

Iquallen v. L.237, Washington, CEU, 41 OCB 20 (BCB 1988) [Decision No. B-20-88 (ES)]

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

-between-

RANCE LOUALLEN,

Petitioner,

DECISION NO. B-20-88 (ES)

-and-

DOCKET NO. BCB-1025-88

FRED WASHINGTON and CITY  
EMPLOYEES UNION, LOCAL 237,

Respondent.

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DETERMINATION OF EXECUTIVE SECRETARY

On January 7, 1988, Rance Louallen ("petitioner") submitted a verified improper practice petition<sup>1</sup> in which he charged Fred Washington and City Employees Union, Local 237 ("respondent") with "gross negligence and misconduct" in that "from April 20, 1982 to the present not one grievance was answered by Local 237." Pursuant to Section 7.4 of the OCB Rules, a copy of which is annexed hereto, the undersigned has reviewed the petition and has determined that, on its face, the petition does not contain facts sufficient as a matter

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<sup>1</sup> The petition initially was filed on December 21, 1987 but was returned to petitioner because it was not accompanied by proof of service on the respondent, which is required by Section 7.6 of the Revised Consolidated Rules of the Office of Collective Bargaining ("OCB Rules").

of law to constitute a violation and also is untimely. Accordingly, it must be dismissed.

While a failure to process grievances, constituting gross negligence, might state a breach of the duty of fair representation and an improper practice under Section 1173-4.2b(1) of the New York City Collective Bargaining Law ("NYCCBL"),<sup>2</sup> the mere failure to process grievances, without more, does not state a violation of the statute. It is well-established that the duty of fair representation requires a union to act fairly, impartially and non-arbitrarily in negotiating, administering and enforcing collective bargaining agreements.<sup>3</sup> It does not require a union to take every grievance to arbitration so long as the decision not to pursue a particular claim is made in good faith and not in an arbitrary or discriminatory manner.<sup>4</sup> Here, there is no allegation that respondent acted arbitrarily or discriminatorily in not pursuing grievances on petitioner's behalf.

Petitioner has attached to his petition two Griev-

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<sup>2</sup> See, Decision No. B-26-81.

<sup>3</sup> Decision Nos. B-13-82; B-11-82.

<sup>4</sup> Decision Nos. B-25-84; B-2-84.

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3.

ance Forms bearing respondent's letterhead which appear to be examples of grievances that respondent allegedly failed to "answer." With respect to the earlier of these, dated March 24, 1986, the petition is untimely under Section 7.4 of the OCB Rules, which requires that an improper practice petition be filed within four months of the date on which the act complained of occurred.<sup>5</sup> The second grievance, dated December 15, 1987, complains that respondent violated Title VII of the 1964 Civil Rights Act by discriminating on the basis of sex. Clearly, this is not a matter with respect to which petitioner sought respondent's representation. Moreover, such a claim would not constitute a basis, for an improper practice petition against respondent as claimed violations of statutes other than the NYCCBL are not subject to the jurisdiction of the OCB.

For all of the foregoing reasons, the petition herein is dismissed pursuant to Section 7.4 of the OCB Rules, but without prejudice to any rights petitioner may have in another forum.

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>5</sup> Furthermore, any alleged failure to "answer" a grievance that may have occurred prior to September 1987, four months before the instant petition was filed, is time-barred.

**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 f"acts 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 f 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.