

Miller v. Goldstein (HHC) & Roberts (L. 1549, DC 37), 69 OCB 14 (BCB 2002) [Decision No. B-14-2002 (ES)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of the Improper Practice Proceeding

-between-

EDDIE L. MILLER,

Petitioner,

Decision No. B-14-2002 (ES)
Docket No. BCB-2284-02

-and-

HAROLD GOLDSTEIN, HEALTH AND HOSPITALS
CORP. AND LILLIAN ROBERTS, DISTRICT
COUNCIL 27, LOCAL 1549

Respondents.

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DETERMINATION OF EXECUTIVE SECRETARY

On May 1, 2002, Eddie L. Miller, *pro se* (“Petitioner”), filed a verified improper practice petition pursuant to the New York City Collective Bargaining Law (New York City Administrative Code, Title 12, Chapter 3) (“NYCCBL”), alleging that the Health and Hospitals Corporation (“HHC”) suspended him without pay effective June 25, 2001, in violation of the Civil Service Law. Moreover, by letter dated November 7, 2001, Petitioner alleges that he was dissatisfied with the manner in which District Council 37 (“Union”) attorneys were representing him over this suspension and that as a result, he chose to represent himself at the Office of Administrative Trials and Hearings (“OATH”) on November 15, 2001. After the OATH hearing, Administrative Law Judge Rosemarie Maldonado recommended that Petitioner be suspended for 60 days without pay. Petitioner objects to the report and recommendation and seeks back pay.

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 determined that the claims asserted must be dismissed because they are untimely and, in any event, they fail to state a claim of an improper practice under the

NYCCBL. OCB Rule Section 1-07(d) provides, in pertinent part:

A petition alleging that a public employer or its agents or a public employee organization or its agents has engaged in or is engaging in an improper practice in violation of Section 12-306 of the statute may be filed with the Board within four (4) months thereof If it is determined . . . that the alleged violation occurred more than four (4) months prior to the filing of the charge, it shall be dismissed by the Executive Secretary

Since OCB received the improper practice petition on May 1, 2002, almost 13 months after Petitioner was suspended and more than seven months after he alleged that the Union breached its duty of fair representation, these claims are untimely under the provisions of OCB Section 1-07(d).

Second, the Board of Collective Bargaining's jurisdiction is limited to violations of the NYCCBL. The Board cannot determine alleged violations of the Civil Service Law or review the report and recommendation of an OATH Administrative Law Judge.

Third, even if Petitioner's claims regarding the Union's breach of a duty of fair representation were timely, it appears from the letter dated November 7, 2001, that the Union offered to represent Petitioner at the OATH hearing but that he choose to represent himself.

In summary, since Petitioner has not alleged that either HHC or the Union committed acts in violation of the NYCCBL within four months of the filing of the instant improper practice petition, the petition is dismissed. Dismissal of the petition is without prejudice to any rights that Petitioner may have in another forum.

Dated: New York, New York
May 14, 2002

Alessandra F. Zorghiotti
Executive Secretary