

OFFICE OF COLLECTIVE BARGAINING  
BOARD OF COLLECTIVE BARGAINING

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In the Matter of the Improper  
Practice Petition

-between-

JOHN DIELE,  
JOHN COOPER, and  
ANTHONY MONGIARDO,

Petitioners,

-and-

UNIFORMED SANITATIONMEN'S  
ASSOCIATION, LOCAL 831, I.B.T.,

Respondent.

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DETERMINATION

The petition in this matter was filed on March 22, 1985. The respondent submitted an answer, though not required to do so,<sup>1</sup> on March 25, 1985. Pursuant to Section 7.4 of the Revised Consolidated Rules of the Office of Collective Bargaining ("OBC Rules"), a copy of which is annexed hereto, the undersigned has reviewed the petition and has determined that

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<sup>1</sup> In accordance with §7.8 of the OCB Rules, a respondent is required to serve and file an answer to an improper practice petition within ten (10) days of the receipt of a notice of finding by the Executive Secretary, under Rule 7.4, that the petition is not, on its face, untimely or insufficient. No such notice was issued by the undersigned in the present case and, thus, the respondent's time to answer did not begin to run.

it does not contain facts sufficient as a matter of law to constitute an improper practice within the meaning of the New York City Collective Bargaining Law ("NYCCBL").

The petition asserts a complaint concerning the respondent's alleged failure to fill a vacancy in a "broom tissue" position based upon seniority. It is alleged that the three petitioners possess greater seniority than the individuals who were given this assignment, and that they were not given notice of the opening in this position.

The petition does not allege that the respondent union committed any of the acts specified in Section 1173-4.2b of the NYCCBL. Even assuming the truth and accuracy of the allegations of the petition, the seniority rights asserted would exist, if at all, as a matter of contract, which arguably would be enforceable through the grievance provisions of the collective bargaining agreement and not through an improper practice proceeding. The petition provides no basis to believe that the respondent's motivation in allegedly failing to notify petitioners of the vacant position was arbitrary, discriminatory, in bad faith, or otherwise violative of the proscriptions contained in Section 1173-4.2b. <sup>2</sup>

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<sup>2</sup>In accordance with Rule 7.4, the dismissal herein is based upon a review of the sufficiency of the petition, on its face. Accordingly, the respondent's answer has not been considered in making this determination. Nothing herein shall be construed as an evaluation or ruling on the merit of the explanation offered in the respondent's answer.

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

Dated:       New York, N.Y.  
              June 20, 1985

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William V. Mulry  
Executive Secretag  
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.