

Camuglia v. L.1597, DC37, 41 OCB 9 (BCB 1988) [Decision No. B-9-88 (IP)]

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

RALPH J. CAMUGLIA,

Petitioner,

-and-

DECISION NO. B-9-88

DISTRICT COUNCIL 37, ED SIMON  
PRESIDENT OF LOCAL 1597,  
Respondent.

DOCKET NO. BCB-1022-87

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DECISION AND ORDER

On December 30, 1987, Ralph J. Camuglia ("petitioner"), filed an improper practice petition against Ed Simon, President of Local 1597, District Council 37, AFSCME, AFL-CIO ("Union"). The petition was served on District Council 37 on December 17, 1987. After two extensions of time, the Union filed its answer on January 28, 1988, to which the petitioner did not reply.

Background

The petitioner, a Custodial Assistant employed by the Department of Environmental Protection, describes the controversy as follows:

"I was charged with doing my work [wrong] and [accumulating] debris at the work site. This is a continuing problem for

\_\_\_\_\_ me to which the Union will not represent me. I called Mr. [Commissiong], Union Representative, and Mr. Simon, Union President of Local 1597 of District Council 37 to assist me in this legal matter repeatedly, and still of this date I have [received] no help in this matter. I am a dues paying member of this Local for fifteen years and I am being denied representation for which I pay for."

In its answer, the Union gave the following account of the facts in this matter:

On August 6, 1987, the petitioner received a Conduct Conference Memorandum from his supervisor, confirming a counseling session held August 5, 1987. Subsequently, the petitioner received a second Conduct Conference Memorandum on August 6, 1987, confirming a counseling session held that day.

The petitioner contacted the Union shortly after receiving one or both of the Conduct Conference Memoranda and spoke to Ed Simon, President of Local 1597, asking for advice and insisting that he be provided with legal representation. Simon's offer that either he or another Union Representative meet with Mr. Camuglia's supervisor was rejected as unsatisfactory by the petitioner. Simon then referred the call to Ruel Commissiong, Council Representative of D.C. 37, whose function it is to service Custodial Assistants. Commissiong explained to Camuglia that such counseling

memoranda as were received by the petitioner were not grievable, and that rights to a hearing did not automatically attach to the petitioner upon his receipt of the memoranda. Commissioning instructed the petitioner to submit a written rebuttal to the allegations to his supervisor, advice which, the Union believes, was heeded by Camuglia. Commissioning further explained to the petitioner that legal representation ordinarily was not provided for situations such as this but rather, was supplied only when a grievance reaches the arbitration stage or when a member is brought up on formal charges requiring a hearing pursuant to §75 of the Civil Service Law.

The petitioner did not avail himself of his right, pursuant to §7.9 of the Revised Consolidated Rules of the Office of Collective Bargaining, to submit a reply to the factual allegations of the Union's answer.

Since the facts alleged in the answer are not rebutted by the petitioner nor controverted in any other way on the record before us, they must be deemed admitted pursuant to the aforementioned Rule 7.9 and we accordingly accept them as true.

#### Positions of the Parties

The petitioner claims generally that he has a continuing problem of being charged with wrong-doing at his work site. He further asserts that the Union and its

representatives have not represented him. He alleges no reason for the Union's alleged failure to represent him.

The Union asserts that the petitioner is known to them and that it has "...represented him on numerous occasions to resolve problems he was having." In the instant matter, the Union states that it fulfilled its duty of fair representation by offering to meet with the petitioner's supervisor on his behalf as well as having advised Mr. Camuglia of the "appropriate" action he could take (the submission of a written rebuttal) upon receipt of Conduct Conference Memoranda. The Union maintains that such memoranda are not grievable generally, under the grievance procedure of the collective bargaining agreement and specifically do not constitute written charges of incompetence or misconduct such as to bring the matter within the definition of a grievance based upon a wrongful disciplinary action. Therefore, the Union claims that the petitioner has failed to state a cause of action under the New York City Collective Bargaining Law.

The Union also contends that the petition is time barred pursuant to §7.4 of the Revised Consolidated Rules of the office of Collective Bargaining which states, in pertinent part, that

"[a] petition alleging that...a public employee organization or its agents has engaged in an improper practice ... may be filed with the Board within four (4) months thereof.... "

The Union alleges that the events which gave rise to the instant petition took place no later than August 10, 1987, more than four months prior to filing, and it requests dismissal of the petition on the basis of un timeliness.

Discussion

Upon review of the petition and answer in this matter we find this claim barred by the statute of limitations due to the petitioner's failure to comply with the time requirements under Rule 7.4 for filing an improper practice petition. Petitioner does not dispute the Union's assertion that the acts complained of occurred no later than August 10, 1987. The petition was not filed with this Board until December 30, 1987, more than four months later.

Moreover, even if we deemed this matter to have been timely filed, based on the record before us, we could find no basis for the substantive claim of a breach of the duty of fair representation. In order to state a cognizable claim of breach of the duty of fair representation, the petitioner must make a prima facie showing that the Union's conduct toward him is arbitrary, discriminatory or in bad faith.<sup>1</sup>

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<sup>1</sup> See, Decision Nos. B-9-86; B-2-84.

Unrebutted facts demonstrate that the Union made efforts to deal with the petitioner's complaints. The Union's reasonable interpretation of the pertinent contract language demonstrates that its conduct in the matter was not arbitrary. The petition does not imply discriminatory treatment, nor does it allege bad faith. The petitioner states that he has received "no help" in an alleged "legal matter", for which the Union claims he will only accept the assistance of an attorney.

After reviewing petitioner's complaints, the Union concluded that the petitioner's claim lacked grounds upon which a grievance could be pursued under the contract. There is no evidence that this conclusion by the Union or its consequent refusal to pursue the claims further amounted to improper handling of the matter rising to the level of unfairness or bad faith. Furthermore, the petitioner does not assert that the treatment afforded him differed in any respect from that received by fellow employees in similar situations. Regardless of the correctness of the Union's decision not to process a grievance in this matter and not to provide the services

of an attorney, the petitioner has failed to make a prima facie showing that the Union acted in an arbitrary, capricious or discriminatory manner. We cannot, therefore, find that the duty of fair representation has been breached and accordingly, we direct that the improper practice 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 improper practice petition filed herein by Ralph J. Camuglia be, and the same hereby is, dismissed.

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

MALCOLM D. MacDONALD  
CHAIRMAN

DANIEL G. COLLINS  
MEMBER

GEORGE NICOLAU  
MEMBER

DEAN L. SILVERBERG  
MEMBER

EDWARD F. GRAY  
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CAROLYN GENTILE  
MEMBER

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