

OFFICE OF COLLECTIVE BARGAINING  
BOARD OF COLLECTIVE BARGAINING

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In the Matter of the Improper  
Practice Proceeding

--between--

DECISION NO. B-5-93 (ES)

WILLIAM M. BROWNE,  
Petitioner,  
--and--

DOCKET NO. BCB-1547-93

NEW YORK CITY DEPARTMENT OF  
SANITATION,  
Respondent.

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**DETERMINATION OF EXECUTIVE SECRETARY**

On January 6, 1993, William M. Browne ("the Petitioner"), a probationary Sanitation worker filed a verified improper practice petition with the Office of Collective Bargaining ("OCB") in which he alleged that he was terminated by the New York City Department of Sanitation ("Department") because his driver's license had earlier been suspended. As a remedy, Petitioner seeks reinstatement to his former position "with retroactive pay."

In a statement attached to the petition, the Petitioner claimed that:

1) the Department of Sanitation was aware of the status of his license prior to his termination;

2)at the time of termination, Petitioner's license and driving privileges had been fully restored;

3) the Department's actions in terminating Petitioner were capricious and arbitrary in that he was never afforded the benefit of a hearing; and

4) Petitioner was not aware that his license was suspended until he was so informed by Department of Sanitation

personnel during a training session at Randalls Island June 15, 1992 -- June 19, 1992. Even with this knowledge, however, the Department allowed Petitioner to work until two (2) days before the expiration of his probation.

Also attached to the petition was:

(A) a photocopy of an Order of Suspension by the New York State Department of Motor Vehicles, indicating that the Petitioner's driver's license had been suspended as of March 23, 1992, for "[f]ailure to file an acceptable accident report for an accident which occurred on 12/08/90," and

showing that the suspension order was terminated on August 5, 1992; and

(B) a photocopy of Petitioner's driver's license superimposed over what appears to be his application for a commercial driver's license originally approved August 27, 1992.

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 (formerly referred to as Section 1173-4.2) of the New York City Collective Bargaining Law ("NYCCBL").<sup>1</sup> The NYCCBL

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<sup>1</sup> 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;  
(continued...)

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 the Department committed any acts which may constitute an improper public employer practice as defined by the NYCCBL. Petitioner has not alleged that the Department's actions were intended to, or did, affect any rights protected under the NYCCBL. For this reason, the petition must be dismissed. I note, however, that dismissal of the petition is without prejudice to any rights Petitioner may have in another forum.

Dated: New York, New York  
February 3, 1993

Loren Krause Luzmore  
Executive Secretary  
Board of Collective Bargaining

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1 ( ... continued)

(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 § 7A) 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) day 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 division, 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 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