

Perez v. North Central Bronx Hospital, et. al, 53 OCB 29 (BCB 1994) [Decision No. B-29-94 (ES)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of the Improper
Practice Proceeding

-between-

Richard Perez,

Petitioner,

- and -

Superintendent of Buildings and
Grounds, North Central Bronx
Hospital (Rodney Raghunath),

Respondent.

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Decision No. B-29-94(ES)

Docket No. BCB-1697-94

DETERMINATION OF EXECUTIVE SECRETARY

On November 16, 1994, Richard Perez ("petitioner") filed a verified improper practice petition alleging that Rodney Raghunath, Superintendent of Buildings and Grounds at North Central Bronx Hospital ("respondent"), violated

Section 12-306.a of the New York City Collective Bargaining Law ("NYCCBL").¹ The petitioner claims:

From 7/8/92 until 7/11/94, I worked from 7 a.m. to 2:30 p.m. I was paid my hourly rate from 7:00 a.m. to 8:00 a.m. I feel I should have been paid 1-1/2x my hourly rate, because I started before the normal time of 8:00 a.m. (a) Time sheets reflect I started 7:00 a.m. (b) other people have won this petition.

As a remedy, he seeks to be paid at time and one-half for days worked between July 8, 1992 and July 11, 1994.

¹ Section 12-306 of the NYCCBL provides, in relevant part:

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:

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....

Title 61, § 1-07(d) of the Rules of the City of New York ("RCNY")² provides that an improper practice petition must be filed within four months of the acts alleged to constitute a violation of NYCCBL §12-306. Since the instant petition, which was filed on November 16, 1994, was filed more than four months after the alleged wrongful acts by the respondents, it must be dismissed as untimely without consideration of its merits.

Even if the petition was not so untimely as to warrant summary dismissal, however, it would be dismissed for failure to state an improper practice under 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 that are created by the statute, i.e., the right to organize, to form, join and assist public employee organizations, to bargain collectively through certified public employee organizations, and the right to refrain from such activities. Petitioner herein does not allege that respondent's actions were intended to, or did, affect any of these protected rights. Therefore, his claim does not appear to involve a matter within the jurisdiction of the Office of Collective Bargaining. Of course, dismissal of the petition is without prejudice to any rights petitioner may have in another forum.

Dated: New York, New York
December 16, 1994

Wendy E. Patitucci
Executive Secretary
Board of Collective
Bargaining

² Title 61, RCNY § 1-07(d) provides, in relevant part:

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 the Section 12-306 of the statute may be filed with the Board within four (4) months thereof....