

Boyd v. Dep't of San., 43 OCB 43 (BCB 1989) [Decision No. B-43-89 (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-43-89 (ES)

KENNETH BOYD,

DOCKET NO. BCB-1173-89

Petitioner,

-and-

NEW YORK CITY DEPARTMENT of
SANITATION,

Respondent.

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DECISION AND ORDER

On June 7, 1989, the Office of Collective Bargaining ("OCB") received a verified improper practice petition from Kenneth Boyd ("Petitioner"), alleging that the Department of Sanitation ("Respondent" or "Department") "entrapped" him into accepting a gratuity, caused him to resign, and then refused to reinstate him.

The alleged improper practice stemmed from an incident which occurred on or about January 27, 1988, when the Petitioner was charged with removing household bulk placed out for collection in exchange for his "soliciting, agreeing to accept and accepting an illegal payment of ten dollars" from an undercover investigator

who was posing as the building superintendent's assistant. By letter dated November 28, 1988, the Department's Deputy Commissioner for Trials informed the Petitioner's attorney that a hearing which had been scheduled to review the charge was canceled because "Mr. Boyd filed his resignation papers." The Petitioner asserts the he "resigned under duress," and that he has been refused reinstatement, despite the fact that criminal charges against him have been dismissed.

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. . . .

Although the Petitioner does not state the date that he tendered his resignation from the Department, it is reasonable to assume that it occurred prior to November 28, 1988, when the Deputy Commissioner for Trials wrote to Petitioner's attorney making reference to Petitioner's resignation. Inasmuch as the petition challenges the propriety of an allegedly forced resignation that occurred in November of 1988, and the petition

was not filed until June of 1989, it is untimely under the provisions of Section 7.4 of the OCB Rules. Accordingly, it must be dismissed.¹

Even if the petition was not so untimely as to warrant summary dismissal, however, it would be dismissed for failure to state an improper practice under the New York City Collective Bargaining Law. The Collective Bargaining Law does not provide a remedy for every perceived wrong or inequity. Its provisions and procedures are designed to safeguard the rights of public employees that are created by the statute, i.e., the right to organize, to form, join and assist public employee organizations, and the right to refrain from such activities.

The Petitioner herein does not assert that his resignation was intended to, or did, affect any of these protected rights. He claims that the January 1988 incident in which he was charged with accepting a gratuity was the product of entrapment, and that the Department refused to reinstate him even after criminal charges were dismissed. However, these events do not appear to be, nor does the Petitioner suggest that they are, in any way

¹ I note that on March 30, 1989, Petitioner wrote a letter to the Department in which he requested reinstatement, and that the request was rejected by the Department's Deputy Director of Personnel, by letter dated March 31, 1989. These communications, however, cannot serve to toll or extend the time for filing an improper practice charge. The event that triggered the beginning of the applicable filing period in this case was the date of the Petitioner's resignation rather than the date or dates of post-resignation conduct. See Decision No. B-24-81.

related to statutorily protected employee rights. Since the petition does not appear to involve a matter within the jurisdiction of the OCB, it must be dismissed. Of course, dismissal is without prejudice to any rights that the Petitioner may have in another forum.

DATED: New York, N.Y.
August 3, 1989

Marjorie A. London
Executive Secretary
Board of Collective
Bargaining

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