Mr. Miller and Mr. Quarless - I was stripped of all my union work, Ms. Calvanico has been freely harrassing [sic] me.<sup>6</sup>

In support of the argument that these denials were retaliatory, petitioner submits the sworn statement of Mr. Ralph Palladino, dated June 6, 1990, which states:

I am writing this memo as the Chief Steward of Local 1549 at Bellevue Hospital. I am responsible for allocating all Step I grievances, counselings and warnings to the various shop stewards.

I can verify that no other shop steward in Local 1549 has been denied release time to carry on such union business. All the other stewards have requested release time at various times.

---

<sup>5</sup> Both witnesses substantially agree that upon leaving the office, Mr. Quarless allegedly said to petitioner:

You talk too much, (and) I will take your balls and stuff them in your mouth ... [A]s long as I am in this office, I do not want to see you or Rosa back in my office. [See sworn statement of Iyesi.]

<sup>6</sup> See EEO Complaint dated July 25, 1990. Although petitioner names Mr. Channing and Mr. Miller as co-respondents, he does not identify their positions with Bellevue Hospital Center. Ms. Calvanico is identified as the Associate Director of Inpatient Revenue and is the person to whom petitioner submitted his requests for release time for union business.

In addition, Mr. Cotov's Release Request is the only one that has written on it any mention of the Office of Labor Relations.

Mr. Cotov has been denied release time even when Local 1549 members have specifically requested his assistance.

In further support of his complaint, petitioner submits a copy of a letter dated April 3, 1990, from Delsie L. Butler, Assistant Division Director, Clerical-Administrative Employees of DC 37, to Mr. Tom Dougherty, Senior Vice President of HHC. This letter provides, in relevant part, as follows:

RE: Labor/Management  
Meeting - Bellevue  
Release of Shop Stewards

The union is requesting a Labor/Management Meeting to be held in your office to discuss the following agenda:

Release Time For Shop Steward

---

- The union would like to discuss the procedure for the release of Shop Stewards on an ad hoc basis at this facility as we contend that Management is violating the rights of one particular Shop Steward, Mr. Mario Cotov who is consistently being denied the right to represent members at counselings, warnings and Step I grievance and departmental hearings.

- The union contends that this is a violation of Executive Order #75<sup>7</sup> ad-hoc release, as all other stewards are allowed the time to represent members at this particular institution.

\* \* \*

- In addition, we would also like to discuss the alleged abusive language directed to Mr. Cotov by Mr. Duncan Quarless, Director of Labor Relations of the institution.

---

<sup>7</sup> Executive Order No. 75 (as amended), dated March 22, 1973, which is incorporated by reference into the 1984-87 collective bargaining agreement between the parties, at Article X, provides, inter alia, for release time for union stewards on an ad hoc basis "to investigate grievances, assist in their early resolution, and to process them at all levels of the grievance procedure."

\* \* \*

**Discussion**

Respondent's motion to dismiss the instant petition is based on petitioner's alleged failure to satisfy the specificity required by Section 7.5 of the Revised Consolidated Rules of the Office of Collective Bargaining ("OCB Rules").<sup>8</sup> HHC maintains

---

<sup>8</sup> Section 7.5 of the OCB Rules provide:

**Petition - Contents.** A petition filed pursuant to Rule 7.2, 7.3 or 7.4 [Improper Practices] shall be verified and shall contain:

- a. The name and address of the petitioner;
- b. The name and address of the other party (respondent);
- c. A statement of the nature of the controversy, specifying the provisions of the statute, executive order or collective agreement involved, and any other relevant and material documents, dates and facts. If the controversy involves contractual provisions, such provisions shall be set forth;
- d. Such additional matters as may be relevant and material.

that the petition should be dismissed as a matter of law because:

Petitioner has not identified any dates on which an improper practice is alleged to have occurred.

Petitioner has not alleged any facts or evidence concerning where and in what manner respondents have committed an unfair labor practice.

Petitioner's statement of the nature of the controversy consists only of self-serving, conclusory statements.

As pointed out by respondent, Section 7.5 provides that an improper practice petition must contain "relevant and material, dates and facts." A petition which fails to comply with this standard deprives the other party of a clear statement of the charges to be met and materially hampers the preparation of a defense. However, it is our long-established policy that the OCB Rules shall be liberally construed, particularly where the other party is not prejudiced by a defect in pleading.<sup>9</sup>

In the instant matter, we find that despite the fact that petitioner, appearing pro se, did not take advantage of legal counsel in preparing his petition and other submissions, he sets forth the material elements of his claim with sufficient clarity to afford the respondents notice of the transactions or occurrences complained of.

In this regard, we note that petitioner's statement of the nature of the controversy, i.e., that he was denied release time to perform his duties as a Shop Steward for retaliatory motives and for the purpose of discouraging his further participation in that capacity, if proved, would constitute a

---

<sup>9</sup> See Decision Nos. B-28-89; B-38-88; B-21-87; B-44-86; B-8-77; B-9-76; B-5-74. See also, OCB Rules, Section 15.1.

violation of Sections 12-306a (1) & (3) of the NYCCBL.<sup>10</sup> Furthermore, the sworn statements and other supporting documentation appended to the petition specifically refer to dates, facts and other matters which are relevant and material to these charges and arguably demonstrate a continuing course of violative conduct by agents of the employer.

Therefore, we find the petition to be in substantial compliance with our rules and are satisfied that sufficient facts have been alleged to find that the petition states a cause of action under the NYCCBL. Accordingly, we shall deny HHC's motion to dismiss, except to the extent the petition refers to events which occurred before September 12, 1989,<sup>11</sup> or to matters not within our jurisdiction,<sup>12</sup> and order respondents to serve and file an answer within ten days of receipt of this decision.

---

<sup>10</sup> Supra, note 1, at 1-2.

<sup>11</sup> Supra, note 2, at 3.

<sup>12</sup> The documents described supra, note 3, at 3, are considered only in the context of background information.

**ORDER**

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 respondents' motion to dismiss be, and the same hereby is, denied; and it is further

ORDERED, that the respondents shall serve and file an answer to the petition within ten days of receipt of a copy of this Interim Decision and Order.

DATED: New York, New York  
December 19, 1990

MALCOLM D. MacDONALD  
CHAIRMAN

DANIEL G. COLLINS  
MEMBER

GEORGE NICOLAU  
MEMBER

CAROLYN GENTILE  
MEMBER

JEROME E. JOSEPH  
MEMBER

GEORGE B. DANIELS  
MEMBER

ELSIE A. CRUM  
MEMBER