

OFFICE OF COLLECTIVE BARGAINING  
BOARD OF COLLECTIVE BARGAINING

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In the Matter of the Improper  
Practice

- between-

ALFRED H. KHALIL,

Petitioner,

DECISION NO. B-27-87(ES)

-and-

DOCKET NO. BCB-959-87

KINGS COUNTY HOSPITAL,

Respondent.

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DETERMINATION OF EXECUTIVE SECRETARY

On May 22, 1987, petitioner Alfred H. Khalil filed a verified improper practice petition alleging that respondent failed to bargain in good faith in that, on or about March 25, 1987, respondent reassigned him to the day shift after more than fourteen years doing night shift work. Petitioner alleges that the reassignment was effected in order to retaliate against him for "reporting acts of extortion by a supervisor and because he refused to submit to extortion." 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 instant 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

Now York City Collective Bargaining Law ("NYCCBL").

In the first place, the duty to bargain in good faith, prescribed by Section 1173-4.3a of the NYCCBL,<sup>1</sup> is an obligation that runs between the public employer and the certified representative of its employees. No such duty is owed to an individual member of a bargaining unit. Accordingly, an individual lacks standing to assert that the duty has been breached.<sup>2</sup> If the acts complained of in the petition in this matter were found to constitute an improper public employer practice within the meaning

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<sup>1</sup>Section 1173-4.3a of the NYCCBL provides, in relevant part:

Subject to the provisions of subdivision b of this section and subdivision c of section 1173-4.0 of this chapter, public employers and certified or designated employee organizations shall have the duty to bargain in good faith on wages (including but not limited to wage rates, pensions, health and welfare benefits, uniform allowances and shift premiums), hours (including but not limited to over-time and time and leave benefits), working conditions and provisions for the deduction from the wages or salaries of employees in the appropriate bargaining unit who are not members of the certified or designated employee organization of sums equal to the periodic dues uniformly required of its members by such certified or designated employee organization, subject to applicable state law....

<sup>2</sup>E.g., Decision Nos. B-9-86; B-29-84; B-15-83.

of Section 1173-4.2a of the NYCCBL,<sup>3</sup> it must be that they violate subdivisions (a)(1), (a)(2) or (a)(3) of that section. However, each of those subdivisions is limited to proscribing conduct by a public employer that interferes with or discriminates against public employees in the exercise of rights which are protected by the statute. These include the right to form, join or assist a public employee organization, to bargain collectively through certified representatives of their own choosing and to refrain from any or all of such activities. Since the petitioner herein has not alleged that his shift re-

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<sup>3</sup>Section 1173-4.2a of the NYCCBL provides:

a. Improper public employer practices. It shall be an improper practice for a public employer or its agents:

(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.

assignment was effected in order to deprive him of any of the aforementioned rights, I find that he has failed to state an improper practice and, pursuant to Section 7.4 of the OCB Rules, the petition must be dismissed. It should be noted, however, that the dismissal of the petition is without prejudice to any rights petitioner may have under a collective bargaining agreement or in any other forum.

DATED:       New York, N.Y.  
              July 15, 1987

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.