Fire Alarm Dispatchers Bene. Ass. v. City, NYFD, 39 OCB 8 (BCB 1987) [Decision No. B-8-87 (ES)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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FIRE ALARM DISPATCHERS BENEVOLENT ASSOCIATION, INC., DECISION NO. B-8-87(ES)

Petitioner, DOCKET NO. BCB-935-87

-and-

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

Respondent.

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DETERMINATION OF EXECUTIVE SECRETARY

On February 11, 1987, a verified improper practice petition was filed by the Fire Alarm Dispatchers Benevolent Association ("FADBA" or "petitioner") in which it is alleged that the respondents City of New York and the Fire Department of the City of New York improperly refused to adhere to the terms of a collective bargaining agreement and to a past practice whereby Borough Administrative Fire Alarm Dispatchers approved requests for time off charged to compensatory time under certain circumstances.

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 New York City Collective Bargaining Law ("NYCCBL"). The petition does

not allege that respondent committed any act in violation of Section 1173-4.2a of the NYCCBL.[1] Further, the rights asserted in the petition would appear to exist, if at all, by virtue of a collective bargaining agreement. Section 205.5(d) of the Taylor Law,[2] which is applicable to the Board of Collective Bargaining, 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.

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[1]Section 1173-4.2a of the NYCCBL provides as follows:

> 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.

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

Where, as here, no basis is offered for the Board to construe the alleged contract violation as an improper practice under the NYCCBL, the Board lacks jurisdiction to consider the claim.

Finally, it should be noted that contract violations may be remedied through the grievance and arbitration procedures of a collective bargaining agreement. The dismissal of this petition, pursuant to Section 7.4 of the OCB Rules, is without prejudice to any rights petitioner may have under such an agreement.

DATED: New York, N.Y.
April 27, 1987

William J. Mully, Esq.
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.

OTHER SECTIONS OF THE LAW AND RULES MAY BE APPLICABLE.

CONSULT THE COMPLETE TEXT.