

Morales v. Elmhurst Hospital Center, 47 OCB 15 (BCB 1991) [Decision No. B-15-91 (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-15-91 (ES)

GUILLERMO MORALES, JR.,

DOCKET NO. BCB-1371-91

Petitioner,

-and-

ELMHURST HOSPITAL CENTER,

Respondent.
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DETERMINATION OF EXECUTIVE SECRETARY

On January 22, 1991, the Office of Collective Bargaining ("OCB") received a verified improper practice petition from Guillermo Morales, Jr. ("Petitioner"), which it did not accept for filing because the Petitioner failed to submit proof of service of the petition on Elmhurst Hospital Center ("Respondent"), as required by Section 7.6 of the Revised Consolidated Rules of the Office of Collective Bargaining ("OCB Rules"). On February 19, 1991, the petition was resubmitted, together with proof of service, and was accepted for filing at that time.

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 is untimely on its face. Section 7.4 provides, in pertinent part, as follows:

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 [12-306] of the statute may be filed with the Board within four (4) months thereof. . . .

Petitioner alleges that he was wrongfully discharged when the Respondent terminated his employment as a Phlebotomist, effective October 11, 1990. Inasmuch as Petitioner's allegation relates to an event that occurred on October 11, 1990, and his improper practice petition was not filed until February 19, 1991, it is untimely under the provisions of Section 7.4 of the OCB Rules. Accordingly, it must be dismissed.

Even if the petition was not so untimely as to warrant summary dismissal, however, it would be dismissed for failure to state an improper practice under the New York City Collective Bargaining Law ("NYCCBL").

The alleged improper practice stems from a claim by the Petitioner that he had been classified improperly as a "provisional" because "I hold a non-competitive title." The Petitioner contends that no civil service examination has been available for his title, and when he was hired, "I was told my employment was full-time."

The provisions and procedures of the NYCCBL are designed to safeguard the rights of public employees that are created by the statute, i.e., the right to organize, to form, join and assist public employee organizations, and the right to refrain from such activities. The NYCCBL does not provide a remedy for every perceived wrong or inequity. Although the Petitioner contends that his employment was wrongfully terminated, he does not assert that the alleged violation was intended to, or did, in fact, affect any of the

rights protected by Section 12-306a.¹ of the statute, which defines improper public employer practices.

Since the petition does not appear to involve a matter within the jurisdiction of the OCB, it must be dismissed. Of course, dismissal is without prejudice to any rights that the Petitioner may have in another forum.

DATED: New York, N.Y.
March 21, 1991

Loren Krause Luzmore
Executive Secretary
Board of Collective
Bargaining

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¹ NYCCBL §12-306a. (formerly §1173-4.2) provides as follows:

Improper practices: good faith bargaining.

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 (formerly §1173-4.1) 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 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.