

Patterson v. L.237, IBT & HHC, 53 OCB 7 (BCB 1994) [Decision No. B-7-94 (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-7-94 (ES)
DOCKET NO. BCB-1628-94

LARRY E. PATTERSON,
Petitioner,
-and-

LOCAL 237, INTERNATIONAL BROTHERHOOD
OF TEAMSTERS AND THE NYC HEALTH AND
HOSPITALS CORPORATION,
Respondents.

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DETERMINATION OF EXECUTIVE SECRETARY

On January 19, 1994, Larry E. Patterson ("Petitioner") filed verified improper practice petitions against Local 237 of the International Brotherhood of Teamsters ("Local 237" or "the Union") and the New York City Health and Hospitals Corporation ("HHC") (collectively referred to as "Respondents"), in which he alleged that he had been represented inadequately in violation of the New York City Collective Bargaining Law ("NYCCBL").

In his improper practice petition, Petitioner makes the following allegations against the Respondents:

My reason for filing an improper practice petition ... is ... inadequate representation by the Union Teamsters Local 237 and by the Health and Hospitals Corporation.... A grievance has been filed with the Teamsters Local Union representative, John Perez ... [because] of the inadequate representation.

As a remedy, Petitioner requests a correction of "the issue at hand. And to revise the decision that has been brought forth within the scope, of the Improper Practice Law."

Pursuant to Title 61, Section 1-07(d) of the Rules of the City

of New York (formerly Section 7.4 of the Revised Consolidated Rules of the office of Collective Bargaining, hereinafter "OCB Rules"), a copy of which is annexed hereto, the undersigned has reviewed the petitions and has determined that the improper practice claims asserted therein must be dismissed because they do not allege facts sufficient as a matter of law to constitute an improper practice within the meaning 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 bargain collectively through certified public employee organizations; the right to organize, form, join, and assist public employee organizations; and the right to refrain from such activities.

As to Petitioner's claim against Respondent HHC, I note that Petitioner has failed to allege any facts in support of his claim that the HHC violated §§12-306a of the NYCCBL.¹ Since the instant

¹Section 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 §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. (Continued...)

petition does not allege that HHC's actions were intended to, or did, affect any rights protected under the NYCCBL, it must be dismissed.

As to Petitioner's claim against Local 237, I note that the petition fails to allege any facts to show that the Union has committed any acts in violation of §12-306b of the NYCCBL,² which has been held to prohibit violations of the judicially recognized fair representation doctrine.

The Board of Collective Bargaining ("Board") has determined that the doctrine of fair representation requires a union to treat all members of the bargaining unit in an evenhanded manner and to refrain from arbitrary, discriminatory and bad faith conduct.³ A union breaches its duty of fair representation if it fails to act

²Section 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

³Decision Nos. B-5-91; B-51-90; B-15-83; B-12-82.

fairly, impartially and nonarbitrarily in negotiating, administering and enforcing collective bargaining agreements.⁴ The petition herein is devoid of any allegations of union improper practice. Petitioner has failed to allege any facts in support of a finding of arbitrary, discriminatory or bad faith conduct on the part of Local 237.

Finally, as to Petitioner's claim that Local 237 violated §12-306c of the NYCCBL,⁵ I note that it is well settled that individual

⁴Decision Nos. B-56-90; B-27-90; B-72-88; B-13-82.

⁵Section 12-306c of the NYCCBL provides as follows:

Good faith bargaining. The duty of a public employer and certified or designated employee organization to bargain collectively in good faith shall include the obligation:

- (1) to approach the negotiations with a sincere resolve to reach an agreement;
- (2) to be represented at the negotiations by duly authorized representatives prepared to discuss and negotiate on all matters within the scope of collective bargaining;
- (3) to meet at reasonable times and convenient places as frequently as may be necessary, and to avoid unnecessary delays;
- (4) to furnish to the other party, upon request, data normally maintained in the regular course of business, reasonably available and necessary for full and proper discussion, understanding and negotiation of subjects within the scope of collective bargaining;
- (5) if an agreement is reached, to execute upon request a written document embodying the agreed terms, and to take such steps as are necessary to implement the agreement.

members of a bargaining unit lack standing to raise such a claim.⁶ Since the duty to bargain in good faith set forth in §12-306c of the NYCCBL runs only between the employer and the union, a petition based on this claim also must be dismissed.

I note, however, that dismissal of the petition is without prejudice to any rights the Petitioner may have in another forum.

Dated: New York, New York
April 5, 1994

Loren Krause Luzmore
Executive Secretary
Board of Collective Bargaining

⁶See e.g., Decision Nos. B-11-92; B-33-89; B-29-84; B-15-83; B-13-81.

TITLE 61 OF THE RULES OF THE CITY OF NEW YORK (FORMERLY
REFERRED TO AS THE REVISED CONSOLIDATED RULES OF
THE OFFICE OF COLLECTIVE BARGAINING)

Section 1-07(d) (formerly § 7.4) Improper Practices. 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 by one (1) or more public employees or any public employee organization acting in their behalf or by a public employer together with a request to the Board for a final determination of the matter and for an appropriate remedial order. Within ten (10) days after a petition alleging improper practice is filed, the Executive Secretary shall review the allegations thereof to determine whether the facts as alleged may constitute an improper practice as set forth in section 12-306 (formerly 1173-4.2) of the statute. If it is determined that the petition, on its face, does not contain facts sufficient as a matter of law constitute a violation, or 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 and copies of such determination shall be served upon the parties by certified mail. If, upon such review, the Executive Secretary shall determine that the petition is not, on its face, untimely or insufficient, notice of the determination shall be served on the parties by certified mail, provided, however, that such determination shall not constitute a bar to the assertion by respondent of defenses or challenges to the petition based upon allegations of untimeliness or insufficiency and supported by probative evidence available to the respondent. Within ten (10) days after receipt of a decision of the Executive Secretary dismissing an improper practice petition as provided in this subdivision, the petitioner may file with the Board of Collective Bargaining an original and three (3) copies of a statement in writing setting forth an appeal from the decision together with proof of service thereof upon all other parties. The statement shall set forth the reasons for the appeal.

Section 1-07(h) (formerly § 7.8) Answer - Service and Filing. Within ten (10) days after service of the petition, or, where the petition contains allegations of improper practice, within ten (10) days of the receipt of notice of finding by the Executive Secretary, pursuant to Title 61, Section 1-07(d) of the Rules of The City of New York (formerly Rule 7.4), that the petition is not, on its face, untimely or insufficient, respondent shall serve and file its answer upon the petitioner and any other party respondent, and shall file the original and three (3) copies thereof, with proof of service, with the Board. Where special circumstances exist that warrant an expedited determination, it shall be within the discretionary authority of the Director to order respondent to serve and file its answer within less than ten (10) days.

OTHER SECTIONS OF THE LAW AND RULES MAY BE APPLICABLE.
CONSULT THE COMPLETE TEXT