Sciarillo v. Dep't of Sanitation & Matula, 53 OCB 15 (BCB 1994) [Decision No. B-15-94 (IP)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

In the Matter of the Improper Practice Proceeding

- between-

Michael Sciarillo,

Petitioner,

- and-

New York City Department of Sanitation and John Matula,

Respondents.

Decision No. B-15-94
Docket No. BCB-1640-94

INTERIM DECISION AND ORDER

On March 11, 1994, Michael Sciarillo ("petitioner"), appearing pro se, filed a verified improper practice petition against the New York City Department of Sanitation ("the Department") and John Matula, a Superintendent in the Department. The Department, by the New York City Office of Labor Relations, filed a motion to dismiss on April 11, 1994. The petitioner, having obtained legal counsel, filed a reply in opposition to the city's motion to dismiss on June 15, 1994. The petitioner alleges that the Department and its agent, John Matula, violated I 12-306(a) of the New York City Collective Bargaining Law ("NYCCBL")[1] when they suspended him for defending his right to

[1]Section 12-306a of the NYCCBL provides:

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;

engage in protected union activity and because he was involved in a previous case before the Board of Collective Bargaining.

Background

The petitioner has been employed by the Department as a Sanitation Worker since 1985, and is a shop steward at the Brooklyn South #12 Sanitation Garage. On January 8, 1994, he had an altercation with his supervisor, John Matula, in the presence

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(Continued....)

1. (Continued)

(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 KYCCBL provides:

Rights of public employees and certified employee organizations. Public employees 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. However, neither managerial nor confidential employees shall constitute or be included in any bargaining unit, nor shall they have the right to bargain collectively; provided, however, that nothing in this Chapter shall be construed to: (1) deny to any managerial or confidential employee his rights under section 15 of the New York Civil Rights Law or any other rights; or (ii) prohibit any appropriate official or officials of a public employer as defined in this Chapter to hear and consider grievances and complaints of managerial and confidential employees concerning the terms and conditions of their employment, and to make recommendations thereon to the Chief Executive Officer of the public employer for such action as he shall deem appropriate. A certified or designated employee organization shall be recognized as the exclusive bargaining representative of the public employees in the appropriate bargaining unit.

of other Sanitation Workers in his bargaining unit. The petitioner was served with charges of insubordination, improper language and threatening behavior. On February 9, 1994, a disciplinary trial was held by the Department, as a result of which the petitioner was suspended for nineteen working days, with a concomitant loss of pay.

Positions of the Parties

Petitioner's Position

The petitioner alleges that on January 8, 1994, in his capacity as shop steward, he was discussing placement of bargaining unit members by seniority in the work schedule. He claims that he was interrupted by Matula and told to leave the office. According to the petitioner, he responded that he was the elected shop steward and had a right to be in the office to check on the work schedule. The petitioner claims that a disagreement ensued, and that this was the basis of the disciplinary charges which resulted in a nineteen-day suspension.

The petitioner refers to a previous case before the Board of Collective Bargaining which was settled by the parties before a hearing took place.[2] The petitioner maintains that he "defended" the petitioner in the previous case, and that Matula's actions also were taken in retaliation against that protected activity.

[2]Docket No. BCB-1512-92.

In his reply, the petitioner argues that the suspension and disciplinary charges were designed to interfere with and restrain him in the exercise of his rights under the NYCCBL. Further, he argues, on a notion to dismiss, the facts alleged in his petition must be deemed to be true; therefore, the only question for adjudication here is whether, taking the facts as alleged in the petition, a cause of action has been stated.

The petitioner maintains that although disciplining employees is a management prerogative, the use of discipline for coercive or discriminatory purposes may constitute an improper practice within the meaning of the NYCCBL. Citing Decision No. B-25-81, he argues that "[t]he motivation for the use of discipline by an employer, if disputed, may be a question of fact which can only be resolved by this Board following an evidentiary hearing."

The petitioner maintains that the Board has adopted the standard set forth in City of Salamanca, 18 PERB ¶ 3012 (1985), when considering charges that an employer has discriminated against an employee because of his or her protected activity. According to the petitioner, we have held previously that "a petitioner has the burden of showing that:

a. there was an improper practice on the part of the employer and as such, he has the burden of showing, initially, that the employer's agent responsible for the challenged action knew of the employee's protected union activity, and

b. that the employee's union activity was a motivating factor in the employer's decision to act."

If a petitioner satisfies both parts of this test, the petitioner asserts, a prima facie case of improper motivation has been stated, and the burden of persuasion shifts to the employer to establish that its actions were motivated by legitimate business reasons.

The petitioner argues that, because his suspension was in direct correlation to the action taken in his capacity as shop steward, the elements of the Salamanca test have been satisfied. He claims that the employer was aware of his duty as shop steward, that is, to place the Sanitation Workers in his shops in jobs according to seniority. Further, he claims, the employer suspended him because it did not approve of the way that he placed one of the Sanitation Workers. Since the City disputes his account, the petitioner maintains, the issue can only be decided after an evidentiary hearing.

City's Position

The City argues that the petitioner has failed to allege facts which constitute a claim that the Department interfered with his rights under § 12-305 of the NYCCBL;[3] that the Department's actions were taken in an attempt to dominate the Union and influence its actions; and that the Department was aware of his union activity and that the union activity was the motivating factor in the action taken against him. Further, the

[3]See note 1, supra.

City claims, the petitioner has alleged no facts that support a claim that the Department refused to bargain collectively in good faith on matters within the scope of collective bargaining.

The City asserts that the petition is insufficient under Title 61, RCNY § 1-07 (e)[4] because it contains no reference to provisions of the NYCCBL, executive order or collective bargaining agreement which the petitioner alleges has been violated. The City maintains that a petitioner risks dismissal of a claim which fails to provide information sufficient to enable respondent to formulate its defense or the Board to reach an informed conclusion. For these reasons, the City argues, the petition must be dismissed.

Discussion

Title 61, § 12-307(e) of the Rules of the City of New York sets forth the standard for pleading a charge of improper practice. It is the Board's long-established policy that the

[4]Title 61, RCNY § 1-07(e), entitled "Petition - Contents," provides:

A petition . . . shall be verified and shall contain:

a. The name and address of the petitioner;
b. The name and address of the other party (respondent);
c. A statement of the nature of the controversy, specifying the provisions of the statute,, executive order or collective agreement involved, and any other relevant and material documents, dates and facts. If the controversy involves contractual provisions, such provisions shall be set forth;
d. Such additional matters as may be relevant and material.

rules regarding pleadings be liberally construed. Where it is clear that the petition provides the respondent with sufficient information to place it on notice of the nature of the petitioner's claim and to enable it to formulate a response, the petition is sufficient.[5] Although the petition here fails to cite the sections of the statute upon which the claim is based, the language used to describe the claim provides the respondent notice of its essential elements. In addition, the petition includes facts sufficient to allow the Department to answer the complaint. Finally, we recognize that, at the time the petition was served and filed, the petitioner appeared pro se. We understand that pro se petitioners may be unable to execute technically perfect or detailed pleadings; as long as the gravamen of the petitioner's complaint may be ascertained by the respondent, the pleading will be deemed acceptable.[6]

It is well-settled that, for purposes of evaluating a motion to dismiss, we must deem the factual allegations of the petition to be true and limit our inquiry to whether, taking the facts as alleged, the petition states a cause of action under the NYCCBL.[7] It is not the function of this Board, in considering a motion to dismiss, to resolve questions as to the credibility and

[5]See, e.g., Decision Nos. B-46-92; B-41-92; B-63-91; B-78-90; B-28-89; B-56-88; B-44-86.

[6]Decision Nos. B-8-94; B-15-93.

[7]Decision Nos. B-15-93; B-6-91; B-32-90; B-36-89; B-7-89; B-36-87; B-12-85; B-20-83; B-17-83; B-25-81.

weight to be given to inconsistent versions of a disputed factual matter. Those questions are properly determined after an evidentiary hearing is held.[8]

With regard to the instant motion to dismiss, we deem the moving party to concede the truth of the facts alleged by the petitioner. In addition, the petition is entitled to every favorable inference, and will be taken to allege whatever may be implied from its statements by reasonable and fair intendment.[9]

In his petition, the petitioner described the argument during which, he claims, Matula told him to leave the office. He stated:

> Shop Steward Mike Sciarillo and Shop Steward David Migdal entered [the] Garage Office the morning of January 8, 1994 at approximately 8:00 A.M. I, Mike Sciarillo proceeded to speak to Garage Superintendent Benny Vultaggio about proper placement of my men according to seniority for that particular day, when Super John Matula rudely interrupted the conversation by saying, "EVERYBODY GET THE FUCK OUT OF THE OFFICE". I, Mike sciarillo answered him by saying, 'I am an elected Shop Steward and have every right to be in the office checking on my men and operations of men.' Superintendent Matula replied by saying 'I don't care what you are.'

The petitioner attached a copy of Matula's departmental disciplinary complaint, and alleged that the statements contained therein were false. He also appended a list of the names and telephone numbers of twelve persons whom he wished to have contacted as witnesses. He concluded, "I think that this

[8]Decision Nos. B-15-93; B-6-91; B-20-83; B-25-81.

[9]Decision Nos. B-4-93; B-36-91; B-34-91; B-32-90; B-34-89.

argument has a little more history than everyone knows. It has roots extended to July of 1992 when I Mike Sciarillo defended Thomas Bruno in an improper practice suit #BCB-1512[-92] against the same man and he still practices the same way [he] always has."

Deeming the petitioner's allegations to be true for the purposes of this motion to dismiss, we find that he has raised a substantial issue as to whether the actions taken by Matula and the Department were retaliatory and/or violative of his rights under § 12-306a (1), (2) and (3) of the NYCCBL. Accordingly, we deny the instant motion to dismiss and direct that the respondent file an answer in the instant case no later than October 12, 1994.

INTERIM ORDER

Pursuant to the powers vested in the Board of Collective Bargaining by the New York City Collective Bargaining Law, it is hereby,

ORDERED, that the motion to dismiss filed by the Department of Sanitation and John Matula in Docket No. BCB-1640-94 be, and the same hereby is, denied; and it is further,

DIRECTED, that the respondent file an answer in the instant case no later than October 12, 1994.

Dated: New York, New York
September 28, 1994

MALCOLM D. MACDONALD
CHAIRMAN

GEORGE NICOLAU
MEMBER

JEROME E. JOSEPH
MEMBER

I dissent. DENNISON YOUNG, JR.
MEMBER

I dissent. ANTHONY COLES
MEMBER

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of Improper Practice Proceeding

-between-

MICHAEL SCIARILLO,

Petitioner,

-and-

NEW YORK CITY DEPARTMENT OF SANITATION and JOHN MATULA,

Respondents.

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INTERIM
DECISION NO. B-15-94
DOCKET NO. BCB-1640-94

DISSENTING OPINION OF CITY MEMBERS COLES AND YOUNG

We respectfully dissent from the interim decision that the majority has rendered in this matter of improper practice. Ile City is cognizant of the Board's reluctance to grant motions to dismiss; the Board has only granted them in isolated cases in which the petition is entirely devoid of facts which arguably fall into one of the delineated categories of the NYCCBL , Section 12-306a. (1)-(4). However, the instant petition represents such a matter appropriate for dismissal. The petition is entirely devoid of facts which arguably rise to a level of improper practice. We submit that disciplinary action taken against an employee, who happens to be a union representative, does not, in itself, serve as a basis for an improper practice under the NYCCBL, absent a showing of a nexus between the facts alleged and one of the prohibitions set forth in NYCCBL, Section 12-306.

For all the above reasons, we respectfully dissent.

DATED: New York, NY

Sept. 27, 1994 Anthony Coles

Dennison Young