

Cooper, Jr. v. OLR & L. 1182, 67 OCB 47 (BCB 2001) [Decision No. B-47-2001 (ES)]

OFFICE OF COLLECTIVE BARGAINING  
BOARD OF COLLECTIVE BARGAINING

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In the Matter of the Improper Practice Proceeding

-between-

KENNETH COOPER, JR.,

Decision No. B-47-2001 (ES)  
Docket No. BCB-2254-01

Petitioner,

-and-

NEW YORK CITY OFFICE OF LABOR RELATIONS  
AND LOCAL 1182,

Respondents.

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#### **DETERMINATION OF EXECUTIVE SECRETARY**

On November 29, 2001, Kenneth Cooper, Jr., *pro se* (“Petitioner”), filed a verified improper practice petition pursuant to §§ 12-306a and 12-306b of the New York City Collective Bargaining Law (New York City Administrative Code, Title 12, Chapter 3) (“NYCCBL”),<sup>1</sup> against the New York City Office of Labor Relations for acts allegedly committed by the Department of Transportation (“City Respondent”) and against Communications Workers of America, Local 1182 (“Union Respondent”).

As to the nature of the controversy against the City Respondent, Petitioner alleges that it was an “improper action to enforce a determination with the specifications in the charges so inaccurate and unclear with what I was being charged for.” The nature of the controversy against the Union Respondent is: “Misrepresentation and Negligence – Failure and neglecting to notify a union paying member of the next action to take after the Step III hearing. The specifications stated in the charges do not substantiate the allegation of falsifying a time card. The evidence is in the specifications.” Petitioner does not indicate a remedy in the petition.

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<sup>1</sup> NYCCBL § 12-306a prohibits improper public employer practices and § 12-306b prohibits improper public employee organization practices.

Attached to the petition is a Notice of Disposition after Step II Hearing. The decision dated July 18, 1996, specifies that Mr. Cooper's termination was effective as of July 26, 1996. No succeeding dates are listed in the petition.

Pursuant to § 1-07(d) of the Rules of the Office of Collective Bargaining (Rules of the City of New York, Title 61, Chapter 1) ("OCB Rules"), a copy of which is annexed hereto, the undersigned has reviewed the petition and determined that the improper practice claims must be dismissed because they are untimely on their face. OCB Rule Section 1-07(d) provides, in pertinent part:

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 of the statute may be filed with the Board within four (4) months thereof . . . . If it is determined . . . 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 . . . .

According to the Notice of Disposition after Step II Hearing, the effective date of Mr. Cooper's termination was July 26, 1996. Even if a Step III hearing was held, this office was not provided with the date of a decision. Since OCB received the improper practice petition on November 27, 2001, over five years after Mr. Cooper's discharge, the allegations against the City Respondent are untimely under the provisions of OCB Section 1-07(d).

Similarly, in order to state a timely cause of action under the NYCCBL against the Union Respondent for allegations of inadequate union representation, they acts complained of would have had to occur after July 27, 2001, that is, within four months of the filing date of the improper practice petition. Nothing in Petitioner's recitation of the facts indicates so recent a date of occurrence. Therefore, on the ground of timeliness, the Petitioner's allegations against the Union Respondent also must be dismissed.

In summary, since Mr. Cooper has not alleged that either Respondent committed acts in violation of the NYCCBL within four months of the filing of the instant improper practice

petition, the petition must be dismissed as untimely pursuant to OCB Rules Section 1-07(d).

Dismissal of the petition is without prejudice to any rights that the Petitioner may have in another forum.

Dated: New York, New York  
December 4, 2001

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Alessandra F. Zorziotti  
Executive Secretary