Jenkins v. DOT & City, 55 OCB 3 (BCB 1995) [Decision No. B-3-95 (ES)]

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

-between-

RUSSELL B. JENKINS, DECISION NO. B-3-95(ES)

Petitioner, DOCKET NO. BCB-1727-95

-and-

DEPARTMENT OF TRANSPORTATION, CITY OF NEW YORK,

Respondent.
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DETERMINATION OF EXECUTIVE SECRETARY

On March 7, 1995, Mr. Russell B. Jenkins ("the petitioner") filed a verified improper practice petition with the Office of Collective Bargaining ("OCB") against the New York City Department of Transportation ("the Department" or "the respondent"). As the statement of the nature of the controversy, the petitioner wrote:

> Terminated without due process; No grievance filed on my behalf; No support nor representation from Union Representative Bill Fenty, DC 37, due to pending felonies; No assistance from Bill Fenty after felonies were dropped.

Appended to the petition was a letter dated January 31, 1995, from the petitioner to Mr. Stanley Hill, the Executive Director of District Council 37, AFSCME, AFL-CIO. According to the petitioner, he had been employed by the Department of Transportation ("DOT") as a Parking Meter Service Worker for seven years. In his letter, the

petitioner explained that as a result of a DOT investigation, he was arrested on December 9, 1993, and his employment was terminated on December 10, 1993. The petitioner also explained that he "suffered with a Handicap of Alcoholism."

The petitioner claimed that his employment was terminated without due process or provision of a reasonable accommodation in view of his disability.[1] In this regard, he stated that:

> If my Supervisor suspected I had some sort of problem that would jeopardize my position, he should have referred me to a particular Rehabilitation Center under the Agency Board.

The petitioner further claimed that because he is suffering from alcoholism, his Union Representative Bill Fenty should have referred his case to "a (Merit System Protection) or Human Resource Management Board."

Finally, the petitioner alleged that although he has been writing in reference to this matter since early 1993, no one has responded. According to the petitioner:

> When I applied for an Alcohol Program "outside", I found out that "Bill Fenty" never informed me of Protected-Rights.

Pursuant to Title 61, Section 1.07(d) of the Rules of the City of New York ("RCNY"), a copy of which is annexed hereto, I have reviewed the petition and have determined that it does not allege facts sufficient as a matter of law to constitute an improper

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[1] The petitioner attached an excerpt from the Civil Rights Act of 1991, concerning damages in cases involving violations of, inter alia, the Rehabilitation Act of 1978 and the Americans with Disabilities Act of 1990.

public employer practice within the meaning of the New York City Collective Bargaining Law ("NYCCBL"). The petition fails to allege that the Department, the named respondent in this matter, has committed any act in violation of §12-306a of the NYCCBL, which defines improper public employer practices.[2]

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 created by that statute, i.e., the right to bargain collectively through certified public employee organizations; the right to organize, form, join, and

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[2] Section 12-306 of the NYCCBL provides, in relevant part:

> **Improper practices; good faith bargaining. 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.
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> * * *

Section 12-305 of the NYCCBL provides, in relevant part:

> **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....

assist public employee organizations; and the right to refrain from such activities. Since the instant petition does not allege that the respondent employer's actions were intended to, or did, affect any rights protected under the NYCCBL, I find that no improper public employer practice has been stated. To the extent that the petition complains of an alleged denial of rights under the Civil Rights Act of 1991, such a claim would not constitute a basis for an improper practice petition against the Department as claimed violations of statutes other than the NYCCBL are not subject to the jurisdiction of the OCB.

For these reasons, I find that no improper public employer practice has been stated. I note that some of the allegations relate to inadequate assistance rendered by the petitioner's union.[3] However, the union is not named as a respondent here. Accordingly, in reviewing the petition, I have only considered the allegations against the employer.

The petition, therefore, is dismissed pursuant to Section 1-07(d) of the RCNY. Such dismissal is, however, without prejudice to any other rights the petitioner may possess under the NYCCBL or in any other forum.

Dated: New York, New York
March 15, 1995

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Wendy E. Patitucci

[3] Section 12-306b of the NYCCBL has been held to prohibit violations of the judicially recognized duty of fair representation doctrine.

Executive Secretary
Board of Collective Bargaining