

Biller v. PBA, Caruso (Pres. of PBA), 37 OCB 13 (BCB 1986)
[Decision No. B-13-86 (ES)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

In the Matter of

P.O. RICHARD R. BILLER,

DECISION NO. B-13-86(ES)

DOCKET NO. BCB-826-85

Petitioner,

-and-

PHIL CARUSO (President of PBA)
and PBA REPRESENTATIVES,

Respondents.

DETERMINATION

Petitioner Richard R. Biller has filed a verified improper practice petition in which he charges respondents Phil Caruso, President of the Patrolmen's Benevolent Association ("PBA"), and other PBA representatives, 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 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 statute, 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 respondents' alleged "'VIOLATION OF CONTRACT' Subject: PUNCH-IN and PUNCH-OUT TIME". The petitioner refers to grievances concerning this matter which he filed in September, 1983, and September, 1984, and he explains his interpretation of the contractual provisions relating to rescheduling of tours and overtime compensation. The petitioner complains that representatives of the PBA informed him, in 1983 and 1984, that management's actions in rescheduling his tour for court appearances were proper. The relief requested from the Board of Collective Bargaining is basically an order enforcing the petitioner's interpretation of his contractual entitlements.

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 respondents, nor does the petition allege any facts tending to show that the respondents committed any of the acts proscribed in that section of the law. The gravamen of the petition is a dispute over the interpretation and application of a contractual provision. This is a dispute which appropriately may be resolved through the grievance

procedure of the collective bargaining agreement;¹ it is not a matter which can be determined by the Board of Collective Bargaining. Section 205.5(d) of the Taylor Law,² which is applicable to this agency, provided that:

"....the board shall not have authority to enforce an agreement between a public employer and an employee organization and shall not exercise jurisdiction over an alleged violation of such an agreement that would not otherwise constitute an improper employer or employee organization practice."

No basis is alleged under which the Board reasonably could construe the alleged contract violation as constituting an independent improper practice. Accordingly, the Board lacks jurisdiction of this claim.

Additionally, I find that even if the allegations of the petition could be deemed to state a legally sufficient claim, 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, must be filed with the Office of Collective Bargaining within four (4)

¹ I note that the petitioner alleges that he twice filed grievances on this subject; the outcome of these grievances is not indicated in the petition.

² Civil Service Law, Article 14.

months of the date the alleged improper practice occurred. In the present case, the petition, which was filed on November 4, 1985, complains of acts which occurred primarily during the period from September, 1983, through September, 1984. Since this period occurred more than four months prior to the filing of the improper practice, the petition is untimely and cannot be maintained.

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

DATED: New York, N.Y.
 March 7, 1986

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 117'-4.2 of the statute may be filed with the Board with-in 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.

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