Hug, et. al v. PBA, City, 47 OCB 5 (BCB 1991) [Decision No. B-5-91 (IP)]

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

-between- DECISION NO. B-5-91

MARI ANNE HUG, INDIVIDUALLY and on behalf of ALL OTHER POLICE OFFICERS SIMILARLY SITUATED, DOCKET NO. BCB-1258-90

Petitioners,

-and-

PATROLMEN'S BENEVOLENT ASSOCIATION OF THE CITY OF NEW YORK and THE CITY OF NEW YORK,

Respondents.
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DECISION AND ORDER

On March 8, 1990, Marianne Hug,[1] individually and on behalf of "all other police officers similarly situated," filed a verified improper practice petition against the Patrolmen's Benevolent Association ("the Union" or "the PBA") and against the City of New York ("the City"). The petition alleged that the PBA failed to bargain in good faith on the Petitioners' behalf in violation of Section 12-306 of the New York City Collective Bargaining Law

[1] Although the caption of the improper practice petition identifies the Petitioner as "Mari Anne Hug," Ms. Hug signed her name at the bottom of the petition as "Marianne Hug." Subsequent pleadings have not resolved this discrepancy. The Decision will refer to the Petitioner by her signed name, Marianne Hug.

("NYCCBL"),[2] and Articles III (overtime provisions) and XXII (grievance and arbitration procedure) of the collective bargaining agreement ("the Agreement") between the PBA and the City.

By letter dated April 25, 1990, the Deputy Chairman/General Counsel of the Office of Collective Bargaining advised Petitioner Hug's counsel that in order to add additional petitioners to this proceeding, an amended petition had to be submitted, containing sworn verifications from each of the individuals who wished to join as petitioners. The letter also noted that the second paragraph of the petition listed only the PBA, and not the City, as Respondent. He directed Petitioner Hug's counsel to submit an amended petition correcting the omission if he intended to make the City of New York a party to this proceeding.

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[2] NYCCBL §12-306 provides, in pertinent part, as follows:

> **Improper practices; good faith bargaining.**
> **a. Improper public employer practices.**
> It shall be an improper practice for a public employer or its agents:
> (1) to interfere with, restrain, or coerce public employees in the exercise of their rights granted in section 1173-4.1 (now re-numbered as section 12-305) of this chapter;
> (2) to dominate or interfere with the formation or administration of any public employee organization;
> (3) to discriminate against any employee for the purpose of encouraging or discourag-ing membership in, or participation in the activities of, any public employee organiza-tion;
> (4) to refuse to bargain collectively in good faith on matters within the scope of collective bargaining with certified or designated representatives of its public employees.
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> **b. Improper public employee organization practices.**
> It shall be an improper practice for a public employee organization or its agents:
> (1) to interfere with, restrain or coerce public employees in the exercise of rights granted in section 1173-4.1 (now re-numbered as section 12-305) of this chapter, or 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.

On June 8, 1990, Petitioner Hug's attorney filed an amended petition, which he served upon both the PBA and the City, elaborating upon the initial allegations and asserting that the City is a necessary party to this proceeding. In addition, the amended petition contained a new charge alleging that the PBA had neglected to process Marianne Hug's and John R. Lapinski's portal-to-portal pay grievances. The sworn verification of Petitioner Lapinski, among others, was attached.

The PBA did not answer, but, instead, submitted a motion to dismiss the petition on July 6, 1990, on the ground that the petition failed to state a cause of action upon which relief may be granted under the NYCCBL. The City also did not answer and it, too, submitted a motion to dismiss the petition on July 13, 1990, on the ground that the petition failed to state a cause of action that may be considered by this Board. On August 10, 1990, the Petitioners filed a reply to the Respondents' motions.

On September 17, 1990, the Board of Collective Bargaining, in Interim Decision No. B-51-90, dismissed the re-scheduling portion of the improper practice petition. The Board ruled
further, however, that neither the PBA nor the City had responded adequately to two of the Petitioners' allegations concerning their portal-to-portal grievances. Accordingly, the Board ordered the PBA and the City to serve and file answers to the alleged late filing or non-filing of Petitioner Hug's and Petitioner Lapinski's portal-to-portal pay grievances within ten days.

The PBA filed its answer on October 30, 1990, followed by a supplemental affirmation, which it filed on November 2, 1990. The City filed its answer on November 15, 1990. When a reply was not received from the Petitioners despite several telephone messages that had been left for their attorney at his office, the Trial Examiner, on December 14, 1990, advised the Petitioners' attorney by FAX and by regular mail that if a reply was to be filed, it would have to be received in the Office of Collective Bargaining by December 20, 1990. No reply ever was filed.

BACKGROUND

During the period within which their alleged portal-to-portal pay entitlements arose, both Petitioners were assigned to Community Affairs Service Teams in the Bronx. Petitioner Hug continues to be employed as a Police Officer. Petitioner Lapinski retired from the Police Department effective July 15, 1989.

By letter dated January 24, 1988, Police Officer Robert Rinaldo, a 94th Precinct PBA delegate, wrote to the PBA's Director of Labor Relations advising that he and all Police Officers assigned to Community Affairs were being systematically deprived of portal-to-portal pay. His letter reads, in pertinent part, as follows:

> This grievance is being submitted on behalf of myself and hopefully in the future, all Police Officers who are assigned to Community Affairs.
>
> There have been at least three incidents for myself in the past month where I have been dismissed from details and was denied Portal to Portal. In light of our stunning arbitration victory concerning "Operation Marlin" . . . I believe that I am entitled to Portal to Portal because I am required to wear a blue colored "wind-breaker" type jacket, with the following words stenciled across the back: N.Y.P.D. COMMUNITY AFFAIRS, and also with a Police Department patch on the right sleeve, the same one that is on all of our uniforms.
>
> On two of the past three incidents, I started out in my own command, but on one incident I was told to report to another command. In all three incidents, I was dismissed from another command and that was the end of my tour, with no Portal to Portal. This happens all the time and not just to me but to all of the Community Affairs Officers throughout the City. Whenever we ask for Portal to Portal, we are told, "you have a Detail and you are not wearing a uniform. We are easily identifiable as N.Y.C. Police Officers and in recent incidents have been in the front of demonstrations throughout the City.
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> * * *
>
> . . . I hope that this case will establish Portal to Portal payments for all Community Affairs Officers.

The PBA responded by submitting an informal grievance, dated February 9, 1988, to the Police Department's Office of Labor Policy "on behalf of P.O. Robert Rinaldo PBA Delegate, 94th Pct." concerning the denial of his portal-to-portal pay. By letter dated August 23, 1988, the Commanding Officer of the Office of Labor Policy denied the grievance, on the ground that Officer Rinaldo had not been assigned to duty in uniform, and therefore was ineligible for portal-to-portal compensation. The PBA appealed the ruling to the Police Commissioner, who denied the grievance for the same reason. Following the parties' contractual grievance and arbitration procedures, the PBA filed a request for arbitration on October 27, 1988, citing the "Overtime Travel Guarantee" article of the parties' collective bargaining agreement as the source of the alleged violation.

In April of 1989, the PBA prepared a blank form letter that could be used by other Community Affairs Officers who also desired to file grievances over denial of portal-to-portal pay. The letter reads as follows:

> From: Community Affairs Officer, ____ Precinct
> To: P.O. John Young, P.B.A. Delegate
> Subject: Portal to Portal
>
> 1. On May 13, 1987, an order issued by the Bronx Borough Commander, concerning Borough Weekend Patrol for precinct community affairs officers required the officers to bring their Blue Community Affairs Jackets while performing this duty.
>
> 2. As in the grievance that was won by the P.B.A. representing officers from O.C.C.B. during Operation Marlin, we feel our jacket fits the requirements, as it has the N.Y.P.D. patch on the front left breast and the words Community Affairs, N.Y.P.D. across the back.
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> 3. In addition to bringing our jacket we are required to start and complete our tour at the Bronx Borough Office, housed in the 48th precinct, not my command. Portal to Portal is neither built into the tour nor are we compensated for our travel time, one and one half hours per tour. Compensation should be at the overtime rate as this time was incurred in addition to our normal tour.
>
> 4. At this time, along with my fellow Community Affairs Officers, I request a grievance be filed on our behalf concerning this matter.

P.O. _____
Community Affairs Officer
___ Precinct

During the spring and summer, the parties scheduled and adjourned several dates for an arbitration hearing on the original Rinaldo grievance. Then, by letter dated January 24, 1990, addressed to all PBA delegates and members, the PBA president announced that the Rinaldo grievance had been resolved and that Officer Rinaldo would be receiving portal-to-portal pay. The president requested the posting of his letter on all bulletin boards, and he urged all Community Affairs officers "who are flown in the future and must wear some uniform item" to submit requests for portal-to-portal pay, and, if denied, to file a grievance with their PBA representative.

On April 11, 1990, the parties signed a formal settlement agreement of the Rinaldo grievance. The stipulation of settlement provided, in summary, as follows:

> 1. Officer Rinaldo and the union agreed to withdrew their grievance with prejudice.
>
> 2. Officer Rinaldo was credited with portal-to-portal pay for four occasions, for a total of three hours and thirty minutes of straight time compensation.
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> 3. The parties agreed that henceforth, when Officers assigned to Community Affairs are ordered to report in uniform outside of their assigned commands and outside of their normally scheduled tours, they will be entitled to receive portal-to-portal compensation.

Except for Officer Rinaldo, the settlement agreement clearly had no retroactive application.

Meanwhile, Petitioner Hug, by letter dated March 20, 1990, informed her PBA delegate of thirteen occasions, between May 23, 1987 and November 5, 1989, when she had not received portal-to-portal compensation after being assigned away from her normal command. By letter dated March 28, 1990, the PBA submitted an informal grievance in Petitioner Hug's behalf to the Department's Assistant Commissioner of Labor Relations regarding her portal-to-portal compensation. The Assistant Commissioner denied the grievance, by letter

dated April 17, 1990, on the ground that the parties' contract had not been violated. His letter reads, in pertinent part, as follows:

> [According to] the current collective bargaining agreement, Police Officer Hug did not submit her grievance within 120 days of the alleged incident. A Stipulation of Settlement entered between the [PBA], the Police Department and the [City], on April 11, 1990 states in part that only members required to bring and/or wear the Community Affairs jacket after the effective date of this stipulation are eligible for compensation.

By letter dated April 19, 1990, the PBA appealed the Assistant Commissioner's ruling to the Police Commissioner. By letter dated May 10, 1990, the Commissioner denied Petitioner Hug's grievance on the same ground.

At the same time, Petitioner Lapinski also informed his PBA delegate, by letter dated March 21, 1990, that on nine occasions spanning a twelve month period ending a year earlier, he had been assigned to work in uniform away from his normal command and had not received portal-to-portal compensation. Allegedly the first assignment occurred on April 3, 1988, and the last occurred on April 16, 1989. Although he had been retired for eight months by the time he contacted the PBA, Petitioner Lapinski stated that his pension could be adjusted if a grievance filed in his behalf was successful. An attached cover letter, also dated March 21, 1990, contained the word-for-word text of the form letter that the PBA had prepared a year earlier, with only the date changed and the Petitioner's signature inserted. There is no record of the PBA's response to either of Petitioner Lapinski's letters.

POSITIONS OF THE PARTIES

Petitioners' Position

The Petitioners object to the terms of the Rinaldo settlement, claiming that it was negotiated in bad faith because "the community affairs officers from the Bronx were systematically excluded from it." They assert that the settlement constitutes "a reconfirmation of the unspoken policy between the Police Department and the PBA of taking isolated incidents involving a few

people, removing them by their agreed upon terms from the realm of decisions which can be used as precedent and neatly packaging them into stipulations containing releases, which can never again be used by any grievant thereafter." As a result, the Respondents allegedly deprived the Petitioners of their right to seek retroactive portal-to-portal pay compensation.

PBA's Position

The PBA denies that it neglected to process either of the Petitioners' portal-to-portal pay grievances. To the contrary, it maintains that, during the pendency of the Rinaldo grievance, the Union appropriately notified its membership of the scheduled portal-to-portal pay arbitration, and it took prudent steps, including the circulation of a form letter, to urge members assigned to Community Affairs teams to file their own grievances to obtain the same benefit if the Rinaldo grievance proved successful.

Referring to the terms of the parties' collective bargaining agreement, the PBA explains that grievances of the nature requested by the Petitioners must be filed within 120 days of their occurrence. In its view, in order for the Petitioners to prove that the Union breached its duty of fair representation, each would have to prove that the PBA had notice of their grievances and that it failed to process them in timely fashion. According to the PBA, neither of the Petitioners established that they notified the Union of their portal-to-portal claims within the 120 day limit.

With respect to Petitioner Hug, the PBA argues that the first notice it had of her complaint was when, "at an unspecified time after March 5, 1990, [she] made a request for portal to portal pay for herself by filing [an improper practice petition]." As for Petitioner Lapinski, the Union insists that it only became aware of his claim when it received his letter dated March 21, 1990. The PBA notes that Petitioner Lapinski retired from the Police

Department in July of 1989, yet he did not make his request for portal-to-portal pay until more than eight months after his retirement, well beyond the last possible date for filing a claim under the terms of the Agreement. The Union further points out that, not only was Petitioner Lapinski's request itself untimely, but, in addition, the request concerned claims that arose between April of 1988 and April of 1989, thus making any potential grievance more untimely still. It underscores the fact that all Petitioner Lapinski needed to have done in order to join the Rinaldo arbitration was to fill in the blanks of the April 1989 form letter when it was circulated and submit a copy to his PBA representative. In the Union's view, Petitioner Lapinski's delay was inexcusable and fatal.

City's Position

The City contends that neither Petitioner has alleged any facts showing that the City deliberately or intentionally caused a delay in the filing of their portal-to-portal pay grievances. Without such support, the City asserts that it cannot be found to have committed an improper practice.[3] In any event, according to the City, the Petitioners' grievances were time-barred because neither of their notifications to the Respondents were made within the required 120-day grievance filing period.

The City contends that Petitioner Lapinski's March 21, 1990 memo "unequivocally establishes that the last [accrual] date [of] his alleged portal-to-portal [claim] was '04/16/89'." It calculates that to pursue a

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[3] In support of this proposition, the City cites "17 PERB ¶4646, Luis Diaz; aff'd, 18 PERB ¶3047; aff'd, 19 PERB ¶7003; aff'd 20 PERB ¶7023 [sic]; aff'd, 21 PERB ¶7019 [sic]."

We note, however, that while the hearing officer and the PERB did dismiss Diaz' complaint against his employer on grounds that it was conclusory and without factual support, the Supreme Court did not rule on the merits of Diaz' cross-claim against the State in 19 PERB ¶7003 at 7007 (1986), dismissing it instead as being untimely. Subsequent decisions by the Appellate Division, Third Department (20 PERB ¶7024 [1987]) and the Court of Appeals
(21 PERB ¶7017 [1988]) were silent on the issue of Diaz' allegations against his employer.

grievance under the terms of the Agreement, Petitioner Lapinski would had to have filed his grievance by August 14, 1989 -- 120 days after April 16, 1989, the last time that the Department allegedly refused to give him portal-to-portal pay. The City argues that since Petitioner Lapinski did not notify the PBA of his alleged entitlement until March 21, 1990, he exceeded the contractual time limit for filing a grievance by at least seven months.

Similarly, the City contends that Petitioner Hug's March 20, 1990 memo "unequivocally establishes that the last date which gave rise to her alleged portal-to-portal grievance was '11/05/89'." According to its calculations, Petitioner Hug would have had to have filed her grievance by March 5, 1990 -- 120 days after November 5, 1989, the last time that the Department allegedly refused to give her portal-to-portal pay. The City maintains that since Petitioner Hug did not notify the PBA of her alleged entitlement until at least March 20, 1990, she exceeded the contractual time limit for filing a grievance by several weeks.

The City concludes that since it lacked prior knowledge of either of the Petitioners' allegations, it was under no obligation to process or resolve their grievances after they were filed untimely.

Discussion

This case involves two issues: First, we must determine whether the Petitioners filed their portal-to-portal pay claims in time for the PBA to have been able to advance them under the terms of the grievance procedure contained in its collective bargaining agreement with the City. If so, we must then consider whether the Union abused its discretion when it settled its portal-to-portal pay grievance in a way favorable to Officer Rinaldo, but arguably to the Petitioners' detriment.

Article XXII of the Agreement between the PBA and the City of New York contains the parties' Grievance and Arbitration Procedure. Section 4. of this article reads, in pertinent part, as follows:

> Under the grievance procedure herein a grievance must be initiated within 120 days following the date on which the grievance arose or the date on which the grievant should reasonably have learned of the grievance or the execution date of this Agreement, whichever date is the latest.

Article XXI of the Agreement contains the parties' Overtime Travel Guarantee provisions for "the assignment of an employee to a post not within the employee's permanent command." Section 5. of this article reads, in pertinent part, as follows:

> (1) All claims for payment . . . must be submitted to the appropriate payroll personnel by the applicant within 180 days from the date payment is earned for payment in cash. All applications submitted after 180 days up to 365 days from the date payment is earned will be granted the appropriate compensatory time off only. . . .
>
> (2) If a request for payment is timely submitted and rejected by the Police Depart-ment, the grievant shall have 120 days from the date of receipt of a written rejection notice to file a grievance pursuant to Article XXII.

Thus, to file an overtime travel guarantee grievance, two conditions apparently have to be met: A claim must be submitted to the "appropriate payroll personnel" within 180 days of accrual for payment in cash or within 365 days of accrual for payment in compensatory time; then, if the appropriate payroll personnel reject the claim, the employee must file a grievance within 120 days. In other words, filing a timely claim with the appropriate payroll personnel is a condition precedent that tolls the grievance filing period.

In this case, the Petitioners did not allege that they ever submitted their claims to the appropriate payroll personnel, and we will not assume that they did so. On the other hand, we find credible the PBA's claim that, in April of 1989, it circulated the portal-to-portal claim form letter urging Community Affairs Officers to file their own claims. We base our finding upon the absence of any evidence to the contrary, and particularly upon the fact that Petitioner Lapinski adopted the full text, word-for-word, without denying

its date of publication.

After waiting almost one year, on March 21, 1990, Petitioner Lapinski submitted his overtime travel guarantee claims to the PBA as follows:

Rank	Date	Tour
P.O.	04/03/88	0837 x 1700
P.O.	05/01/88	0937 x 1800
P.O.	06/12/88	0837 x 1700
P.O.	07/10/88	1000 x 1823
P.O.	08/21/88	1200 x 2020
P.O.	11/13/88	1200 x 2023
Det.	02/05/89	1215 x 2023
Det.	03/12/89	1215 x 2023
Det.	04/16/89	1215 x 2023

As a result, even if the PBA had immediately submitted Petitioner Lapinski's overtime travel claims to the appropriate payroll personnel, under the terms of the Overtime Travel Guarantee article, the claims that accrued prior March 21, 1989 would have been untimely and uncollectible.

This leaves only his last claim, which allegedly occurred on April 16, 1989. We note, however, that Petitioner Lapinski identifies himself as holding the position of Detective as of that date. As a detective, he would not have been entitled to make a claim for overtime travel under the terms of the Agreement between the City of New York and the Patrolmen's Benevolent Association of the City of New York, Inc., inasmuch as the title of detective is covered by a different collective bargaining agreement, negotiated and administered by a different employee organization.[4]

Based upon this record, we conclude that the Petitioner Lapinski neglected to file his compensable travel claims with the appropriate payroll personnel within the prescribed time limit. Under these circumstances, no matter how great an effort the PBA might have made, the Petitioner's claims were beyond rehabilitation by the time he notified the Union of his alleged entitlement.

Similarly, Petitioner Hug waited an extraordinary length of time before submitting her overtime travel guarantee claims to the PBA. By letter dated

[4] The Detectives' Endowment Association.

March 20, 1990, she did so as follows:

Sat.	05/23/87	1537 x 2400
Sun.	03/27/88	0700 x 1523
Sun.	04/24/88	0700 x 1523
Sun.	07/17/88	1000 x 1823
Sun.	07/24/88	1000 x 1823
Sun.	08/28/88	1000 x 1823
Sun.	10/02/88	1200 x 2023
Sun.	01/01/89	1200 x 2023
Sun.	03/19/89	1000 x 1823
Sun.	04/23/89	1000 x 1823
Sun.	06/04/89	1000 x 1823
Sun.	08/13/89	1000 x 1823
Sun.	11/05/89	1000 x 1823

Like Petitioner Lapinski, Petitioner Hug, did not show that she submitted her claims previously to the appropriate payroll personnel in a timely fashion. Without such submission, all her overtime travel claims that accrued prior March 20, 1989 would have been untimely and uncollectible. This leaves only the last four claims, which allegedly occurred between April 23, 1989, and November 5, 1989, as potentially viable.

Under other circumstances, on March 20, 1990, the PBA could have advised Petitioner Hug to submit her last four claims to the appropriate payroll personnel by herself, or it could have submitted the claims for her. However, by this time it had concluded, or it was about to conclude, the Rinaldo grievance settlement, which eliminated the Department's liability for retroactive travel claims filed by Community Affairs officers other than Officer Rinaldo. Thus, when the PBA processed Petitioner Hug's grievance, the otherwise viable portion of it could no longer be enforced. The question we must address, therefore, is whether the PBA acted reasonably in making the Rinaldo settlement, or whether it abused its discretion, as Petitioner Hug charges.

As we explained in Interim Decision No. B-51-90 concerning this case, the duty of fair representation balances the union's right as the exclusive bargaining representative against its correlative duty arising from the possession of this right. It is the duty of a union, under this doctrine, to act fairly toward all employees that it represents without hostility or

discrimination toward any, to exercise its discretion with complete good faith and honesty, and to avoid arbitrary conduct.[5] A breach of the duty occurs when the union's conduct toward a member of the collective bargaining unit is arbitrary, discriminatory or in bad faith.[6] Under this standard, a union enjoys wide discretion in reaching grievance settlements.[7] It does not breach its duty of fair representation simply because a settlement outcome does not satisfy a grievant,[8] nor does a violation of the Taylor Law take place simply because some union decisions may have an adverse effect upon some bargaining unit members.[9]

For the purposes of deciding Petitioner Hug's contention that the PBA abused its discretion, the time element involved is a critical factor. On January 24, 1990, the PBA president announced that, after protracted negotiations between the Union and the City, the Rinaldo grievance had been settled. More than a year earlier, through the distribution of its blank form letter, the Union had urged its Community Affairs officers to file claims if they believed they had been unjustly denied portal-to-portal pay. Yet, despite the Union's exhortations, Petitioner Hug took no action during that year, and then only notified her PBA delegate of her claim by letter dated March 20, 1990, two months after the PBA president made his settlement announcement. The fact that the PBA and the City did not enter into a formal stipulation of settlement until April 11, 1990, some three weeks later, does not excuse the Petitioner's lengthy delay in making her claim known to her

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[5] Vaca v. Sipes, 386 U.S. 171, 87 S.Ct. 903, 17 L.Ed.2d 842 (1967).

[6] Vaca at 190.

[7] Barry v. United University Professions, 22 PERB ¶3013 (1989), Faculty Association of Hudson Valley Community College v. Dansereau, 15 PERB ¶3080 (1982), and Nassau Educational Chapter of Syosset School District CSEA v. Marinoff, 11 PERB ¶3010 (1978).

[8] Decision Nos. B-2-90; B-9-86; and B-13-81.

[9] Decision No. B-42-87.

Union.

Under these circumstances, we find that Petitioner Hug's failure to file her claims with the appropriate payroll personnel as they accrued, and her long delay in notifying the PBA of her possible entitlement, rendered it unreasonable to expect that the Union should upset its Rinaldo grievance settlement in order to accommodate her belated claims. This is especially true in view of the scope of the settlement, the main component of which set a Department-wide precedent for a portal-to-portal pay entitlement for all Community Affairs officers. We note that although Officer Rinaldo was the only member to receive a retroactive benefit, he was the named grievant, and the settlement gave him a mere three and one-half hours of straight time compensation.

We find, therefore, that the PBA neither abused its discretion nor acted in bad faith when it settled the Rinaldo grievance, and that it did not breach its duty of fair representation by acting arbitrarily or discriminatorily toward either Petitioner Hug or Petitioner Lapinski. Thus, we shall dismiss the remaining improper practices charges filed by the Petitioners against the Union.

With respect to the remaining improper practice charges pending against the City, as we explained in Interim Decision No. B-51-90, charges against the employer may be incidental to an alleged breach of the duty of fair representation by the union. Thus, if an employee is successful in an action against the union, he or she is given a chance to further press the initial claim against the employer. Because a breach of the duty of fair representation by the union is a necessary condition precedent to the prosecution of a related claim against the employer, and because we have found no violation of the duty by the PBA in this case, we shall dismiss the remaining improper practice charges filed by the Petitioners against the City as well.

ORDER

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 petitions filed by the Petitioners individually named herein against the Patrolmen's Benevolent Association of the City of New York and against the City of New York, in docket number BCB-1258-90 be, and the same hereby are, dismissed in their entirety.

DATED: New York, N.Y.
January 24, 1991

MALCOLM D. MACDONALD
CHAIRMAN

DANIEL COLLINS
MEMBER

GEORGE NICOLAU
MEMBER

CAROLYN GENTILE
MEMBER

EDWARD SILVER
MEMBER

DEAN L. SILVERBERG
MEMBER