L.371, SSEU, Wolfer v. Grinker, HRA, et. al, 39 OCB 56 (BCB 1987) [Decision No. B-56-87 (ES)]

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

SOCIAL SERVICE EMPLOYEES UNION, LOCAL 371, and JEFFREY WOLFER,

Petitioners,

-and-

DECISION NO. B-56-87(ES)

DOCKET NO. BCB-1014-87

WILLIAM J. GRINKER, HUMAN RESOURCES ADMINISTRATION ADMINISTRATOR/DEPARTMENT OF SOCIAL SERVICES COMMISSIONER; BROOK TRENT, DEPUTY COMMISSIONER, OFFICE OF SPECIAL SERVICES FOR CHILDREN,

Respondents.
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DETERMINATION OF EXECUTIVE SECRETARY

On December 11, 1987, a verified improper practice petition was filed by the Social Service Employees Union, Local 371 (referred to herein as "SSEU" or "petitioner"), in which it is alleged that the respondents William J. Grinker, Human Resources Administration Administrator/ Department of Social Services Commissioner and Brooke Trent, Deputy Commissioner, Office of Special Services for Children (collectively referred to herein as "the City") have failed and refused to comply with the terms of an arbitration award dated January 14, 1987, a supplemental award dated July 17, 1987, and a letter from the arbitrator dated August 13, 1987 Confirming and reiterat-

ing the terms of the original and supplemental awards, which directed respondents to reinstate the grievant, Jeffrey Wolfer, to his former position of employment in an office other than Special Services for Children in Brooklyn. Petitioner argues that, by its actions, the City has failed to adhere to the terms of a collective bargaining agreement between the parties and that this feilure constitutes a refusal to bargain collectively in good faith, in violation of Section 1173-4.2a(4) of the New York City Collective Bargaining Law ("NYCCBL") It is alleged additionally that the above-described actions interfere with, restrain and coerce public employees in the exercise of their rights under Section 1173-4.1 of the NYCCBL, in violation of Section 1173-4.2a(l) of the law.[1]

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[1]Section 1173-4.2a of the NYCCBL provides, in relevant part:

> 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;
>
> (4) to refuse to bargain collectively in good faith on matters within the

(continued...)

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 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.

In Matter of Board of Higher Education of the City of New York,[2] an employee charged that the failure of its employer and negotiating representative to implement an arbitrator's award was an improper practice under the Taylor Law. In dismissing the charge as failing to state a prima facie case, the State Public Employment Relations Board ("PERB") observed that Section 209-a of the Taylor Law proscribes employer or employee organi-

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(...continued)

> scope of collective bargaining with certified or designated representatives of its public employees.

Section 1173-4.1 provides, in relevant part:

> 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.

[2]3 PERB ¶4513 (Dir. 1970).

zation conduct which either seeks to inhibit public employees from freely exercising their rights under Section 202 of the state law or which evidences a refusal to meet the good faith standard required of parties to collective negotiations.[3] PERB found that the acts complained of in that case could not "reasonably be construed as infringements upon the charging party's protected §202 rights nor [could] they constitute a refusal to negotiate in good faith." Therefore, it concluded, the failure to implement an arbitrator's award does not sound in improper practice.[4]

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[3]Section 209-a of the Taylor Law, the state analogue to Section 1173-4.2 of the NYCCBL provides, in relevant part:

> 1. Improper employer practices. It shall be an improper practice for a public employer or its agents deliberately (a) to interfere with, restrain or coerce public employees in the exercise of their rights guaranteed in section two hundred two for the purpose of depriving them of such rights; ... (d) to refuse to negotiate in good faith with the duly recognized or certified representatives of its public employees; ....

Section 202, which is analogous to NYCCBL Section 1173-4.1, provides that "public employees shall have the right to form, join and participate in, or to refrain from forming, joining, or participating in, any employee organization of their own choosing."

[4]Matter of Board of Higher Education, 3 PERB at p. 4564. See also, Matter of Administrative Board of the Judicial Conference of the State of New York, 6 PERB ¶3013 (1973); Addison Central School District, 13 PERB ¶3060 (1980); Schalmont Central School District, 14 PERB ¶4596 (H.O. 1981).

In further support of the above-stated principle, PERB has reasoned that while at least two states specifically made it an unfair practice for a public employer to refuse to comply with the provisions of a binding arbitration award, or wilfully to violate the terms of a collective bargaining agreement, the Taylor Law lacks such specific provisions.[5] To the contrary, the Taylor Law expressly provides that:

> the [Public Employment Relations] 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 (emphasis added).[6]

[5]Matter of Administrative Board of the Judicial Conference of the State of New York, supra. Pennsylvania's Public Employee Relations Act make sit an unfair practice for a public employer or employee organization to refuse "to comply with the provisions of an arbitration award deemed binding under Section 903 of Article IX." Act 195 §§120la(B), b(S) (CCH ¶27,371 (1979)). The second state statute cited by PERB, Nevada's Local Government Employee-Management Relations Act, used to, but no longer makes it a prohibited practice "wilfully to violate the terms of a collective bargaining Agreement." Nev. Rev. Stat. §288.270 (CCH ¶22,842, (1987)).

[6]N.Y. Civ. Serv. Law §205.5d (McKinney 1983).

This provision is made directly applicable to the City of New York by virtue of Section 212 of the Taylor Law.

Based upon the foregoing, I conclude that, as a matter of law, it is not an improper practice under the NYCCBL to refuse to comply with the provisions of a binding arbitration award. Moreover, it is clear that the relief which petitioner presumably[7] seeks in this matter, to wit, enforcement of the arbitrator's award, as supplemented and thereafter confirmed by letter, is not within the power of the Board of Collective Bargaining to grant. Enforcement of an arbitrator's award must be sought in a court of law, in accordance with Section 75 of the CPLR.

The dismissal of this petition, pursuant to Section 7.4 of the OCB Rules, is without prejudice to any rights petitioner may have in the courts.

DATED: New York, N.Y.
December 18, 1987

William J. Mulry
Executive Secretary
Board of Collective
Bargaining

[7]The petition does not specify the relief sought.

§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.

OTHER SECTIONS OF THE LAW AND RULES MAY BE APPLICABLE.
CONSULT THE COMPLETE TEXT.