

OFFICE OF COLLECTIVE BARGAINING  
BOARD OF COLLECTIVE BARGAINING

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In the Matter of the Improper  
Practice

-between-

CLAUDIA JONES,

Petitioner,

DECISION NO. B-19-88 (ES)

DOCKET NO. BCB-1019-87

-and-

NEW YORK CITY DEPARTMENT OF  
CORRECTIONS, et al.

Respondents.

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DETERMINATION OF EXECUTIVE SECRETARY

On October 28, 1987, the office of Collective Bargaining ("OCB") received from Claudia Jones (hereinafter referred to as "petitioner") a verified improper practice petition dated October 9, 1987, which it did not accept for filing because petitioner failed to submit proof of service of the petition on the New York City Department of Corrections (hereinafter referred to as "respondent") as required by Section 7.6 of the Revised Consolidated Rules of the Office of Collective Bargaining ("OCB Rules"). On December 21, 1987, the petition was resubmitted, together with proof of service, and was accepted for filing at that time.

Pursuant to Section 7.4 of the OCB Rules, a copy

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Docket No. BCB-1019-87

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of which is annexed hereto, the undersigned has reviewed the petition and has determined that the improper practice claim asserted therein must be dismissed because it is untimely on its face. Section 7.4 provides, in pertinent part, as follows:

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...

The petitioner herein alleges that she was harassed and discriminated against in retaliation for filing a "grievance/complaint" against respondent; that she advised the Assistant Commissioner (E.E.O.) about the alleged retaliation on or about January 26, 1987; and that on May 2, 1987, she had further communication with the Assistant Commissioner concerning specific incidents of harassment. Petitioner also charges that, on or about March 28, 1987, in violation of respondent's rules and procedures, she was ordered to submit to a urine test even though there was no basis for respondent to believe that she was using drugs. Even assuming, arguendo, that the alleged acts of harassment and discrimination continued as late as May 1987, the petition herein was filed at least seven months after the last incident

complained of <sup>1</sup> and, accordingly, must be dismissed as untimely under Section 7.4 of the OCB Rules.

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

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Marjorie A. London  
Executive Secretary  
Board of Collective  
Bargaining

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<sup>1</sup> The file in this matter shows that petitioner initially filed her claim on August 10, 1987 with the New York State Public Employment Relations Board ("PERB"). On August 18, 1987, the Director of Public Employment Practices and Representation of PERB returned the charge to the petitioner, and correctly advised her that the New York City OCB was the agency having jurisdiction over her charge. At this time, petitioner's claim was still timely, at least as to events alleged to have taken place on or about May 2, 1987. However, petitioner did not attempt to file with the proper agency until October 28, 1987, at which time the petition was untimely.

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.