

Tucker, Sr. v. DC37, 51 OCB 24 (BCB 1993) [Decision No. B-24-93 (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-24-93
DOCKET NO. BCB-1559-93

WILLIE E. TUCKER, SR.,

Petitioner,

-and-

DISTRICT COUNCIL 37, AFSCME,

Respondent.

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DECISION AND ORDER

On December 8, 1992, the Office of Collective Bargaining ("OCB") received a verified improper practice petition from Willie E. Tucker, Sr. ("Petitioner"), which it did not accept for filing because the Petitioner failed to submit proof of service of the petition on the Respondent, District Council 37, AFSCME ("the Union"), as required by Title 61, Section 1-07(f) of the Rules of the City of New York ("the OCB Rules"). On February 18, 1992, the petition was submitted for a second time, together with proof of service, and was accepted for filing. The Petitioner, appearing Pro Se, alleged in the petition that the Union had breached its duty of fair representation. The Union filed a verified answer on March 22, 1993. The Petitioner did not file a reply notwithstanding the fact that the Trial Examiner assigned

to the case informed him, in writing, of his right to do so.

Background

In his improper practice petition, the Petitioner makes the following allegations against the Union:

CIVIL SERVICE LAW 209-A SECTION 200 Improper Employee organization practices Deliberately Refuse to Interfere or coerce on my behalf In the Exercise my Rights Granted In Section 200 In my TITLE SUPERVISOR Senior Experience Employer N.Y.C.D.O.T. Discriminated against by Refusing to negotiate collectively In good Faith with public Employer Duly Recognized Certified Representative of my Employer for my Promotion Instead acted In concert with the city of New York promoted Employees with lesser seniority and Experience over me continued that reason Is I am Afro-American they Favored Employees that are White. I ask my Union For a Lawyer to Represent me, the case Discrimination In the workplace, they said they Don't handle Labor Cases my Union Local 1157 after going through step 1, step 2 and step 3. Refused to take my case to arbitration to get my pay for premium overtime work performed In that overtime work was granted to other employees with lesser seniority in lesser titles. I contend that the reason is that I am an Afro-American and that the favored employee is white.

As a remedy the Petitioner requests an order requiring the City to pay him for the overtime work that he performed.

Appended to the Union's answer is a copy of a complaint that the Petitioner filed against the Union before the State Division of Human Rights on December 20, 1991.¹ In the complaint, the Petitioner alleged that the Union discriminated against him based on his race. Specifically, the Petitioner alleged that on December 21, 1990, he filed a grievance against the Department of

¹ The status of this complaint is unclear. Neither the Union nor the Petitioner has mentioned whether it has been decided or is still pending.

Transportation in which he alleged that he had been denied a promotion and pay for overtime work because he is black. The Petitioner further alleged that the Union refused to represent him in this matter and stated that it did not handle "labor discrimination cases." However, the Petitioner alleged, he subsequently learned through newspaper articles, which appeared in The Chief and The Amsterdam News, that the Union had represented white members who had filed grievances similar to his.²

Positions of the Parties

Petitioner's Position

The Petitioner contends, in essence, that the Union breached its duty of fair representation when it refused to represent him in his grievance. According to the Petitioner, the Union acted in a discriminatory matter since it had provided representation to similarly situated white members.

² The Petitioner submitted two newspaper articles with his improper practice petition. One article, apparently clipped from the Amsterdam News, reports on a suit, brought by District Council 37 on behalf of the communication technicians at the Police Department, in which the Union alleged pay discrimination based on race and sex. The other article, apparently clipped from The Chief, is about an improper practice decision rendered by the Board of Collective Bargaining in a case brought by District Council 37. In that case, the Union had alleged discrimination on the basis of union activity.

Union's Position

The Union argues that the instant improper practice petition is untimely. According to the Union, the petition concerns events and occurrences that took place in 1989; the Step III decision denying the Petitioner's grievance was rendered on December 7, 1989 and the Union decided not to proceed to arbitration shortly thereafter. The Petitioner did not file his improper practice petition until 1992, well beyond the four month statute of limitations provided in the New York City Collective Bargaining Law ("NYCCBL").

After stating that the petition is "generally illegible and unintelligible," the Union maintains that to the extent that the petition refers to the Union's refusal to take the Petitioner's grievance to arbitration, it fails to state a claim. The Union argues that the Petitioner has not demonstrated that this refusal was made in an arbitrary or discriminatory manner. According to the Union, it made a good faith judgement not to proceed to arbitration because the grievance had no merit. Furthermore, the Union asserts, through its efforts to solve the problem informally, it arranged for the Petitioner to obtain additional overtime in 1990.

Finally, the Union argues, as to the Petitioner's claim that the Union discriminated against him on the basis of race, the Board of Collective Bargaining ("Board") lacks subject matter

jurisdiction over this claim since it is the subject of the complaint filed before the State Division of Human Rights.

DISCUSSION

Upon review of the pleadings in this case we find that the Petitioner's claim is barred by the four month statute of limitations found in 61 RCNY 51-07(d).³ The improper practice petition is silent as to when the events attested to by the Petitioner took place.⁴ In its answer, the Union alleged that the Step III decision was rendered in December of 1989 and the decision not to bring the case to arbitration was made at approximately the same time. The Union also submitted the Petitioner's State Division of Human Rights complaint, in which he alleged that the Union refused to represent him in December of 1990. The OCB rules provide that "additional facts or new matter alleged in the answer shall be deemed admitted unless denied in

³ Section 1-07(d) of the OCB Rules provides, in relevant part, that:

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 §12-306 of the statute may be filed with the Board within four (4) months thereof...

⁴ We note, however, that a copy of a grievance form signed by the Petitioner and dated March 16, 1989 was submitted with the improper practice petition. The form provides a space for the grievant to indicate at which step of the grievance procedure he is filing. The Petitioner left this space blank. The form also contains a space for the Union representative's signature. This space is also blank. Finally, the grievance contains only allegations concerning the Petitioner's overtime claim.

the reply."⁵ Since the Petitioner did not file a reply, the dates alleged by the Union in its answer must be deemed admitted. Even accepting the December 1990 date as accurate, the petition is untimely since it was not filed until February of 1992, more than a year later. Moreover, we note that the Petitioner has made no effort to explain his delay in commencing the improper practice proceeding.

Accordingly, the petition must be dismissed. Of course, dismissal is without prejudice to any rights that the Petitioner may have in another forum.

⁵ 61 RCNY §1-07(i)

ORDER

Pursuant to the powers vested in the Board of Collective Bargaining by the NYCCBL, it is hereby,

ORDERED, that the improper practice petition of Willie E. Tucker, Sr. be, and the same hereby is dismissed.

DATED: New York, New York
June 16, 1993

Malcolm D. MacDonald
CHAIRMAN

Daniel G. Collins
MEMBER

Carolyn Gentile
MEMBER

Jerome E. Joseph
MEMBER

Dean L. Silverberg
MEMBER

Steven H. Wright
MEMBER