

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of the Improper
Practice Proceeding

--between--

DENISE C. HOWARD,
Petitioner,

DECISION No. B-30-93(ES)

--and--

DOCKET No. BCB-1483-92

QUEENS GENERAL HOSPITAL CENTER,
Respondent.

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DETERMINATION OF EXECUTIVE SECRETARY

On April 3, 1992, Denise C. Howard ("the Petitioner") filed a verified improper practice petition with the office of Collective Bargaining ("OCB"). On April 27, 1992, Petitioner filed an affidavit dated April 29, 1992, as an addendum to the verified improper practice petition filed April 3, 1992, alleging wrongful discipline and lack of due process. She alleges violation of Section 12-306a (formerly referred to as Section 1173-4.2) of the New York City Collective Bargaining Law ("NYCCBL").¹ As a remedy, Petitioner seeks reinstatement "with

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 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
(continued...)

(...continued)

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

full benefits."

Petitioner's Allegations

Petitioner alleges that she was employed as a Laboratory Assistant at the Queens General Hospital Center. She also alleges that she was the target of an assault on the premises of her employer and that, on August 23, 1991, she was suspended from her duties pending an investigation and hearing. Following a Step 1A informal conference and determination by the Associate Director of Labor Relations at the Queens General Hospital Center, she was terminated on October 3, 1991. In her petition, she states as follows:

In the October 3, 1991, determination of the Queens [General] Hospital Center, Office of Labor Relations, by Larry Woods, Associate Director, it is acknowledged that petitioner Denise Howard acted in self-defense in the incident which precipitated the charges filed against her. Yet, the Office of Labor Relations found against petitioner finding that petitioner "was accorded the opportunity to avoid the physical confrontation and elected to remain in a potentially explosive setting."

Petitioner alleges that she was denied a full and fair hearing in

employees.

the termination of her employment. She also alleges that she was wrongfully disciplined for remaining on the premises and for using reasonable force in her defense.

DISCUSSION

Pursuant to Title 61, Section 1-07(d) of the Rules of the City of New 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 a claim of improper practice against the Respondent within the meaning of Section 12-306a. The NYCCBL does not provide a remedy for every perceived wrong or inequity, only the rights of public employees as specifically 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, conversely, the right to refrain from such activities.

In the instant case, Petitioner has failed to state facts which show the Respondent committed acts which may constitute an improper public employer practice. The instant petition does not allege that Respondent's actions were intended to, or did, affect the rights specifically protected under the NYCCBL. Accordingly,

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the petition must be dismissed. I note, however, that dismissal of the petition is without prejudice to any rights Petitioner may have to pursue her claim in another forum.

Dated: New York, New York
August 18, 1993

Wendy E. Patitucci
Acting Executive Secretary
Board of Collective Bargaining

TITLE 61 OF THE RULES OF THE CITY OF NEW YORK (FORMERLY
REFERRED TO AS THE REVISED CONSOLIDATED RULES OF
THE OFFICE OF COLLECTIVE BARGAINING)

Section 1-07(d) (formerly § 7.4). Improper Practices. A petition alleging that a public employer or its agents or a public employee or its agents has engaged in or is engaging in an improper practice in violation of Section 12-306 (formerly 1173-42) 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 12-306 (formerly 1173-4.2) 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 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 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.

Section 1-07(h) (formerly § 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 Title 61, Section 1-07(d) of the Rules of The City of New York (formerly 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**