

Siegel v. Dep't of Housing & Preservation, Evans, 47 OCB 51 (BCB 1991)  
[Decision No. B-51-91]

OFFICE OF COLLECTIVE BARGAINING  
BOARD OF COLLECTIVE BARGAINING

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In the Matter of

VERNELL ROBERTS SIEGEL,  
Petitioner,

DECISION NO. B-51-91

-and-

DOCKET NO. BCB-1295-90

NEW YORK CITY DEPARTMENT OF  
HOUSING AND PRESERVATION AND  
EARL G. EVANS,  
Respondents.

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DECISION AND ORDER

On June 20, 1990, Vernell Roberts Siegel ("petitioner") submitted a verified improper practice petition alleging that Earl G. Evans, Michael Slutsky and the New York City Department of Housing and Preservation ("the Department"), violated §§ 12-306a (1) and (2) of the New York City Collective Bargaining Law ("NYCCBL"). Petitioner requested that respondents "be punished for all improper practices committed if they are confirmed at any level by removing that HPD Agent from the position where the improper practice took place and ordering a monetary [penalty]."

With the agreement of petitioner, the New York City Office of Labor Relations ("OLR" or "the City"), representing respondents, was granted an extension of time in which to file an answer. The answer was filed on August 9, 1990. No reply was filed by the petitioner.

On October 5, 1990, the Trial Examiner assigned to the case requested from OLR a clarification of the City's position on one

of the allegations made by petitioner. A clarification was received from OLR on October 19, 1990.

Interim Decision No. B-23-91 was issued by this Board on April 24, 1991. We ordered that a hearing be held to determine whether improperly motivated retaliatory acts were committed by Evans and the Department. The Board dismissed the remaining improper practice charges against Evans and the improper practice charges against Slutsky. A pre-hearing conference between the parties was held on June 14, 1991, at which time it was agreed that a hearing would take place on September 9th, 10th, and 11th, 1991.

#### Background

Petitioner has been employed by the Department in the title Paralegal Aide Level I since October, 1979. Respondent Evans, the Executive Director of the Anti-Abandonment Programs, is petitioner's supervisor. Michael Slutsky is Labor Relations Agent for the Department.

In March, 1989, petitioner received a job evaluation from Evans covering the period from March, 1988, to April, 1989, with an overall performance rating of "very good". Petitioner submitted a grievance at Step I of the grievance procedure, dated February 15, 1990. The grievance alleged that petitioner had been performing some duties of the Director of the program, and thus was working out of title; that the City statute prohibiting

smoking in public work areas was being violated in the office; and that Evans was pressuring her to generate reports without adequate time to prepare them. Evans completed an annual performance review of petitioner's work that was signed and dated by him on February 27, 1990. Petitioner received an overall "good" performance rating.

Petitioner's grievance was forwarded to Slutsky as a Step II grievance. In a decision dated May 7, 1990, Slutsky found that petitioner was performing the work of an Office Associate, and recommended that she be reassigned to duties commensurate with the title Paralegal Aide Level I. In response to petitioner's other allegations, Slutsky referred the complaint about violations of the anti-smoking statute to the Department's Health and Safety Officer, and ruled that petitioner's responsibility to meet a deadline was a performance issue that could not be addressed by the grievance process.

In Interim Decision No. B-23-91, the Board ordered that a hearing be held concerning the charges of improperly motivated retaliation. The parties met in a pre-hearing conference on June 14, 1991, and scheduled a hearing on September 9th, 10th and 11th, 1991. When petitioner expressed reservations about proceeding, the Trial Examiner suggested that petitioner advise the Board on or before August 19, 1991, if petitioner decided not to appear.

In a letter dated June 14, 1991, mailed and delivered to

both parties, the Trial Examiner stated, in relevant part:

Petitioner may represent herself or may choose to be represented by an attorney. If petitioner chooses to be represented by an attorney, the attorney must contact me before the hearing takes place.

The parties agreed that the hearing will take place on September 9, 10, and 11, 1991 at 9:00 A.M. on all days, at the Office of Collective Bargaining, 40 Rector Street, 7th Floor. Any changes regarding scheduling of the hearing will be made on or before August 19, 1991.

A notice of Hearing was issued by the Board on June 17, 1991, and was mailed and delivered to the parties.

The Trial Examiner wrote the following letter to the parties on August 21, 1991:

Since I have not heard to the contrary from petitioner, I assume that a hearing in the referenced case will proceed as scheduled on September 9, 10, and 11, 1991. I would, therefore, like to receive by September 3, 1991, a written list of witnesses that the parties intend to have appear.

Ms. Siegel, if you will be represented at the hearing by counsel, please have your attorney call me before September 6, 1991. If you do not intend to proceed with the hearing, please let me know immediately so that I can schedule another proceeding for these dates.

Petitioner did not respond. The Trial Examiner telephoned petitioner at her work site on September 5, 1991, and was told that petitioner was on vacation and was expected back at work on the morning of September 9, 1991.

Petitioner did not appear for the scheduled hearing at 9:00 A.M. on September 9, 1991. At 9:30 A.M., the Trial Examiner convened the hearing. The appearance of respondent was noted for the record and the record was closed.

Positions of the Parties

Petitioner's Position

Petitioner alleges, in a memo and affidavit submitted with her petition, that she received a downgraded performance evaluation and was subjected to harassment and sabotage of her work because she filed an out-of-title grievance.

In a memo dated February 23, 1990, to Robin Weinstein, Acting Assistant Commissioner of the Department, petitioner alleged that "on February 22, 1990, my out of title grievance submitted to your office... [Evans] did commence and promote physical threats to me, harassment... A union grievance is not a lawsuit as I was harassed about on [February 22] ...."

In her comments included in the performance evaluation, petitioner alleges, "Mr. Evans has a personal problem with me not my work because of his lack of ability to deal with my out of title grievance... If I had a problem with my work assignments before I filed the out of title grievance Mr. Evans would have sent me a memo or at least held conferences and provided me with the proper training...."

In an affidavit dated May 17, 1990, petitioner affirms that on April 26, 1990, Evans told her to complete 38 audits to be included in her May 1990 report. Petitioner affirms that her work on this assignment was sabotaged by the office staff because she had filed a grievance.

### City's Position

The City argues that petitioner has failed to demonstrate an improper practice within the meaning of § 12-306a of the NYCCBL because her charges are conclusory allegations that do not establish a relationship between the acts complained of and interference with employee rights protected under the NYCCBL.

The City requests that, "the improper practice petition be dismissed in its entirety, or that the Board issue an order providing such other and further relief as it shall deem appropriate."

### Discussion

Our interim decision eliminated all charges against the respondent Slutsky, and all charges against the respondent Evans except the charge that he had taken action against petitioner in retaliation for her commencement of a grievance proceeding. As to the latter charge, we found that petitioner's allegations were sufficient to warrant further consideration, but that further evidence in support of the charge must be submitted in order to advance the matter.

To this end, a pre-hearing conference was held at which both parties were in attendance and a hearing was scheduled for September 9th, 10th and 11th, 1991. Petitioner failed either to appear at the hearing or to offer any justification for her non-appearance. Her default leaves the record bare of support

essential to the viability of the charges she has submitted, and the same must therefore be dismissed.

ORDER

Pursuant to the power vested in the Board of Collective Bargaining by the New York City Collective Bargaining Law, it is hereby,

ORDERED that the improper practice charges against respondents Earl G. Evans and the New York City Department of Housing and Preservation be, and the same hereby are, dismissed.

Dated: New York, New York  
October 23, 1991

MALCOLM D. MACDONALD  
CHAIRMAN

GEORGE NICOLAU  
MEMBER

DANIEL G. COLLINS  
MEMBER

CAROLYN GENTILE  
MEMBER

JEROME E. JOSEPH  
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DEAN L. SILVERBERG  
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