Laing v. L.420, DC37, 49 OCB 42 (BCB 1992) [Decision No. B-42-92 (ES)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING
----------X
In the Matter of the Improper
Practice Proceeding

-between-

Adolphus A. Laing,
Petitioner,

Decision No. B-42-92(ES)
-and- Docket No. BCB-1521-92

Local 420, District Council 37,
AFSCME, AFL-CIO,
Respondent.
----------X

DETERMINATION OF EXECUTIVE SECRETARY

On September 4, 1992, Adolphus A. Laing ("petitioner") filed a verified improper practice petition alleging that Local 420, District Council 37, AFSCME, AFL-CIO ("the Union") violated the New York City Collective Bargaining Law ("NYCCBL").[1] Petitioner alleges that the Union "deni[ed him] equal terms, conditions and

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

b. 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 chapter, or to cause or attempt to cause, a public employer to do so.

Section 12-305 of the NYCCBL provides, in relevant part:

Rights of public employees and certified employee organizations. Public employees shall have the right to self-organization, to form, join or assist public employee organizations, to bargain collectively through certified employee organizations of their own choosing and shall have the right to refrain from any or all such activities.

privileges of union membership," did not represent him "because of [his] race and color" and "aid[ed] and abett[ed] the unlawful discriminatory practices of [his] employer in violation of the New York State Human Rights Law."

Petitioner was employed by the Neponsit Health Care Center ("employer") in the title Dietary Aide until 1988. He claims that the employer denied him promotions because of his race, and that charges of misconduct were falsely brought against him when he sought promotions. Petitioner asserts that he was not adequately represented by the Union at a Step I hearing on misconduct charges in September, 1987. In particular, he alleges that union representatives suppressed evidence in his favor and counseled other union members not to testify in his behalf at the hearing. He made these claims in a letter to the Union dated November 25, 1988. Petitioner also submits determinations of the New York State Division of Human Rights, dated December 31, 1991, and the Equal Employment Opportunity Commission, dated May 19, 1992, which dismissed petitioner's claim of discrimination against the employer.

Pursuant to Title 61, § 1-07(d) of the Rules of the City of New York, a copy of which is annexed hereto, the undersigned has reviewed the petition and has determined that the improper practice claims asserted therein must be dismissed because the petition is untimely on its face. Under § 1-07(d), an improper practice petition must be filed within four months of the alleged violation of the statute. In the instant case, petitioner

alleges that the Union failed to represent him adequately at a Step I hearing which took place in 1987. Even assuming that petitioner had no knowledge of the facts until November, 1988, when he asserted them in a letter to the Union, the petition would still be untimely by more than two years.

Petitioner also alleges that the employer violated § 12-306c(4)[2] when it refused to furnish him with copies of his employment records. I note, however, that the employer was not named as a respondent in the petition. Even if the employer were named as a respondent in the petition, it is well-settled that individual members of a bargaining unit lack standing to raise a claim pursuant to NYCCBL § 12-306c.[3] Since the duty to bargain in good faith set forth in § 12-306c of the NYCCBL runs only between the employer and the union, a petition based on this claim also would be dismissed.

Accordingly, for the reasons stated above, the petition is dismissed without consideration of its merits. I note, however,

---

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

> c. **Good faith bargaining.** The duty oi a public employer and certified or designated employee organization to bargain collectively in good faith shall include the obligation:
>
> (4) to furnish the other party, upon request, data normally maintained in the regular course of business, reasonably available and necessary for full and proper discussion, understanding and negotiations of subjects within the scope of collective bargaining.

[3] See, e.g., Decision Nos. B-11-92; B-33-89; B-29-84; B-15-83; B-13-81.

that the dismissal of the petition is without prejudice to any rights that petitioner may have in another forum.

Dated: New York, New York
November 18, 1992

Loren Krause Luzmore
Executive Secretary
Board of Collective Bargaining