

Cooper, Jr. v. OLR & L. 1182, 69 OCB 4 (BCB 2002) [Decision No. B-4-2002 (IP)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of the Improper Practice Proceeding

-between-

KENNETH COOPER, JR.,
Petitioner,

Decision No. B-4-2002
Docket No. BCB-2254-01

-and-

NEW YORK CITY OFFICE OF LABOR RELATIONS
AND LOCAL 1182,

Respondents.

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DECISION AND ORDER

On November 27, 2001, Kenneth Cooper, Jr., *pro se* (“Petitioner”) filed a verified improper practice petition against the New York City Office of Labor Relations (“OLR” or “City”) and against Communications Workers of America, Local 1182 (“CWA” or “Union”) alleging violations of §12-306a and b of the New York City Collective Bargaining Law (New York City Administrative Code, Title 12, Chapter 3) (“NYCCBL”).¹ As to the nature of the

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

controversy against the City, Petitioner alleges that it was an “improper action to enforce a determination with the specifications in the charges so inaccurate and unclear with what I was being charged for.” The nature of the controversy with the Union is: “Misrepresentation and Negligence – Failure and neglecting to notify a union paying member of the next action to take after the Step III hearing. The specifications stated in the charges do not substantiate the allegation of falsifying a time card. The evidence is in the specifications.” Petitioner does not indicate in the petition what remedy he seeks. In his letter requesting appeal, Petitioner seeks to clear his name and to receive 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”), the Executive Secretary of the Board of Collective Bargaining reviewed the petition and determined that the charges of improper employer practice and inadequate representation were untimely. Accordingly, in a determination dated December 4, 2001, the petition was dismissed. *Cooper*, Decision No. B-47-2001(ES).

The determination was served upon the petitioner by certified mail on December 6, 2001. A copy of §1-07(d) of the OCB Rules was attached to the determination. On December 13, 2001, Petitioner filed this appeal.

THE PETITION

Petitioner had been employed as a Traffic Enforcement Agent, Level II, by the New York

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.

City Department of Transportation (“DOT”). According to a July 18, 1996, Step II Decision, the Division of Enforcement served Petitioner with disciplinary charges on January 26, 1995, and October 24, 1995. The conference leader at Step I determined that the charges were established and recommended that Petitioner be terminated for falsifying his time cards, in violation of the rules and regulations of DOT. At the Step II hearing, Petitioner was represented by James Huntley, Executive Vice-President of CWA, Local 1182. While the hearing officer, Gwendolyn T. Lewis, dismissed certain charges concerning emergency leaves of absence, she otherwise upheld the Step I determination. Citing Petitioner’s history of numerous disciplinary actions, the hearing officer confirmed the penalty of termination and set the date of July 26, 1996. The determination advised Petitioner of the right and the procedure to appeal.

Petitioner seems to maintain that he was deprived of due process because OLR acted improperly when it enforced a determination concerning inaccurate and unclear charges.

EXECUTIVE SECRETARY’S DETERMINATION

In Decision No. B-47-2001 (ES), the Executive Secretary found that the petition was untimely on its face as to the allegations (1) that the charges against him were unclear and the City’s actions were improper and (2) that the Union failed in its duty to represent Petitioner. Pursuant to OCB Rule §1-07(d), a claim alleging conduct in violation of §12-306 of the NYCCBL must be filed within four months of the date the alleged improper practice occurred. In the instant case, such claims included the Union’s supposed failure to notify Petitioner of the next action to take “after Step III.”

According to documentation submitted by Petitioner, he was terminated as of July 26,

1996. The petition included only a Step II, and not a Step III, determination. The Executive Secretary noted that even if there had been a Step III request or proceeding, Petitioner has not provided the Office of Collective Bargaining (“OCB”) with the date. The date of termination, the last date in the petition concerning this claim, is over five years before the November 27, 2001, filing of the instant verified petition. On this ground, the Executive Secretary concluded that the petition was filed outside the four month statute of limitations.

THE APPEAL

By letter dated December 12, 2001, Petitioner seeks to appeal Decision No. B-47-2001 (ES). Petitioner argues that from 1996 to 1999, he spoke with various members of the Union, including Robert Ceasar, James Huntley, and Joe Diesso, who advised Petitioner that he was terminated, and there was nothing he could do about the termination. Petitioner claims, therefore, that the Union was negligent in failing to inform him of the next action he should take.

Without providing dates, Petitioner also contends that he was on medical leave, and when he went to the Personnel Department at 40 Worth Street, he was surprised to learn of his termination. Several letters attached to the appeal indicate that on November 17, 2000, and on January 23, 2001, Petitioner wrote to the DOT seeking reinstatement after a leave of absence. On February 14, 2001, Philip Bibla of the Department of Citywide Administrative Services advised Petitioner to send copies of documents demonstrating his official leave of absence or termination. OCB has no information on any action thereafter.

DISCUSSION

We have reviewed the record that was before the Executive Secretary and find that the improper practice petition filed on November 27, 2001, was untimely. The original matter about which Petitioner complains occurred in 1996. Thus the Executive Secretary's determination correctly found that Petitioner's claim against the City concerns actions well beyond the four month statute of limitations. Similarly, Petitioner has not shown that the Union failed to respond to a specific request within the last four months. Between 1996 and 1999 he communicated with the Union regarding his termination. Yet he waited two and one-half years to file an improper practice claiming that the Union failed to represent him adequately. Such a length of time is well beyond the time limit to assert claims.

Petitioner may be attempting in his appeal to add allegations that the City failed to act on his request to reinstate him when he wrote to DOT in November 2000 and January 2001 and that the Union failed to assist him after the February 14, 2001, letter from Bibla. The purpose of an appeal is to determine the correctness of the Executive Secretary's decision based upon the facts that were available to her in the record as it existed at the time of her ruling. *See White*, Decision No. B-20-94 at 8-9; *Marrow*, Decision No. B- 54-90 at 4. A petitioner may not add new facts at a later date to attack the basis of her determination. At any rate, these allegations are also untimely since they occurred outside the four month statute of limitations. 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 City Collective Bargaining Law, it is hereby,

ORDERED, that the appeal filed by Kenneth Cooper, Jr., be, and the same hereby is, denied; and it is further

ORDERED, that the determination of the Executive Secretary in Decision No. B-47-2001 (ES) be, and the same hereby is, confirmed.

Dated: January 30, 2002
New York, New York

MARLENE A. GOLD
CHAIR

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