

Miller v. Detec. Endowment Ass.& Deutsch, 57 OCB 40 (BCB 1996) [Decision No. B-40-96 (IP)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of the Improper
Practice Proceeding

-between-

MARC A. MILLER,

DECISION NO. B-40-96

Petitioner,

-and-

DOCKET NO. BCB-1805-96

DETECTIVES ENDOWMENT ASSOCIATION and
ROBERT F. DEUTSCH, TRUSTEE,

Respondents.

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DECISION AND ORDER

On January 19, 1996, Marc A. Miller (the "Petitioner"), pro se, filed a verified improper practice petition against the Detectives Endowment Association (the "DEA" or the "Union"), and against Robert Deutsch, one of the Union's Trustees. The petition alleges that the DEA committed an improper practice in violation of Section 12-306 of the New York City Collective Bargaining Law ("NYCCBL")¹ by not processing his grievance concerning his reassignment from a homicide investigation.

The Union filed its answer to the improper practice petition on March 6, 1996. The City, appearing by its Office of Labor Relations, filed an answer

¹ NYCCBL §12-306b., which pertains to public employee organization improper practices, provides 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 Section 12-305 (formerly §1173-4.1) 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 bargaining provided the public employee organization is a certified or designated representative of public employees of such employer.

on May 2, 1996, as required by Section 209-a.3. of the Taylor Law. The Petitioner filed a reply on July 19, 1996.

BACKGROUND

Marc A. Miller is a New York City Police Detective assigned to the Staten Island Crimes Versus Property Squad. On January 17, 1995, he was detailed to investigate the disappearance of two elderly people from their Staten Island home under mysterious circumstances. He worked on the investigation until February 2, 1995, when the commanding office of the Staten Island Property Squad informed him by telephone that he was being removed from the investigation. On February 6, 1995, he attempted to complain of his reassignment to Detective Robert Deutsch, who "made a hasty retreat from the room stating that he did not want to get involved with this issue as he exited."

In April and again in late December 1995, Detective Miller contacted the DEA seeking its intervention in his behalf. The Union took no action, and, on January 19, 1996, he filed the instant improper practice charge.

POSITIONS OF THE PARTIES

Petitioner's Position

According to the Petitioner, the Union failed to provide him with adequate representation. In his view, it acted in bad faith and with a conflict of interest in condoning "discriminatory practices in work assignments and union representation." It also assertedly violated his civil rights by denying him due process. All these allegations stem from Petitioner's reassignment from a missing persons investigation in February, 1995. It is his belief that the Union delegate assigned to assist him, Trustee Robert Deutsch, had a conflict of interest because he "continually and consistently represented both detective's union members and other non-members before senior management." Yet when the Petitioner needed representation because he was "removed from an investigation in its infancy without warning, provocation or notice", the trustee assertedly "failed to advocate on my behalf."

Union's Position

The DEA contends that the Petitioner's claim is time barred because almost a full year elapsed from the time Detective Miller was reassigned until the time that he filed his improper practice petition. In addition, the Union views the Petitioner's reassignment as being in management's discretion under the NYCCBL, and thus not subject to challenge. It claims that the DEA President spent much time attempting to inform the Petitioner of this fact. In these circumstances, it assertedly cannot be found to have acted arbitrarily, capriciously, or discriminatorily. Finally, DEA points out that all union trustees are also Detectives, and are required to perform many non-union duties.

Department's Position

The City, on behalf of the Department, points out that the Petitioner is

seeking review of a managerial decision concerning the assignment of one of its detectives to a police investigation. This assertedly is not arbitrable under the terms of the City's contract with the DEA. Therefore, the City concludes, a grievable cause of action never existed. More importantly, the City argues that the petition is untimely. It notes that the circumstances giving rise to the Petitioner's improper practice claim occurred during the first two months of 1995. Yet he did not file the petition until January 1996, "almost a full year later and clearly beyond the 120 day requirement of Title 61 of the Rules of the City of New York, Section 1-07(d)."

DISCUSSION

The essence of the Petitioner's improper practice charge is that he was reassigned from a criminal investigation, and that his Union, the DEA, refused to assist him in availing himself of certain alleged contractual rights. The petition is jurisdictionally defective.

The four-month limitation period described in Title 61, Section 1-07(d) of the Rules of the City of New York ("RCNY") bars our consideration of untimely filed improper practice allegations.² The application of the four-month limitation period is not discretionary by this Board.³ Thus, the Petitioner's claims for relief for any alleged wrongful acts that the

² Section 1-07(d) of the RCNY reads, in pertinent part, as follows:

Improper practices. A petition alleging that a public employer or its agents . . . has engaged in or is engaging in an improper practice in violation of §12-306 of the statute may be filed within four (4) months thereof. . . .

See, also, Decision Nos. B-11-95; B-31-94; B-38-93; B-21-93; B-37-92; B-61-91; B-1-90; B-25-89.

³ Decision Nos. B-9-96; B-38-93; and B-59-88.

Department may have committed prior to September 19, 1995, are time-barred, as they occurred more than four months before he filed the petition.

The fact that the Petitioner wrote to the DEA president in April, 1995, and on December 30, 1995, demanding a written explanation as to why the Union decided not to act in his behalf does not serve to toll the statute of limitations. The Petitioner has not alleged that the Union gave him any reason to believe that it was reconsidering its position during this time. His letters do not qualify as commencement of an action before this Board, nor do they stay the running of the applicable four-month limitation period.⁴

ORDER

Pursuant to the powers vested in the Board of Collective Bargaining by the New York City Collective Bargaining Law, it is hereby

ORDERED, that the improper practice petition filed by the Petitioner, Marc A. Miller, and docketed as BCB-1805-96 be, and the same hereby is, dismissed.

DATED: New York, N.Y.
October 31, 1996

STEVEN C. DECOSTA
CHAIRMAN

DANIEL G. COLLINS
MEMBER

CAROLYN GENTILE
MEMBER

ROBERT H. BOGUCKI
MEMBER

RICHARD A. WILSKER
MEMBER

SAUL G. KRAMER
MEMBER

⁴ Decision Nos. B-35-92; B-28-91; and B-33-89.