St. John v. CWA, 57 OCB 21 (BCB 1996) [Decision No. B-21-96 (ES)]

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

-between-

JOYCE ST. JOHN,

Petitioner, DECISION NO. B-21-96(ES)

-and- DOCKET NO. BCB-1779-95

COMMUNICATIONS WORKERS OF AMERICA,
GWEN RICHARDSON, GLORIA MIDDLETON,
WINNIE KOONCE, PETER CARRUBBA,
DR. G. GORHAM, DR. E. BERWIN,
MICHAEL FALZARANO, RAYMOND FRASENE,
GODFREY GREGORY, ROSALEE O'HARRA,
ALMETA GADSDEN, JEAN MATTHEWS,

Respondents.

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DETERMINATION OF EXECUTIVE SECRETARY

On August 21, 1995, Joyce St. John ("the petitioner") filed a verified improper practice petition with the Office of Collective Bargaining ("OCB"), in which she alleges that the Communications Workers of America ("CWA" or the "Union"); several representatives of the CWA; two physicians employed in the Medical Unit of the New York City Human Resources Administration ("HRA"), an HRA Hearing Officer; and various other HRA personnel violated the New York City Collective Bargaining Law ("NYCCBL"). Based on the documentation submitted by petitioner, it appears that her complaints stem from her placement on an involuntary medical leave of absence. In essence, petitioner alleges that

various HRA personnel conspired against her and that the Union assisted management in this endeavor.

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, the undersigned has reviewed the petition and has determined that the claims asserted therein must be dismissed because petitioner has not alleged facts sufficient as a matter of law to constitute an improper practice claim within the meaning of the NYCCBL.[1]

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[1] Section 12-306a of the NYCCBL 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 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 12-306b of the NYCCBL provides as follows:

> **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 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

(continued...)

With respect to the complaint that the Union has violated NYCCBL §12-306b(1), which prohibits violations of the judicially recognized fair representation doctrine,[2] I find that petitioner has failed to offer any evidence to show that the Union treated her in an arbitrary, discriminatory or bad faith manner. To establish a violation of NYCCBL §12-306b(1), petitioner must show that the Union's conduct was improperly motivated so as to cause, or attempt to cause, the employer to deprive petitioner of her rights to form, join or assist public employee organizations, or to refrain from such activities.[3] Clearly, petitioner has not made such a showing.

To the extent the petition complains that HRA has violated of NYCCBL §12-306a, this claim also must be dismissed. Apparently, petitioner would have the Board of Collective Bargaining infer that the employer placed her on an involuntary leave of absence for reasons proscribed by the NYCCBL. Unless petitioner can demonstrate that HRA, by placing her on a leave of absence, intended to, or did, interfere with or diminish her rights under the NYCCBL, such an allegation does not constitute a prima facie claim of improper practice pursuant to NYCCBL §12-306a.

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[1](...continued)
representative of public employees of such employer.

[2] See Decision Nos. B-24-86; B-14-83; B-13-81; B-16-79.

[3] See Decision No. B-11-87.

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 that are created by the statute, i.e., the right to organize, to form, to join and assist public employee organizations, to bargain collectively through certified public employee organizations, and the right to refrain from such activities.[4] Absent an allegation that HRA's actions were intended to, or did in fact, affect any of petitioner's rights that are protected by the NYCCBL, the petition should be dismissed under RCNY §1-07(d).

In summary, it does not appear that the events which form the basis of the instant improper practice petition are, in any way, related to statutorily protected employee rights. Since the petition does not appear to involve a matter within the jurisdiction of the OCB, it must be dismissed. Of course, dismissal of this petition is without prejudice to any rights the petitioner may have in another forum.

Dated: New York, New York
June 19, 1996

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Wendy E. Patitucci
Executive Secretary
Board of Collective Bargaining

[4] NYCCBL §12-305.