

Plumbers & Plumbers Helpers of Parks Dep't. v. Dep't of Parks,
37 OCB 15 (BCB 1986) [Decision No. B-15-86 (ES)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

PLUMBERS & PLUMBERS' HELPERS OF
THE N.Y.C. PARKS DEPARTMENT,

DECISION NO. B-15-86 (ES)

Petitioners,

DOCKET NO. BCB-831-86

-and-

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

Respondent.

DETERMINATION

The petition in this matter was filed on March 4, 1986. 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 New York City Collective Bargaining Law ("NYCCBL").

The petition asserts a complaint which is stated as follows:

"Failure to pay annuity monies for a period of 11 months. The money has been allocated by the Comptroller's office to the Parks Department."

No further explanation or documentation of this complaint has been submitted.

The petition does not alleged-that either Commissioner Stern or the Parks Department has committed any if the acts specified in Section 1173-4.2 a of the NYCCBL. Even assuming the truth and accuracy of the allegations of the petition, it does not appear that the annuity monies have been withheld for any of the proscribed reasons set forth in the NYCCBL.

I also note that the petitioners have not identified the source of their claimed right to annuity monies; the petition fails to indicate whether such monies are due pursuant to collective bargaining agreement, statute, or some other authority. In any event, the enforcement of such right, assuming it exists, does not lie in an improper practice proceeding under the NYCCBL. Contractual rights may be enforced through the grievance and arbitration procedures contained in the contract creating the right. Similarly, statutory rights may be enforced through procedures embodied in the statute which creates the right.¹ The improper practice pro-

¹ Although the petition does not indicate this, it appears that the petitioners may be employees who are subject to the provisions of §220 of the Labor Law. To the extent that their complaint may involve questions of compliance with the provisions of that statute, including compliance with a Comptroller's determination issued uner §220, it is clear that such questions are not within the improper practice jurisdiction of the Board of Collective Bargaining and must be dealt with under the procedures set forth in the State Law or under the grievance procedures of an applicable collective bargaining agreement. Decision Nos. BCB-13-83; B-37-85(ES).

visions of the NYCCBL do not create an addition forum for the vindication of rights created outside of 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 petition herein does not allege that the employer's action was intended to affect any of these protected 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.
March 14, 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 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.