

Thweatt v. DC37, Adams (Union Rep.), 29 OCB 42 (BCB 1982) [Decision No. B-42-82 (IP)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of

DAVID CHARLES THWEATT

DECISION NO. B-42-82

DOCKET NO. BCB-620-82

Petitioner,

-and-

DISTRICT COUNCIL 37, AFSCME,
AFL-CIO; and SHIRLEY ADAMS,
Union Representatives

Respondents.

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DECISION AND ORDER

This proceeding was commenced by the filing on October 27, 1982, of an improper practice petition by David Charles Thweatt ("petitioner"), charging District Council 37, AFSCME AFL-CIO and Shirley Adams, Union Representative ("respondents" or "DC 37") with the failure to represent him in connection with his termination, on June 25, 1982, from Yorkville Center, Income Maintenance Center #19 ("Yorkville"). DC.37 submitted its answer on November 4, 1982. No reply was filed.

Background

Petitioner was hired as a Provisional Office Associate, on January 4, 1982, and continued to serve in

that title until his discharge on June 25, 1982. Approximately two months prior to his termination, Mr. Thweatt, by letter dated April 27, 1982 and addressed to Ms. Dora Galinda, Assistant Office Manger, Yorkville Center, responded to questions which had apparently been raised regarding his competence. He attributed any difficulties he might have had to the "hideous and malfunctioning situation at Yorkville" as well as the lack of on-the-job training.

On September 27, 1982, petitioner sent a letter to respondent, Shirley Adams, charging the City with a violation of "my civil rights, my human rights and my constitutional rights," and requesting her prompt assistance in connection with his termination.

Ms. Adams, you have known about this grave matter for some time now. Steve Simon and Michael Price, the Union Representatives for Yorkville Center, Number 19, are fully aware of the fact that I was fired for writing a solicited letter to my supervisor. I beseech you to move forthwith on investigating this matter and advising me, in written form, according to papers legal and procedural disposition.

On October 27, 1982, Mr. Thweatt filed the improper practice petition herein, stating the nature of the controversy to be:

Union D.C. 37 and its Representative, Shirley Adams, the Respondent, failed to represent the Petitioner, David Charles Thweatt, on the matter of termination without proper procedure and without cause.

Positions of the Parties

Petitioner's Position

Mr. Thweatt, in his September 27, 1982 letter to Shirley Adams, urges that

[t]he Civil Service Law of the City and State of New York does not give the administrative officials license to act fraudulently , arbitrarily, and capriciously in dismissing their employees, provisional employees included.

Accordingly, petitioner, for his remedy, seeks "reinstatement to the position of office Associate II or to the equivalent and updated corresponding position."¹

Respondent's Position

DC 37 maintains that neither the remedies prescribed by Section 75 of the Civil Service Law, nor the grievance procedure set forth in the collective bargaining agreement at Article VI, Section 1(e), are available to provisional employees Since petitioner is not afforded the protections of either of the above, DC 37 contends no rights exist

¹ Remedy requested in the Verified Improper Practice Petitioner.

with respect to which it was under a duty to act. DC 37 further maintains that, at any event, the remedy of reinstatement is not one which it has the power to grant.

Discussion

Petitioner has failed to establish a prima facie case against respondent in that 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.² 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, nor is it empowered, to create or enlarge the rights of special classes of employees. Those rights are delimited by law. In the instant proceeding, petitioner's termination was a matter as to which he had no rights either at law or in contract; it follows that

² Decision Nos. B-16-79; B-13-81; B-12-82.

the union has no basis for proceeding further with the matter on his behalf and consequently cannot be held at fault for not doing so.

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 David Charles Thweatt be, and the same hereby is, dismissed.

DATED: New York, N.Y.
November 29, 1982

ARVID ANDERSON
CHAIRMAN

DANIEL G. COLLINS
MEMBER

MILTON FRIEDMAN
MEMBER

CAROLYN GENTILE
MEMBER

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