

Higgins, Jr. v. Fire Alarm Dispatchers Bene. Ass., 29 OCB 21 (BCB 1982)
[Decision No. B-21-82 (IP)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of

JOSEPH E. HIGGINS, JR.,

DECISION NO. B-21-82

Petitioner,

DOCKET NO. BCB-562-82

-and-

FIRE ALARM DISPATCHERS BENEVOLENT
ASSOCIATION; FRANCIS X. HOLT, as
President; JOHN C. PEDALINO, as
Vice President,

Respondents.

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DECISION AND ORDER

This proceeding was commenced on January 8, 1982, by the filing of a Verified Improper Practice Petition by Mr. Joseph E. Higgins, Jr. (hereinafter "Petitioner"). Petitioner alleges that the Fire Alarm Dispatchers Association, by its President, Francis X. Holt, and Vice President, John C. Pedalino (jointly referred to as "Respondents," or "the Union"), violated Section 1173-4.2(b) of the New York City Collective Bargaining Law (hereinafter "NYCCBL") by delaying the processing of his grievance and by failing to represent him at a Step II hearing. After receiving an extension of time in which to file an Answer, counsel for Respondents filed a Motion to Dismiss Higgins' Petition on February 26, 1981.

Petitioner, claiming that he had not been timely served with a copy of the Motion, was granted an extension of time in which to respond. On March 18, 1982, Petitioner submitted a letter opposing the Motion.

On March 23, 1982, an Interim Decision and Order issued,¹ finding that the allegations of the Petition stated a prima facie claim of an improper practice under NYCCBL §1173-4.2 and ordering Respondents to file an Answer. Respondents did so on April 7, 1982. On April 16, 1982, Petitioner filed a Reply.

Background

On May 10, 1980, Petitioner filed a grievance over an incident which occurred on April 19, 1980, involving the alleged improper allocation of overtime for one shift. On May 28, 1980, the Union wrote to the New York City Fire Department (hereinafter "the Department") stating that the Department's Step I disposition of the matter was unacceptable. After delay due in part to contract negotiations, Petitioner wrote to the Department on January 8, 1981, requesting a Step II hearing. The Department respondent on January 13, 1981, advising Higgins that such a request had to be initiated by the collective

¹ See Decision No. B-9-82.

bargaining agent that represented the grievant. On March 6, 1981, Union President Holt submitted to the Department the paperwork necessary to further process the grievance. In a memorandum dated March 18, 1981, the Department informed both Petitioner and Respondents that the Step II hearing request was time barred in that it was not made within five days of the Step I disposition of the matter, as required by the grievance procedure. Holt wrote to the Department on March 20, 1981, and stated that the time bar provisions of the grievance procedure had been relaxed by mutual agreement of labor and management during the recent negotiations. Higgins, who by now had three outstanding grievances, wrote to the Department on June 5, 1981. Since negotiations were completed and resulting changes in the grievance procedure had already been implemented, Petitioner requested "immediate action" in the processing of his claims.

By letter of June 22, 1981, the Department informed Higgins that a Step II hearing had been scheduled for July 13, 1981.²

² In the same letter, the Department resolved Higgins' two other grievances.

By letter dated July 7, 1981, the Department postponed the July 13th hearing to July 21, 1981 because the Commissioner was to be on vacation in mid-July. Holt then informed the Department that Higgins would be on vacation and out of town the week of July 21st. The Department wrote to Higgins on July 14, 1981, asking him to submit a convenient date. Higgins did so on July 31, 1981, and named five dates in August, 1981. One of these dates, August 21, 1981 was selected and, in an apparent mixup, was confirmed in a Department letter dated August 25, 1981. By letter dated August 24, 1981, the Department informed both Higgins and Holt that the Step II hearing would take place on September 11, 1981.

According to Respondents, Holt first learned of the September 11th hearing date on or about September 8, 1981. He immediately notified Petitioner that he would be unable to personally appear on that date because of a busy agenda but would arrange for another Union official to be present. Petitioner denies this conversation. Rather, Higgins states that he was not contacted by Respondents until September 9, 1981, at which time Union Vice President Pedalino telephoned and informed Higgins that he would appear with Higgins at the hearing.

The parties do agree however, that on September 10, 1981, Pedalino contacted Higgins. Pedalino told

Higgins that he was being subpoenaed and would be unable to attend the next day's hearing. Higgins then spoke to Holt who suggested that Higgins call the Department and cancel the meeting. Respondents attest, and Petitioner does not deny, that both Holt and Pedalino told Petitioner that they would appear with him in the future at a rescheduled Step II hearing. Higgins, however, "strongly protested" any further delay.

Higgins appeared at the hearing on September 11, 1981 without Union representation. The grievance was denied at Step II.

Petitioner complains that the overall delay in this matter prejudiced his rights. Even in making this allegation, however, Petitioner suggests a perfectly legitimate Union reason for the delay, namely, fear that "this would interfere with the temporary pilot program that the Union was actively entering upon with the New York City Fire Department . . ."

Discussion

The United States Supreme Court has held that a union breaches its duty of fair representation "only when the union's conduct toward a member of the bargaining unit is arbitrary, discriminatory or in bad faith."³ Prior Board decisions have adopted this standard and have examined the facts of each case on an ad hoc basis to determine whether a union has: a) treated all factions of its membership without hostility or discrimination; b) asserted the rights of its individual members in good faith and honesty; and c) avoided arbitrary and capricious conduct.⁴ Applying these standards to the present matter, we find that the Union has not breached its duty of fair representation to member Higgins.

The facts show that Union President Holt successfully persisted in obtaining the Department's commitment to proceed to Step II despite objections relating to timeliness. The gravamen of the improper practice charge thus goes to the delay in processing Petitioner's grievance.

³ Vaca v. Sipes, 396 U.S. 171, 87 S. Ct. 903 (1967).

⁴ Decision Nos. B-1-79, B-16-79, B-13-81, B-26-81, B-2-82, B-13-82.

It is uncontroverted that after substantial delay due in part to contract negotiations that affected the unit as a whole, the Step II hearing originally scheduled for June 22, 1981, was rescheduled three times - to July 21, 1981, August 21, 1981 and September 11, 1981. Two of the postponements, those of June 22, 1981 and August 21, 1981, are attributable to the Department. The July 21, 1981 hearing date was rescheduled at Grievant's request because of his scheduled vacation. Only once did the Union ask that the Step II hearing (for September 11, 1981) be rescheduled, a request which Grievant refused to honor.

We have previously stated that Board policy favors expedition in the processing of grievances and note that this policy was not followed in the instant case. While Respondent Union is at least partly responsible for the delays herein, that responsibility is shared by each of the interested parties, including Grievant, and cannot be said, under the circumstances, to constitute a failure or refusal by the Union to represent Grievant. On the contrary, it is uncontroverted that both Holt, who was engaged in other Union business, and Pedalino, who was under subpoena on September 11, 1981, offered to represent Petitioner if he would reschedule the Step II hearing. Respondents' one and only request

to postpone the Step II hearing was reasonable in light of the unavailability of its officials and its willingness to represent Petitioner at a later time.

In addition, Petitioner has failed to allege any facts which would prove any improper motivation on the part of Respondents. Higgins has not demonstrated how Respondents' actions were based upon motives prohibited by NYCCBL Section 1173-4.2 or interfered with the rights granted by Section 1173-4.1. Thus, in the absence of a showing of discriminatory intent, we find that no violation of the NYCCBL has been stated.

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

ORDERED that the improper practice petition filed by Joseph E. Higgins, Jr. in the case docketed as

BCB-562-82 be, and the same hereby is, dismissed.

DATED: New York, N.Y.
June 17, 1982

ARVID ANDERSON
CHAIRMAN

MILTON FRIEDMAN
MEMBER

EDWARD J. CLEARY
MEMBER

EDWARD SILVER
MEMBER

JOHN D. FEERICK
MEMBER