

Shackelford v. City, Dep't of General Services, 35 OCB 35 (BCB 1985) [Decision No. B-35-85 (ES)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of

STEPHANIE SHACKELFORD,

DECISION NO. B-35-85 (ES)

Petitioner,

DOCKET NO. BCB-801-85

-and-

THE CITY OF NEW YORK, DEPARTMENT
OF GENERAL SERVICES,

Respondent.

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DETERMINATION

Petitioner Stephanie Shackelford has filed a verified improper practice petition in which she charges the respondent Department of General Services 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 NYCCBL.

The petition asserts that the petitioner, a custodial assistant assigned to the Brooklyn Supreme Court building, has been harassed and treated unfairly by

her supervisor. The petition further alleges that the supervisor prepared an unsatisfactory evaluation of the petitioner's work based upon untrue statements. In support of her contention that her work has been entirely satisfactory, the petitioner has submitted six letters of recommendation attesting to the quality of the work performed by her in the Court building. Two letters were written by Supreme Court Justices, one by a Justice's Law Secretary, and three by high level Clerks of the Court. The content of these letters can only be characterized as exceptionally favorable to the petitioner's position.

However, notwithstanding the evidence of the superior quality of the petitioner's work, and the supervisor's apparently inconsistent evaluation thereof, the fact remains that the petition does not allege facts tending to show that the respondent employer,, or its agents, committed any of the acts specified in Section 1173-4.2(a) of the NYCCBL. Even assuming the truth and accuracy of the allegations of the petition, and the documents attached thereto, it does not appear that the respondent harassed or discriminated against the petitioner for any of the proscribed reasons set forth in the NYCCBL.

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

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.