

Williams v. Bureau of Wastewater Treatment, 41 OCB 23 (BCB 1988) [Decision No. B-23-88 (ES)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of the Improper
Practice Proceeding

-between-

JAMES WILLIAMS,

Petitioner

DECISION NO. B-23-88 (ES)

-and-

DOCKET NO. BCB-1061-88

BUREAU OF WASTEWATER TREATMENT,

Respondent.

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DETERMINATION OF EXECUTIVE SECRETARY

On May 31, 1988, James Williams ("petitioner"), filed a verified improper practice petition against the Bureau of Wastewater Treatment, a subdivision of the Department of Environmental Protection ("respondent"), in which he alleges as follows:

On November 11, 1983, I received a merit increase of \$500 which raised my salary from \$17,521 to \$18,021. On January 1, 1983, I received a promotion with a salary increase of \$1,400. My salary should have gone from \$17,021 to \$19,421. This did not happen. My salary was raised to \$18,907. I would like for this \$500 to be restored back to my salary, retroactive to the time of discontinuation. My contract states in Article II Section 1(d). The maximum salary for a title shall not constitute a bar to the payment of any salary adjustment or pay differentials provided for in this agreement.

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 this 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 fails to allege that respondent has committed any acts in violation of Section 1173-4.2a of the NYCCBL¹ as it does not allege that the perceived error in petitioner's salary was intend-

¹ Section 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.

ed to, or did, interfere with or deprive petitioner of any rights protected by the statute, i.e., the right to organize, to form, join and assist public employee organizations, or the right to refrain from such activities.²

To the extent that petitioner has offered any basis for his claim, he cites a provision of 'his' contract. It is well-settled however that contract rights may not be enforced through an improper practice proceeding. Section 205.5d of the Taylor Law,³ which-is applicable to this agency, provides:

the board shall not have 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.

As no basis has been alleged for construing petitioner's arguable contract claim to state an independent improper practice, I find that the Board lacks jurisdiction of any such claim.

For the aforementioned reasons, the petition shall be dismissed pursuant to Section 7.4 of the OCB Rules. It should be noted, however, that the dismissal is without

² NYCCBL §1173-4.1.

³ N.Y. Civ. Serv. Law, Art. 14.

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prejudice to any rights petitioner may have under any applicable collective bargaining agreement or in any other forum.

DATED: New York, N.Y.
June 28, 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.

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