

Ziering v. L.420, DC37, et. al, 31 OCB 1 (BCB 1983) [Decision No. B-1-83]

OFFICE OF COLLECTIVE BARGAINING  
BOARD OF COLLECTIVE BARGAINING

-----X

In the Matter of

STEFAN ZIERING,	DECISION NO. B-1-83
Petitioner,	DOCKET NO. BCB-625-82
-and-	

CHIEF MEDICAL EXAMINER'S OFFICE;  
CITY OF NEW YORK HEALTH AND  
HOSPITALS CORPORATION; ROBERT WILLIS,  
Inspector JOHNNY GRIFFIN,  
Supervisor; AFL-CIO, DISTRICT COUNCIL 37,  
LOCAL 420,

Respondents.

-----X

**DECISION AND ORDER**

This proceeding was commenced on November 22, 1982,<sup>1</sup> by the filing of a verified improper practice petition by Mr. Stefan Ziering (hereinafter "petitioner"). Upon receipt of the petition, on December 17, 1982, the New York City Office of Municipal Labor Relations (hereinafter "OMLR" or "the City") filed a motion to dismiss on behalf of the Office of Chief Medical Examiner (hereinafter

---

<sup>1</sup> The petition was originally filed on November 15, 1982, but was not accepted because the petitioner failed to file proof of service as required by Section 7.6 of the Revised Consolidated Rules of the Office of Collective Bargaining (hereinafter "OCB Rules"). The petition was resubmitted with the requisite certificate of mailing on November 22, 1982, and was docketed as of that date.

"OCME"), the Health and Hospitals Corporation (hereinafter "HHC"), Inspector General Robert Willis and Supervisor Johnny Griffin.<sup>2</sup> In its motion, OMLR argues that Petitioner has failed to state a claim upon which relief can be granted in that no facts have been alleged which could form the basis of an improper employer practice pursuant to the New York City Collective Bargaining Law (hereinafter "NYCCBL"). On December 20, 1982, District Council 37 (hereinafter "DC 37" or "the Union") filed an answer in which it also sought dismissal of the, instant petition. Local 420, on December 21, 1982, submitted a letter in which it stated that it was never served with a copy of the instant petition. Local 420 also stated that none of its staff members have had any dealings with Petitioner. Ziering did not file a reply.

### **Background**

Petitioner describes the controversy as follows:

The Respondents have violated and con-

---

<sup>2</sup> Petitioner's Affidavit of Service gives no indication of service to either HHC or Local 420. Rather, service is claimed to have been made on November 22, 1982, on OCME, Griffin, Willis and DC 37, at OCME's address. In view of the apparent confusion regarding proper service and the delay caused thereby, the Trial Examiner handling the instant matter granted Respondents' separate requests for extensions of time in which to file responses.

tinue to violate Petitioner's rights  
under 42 U.S.C. §§1981, 1982, 1983,  
2000e et seq.; and Article 15, §296

of the Executive Law; in that Respondents discriminatorily terminated Petitioner under color of State law based on Petitioner's color, race and nationality.

That in furtherance of the above, and for its conspiracy of execution, the Respondents have failed to heed to administrative proceedings and jurisdictional bases as provided by New York law; have failed to negotiate in good faith; and have denied discovery of necessary documents, records and other papers to Petitioner.

That the acts complained of commenced on or about October, 1982.

In addition to urging that Petitioner fails to establish a prima facie case, OMLR argues that the above-cited allegations, even if true, do not constitute violations of the NYCCBL. It maintains that the City has no duty to bargain with Petitioner, who is neither a certified nor a designated collective bargaining representative of any City employees. OMLR submits that to negotiate directly with Petitioner would, in fact, amount to a violation of the NYCCBL.

The City also maintains that alleged violations of any law other than the NYCCBL are inappropriate for resolution by this Board. Furthermore, OMLR claims that service of the petition herein was insufficient and specifically alleges that Petitioner failed to effect

service of that pleading on HHC, Griffin and/or Willis, all of whom, we note, are named as parties in the heading of the petition.

DC 37 argues that the petition is so vague as to make it impossible to determine the factual basis for Ziering's complaint. However, upon information and belief, the Union states that Petitioner was a provisional Mortuary Technician whose employment was terminated when permanent employees in that job classification were appointed from a civil service examination list. DC 37 is unaware of Ziering having requested from the Union any documents relating to his termination.

DC 37 maintains that Petitioner has not alleged any facts whatsoever to demonstrate that the Union breached its duty to bargain in good faith. With regard to the aforementioned request for documents, the Union urges that Petitioner fails to meet the specificity requirements found in OCB Rule 7.5.<sup>3</sup> In this connection, it is claimed that

---

<sup>3</sup> OCB Rule 7.5 reads as follows:

§7.5 Petition-Contents. A petition filed pursuant to Rule 7.2, 7.3 or 7.4 shall be verified and shall contain:

- a. The name and address of the petitioner;
- b. The name and address of the other party (respondent);
- c. A statement of the nature of the controversy, specifying the provisions of the statute, executive order or collective agreement involved, and any other relevant and material documents, dates and facts. If the controversy involves contractual provisions, such provisions shall be set forth;
- d. Such additional matters as may be relevant and material.

Ziering failed: a) to allege that he actually requested any documents, papers or records from the Union; b) to describe the documents demanded; c) to state when such demand was made; or d) to state the response received. DC 37 urges that the failure to provide this specific information amounts to a failure to establish a prima facie case against the Union in this matter.

### Discussion

The instant petition is dismissed for several reasons. This Board's authority does not extend to the interpretation and administration of any statute other than the NYCCBL.<sup>4</sup> Allegations of violations of laws such as 42 U.S.C. §1983 as the central basis for claims of improper practice are misplaced; they cannot constitute the elements of a prima facie case of improper practice under the provisions of Section 1173-4.2 of the NYCCBL nor do they present an issue within the competence of this Board.

Petitioner herein has failed to specify any provision of the NYCCBL he claims to have been violated by Respondents. While it is well established Board policy

---

<sup>4</sup> Decision No. B-2-82.

that the OCB Rules are to be construed liberally,<sup>5</sup> requirements as to the information to be set forth in a petition must be met, at least to such extent as will assume that respondents' due process rights are protected and that the jurisdiction of this Board in a given matter may readily be ascertained. Rule 7.5 requires that respondents be made aware of the nature, though not necessarily the details, of petitioner's claim and be thus enabled to frame a response thereto.<sup>6</sup>

In the instant matter, Petitioner has pleaded in so vague a manner as to make it impossible for Respondents to be aware of the true nature of the controversy. Ziering alleges that he has been discriminated against by Respondents but does not state how this was accomplished; Petitioner claims that he was denied certain documents and records but fails to provide any details relating to the alleged denial. Respondents are thus unfairly put to the task of engaging in speculation and surmise in attempting to frame a response.

What can be gleaned from Petitioner's charges is an alleged refusal to bargain in good faith. NYCCBL Section 1173-4.2(c) pertains to the duty of a public employer and the certified or designated employee organization to bargain collectively in good faith. However,

---

<sup>5</sup> Decision Nos. B-5-74, B-9-76, B-8-77, B-23-82.

<sup>6</sup> Decision No. B-23-82.

under Section 1173-4.2(c), as it applies to the parties herein, the City is obligated to bargain collectively with DC 37 and vice versa. Petitioner has no standing as an individual to allege that this obligation, running between the Union and the City, has been violated.

As stated, Ziering also claims to have been discriminatorily discharged. Nonetheless, he fails to demonstrate how any action of either a City or Union representative was based upon motives prohibited by NYCCBL Section 1173-4.2<sup>7</sup> and interfered with the rights to organize and to bargain collectively (or to refrain from doing so) granted by Section 1173-4.1. The record herein is devoid of any objective evidence that Respondents under took any action which was intended to or did, in fact, interfere with or diminish Petitioner's rights under the NYCCBL. In the absence of a showing of discriminatory intent to interfere with protected activity, we cannot find that a violation of the NYCCBL has been stated.

We note that Ziering declined either to oppose or to reply to OMLR's motion to dismiss and/or to the Union's answer. He therefore did not take advantage of the opportunity to correct the deficiencies of the petition explicitly identified by Respondents. We also take

---

<sup>7</sup> NYCCBL Section 1173-4.2(a) and (b) pertain to improper public employer and public employee organization practices, respectively.



administrative notice of the fact that OCME is part of the New York City Department of Health as distinguished from HHC, so that regardless of the adequacy of service, HHC is not a proper party to this proceeding.

For the above reasons, we hold that the petition fails effectively to allege any improper practice and therefore must be dismissed.

**O R D E R**

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 improper practice petition filed by Stefan Ziering in the case docketed as BCB-625-82 be, and the same hereby is, dismissed.

DATED: New York, N.Y.  
January 18, 1983

ARVID ANDERSON  
CHAIRMAN

MILTON FRIEDMAN  
MEMBER

DANIEL G. COLLINS  
MEMBER

EDWARD F. GRAY  
MEMBER

EDWARD J. CLEARY  
MEMBER

EDWARD SILVER  
MEMBER

PATRICK F.X. MULHEARN  
MEMBER