

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

-- between--

DECISION NO. B-7-93 (ES)

JAGAN T. ABRAHAM,
Petitioner,

DOCKET NO. BCB-1553-93

--and--

NEW YORK CITY DEPARTMENT OF
TRANSPORTATION,
Respondent.

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DETERMINATION OF EXECUTIVE SECRETARY

On February 16, 1993, Jagan T. Abraham ("the Petitioner"), an Assistant Bridge Operator, filed a verified improper practice petition with the Office of Collective Bargaining ("OCB") in which he alleged that he was terminated by the New York City Department of Transportation ("Department") in 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 a review of his job evaluation and reinstatement to his former position.

Petitioner's Allegations

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 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.

Petitioner alleges that he was employed by the New York City Department of Transportation as an Assistant Bridge Operator from December 9, 1991 until December 1, 1992. During that period of time, he was assigned to work all bridges in New York City except the Union Port Bridges. Petitioner alleges that all of his immediate supervisors expressed a positive opinion of him and his work. He was terminated, however, when one supervisor, whom he states was not his immediate supervisor and with whom he allegedly never worked, evaluated Mr. Abraham's work and determined it was average and below average.

Attached to the petition are photocopies of (i) an Assignment and Transfer Form from the Personnel Division of the Department of Transportation indicating the Petitioner's date of appointment to the Title of Assistant Bridge Operator, effective December 9, 1991; (ii) letters from four individuals identified as Bridge Operators in Charge, whom Petitioner described in the letter attached to the petition as his immediate supervisors at various times, (iii) a three-page document, apparently unofficial, described as "WORK SCHEDULE FROM DECEMBER 09, 1991, TO 12/01/92," (iv) a two-page document, apparently unofficial, described as "WORKED EXTRA TIME BUT DIDN'T PAY OT," and (v) a one-page document described as "DEPARTMENT OF TRANSPORTATION'S PROBATIONARY EVALUATION REPORT," signed October 16, 1992.

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 Department within the meaning of Section 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 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 Department committed acts constituting an improper public employer practice as defined by the New York City Collective Bargaining Law. Petitioner claims that it is unfair that he was terminated on the basis of an evaluation prepared by a supervisor with whom he has never worked. He has not alleged, however, that the Department's actions were intended to, or did, affect the rights specifically protected under the NYCCBL. For this reason, the petition must be dismissed. I note, however, that dismissal of the petition does not prejudice any rights Petitioner may have in another forum.

DATED: New York, New York
 November 19, 1993

Loren Krause Luzmore
Executive Secretary
Board of Collective
Bargaining