

Parker v. EMS, HHC & L. 2507 & 3621, DC 37, 59 OCB 15 (BCB 1997) [Decision No. B-15-97 (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 AND ORDER**

On October 30, 1995, James Parker ("Petitioner") filed a verified improper practice petition, pursuant to § 12-306(a) and (b) of the New York City Collective Bargaining Law ("NYCCBL"), against the New York City Emergency Medical Service of the Health and Hospitals Corporation ("HHC") and against District Council 37, AFSCME, AFL-CIO, and its Affiliated Locals 2507 and 3621 ("Union").

The petition was dismissed by a determination of the Executive Secretary of the Board of Collective Bargaining ("Board") dated December 9, 1996.<sup>1</sup> By

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<sup>1</sup> Decision No. B-51-96 (ES).

facsimile transmission dated December 30, 1996, the Petitioner expressed his wish to appeal to the Board.<sup>2</sup>

#### The Petition

The original petition, filed pro se, is seventy-three pages in length, containing daily entries over a five-year period alleging deprivation of rights including but not limited to those arising under the NYCCBL during the time Petitioner served as a union shop steward. As remedies, the Petitioner requests a declaratory judgment that his rights were 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."

#### The Executive Secretary's Determination

In Decision No. B-51-96(ES), the Executive Secretary found, inter alia, that the claims alleged to have occurred more than four months prior to the filing of the petition were untimely on their face. She also determined that, as to acts or events complained of which were not so untimely as to warrant summary dismissal, those which nonetheless addressed rights outside the jurisdiction of the Board, such as those arising under 42 U.S.C. § 1981 et seq. (regarding discrimination as to race), New York State Civil Service Law (regarding the Taylor Law as well as regarding disciplinary procedures of

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<sup>2</sup> The Rules of the City of New York, Title 61 (Rules of the Office of Collective Bargaining), ("Rules") do not authorize the filing of documents by facsimile transmission.

civil service employees), § 7390 of the New York State Unconsolidated Laws (regarding HHC personnel procedures), and New York State Labor Law (regarding "whistleblower" protection), also required dismissal.

As to any claims which appeared to be timely and which appeared to arise under the NYCCBL, the Executive Secretary determined that they did not meet minimum pleading requirements set forth in § 1-07(e), which requires that an improper practice petition contain, inter alia, "a statement of the nature of the controversy." She stated, in pertinent part:

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.<sup>3</sup>

Accordingly, in a determination dated December 9, 1996, the petition was dismissed as procedurally defective, without prejudice to any rights Petitioner may have in another forum. Further, it was dismissed 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 the Executive Secretary's determination. The determination stated that such resubmission for consideration by the Executive Secretary would 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 filing of the original petition on October 30, 1995.

#### The Appeal

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<sup>3</sup> Decision No. B-51-96(ES), citing Linda Orlando v. State of New York & CSEA, 29 PERB ¶ 3054 (1996).

The Executive Secretary's determination was received by Petitioner on December 19, 1996, by certified mail. By facsimile transmission dated December 30, 1996, Petitioner informed the Board as follows:

I hereby give notice that I wish to appeal the decision of Wendy E. Patitucci, Executive Secretary of Board of Collective Bargaining docketed as BCB-1791-95 (Decision # B-51-96(ES) on the whole record before the Board.

By letter dated January 7, 1997, the Trial Examiner assigned to the case advised the Petitioner that his facsimile transmission dated December 30, 1996, did not comply with the option to replead given in the Executive Secretary's determination, i.e., "the transmission is not a resubmission of a revised petition containing a clear and concise statement of your complaint."

The Trial Examiner requested that the Petitioner inform her, no later than January 31, 1997, in writing "whether (1) you have declined to submit a revised improper practice petition and, instead, wish to appeal the Executive Secretary's Decision, or, (2) you request additional time to comply with the opportunity extended in the Decision to submit a revised improper practice petition." The Trial Examiner also explained that failure to respond by January 31, 1997, would be deemed an expression of the Petitioner's declination to submit a revised improper practice petition and a desire, instead, to appeal the Executive Secretary's Decision.

On January 29, 1997, the Petitioner requested of the Board's Director of Information that a copy of the original Petition be made for his review. The Petitioner also informed the Director of Information on that date that he would notify the Board of his intended course of action by January 31, 1997. As of this date, no further response from the Petitioner has been heard or received.

#### Discussion

The Petitioner's appeal of the Board's determination must be rejected on several grounds. First, OCB Rules require that 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. Allegations relating to events which occurred more than four months before the filing of an improper practice petition may be considered in the context of background information and not as specific violations of the NYCCBL.<sup>4</sup> The application of the four-month limitation period is not discretionary.<sup>5</sup>

In the present case, the Executive Secretary correctly determined that events specified in the petition which occurred before the the applicable limitations period were untimely under the law. That limitations period, for purposes of the instant proceeding, accrued on June 30, 1995. Accordingly, the Executive Secretary was correct in dismissing those claims arising before that date.

Secondly, with respect to any claims to rights arising under statutes other than the NYCCBL, the Executive Secretary was correct in determining that it is not within the purview of this Board to address rights accruing under statutes other than the NYCCBL. Accordingly, the Executive Secretary was correct in dismissing any claims in the original petition which arise outside the jurisdiction of this Board.

Thirdly, the purpose of an appeal of the Executive Secretary's determination is to review the correctness of that ruling based upon the facts that were available at the time that it was made. When a petition is filed, it must state the nature of the controversy, specify the statute involved, and include all other relevant and material documents, dates and facts. It must

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<sup>4</sup> Decision Nos. B-6-96; B-31-94; B-38-93; B-21-93.

<sup>5</sup> Decision Nos. B-6-96; B-31-94; B-38-93; B-21-93.

supply enough essential facts to state at least a prima facia case.<sup>6</sup> The Board does not require a petitioner, particularly one who is appearing pro se, to comply with legalistic forms of pleading or to submit unduly detailed papers; it is enough that the petitioner place respondents on notice of the nature of the claim.<sup>7</sup> Although the Board construes its rules liberally, however, it will not permit a pleading to stand if it fails to satisfy these minimum standards.<sup>8</sup>

The Executive Secretary determined, in the instant matter, that the original petition contained "such an extensive, unfocused recitation of facts that it cannot be determined unequivocally which alleged acts are the subject of the complaint." We affirm the Executive Secretary's determination which stated, "It is not properly the role of the Executive Secretary to attempt to discern and articulate for a petitioner the existence of a charge."

Petitioner herein was afforded a second chance to refile his petition in compliance with the Rules' requirements. Although he called the Board's Director of Information on January 29, 1997, and expressed an understanding of the required time for filing a written statement, no written communication has been received.<sup>8</sup> Therefore, the record was closed without any further submission by the Petitioner.

Based on the record before the Executive Secretary in her determination of December 9, 1996, we agree entirely with her conclusion. Accordingly, we dismiss the Petitioner's appeal and confirm the determination of the Executive Secretary in Decision No. B-51-96(ES), dismissing the petition docketed as BCB-1791-95, filed on October 30, 1995, as procedurally defective. This

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<sup>6</sup> Decision Nos. B-6-96 and B-20-94.

<sup>7</sup> Decision Nos. B-24-94; B-15-94; N-8-94; B-37-93.

<sup>8</sup> Decision No. B-20-94.

dismissal is with prejudice to the resubmission of a verified improper practice petition based on such claims as may have been contained therein. We note, however, as did the Executive Secretary, that dismissal of the petition is without prejudice to any rights the Petitioner may have in any other forum.

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 appeal of the Executive Secretary's determination in the matter of the verified improper practice petition of James Parker in Docket No. BCB-1791-95 be, and the same hereby is, denied; and it is further

**ORDERED**, that the determination of the Executive Secretary in Decision No. B-51-96(ES) be, and the same hereby is, confirmed.

**DATED: New York, New York  
March 25, 1997**

STEVEN C. DeCOSTA

CHAIRMAN

GEORGE NICOLAU

MEMBER

DANIEL G. COLLINS

MEMBER

SAUL G. KRAMER

MEMBER

ROBERT H. BOGUCKI

MEMBER

CAROLYN GENTILE

MEMBER