Wytak v. Dep't of Personnel& DOC & Corr. Captains Ass., 55 OCB 28 (BCB 1995) [Decision No. B-28-95 (ES)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING
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In the Matter of the Improper
Practice Proceeding

-between-

George Wytak, Decision No. B-28-95 (ES)

Petitioner, Docket No. BCB-1771-95

- and -

New York City Department of
Personnel, New York City Department
of Correction, and Correction
Captains Association,

Respondents.
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DETERMINATION OF EXECUTIVE SECRETARY

On August 1, 1995, George Wytak ("petitioner"), a Captain employed by the New York City Department of Correction ("DOC"), filed a verified improper practice petition against the New York City Department of Personnel ("DOP"), the DOC and the Correction Captains Association ("Union"). The petitioner alleges that he was unfairly denied a promotion. As a remedy, he seeks promotion to Assistant Deputy Warden, with concomitant salary and seniority retroactive to 1992.

The petitioner had been certified as an eligible candidate for promotional consideration for the position Assistant Deputy Warden. According to the petitioner, in 1992 he was disqualified from consideration based on what he characterizes as an unsubstantiated, fraudulent and illegal allegation that was not adequately investigated.

Among the many documents appended to the petition was a letter, dated March 23, 1993, from DOC to the Union's attorney, which provides as follows:

> the allegations against Captain Wytak were found to lack a basis in fact and were judged unfounded. At that point, under normal circumstances, Captain Wytak

> would have been promoted. Unfortunately, the civil service list on which Captain Wytak's name appeared expired prior to the time the Inspector General concluded his inquiry. As a result, this Department is unable to promote Captain Wytak. We simply have no mechanism to revise a civil service list that has expired.

Also among the documentation was a letter dated June 24, 1993, in which the Union's attorney advised the Union that, after working approximately twenty hours on the petitioner's behalf, there was no more that could be done for him. The record also reveals that since 1992, the petitioner has been filing appeals and/or complaints with, inter alia, the DOC, the New York City Department of Investigation, the State Division of Human Rights, and the Mayor's Action Center.

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 herein and has determined that it does not 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 petitioner has failed to allege that the acts complained of violate any specific section of the NYCCBL. However, the petition, as pleaded, has failed to state a claim of improper practice under the NYCCBL against the respondents under any applicable section of the law.[1]

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[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 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.

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
(continued...)

It should be noted that 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

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[1](...continued)
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 of such employer.

c. 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.

Section 12-305 of the NYCCBL provides as follows:

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. However, neither managerial nor confidential employees shall constitute or be included in any bargaining unit, nor shall they have the right to bargain collectively; provided, however, that nothing in this Chapter shall be construed to: (1) deny to any managerial or confidential employee his rights under section 15 of the New York Civil Rights Law or any other rights; or (ii) prohibit any appropriate official or officials of a public employer as defined in this Chapter to hear and consider grievances and complaints of managerial and confidential employees concerning the terms and conditions of their employment, and to make recommendations thereon to the Chief Executive Officer of the public employer for such action as he shall deem appropriate. A certified or designated employee organization shall be recognized as the exclusive bargaining representative of the public employees in the appropriate bargaining unit.

organizations and the right to refrain from such activities. Absent any allegations that any of the respondents' actions were intended to, or did, affect any rights that are protected under the NYCCBL, the petition cannot be entertained by the Board of Collective Bargaining.

Of course, dismissal of this petition is without prejudice to any rights the petitioner may have in another forum.

Dated: New York, New York
December 22, 1995

Wendy E. Patitucci
Executive Secretary
Board of Collective Bargaining