

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

-between-

Janice Nixon, Decision No. B-6-93(ES)
Docket No. BCB-1538-92
Petitioner,

-and-

New York City Housing Authority,
Respondent.
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DETERMINATION OF EXECUTIVE SECRETARY

On November 12, 1992, Janice Nixon ("petitioner") filed a verified improper practice petition against the New York City housing Authority ("NYCHA"). Petitioner claims that the NYCHA committed improper practices in violation of the Now York City Collective Bargaining Law¹ and violated the collective bargaining

¹Section 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 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 in the activities of, any public employee organization;

(continued...)

(... continued)

(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....

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

agreement between the City and the public employee organization which represents her job title by assigning her to perform out-of-title work. As a remedy, petitioner seeks a transfer from social and community services; assignment to a different supervisor; and a special investigation of sexual, physical and verbal abuse at Farragut Community Center.

The petitioner alleges that she has been employed as a Community Coordinator in the NYCHA's Drug Elimination Program since September 1991. She was first employed at the Farragut Community Center in Brooklyn. Five months after she began work in that location, she was sexually, physically and verbally abused by a subordinate. Although petitioner brought the matter to the attention of her supervisors,, they took no action. In March 1992,, petitioner was warned not to seek an order of protection against the subordinate; and was relieved of her supervisory duties and ordered to work alone. Shortly thereafter, petitioner's case files were removed from her office.

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 of such activities....

In addition, petitioner alleges that she was required to use the men's bathroom for several months because she would not agree to clean the women's bathroom.

In July 1992, petitioner was forced to accept a transfer from Farragut Center to Cypress Hills Center in Queens. After two months at Cypress Hills,, petitioner was threatened at gunpoint by an unknown assailant. She was then transferred to the District Office.

Petitioner alleges that she has made numerous requests for promotion or transfer which have been thwarted by her supervisors. Petitioner claims that the NYCHA has notified her that she will be returned to Cypress Hills, but she is afraid to return to work there. In addition, petitioner claims that her work at Cypress Hills is out-of-title, and alternate job sites are each from one-and-a-half to two hours from her home, thus creating a travel hardship.

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 it does not allege facts sufficient as a matter of law to constitute a claim of improper practice within the meaning of § 12-306a 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.

In the instant case, petitioner has failed to state any facts which show that the NYCHA may have committed acts which constitute an improper practice under the, NYCCBL, nor has petitioner alleged that the NYCHA's actions were intended to, or did, affect rights protected under the NYCCBL. Insofar as petitioner claims that she is being forced to perform out-of-title work, I note that such an allegation may not be considered in the improper practice forum. Under 5 205.5(d) of the Taylor Law,² a claim of contract violation which does not otherwise state a claim of improper practice may be raised only through the parties contractual grievance and arbitration process.³ Regarding petitioner's request for a special investigation of abuse at Farragut Center, the Board of Collective Bargaining is not authorized by statute to perform such investigations.

²Section 205.5(d) of the Taylor Law, which applies to the City of New York pursuant to § 212 of that law, 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.

³Decision Nos. B-23-91; B-55-87; B-37-87; B-17-86.

Accordingly, for the above reasons, the instant petition is dismissed. I note, however, that dismissal of the petition is without prejudice to any rights petitioner may have in another forum.

Dated: New York, New York
February 10, 1992

Loren Krause Luzmore
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 6 7.4) Improper Practices. A petition alleging that a public employer or its agents or a public employee organization 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 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 as 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 alleged 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. It 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 certified mail, provided, however, that such determination shall not constitute a 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 subdivision, the petitioner may file 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 expected 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**