Glisson v. L.831, USA, 45 OCB 38 (BCB 1990) [Decision No. B-38-90(ES)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING
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In the Matter The Improper
Practice Proceeding

-between-

CARL B. GLISSON, DECISION NO. B-38-90(ES)

Petitioner, DOCKET NO. BCB-1283-89

-and-

LOCAL 831, UNIFORMED
SANITATIONMEN'S ASSOCIATION

Respondent.
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DETERMINATION OF EXECUTIVE SECRETARY

On May 21, 1990, Carl B. Glisson ("the petitioner") filed a verified improper practice petition against Local 831, Uniformed Sanitationmen's Association ("the Union") alleging that the Union violated Section 12-306b of the New York City Collective Bargaining Law ("NYCCBL").[1]

[1] Section 12-306 of the NYCCBL provides in pertinent part as follows:

> b. Improper public employee organization practices. It shall be and improper practice for a public employee organization or it agents:
>
> (1) to interfere with, restrain or coerce public employees in the exercise of rights granted in section 12-305 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.

According to documents that were attached to the improper practice petition, petitioner was appointed to the New York City Department of Sanitation ("Department") on July 14, 1980. In a proceeding at which he was represented by an attorney, petitioner admitted the truth of the facts set forth in the specifications against him, and entered a plea of guilty to the following charges:

- April 25, 1989 - petitioner was involved in a multi-vehicle accident and, as a result, was charged with the violation of Department rules

- July 8, August 10 and September 11, 1989 - petitioner tested positive for drugs

- July 13, 1989 - petitioner began sick leave but failed to report to the clinic until July 14, 1989, and failed to substantiate his inability to report as required.

Thereafter, the petitioner and the Department entered an agreement whereby the Department granted the petitioner a 6 month leave of absence without pay during which time he was required to enter the rehabilitative treatment program sponsored by the Employee Assistance Unit (EAU). As part of this agreement petitioner was required to be tested for substance abuse at the clinic every other Saturday. The agreement stated that the failure to appear for these tests would result in petitioner's termination. On November 20th, 25th, and 27th, 1989, petitioner failed to report for his scheduled substance abuse test. On January 19, 1990, petitioner was terminated from his position with the Department.

In his improper practice petition, petitioner alleges that he was coerced into signing the agreement with the Department on October 19, 1989[2], and Union representatives withheld information from him on December 27, 1989 which led to his dismissal on January 19, 1990. Petitioner also alleges that on March 22, 1990, the Union failed to represent him at his Civil Service hearing.

In a letter addressed to the Department dated September 9, 1989, which was attached to the improper practice petition at issue herein, petitioner claimed that Union representatives persuaded him to plead guilty to false charges based on "bogus urinalysis". Petitioner further claimed that the Department treated him differently than it has treated similarly situated white employees; and that the actions taken against him by the Department were retribution for an earlier disciplinary proceeding in which he successfully sought reinstatement.

Pursuant to Section 7.4 of the Revised Consolidated Rules of the office of Collective Bargaining ("OCB Rules"), a copy of which is annexed hereto, the undersigned has reviewed the petition and has determined that the improper practice claim asserted therein must be dismissed because it does not allege facts sufficient as a matter of law to constitute an improper practice within the meaning of the NYCCBL. The NYCCBL does not

[2] Although the date referred to by Petitioner in his petition is October 19, 1990, that date obviously was written in error and has been corrected in the decision herein.

provide a remedy for every perceived wrong or inequity. Its provisions and procedures are designed to safeguard the rights of public employees set forth therein, i.e., the right to bargain collectively through certified public employee organization; the right to organize, form, join and assist public employee organizations; and the right to refrain from such activities.

Petitioner does not allege that the Union has committed any acts in violation of Section 12-306b of the NYCCBL, which defines improper public employee organization practices. Section 12-306b has been recognized as prohibiting violations of the duty of fair representation owed by a certified employee organization to represent bargaining unit members with respect to the negotiation, administration and enforcement of Collective Bargaining Agreements.[3] The doctrine of fair representation requires a union to treat all members of the bargaining unit in an evenhanded manner and to refrain from arbitrary, discriminatory and bad faith conduct.[4] It is well-settled that a Union does not breach it duty of fair representation merely by refusing to advance a particular grievance. Rather, the duty of fair representation requires only that the Union's decision not to advance a claim be made in good faith and not in an arbitrary or discriminatory manner.[5]

[3] Decision No. B-14-83

[4] Decision Nos. B-9-88; B-9-86; B-2-84; B-12-82.

[5] Decision Nos. B-9-88; B-25-84; B-2-84; B-16-83.

The petitioner has offered no evidence to show that the treatment the Union afforded him was arbitrary or discriminatory or differed in any respect from that received by his fellow employees. Petitioner submits nothing more than a conclusory assertion that he was coerced into signing the agreement with the Department on October 19, 1990, or that the union representative withheld information from him on December 27, 1989. with regard to petitioner's contention that he was not treated the same way as similarly situated white employees and, in addition, that certain actions were taken against him in retribution for an earlier proceeding in which he successfully sought reinstatement, I note that those allegations relate to actions taken by the Department - not the Union against whom petitioner filed the instant improper practice petition.

Accordingly, I find that no improper public employee organization practice has been stated. Therefore, the petition must be dismissed pursuant to Section 7.4 of the NYCCBL. Such dismissal is, of course, without prejudice to any rights the petitioner may have in any other forum.

Dated: New York, New York
July 2, 1990

Loren Krause Luzmore
Executive Secretary
Board of Collective
Bargaining

REVISED CONSOLIDATED RULES OF THE OFFICE OF COLLECTIVE BARGAINING

§7.4 Improper Practices. A petition alleging that a public employer or its agents or a public employee organization or its agents has engaged in or is engaging in an improper practice in violation of Section 1173-4.2 of the statute way be filed with the Board within four months thereof by one (1) or more public employees or any public employee organization acting in their behalf or by a public employer together with a request to the Board for a final determination of the matter and for an appropriate remedial order. Within ten (10) days after a petition alleging improper practice is filed, the Executive Secretary shall review the allegations thereof to determine whether the facts sufficient as a matter of law constitute a violation, or that the alleged violation occurred more than four (4) months prior to the filing of the charge, it shall be dismissed by the Executive Secretary and copies of such determination shall be served upon the parties by certified mail. If, upon such review, the Executive Secretary shall determine that the petition is not, on its face, untimely or insufficient, notice of the determination shall be served on the parties by certified mail, provided, however, that such determination shall not constitute a bar to the assertion by respondent of defenses or challenges to the petition based upon allegations of untimeliness or insufficiency and supported by probative evidence available to the respondent. Within ten (10) days after receipt of a decision of the Executive Secretary dismissing an improper practice petition as provided in this subdivision, the petitioner may file with the Board of Collective Bargaining an original and three (3) copies of a statement in writing setting forth an appeal from the decision together with proof of service thereof upon all other parties. The statement shall set forth the reasons for the appeal.

§7.8 Answer-Service and Filing. Within ten (10) days after service of the petition, or, where the petition contains allegations of improper practice, within ten (10) of the receipt of notice of finding by the Executive Secretary, pursuant to Rule 7.4, that the petition is not, on its face, untimely or insufficient, respondent shall serve and file its answer upon petitioner and any other party respondent, and shall file the original and three (3) copies thereof, with proof of service, with the Board. Where special circumstances exist that warrant an expedited determination, it shall be within the discretionary authority of the Director to order respondent to serve and file its answer within less than ten (10) days.

OTHER SECTIONS OF THE LAW AND RULES MAY BE APPLICABLE.

CONSULT THE COMPLETE TEXT.