Morris v. HHC,EMS, 49 OCB 43 (BCB 1992) [Decision No. B-43-92 (ES)]

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

Zhinga Morris,

Petitioner,

-and-

Decision No. B-43-92(ES)
Docket No. BCB-1529-92

New York City Emergency Medical Service, Health and Hospitals corporation,

Respondent.
---------- X

DETERMINATION OF EXECUTIVE SECRETARY

On October 7, 1992, Zhinga Morris ("petitioner") filed a verified improper practice petition alleging that the New York City Emergency Medical Service of the Health and Hospitals corporation ("EMS") violated the New York City Collective Bargaining Law ("NYCCBL").[1] Petitioner's claims are as follows:

---

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

> **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 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 of 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.

(continued...)

> There has been a violation, misapplication or misinterpretation of HHC rules and regulations, and/or the City-Wide Contract, in that I was (1) given two separate performance evaluations for the same time period which were different, with the latter evaluation made more negative, as retaliation against me for rebutting the original evaluation; (2) a counseling based on attendance was used to justify a "needs improvement" rating on the evaluation, even though I had valid and documented reasons for my absences; (3) Evaluation items are mutually contradictory and are not supported by a reasonable reading of the text, evaluation show wrongful discrimination not warranted by the facts; (4) I was not given evaluations by the evaluating supervisor in a review meeting, this violates HHC Operating Procedure 20-40, 4(D); (5) I was not given a follow-up evaluation within 90 days, this violates HHC Operating Procedure 20-40, 3E; (6) I was ordered to sign that I had received a copy of said evaluation although I was not given a copy until approximately five days later, upon my request, this violates HHC Operating Procedure 20-40 4(E). Management stated that I would receive a copy by mail; such evaluation was not mailed within the tan days allowed for rebuttal, therefore my right to a timely rebuttal was taken away; (7) the counseling that I received is in violation of the operating Guide Procedures 120-1 through 120-5 and as stipulated in the City-Wide Contract 3.0 through 3.2.

As a remedy, petitioner seeks "[e]xpungement of these two wrongful evaluations from all EMS records."

Pursuant to Title 61, § 1-07(d) of the Rules of the City of New York, a copy of which is annexed hereto, I have reviewed the petition and have determined that the improper practice claims

---

1 (...continued)
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.

asserted therein must be dismissed because they do not allege facts sufficient as a matter of law to constitute improper practices 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 safeguard the rights of public employees set forth therein, i.e., the right to bargain collectively through certified public organizations; the right to organize, form, join and assist public employee organizations; and the right to refrain from such activities.

Claimed violations of a collective bargaining agreement such as the City-wide contract are expressly beyond the jurisdiction of the Board of Collective Bargaining, pursuant to § 205.5(a) of the Taylor Act,[2] which reserves for the public employee or the public employee organization the right to file a grievance under a collective bargaining contract. The allegations set forth herein by petitioner may not be considered in the improper practice forum because the events upon which the petition are based are not related to rights protected under § 12-306a of the NYCCBL. For this reason, the petition must be dismissed. I

[2] Section 205.5(d) of the Taylor Act, which applies to the City of New York pursuant to 5 212 of that statute, provides in relevant part:

> the board shall not have the authority to enforce an agreement between an employer and an 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.

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

Dated: New York, New York
November 18, 1992

Loren Krause Luzmore
Executive Secretary
Board of Collective Bargaining