

Miles v. Samuel, 57 OCB 2 (BCB 1996) [Decision No. B-2-96 (ES)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of the Improper
Practice Proceeding

-between-

Raymond Miles,

Petitioner,

DECISION NO. B-2-96 (ES)

DOCKET NO. BCB-1744-95

- and -

Guy Samuel,

Respondent.

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DETERMINATION OF EXECUTIVE SECRETARY

On May 4, 1995, Raymond Miles ("the petitioner") filed a verified improper practice petition against Guy Samuel ("the respondent"), the Director of Labor Relations at Queens Hospital Center. The petition alleges that "Labor Relations has not provided Document[ed] Communication to my Designated Representative concerning my 7:5 Appeal hearing. I have been denied due process by labor relations."

The petitioner was employed as a Stockhandler at Queens Hospital Center until the termination of his employment on December 27, 1994, following a disciplinary conference. According to the petitioner, his privately retained attorney requested an appeal pursuant to Rule 7:5 of the Rules and Regulations of the New York City Health and Hospitals Corporation, but had not been notified of such a hearing by the respondent as of March 28, 1995.

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 it does not allege facts sufficient as a matter of law to constitute an improper practice within the meaning of §12-306a. of the New York City Collective Bargaining Law ("NYCCBL").¹

¹ Section 12-306a of the NYCCBL provides:

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.

Section 12-305 of the NYCCBL provides:

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

(continued...)

The petitioner has failed to allege how the respondent, by failing to communicate directly with his privately retained attorney, 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 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.

Since the instant petition does not allege that the actions of the respondent 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 that the petitioner may have in any other forum.

Dated: New York, New York
January 30, 1996

Wendy E. Patitucci
Executive Secretary
Board of Collective Bargaining

¹(...continued)

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.