

Martinez v. DC37 &Harlem Hospital, 53 OCB 9 (BCB 1994) [Decision No. B-9-94 (ES)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of the Improper
Practice Proceeding

-between-

EDWIN MARTINEZ,

Petitioner,

-and-

HARLEM HOSPITAL AND DISTRICT
COUNCIL 37,

Respondent.

DECISION NO. B-9-94 (ES)

DOCKET NO. BCB-1627-94

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DETERMINATION OF EXECUTIVE SECRETARY

On January 18, 1994, Edwin Martinez ("Petitioner") filed a verified improper practice petition against Harlem Hospital ("HHC") and District Council 37 ("Union").

In his improper practice petition, Petitioner, an Institutional Aide in the Housekeeping Department, alleges that he was instructed to "pick up 'red bags'" which contained hazardous waste. According to Petitioner, employees who perform this task are supposed to be paid "an additional \$20". Petitioner claims that between September of 1991 and December of 1993, he continuously disposed of 'red bags' without receiving any additional compensation. Petitioner alleges that he has "made numerous complaints to no avail" and has filed a grievance. "As of yet", Petitioner submits, "nothing has been resolved." As a remedy, Petitioner requests "pay for additional service - disposing of 'red bags'".

Pursuant to Title 61, Section 1-07(d) of the Rules of the City of New York, a copy of which is annexed hereto, the undersigned has reviewed the petition and has determined that it does not allege facts sufficient as a matter of law to constitute an improper practice within the meaning of Section 12-306 of the New York City Collective Bargaining Law ("NYCCBL").¹ The NYCCBL

¹ NYCCBL §12-306 provides, in relevant part, as follows:

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 [formerly §1173-4.1] 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.

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 of this

(continued...)

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 HHC, I note that Petitioner has failed to allege any facts in support of his claim that HHC violated §12-306a of the NYCCBL. Petitioner claims that he should be paid an additional \$20 for picking up "red bags", which may arguably constitute a contractual violation; but not a violation of the New York City Collective Bargaining Law.

It is well-established that the jurisdiction of the Board of Collective Bargaining ("Board") may not be invoked if the claimed statutory violation

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(2) to refuse to bargain collectively in good faith with a public employer on matters within the scope of collective bargaining provided the public employee organization is a certified or designated representative of public employees in of such employer.

derives solely from an alleged violation of a collective bargaining agreement.² The Board is without authority to enforce the terms of a collective bargaining agreement and may not exercise jurisdiction over an alleged violation of an agreement unless the acts constituting such a violation would otherwise constitute an improper practice.³

These principles flow from §205.5(d) of the Taylor Law which states:

[The Public Employment Relations Board, hereinafter "PERB"] shall not have 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.

Accordingly, neither PERB nor this Board has jurisdiction over an alleged violation of a collective bargaining agreement unless the offending party's actions "otherwise constitute an improper ... practice."

As to Petitioner's claim against the Union, 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, which has been held to prohibit violations of the judicially recognized fair representation doctrine.

The 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.⁴ A union breaches its duty of fair representation if it fails to act fairly, impartially and in a nonarbitrary manner in negotiating, administering and

² Decision Nos. B-60-88; B-55-88; B-36-87.

³ Decision Nos. B-36-87; B-29-87; B-8-85.

⁴ Decision Nos. B-5-91; B-51-90; B-15-83.

enforcing collective bargaining agreements.⁵ 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 the Union.

For the aforementioned reasons, the petition herein shall be dismissed. Such dismissal is, of course, without prejudice to any rights that the petitioner may have under an applicable collective bargaining agreement or in any other forum.

DATED: New York, New York
May 4, 1994

Loren Krause Luzmore
Executive Secretary
Board of Collective Bargaining

⁵ Decision Nos. B-56-90; B-27-90; B-72-88.