

OFFICE OF COLLECTIVE BARGAINING  
BOARD OF COLLECTIVE BARGAINING  
- - - - - x  
DONALD C. STURKEY,

Petitioner,

DECISION NO. B-45-87 (ES)

-and-

DOCKET NO. BCB-852-86

DEPARTMENT OF SANITATION,

Respondent.

- - - - - x

DETERMINATION

Petitioner Donald C. Sturkey has filed a verified improper practice petition in which he charges the respondent Department of Sanitation with committing an improper practice within the meaning of the New York City Collective Bargaining Law (hereinafter "NYCCBL"). Pursuant to Section 7.4 of the Revised Consolidated Rules of the office of Collective Bargaining ("OCB"), 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 NYCCBL.

The petition alleges that the petitioner's employment as a probationary Sanitation Worker was terminated by the respondent after seven months of satisfactory service, on the grounds that the results of a urine test purportedly showed "foreign matter" in the petitioner's sample. While denying his use of drugs, the petitioner alleges that the Department failed to follow

the provisions of its own Policy and Procedure Manual concerning re-testing to confirm positive urine tests, issuance of a complaint by the Medical Division, and referral to the Department's Employees Assistance Unit for treatment. The petitioner alleges that none of these prescribed actions were undertaken by the respondent.

The petitioner has submitted documentation and letters of reference attesting to his character, his non-use of drugs or alcohol, and his conscientious service as an employee. He also has submitted a newspaper article describing his community service to the youth in the housing project in which he resides. It further appears that the petitioner is a former instructor at the United States Military Academy, and presently serves as a Medical Specialist in the Army Reserve. Finally, a petition has been submitted, signed by 47 persons alleging to be petitioner's co-workers in the Department of Sanitation, stating that they never saw petitioner use or appear to be under the influence of drugs, and vouching for his reputation as a cooperative, honest, conscientious worker.

However, notwithstanding the exceptionally favorable evidence submitted concerning the petitioner, the fact

remains that the petition does not allege facts tending to show that the respondent employer committed any of the acts specified in Section 1173-4.2a of the NYCCBL. Even assuming the truth and accuracy of the allegations of the petition, and the documents attached thereto, it does not appear that the respondent terminated the petitioner's employment for any of the proscribed reasons set forth in 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 actions were intended to affect the exercise of any of these rights. Accordingly, I am constrained to find that no improper employer practice has been stated.

Clearly, the petitioner and his supporters believe that an injustice has been done. If the facts alleged in the petition and supporting documents are true, then it is reprehensible that an employee as highly regarded

as petitioner is by his co-workers, former employers, military superiors, and neighbors, could be discharged on the basis of an unverified urine test without an opportunity to contest the accuracy of the test. This situation would seem to be inconsistent with the respondent's own rules, as cited by the petitioner, which provide for the administration of a second test to confirm an alleged positive finding, and referral to the Employees Assistance Unit for treatment in the case of a confirmed positive test result. Unfortunately, petitioner's recourse, if any exists, lies elsewhere than in a proceeding under Section 1173-4.2(a) of the NYCCBL. The Board of Collective Bargaining's jurisdiction is limited by the terms of that statute. The petitioner's claim is not within the scope of the improper practice provisions of the NYCCBL. The petition, therefore, is dismissed pursuant to Section 7.4 of the OCB Rules.

Dated:       New York, N.Y.  
              September 29, 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 11713-4.2 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.