Smiley v. DOT, 49 OCB 12 (BCB 1992) [Decision No. B-12-92 (ES)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING
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In the Matter of

FRANCES SMILEY,

Petitioner, DECISION NO. B-12-92 (ES)

-and- DOCKET NO. BCB-1485-92

NEW YORK CITY DEPARTMENT OF
TRANSPORTATION,

Respondent.

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DETERMINATION OF EXECUTIVE SECRETARY

On April 6, 1992, Frances Smiley ("petitioner") submitted a verified improper practice petition in which she alleged that the New York City Department of Transportation ("respondent") committed an improper practice within the meaning of the New York City Collective Bargaining Law ("NYCCBL"). The petitioner, a Traffic Enforcement Agent employed by the respondent, complains:

> On two different occasions when I asked for a Step III hearing, I was denied due process on all grounds under the collective bargaining agreement.

Appended to the petition were documents pertaining to various disciplinary matters and grievances involving petitioner, of which at least two were appealed through Step II of the contractual grievance procedure.

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, the undersigned has reviewed the petition and has determined that it does not allege facts sufficient as a matter of law to constitute an improper practice

within the meaning of Section 12-306 of the NYCCBL.[1] Because the petition complains of a denial of rights prescribed by a collective bargaining agreement, it must be dismissed because the Board of Collective Bargaining ("Board") lacks jurisdiction to consider such claims.[2] Section 205.5d of the Taylor Law,[3] which is applicable to this agency, provides:

> the board shall not have authority to enforce an agreement between a public employer and employee organization and shall not exercise jurisdiction over an alleged violation of such an agreement that would not otherwise constitute an improper employer or employee organization practice.

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[1] Section 12-306 of the NYCCBL states, in relevant part, as follows:

> **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;
>
> (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.

[2] E.g., Decision No. B-8-85.

[3] New York State Civil Service Law, Article 14.

As no basis has been alleged for finding that the alleged contract violations constitute independent improper practices under the NYCCBL, petitioner is left to her contract remedies, if any exist, with respect to these claims.

For the aforementioned reason, the petition herein shall be dismissed. Such dismissal is, of course, without prejudice to any rights petitioner may have under an applicable collective bargaining agreement or in any other forum.

Dated: New York, New York
April 29, 1992

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Loren Krause Luzmore
Executive Secretary
Board of Collective
Bargaining