

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of the Improper
Practice Proceeding

-between-

CURTIS W. HALE, JR.,

Petitioner,

DECISION NO. B-39-87(ES)

-and-

DOCKET NO. BCB-952-87

LIFEGUARD COORDINATORS PETER
STEIN, RICHARD SHER, MIKE
FERRIS,

Respondents.

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DETERMINATION OF EXECUTIVE SECRETARY

On April 24, 1987, Curtis Hale, Jr. (hereinafter petitioners, a lifeguard employed by the Department of Parks and Recreation, filed a verified improper practice petition alleging that Lifeguard Coordinator Peter Stein¹ "continues his harassment" of petitioner by detailing petitioner to an undesirable work location in Brooklyn. Petitioner asserts that, prior to the instant dispute, he had been terminated on "trumped up" charges resulting from an attempt to organize a coalition of Black and Hispanic lifeguards. Thereafter, petitioner was rein-

¹Although Lifeguard Coordinators Richard Sher and Mike Ferris are also named as respondents in this matter the principal allegations of the petition involve acts allegedly committed by Mr. Stein.

stated to his job, but, it is alleged, the retaliation and harassment against him continue, violating his rights under Section 1173-4.1 of the New York City Collective Bargaining Law ("NYCCBL").²

As a remedy, petitioner seeks an order directing that he be restored to his former work location and tour of duty and that he not be assigned to details in Brooklyn in the future. Additionally, petitioner requests that Mr. Stein and another Lifeguard Coordinator (Leo Perlmutter) be asked to resign from their positions as presidents of the local union chapters of District Council 37 which represent New York City Lifeguards because both individuals are also agents of management, thus creating a serious conflict of interest.³

Pursuant to Section 7.4 of the Revised Consoli-

²Section 1173-4.1 of the NYCCBL provides, in relevant portion:

Public employees shall have the right to self-organization, to form, join or assist public employee organizations, to bargain collectively through certified employee organizations of their own choosing and shall have the right to refrain from any or all of such activities.

³I take notice of the fact that Peter Stein is the president of New York City Lifeguard Supervisors, Local 508, District Council 37, while Leo Perlmutter is president of New York City Lifeguards, Local 461.

dated 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 NYCCBL. The petition does not allege that respondents, as agents of the City of New York, committed any of the acts proscribed by Section 1173-4.2a.⁴ It does not allege, for example, that the coalition of Black and Hispanic lifeguards that petitioner attempted to organize had as a purpose the improvement of terms and conditions of employment of minority lifeguards or that the assign-

⁴Section 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.

ment of petitioner to an undesirable work location was in retaliation for other activity protected by the statute.⁵ In this connection, it should be noted that the NYCCBL does not provide a remedy for every perceived wrong. It protects 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 he has been deprived of any of the rights protected by the statute, his petition must be dismissed.⁶

⁵In an earlier proceeding (Docket No. BCB-836-85), petitioner alleged that he was discharged because of his participation in a coalition of Black and Hispanic lifeguards created for purpose of persuading District Council 37 to seek equal employment opportunity rights for minority lifeguards. In Decision No. B-8-86, the Board of Collective Bargaining ("Board") dismissed the petition, inter alia, because it found no "probative evidence to show that the disciplinary action taken against petitioner was in retaliation for his dissatisfaction with the union's representation of minority lifeguards...."

⁶I note that additional improper practice petitions filed by Mr. Hale, docketed as BCB-817-85, BCB-980-87 and BCB-981-87, have been deemed sufficient on their face and are under consideration by the Board.

Similarly, petitioner's contention that Lifeguard Coordinators Stein and Perlmutter should be asked to resign from their union positions because of an alleged conflict with their positions as City managers does not state a cause of action under the NYCCBL and cannot be considered by the Board.

DATED: New York, N.Y.
 September 9, 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 what 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 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.