

Olzewski v. DOS & L. 831, 63 OCB 37 (BCB 1999) [Decision No. B-37-99 (ES)]

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

-between- :

Anthony Olzewski, :

Petitioner, :

-and- :

New York City Department of Sanitation
and Local 831, :

Respondents. :

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DECISION NO. B-37-1999(ES)

DOCKET NO. BCB-2084-99

DETERMINATION OF EXECUTIVE SECRETARY

On August 23, 1999, Anthony Olzewski ("Petitioner") filed a verified improper practice petition pursuant to 12-306 of the New York City Collective Bargaining Law ("NYCCBL"),¹ naming the New York City Department of Sanitation and Local 831, Uniformed Sanitationmen's Association, IBT, as Respondents. As to the nature of the controversy, the Petitioner lists numerous complaints against the employer. He states that he was charged with violating three sections of the departmental code of conduct and that he "was deprived of his rights in that he never received a copy of the complaint against him." Furthermore, the Petitioner alleges that he was not given "proper notice of [his] trial, in that he was notified the same day of trial, giving inadequate time to prepare a defense." He further complains that no hearing was held and that he

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

was deprived of due process “because the charges were upheld.”

Pursuant to Title 61, §1-07(d), of the Rules of the City of New York, a copy of which is annexed hereto, the undersigned has reviewed the petition and has determined that it does not allege facts sufficient as a matter of law to constitute an improper practice within the meaning of § 12-306 of the NYCCBL. The NYCCBL does not provide a remedy for every perceived wrong or inequity. Its provisions and procedures are designed to safeguard the rights of public employees set forth therein, *i.e.*, the right to bargain collectively through certified public employee organizations, and the right to refrain from such activities.

The Petitioner has failed to state any facts which show that the City violated any of the rights delineated in the NYCCBL. The Petitioner’s claims against the employer concern a disciplinary matter and the conduct of the administrative process disposing of it. Absent an allegation that the City’s actions were intended to, or did, affect rights protected under § 12-306a of the NYCCBL, the Petitioner’s claims do not fall within the jurisdiction of the Board of Collective Bargaining.

With respect to the Union, § 12-306b(3) of the NYCCBL, the duty of fair representation, requires a union to treat all members of the bargaining unit in an evenhanded manner and to refrain from arbitrary, discriminatory and bad faith conduct.² A union breaches its duty of fair representation if it fails to act fairly, impartially and in a nonarbitrary manner in negotiating,

² See, e.g., *Mari Anne Hug v. Patrolmen’s Benevolent Association of the City of New York and the City of New York*, Decision No. B-5-91 at 19.

administering and enforcing collective bargaining agreements.³ I find that the Petitioner has neither alleged nor offered any evidence to show that the Union herein treated him in an arbitrary, discriminatory or bad faith manner.

Since the Petitioner has not stated any claims arising under the NYCCBL, the petition herein shall be dismissed. Such dismissal is, of course, without prejudice to any rights that the Petitioner may have in any other forum.

Dated: New York, New York
September 3, 1999

Wendy E. Patitucci
Acting Executive Secretary
Board of Collective Bargaining

³ See, e.g., *Howard Bowers v. Local 237, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, AFL-CIO*, Decision No. B-56-90 at 5.

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