Buksha v. Kerik & DOC, 65 OCB 28 (BCB 2000) [Decision No. B-28-2000 (IP)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

In the Matter of the Improper Practice Proceeding -between- Lynne Buksha, *pro se* Petitioner, -and- Bernard Kerik, Commissioner, and New York City Department Of Correction, Respondent.	Decision No. B-28-2000 Docket No. BCB-2123-00
In the Matter of the Improper Practice Proceeding -between- Lynne Buksha, *pro se* Petitioner, -and- Correction Officers Benevolent Association and Office of Labor Relations, Respondent.	Docket No. BCB-2124-00

DECISION AND ORDER

On March 10, 2000, Lynne D. Buksha, *pro se* ("Petitioner") filed two verified improper practice petitions: one against the New York City Department of Corrections ("DOC"), its Commissioner, Bernard Kerik, and one against the Correction Officers Benevolent Association ("COBA"), and the New York City Office of Labor Relations ("City") alleging violations of §12-

306(a) and (b) of the New York City Collective Bargaining Law ("NYCCBL").[1] The petitions were consolidated for decision. The Petitioner alleged that COBA breached its duty of fair representation in its handling of disciplinary charges that were brought against her. As to the DOC, Petitioner complains that she was deprived of due process. As a remedy, Petitioner seeks reinstatement with full back pay and requests that her union dues be refunded.

Pursuant to Title 61, §1-07(d), of the Rules of the City of New York ("RCNY"), the Executive Secretary of the Board of Collective Bargaining ("BCB") reviewed the petition and determined that the charge of inadequate representation was untimely. Accordingly, in a

---

[1] NYCCBL §12-306 provides, in pertinent part:
(a) Improper public employer practices. It shall be an improper practice for a public employer or its agents:
(1) to interfere with, restrain or coerce public employees in the exercise of their rights granted in section 12-305 of this chapter;
(2) to dominate or interfere with the formation or administration of any public employee organization;
(3) to discriminate against any employee for the purpose of encouraging or discouraging membership in, or participation in the activities of, any public employee organization;
(4) to refuse to bargain collectively in good faith on matters within the scope of collective bargaining with certified or designated representatives of its public employees;
(5) to unilaterally make any changes as to any mandatory subject of collective bargaining or as to any term and condition of employment established in the prior contract, during a period of negotiations with a public employee organization as defined in subdivision d of section 12-311 of this chapter.

(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.

determination dated March 29, 2000, the petition was dismissed.[2]

The determination was served upon the petitioner by certified mail on April 6, 2000. A copy of §1-07 (d) of the RCNY was attached to the determination. On April 11, 2000, the petitioner filed this appeal.

THE PETITION

The Petitioner has been employed as a Correction Officer by the DOC and is a member of the bargaining unit represented by COBA. She was suspended from her duties as of April 22, 1998 for violating the rules and regulations regarding an authorized visit of an inmate at Ossining State Correctional Facility. On April 24, 1998, Steven Isaacs, an attorney hired by COBA, wrote a letter to Luis Burgos, EEO Director, on Petitioner's behalf appealing her suspension. Petitioner maintains that the charges brought against her were false and that she was deprived of due process because no investigation was conducted concerning the allegations of misconduct.

A meeting was scheduled to take place on May 10, 1999, between Israel Rexach, Vice President of COBA, and the Petitioner, but Mr. Rexach did not keep the appointment. Furthermore, Mr. Rexach did not return Petitioner's repeated phone calls.

The petitioner requested that State Assemblyman Nelson A. Denis write a letter to COBA's President, Norman Seabrook, on her behalf. The letter stated that the Petitioner was never afforded the opportunity to rebut the charges brought against her at an informal hearing and urged Mr. Seabrook to investigate the matter. Petitioner states that no response was ever received in connection with this letter.

---

[2] Decision No. B-7-2000(ES).

EXECUTIVE SECRETARY'S DETERMINATION

In Decision No. B-7-2000(ES), the Executive Secretary found that the petition was untimely on its face as to the allegations that the Union failed in its duty to represent the Petitioner. Pursuant to Title 61, §1-07(d) of the RCNY, a claim alleging conduct in violation of §12-306 of the NYCCBL must be filed within four (4) months of the date the alleged improper practice occurred. In the instant case, such allegations included the Union's alleged failure to investigate the charges of misconduct.

According to documentation submitted by the Petitioner, it was evident that the Petitioner was suspended from her duties as of April 22, 1998. The Executive Secretary also found that the Petitioner had an appointment to meet with Mr. Rexach on May 10, 1999, but that Mr. Rexach did not keep that appointment. Therefore, "the Petitioner was suspended nearly two years before she filed the instant petition and the Union's representation of her allegedly was problematic close to a year before the petition was filed." On these grounds, the Executive Secretary concluded that the petition was filed outside the four-month limitations period.

THE APPEAL

By letter dated April 11, 2000 and filed with the OCB on April 12, 2000, the Petitioner sought to appeal Decision No. B-7-2000(ES). The Petitioner argues that her petition is timely because State Assemblymen Denis' letter dated December 28, 1999, "verifies that the Petitioner's complaint was processed within the four month period, from [her] last day of

employment, September 12, 1999."[3]

DISCUSSION

We have reviewed the record that was before the Executive Secretary and find that the two improper practice petitions which were filed on March 10, 2000 were untimely. The Petitioner's reliance on Assemblyman Denis' letter of December 28, 1999 is misplaced. The Petitioner erroneously believes that her petition is timely because Assemblyman Denis' letter was written within four months of her last day of employment. Even assuming the Executive Secretary was aware of the fact that Petitioner's final day of employment was September 12, 1999, Assemblyman Denis' letter of December 28, 1999 does not serve to toll the statute of limitations. For the petitions to have been timely filed, they, not Denis' letter, would have had to have been filed within four months of the date of the alleged improper practice. Thus, we find that the dismissal of the improper practice petition on timeliness grounds was correct.

ORDER

Pursuant to the powers vested in the Board of Collective Bargaining by the New York

[3] Petitioner's letter of April 11, 2000 appealing the Executive Secretary's Decision was the first time the Board learned that Petitioner's employment was terminated on September 12, 1999.

City Collective Bargaining Law, it is hereby,

ORDERED, that the appeal filed by Lynne Buksha, and the same hereby is, denied; and it is further

ORDERED, that the determination of the Executive Secretary in Decision No. B-7-2000(ES) be, and the same hereby is, confirmed.

Dated: September 7, 2000
New York, New York

MARLENE A. GOLD
CHAIR

DANIEL G. COLLINS
MEMBER

CHARLES G. MOERDLER
MEMBER

BRUCE H. SIMON
MEMBER

RICHARD A. WILSKER
MEMBER