

Plumbers & Plumbers Helpers, Carpenters of Parks Dep't v. Dep't
of Parks, 35 OCB 37 (BCB 1985) [Decision No. B-37-85(ES)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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PLUMBERS & PLUMBERS' HELPERS OF
THE N.Y.C. PARKS DEPARTMENT -
86TH STREET SHOPS,

Petitioners,

-and-

DECISION NO. B-37-85(ES)

COMMISSIONER HENRY V. STERN,
NEW YORK CITY DEPARTMENT OF
PARKS,

DOCKET NOS. BCB-822-85

Respondent.

----- x
CARPENTERS OF THE N.Y.C. PARKS
DEPARTMENT - 86TH STREET SHOPS,

Petitioners,

-and-

BCB-823-85

COMMISSIONER HENRY V. STERN,
NEW YORK CITY DEPARTMENT OF
PARKS,

Respondent.

----- x
PLUMBERS & PLUMBERS' HELPERS OF
THE N.Y.C. PARKS DEPARTMENT -
BRONX RIVER PARKWAY SHOP,

Petitioners,

-and-

BCB-825-85

COMMISSIONER HENRY V. STERN,
NEW YORK CITY DEPARTMENT OF
PARKS,

Respondent.

----- x

----- x

CARPENTERS OF THE N.Y.C. PARKS
DEPARTMENT - BRONX RIVER PARKWAY
SHOP,

Petitioners,

-and-

BCB-827-85

COMMISSIONER HENRY V. STERN,
NEW YORK CITY DEPARTMENT OF
PARKS,

Respondent.

----- x

NICHOLAS CIAVARELLA,
MAINTENANCE MEN BRICKLAYERS,
CEMENT MASONS, MASONS' HELPERS
- PARKS DEPARTMENT BRONX RIVER
PARKWAY SHOP,

Petitioners,

-and-

BCB-829-85

COMMISSIONER HENRY V. STERN,
NEW YORK CITY DEPARTMENT OF
PARKS,

Respondent.

----- x

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DETERMINATION

The petitions in these matters were filed respectively on October 29, 30, November 4, 6, and 18, 1985. The named respondent and the allegations of the petition are identical in each of the five proceedings; only the names, trades, and work locations of the petitioners differ. Because of the common issue of law presented, these matters have been consolidated for determination herein. Pursuant to Section 7.4 of the Re-

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vised Consolidated Rules of the office of Collective Bargaining ("OCB Rules"), a copy of which is annexed hereto, the undersigned has reviewed these petitions and has determined that they do 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").

The petitions allege a complaint that the petitioners' pay period has been changed from weekly to bi-weekly. It is further alleged that under Section 220 of the State Labor Law, the petitioners must be paid weekly.

The petitions do not allege that Commissioner Stern, the Department of Parks, or any of 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 petitions, it does not appear that the petitioners' pay period was changed for any of the proscribed reasons set forth in the, NYCCBL. With respect to the petitioners' allegation of a violation of Section 220 of the Labor Law, it is clear that violations of laws external to the NYCCBL are matters beyond the jurisdiction of the Board of Collective Bargaining and cannot form the basis for an improper practice.¹ I particularly note

¹ Decision No. B-14-83.

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that an employer's duty to employees subject to Section 220 of the Labor Law is limited under the NYCCBL, pursuant to Section 1173-4.3a(1), which provides:

"with respect to those employees whose wages are determined under section two hundred twenty of the labor law, there shall be no duty to bargain concerning those matters determination of which is provided for in said section;..."²

(Emphasis added)

Accordingly, rights created under Section 220 of the Labor Law are enforceable under procedures set forth in that State Law and not under the procedures contained 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 petitions herein do not allege that the employer's action was intended to affect the exercise of any of those rights. Accordingly, I find that no improper

² Thus, a claimed refusal to bargain over wages and benefits set under §220 does not constitute an improper practice. Decision No. B-13-83.

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employer practice has been stated. The petitions, therefore, are dismissed pursuant to Section 7.4 of the OCB Rules.

Dated: New York, N.Y.

November 21, 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 Rue 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

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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.