

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of

CLARA GIBSON,

Petitioner,

-and-

Decision No. B- 13-82

Docket No. BCB-514-81

DAVID SELWYN, Grievance
Representative, DISTRICT
COUNCIL 37, AFSCME, AFL-CIO,

Respondent.

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DECISION AND ORDER

This proceeding was commenced by the filing, on July 29, 1981, of an improper practice petition by Clara Gibson ("Petitioner") charging David Selwyn, Grievance Representative, District Council 37, AFSCME, AFL-CIO ("respondent") with the failure to represent her in connection with two separately filed and unrelated grievances. On August 18, 1981, respondent filed an answer, in response to which a reply was filed by petitioner on September 3, 1982.

BACKGROUND

Petitioner instituted this improper practice proceeding in response to D.C. 37's alleged failure to adequately represent her interests in connection with two grievances.

Grievance #1

According to petitioner, Ed Hartman, her supervisor, violated the collective bargaining agreement between D.C. 37

and the City

... when he summoned employee into a semi-darkened private office and attacked verbally and non-verbally, harassed by him and other supervisors, inculpated, pressured into leaving her job, caused tears to stream from her eyes, stripped of superb working record, stripped of promotion to a higher level ... sleep impediments, without her knowledge nor union representation.

Grievance #2

Petitioner also filed, before her termination, an unrelated grievance concerning out-of-title work. The union representative, it is alleged, failed to process this grievance as well.

Respondent alleges it knew nothing of Ms. Gibson's encounter with Hartman until after it took place. It further alleges that the union representative subsequently contacted Mr. Hartman who indicated that Ms. Gibson was an unsatisfactory worker and would not, therefore, be retained beyond her CETA term. Hartman also denied the charges of harassment. According to respondent, its representative attempted to explain to Ms. Gibson that the agency could not be compelled to retain her beyond the expiration of the employment term and that there were, therefore, no grounds for the grievance.

With respect to the out-of-title grievance, a Step I grievance was scheduled but subsequently canceled when the agency wrote a Step I decision. Respondent admits that it forgot to notify Ms. Gibson of the cancellation, but indicates that the union representative subsequently called Ms. Gibson to apologize

and to recommend that the grievance be discontinued since her termination would render the matter "moot."

In her reply, petitioner maintains that Hartman indicated that the agency would retain her, albeit on a part-time basis. Hence, she urges the out-of-title grievance was not "moot". She further urges that respondent was uncooperative and disinterested, and that only token efforts were undertaken on her behalf.

DISCUSSION

Petitioner has failed to establish a prima facie case against respondent. Petitioner's allegations, even if true, fail to constitute a basis for an improper practice finding. This Board has previously held that the duty of fair representation requires only that the union act fairly, impartially and non-arbitrarily in negotiating, administering and enforcing collective bargaining agreements.¹

In considering this obligation within the context presented by this petition, we note that a union does not breach this duty by the mere refusal to advance each and every grievance instituted by its members. However, the refusal to advance a claim must be made in good faith and must be neither arbitrary nor discriminatory. The Supreme Court so held in Vaca v. Sipes, 386 U.S. 171 (1967), and reaffirmed in Hines v. Anchor Motor Freight, Inc.,

¹ B-16-79; B-13-81; B-12-82.

424 U.S. 554, at 540 (1976):

In Vaca "we accept[ed] the proposition that a union may not arbitrarily ignore meritorious grievance or process, it in perfunctory fashion"...and our ruling that the union had not breached its duty of fair representation in not pressing the employee's case to the last step of the grievance process stemmed from our evaluation of the manner in which the union had handled the grievance in its earlier stages. Although "the Union might well have breached its duty had it ignored the [employee's] complaint or had it processed the grievance in a perfunctory manner, the Union conclude[d] that arbitration would be fruitless and that the grievance should be dismissed" only after it had "processed the grievance into the fourth step, attempted to gather sufficient evidence to prove the (employee's] case, attempted to secure for him less vigorous work at the plant, and joined the employer's efforts to have him rehabilitated."

As a CETA worker, petitioner's employment term was fixed by statute, not by contract. The length of the term, and any right relating thereto, derived from the federal legislation through which the CETA program was conceived. In Decision No. B-16-79, we considered the status of a probationary employee in a similar context. The employee, whose rights were limited by the Civil Service Law, charged the union with the failure to represent him in connection with An improper termination grievance. We recognized there that an employee representative cannot be expected, to create or enlarge the rights of special whose rights are delimited by law. In the instant proceeding, petitioner's impending termination was a matter beyond respondent's control and was not, therefore, an event with nor is it empowered classes of employees

respect to which the obligation of fair representation arises. In addition, we find that the Union's determination not to pursue the out-of-title grievance, on the grounds that the petitioner's impending termination rendered this grievance moot, has not been shown to be arbitrary or discriminatory so as to constitute a breach of the duty of fair representation.

Accordingly, this Board perceives no basis for a finding of an improper practice.

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 Clara Gibson be, and the same hereby is, dismissed.

DATED: New York, New York
April 21, 1982.

ARVID ANDERSON
CHAIRMAN

DANIEL G. COLLINS
MEMBER

MILTON FRIEDMAN
MEMBER

JOHN D. FEERICK
MEMBER

FRANKLIN J. HAVELICK
MEMBER

EDWARD F. GRAY
MEMBER

CAROLYN GENTILE
MEMBER