

Leahey v. PBA, P. Caruso (Pres. of PBA), 43 OCB 14 (BCB 1989) [Decision No. B-14-89 (ES)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of the Improper
Practice Proceeding

-between-

DECISION NO. B-14-89(ES)

CHARLES LEAHEY,

DOCKET NO. BCB-1105-88

Petitioner,

-and-

PHIL CARUSO, President,
PATROLMEN'S BENEVOLENT
ASSOCIATION,

Respondent.

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DECISION AND ORDER

On October 19, 1988, the Office of Collective Bargaining ("OCB") received a verified improper practice petition from Charles Leahey ("Petitioner"), which it did not accept for filing because Petitioner failed to submit proof of service of the petition on Phil Caruso, President, Patrolmen's Benevolent Association ("Respondent"), as required by Section 7.6 of the Revised Consolidated Rules of the Office of Collective Bargaining (OCB Rules"). On October 27, 1988, 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 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 the Respondent committed a "blatant violation of [the) union mandate re: support of member" in that the Respondent allegedly directed a PBA consultant "to volunteer wrongful information into the record" during a Board of Trustees meeting held on April 24, 1981. The Petitioner also alleges that he raised this complaint 1118 months ago (CO #1317/85) [and that he has] heard nothing on said complaint."

Inasmuch as the allegation concerning the original charge relates to an incident that allegedly took place in April of 1981, it is untimely by more than seven years. Further, Petitioner's complaint concerning Respondent's failure to respond to his complaint CO #1317/85, which Petitioner asserts was made eighteen months ago, would also appear to be untimely under

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Section 7.4 of the OCB Rules. Accordingly, both allegations referred to in the petition must be dismissed.

DATED: New York, N.Y.
March 28, 1989

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*3.173-4.2 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 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.