

McAllen v. DC37, Barriteau, 33 OCB 26 (BCB 1984) [Decision No. B-26-84 (IP)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of

RICHARD McALLAN,

DECISION NO. B-26-84

Petitioner,

DOCKET NO. BCB-504-81

-and-

JOSEPH BARRITEAU and DISTRICT
COUNCIL 37, AFSCME, AFL-CIO,

Respondents.

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DECISION AND ORDER

Petitioner Richard McAllan has filed a verified improper practice petition in which he charges that Joseph Barriteau and District Council 37, AFSCME (hereinafter "D.C. 37" or "the Union"), have committed improper practices in violation of §1173-4.2(b) of the New York City Collective Bargaining Law (hereinafter "NYCCBL"). The Union, on behalf of itself and Joseph Barriteau, has submitted a verified answer and a memorandum of law. The petitioner has filed a verified reply.

Background

Petitioner McAllan is an employee of the Emergency Medical Service (hereinafter "EMS") in a bargaining unit represented by D.C. 37's affiliated Local 2507. At the time in question herein, McAllan served as the Secretary

Treasurer of Local 2507. Respondent Barriteau is an employee of D.C. 37, assigned to advise and represent, inter alia, Local, 2507 and its employees.

The improper practice charges concern the petitioner's difficulties in obtaining access to various EMS facilities, and the respondents' failure to assist him in connection therewith. The petitioner alleges that when he informed the Local's Executive Board that management was interfering with his access to EMS facilities, in claimed violation of an "open shop law", respondent Barriteau denied that an "open shop law" existed and further asserted that management was not required to guarantee access to all union officers. Petitioner alleges that Barriteau advised the Executive Board that the Director of EMS had complained that McAllan was a "disruptive employee". At a subsequent meeting of the Local's general membership, Barriteau repeated the above statements and further stated that EMS had issued an order banning McAllan from all EMS locations when he was off duty. Petitioner alleges that Barriteau took no action to resolve McAllan's difficulties with EMS.

The petitioner further claims that he wrote to D.C. 37's Executive Director concerning alleged "unfair labor practices" by EMS. He alleges that he requested representation by D.C. 37 in connection with the "unfair

labor practices" he had alleged against EMS. The petitioner contends that D.C. 37 did not respond to his letter and did not offer to discuss the "unfair labor practice" allegations. He concedes, however, that the Union offered to provide representation in connection with disciplinary charges brought by EMS which arose out of the same incidents alleged in the "unfair labor practice" claims.

Positions of the Parties

Petitioner's Position

The petitioner argues that the above actions by the Union and its representative, Joseph Barriteau, constitute breaches of the duty of fair representation. Moreover, the petitioner contends that the respondents' motivation was their desire to discredit the petitioner as a candidate for the Presidency of the Local, and to insure the reelection of the incumbent. The petitioner submits that these actions constitute improper practices under the NYCCBL.

Respondents' Position

The respondents deny that they have interfered with, restrained, or coerced the petitioner in connection with his exercise of protected rights, or that they caused or attempted to cause the employer so to do. They further

deny that they breached any duty of fair representation.

The Union alleges that Barriteau's statements at the Executive Board and general membership meetings were correct, accurate, and made in good faith. Specifically, the Union submits that there exists no State "open shop" law, and that the authorization for union officers' access to employer premises was not unconditional and did not extend to conduct which disrupted the employer's normal operations. The Union further alleges that Barriteau considered McAllan's claims and concluded that EMS was not infringing on any union member's rights but was merely exercising its own management rights. D.C. 37 also alleges that Barriteau sought and obtained the advice of counsel, who confirmed his assessment of the McAllan's claims.

The Union alleges that its staff investigated the petitioner's "unfair practice" charges, and concluded that there was no legal or factual basis to support the charges. Furthermore, the Union contends that its General Counsel believed that the filing of an improper practice charge might conflict with the petitioner's defense of pending disciplinary charges brought by EMS. D.C. 37 offered to provide representation for petitioner in connection with the disciplinary matter, but the petitioner chose to be represented by private counsel of his own selection.

The Union argues that the petitioner's allegations concerning acts intended to discredit McAllan as a candidate for union office and to support the incumbent Local President, involve internal union affairs over which this Board has no jurisdiction.

D.C. 37 further submits that the duty of fair representation does not obligate a union to file an improper practice petition under the NYCCBL at a member's request. The Union contends that the duty of fair representation does not apply to extra-contractual claims where the means of redress is not within the exclusive control of the Union. The Union alleges that petitioner's "unfair practice" claims do not involve the collective bargaining agreement, but appear to arise under the NYCCBL. The Union observes that the filing of an improper practice petition under the NYCCBL is not within the exclusive control of the Union; in fact, the petitioner did present his claims in an improper practice petition which he filed without the assistance of the Union (Docket No. BCB-499-81).

For all of the above reasons, D.C. 37 requests that the petition be dismissed.

Discussion

The petitioner alleges that the statements made by respondent Barriteau, together with both respondents' failure to act on the petitioner's claims of "unfair labor practices", constitute breaches of the Union's duty of fair representation. The primary question presented for our determination is whether the duty of fair representation imposes upon unions an obligation to enforce the rights of bargaining unit employees deriving not from the contract and the collective bargaining process, but rather from a statute, the NYCCBL. We conclude that it does not.

The United States Supreme Court, in defining the scope of the duty of fair representation, has stated that when Congress empowered unions to bargain exclusively for, all employees in a bargaining unit, thereby subordinating individual interests to the interests of the unit as a whole, it simultaneously imposed on unions a correlative duty "inseparable from the power of representation to exercise that power fairly".¹ The fair representation doctrine thus serves as a counterbalance to a union's exclusive authority: since exclusive representation reduces the individual rights of employees, the doctrine

¹ Steele v. Louisville and Nashville Railroad, 323 U.S. 192, 15 LRRM 708 (1944).

protects "individuals stripped of traditional forms of redress by the provisions of the ... labor law."²

Pursuant to the doctrine, as it has been applied by the courts, a union must represent fairly the interests of all bargaining unit members with respect to the negotiation, administration, and enforcement of collective bargaining agreements.³ The question posed by the petitioner herein is whether the union has an obligation to represent unit members with respect to a matter outside the scope of negotiation, administration, and enforcement of collective bargaining agreements. The respondent Union asserts that this question must be answered in the negative. We agree.

We believe that duty of fair representation is coextensive with a union's exclusive authority to deal with the employer on behalf of bargaining unit employees with respect to certain matters. To the extent that a union's status as exclusive collective bargaining representative extinguishes an individual employee's access to available remedies, such as negotiation with the employer, the union owes a duty to represent fairly the interests of the

² Vaca v. Sipes, 386 U.S. 171, 182 (1967).

³ International Brotherhood of Electrical Workers v. Foust, 442 U.S. 32 (1979); see Decision Nos. B-16-79; B-14-83; B-23-84.

employee who is unable to act independently to protect his own interests. In the context of a certified employee representative's exclusive authority under the NYCCBL and the applicable provisions of the Taylor Law, the duty of fair representation does not reach into and control all aspects of the Union's relationship with its members. The duty extends only to the negotiation, administration, and enforcement of a collective bargaining agreement.⁴ It does not extend to the enforcement of provisions of the NYCCBL, the vindication of which may be obtained by any affected employee through free access to the processes of this Board. In the latter case, the union does not control the sole access to the forum through which rights may be vindicated, and thus there exists no policy reason why the union should be held responsible for protecting those rights.

This view of the scope of the duty of fair representation has been accepted by the courts.⁵ We believe

⁴ Decision Nos. B-14-83; B-23-84.

⁵ See, Black Musicians of Pittsburgh v. Local 6071, American Federation of Musicians, 375 F supp. 902, 86 LRRM 2296 (W.D. Pa. 1974), aff'd, 544 F. 2d 512 (3d Cir. 1975); see, Hawkins v. Babcock & Wilcox Co., 105 LRRM 3438 (N.D. Ohio 1980); Lacy v. Local 287, United Auto Workers, 102 LRRM 2847 (S.D. ind. 1979).

that it strikes an appropriate balance between the rights and interests of unions and employees. To impose a broader scope of duty upon unions would be, in our view, unwarranted and unduly burdensome.

In the present case, the Union does not control the sole means of obtaining enforcement of employees' rights under the NYCCBL. To the contrary, any affected employee has access to this Board to challenge the alleged violation of these rights by the employer. In fact, petitioner McAllan has availed himself of this right by commencing an improper practice proceeding before this Board challenging the same actions by EMS of which he complained to the Union.⁶ Under these circumstances, we hold that D.C. 37 owed no legal duty to petitioner to institute an improper practice proceeding on his behalf.

Concerning petitioner's challenge to the statements made by D.C. 37 representative Barriteau at two union meetings, the record fails to show how those statements interfered with, restrained, or coerced the petitioner in connection with his exercise of protected rights. Indeed, the petitioner has failed to show that the statements made were not, in fact, accurate. The petitioner emphasizes that Barriteau denied the existence of an "open shop law" which guaranteed unrestricted access by

⁶ Docket No. BCB-499-81.

union officers. The petitioner has not supplied any citation to the source of this alleged law. This Board is not aware of the existence of such a law, and cannot fault the advice given by Barriteau concerning this issue.

The petitioner also challenges Barriteau's statement that the Director of EMS had complained that McAllan was a "disruptive employee". Yet, without forming a judgment as to the truth of the complaint, we find that the record establishes that the Executive Director of EMS, James J. Kerr, did write to Barriteau concerning McAllan's behavior, which he characterized as "extremely disruptive". Thus, Barriteau's report of this matter to the Local's Executive Board was accurate. The fact that McAllan was not immediately given a copy of Kerr's letter is of no consequence.

Aside from the question of the accuracy of Barriteau's statements, the petitioner argues that his motivation in making the statements was to discredit the petitioner as a candidate for the Presidency of Local 2507. However, it is clear that this contention relates to an internal union matter which is outside the scope of this Board's jurisdiction under the NYCCBL.⁷

⁷ Decision No. B-23-84 and cases cited therein.

For all of the above reasons, we find that the petitioner has failed to establish an improper practice within the meaning of the NYCCBL. Accordingly, we will order that the petition 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 petition herein be, and the same hereby is, dismissed.

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

ARVID ANDERSON
CHAIRMAN

MILTON FRIEDMAN
MEMBER

DANIEL G. COLLINS
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