OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING
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In the Matter of

ROSE A. MIGLIARO,

Petitioner,

-and- DECISION NO. B-40-87(ES)

NEW YORK CITY OFF-TRACK BETTING CORPORATION, DOCKET NO. BCB-955-87

Respondent.
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DETERMINATION OF EXECUTIVE SECRETARY

On May 11, 1987, Rose A. Migliaro ("petitioner") filed a verified improper practice petition alleging that the New York City Off-Track Betting Corporation ("OTB" or "respondent") "willingly and willfully" violated the collective bargaining agreement then in effect between the OTB and Local 2021, District Council 37, AFSCME, AFL-CIO ("D.C. 37"), by involuntarily transferring her twice in less than one year.[1] The petition alleges that the transfers were discriminatory and caused petitioner severe and unnecessary pain and stress. 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

[1]Petitioner cites Article X, Sections 8F and 9 of the agreement between the OTB and D.C. 37. I note that these provisions deal with involuntary transfer of employees.

petition, including the detailed documents annexed thereto, 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 New York City Collective Bargaining Law ("NYCCBL").

The petition does not allege that respondent has committed any act in violation of Section 1173-4.2a of the statute.[2] Rather, the rights asserted in the petition

[2]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.

appear to exist, if at all, by virtue of a collective bargaining agreement between the respondent and D.C. 37. Section 205.5(d) of the Taylor Law,[3] which is applicable to the Board of Collective Bargaining ("Board"), provides that the Board is without 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.

Although it is true that petitioner claims her transfers were "discriminatory", and that Section 1173-4.2a(3) of the NYCCBL prohibits discrimination against public employees, it should be noted that the discrimination prohibited by the NYCCBL involves the exercise of union-related or other activity protected by the statute. The NYCCBL does not provide a remedy for every perceived wrong. It protects the rights of public employees to self-organization, 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.[4] Since petitioner herein has

[3]New York Civil Service Law, Article 14.

[4]NYCCBL Section 1173-4.1.

not alleged that her participation in protected activity was a reason for her transfer, she has failed to state a cause of action under the law.

For the aforementioned reasons, I am required to dismiss the improper practice petition in its entirety.

DATED: New York, N.Y.
September 9, 1987

William J. Mulry
Executive Secretary
Board 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.