

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING
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In the Matter of the Improper
Practice Proceeding

--between--

DECISION NO. B-43-93 (ES)

NEIL ALPER,
Petitioner,

DOCKET NO. BCB-1599-93

--and--

DEPARTMENT OF TRANSPORTATION,
Respondent.

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DETERMINATION OF EXECUTIVE SECRETARY

On August 16, 1993, Neil Alper ("the Petitioner"), an employee of the New York City Department of Transportation ("DOT") in the title of Assistant Highway Repairer, filed a verified improper practice petition with the Office of Collective Bargaining ("OCB") alleging a violation of Section 12-306a (formerly referred to as Section 1173-4.2) of the New York City Collective Bargaining Law ("NYCCBL").¹ He alleges that he was passed over for promotion to at least three vacancies despite positive performance ratings from his supervisors and that he was dropped from the civil service list. As

¹ Section 12-306a of the NYCCBL 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 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.

a remedy, Petitioner seeks recertification to the civil service list at his previously listed number rating. He also requests reconsideration for promotion to the title of Highway Repairer.

Petitioner's Allegations

Petitioner alleges that he has held the title Assistant Highway Repairer in the DOT for five years. He states, "I have only applied and have been considered for one vacancy in this title." Petitioner also states, "I have always been evaluated satisfactory to excellent (copies attached), and was recommended for promotion by a former foreman. I have a total of thirteen years with DOT. I feel that this promotion has been conducted in an unfair and arbitrary manner."

As to Examination No.1534, List No.67, dated June 7, 1993, for promotion to Highway Repairer, Petitioner was notified that he was considered but was not selected for appointment or promotion to three separate vacancies on the list. The notice stated that he is ineligible for further certification for the Department of Transportation and that he can be recertified to that agency upon that agency's request. Attachments to the petition indicate that supervisors have given Petitioner positive ratings for work performance.

Discussion

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 it does not allege facts sufficient as a matter of law to constitute a claim of improper practice against the Department within the meaning of Section 12-306a. The NYCCBL does not provide a remedy for every perceived wrong or inequity, only the rights of public employees as specifically 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, conversely, the right to refrain from such activities.

In the instant case, Petitioner has failed to state facts which show that the Respondent committed acts which may constitute an improper public employer practice. Although the Petitioner contends that he was passed over for promotion, he does not allege that Respondent's actions were intended to or did affect any rights protected under Section 12-306a of the NYCCBL. Accordingly, the petition must be dismissed. I note, however, that dismissal of the petition is without prejudice to any rights Petitioner may have to pursue his claim in another forum.

Dated: New York, New York
October 6, 1993

Loren Krause Luzmore

Executive Secretary
Board of Collective Bargaining