Willams v. Dep't of Health, 49 OCB 36 (BCB 1992) [Decision No. B-36-92 (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-36-92(ES)
RUBY L. WILLIAMS, DOCKET NO. BCB-1492-92
Petitioner,
-and-

DEPARTMENT OF HEALTH,
Respondent.
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DETERMINATION OF EXECUTIVE SECRETARY

On May 7, 1992, Ruby L. Williams ("petitioner") submitted a verified improper practice petition in which she alleged that the New York City Department of Health ("respondent") committed an improper practice within the meaning of the Nov York City Collective Bargaining Law ("NYCCBL"). The petitioner alleges that, following a layoff and reassignment, she was improperly denoted.

Specifically, petitioner alleges the following:

> On June 30, 1991, layoffs occurred in the Window Guard Bureau (Layoff unit). On November 25, 1991, I received a re-assignment letter ... to report to Disease intervention/Immunization as of December 9, 1991. On December 9, 1991, I reported there and was assigned my duties ... and then transferred and denoted on December 10, 1991...
>
> This demotion is in violation of the City Wide contract article 16, section 4. In an much as I vas appointed as a permanent civil servant on February 19, 1969, and had hold the title of community associate since 10/86, and have seniority over [two other employees] who were employed in the layoff unit and rehired as Community Associates prior to my demotion...
>
> My DC 37 Stop I [g]rievance ... plus numerous telephone calls have gone unanswered.

Appended to the petition were documents pertaining to demotion and the Stop I grievance, which was denied.

Pursuant to Title 61, Section 1-07(d) of the Rules Of the City of Now York (formerly referred to as Section 7.4 of the Revised Consolidated Rules of the office of Collective Bargaining), 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 12-306a[1] of the NYCCBL. 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")

[1] Section 12-306a of the NYCCBL defines improper public employer practices 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 in matters within the scope of collective bargaining with certified or designated representatives of its public employees.

lacks jurisdiction to consider such claims.[2] Section 205.5d of the Taylor Law,[3] which in 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.

As no basis has been alleged for finding that the alleged contract violation constitutes an independent improper practice under the NYCCBL, petitioner in left to contract remedies, if any exist, with respect to these claims.

With regard to petitioner's allegation that DC 37 has ignored her phone calls, I note that no claim was filed against the Union. Rather, petitioner's improper practice petition names only the Department of Health as the respondent herein. In any event, the petition fails to allege that the Union has committed any acts in violation of Section 12-306b of the NYCCBL, which has been held to prohibit violations of the judicially recognized fair representation doctrine.[4] The petition is devoid of any

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[2] E.g., Decision No. B-12-92 (ES).

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

[4] Section 12-306b of the NYCCBL, in relevant part, provides:

> Improper public employee organization practices. It shall be an improper practice for a public employee organization or its agents:
>
> (1) to interfere with, restrain or coerce public employees in the exercise of rights granted in Section 12-305 of this

(continued...)

allegations of fact in support of a finding of arbitrary, discriminatory, or bad faith conduct on the part of DC 37.

For the aforementioned reasons, 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
October 8, 1992

Loren Krause Luzmore
Executive Secretary
Board of Collective Bargaining

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4 (continued)
chapter, or to cause, or attempt to cause, a public employer to do so;
See Decision Nos. B-27-91; B-13-81.