

Toth v. FDNY, 59 OCB 38 (BCB 1997) [Decision No. B-38-97 (ES)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of the Improper Practice Proceeding :
-between- :
LAWRENCE J. TOTH, : DECISION NO. B-38-97 (ES)
Petitioner, : DOCKET NO. BCB-1930-97
-and- :
NEW YORK CITY FIRE DEPARTMENT, :
Respondent. :
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DETERMINATION OF EXECUTIVE SECRETARY

On August 13, 1997, Lawrence J. Toth ("Toth" or "Petitioner") filed a verified improper practice petition against the Fire Department of the City of New York ("Department" or "Respondent"). As to the nature of the controversy, the petition states, "Application for service incurred disability retirement, disability pension, (denied), new medical evidence enclosed." As to the relief requested, the petition states, "Disability retirement pension."

Also filed with the petition were numerous documents, including a letter from the Chief of Personnel of the Department stating that Toth's employment was terminated effective July 8, 1997, pursuant to Section 71 of the Civil Service Law, for want of a determination by a physician appointed by the Department of Personnel that Toth was physically fit to return to duty as a Firefighter. Other documents include applications for service-incurred disability retirement, and for various federal disability benefits and state public assistance benefits, as well as physicians' letters attesting to his physical condition and various departmental memoranda concerning his medical condition.

Discussion

Pursuant to Title 61, Section 1-07(d) of the Rules of the City of New York ("the 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 public employer practice within the meaning of Section 12-306a of the New York City Collective Bargaining Law ("NYCCBL").¹ The NYCCBL does not provide a 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 the right to refrain from such activities.²

¹ NYCCBL §12-306a provides as follows:

Improper public employer practices. It shall be 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 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 See, e.g., Decision Nos. B-47-93; B-10-89; B-39-88; and B-38-87.

In the instant case, Petitioner has failed to state any facts which show that the Department violated any of the rights delineated in the NYCCBL. The gravamen of Petitioner's complaint is that his application for a service-related disability pension has been denied. The Board of Collective Bargaining lacks jurisdiction to consider such a claim.

Since the Petitioner has not stated any claim arising under the NYCCBL, the Petition herein shall be dismissed. Such dismissal is, of course, without prejudice to any rights that the Petitioner may have in any other forum.

DATED: New York, New York
September 11, 1997

/S/ WENDY E. PATITUCCI
Wendy E. Patitucci
Acting Executive Secretary
Board of Collective Bargaining