

Gallegher v. Dep't of General Serv., 43 OCB 58 (BCB 1989)
[Decision No. B-58-89 (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-58-89(ES)
Docket No. BCB-1208-89

JAMES GALLAGHER,

Petitioner,

-and-

THE CITY OF NEW YORK DEPARTMENT OF
GENERAL SERVICES,

Respondent.

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DETERMINATION OF EXECUTIVE SECRETARY

On August 31, 1989, the office of Collective Bargaining ("the OCB") received a verified improper practice petition dated August 12, 1989 from James Gallagher ("the Petitioner"). The OCB did not accept the petition for filing at that time because the Petitioner had failed to submit proof of service on the Respondent as required by Section 7.6 of the Revised Consolidated Rules of the Office of Collective Bargaining ("OCB Rules"). Thereafter, on September 13, 1989, the petition was resubmitted to the OCB together with proof of service, and was accepted for filing.¹

In his improper practice petition, the Petitioner alleges as

¹On September 11, 1989, the Respondent filed a verified answer. On September 18, 1989, Steven C. DeCosta, Deputy Chairman/General Counsel to the Board of Collective Bargaining, wrote to the Respondent and informed it that a response to the petition was not required until the Executive Secretary's preliminary review was completed. Since the submission of the verified answer was premature, the pleading was returned to the Respondent.

follows:

As an employee, I was never given an equal opportunity to do my job. The supervisors went thru the civil Service List to disqualify all who were on it, an bring in who they wanted.

He further contends that he was fired unfairly, and seeks a hearing "regarding [his] . . . status as a Civil Service employee."

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 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 the Section 12-306 of the New York City Collective Bargaining Law ("the NYCCBL").² The NYCCBL does not provide a remedy for every

²Section 12-306 of the NYCCBL provides in relevant part as follows:

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 12-305 of this chapter;

(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;

(continued...)

perceived wrong or inequity. Its provisions and procedures are designed to safeguard the rights of public employees to organize, form, join, and assist public employee organizations and to refrain from such activities.

In the instant case, the Petitioner alleges that he was not given an "equal opportunity" to do his job, and contends that his termination was unfair. However, he fails to allege that these actions implicated any rights granted to him under the NYCCBL. Since the instant petition does not allege that the Respondent's actions were intended to, or did affect rights protected under the NYCCBL, it must be dismissed in its entirety. Of course, dismissal of the petition is without prejudice to any rights the Petitioner may have in another forum.

Dated: New York, N.Y.
October 11, 1989

Marjorie A. London
Executive Secretary
Board of Collective Bargaining

(...continued)

(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.

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 reason; 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.

