

Melisi v. City, 57 OCB 52 (BCB 1996) [Decision No. B-52-96 (IP)]

OFFICE OF COLLECTIVE BARGAINING  
BOARD OF COLLECTIVE BARGAINING

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In the Matter of the Improper  
Practice Proceeding

-between-

HELENA MELISI,  
Petitioner,  
-and-

DECISION NO: B-52-96  
DOCKET NO: BCB-1478-92

THE CITY OF NEW YORK,  
Respondent.

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**DECISION AND ORDER**

On March 23, 1992, a verified improper practice petition was filed by Helena Melisi ("Petitioner") alleging that the New York City Police Department ("the Department") committed an improper practice, in violation of §12-306(a) of the New York City Collective Bargaining Law ("NYCCBL"). On April 1, 1992, in lieu of an answer, the Department, appearing by the City of New York Office of Labor Relations, filed a Motion to Dismiss on the ground that Petitioner failed to state a cause of action under the NYCCBL. Petitioner requested, and received, six (6) extensions to respond to the Department's motion and filed her response on February 16, 1993.

**BACKGROUND**

The Petitioner gave the following unrebutted account of the events which she claims form the basis of the improper practice charge against the Department:

My weapons were wrongfully removed by the  
Psychological Services Unit causing me to

[lose] a promotion to Detective which was due April 5, 1991. I was to remain assigned to my specialized unit, and would receive my promotion upon the completed evaluation of the Psychological Services Unit. Instead, after a dispute with my former husband (a police captain and attorney), I was dumped to a deviate position in a dormant unit. This transfer took place 12/12/91 after I received an extremely competent evaluation from my supervisor in September 1991. I have made numerous, impassioned attempts to rectify this situation, only to be ignored. I have contacted every unit within the department and outside of the department, and have received no response. I requested that the PBA file a grievance regarding my transfer and [an] Article 78 [proceeding] for my promotion, and have been ignored.<sup>1</sup>

Petitioner requests that she be returned to full duty status; promoted to Detective Investigator; returned to her specialized unit; granted back pay and have all personal and marital information removed from her record.

### **POSITIONS OF THE PARTIES**

#### Petitioner's Position

In support of her claim against the Department, Petitioner alleges that her "weapons were removed unjustly and [that she] was harassed thereafter, denied a promotion, transferred, and given a negative evaluation all due to [her] former husband and his buddies in the police department covering up for him." She further states that the Department and the PBA failed to submit any valid reasons

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<sup>1</sup> It should be noted that on March 23, 1992, Petitioner also filed an improper practice petition against the Patrolman's Benevolent Association ("PBA"), docketed as BCB-1479-92, alleging a breach of the Duty of Fair Representation. On January 21, 1993, Petitioner withdrew the charge against the PBA "[s]ince they ... represented [her] in [her] grievance against the [Department] and [would] continue representation."

for their decisions regarding her situation and notes that the reasons behind the Department's actions were "personal, marital, off-duty, and non-work related." In an attempt to buttress her claim that she was retaliated against for union activity, Petitioner alleged that her request that the Union be involved since the original occurrence in April, 1991, was union activity and "[t]he entire [Department] was aware of [that] activity."

#### The Department's Position

The Department requests that the instant improper practice petition be dismissed and contends that Petitioner failed to state a claim that the Department violated section 12-306(a) of the NYCCBL. The Department notes that Petitioner does not allege that it took action against her because of protected activity and, in fact, only alleges that the action was taken because of personal conflicts with her former husband.

#### **DISCUSSION**

It is well established that all facts alleged by a petitioner must be deemed true when considering a respondent's Motion to Dismiss.<sup>2</sup> However, a petitioner still has the burden of sufficiently stating a cause of action under the NYCCBL. Thus, Petitioner's claim that the Department committed an improper employer practice in violation of section 12-306(a) of the NYCCBL must be supported by facts that, if taken as true, establish a cause of action.

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<sup>2</sup> See, e.g., Decision No. B-15-87.

Section 12-306(a) states that it is 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<sup>3</sup> of this chapter;
- (2) to dominate or interfere with the formation or administration of any public employee organization;
- (3) to discriminate against any employee for the purpose of encouraging or discouraging membership in, or 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.

The NYCCBL does not give the Board of Collective Bargaining jurisdiction to consider, and attempt to remedy, every perceived wrong or inequity which may arise out of the employment relationship. It mandates only that the Board administer and enforce procedures designed to safeguard those employee rights created in section 12-305 of the NYCCBL.<sup>4</sup> No where in Petitioner's pleadings is it alleged that the Department's actions affected those rights. Even taking all alleged facts as true, those facts would not constitute a violation under §12-306(a).

Although Petitioner stated that she engaged in union activity

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<sup>3</sup> NYCCBL §12-305 states that those rights include the rights to:  
self-organization, to form, join or assist public employee organizations, to bargain collectively through certified employee organizations ... [and to] refrain from any or all of such activities.

<sup>4</sup> Decision Nos. B-39-96; B-21-93.

since April, 1991, by virtue of her requests that the Union become involved in this matter, that statement alone will not allow us to find that the Department acted with improper motivation.<sup>5</sup> In the absence of evidence, other than this conclusory allegation, demonstrating a causal connection between Petitioner's claimed union activity and the Department's alleged retaliatory action, a finding that the Department acted with improper motivation within the meaning of the NYCCBL would be purely speculative.<sup>6</sup> In addition, this Board is not empowered to review the merit of an employer's personal motives, apart from the criteria set forth in §12-306(a) of the NYCCBL, nor are we empowered to deem any and all actions adverse to a public employee, an improper practice.<sup>7</sup> Accordingly, the instant Motion to Dismiss the improper practice petition, docketed as BCB-1478-92, is granted.

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<sup>5</sup> Decision Nos. B-42-96; B-21-93. We note that Petitioner's request that the Union "be involved" was a response to the removal of her weapons and the loss of a promotion on or before April, 1995, and thus, logically, could not have been a cause of those actions.

<sup>6</sup> Decision No. B-41-91.

<sup>7</sup> Decision No. B-21-93.

**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 Motion to Dismiss the improper practice petition, docketed as BCB-1478-92, filed by the City of New York Office of Labor Relations on behalf of the New York City Police Department be, and the same hereby is, granted, and it is further

ORDERED, that the improper practice petition, docketed as BCB-1478-92, be dismissed.

Dated: New York, New York  
December 19, 1996

STEVEN C. DECOSTA  
CHAIRMAN

DANIEL G. COLLINS  
MEMBER

JEROME E. JOSEPH  
MEMBER

THOMAS J. GIBLIN  
MEMBER

SAUL G. KRAMER  
MEMBER

RICHARD A. WILSKER  
MEMBER

Decision No. B- -96  
Docket No. BCB-1478-92