Whaley v. L. 237, CEU & NYCHA, 59 OCB 41 (BCB 1997) [Decision No. B-41-97 (IP)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

In the Matter of the Improper Practice Proceeding	
--between--	DECISION NO. B-41-97
BEVERLY WHALEY, Pro Se, Petitioner,	DOCKET NO. BCB-1652-94
--and--	
CITY EMPLOYEES UNION LOCAL 237 INTERNATIONAL BROTHERHOOD OF TEAMSTERS and NEW YORK CITY HOUSING AUTHORITY,	
Respondents.	

DECISION AND ORDER

On May 18, 1994, Beverly Whaley ("Petitioner") filed a verified improper practice petition against the City Employees' Union, Local 237, of the International Brotherhood of Teamsters ("Union") and against Madelyn Oliva, Director of Personnel for the New York City Housing Authority ("Authority"). The petition alleges that the Union violated Section 12-306(b) of the New York City Collective Bargaining Law ("NYCCBL") in its handling of a contractual grievance alleging wrongful termination. The Authority was joined as a necessary party to the action pursuant to the requirement under Section 209-a(3) of the Civil Service Law ("Taylor Law").[1]

[1] The Civil Service Law, Section 209-a, provides, in pertinent part, as follows:

Improper employer practices; improper employee organization practices.

* * *

Conferences were held on May 22 and June 24, 1996, to clarify issues raised in the pleadings. The parties agreed that the Petitioner would be allowed to amend the petition to include events related to matters raised in the petition but which allegedly occurred after the original petition was verified, and the amended verified petition was filed on May 23, 1996. The parties also agreed that the Respondents would be permitted to submit amended verified answers. On June 18, 1996, the Authority filed its amended verified answer, and on June 24, 1996, the Union filed its amended verified answer. The Petitioner filed a verified reply to the Authority's amended answer on July 31, 1996, and a verified reply to the Union's amended answer on August 7, 1996.

BACKGROUND

At all times relevant herein, the Union and the Authority were parties to a collective bargaining agreement ("agreement") executed December 28, 1993, effective for the period from January 1, 1992, through March 31, 1995, which covered the bargaining unit of which Petitioner was a member. The agreement does not expressly exclude, from its coverage and application, probationary employees, such as

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(3) The public employer shall be made party to any charge filed under subdivision two of this section which alleges that the duly recognized or certified employee organization breached its duty of fair representation in the processing of or failure to process a claim that the public employer has breached its agreement with such employee organization.

Petitioner herein.

The agreement contains a four-step procedure for the adjustment of contractual grievances, and, in a section addressing "Personnel Records,"[2] states that, following a "general" or a "local" hearing on charges and specifications, references to charges determined to be unfounded are to be deleted from the employee's personnel record. However, the agreement does not provide for the service of charges and specifications or for the holding of a "general" or "local" hearing, and it does not include within the contractual definition of a grievance claims of wrongful discipline, such as the underlying claim in the instant proceeding.[3]

Petitioner was appointed by the Authority as a Housing Teller

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[2] Paragraph 50.

[3] A grievance is defined in Paragraph 51 ("Adjustment of Grievances") of the agreement as, _inter alia_, the following:

> 1. A dispute concerning the application or interpretation of the terms of written collective bargaining agreements and written rules or regulations.
> 2. A claimed violation, misinterpretation or misapplication of the rules or regulations of the Authority affecting the terms and conditions of employment.
>
> * * *
>
> 4. Any dispute defined as a grievance by a collective bargaining agreement, or as expressly agreed to in writing by the Authority and the Union. . . .

No party herein has pointed to any express or implied agreement between the Authority and the Union which would incorporate a claim of wrongful discipline within the contractual definition of a grievance, regardless of whether the grievant's employment be probationary or permanent.

on August 12, 1993, subject to a 12-month probationary period. In that capacity, she was required to collect rent, count money and make change accurately, make bank deposits, post rent receipts and security deposits, maintain records of accounts, calculate interest on security deposits, and perform related clerical tasks.

Petitioner was assigned to the Van Dyke Houses, commencing on October 5, 1993. She received training from October 13 through 15, 1993. By memo dated November 16, 1993, Adrienne Billups, Petitioner's supervisor, informed her that her work needed improvement. Petitioner was counseled to work more slowly in order to improve her accuracy. Petitioner received additional counseling memos dated December 6 and 7, 1993, from Van Dyke Houses Manager Leonore Siragusa regarding Petitioner's work performance.

On December 16, 1993, Siragusa recommended to Deputy District Director Willis Morris that Petitioner be discharged, allegedly for "her unwillingness and inability to accept and follow direction and instruction." By memo dated December 21, 1993, Morris forwarded the recommendation to Donald Matthews, Director of Management. Three additional counseling memoranda were issued to Petitioner during January, 1994, about her work.

By memo dated January 14, 1994, Madelyn Oliva, Director of Personnel, advised Petitioner that her employment would be terminated as of the end of the work day on January 19, 1994. Petitioner alleges she did not receive notice of her termination

until she was "verbally terminated" on January 18, 1994, by Project Manager Siragusa.

Petitioner asserts that she called the Union's business agent for Housing Tellers, Joe Martino, ("Martino"), on January 19, "explaining to him that Ms. Siragusa had changed the locks on the office door and refused to give [Petitioner] the keys." Petitioner also asserts that Martino said that "there would be a meeting scheduled at Brooklyn East District Office to resolve this matter."[4]

The Authority states that, on January 26, 1994, Petitioner,

[4] It is unclear if this "meeting" was a hearing as referenced in the collective bargaining agreement, but the distinction has no bearing on the disposition of the instant matter.

Martino and Deputy District Director Morris were scheduled to attend a meeting which was cancelled by Morris for personal reasons. It was rescheduled for February 8, 1994, and subsequently for February 23, 1994, but Martino arrived too late to conduct business. (The Union maintains that traffic delayed his arrival.) The meeting was in fact held on March 1, 1994, at the Union's District Office. In attendance were Petitioner, Martino for the Union, and Morris, for the Authority, who reserved decision on the matter.

Petitioner asserts that she called Martino once a week for three weeks to ascertain Morris' decision. Although she offers, in her replies to Respondents' amended answers, (i) a copy of an internal memorandum dated March 2, 1994, from Morris to Robin Griss, District Administrator, Brooklyn East, describing Petitioner's "appeal," which presumably took place at the March 1 meeting, and (ii) a copy of a letter dated March 16, 1994, from Morris to Martino, sustaining the decision to terminate Petitioner's employment, she maintains that Martino withheld the memo and the letter, and she states that she never received the documents.

The Union asserts -- and Petitioner does not deny -- that, on March 25, 1994, Martino informed Petitioner that Morris' decision was on its way to him by facsimile transmission. The Union insists that, after it received Morris' determination, Martino sent a

letter dated March 30, 1994, addressed to "Rita Coss, Deputy Director, NYC Housing Authority," by which "the union attempted to have this matter reviewed at a higher level." The Union states, "Management refused to schedule another meeting." Petitioner argues that the Union withheld this information from her, but she does not deny that Martino appealed Morris' decision.

The Union further maintains -- and Petitioner does not deny -- that, on or about May 11, 1994, Petitioner spoke with Union Trustee Norris Jackson. The Union further asserts, "Also during May, 1994, [Petitioner] visited the union office, met with Mr. Jackson and discussed her case." Petitioner denies that she actually had a meeting with Jackson but does not deny that Jackson promised her that he would speak to John Reilly, Director of Personnel for the Authority, in an attempt to secure her reinstatement.

According to the Union, Jackson, in fact, called Reilly, who "informed Mr. Jackson in late May or early June that the Housing Authority would not change its position." The Union further asserts -- but Petitioner disputes -- that "Mr. Jackson then called [Petitioner] and informed her that management would not change their position." The petition, filed on May 18, 1994, asserts that, as of the day before the filing, Petitioner "ha[s] had no response from anyone."

POSITIONS OF THE PARTIES

Petitioner's Position

Although Petitioner does not dispute the Authority's right to terminate her employment and, in fact, acknowledges that she made "drastic errors in her work performance," she argues, in substance, that she was given insufficient training and supervision which, she argues, could have prevented the errors.

Procedurally, Petitioner bases her claim of a right to grieve her employment termination on the Authority's Personnel Rules and Regulations, which she asserts states, in Article VII ("Employe[e] Grievances"), the following:

> The processing of grievances of all employe[e]s of the Authority is patterned upon the provisions of Section 8(a) of Executive Order No. 52 of the City of New York, dated September 29, 1967, except as may otherwise be provided in a collective bargaining agreement.
>
> Any employe[e] may present his/her own grievance through the first three steps set forth in Section C below either personally or through an appropriate representative of an organization of which he/she is a member. However, where an employe[e] organization has been certified as the exclusive bargaining agent for the employe[e]'s title, a grievance may be presented and processed either by such certified employe[e] organization or by the individual employe[e], but not through any other employe[e] organization.... (Emphasis supplied by Petitioner.)

The "Personnel Rules and Regulations" which Petitioner offers to support her position also define claims which may be considered grievances thereunder. They state that the term "'grievance' shall mean:

1. A dispute concerning the application and interpretation

of the terms of:

a. Written collective bargaining agreements and written rules or regulations.

b. A determination under Section 220 of the Labor Law affecting terms and conditions of employment.

2. A claimed violation, misinterpretation, or misapplication of the rules and regulations of the Authority affecting the terms and conditions of employment.

3. A claimed assignment of employe[e]s to duties substantially different from those stated in their job classification.

4. Any dispute defined as a grievance by a collective bargaining agreement, or as expressly agreed to in writing by the Authority and a public employe[e] organization...."

Petitioner contends that she followed the procedure under the Authority's Personnel Rules and Regulations to grieve what she describes as an "administrative problem." It is with regard to its handling of that "administrative problem" that she contends the Union failed in its duty of fair representation.

The petition recites dates and events from January 18, 1994, when Petitioner was "[v]erbally terminated ... without notice or evaluation" through May 17, 1994, when Petitioner asserts, "I have had no response from anyone." The petition, however, specifically describes communication between Petitioner and Union Representative Martino on several different occasions, communication with Jackson on another occasion, as well as two meetings with Authority personnel at which Union personnel appeared on behalf of Petitioner. (One meeting was cancelled without transacting

business, because Union personnel arrived late.)

Petitioner also asserts that Union Representative Martino withheld information from her regarding the appeal of the Authority's termination of her employment. In this regard, she refers specifically to the Authority's internal memo of March 2 from Morris to Griss describing Petitioner's appeal and to the March 16 letter from Morris to Martino denying the appeal. Petitioner also states that Martino failed to tell her about his March 30 letter to Deputy Director Coss by which he requested a further appeal of Morris' decision to sustain the termination.

Citing Sections 12-306b(2) and 12-306c of the NYCCBL,[5]

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[5] NYCCBL Sec. 12-306 provides, in relevant parts, as follows:

> **b. Improper public employee organization practices.** It shall be an improper practice for a public employee organization or its agents:
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> (1) to interfere with, restrain or coerce public employees in the exercise of rights granted in Sec. 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 pubic employees of such employer.
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> **c. Good faith bargaining.** The duty of a public employer and certified or designated employee organization to bargain collectively in good faith shall include the obligation:
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> * * *
>
> (3) to meet at reasonable times and convenient places as frequently as may be necessary, and to avoid unnecessary delays;
>
> (4) to furnish to the other party, upon request,

Petitioner argues that the Union failed to act in good faith. Specifically, she contends that Martino did not make himself accessible in negotiating her grievance with respect to what she describes as an "administrative problem."

As relief, Petitioner requests "back pay and review of [her] personnel folder to determine if negative information is contained therein, and if so the right to refute it and have it destroyed."

Union's Position

The Union argues that the petition fails to state a claim. As a probationary employee, Petitioner is not entitled to grieve termination of her employment, in the Union's view. Nonetheless, it asserts that it attempted to have Petitioner reinstated although it was under no obligation to do so. It notes that its actions on behalf of the Petitioner, both in the meeting with Authority personnel and with respect to its appeal of the Authority's decision to sustain the termination, demonstrate that it acted in good faith.

The Union further argues that it maintained contact with the

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data normally maintained in the regular course of business, reasonably available and necessary for full and proper discussion, understanding and negotiation of subjects within the scope of collective bargaining;

(5) if an agreement is reached, to execute upon request a written document embodying the agreed terms, and to take such steps as are necessary to implement the agreement.

Petitioner during the period in question. As evidence, it cites its attempts to arrange a meeting with the employer and describes communication with Petitioner on various occasions when Authority personnel asked to reschedule the meeting. It cites its representation of Petitioner at the March 1, 1994, meeting with management personnel. It cites discussions between Norris Jackson and Petitioner by phone and in person in May, 1994, in which her claim was discussed. The Union maintains that, when John Reilly, Director of Personnel for the Authority, "informed Mr. Jackson in late May or early June that the Housing Authority would not change its position [with respect to Petitioner's employment termination][,] Mr. Jackson then called [Petitioner] and informed her that management would not change their position."

The Union urges that the petition be dismissed.

Authority's Position

The Authority also asserts that the petition fails to state a claim under the NYCCBL. It maintains that its decision to terminate Petitioner's employment was within management's legitimate discretion under Section 12-307b of the statute. It argues that, as a probationary employee, Petitioner has no contractual basis to grieve the termination. Finally, the Authority contends that it "at all times acted in good faith and in conformity with all applicable laws, statutes, ordinances, rules

and regulations, and in no way acted in an arbitrary or discriminatory manner, nor in bad faith." It also argues for dismissal of the petition.

DISCUSSION

The duty of fair representation has been recognized as obligating a union to act fairly, impartially and non-arbitrarily in negotiating, administering and enforcing collective bargaining agreements.[6] In the area of contract administration, including the processing of employee grievances, it is well-settled that a union does not breach its duty of fair representation merely because it refuses to advance each and every grievance.[7] Rather, the duty of fair representation requires only that the refusal to advance a claim must be made in good faith and in a non-arbitrary, non-discriminatory manner.[8] Arbitrarily ignoring a meritorious grievance or processing a grievance in a perfunctory fashion may constitute a violation of the duty of fair representation,[9] but the burden is on the petitioner to plead and prove that the union has engaged in such conduct.[10] It is not enough for a petitioner merely

[6] Decision Nos. B-46-96, B-35-96, B-11-95 and B-24-94.

[7] Decision Nos. B-46-96, B-24-94, B-8-94 and B-29-93.

[8] Decision Nos. B-46-96 and B-58-88.

[9] Decision Nos. B-46-96, B-24-94, B-21-93 and B-35-92.

[10] Decision Nos. B-46-96, B-24-94, B-21-93 and B-35-92.

to allege that a union has engaged in conduct violative of the law.[11]

Applying these principles to the instant case, we conclude that Petitioner herein has stated a claim cognizable under Section 12-306b of the NYCCBL but that she has failed to establish a breach of the duty of fair representation. In reaching this conclusion, we rely on the fact that the Petitioner has stated no contractually recognized source of a right to grieve her employment termination. We also conclude that Petitioner has failed to state a claim under Section 12-306c of the NYCCBL.

Turning first to the claim under Section 12-306b, Respondents argue that Petitioner's status as a probationary employee deprives her of the right to grieve her employment termination. They argue that, as a probationary employee, Petitioner had no right to appeal her employment termination. Respondents have pointed to no provision in the parties' collective bargaining agreement or any other applicable source, e.g., written policies, procedures, rules or regulations of the Authority, which restrict the right of probationary employees in Petitioner's unit to grieve certain, enumerated claims. In this respect, Petitioner's probationary employment status is not dispositive of the issues herein.

Petitioner's claim with respect to her employment termination fails, however, on three different grounds. First, she has cited

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[11] Decision Nos. B-46-96 and B-24-94.

no source, contractual or otherwise, of a right to grieve managerial action which is disciplinary in nature.[12] Second, she has not sustained her burden of proof with respect to the Union's handling of her complaint. Third, as an individual unit member, she lacks standing to assert a claim under Section 12-306c of the NYCCBL.

As to the first ground, we have stated that, where a grievance does not proceed to arbitration, the Board may evaluate the arguable merit of the claim, in a limited fashion, to determine whether a union's failure to pursue the grievance was arbitrary.[13] If arbitrary action is found sufficient to constitute a breach of the duty of fair representation, the Board will direct that the grievance be submitted to arbitration.[14] After having considered the pleadings in the instant proceeding, we find that the Union was justified in not pursuing the claim further. We find this to be so, because neither the contractual definition of a grievance nor the definition of a grievance under the document which Petitioner offers as Personnel Rules and Regulations of the Authority includes

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[12] We take administrative notice of the fact that Paragraph 54 of the agreement indicates that general trials are held pursuant to Section 75 of the Civil Service Law. We further note that the disciplinary rights granted in Section 75 are not applicable to probationary employees.

[13] Decision No. B-15-93.

[14] Id.

claims of wrongful discipline.[15]

As a source of a right to grieve, Petitioner appears to rely on an informational booklet describing the role of a union business agent. She claims that Martino "could ha[ve] avoided the termination of Petitioner, which is stated as duties of Business Agent in booklet. How the Union Works for You." (Citation omitted.) The booklet states, in pertinent part, that business agents "are on the front line in assuring that the provisions of negotiated contracts are upheld at work sites. They handle hearings, grievances, appeals, and certain administrative problems. They work closely with members and Shop Stewards and are immediately available to assist members, either on site or at Union Headquarters." The booklet does not warrant, however, that business agents can prevent employment termination; nor does the

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[15] Petitioner, in fact, does not assert that the employer's decision to discipline her, i.e., terminate her employment, was "wrongful."

NYCCBL. Moreover, Petitioner has referred us to no other source of the right to grieve her employment termination.

We find, therefore, that the Union was under no external duty -- contractual or otherwise -- to pursue Petitioner's alleged grievance. Our finding is consistent with the rationale used by the New York State Public Employment Relations Board ("PERB"), which also has held that a union, acting in good faith, without arbitrary or discriminatory conduct, is under no obligation to pursue a claim which it believes lacks merit.[16]

As to the second ground, Petitioner has not sustained her burden of proof with respect to the Union's self-imposed handling of her complaint. While the duty of fair representation encompasses matters relating only to the negotiation, administration, and enforcement of the collective bargaining agreement,[17] a union may undertake the duty of fair representation by choosing to handle other, unrelated matters for its members. If it elects to do so, however, as did the Respondent Union herein, it

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[16] Ventrilla v. Niagara Falls Fire Dep't Officers Ass'n and City of Niagara Falls, 27 PERB 4599 (ALJ, 1994) (employee acknowledged receiving letter from union's counsel explaining the basis upon which the union determined not to proceed with his grievance; no facts were asserted alleging arbitrary, discriminatory or bad faith motives by the union);
see, also, Meany v. East Ramapo Central School District and East Ramapo Teachers Ass'n, 14 PERB 4540 (ALJ 1981).

[17] See n.7, above.

must do so for all members who are in similar circumstances.[18]

As to whether the Union in the instant proceeding violated the duty of fair representation to the Petitioner by engaging in any such discriminatory conduct, we find that Petitioner has raised no allegation that the Union provided the assistance she sought to other unit members while denying it to her. In this respect, then, Petitioner has not sustained the burden of proving discriminatory conduct.

As to whether the Union's undertaking to handle Petitioner's grievance was arbitrary or in bad faith, we have held that a union has wide discretion in reaching grievance settlements and that a union does not breach the duty of fair representation merely because it refuses to advance a grievance or because the outcome of settlement efforts does not satisfy the grievant.[19] Provided a union's decision on whether to pursue a grievance is not made for an unlawful purpose under the NYCCBL, a union does not breach its duty even where its decision not to pursue a grievance has an adverse effect on a unit member or members.[20]

In the instant proceeding, Petitioner does not deny that Representative Martino spoke with her, arranged for a meeting with Authority personnel for her to have an opportunity to be heard on

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[18] Decision Nos. B-35-96, B-21-93, B-11-87 and B-14-83.

[19] Decision No. B-34-96, B-31-94, B-29-93 and B-21-93.

[20] Decision No. B-29-93.

the matter of her employment termination, represented her at that meeting at which she spoke, and informed her that the Authority's written decision was in the process of being forwarded to him. Although she denies that Martino told her of the outcome of the March 1 meeting with Morris, she does not deny the Union's assertion that he wrote a letter requesting an appeal of her determination. In addition, although she denies that she actually met with Norris Jackson, also of the Union, she does not deny that Jackson spoke with her by phone and promised to appeal to the Authority's Director of Personnel "in order to get [her] job back."

In essence, then, Petitioner's claims are that Union personnel "withheld" information from her concerning the progress of the grievance and that Martino, in particular, was not "accessible" to her to negotiate a resolution of the employment termination. The Union denies these claims.

As to the "accessibility" question, there is no dispute that Martino spoke with her when she was discharged, arranged for the termination to be appealed, represented her at the hearing at which she spoke, and sought to ascertain management's decision thereafter. There is also no dispute that Jackson spoke with Petitioner, agreeing to attempt to secure her reinstatement. We find, therefore, on the basis of this uncontested information, that the Union did make a good faith attempt to negotiate a resolution of Petitioner's employment termination and that no breach of the

duty of fair representation can be found here.

With respect to claims of arbitrary conduct or conduct in bad faith, specifically in the context of the duty to inform, we have addressed the issue of a union's obligation, under the duty of fair representation, to provide information to unit members.

In one case,[21] the union's counsel evaluated the grievant's claim and decided that it could not succeed if arbitrated. We found there that a six-month delay in apprising the petitioner of the outcome of the grievance did not rise to the level of bad faith. We held that the grievant failed to sustain the burden of proof with respect to any allegedly improper motivation in the handling of the grievance. We reasoned that, even if the union could be found to have been remiss in waiting to inform the grievant, poor judgment on its part is not an act which will rise to the level of a breach of the duty of fair representation.[22]

In another case, a grievant filed contract claims over involuntary transfers and later complained that her union representative "evaded her inquiries" about the status of the case for two months.[23] We found no evidence of arbitrary conduct by the union or action in bad faith. We reasoned that "petitioner's

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[21] Urban v. D.C. 37, Local 1549, et al., Decision No. B-20-97.

[22] Id.

[23] Migliaro v. D.C. 37, Local 2021, Decision No. B-42-87.

allegations regarding the Union's failure to notify her regarding the status of her grievance ... even if proven, do not establish bad faith, unfairness, or gross negligence constituting a breach of the duty of fair representation."

In the instant matter, Petitioner admittedly last heard from Martino on March 25, 1994, and from Jackson on May 11, 1994. The instant petition was filed one week later, on May 18, 1994. Applying the time frame of the earlier cases to the facts presented in the instant proceeding, we find that any delay in communicating the result of the Union's appeal on Petitioner's behalf -- even if proven -- would not constitute arbitrary or bad-faith conduct. This is so particularly in view of the undisputed work that the Union undertook on Petitioner's behalf.

In another case before this Board, petitioners pursuing a contract grievance claimed that their union failed to give them prior notice of a negotiated settlement of a larger group grievance in which they also participated.[24] Not only did we hold that no violation will be found in the absence of evidence of improper motivation, arbitrariness or grossly negligent conduct, but we also held that the duty to inform arises only when a union's failure to disclose is without rational basis or is reckless and extremely prejudicial to the rights of the employee.[25] We based our decision

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[24] Decision No. B-51-90.

[25] Id.

on private sector case law[26] and our precedent.[27] McAllan[28] is particularly relevant here for our holding that no breach of the duty of fair representation will be found where a petitioner cannot establish that he has been, or will be, prejudiced or injured by any failure to inform. In the instant case, Petitioner has made no allegation that the failure -- even if proven -- to be informed of the outcome of her grievance has prejudiced or would prejudice her in the assertion of her collective bargaining rights under the NYCCBL. Petitioner has failed to sustain the burden of proof on this point as well.

As to the third ground, i.e., Petitioner's assertion that the Union has violated Section 12-306c of the NYCCBL, we find that

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[26] Id.; see, also, Robesky v. Quantas Empire Airways, 573 F.2d 1082, 98 LRRM 2090 (9th Cir. 1978) (union's failure to notify discharged employee that settlement offer, which she rejected, precluded pursuing grievance at arbitration, held arbitrary in breach of duty of fair representation); Minnis v. UAW, 531 F.2d 850, 854, 91 LRRM 2081 (8th Cir. 1975) (union's failure to inform employee that it did not process his discharge grievance, prejudicing his chance for reinstatement, held to violate duty of fair representation).

[27] Shapiro v. Dep't of Sanitation, et al. Decision No. B-9-86 (petitioner, dissatisfied with Comptroller's determination, failed to sustain burden of proof that union failed to disclose information about status of negotiations); McAllan v. E.M.S. Division of H.H.C., et al., Decision No. B-15-83 (petitioner failed to sustain evidentiary burden where he alleged union failed to inform unit members of negotiations concerning employer's attempt to recoup "heat days," allegedly preventing them from taking part in formulating union's bargaining position and allegedly evincing bad faith towards its members).

[28] Id.

Petitioner, as an individual unit member of the bargaining unit represented by the Respondent Union, lacks standing to assert a failure-to-bargain claim. This is so, because the duty of a certified employee organization to bargain in good faith is a duty owed to the public employer and not to the union's members.[29] In this regard, the Petition fails to state a claim under the NYCCBL.

In sum, for all of the reasons set forth above, therefore, the instant improper practice petition, docketed as BCB-1652-94, is dismissed in its entirety.

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-1652-94 be, and the same hereby is, dismissed in its entirety.

DATED: New York, N.Y.
September 18, 1997

STEVEN C. DeCOSTA
CHAIRMAN

DANIEL G. COLLINS
MEMBER

GEORGE NICOLAU
MEMBER

RICHARD A. WILSKER
MEMBER

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[29] Decision Nos. B-15-83 and B-13-81.

SAUL G. KRAMER
MEMBER

THOMAS J. GIBLIN
MEMBER