Colvatio v. Dep't of Sanitation, 51 OCB 47 (BCB 1993) [Decision No. B-47-93 (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-47-93 (ES)

ALBERT COLVATIO,

DOCKET NO. BCB-1573-93

Petitioner,

-and-

NEW YORK CITY DEPARTMENT OF SANITATION,

Respondent.
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DETERMINATION OF EXECUTIVE SECRETARY

On April 23, 1993, Albert Colvatio (the "petitioner") filed a verified improper practice petition alleging that the Department of Sanitation (the "Department") discriminated against him on account of his provisional status. Based on documents annexed to the petition, it appears that the petitioner was injured on the job in September 1990. Petitioner contends that, as a result of his injury, he was contractually entitled to "90 days pay and continued medical for 4 months." Because of his provisional status, petitioner argues, the Department denied him both of these entitlements.

The petitioner also claims that Local 246, Service Employees International Union (the "Union") refused to assist him in this matter because of his status as a provisional employee. In fact, the petitioner alleges, the Union even failed to provide him with a copy of the collective bargaining agreement despite two years of repeated requests.[1] As a result, the

[1] The petitioner alleges that he finally received a copy of (continued...)

petitioner argues, he was unaware of his right to bring a grievance and the contractual time limit for filing a grievance expired. As a remedy, the petitioner seeks an order waiving the contractual time limit and allowing him to file a grievance.

Initially, I note that the Union is not named as a respondent here. Therefore, in reviewing the petition, I have considered only the allegations against the Department.

Pursuant to Title 61, Section 1-07(d) of the Rules of the City of New York ("the 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 12-306a of the New York City Collective Bargaining Law ("NYCCBL").[2] The NYCCBL does not provide a remedy for every perceived wrong

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[1](...continued)
the collective bargaining agreement in 1992 after he wrote to Senator Alfonse D'Amato complaining about the situation.

[2] NYCCBL §12-306a (formerly §1173-4.2) 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 [formerly §1173-4.1] 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.

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 employee organizations; the right to organize, form, join and assist public employee organizations; and the right to refrain from such activities.

In the instant case, petitioner has failed to state any facts which show that the Department may have committed acts which constitute an improper practice under the NYCCBL. The petition complains of a denial of rights prescribed by a collective bargaining agreement. The Board of Collective Bargaining ("Board"), however, lacks jurisdiction to consider such claims.[3] Section 205.5d of the Taylor Law,[4] 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.

Since the petitioner has not stated any basis for finding that the alleged contract violation constitutes an independent improper practice under the NYCCBL, he is left to contract remedies, if any exist, with respect to these claims.

For the aforementioned reasons, the petition herein shall be dismissed. Such dismissal is, of course, without prejudice to any rights that the petitioner may have in another other forum.

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[3] E.g., Decision Nos. B-23-91; B-55-87; B-37-87.

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

DATED: New York, New York
November 22, 1993

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Loren Krause Luzmore
Executive Secretary
Board of Collective
Bargaining