

OFFICE OF COLLECTIVE BARGAINING  
BOARD OF COLLECTIVE BARGAINING

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In the Matter of

CHARLES OSBACK,

Petitioner,

-and-

UNIFORMED SANITATIONMEN'S  
ASSOCIATION,

Respondent.

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**DETERMINATION**

Petitioner Charles Osback has filed a verified improper practice petition in which he charges the respondent Uniformed Sanitationmen's Association (hereinafter "USA" or "the Union") with committing an improper practice within the meaning of the New York City Collective Bargaining Law (hereinafter "NYCCBL"). Pursuant to Section 7.4 of the Revised Consolidated Rules of the Office of Collective Bargaining (hereinafter "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.

The petition asserts a complaint concerning the termination of the petitioner's employment by the Department of Sanitation (which is not a party herein). The

petitioner alleges that he was terminated from his job because of excessive medical absences. He also sets forth a narrative statement of a series of occurrences, starting with his involvement in an accident on the job, his referral for physical and psychiatric tests, his admission to a hospital for two weeks for psychiatric observation, his intermittent resumption of work, and finally, the termination of his employment. It appears that the termination of petitioner's services occurred during his probationary period. The petition makes no claim against the employer, but asserts that the Union violated Section 6(b) of the collective bargaining agreement and Section 203 of the Civil Rights Law by breach of its duty of fair representation.

The petition does not allege that the respondent Union committed any of the acts proscribed in Section 1173-4.2 of the NYCCBL. The allegation that the Union breached its duty of fair representation is wholly conclusory. No facts are alleged as to how the Union breached its duty, or what it was that the Union did or failed to do. In this regard, I note that the rights of probationary employees are limited by law, and consequently the scope of a union's duty to such employees is also limited.<sup>1</sup> There is no indication in the petition that

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<sup>1</sup> See Decision No. B-16-79; cf. Decision Nos. B-10-84(ES); B-13-82.

the petitioner even informed the Union of his predicament or asked the Union for assistance.

With respect to the petitioner's allegation of a violation of Section 6(b) of the collective bargaining agreement, it is clear that such claim may not be considered in this forum. Contract violations may be remedied through the grievance and arbitration procedures of the collective bargaining agreement, but not through an improper practice proceeding. Section 205.5(d) of the Taylor Law,<sup>2</sup> which is applicable to this agency provides:

"... 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 of Collective Bargaining reasonably could construe the alleged contract violation as constituting an independent improper practice. Accordingly, the Board lacks jurisdiction of this claim.

Similarly, with respect to the petitioner's allegation of a violation of Section 203 of the Civil Rights Law, it is clear that alleged 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.<sup>3</sup>

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<sup>2</sup> Civil Service Law, Article 14.

<sup>3</sup> Decision No. B-14-83.

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; and the right to refrain from such activities. It also provides a forum in which an individual can obtain enforcement of the duty a certified employee organization owes to members of its bargaining unit to represent them in matters concerning the negotiation, administration, and enforcement of collective bargaining agreements in a manner which is not arbitrary or discriminatory.<sup>4</sup> The petition does not allege how any of the above rights or duties have been violated by the respondent Union. Accordingly, I find that no improper public employee organization practice has been stated. The petition, therefore is dismissed pursuant to Section 7.4 of the OCB Rules.

Dated: New York, N.Y.  
March 12, 1986

William J Mulry  
Executive Secretary  
Board of Collective Bargaining

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<sup>4</sup> See, e.g., Decision Nos. 3-26-94; B-14-83

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 or 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.

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§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.