



Secretary issued a determination on September 1, 1989.<sup>1</sup> The determination dismissed the petition for its failure to state an improper practice within the meaning of the New York City Collective Bargaining Law ("NYCCBL"), and because the charge involved a matter not within the jurisdiction of the OCB. The determination was received by the Petitioner on September 17, 1989. On September 20, 1989, the Petitioner filed a timely appeal pursuant to Section 7.4 of the OCB Rules.

### **The Petition**

The improper practice petition alleges that the Petitioner was wrongfully discharged from his employment as a Public Health Sanitarian. The discharge allegedly occurred during a meeting between the Petitioner and the Assistant Commissioner that was held on June 23, 1989, when the Petitioner was advised that his employment was being terminated. According to the Petitioner, when he asked the Assistant Commissioner why he was being dismissed, the Commissioner refused to give him a reason. The Petitioner contends that at no time during his employment with the Department had he been brought up on charges. He seeks reinstatement and a fair hearing in order to "confront [his] accusers against any specific charges which the Department may wish to bring against [him]."

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<sup>1</sup> Decision No. B-45-89 (ES).

### **Executive Secretary's Determination**

In Decision No. B-45-89 (ES) dismissing the improper practice petition, the Executive Secretary found that:

[The petition] must be dismissed for failure to state an improper practice under the New York City Collective Bargaining Law. The provisions and procedures of the Collective Bargaining Law 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 Law does not provide a remedy for every perceived wrong or inequity. Although the Petitioner contends that he had a right to due process that was violated, he does not assert that the alleged violation was intended to, or did, in fact, affect any of the rights protected by the statute.

On this basis, the petition was deemed not to involve a matter within the jurisdiction of the OCB, and it was dismissed pursuant to Section 7.4 of the OCB Rules.

### **The Appeal**

In his appeal the Petitioner does not challenge the basis for the Executive Secretary's determination. Rather, he sets forth new and additional allegations that were not part of the original petition. The Petitioner now claims that his dismissal stemmed from a conflict that he had had with a supervisor, and that it also was linked to his request for an unpaid leave of absence.

The Petitioner contends that, on June 13, 1989, his

supervisor's "manner was unprofessional" during her criticism of an incomplete report that the Petitioner had submitted to her for signature. According to the Petitioner, the supervisor was "personally vindictive and sometimes abusive towards me," and she "has resorted to personal insults, and has used unprofessional language to attack my work habits and my intelligence."

The Petitioner also contends that he was dismissed in retaliation for his having requested leave without pay in order for him to extend his paid annual leave time. According to the Petitioner, he wanted to travel to Nigeria to visit his father who suffered a stroke, and, although the Assistant Commissioner "sympathize[d] with my situation," he refused the request. Later, when the Petitioner asked for reconsideration, the Assistant Commissioner allegedly "made it known to me that he was very annoyed for challenging his decision."

### **DISCUSSION**

The purpose of an appeal of a determination made by the Executive Secretary that an improper practice petition does not contain facts sufficient as a matter of law to constitute a violation of the statute, is to review the correctness of that ruling based upon the facts that were available to the Executive Secretary at the time that the determination was made. New facts

may not be alleged to attack the basis for the determination.<sup>2</sup>

The Petitioner has failed to assert any basis for overturning the Executive Secretary's ruling with respect to the facts that were before her. After carefully reviewing the record that was before the Executive Secretary, we agree that the facts alleged at that time were insufficient to establish the basis for an improper practice within the meaning of Section 12-306a. (formerly §1173-4.2a.) of the NYCCBL.<sup>3</sup> Accordingly, we shall confirm the Executive Secretary's determination.

We note that even if the new facts asserted by the

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<sup>2</sup> Decision Nos. B-29-88; B-55-87 and B-26-86.

<sup>3</sup> NYCCBL §§12-306a.(1), (3) and (4) provide as follows:

**Improper practices; good faith bargaining.**

**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 1173-4.1 (now renumbered as section 12-306) 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;

(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.

Petitioner in his appeal herein properly were before us for consideration, we would affirm the dismissal of his petition. Accepting the truth and accuracy of all of the new allegations, the Petitioner has shown nothing more than that his employment was terminated because he had a dispute with a supervisor, and/or because he requested unpaid leave time. Regardless of whether a termination under these circumstances is justified, the Petitioner's dismissal from his employment as a Public Health Sanitarian does not constitute an improper practice within the meaning of the Collective Bargaining Law.

The NYCCBL does not provide a remedy for every perceived wrong or inequity. It does provide procedures designed to safeguard those employees' rights 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. Neither the original petition nor the appeal herein alleges that the employer's actions were intended to affect the exercise of any of those rights. According, even if this appeal were properly before us, we would still find that no improper employer practice has been stated.

For all of these reasons, we conclude that the Petitioner has failed to meet his burden of establishing that he was discriminated against due to his having engaged in protected activity. Accordingly, we find that no violation of the New York

City Collective Bargaining Law has been stated and we will dismiss the appeal herein.

**ORDER**

Pursuant to the powers vested in the Board of Collective Bargaining by the New York City Collective Bargaining Law, it is hereby

ORDERED, that the appeal of the Executive Secretary's determination in the matter of the improper practice petition of Ganiu O. Balogun in Docket No. BCB-1197-89 be, and the same hereby is, denied; and it is further

ORDERED, that the determination of the Executive Secretary in Decision No. B-45-89 (ES) be, and the same hereby is, confirmed.

DATED: New York, N.Y.  
October 23, 1989

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Decision No. B-  
Docket No. BCB-1197-89

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