

Antaonetti v. L.237, CEU, IBT, 29 OCB 11 (BCB 1982) [Decision No. B-11-82 (IP)]

OFFICE OF COLLECTIVE BARGAINING  
BOARD OF COLLECTIVE BARGAINING

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AUGUSTO ANTAONETTI,

Petitioner,

-and-

Decision No. B-11-82

Docket No. BCB-510-81

CITY EMPLOYEES UNION LOCAL 237,  
I.B.T.,

Respondent.

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DECISION AND ORDER

The petitioner, Augusto Antonetti, filled a verified improper practice petition on July 2, 1981,<sup>1</sup> in which he charged City Employees Union Local 237, I.B.T. (hereinafter "Local 237" or "the Union"), and its representative, Arthur Illery, with committing an improper practice. Respondent Local 237 filed an answer on July 27, 1981, in which it denied that the petition stated any improper practice.

An informal conference was held on August 13, 1981, before the Trial Examiner designated by the office of Collective Bargaining for the purpose of clarifying the specifics of the petitioner's claim and the Union's response thereto. At the conclusion of this conference, the petitioner was directed by the Trial Examiner to submit a written statement setting forth certain details of his claim. After several extensions of time, the petitioner submitted, on October 29, 1981, a letter to the Trial Examiner, dated

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<sup>1</sup> The petition was originally submitted on June 22, 1981, without proof of service, and was returned to petitioner on June 30, 1981 after he failed to provide proof of service as requested by the Trial Examiner. The petition was submitted with proper proof of service, on July 2, 1981, and was docketed as of date.



September 7, 1981, together with an extensive package of documents, many of which bear handwritten or typed notations in the margins, presumably added by the petitioner. On December 1, 1981, Local 237 submitted a written response, which included a request that the improper practice petition be dismissed. On December 22, 1981, and January 13, 1982, the petitioner submitted further annotated documents.

NATURE OF THE IMPROPER PRACTICE CHARGE

The petitioner, an Assistant Building Custodian employed by the New York City Police Department, states his complaint against the Union in the following terms:

"New York City Municipal Employees Union Local 237 And Assistant Director City Wide Division Mr. Arthur Illery Never Have Helped Mr. Augusto Antonetti To Resolve Any Grievances, Problems.

It Appear, Look Like Mr. Arthur Illery And Union Local 237, Act, Work And Behave Without Interest, Concern, Caring For Spanish Americans People

September 8, 1980 New York City Police Department Transferred Illegally Without Seniority And Good Conduct Taken In Consideration. Mr. Augusto Antonetti. Mr. Arthur Illery Was The First Human Being That Laughter And Laughter."

The petition does not allege which provisions of the New York City Collective Bargaining Law (hereinafter "NYCCBL") are claimed to ,have been violated by the above actions.

An informal conference was scheduled and held by the Trial Examiner in order to attempt to define more clearly the nature ~of the petitioner's claim. At the conference, the petitioner

indicated that he believed that he had been improperly transferred by the Police Department in September, 1980, without regard to his seniority and good conduct, and that when he complained about this matter to a union representative, Arthur Illery, nothing was done to resolve the problem. The Trial Examiner directed, at the conference, and in a subsequent letter dated October 16, the petitioner submit a written statement specifying the dates, grievances, and individuals involved in his further claim that the Union failed to represent him adequately in other matters.

Petitioner's letter dated September 7, 1981, but submitted on October 29, 1981, alleges additional instances in which petitioner asserts that Mr. Illery failed to represent him adequately. However, neither dates nor the subject matter of the alleged grievances are provided in the letter. The various annotated documents submitted with petitioner's letter reflect a number of grievances and disciplinary matters during the period from February, 1975 to the time of petitioner's transfer in September, 1980. The documents also indicate a disciplinary matter arising in March, 1981 and continuing through December, 1981. The marginal annotations in these documents express the petitioner's contention that the Union's involvement in these various matters was less than satisfactory.

#### POSITIONS OF THE PARTIES

The petitioner claims that the documents submitted demonstrate that Local 237's representative, Arthur Illery,

failed to attend scheduled meetings and/or hearings related to various grievances and disciplinary matters; that he made a disparaging statement about petitioner; and that the Union has been unsuccessful in challenging the petitioner's transfer by the Police Department. Petitioner asserts that the Union and its representative, Arthur Illery, have not fairly represented him. He implies that the reason for the inadequate representation is the Union's alleged lack of concern for the interests of Spanish-American people such as himself.

Local 237 contends that it has assisted the petitioner on every occasion in which he requested it to do so. The Union further alleges that the reason it was unable to obtain a reversal of the Police Department's decision to transfer petitioner, is that the applicable collective bargaining agreement does not contain a transfer policy and does not permit the grieving of a transfer. The Union asserts that it has represented the petitioner a number of times subsequent to the transfer problem. Local 237 concludes' that the petitioner has not alleged any basis to substantiate his claim of an improper practice, and the petition should be dismissed.

#### DISCUSSION

After having reviewed the petitioner's voluminous and unusual submissions (i.e., documents annotated with marginal notes by the petitioner), it is apparent to us that the substance of the petitioner's claim is an alleged breach, by the Union, of the duty of fair representation. Clearly, such a claim is

within the jurisdiction of this Board under §1173-4.2(b) of the NYCCBL.<sup>2</sup>

However, the documents submitted by petitioner relate to grievance and disciplinary matters arising as long ago as February, 1975. There is no allegation that these matters, other than the September, 1980 transfer, are of a continuing nature. Therefore, we find that consideration of all such matters arising more than four months prior to the date of filing of the improper practice petition herein is barred by the statute of limitations contained in §7.4 of the Revised Consolidated Rules of the Office of Collective Bargaining, which provides:

"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 1173-4.2 of the statute may be filed with the Board within four (4) months thereof...."

In connection with these untimely claims of inadequate representation, we note that certain of the memoranda prepared by agents of the employer, which were submitted by the petitioner herein, contradict the petitioner's assertion that the Union failed to provide representation at meetings or hearings, and instead recite the participation of a union representative in support of the petitioner at such meetings or hearings. Moreover, we note that even at several hearings where the Union representative was alleged

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<sup>2</sup> Decision Nos. B-16-79, B-13-81.

to have been absent, decisions were rendered which were favorable to the petitioner. Thus, it appears doubtful that the petitioner was damaged by any inadequacy of representation on those occasions.

The primary subject of the petitioner's claim concerns his transfer by the Police Department from one work location to another. Petitioner asserts that this transfer was wrongful, and that when he brought this matter to the Union's attention, nothing was done. The effective date of the transfer was September 8, 1980; the petitioner fails to allege the date on which he requested the Union to assist him in challenging the transfer, or any other date on which the Union refused or failed to represent him concerning the transfer. However, a document submitted by petitioner demonstrates that on October 17, 1980, Local 237 representative Arthur Illery wrote to a Deputy Inspector of the Police Department to request a meeting to discuss the petitioner's transfer. Petitioner's annotation inserted on this document alleges that the Union requested the Police Department not to transfer petitioner, but that when a meeting was scheduled for October 30, 1980, to discuss the transfer, Mr. Illery failed to appear.

We find that this claim is also barred by the statute of limitations. October 30, 1980, the date on which it is alleged Mr. Illery failed to attend a scheduled meeting, is more than four months prior to the date of filing of this improper practice. Assuming, arguendo, that this claim were timely, the uncontroverted

fact that the applicable collective bargaining agreement does not contain a transfer provision and does not permit the grieving of transfer claims would persuade us that the Union's failure to pursue petitioner's transfer complaint was not arbitrary or capricious. The law imposes no duty upon the Union to prosecute a grievance based upon an alleged wrong which is outside the scope of the collective bargaining agreement. The record does show that Local 237 asked the Police Department not to transfer petitioner; the fact that the Union failed to do more does not, under these circumstances, establish a breach .of the duty of fair representation.

Finally, we have considered the numerous documents submitted by petitioner concerning an incident on March 17, 1981, which resulted in the filing of disciplinary charges against the petitioner. Neither in the petition nor at the informal conference before the Trial Examiner did the petitioner claim that Local 237 has failed or refused to represent him concerning this disciplinary matter. The record indicates that Local 237 representative Illery represented the petitioner at an informal conference held by the Police Department in June, 1981 in this matter. It further appears that the petitioner was represented by a private attorney at the formal disciplinary hearing held on the charges. Petitioner does not claim that the Union refused to represent him at this hearing, although he does allege that Mr. Illery did not attend the hearing. But, the documentary evidence shows that when Local 237 was informed of petitioner's



representation by a private attorney in connection with the disciplinary charges, the Union wrote to petitioner to inquire whether he wished to be represented by the Union or by his own attorney. It was not until January 13, 1982, after the disciplinary case was concluded, that the petitioner wrote to Local 237 to state that he was no longer being represented by a private attorney and that he wished to be represented by the Union.

On the record before us, we find no basis for any claim of a breach of the duty of fair representation. Petitioner's further implied claim of Union discrimination against Spanish-American workers is wholly unsupported and is summarily rejected by this Board. We hold that the petitioner has failed to allege facts sufficient to establish, prima facie, any violation of the NYCCBL. Therefore, we will order that the petition be dismissed.

**O R D E R**

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

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ORDERED, that the improper practice petition of Augusto Antonetti be,  
and the same hereby is, dismissed.

DATED: New York, New York  
March 23, 1982.

ARVID ANDERSON  
CHAIRMAN

DANIEL G. COLLINS  
MEMBER

MILTON FRIEDMAN  
MEMBER

CAROLYN GENTILE  
MEMBER

EDWARD J. CLEARY  
MEMBER

JOHN D. FEERICK  
MEMBER

FRANKLIN J. HAVELICK  
MEMBER