

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

- - - - - X
In the Matter of the Improper Practice

- between -

Petitioner,
MARTHA CORSALINI,

DECISION NO. B-15-84

- and -

1199 NATIONAL BENEFIT FUND,

DOCKET NO. BCB-682-83

Respondent.

- - - - - X

DETERMINATION AND ORDER

On November 29, 1983, Martha Corsalini filed a verified improper practice petition, received by the Office of Collective Bargaining on December 9, 1983, in which it is alleged that 1199 National Benefit Fund breached a promise to petitioner that it would refrain from providing legal assistance to a co-worker of the petitioner. on December 12, 1983, counsel for District 1199, National Union of Hospital and Health Care Employees ("District 1199" or "the Union") filed an answer, asserting inter alia that 1199 National Benefit Fund is not a proper respondent in this proceeding as District 1199 represents employees in the relevant bargaining unit.¹ Petitioner did not file a reply.

¹ We note that District 1199, National Union of Hospital and Health Care Employees, is the certified collective bargaining representative for the unit of which petitioner is a member. Cert. No. 66-78. Accordingly, District 1199 is the proper party respondent.

Background

Petitioner is a pharmacist at Bellevue Hospital. The instant dispute arose when a co-worker of petitioner, also a member of the bargaining unit represented by District 1199, was discharged, allegedly as a result of a complaint filed by petitioner.

In this proceeding, petitioner alleges that District 1199 promised to remain neutral in the proceedings initiated by her against the co-worker and to refrain from assisting either party in that matter. Petitioner charges that the Union breached its promise by rendering legal assistance to the co-worker in an appeal of his discharge.

Positions of the Parties

Petitioner's Position

Petitioner claims that the Union's breach of a promise of neutrality in the disciplinary proceedings against a co-worker amounts to discrimination against her and warrants a finding by this Board of "improper union representation." She asks that the Board determine the proper remedies.

Respondent's Position

District 1199 denies the material allegations of the

petition. The Union states "upon information and belief" that the co-worker retained his own personal attorney in his appeal of the discharge. In any event, District 1199 attorneys did not represent him. Thus, the Union concludes, it has not discriminated against petitioner.

Discussion

While the improper practice petition filed herein fails to allege that the Union has violated any provision of the NYCCBL, it is clear that the petitioner is claiming that District 1199, by its alleged representation of her co-worker, has breached a duty of fair representation owed to the petitioner. We have previously held that a claimed breach of the duty of fair representation is within our jurisdiction² and, if proven, may constitute an improper practice within the meaning of section 1173-4.2b of the New York City Collective Bargaining Law (NYCCBL).³

² Decisions B-16-79, B-13-81, B-11-82, B-12-82, B-18-82.

³ Section 1173-4.2b of the NYCCBL provides:

Improper public employee organization practices. It shall be an improper practice for a public employee organization or its agents:

(1) to interfere with, restrain or coerce public employees in the exercise of rights granted in section 1173-4.1 of this chapter, or to cause, or attempt to cause, a public employer to do so;

(2) to refuse to bargain collectively in good faith with a public employer on matters within the scope of collective bargaining provided the public employee organization is a certified or designated representative of public employees of such employer.

We find, however, that the facts presented in the petition in this case do not state a prima facie claim of a breach of the duty of fair representation.

It is well-established that a union may be found to have breached its duty of fair representation when its conduct toward a bargaining unit member is arbitrary, discriminatory or in bad faith.⁴ However, there can be no breach of the duty of fair representation where the alleged union conduct does not affect the terms and conditions of employment of the petitioning employee and has no effect on the nature of the representation accorded to such employee by the union.⁵

In the instant matter, petitioner claims that District 1199, by its alleged breach of promise, discriminated against her. She fails entirely to support this claim, however, offering no evidence that the Union treated her differently than it would have or has treated any other bargaining unit member under similar circumstances. Nor does petitioner allege facts which, if proven, would demonstrate a discriminatory motive on the Unions part.

Further, petitioner does not contend that the Union has failed to represent her in the enforcement of her

⁴

See Decisions B-16-79, B-12-82, B-13-82, B-21-82; *Vaca V. Sipes*, 386 U.S. 171 (1967).

⁵ See Decision B-1-79 and cases cited therein.

rights under the collective bargaining agreement with her employer. Such an allegation would, of course, constitute a claim of failure of fair representation. Instead, petitioner accuses the Union of breaching a private agreement with her which purports to limit the Union's involvement in petitioner's dispute with a co-worker.

In the absence of a showing that the Union failed to treat petitioner fairly, impartially and non-arbitrarily in connection with the negotiation, administration or enforcement of the collective bargaining agreement,⁶ we conclude that no violation of section 1173-4.2b of the NYCCBL has been stated. Accordingly, we shall dismiss the improper practice petition in its entirety.

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

⁶ See note 4 and accompanying text supra.

ORDERED, that the improper practice petition filed
by Martha Corsalini be, and the same hereby is, dismissed

DATED: New York, N.Y.
July 18 , 1984

ARVID ANDERSON
CHAIRMAN

MILTON FRIEDMAN
MEMBER

DANIEL G. COLLINS
MEMBER

EDWARD SILVER
MEMBER

JOHN D. FEERICK
MEMBER

EDWARD F. GRAY
MEMBER

CAROLYN GENTILE
MEMBER