Warren, 18 OCB2d 2 (BCB 2025)

(IP) (Docket Nos. BCB-4499-23; BCB-4501-23; BCB-4502-23; and BCB-4503-23)

Summary of Decision*:** Petitioners alleged that HRA violated NYCCBL § 12-306(a)(1), (3), and (4) by reassigning them to a unit with poor working conditions and depriving them of meaningful work in their new assignment in retaliation for filing an out-of-title grievance. Petitioners also alleged that the Union violated NYCCBL § 12-306(b)(3) by failing to adequately represent them regarding the reassignment and subsequent conditions. The City argued that Petitioners failed to establish a *prima facie* case of retaliation, and that Petitioners were reassigned legitimately to comply with an arbitrator's decision regarding the above-referenced out-of-title grievance. Additionally, the City and the Union each argued that the Union did not breach its duty of fair representation. The Board found that, although Petitioners established a *prima facie* case of retaliation, the City established a legitimate business reason for the reassignment. The Board also found that the Union did not breach its duty of fair representation. Accordingly, the petitions were dismissed. ***(Official decision follows).

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

In the Matter of the Improper Practice Proceeding

-between-

WAYNE WARREN, PAULINA RUEDA, LADINIA JOHNSON, and MICHELLE ROLLINS,

Petitioners,

-and-

THE CITY OF NEW YORK,
THE NEW YORK CITY HUMAN RESOURCES ADMINISTRATION, and
SOCIAL SERVICE EMPLOYEES UNION, LOCAL 371,
DISTRICT COUNCIL 37,

Respondents.

DECISION AND ORDER

In January 2023, Wayne Warren, Paulina Rueda, Ladinia Johnson, and Michelle Rollins filed verified improper practice petitions against the City of New York ("City"), the New York

City Human Resources Administration ("HRA"), and Social Service Employees Union, Local 371, District Council 37 ("Union").[1] Petitioners allege that HRA violated § 12-306(a)(1), (3), and (4) of the New York City Collective Bargaining Law (New York City Administrative Code, Title 12, Chapter 3) ("NYCCBL") by reassigning them to a unit with poor working conditions and depriving them of meaningful work in their new assignment in retaliation for filing an out-of-title grievance. Petitioners also allege that the Union violated NYCCBL § 12-306(b)(3) by failing to adequately represent them regarding the reassignment and subsequent conditions. The City argues that Petitioners failed to establish a *prima facie* case of retaliation, and that Petitioners were reassigned legitimately to comply with an arbitrator's decision regarding the above-referenced out-of-title grievance. Additionally, the City and the Union each argue that the Union did not breach its duty of fair representation. The Board finds that, although Petitioners established a *prima facie* case of retaliation, the City established a legitimate business reason for the reassignment. The Board also finds that Petitioners lack standing to raise claims under NYCCBL § 12-306(a)(4), and that the Union did not breach its duty of fair representation. Accordingly, the petitions are dismissed.

BACKGROUND

The Trial Examiner held nine days of hearings and found that the totality of the record, including the pleadings, exhibits, transcripts, and briefs, established the relevant facts set forth below.

[1] Petitioner Warren filed his petition, docketed as BCB-4499-23, on January 13, 2023. He subsequently filed an amended petition on January 24, 2023. Petitioner Rueda filed her petition, docketed as BCB-4501-23, on January 25, 2023. Petitioners Johnson and Rollins filed their petitions, docketed as BCB-4502-23 and BCB-4503-23, respectively, on January 26, 2023. With no objection from the parties, the Trial Examiner consolidated the petitions for all purposes because they were substantively identical. Petitioners obtained counsel prior to the initial conference in the consolidated matter.

Petitioners are employed by HRA as Associate Fraud Investigators ("AFI"), Level I ("AFI I").[2] The Union represents employees in the AFI title. The employees are covered by the Social Services and Citywide Agreements.

Prior to October 24, 2022, Petitioners held the in-house position of Fair Hearing Representatives ("FHR"). As FHRs, Petitioners were generally responsible for representing the City in a variety of fair hearing proceedings.[3] Specifically, Petitioners reviewed case files in assigned matters, compiled evidence packets in the Fair Hearing Electronic Management System ("FHEMS"), defended the City in administrative hearings before an administrative law judge ("ALJ") regarding the denial or alleged overpayment of benefits, and determined whether the City should appeal the ALJ's decision, among other duties.

We take administrative notice that, in response to federal and state welfare legislation in the late 1990s, HRA restructured its model for distributing public assistance benefits. *See generally L. 371, SSEU*, 76 OCB 1 (BOC 2005). As part of this reorganization in the early 2000s, HRA combined the functions of existing professional staff, created the Job Opportunity Specialist ("JOS") title series, including the title Associate Job Opportunity Specialist ("AJOS"), and asked staff to voluntarily convert to the new titles. *See id.* at 3. Upon the AJOS title's creation, AJOS Levels I, II, and III ("AJOS I, II, and III") were assigned fair hearing duties in HRA's newly created "Job Centers."[4] *See id.* at 14.

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[2] HRA is one of two administrative units, along with the Department of Homeless Services, that comprises the New York City Department of Social Services.

[3] Fair hearings are conducted at the request of individuals who are disputing the decisions regarding their receipt of public assistance benefits.

[4] The AJOS title specification offered into evidence by Petitioners is dated May 2021 and notes that "examples of typical tasks" include the performance of fair hearing duties. (Pet. Ex. 2L)

As of November 2013, HRA's various program areas maintained their own fair hearing units. Petitioners were assigned to HRA's Investigative Revenue Enforcement Administration ("IREA") Fair Hearing Unit (collectively, "IREA FHU").[5] Petitioners' immediate supervisor was AFI Level II ("AFI II") Betzaida Echevarria.

Background Information[6]

On November 13, 2013, the Union filed a group grievance on behalf of Petitioners and seven other grievants who are not petitioners in this matter (collectively, "grievants"), alleging that they were performing duties substantially different from those provided in the AFI I title specification.[7] Specifically, Petitioner Rueda testified that the grievants, despite being nominally supervised by AFI II Echevarria, were compelled to perform various AFI II functions and responsibilities because Echevarria was often absent or otherwise not fulfilling her supervisory obligations.

Specifically, it states that AJOS Is "prepare comprehensive and complete evidence packets" for fair hearings, AJOS IIs "represent [HRA] before State Hearing Officers[,]" and AJOS IIIs "oversee [HRA's] fair hearing operation." (*Id.*)

[5] Other HRA divisions with their own fair hearing units included the Bureau of Fraud Investigation ("BFI"), the Family Independence Administration ("FIA"), and the Medicaid and Supplemental Nutritional Assistance Program ("SNAP") divisions.

[6] Petitioners offered voluminous testimony concerning events that occurred prior to September 2022. These facts cannot be considered timely claims pursuant to NYCCBL § 12-306(e). However, they are included in this section to provide background, support allegations of animus, and context for the timely claims discussed thereafter.

[7] The AFI I title specification states that "examples of typical tasks" include performing investigative and/or field work to ascertain facts and make determinations concerning illegal or unethical practices; making referrals to appropriate authorities regarding possible criminal prosecution or other appropriate action as mandated by rules and regulations; performing surveillance; interviewing subjects and/or witnesses; examining and analyzing financial, public, and/or agency records; reviewing and maintaining case records; testifying at hearings and court proceedings; performing joint investigations of confidential matters in conjunction with law enforcement agencies and other investigative and/or prosecutorial offices; preparing reports; and submitting recommendations in investigative cases. (Pet. Ex. 2L)

Petitioner Rueda testified that, starting in 2014, Karen Bryant-Harris, HRA Executive Director for Fair Hearings,[8] began to routinely belittle the grievants' work in IREA FHU staff meetings, making statements such as "you guys do nothing . . . the only thing you do is push a button in FHEMS." (Tr. 205) Moreover, Rueda testified that when the grievants raised the issue of their alleged out-of-title work during these staff meetings, Bryant-Harris made statements such as, "[y]ou guys are troublemakers, [you are] always complaining to the Union . . . [n]o one is going to want to work with you because you have a reputation [of] complaining." (*Id.* at 476) Petitioners Rollins, Johnson, and Warren testified similarly with respect to Bryant-Harris' routine statements belittling their work and labeling them as troublesome.

The record reflects that, around 2014, there was an HRA proposal to consolidate all fair hearing units, including the IREA FHU, into HRA's Office of Legal Affairs ("OLA"). It is clear from the record that, around 2015, the IREA FHU was consolidated into OLA. It is also clear that, subsequently, the IREA FHU continued to function as a unit within OLA and that the grievants continued to perform IREA fair hearing duties until their departure from the unit in October 2022. However, the record is not clear as to whether HRA's other fair hearing units were also brought under the OLA umbrella consistent with the proposal. The record further shows that, in March 2017, HRA's Classification & Organization Development Division reevaluated the grievants' positions and determined that IREA FHR work should be performed by AJOS IIs.[9]

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[8] We note that there is inconsistent evidence in the record regarding Bryant-Harris's precise title. Nevertheless, the record demonstrates that her supervisorial jurisdiction included the IREA FHU between June 2014 and January 2022.

[9] A March 9, 2017 memorandum ("Evaluation Memo") issued by Carol Feldman, HRA Director of Classification & Organizational Development, titled "Non-Managerial Position Evaluation Requests," states that the grievants' positions were evaluated and the "allocated [civil service] title" for their position was determined to be AJOS II. (Pet. Ex. 1A) The Memo further states that AFI II Echevarria's supervisor position was also evaluated and the "allocated [civil service] title"

Petitioners allege that at different times between 2015 and 2017, Executive Director Bryant-Harris and Ann Marie Scalia, HRA Deputy Commissioner for Fair Hearings, made other statements in staff meetings regarding their title and position in the IREA FHU that they contend evince animus towards their filing of the out-of-title grievance and created a hostile work environment. For instance, Petitioner Rueda testified that during a 2015 staff meeting, Bryant-Harris and Scalia advised the grievants that their AFI title was being phased out and would be replaced with the AJOS title. Rueda explained that Bryant-Harris told them, "you can change your title, otherwise [you are] not going to be promoted here and you will be replaced through attrition."[10] (Tr. 212) Moreover, Petitioner Rollins testified that during a 2017 meeting, Scalia told the grievants that they "would make her job much easier if [they] voluntarily changed [their] jobs into an AJOS." (*Id.* at 588)

Petitioners allege that the grievants complained to Carl Cook, Union Vice President ("VP") of Research & Negotiations, and Union Counsel Jeffrey Kreisberg ("Union Counsel") about the IREA FHU's consolidation into OLA and the evaluation of their positions, arguing that the actions were taken by HRA in retaliation for their filing of the out-of-title grievance, but no action was taken by the Union on their behalf.[11]

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was determined to be AJOS III. (*Id.*) We note that the parties and witnesses throughout this proceeding, in the pleadings, at the hearing, and in post-hearing briefs, referred to the evaluation as set forth in the Evaluation Memo as a "reclassification." On its face, the Evaluation Memo does not reclassify any positions. Further, it is undisputed that the grievants remained AFI Is following the issuance of the Evaluation Memo. Accordingly, to avoid any confusion here, we recast such references to the "evaluation," rather than "reclassification."

[10] Petitioner Rueda also testified that the grievants' titles in the FHEMS case tracking system were changed to reflect AJOS II around this time.

[11] Petitioner Rueda testified that the grievants also complained to the Union that the evaluation of their positions was unlawful because it was not authorized by the City's Department of Citywide Administrative Services ("DCAS"). Denise DePrima, HRA Deputy Commissioner for Labor

In April 2018, AJOS III Lynette Murray was hired as the IREA FHU Assistant Deputy Director to replace AFI II Sumer Kotru, who departed the unit in 2016. Murray's responsibilities included, among other duties, assigning cases to the grievants, creating their hearing schedules, and reviewing their work. Murray testified that upon her arrival to IREA FHU, the grievants "opposed" her supervision and refused to follow instructions such that it was a hostile work environment for her. (Tr. 36) Petitioner Rollins testified that the grievants were "a little bit perturbed" because they had been told that IREA FHU's consolidation into OLA would not impact their promotional opportunities. (*Id.* at 624) However, once Murray was hired, and it was clear that the grievants were "overlooked" for the promotion, Rollins explained that they collectively decided that they wished to leave OLA and return to IREA where they believed they could continue to work as AFIs and maintain upward mobility. (*Id.* at 623)

In May 2018, Petitioner Rollins and another grievant, who was also a Union Delegate, participated in a labor-management meeting to discuss the hiring of AJOS III Murray and the grievants' potential return to IREA. Among those present for the Union were VP Cook and three other Union representatives. On behalf of HRA, those in attendance included Deputy Commissioners DePrima and Scalia and Executive Director Bryant-Harris. Rollins testified that Cook asked DePrima to provide the Union with a list of available positions in IREA for which the grievants could have first transfer priority. According to Rollins, DePrima stated that, "I have a list, but [it is] not completed yet. [I am] going [to] give it to you guys as soon as [it is] completed and [grievants] can put in for a transfer to the available slots." (Tr. 625) However, Rollins testified that a couple of weeks later the grievants were concerned because they had not yet received the

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Relations, testified that it was not required to be approved by DCAS because it was approved by HRA's Classification & Organizational Development Division.

list of available positions from DePrima but had heard "through the grapevine" that IREA was actively hiring AFIs through a promotional list. (*Id.*)

Petitioner Rollins testified that Deputy Commissioner DePrima told the Union that the grievants, "could not go anywhere until the grievance was settled." (Tr. 626) Initially, Rollins testified that it was VP Cook who informed her and the Union Delegate what Deputy Commissioner DePrima had said. On rebuttal, Rollins stated that it was Aggrey Dechinea, Union Associate Vice President ("Associate VP") for Research & Negotiations, who had relayed DePrima's comments. Cook testified that the May 2018 labor-management meeting occurred, that he requested a list of available positions from DePrima, and that DePrima provided the list to both the grievants and the Union following the meeting. Cook denied that he was told by DePrima that the list would not be provided because of the out-of-title grievance.[12]

In June 2018, AJOS III Murray met with Executive Director Bryant-Harris and IREA FHU Director Eunice Arias to discuss her allegations of a hostile work environment caused by the grievants. Murray testified that Bryant-Harris stated that the grievants were very upset because they were fighting the City in an out-of-title grievance. She testified that Bryant-Harris further explained that the grievants "would be leaving soon[,]" that they would not be promoted in the IREA FHU, and that they had been advised to look for other jobs in IREA or BFI. (Tr. 39) However, Bryant-Harris noted that "[looking for other jobs in IREA or BFI] would probably be problematic because [HRA] was not very pleased with the grievance." (*Id.*) Murray testified that her hostile work environment continued throughout her time as Assistant Deputy Director between 2018 and 2022 and that she continued to raise the issue with Bryant-Harris in various meetings

[12] Deputy Commissioner DePrima was asked about the May 2018 labor-management meeting and the alleged list of positions during her testimony, but she had no recollection of either.

throughout the period. In response, Bryant-Harris told her on several occasions that the grievants would be leaving soon and that the unit would be repopulated with AJOS staff.

In January 2019, the grievants participated in an IREA FHU staff meeting with Executive Director Bryant-Harris to discuss the work environment. Petitioner Rueda testified that the grievants raised concerns that they were being retaliated against for filing the out-of-title grievance, including with respect to the evaluation of their positions and the subsequent lack of promotional opportunities. Rueda testified that Bryant-Harris told them, "no one's going to want to work with you, you guys complain too much, you keep on talking about the out-of-title grievance . . . ." (Tr. 265)

In October 2019, Petitioners' out-of-title grievance advanced to an arbitration hearing. The Union argued that the grievants were performing the duties of an AFI II. The City argued that the grievants were working in-title but, if the arbitrator determined that they were working out-of-title, the appropriate title was that of an AJOS II. Petitioner Rollins testified that in an October 2019 staff meeting, Executive Director Bryant-Harris told the grievants, "you guys are going to be removed as soon as this grievance is over. You guys are troublemakers. You're always challenging my authority and you're going to be removed, and I don't know where you're going to go because [nobody] wants to deal with you all." (Tr. 595)

AJOS III Murray and Petitioner Rueda testified that, in June 2020, Executive Director Bryant-Harris directed the grievants to work on SNAP fair hearing cases, in addition to maintaining their full complement of IREA fair hearing responsibilities. Murray testified that she complained to Bryant-Harris because she assigned the grievants' work and knew that the grievants were fully engaged, with no time for a secondary job function. Murray explained that the grievants refused to do the SNAP work, and Bryant-Harris threatened to write them up. Ultimately, the

grievants reached out to the Union, the Union intervened, and the grievants were told that they would not have to perform the SNAP work unless it was on overtime. Rueda testified that Bryant-Harris told the grievants that they "must work" overtime on evenings and weekends to perform the SNAP work. (Tr. 281) Rueda further noted that "[the IREA FHU] [was] the only unit that was . . . being asked to work mandatory overtime in the SNAP cases during the evening as well as the weekends." (*Id.* at 282)

On June 21, 2021, the arbitrator issued her decision regarding the out-of-title grievance, finding that the grievants' duties and responsibilities best fell within the title specification of an AFI I. However, she reasoned that when the grievants performed such duties without the supervision of an AFI II, they were functionally performing at an AFI II assignment level. Accordingly, she issued the following award:

> The grievance is denied in part and grant[ed] in part. The grievants are performing the duties of an [AFI I], except for those periods when they were/are not supervised by an [AFI II]. For such periods, [HRA] is directed to pay the grievants the difference in pay between an [AFI I] and an [AFI II].

(Pet. Ex. 1C)

Upon receiving an initial payment for out-of-title work pursuant to the award in January 2022, Petitioner Rueda testified that the grievants realized that they were not being paid for certain periods in which they were immediately supervised by AFI II Echevarria, despite the fact that she was largely absent and failed to fulfill her supervisorial responsibilities.[13] As a result, Rueda collected evidence from 2016 onward to demonstrate that Echevarria failed to supervise the grievants' work and presented it to the Union Counsel. In April 2022, the Union Counsel presented

[13] AFI II Echevarria retired and was replaced by AJOS III Lynette Gaddy in or around October 2020.

this evidence, along with a narrative written by Rueda, to the City, and the parties settled on a remedy soon thereafter.

VP Cook testified that, in May 2022, Deputy Commissioner DePrima called and told him that HRA planned to transfer the grievants to a newly established unit to comply with the terms of the arbitrator's award. Cook asked DePrima why the grievants could not stay where they were, and DePrima stated that a move was necessary to end the agency's ongoing liability for the out-of-title differential payments. Cook testified that DePrima did not ask for the Union's consent to transfer, nor did he agree to it on behalf of the Union. On May 18, 2022, DePrima emailed Cook specifying that HRA would be reassigning the grievants to the Vendor Review Unit ("VRU") as Vendor Compliance Investigators, an AFI I position. Petitioner Rueda testified that the Union did not inform the grievants of HRA's plan to reassign them at this time.

In June 2022, the grievants received a second payment pursuant to the arbitrator's award through May 2022, which included payment for the post-2016 periods in which they were supervised by AFI II Echevarria.

By August 2022, Executive Director Bryant-Harris had retired, and was replaced by Sandy Bryant.[14] Petitioners Rueda, Rollins, and Johnson testified that in an August 2022 IREA FHU staff meeting, Rollins asked Bryant what would happen to the grievants in the wake of the arbitrator's decision. Bryant replied that nothing was going to change and that the grievants would continue to work on IREA fair hearing cases.

On September 9, 2022, the Union participated in a virtual labor-management meeting with Deputy Commissioner DePrima to discuss the grievants' planned reassignment. Cook testified

[14] Like with Bryant-Harris, we note that there is inconsistent evidence in the record regarding Bryant's title. Nevertheless, the record demonstrates that her supervisorial jurisdiction included the IREA FHU in August 2022.

that he asked DePrima about the "purpose" of creating the VRU and the grievants' reassignment. (Tr. 996) He testified that DePrima stated that the "purpose of the creation of [the VRU] and the proposed transfer was due to the arbitrator's award." (*Id.*) Cook noted that, following the meeting, the Union was "supposed to get tasks and standards [for the grievants' new assignment as AFIs in the VRU] and a whole bunch of other stuff . . . ." (*Id.*)

Facts in the Timely Period[15]

On September 13, 2022, the grievants participated in a virtual labor-management meeting with the Union and HRA, in which HRA announced that, in late September or early October 2022, the grievants would be reassigned to IREA in the VRU. Among those present for the Union were VP Cook and Associate VP Dechinea. On behalf of HRA, those in attendance included Deputy Commissioner DePrima, Executive Director Bryant, and Alson Goddard, HRA Assistant Deputy Commissioner for Referrals & External Affairs. Petitioners Rueda and Johnson testified that DePrima stated that the grievants were being reassigned to comply with the arbitrator's decision, that the City could not afford to continue paying the AFI II differential pursuant to the arbitrator's award, and that the grievants had to be transferred to an IREA position where they could do AFI I work. Rueda testified that Cook stated that the Union had not yet received the tasks and standards for the new assignment and urged HRA to provide them as soon as possible.[16] Rueda testified that Associate VP Dechinea asked Deputy Commissioner DePrima whether there were any positions

[15] The following facts concern events occurring on or after September 12, 2022, and form the basis of Petitioners' timely claims.

[16] The grievants and the Union did not receive the tasks and standards until January 2023. Prior to the September 13, 2022 labor-management meeting, VP Cook received a copy of the "general duties and responsibilities regarding [the] new program." (Pet. Ex. 4)

that the grievants could transfer to other than those in the VRU, but DePrima said no.[17] Further, Petitioner Rueda testified that Dechinea asked DePrima whether HRA had considered allowing the grievants to otherwise remain in OLA doing fair hearing work, to which DePrima replied, "we're not revisiting" the evaluation. (Tr. 301)

Deputy Commissioner DePrima testified regarding HRA's decision to reassign the grievants. She explained that following the arbitrator's decision, HRA had been making out-of-title differential payments as required because there was no AFI II in the IREA FHU. She noted that the HRA Classification & Organization Development Division previously determined in the Evaluation Memo that IREA's fair hearing work should be performed by AJOS staff, so she explained that HRA took steps to ensure that the grievants reported to an AFI II elsewhere. Moreover, she testified that HRA determined that there was a need for AFIs to perform the work of the VRU, which she described as a new initiative.

Petitioner Rueda testified that, following the September 13, 2022 meeting, the grievants unsuccessfully attempted to schedule a meeting with the Union to complain about the pending reassignment. As a result, on October 19, 2022, Rueda emailed HRA Commissioner Jenkins, as the grievants' "final attempt to resolve [their] current situation with [HRA.]" (Pet. Ex. 1E) Rueda noted that the grievants had not yet received "official written notification" of the pending reassignment. (*Id.*) Further, Rueda described the grievants' prior history in the IREA FHU and

[17] Petitioner Rueda alleged that there were other AFI positions that the grievants could have been assigned to. In support of this assertion, Petitioners submitted a Civil Service Hiring Pool Information Handout ("Handout") noting that HRA was holding a "pre-selection civil service session" for "Associate Fraud Investigator (PROM) Exam No. 2552," on October 20, 2022. (Pet. Ex. 2B) Job descriptions for various AFI vacancies were attached to the Handout. Rueda explained that she learned of the hiring pool through her husband, who was on the "eligible list." (Tr. 376) She alleged that she did not apply to any of the listed positions because "[she] was not invited" to the pool. (*Id.* at 377)

alleged that the pending reassignment, along with numerous other acts over the years, including the consolidation into OLA and evaluation of their positions, was retaliation for filing the out-of-title grievance.[18]

Later that day, on October 19, 2022, the grievants were notified by HRA that they were to report to the VRU effective October 24, 2022.[19] On October 24, the grievants reported to the VRU.[20] They remained in the AFI I title in this unit.

Upon the grievants' departure from the IREA FHU, the unit was dissolved, and the IREA fair hearing work was reassigned to the FIA FHU. AJOS III Murray was reassigned to work on IREA fair hearing cases in FIA. In the FIA FHU, Murray testified that staff in AJOS Levels I-III are being used to perform the IREA fair hearing work.[21] Specifically, Murray explained that AJOS I staff prepare the evidence packets, AJOS II staff represent the agency at the fair hearing

[18] On November 4, 2022, Mark Neal, HRA Chief People Officer, replied to Petitioner Rueda's email, on Commissioner Jenkins' behalf, noting that the Union was advised of the grievants' reassignment to the VRU in May 2022 and that the Union received a draft job description for the Vendor Compliance Investigator position at that time. Petitioner Rueda testified that the grievants learned for the first time, upon receipt of Neal's email, that the Union had been engaged in discussions with HRA regarding the reassignment "behind [their] backs." (Tr. 312)

[19] By this time, not all the grievants who were parties to the out-of-title grievance remained in the IREA FHU. Four of the grievants had either retired or otherwise left the unit. The four Petitioners, in addition to two other grievants and the Union Delegate, were instructed to report to the VRU.

[20] Although we refer to the unit as the VRU, we note that the title for the unit changed over time. Initially, upon the grievants' reassignment, it was known as the Vendor Compliance Integrity Unit. In January 2023, it was changed to the Vendor Compliance Unit. Ultimately, it was changed to the Vendor Review Unit.

[21] We take administrative notice that, in April 2023, DCAS reclassified the JOS title series to the newly created Benefits Opportunity Specialist ("BOS") title series. As part of this reclassification, the AJOS title was reclassified to the newly created Associate Benefits Opportunity Specialist ("ABOS") title. All employees in the AJOS title were reclassified to the ABOS title, with no change in duties, status, or salary. However, as the title was AJOS through most of the time period at issue here and the parties referred to it as AJOS throughout this proceeding, we also refer to the title as AJOS.

proceedings, and she, as an AJOS III, has occasionally been assigned to cover the duties performed by the AJOS I and II staff. She noted that previously, in the IREA FHU, the grievants performed all the above-referenced duties.

AJOS III Murray testified that, despite the hostile work environment that she experienced in the IREA FHU, the grievants worked effectively and, therefore, she does not think it made sense for HRA to reassign the grievants and terminate the unit. Moreover, she explained that the FIA FHU was already overloaded with cases due to a staff shortage resulting from the COVID-19 pandemic. Accordingly, she stated that she does not think it was logical for FIA to absorb the IREA fair hearing work, particularly considering that IREA fair hearing cases were more "specialized" and "investigative" than FIA fair hearing cases. (Tr. 100) Murray testified that she articulated these sentiments to Executive Director Bryant during an October or November 2022 meeting and suggested that management recreate an IREA FHU with AJOS staff specifically to handle IREA fair hearing cases. However, Bryant told her that such a unit would require both AJOS I and II staff to avoid out-of-title issues and that was not an option with the staffing shortage.

Petitioners' Reassignment to the VRU

Assistant Deputy Commissioner Goddard testified that the VRU was formed within IREA's Division of Referrals & External Affairs, in October 2022, to work with the Office of Contracts to vet and investigate subcontractors doing business with City contractors. The Division of Referrals & External Affairs was formed in 2021 and focuses primarily on "non-client related investigations." (Pet. Ex. 25)

The Office of Contracts is a separate division, maintaining its own Vendor Compliance & Relations Unit, under the purview of the Agency Chief Contract Officer ("ACCO"). Assistant Deputy Commissioner Goddard testified that, prior to the formation of the VRU, the ACCO was

responsible for conducting subcontractor vetting investigations. He noted that the ACCO still conducts these investigations, but "their unit is relatively small" so the VRU "supplement[s] their investigative process." (Tr. 912-13) Specifically, Goddard explained that the Office of Contracts sends the VRU lists of subcontractors and the VRU researches various databases as part of comprehensive vetting investigations. The VRU is staffed with the grievants and AFI II Latesha Slater, the unit supervisor, who was hired for the position.

Working Conditions in the VRU

In October 2022, the VRU was located at 250 Livingston Street, on the fourth floor. HRA's Bureau of Eligibility Verification ("BEV") occupied parts of three floors of the same building, including the fourth floor with the VRU. Assistant Deputy Commissioner Goddard testified that the BEV's Program Director assigned the grievants' cubicle locations.

Petitioner Rollins, another grievant, and the Union Delegate were seated in a cubicle area in the middle of the floor. Petitioners Rueda, Johnson, and Warren were seated in a different cubicle area near the restrooms. Rueda testified that their workspace near the restrooms was a filthy, highly-trafficked, and noisy area, where she frequently heard toilets flushing and smelled foul odors. Johnson testified similarly and added that there were many empty seats on the floor elsewhere. Warren noted that his desk was located immediately next to a copy machine and that there was "dust and filth" under his desk. (Tr. 755) Further, Rueda stated that she observed cockroaches and water bugs crawling around the area "many times." (*Id.* at 160) Petitioners submitted two videos to illustrate the alleged poor conditions in Rueda, Johnson, and Warren's workspace. (*See* Pet. Ex. 16-17) The first video depicts their desks in a cubicle area adjacent to a hallway housing the restrooms. (*See* Pet. Ex. 16) The second video depicts a bug running on the

floor past one of the restroom doors. (*See* Pet. Ex. 17) Rueda, Johnson, and Warren worked in this workspace through September 29, 2023, when the VRU was relocated to 375 Pearl Street.

Work in the VRU

Petitioners Rueda, Johnson, and Warren testified that the grievants had no work to do for approximately four months, from their assignment to the VRU in October 2022 until February 2023.[22] Petitioner Rueda testified that she asked AFI II Slater about the unit's lack of work during this period, to which she replied that, "I'm as confused as you are . . . I've never been in a unit where there's no work." (Tr. 163) On February 21, 2023, Slater held a meeting with the unit, in which she instructed the grievants on how to access six investigative databases/websites, enter the tax identification numbers for proposed subcontractors, print/scan the "business information," and forward it to her, so she could forward it to Contract Investigators in the Office of Contracts. (Pet. Ex. 2A) Rueda testified that she asked Slater whether the grievants should be looking for any inconsistencies "with the frame of mind of being an investigator." (Tr. 164) Slater replied that all that the grievants should do is forward her the information, while acknowledging that it was "busy work, they just want you guys to do something." (*Id.* at 165) Rueda explained that the grievants were assigned this work, which she characterized as "low[-]level clerical duties," until April 19, 2023. (*Id.* at 166) Rueda, Johnson, and Warren testified that the grievants had no work at all to do between the end of April 2023 and October 2023. Petitioner Rollins testified that, prior to October

[22] In November 2022, the Office of Contracts gave the grievants training to provide a general overview on contracts, the contracting process, and the relationship between contractor and subcontractor. Petitioners Rueda and Johnson testified that various Contract Investigators with the Fraud Investigator II title also attended the training. Rueda explained that Fraud Investigator II is "a level below [AFI I]." (Tr. 387) Moreover, Rueda and Johnson alleged that these Fraud Investigator IIs were already performing the grievants' purportedly new work. Johnson testified that a Fraud Investigator II told her that he "had been in that unit" since January 2020. (*Id.* at 669)

2023, the grievants repeatedly asked Slater when they would receive work, and that Slater responded that they were waiting for personnel to be available to train them.

In October 2023, following the VRU's relocation to 375 Pearl Street, the grievants received training from the Office of Contracts' Vendor Compliance & Relations Unit regarding the procedure for vetting subcontractors.[23] Thereafter, the grievants were assigned the work of vetting subcontractors. Specifically, the grievants are responsible for various tasks, such as reviewing bid tabulation sheets and justification letters, ensuring that subcontractors' regulatory requirements are up-to-date, pulling reports from Lexis Nexis, and searching for "adverse information" on the internet. (Pet. Ex. 12) Petitioner Rueda alleged that this work is "low[-]level clerical work" that has "nothing to do with fraud allegations" and does not reflect the duties described in the job description for the Vendor Compliance Investigator position.[24] (Tr. 434) Petitioners Johnson and Warren testified similarly, noting that they do not believe that their duties rise to the level of AFI work. Rueda complained to AFI II Slater that the work is beneath her title as an AFI, and Slater told her that she "doesn't understand why they're giving [the grievants] this type of work, it has nothing to do with investigation." (*Id.* at 436)

Assistant Deputy Commissioner Goddard testified regarding the grievants' alleged lack of work. Goddard explained that initially, following their assignment to the VRU at 250 Livingston

[23] Petitioner Rueda testified that one of the Fraud Investigator IIs from the November 2022 training "came to the [October 2023] training to show [the grievants] what she does." (Tr. 387) Rueda noted that the Fraud Investigator II stated that the grievants would be "doing the same things" as her. (*Id.*)

[24] The job description for Vendor Compliance Investigator notes that the position would be responsible for, among other duties, identifying and making determinations concerning improper or fraudulent vendor practices, investigating and monitoring vendor performance of contractual obligations, conducting in-depth reviews of vendor records to verify the accuracy and authenticity of reports and records to ensure compliance with contract specifications and agency rules, and interviewing contractors in response to internal audits or contract reviews and external inquiries.

Street, the grievants were assigned "basic investigative link cases . . . in essence testing the system to check for capabilities." (Tr. 916) He noted that it was basic review work, such as checking a corporation's registration. Goddard testified that there were computer issues, such as limitations on bandwidth, hardware, and access to databases, that precluded the VRU staff from completing the "full vetting." (*Id.* at 918) Goddard testified that, following the move to 375 Pearl Street, the unit became fully operational. Petitioner Rueda denied experiencing any bandwidth or network issues or otherwise experiencing computer issues at 250 Livingston Street. She testified that she had no issues with accessing databases and did not have difficulty completing assignments due to internet issues. Further, she testified that the grievants were never provided a reason for the VRU's relocation from 250 Livingston Street to 375 Pearl Street.

Petitioner Rueda alleged that the lack of substantive investigative work in the VRU has stunted her career prospects and ability to progress at HRA. Petitioners Johnson and Warren testified similarly and expressed concerns that prospective employers may perceive their current role as a demotion from their prior job. Rueda and Rollins explained that they have tried to submit transfer requests in HRA's Transfer Request and Notification System ("Transfer System") to leave the VRU but are unable to do so because the VRU is not coded in the Transfer System.

Petitioners' Contacts with the Union Following the Reassignment

On October 31, 2022, Petitioner Rueda met with the Union Counsel in his office. Rueda testified that the Union Counsel told her that the grievants' reassignment was inappropriate and that they should have never been removed from OLA. Rueda stated that the Union Counsel told her to "let the Union know" that he was interested in challenging the reassignment. (Tr. 338) Further, she testified that the Union Counsel stated that the grievants were reassigned because they

"kicked [the City's] butts with the evidence [] provided in the grievance and they're not happy about it." (*Id.* at 339)

On November 3, 2022, numerous grievants, including Petitioners, met with VP Cook and Associate VP Dechinea at the Union's offices to discuss the reassignment. Petitioner Rueda testified that the grievants complained about the poor working conditions in the VRU and asked the Union to challenge their reassignment during the meeting, but Cook was hostile and aggressive. According to Rueda, Cook questioned why she contacted Commissioner Jenkins in October 2022 and alleged that the Commissioner would not answer her or do anything to help the grievants. Moreover, Rueda testified that Cook stated that her October 2022 email to the Commissioner was "bullshit" and that "[t]he Union is not going to do anything for you. You went over our heads." (Tr. 515) Cook acknowledged raising his voice during the meeting but denied that he was dismissive of the grievants' complaints or that he told them that he would no longer assist them. Rueda noted that the meeting concluded with Dechinea suggesting that they schedule a subsequent meeting to discuss the matter with the Union Counsel.

On November 7, 2022, Magda Santos, Union Health & Hazard Coordinator, and Roberto Fernandez, Union Organizer, visited the grievants at their VRU work location to follow-up on the complaints made to VP Cook during the November 3 meeting. Petitioners Rueda, Warren, and Johnson showed Santos and Fernandez their cubicle area to illustrate that they were the only three people seated near the restroom. Warren pointed out that his desk was located immediately next to the copy machine and that it was dusty and filthy under his desk. Rueda, Johnson, and Warren testified that Fernandez was dismissive of the complaints and remarked that they were all still receiving a paycheck. Rueda testified that, at the end of the meeting, Santos stated that the Union would follow up, but no subsequent action was taken.

On November 17, 2022, Petitioners Rueda, Rollins, and the Union Delegate met with the Union Counsel at his office to discuss the reassignment. VP Cook testified that he and Associate VP Dechinea planned to attend the meeting but had a last-minute scheduling conflict. Rueda testified that they complained about their poor working conditions and lack of work, to which the Union Counsel replied, "the City does that, whenever you complain, they just put you in a corner . . . ." (Tr. 335) Rueda asked the Union Counsel to file an improper practice petition against HRA, but he replied that "proving retaliation is very difficult." (*Id.* at 456) Nevertheless, it was agreed at the end of the meeting that Rueda was going to prepare a document for the Union Counsel summarizing the grievants' concerns. It is undisputed that Rueda never followed through with preparing the summary document.

On December 1, 2022, Petitioner Rueda emailed Union President Anthony Wells, copying VP Cook and Associate VP Dechinea, to request a meeting with him regarding the reassignment because Cook and Dechinea failed to attend the November 17 meeting with Union Counsel. Dechinea replied, explaining that he and Cook had a scheduling conflict that precluded their attendance. He noted that the Union Counsel indicated that Rueda would be putting together a summary document regarding grievants' concerns and that the Union Counsel would review the document and reach out to HRA. On December 2, Rueda replied to Dechinea, alleging that it was Cook's responsibility to collaborate with the Union Counsel on a resolution to their issues and that it was not her responsibility to draft a summary.[25] President Wells never responded to her email or reached out to schedule a meeting as requested.

[25] Petitioner Rueda testified that she did not draft the summary as was agreed upon during the November 17 meeting because it was "not [her] job[,] [nor her] responsibility." (Tr. 349) Moreover, she asserted that the grievants "brought the complaint to [the Union] . . . [and] gave them all the information they needed, and they could have just moved forward on that." (*Id.*)

VP Cook testified that he concluded that the grievants' reassignment to the VRU was not retaliation for filing the out-of-title grievance. Instead, he believes that the motivation for their reassignment was compliance with the arbitrator's award. With respect to the grievants' complaints regarding the working conditions in the VRU at 250 Livingston Street, Cook noted that the Union sent its Health & Hazard Unit to investigate. He explained that the grievants could have filed a grievance regarding their working conditions on their own, pursuant to the Citywide Agreement.[26] Regarding the grievants' job duties, Cook averred that he reviewed the grievants' tasks and standards against the proposed duties for their position in the VRU and concluded that such duties "did not violate anything." (Tr. 1004) He explained that the grievants could have filed an out-of-title grievance on their own, pursuant to the Social Services Agreement.[27] Moreover, regarding the grievants' complaints that they were assigned little to no work following their reassignment, Cook concluded that because the VRU was a new program, "it took a little bit of time for [HRA] to get [the VRU] up and rolling." (*Id.* at 1005)

In January 2023, the petitions in this matter were filed. On February 2, 2023, Petitioner Rueda emailed the Union Counsel explaining that the grievants had still not yet received the final differential payment due pursuant to the arbitrator's award for the period of May 2022 through the October 2022 reassignment. That same day, the Union Counsel replied stating that he would check with the City's Office of Labor Relations ("OLR") and get back to her. On February 17, 2023,

[26] Article XV § 1 of the Citywide Agreement defines a "grievance" as "a dispute concerning the application of the terms of this Agreement." (Union Ex. 2) Article XIV § 2(a) of the Citywide Agreement, titled "Occupational Safety and Health," provides that, "[a]dequate clean, structurally safe and sanitary working facilities shall be provided for all employees." (*Id.*)

[27] Article VI § 1 of the Social Services Agreement defines a "grievance," in relevant part, as "(a) A dispute concerning the application or interpretation of the terms of this Agreement . . . (c) A claimed assignment of Employees to duties substantially different from those stated in their job specifications." (Union Ex. 1A)

Petitioner Warren received the final payment. On February 22, 2023, the Union Counsel emailed Rueda noting that OLR informed him that the payments had been "sent out for distribution and that if not made yet [would] be made very shortly." (Pet. Ex. 2O) Ultimately, around January 2024, Petitioners Rueda, Johnson, and Rollins received their final payments.

POSITIONS OF THE PARTIES

Petitioners' Position

Petitioners argue that HRA violated NYCCBL § 12-306(a)(1), (3), and (4) by reassigning them to the VRU with poor working conditions and a lack of meaningful work in retaliation for filing the out-of-title grievance.[28] Petitioners assert that the Union's filing of the 2013 grievance on their behalf was directly related to their employment relationship with the City and therefore constitutes protected union activity. Moreover, they contend that their reassignment to the VRU

[28] NYCCBL § 12-306(a) provides, in pertinent part:

> It shall be an improper practice for a public employer or its agents:
>
> (1) to interfere with, restrain or coerce public employees in the exercise of their rights granted in section 12-305 of this chapter;
>
> ***
>
> (3) to discriminate against any employee for the purpose of encouraging or discouraging membership in, or participation in the activities of, any public employee organization;
>
> (4) to refuse to bargain collectively in good faith on matters within the scope of collective bargaining with certified or designated representatives of its public employees[.]

NYCCBL § 12-305 provides, in pertinent part:

> Public employees shall have the right to self-organization, to form, join or assist public employee organizations, to bargain collectively through certified employee organizations of their own choosing and shall have the right to refrain from any or all of such activities . . . .

was an adverse employment action because 250 Livingston Street was a "bug-infested area" where they were assigned "busy clerical work" when there was any work at all. (Pet. Br. at 40-41)

Petitioners argue that they produced evidence establishing that their reassignment was motivated by anti-union animus. First, they assert that there was temporal proximity between the Union's filing of the out-of-title grievance in November 2013 and the IREA FHU's consolidation into OLA in 2015, which they allege was the first in a series of retaliatory actions taken against them over the course of nearly a decade. Indeed, they contend that HRA's anti-union animus was reflected in countless actions and statements taken and made against the grievants between 2015 and 2022. Specifically, Petitioners note Executive Director Bryant-Harris' statements suggesting that they would never advance in HRA because of the grievance, that they were troublemakers and problematic, and that they would be replaced through attrition with the AJOS title. They cite the fact that their titles in the FHEMS tracking system were changed to AJOS II, that management attempted to force them to work on SNAP fair hearing cases in addition to their regular IREA fair hearing responsibilities in 2020, and that they were denied various job opportunities over the years. As further evidence of anti-union animus, Petitioners highlight Deputy Commissioner DePrima's decision, in 2018, to withhold the list of available positions for which the grievants could have transfer priority due to the pending grievance and HRA's failure to pay Petitioners the full sum due pursuant to the arbitrator's award prior to the start of the hearing in this matter.

Petitioners also argue that HRA failed to establish a legitimate business reason for reassigning them to the VRU. Indeed, although Deputy Commissioner DePrima testified that they were reassigned because HRA could not afford to continue to pay the out-of-title differential pursuant to the arbitrator's award, Petitioners assert that the record evidence demonstrates that this purported justification is pretextual. In support of this contention, Petitioners cite Executive

Director Bryant-Harris' 2018 statements to AJOS III Murray, made three years prior to the arbitrator's resolution of the grievance in 2021, in which she explained that the grievants would not be promoted and would have to leave the IREA FHU because of the out-of-title grievance. Petitioners aver that Bryant-Harris' statements were prescient, as they were moved to the VRU in October 2022. Indeed, Petitioners aver that these statements, coupled with her comments about how they were troublemakers and would soon be leaving the IREA FHU, demonstrate that the City's claim that they were reassigned to comply with "the arbitrator's decision is false." (Pet. Br. at 40)

Moreover, Petitioners contend that any financial rationale for reassigning them to end the differential payments is inconsistent with the evidence of record which shows that, post-reassignment, the City is "prefer[ing] to pay" between two and three AJOS staff to perform the IREA fair hearing job duties that a single grievant was performing on their own. (Pet. Br. at 39) Petitioners further highlight AJOS III Murray's perspective that the decision to reassign the grievants away from the IREA FHU seemed illogical, particularly since the unit was functioning effectively.

Petitioners also argue that the Union violated NYCCBL § 12-306(b)(3) by failing to adequately represent them regarding their reassignment to the VRU and the subsequent conditions experienced there.[29] Indeed, Petitioners assert that the grievants complained to the Union and VP Cook for years about the "several continuing and discrete adverse employment actions" taken against them for filing the out-of-title grievance, including the IREA FHU's consolidation into OLA and the evaluation of their positions, but no action was taken on their behalf. (Pet. Br. at 44)

[29] NYCCBL § 12-306(b)(3) provides, in pertinent part: "[i]t shall be an improper practice for a public employee organization or its agents . . . to breach its duty of fair representation to public employees under this chapter."

They contend that HRA's pattern of retaliation culminated in their unlawful reassignment in October 2022, which the Union similarly failed to challenge despite "stringing Petitioners along . . . . " (*Id.* at 43) Moreover, Petitioners aver that the Union took no action despite knowing that they "were not assigned investigative work for more than one year" in the VRU and that multiple levels of AJOS staff were assigned their former IREA fair hearing duties. (*Id.* at 47)

Petitioners argue that the Union failed to advocate or negotiate on their behalf between May and September 2022, after VP Cook was informed of HRA's intention to reassign the grievants to the VRU. They assert that, despite their years of complaining about the consolidation of the IREA FHU into OLA, the unlawful evaluation of their positions, and other acts of retaliation, Cook and the Union failed to provide the grievants with an opportunity to participate in the discussions regarding their reassignment or even make them aware of HRA's plan. Petitioners contend that they could have helped negotiate with HRA "based on the stagnation and lack of upward mobility" that they experienced due to the consolidation and evaluation. (Pet. Br. at 45)

Petitioners aver that, following their reassignment, it took weeks to secure the November 3, 2022 meeting with VP Cook and Associate VP Dechinea, in which Cook was hostile and aggressive and demanded to know why they involved Commissioner Jenkins. Indeed, Petitioners allege that Cook "essentially discouraged [them] from asserting their employment rights" by suggesting that they would not succeed by directly contacting Jenkins. (Pet. Br. at 45)

Petitioners argue that, following their November 3, 2022 meeting with VP Cook and Associate VP Dechinea, the Union breached its duty of fair representation by "failing to conduct an adequate investigation" into their working conditions at 250 Livingston Street. (Pet. Br. at 44) Although the Union sent Health & Hazard Coordinator Santos and Organizer Fernandez to investigate their workspace, they assert that their complaints were not taken seriously and that

Fernandez responded with a flippant remark implying that they should not complain as long as they are being paid.

As a remedy, Petitioners seek an order finding that HRA committed the specified improper practices alleged and directing that HRA and the Union cease and desist from such practices; directing their reassignment "back to their original roles as Fraud Investigators in [the IREA FHU];" "stopping HRA [from] denying them work assignments commensurate with their Fraud Investigator" title; compensating them for "being placed in a poor and unsanitary work location for over a year;" "stopping the continued stagnation of their career advancement;" declaring that "the non-payment in full of the grievance award for more than one year" caused the loss of money and awarding interest on the delayed payment; and directing the City and the Union to reimburse them for "the fees and costs incurred in bringing this proceeding."[30] (Pet. Br. at 48) Petitioners further argue that the requested remedies are consistent with Board precedent.

City's Position

The City argues that HRA did not discriminate or retaliate against Petitioners in violation of NYCCBL § 12-306(a)(1) and (3). As a preliminary matter, the City argues that, although Petitioners presented testimony regarding numerous alleged retaliatory acts occurring over a nearly ten-year period, any such actions occurring prior to September 2022 are untimely and time-barred under the NYCCBL and the Rules of the Office of Collective Bargaining (Rules of the City of New York, Title 61, Chapter 1) ("OCB Rules"). Indeed, the City asserts that the one timely claim presented by Petitioners concerns their reassignment to the VRU. Regarding Petitioners' claim

[30] Petitioners maintain that they should be given the opportunity to quantify their attorneys' fees and expenses, as well as the amount of pre-judgment interest accrued through the date of the Board's final decision, and request that the Board include "the actual amount" of attorneys' fees and expenses and pre-judgment interest in any final decision issued. (Pet. Br. at 49 n.7)

that the reassignment violated NYCCBL § 12-306(a)(4), the City notes that Petitioners have no standing to raise such a claim because the duty to bargain in good faith only runs between the employer and the union.

With respect to their retaliation claim, the City contends that Petitioners have failed to establish a *prima facie* case of retaliation. The City concedes that Petitioners engaged in union activity when the Union filed the out-of-title grievance on their behalf in 2013. However, it avers that Petitioners have failed to present any probative facts to support the conclusion that their reassignment in 2022 was motivated by the filing of their out-of-title grievance in 2013. The City argues that temporal proximity cannot serve as an element to demonstrate anti-union animus because nearly ten years passed between the filing of the grievance and Petitioners' reassignment. Moreover, it asserts that any other purported evidence of improper motivation is "based entirely on speculation, surmise, and conclusory allegations." (City Br. at 17)

Specifically, the City contends that any inference that payments due pursuant to the arbitrator's award were deliberately delayed has no support in the record as the amounts paid were "subject to negotiations" between the Union and the City and were subsequently processed in "the normal course of business." (City Br. at 17) Moreover, although Petitioners alleged that various statements were made by Executive Director Bryant-Harris that purportedly showed animus against them for filing the grievance, the City avers that such allegations were not supported by substantial evidence and were only corroborated by Petitioners. Further, to the extent otherwise untimely allegedly retaliatory actions were raised by Petitioners on background, such as the consolidation and the evaluation of Petitioners' positions, the City argues that such actions were taken in the proper exercise of their rights under NYCCBL § 12-307(b) and that there is no evidence to support any inference that they were improperly motivated. Indeed, the City asserts

that Petitioners' background evidence is insufficient and unreliable and should be disregarded in its entirety.

However, even if the Board were to find that Petitioners established a *prima facie* case of retaliation, the City contends that it established a legitimate business reason for their reassignment to the VRU consistent with its discretion to direct the methods, means, and personnel by which government operations are to be conducted under NYCCBL § 12-307(b). It avers that the arbitrator found that Petitioners and the other grievants were working out-of-title and therefore HRA directed their reassignment to remedy the contract violation. The City notes that Petitioners received substantial backpay pursuant to the arbitrator's award and would have continued to receive the salary differential between AFI I and II for as long as they were assigned to a unit without an AFI II supervisor. It argues that Petitioners' reassignment to the VRU contemplated in-title AFI I duties and that the structure of the VRU provided for the appropriate AFI II supervision, as necessitated by the arbitrator's award. The City asserts that HRA was not obliged to continue to pay the salary differential "in perpetuity" and that Petitioners' salaries returned to the AFI I level once they were assigned to perform in-title duties with appropriate AFI II supervision. (City Br. at 18) It contends that the appropriateness of the reassignment and duties involved is underscored by the Union's determination that the assignments were compliant with the Social Services Agreement and did not provide the basis for a grievance.[31]

Additionally, the City argues that Petitioners failed to establish a breach of the duty of fair representation in violation of NYCCBL § 12-306(b)(3). Like those claims brought against HRA, the City asserts that only one of Petitioners' allegations against the Union is timely, which concerns

[31] Although not clearly raised by Petitioners, the City also argues that Petitioners failed to establish an independent violation of NYCCBL § 12-306(a)(1).

the Union's alleged failure to adequately address their reassignment to the VRU. However, the City contends that the Union's actions relating to the reassignment were appropriate and that the record is devoid of facts showing that it acted in an arbitrary, discriminatory, or bad faith manner. To the contrary, the City avers that the record established that the Union responded to the many complaints brought to their attention and met with Petitioners on numerous occasions to hear their concerns.

Moreover, the City argues that Petitioners' claim that the Union failed to advocate against their reassignment is unfounded. Indeed, the City asserts that such a claim is belied by VP Cook's testimony that, upon being informed of the planned reassignment by Deputy Commissioner DePrima in May 2022, he opposed the move, requested documentation relating to the new assignment, and ultimately attended a September 9, 2022 labor-management meeting to discuss the proposed reassignment. The City avers that, based on the information provided by management about the VRU and the grievants' proposed AFI I role, the Union determined that the assignment involved appropriate in-title duties and that a grievance was not warranted.

The City argues that Petitioners' disagreement or dissatisfaction with the Union's reasoned judgment, strategic determinations, or the quality or extent of their representation does not state a violation of the duty of fair representation. The City asserts that Petitioners' claim amounts to nothing more than dissatisfaction with the Union's reasoned judgment not to pursue an unwarranted and likely unsuccessful grievance. However, it contends that to the extent any of the Union's timely actions were deemed to be negligent, mistaken, or incompetent, this would be

insufficient to establish a breach of the duty of fair representation. Accordingly, the City argues that any derivative claim against HRA pursuant to NYCCBL § 12-306(d) must also be dismissed.[32]

Union's Position

The Union argues that the petitions fail to state a claim under NYCCBL § 12-306(b)(3) because it did not act in an arbitrary, discriminatory, or bad faith manner. The Union asserts that Petitioners' complaint that their reassignment to the VRU was effectuated in retaliation for either the filing of the out-of-title grievance or the arbitrator's award is unsupported by the record. It contends that the fact that Petitioners were "extremely unhappy" about the reassignment does not establish retaliatory motive. (Union Br. at 8) To the contrary, the Union avers that the evidence supports its conclusion that the creation of the VRU and Petitioners' assignment to it was done legitimately to comply with the arbitrator's award and end HRA's liability for the out-of-title differential payments.

The Union argues that the record shows that the Union's Health & Hazard Unit investigated Petitioners' complaints regarding their alleged unsafe workspace at 250 Livingston Street and determined that such complaints were "not supported." (Union Br. at 8) However, it asserts that if Petitioners believed their complaints had merit, they could have filed their own health and safety grievance under the Citywide Agreement. Similarly, the Union contends that the Union determined that Petitioners' complaints that they were initially assigned no work and then assigned out-of-title work were either explainable or unfounded. The Union concluded that the initial lack of work was due to the newness of the VRU and that the duties ultimately assigned to them constituted in-title work.

[32] Pursuant to NYCCBL § 12-306(d), "[t]he public employer shall be made a party to any charge filed under [NYCCBL § 12-306(b)]."

Overall, the Union argues that Petitioners' claim is founded in their unhappiness with the reassignment and the discontinuance of the out-of-title differential payments that they received for years following the arbitrator's award. The Union asserts that such unhappiness and its inability to satisfy their complaints does not establish a violation of the NYCCBL. Accordingly, the Union avers that it did not breach the duty of fair representation and that Petitioners' claims must be dismissed.

DISCUSSION

As a threshold matter, we address the timeliness of Petitioners' claims. *See Nardiello*, 2 OCB2d 5, at 28 (BCB 2009) (timeliness is a threshold question). The statute of limitations for filing an improper practice petition is set forth in NYCCBL § 12-306(e), which provides, in relevant part, as follows:

> 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 this section may be filed with the board of collective bargaining within four months of the occurrence of the acts alleged to constitute the improper practice or of the date the petitioner knew or should have known of said occurrence . . . .

See also OCB Rule § 1-07(b)(4). Consequently, "[a]ny claims antedating the four[-]month period preceding the filing of the [p]etition are not properly before the Board and will not be considered." *Rondinella*, 5 OCB2d 13, at 15 (BCB 2012) (internal quotation marks omitted) (quoting *Okorie-Ama*, 79 OCB 5, at 13 (BCB 2007)). Pursuant to NYCCBL § 12-306(e) and OCB Rule § 1-12(f), the four-month period begins to accrue on the day after the alleged violations occurred.

The various petitions in this matter were submitted throughout January 2023 prior to their consolidation, the first of which was filed on January 13, 2023. Based on this filing date, Petitioners' consolidated claims must have arisen on or after September 12, 2022, in order to be

timely. Accordingly, to the extent Petitioners allege claims arising prior to September 12, 2022, such claims are untimely and will not be discussed.[33] Therefore, we proceed to consider the merits of Petitioners' timely allegations against HRA and the Union arising on or after September 12, 2022, which include their reassignment to the VRU and the related events that followed. Specifically, Petitioners allege that HRA violated NYCCBL § 12-306(a)(1), (3), and (4) by reassigning them to the VRU with poor working conditions and a lack of meaningful work. Petitioners also argue that the Union violated NYCCBL § 12-306(b)(3) by failing to adequately represent them regarding their reassignment to the VRU and the conditions experienced there.

Claims Against HRA

As a preliminary matter, we find that Petitioners lack standing to raise refusal to bargain claims against HRA under NYCCBL § 12-306(a)(4). *See, e.g.*, *Johnson*, 17 OCB2d 3, at 7 (BCB 2024); *Lawtone-Bowles*, 15 OCB2d 4, at 8 (BCB 2022); *Proctor*, 3 OCB2d 30, at 11 (BCB 2010). The Board has repeatedly held that the duty to bargain in good faith only runs between the public employer and union. *See Witek*, 7 OCB2d 10, at 10-11 (BCB 2014) ("[T]he duty to bargain in good faith runs between the employer and the [u]nion and is enforceable by each of those parties under NYCCBL § 12-306(b)(2) (breach of a union's duty) and § 12-306(a)(4) (breach of employer's duty).") (internal quotation marks omitted) (quoting *Brown*, 75 OCB 30, at 7-8 (BCB 2005)). Accordingly, we dismiss Petitioners' claims under NYCCBL § 12-306(a)(4).

NYCCBL § 12-306(a)(3) provides that it shall be an improper practice for a public employer or its agents "to discriminate against any employee for the purpose of encouraging or discouraging membership in, or participation in the activities of, any public employee

[33] Events occurring prior to September 12, 2022, are considered only as relevant background information. *See Local 376, DC 37*, 13 OCB2d 3, at 13 (BCB 2020); *Buttaro*, 12 OCB2d 23, at 13 (BCB 2019).

organization." A violation of NYCCBL § 12-306(a)(3) is also a derivative violation of NYCCBL § 12-306(a)(1); *see Kalman*, 11 OCB2d 32, at 11 (BCB 2018); *Local 621, SEIU*, 5 OCB2d 38, at 2 (BCB 2012).

A "crucial determination in [NYCCBL § 12-306(a)(3)] claims [is] whether a petitioner has alleged an adverse employment action taken by an employer." *Andreani*, 2 OCB2d 40, at 28 (BCB 2009); *see also Moriates*, 1 OCB2d 34, at 13 (BCB 2008), *affd.*, *Matter of Moriates v. NYC OCB*, Ind. No. 114094/08 (Sup. Ct. N.Y. Co. Mar. 15, 2010) (Sherwood, J.) (failure to allege adverse employment action fatal to NYCCBL § 12-306(a)(3) claim). Here, we find that Petitioners' involuntary reassignment from the IREA FHU, where they allege that they performed desirable fair hearing work, to the VRU, where they allege that they were initially assigned no work and are currently performing undesirable vendor compliance work, constitutes an adverse employment action.[34] *See, e.g.*, *Fulgieri*, 11 OCB2d 34, at 17 (BCB 2018) (finding that an involuntary transfer was an adverse employment action); *OSA*, 7 OCB2d 20, at 27 (BCB 2014) (same).

To determine whether an action violates NYCCBL § 12-306(a)(1) and (3), this Board applies the test enunciated in *City of Salamanca*, 18 PERB ¶ 3012 (1985), and adopted by the Board in *Bowman*, 39 OCB 51 (BCB 1987), and its progeny. The test states that, to establish a *prima facie* claim of retaliation, a petitioner must demonstrate that:

[34] However, we do not find that the assignment of Petitioners Rueda, Johnson, and Warren's physical workspace at 250 Livingston Street constitutes a separate adverse employment action. Indeed, under the specific facts of this case, upon review of the full record, including videos entered into evidence by Petitioners depicting the workspace and conditions, we find that there is insufficient evidence to conclude that the workspace assignment constitutes an adverse action. Moreover, even assuming *arguendo* that the assignment were an adverse action, we would find that there is insufficient evidence to conclude that it was made in retaliation for union activity. Notably, it is undisputed that all the grievants were assigned to the same floor as staff working in the BEV, and at least three other grievants, including Petitioner Rollins and the Union Delegate, were seated elsewhere and not subject to the challenged conditions.

> 1. The employer's agent responsible for the alleged discriminatory action had knowledge of the employee's union activity; and
>
> 2. The employee's union activity was a motivating factor in the employer's decision.

Bowman, 39 OCB 51, at 18-19; *see also Kalman*, 11 OCB2d 32, at 11. The first prong of the *prima facie* case is satisfied where "the employer is shown to have knowledge of the protected union activity." *CSTG, L. 375*, 7 OCB2d 16, at 20 (BCB 2014) (citing *Local 376, DC 37*, 4 OCB2d 58, at 11 (BCB 2011); *Local 376, DC 37*, 73 OCB 15, at 13 (BCB 2004)).

In this case, it is undisputed that Petitioners sought the Union's assistance regarding alleged out-of-title work and that the Union filed a grievance on their behalf in November 2013. Subsequently, the Union pursued the grievance on Petitioners' behalf over a period of nearly ten years, which culminated in the arbitrator's award in June 2021. Thereafter, Petitioners sought the Union's assistance regarding their concerns with the adequacy of payment received pursuant to the arbitrator's award, and the Union raised these concerns with HRA in April 2022. *See CSTG, L. 375*, 7 OCB2d 9, at 17 (BCB 2014) ("The Board has long held that the filing of contractual grievances constitutes activity that is protected under the NYCCBL.") (internal quotation marks omitted) (quoting *DC 37*, 6 OCB2d 24, at 29 (BCB 2013)); *see also County of Nassau*, 21 PERB ¶ 4547, at 4619 (ALJ 1988), *affd.*, 21 PERB ¶ 3053 (1988) (finding that the "successful pursuit of grievances" was protected activity under the Taylor Law). Moreover, it is undisputed that the City had knowledge of this protected activity. *See, e.g.*, *DC 37, L. 1113*, 77 OCB 33, at 26 (BCB 2006) (noting that "an employer's participation in [grievance] proceedings is sufficient to establish its knowledge of the employee's protected activity") (citations omitted); *Colella*, 79 OCB 27, at 53 (BCB 2007); *DC 37*, 6 OCB2d 24, at 29. Accordingly, we find that Petitioners have satisfied the first prong of the *prima facie* case.

To satisfy "the second prong of the *Bowman*/*Salamanca* test requires proof of a causal connection between the alleged improper act and the protected [u]nion activity." *Kalman*, 11 OCB2d 32, at 12. Typically, causation is "proven through the use of circumstantial evidence, absent an outright admission." *Benjamin*, 4 OCB2d 6, at 16 (BCB 2011) (quoting *Local 2627, DC 37*, 3 OCB2d 37, at 16 (BCB 2010)); *see also CWA, L. 1180*, 43 OCB 17, at 13 (BCB 1989). However, a "petitioner must offer more than speculative or conclusory allegations." *SBA*, 75 OCB 22, at 22 (BCB 2005). Such "allegations of improper motivation must be based on statements of probative facts." *Feder*, 5 OCB2d 14, at 25 (BCB 2012). It is well-established that while "temporal proximity alone is not sufficient to establish causation, the temporal proximity between the protected union activity and the alleged retaliatory action, in conjunction with other facts supporting a finding of improper motivation, [may be] sufficient to satisfy the second element of the *Bowman*/*Salamanca* test." *Feder*, 4 OCB2d 46, at 44 (BCB 2011); *see also SSEU, L. 371*, 75 OCB 31, at 13 (BCB 2005), *affd.*, *Matter of Soc. Serv. Empl. Union, Local 371 v. N.Y.C. Bd. of Collective Bargaining*, Index No. 116054/05 (Sup. Ct. N.Y. Co. May 30, 2006) (Stallman, J.), *affd.*, 47 A.D.3d 417 (1st Dept. 2008).

We find that Petitioners presented sufficient evidence of an improper motivation for their reassignment to the VRU to satisfy the second prong of the *prima facie* case. Petitioners offered direct evidence of anti-union animus via various unrebutted statements made to them by Executive Director Bryant-Harris starting in 2014, including those made to the grievants during IREA FHU staff meetings suggesting that they were "troublemakers" for raising concerns with the Union and those made to AJOS III Murray in 2018 noting that HRA "was not very pleased with the grievance." (Tr. 39; 476; 595); *see Colella*, 79 OCB 27, at 55-57 (crediting the petitioner's testimony "concerning specific objectionable statements made directly to him by his supervisors

that reflect[ed] anti-union animus"). Further, we find temporal proximity between the arbitrator's award in June 2021, the Union's advocacy regarding the adequacy of payment received by Petitioners pursuant to the award in April 2022, and Petitioners' ultimate reassignment to the VRU in October 2022. Accordingly, we find that Petitioners have proffered sufficient evidence of an improper motivation for their reassignment to state a *prima facie* case of retaliation.[35]

Once *prima facie* evidence of retaliation has been established, our analysis shifts to whether the employer has refuted the *prima facie* evidence and/or established a legitimate business reason for its action. *See Local 30, IUOE*, 8 OCB2d 5, at 23 (BCB 2015); *DC 37, L. 1113*, 77 OCB 33, at 25 (BCB 2006). If the employer refutes the *prima facie* evidence or establishes a legitimate business reason, the retaliation claim is dismissed. *See SSEU, L. 371*, 12 OCB2d 15, at 11-12 (BCB 2019).

We find that the City has established a legitimate business reason for Petitioners' reassignment to the VRU. The arbitrator's decision regarding the out-of-title grievance found that HRA was liable to pay the grievants "the difference in pay between an [AFI I] and an [AFI II]" for such periods that they "were/are not supervised by an [AFI II]." (Pet. Ex. 1C) We credit Deputy Commissioner DePrima's testimony that, following the arbitrator's decision, HRA reassigned Petitioners to the VRU to be supervised by an AFI II and thus end the agency's liability for the out-of-title differential payments. Moreover, DePrima's testimony regarding HRA's rationale for Petitioners' reassignment is consistent with statements attributed to her by VP Cook and Petitioners following the arbitrator's decision. For example, in May 2022, DePrima told Cook that

[35] We note that Petitioners suggest that their allegedly late receipt of the final differential payments due pursuant to the arbitrator's award is additional indicia of discrimination. However, we do not find sufficient evidence to conclude that any delay in receipt of these payments was retaliatory.

Petitioners' reassignment was necessary to end HRA's ongoing liability for the out-of-title differential payments.

It is undisputed that, as a result of their reassignment to the VRU, Petitioners are now supervised by an AFI II and that, as a result, HRA's liability for the out-of-title differential payments under the arbitration decision ceased. HRA's desire to cease its out-of-title liability is a facially legitimate justification for Petitioners' reassignment. *See, e.g.*, *Local 1180, CWA*, 8 OCB2d 36, at 21 (BCB 2015) ("transferring an employee to remedy an out-of-title grievance does not constitute unlawful retaliation"); *Cerra*, 27 OCB 27, at 8 (BCB 1981) ("diminution in responsibility and the reduction in duties were not acts of [] discrimination . . . [when] taken to resolve [an] out-of-title [] grievance"); *DC 37, L. 3621*, 11 OCB2d 5, at 30 (BCB 2018) (holding that the Fire Department's desire to limit overtime liability constituted a legitimate business reason for its decision to cease pre-shift briefings) (citing *Local 1180, CWA*, 8 OCB2d 36, at 21; *Cerra*, 27 OCB 27, at 8).

In so finding, we note that HRA's determination to reassign Petitioners to be supervised by an AFI II, rather than assigning an AFI II to supervise their performance of fair hearing work in the IREA FHU and OLA, is consistent with HRA's decision to assign fair hearing work to the AJOS title. That decision by HRA was reflected in the 2017 Evaluation Memo regarding the evaluation of Petitioners' FHR positions. Moreover, the use of the AJOS title to perform fair hearing work dates back to the early 2000s. *See L. 371, SSEU*, 76 OCB 1, at 14 (noting that the AJOS title was assigned fair hearing work in HRA's "Job Centers" upon the title's inception). Indeed, consistent with that decision is the fact that the IREA FHU was eliminated and AJOS III Murray's testimony that Petitioners' former IREA fair hearing duties are now being performed by AJOS employees in the FIA.

Further, we reject Petitioners' allegation that HRA's financial justification for Petitioners' reassignment was pretextual. Specifically, Petitioners cite the fact that multiple levels of AJOS are being used to perform the work that a single grievant previously performed on their own as an AFI I. However, we find that this fact is consistent with HRA's managerial prerogative to organize and assign work and utilize the AJOS title to perform fair hearing work. Indeed, the assignment of these duties to multiple levels of AJOS is consistent with the duties described in the AJOS title specification, which notes that AJOS Is "prepare comprehensive and complete evidence packets" for fair hearings, AJOS IIs "represent [HRA] before State Hearing Officers," and AJOS IIIs "oversee [HRA's] fair hearing operation."[36] (Pet. Ex. 2L) Petitioners also cite Executive Director Bryant-Harris's statement to AJOS III Murray in 2018 suggesting that the grievants would not be promoted in the IREA FHU and would ultimately have to leave. We do not find this statement to demonstrate a pretextual motive. On its face, it simply reflects the reality of HRA's decision to use the AJOS title to perform the duties of FHRs.

Moreover, we do not find that Petitioners' initial lack of work in the VRU or the fact that their current duties may be less substantive than the work they previously performed in the IREA FHU is evidence of pretext.[37] We acknowledge that the record illustrates that Petitioners

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[36] The AJOS title specification entered into evidence by Petitioner is dated May 2021 and includes the breakdown of these fair hearing duties. Therefore, HRA's assignment of fair hearing duties as well as the breakdown of those duties between assignment levels was implemented prior to the arbitration award.

[37] In reaching this conclusion, we credit Assistant Deputy Commissioner Goddard's testimony regarding the role of the VRU and its function to supplement the Office of Contracts' investigative process in vetting subcontractors. We acknowledge that Petitioners believe that their current duties as part of this investigative process are inconsistent with those contemplated by the AFI title specification. However, our decision does not reach the issue of whether Petitioners' current duties are substantially different from those set forth in the AFI title specification, the standard applicable in a contractual out-of-title claim. The Board has no jurisdiction to adjudicate such a claim. *See*,

experienced significant institutional disorganization upon their reassignment to the VRU, including multiple periods in which they had no work and a period in which AFI II Slater described their duties as "busy work." (Tr. 165) However, we conclude that this disorganization, rather than evincing a retaliatory scheme by HRA to punish Petitioners, is consistent with a hasty effort to establish the VRU and assign Petitioners to it in order to cease HRA's liability for the out-of-title differential payments. Moreover, it is undisputed that after the unit's relocation to 375 Pearl Street, Petitioners were assigned a more fulsome range of work vetting subcontractors that they continue to perform.

Therefore, for the reasons stated above, we find that the City has established a legitimate business reason for Petitioners' reassignment to the VRU. *See Local 1180, CWA*, 8 OCB2d 36; *Cerra*, 27 OCB 27, at 8; *DC 37, L. 3621*, 11 OCB2d 5. Accordingly, we dismiss all related claims under NYCCBL § 12-306(a)(1) and (3).[38]

Claims Against the Union

NYCCBL § 12-306(b)(3) makes it "an improper practice for a public employee organization or its agents . . . to breach its duty of fair representation to public employees under this chapter." This duty requires that "a union must not engage in arbitrary, discriminatory, or bad faith conduct in negotiating, administering, or enforcing a collective bargaining agreement."

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e.g., *NYC Deputy Sheriffs Assn.*, 14 OCB2d 9, at 10 n.7 (BCB 2021). Here, we merely conclude that there is insufficient evidence to establish that the assignment of such duties was retaliatory.

[38] We decline to analyze Petitioners' allegations as independent violations of NYCCBL § 12-306(a)(1) because such claims, to the extent they were raised, rely on the same underlying facts and arguments as their discrimination claims. *See DC 37, L. 2507*, 15 OCB2d 2, at 33 n.33 (BCB 2022); *DC 37, L. 983*, 6 OCB2d 10, at 21 n.13 (BCB 2013); *SSEU, L. 371*, 79 OCB 34, at 14 (BCB 2007). Additionally, since we find the conduct was not discriminatory under NYCCBL § 12-306(a)(3), we find no derivative violation of NYCCBL § 12-306(a)(1). *See DC 37, L. 1549*, 13 OCB2d 20, at 21 (BCB 2020).

Nealy, 8 OCB2d 2, at 16 (BCB 2015) (citing *Walker*, 6 OCB2d 1 (BCB 2013); *Okorie-Ama*, 79 OCB 5 (BCB 2007)). The "burden of pleading and proving a breach of this duty lies with the petitioner and cannot be carried simply by expressing dissatisfaction with the outcome . . . or questioning the strategic or tactical decisions of the Union." *Nealy*, 8 OCB2d 2, at 16 (internal quotation marks omitted) (quoting *Okorie-Ama*, 79 OCB 5, at 14); *see also Gertskis*, 77 OCB 11, at 11 (BCB 2006). Further, "to meet this burden, a petitioner must allege more than negligence, mistake or incompetence." *Bonnen*, 9 OCB2d 7, at 17 (internal quotation marks omitted) (quoting *Sims*, 8 OCB2d 23, at 15 (BCB 2015)). "Even errors in judgment do not rise to the level of a breach of this duty, unless it can be shown that the union's actions were arbitrary, discriminatory, or in bad faith." *Feder*, 9 OCB2d 33, at 34 (BCB 2016) (citations omitted).

Arbitrarily ignoring a meritorious grievance constitutes a breach of the duty of fair representation. *See Morales*, 5 OCB2d 28, at 23 (BCB 2012), *affd.*, *Matter of City of New York, et al. v. Morales, et al.*, Index No. 103612/12 (Sup. Ct. N.Y. Co. Mar. 31, 2016) (Bluth, J.), and *Matter of United Fedn. of Teachers, Local 2, AFT, AFL-CIO v. NYC Bd. of Collective Bargaining*, 51 Misc. 3d 817 (Sup. Ct. N.Y. Co. 2016), *affd.*, *Matter of United Fedn. of Teachers v. City of New York*, 154 A.D.3d 548 (1st Dept. 2017) (citations omitted). However, a union "'enjoys wide latitude in the handling of grievances as long as it exercises discretion with good faith and honesty [and] the Board will not substitute its judgment for that of a union or evaluate its strategic determinations.'" *Turner*, 3 OCB2d 48, at 15 (BCB 2010) (additional citations and editing marks omitted) (quoting *Edwards*, 1 OCB2d 22, at 21 (2008)). Thus, a union is not obligated to advance every grievance, and a union does not breach the duty of fair representation merely because a member disagrees with the union's tactics or strategic decisions. *See Nardiello*, 2 OCB2d 5, at 40; *Del Rio*, 75 OCB 6, at 13 (BCB 2005). Indeed, "[a] union has the implied authority, as

representative, to make a fair and reasonable judgment about whether a particular complaint is meritorious and to evaluate the degree of prosecution to which it is entitled." *Sicular*, 79 OCB 33, at 13 (BCB 2007) (citation omitted).

In this case, Petitioners have failed to establish that the Union's conduct was arbitrary, discriminatory, or taken in bad faith. Petitioners argue that the Union breached its duty of fair representation by failing to adequately represent them regarding their reassignment to the VRU. We do not find that the record supports this claim. The record shows that Union personnel met with Petitioners on at least three different occasions in October and November 2022 to discuss the reassignment, including Petitioners' concerns regarding their working conditions at 250 Livingston Street and their lack of work in the VRU. Additionally, following Petitioners' November 3, 2022 meeting with VP Cook and Associate VP Dechinea, in which they complained about their working conditions, it is undisputed that the Union sent Health & Hazard Coordinator Santos and Organizer Fernandez to inspect their workspace.

While acknowledging these efforts, Petitioners allege various issues regarding the quality of representation that they received. For instance, they contend that it took weeks to secure the November 3 meeting with VP Cook and Associate VP Dechinea, that Cook was hostile and aggressive during the November 3 meeting, and that Santos and Fernandez did not take their complaints seriously upon inspection of their workplace. However, the Board has long held that "dissatisfaction with the quality or extent of representation does not constitute a breach of the duty of fair representation." *Ruiz*, 15 OCB2d 41, at 12 (BCB 2022) (quoting *Shymanski*, 5 OCB2d 20, at 11 (BCB 2012)); *see also Hogans*, 16 OCB2d 13, at 11 (BCB 2023) (finding that the petitioner's disagreement with the guidance provided and positions taken by the union regarding her warning memorandum did not state a violation of the duty of fair representation); *West*, 14 OCB2d 12, at

16 n.20 (BCB 2021) (explaining that the petitioner was "merely alleging that [the union representative] was not doing his job properly, which is insufficient to establish a breach of the duty of fair representation"). Similarly, the Board has long held that "dissatisfaction with the manner of communication by a union does not state a claim for a breach of the duty of fair representation." *Thigpen*, 17 OCB2d 17, at 6-7 (BCB 2024) (finding that the petitioner's complaints about slow and inadequate communication by the union did not breach the duty of fair representation) (citing *Feder*, 9 OCB2d 33, at 37 (BCB 2016); *Turner*, 3 OCB2d 48, at 16 (BCB 2010)). Accordingly, we reject all such complaints regarding the quality of the Union's representation and communication.[39]

Moreover, we do not find that the Union violated its duty of fair representation by failing to advise Petitioners of HRA's intention to reassign them when VP Cook was first informed of it in May 2022 and otherwise failing to provide Petitioners with an opportunity to participate in discussions with HRA regarding the reassignment between May and September 2022. The Board has consistently held that it "will not substitute its judgment for that of a union or evaluate its strategic determinations." *Hogans*, 16 OCB2d 13, at 9 (internal quotation marks omitted) (quoting *Walker*, 79 OCB 2, at 14 (BCB 2007)); *Gaud*, 41 OCB 58, at 8, 12-13 (BCB 1988) (finding no breach of the duty of fair representation where, among other allegations, the petitioner alleged that

[39] We acknowledge Petitioner Rueda's testimony that VP Cook stated during the November 3, 2022 meeting that "[t]he Union is not going to do anything for you . . . [y]ou went over our heads" by directly emailing Commissioner Jenkins. (Tr. 515) Cook denied telling Petitioners that he would no longer assist them. However, even crediting Rueda's version of events, the record shows that, irrespective of any particular statements made by Cook during the November 3 meeting, the Union continued to investigate Petitioners' concerns with the reassignment. In fact, soon thereafter, on November 7, 2022, the Union sent Health & Hazard Coordinator Santos and Organizer Fernandez to inspect their workspace at 250 Livingston Street, and on November 17, 2022, the Union Counsel met with Petitioners to further discuss their concerns regarding the reassignment.

the union "failed to inform him of conversations held with representatives of the [employer]"); *see also Richards*, 15 OCB2d 14, at 15 (BCB 2022). Accordingly, we reject such claims.

Finally, we do not find that the Union breached its duty of fair representation by declining to file a grievance or otherwise challenge Petitioners' reassignment to the VRU and the conditions experienced there. The record shows that following various meetings with HRA and Petitioners, the Union concluded that the grievants' reassignment was not retaliation for filing the out-of-title grievance and was instead motivated by HRA's desire to comply with the arbitrator's award. The Union further determined that Petitioners' proposed duties in the VRU would not support a meritorious out-of-title grievance, that Petitioners' initial lack of work in the VRU was explained by the fact that it was a new unit which took some time to ramp up, and that Petitioners' working conditions at 250 Livingston Street were insufficient to file a health and safety grievance. We acknowledge that Petitioners vehemently disagree with the Union's conclusions. However, given the Union's "implied authority, as representative, to make a fair and reasonable judgment about whether a particular complaint is meritorious and to evaluate the degree of prosecution to which it is entitled," we do not find that such conclusions establish a violation of the duty of fair representation. *Sicular*, 79 OCB 33, at 13; *see also Turner*, 3 OCB2d 48, at 15; *Nardiello*, 2 OCB2d 5, at 40.

In reaching the above determinations, we note that there is insufficient evidence in the record to establish that any of the actions or positions taken by the Union regarding Petitioners' reassignment to the VRU were arbitrary, discriminatory, or motivated by bad faith. Indeed, Petitioners have not shown that the Union handled their reassignment differently than that of other bargaining unit members. *See D'Onofrio*, 79 OCB 3, at 20 (BCB 2007) (finding no breach of the duty of representation where the petitioner did not show that the union did more for others in the

same circumstances than it did for the petitioner); *Schweit*, 61 OCB 36, at 15 (BCB 1998) (same); *Fash*, 15 OCB2d 15, at 23 n.26 (BCB 2022); *Stathes*, 14 OCB2d 3, at 10-11 n.11 (BCB 2021).

Therefore, we find that the Union did not breach its duty of fair representation. Accordingly, we dismiss all related claims under NYCCBL § 12-306(b)(3).

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 petitions, docketed as BCB-4499-23; 4501-23; 4502-23; and 4503-23, filed by Wayne Warren, Paulina Rueda, Ladinia Johnson, and Michelle Rollins, against the City of New York, the New York City Human Resources Administration, and Social Service Employees Union, Local 371, are hereby dismissed in their entirety.

Dated: March 6, 2025
New York, New York

SUSAN J. PANEPENTO
CHAIR

ALAN R. VIANI
MEMBER

M. DAVID ZURNDORFER
MEMBER

CAROLE O'BLENES
MEMBER

ALAN M. KLINGER
MEMBER

HARRY GREENBERG
MEMBER