

Laguerre v. Housing Preservation & Development, 51 OCB 51 (BCB 1993) [Decision No. B-51-93 (ES)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of the Improper
Practice Proceeding

-between-

MENDEL R. LAGUERRE
Petitioner,

DECISION NO. B-51-93 (ES)
DOCKET NO. BCB-1594-93

-and-

NEW YORK CITY HOUSING PRESERVATION
AND DEVELOPMENT,
Respondent.

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DETERMINATION OF EXECUTIVE SECRETARY

On July 22, 1993, Mendel R. Laguerre ("Petitioner") filed a verified improper practice petition against the New York City Housing Preservation and Development Corporation ("Respondent"), in which he alleged that Respondent terminated him unjustly in violation of Section 12-306a of the New York City Collective Bargaining Law ("NYCCBL").¹

In his improper practice petition, Petitioner explains that on April 1, 1992, he was assaulted by two gunmen and locked in an apartment bathroom while

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 §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 or participation in the activities of, any public employee organization;
- in,

- (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.

inspecting a City owned building. Petitioner states that since this incident he has been receiving workers' compensation for "post traumatic disorder." Petitioner alleges he was terminated from work on April 9, 1993 "because the State doctor was in disagreement with my doctor." Petitioner explains that the State doctor told him he could return to work, whereas his own doctor told him he was not fit to return to work. Petitioner questions why his doctor was not contacted if the diagnosis was unacceptable or incorrect. He further explains that his doctor was waiting for approval for a psychiatric evaluation, which was received after Petitioner was terminated. Petitioner also claims that he was terminated after "filing charges with EEO" and notes that the EEO determination letter was dated April 9, 1993, his termination date. Petitioner requests that he be reinstated to his former position because he was terminated without a hearing and without notice to his union. He notes that another employee was permitted to stay on leave even though that employee's doctor was in disagreement with the State doctor.

Pursuant to Title 61, Section 1-07(d) of the Rules of the City of New York (formerly Section 7.4 of the Revised Consolidated Rules of the Office of Collective Bargaining, hereinafter "OCB Rules"), a copy of which is annexed hereto, the undersigned has reviewed the petition and has determined that the improper practice claim asserted therein must be dismissed because it does not allege facts sufficient as a matter of law to constitute an improper practice 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 employee organizations; the right to organize, form, join, and assist public employee organizations; and the right to refrain from such activities.

Petitioner has failed to allege that Respondent has committed any act in violation of §12-306a of the NYCCBL, which defines improper public employer practices. Since the instant petition does not allege that Respondent's

actions were intended to, or did, affect any rights protected under the NYCCBL, it must be dismissed. I note, however, that dismissal of the petition is

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without prejudice to any rights the Petitioner may have in another forum.

Dated: New York, New York
December 6, 1993

Loren Krause Luzmore
Executive Secretary
Board of Collective Bargaining