

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING
- - - - -X
RANDOLPH EARL, JR.,

Petitioner,

-and-

DECISION NO. B-24-85 (ES)

NEW YORK CITY DEPARTMENT OF PARKS,

DOCKET NO. BCB-795-85

Respondent.

- - - - -X

DETERMINATION

The petition in this matter was filed on June 24, 1985.¹ 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.

The petition asserts a complaint concerning the termination of petitioner's employment as a City Seasonal Aide on

¹ The petition was initially submitted on June 21, 1985, but was returned to petitioner and was not docketed because it was unverified and because proof of service on the respondent was not supplied. A properly verified petition, with proof of service, was resubmitted on June 24, 1985, and was docketed as of that date.

the alleged grounds of unsatisfactory work performance, insubordination, and failure to carry out orders. The petitioner questions the competency of his supervisor and asserts that the supervisor's statements that the petitioner did not work and walked off the job are untruthful.

The petition does not allege that the Department of Parks or its agents committed any of the acts specified in Section 1173-4.2a of the NYCCBL. Even assuming the truth and accuracy of the allegations of the petition, it does not appear that the petitioner's supervisor "bothered" him or that the employer terminated his employment for any of the prescribed reasons set forth in the NYCCBL.

The NYCCBL does not provide a remedy for every perceived wrong or inequity. It does provide procedures designed to safeguard those employees' rights created in that statute, i.e., the right to organize, to form, join, and assist public employee organizations, to bargain collectively through certified public employee organizations; and the right to refrain from such activities. The petition herein does not allege that the employer's action was intended to affect any of these protected rights.

Moreover, it appears that even if the allegations of the petition could be deemed to state a legally sufficient claim of improper practice, 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 June 24, 1985, complains of an act which occurred on or before September 18, 1984. Since this date is more than four months prior to the filing of the improper practice petition, the petition is untimely and can not be maintained.

The petitioner's statement that he did not know earlier about his right to file an improper practice petition because his union did not so inform him does not excuse his delay in filing, inasmuch as the union had no duty to assist petitioner in connection with his improper practice charge.² In any event, such a dereliction by the union, if it existed, would not toll the running of the statute of limitations on a claim against the employer.

For the reasons stated above, the petition hereby is

²Decision No. B-26-84; see Decision No. B-14-83.

dismissed pursuant to Section 7.4 of the OCB Rules.

Dated:

Dated: New York, N.Y.

August 8, 1985

William Mulry
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.