Abdal-Rahim v. L. 371, SSEU & Child Welfare Adm., 59 OCB 17 (BCB 1997) [Decision No. B-17-97 (IP)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

In the Matter of the Improper Practice Proceeding	
between	
Aladdin Abdal-Rahim, pro se	
Petitioner,	
and	Decision No. B-17-97 Docket No. BCB-1630-94
Local 371, Social Service Employees Union and New York City Child Welfare Administration,	
Respondents.	

DECISION AND ORDER

On January 24, 1994, Aladdin Abdal-Rahim, pro se ("petitioner") filed a verified improper practice petition against Local 371 of the Social Service Employees Union ("the Union") and the New York City Child Welfare Administration ("the City"). It alleged, in its entirety:

> Improper representation, amounting to discrimination and denial of union rights, civil rights, citizenship rights and human rights. I filed a grievance against the employer alleging unfair labor practice. The union failed to pursue the grievance even while assuring me that my complaint was being processed. I was given the runaround for years. Finally I was told that my grievance had been misplaced and when it was located I would be contacted. I was never contacted as of 1/13/94.

The Union filed an answer on February 9, 1994. The City requested and was granted an extension of time in which to file

an answer, and filed an answer on March 25, 1994.

By letter dated April 8, 1994, the Trial Examiner explained to the petitioner that he had the right to file a reply and would be allowed to do so until April 30, 1994. On April 30, 1994, the petitioner requested an extension of time until May 31, 1994 to reply, because he had been ill. His request was granted. On June 29, 1994, the petitioner requested an additional extension of time in which to file a reply, claiming that he had been evicted from his apartment but hoped to have his reply "ready within the very near future." By letter dated July 5, 1994, the Trial Examiner allowed the petitioner until November 30, 1994 to file a reply, but added that no more extensions would be granted. The petitioner did not file a reply.

The petitioner came to the Office of Collective Bargaining to inquire about his case in January and March 1997 and was told that he would not be allowed to file a reply. By letter dated March 27, 1997, the petitioner asked to be granted leave for oral argument before the Board, citing his poverty as the reason for his inability to file a reply. By letter dated March 28, 1997, the Union asked that the petitioner's request be denied.

On April 9, 1997, the petitioner submitted to the Office of Collective Bargaining a 21-page document. In it, he maintained that pro se petitioners should be "treated less stringently ... in the technical procedural aspects of matters at bar (or under

appeal.)" He argued that he should be allowed "a fair hearing and oral argument" because he is proceeding "pro se and in forma pauperis" and should not be "denied a fair hearing only simply and merely because of technical procedural shortcomings in his application for judicial intervention and review." He contended that "timely filing requirements are not a jurisdictional prerequisite but, like a statute of limitations, are subject to waiver, estoppel and equitable tolling" and that there is "no jurisdictional bar to allowing [him] oral argument." The remainder of the document appears to be a reply to the Union's answer.

The Union claims that the petition fails to allege facts specific enough to allow it to respond, such as the date that the alleged grievance was filed, the nature of the grievance, and the identity of Union employees who told him the grievance had been misplaced. The Union speculates that the grievance to which the petitioner refers was also the subject of a complaint to the New York City Commission on Human Rights filed on March 30, 1988, a copy of which it entered into evidence.

The petitioner's 1988 complaint to the Human Rights Commission alleged that the Union discriminated against him because of his religion. He maintained that his employment as a Caseworker at Special Services for Children had been terminated, also because of religious discrimination; when he wanted to pursue a

grievance on these grounds, the complaint said, the Union's representative told him that it would be hard to prove and instead drew up a grievance based on unfair labor practices. It claimed further that when a representative of the Human Rights Commission investigated, the Union said that the petitioner had been a provisional employee with no due process rights. The petitioner asserted in the complaint that he had permanent, not provisional, status at Special Services for Children. There is nothing in the pleadings that indicates whether, or how, the Human Rights Commission complaint was resolved.

The City maintains that the petitioner has not alleged that it has violated the New York City Collective Bargaining Law. In addition, it claims that there is no possible remedy for the petitioner since he was never an employee of the Child Welfare Administration.

Discussion

At the outset, we will comment on the petitioner's arguments concerning oral argument, timeliness and less stringent treatment of pro se petitioners. Permission for oral argument is granted solely at the discretion of this Board and the administrative agency which serves it. Oral argument is not a substitute for submitting a reply; we have never allowed a party to a case before us to submit a reply other than in writing.

We agree with the petitioner that persons filing pro se should be treated less stringently; as we have often reminded the parties, we do not require a pro se petitioner to execute technically perfect or detailed pleadings.[1] It is for this reason that the petitioner was allowed more than seven months to file a reply, rather than the ten days allowed by statute.

We have also found, however, that "[g]ood practice requires prompt responses to time-limited pleadings and we will, in an appropriate case, disallow any pleading that is egregiously late or that is shown to prejudice the interests of a party."[2] The term "egregiously late" can reasonably be applied when a petitioner, given an extra seven months to file a reply, does not do so but argues more than two years later that he should be allowed not only to submit a reply, but to submit a reply by oral argument. Further, it is unreasonable to expect us to accede to such a request simply on the grounds that the petitioner is filing pro se and that he believes he has such a right, and to expect us also to prejudice the other parties by so doing. Therefore, we will not consider the remainder of the petitioner's document of April 9, 1997 because it is in the nature of a reply.

We note that the City claimed that the petitioner had never

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[1]See, e.g., Decision No. B-15-93 at 26.

[2]Decision No. B-8-92.

been an employee of the Child Welfare Administration. The Union's answer indicates that it acted as if the petitioner had been an employee in its bargaining unit at the time in question. However, we need not inquire further about this jurisdictional issue because, even if the petitioner was employed as he asserts, his claim would still fail.

Although the petitioner may believe that the Union did not act on his grievance because of discrimination against his religion, he has not shown any facts that even arguably could support such a claim. The Union argues, and we agree, that the petition fails to allege facts specific enough to allow it to respond, such as the date that the alleged grievance was filed, the nature of the grievance, and the identity of Union employees who told him the grievance had been misplaced. When a petition is filed, it should include, but not be limited to, the names, dates and places of occurrence of each particular act alleged.[3] Although we construe our rules liberally, we cannot uphold a claim that fails to satisfy minimum standards.[4]

A finding of improper employer practice under our statute requires a claim that the employer interfered in some way with

[3]Decision Nos. B-15-97; B-6-96; B-20-94.

[4]Decision Nos. B-15-97; B-20-94.

protected employee rights.[5] These include, broadly, the rights to form, join and organize public employee organizations and the right to refrain from so doing.[6] The petition does not allege any violation by the City of rights protected under our statute.

Accordingly, for all of these reasons, the instant improper practice petition is dismissed in its entirety.

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[5]Decision No. B-17-94.

[6]Sections 12-305 and 12-306 of the New York City Collective Bargaining Law.

DECISION AND 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 petition docketed as BCB-1630-94 be, and the same hereby is, dismissed.

Dated: New York, New York
April 24, 1997

Steven C. DeCosta
CHAIRMAN

George Nicolau
MEMBER

Daniel G. Collins
MEMBER

Carolyn Gentile
MEMBER

Thomas J. Giblin
MEMBER

Richard A. Wilsker
MEMBER

Saul G. Kramer
MEMBER