

OFFICE OF COLLECTIVE BARGAINING  
BOARD OF COLLECTIVE BARGAINING

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In the Matter of

ROBERT C. PALUMBO,  
Petitioner  
-and-

DECISION NO. B-10-87(ES)

DOCKET NO. BCB-943-87

DEPARTMENT OF ENVIRONMENTAL  
PROTECTION,

Respondent.

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DETERMINATION OF EXECUTIVE SECRETARY

On March 31, 1987, petitioner Robert C. Palumbo filed a verified improper practice petition alleging that the termination of his employment as a Laborer in the Bureau of Water Supply of the Department of Environmental Protection on December 3, 1986 violated 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, I have reviewed the petition and have determined that it does not allege facts sufficient as a matter of law to constitute an improper practice within the meaning of the statute.

Petitioner asserts that he was wrongfully terminated without prior written warning on account of his alleged

abuse of time and leave rules while three other "time abusers" were given written warnings only and were not terminated. Petitioner speculates that the reason for the difference in treatment is that the other employees were favored by his supervisor. Petitioner asserts that most of his absences were attributable to family and personal sick leave. He notes that he won his unemployment insurance case against the City and reports that his union president advised him that the employer's action was discriminatory. As a remedy for the alleged improper practice, petitioner seeks reinstatement to his former position of Laborer in the Bureau of Water Supply.

Even assuming the truth and accuracy of the allegations of the petition, the petition must fail because it does not allege that petitioner was terminated for any reason that is encompassed within the proscriptions of Section 1173-4.2a of the NYCCBL. That section provides that it is an improper practice for a public employer

(1) to interfere with, restrain or coerce public employees in the exercise of their rights granted in section 1173-4.1 of this chapter;

(2) to dominate or interfere with the formation or administration of any public employee organization;

(3) to discriminate against any employee for the purpose of encouraging or discouraging membership in, or participation in the activities of, any public employee organization;

(4) to refuse to bargain collectively in good faith on matters within the scope of collective bargaining with certified or designated representatives of its public employees.

It should be noted that the discrimination prohibited under Section 1173-4.2a(3) must relate to the exercise of union-related or other protected activity. It is not alleged, nor does it appear, that petitioner's participation in protected activity was a reason for the termination of his employment.

The NYCCBL does not provide a remedy for every wrong. It does protect the rights of public employees to form, join or assist public employee organizations, to bargain collectively through certified organizations of their own choosing and to refrain from any or all of such activities. Since the petitioner herein does not allege that the termination of his employment was effected in order to deprive him of any of the rights protected by the statute, I find that no improper practice has been stated. The dismissal of this petition, pursuant to Section 7.4 of the OCB Rules, is without prejudice, however, to any rights petitioner may have under the

collective bargaining agreement between the City and the certified representative of Laborers.<sup>1</sup>

DATED: New York, N.Y.  
April 27, 198

William J. Mulry  
Executive Secretary  
Board of Collective Bargaining

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<sup>1</sup>I note that District Council 37, AFSCME is the certified collective bargaining representative for employees in the Laborer title and that there is a working conditions contract on file in the Office of Collective Bargaining covering these employees for the period July 1, 1978 through June 30, 1981.

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 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.