

Kitchings v. HHC (Harlem Hospital), 57 OCB 18 (BCB 1996) [Decision No. B-18-96 (ES)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of the Improper
Practice Proceeding

-between-

RONNELL KITCHINGS,

Petitioner,

-and-

NEW YORK CITY HEALTH AND HOSPITALS
CORPORATION and HARLEM HOSPITAL,

Respondents.

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DECISION NO. B-18-96 (ES)

DOCKET NO. BCB-1825-96

DETERMINATION OF EXECUTIVE SECRETARY

On April 9, 1996, Ronnell Kitchings ("Kitchings"; "Petitioner") filed an unverified improper practice Petition. The Petition was not accepted for filing on that date but instead was returned to the Petitioner with the explanation that proof was not submitted that a copy of the Petition had been served upon the other parties to the proceeding. Also, the Petitioner was notified at that time that the Petition was not verified. He was invited to resubmit the Petition in proper form with verification and proof of service. On April 15, 1996, he resubmitted the Petition, verified, with proof of service on respondent Harlem Hospital. The Petition was accepted for filing.

As the nature of the controversy, the Petition alleges "improper practices; good faith bargaining" and refers to attachments for specifics. A two-paged attachment of ten paragraphs contains details which refer to events concerning the loss of the Petitioner's job as a Special Officer at the Hospital and the handling of that matter by Hugh Ortega, Esq., ("Ortega") of counsel to the firm of Lysaght, Lysaght & Kramer, P.C., attorney for the

Petitioner's union, Local 237, International Brotherhood of Teamsters, ("Union").

Attached to the Petition are documents which state that Kitchings was arrested on July 27, 1994, and convicted of a crime for which he was brought up on charges and suspended from his job. In a hearing before the Office of Administrative Trials and Hearings on September 20, 1995, at which Kitchings was represented by Ortega, Kitchings voluntarily waived his right to an evidentiary trial before OATH. In lieu of the trial, it appears that Kitchings voluntarily resigned his position, effective December 31, 1995. Another document attached to the Petition indicates that, on March 19, 1996, Kitchings appealed the resignation to the New York State Department of Labor, asserting that he "was not advise[d] properly or given a chance to keep [his] job which [he] really cared about."

Also attached to the instant Petition is a copy of a Certificate of Relief from Disabilities, issued by the Supreme Court of New York, Kings County, to Kitchings. The date of issue is not apparent on its face. The Certificate appears to grant Kitchings permanent relief from a bar to employment in "any armed positions and/or any positions working with children."

The Petitioner maintains that Ortega and he were told by Doris Gaskins, Associate Director of Hospital Police, that the Certificate of Relief would be sufficient for Kitchings to maintain his job "without fear of termination or coerced resignation." He states that he was told this also by Alma Robinson, the Hospital's Associate Director of Human Resources.

The Petitioner asserts that the law firm of Lysaght, Lysaght & Kramer, P.C., represented him but that "a meeting was never held, 1 day prior to [the] hearing at OATH." He further alleges that he was "advised wrongfully based on allegations that were proven false in court." Here, the Petitioner refers to attachments to the instant Petition. The only court-issued document is the Certificate of Relief, described hereinabove. No court decree or order is attached to the Petition indicating that any hearing or trial took place acquitting Kitchings of the charges.

The Petitioner maintains that Ortega's advice to him to take the "'best deal' and mov[e] on with [his] life" indicated, in his words, that "Local 237 made it clear that they wanted me out of the system. They searched my records looking for anything to coerce me out of my position." Kitchings states, "I could have requested a trial in court if that was needed to keep my job as a hospital police officer." Further, he states:

My ten years of service was never mentioned in court. The fact that I served, protected and maintained my job and community. Only negative, personal problems with my family were elaborated upon. There were times when I sustained injuries protecting Harlem Hospital. The good things that I accomplished during my ten years there far outweighed the negatives.

Finally, the Petitioner describes problems, which he overcame, with being declared eligible to receive unemployment benefits.

The Petitioner states, "It is not fun being unemployed and unable to care for myself and family, especially my son." The Petition, however, does not specify the remedy sought.

Discussion

Initially, I note that the Union is not named as a respondent here. Therefore, in reviewing the Petition, I have considered only the allegations against the respondent New York City Health and Hospitals Corporation ("Corporation") and the Hospital.

Pursuant to Title 61, Section 1-07(d) of the Rules of the City of New York ("the Rules"), 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 public employer practice within the meaning of Section 12-306a of the New York City Collective Bargaining Law ("NYCCBL").¹ 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

¹ NYCCBL §12-306a (formerly §1173-4.2) 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 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.

right to organize, form, join and assist public employee organizations; and the right to refrain from such activities.²

In the instant case, Petitioner has failed to state any facts which show that the Corporation and/or the Hospital may have committed acts which constitute an improper practice under the NYCCBL. The Petition complains of Kitchings' termination of employment despite his being granted a Certificate of Relief from a bar against employment in "any armed positions and/or any positions working with children." The Board of Collective Bargaining, however, lacks jurisdiction to consider such a claim.

Since the Petitioner has not stated any basis for finding that the termination of his employment constitutes an independent improper public employer practice under the NYCCBL, the Petition herein shall be dismissed. Such dismissal is, of course, without prejudice to any rights that the Petitioner may have in any other forum.

DATED: New York, New York
June 17, 1996

Wendy E. Patitucci
Executive Secretary
Board of Collective Bargaining

² See, e.g., Decision Nos. B-47-93; B-10-89; B-39-88; and B-38-87.