

Knight v. Office of the Sheriff, 49 OCB 34 (BCB 1992) [Decision No. B-34-92 (ES)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of the Improper
Practice Proceeding

-between-

DWAYNE KNIGHT,
Petitioner,

DECISION NO. B-34-92 (ES)
DOCKET NO. BCB-1500-92

-and-

NEW YORK CITY OFFICE OF THE
SHERIFF,
Respondent.

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DETERMINATION OF EXECUTIVE SECRETARY

On June 18, 1992, Dwayne Knight ("Petitioner") filed a verified improper practice petition against the New York City Office of the Sheriff ("Respondent"), in which he alleged that Respondent terminated him unjustly in violation of Section 12-306a of the New York City Collective Bargaining Law ("NYCCBL").¹

¹ Section 12-306a of the NYCCBL defines improper public employer practices 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 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.

In his improper practice petition, Petitioner makes the following allegations against the Respondent:

1. When transferring from one City agency to another, employees records must follow including fingerprints.
2. Any negligence should show up by the City within a few days, (any criminal records).
3. There was a conflict of interest with my supervisor, in which I tried to resolve but could not which resulted in my applying for a transfer. (This is the time period in which I feel that I was treated unfairly) . I was told by my supervisor on Tuesday, May 19, 1992, that I would be granted a transfer and when I went to work on Wednesday, May 20, 1992, I was terminated.
4. All the information requested by the Department of Investigation was furnished by me in a timely manner as instructed. The Department of Investigation has no record of my termination, in which they should have contacted me first.
5. I feel that this is totally (unfair] practice by Management and Supervision, and I feel that I should be reinstated because the error was made by the Sheriff Is Department.
6. I submitted, and have done everything I was instructed to do.

Pursuant to Title 61, Section 1-07(d) of the Rules of the City of New York (formerly referred to as Section 7.4 of the Revised Consolidated Rules of the Office of Collective Bargaining), 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 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.

In the instant case, Petitioner has failed to state any facts which show that Respondent committed any acts which may constitute an improper public employer practice. The instant petition does not allege that Respondent's actions were intended to, or did, affect any rights protected under the NYCCBL. Accordingly, the petition 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
October 1, 1992

Loren Krause Luzmore
Executive Secretary
Board of Collective Bargaining

**TITLE 61 OF THE RULES OF THE CITY OF NEW YORK (FORMERLY
REFERRED TO AS THE REVISED CONSOLIDATED RULES OF
THE OFFICE OF COLLECTIVE BARGAINING)**

Section 1-07(d) (formerly § 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 12-306 (formerly 11734.2) 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 12-306 (formerly 1173-4.2) 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.

Section 1-07(h) (formerly § 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 find by the Executive Secretary, pursuant to Title 61, Section 1-07(d) of the Rules of The City of New York (formerly 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**