

Holloway v. L.1180, 57 OCB 29 (BCB 1996) [Decision No. B-29-96 (ES)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of the Improper
Practice Proceeding

-between-

PATRICIA HOLLOWAY,

DECISION NO. B-29-96 (ES)

Petitioner,

DOCKET NO. BCB-1854-96

-and-

LOCAL 1180,

_____Respondent._____
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DETERMINATION OF EXECUTIVE SECRETARY

On September 16, 1996, Patricia Holloway ("Petitioner") filed a verified improper practice petition against Local 1180 of the Communications Workers of America ("Union"), pursuant to §12-306 of the New York City Collective Bargaining Law ("NYCCBL").¹

¹ NYCCBL §12-306 provides, in relevant part, 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 the secti

(continued...)

In her petition, Petitioner submits that the Union failed to obtain a "positive resolution" of her complaint concerning her alleged unlawful demotion from "PAA I" to "E.S. III," pursuant to an evaluation performed by a "provisionally-promoted supervisor." As relief, Petitioner requests restoration to "PAA I," all back monies from the date of demotion and reassignment to another department.

Attachments to the petition include: (i) an un-dated note from Petitioner stating that three months ago (May, 1996), the supervisor who evaluated her and recommended that Petitioner be

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(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 representative of public employees in of such employer.

demoted in 1994, was herself demoted back to her PAA I title "due to incompetency." The Petitioner maintained that because her former supervisor was a PAA I who was provisionally-promoted to a PAA II, she was precluded from recommending the demotion of Petitioner, a PAA I. In support of this contention, the Petitioner attached a copy of a rule which allegedly prohibits the practice Petitioner complains of.² Petitioner also maintained that she did not receive a satisfactory resolution of her complaint because the two Union representatives that she sought assistance from had represented her former Supervisor in a grievance. Finally, Petitioner inferred that her demotion was suspect because the department head who authorized the personnel action was a former official of the Union; (ii) a certified letter from Petitioner to the President of the Union, dated January 1, 1996, which explained that Petitioner was not satisfied with the representation she received from the two Union representatives and sought the President's assistance in resolving her complaint; (iii) a copy of personnel documents

² The unidentified rule provides, in relevant part:

§35.5 Powers and duties of the agency.

(a) For purposes of increment and promotion eligibility:

* * *

(2) Each employee shall, so far as reasonably possible, be rated by the person or persons who supervised his work or who was responsible for the supervision of his work during the rating period.

However, no employee shall be rated by a provisionally-promoted supervisor with whom he may compete in a promotion examination...[emphasis added].

officially demoting Petitioner, dated November 1, 1994 and November 2, 1994; (iv) a copy of Petitioner's performance evaluation, dated and signed by Petitioner on October 7, 1994, advising her of her demotion; and (v) a copy of the Petitioner's "Tasks and Standards," dated and signed by Petitioner on March 28, 1994.

Pursuant to Title 61, §1-07(d) of the Rules of the City of New York ("OCB Rules"), a copy of which is annexed hereto, the undersigned has reviewed the petition and has determined that it is untimely on its face. Under §1-07(d) of the OCB Rules, a petition alleging conduct in violation of NYCCBL §12-306 must be filed within four (4) months of the date the alleged improper practice occurred.

The instant petition, which was filed on September 16, 1996, alleges that the Union breached its duty of fair representation by failing to obtain a satisfactory resolution of Petitioner's complaint concerning the manner in which she was demoted on or about November 2, 1994.³ Assuming, arguendo, that the alleged violation of the NYCCBL did not arise until Petitioner's most recent attempt to seek the Union's assistance, on or about January 1, 1996, more than four months elapsed before the filing of the complaint in this matter. For this reason, the petition must be dismissed in its entirety.

³ Section 12-306b of the NYCCBL has been held to prohibit violations of the judicially recognized duty of fair representation doctrine.

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DATED: New York, New York
September 25, 1996

Wendy E. Patitucci
Executive Secretary
Board of Collective Bargaining