

NcCloskey v. OTB, 51 OCB 32 (BCB 1993) [Decision No. B-32-93 (ES)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

----- X

In the Matter of the Improper
Practice Proceeding

-between-

ELLEN NcCLOSKEY,

Petitioner,

-and-

NEW YORK CITY OFF TRACK BETTING
CORP.,

Respondent.

----- X

DETERMINATION OF EXECUTIVE SECRETARY

On November 18, 1992, Ms. Ellen McCloskey (the "petitioner"), formerly employed as a Betting Clerk for the New York City Off-Track Betting Corporation ("OTB"), filed a verified improper practice petition contending that she was unfairly discharged on July 20, 1992, after four years of service. Annexed to the petition was a summary of events surrounding her discharge and several exhibits substantiating these events.

In her petition, petitioner acknowledges that she made an error in taking a telephone bet, which resulted in a loss of \$2,000 to OTB. Petitioner maintains, however, that at the time of her discharge, "there was no policy of dismissal or any other extreme disciplinary action upon discovery and acknowledgment of such error." According to petitioner, OTB violated its own policies and procedures by terminating her for an "acknowledged"

error. Petitioner also complains that OTB attempted to coerce her into submitting a letter of resignation and denied her access to due process.

The petitioner claims that she made several attempts to contact Local 2021, District Council 37, AFSCME, AFL-CIO (the "union"), "in order that they might represent (her] in this matter," but received no response. The union, however, is not named as a respondent here. Accordingly, in reviewing the petition, I have considered only the allegations against OTB.

Pursuant to Section 1-07(d) of the Rules of the City of New York, 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 fails to state an improper practice under the New York City Collective Bargaining Law ("NYCCBL").

The provisions and procedures of the NYCCBL are designed to safeguard the rights of public employees that are created by the statute, the right to organize, to form, join and assist public employee organizations, and the right to refrain from such activities. The NYCCBL does not provide a remedy for every perceived wrong or inequity. Although the petitioner contends that her employment was wrongfully terminated, she does not assert that the alleged violated was intended to, or did, in fact, affect any of the rights protected by Section 12-306a of

the New York City Collective Bargaining Law ("NYCCBL"),¹ which defines improper public employer practices.

Since the petition does not appear to involve a matter within the jurisdiction of the Office of Collective Bargaining, it must be dismissed. Of course, dismissal is without prejudice to any rights that the petitioner may have in another forum.

DATED: New York, New York
August 18, 1993

Wendy E. Patitucci
Acting Executive Secretary
Board of Collective Bargaining

¹ NYCCBL §12-306a (formerly §1173-4.2) provides 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 Section 12-305 [formerly §1173-4.1] 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.

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 1173-4.2) 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 finding 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**