

Williams v. L. 1969, IBPAT & NYCHA, 59 OCB 48 (BCB 1997) [Decision No. B-48-97 (IP)]

OFFICE OF COLLECTIVE BARGAINING  
BOARD OF COLLECTIVE BARGAINING

-----X  
In the Matter of the Improper Practice Proceeding :  
: Between :  
: :  
Carlton Williams, pro se, :  
: :  
Petitioner, :  
: :  
And : Decision No. B-48-97  
: Docket No. BCB-1906-97  
Local 1969, I.B.P.A.T., and the New York City :  
Housing Authority, :  
: :  
Respondents. :  
-----X

**DECISION AND ORDER**

On May 14, 1997, Carlton Williams, pro se (“Petitioner”), filed a verified improper practice petition against Local 1969, I.B.P.A.T (“Union”) and the New York City Housing Authority (“Housing Authority”). He claims that he was improperly disciplined by the Housing Authority and that the Union failed to bargain in good faith. As a remedy, he asks that the Union and the Housing Authority “be held responsible for all loss of earnings, expenses of legal fees [and] compensatory damages.”

After requesting and being granted several extensions of time in which to file an answer, the Housing Authority filed an answer on June 24, 1997 and the Union filed its answer on July 2, 1997. The Petitioner filed a reply to the Housing Authority’s pleading on July 1, 1997 and a reply to the Union’s pleading on July 7, 1997.

### **BACKGROUND**

The Petitioner was hired by the Housing Authority in July, 1992, into the Civil Service title Painter, which is covered by a prevailing wage determination pursuant to §220 of the Labor Law. That title is included in a bargaining unit certified to the Union. His direct supervisor at the Housing Authority, Anthony Mazzeo, serves as Warden of the Union. Stephen Melish, Jr. is the Borough Supervisor who oversees the unit in which the Petitioner worked. Melish also serves as President of the Union.

According to the Union and the Housing Authority, the Petitioner had a history of disciplinary problems and altercations on the job, and three police reports were filed because of his threats to co-workers. The Housing Authority has submitted a number of documents showing that the Petitioner's co-workers and supervisors complained about his threatening behavior between 1993 and 1997. In particular, a memo from Melish, written in his capacity as Borough Supervisor and dated February 17, 1994, discussed complaints from inspectors about the Petitioner's behavior on the job and concluded with a request that "something be done about this worker before his actions become more severe."

On February 20, 1997, the Union said, Melish visited the Petitioner's work site in response to phone calls from the Petitioner and Mazzeo in which they complained about each other. As a result, the Union claims, the two men agreed to try to work together cooperatively. However, the Union contends that, at the beginning of March, the Petitioner complained about Mazzeo's supervision and threatened to harm him.

On March 19th, 1997, Mazzeo handed the Petitioner a letter informing him that he had been

suspended. Mazzeo also told the Petitioner that he was not allowed on Housing Authority grounds while under suspension. According to the Petitioner, the letter stated no reason for his suspension, nor was he told how long it was to last.

The Petitioner said that he went to the Union hall and, while there, spoke to Melish by telephone. The Union asserts that, during this conversation, Melish learned that the Petitioner had not been served with formal disciplinary charges. According to the Union, its attorney protested the suspension without service of charges in a letter dated March 24, 1997.<sup>1</sup> The Petitioner said that he called the Housing Authority's Human Resources Department on March 25, 1997, and was told that there was nothing in his file to indicate that he had been suspended. The Housing Authority claims that it has no record of this call.

By letter dated March 28, 1997, the Petitioner was formally charged with incompetence and misconduct; one of the charges specified that he threatened Mazzeo. The Petitioner says that throughout March and April, 1997, he made many efforts to contact Melish by telephone and by visits to the Union hall, but Melish was never available to speak to him and did not return his phone calls. The Union says that the Petitioner neither contacted Melish after their telephone conversation in March nor requested representation at the disciplinary hearing scheduled to be held pursuant to § 75 of the Civil Service Law. By letter dated March 31, 1997, the Union says, the Housing Authority responded that it had the authority to suspend an employee before a hearing in order to investigate allegations of misconduct.<sup>2</sup>

---

<sup>1</sup>A copy of this letter was not submitted into the record.

<sup>2</sup>A copy of this letter was not submitted into the record.

The Petitioner had a disciplinary hearing on April 21, 1997, at which he was represented by a private attorney. He says that he was forced to pay \$5,000 to hire an attorney because the Union would not represent him. At the hearing, John Todaro, who was both the Petitioner's shop steward and a Supervisor of Painters, testified against him.

On April 22, 1997, the Petitioner says, he returned to his work site to ask co-workers to testify on his behalf. According to the Petitioner, Mr. Gavin, Superintendent of the Carver Houses, intervened and told the employees not to make any statements on his behalf or get involved with the proceedings. The Housing Authority claims that Gavin only reminded the Petitioner that he was not allowed to be at a Housing Authority facility during his suspension.

On May 8, 1997, a meeting was held at the Union hall. The Petitioner asserts that when he entered the hall, he was assaulted by Mazzeo and three other union officials as Melish watched; these individuals pushed him towards the exit and told him he could not attend the meeting because he had been suspended from his job. As the Petitioner left, he says, Mazzeo stated that he was "not afraid of the O.E.O., the E.E.O.C. or the N.A.A.C.P."

The Union claims that the Petitioner refused to sign the attendance sheet when he entered the Union hall and began shoving Union members, including Mazzeo. For this reason, it asserts, the Petitioner was asked to leave the meeting and left of his own volition.

The Petitioner's employment was terminated on June 4, 1997.

## **POSITIONS OF THE PARTIES**

### *Petitioner's Position*

The Petitioner alleges that the Housing Authority and its agent violated his rights by intimidating employees who could be witnesses in his behalf in his disciplinary hearing. He claims he was improperly served with a suspension without being informed of the charges or how long the suspension would last. He charges the Union with “deliberate failure to structure itself in such a way so as to provide equitable representation to all its members.” The Petitioner maintains that the Union is made up of supervisors of the Housing Authority, from the President to the shop stewards, and that this constitutes a breach of ethics which is not in the best interests of its members .

Concerning the accusations of misconduct, the Petitioner claims that they are false; he contends that he became unpopular because he pointed out work errors and what he says was theft of materials which was ignored by supervisors who are also Union officials. As proof of this allegation, he claims that he was never given a written disciplinary notice or suspended as a result of any of the alleged disciplinary problems until March 1997.

The Petitioner makes a number of references to what he considers to be racial discrimination by his supervisors, some of whom are also Union officials. He says that Mazzeo referred to the “O.E.O., E.E.O.C or N.A.A.C.P.” during their altercation at the Union hall, and claims, “I was the only West Indian under those Italian guys ... [so] I would not be treated fairly.”

### *Union's Position*

The Union notes that the Board has repeatedly held that it has no jurisdiction over complaints

concerning internal union matters unless it can be shown that such matters affect the employee's terms and conditions of employment, or representation by the union with respect to those terms and conditions of employment. Its requirement that members sign an attendance sheet and maintain orderly conduct, it says, had no effect on the Petitioner's terms and conditions of employment or the representation afforded him with respect to those terms and conditions of employment. Similarly, it asserts, the Board has no jurisdiction over allegations regarding the structure of the Union.

The Union claims that the §220 consent determination does not include a grievance procedure or a provision concerning employee discipline. Thus, it maintains, the Petitioner's claimed rights are not derived from the NYCCBL or a collective bargaining agreement, but from Civil Service Law §75, which regulates discipline of Civil Service employees. The Union does not owe a duty to the Petitioner, it argues, because proceedings under §75 of the Civil Service Law do not concern the negotiation, administration and/or enforcement of a collective bargaining agreement. According to the Union, it has no duty to represent the Petitioner because bargaining unit members can assert rights under the Civil Service Law without a union's assistance.

#### *Housing Authority's Position*

The Housing Authority claims that all the actions it took with regard to the Petitioner were within its rights as set forth in §12-307b of the New York City Collective Bargaining Law ("NYCCBL").<sup>3</sup> Because of the Petitioner's history of violent threats, it maintains, it acted

---

<sup>3</sup>Section 12-307 of the NYCCBL provides, in relevant part:

(b) It is the right of the city, or any other public employer, acting through its agencies, to determine the standards of services to be offered by its agencies; determine the standards of selection for employment; direct its employees; take disciplinary action; relieve its employees

appropriately in suspending him upon the last instance of violent conduct, even before charges were served; it cites § 75(3) of the New York State Civil Service Law<sup>4</sup> and Chapter VIII of its Personnel Manual<sup>5</sup> as authority for the Petitioner's suspension.

Like the Union, the Housing Authority claims that the Petitioner has no contractual right to grieve his suspension as a Civil Service Painter under the terms of the Consent Determination issued pursuant to §220 of the Labor Law. Thus, it maintains, it cannot be joined as a necessary party under §209-a(3) of the Civil Service Law.<sup>6</sup>

## DISCUSSION

The NYCCBL expressly permits bargaining units that include both supervisory and non-supervisory employees. Nothing in the law limits the rights of these supervisory employees to serve

---

from duty because of lack of work or for other legitimate reasons; maintain the efficiency of governmental operations; determine the methods, means and personnel by which government operations are to be conducted; determine the content of job classifications; take all necessary actions to carry out its mission in emergencies; and exercise complete control and discretion over its organization and the technology of performing its work....

<sup>4</sup>Section 75(3) of the Civil Service Act concerns suspension of a Civil Service employee pending determination of disciplinary charges.

<sup>5</sup>The Housing Authority did not submit this section of its Personnel Manual into the record.

<sup>6</sup>Section 209-a(3) of the Civil Service Law provides that, when a union is charged with a breach of the duty of fair representation, the Board acquires jurisdiction over the petitioner's employer in the event that a grievance concerning the underlying claimed breach of the contract is heard by an arbitrator.

as union officers,<sup>7</sup> and a union member may hold office in the union while employed as a supervisor of other bargaining unit members.<sup>8</sup> Therefore, under the NYCCBL, the Petitioner's claim against the Union concerning what he characterizes as an ethical breach created by its structure is without merit.

We next consider the Union's representation of the Petitioner in the matter of the disciplinary charges against him and the subsequent proceeding at which those charges were heard. The Union correctly notes that we do not have jurisdiction over complaints concerning internal union matters unless it can be shown that such matters affect the employee's terms and conditions of employment, or representation by the union with respect to those terms and conditions of employment. It argues, also correctly, that we would thus have no jurisdiction over the alleged incident at the Union hall.

The Union has not breached its duty of fair representation toward the Petitioner by failing to represent him properly at the disciplinary hearing because it owed him no duty. Because the §220 consent determination does not include a grievance procedure or a provision concerning employee discipline, the Petitioner's claimed rights are not derived from the NYCCBL or a collective bargaining agreement, but from Civil Service Law §75. Proceedings under §75 of the Civil Service Law do not concern the negotiation, administration and/or enforcement of a collective bargaining agreement and bargaining unit members can assert rights under the Civil Service Law without a union's assistance. To the extent that a union's status as exclusive collective bargaining representative extinguishes an individual employee's access to available remedies, the union owes

---

<sup>7</sup>Section 12-309(b)1; Decision No. B-47-91, *affirmed*, 24 PERB ¶ 2041 (1991).

<sup>8</sup>Decision Nos. B-5-92; B-12-85.



a duty to represent fairly the interests of an employee who is unable to act independently to protect his or her own interests. The duty of fair representation, however, does not reach into and control all aspects of a union's relationship with its members; it concerns only the negotiation, administration and enforcement of a collective bargaining agreement.<sup>9</sup> The duty of fair representation, therefore, does not extend to the enforcement of rights which an individual employee may vindicate without the assistance of his or her bargaining representative. Where a union does not solely control access to the forum through which rights may be vindicated, there is no reason for it to be held responsible for protecting such rights.<sup>10</sup>

The Petitioner claims that he was a victim of racial discrimination by his supervisors, some of whom are also Union officials. Independent claims of discrimination and disparate treatment based on race are not related to rights protected under the NYCCBL and may not be addressed by this Board.<sup>11</sup> The duty of fair representation, however, requires that a Union's refusal to advance a claim be made in good faith and in a manner which is non-arbitrary and non-discriminatory.<sup>12</sup> Therefore, where a bargaining unit member claims that a union engaged in improperly motivated and disparate treatment, that complaint may be an element of the larger claim of a breach of the duty of fair representation. Since the Union here has no duty to the Petitioner, however, we may not entertain the subordinate claims of discrimination.

---

<sup>9</sup>*See, e.g.*, Decision Nos. B-23-94; B-44-93.

<sup>10</sup>*See*, Decision No. B-23-94 and the cases cited therein at fn. 24.

<sup>11</sup>*See, e.g.*, Decision No. B-23-91.

<sup>12</sup>*See, e.g.*, Decision Nos. B-35-92; B-21-92; B-72-88.

As for the Petitioner's complaints against the Housing Authority, unless the Petitioner alleges that his discharge was taken for reasons involving his rights under § 12-305 of the NYCCBL, we will not consider whether the termination of his employment was justified. Since the Petitioner has not alleged that the disciplinary actions were taken in response to protected activity, this claim also must be dismissed.

Finally, the Petitioner claimed that a Housing Authority manager coerced and intimidated potential witnesses from appearing in his behalf at the disciplinary hearing. As we discussed earlier, the NYCCBL guarantees rights concerning the negotiation, administration and/or enforcement of a collective bargaining agreement, but not rights related to proceedings under §75 of the Civil Service Law.<sup>13</sup> Again, because this claim concerns events surrounding the § 75 hearing, it does not fall within the protections of our statute.

For all of these reasons, the Petitioner has failed to state a claim against the Union or the Housing Authority. Therefore, the instant improper practice petition is dismissed in its entirety.

---

<sup>13</sup>Section 75(2) of the Civil Service Law; *see, e.g., Julien v. Lubin*, 185 N.Y.S.2d 627 (1<sup>st</sup> Dept. 1959) and *Spetalieri v. Quick*, 464 N.Y.S.2d 601 (3<sup>rd</sup> Dept. 1983), in which employees in disciplinary hearings enforced due process rights granted under that statute.

**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-1906-97 be, and the same hereby is, dismissed.

Dated: New York, New York  
December 18, 1997

Steven C. DeCosta  
CHAIRMAN

Daniel G. Collins  
MEMBER

George Nicolau  
MEMBER

Carolyn Gentile  
MEMBER

Jerome E. Joseph  
MEMBER

Richard Wilsker  
MEMBER

Saul G. Kramer  
MEMBER