

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of the Improper
Practice Proceeding
-between-

ERNEST J. SMILEY,
Petitioner,
-and-

DECISION NO. B-72-90 (ES)
DOCKET NO. BCB-1327-90

JACKIE MOSES, President,
FREDERICK BROCKENBURY, Vice
President, COMMUNICATIONS WORKER
OF AMERICA, LOCAL 1182

Respondent.

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DETERMINATION OF EXECUTIVE SECRETARY

On October 4, 1990, Ernest J. Smiley ("petitioner") filed a verified improper practice petition against Jackie Moses and Frederick Brockenbury, President and Vice President, respectively, of Local 1182 of the Communication Workers of America ("Union"), in which he alleged that the Union violated Section 12-306 of the New York City Collective Bargaining Law ("NYCCBL").¹

¹ Section 12-306 of the NYCCBL provides in relevant part as follows:

b. Improper public employee organization practices.
It shall be an improper practice for a public employee organization or its agents:

(1) to interfere with, restrain or coerce public employees in the exercise of rights granted in section 12-305 of this chapter, or to cause, or attempt to cause, a public employer to do so;

(continued...)

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 alleges that when the Department of Transportation preferred disciplinary charges against him the Union advised him that he could not appeal the charges. Petitioner further alleges that the Union "forced" him to sign an agreement concerning the charges, telling him that he would be terminated if he refused to do so. Referring to another, later set of disciplinary charges filed against him, petitioner alleges that the Union failed to notify him as to the date and time of his step III hearing. As a result, petitioner did not attend the hearing and he was terminated.

According to documents that were attached to the improper practice petition, all of the events referred to by the petitioner took place in 1985, 1986 and 1987. Section 7.4 of the OCB Rules provides, in pertinent part, that:

A petition alleging that a public employer or its agents or a public employee organization

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- 1(... continued)
(2) to refuse to bargain collectively in good faith with a public employer on matters within the scope of collective bargaining provided the public employee organization is a certified or designated representative of public employees of such employer.

or its agents has engaged in or is engaging in an improper practice in violation of Section 1173-4.2 (now Section 12-306] of the statute may be filed with the Board within four (4) months thereof

Since the instant improper practice petition was filed more than three years after the most recent alleged wrongful act was committed by the Union, it must be dismissed as untimely without consideration of its merits. I note, however, that dismissal of the petition is without prejudice to any rights the petitioner may have in another forum.

Dated: New York, New York
October 26, 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.

§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 less than ten (10) days.

OTHER SECTIONS OF THE LAW AND RULES MAY BE APPLICABLE.

CONSULT THE COMPLETE TEXT.