

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING
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FIRE ALARM DISPATCHERS BENEVOLENT
ASSOCIATION, INC.,

Petitioner,

DECISION NO. B-49-87 (ES)

-and-

DOCKET NO. BCB-911-86

THE CITY OF NEW YORK and THE FIRE
DEPARTMENT OF THE CITY OF NEW YORK,

Respondents.

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DETERMINATION

Petitioner Fire Alarm Dispatchers Benevolent Association, Inc. (also referred to herein as "the Union") has filed a verified improper practice petition in which it charges the respondents, the City of New York and the New York City Fire Department, with committing an improper practice within the meaning of the New York City Collective Bargaining (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.

The Union complains that the respondents,

"...have violated [NYCCBL] Section 1173-4.2 in that they have violated the terms of the collective bargaining agreement insofar as assigning Fire Alarm Dispatcher Vincent Alliegro to a tour of duty which is outside of the chart and which is contrary to the terms of the collective bargaining agreement."

The petition does not indicate what form of relief, if any, the Union requests the Board to grant.

The petition fails to specify which of the improper practice provisions of Section 1173-4.2 of the NYCCBL are claimed to have been violated by the respondents. It similarly fails to allege any facts tending to show that the respondents committed any of the acts proscribed by that section of the law. Nothing more is alleged than the assertion that the respondents violated the terms of the parties' collective bargaining agreement by assigning a unit member to a tour of duty outside of the "chart". However, with respect to the alleged violation of the collective bargaining agreement, it is clear that such claim may not be considered in this forum.

Contract violations may be remedied through the grievance and arbitration procedures of the collective bargaining agreement, but not through an improper practice proceeding. Pursuant to Section 205.5(d) of the Taylor Law,¹ the provisions of which are applicable to the Board of Collective Bargaining,² the Board's improper practice jurisdiction is subject to the following limitation:

"...provide, however, the board shall not have authority to enforce an agreement between an 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."

¹Civil Service Law, Article 14.

²Civil Service Law §212.

The petition fails to allege any basis under which the Board reasonably could construe the alleged contract violation as constituting an independent improper practice. Accordingly, the Board lacks jurisdiction of this claim.

For the reasons stated above, I find that no improper public employer practice has been stated. The petition, therefore, is dismissed pursuant to Section 7.4 of the OCB Rules, without prejudice to any claim the petitioner may possess under the grievance and arbitration provisions of the applicable collective bargaining agreement.

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 3-173-4.2 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.