Lara v. City, 47 OCB 39 (BCB 1991) [Decision No. B-39-91 (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-39-91(ES)
PABLO LARA, DOCKET NO. BCB-1401-91
Petitioner,
-and-

CITY OF NEW YORK
Respondent.
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DETERMINATION OF EXECUTIVE SECRETARY

On July 22, 1991, Pablo Lara ("Petitioner") filed a verified improper practice petition against the City of New York ("the City"), in which he alleged that respondent violated Section 12-306 of the New York City Collective Bargaining Law ("NYCCBL").[1]

[1] 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

(continued...)

On August 5, 1991, the City, by its Office of Labor Relations, filed an answer to the petition.[2]

Specifically, Petitioner alleges that the City violated §12-306a(1) and (2) by permitting employees in supervisory job titles to hold positions as officers in the Social Service Employees Union, Local 371. As a remedy, Petitioner requests an order directing the City "to require those identifiable employees [in] supervisory positions to relinquish their union officership positions in the Social Service Employees Union, Local 371."

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, I have reviewed the petition and have determined that the 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 NYCCBL.

The NYCCBL does not provide a remedy for every perceived wrong or inequity. Its provisions and procedures are designed to

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1(... continued)
collective bargaining with certified or designated representatives of its public employees.

[2] The City was not required to file an answer by that date since the petition was still under review by the Executive Secretary pursuant to Section 7.4 of the Revised Consolidated Rules of the Office of Collective Bargaining. Therefore, the answer was not considered in reaching the decision herein. By letter dated August 12, 1991, Petitioner requested an extension of time to file a reply. Since the City's answer was disregarded a reply is not necessary and will not be considered.

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 any act in violation of §12-306a, which 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. In fact, §12-309b(l) provides that the Board of Certification shall have the power and the duty to make final determinations of the units appropriate for collective bargaining between public employers and public employee organizations.[3]

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[3] Section 12-309b(l) of the NYCCBL provides, in pertinent part, as follows:

> The board of certification, in addition to such other powers and duties as it has under this chapter and as may be conferred upon it from time to time by law, shall have the power and duty:
> (1) to make final determinations of the units appropriate for purposes of collective bargaining between public employers and public employee organizations, which units shall be such as shall assure to public employees the fullest freedom of exercising the rights granted hereunder and under executive orders, consistent with the efficient operation of the public service, and sound labor relations, provided that in any case involving a petition for certification where supervisory or professional employees petition to be represented for purposes of collective bargaining separate and apart from non-supervisory or non-professional employees. or

(continued...)

3 (... continued)
where a Petition for certification ha been filed requesting a unit of supervisory and non-supervisory or a unit of professional and non-professional employees and the Public employer objects thereto, the board of certification shall not include such supervisory or professional employees in a bargaining unit which includes non-supervisory or non-professional employees respectively unless a majority of the supervisory or professional employees voting in an election vote in favor thereof (emphasis added).

Supervisory employees may belong to the same unit as non-supervisory employees in accordance with the terms of NYCCBL §12-309b(l). Where supervisory and non-supervisory employees are found in the same bargaining unit, nothing in §12-309b prohibits supervisory employees from holding offices in that unit. If, as petitioner alleges, he has a right to demand that supervisory employees cease to serve as union officials, this right derives from a source other than the NYCCBL.

Accordingly, I find that no improper public employer practice has been stated. Therefore, the petition is dismissed pursuant to Section 7.4 of the OCB Rules. Such dismissal is, of course, without prejudice to any rights the petitioner may have in another forum.

Dated: New York, New York
August 13, 1991

Loren Krause Luzmore
Executive Secretary
Board 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 [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**