

King v. NYPD, 53 OCB 25 (BCB 1994) [Decision No. B-25-94 (ES)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of the Improper
Practice Proceeding

-between-

LISA KING,

DECISION NO. B-25-94 (ES)

Petitioner,

DOCKET NO. BCB-1674-94

-and-

NEW YORK CITY POLICE DEPARTMENT,

Respondent.

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DETERMINATION OF EXECUTIVE SECRETARY

On August 4, 1994, Lisa King ("the petitioner") filed a verified improper practice petition alleging that the New York City Police Department ("the Department") violated New York City Administrative Code Section 14-122.1 and Article X(ii) of the collective bargaining agreement between the Department and the Patrolmen's Benevolent Association ("the PBA"), when it denied her leave with pay for the period of her incapacity due to mental illness. The petitioner also alleges that the Department violated Section 75 of the Civil Service Law and Article XVI, Section 9 of the collective bargaining agreement, when it terminated her.

According to the petitioner, she was employed by the Department as a police officer. The petitioner alleges that she was served with departmental charges in March 1992, and found guilty of some of those charges in October 1992. She maintains that the Assistant Trial Commissioner recommended, as a penalty,

"twenty days suspension without pay and one year dismissal probation," specifically setting "midnight on April 5, 1993 as the time at which the sentence would start and midnight April 4, 1994, as the time on which the sentence would expire."

The petitioner next maintains that she gave birth to a baby by Caesarian section on May 28, 1993, and that she was ordered back to work against the advice of her doctor on July 16, 1993. According to the petitioner, on August 26, 1993, she "filed a complaint about the treatment meted out to her."¹

The petitioner further alleges that on October 22, 1993, she filed for a disability retirement after being diagnosed as suffering from depression related to her employment as a police officer. In this connection, the petitioner claims "several emotionally trying experiences including the suicide death of a close associate and police officer and the constant barrage of harassment by the Department." The petitioner also alleges that she was "adversely affected by her husband's involvement with certain investigatory boards established to reveal instances of police corruption."

The petitioner claims that instead of an acknowledgment of her application for a disability retirement, on April 5, 1994, she was wrongfully served with a notice of termination effective April 5, 1994. The petitioner contends that the Department violated Article

¹ The petitioner fails to indicate to whom the complaint was filed or the nature of the complaint. She merely refers to an exhibit that was not annexed to the petition.

XVI, Section 9 of the collective bargaining agreement and Section 75 of the Civil Service Law because "effective April 4, 1994, petitioner resumed her permanent civil service status and was thus protected by both the contract and civil service laws." She further claims that, "based on the foregoing treatment ... it appears patently clear that the respondent engaged in [an] improper practice in failing to extend to her benefits guaranteed under the contract in violation of Article X(ii) ... and [under] other applicable law, to wit: Civil Service Law, Article 14, Section 209-a.1(e)." ²

Based upon my review, I have determined, pursuant to Section 1-07(d) of the Rules of the City of New York ("OCB Rules"), a copy of which is annexed hereto, that the petition must be dismissed as it fails to allege facts sufficient as a matter of law to constitute an improper practice within the meaning of the New York City Collective Bargaining Law ("NYCCBL"). The petition fails to specify how the actions of the Department are violative of any of the enumerated subdivisions of Section 12-306a. of the NYCCBL,

² Civil Service Law, Article 14, Section 209-a.1(e) is that provision of the Taylor Law, which is applicable to this agency, that defines an improper employer practice as follows:

... to refuse to continue all the terms of an expired agreement until a new agreement is negotiated, unless the employee organization which is a party to such agreement has, during such negotiations or prior to such resolution of such negotiations, engaged in conduct violative of subdivision one of section two hundred ten of this article.

which defines improper public employer practices.³

Apparently, the petitioner would have the Board of Collective Bargaining ("Board") infer that her claim is based upon the premise that she was harassed and terminated by the Department in retaliation for a "complaint" that she allegedly filed. Even if such an inference were to be drawn, however, the petition fails to allege any facts which would establish either that the petitioner was engaged in conduct protected under the NYCCBL when she filed the "complaint", or that there was a causal connection between the

³ Section 12-306 of the NYCCBL provides, in relevant part:

Improper practices; good faith bargaining. 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-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....

alleged filing of the complaint on August 26, 1993, and her termination on April 5, 1994. Assuming the truth and accuracy of the allegations of the petition, it does not appear that the petitioner was terminated for any of the proscribed reasons set forth in §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 organize, to form, join and or assist public employee organizations; to bargain collectively through certified public employee organizations; and the right to refrain from such activities. The petitioner herein does not assert that the Department's actions were intended to, or did, affect any of these protected rights.

Her claims based on alleged violations of the New York City Administrative Code (other than the provisions of the NYCCBL) and the Civil Service Law, concerning her requests for a leave of absence or a disability retirement, are not within the scope of the improper practice provisions of the NYCCBL and, thus, may not be addressed by this Board.⁴ With respect to the claims that the Department violated certain provisions of the collective bargaining agreement, the Board is without authority to enforce the terms of a contract and may not exercise jurisdiction over an alleged violation of the collective bargaining agreement unless the acts

⁴ Decision Nos. B-21-93; B-23-91; B-39-88; B-2-82.

constituting such violation would otherwise state a claim of improper practice.⁵ These principles flow from Section 205.5(d) of the Taylor Law, which provides:

... the board shall not have the authority to enforce an agreement between an employer and an employee organization and shall not exercise jurisdiction over an alleged violation of such an agreement that would not otherwise constitute an improper employer or employee organization practice....

As no basis has been offered here for construing the alleged contract violations as independent improper practice claims, I must conclude that the Board lacks jurisdiction to consider such claims.

For all of these reasons, the petition herein is dismissed pursuant to Section 1-07(d) of the OCB Rules, but without prejudice to any rights the petitioner may have in another forum.

Dated: New York, New York
November 1, 1994

Wendy E. Patitucci
Executive Secretary
Board of Collective Bargaining

⁵ E.g., Decision Nos. B-36-87; B-29-87; B-8-85.