

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of the Improper
Practice Proceeding

-between-

ANTHONY GURLEY,
Petitioner,

DECISION NO. B-62-90 (ES)
DOCKET NO. BCB-1323-90

-and-

NEW YORK CITY
DEPARTMENT OF TRANSPORTATION,
Respondent.

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DETERMINATION OF EXECUTIVE SECRETARY

On September 17, 1990 Anthony Gurley ("petitioner"), a tow operator in the New York City Department of Transportation ("the Department" or "respondent"), filed a verified improper practice petition against the Department in which he asserted that on November 21, 1989 he was sent home on leave with no pay for six days because he was not wearing a uniform with orange glow striping and, therefore, was unprepared for duty. Petitioner maintains that having orange glow striping on his uniform is not a department regulation. As a remedy, petitioner seeks back pay for the six days he was not paid.

In a letter attached to his improper practice petition, petitioner explains that on July 18, 1989 he was given an intradepartmental memo, which requested that tow operators wear orange glow striping on their uniforms. On September 1, 1989, petitioner had his uniform modified at his own expense. On November 21, 1989, the day he was sent home with no pay, petitioner had changed to his winter uniform which did not have striping.

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. Section 7.4 of the OCB Rules provides that an improper practice petition must be filed within four months of the alleged violation of §12-306. Since the instant petition was filed almost 10 months after the alleged wrongful acts by the Department, it must be dismissed as untimely without consideration of its merits.

I note, however, that even if the petition were timely filed, the improper practice claim would be dismissed because it does 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 respondent has committed

an act in violation of §12-306a of the NYCCBL¹, which defines improper public employer practices. Since the instant petition does not allege that respondent's actions were intended to, or did, affect any rights protected under the NYCCBL, it must be dismissed. If, as petitioner alleges, he has a right to receive back pay, this right derives from a source other than the NYCCBL.

As this petition is both untimely and fails to state a cause of action under the NYCCBL, it must be dismissed. Such dismissal is, of course, without prejudice to any rights the petitioner may

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:

(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 employee 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.

have in another forum.

DATED: New York, New York
 October 10, 1990

LOREN KRAUSE LUZMORE
EXECUTIVE SECRETARY
BOARD OF COLLECTIVE BARGAINING

**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 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 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.

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§7.8 Answer-Service and Filing. Within ten (10) days or, where the petition contains after service of the petition, 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 less than ten (10) days.

**OTHER SECTIONS OF THE LAW AND RULES MAY BE APPLICABLE.
CONSULT THE COMPLETE TEXT.**