

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of the Improper Practice Proceeding :
: between :
: :
Moses L. Green, Jr., *pro se*, :
: :
: Petitioner, :
: :
and : Decision No. B-20-1999(ES)
: Docket No. BCB-2059-99
Robert Cassar, President, and Local 1182, :
Communications Workers of America and Office :
Of Labor Relations, :
: Respondents. :
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DETERMINATION OF EXECUTIVE SECRETARY

On May 10, 1999, Moses L. Green, Jr. (“Petitioner”), *pro se*, filed a verified improper practice petition against Local 1182, Communications Workers of America (“Union”), its president, Robert Cassar, and the New York City Office of Labor Relations (“City”). The Petitioner alleged that the Union had committed improper practices within the meaning of Section 12-306 of the New York City Collective Bargaining Law (“NYCCBL”).¹

¹ The Petitioner alleges violations of § 12-306, subsections a.1-5, b.1-3 and c.1-5 of the NYCCBL.

NYCCBL § 12-306 provides, in relevant part:

a. 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;

(continued...)

The Petitioner is employed as a Traffic Enforcement Agent by the New York City Department of Transportation and is a member of a bargaining unit represented by the Union. He was suspended on October 30, 1998 and December 1, 1998 for refusing to report to in-patient treatment for alcohol abuse. According to the Petitioner, he told his employer on both instances, and Cassar and other Union officials on December 1, 1998, that he does not need treatment for alcohol abuse. It is his contention that there has never been an on-the-job incident which

¹(...continued)

- (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;
- (5) to unilaterally make any change as to any mandatory subject of collective bargaining or as to any term and condition of employment established in the prior contract, during a period of negotiations with a public employee organization as defined in subdivision d of section 12-311 of this chapter.

b. 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;
- (3) to breach its duty of fair representation to public employees under this chapter.

c. Good faith bargaining. The duty of a public employer and certified or designated employee organization to bargain collectively in good faith shall include the obligation:

- (1) to approach the negotiations with a sincere resolve to reach an agreement;
- (2) to be represented at the negotiations by duly authorized representatives prepared to discuss and negotiate on all matters within the scope of collective bargaining;
- (3) to meet at reasonable times and convenient places as frequently as may be necessary, and to avoid unnecessary delays;
- (4) to furnish to the other party, upon request, data normally maintained in the regular course of business, reasonably available and necessary for full and proper discussion, understanding and negotiation of subjects within the scope of collective bargaining;
- (5) if an agreement is reached, to execute upon request a written document embodying the agreed terms, and to take such steps as are necessary to implement the agreement.

* * *

warranted his referral for substance abuse treatment and his employer has never complained of any inability on his part to perform his job. The Petitioner says that the Union failed adequately to represent him against allegations that he has a substance abuse problem.

The Petitioner says that he discovered in October, 1997, that the Union had conspired with the City by maliciously failing to inform its membership that they had the right to protest a merger with the New York City Police Department (“NYPD”) and, by so doing, had assisted the City in reducing staff. When the merger took place, he says, Cassar and the Union fraudulently told the membership that they were subject to the rules and regulations of the Police Department, which caused 300 members to lose their jobs.

The Petitioner also maintains that Cassar and the Union wrongfully caused the death of a bargaining unit member, Ramona Davis, who died on February 12, 1998. He says that Davis was denied sick leave by the NYPD under rules that the Union and its officials knew did not apply to Davis at the time. When, in his capacity as shop steward, he told Cassar that Davis had been denied sick leave, the Petitioner asserts, Cassar told him that “management has the right to manage and they can deny sick leave.”

The petitioner seeks a number of remedies. They include the ability to protest the unit’s transfer to the NYPD; an investigation of Davis’ death; prosecution of Cassar and other Union officials for the wrongful death of Davis; reinstatement of terminated unit members with full back pay; replacement of Cassar and other Union officials; a \$50 million scholarship fund for each child of Ramona Davis; legal expenses; and \$30 million dollars for mental anguish, pain and suffering.

Pursuant to Title 61, Section 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 is untimely on its face as to the allegations that the Union failed in its duty to represent bargaining unit members. Under §1-07(d) of the OCB Rules, a claim alleging conduct in violation of Section 12-306 of the NYCCBL must be filed within four (4) months of the date the alleged improper practice occurred. In the instant case, such allegations include the Union's alleged failure to investigate the circumstances of the Petitioner's two suspensions in 1998; the Union's alleged conspiracy to deprive unit members of their jobs by withholding information in 1997; and the Union's alleged failure to investigate denial of sick leave to Ramona Davis before her death in 1998. None of these actions are alleged to have occurred within four months of the date that the Petitioner filed this petition.

The Petitioner's other allegations must be dismissed because they relate to claims, such as wrongful death, which are outside the jurisdiction of this Board. 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. They do not, however, extend to criminal or other civil statutes.

Accordingly, for the foregoing reasons, the petition must be dismissed. Dismissal, of course, is without prejudice to any rights the Petitioner may have in another forum.

Dated: New York, New York
July 1, 1999

Victoria A. Donoghue
Executive Secretary
Board of Collective Bargaining