

Selby v. L. 1182, CWA & DOS, 63 OCB 29 (BCB 1999) [Decision No. B-29-99 (IP)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING
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In the Matter of the Improper Practice
Proceeding :

-between- :

Dennis Selby, :

DECISION NO. B-29-1999(ES)

Petitioner, :

DOCKET NO. BCB-2076-99

-and- :

C.W.A. Local 1182 and Department of
Sanitation, :

Respondents. :

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DETERMINATION OF EXECUTIVE SECRETARY

On August 2, 1999, Dennis Selby ("Petitioner") filed a verified improper practice petition pursuant to 12-306 of the New York City Collective Bargaining Law ("NYCCBL"),¹ naming Local 1182 of the Communications Workers of America and the New York City Department of Sanitation as Respondents. In his petition, Petitioner set forth the statement of the nature of the controversy as follows:

CWA WAS NOTIFIED WHEN I WAS OBTAINED IN THE CUSTODY OF NEW YORK CITY DEPT OF CORRECTIONS, BUT FAILED TO GIVE ME REPRESENTATION DUE TO CWA ADVISING ME THAT I DID NOT CONTACT THEM. I SPOKE TO THE CHIEF EXEC/ADMIN RUTH.

Pursuant to Title 61, §1-07(d) of the Rules of the City of New York ("RCNY"), a copy of

¹ NYCCBL §12-306(a) prohibits improper public employer practices; NYCCBL §12-306(b) prohibits improper public employee organization practices.

which is annexed hereto, the undersigned has reviewed the petition and has determined that it does not meet the minimum pleading requirements set forth in the rules of the Office of Collective Bargaining. RCNY §1-07 provides, in pertinent part, as follows:

(e) Petition-contents. A petition filed pursuant to §§1-07(b), (c) or (d) shall be verified and shall contain:

- (1) The name and address of the petitioner;
- (2) The name and address of the other party (respondent);
- (3) A **statement of the nature of the controversy**, specifying the provisions of the statute, executive order or collective agreement involved, and any other relevant and material documents, dates and facts. If the controversy involves contractual provisions, such provisions shall be set forth;
- (4) Such additional matters as may be relevant and material.
[Emphasis added.]

The "statement of the nature of the controversy" referred to in RCNY §1-07(e)(3) above should consist of a clear and concise statement of the facts constituting the alleged improper practice and should include, but not be limited to, the names of the individuals involved in the particular act alleged and the date and place of occurrence of each particular act alleged. The statement may be supported by attachments which are relevant and material but can not consist solely of such attachments. The mere allegation of a breach of the duty of fair representation, in lieu of a concisely stated charge setting forth factual allegations, including dates, which, if established, might constitute a violation of the NYCCBL, does not satisfy the requirements of the RCNY.

For the above reasons, the petition must be dismissed as procedurally defective. Dismissal of the petition, however, is without prejudice to resubmission of a petition for reconsideration by the Executive Secretary which does satisfy the minimum pleading

requirements set forth in RCNY §1-07(e), within ten (10) days upon receipt of this determination. In the event the Petitioner does so, the charge(s) will be timely only as to conduct which occurred within four months of August 2, 1999, the date that the instant petition was filed with the Office of Collective Bargaining.

Dated: New York, New York
August 12, 1999

Wendy E. Patitucci
Acting Executive Secretary
Board of Collective Bargaining