

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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VINCENT T. RICCORDELLA,

Petitioner,

DECISION NO. B-12-82

DOCKET NO. BCB-516-61

-and-

NEW YORK CITY FIRE DEPARTMENT
and THE UNIFORMED FIREFIGHTERS
ASSOCIATION OF GREATER NEW YORK,

Respondents.

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DECISION AND ORDER

On August 7, 1981, the petitioner, Vincent T. Riccordella, a fireman employed by the New York City Fire Department, filed a verified improper practice petition in which he charged both the Fire Department and the Uniformed Firefighters Association of Greater New York (hereinafter "UFA" or "the Union") with committing improper practices against him relating to his treatment for an alleged line of duty injury and the determination of his fitness to perform, fire duty. After several extensions of time, the UFA, on October 8, 1981, filed a verified answer and a motion to dismiss, based upon two supporting affidavits. The Fire Department by its representative, the Office of Municipal

Labor Relations, also filed a motion to dismiss on October 8, 1981. The petitioner was informed, by the Trial Examiner, of his right to submit a reply to the respondents' submissions, but he failed to do so.

Nature of the Improper Practice Charge

The improper practice petition states the petitioner's employment and military service background, and alleges that he injured his back in the course of his employment in 1973 and again in 1978. The petition sets forth in considerable detail the petitioner's account of his medical treatment; assignment to limited duty; application for service-incurred disability retirement; examination by the Pension Fund's Medical Board and by the Fire Department's Medical Division; the Medical Board's recommendation of the denial of his application for disability retirement; and his reassignment to full duty. The petitioner's complaints against his employer and the Union arise out of this background of medical difficulties.

The improper practice charge against the Fire Department alleges that the Department's doctors, and those of the New York Fire Department Pension Fund, Article 1B,¹

¹ The New York Fire Department Pension Fund, Article 1B, is an independent body established pursuant to §B19-7.54 et seq. of the New York City Administrative Code, and governed by a Board of Trustees. Neither the Pension Fund nor its Trustees have been made a party to this proceeding.

improperly and incorrectly diagnosed the extent of petitioner's injury and his fitness to perform full fire duty. Additionally, the petitioner alleges that he has been placed "in Limbo" inasmuch as he has been found ineligible for disability retirement and fit for full duty "on paper", but has been assigned as a "permanent trainee" at the Department's Division of Training because the Department realizes that he cannot actually perform the duties of a fireman.

The relief sought by petitioner against the Fire Department includes reassignment to limited duty, immediate action on his application for disability retirement, an investigation of the treatment he received from Fire Department doctors, reimbursement for medical expenses, and the furnishing of copies of the minutes of his hearings before the Pension Fund's Board of Trustees and the Fire Department Medical Review Panel.

Petitioner's improper practice charge against the UFA alleges that the Union commenced a grievance on petitioner's behalf concerning the qualifications of a Fire Department consulting neurologist, but failed to prosecute the grievance to Step 4 of the contractual grievance procedure when the written Step 3 decision was not satisfactory to the petitioner. The petitioner also alleges that the Union's Security Benefit Fund did not reimburse him for his medical expenses and that the Union only managed to obtain partial reimbursement for petitioner from the Fire Department. The

petitioner further claims that the Union failed to have a representative present at the Medical Division to handle problems of members. Finally, petitioner asserts that the Trustees of the Pension Fund, including the Union-designated Trustees, failed to vote on his application for disability retirement.

The relief sought by petitioner against the UFA includes immediate retirement for service-incurred disability, reimbursement for medical expenses not paid by the Fire Department, the return of union dues paid from February 18, 1978 to the present, an investigation into the conduct of the union, and the furnishing of a copy of the minutes of a meeting of the Pension Fund's Board of Trustees.

Positions of the Parties

Petitioner's Position

It is the petitioner's position that the actions set forth in the petition constitute improper practices by the Fire Department and the Union. With respect to the Union, it appears that petitioner contends that the Union failed to provide adequate representation and thus breached its duty of fair representation.

Fire Department's Position

The Fire Department argues that the petition fails to cite any provision of the New York City Collective Bargain-

ing Law (hereinafter "NYCCBL") which has been violated by the actions alleged in the petition. The Department submits that the petitioner has failed to allege a dispute which is subject to resolution within this Board's improper practice jurisdiction under the NYCCBL. The Department notes that the NYCCBL does not purport to be an "all-encompassing remedial statute", and it asserts that the petition utterly fails to associate the wrongs complained of with the statute under which the petitioner seeks relief. Finally, the Fire Department contends that consideration of the matters raised in the petition appears to be barred by the four month statute of limitations contained in §7.4 of the Revised Consolidated Rules of the office of Collective Bargaining (hereinafter "OCB Rules"). For all of these reasons, the Fire Department moves that the petition be dismissed.

Union's Position

The UFA acknowledges that the petitioner is dissatisfied with and disgruntled by the course of events relating to his line-of-duty injuries over the past few years. However, the Union contends that it has more than met its duty of fairly representing the petitioner with respect to the matters raised in the petition. Moreover, the Union asserts that the petitioner's allegations concerning the Pension Fund are not only not properly directed toward the UFA, but are outside this Board's jurisdiction to hear and determine improper practice charges. The UFA further submits that much of the

relief requested by the petitioner is beyond the power of this Board to grant.

The UFA, through the affidavit of Carmine A. DeRoss, Jr., an elected official of the union, alleges that it took great pains to protect the rights of the petitioner. Mr. DeRoss alleges that he obtained for the petitioner reimbursement of all medical bills for which the Fire Department was legally obligated to provide reimbursement. However, it is alleged that Fire Department regulations require prior authorization by a Fire Department Medical officer for treatment or examination by a private doctor in connection with line-of-duty injuries, and that no bills for unauthorized treatment or examination will be honored by the Department. Mr. DeRoss contends that the petitioner has never brought to his attention unreimbursed medical bills for which proper prior authorization was obtained, and he believes that the unreimbursed sums referred to in the petition represent bills for treatment for which the petitioner did not receive proper prior authorization. The Union contends that it has no duty nor legal ability to compel the Fire Department to reimburse petitioner for such unauthorized medical expenses.

With respect to the petitioner's claim that the UFA failed to provide representation for members at the Medical Division, the Union contends that medical examinations of sick and injured firefighters at the Medical Division are not adversary proceedings requiring the presence of a union

official; but, notwithstanding this fact, upon request, a union official will consult with a unit member at the Medical Division or at the Union office concerning such matters. The UFA specifically alleges that on several occasions, the petitioner has had such consultations with members of the UFA Executive Board.

Regarding the alleged failure of the UFA to process beyond Step 3 the petitioner's grievance concerning a consulting neurologist's qualifications, the Union asserts that at Step 3, the grievance was granted in part, to the extent that the Fire Department agreed not to send any further referrals to the doctor in question until the question of his credentials as a neurologist could be resolved. The UFA alleges that it consulted with legal counsel concerning the advisability of pursuing this matter further in grievance arbitration, and was advised by counsel that there existed a serious question of the arbitrability of such a grievance, since the Union would be asking the arbitrator to make medical judgments in determining the issues framed by the grievance. The Union further alleges that it was advised against submitting this matter to the contractually-established Medical Review Practices Committee, since that Committee is partially composed of laymen who similarly cannot make medical judgments. Based upon the advice of counsel, the UFA did not further prosecute this grievance. The Union also submits that the issues raised in this grievance have become moot due to the

Pension Fund Medical Board's consideration of petitioner's application for disability retirement based upon the reports of specialists other than the doctor whose credentials were questioned.

The UFA argues that its pleadings demonstrate that it has fairly represented the petitioner and that it has not committed any improper practice. On this basis, it moves that the petition be dismissed.

Discussion

The improper practice charge against the Fire Department may be disposed of summarily. Our jurisdiction in improper practice proceedings is limited to consideration of acts alleged to be violative of the provisions of NYCCBL §1173-4.2. The petition does not allege that the Fire Department violated any provision of that law, and our close scrutiny of the detailed allegations of the petition fails to disclose any acts which might arguably constitute a public employer improper practice.

The petitioner's dispute with the Fire Department and with the Trustees and Medical Board of the Fire Department Pension Fund, Article 1B, involves pension and medical matters which are beyond the scope of this Board's inquiry. There is no allegation, and no basis to believe, that the Fire Department's and Pension Fund's actions were intended as or had the effect of any of the acts proscribed by NYCCBL

§1173-4.2(a). We also observe that the Pension Fund is not a party to this proceeding, and that the medical and retirement determinations of the Trustees and Medical Board of the Pension Fund are not reviewable by this Board. For these reasons, we will dismiss the petition as to the Fire Department.

The improper practice charges against the UFA are more complex. While the petition fails to allege that the UFA has violated any provisions of the NYCCBL, it appears from a reading of the petition that the petitioner is claiming that the Union breached its duty to fairly represent him. This Board has held that a claimed breach of the duty of fair representation is within its jurisdiction and, if proven, may constitute an improper practice in violation of NYCCBL §1173-4.2 (b).²

We find, however, that the substance of the petitioner's claim is without merit. The uncontroverted³ allegations of the affidavit of Carmine A. DeRoss, Jr., submitted by the UFA, refute the contentions of the

² Decision Nos. B-1-6-79, B-13-81.

³ We find it significant that after service of the UFA's answer, motion to dismiss, and supporting affidavit of Mr. DeRoss, the petitioner spoke to the Trial Examiner, who confirmed his right to file a reply; and, yet, petitioner failed to submit a reply or any other response.

petitioner. We note especially that the Union's determination not to prosecute further the petitioner's grievance concerning the medical qualifications of a doctor who had examined him, was based upon the advice of counsel. Such a determination, even if based upon poor judgment, would not constitute a breach of the duty of fair representation. It is well established that a union breaches its duty of fair representation only when its conduct toward a member of the bargaining unit is arbitrary, discriminatory, or in bad faith.⁴ We do not find that the Union's conduct with respect to petitioner's grievance was arbitrary, discriminatory, or in bad faith.

With regard to reimbursement of petitioner's medical expenses, the record indicates that the Union obtained reimbursement for all expenses for which prior approval was obtained, pursuant to Fire Department regulations. The petitioner cannot hold the Union accountable for other medical expenses which he, himself, incurred in such a fashion as to render them ineligible for reimbursement. If petitioner incurred medical expenses in connection with treatment of a line-of-duty injury, without prior approval by the Fire Department Medical officer, as required by Department regulations, he deprived himself of any right of reimbursement. It appears that the petitioner's expectations concerning the Union's responsibilities are, in some instances, excessive, as in the matter of union representation at Medical Division examinations. We see no basis for finding that the UFA

⁴ Decision No. B-13-81; see Vaca v. Sipes, 386 U.S. 171 (1967).

has a duty to provide representation in such a non-adversarial transaction between a unit employee and the public employer.

Upon careful review of the petition and the responses thereto, contained in the affidavit of Mr. DeRoss, we find the allegations of the UFA convincing and note that they are unrefuted by any response by the petitioner; and we find that the petitioner has failed to establish any breach by the Union of the duty of fair representation.

We again observe that those portions of the charge against the Union which refer to actions by the Trustees of the Pension Fund are beyond this Board's power to review. We also take administrative notice that, pursuant to the Administrative Code, the Board of Trustees is composed of members other than union representatives; that not all of the union representatives on the Board are selected by the UFA; and that, as Trustees, the members of the Board serve as fiduciaries. Thus, in any event, the UFA cannot be held legally responsible for the actions of the Board of Trustees of the Pension Fund.

For all of the above reasons, we hold that the petition fails to establish any improper practice, and we will direct that it be dismissed.

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 of
Vincent T. Riccordella be, and the same hereby is, dismissed.

Dated: New York, N.Y.
March 23, 1982

ARVID ANDERSON
CHAIRMAN

MILTON FRIEDMAN
MEMBER

DANIEL G. COLLINS
MEMBER

CAROLYN GENTILE
MEMBER

EDWARD J. CLEARY
MEMBER

JOHN D. FEERICK
MEMBER

FRANKLIN J. HAVELICK
MEMBER