

Jones v. DOT, 57 OCB 9 (BCB 1996) [Decision No. B-9-96 (IP)]

OFFICE OF COLLECTIVE BARGAINING  
BOARD OF COLLECTIVE BARGAINING

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In the Matter of the Improper  
Practice Proceeding

-between-

JOHN JONES,

DECISION NO. B-9-96

Petitioner,

-and-

DOCKET NO. BCB-1701-94

NEW YORK CITY DEPARTMENT OF  
TRANSPORTATION,

Respondent.

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**DECISION AND ORDER**

On November 22, 1994, John Jones (the "Petitioner"), pro se, filed a verified improper practice petition against the New York City Department of Transportation (the "DOT" or the "Department"). The petition alleges that the Department committed an improper practice in violation of Section 12-306a.(1) of the New York City Collective Bargaining Law ("NYCCBL")<sup>1</sup> by demoting him and transferring him improperly.

The Department, appearing by the New York City Office of Labor Relations, filed its answer to the improper practice petition on December 23, 1994. The Petitioner did not file a reply, despite the Trial Examiner's written invitation to do so.

**BACKGROUND**

John Jones gained permanent appointment in the title Traffic Enforcement Agent ("TEA") in July 1984. TEAs work in uniform outdoors, enforcing laws, rules and regulations relating to movement, parking, stopping and standing of vehicles. In September 1991, the Petitioner received a provisional

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<sup>1</sup> NYCCBL §12-306a. (formerly §1173-4.2) provides, in pertinent part, as follows:

**Improper practices: good faith bargaining.**

**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 (formerly §1173-4.1) of this chapter;

appointment to the title of Operations Communication Specialist, inside work at the Department's Communications Center that involves monitoring, receiving and answering radio calls, and entering reports on traffic signal defects on teletype and computer equipment.

In September 1993, the Petitioner was charged with being habitually late and with the accrual of seventeen unpaid parking summonses. The charges were resolved with the Petitioner entering into a probationary agreement, by which he agreed to serve a disciplinary probation period of one year, commencing March 1, 1994. He also agreed that his failure to comply with the Department's time and leave rules would subject him to immediate demotion to his permanent civil service title of TEA, and that the Department Advocate would have the sole discretion of deciding whether he violated the rules.

By letter dated March 16, 1994, the Advocate notified the Petitioner that he had violated the probationary agreement by being late on one occasion and by failing to notify the agency that he would be absent on a second occasion. In the Advocate's view, the Petitioner did not take the probationary agreement seriously, and she ordered him demoted to TEA, effective March 21, 1994.

The Petitioner continued to work in the Communications Center for several more months to allow him time to purchase new dress uniforms, although his title had reverted to TEA, and his salary was reduced accordingly. On July 6, 1994, the Petitioner was notified that his assignment in the Communications Center had ended, and that he was to report for a regular TEA assignment on July 20, 1994.

No one in the Department was aware of any union activity by the Petitioner, nor had his union ever designated him shop steward or union official. The union's involvement was limited to providing the Petitioner with legal counsel during the disciplinary proceeding earlier in the year.

**POSITIONS OF THE PARTIES**

**Petitioner's Position**

According to the Petitioner, he was coerced in the exercise of his organizational rights because the Department refused to grant him a conference to discuss the basis for his change in title from Communications Specialist to TEA. In his view, the denial violated the Citywide Agreement between the City and District Council 37, and it deprived him of his asserted right to be represented by a certified employee organization. The Petitioner also contends that his transfer violated past practice in the DOT, because a non-managerial employee at the Communications Center allegedly ordered his July 1994 reassignment out of the Center.

**DOT's Position**

The City, on behalf of the Department, asserts that personnel at the Communications Center lacked authority to order the Petitioner's demotion and transfer. It maintains that the Department Advocate made those decisions, although someone at the Center concededly may have informed the Petitioner of where to report on July 20, 1994.

More importantly, the City argues that the petition is untimely. It notes that the Petitioner was demoted effective March 21, 1994, and that he was advised of his demotion on March 16, 1994. Yet he did not file the petition until November 22, 1994, more than eight months later.

Besides being untimely, the City contends that the petition lacks the specificity necessary to support a claimed violation of NYCCBL Section 12-306a.(1). It notes that the Petitioner did not cite even one instance of interference, domination, or any attempt by management to diminish his organizational rights, except his claim that the DOT allegedly violated the Citywide Agreement. The City points out that this Board lacks jurisdiction to review asserted contractual violations when they are raised in the context of an improper practice charge.

Finally, the City claims that the Department acted against the

Petitioner for legitimate business reasons; specifically, for disciplinary purposes. Employee discipline, it contends, is a legitimate and permissive function of management.

### **DISCUSSION**

The essence of the Petitioner's improper practice charge is that he was demoted and transferred without being allowed to avail himself of certain contractual rights. The petition is jurisdictionally defective.

The four-month limitation period described in Title 61, Section 1-07(d) of the Rules of the City of New York ("RCNY") bars our consideration of untimely filed improper practice allegations.<sup>2</sup> The application of the four-month limitation

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<sup>2</sup> Section 1-07(d) of the RCNY reads, in pertinent part, as follows:

Improper practices. A petition alleging that a public employer or its agents . . . has engaged in or is engaging in an improper practice in violation of §12-306 of the statute may be filed within four (4) months thereof. . . .

See, also, Decision Nos. B-11-95; B-31-94; B-38-93; B-21-93; B-37-92; B-61-91; B-1-90; B-25-89.

period is not discretionary by this Board.<sup>3</sup> Thus, the Petitioner's claims for relief for any alleged wrongful acts that the Department may have committed prior to July 22, 1994, are time-barred, as they occurred more than four months before he filed the petition.

**ORDER**

Pursuant to the powers vested in the Board of Collective Bargaining by the New York City Collective Bargaining Law, it is hereby

ORDERED, that the improper practice petition filed by the Petitioner, John Jones, and docketed as BCB-1701-94 be, and the same hereby is, dismissed.

DATED: New York, N.Y.  
March 25, 1996

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<sup>3</sup> Decision No. B-59-88.