

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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 In the Matter of the Improper Practice Proceeding :
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 Between :
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 Darren T. Terry, *pro se*, :
 :
 Petitioner, : Decision No. B-42-1999
 : Docket No. BCB-1990-98
 And :
 :
 Uniformed Sanitationmens' Association and :
 New York City Department of Sanitation, :
 :
 Respondents. :
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DECISION AND ORDER

Darren T. Terry (“petitioner”), *pro se*, is employed in the title Sanitation Worker by the New York City Department of Sanitation (“Department”). On June 1, 1998, he filed a verified improper practice petition alleging that the Uniformed Sanitationmen’s Association (“Union”) breached its duty of fair representation. It claimed that the Union failed adequately to represent him and that the Union violated its collective bargaining agreement with the Department.

The Union and the City filed answers on July 31, 1998. The petitioner filed a reply on August 13, 1998.

BACKGROUND

In June, 1997, the petitioner witnessed a fight between co-workers at the Bronx No. 5 garage and called the police. When the police arrived, the petitioner was arrested and charged with resisting arrest. The Department issued a complaint against the petitioner and suspended

him for one day. The petitioner and other employees wrote to the Union and the Department, complaining about the incident and asking for an investigation.

The Union hired an attorney to represent the petitioner at a hearing on the departmental charges in November, 1997. Although the Department offered to drop the charges and pay him for the day he was suspended, the petitioner refused to sign the disposition form because at least some part of the form, and possibly all of it, was blank. The Department Advocate declined to dismiss the complaint because the petitioner would not sign.

In July, 1998, the petitioner's claim was again before the Department Advocate and the petitioner refused to sign the disposition form for the same reason. However, the complaint was dismissed and the petitioner was paid for the day he was suspended.¹

In February, 1998, several Department supervisors wrote a letter complaining about the petitioner. It alleged that he had been involved in an assault at the garage in June, 1997, implied that he had slashed the tires on Supervisor Frank Lombardo's car, and asked that he be transferred.

In a letter dated March 21, 1998, to the Union, the petitioner related that he had been threatened by a Sanitation Worker in November 1997, who accused him of making trouble for Lombardo. He said he was again threatened by a different individual in February 1998, who offered to "transfer back so we can take care of" the petitioner.

¹The petitioner filed a complaint about the attorney with the Nassau County Bar Association, which was dismissed. He also wrote to the Department, complaining about the behavior of its Trial Advocate, but says the Department did not respond.

POSITIONS OF THE PARTIES

Petitioner's Position

According to letters written to the Union and the Department by the petitioner and his co-worker, they asked a supervisor to call the police and an ambulance during the June, 1997 incident but he refused. Instead, they say, the supervisor falsely pointed them out as having been involved in the altercation, they were arrested, and false allegations were placed in their employment records. The petitioner says that he told Union representative about the events surrounding the 1997 incident, and of the threats subsequently made against him, but the Union did not take any action in response to these events or his subsequent letters.

The petitioner alleges, also, that he is being retaliated against for having complained about the June, 1997, incident. He states that he was suspended for 30 days in January, 1998 for allegedly threatening a supervisor with physical harm. However, he says, the Sanitation Worker who actually assaulted a co-worker in the 1997 incident was suspended for one day. In addition, he says, his name is on a Department report about the incident that was put in his personnel file, while the names of some of those responsible were omitted.

The petitioner also claims that the Union breached its contract with the City. He cites Section 2 (a) and (b) ("Trial Room") and Section 2 ("Grievance Procedure") of the contract as the provisions that were violated..

Union's Position

The Union claimed that the petition is time-barred, since the claims arose more than four months before it was filed.² Even if it were not time-barred, it maintains, it does not state a cognizable claim of a breach of the duty of fair representation.

Furthermore, the Union argues, it acted properly regarding the petitioner. It says that it promptly investigated the 1997 incident and retained counsel to represent the petitioner in the Departmental charges. The Union also investigated the petitioner's complaints about that counsel, it says, and the petitioner has requested that the attorney represent him in other, unrelated proceedings.

The Union contends that its representative counseled the petitioner regarding his complaints, and continues to do so in other proceedings, but decided not to take further action. It argues that a union does not breach its duty of fair representation because it refuses to file a grievance.

City's Position

The City maintains that the petition is untimely, pursuant to Section 1-07 of the OCB Rules. It contends that the petition fails to state a claim that the Department acted in contraven-

²Section 1-07(d) of the Rules of the Office of Collective Bargaining ("OCB Rules") provides, in relevant part:

A petition alleging that a public employer or its agents or a public employee organization or its agents has engaged in or is engaging in an improper practice in violation of section 12-306 of the statute may be filed with the Board within four (4) months thereof....

tion of the petitioner's rights under the New York City Collective Bargaining Law ("NYCCBL"). In addition, it argues, the petitioner has not made a claim that the Union's conduct towards him was arbitrary, discriminatory or in bad faith, thus has failed to allege a breach of the duty of fair representation. The Union's decision not to pursue a grievance on the petitioner's behalf, it says, does not amount to a breach of the duty. In addition, the City claims, the petitioner's allegations about a failure to investigate the 1997 incident are unsubstantiated.

DISCUSSION

Section 1-07(d) of the OCB Rules provides that an improper practice petition must be filed within four months of the time that the alleged violation occurred.. Therefore, to be timely, any occurrence claimed by the petitioner to be an improper practice must have taken place after February 1, 1998.

The only timely claim here arises from the March 21, 1998 letter and alleges, essentially, that the Union was informed of incidents in which the petitioner was threatened but did not act to correct them. This allegation does not constitute an arguable claim under our statute.

The issued raised by the petitioner is whether the Union breached its duty fairly to represent him. A breach of the duty occurs "only when the union's conduct toward a member of the collective bargaining unit is arbitrary, discriminatory or in bad faith."³ A union enjoys wide discretion in its handling of grievances and does not breach its duty of fair representation merely because it refuses to file a grievance for a member, as long the decision not to process a

³*Vaca v. Sipes*, 386 U.S. 190 (1967).

grievance is made in good faith and in a manner that is neither arbitrary nor discriminatory.⁴

Arbitrarily ignoring a meritorious grievance or processing a grievance in a perfunctory fashion may constitute a violation of the duty of fair representation, but the burden is on the petitioner to plead and prove that the union has engaged in such conduct. It is not enough for a petitioner to allege negligence, mistake, or incompetence on the part of the union. Even where a union's action is due to an error in judgment there is no violation, provided that the evidence does not suggest that the union's conduct was improperly motivated.

Here, the petitioner has not shown evidence of hostility or neglect on the part of the Union, or that the Union failed to communicate with him as to its handling of the matter. Thus, there is no basis for a finding of improper practice with respect to the Union's representation of the petitioner.

Our statute does not provide a remedy for every perceived wrong or inequity. Its provisions and procedures are designed to safeguard the rights of public employees set forth therein: the right to bargain collectively through certified public employee organizations; the right to organize, form, join and assist public employee organizations; and the right to refrain from such activities. Since the petitioner has not shown that the Union or the Department violated a provision of the NYCCBL, this petition must be dismissed.

⁴For the following discussion of the duty of fair representation, *see, Wooten v. L. 1549, Dist. Council 37 and Dep't of Gen'l Svcs*, Decision No. B-23-94, and the cases cited therein.

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-1990-98 be, and the same hereby is, dismissed.

Dated: New York, New York
September 28, 1999

STEVEN C. DeCOSTA
CHAIRMAN

GEORGE NICOLAU
MEMBER

DANIEL G. COLLINS
MEMBER

RICHARD A. WILSKER
MEMBER

ROBERT H. BOGUCKI
MEMBER

JEROME E. JOSEPH
MEMBER