

UPOA v. City, DOP, 43 OCB 23 (BCB 1989) [Decision No. B-23-89 (ES)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING
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IN THE MATTER OF THE ARBITRATION

-between-

THE UNITED PROBATION OFFICERS
ASSOCIATION,

Decision No. B-23-89 (ES)
Docket No. BCB-1153-89

Petitioner,

-and-

THE CITY OF NEW YORK AND THE NEW
YORK CITY DEPARTMENT OF PROBATION,

Respondents.

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DETERMINATION OF EXECUTIVE SECRETARY

On April 5, 1989, the United Probation Officers Association filed a verified improper practice petition alleging that the City of New York and its Department of Probation (collectively referred to herein as "the City") violated §12-306a(4)¹ of the New York City Collective Bargaining Law ("the NYCCBL") by refusing to comply with two arbitration awards by arbitrator Nathan Cohen, dated December 16, 1986 and April 22, 1987. As a

¹Section 12-306a(4) of the NYCCBL provides as follows:

- a. Improper public employer practices.
It shall be an improper practice for a public employer or its agents:
(4) to refuse to bargain collectively in good faith on matters within the scope of collective bargaining.

remedy, it seeks an Order directing the City to comply with the terms of those arbitration awards.

Pursuant to Section 7.4 of the Revised Consolidated Rules of the Office of Collective Bargaining ("OCB Rule"), a copy of which is annexed hereto, I have reviewed the 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 NYCCBL §12-306a(4). PERB has held on several occasions that the failure to adhere to an arbitrator's award does not sound in improper practice.² Moreover, in Decision No. B-56-87(ES), former Executive Secretary William J. Mulry concluded that:

as a matter of law, it is not an improper practice under the NYCCBL to refuse to comply with the terms of a binding arbitrator's award . . . [and that the] enforcement of an arbitrator's award . . . is not within the power of the Board of Collective Bargaining to grant."

The enforcement of an arbitration award must be sought in a court of law in accordance with Section 75 of the CPLR.³

Consequently, pursuant to the provisions of Section 7.4

²Schalmon Central School District, 14 PERB ¶4596 (1981), Addison Central School District, 13 PERB ¶3060 (1980), Matter of Administrative Board of the Judicial Conference of the State of New York, 6 PERB ¶3013 (1973), Matter of Board of Higher Education, 3 PERB ¶4513 (1970).

³ See also, Decision No. B-21-88(ES).

of the OCB Rules, the instant petition must be dismissed.⁴

Dated: New York, N.Y.
May 9, 1989

Marjorie A. London
Executive Secretary
Board of Collective Bargaining

⁴I also note that the petition appears to be untimely on its face, as the arbitration awards alleged to have been violated were issued well beyond the four month period for filing an improper practice petition set forth in OCB Rule 7.4.

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.