Miles v. L.237, IBT, 57 OCB 3 (BCB 1996) [Decision No. B-3-96 (IP)]

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

- between -

Raymond Miles,

Petitioner,

Decision No. B-3-96
Docket No. BCB-1745-95

-and-

Carl Haynes, Local 237, International Brotherhood of Teamsters,

Respondent.
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DECISION AND ORDER

On May 4, 1995, Raymond Miles ("petitioner") filed a verified improper practice petition alleging that Carl Haynes and Local 237, International Brotherhood of Teamsters ("Union") deprived him of his rights under §12-306 of the New York City Collective Bargaining Law ("NYCCBL").[1] The petition states:

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[1] Section 12-306 of the NYCCBL provides, in relevant part:

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 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.

(continued...)

> I have been denied access to monies I have earned. (Sick Time, A[nnual] L[eave] Time.) I have also been denied access to my pension money. I was not provided with a place, time & date concerning my 7:5 appeal hearing that Union Representative Thomas Carr was supposed to have filed. This 7:5 appeal hearing was very pertinent to the resumption of my employment.

The Union filed an answer on May 18, 1995. The petitioner did not file a reply.

Background

In Decision No. B-5-95(ES), the Executive Secretary dismissed the petitioner's original claim, for lack of specificity. He subsequently filed the instant petition and a petition alleging violations of the NYCCBL by the Labor Relations Director of Queens Hospital Center ("hospital"). The latter

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[1](...continued)

Section 12-305 of the NYCCBL provides:

Public employees shall have the right to self-organization, to form, join or assist public employee organizations, to bargain collectively through certified employee organizations of their own choosing and shall have the right to refrain from any or all of such activities. However, neither managerial nor confidential employees shall constitute or be included in any bargaining unit, nor shall they have the right to bargain collectively; provided, however, that nothing in this Chapter shall be construed to: (1) deny to any managerial or confidential employee his rights under section 15 of the New York Civil Rights Law or any other rights; or (ii) prohibit any appropriate official or officials of a public employer as defined in this Chapter to hear and consider grievances and complaints of managerial and confidential employees concerning the terms and conditions of their employment, and to make recommendations thereon to the Chief Executive Officer of the public employer for such action as he shall deem appropriate. A certified or designated employee organization shall be recognized as the exclusive bargaining representative of the public employees in the appropriate bargaining unit.

petition was dismissed in Decision No. BCB-2-96(ES) for failure to state an arguable claim.[2]

The petitioner was employed as a Stockhandler at the hospital. In August, 1994, he was involved in an altercation with another employee and disciplinary charges were filed against him. By letter dated September 14, 1994, the petitioner advised the Union that he had retained a private attorney to represent him and that he "waived the services of Thomas E. Carr, [a business agent] for Local 237. . . ." The petitioner's employment was terminated on December 27, 1994, following a disciplinary conference.

In a letter to the hospital dated January 19, 1995, the petitioner's attorney wrote:

> This is to request that I be notified as to date of hearing pursuant to Rule 7:5. I understand Mr. Tom Carr earlier filed for such hearing; if not, please consider this as Mr. Miles' request for such hearing.

In a letter to HHC dated August 30, 1995, an attorney for the petitioner requested a hearing date for an appeal of his termination pursuant to Rule 7:5. By letter dated September 18, 1995, HHC notified the petitioner that a hearing at the Office of Administrative Trials and Hearings ("OATH") would be held on October 4, 1995.

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[2] The petitioner submitted some documents with his petition in Docket No. BCB-1744-95 that are relevant to the instant case but were not submitted into the record here. We take administrative notice of the record in Docket No. BCB-1744-95 to the extent that it ais us in understanding the instant matter.

Both the petitioner's attorney and the Union's attorney were present on the day of the OATH hearing. Before the hearing began, the Union's attorney informed the petitioner's attorney of a settlement offer from HHC and the hearing was adjourned. The petitioner has instructed his attorney to refuse the offer. The reason he gives for refusing the offer is that it was not "officially offered" because HHC contacted the Union's attorney rather than his attorney.

Positions of the Parties

The petitioner claims that he was falsely accused and arrested by HHC security personnel and that the Union did not adequately represent him. The Union claims that the petitioner executed a waiver of its services in September, 1994, and that it had no obligation to represent him.

Discussion

The duty of fair representation balances a union's right as the exclusive bargaining representative with its correlative duty arising from possession of this right. A union must act fairly by "serv[ing] the interest of all members without hostility or discrimination toward any, to exercise its discretion with complete good faith and honesty, and to avoid arbitrary

conduct."[3] A breach of the duty occurs "only when the union's conduct toward a member of the collective bargaining unit is arbitrary, discriminatory or in bad faith."[4] Even where a union's action is due to an error in judgment there is no violation, provided that the evidence does not suggest that its conduct was improperly motivated.[5]

We find that the petitioner has not proven that the Union failed to represent him for reasons that were arbitrary, discriminatory or in bad faith. On the contrary, the petitioner was offered representation by the Union but refused it and retained his own legal counsel. Indeed, even after the petitioner waived his right to representation by the Union, the Union's attorney attended the petitioner's OATH hearing and relayed HHC's settlement offer to the petitioner's attorney.

In these circumstances, we cannot find that the Union breached its duty of fair representation. Accordingly, the instant petition is dismissed.

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[3] See, Decision No. B-23-94; Vaca v. Sipes, 386 U.S. 171,, 87 S.Ct. 903, 17 L.Ed.2d 842 (1967).

[4] Id.

[5] Decision Nos. B-29-93; B-51-90; B-27-90.

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 petition docketed as BCB-1745-95 be, and the same hereby is, dismissed.

Dated: New York, New York
January 31, 1996

Steven C. DeCosta
CHAIRMAN

Daniel G. Collins
MEMBER

Jerome E. Joseph
MEMBER

Robert Bogucki
MEMBER

Saul G. Kramer
MEMBER