

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING
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In the Matter of the Improper
Practice Proceeding

-between-

ANTHONY GURLEY,

Petitioner,

DECISION NO. B-16-88 (ES)

-and-

DOCKET NO. BCB-1027-88

DEPARTMENT OF TRANSPORTATION,

Respondent.

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DETERMINATION OF EXECUTIVE SECRETARY

On January 27, 1988, Anthony Gurley ("petitioner") filed a verified improper practice petition alleging that he "was sent home by (Provisional) Lieutenant David Ferdinand for not having the proper equipment." He was accordingly docked a day's pay.

Petitioner, a Traffic Enforcement Agent, is required to wear a safety vest. He alleges that he lost his safety vest but, on March 19, 1987, replaced the vest with a safety belt. Nevertheless, on September 23, 1987, Lieutenant Ferdinand informed him that he would be sent

home unless he produced a safety vest, which petitioner did not do.¹

¹Petitioner states that, on the day in question, he 'borrowed a vest and presented it to the Lieutenant. Apparently, however, the borrowed vest was rejected, as petitioner was sent home.

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 the Department of Transportation ("respondent"), in docking petitioner's pay, has committed any act in violation of Section 1173-4.2a of the NYCCBL². Nor does it appear that petitioner was denied

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.

Decision No. B-16-88 (ES)

Docket No. BCB-1027-88

a day's pay for any of the proscribed reasons set forth in the law. It should be noted that the NYCCBL does not provide a remedy for every perceived wrong. Its provisions and procedures are designed to safeguard the rights of public employees that are created by the statute, including the right to organize, to form, join and assist public employee organizations; to bargain collectively through certified public employee organizations; and the right to refrain from such activities. Since the instant petition does not allege that respondent's actions were intended to, or did, affect any of these protected rights, it must be dismissed.

In addition, I note that the petition herein, filed on January 27, 1988, complains of acts alleged to have occurred on September 23, 1987. 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 1173-4.2 of the NYCCBL must be filed with the Office of Collective Bargaining ("OCB") within four months of the date of the alleged improper practice. Since more than four months elapsed between the date on which the acts complained of occurred and the date on which the improper practice petition was filed with the OCB, the petition

Decision No. B-16-88 (ES)
Docket No. BCB-1027-88

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is untimely and cannot be considered by the Board. For this additional reason, it is hereby dismissed.

DATED: New York, N.Y.
May 27, 1988

Marjorie A. London
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.