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Tam, 18 OCB2d 9 (BCB 2025)

(IP) (Docket No. BCB-4594-25)

Summary of Decision: Petitioners alleged that the Respondents violated the NYCCBL by improperly entering into an agreement in 2014 to commit to achieving citywide healthcare savings. The Executive Secretary dismissed the petition on the grounds that all the claims were untimely. Petitioners appealed, arguing that the Executive Secretary's dismissal was in error. The Board found that the Executive Secretary properly deemed the petition untimely and dismissed the petition. The Board further dismissed the petition for lack of standing and for failure to state a claim under the NYCCBL. ***(Official decision follows.)***

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

In the Matter of the Improper Practice Proceeding

-between-

KAREN TAM, EVELYN SILBERMAN, and KATIE ANSKAT,

Petitioners,

-and-

CITY OF NEW YORK and MUNICIPAL LABOR COMMITTEE,[1]

Respondents.

DECISION AND ORDER

On January 23, 2025, Karen Tam, Evelyn Silberman, and Katie Anskat ("Petitioners") filed an improper practice petition against the City of New York ("City") and the Municipal Labor Committee ("MLC") (collectively "Respondents"). Petitioners allege that Respondents violated the New York City Collective Bargaining Law § 12-306(a)(1),(2), (4), and (b)(1)-(3) (New York City Administrative Code, Title 12, Chapter 3) ("NYCCBL") by improperly entering into an

[1] The petition named the New York City Office of Labor Relations ("OLR") as a party. OLR is not a proper party to the instant matter, and we amend the petition *nunc pro tunc* to remove OLR as a party and adjust the caption accordingly. *See PBA,*6 OCB2d 33, at 1 (BCB 2013).

agreement in 2014 to commit to achieving citywide healthcare savings. 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"). Petitioner appealed the ES Determination ("Appeal") on February 14, 2025, arguing that the Executive Secretary's dismissal was in error. The Board finds that the Executive Secretary properly deemed the petition untimely and dismissed the petition. The Board further dismisses the petition for lack of standing and for failure to state a claim under the NYCCBL. Accordingly, the Appeal is denied.

BACKGROUND

Petitioners assert that they are current or former employees of the City.[2] Petitioner Tam is a member of Local 372 ("Local 372") of District Council 37, AFSCME, AFL-CIO ("DC 37"), Petitioner Anskat is a member of the United Federation of Teachers, Local 2, AFL-CIO ("UFT"), and Petitioner Silberman is a former member of the UFT. Petitioners allege that Respondents have restrained or coerced public employees in the exercise of their rights, failed to bargain in good faith, and breached the duty of fair representation, in violation of NYCCBL § 12-306(a)(1),(2),

[2] It is unclear from the petition whether Petitioners are current or former employees of the City or of the New York City Department of Education ("DOE"). Because of this lack of clarity, and because the Board dismisses the case on other grounds, we do not address our jurisdiction over Petitioners here but note that the Board does not have jurisdiction over DOE employees in the absence of the DOE's election of coverage under the statute. *See* NYCCBL § 12-304(c); *Plumbers L. Union No. 1,* 1 OCB2d 28, at 28-29 (BCB 2008), *affd. sub nom.*, *Matter of Plumber's Local Union No. 1 v. Gold,* 2010 NY Slip Op 30293(U) (Sup. Ct. N.Y. Co. Feb. 2, 2010) (Goodman, J.).

(4), and (b)(1)-(3), by agreeing to citywide healthcare savings, as discussed below.[3]

In 2014, the DOE and the UFT reached a settlement for a collective bargaining agreement with an effective date of November 1, 2009, through October 31, 2018. They memorialized the settlement in a published Memorandum of Agreement ("2014 MOA" or "Agreement"). Among the terms and conditions in the Agreement was an economic package including salary increases, backpay, and a $1,000 payment to bargaining unit employees payable upon ratification, and other terms and conditions of employment. The 2014 MOA also included a provision on proposed citywide healthcare savings that required the UFT to make its best efforts to have the MLC agree to specific savings on citywide healthcare costs for each fiscal year from 2015 through 2018. The DOE and the UFT agreed that the economic package provided to the UFT was dependent upon

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[3] NYCCBL § 12-306(a) states, in relevant 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;
> (2) to dominate or interfere with the formation or administration 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 § 12-306(b) states, in relevant part:

> It shall be an improper practice for a public employee organization or its agents:
> (1) to interfere with, restrain or coerce public employees in the exercise of rights granted in section 12-305 of this chapter, or to cause, or attempt to cause, a public employer to do so. . .;
> (2) to refuse to bargain collectively in good faith with a public employer on matters within the scope of collective bargaining provided the public employee organization is a certified or designated representative of public employees of such employer;
> (3) to breach its duty of fair representation to public employees under this chapter.

achieving these citywide healthcare savings. If the MLC did not agree to the targeted healthcare savings, the 2014 MOA provided:

> In the event the MLC does not agree to the above citywide targets, the arbitrator shall determine the UFT's proportional share of the savings target and, absent an agreement by these parties, shall implement the process for the satisfaction of these savings targets . . . .
>
> In the event the MLC does not agree to provide the funds specified in this paragraph, the arbitrator shall determine the UFT's proportional share of the Stabilization Fund monies required to be paid under this paragraph.

(2014 MOA § H (vii) and (viii))

The Agreement also required ratification by the members of the UFT.

On May 1, 2014, Mayor Bill DeBlasio held a press conference at City Hall to announce the 2014 MOA. Also speaking at the press conference were UFT President Michael Mulgrew, Schools Chancellor Carmen Farina, City Budget Director Dean Fuleihan, and OLR Commissioner Bob Linn. During the press conference, Mayor DeBlasio stated multiple times that the 2014 MOA required the MLC to agree to citywide healthcare savings and that the MLC needed to get the approval of MLC leadership and its constituent unions. UFT President Mulgrew also stated at the press conference that the citywide healthcare savings set forth in the 2014 MOA required the MLC's approval and that a joint labor-management committee was to be established to address citywide healthcare savings in the future. OLR Commissioner Linn and City Budget Director Fuleihan also spoke at the press conference regarding the proposed healthcare savings needed from the MLC. Petitioners included a link to a YouTube recording of the press conference. (Pet. ¶ 16 n1)

In May 2014, the MLC held both a Steering Committee meeting and a General Membership meeting to discuss the proposed citywide healthcare savings. Earlier, there had been meetings of

MLC technical committees that discussed the details of the citywide healthcare savings proposal set forth in the 2014 MOA. On May 2, 2014, the MLC Steering Committee voted 20 to two in favor of accepting the citywide healthcare savings proposal. At the MLC General Membership Meeting on May 5, 2014, the MLC member unions voted to accept the proposed citywide healthcare savings by a vote of 72 to four. Local 372, the UFT, and DC 37 are members of the MLC and of the MLC Steering Committee. Representatives of Local 372, the UFT, and DC 37 were present and voted in favor of accepting the citywide healthcare savings proposal at both the Steering Committee meeting and the General Membership meeting.

Local 372 entered into a new collective bargaining agreement with the City on July 1, 2014, that covered the period 2010-2017 ("2010-2017 Agreement").[4] The 2010-2017 Agreement included a countersigned letter, dated May 5, 2014, between the City and the MLC setting forth and agreeing to the citywide healthcare savings. The 2010-2017 Agreement was subject to ratification by the members of Local 372.

The Petition

The petition alleges that the City and the MLC violated NYCCBL § 12-306(a)(1),(2), (4), and (b)(1)-(3). Petitioners alleged that the City pressured the MLC into agreeing to citywide healthcare savings in 2014. In particular, Petitioners claimed that the City made the collective bargaining agreement with the UFT contingent upon the UFT convincing the MLC to agree to the citywide healthcare savings desired by the City.

As to Respondent MLC, Petitioners maintained that it had no authority to agree to any collective bargaining demand on behalf of any municipal employee or union. Moreover, they asserted that the MLC had a conflict of interest because an attorney for the UFT, Alan Klinger,

[4] The Board takes administrative notice of the 2010-2017 Agreement, which is available on OLR's website.

("UFT Attorney") also served as counsel to the MLC and that the 2014 Agreement specifies that the UFT will make its best efforts to get the MLC to agree to citywide healthcare savings. Petitioners alleged that, during the May 1, 2014, press conference announcing the agreement between the UFT and the City, the UFT Attorney stated that the MOA was contingent upon the MLC's agreement to proposed citywide health savings.[5]

Petitioners further contended that there were several MLC meetings in May 2014 where the proposed healthcare agreement was discussed and approved and that the UFT Attorney spoke at each of the meetings. Petitioners alleged that the decisions made at these meetings were rushed, that the unions' boards or members were not given an opportunity to vote on the citywide healthcare savings proposal, and that the unions never polled their members prior to voting at the MLC meetings. Petitioners additionally asserted that the MLC's weighted voting structure is improper because the votes of DC 37 and the UFT alone were sufficient to pass the resolution adopting the proposed citywide healthcare savings and the unions whose members did not receive healthcare benefits through the City were also permitted to vote on citywide healthcare issues.

Petitioners alleged that the result of the MLC's 2014 approval of the citywide healthcare savings is the "degradation of the NYC Health Benefits Program and the stripping of healthcare benefits from countless NYC employees – both with respect to their current healthcare benefits and their healthcare benefits in retirement – and retirees." (Pet. ¶ 31) Petitioners argued that they did not know of the alleged violations until October 2024 at the earliest. Petitioners allege that, by taking these actions, the City and the MLC violated NYCCBL § 12-306(a)(1),(2), (4), and (b)(1)-(3).

[5] The video of the May 1, 2014, press conference attached to the petition does not show the UFT Attorney speaking at the press conference.

The Executive Secretary's Determination

On February 4, 2025, the Executive Secretary issued a determination ("ES Determination") pursuant to OCB Rule § 1-07(c)(2), dismissing the petition as untimely. The Executive Secretary stated that because the petition was filed on January 23, 2025, any alleged violations that took place prior to September 22, 2024, are time-barred under the NYCCBL's four-month statute of limitations. In her review of the petition and attached documents, the Executive Secretary observed that the relevant factual allegations had taken place in 2014, well outside of the statutory period. Moreover, the Executive Secretary noted that the petition did not set forth any facts to demonstrate why Respondents' 2014 actions were not known or could not have been known by Petitioners until October 2024.

The ES Determination pointed out that the petition attached and cited videos and documents that were publicly available in 2014, including the 2014 MOA and the video of the May 1, 2014 press conference, both of which contain explicit statements of the need for MLC approval of citywide healthcare savings and the contingency of the 2014 Agreement upon such MLC action. The ES Determination also stated that the petition did not include any assertion that the minutes of the MLC's 2014 meetings were unavailable to Petitioners. Therefore, the Executive Secretary stated, "based on the facts alleged, I cannot find that Petitioners did not know or could not have known of these actions prior to October 2024." (ES Determination at 2)

The Appeal

In their Appeal, Petitioners claim for the first time that that the action is not time-barred because they did not have access to the minutes of the 2014 MLC meetings detailing the discussions and votes that took place over the healthcare savings proposal and therefore did not know:

> how these health care costs would be 'saved,' nor the way in which the MLC usurped the bargaining powers of the unions in order to do so. They did not reveal that the decision to cut healthcare benefits was never brought back to the union presidents' boards or members; that the unions never polled their members to cast their votes; the way the vote took place (including but not limited to the weighted voting system and that member organizations who do not negotiate their healthcare with OLR were permitted to vote); nor that the MLC never identified the weighted vote for every member union and never specified whether it had included votes from the 70,334 UFT retirees who retain a partial vote in union elections. . . .

(Appeal at 3-4) Petitioners also aver for the first time in the Appeal that they had never received the 2014 MOA and had no knowledge of the May 1, 2014, press conference.

Petitioners further argue that the claim is not untimely because it is a continuing violation. In their Appeal, Petitioners claim for the first time that the "central violations" of the petition, specifically the "degradation of the NYC Health Benefits Program and the stripping of healthcare benefits" from City employees and retirees "have not yet been instituted." (*Id.* at 5) While they do not cite any specific acts, Petitioners state in their Appeal that "[t]he invalid negotiation process with respect to healthcare benefits . . . in which Respondents, among other things, engage in secret voting procedures; do not solicit the votes of union members on mandatory subjects of bargaining; and inequitably weigh votes, continues." (*Id.*)

DISCUSSION

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

The petition in this matter was filed on January 23, 2025; therefore, any claim that arose prior to September 22, 2024, is untimely and not properly before the Board. The ES Determination correctly stated that every act alleged to be a violation of the NYCCBL took place in 2014, over ten years prior to the filing of the petition. (Pet. ¶¶ 10-28) When determining when a party should have known of an act, the Board must establish whether the facts surrounding the act would reasonably have alerted a party to the action. *See Local 306 I.A.T.S.E.*, 7 OCB2d 27, at 7 (BCB 2014) (citing *DC 37*, 5 OCB2d 22 (BCB 2012)). Here, we find that the facts in the petition establish that Petitioners should have known of the claim well before the four-month statutory period.

As current and former members of the UFT, Petitioners Anskat and Silberman were covered by the 2014 MOA. The Agreement expressly states both the amount of the proposed citywide healthcare savings for fiscal years 2014-2018 and the fact that the MLC's approval of the citywide healthcare savings is required as a material term of the Agreement. In addition, the Agreement was subject to ratification by the UFT membership. The 2014 MOA was also posted

on OLR's website. Mayor de Blasio and UFT President Mulgrew held a press conference on May 1, 2014, in which they publicly addressed the terms of the 2014 MOA, including the need for MLC approval of the citywide healthcare savings. A fair reading of the petition thus establishes that the terms of the 2014 MOA were publicly available to UFT members and therefore should have been known to Petitioners. Moreover, there is no allegation in the petition that the terms of the collective bargaining agreement covering them were not or should not have been known.[6]

As to Petitioner Tam, the petition does not include any specific allegations regarding the 2010-2017 Agreement, which bound Local 372 to the citywide healthcare savings. Nevertheless, in addition to the 2014 MOA and the May 1, 2014, press conference, the 2010-2017 Agreement was signed on July 1, 2014, and amended on January 12, 2017. This publicly available contract contained a May 5, 2014, letter of agreement between the MLC and the City expressly setting forth the citywide healthcare savings contained in the 2014 MOA. The 2010-2017 Agreement was also subject to ratification by the members of Local 372. Therefore, based on facts as pled, we find that the Executive Secretary properly determined that Petitioners knew or should have known that the 2014 MOA and the 2010-2017 Agreement incorporated the MLC's agreement to citywide healthcare savings prior to October 2024.

The sole factual claim in the petition that took place after 2014 is the allegation that in 2023, Petitioners requested and were denied information about the specifics of the weighted voting used by the MLC for the 2014 votes on the citywide healthcare savings.[7] (Pet. ¶ 28 n3) However,

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[6] The 2014 MOA included a $1,000 ratification bonus, four annual salary increases, and a series of lump sum payments to UFT members and retirees. As bargaining unit members, receipt of any of these economic benefits should have put Petitioners on notice well before October 2024 that the 2014 MOA had been ratified.

[7] The petition contains no allegation that the minutes from the 2014 MLC meetings were unavailable to Petitioners but rather was raised for the first time on appeal.

this means that, by their own admission, Petitioners knew by 2023 that the MLC had approved the citywide healthcare savings proposal and had used some form of weighted voting process to do so. That knowledge, given the legal claims made in the petition that the MLC lacked authority to approve the citywide healthcare savings under any procedures, was sufficient to put Petitioners on notice of their claim by 2023 at the very latest. *See OSA*, 2 OCB2d 30, at 14 (2009); *Cherry,* 4 OCB2d 15, at 11 (2011). The petition was not filed until January 23, 2025, well outside the four-month statute of limitations. That some information supporting their claim was discovered after the claim arose does not serve to extend the time limit under the statute. *See Buttaro*, 13 OCB2d 1, at 10-11 (BCB 2020).

We find therefore that Petitioners knew or should have known of their claims many years before the petition was filed. Petitioners' claimed ignorance of public information is insufficient to establish that they did not or should not have known about their claim until on or after September 22, 2024. Accordingly, we uphold the ES Determination and dismiss the Petition as untimely.

Moreover, we do not find Petitioners' assertions raised for the first time in the Appeal warrant a different conclusion. In their Appeal, Petitioners allege that they were not in possession of the 2014 MLC meeting minutes but ultimately obtained them because they were filed in an unrelated lawsuit.[8] (Appeal at 3) Petitioners further assert that they have never received the 2014 MOA attached to the petition and had no knowledge of Mayor de Blasio's May 1, 2014 press conference attached to the petition. Petitioners now claim that, without the minutes of the 2014 MLC meetings, they could not have known how the citywide healthcare savings would be achieved

[8] The Board notes that the link included in Petitioners' appeal is to a publicly available filing from a 2017 New York State Supreme Court case, *Matter of Patrolmen's Benevolent Association of the City of New York, Inc. v. New York City Office of Collective Bargaining.*, Index No. 100021/2017 (Jaffe, J.). The Board takes further notice that the claims in that matter concerned the citywide healthcare savings approved by the MLC in 2014 and referenced prior proceedings before the Board in *PBA*, 9 OCB2d 32 (BCB 2016).

nor the way in which the MLC usurped the bargaining powers of its member unions. Petitioners further allege for the first time that, without the MLC meetings minutes, they could not have known of the rules governing the MLC's voting procedures or that the MLC's approval of the citywide healthcare savings was never voted on by the MLC's constituent unions' members or executive boards.

The "'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 [her] ruling.'" *Buttaro*, 12 OCB2d 23, at 13 (BCB 2019) (quoting *Babayeva*, 1 OCB2d 15, at 10 (BCB 2008)), *affd. sub nom.*, *Matter of Buttaro v. New York City Off. of Collective Bargaining*, Index No. 152489/2020 (Sup. Ct. N.Y. Co. Apr. 23, 2021) (Engoron, J.). "A petitioner may not add new facts at a later date to attack the basis of the Executive Secretary's determination." *Payne*, 17 OCB2d 11, at 8 (BCB 2024) (citing *Babayeva,* 1 OCB2d 15, at 10; *see also Simon,* 16 OCB2d 27, at 7 (BCB 2023); *Rodriguez,* 16 OCB2d 12, at 8-9 (BCB 2023); *Cooper, Jr.*, 69 OCB 4, at 5 (BCB 2002); *Marrow,* 45 OCB 54, at 4 (BCB 1990). Petitioners' assertions that they did not have the 2014 MLC minutes, the 2014 MOA, or knowledge of the 2014 press conference until September and October 2024, are not set forth in the petition and may not now be raised on appeal. Therefore, Petitioner's new factual assertions are not properly before the Board on this review.

Even if Petitioners had included these facts in their original petition, we would not find that they establish that Petitioners did not or could not have knowledge of their claims until they came into possession of the 2014 MLC Minutes, May 1, 2014 press conference, or 2014 MOA. The basis for Petitioners' claims is that the City and the MLC unlawfully agreed to achieve certain

health care savings.[9] Petitioners' claim they did not receive the 2014 MOA or somehow lacked express knowledge of the signing or ratification of the 2014 MOA does not establish that they lacked knowledge of their claims prior to 2024. As stated earlier, the MLC's adoption of the health care savings proposal was a requirement clearly set forth in the 2014 MOA and 2010-2017 Agreement and was a condition precedent to the terms of those contracts going into effect. Commencing soon after ratification of those agreements and for ten years thereafter, Petitioners received the economic benefits of these agreements, such as the signing bonuses and annual wage increases. Therefore, we find that Petitioners have not pled facts to establish that they could not have known of their claims until four months prior to the filing of their petition. *See e.g.*, *Lawtone-Bowles*, 15 OCB2d 4, at 8 n.13 (finding claim untimely because petitioner's knowledge of the contents of a collective bargaining agreement is deemed to accrue upon the execution of the collective bargaining agreement). Similarly, Petitioners point to nothing in the May 2014 press conference video that was not referenced in the 2014 MOA and the 2010-2017 Agreement. In addition, the 2014 MLC Minutes show only that a discussion and vote was taken among MLC member unions to adopt the healthcare savings proposal. Since the 2014 MOA and 2010-2017 Agreement expressly incorporate the requirement that the MLC agree to achieve health care savings, Petitioners should have known of their claims well in advance of September 22, 2024. Accordingly, Petitioners' claim is untimely even considering the newly pled allegations.

We also reject Petitioners' claim in their appeal that the petition states a continuing violation. The Board may find a violation in a situation where a new incident occurring within the four-month limitations period is a continuation of the same or similar conduct which occurred

[9] Petitioners' assertions concerning improprieties in the MLC's internal voting process is not relevant to their central claim that the MLC had no authority to negotiate the citywide healthcare savings and was improperly pressured to do so by the City.

beyond the four-month limitations period. *See Buttaro*, 12 OCB2d 23, at 12-13. In those cases, the Board has permitted a party to introduce evidence of the untimely actions as part of its proof for the timely allegations. However, the Board has consistently required that a petition identify a specific act of the same or similar nature that has occurred within the four-month limitations period. *See, e.g.*, *DC 37*, 49 OCB 37, at 14-17 (holding that union's claims that City refused to provide copies of desk audits dating back to 1988 is time-barred except for two specific instances on identified dates within the four-month statutory period in 1991). OCB Rule § 1-07(c)(1)(i)(D) requires a petition to include, *inter alia*, "the date, time, and place of occurrence of each particular act alleged." Petitioners do not allege a single act of bad faith bargaining, or interference that occurred within the four-month statute of limitations period. Vague assertions that the acts complained of are continuing and that Petitioners are continuing to experience the impact of alleged improper practices are insufficient to satisfy the pleading standard set forth in OCB Rule § 1-07(c)(1)(i)(D). *See Irrera*, 17 OCB 9, at 10 (BCB 2024) (holding that continuing impact on pay resulting from alleged violation of the duty of fair representation does not constitute a continuing violation); *Buttaro*, 13 OCB2d 1, at 10 ("Petitioner's allegations of additional, newly discovered errors that he believes the Union's counsel made many years ago . . . do[] not toll the statute of limitations nor state[] a claim of a continuing violation of the Union's breach of its duty of fair representation."); *Phelan,* 12 OCB2d 35, at 8 (BCB 2019); *see also Buttaro*, 14 OCB 2d 14, at 7 (BCB 2021); *Buttaro,* 12 OCB2d 29, at 11; *Buttaro*, 12 OCB2d 23, at 12-14;*Garg*, 6 OCB2d 35, at 10 (BCB 2013) (upholding the dismissal of a petition as untimely because "the time period within which to file a petition begins when the alleged wrongful act occurred, not when the effect of the act is realized"). For all these reasons, we affirm the Executive Secretary's dismissal of the petition as untimely.

The untimely filing of the petition is sufficient reason to dismiss it. However, the petition's allegations also do not raise claims under the NYCCBL. The Executive Secretary did not address the substance of Petitioners' claims, but we address them here. First, Petitioners cite no support for a claim that the MLC's voting process violates the NYCCBL, that the statute requires MLC's constituent unions to present the MLC's approval of the citywide healthcare savings to their members or executive boards, or that an individual union member has standing to bring such a claim against the MLC. In this regard, we have consistently held that the NYCCBL does not govern internal union affairs. *See Shapiro*, 37 OCB 9, at 18 (BCB 1986) (a union's failure to submit a settlement to membership ratification cannot constitute an improper practice under the NYCCBL); *see also Brengel*, 65 OCB 10, at 11-12 (BCB 2000); *Miller*, 53 OCB 21, at 16 (BCB 1994); *Carolan*, 43 OCB 56, at 7-8 (ES 1989) (Executive Secretary dismissed an improper practice petition asserting noncompliance with the contract ratification procedures in the union's constitution). Accordingly, we dismiss all claims relating to the MLC's approval of the healthcare benefits saving proposal.

Second, the Board has long held that an individual lacks standing to bring a claim under NYCCBL § 12-306(a)(4) and (b)(2). Recently in *Johnson*, 17 OCB2d 3 (BCB 2024), another appeal from an Executive Secretary's dismissal of a petition, the Board clearly stated the law on this issue:

> [T]he 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)); *McAllan*, 31 OCB 15, at 15 (BCB 1983) (the union's duty to bargain in good faith is a duty "owed to the public employer and not the union's members").

Johnson, 17 OCB2d 3, at 7-8. Therefore, in addition to affirming the ES Determination's dismissal on timeliness grounds, we dismiss Petitioners' claims brought under NYCCBL § 12-306(a)(4) and (b)(2) for lack of standing.

Accordingly, the Appeal is denied, and the Petition is dismissed as untimely. The Board further dismisses the claims for failure to state a claim and for lack of standing.

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-4594-25 is affirmed, and the Appeal is denied; it is further

ORDERED that the improper practice petition be, and the same hereby is, denied as to the claims pursuant to NYCCBL § 12-306(a)(1),(2), (4), and (b)(1)-(3).

Dated: May 21, 2025
New York, New York

SUSAN J. PANEPENTO
CHAIR

ALAN R. VIANI
MEMBER

M. DAVID ZURNDORFER
MEMBER

CAROLE O'BLENES
MEMBER

JEFFREY L. KREISBERG
MEMBER

JESSICA DRANGEL OCHS
MEMBER