# *Piskunov,* 18 OCB2d 8 (BCB 2025)

(IP) (Docket No. BCB-4586-24)

***Summary of Decision*:** Petitioner, *pro se*, appealed the determination of the Executive Secretary of the Board of Collective Bargaining dismissing his petition as untimely. Petitioner argued that his claims were timely because he had not yet received a final determination from DCAS regarding his suspension without pay and the Union had not filed a grievance or responded to all of his emails. The Board found that the Executive Secretary properly deemed the petition untimely and denied the appeal. ***(Official decision follows.)***

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**OFFICE OF COLLECTIVE BARGAINING**
**BOARD OF COLLECTIVE BARGAINING**

**In the Matter of the Improper Practice Proceeding**

***-between-***

**OLEG PISKUNOV,**

***Petitioner,***

***-and-***

**LOCAL 375, DISTRICT COUNCIL 37, AFSCME, AFL-CIO, and THE NEW YORK CITY DEPARTMENT OF CITYWIDE ADMINISTRATIVE SERVICES,**

***Respondents.***

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## DECISION AND ORDER

On November 20, 2024, Oleg Piskunov ("Petitioner"), a self-represented individual, filed an improper practice petition against Local 375 ("Local 375" or "Union"), District Council 37 ("DC 37"), AFSCME, AFL-CIO and the New York City Department of Citywide Administrative Services ("DCAS" or "City"). Petitioner alleges that the City violated the New York City Collective Bargaining Law (New York City Administrative Code, Title 12, Chapter 3) ("NYCCBL") by retaliating against him and not issuing a final determination regarding a

suspension without pay and that the Union violated the NYCCBL by failing to file a grievance seeking a final determination of that disciplinary action after he retired. Pursuant to § 1-07(c)(2) of the Rules of the Office of Collective Bargaining (Rules of the City of New York, Title 61, Chapter 1) ("OCB Rules"), the Executive Secretary dismissed the petition on the ground that all the claims were untimely ("ES Determination").[1] Petitioner appealed the ES Determination ("Appeal") on December 4, 2024, arguing that his petition should be deemed timely because the improper practice alleged was ongoing since he had not yet received a final determination regarding his suspension without pay from DCAS and the Union had not filed a grievance or responded to all his emails. The Board finds that the Executive Secretary properly deemed the petition untimely. Accordingly, the Appeal is denied.

## BACKGROUND

Petitioner was a Construction Project Manager at DCAS prior to his retirement. Local 375 is the certified bargaining representative for Construction Project Managers.

### The Petition

On January 27, 2024, Petitioner received a phone call from Michael Troman, President of Local 375, in response to an email from Petitioner. Petitioner does not specify the subject matter of the email or phone call, but states that President Troman "started to pretend as if he is on [his]

[1] Petitioner alleges that subsections "1, 2, 3" of NYCCBL § 12-306 were violated. (Pet. at 1) In reviewing the sufficiency of the petition, the Executive Secretary stated that it was not clear if Petitioner was asserting claims against DCAS, the Union, or both, but that a determination need not be made as all claims were deemed untimely. As noted below, based on Petitioner's allegations, we construe the petition to allege violations of NYCCBL § 12-306(a)(1) and (3) against DCAS and NYCCBL § 12-306(b)(3) against the Union. *See Bonnen*, 9 OCB2d 7, at 15 (BCB 2016) (Board draws from the pleadings "all permissible inferences in favor of" a self-represented petitioner).

side," told him to follow his instructions "otherwise he could not protect [him]," and "created an outrageous plot against him with DCAS." (Pet. at 2) In February 2024, Petitioner received a Step 1 Determination regarding an unspecified disciplinary matter, as a result of which he received a recommended 30-day suspension without pay.[2] On February 29, 2024, Petitioner sent an email to DCAS Agency Attorney Jakub Kazior ("Agency Attorney"), copying President Troman, that described the Step I Determination as a "totally false case created due to continued intimidation and retaliation." (Pet. at 3)

On April 2, 2024, Petitioner emailed the Agency Attorney requesting a "copy of DCAS's final Agency Determination Notice regarding [his] suspension." (Pet. at 6) The Agency Attorney replied that same day, stating that "[t]here was no final determination because [Petitioner] retired before the case was fully adjudicated." (Pet. at 6) On May 10, 2024, Petitioner reiterated his request for a final determination on the disciplinary matter in an email to President Troman and the Agency Attorney, copying 11 other DCAS officials and DC 37 General Counsel Robin Roach. No responses to Petitioner's requests were provided in the record.

On November 6, 2024, Petitioner emailed the DCAS Human Resources Department requesting an update on the final determination of the disciplinary matter. On November 15, 2024, he emailed Human Resources again with the same request, this time copying DC 37 General Counsel Roach and four DCAS officials. (Pet. at 4)

On November 14, 2024, Petitioner emailed President Troman and DC 37 General Counsel Roach requesting that they bring a grievance against DCAS on his behalf regarding DCAS' failure

[2] Petitioner requested an appeal of his suspension with the NYC Civil Service Commission on March 29, 2024. The NYC Civil Service Commission denied his request on April 5, 2024, because his "disciplinary case was never fully adjudicated, and no final [decision] imposing discipline was ever issued." (Pet. at 7)

to issue a final determination on his suspension. (Pet. at 5)

**The Executive Secretary's Determination**

On November 27, 2024, the Executive Secretary issued the ES Determination pursuant to OCB Rule § 1-07(c)(2), dismissing the petition for untimeliness. The Executive Secretary found that any actions taken by DCAS in violation of NYCCBL § 12-306(a)(1), (2), or (3) occurred more than four months prior to the filing of the petition and are therefore time-barred. She also found that in light of the fact that Petitioner sought assistance from the Union on May 10, 2024, but never received a response, he knew or should have known more than four months prior to the filing of the petition that the Union would not assist him.

Based on the November 20, 2024 filing date, the Executive Secretary determined that Petitioner's claims must have arisen on or after July 19, 2024, in order to be timely. Therefore, because the petition was filed on November 20, 2024, and the alleged facts occurred prior to July 19, 2024, the petition was untimely. While Petitioner sent additional emails to Union and DCAS officials a few weeks prior to filing the petition and within the four-month time period, the Executive Secretary ruled that "those alleged interactions with the Union or DCAS that occurred after July 19, 2024, relate back to events occurring prior to that date and/or prior to your retirement. Therefore, they are also barred by the statute of limitations." (ES Determination at 2)

**The Appeal**

In his Appeal, Petitioner asserts that his petition was timely because he "sent multiple emails to DC 37 and DCAS on time" and because "the alleged improper practice continues" since he does not have a final determination regarding his suspension and Local 375 and DC 37 did not respond to all of his emails requesting that they file a grievance. (Appeal at 1)

With his Appeal, Petitioner submitted 28 emails between himself, DCAS officials, and

Union representatives that were not included with the initial petition. They included a March 13, 2024 email exchange between Petitioner and President Troman in which Petitioner asked President Troman what he needed to do to respond to the Step 1 Determination, and President Troman instructed him to contact the Agency Attorney for instructions. In an email exchange with the Agency Attorney the same day, copying President Troman, Petitioner asked how to respond to the Step 1 Determination and was told that no response was necessary in light of his pending retirement.[3] The Appeal additionally included emails to DC 37 General Counsel Roach dated March 27, March 28, April 8, April 17, and May 6, 2024, in which Petitioner accused President Troman of corruption, requested counsel separate from Local 375, and requested a final determination of his suspension without pay.

## DISCUSSION

"Recognizing that a [self-represented] Petitioner may not be familiar with legal procedure, the Board takes a liberal view in construing a [self-represented] Petitioner's pleadings." *Bonnen*, 9 OCB2d 7, at 15 (quoting *Rosioreanu*, 1 OCB2d 39, at 2 n.2 (BCB 2008), *affd. sub nom., Matter of Rosioreanu v. NYC Off. of Collective Bargaining*, Index No. 116796/2008 (Sup. Ct. N.Y. Co. Mar. 30, 2009) (Sherwood, J.), *affd*., 78 A.D.3d 401 (1st Dept. 2010, *lv. denied*, 17 N.Y.3d 702 (2011)). (internal quotation and editing marks omitted). Thus, "as long as the gravamen of the Petitioner's complaint may be ascertained by the Respondent, the pleading will be deemed acceptable." *Sciarillo*, 53 OCB 15, at 7 (BCB 1994) (citations omitted). Here, "[s]ince no hearing was held, in reviewing the sufficiency of the [allegations in the pleadings], we [will] draw all

[3] As part of this email exchange, Petitioner confirmed that he planned to retire and that March 18, 2024, would be his last day of work.

permissible inferences in favor of Petitioner and assume, arguendo, that the factual allegations [] are true, analogous to a motion to dismiss." *Seale*, 79 OCB 30, at 6-7 (BCB 2007); *Morris*, 3 OCB2d 19, at 12 (BCB 2010). Petitioner alleges that subsections "1, 2, 3" of NYCCBL § 12-306 were violated. (Pet. at 1) Taking the above into consideration, we construe Petitioner's claims to allege that DCAS retaliated against him in violation of NYCCBL § 12-306(a)(1) and (3) and that the Union breached its duty of fair representation in violation of NYCCBL § 12-306(b)(3).[4]

As noted in the ES Determination, 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 Rules § 1-07(c)(2)(i). "It is well established that an improper practice charge must be filed no later than four months from the time the disputed action occurred or from the time the petitioner knew or should have known of said occurrence." *Mahinda*, 2 OCB2d 38, at 9 (BCB 2009) (citations and internal quotation marks omitted), *affd. sub nom., Matter of Mahinda v. City of New York., et al.,* Index No. 117487/2009 (Sup. Ct. N.Y. Co. Oct. 5, 2010) (Scarpulla, J.), *affd*., 91 A.D.3d 564 (1st Dept. 2012); *see also Edwards*, 14 OCB2d 17, at 9 (BCB 2021). Consequently, "claims antedating the four-month period preceding the filing of the [p]etition are not properly before the Board and will not be considered." *Okorie-Ama*, 79 OCB 5, at 13 (BCB 2007) (citing

[4] Petitioner referenced retaliation in the emails attached to the petition but did not allege that he was retaliated against because of any union activity. *See Bowman*, 39 OCB 51, at 18-19 (BCB 1987). To the extent that Petitioner asserts retaliation on grounds other than union activity, such claims are not within the Board's jurisdiction. *See Babayeva*, 1 OCB2d 15, at 8 (BCB 2008).

*Castro*, 63 OCB 44, at 6 (BCB 1999)).

The petition in this matter was filed on November 20, 2024. Based on this filing date, Petitioner's claims must have arisen on or after July 19, 2024, in order to be timely. To determine whether his claims are timely, we must establish whether Petitioner knew or should have known prior to July 19, 2024, that DCAS did not plan to issue a final determination and that the Union would not file a grievance or otherwise assist him in seeking a final determination. *See Raby*, 71 OCB 14, at 12 (BCB 2003), *affd. sub nom., Matter of Raby v. Off. of Collective Bargaining*, No. 109482/03 (Sup. Ct. N.Y. Co. Oct. 8, 2003) (Beeler, J.) (finding that if a union has not explicitly stated that it will not pursue a grievance, a claim under NYCCBL § 12-306(b)(3) accrues when "Petitioner knew or should have known that the Union would not be processing [the] claims"); *see also CWA, L. 1183*, 17 OCB2d 7, at 11 (BCB 2024).

The Executive Secretary properly found that Petitioner knew or should have known of any alleged violations by DCAS before July 19, 2024. Petitioner received the proposed discipline in February 2024. In addition, the Agency Attorney notified him on April 2, 2024, that there would be no final determination because Petitioner retired before the case was fully adjudicated. (Pet. at 6) Thus, to the extent Petitioner alleges that DCAS's issuance of the suspension or failure to make a final determination concerning the suspension violated NYCCBL § 12-306(a)(1) and/or (3), Petitioner had knowledge of these alleged actions well before July 19, 2024, and consistent with the ES Determination, these claims are time-barred. *See* NYCCBL § 12-306(e); *Payne*, 17 OCB2d 11, at 9 (BCB 2024) ("claims antedating the four[-]month period preceding the filing of the Petition are not properly before the Board and will not be considered"). While Petitioner alleges that he again sought a final determination on the discipline from DCAS in November 2024, the statute of limitations does not run from the date he repeated his earlier request, nor does this communication

serve to extend or restart the statute of limitations. *See Minervini*, 71 OCB 29, at 13 (BCB 2003) ("Petitioner's reassertion of the same issues in a new grievance cannot serve to extend the date upon which Petitioner should have known that the Union had failed to act.") (citing *Raby*, 71 OCB 14, at 12-13).

The Executive Secretary also properly found that Petitioner's claims against the Union were untimely. In the petition, Petitioner expressed dissatisfaction with President Troman's representation as early as January 2024. Petitioner included President Troman on an email protesting the outcome of the Step I hearing as early as February 2024, and on May 10, 2024, he emailed him and various DCAS officials requesting a final determination of the disciplinary case against him. Petitioner does not allege he received any response from the Union indicating that it was taking any action on Petitioner's behalf. This Board has found that a union's lack of response to a member's request for assistance within a reasonable time period puts that member on notice that the union would not assist them. *See Payne,* 17 OCB2d 20, at 10-11 (BCB 2024) (petitioner should have known that the union was not taking action because it gave no indication that it was pursuing his complaints and advised him to contact his employer); *Gonzalez*, 8 OCB2d 10, at 8 (BCB 2015) (petitioner should have known that the union was not going to arbitrate her grievance when the union did not respond to her repeated requests for assistance); *Dixon*, 8 OCB2d 9, at 12 (BCB 2015) (petitioner should have known that the union was not pursuing his grievance "[a]t the point where the [u]nion had not responded within a reasonable time"). Accordingly, we find that Petitioner knew or should have known that the Union was not taking action within a reasonable period of time after he raised his complaints. The record shows that DCAS clearly communicated on April 2 that it would not issue a final determination because Petitioner retired. There is nothing in the record to show that Petitioner could have reasonably believed that the Union would appeal

that response or that he was unable to discern their failure to act prior to July 2024, four months prior to the filing of the petition.[5] Although Petitioner made additional requests that the Union seek a final determination after July 19, 2024, we find that such requests on November 14 and 15, 2024, merely repeated the same complaint he raised in his email six months earlier and thus do not extend the time that his claim accrued or the statute of limitations. *See Minervini*, 71 OCB 29, at 13 (citing *Raby*, 71 OCB 14, at 12-13); *see also Miller*, 57 OCB 40, at 5 (BCB 1996) (finding that petitioner's correspondence to the union demanding a written explanation of the reasons it decided not to process his grievance did not toll the statute of limitations).

Regarding the additional documents submitted with the Appeal, this Board has previously stated that "[t]he purpose of an appeal is to determine the correctness of the Executive Secretary's decision based upon the facts that were available . . . in the record as it existed at the time of his ruling." *Babayeva*, 1 OCB2d 15, at 10 (citing *Cooper*, 69 OCB 4, at 5 (BCB 2002); *White*, 53 OCB 20, at 8-9 (BCB 1994); *Marrow*, 45 OCB 54, at 4 (BCB 1990)). As such, facts or claims that were not asserted in the petition will not be addressed in the Appeal. *See Babayeva*, 1 OCB2d 15, at 10; *White*, 53 OCB 20, at 8-9.

[5] Moreover, we note that the petition does not allege any contractual basis upon which the Union could have brought a grievance seeking a final determination of Petitioner's disciplinary charges. *See Kaplan*, 55 OCB 24, at 11 (BCB 1995) (petitioner fails to establish a violation of the duty of fair representation where they do not identify a contractual provision upon which to grieve the asserted violation); *Fash*, 15 OCB2d 15, at 22 (BCB 2022) (no violation of the duty of fair representation where a union declines to arbitrate a grievance and the petitioner does not identify a contractual provision provided for the relief sought); *Ozcan*, 15 OCB2d 16, at 13-14 (BCB 2022) (same).

The petition contained no reference to the additional emails attached to the Appeal. Consequently, the dismissal of the petition here does not rely upon these new facts.[6]

Therefore, we find that Petitioner has not presented any timely claims. Accordingly, we affirm the dismissal of the petition and deny the Appeal.

[6] Even had the additional documents been considered, the evidence still does not support a finding that the Union breached its duty of fair representation. The documents showed additional contacts between Petitioner and the Union, including emails in March 2024 in which President Troman instructed Petitioner to contact the Agency Attorney regarding a response to the Step I Determination. Thus, rather than supporting a finding that the Union breached its duty of fair representation, the additional documents bolster our conclusion that Petitioner knew or should have known that the Union would not appeal the Step I Determination prior to July 19, 2024. *See Payne*, 17 OCB2d 20, at 10-11 (petitioner knew or should have known the union would not pursue his grievance when it advised him to seek assistance from his employer and gave no indication it would pursue his complaints).

**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 Executive Secretary's Determination dismissing the improper practice petition docketed as BCB-4586-24 is affirmed, and the Appeal is denied.

Dated: May 21, 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

JEFFREY L. KREISBERG
MEMBER