

Lowe v. L.1199, 57 OCB 49 (BCB 1996) [Decision No. B-49-96 (ES)]

OFFICE OF COLLECTIVE BARGAINING  
BOARD OF COLLECTIVE BARGAINING

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In the Matter of the Improper  
Practice Proceeding

-between-                    DECISION NO. B-49-96(ES)

MILLCENT M. LOWE,                    DOCKET NO. BCB-1871-96

Petitioner,

-and-

1199 NATIONAL HEALTH AND HUMAN  
SERVICE EMPLOYEES UNION,

Respondent.

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#### **DETERMINATION OF EXECUTIVE SECRETARY**

On November 8, 1996, Millicent M. Lowe ("Petitioner") filed a verified improper practice petition against her union, 1199 National Health and Human Service Employees Union ("Union"). Petitioner alleges that the Union violated §12-306b of the New York City Collective Bargaining Law ("NYCCBL"),<sup>1</sup> by failing to represent her adequately when she was improperly discharged from her position at the Washington Heights-West Harlem-Inwood Mental Health Council ("Council").

Petitioner's employment with the Council was terminated effective January 4, 1996. Apparently, Petitioner was discharged for having "abandon[ed] [her] post at a 24/hour Supervised Residence." The Petitioner contends that the disciplinary penalty imposed in her case, termination of employment, was too harsh relative to her offense.

In February of 1996, Petitioner wrote to Dennis Rivera, President of the Union. In that letter Petitioner outlined the circumstances surrounding the termination of her employment and

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<sup>1</sup> Section 12-306b of the NYCCBL has been held to prohibit violations of the judicially recognized duty of fair representation doctrine.

requested the Union's assistance. She alleged that she had already been forced on one occasion to meet with management in the absence of a union representative. In response, by letter dated February 12, 1996, Mr. Rivera stated that he had referred the matter to Betty Hughley, one of the Union's Executive Vice Presidents. Petitioner alleges, however, that Ms. Hughley never contacted her.

By letter dated March 18, 1996, Petitioner wrote to Ms. Hughley directly, again to request assistance. She complained that Mr. Caban, apparently a Union representative, took three months "to schedule a meeting with the employer" to discuss the termination of her employment. Petitioner maintained that this delay was unacceptable, particularly in light of the fact that she was "suspended without written notice" and "never given a warning." At the conclusion of that meeting, Petitioner alleged, Mr. Caban requested that management provide Petitioner and the Union with a written decision within seven days.<sup>2</sup> As of March 18, Petitioner wrote, she had received nothing in writing from either the Union or the employer.

On April 19, 1996 Petitioner sent a second letter to Mr. Rivera. In this letter, she stated that she still had not been contacted by Ms. Hughley and requested the Union's assistance with her "wrongful termination" case.

Approximately six months later, in October 1996, Petitioner alleges that she called the Union to again request assistance. Petitioner states that she spoke to Donna Smith, who informed her that her case "was treated as an abandonment case." According to Petitioner, prior to this conversation, the Union had not notified her that her case had been deemed abandoned.<sup>3</sup>

Pursuant to Title 61, §1-07(d) of the Rules of the City of New York ("OCB Rules"), a

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<sup>2</sup> Evidently, the "meeting" referred to by Petitioner was actually a grievance hearing held on February 23, 1996, pursuant to the parties' contractual grievance procedure.

<sup>3</sup> Petitioner further alleges that on October 24, 1996, in a conference before the State Division of Human Rights, where she has filed a complaint against the Council, her former employer indicated that it had received a letter from the Union in March of 1996, which stated that the Union considered Petitioner's case resolved.

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 alleges that the Union breached its duty of fair representation by failing to pursue a grievance concerning the termination of Petitioner's employment beyond the grievance meeting held on February 23, 1996. Viewing the facts in a light most favorable to the Petitioner, the alleged violation of the NYCCBL arose when Petitioner's second request for Mr. Rivera's assistance, by letter dated April 19, 1996, allegedly went unanswered. The petition was not filed until November 8, 1996, almost seven months later. The mere fact that Petitioner contacted the Union in October 1996 concerning the matter cannot serve to toll the period of limitations. Petitioner has not alleged that, at any time between April and October of 1996, the Union gave her any reason to believe that it would be pursuing her grievance.

For this reason, the petition must be dismissed as untimely without consideration of its merits.

DATED: New York, New York  
November 29, 1996

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Wendy E. Patitucci  
Executive Secretary  
Board of Collective Bargaining