

Benenati v. Dept' of Sanitation & NYCERS, 67 OCB 7 (BCB 2001) [Decision No. B-7-2001 (IP ES)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

-----X
In the Matter of the Improper Practice Proceeding

-between-

KENNETH BENENATI,

Decision No. B-7-2001 (ES)
Docket No. BCB-2185-01

Petitioner,

-and-

DEPARTMENT OF SANITATION & NYCERS,

Respondents.

-----X

DETERMINATION OF EXECUTIVE SECRETARY

On January 30, 2001, Kenneth Benenati, *pro se*, filed a verified improper practice petition pursuant to Section 12-306 of the New York City Collective Bargaining Law (New York City Administrative Code, Title 12, Chapter 3) ("NYCCBL"), against the Department of Sanitation and the New York City Employees Retirement System ("NYCERS") (jointly "Respondents"). Petitioner alleges that at his disability retirement hearing, he was not permitted to present testimonial or documentary evidence about an accident that he had on the job. Respondents would not pay for any doctor bills. Petitioner claims that originally someone at NYCERS told Petitioner to go to the Workers' Compensation Board, which notified him months later that he should return to NYCERS, and thus Petitioner also lost time. As a remedy, Petitioner requests that he have a Line-of-Duty Injury ("LODI") award hearing to present evidence of his accident and disability.

Pursuant to § 1-07(d) of the Rules of the Office of Collective Bargaining (Rules of the City of New York, Title 61, Chapter 1) (“OCB Rules”), a copy of which is annexed hereto, I have reviewed the petition and have determined that the claim asserted must be dismissed because it fails to state an improper practice under the Collective Bargaining Law.

Section 12-305 of NYCCBL reads in part:

Public employees shall have the right to self-organization, to form, join or assist public employee organizations, to bargain collectively through certified employee organizations of their own choosing and shall have the right to refrain from any or all of such activities.

NYCCBL § 12-306a provides, in relevant part:

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. . . .

The provisions and procedures of the NYCCBL are thus designed to safeguard the rights of public employees to organize and assist unions or to refrain from doing so.

For the Board of Collective Bargaining to find an improper practice – a violation of the rights in section 12-305 – a petitioner must allege with sufficient facts that a respondent committed at least one of the acts stated in section 12-306a. The Office of Collective Bargaining does not have jurisdiction over actions alleging employer wrongs or inequities that are not specifically defined as improper employer practices under that statute.

Petitioner here states that at his disability retirement hearing, he was not permitted to present evidence of any sort about a job-related accident. I note, incidentally, that the hearing was conducted by NYCERS, not Petitioner's employer (the Department of Sanitation). In any event, Petitioner does not assert that the alleged violation was intended to, or did, affect any of the rights protected by section 12-306a of NYCCBL. Since the petition does not appear to involve interference with Petitioner's union activities, if any, or discrimination against him because of possible union activities, the matter is not within OCB's jurisdiction and must be dismissed.

Petitioner may, of course, pursue any rights he has in a different forum.

Dated: New York, New York
February 6, 2001

Steven C. DeCosta
Acting Executive Secretary