Hines, Mickens, et. al v. Comm. Development Agency, et. al, 47 OCB 19 (BCB 1991) [Decision No. B-19-91 (ES)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

In the Matter of

FINNIE D. HINES, JOSEPH MICKENS, CHARLES CARTER and JOSEPH WASHINGTON,
Petitioners,

-and-

JAMES CORCORAN, CHIEF OF STAFF, NEW YORK CITY COMMUNITY DEVELOPMENT AGENCY and DANE B. WESLEY, INSPECTOR GENERAL, NEW YORK CITY COMMUNITY DEVELOPMENT AGENCY,
Respondents.

DECISION NO. B-19-91 (ES)

DOCKET NO. BCB-1365-91

DETERMINATION OF EXECUTIVE SECRETARY

On January 29, 1991, Finnie D. Hines, Joseph Mickens, Charles Carter, and Joseph Washington ("the Petitioners"), filed a verified improper practice petition against James Corcoran, Chief of Staff, New York City Community Development Agency and Dane B. Wesley, Inspector General, New York City Community Development Agency ("the Respondents"). The petition alleges that the Respondents improperly commenced an investigation into Petitioners' educational backgrounds because of their race.

Specifically, Petitioners allege the following:

Inspector General Dane B. Wesley and James Corcoran, Chief of Staff, upon information and belief, the investigation was commenced for the purpose of pretextual harassment based upon our race and color. Upon information and belief, the investigation is being conducted by Dane B. Wesley, who is non-Black. Mr. Wesley is the Inspector General for petitioners and is employed by the New York City Department of Investigation, which is aiding and abetting the discriminatory harassment. Pursuant to this investigation, Mr. Wesley has custody of our personnel files.

In the documents attached to the improper practice petition,

Petitioners explain that Respondents commenced an investigation in June of 1988 regarding their educational credentials. Petitioners assert, upon information and belief, that the investigation was commenced because of an untrue accusation that the school from which they had received their undergraduate degrees, Allen University, had ceased operations during the mid-1950's due to fiscal constraints. As some of the Petitioners claimed dates of attendance at Allen University during this period, an investigation was launched in order to determine whether Petitioners had made false written statements on their personal history questionnaires. Petitioners note that Allen University has never ceased to operate as a degree granting institution. Thus, Petitioners conclude that the alleged reason given for the investigation was a pretext, and that the investigation was actually conducted in order to harass them based on their race and color. Petitioners base their claim of racial harassment on the fact that only graduates of Allen University, a black college located in South Carolina, were the targets of the education credentials investigation. Petitioners also base their claim of racial harassment on the alleged comment of a commissioner in the New York City Department of Personnel that certain black colleges were "diploma 'mills."

Petitioners note that the investigation is being conducted by Respondent Dane B. Wesley, who is not black. They charge that Mr. Wesley, who is the Inspector General for the Community Development Agency (“CDA”) , "is employed by the New York City Department of

Investigation, which is aiding and abetting the discriminatory harassment." Petitioners add that pursuant to this investigation, Mr. Wesley has custody of their personnel files.

Petitioners claim that no action on the investigation was taken between August of 1988 and January of 1990. In January of 1990, the Petitioners allege, the Department of Investigation contacted Allen University regarding the question of whether or not it had ceased operations. Petitioners note that the credentials investigation is still pending, and that Inspector General Wesley still has custody of their personnel files. They charge that these acts support a conclusion that the investigation was not conducted in a reasonable amount of time. Furthermore, Petitioners allege that they have been adversely affected in their employment, in terms of not receiving promotional opportunities and merit increases, because of the delay in the closing of the investigation.

Petitioners charge that Respondents had them provide documentation of their educational background in order to justify their receiving educational salary differentials. Petitioners allege that Respondents requested the salary differential verification as part of a pattern and practice of harassment. Petitioners claim that this violates the Mayor's Executive Order No. 78[1] because Respondents conducted an investigation which they

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[1] Executive Order No. 78 pertains to investigations by the Commissioner of Investigation and Inspector Generals, based on information concerning, inter alia, corrupt or other criminal

(continued...)

knew "did not fit under" the order and, therefore, engaged in "unethical conduct" and "incompetence."

Pursuant to Section 7.4 of the Revised Consolidated Rules of the office of Collective Bargaining ("0CB 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 that are created by the statute, i.e., the right to organize, to form, join or assist public employee organizations, to bargain collectively through certified employee organizations, and the right to refrain from such activities.

In essence, Petitioners' complaint involves claims of discrimination based upon race, which are outside the scope of the jurisdiction of the Board of Collective Bargaining under the New York City Collective Bargaining Law.[2] Since Petitioners have failed to allege that Respondents have committed any acts in

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1 (... continued)
activity, or conflict of interest, gross mismanagement or abuse of authority.

[2] Decision No. B-8-86.

violation of §12-306a of the NYCCBL,[3] which defines improper public employer practices, the instant petition must be dismissed. I note, however, that the dismissal of the petition is without prejudice to any rights that Petitioners may have in another forum.

DATED: New York, New York
April 2, 1991

LOREN KRAUSE LUZMORE
Executive Secretary
Board of Collective Bargaining

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[3] 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 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.

§ 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 [12-306] 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 as alleged may constitute an improper practice as set forth in section 1173-4.2 [12-306) of the statute. If it is determined that the petition, on its face, does not contain 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) 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**