

L. 237, IBT v. DHS, 69 OCB 15 (BCB 2002) [Decision No. B-15-2002 (ES)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of the Improper Practice Proceeding

-between-

CITY EMPLOYEES UNION, LOCAL 237,
I.B.T., AFL-CIO

Decision No. B-15-2002 (ES)
Docket No. BCB-2282-02

Petitioner,

-and-

NEW YORK CITY DEPARTMENT OF HOMELESS
SERVICES,

Respondent .

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DETERMINATION OF EXECUTIVE SECRETARY

On April 18, 2002, the City Employees Union, Local 237 (“Union”), filed a verified improper practice petition alleging that the New York City Department of Homeless Services (“DHS”) violated §12-301(1), (2) and (3) of the New York City Collective Bargaining Law (New York City Administrative Code, Title 12, Chapter 3) (“NYCCBL”).¹ The Union claims that on October 25, 2001, Special Officer Fabre, a per diem employee, was summoned to the Office of

¹NYCCBL § 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. . . .

Investigator Ogedengbe, Division of Legal Affairs, to discuss her employment. Fabre requested that she be allowed to have a Union representative present during the meeting. Thereafter, Fabre was informed that the meeting was cancelled and would be rescheduled. On November 2, 2001, Fabre was terminated. Moreover, since then, DHS has refused to allow a Union representative to be present during disciplinary meetings with Per Diem Special Officers.

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, the undersigned has reviewed the petition and determined that the claims against DHS for denying Fabre Union representation at the October 25, 2001, meeting and her subsequent termination on November 2, 2001, are time-barred. 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 April 18, 2002, almost six months after Fabre was allegedly improperly denied Union representation and more than five months after she was terminated, these claims are untimely under the provisions of OCB Section 1-07(d).

With regard to the Union’s claim that DHS has continuously refused to allow a Union representative to be present during disciplinary meetings with Per Diem Special Officers, this claim is dismissed pursuant to OCB Rule § 1-07(e) which provides, in pertinent part:

A petition filed pursuant to §§ 1-07(b), (c) or (d) shall be verified and shall contain:

(1) The name, address, telephone number . . . 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 a clear and concise statement of the facts. . . . If the controversy involves an alleged improper practice, such statement shall include but not be limited to the names of the individuals involved in the particular act alleged and the date and place of the occurrence of each particular act alleged. . . . 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 OCB Rule § 1-07(e)(3) should consist of a clear and concise statement of the facts constituting the alleged improper practice and should include 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 that DHS has refused to allow a Union representative to be present during disciplinary meetings with Per Diem Special Officers, in lieu of a concisely stated charge setting forth factual allegations (including names, dates, and places), which, if established, might constitute a violation of the NYCCBL, does not satisfy the requirements of the OCB Rules. In other words, to satisfy the Rules, a statement should explain *who* committed the acts, *who* was denied Union representation, *what* were the circumstances surrounding the meeting where the Union representative was denied to be present, and *when* this occurred.

For the above reasons, the petition must be dismissed as to Fabre and dismissed as procedurally defective as to the allegation that the DHS has denied employees Union representation at disciplinary meetings. Dismissal of the procedurally defective portion of the petition, however, is without prejudice to Petitioner’s right to resubmit, within ten (10) business days after service of this determination, a petition that does satisfy the minimum pleading requirements set forth in OCB Rule § 1-07(e).² In the event that Petitioner does resubmit, the Executive Secretary will reconsider the petition, and the charge(s) will be timely only as to

² If such an amended petition is resubmitted, it must also comply with the other requirements of the OCB Rules, including verification and proof of service on the designated agent for the Respondent.

conduct which occurred within four months of April 18, 2002, the date that the instant petition was filed with the Office of Collective Bargaining.

Dated: New York, New York
May 14, 2002

Alessandra F. Zorghiotti
Executive Secretary