

Pesce v. Dep't of San. & Uni. San. Ass., 51 OCB 9 (BCB 1993) [Decision No. B-9-93 (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-9-93 (ES)

THOMAS M. PESCE,
Petitioner,

DOCKET NO. BCB-1551-93

--and--

NEW YORK CITY DEPARTMENT OF
SANITATION and UNIFORMED
SANITATIONMEN'S ASSOCIATION,
Respondents.

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DETERMINATION OF EXECUTIVE SECRETARY

On February 4, 1993, Thomas M. Pesce ("the Petitioner"), an employee of the New York City Department of Sanitation, filed a verified improper practice petition against the New York City Department of Sanitation (Department") and the Uniformed Sanitationmen's Association, Local 831 ("the Union") (collectively referred to as "the Respondents") alleging that he was injured in the line of duty and that he has been denied compensation for that injury. As a remedy, Petitioner seeks compensation for the medical bills and salary lost as a result of the injury he allegedly sustained in the line of duty.

In the petition, Petitioner states that he was hurt on October 22, 1992 while working between the hours of six and two. He alleges, "I was hurt at 12:10 on City time and property. I was taken by City Ambulance ... to Peninsula Hospital. I am being denied line of duty injury compensation."

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 or the Union within the meaning of Sections 12-306a or 12-306b of the New York City Collective Bargaining Law ("NYCCBL")

(formerly Section 1173-4.2 of the NYCCBL).¹ The NYCCBL does not provide a remedy for every perceived wrong or inequity. To the contrary, the provisions and procedures of the NYCCBL are designed to safeguard only the rights of public employees that are created by the statute, 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.

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.

Section 12-306b of the NYCCBL provides as follows:

Improper public employee organization practices. It shall be an improper practice for a public employee organization or its agents:

- (1) to interfere with, restrain or coerce public employees in the exercise of rights granted in Section 12-305 of this chapter, or to cause, or attempt to cause, a public employer to do so;
- (2) to refuse to bargain collectively in good faith with a public employer on matters within the scope of collective bargaining provided the public employee organization is a certified or designated representative of public employees of such employer.

In the instant case, Petitioner has failed to state facts which show that the Respondents committed acts which may constitute an improper public employer or public employee practice. The instant petition does not allege that Respondents' actions were intended to, or did, affect any of the rights specifically protected under the NYCCBL. Accordingly, the petition must be 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
November 19, 1993

Loren Krause Luzmore
Executive Secretary
Board of Collective
Bargaining