

Zunich v. PBA, 43 OCB 15 (BCB 1989) [Decision No. B-15-89 (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-15-89(ES)
Docket No. BCB-1148-89

MARK J. ZUNICH

Petitioner,

-and-

THE NEW YORK CITY HOUSING
PATROLMEN'S BENEVOLENT ASSOCIATION

Respondent.

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DETERMINATION OF EXECUTIVE SECRETARY

On March 7, 1989, Mark J. Zurich, a Housing Authority Police Officer ("the petitioner"), filed a verified improper practice petition in which he alleged that the New York City Housing Patrolmen's Benevolent Association ("the Union" or "the NYCHPBA") breached its duty of fair representation by failing to provide him with legal representation. As a remedy, he seeks the reimbursement of \$7,500.00 in legal fees which he incurred when he retained private counsel.

In January of 1988, the New York City Housing Authority took disciplinary action against the petitioner, and suspended him from duty without pay for one week. As a NYCHPBA member, the petitioner alleges that he pays for legal representation on a bi-weekly basis. During his suspension, he contacted the Union's counsel for such legal representation, but was informed that since that office was representing a fellow Housing Police Officer in a law suit against him, it could not represent the petitioner in the instant matter due to a conflict of interest. When the petitioner contacted the NYCHPBA regarding this

situation, he was told that he would have to obtain legal counsel at his own expense. Thereafter, on January 28, 1988, the petitioner retained the services of Arthur I. Strier as legal counsel, making a payment of \$1,500.00 to him as an initial retainer.

The petitioner returned to work at the beginning of February 1988, and was subsequently served with formal disciplinary charges on June 8, 1988. On June 29, 1988, the petitioner made a \$4,000.00 payment to Mr. Strier, and his case proceeded to a Department trial in August of 1988. The petitioner made a final payment of \$2,000.00 to Mr. Strier on August 7, 1988. On December 12, 1988, the Department notified petitioner of the disposition of the charges against him and directed that he be suspended without pay for 30 days.

Pursuant to Section 7.4 of the OCB Rules, a copy of which is annexed hereto, the undersigned has reviewed the instant 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 relevant 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 12-306 of the statute may be filed with the Board within four (4) months thereof . . .

The improper labor practice which is alleged in the petition occurred over one year ago in January of 1988, when the petitioner was directed by a Union representative to obtain his

own legal counsel.¹ Even if the alleged violation were deemed to have continued during the processing of the disciplinary charges, the instant petition would still be untimely, as petitioner concedes that the trial was held in August of 1988, which is also more than four months prior to the filing of this petition.

Since it is not alleged that respondent NYCHPBA committed any acts in violation of its duty of fair representation within four months of the filing of the instant improper practice petition, the petition must be dismissed as untimely pursuant to Section 7.4 of the OCB Rules.

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

Marjorie A. London
Executive Secretary
Board of Collective
Bargaining

¹See, Civil Service Employees Association Inc., Local 832 and Gloria Ebersole, 20 PERB ¶4542 (1987) (statutory limitations period is measured from the date that petitioner was advised that her union would not provide her with legal representation).

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.

CONSULT THE COMPLETE TEXT.