

Yovino v. Doherty (as Commissioner of Dep't of Sanitation), 69 OCB 8 (BCB 2002) [Decision No. B-8-2002 (ES)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of the Improper Practice Proceeding

-between-

MICHAEL YOVINO,

Decision No. B-8-2002 (ES)

Docket No. BCB-2278-02

Petitioner,

-and-

JOHN J. DOHERTY AS N.Y.C COMMISSIONER
OF SANITATION,

Respondent.

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DETERMINATION OF EXECUTIVE SECRETARY

On April 5, 2002, Michael Yovino, *pro se*, filed a verified improper practice petition against the Commissioner of the New York City Department of Sanitation. Petitioner alleges that based on *Olszewski v. Farrel*, No. 104718/01 (S.Ct. N.Y. Co. Dec. 12, 2001), he should be reinstated as a sanitation worker. Mr. Olszewski, who was allegedly terminated by the Department of Sanitation ("Sanitation") under similar circumstances as Mr. Yovino, was ordered reinstated by the Court based on a finding that Sanitation had improperly served him with the disciplinary charges which ultimately led to his termination. Mr. Yovino argues that the same method of service used in Olszewski's case was used when he was served with disciplinary charges and that as a result of the Court's ruling, the same remedy of reinstatement should be granted by the Board of Collective Bargaining.

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 claim asserted must be dismissed because it is untimely and, in any event, it fails to state a claim of an improper practice under the New York City Collective Bargaining Law (“NYCCBL”).

As evident from a prior improper practice petition filed by Mr. Yovino, BCB Docket No. BCB-2199-01, which is currently pending, his employment was terminated by Sanitation on November 9, 2000. Thus, had petitioner been improperly served with disciplinary charges, as alleged, this would have occurred prior to November 9, 2000.

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 5, 2002, almost 17 months after petitioner’s discharge, the allegations that Sanitation improperly served him with disciplinary charges which led to his termination, are untimely under the provisions of OCB Section 1-07(d).

Moreover, even if the petition were timely, it would be dismissed because improper service of disciplinary charges, while perhaps violative of some other statute, is not an improper practice under the NYCCBL. 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 designed to safeguard the rights of public employees to organize and assist unions or to refrain from doing so. The petition does not allege that Mr. Yovino was improperly served with disciplinary charges for any of the proscribed reasons enumerated in §12-306a. Therefore, even if Mr. Yovino's claim that he was improperly served with disciplinary charges were true, it is not an improper practice under the NYCCBL.

In summary, since Petitioner has not alleged that Respondent 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
April 25, 2002

Alessandra F. Zorghiotti
Executive Secretary