

Baith v. DOT, 57 OCB 30 (BCB 1996) [Decision No. B-30-96 (ES)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of the Improper
Practice Proceeding

-between-

JIHAD A. BAITH,

Petitioner,

-and-

NEW YORK CITY DEPARTMENT OF
TRANSPORTATION

Respondent.

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DECISION NO. B-30-96 (ES)

DOCKET NO. BCB-1851-96

DETERMINATION OF EXECUTIVE SECRETARY

On September 3, 1996, pursuant to Section 12-306 of the New York City Collective Bargaining Law ("NYCCBL"), Jihad Abdul Baith ("Petitioner") filed a verified improper practice petition against the New York City Department of Transportation ("DOT"). As to the nature of the controversy, Petitioner alleges that the DOT refused to bargain in good faith on matters within the scope of collective bargaining and failed to approach negotiations with a sincere resolve to reach an agreement.¹

¹ Section 12-306 of the NYCCBL provides, in relevant part:

Improper practices; good faith bargaining.

a. 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.

(3) to discriminate against any employee for the purpose of encouraging or discouraging membership in, or the 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.

c. Good faith bargaining. The duty of the public employer and the certified or designated employee organization to bargain collectively in good faith shall include the

(continued...)

Attached to the petition were several documents. Among them were a number of grievance forms, one of which documented a Step I Grievance dated June 7, 1993. In that grievance, Petitioner alleged that the failure of the DOT to promote him was improper. Petitioner seeks to be promoted from the position of Debris Remover to the position of Assistant City Highway Repairer with back pay as may be applicable.

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 it does not allege facts sufficient as a matter of law to constitute an improper practice within the meaning of NYCCBL. It is well settled that the duty to bargain in good faith under NYCCBL Sections 12-306(a)(4) and 12-306(c) runs between the public employer and the employee organization.² A plain reading of the statute reveals the express intention of the legislature to obligate a public employer to bargain collectively and in good faith with the "certified or designated employee organization." Neither section was intended to create any independent rights or causes of action for the benefit of third parties, whether they be constituent members of the bargaining group or whether they are

¹(...continued)
obligation:

- (1) to approach negotiations with a sincere resolve to reach an agreement;
- (2) to be represented at the negotiations by duly authorized representatives prepared to discuss and negotiate on all matters within the scope of bargaining;
- (3) to meet at reasonable times and convenient places as frequently as may be necessary, and to avoid unnecessary delays;
- (4) to furnish to the other party, upon request, data normally maintained in the regular course of business, reasonably available and necessary for full and proper discussion, understanding and negotiation of subjects within the scope of collective bargaining;
- (5) if an agreement is reached, to execute upon request a written document embodying the agreed terms, and to take such steps as are necessary to implement the agreement.

² See; Decision Nos. B-26-95, B-29-86, B-5-86, B-2-82.

merely seeking to represent them in an unofficial capacity.³ Individual bargaining unit members lack standing to assert that the employer has allegedly violated its duty to bargain.⁴

Inasmuch as Petitioner, as an individual, lacks standing to allege, as a basis for an improper practice claim, the failure of the DOT to bargain in good faith pursuant to Sections 12-306(a)(4) and 12-306(c) of the NYCCBL, the instant petition must be dismissed in its entirety.⁵ Such dismissal, of course, is without prejudice to any rights Petitioner may have in any other forum.

Dated: New York, New York
September 25, 1996

Wendy E. Patitucci

Executive Secretary
Board of Collective Bargaining

³ See; Decision No. B-29-86.

⁴ Decision No. B-26-95.

⁵ On January 25, 1995, the petitioner in this case filed an improper practice petition against District Council 37 ("Union") that involved the same set of circumstances and sought the same remedy. In that petition, Petitioner alleged that the Union had "misrepresented information" that had a bearing upon the promotion in dispute. That petition was dismissed in Decision No. B-21-95 (ES) as being, first, untimely and then, even if not so untimely as to warrant summary dismissal, for failure to allege facts sufficient as a matter of law to show any violation of Section 12-306 of the NYCCBL. Upon appeal of that decision, the Board of Collective Bargaining upheld the determination of the Executive Secretary in Decision No. B-6-96.