

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of

GLYNE A. GRIFFITH,

DECISION NO. B-9-87(ES)

Petitioner,

DOCKET NO. BCB-939-87

-and-

CITY OF NEW YORK DEPARTMENT
OF FINANCE,

Respondent.

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DETERMINATION OF EXECUTIVE SECRETARY

On February 24, 1987, petitioner Glyne A. Griffith filed a verified improper practice petition alleging that, from 1977 to 1986, the Section 822 income tax levied against non-resident employees of the City of New York was improperly deducted from his salary.¹ Petitioner asserts that he became aware that improper deductions were being made in October of 1986, that the parties to this matter agree that petitioner is not subject to the Section 822 tax and that the deductions

¹The "Section 822 tax" is a tax on a non-City resident in

"an amount by which a City personal income tax on residents computed and determined as if he were a resident individual ... exceeds the amount of any city earnings Tax and city personal income tax imposed on him for the same taxable period."
N.Y. City Charter §822 (1973).

were terminated as of October 1986. Petitioner also alleges however that, while he was informed that he would receive a full refund plus interest on monies improperly deducted between 1977 and 1986, respondent Department of Finance has refused to repay amounts deducted during 1977 and 1978, or the interest due on said amounts, claiming that the statute of limitations has run with respect to those claims. Petitioner asserts that the statute of limitations should run from the time the illegal act was discovered in October 1986. As a remedy for the alleged improper practice, petitioner seeks a full refund of all amounts deducted from his paycheck, plus interest, from 1977 through 1986.

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 instant 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 has committed any acts in violation of Section 1173-4.2a of

the NYCCBL.² Nor does it appear that an alleged refusal to refund amounts of Section 822 tax improperly deducted from petitioner's salary or the interest accrued thereon, even if true, would constitute employer action of a type prohibited by Section 1173-4.2a.

It should be noted that the NYCCBL does not provide a remedy for every perceived wrong. It does protect the rights of public employees to form, join or assist public employee organizations, to bargain collectively through certified organizations of their own choosing and to refrain from any or all of such activities. Since

²Section 1173-4.2a of the NYCCBL provides:

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.

the petitioner herein does not allege that he has been deprived of any of the rights protected by the statute, his petition must be dismissed. This dismissal is without prejudice to any rights petitioner may have in another forum.

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