

Oculien v. NYPD, Dep't of Personnel, 33 OCB 9 (BCB 1984)
[Decision No. B-9-84 (IP)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

In the Matter of the Improper
Practice Petition

DECISION NO. B-9-84

DOCKET NO. BCB-677-83

-between-

JOSEPH K. OCULIEN,

Petitioner,

-and-

PERSONNEL DEPARTMENT, NEW YORK
CITY POLICE DEPARTMENT.

Respondent.

DECISION AND ORDER

This proceeding was commenced by the filing on October 3, 1983, of an improper practice petition by Joseph K. Oculien ("Petitioner"), pursuant to Section 1173-4.2 of the New York City Collective Bargaining Law ("NYCCBL"),¹

¹ §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:

(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;

(continued...)

against the New York City Police Department ("respondent" or "the Department") On November 16, 1983, the Department, by the New York City Office of Municipal Labor Relations ("OMLR") , filed its answer, to which petitioner replied on December 2, 1983.

Positions of the Parties

Petitioner's Position

_____Mr. Oculien was employed with the New York City Police Department from September 18, 1978 until April 22, 1979 when, according to Gail J. Wright of the Legal Defense Fund of the NAACP, "he voluntarily resigned in order to avoid protracted and embarrassing litigation involving charges of sexual harassment which has been filed against him." The resignation followed a departmental hearing which is alleged to have taken place on April 18, 1979. Before the hearing, Mr. Oculien was advised

¹(...continued)

(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.

by Lt. O'Brien of the Department that things looked bad for him. He was not, however, advised by Lt. O'Brien or anyone else that he had the right to have a union representative present at the April 18th hearing. During an informal hearing held on May 7, 1979, Salvatore Ferreri, a representative from District Council 37, met with Lt. James Whaley of the Department and Mr. Oculien to discuss alternative courses for the disposition of this matter. At Mr. Ferreri's suggestion, an agreement was allegedly reached whereby Mr. Oculien would tender his resignation on the express condition that any reference to the charges against him would be removed from his personnel file. The petitioner did not submit his resignation until two weeks later; by then the Department had terminated him.

In May of 1983, Mr. Oculien met with Captain Dowd of the Department in a further attempt to resolve this matter. In connection with this meeting, he maintains that he had not made a timely request to the Department for review of adverse action - i.e. termination, because he had never been notified that his resignation had not been accepted.

Mr Oculien contends that he has been unemployed since November 18, 1982, due to the presence in his

personnel file of "negative references", contrary to the assurances given him by respondent back in 1979.

Respondent's Position

Respondent asserts in its answer several defenses which may be summarized as follows:

1. The petitioner has failed to allege any facts which may form the basis of an improper practice pursuant to any of the cited provisions under the New York City Collective Bargaining Law.

2. The petition is time-barred pursuant to Section 7.4 of the Revised Consolidated Rules of the Office of Collective Bargaining which states, in pertinent part, that

[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 violation of Section 1173-4.2 of the statute may be filed with the Board within four (4) months thereof ...

The petitioner complains of acts which occurred in 1979, clearly more than four months prior to the filing of the instant petition. That a grievance relating to the alleged improper termination was filed on behalf of petitioner in August of 1979, demonstrates that petitioner did indeed have knowledge of the termination at least as of that date. While respondent denies that any agreement had been made between Lt. Whaley and Mr. Ferreri, it maintains that it would have, nevertheless, accepted the resignation had it been timely submitted.

3. The respondent, for its third defense, incorporates by reference the statements contained in its response letter to the Legal Defense Fund of the NAACP:

[T]he facts do not demonstrate that the Police Department reached any agreement of understanding nor that it provided [in any event] any information regarding Mr. Oculien's employment with the Police Department to any employer whatsoever.

Discussion

_____The petitioner herein alleges that Mr. Ferreri of the Union and Lt. Whaley of the Department entered into an agreement on May 7, 1979, whereby Mr. Oculien would resign if references to the charges against him were removed from his personnel file. The petitioner further alleges that this agreement was subsequently breached in a May 11, 1979 letter in which Lt. Whaley, despite the alleged agreement, recommended termination. This letter, he insists, written just a few days after an agreement to accept his resignation had been entreated and obtained, "demonstrates that the Police Department did not act in good faith."

A grievance relating to the alleged wrongful termination, of which a copy is attached to respondent's answer, was filed by the union on behalf of the petitioner in August of 1979. It seems clear to the Board that Mr. Oculien must have been on notice, at

least as of that date, that he had been terminated. Furthermore, the petitioner must have become aware, if he had not been already, that the reference to the charges had not been expunged from his file when, on April 21, 1982, he was allegedly notified that effective November 18, 1982, he would be terminated from his new City job due to unsatisfactory past service with New York City. Yet, he met with Captain Dowd of the Police Department in May of 1983, more than a year later, and filed the instant petition approximately eighteen months after he received such notice of termination. In fact, if we were to presume, as we reasonably could, that petitioner must have been aware of the August 7, 1979 grievance filed by the union on his behalf, we could conclude that as many as four years had intervened between the date on which Mr. Oculien was first placed on notice of the facts underlying this petition, and the commencement of this proceeding on October 3, 1983.

As the City correctly notes in its answer, Section 7.4 of the Rules of the Office of Collective Bargaining²

² Section 7.4 of the Revised Consolidated Rules provides as follows:

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

(continued...)

provides that an improper practice petition must be filed within four months of the occurrence of an alleged improper practice. Petitioner commenced the instant improper practice proceeding substantially in excess of the four month statute of limitations applicable to such matters.

Petitioner's failure to comply with the filing requirement relating to timeliness mandated by the New York City Collective Bargaining Law precludes us from reaching the actual merits of petitioner's complaints. Our disposition of this matter, therefore, rests solely on the untimely commencement of this action.

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

²(...continued)

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.

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8.

ORDERED that the improper practice petition filed in the instant case be, and the same hereby is, dismissed.

DATED: New York, N.Y.
May 2, 1984

ARVID ANDERSON
CHAIRMAN

DANIEL G. COLLINS
MEMBER

MILTON FRIEDMAN
MEMBER

CAROLYN GENTILE
MEMBER

EDWARD F. GRAY
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EDWARD SILVER
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