Schweit v. DOC, 59 OCB 26 (BCB 1997) [Decision No. B-26-97 (ES)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

In the Matter of the Improper Practice Proceeding	
-between-	
DANIEL SCHWEIT, Petitioner,	DECISION NO. B-26-97(ES) DOCKET NO. BCB-1909-97
-and-	
DEPARTMENT OF CORRECTION, Respondent.	

DETERMINATION OF EXECUTIVE SECRETARY

On May 7, 1997, Daniel Schweit ("Petitioner") filed a verified improper practice petition against the Department of Correction ("DOC"). The Petitioner alleges that the DOC repeatedly refused to pay him for overtime that he worked in 1987 and 1990. As a remedy, he requests payment.

Pursuant to Title 61, §1-07(d) of the Rules of the City of New York ("OCB Rules"), a copy of which is annexed hereto, the undersigned has reviewed the petition and has determined that it does not allege facts sufficient as a matter of law to constitute an improper practice within the meaning of §12-306a. of the New York City Collective Bargaining Law ("NYCCBL").[1]

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[1] Section 12-306a of the NYCCBL provides:

a. Improper public employer practices. It shall be an improper practice for a public employer or its agents:

(continued...)

Petitioner has failed to allege facts to support a claim that the employer committed any acts in violation of §12-306a of the NYCCBL, which defines improper public employer practices. The provisions and procedures of the NYCCBL 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 the right to refrain from such activities.

The only allegation made by the Petitioner is that the employer has refused to pay him for overtime worked, i.e., that the employer has violated the collective bargaining agreement. It is well-established that the jurisdiction of this Board may not be invoked if the claimed statutory violation derives solely from an alleged violation of a collective bargaining agreement.[2] The Board is without authority to enforce the terms of a

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[1](...continued)
(1) to interfere with, restrain or coerce public employees in the exercise of their rights granted in section 12-305 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.

[2] Decision Nos. B-60-88; B-55-88; B-36-87.

collective bargaining agreement and may not exercise jurisdiction over an alleged violation of an agreement unless the acts constituting such a violation would otherwise constitute an improper practice.[3] These principles flow from §205.5(d) of the Taylor Law which states:

> [The Public Employment Relations Board, hereinafter "PERB"] shall not have authority to enforce an agreement between an employer and an employee organization and shall not exercise jurisdiction over an alleged violation of such an agreement that would not otherwise constitute an improper employer or employee organization practice.

Since the instant petition does not allege that the actions of the DOC were intended to, or did, affect any rights protected under the NYCCBL, it must be dismissed. Such dismissal, however, is without prejudice to any rights that Petitioner may have in any other forum.

Dated: New York, New York
June 6, 1997

Victoria A. Donoghue
Executive Secretary
Board of Collective Bargaining

[3] Decision Nos. B-36-87; B-29-87; B-8-85.