

McNeill v. Dep't of Personnel & Dep't of San., 43 OCB 6 (BCB 1989)
[Decision No. B-6-89 (ES)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of

LARRY W. McNEILL,
Petitioner,

Decision No. B-6-89(ES)
Docket No. BCB-1094-88

-and-

N.Y.C. DEPT. OF PERSONNEL &
N.Y.C. DEPT OF SANITATION,

Respondents.

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DETERMINATION OF EXECUTIVE SECRETARY

On September 29, 1988, Larry W. McNeill ("the petitioner") filed a verified improper practice petition dated September 19, 1988 with the Office of Collective Bargaining. The petition arose out of the petitioner's discharge by the New York City Department of Sanitation ("the City").

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, 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.

The petitioner herein was a sanitation worker for the City for one year and eleven months before his termination effective June 5, 1987. He alleges that he was terminated because of his failure to disclose to the City the existence and the disposition of certain criminal charges, although a subsequent determination

by an Unemployment Insurance Administrative Law Judge found that he had taken all steps reasonably possible to comply with the City's request for information with respect to the charges.

Section 7.4 of the OCB Rules provides that an improper practice petition must be filed within four months of the acts alleged to constitute a violation of Section 1173-4.2 (now Section 12-306) of the New York City Collective Bargaining Law ("NYCCBL"). Since the instant petition was filed almost 15 months after the alleged wrongful acts by the City, it must be dismissed as untimely without consideration of its merits.

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 NYCCBL. The NYCCBL 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, to bargain collectively through certified public employee organizations, and the right to refrain from such activities. Petitioner herein does not allege that respondents, actions were intended to, or did, affect any of these protected rights. Therefore, his claim does not appear to involve a matter within the jurisdiction of the OCB. Of course, dismissal of the

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petition is without prejudice to any rights petitioner may have in another forum.

Dated: New York, New York
March 24, 1989

Marjorie A. London
Executive Secretary
Board of Collective
Bargaining

REVISED CONSOLIDATED RULES OF THE
OFFICE OF COLLECTIVE BARGAINING

S 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.

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.