Miles v. L.237,CEU & Queens Hospital Center, 53 OCB 9 (BCB 1995) [Decision No. B-9-95 (ES)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING
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In the Matter of the Improper Practice Proceeding

-between-

RAYMOND MILES,
Petitioner, DECISION NO. B-9-95(ES)

-and- DOCKET NO. BCB-1739-95

CITY EMPLOYEES UNION, LOCAL 237, IBT,
Respondent,

-and-

QUEENS HOSPITAL CENTER,
Respondent.
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DETERMINATION OF EXECUTIVE SECRETARY

On March 30, 1995, Mr. Raymond Miles ("the Petitioner") filed two verified improper practice petitions with the Office of Collective Bargaining ("OCB"), one against the City Employees Union, Local 237, IBT ("the Union") and one against Queens Hospital Center ("the Employer"). As the statement of the nature of the controversy, the Petitioner wrote on both petitions:

> To interfere with, restrain or coerce public employees in the exercise of their rights granted in Section 12-305 of [the New York City Collective Bargaining Law "NYCCBL"].[1]

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[1] NYCCBL §12-305 provides, in relevant part:

Rights of public employees and certified employee organizations. Public employees shall have the right to self-organization, to form, join or assist public

(continued...)

Accompanying the petitions was a voluminous and unorganized stack of papers which contained a variety of letters, notes and documents.[2] It is not clear whether copies of the accompanying documents had been served upon either the Union or the Employer.

Pursuant to §1-07(d) of the Rules of the City of New York ("RCNY"), a copy of which is annexed hereto, I have reviewed the petitions and have determined that they are insufficient as a matter of law to constitute cognizable claims of improper practice within the meaning of §12-306 of the NYCCBL.[3] The

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[1](...continued)
employee organizations, to bargain collectively through certified employee organizations of their own choosing and shall have the right to refrain from any or all of such activities....

[2] Among these documents was an unaddressed, handwritten letter dated March 28, 1995. Although the content of the letter was ambiguous and confusing, it appears to be a recitation of an incident that occurred on March 2, 1995, concerning an attempt by the Petitioner to renew his Union prescription drug card.
Also included among the papers were several items of correspondence between Petitioner and the Union, as well as between Petitioner and the Employer. Additionally, these papers included some medical notes from various doctors as well as letters from an alcohol rehabilitation center. The material ranges in date from January 1, 1989 to March 28, 1995.

[3] Section 12-306 of the NYCCBL provides, in relevant part:

Improper Practices ...
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 §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,
(continued...)

petitions merely recite, as a statement of the nature of the controversy, the language of §12-306a(1) of the NYCCBL. The petitions fail to specify which acts, if any, of the Union and/or the Employer form the basis of the Petitioner's complaint(s). Although the appended collection of documents concern various matters with respect to the Petitioner's employment over the past six years, it is not clear which, if any, pertain to a claim over which the Board of Collective Bargaining ("Board") has jurisdiction. Additionally, inasmuch as RCNY §1-07(d) requires that a petition alleging an improper practice be filed within four (4) months of the claimed violation, the absence of any specificity precludes a determination that the petitions were timely filed.

While it is well established Board policy that the rules of

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[3](...continued)
or participation in, the activities of any public employee organization;

(4) to refuse to bargain collectively in good faith on matters within the scope of collective bargaining with certified or designated representatives of its public employees.

b. Improper public employee organization practices. It shall be an improper practice for a public employee organization or its agents:

(1) to interfere with, restrain or coerce public employees in the exercise of rights granted in §12-305 of this chapter, or to cause, or attempt to cause, a public employee to do so;

(2) to refuse to bargain collectively in good faith with a public employer on matters within the scope of collective bargaining provided the public employee organization is a certified or designated representatives of public employees of such employer.

* * *

the OCB are to be construed liberally,[4] requirements as to the information to be set forth in a petition must be met at least to the extent as will assure that a respondents' due process rights are protected and that the jurisdiction of the Board in a given matter may readily be ascertained.[5] Section §1-07(e) of the RCNY requires that an improper practice petition be verified and contain:

> (1) The name and address of the petitioner;
> (2) The name and address of the other party (respondent);
> (3) A statement of the nature of the controversy, specifying the provisions of the statute, executive order or collective bargaining agreement involved, and any other relevant and material documents, dates and facts. If the controversy involves contractual provisions, such provisions shall be set forth;
> (4) Such additional matters as may be relevant and material. [Emphasis added.]

In Decision No. B-12-85, the Board held that "a petition which fails to comply with the minimal standard set forth above deprives the responding party of a clear statement of the charges to be met and materially hampers the preparation of a defense."

In the instant matter, because the Petitioner has pleaded in so vague a manner as to make it impossible for the Employer or the Union to be aware of the true nature of the controversy, it is impossible to find that the petitions are sufficient as a matter of law to state a claim of improper public employer

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[4] Decision Nos. B-1-83; B-23-82; B-8-77; B-9-76; B-5-74.

[5] See e.g., Decision Nos. B-12-85; B-1-83.

practice within the meaning of §12-306a of the NYCCBL;[6] or an improper public employee organization practice within the meaning of §12-306b of the NYCCBL.[7]

Accordingly, inasmuch as the petitions, as pleaded, fail to effectively allege any improper practices within the meaning of §12-306 of the NYCCBL, they shall be dismissed in their entirety. Dismissal, however, is without prejudice to the Petitioner's right to resubmit newly verified improper practice petitions, with proof of service of the petitions and any supporting documentation on the Employer and the Union, which set forth in clear written statements specific allegations of improper practice for consideration by the Board.[8] Additionally, the instant petitions are dismissed without prejudice to any rights the Petitioner may have under an applicable collective bargaining agreement or in any other forum.

Dated: New York, New York

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[6] NYCCBL §12-306a safeguards the rights of public employees to form, join, assist or participate in the activities of a public employee organization; or to refrain therefrom.

[7] Section 12-306b of the NYCCBL has been recognized as prohibiting violations of the duty of fair representation owed by a certified employee organization to represent bargaining unit members with respect to the negotiation, administration and enforcement of collective bargaining agreements. The doctrine of fair representation requires a union to treat all members of the bargaining unit in an evenhanded manner and to refrain from arbitrary, discriminatory and bad faith conduct.

[8] The written statements should make reference to and explain the relevance of any attachments that are offered in support of the underlying claims.

April 14, 1995

Wendy E. Patitucci
Executive Secretary
Board of Collective Bargaining