

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of the Improper
Practice Petition

-between-

DECISION NO. B-16-84(ES)

VICTOR M. PEREZ,

DOCKET NO. BCB-731-84

Petitioner,

-and

THE DEPARTMENT OF CORRECTION,

Respondent.

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DETERMINATION

The petition in this matter was filed on August 29, 1984.¹ Pursuant to Section 7.4 of the Revised Consolidated Rules of the Office of Collective Bargaining ("OCB Rules"), a copy of which is annexed hereto, the undersigned has reviewed the petition and has determined that it does not allege facts sufficient as a matter of law to constitute an improper practice within the meaning of the New York City Collective Bargaining Law ("NYCCBL") and further, assuming arguendo that it did allege a legally sufficient claim, such claim would be untimely on its face.

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The petition was initially submitted on July 31, 1984, but was not docketed because of the failure of the petitioner to supply proof of service, as required by §7.6 of the OCB Rules. Proof of service was finally submitted on August 29, 1984, and the petition was deemed filed as of the latter date.

The petition alleges a complaint concerning the payment of vacation pay and other compensation which allegedly were due upon the termination of the petitioner's employment with the Department of Correction. There is no allegation that the employer committed any of the acts specified in Section 1173-4.2(a) of the NYCCBL. Even assuming the truth and accuracy of the allegations of the petition, the rights asserted presumably would exist, if at all, as a matter of contract; there appears no basis to believe that the respondent's alleged failure to pay proper compensation is violative of the proscriptions contained in Section 1173-4.2(a).

Moreover, under Section 7.4 of the OCB Rules, a petition alleging that a public employer or a public employee organization has engaged in an improper practice in violation of Section 1173-4.2 (a) , must be filed with the Office of Collective Bargaining within four (4) months of the date the alleged improper practice occurred. In the present case, the petition, which was filed on August 29, 1984, complains of acts or omissions relating to a period ending with the cessation of the petitioner's employment on January 3, 1984. since more than four months elapsed between January 3 and the date the petition was filed, the petition is untimely and cannot be maintained.

For these reasons, the petition hereby is dismissed pursuant to Section 7.4 of the OCB Rules. This dismissal is without prejudice to any rights the petitioner may have under an applicable collective bargaining agreement.

Dated; New York, N.Y.
 September 6, 1984

William J. Mulry, Esq.
Executive Secretary
Board of Collective Bargaining

REVISED CONSOLIDATED RULES OF THE
OFFICE OF COLLECTIVE BARGAINING

§7.4 Improper Practices. 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. Within ten (10) days after a petition alleging improper practice is filed, the Executive Secretary shall review the allegations thereof to determine whether the facts as alleged may constitute an improper practice as set forth in section 1173-4.2 of the statute. If it is determined that the petition, on its face, does not contain facts sufficient as a matter of law to constitute a violation, or that the alleged violation occurred more than four (4) months prior to the filing of the charge, it shall be dismissed by the Executive Secretary and copies of such determination shall be served upon the parties by certified mail. If, upon such review, the Executive Secretary shall determine that the petition is not, on its face, untimely or insufficient, notice of the determination shall be served on the parties by certified mail, provided, however, that such determination shall not constitute a bar to the assertion by respondent of defenses or challenges to the petition based upon allegations of untimeliness or insufficiency and supported by probative evidence available to the respondent. Within ten (10) days after receipt of a decision of the Executive Secretary dismissing an improper practice petition as provided in this subdivision, the petitioner may file with the Board of Collective Bargaining an original and three (3) copies of a statement in writing setting forth an appeal from the decision together with proof of service thereof upon all other parties. The statement shall set forth the reasons for the appeal.

§7.8 Answer-Service and Filing. Within ten (10) days after service of the petition, or, where the petition contains allegations of improper practice, within ten (10) days of the receipt of notice of finding by the Executive Secretary, pursuant to Rule 7.4, that the petition is not, on its face, untimely or insufficient, respondent shall serve and file its answer upon petitioner and any other party respondent, and shall file the original and three (3) copies thereof, with proof of service, with the Board. Where special circumstances exist that warrant an expedited determination, it shall be within the discretionary authority of the Director to order respondent to serve and file its answer within less than ten (10) days.

OTHER SECTIONS OF THE LAW AND RULES MAY BE APPLICABLE.
CONSULT THE COMPLETE TEXT.