

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

-between-

OM CHOJAR, Computer Programmer
Analyst, Department of Personnel,
City of New York,

DECISION NO. B-57-88 (ES)

Petitioner,

DOCKET NO. BCB-1080-88

-and-

JUDITH LEVITT, New York City
Department of Personnel,
New York,

Respondent.

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DETERMINATION OF EXECUTIVE SECRETARY

On August 24, 1988, Om Chojar ("petitioner") filed a verified improper practice petition in which he alleges that the termination of his employment by the New York City Department of Personnel ("respondent") on February 22, 1988 violated his rights under section 1173-4.2 of the New York City Collective Bargaining Law ("NYCCBL"). Specifically, petitioner alleges that respondent violated section 1173-4.2a(1) when the Director of the unit where he was employed threatened to fire him because he "went to the court against her two prov[isional]/politically

appointed friends ... [who] assaulted [him] physically on April 9, 1987," and moved his work station to a smoking area with the knowledge that petitioner was a non-smoker. Petitioner also alleges that respondent violated NYCCBL section 1173-4.2c(1) by failing to make any effort to reach an agreement with him on any of the charges filed against him on April 24, 1987, and by placing him on an involuntary leave of absence commencing in April 1987. Petitioner further alleges that respondent violated NYCCBL section 1173-4.2c(4) by failing to provide him any "clear cut orders of [his] termination" or any back pay since his suspension on June 3, 1987.

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 NYCCBL, and also that the violations alleged occurred more than four months prior to the filing of the petition, thus rendering the charge untimely. It should be noted that the NYCCBL does not provide a remedy for every perceived wrong or inequity.

Its provisions and procedures are designed to protect the rights of public employees that are created by the statute, including the right to organize, to form, join or assist public employee organizations, to bargain collectively through certified employee organizations, and the right to refrain from such activities.¹

In the instant matter, it appears that petitioner was brought up on disciplinary charges which resulted in a decision to terminate him. Even assuming the truth and accuracy of his allegations, however, it does not appear that the termination or any of the other acts complained of in the petition were taken for any of the proscribed reasons set forth in the NYCCBL.² Therefore, the petition must be dismissed.

¹ NYCCBL §1173-4.1.

² 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;

(continued...)

In addition, it should be noted that the duty of good faith bargaining, created by section 1173-4.2c of the statute³ applies to, and runs between, the public employer and the certified representative of

(...continued)

(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.

³ Section 1173-4.2c of the NYCCBL provides:

c. Good faith bargaining. The duty of a public employer and certified or designated employee organization to bargain collectively in good faith shall include the obligation:

(1) to approach the negotiations with a sincere resolve to reach an agreement;

(2) to be represented at the negotiations by duly authorized representatives prepared to discuss and negotiate on all matters within the scope of collective bargaining;

(3) to meet at reasonable times and convenient places as frequently as may be necessary, and to avoid necessary delays;

(continued...)

its employees. As the duty to negotiate is not owed to an individual employee, petitioner may not invoke section 1173-4.2c on his own behalf or seek to enforce any obligation contained therein.⁴

Finally, the petition must be dismissed because it was filed more than four months after the occurrence of the actions complained of, in violation of the express provisions of section 7.4 of the OCB Rules.

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

Marjorie A. London
Executive Secretary
Board of Collective
Bargaining

(...continued)

(4) to furnish to the other party, upon request, data normally maintained in the regular course of business, reasonably available and necessary for full and proper discussion, understanding and negotiation of subjects within the scope of collective bargaining;

(5) if an agreement is reached, to execute upon request a written document embodying the agreed terms, and to take such steps as are necessary to implement the agreement.

⁴ Decision Nos. B-9-86; B-5-86; B-29-84; B-15-83; B-1-83; B-13-81.

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 (30) days.

OTHER SECTIONS OF THE LAW AND RULES MAY BE APPLICABLE.

CONSULT THE COMPLETE TEXT.