

Overstreet v. NYCHA, L. 237, IBT, Jackson & Cratee, 61 OCB 37 (BCB 1998) [Decision No. B-37-98 (IP)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of the Improper Practice Proceeding :
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 between :
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 RAYMOND OVERSTREET, :
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 Petitioner, :
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 Decision No B-37-98 :
 Docket No. BCB-1653-94 :
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 and :
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 NEW YORK CITY HOUSING AUTHORITY, :
 :
 LOCAL 237, INTERNATIONAL BROTHERHOOD OF :
 :
 TEAMSTERS, NORRIS JACKSON, and PHIL CRATEE : :
 :
 Respondents. :
 :
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DECISION AND ORDER

On May 20, 1994, Raymond Overstreet (“Petitioner”) filed an improper practice petition alleging that City Employees Union Local 237, I.B.T. (“Union”) and two of its officers breached their duty of fair representation under §12-306(b)¹ of the New York City Collective Bargaining

¹ Section 12-306(b) of the New York City Collective Bargaining Law (“NYCCBL”) provides as follows:

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

- (1) to interfere with, restrain or coerce public employees in the exercise of rights granted in Section 12-305 of this chapter, or to cause, or attempt to cause, a public employer to do so;
- (2) to refuse to bargain collectively in good faith with a public employer on matters within the scope of collective bargaining provided the public employee organization is a certified or designated representative of public employees of such employer.

Section 12-305 of the NYCCBL provides, in relevant part:

Public employees shall have the right to self-organization, to form, join or assist public

(continued...)

Law. The petitioner also claims that the New York City Housing Authority (“Housing Authority”) discriminated against him on the basis of race.

The Union filed an answer on June 27, 1994 and the Housing Authority filed an answer on September 14, 1994. The Petitioner did not file a reply.

At a conference held on May 3, 1996, the parties agreed to explore settlement options. By letter dated November 18, 1996, the Trial Examiner assigned to the case inquired about the settlement talks. The petitioner left a message on November 22, 1996 that the case had not been settled. By letters dated December 8, 1997 and March 9, 1998, the Trial Examiner again inquired about the status of the case. By letter dated March 20, 1998, the Petitioner’s attorney advised that a settlement was not forthcoming and that the Petitioner wished to proceed to a hearing.

BACKGROUND

The Petitioner, an African-American, is a Maintenance Worker with the New York City Housing Authority. He was hired by the Housing Authority in 1972 and promoted to his present position in 1975. In April, 1992, the Petitioner was transferred from the Manhattan South work site to the Brooklyn East work site. The Petitioner claims his transfer was triggered by an altercation with a co-worker. According to the Petitioner, overtime work is available at the Manhattan work site but not in Brooklyn and he lost at least \$10,000 a year in overtime income.

The Union filed a grievance on the Petitioner’s behalf in 1992 and pursued it to Step III

¹(...continued)
employee organizations, to bargain collectively through certified employee organizations of their own choosing and shall have the right to refrain from any or all of such activities....

of the contractual grievance and arbitration procedure. When it was denied at Step III, the Union decided not to pursue the grievance to arbitration and informed the Petitioner of its decision in early 1993.

According to the Petitioner, he attempted to be reassigned to Manhattan until April 2, 1994, but each request was denied by Housing Authority management. In April, 1994, the Petitioner filed a complaint with the New York State Division of Human Rights against the Union and the Housing Authority that alleges the same facts and arguments as are set forth here, and which he incorporated by reference into the instant petition.

POSITIONS OF THE PARTIES

Petitioner's Position

In his complaint to the Office of Collective Bargaining, the Petitioner claims that the Union failed adequately to represent him because of “hostility on the part of the Union and its officials because he sought the services of a lawyer, and there was personal and political hostility between [the Petitioner] and the Union steward and representatives of the Union.” In the complaint to the Human Rights Commission, the Petitioner alleges that the Union “failed to seek redress for [the Petitioner] as provided for in the collective bargaining agreement and also failed to otherwise fairly represent [him] in connection with his transfer and his repeated inquiries and requests to be transferred back ... Said inquiries have been made repeatedly since April of 1992 through and including April 2, 1994.”

In his complaint to the Human Rights Commission, the Petitioner alleges that his transfer,

and the Housing Authority's failure to reassign him to Manhattan and award him overtime, were motivated by racial bias and claims that "white workers of a similar stature have not been, and are not, treated in the same fashion as [Petitioner] by either the Housing Authority or the Union." According to the Petitioner, the Union's failure to advocate on his behalf in the matter of the transfer is evidence of a conspiracy between the Housing Authority and the Union to keep him from returning to the Manhattan location, to reduce the amount of overtime he will accrue and to cause him mental anguish.

Union's Position

The Union claims that the petition is untimely and should be denied for failure to state a cause of action. It contends that it represented the Petitioner on at three meetings with representatives of the Housing Authority concerning his transfer and pursued the grievance on the petitioner's behalf through Step Three of the grievance procedure. After the grievance was denied, the Union informed the petitioner in early 1993 that it had decided not take the grievance to arbitration. Therefore, the Union argues, the instant claim should be denied because the Union rendered assistance to the Petitioner as he requested and the assistance was given fairly and in good faith.

City's Position

The City claims that the Petitioner has failed to state a cause of action and requests that the petition be dismissed.

DISCUSSION

We have consistently held that the four-month limitations period prescribed in § 1-07(d) of our Rules bars consideration of an untimely improper practice petition.² The Petitioner's grievance was denied at Step III in 1992 and he was informed early in 1993 that the Union chose not to pursue his grievance. Therefore, his petition, filed in 1994, is untimely. Neither continuing to contact the Union about the matter,³ nor requesting reconsideration or using other means to redress the complaint, will toll the limitations period.⁴ Accordingly, the instant improper practice petition is dismissed.

²Section 1-07(d) of the OCB Rules 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...

³Decision No. B-35-92.

⁴Decision No. B-29-98; *see also*, 30 PERB ¶ 4510 (1997).

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 petition docketed as BCB-1653-94 be, and the same hereby is, DISMISSED. Such dismissal, however, is without prejudice to any rights that Petitioner may have in any other forum. .

Dated: New York, New York
September 28, 1998 _____

STEVEN C. DeCOSTA
CHAIRMAN

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MEMBER

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