

Crews v. Kings County Hospital Center, 47 OCB 10 (BCB 1991) [Decision No. B-10-91 (ES)]

OFFICE OF COLLECTIVE BARGAINING  
BOARD OF COLLECTIVE BARGAINING

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In the Matter of the Improper  
Practice Proceeding

-between-

BRENDA CREWS,

Petitioner,

-and-

KINGS COUNTY HOSPITAL CENTER,

Respondent.

DECISION NO. B-10-91(ES)  
DOCKET NO. BCB-1341-90

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DETERMINATION OF EXECUTIVE SECRETARY

On December 3, 1990, Brenda Crews ("petitioner"), an office Aide III employed by Kings County Hospital Center, filed a verified improper practice petition against Kings County Hospital Center ("respondent"), in which she alleges as follows:

"Improper Practices - Misconduct

1. On September 25, 1990 you endangered the life of a patient.
2. On September 25, 1990 you were negligent when you did not follow proper Departmental procedure.
3. Poor work performance on September 25, 1990."

Petitioner does not specify the relief sought in this proceeding.

From documents attached to the improper practice petition, it is apparent that petitioner was charged with misconduct by her employer. In stating the nature of her improper practice claim, I note that petitioner merely restated those charges. Therefore, I assume that in filing the instant petition, petitioner intends to contest the validity of the misconduct charges that were preferred against her.

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.<sup>1</sup> If petitioner was unjustly charged with

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<sup>1</sup> 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 employee organization;

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

misconduct, 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  
March 7, 1990

Loren Krause Luzmore  
Executive Secretary  
Board of Collective Bargaining

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1(... continued)  
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 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) 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.