

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

CHESLY McCOWN,

Petitioner,

DECISION NO. B-46-87 (ES)

-and-

DOCKET NO. BCB-876-86

LOUIS CIULLA and DEPT. OF PARKS,

Respondents.

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DETERMINATION

Petitioner Chesly McCown has filed a verified improper practice petition in which he charges the respondents, Louis Ciulla and the Department of Parks and Recreation, 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 (hereinafter "OCB Rules"), 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 statute, and that the claim asserted therein is untimely on its face.

The petitioner, a Park Service Worker employed as an exterminator in the Department of Parks and Recreation, alleges that disciplinary charges were preferred by the respondents on April 4, 1985, in retaliation for the peti-

tioner's action in complaining of employment discrimination.¹ It appears that the disciplinary charges relate to an incident which occurred on January 25, 1985, involving the petitioner's use of a Department vehicle containing terminating chemicals. However, the petitioner contends that his dispute with the Department "dates back to 1983."

Under Section 7.4 of the OCB Rules, a petition alleging that a public employer or a public employee organization has engaged in an improper practice in violation of Section 1173-4.2a of the NYCCBL must be filed with the Office of Collective Bargaining within four (4) months of the date the alleged improper practice occurred. In the present case, the petition was filed more than one year after the date of the latest act complained of (April 4, 1985), and relates to even earlier acts, "dat[ing] back to 1983." Since more than four months elapsed between April, 1985, and the date the petition was filed, the petition is untimely and cannot be maintained.

In any event, the petition fails to allege any facts tending to show that the employer committed any of the acts

¹The exhibits attached to the petition indicate that the petitioner filed charges of employment discrimination with the Equal Employment Opportunity Commission in May, 1984, and with the N.Y. State Division of Human Rights in July, 1984.

specified in Section 1173-4.2a of the law. In this regard, I note that the kind of discrimination referred to in Section 1173-4.2a(3) is discrimination intended to encourage or discourage membership in, or participation in the activities of, a public employee organization. The petitioner's complaints of employment discrimination, in retaliation for which the respondents allegedly preferred disciplinary charges, concern an entirely different form of discrimination. There is no allegation or even suggestion that the respondents' actions were intended to encourage or discourage the petitioner's union activity or membership. Accordingly, no improper employer practice has been stated.

For the reasons stated above, the petition is dismissed pursuant to Section 7.4 of the OCB Rules. Such dismissal is, of course, without prejudice to any rights the petitioner may possess in any pending proceeding before the EEOC or the State Division of Human Rights.

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 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 an 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.