Thomas v. Dep't of Housing Pres. & Develop., 35 OCB 34 (BCB 1985) [Decision No. B-34-85 (ES)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

In the Matter

CHARLES THOMAS,

Petitioner,

-and-

DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT,

Respondent.

DECISION NO. B-34-85(ES)

DOCKET NO. BCB-796-85

DETERMINATION

Petitioner Charles Thomas has filed a verified improper practice petition in which he charges the respondent Department of Housing Preservation and Development ("HPD") with committing an improper practice within the meaning of the New York City Collective Bargaining Law ("NYCCBL"). Pursuant to Section 7.4 of the Revised Consolidated Rules of the Office of Collective Bargaining ("OCB"), 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 statute.

The petition asserts a complaint concerning the termination of the petitioner's employment, allegedly "without cause", and the subsequent denial of his claim

for unemployment compensation on the basis of a "totally untrue" reason for his termination supplied by the City's Personnel Department.

The petition does not specify which of the improper practice provisions of Section 1173-4.2 of the NYCCBL are claimed to have been violated by the respondent, nor does the petition allege any facts tending to show that the respondent employer committed any of the acts specified in that section of the law. Even assuming the truth and accuracy of the allegations of the petition, it does not appear that the employer terminated the petitioner's employment for any of the proscribed reasons set forth in the NYCCBL.

The petition does not indicate what the petitioner's job title was; whether his position was permanent, provisional, or probationary; and whether there exists a collective bargaining agreement covering his title. It should be observed that in the case of most permanent City employees, a claim of wrongful discharge may form the basis of a grievance under an applicable collective bargaining agreement or grounds for a hearing under the provisions of the State Civil Service Law. Other categories of City employees may have different or lesser rights. Moreover, appeals

from the denial of unemployment compensation benefits are governed by the provisions of the State Labor Law. None of these areas of potential contractual or statutory right involve the application of the improper practice provisions of the NYCCBL. They involve matters outside the scope of the Board of Collective Bargaining's improper practice jurisdiction.

The NYCCBL does not provide a remedy for every 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 actions were intended to affect the exercise of any of these rights. Accordingly, I find that no improper employer practice has been stated. The petition, therefore, is dismissed pursuant to Section 7.4 of the OCB Rules.

Dated: New York, N.Y.
November 1, 1985

William J. Mulry
Executive Secretary
Board 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.