

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of the Improper Practice
Proceeding :

-between- : DECISION NO. B-21-1999 (ES)

CHARLES V. RETTY, : DOCKET NO. BCB-2055-99

Petitioner, :

-and- :

SEIU, LOCAL 246, AFL-CIO and the
DEPARTMENT OF SANITATION :

Respondents. :

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DETERMINATION OF EXECUTIVE SECRETARY

On April 14, 1999, Charles V. Retty ("Petitioner") filed a verified improper practice petition pursuant to Sections 12-306 of the New York City Collective Bargaining Law ("NYCCBL"), naming Local 246, SEIU ("Local 246") and the New York City Department of Sanitation ("Department") as Respondents.¹ In the petition, Retty alleges that he is entitled to a

¹ NYCCBL §12-306 provides, in pertinent part, as follows:

Improper practices; good faith bargaining.

* * *

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

* * *

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

* * *

d. Joinder of parties in duty of fair representation cases. The public employer shall be made a party to any charges filed under paragraph three of subdivision b of this section which alleges that the duly certified employee organization breached its duty of fair representation in the processing of or failure to process a claim that the public employer has breached its

night differential under a Comptroller's Consent Determination, even though a 1995 side agreement changed the provision for Petitioner's title so as to exclude him from coverage. Retty alleges "discrimination" in that a select portion of employees (including Petitioner) were eliminated from entitlement to night differential in the 1995 side agreement and "no vote was ever taken."

In support of his claim, Petitioner attaches a copy of a grievance that he filed on March 12, 1999, which sets forth the nature of his grievance as follows:

Violation of contract, which states 10% night differential shall be paid for hours worked between 4:00 p.m. and 8:00 a.m.

On October 1, 1995, my night differential was stopped. On several occasions I questioned management and union officers and have been misled into believing that I was not entitled to receive n[ight] d[ifferential]. Finally after receiving a copy of my contract and doing research I believe that I have always been entitled to it. At this time, 3/11/99, I am owed over \$4,000.00 plus interest.

Petitioner also attaches a copy of a letter which was written in response to his grievance, from Jack Friedman, President of Local 246. Friedman states:

Your grievance delivered to my office last Monday, March 15, 1999, appears to infer that the union with management, misled you concerning [night differential].

You know that this is not the case. No Local 246 Officer ever misled you on this or any other issue. However, inasmuch as you have seen fit to allege improper actions on the part of the Union Officers, the possibility of conflict of interest arises. I suggest that you pursue this on your own. Although I disagree with your grievance, I will forward your grievance to Gene Egan, [the Department's Director of Labor Relations], with a letter stating that all his responses be sent to you with a copy to the Union.

As a former Union Official I find it hard to believe that you were unaware

agreement with such employee organization.

of what was done. Clearly, you benefitted from it as is evidenced by the fact that you asked us to present the grievance on your final day of work.

Pursuant to 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 the improper practice claim must be dismissed because it is untimely on its face. Section 1-07(d) provides that an improper practice petition must be filed within four months of the alleged violation. Here, the gravamen of the complaint is Petitioner's alleged loss of entitlement to a night differential, which he states he stopped receiving on October 1, 1995. Almost three and one-half years later, Petitioner filed a grievance and then this improper practice petition claiming, in the former, that he was "misled" into believing that he was not entitled to night differential and, in the latter, that employees in his title were "discriminated" against in 1995. Clearly, even if Petitioner's allegation of discrimination constituted a *prima facie* claim of improper practice, the claim is untimely.

As for Petitioner's grievance, the dispute concerns the interpretation and application of a Comptroller's Consent Determination and the 1995 side agreement. This is a dispute which appropriately may be resolved through the grievance procedure; it is not a matter which can be determined by the Board of Collective Bargaining.² To the extent Retty claims that Local 246 "would not represent [him]" in his grievance, this allegation is, at best, premature. There is no

² Section 205.5(d) of the Taylor Law, which is applicable to this agency, provides that:

"...the board shall not have authority to enforce an agreement between a public 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."

dispute that Friedman forwarded Petitioner's grievance to the Department for handling. I note that Petitioner states that he received a response from the Department but does not indicate either the outcome of the grievance or its current status.

For these reasons, the improper practice petition is dismissed in its entirety. Of course, dismissal is without prejudice to any rights Petitioner may have in any other forum.

Dated: July 1, 1999
New York, N.Y.

Victoria A. Donoghue
Executive Secretary
Board of Collective Bargaining