Abdal-Rahim v. L. 983, DC 37 & HPD, 59 OCB 18 (BCB 1997) [Decision No. B-18-97 (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-18-97 Docket No. BCB-1631-94
Local 983, District Council 37, AFSCME, AFL-CIO and New York City Housing Police Department,	
Respondents.	

DECISION AND ORDER

On January 24, 1994, Aladdin Abdal-Rahim, pro se ("petitioner") filed a verified improper practice petition against Local 983 of District Council 37, AFSCME, AFL-CIO ("the Union") and the New York City Housing Police Department ("the Department"). It alleged that his employment had been terminated without due process and that the Union failed to represent him adequately.

The City requested and was granted an extension of time in which to file an answer, but did not do so. The Union filed an answer on March 3, 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.

Background

In 1991, the petitioner was hired by the New York City Housing Authority in the title Housing Supply Handler. On August 30, 1993, the petitioner was appointed to the title Motor Vehicle Operator, with a one-year probationary period. The petitioner's new title is represented by the Union. On November 9, 1993, he was terminated from the position.

Positions of the Parties

Petitioner's Position

The petitioner claims that he had been employed by the Department for three years when he was dismissed without being given a reason for the termination. He alleges that the Union failed to defend him adequately.

Union's Position

The Union asserts that the petitioner never requested its assistance. Even if he had, it maintains, a termination during the probationary period may not form the basis of a grievance under the contract between the Union and the Housing Authority, nor did the petitioner have the right to a hearing under Section 75 of the New York State Civil Service Law. Therefore, the Union contends, it did not breach its duty of fair representation to the petitioner. The Union also claims that the petitioner was not entitled to notice, a statement or charges or any explanation of his termination during the probationary period.

Discussion

At the outset, we will comment on the petitioner's request for oral argument. 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 allow the petitioner to submit a reply either in writing

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

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

or by oral argument.

The duty of fair representation requires only that a union act fairly, impartially and non-arbitrarily in negotiating, administering and enforcing collective bargaining agreements. A union is permitted wide discretion in contract administration, as long as its refusal to act on a complaint is made in good faith and in a manner which is neither arbitrary nor discriminatory. Therefore, a union does not breach its duty merely because it refuses to advance a grievance.[3]

Here, the petitioner has failed to show that there was any alleged contractual violation for which he could have filed a grievance and, thus, that the Union had breached its duty of fair representation by not proceeding on such a grievance. The petitioner had been employed for more than two years by the Department; however, when he was appointed to a position in which he became a probationary employee, the Union no longer had the right to seek arbitration on his behalf about his termination.[4]

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[3]Decision No. B-35-96.

[4]Article VI ("Grievance Procedure"), Section 1 of the collective bargaining agreement between the parties defines a grievance, in relevant part, as:

e. A claimed wrongful disciplinary action taken against a permanent employee covered by Section 75(1) of the Civil Service Law....

f. Failure to serve written charges ... upon a permanent

(continued...)

Since the rights of probationary employees are limited by law, the Union could not and did not have an obligation to file a grievance on the petitioner's behalf.[5]

A finding of improper employer practice under our statute requires a claim that the employer interfered in some way with protected employee rights.[6] These include, broadly, the rights to form, join and organize public employee organizations and the right to refrain from so doing.[7] 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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[4](...continued)
employee covered by Section 75(1) of the Civil Service Law...

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h. A claimed wrongful disciplinary action taken against a provisional employee who has served two yeras in the same or similar title or related occuptational group in the same agency.

See also, Decision No. B-24-95.

[5]Decision No. B-51-88.

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

[7]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