

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of

DECISION NO. B-27-91 (ES)

VERONICA OUTLER,
Petitioner,

DOCKET NO. BCB-1379-91

-and-

DISTRICT COUNCIL 37, AFSCME,
AFL-CIO,

Respondent.

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DETERMINATION OF EXECUTIVE SECRETARY

On April 1, 1991, Veronica Outler ("the Petitioner"), filed a verified improper practice petition against District Council 37, AFSCME, AFL-CIO ("DC 37" or "the Respondent").¹ The petition alleges that Petitioner was unjustly terminated.

Specifically, Petitioner alleges that:

On 6/6/90, I walked in Central Warrant Unit at 49 Chambers Street, New York, NY at 8:00. Lt. Gillespie said I was suspended and off payroll. He said I broke the computer. I didn't break the computer. I told Lt. Gillespie. He asked for my I.D. card or badge. I told him I wanted to go to my union representatives. Sgt. Walter Zulberti told me I can go. This is an order. I didn't leave my job. The computer broke down just about everyday for 15 to 20 minutes. They couldn't present a receipt from a repairman that the computer was broke. My union, Mr. Alvis, gave me a written paper stating that the computer wasn't broken, and I didn't have to return my badge or I.D. card.

¹ I note that DC 37 prematurely filed an answer in this proceeding on April 15, 1991. Consequently, I have not considered the allegations set forth in DC 37's answer in reaching my determination herein. In this regard, I note that pursuant to Section 7.4 of the Revised Consolidated in an improper practice notice that the petition has been reviewed by the Executive Secretary, and a determination made that the petition is sufficient on its face to warrant further proceedings.

In documents attached to the improper practice petition, Petitioner asserts that the computer had been working on the day she was suspended. She argues that since she did not break the computer, she should have been returned to work. She also contends that she had a right to speak with her union representative regarding the incident.

Also attached to the improper practice petition were pages from an administrative disciplinary determination. Petitioner enclosed the portion of that decision which exonerated her of charges relating to the damage of the computer.

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 approximately 10 months after the alleged wrongful acts by DC 37 on June 6, 1990, 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 petition fails to allege

that the Respondent has committed any acts in violation of Section 12-306b of the NYCCBL, which has been held to prohibit violations of the judicially recognized fair representation doctrine.²

The Board of Collective Bargaining ("the Board"), has determined that the doctrine of fair representation requires a union to treat all members of the bargaining unit in an evenhanded manner and to refrain from arbitrary, discriminatory and bad faith conduct.³ A union breaches its duty of fair representation if it fails to act fairly, impartially and non-arbitrarily in negotiating, administering and enforcing collective bargaining agreements.⁴

The petition herein is devoid of any allegations of union improper practice. The Petitioner has failed to allege any facts

² Section 12-306b of the NYCCBL provides:

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;

(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.

See Decision Nos. B-13-81; B-16-79.

³ Decision Nos. B-5-91; B-51-90; B-15-83; B-12-82.

⁴ Decision Nos. B-56-90; B-27-90; B-72-88; B-13-82.

in support of a finding of arbitrary, discriminatory, or bad faith conduct on the part of DC 37.

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 or assist public employee organizations, to bargain collectively through certified employee organizations, and the right to refrain from such activities. Inasmuch as the petition contains no allegation of facts which would support a claim that DC 37 breached its duty of fair representation, I find that the petition fails to state a cause of action for which relief may be granted under the NYCCBL.

I note, however, that the dismissal of the petition is without prejudice to any rights the Petitioner may have in another forum.

DATED: New York, New York
May 22, 1991

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 [12-306] 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 [12-306] of the statute. If it is determined that the petition, on its face, does not contain 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) 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 the 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**