Perez v. NYCHA, 55 OCB 20 (BCB 1995) [Decision No. B-20-95 (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-20-95 (ES)
ISMAEL PEREZ, DOCKET NO. BCB-1747-95
Petitioner,

-and-

NEW YORK CITY HOUSING
AUTHORITY,
Respondent.
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DETERMINATION OF EXECUTIVE SECRETARY

On May 17, 1995, Ismael Perez ("Petitioner") filed a verified improper practice petition against the New York City Housing Authority ("Respondent"), in which he alleged that Respondent coerced and restrained him in the exercise of his collective bargaining rights in violation of § 12-306 of the New York City Collective Bargaining Law ("NYCCBL").[1]

[1] Section 12-306 of the NYCCBL provides 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 §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.
>
> **b. Improper public employee organization practices.** It shall be an improper practice for a public employee organization or its agents:

(continued...)

In his improper practice petition, Petitioner alleges that he made three written requests to Respondent for a transfer of work assignment but that the request was summarily rejected. He further alleges the following:

> Upon agreements between the New York City Housing Authority (my employer) and Local Union 237 (my representative) for some irrelevant or arbitrary reasons, the . . . transfer requests have been neglected to me . . . Restraints and coercives is the role that both my Local 237 and my employer are playing on those requests.
>
> So since the New York City Housing Authority is an equal opportunity employer and is committed upon agreement to a policy of non-discrimination in hiring, promotion and other employment practices, the same Authority in conjunction with my Local 237 has been lacking and violating their own rules. . . .

Petitioner specifies no relief sought other than a determination by the Board of Collective Bargaining that Respondent's actions constitute an improper practice as defined in § 12-306 of the NYCCBL.

Pursuant to Title 61, § 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 the improper practice claim asserted therein must be dismissed because it does not allege facts sufficient as a matter of law to constitute an improper practice within the meaning of the NYCCBL.

Petitioner has failed to allege how Respondent, by rejecting his requests for a work transfer, may have committed any act in violation of § 12-306a of the NYCCBL, which defines improper public employer practices. 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

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[1](...continued)

> (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 provided the public employee organization is a certified or designated representative of public employees in of such employer.

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. The NYCCBL is not intended to address claims of discrimination in hiring and promotion by an equal opportunity employer which are not related to § 12-306a.

I note that Petitioner also claims that the union is involved, in an unstated manner, with the employer's conduct which is the subject of the complaint. However, the union is not a named respondent. Therefore, I have considered only the allegations against the New York City Housing Authority. Since the instant petition does not allege that the actions of the New York City Housing Authority were intended to, or did, affect any rights protected under the NYCCBL, it must be dismissed. Such dismissal, however, is without prejudice to any rights the Petitioner may possess under the NYCCBL or in any other forum.

Dated: New York, New York
November 20, 1995

Wendy E. Patitucci
Executive Secretary
Board of Collective Bargaining