

Schweit v. DOC, 57 OCB 28 (BCB 1996) [Decision No. B-28-96 (ES)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of the Improper
Practice Proceeding

between

Daniel Schweit,

Petitioner,

DECISION NO. B-28-96(ES)

and

DOCKET NO. BCB-1800-96

The City of New York Department
of Corrections,

Respondent.

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DETERMINATION OF EXECUTIVE SECRETARY

On January 2, 1996, Daniel Schweit ("Petitioner") filed a verified improper practice petition with the Office of Collective Bargaining ("OCB"), in which he alleged that the City of New York Department of Correction ("Department") breached an agreement with him. Petitioner claims that the Department agreed to dismiss all pending disciplinary charges and not to prevent him from gaining employment in the future. The Petitioner complains that the Department broke the agreement and had him terminated from his present employment. The Petitioner seeks "to start a law suit against the [Department] based on these facts."

Among other things, attached to the petition was a copy of a "Negotiated Plea Agreement for Settlement of Disciplinary Matters Within the Department of Correction," indicating that the

Department agreed to "administratively file (dismiss) all pending disciplinary charges in consideration of the [Petitioner's] resignation." Also attached was a copy of the Petitioner's resignation from the Department.

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 a claim of improper public employer practice within the meaning of §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 right to organize, form, join and assist public employee organizations; and the right to refrain from such activities.

In the instant case, Petitioner has failed to state any facts which show that the Department

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.

may have committed any acts which constitute an improper public employer practice under the NYCCBL; nor has Petitioner alleged that the Department's actions were intended to, or did, affect rights protected under §12-306a of the NYCCBL. Therefore, I find that the instant claim against the Department does not fall within the jurisdiction of the Board of Collective Bargaining.²

Accordingly, for the above reasons, the petition must be dismissed. Dismissal of the petition, of course, is without prejudice to any rights Petitioner may have in another forum.

Dated: New York, New York
September 11, 1996

Wendy E. Patitucci

Executive Secretary
Board of Collective Bargaining

² It is noted that on June 1, 1993, the Petitioner filed an improper practice petition with the OCB, docketed as BCB-1584-93, alleging a breach of the duty of fair representation. That matter is still pending.