

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of

A. H. J. Foxx,

Petitioner,

Decision No. B-53-91 (ES)

-and-

Docket No. BCB-1423-91

Stanley Hill, President, District
Council 37, AFSCME, AFL-CIO,

Respondent.

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DETERMINATION OF EXECUTIVE SECRETARY

On September 30, 1991, A.H.J. Foxx ("petitioner"), pro se, filed a verified improper practice petition in which he alleged that District Council 37, AFSCME, AFL-CIO ("Union" or "respondent") violated the New York City Collective Bargaining Law ("NYCCBL").¹ Petitioner claims that he was terminated from

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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;

Section 12-305 of the NYCCBL provides, in relevant part, as follows:

Rights of public employee and certified employee organizations. Public employees shall have the right to self-organization, to form, join or assist public employee organizations, to bargain collectively through certified employee organizations of their own choosing and shall have the right to refrain from any or all such activities.

his employment on January 16, 1991, based on a performance evaluation dated March 23, 1990, which he received after filing a report concerning the disappearance of supplies. Petitioner asserts that he reported this incident and his subsequent termination to a representative of the Union. Nevertheless, the Union failed to represent him in the matter. Petitioner states that he believes the Union failed to represent him because he is a senior citizen. As a remedy, petitioner seeks to have the Union represent him in an attempt to regain his former employment, receive back pay retroactive to his termination, and expunge the "poor" evaluation from his file.

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. Under Section 7.4 of the OCB Rules, an improper practice petition must be filed within four months of the alleged violation of the statute. In the instant case, petitioner alleges that he was "terminated from employment 1-16-91 due to a poor evaluation dated 3-23-90 ... At the time of his poor evaluation [he] had discussed it with Mr. Edward Simon from the Union and was advised it was of no concern." It is unclear from the petition whether petitioner claims that a violation of the

statute occurred at the time of his evaluation in 1990 or when he was terminated in January, 1991. Even if the date of petitioner's termination is considered to be the date of the alleged improper practice, the instant petition is untimely by more than four months and, therefore, must be dismissed without consideration of its merits. I note, however, that the dismissal of the petition is without prejudice to any rights that petitioner may have in another forum.

DATED: New York, New York
October 28, 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.

§ 7.9 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**