

Miller v. L.1549, DC37 (Kings County Hospital), 57 OCB 27 (BCB 1996) [Decision No. B-27-96 (ES)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of the Improper
Practice Proceeding

-between-

EDDIE LEE MILLER,

Petitioner,

DECISION NO. B-27-96(ES)

DOCKET NO. BCB-1815-96

-and-

LOCAL 1549, DC 37 MUNICIPAL UNION
AND KINGS COUNTY HOSPITAL,

Respondents.

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DETERMINATION OF EXECUTIVE SECRETARY

On March 11, 1996, Eddie Lee Miller ("Petitioner") filed a verified improper practice petition against Local 1549, District Council 37, AFSCME ("the Union") and Kings County Hospital Center (the "Hospital"). In his improper practice petition, the Petitioner does not state the nature of the controversy alleged to have caused the improper practice, nor does he allege any specific violation of the New York City Collective Bargaining Law ("NYCCBL"). The Petitioner did, however, refer to one of the numerous documents which accompanied the petition, i.e., a letter he had written to the president of the Union, dated August 4, 1994, in which he sought "help to resolve the problems that he was having with the Union, the Hospital and his immediate supervisor."

According to this letter, on September 15, 1993, the Petitioner, who was a Supervisor in the Admitting Department of the Hospital, had a verbal dispute with one of his superiors. The Petitioner alleges that as a consequence of this dispute, he was expelled from a meeting, given a one-day suspension and transferred. The other documents that were appended to the petition consist primarily of letters exchanged between the Petitioner, various Union officials, and the Hospital's Labor Relations Officer and concern the aftermath of this incident.¹ The most recent of these documents was dated January 6, 1995, in which the Petitioner's request for a transfer to his prior work location was denied.

Pursuant to Title 61, §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 improper practice claim asserted therein must be dismissed because it is untimely on its face. RCNY §1-07(d) provides, in relevant 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 the Section 12-306 of the statute may be filed with the Board within four (4) months thereof....

¹ According to the documents, the Union grieved the disciplinary charges and was able to achieve restoration of one day's pay to the Petitioner.

Since it is not alleged that the respondents committed any acts in violation of §12-306 of the NYCCBL within four months of the filing of the instant improper practice petition, it must be dismissed as untimely under RCNY §1-07(d).

Even if the petition was not so untimely as to warrant summary dismissal, however, it would be dismissed for failure to state an improper practice under the NYCCBL. 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, join and assist public employee organizations, to bargain collectively through certified public employee organizations, and the right to refrain from such activities. The Petitioner herein does not allege that the respondents' actions were intended to, or did, affect any of these protected rights. Therefore, his petition does not appear to involve a matter within the jurisdiction of the Office of Collective Bargaining. Of course, dismissal of the petition is without prejudice to any rights the Petitioner may have in another forum.

Dated: New York, New York
August 15, 1996

Wendy E. Patitucci
Executive Secretary
Board of Collective Bargaining