

Sanchez v. Woolery-Johnson, Levinson & Lebron @ Lincoln Hosp., 65 OCB 25 (BCB 2000)
[Decision No. B-25-2000 (ES)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

-----X
In the Matter of the Improper :
Practice Proceeding :
 :
-between- :
 :
Robert Sanchez, :
 :
Petitioner, :
 :
-and- :
 :
Woollery-Johnson, Lewis Levinson, and :
Reggie Lebron, of the Lincoln Hospital :
Mental Health Center, :
 :
Respondents. :
 :
-----X

DECISION NO. B-25-2000 (ES)
DOCKET NO. BCB-2141-00

DETERMINATION OF EXECUTIVE SECRETARY

On July 3, 2000, Robert Sanchez ("Petitioner") filed a verified improper practice petition pursuant to § 12-306 of the New York City Collective Bargaining Law ("NYCCBL"),¹ naming Woollery- Johnson, Lewis Levinson, and Reggie Lebron of the Lincoln Hospital Mental Health Center ("Lincoln Hospital"), as Respondents. In his petition, Petitioner alleges violations of §§ 12-305, 12-306, and 12-311 of the NYCCBL. As to the nature of the controversy, Petitioner sets forth numerous allegations dating back to 1998. According to the Petitioner, he won an out-of-title grievance in October 1998 was awarded back pay and a promotion. In December 1998, Petitioner alleges, he was asked to fill out a Background Investigation Questionnaire even though he was a ten

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

year tenured employee. He received the back pay due to him on January 21, 1999, and on that same day Ms. Woollery-Johnson rejected the submission of his questionnaire and told him that his promotion had been rescinded.

On June 6, 1999 he submitted a second grievance alleging that he was again performing out-of-title work. Thereafter, Petitioner alleges, he was denied easy access to his time sheet because it was placed in a locked room. He states that he has been complaining continuously about this situation since 1999. He also alleges that he has been subjected to an additional mid-year performance evaluation as of August, 1999. In a Step II decision dated March 11, 2000, Petitioner alleges, he was once again awarded back pay for performing out-of-title duties . Petitioner alleges that Lincoln Hospital refuses to pay the back pay ordered.

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 the improper practice claim asserted therein is untimely on its face. Under RCNY § 1-07(d), a petition alleging that a public employer or a public employee organization has engaged in an improper practice in violation of § 12-306 of the NYCCBL must be filed with the Office of Collective Bargaining (“OCB”) within four months of the date the alleged improper practice occurred.

In the present case, most of the Petitioner’s complaints arise out of incidents that occurred, at the latest, in August, 1999. Accordingly, the four month statute of limitations period began running in August 1999. Because the petition was not filed until July 3, 2000, it was untimely. The most recent allegation in the petition concerns the March 11, 2000 Step II grievance decision. While this allegation falls within the statute of limitations, Petitioner alleges, essentially, a violation of the

parties' collective bargaining agreement, *i.e.*, a refusal to comply with a decision made at Step II of the contractual grievance procedure. The Board of Collective Bargaining has determined that a claim of contract violation which does not otherwise state a claim of improper practice may be raised only through the parties' contractual grievance and arbitration process.² Petitioner has given no indication that Respondent's alleged refusal to pay what is owed him is in violation of § 12-306 of the NYCCBL.

Accordingly, the improper practice petition is dismissed in its entirety. Such dismissal is, of course, without prejudice to any rights Petitioner may have in any other forum.

Dated: New York, New York
August 14, 2000

Victoria A. Donoghue
Executive Secretary
Board of Collective Bargaining

² Decision Nos. B-6-93; B-23-91; B-55-87; B-17-86.