

Koch v. C. Hynes (District Att. of Kings County), 51 OCB 8 (BCB 1993)  
[Decision No. B-8-93 (ES)]

OFFICE OF COLLECTIVE BARGAINING  
BOARD OF COLLECTIVE BARGAINING

----- X  
In the Matter of the Improper  
Practice Proceeding

-between-

Lorraine Koch,

Decision No. B-8-93(ES)

Petitioner,

Docket No. BCB-1554-93

-and-

Charles Hynes, District Attorney  
of Kings county,

Respondent.

----- X

---

DETERMINATION OF EXECUTIVE SECRETARY

On February 16, 1993, Lorraine Koch ("petitioner"), pro se, filed a verified improper practice petition in which she claims that Charles Hynes, District Attorney of Kings County "respondent"), violated Section 12-306 of the New York City Collective Bargaining Law ("NYCCBL").<sup>1</sup>

---

1

Section 12-306 of the NYCCBL provides:

**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;

(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:

**Rights of public employees and certified employee organizations.** Public employees shall have the right to self-

(continued ... )

Petitioner alleges:

I was wrongfully terminated from the District Attorney's Office of Kings County on January 22, 1993, in the position of paralegal/community aide. I was terminated without justification or explanation. I was never given an opportunity to be placed with a Zone or Bureau where my credentials,, knowledge and future training would be appropriate ... I was treated in an emotionally abusive manner for eleven months by my supervisor without cause or justification. Attempts were made to resolve this matter but to no avail. I was transferred to the Homicide Bureau, for which I was not qualified. This was known by the Personnel Director. I was also publicly and privately humiliated, demeaned, embarrassed and degraded by being escorted out, like a common criminal, from the premises by a Detective Investigator.

As a remedy, petitioner seeks reinstatement to a position with the same or greater pay, reinstatement of all benefits, and a letter of apology to herself, the Recertification Division and her file.

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

---

1( ... continued)  
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.

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 respondent may have committed any acts which constitute an improper practice under the NYCCBL, nor has petitioner alleged that the respondent's actions, e.g., alleged wrongful termination, inadequate training and deployment of personnel, inappropriate treatment by supervisors, were intended to, or did, affect rights protected under § 12-306a of the NYCCBL. Therefore, I find that petitioner's claim does not fall within the jurisdiction of the Board of Collective Bargaining.

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,, Now York  
March 15, 1993

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 § 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 1173-4.2) 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 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. 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 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 as provided in this 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 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**