

Hodge v. HHC EMS Office Of Labor Relations, 55 OCB 26 (BCB 1995) [Decision No. B-26-95]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of the Improper
Practice Proceeding :

-between- : DECISION NO. B-26-95 (ES)
MYRON E. HODGE, : DOCKET NO. BCB-1725-95
Petitioner, :
-and- :
HHC EMS OFFICE OF LABOR :
RELATIONS, :
Respondents. :
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DETERMINATION OF EXECUTIVE SECRETARY

On February 27, 1995, the Office of Collective Bargaining ("OCB") received a verified improper practice petition from Myron E. Hodge ("Petitioner"). Petitioner alleges that he was denied certain contractual rights by the Office of Labor Relations of the Health and Hospitals Corporation ("HHC"), in violation of New York City Collective Bargaining Law ("NYCCBL") Section 12-306c. (good faith bargaining), and "possibly part of" Section 12-306a. (improper public employer practices).

According to the Petitioner, on July 26, 1994, he was suspended without pay from his job as an EMT at Boston Outpost, pending a disciplinary investigation by the HHC. On August 11, 1994, he attended a Step 1(A) conference. On October 16, 1994, he received the Step 1(A) determination recommending a twenty day suspension, and an attached "waiver of employee rights" form. Petitioner contends, however, that the waiver form was an incorrect one for persons in his category of employment, and thus he allegedly could not complete it. "As a result, I was not able to stop the implementation of the determination nor was I allowed to continue with the grievance process to the Step 2 conference." On October 20, 1994, he asked his Union to obtain the correct waiver form for him. On October 24, 1994, Petitioner's Union informed him that HHC had taken the position that "the grievance process might be stopped and the determination

might be implemented, citing a breaking of the [election of rights] deadline." Although Petitioner attempted to point out to HHC that it had sent an incorrect waiver form to him, on October 28, 1994, he received a notice informing him that his failure to request a Step 2 conference within thirty days had resulted in the implementation of the Step 1(A) penalty. In Petitioner's view, HHC's alleged noncompliance with a contractual grievance procedure constitutes a violation of the NYCCBL.

Pursuant to Title 61, Section 1-07(d) of the Rules of the City of New York, a copy of which is annexed hereto, the undersigned has reviewed the petition and has determined that the improper practice claims asserted therein must be dismissed because the petition fails to allege facts sufficient as a matter of law to constitute an improper practice within the meaning of either Section 12-306c. or 12-306a. of the NYCCBL.

The duty to bargain in good faith (NYCCBL § 12-306c.) runs between the public employer and the certified bargaining representative of its employees. Individual bargaining unit members lack standing to assert that the employer allegedly violated its duty to bargain.¹ NYCCBL § 12-306a. (improper public employer practices) prohibits employers from interfering with rights conferred on public employees by NYCCBL § 12-305 (the right to organize, form, join or participate in public employee organizations of their own choosing).

Petitioner complains that the HHC allegedly violated his contractual rights regarding employee discipline. However, unless the acts constituting such violation would otherwise state a claim of improper practice, the Board of Collective Bargaining is without authority to enforce the terms of a contract, and may not exercise jurisdiction over an alleged violation of the collective bargaining agreement. These principles flow from Section 505.5(d) of the Taylor Law, which provides:

. . . the board shall not have the authority to enforce an agreement between an employer and an employee organization and shall not exercise

¹ See Decision No. B-9-86.

jurisdiction over an alleged violation of such an agreement that would not otherwise constitute an improper employer [practice]

The NYCCBL does not provide a remedy for every perceived wrong or inequity. As no basis has been offered here for construing the alleged contract violations as independent improper practice claims under the New York City Collective Bargaining Law, I must conclude that the Board lacks jurisdiction to consider such claims.

For all of these reasons, the petition herein is dismissed pursuant to Section 1-07(d) of the Rules of the City of New York, but without prejudice to any rights that the Petitioner may have in another forum.

DATED: New York, New York
December 11, 1995

Wendy E. Patitucci
Executive Secretary
Board of Collective Bargaining