

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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 In the Matter of the Improper Practice :
 Proceeding :
 -between- :
 : :
 PECOLIA DAYE, :
 : :
 Petitioner, :
 : :
 -and- :
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 : :
 DISTRICT COUNCIL 37, AFSCME, AFL- :
 CIO, and the NEW YORK CITY :
 DEPARTMENT OF HEALTH, :
 : :
 : :
 Respondents. :
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Decision No. B-50-97
Docket No. BCB-1912-97

DECISION AND ORDER

On May 5, 1997, Ms. Pecolia Daye, (the “Petitioner”) filed a verified improper practice petition against District Council 37 (the “Union”) and the New York City Department of Health (the “City”) ¹. Therein, she alleged that the Union and the City engaged in “Harassment (non-chalantness and indifference to [her] grief) Misrepresentation and improper practice.” The Union filed its answer on July 7, 1997, and the City filed its answer on July 21, 1997. On August 4, 1997, the Petitioner filed a request for an extension of time to submit her reply which was granted until August 31, 1997. Another request for an extension was filed on September 11,

¹ The Petitioner initially filed her verified improper practice petition against the Union on May 5, 1997. Because she failed to include the City as a necessary party pursuant to §209-a(3) of the Taylor Law, she was instructed by the Office of Collective Bargaining to amend her petition, which was done on June 16, 1997.

1997, and was followed by objections submitted by both the City and the Union on September 15, 1997 and September 19, 1997, respectively. An extension was granted until October 31, 1997, on the condition that no further extensions would be granted. A reply was never submitted by the Petitioner nor were any other communications made by her to the Office of Collective Bargaining (OCB) seeking a further extension.

BACKGROUND

Petitioner was a provisional *per diem* employee with the New York City Department of Health. She was hired in the title of Secretary IV on or about December 17, 1995. In early February 1997, the Petitioner's employment with the Department of Health was terminated. The Petitioner then filed an improper practice petition with the OCB.²

According to the Petitioner, "the gist of the matter is this: DC-37 never fulfilled their obligations to me, never informed me of my benefits (even though I literally begged them for written information, etc) had me in the incorrect local (perhaps withholding the incorrect dues)." The Petitioner also asserts that she was "unjustly dismissed" from her job and received no due process rights or representation from the Union. She states that she was dismissed with no option to continue medical insurance and with no information on the procedure of processing such a claim. She contends that she was harassed and misrepresented by the Union.

In response to these contentions the Union asserts that the Petitioner's concerns were not ignored. As proof of this, the Union notes that the Director of Labor Relations for the New York City Department of Health, responded to an inquiry made by the Union on the Petitioner's behalf,

²The City claims that Petitioner's employment was terminated on or about February 5, 1997 and the Union alleges that the termination occurred on or about February 8, 1997.

in a letter dated December 31, 1996. Further, notes the Union, the Petitioner acknowledged that she received written information from the Union regarding her benefits and that she also received her prescription drug card. The Union also contends that the oversight of placing the Petitioner in an incorrect local did not harm the Petitioner and was, in fact, in her favor since the dues withheld were lower than that required by her correct local.

The Union claims that because the “events about which the charging party complains [concerning her benefits] occurred” on or about October 16, 1996; her employment was terminated on or about February 8, 1997, and “the petition herein was filed on or about June 12, 1997[sic]”, the petition herein is untimely.³ Furthermore, contends the Union, the petition fails to state a claim for which relief can be granted since Petitioner was a provisional employee with less than two years in the same title and agency when her employment was terminated and was not entitled to any statutory or contractual due process.

The City, joined as a necessary party under §209-a(3) of the Taylor Law⁴, also refers to the Petitioner’s status as a provisional, per diem employee with less than two years in title, and notes that because of this, she has “no contractual grievance or disciplinary rights” and could have her employment terminated by the City at will.

According to the City, the petition should be dismissed because the Petitioner failed to

³The Union notes that under Section 217 of the Civil Practice Law and Rules and 61 RCNY §1-07(d), an improper practice petition alleging breach of the Union duty of fair representation is to be filed within four months of the alleged improper conduct.

⁴ Section 209-a(3) of the Taylor Law requires that a public employer be made a party to a charge filed against a public employee organization where it is alleged that the employee organization breached its duty of fair representation in processing a claim against the public employer for its violation of the parties’ collective bargaining agreement.

“allege facts sufficient to support an improper practice” claim against the City under any section §12-306 of the NYCCBL. The City further contends that because the Petitioner is alleging a contractual violation against the City which “should be raised in a grievance procedure and not in an improper practice proceeding”, the Board has no jurisdiction and the claim should be dismissed.

DISCUSSION

Because the Petitioner’s original petition was filed and served on the Union within the four month limitation period, we will not dismiss the petition based on the ground of untimeliness asserted by the Union.

We have long held that the duty of fair representation does not reach into and control all aspects of a Union’s relationship with its members; it concerns the negotiation, administration and enforcement of the collective bargaining agreement⁵. In order to set forth a *prima facie* case that a Union breached its duty of fair representation, a Petitioner must show that the Union behaved in a hostile, discriminatory, or arbitrary manner.⁶

The allegations contained in the Petitioner’s pleadings alone, do not establish a breach of the duty of fair representation by the Union and there is nothing therein to show that the Union treated the Petitioner differently from other similarly situated members or was hostile and discriminatory towards her. Further, as noted by both the Union and the City, the Petitioner’s status as a provisional employee, with less than two years in the same title, made her ineligible to

⁵ See Decisions No. B-35-96, B-23-94, B-44-93.

⁶ See, e.g., Decisions No. B-35-96, B-29-93, B-32-92.

receive any statutory or contractual due process rights. Finally, since the petition against the Union fails, the derivative claim brought against the City, pursuant to §209-a(3) of the Taylor Law, can not stand.

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 filed herein by PECOLIA DAYE, docketed as BCB-1912-97 be, and the same hereby is, dismissed.

Dated: December 18, 1997
New York, New York

STEVEN C. DeCOSTA
CHAIRMAN

GEORGE NICOLAU
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DANIEL G. COLLINS
MEMBER

CAROLYN GENTILE
MEMBER

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