Maldonado v. L.371, SSEU, 41 OCB 1 (BCB 1988) [Decision No. B-1-88 (IP)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING
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In the Matter of

DAISY MALDONADO,

Petitioner,

-and-

SOCIAL SERVICE EMPLOYEES UNION, LOCAL 371,

Respondent.
- - - - ---------- - - - - - - - - - - X

DECISION NO. B-1-88
DOCKET NO. BCB-907-86

DECISION AND ORDER

This proceeding was commenced by the filing, on October 8, 1986, of an improper practice petition by Daisy Maldonado ("Petitioner") charging Social Service Employees Union, Local 371 ("respondent" or "the Union") with the failure to represent her in connection with her termination on August 20, 1986. After several extensions of time, on December 31, 1986 the Union filed its answer. No reply was filed.

Background

Petitioner was,a probationary employee employed by the New York City Health and Hospitals Corporation (“HHC”). Prior to the completion of her probationary period, petitioner was notified that a determination had been made

to terminate her services. Upon the request of petitioner, respondent thereafter contacted the HHC and obtained a hearing at which objection to petitioner's discharge could be made. Prior to the date scheduled for the hearinq, however, petitioner notified respondent that she had retained private counsel and did not want the Union to take any further action on her behalf in connection with her discharge.

On or about August 12, 1986, petitioner's attorney telephoned respondent's attorney to confirm that he was representing petitioner, and that petitioner did not want the Union to take any further action on her behalf. In addition, petitioner's attorney requested that respondent's attorney provide him with a copy of the Guidelines on the Jurisdiction of the HHC Personnel Review Board.

By letter dated August 13, 1986, respondent's attorney confirmed his telephone conversation with petitioner's attorney and enclosed a copy of the requested Guidelines. Respondent's attorney also advised petitioner's attorney that "the time for filing an appeal is 30 days from the date of the act complained of. If you intend to pursue this route, in order to be safe you might consider measuring 30 days from the date [petitioner]

received notice of the termination rather than the termination date itself."

Positions of the Parties

Petitioner's Position

Petitioner contends that the Union improperly re presented her with regard to her termination by not ascertaining the facts surrounding her grievance and by not representing her properly at the Step IA conference. In support of her contention, petitioner asserts that the union representative discouraged her from participating in the Step IA conference, and thereafter failed to advise her of her legal rights and remedies.

Respondent's Position

Respondent contends that the petition should be dismissed in its entirety because it fails to state a violation of the New York City Collective Bargaining Law.

Respondent claims that as a probationary employee petitioner was an "at-will" employee and not entitled to any pre-termination or post-termination hearing either under the New York State Civil Service Law or the grievance procedures of the Union's collective bargaining

agreement with the HHC. Notwithstanding petitioner's lack of entitlement to any due process or re view procedures regarding her discharge, respondent asserts that it did in fact intervene on her behalf. Respondent maintains that it acted on behalf of petitioner until she notified the Union that she had retained private counsel and, thus, did not want the Union to take any further action in connection with her discharge.

Discussion

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.[1] In Decision No. B-16-79, we considered the status of a probationary employee in a context similar to that presented herein.[2] 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

[1] See, e.g., Decision Nos. B-16-79; B-13-82; B-42-82; B-14-86 (ES) .

[2] See also, Decision Nos. B-13-82; B-18-84; B-14-86(ES).

that an employee representative cannot be expected, nor is it empowered, to create or enlarge the rights of special classes of employees whose rights are delimited by law. An exception to this principle would exist where the parties, in their collective bargaining agreement, have granted such employees rights greater than their statutory entitlement. Such is not the case here.

In the instant proceeding, petitioner's termination was a matter as to which she had no rights either at law or pursuant to contract and was not, therefore, an event with respect to which the obligation of fair re presentation arises. We note that while not obligated to do so, the Union did in fact intervene on petitioner's behalf and arranged a hearing with the HHC. Moreover, we note that the Union ceased to represent petitioner only when it was notified that petitioner had retained private counsel, and did not want the Union to take any further action in connection with her discharge.

Accordingly, for the reasons stated above, we find no basis for a finding of improper practice.

0 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 Daisy Maldonado be, and the same hereby is, dismissed.

DATED: New York, N.Y.
January 28, 1988

MALCOLM D. MacDONALD
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