

White v. HHC, L.371, SSEU & DC37, 53 OCB 11 (BCB 1994) [Decision No. B-11-94 (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-11-94 (ES)

CHERYL WHITE,

DOCKET NO. BCB-1634-94

Petitioner,

-and-

NYC HEALTH AND HOSPITALS CORP.,  
S.S.E.U. LOCAL 371, and DISTRICT  
COUNCIL 37, AFSCME,

Respondents.

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#### DETERMINATION OF EXECUTIVE SECRETARY

On February 7, 1994, the Office of Collective Bargaining ("OCB") received a verified improper practice petition from Terrance O. Morris, Esq. on behalf of Cheryl White ("Petitioner"). In her petition, Petitioner, alleges that she was discharged from her employment at Queens Hospital Center in January, 1992 for having filed several grievances, and that her union, District Council 37, AFL-CIO, AFSCME (the "Union"), failed to represent her adequately.

According to the Petitioner, she was employed at Queens Hospital Center from February, 1991 to January, 1992. On July 30, 1991, she allegedly filed a grievance against her supervisor "for striking her in the face." Petitioner charges that after filing her grievance, she received "verbal and written threats of lay-offs." Petitioner claims that she then filed three other grievances of unspecified nature, and eventually was terminated. She asserts that these actions violate the improper employer practice provisions contained in Section 12-306a.(3) of the New York City Collective Bargaining Law ("NYCCBL").<sup>1</sup>

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<sup>1</sup> NYCCBL §12-306a.(3) [formerly §1173-4.2a.(3)] provides as follows:

**Improper practices: good faith bargaining.**

**a. Improper public employer practices.**

It shall be an improper practice for a public employer or its agents:

\* \* \*

(3) to discriminate against any employee

With respect to the Union's representation of the Petitioner, she maintains that her unit representative, S.S.E.U. Local 371, "failed to adequately represent her during grievance proceedings," and that it also failed to file an improper practice petition in her behalf. Petitioner contends that although she was referred to District Council 37 for legal representation, the Union attorney "failed to adequately represent her through arbitration," and then "retaliated against her when she complained." This course of conduct, in the Petitioner's view, violates the improper public employee organization practice provisions contained in Section 12-306b.(1) of the NYCCBL.<sup>2</sup>

Pursuant to Title 61, Section 1-07(d) of the Rules of the City of New York (RCNY), a copy of which is annexed hereto, the undersigned has reviewed the petition and has determined that the improper practice claims asserted therein must be dismissed because they are untimely on their face. RCNY Section 1-07(d) provides, in pertinent part, as follows:

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 . . . If it is determined . . . 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 . . .

Although the petition does not disclose the precise date that Petitioner's employment at Queens Hospital Center was terminated, from the facts alleged, it

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for the purpose of encouraging or discouraging membership in, or participation in the activities of, any public employee organization;

<sup>2</sup> NYCCBL §12-306b.(1) [formerly §1173-4.2b.(1)] provides as follows:

**b. 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 (formerly §1173-4.1) of this chapter, or to cause, or attempt to cause, a public employer to do so;

\* \* \*

appears that it occurred sometime during the month of January, 1992. Inasmuch as the improper practice petition was not received by the OCB until February 7, 1994, more than two years after her discharge, the allegations against the employer clearly are untimely under the provisions of RCNY Section 1-07(d).

Insofar as her inadequate union representation claim is concerned, in order for any of her allegations to state a timely cause of action under the NYCCBL, they would have had to have occurred after October 7, 1993 (i.e., within four months of the filing date of the improper practice petition). There is nothing in the Petitioner's recitation of the facts to indicate so recent a date of occurrence. Therefore, on the ground of timeliness alone, the Petitioner's allegations against the Union also must be dismissed.

In summary, inasmuch as it is not alleged that either respondent committed acts in violation of the NYCCBL within four months of the filing of the instant improper practice petition, the petition must be dismissed as untimely pursuant to RCNY Section 1-07(d). It should be noted that dismissal of the petition is without prejudice to any rights that the Petitioner may have in another forum.

DATED: New York, New York  
June 9, 1994

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Wendy E. Patitucci  
Executive Secretary  
Board of Collective Bargaining