

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

-between-

USHER BANKS,

DECISION NO. B-49-88 (ES)

Petitioner,

DOCKET NO. BCB-1070-88

-and-

HUMAN RESOURCES ADMINISTRATION,

Respondent.

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DETERMINATION OF EXECUTIVE SECRETARY

On July 21, 1988, Usher Banks ("petitioner"), formerly employed as a per diem cook at a men's shelter operated by the Human Resources Administration ("HRA" or "respondent"), filed a verified improper practice petition contending that he was unfairly discharged on May 19, 1988, after three and a half years of service during which his performance was rated favorably. Annexed to the petition is a 26-page letter detailing events which preceded his discharge. Petitioner also submitted numerous documents substantiating these events.

It appears that after prolonged and unsuccessful efforts to obtain permanent employee status,

petitioner, frustrated by the failure of his union to resolve this situation,¹ wrote a threatening letter to the union president. Thereafter, criminal charges of "aggravated harassment" were filed against him and a temporary order of protection was obtained by the union president. When respondent became aware of these events, it terminated petitioner. Petitioner asserts that the union was responsible for having him terminated. However, the union is not named as a respondent here. Accordingly, in reviewing the petition, I have considered only the allegations against HRA.

Based upon my review, I have determined, 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, that the petition must be dismissed as it fails to 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

¹ I note that City Employees Union, Local 237 and Local 832, International Brotherhood of Teamsters are the jointly certified bargaining representatives of employees in the title Cook. Decision No. 14-80.

HRA has committed any acts in violation of Section 1173-4.2a of the NYCCBL, which defines improper public employer practices.² Moreover, even assuming the truth and accuracy of the allegations of the petition, it does not appear that petitioner was terminated for any of the proscribed reasons set forth in the NYCCBL. It should be noted that the NYCCBL does not provide a remedy for every perceived wrong or inequity. It is designed only to safeguard the rights of public employees that are created by that statute, i.e., the right to organize, to form, join or assist

² Section 1173-4.2a of the NYCCBL provides:

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.

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public employee organizations, to bargain collectively through certified public employee organizations; and the right to refrain from such activities. While petitioner also asserts that the City of New York discriminates against per diem employees, he does not allege that such discrimination is based on any of the reasons proscribed by the NYCCBL. Since it is not alleged that respondent's actions were intended to, or did, affect any of the rights protected by the statute, the petition must be dismissed. This dismissal is without prejudice, however, to rights petitioner may have in any other forum.

DATED: New York, N.Y.
October 20, 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 11713-4.2 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.