

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

-between-

DECISION NO. B-15-85(ES)

STANLEY WRIGHT,

DOCKET NO. BCB-776-85

Petitioner,

-and-

PETER STEIN,

Respondent.

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DETERMINATION

The petition in this matter was filed on April 17, 1985. <sup>1</sup> 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.

The petition asserts a complaint against the individual respondent, Peter Stein, who, according to the petitioner,

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<sup>1</sup> The petition was initially submitted on April 5, 1985, 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 April 17, 1985, and the petition was deemed filed as of the latter date.



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has acted at various times as a representative of the employer (the New York City Department of Parks and Recreation) and as a representative of an employee organization (Local 508, District Council 37, AFSCME). The petition alleges that Mr. Stein committed improper practices by interfering with, restraining and coercing the petitioner's exercise of his rights under the NYCCBL, and by dominating or interfering with the formation or administration of a public employee organization. Specifically, petitioner alleges that respondent violated his rights in response to his activity in organizing the Afro-American and Hispanic Lifeguard Association and in presenting a grievance under the City-Wide Contract.

Under §1173-4.2 of the NYCCBL, improper practices are defined in terms of actions taken by public employers or public employee organizations. There is no basis for an improper practice charge against an individual, as such, although an employer or union may be charged with responsibility for the actions of its agents. The NYCCBL grants no separate cause of action against an individual.

In the present case, the petitioner has chosen to name Peter Stein, alone, as the respondent in this improper practice proceeding. Neither the Department of Parks and Recreation nor District Council 37, AFSCME, has been named as a respondent or served with the petition herein. Moreover,

the petition does not allege that either the employer or the union committed any improper practice within the meaning of NYCCBL. The charges asserted in the petition are against Peter Stein personally. Such charges are without basis in law and cannot be maintained.

The petitioner also implies that certain of the respondent's actions may have been racially motivated. Without commenting on the sufficiency of petitioner's allegations in this regard, or lack thereof, I observe that it is clear that the Board of Collective Bargaining does not possess jurisdiction over claims of racial discrimination.

Finally, I find that even if the allegations of the petition could be deemed to state a legally sufficient claim, such claim would be untimely on its face. 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 April 17, 1985, complains of acts which occurred primarily in April, 1984 (e.g., April 4 - meeting at which Stein was hearing officer; April 11 - alleged statement by Martino re: Stein; April 20 - service

of charges and specifications on petitioner). While the date of petitioner's termination is not alleged in the petition, I take administrative notice of the fact that such termination was effective on May 7, 1984.<sup>2</sup> The latest date alleged by petitioner concerns claimed "perjury" by respondent at an arbitration hearing which was held on November 26 and December 3, 1984. Since all of these dates occurred more than four months prior to the filing of the improper practice petition on April 17, 1985, the petition is untimely and cannot be maintained.

For reasons stated above, the petition hereby is dismissed pursuant to Section 7.4 of the OCB Rules.

Dated: New York, N.Y.  
May 2, 1985

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

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<sup>2</sup>The source of this information is an arbitration award, on file in the office of Collective Bargaining pursuant to §6.8 of the OCB Rules, in case number A-1979-84, in which the petitioner, through his union, challenged his discharge. The arbitrator ruled that petitioner's discharge was not wrongful under the terms of the parties' collective bargaining agreement.

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.