

Nipitella v. Dep't of Sanitation, 47 OCB 57 (BCB 1991) [Decision No. B-57-91 (ES)]

OFFICE OF COLLECTIVE BARGAINING  
BOARD OF COLLECTIVE BARGAINING

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In the Matter of the Improper  
Practice Proceeding

-between-

DECISION NO. B-57-91 (ES)  
DOCKET NO. BCB-1402-91

SALVATORE P. NIPITELLA,  
Petitioner,

-and-

NEW YORK CITY DEPARTMENT  
OF SANITATION,  
Respondent.

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DETERMINATION OF EXECUTIVE SECRETARY

On July 26, 1991 Salvatore P. Nipitella ("Petitioner") filed a verified improper practice petition against the New York City Department of Sanitation ("Department" or "Respondent"), in which he claims that his "employment was terminated as a result of alleged violations of an undocumented extension of his probation period."

Petitioner argues that although the Department claims a document exists which extends his probationary period until July 1, 1991, he had documentation of an extension only through April 30, 1991. Petitioner attaches a copy of a certified letter, dated March 22, 1991, detailing the extension of his probationary period through April 30, 1991. Petitioner claims that he never received a letter or any other documentation of a further extension of his probationary period. As he was unaware of a further extension of his probationary period, Petitioner argues that he could not be terminated for violating the terms of his probation. Petitioner requests that the Board reinstate him and compensate him

retroactively to the date of termination.

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 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 any act in violation of §12-306a of the NYCCBL,<sup>1</sup> which defines

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<sup>1</sup> Section 12-306a of the NYCCBL provides as follows:

- a. 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 section 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;
  - (4) to refuse to bargain collectively in good faith on matters within the scope of collective bargaining with
- (continued... )

improper 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. 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  
December 12, 1991

Loren Krause Luzmore  
Executive Secretary  
Board of Collective Bargaining

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1(... continued)  
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 [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**