Williams v. HRA, Dep't of Personnel, 45 OCB 49 (BCB 1990)
[Decision No. B-49-90 (ES)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

In the Matter of the Improper Practice Proceeding

-between-

DONALD WILLIAMS,
Petitioner,

DECISION NO. B-49-90(ES)
DOCKET NO. BCB-1306-90

-and-

HUMAN RESOURCES ADMINISTRATION,
DEPARTMENT OF PERSONNEL,
Respondent.

In the Matter of the Improper Practice Proceeding

-between-

DONALD WILLIAMS,
Petitioner,

DOCKET NO. BCB-1307-90

-and-

DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT, DEPARTMENT OF PERSONNEL,
Respondent.

DETERMINATION OF EXECUTIVE SECRETARY

On July 24, 1990, Donald Williams ("petitioner") filed a verified improper practice petition against the New York City Human Resources Administration ("HRA"), docketed as BCB-1306-90, and a verified improper practice petition against the New York City Department of Housing Preservation and Development ("HPD"), docketed as BCB-1307-90, in which he asserted that he had been terminated without warning for an alleged conflict of interest. As a remedy, petitioner seeks to be reinstated to his civil service

title with HPD, and then transferred to HRA in his former title. In addition, petitioner seeks back pay and accrued annual and sick leave.

Petitioner states that he was employed by HPD for eight years, until March 1988, when he resigned to work with a private company. A few weeks after he began his new job, a representative of the Department of Investigation visited petitioner at his new place of employment and questioned him and his employer regarding a possible conflict of interest between his current employment and his former position at HPD. Thereafter, in May 1988, petitioner wrote to Ms. Lifrak at the Board of Ethics, requesting an advisory opinion on whether his "present employment... would constitute an unfair advantage to [his] present employer in its dealing with [HPD] and whether [his] present employment would have an adverse or detrimental effect on the part of said City Agency." Petitioner contends that Ms. Lifrak did not respond to his request for an advisory opinion.

In August 1988, petitioner wrote to the Personnel Director of HPD requesting that he be "reinstated", but did not receive a response to his letter. In March, 1989, petitioner began working at HRA as a provisional Principal Administrative Associate II. Petitioner alleges that on June 29, 1990, he was terminated and was informed that his termination was at the request of HPD, because of some conflict of interest that transpired subsequent to his resignation.

Pursuant to Section 7.4 of the Revised Consolidated Rules of the Off ice of Collective Bargaining, a copy of which is annexed hereto, the undersigned has reviewed the petitions and has determined that the improper practice claims asserted therein must be dismissed because they do not allege facts sufficient as a matter of law to constitute an improper practice within the meaning of the New York City Collective Bargaining Law ("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 set forth therein, i.e., the right to bargain collectively through certified public employee organizations; the right to organize, form, join, and assist public employee organizations; and the right to refrain from such activities.

Petitioner has failed to allege that respondents have committed any acts in violation of S 12-306 of the NYCCBL[1], which

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[1] Section 12-306 of the NYCCBL provides as follows:

> **Improper public employer practices**. It shall be an improper practice for a public employer or its agents:
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> (1) to interfere with, restrain or coerce public employees in the exercise of their rights granted in § 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...)

defines improper public employer practices. If, as petitioner alleges, he has a right to be reinstated at HPD, transferred to HRA in his former title, and awarded back pay and accrued leave, these rights derive from sources other than the NYCCBL. Since the instant petitions do not allege that respondents' actions were intended to, or did, affect any rights protected under the NYCCBL, it must be dismissed. Such dismissal is, of course, without prejudice to any rights the petitioner may have in another forum.

Dated: New York, New York
August 23, 1990

Loren Krause Luzmore
Executive Secretary
Board of Collective Bargaining

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[1](... 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 Say be filed with the Board within four 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 sufficient as a matter of law constitute a violation, or that the alleged violation occurred more that 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) 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 lose that ten (10) days.

OTHER SECTIONS OF THE LAW AND RULES MAY BE APPLICABLE.

CONSULT THE COMPLETE TEXT.