

Parker v. DC37 & L.2507 & L.3621, 57 OCB 51 (BCB 1996) [Decision No. B-51-96 (ES)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of the Improper
Practice Proceeding

-between-

JAMES PARKER,

Petitioner,

-and-

NEW YORK CITY EMERGENCY MEDICAL
SERVICE OF THE HEALTH AND HOSPITALS
CORPORATION, DISTRICT COUNCIL 37,
AFSCME, AFL-CIO, AND ITS AFFILIATED
LOCALS 2507 AND 3621,

Respondents.

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DECISION NO. B-51-96(ES)

DOCKET NO. BCB-1791-95

DETERMINATION OF EXECUTIVE SECRETARY

On October 30, 1995, James Parker ("Petitioner") filed a verified improper practice petition, pursuant to § 12-306a and b of the New York City Collective Bargaining Law ("NYCCBL"),¹ against the New York City Emergency

¹ NYCCBL § 12-306a provides, in pertinent part, that it

shall be an improper practice for a public employer or its agent(s) to interfere

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Medical Service of the Health and Hospitals Corporation ("HHC") and against

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NYCCBL § 12-306b provides that it shall be an improper practice for a public employee organization or its agent(s) to interfere with, restrain or coerce public employees in the exercise of rights granted under § 12-305 of this statute or to cause a public employer to do so; and to refuse to bargain collectively in good faith with a public employer on matters within the scope of collective bargaining, provided the employee organization is a certified or designated representative of public employees of that employer.

District Council 37, AFSCME, AFL-CIO, and its Affiliated Locals 2507 and 3621 ("Union").

The petition, filed by Petitioner, pro se, is seventy-three (73) pages in length, of which sixty-nine (69) pages is a day-by-day diary describing in detail dialogue and interaction between Petitioner and unit members, non-unit coworkers, supervisors, and medical and police personnel. The diary contains entries dating from November 14, 1990, through September 8, 1995. As a remedy, Petitioner requests a declaratory judgment that his rights have been violated, a cease-and-desist order preventing further deprivation of rights, disciplinary action against those responsible for deprivation of his rights, retraining for "all Respondents in the usage of HHC and EMS policies, procedures, practices, Rules and Regulations and the appointment of a panel to oversee the overhauling and enforcement of these procedures," and an award to "make Petitioner whole for losses."

Title 61, Section 1-07(d), of the Rules of the City of New York ("OCB Rules") provides, in pertinent part, as follows:

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

Pursuant to that section of the OCB Rules, a copy of which is annexed hereto, the undersigned has reviewed the petition and has determined that, insofar as Petitioner alleges claims which occurred more than four (4) months prior to the filing of the instant petition, those claims are untimely on their face. Any claims having occurred more than four months earlier than the accrual date of the applicable limitations period may be considered only as background for any timely claim(s), but those untimely claims are not remediable in the

instant proceeding.

Even as to acts or events complained of which were not so untimely as to warrant summary dismissal, the undersigned has determined that any claims which address rights outside the jurisdiction of the Board of Collective Bargaining ("Board") also must be dismissed.² The NYCCBL does not provide a

² As the source of other claims, the petition also refers to 42 U.S.C. § 1981 et seq. (regarding discrimination on as to race), New York State Civil Service Law (regarding the Taylor Law as well as regarding disciplinary procedures of civil service employees), § 7390 of the

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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, conversely, the right to refrain from such activities. Any claims in the instant petition which may arise under sources of law other than the NYCCBL do not allege actions which the NYCCBL protects. Therefore, those claims are dismissed here without prejudice to any rights Petitioner may have in another forum.

As to any claims which appear to be timely and which appear to arise

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New
York
State
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Laws
(regarding
HHC
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and
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(regarding
"whistleblower"
protection).

under the NYCCBL, the undersigned has reviewed them and determined that they do not meet minimum pleading requirements set forth in § 1-07(e) of the OCB Rules, which requires that an improper practice petition contain, inter alia, "a statement of the nature of the controversy." That statement should be a clear and concise statement of the facts constituting the alleged improper practice. The statement of facts should include but not be limited to the names of the individuals involved in the particular act(s) alleged as well as the date and place of occurrence of each particular act alleged. The statement may be supported by attachments which are relevant and material, but the statement should not contain such an extensive, unfocused recitation of facts that it cannot be determined unequivocally which alleged acts are the subject of the complaint. Such is the nature of the statement supporting the instant petition, and, as such, it does not satisfy the pleading requirements of the Rules.

It is not properly the role of the Executive Secretary to attempt to discern and articulate for a petitioner the existence of a charge.³

Accordingly, the instant petition is dismissed as procedurally defective. However, dismissal of the instant petition is without prejudice to the resubmission of a verified improper practice petition that is in compliance with the Board's jurisdictional, timeliness, and pleading requirements within ten (10) days of receipt of this determination. Such resubmission for consideration by the Executive Secretary will be accepted as timely, nunc pro tunc, to the extent that the acts which are the subject of the claim(s) occurred within the four-month limitations period preceding the

³ See, Linda Orlando v. State of New York & CSEA, 29 PERB ¶3054 (1996).

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filing of the instant petition on October 30, 1995.

DATED: New York, New York
December 9, 1996

Wendy E. Patitucci
Executive Secretary
Board of Collective Bargaining