

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

In the Matter of

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YUBA E. DORHAM,

Petitioner

DECISION NO. B-25-84

-and-

DOCKET NO. BCB-730-84

SOCIAL SERVICE EMPLOYEES UNION,
Local 373,

Respondent.

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DECISION AND ORDER

This proceeding was commenced on August 22, 1984, by the filing of a verified improper practice petition by Yuba E. Dorham ("Petitioner"). Petitioner alleges that Social Service Employees Union, Local 371,¹ ("the Union" or "Local 371") breached its duty of fair representation in violation of Section 1173-4.2 of the New York City Collective Bargaining Law (hereinafter "NYCCBL"). Local 371 submitted its answer on October 17, 1984, to which petitioner did not reply.

Background

Petitioner, who had been employed as a Senior Houseparent by the New York City Human Resources Administration

¹ Petitioner incorrectly cites the name of the Union as "SSEU DC 37 Local 371". The Board takes administrative notice of the Union's correct name.

("the City" or "HRA") prior to her discharge, alleges that Local 371 "failed to properly handle" her grievance. Dorham states that the "Step I hearing was never ruled on", that neither the City nor the Union notified her of a Step III hearing held in November, 1983, and that the Union refused both to proceed to arbitration and to put her in contact with its attorney. As a remedy, Petitioner seeks reinstatement, backpay and benefits, plus payment by the Union for arrears on rent and utilities as well as court costs.

According to the undisputed facts contained in the Union's answer, Petitioner was served with three different sets of charges on account of excessive unauthorized absenteeism in July, 1981; July, 1982; and November, 1982, respectively. The Union represented Petitioner at various informal conferences and Step II and Step III hearings.² The recommended penalty of dismissal was reduced in both the first and second set of charges.

The Union also filed a work treatment grievance on Petitioner's behalf in July, 1982, and, later that year, obtained a transfer for her that she had requested.

On April 17, 1984, the Union filed a request for arbitration over Dorham's discharge, which emanated

² The Union states that neither HRA nor Petitioner informed it of the informal conference held on the third set of charges in November, 1982.

from the third set of charges concerning her absenteeism. However, subsequent to this filing, a revised Step II determination issued in July, 1984, rendering moot certain technical objections that the Union had pleaded below.³ Local 371 then informed Petitioner that based on all the facts and circumstances, further proceedings were unwarranted and it intended to withdraw the request for arbitration. The Union also told Dorham that it negotiated an agreement with HRA whereby her dismissal could be converted to a resignation, if she so desired.

The Union argues that Petitioner has failed to state an improper practice under the NYCCBL. Local 371 contends that it has fully and fairly represented the Petitioner on numerous occasions. Its decision to withdraw the April, 1984 arbitration request, states the Union, was based on its good faith judgment that there was "no substantial likelihood of success" in arbitration in view of Petitioner's "legally indefensible" attendance record. Furthermore, contends Local 371, the petition is devoid of any facts indicating that the Union acted in bad faith or with hostility towards Petitioner, or that it failed to

³ The Union's procedural objections related to HRA's failure to properly sign and issue the Step II determination in the second set of charges.

act in a fair impartial, non-arbitrary manner, so that the petition must be dismissed.

Discussion

At the outset, we note that Section 7.4 of the Revised Consolidated Rules of the Office of Collective Bargaining prescribes a four-month statute of limitations for the commencement of improper practice proceedings. Thus, Petitioner's allegations relating to events which may have occurred prior to April 22, 1984 are time-barred and can be considered only in the context of background information rather than as specific violations of the NYCCBL presently being pleaded.⁴

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."⁵ In previous decisions, we have adopted the above standard and have held that, "broadly stated, the duty of fair representation obliges a union to act fairly, impartially, and non arbitrarily in negotiating, administering and enforcing collective bargaining agreement."⁶ " This does not constitute the establishment of a fixed standard by which

⁴ Decision Nos. B-20-81, B-30-81.

⁵ Vaca v. Sipes, 386 U.S. 171, 87 S. Ct. 903(1967).

⁶ Decision No. B-39-82.

the conduct of business by unions is to be measured nor deprive unions of the right and the duty to make informed judgments as to how their affairs should be managed.⁷ We have said that "a union does not breach [its] duty by the mere refusal to advance each and every grievance" and that the rule requires only that "the refusal to advance a claim must be made in good faith and must be neither arbitrary nor discriminatory".⁸ Applying these standards to the present matter, we find that the Union has not breached its duty of fair representation to member Dorham.

The uncontested facts show that over the last three years, the Union repeatedly represented Petitioner in a variety of different disciplinary proceedings and has obtained results beneficial to Petitioner. It has also filed grievances on Dorham's behalf and, at one point, was able to secure a transfer which she requested.

The Union states that it acted in good faith when it decided not to proceed to arbitration over the third set of disciplinary charges after receiving notice that any technical arguments it may have been able to make had been rendered moot. Dorham has failed to allege any facts which prove, or from which the Board could even infer,

⁷ Decision Nos. B-1-79, B-16-79, B-13-81, B-26-81, E-2-82, B-13-82, B-39-82, B-20-84.

⁸ Decision No. B-13-82.

that the Union's decision no longer to pursue arbitration was based upon anything but its good faith judgment that to do so would prove futile. Nor has Petitioner demonstrated how the Union's 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.

For the reasons set forth above, we find that the petition fails to establish any improper practices, and direct that it be dismissed.

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 Yuba A. Dorham in the case docketed as BCB-730-84 be,

and the same hereby is, dismissed.

DATED: New York, N.Y.
November 20, 1984

ARVID ANDERSON
CHAIRMAN

DANIEL G. COLLINS
MEMBER

MILTON FRIEDMAN
MEMBER

DEAN L. SILVERBERG
MEMBER

JOHN D. FEERICK
MEMBER

SANDRA B. DURANT
MEMBER

CAROLYN GENTILE
MEMBER