McCartney v. L. 1320, DC 37 & DEP & OLR, 65 OCB 1 (BCB 2000) [Decision No. B-1-2000 (IP)]

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In the Matter of the Improper Practice Proceeding :

-between-

Steven C. McCartney, *pro se* : Decision No. B-1-2000 (ES)

Petitioner, : Docket No. BCB-2099-99

-and-

District Council 37, Local 1320 & The Department of Environmental Protection / Office of Labor Relations

:

Respondent.

DETERMINATION OF EXECUTIVE SECRETARY

On October 19, 1999, Steven C. McCartney, *pro se* ("Petitioner") filed a verified improper practice petition pursuant to 12-306 of the New York City Collective Bargaining Law ("NYCCBL"), in which he named the District Council 37, Local 1320 ("Union"), the Department of Environmental Protection ("DEP") and the Office of Labor Relations ("OLR") as Respondents. As to the nature of the controversy, the Petitioner alleges "Neglect, delay and misrepresentation." As a remedy, Petitioner requests that he recover any lost wages.

Pursuant to Title 61, §1-07(d), of the Rules of the City of New York ("RCNY"), a copy of which is annexed hereto, the undersigned has reviewed the petition and has determined that it does

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

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 cannot consist solely of such attachments. The mere allegation of "neglect, delay and misrepresentation," 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 October 19, 1999, the date that the instant petition was filed with the Office of Collective Bargaining.

Dated: New York, New York January 5, 2000

Victoria A. Donoghue Executive Secretary