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

RUBY WHITE,

Petitioner Pro Se,

-against-

D.C. 37, AFSCME, AFL-CIO, and
DEPARTMENT OF PARKS,
Respondents.

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DECISION NO. B-37-96

DOCKET NO. BCB-1450-92

DECISION AND ORDER

On December 31, 1991, Ruby White ("Petitioner") filed a verified improper practice against District Council 37, AFSCME, AFL-CIO ("the Union"). The Petitioner alleges that the Union discriminated against her, failing to provide fair representation at a disciplinary hearing brought by the Department of Parks and Recreation ("the Department"). On June 12, 1992, the Union requested a time extension for filing an answer.[1] On June 28, 1996, the Union filed an answer to the improper practice petition. Petitioner filed a reply to the Union's answer on July 1, 1996. The Department filed its answer on July 10, 1996. Petitioner filed a reply to the Department's answer on July 15, 1996.

BACKGROUND

Petitioner is a City Park Worker. On March 22, 1990, the Department filed Charges and Specifications against her, alleging: 1) insubordination; 2) neglecting assigned duties; and 3) leaving assigned work locations without authorization. Based on these allegations, the Department imposed the following

[1] Subsequent to requesting an extension of time, the Union apparently misplaced the petition. When, after an extended period, no answer was filed and no objection made by Petitioner, the Trial Examiner inquired whether the parties wanted the case to be placed on the inactive docket. The Petitioner opposed this. The Petitioner was directed to make the Department a party, as required by Civil Service Law, § 209-a.3; and the Union was provided with a duplicate copy of the petition.

penalty on Petitioner: 1) a fine of $100; 2) a loss of five annual leave days; and 3) a six month probation. Petitioner disputed the Charges and Specifications and the Union filed a grievance against the Department. The parties failed to resolve the grievance during the preliminary steps of the contractually provided grievance procedure and the matter proceeded to arbitration. The Union requested that the grievance be granted and that Petitioner be made whole for the penalty imposed by the Department. In the Opinion and Award, the Arbitrator described the Union's contentions on behalf of Petitioner:

> The Union maintains that the Grievant provided truthful testimony to refute the Charges and Specifications. The Union contends that the Grievant is an excellent worker who performs the tasks within the job specification. The Union emphasizes that the Grievant did nothing wrong. According to the Union, the Grievant's supervisor engaged in improper conduct by harassing the Grievant.

On December 26, 1991, the Arbitrator found that Petitioner had not been wrongfully disciplined and, accordingly, denied the grievance. On December 31, 1991, Petitioner filed an improper practice petition with the Office of Collective Bargaining, complaining that the Union failed to represent her fairly in the dispute with the Department over the disciplinary action. Petitioner does not specify the remedy she seeks.

On June 4, 1992, Petitioner filed with the Office of Collective Bargaining documents regarding another grievance she filed against the Department on June 2, 1992. These documents are not relevant to or probative of the claim herein that the Union's representative breached its duty of fair representation in the handling of Petitioner's grievance arbitration.

POSITIONS OF THE PARTIES

Petitioner's Position

Petitioner maintains she was wrongfully disciplined by the Department. She also charges that the Union failed to provide her with fair representation. She claims her case was handled in a discriminatory manner. In her petition, she alleges as follows:

> Mr. Martin Druyan (the Union's attorney) failed to represent my case fairly . . . He ignored my rights completely. My feeling is my case was handled in a discriminatory fashion and needs to be reviewed in a serious manner . . . He wanted me to accept part of the charges. I said "why should I accept something that's not true?" Since it was a black against a white, he let the charges remain the same, guilty of all charges.

In her reply to the Union's answer, Petitioner alleges:

> He (Mr. Druyan) seemed to side with the supervisor Nicholas N. Sarro's lies and behavior and ignored any document or statement I represented as proof on my behalf. It was as if I was convicted before charged.

In her reply to the Department's answer, Petitioner alleges:

> I refuse to be a victim under chains of command and built up lies, discriminating against me because I am a woman of color plus gay. All of my chain of command was white and all male. Even down to my arbitrator.

Union's Position

The Union denies Petitioner's allegations and asserts that a union does not breach its duty of fair representation by holding an opinion contrary to a union member concerning the value or relevance of proposed items of evidence and discussions about the proper strategy to pursue in a disciplinary arbitration. The Union maintains: 1) the Petition fails to state a claim under the NYCCBL; 2) the Petition fails to set forth any facts to support the view that Petitioner's grievance was handled by the Union in an arbitrary, discriminatory or bad faith manner; and 3) the Arbitrator's Opinion and Award demonstrates that the Union vigorously disputed the underlying disciplinary charges during the disciplinary arbitration and adequately represented Petitioner at arbitration. The Union asks that the petition be dismissed.

Department's Position

The Department argues: 1) Petitioner was properly disciplined; 2) that the Arbitrator found the penalty to be proper; and 3) that Petitioner has not appealed the award. Moreover, with respect to the Union's conduct in the matter, the Department observes that the Arbitrator found that "[a]ll concerned were afforded a full opportunity to offer evidence and argument and to examine and cross-examine witnesses" and that the Union vigorously defended Petitioner. The Department requests that the petition be dismissed for failure to state an independent claim of improper practice against the Department.

DISCUSSION

Petitioner asserts that the Union breached its duty of fair representation by advising her to accept part of the misconduct charges despite her claim that the charges were false. Petitioner alleges that the Union's handling of her grievance was motivated by discrimination against Petitioner based on her race, gender and sexual orientation. This Board's jurisdiction is limited to the interpretation and enforcement of the provisions of the NYCCBL. To the extent that Petitioner's allegations are that she has been denied the benefit of laws other than the NYCCBL, those allegations may not be considered because they do not raise issues within this Board's jurisdiction.[2]

As to issues which do arise under the NYCCBL, we note that a union's duty of fair representation includes the duty to refrain from discriminatory conduct in the enforcement and administration of the collective bargaining agreement.[3] This duty may overlap with rights protected under other laws. While claimed violations of other laws are not within the Board's jurisdiction, claims of discriminatory breaches of the duty of fair representation are within its jurisdiction.

A union, nevertheless, is recognized as having the implied authority to make a fair judgment about whether a particular complaint is meritorious and to evaluate the degree of prosecution to which it is entitled.[4] Indeed, a union has no obligation to advance a particular grievance or to bring it to arbitration.[5] It is well settled that a union does not breach its duty of fair representation when it refuses to advance an employee grievance to a higher step in the grievance procedure, provided that the refusal is not made in bad faith, or in

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[2] Decision Nos. B-10-89; B-39-88; B-55-87.

[3] Decision Nos. B-53-87, B-32-86; see Vaca v. Sipes, 386 U.S. 171, 87 S. Ct. 903, 17 L.Ed. 2d 842 (1967).

[4] Decision Nos. B-51-90; B-31-91.

[5] Decision No. B-31-91.

an arbitrary or perfunctory fashion, or in a manner which discriminates against the Petitioner in a manner contemplated under the NYCCBL.[6] And where a union processes an employee grievance, the duty of fair representation does not guarantee a favorable outcome for a grievant.[7]

When allegations are presented that a union has failed in its duty, under the NYCCBL, to represent a unit member during a disciplinary proceeding such as the one at issue herein, those allegations must be supported by statements of fact from which the Board may reasonably conclude that the treatment afforded the Petitioner was violative of the NYCCBL as it has come to be interpreted.[8]

In the present case, Petitioner has presented no facts from which we may infer that the Union discriminated against her in the manner in which it provided representation, or in any other way violated her rights under the NYCCBL. We find that her assertions of discrimination on the basis of race, gender, and sexual orientation are entirely conclusory. The Union not only processed Petitioner's grievance through the lower steps of the grievance procedure, but it also chose to proceed to arbitration. The Arbitrator's report states that the Union representative presented to him a credible case on behalf of Petitioner herein. Merely because the outcome of the arbitrated matter was not satisfactory to Petitioner does not establish a breach of the duty of fair representation, nor does it justify the grant of a remedial order by this Board.

Since Petitioner has not sustained the burden with respect to the Union's duty herein, no consequential liability may be found on the part of the Department. Moreover, Petitioner has stated no independent claim of improper practice against the Department.

For these reasons, the improper practice petition must be dismissed in its entirety.

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[6] Decision No. B-31-91; B-51-90; B-56-90; B-58-88.

[7] Decision No. B-31-91.

[8] Decision No. B-16-83.

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-1450-92 be, and the same hereby is, denied.

DATED: New York, New York
Oct. 31, 1996

Steve C. DeCosta
CHAIRMAN

Daniel G. Collins
MEMBER

Carolyn Gentile
MEMBER

Robert H. Bogucki
MEMBER

Saul G. Kramer
MEMBER

Richard A. Wilsker
MEMBER

MEMBER