Sneed v. L.1549, DC37,HRA, 57 OCB 20 (BCB 1996) [Decision No. B-20-96 (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-20-96 (ES)

JOY MARIE SNEED, DOCKET NO. BCB-1788-95
Petitioner,

-and-

DISTRICT COUNCIL 37 - LOCAL 1549, EDDIE GATES AND EDDIE DEMMINGS AND HIS SUCCESSORS - HUMAN RESOURCES MARVA LIVINGSTON HAMMONS, COMMISSIONER,

Respondents.
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DETERMINATION OF EXECUTIVE SECRETARY

On September 29, 1995, Joy Marie Sneed ("Petitioner") filed a verified improper practice petition against the New York City Human Resources Administration ("HRA"), and her union, Local 1549, District Council 37, AFL-CIO, AFSCME (the "Union"). The Petitioner alleges that she was improperly discharged from her position as a Level III Eligibility Specialist at the HRA for having been Absent With Out Leave ("A.W.O.L"). The Petitioner further alleges that the Union did not arrange for a hearing before the Office of Administrative Trials and Hearings ("OATH"), and thus, failed to represent her adequately.

On December 5, 1995, the HRA, by the New York City Office of Labor Relations ("City") filed an answer alleging that the

petition is untimely, that it lacks facts to substantiate Petitioner's claim that the City violated any provision of the New York City Collective Bargaining Law ("NYCCBL"), and that HRA bears no responsibility in the Union's representation of the Petitioner and should not be named as a responding party.[1]

On January 16, 1996 the Petitioner filed a reply rebutting the City's arguments. The Petitioner cites relevant contract provisions from the Citywide agreement and re-alleges that she was not given due process.

According to the Petitioner, she was employed by the HRA from June, 1988 to September, 1994. On September 28, 1994, the Petitioner received a termination letter from Joseph Generett, Director of Recruitment, HRA, informing her of the termination of her employment. The Petitioner insists that since she had been absent from work due to medical reasons prior to her termination, she was improperly dismissed for being "A.W.O.L". The Petitioner asserts that this action by the HRA violated the improper practice provision contained in Section 12-306a. of the New York City Collective Bargaining Law ("NYCCBL").[2]

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[1] It should be noted that pursuant to Title 61, Section 1-07(h) of the Rules of the City of New York ("RCNY"), the City was not required to file an answer in this matter until it was in receipt of a notice of finding by the executive secretary, "that the petition is not, on its face, untimely or insufficient."

[2] NYCCBL §12-306a. provided as follows:
Improper practices: good faith bargaining.
a. Improper public employer practices.
(continued...)

As far as the Union is concerned, the Petitioner maintains that her unit representative "failed to provide her with an [OATH] hearing," and failed to obtain for her a "due process" hearing. This course of action, in the Petitioner's view, violates the improper public employee organization practice provisions contained in section 12-306 b. of the NYCCBL.[3]

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[2](...continued)
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.

[3] NYCCBL §12-306b. provides as follows:
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 granted in Section 12-305 (formerly §1173-4.1) 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 bargaining provided the public employee organization is a certified
(continued...)

Pursuant to RCNY, Section 1-07(d), a copy of which is annexed hereto, the undersigned has reviewed the petition and has determined that the improper practice claims asserted therein must be dismissed because they are untimely on their face. RCNY Section 1-07(d) provides, in pertinent part, as follows:

> A petition alleging that a public employer or its agents or a public employee organization or its agents has engaged in or is engaging in an improper practice in violation of Section 12-306 (formerly 1173-4.2) of the statute may be filed with the Board within four (4) months thereof. . . . If it is determined . . . that the alleged violation occurred more than four (4) months prior to the filing of the charge, it shall be dismissed by the Executive Secretary . . . .

It is undisputed, that the Petitioner was terminated on September 28, 1994. Since the improper practice petition was not received by the Office of Collective Bargaining until September 29, 1995, a year later, the allegation against the employer clearly is untimely under Section 1-07(d) of the RCNY, and must be dismissed.

With respect to the Union, it is apparent that District Council 37 participated in a Step II hearing on November 30, 1994. The Step II decision was sent to the Petitioner on December 12, 1994. There is no evidence of the Union's involvement on or after this date. Because the Petitioner waited almost nine months before filing her allegation against the

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[3](...continued)
or designated representative of public employees of such employer.

Union, this claim also must be dismissed as untimely.

In summary, inasmuch as the Petitioner has not shown that either the City or the Union committed acts in violation of the NYCCBL within four months of the filing of the instant improper practice petition, the petition must be dismissed in its entirety. It should be noted that dismissal of the petition is without prejudice to any rights that the Petitioner may have under an applicable collective bargaining agreement or in any other forum.

DATED: New York, New York
June 19, 1996

Wendy E. Patitucci
Executive Secretary
Board of Collective Bargaining