Marquez v. OLR, HRA & L. 1180, CWA, 61 OCB 29 (BCB 1998) [Decision No. B-29-98 (IP)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of Improper Practice Proceeding	:	
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-between-	:	
RICHARD MARQUEZ,	:	
Petitioner,	:	Decision No. B-29-98
-and-	:	Docket No. BCB-1711-95
OFFICE OF LABOR RELATIONS, HUMAN RESOURCES ADMINISTRATION AND COMMUNICATIONS WORKERS OF OF AMERICA, LOCAL 1180,	:	
Respondents,	:	

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DECISION AND ORDER

Richard Marquez (“petitioner”), filed a verified improper practice petition on January 3, 1995. The petitioner alleges the Office of Labor Relations (“OLR”), the Human Resources Administration (“HRA”), and Communications Workers of America, Local 1180 (“Union”), committed improper practices by suspending him for one week in October of 1992. The Union filed a verified answer on January 31, 1995, as did OLR on February 2, 1995. A verified reply was filed on August 13, 1996.

Background

The petitioner is employed at the Agency for Child Development as a Principal Administrative Associate. He was accused of threatening and shouting belligerently at his supervisor, Carmen Del Valle, who was speaking with one of the petitioner’s colleagues when she was allegedly interrupted by Marquez. The petitioner was suspended for seven

days in October of 1992. A grievance was filed and the Union represented the petitioner throughout the lower steps of the grievance procedure. The grievance was denied on January 6, 1994 at Step III. In a letter to the petitioner dated January 25, 1994, the Union's Staff Representative Joe Diesso, indicated that he chose not to pursue arbitration because he believed the testimony of eyewitnesses would lead an arbitrator to reach the same conclusion.

The petitioner appealed Diesso's decision not to arbitrate the grievance first to Diesso himself, then to the Vice President of the Union, Jan D. Pierce, and finally to the President of the Union, Morton Bahr. His appeal was based on the testimony of a new witness, the security guard on duty during the altercation. The security guard maintained in a signed statement that he did not witness nor was he notified of any threatening or unusual behavior, allegedly substantiating the petitioner's story. All of petitioner's appeals were denied in writing, the last by letter dated August 30, 1994, from President Bahr. The petitioner filed an improper practice petition against the Union and HRA on January 3, 1995.

Positions of the Parties

The Petitioner's Position

Marquez argues the petition was timely, pursuant to Title 61 of the Rules of the City of New York ("RCNY") §1-07(d), because it was filed on January 3, 1995, four months after his final appeal to the President of the Union was denied on August 30, 1994, including mailing days and the weekend. The petitioner believes the Union has breached its duty of fair representation

by failing to advance a grievance because it made a "bad faith" determination and overlooked the merits of his arguments. He contends the testimony of the Department's witnesses was contradictory, inconsistent and tainted, because two subordinates were testifying about the actions of their supervisor. The petitioner claims that his behavior was neither forceful nor threatening, and that the security guard supports his position.

As to the HRA, the petitioner asserts that an independent improper practice claim against the employer is both "valid and necessary". He contends that the severe disciplinary action taken by the HRA was a clear misuse of management prerogative. The result of the actions, he claims, is that he lost pay and had defamatory correspondence placed in his file.

The Union's Position

The Union contends the instant petition is both untimely and unwarranted. First, the Union asserts the petition was filed on January 9, 1995, exceeding the four-month period of limitations and making the petition untimely. The Union also argues the petition is unwarranted because the Union is not required to pursue all grievances to arbitration. It maintains that Diesso made a good faith determination not to pursue arbitration, after evaluating the testimony of the petitioner's coworkers, and the decision was neither arbitrary nor discriminatory.

The City's Position

The City maintains that the petitioner has not presented facts which make an arguable claim of improper practice[1]. In addition, it contends the petition is untimely because the four-

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[1]Section 12-306(a) of the New York City Collective Bargaining Law ("NYCCBL") provides, in relevant part: It shall be an improper practice for a public employer or its agents:

(continued...)

month period of limitation started on January 6, 1994, the day the Step III Hearing Officer issued his decision denying the petitioner's grievance. The City cites Board Decision Nos. B-35-92 and B-60-88 for the proposition the Board follows a strict policy of dismissing untimely petitions.

The City asserts that the Board lacks jurisdiction over the petitioner's claim that the Step III Hearing Officer improperly exercised his judgement. The appropriate resolution of such a controversy is through the mechanisms outlined in the collective bargaining agreement, namely the grievance procedure. The City also asserts that it has the right unilaterally to take disciplinary action, unless that right is limited by the collective bargaining agreement[2]. Here it argues, the collective bargaining agreement contains no such limitation.

Discussion

Upon review of the pleadings in this case, we find that the claim is barred by the four

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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]The City cites Decision Nos. B-35-80; B-1-89; B-61-89; B-3-88; B-16-90.

month period of limitations found in 61 RCNY §1-07(d)[3]. The petitioner does not dispute that the grievance was denied by the employer at Step III in January of 1994, or that he was informed of the Union's decision not to pursue arbitration, also in January of 1994. The petition, however, was not filed until January of 1995, almost a full year later. The mere fact that the petitioner continued to contact the Union concerning the matter cannot serve to toll the applicable period of limitations[4]. Requests for reconsideration, or the use of alternative means to redress perceived wrongdoing, do not toll the four-month filing period.[5] Accordingly, the instant petition is dismissed.

DECISION AND ORDER

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[3]Section 1-07(d) of the RCNY provides in relevant part, that:

> 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 §12-306 of the statute may be filed with the board within four (4) months thereof...

[4]Decision No. B-35-92

[5]Pietraszewski v. CSEA, 30 PERB 4510 (1997), wherein the hearing officer held that the petitioner's plea that CSEA's president review the matter did not toll the four-month filing period.

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 petition docketed as BCB-1711-95 be, and the same hereby is, dismissed.

Dated: New York, New York
July 30, 1998

STEVEN C. DeCOSTA
CHAIRMAN

GEORGE NICOLAU
MEMBER

DANIEL G. COLLINS
MEMBER

JEROME E. JOSEPH
MEMBER

ROBERT H. BOGUCKI
MEMBER

SAUL G. KRAMER
MEMBER

RICHARD A. WILSKER
MEMBER