

OFFICE OF COLLECTIVE BARGAINING  
BOARD OF COLLECTIVE BARGAINING

-----X

In the Matter of

LIONEL D. WARLICK,

DECISION NO. B-1-82

Petitioner,

DOCKET NO. BCB-490-81

-and-

THE OFF-TRACK BETTING CORPORATION,

Respondent.

-----X

---

DECISION AND ORDER

This proceeding was commenced on April 16, 1981, by the filing of a verified improper practice petition by Lionel D. Warlick (hereinafter "Petitioner"). Petitioner alleges that the New York City Off-Track Betting Corporation (hereinafter "OTB") committed, improper practices in connection with a fifteen (15) day suspension without pay in October of 1980 and termination of his employment as a supervising clerk and office associate on February 19, 1981.<sup>1</sup> OTB filed its answer on May 26, 1981, in which it denied the material allegations of the petition, denied that facts constituting an improper practice had been alleged, asserted that its action constituted a management

---

<sup>1</sup> Documents submitted by both parties differ as to the date of termination. The discrepancy need not be further examined or resolved since it has no material bearing upon the disposition of this matter.

prerogative, and requested that the petition be dismissed. Subsequent documents filed by OTB and Petitioner, on July 15, and July 17, 1981, respectively, concern hearings conducted before the New York State Department of Labor/ Unemployment Insurance Division relating to Petitioner's suspension and termination of employment.

#### Background

Petitioner has been a supervising clerk and office associate at the OTB for approximately seven and a half years. On February 19, 1981, Petitioner was discharged by the head of OTB after receiving the findings and recommendation of a hearing officer who conducted a hearing pursuant to Section 75 of the Civil Service Law. The hearing officer found that Petitioner was insubordinate in violating a lawful order of his superiors in which they requested Petitioner to sign waivers for the release of certain personal medical records that were found necessary by the OTB's medical officer. Petitioner refused to sign such waivers, asserting a constitutional right of a physician-patient privilege. Petitioner alleges that his suspension and termination resulted from harassment by his superiors concerning his medical background and that his refusal to sign medical waivers does not constitute "mis-

conduct" or "insubordination" under the provisions of the OTB Rules and Regulations.

As early as September of 1979 and May of 1980, Petitioner had been requested to submit to medical examinations before the OTB doctor and did so without objection. On May 12, 1980, Petitioner voluntarily submitted a note from his doctor to the OTB medical officer certifying that Petitioner had a gastric problem for which he had been prescribed medication. Petitioner had been engaged in a personality conflict with one of his superiors at this time and was subsequently transferred to another work area where he was required to perform work of a lesser status until the date on which he was terminated.

Upon termination, Petitioner commenced proceedings before the New York State Department of Labor/Unemployment Insurance Administrative Law Judge Section (hereinafter "The Section") in which both parties appeared and testified as to facts concerning the present dispute. Petitioner filed, along with the improper practice petition, a decision rendered by The Section on April 2, 1981, to the effect that Petitioner's failure to sign the medical waiver under the circumstances herein does not constitute "misconduct" under the New York State Unemployment Insurance Law, and the evidence establishes that Petitioner had been harassed by

his supervisor on several occasions involving medical examinations and inquiries.

OTB maintains that its request for medical waivers from Petitioner was justified because Petitioner's "job behavior" caused its medical officer to entertain a reasonable doubt as to whether such behavior was related to a prior injury. OTB alleges:

Since Respondent [OTB] acted within its managerial prerogative to (1) direct its employees, (ii) to take disciplinary action, and (iii) to maintain the efficiency of governmental operations, and took all of the foregoing actions in accordance with its duly promulgated Rules and Regulations, contractual and statutory standards, the actions taken by Respondent [OTB] herein may not form the basis for an improper practice.

OTB maintains that even if Petitioner's limited factual allegations are deemed to be true, these facts do not constitute an improper practice under the law.

On July 15, 1981, OTB filed a decision rendered by the New York State Department of Labor/Unemployment Insurance Appeal Board (hereinafter "Appeal Board") reversing the Section's decision that found in favor of the Petitioner. Petitioner responded by filing a letter on July 17, 1981, questioning the procedural fairness of the hearings conducted before the New York State Department of

Labor while requesting the office of Collective Bargaining to proceed with the improper practice petition.

Discussion

Consideration must be given, at the outset, to the threshold issue of whether the petition, assuming that all of its allegations of fact are true, states facts constituting an improper practice as that term is prescribed and defined in NYCCBL Section 1173-4.2. The issue, specifically, is whether suspension and discharge for failure to sign waivers for the release of certain personal medical records constitute an improper practice within the Board's jurisdiction. In attempting to determine whether any of the improper practices enumerated in NYCCBL §1173-4.2a have occurred, the Board is hindered by Petitioner's failure to specify which of the enumerated practices he alleges as a basis of his claim. Our review of the record, however, persuades us that Petitioner's claim does not fall within the purview of any of the categories enumerated in §1173-4.2a.<sup>2</sup>

---

<sup>2</sup> §1173-4.2 Improper practices; good faith bargaining.

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

(more)

Petitioner accuses the OTB of "harassment" and "defamation of character," alleging that his suspension<sup>3</sup> and subsequent termination for failure to sign medical waivers violates the disciplinary provisions of the OTB Rules and Regulations. Even if such violation of OTB Rules and Regulations were proven they would not constitute an improper employer practice within the meaning of §1173-4.2a, in the absence of evidence that the actions

---

(Footnote 2/ continued)

(1) to interfere with, restrain or coerce public employees in the exercise of their rights granted in section 1173-4.1 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;

(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.

<sup>3</sup> Allegations relating to Petitioner's suspension without pay in October of 1980 are time-barred under the provisions of §7.4 of the Revised Consolidated Rules of the Office of Collective Bargaining and will not be considered as part of this improper practice petition. Rule 7.4 provides as follows: "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 1173-4.2 of the statute may be filed with the Board within four (4) months thereof by one (1) or more public employees or any public employee organization acting in their behalf or by a public employer together with a request to the Board for a final determination of the matter and for an appropriate remedial order."

complained of were so motivated or of such effect as to fall within the specific prohibitions enumerated in §1173-4.2a.<sup>4</sup> No such evidence has been presented by Petitioner.

It is not the purpose of the improper practice provisions of the law to protect employees from any and all forms of alleged employer wrongdoing. It is the limited purpose and function of Section 1173-4.2 to protect rights set forth in Section 1173-4.1. Redress of rights other than those stated in Section 1173-4.1 must be sought elsewhere. This is true, a fortiori, in a case such as this where the Petitioner complains of the actions of his employer in or in connection with other statutory proceedings, namely the Article 75 proceeding and the Unemployment Compensation hearings. The proceedings and resolution of those matters are all subject to review under the appeal provisions of the respective statutes under which the proceedings, themselves, were conducted. Petitioner may not seek, nor does this Board have jurisdiction to provide, an alternative avenue of appeal by way of the improper practice proceedings.

Under the circumstances present here, it is not within our jurisdiction to render an opinion as to the applicability of the OTB Rules and Regulations to the

---

<sup>4</sup> Cf. B-14-80; B-35-80; B-1-81; B-20-81; B-24-81; B-27-81.

Decision No. B-1-82  
Docket No. BCB-490-81

8.

Petitioner in this case, or to determine whether OTB has applied them properly. The petition fails to allege facts constituting an 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 petition filed herein by Lionel D. Warlick, alleging that improper practices had been committed by the New York City Off-Track Betting Corporation, be dismissed in its entirety.

DATED: New York, N.Y.  
January 11, 1982

ARVID ANDERSON  
CHAIRMAN

DANIEL G. COLLINS  
MEMBER

MILTON FRIEDMAN  
MEMBER

CAROLYN GENTILE  
MEMBER

MARK J. CHERNOFF  
MEMBER

EDWARD SILVER  
MEMBER

JOHN D. FEERICK  
MEMBER