Bukowski, 18 OCB2d 14 (BCB 2025)

(IP) (Docket No. BCB-4602-25)

***Summary of Decision*:** Petitioner claimed that the Union breached its duty of fair representation in violation of NYCCBL § 12-306(b)(3) by failing to adequately represent him during a disciplinary investigation. The Union argued that it did not breach its duty of fair representation because Petitioner was not entitled to the due process protections of the collective bargaining agreement or the Civil Service Law. The Board found that the petition was untimely. Accordingly, the petition was dismissed. **(*Official decision follows*.)**

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

In the Matter of the Improper Practice Proceeding

-between-

ADAM BUKOWSKI,

Petitioner,

-and-

SOCIAL SERVICE EMPLOYEES UNION, LOCAL 371, DISTRICT COUNCIL 37, and THE OFFICE OF THE DISTRICT ATTORNEY OF BRONX COUNTY,

Respondents.

DECISION AND ORDER

On April 7, 2025, Adam Bukowski filed an improper practice petition against Social Services Employees Union, Local 371, District Council 37 ("Union") and the Office of the District Attorney, Bronx County ("Bronx DA"). Petitioner asserts that the Union breached its duty of fair representation in violation of § 12-306(b)(3) of the New York City Collective Bargaining Law (New York City Administrative Code, Title 12, Chapter 3) ("NYCCBL") by failing to adequately represent or assist him in a disciplinary investigation conducted by the Bronx DA, which resulted in his termination. Specifically, Petitioner alleges that the Union failed to schedule or facilitate

the evaluation requested by the Bronx DA, failed to respond to his questions concerning the investigation, neglected to provide him a trained representative, and refused to file a grievance on his behalf. The Union argues that it did not breach its duty of fair representation because Petitioner was not entitled to due process rights under the applicable collective bargaining agreement or the Civil Service Law.[1] The Board finds that the claims alleged in the petition are untimely. Accordingly, the petition is dismissed.

BACKGROUND

Petitioner was hired by the Bronx DA in the non-competitive title of Community Assistant on October 2, 2023. The Union is the certified bargaining representative for employees in the Community Assistant civil service title. The City of New York and the Union are parties to a collective bargaining agreement ("Agreement"). An appendix to the Agreement reflects "that the District Attorneys have not elected to be covered by subsections 1(e), 1(f), 1(g), and 1(h) of … Article VI [of the Agreement] and that these subsections do not currently apply to the employees of the District Attorneys' Offices."[2] (Union Ex. B)

On July 29, 2024, Petitioner received a letter from the Bronx DA stating that he had been placed on administrative leave pending an investigation. According to Petitioner, this letter stated that he had been placed on paid administrative leave from July 30, 2024, to August 6, 2024. The same day, Andrew Douglas, the Union's Organizer for Organization and Education ("Union Organizer"), received a phone call from the Bronx DA's Deputy Chief of Human Resources

[1] The Bronx DA is a respondent pursuant to NYCCBL § 12-306(d). The Bronx DA was properly served by Petitioner but did not file an answer.

[2] Article VI of the Agreement concerns the filing of grievances.

Darlene Martinez ("Deputy Chief"). The Deputy Chief told the Union Organizer that the Bronx DA was investigating allegations that Petitioner had sent inappropriate text messages to another employee at the Bronx DA and was being placed on administrative leave pending an investigation. After Petitioner was placed on administrative leave, he met with the Union to discuss the Bronx DA's investigation.

On August 5, 2024, Petitioner received another letter from the Bronx DA, which stated that he was not permitted to return to work on August 6. According to Petitioner, the August 5 letter further explained that the Bronx DA and the Union had agreed that Petitioner would be subject to a mental health evaluation to determine his fitness to return to work and that this evaluation was scheduled to occur on August 7. Petitioner spoke with the Union, which, according to Petitioner, "informed [him] that they did not conduct nor were they aware of any scheduled appointment to evaluate [his] fitness to return to duty." (Pet. ¶ 7)

According to the Union, on August 7, the Deputy Chief called the Union Organizer to discuss the investigation into Petitioner's conduct. A social worker represented by the Union, Derick Saunders ("Social Worker"), was also on the call. During the call, the Deputy Chief stated that the Bronx DA wanted the Social Worker to conduct Petitioner's evaluation. The Deputy Chief indicated that Petitioner would not be permitted to return to work until Petitioner completed that mental health evaluation. The Social Worker responded that he could not evaluate Petitioner because they were both Union members, which presented a conflict of interest.

On September 12, 2024, Sean Dillon, the Bronx DA's Director of Labor Relations and Discipline ("Director of Labor Relations"), emailed the Union Organizer and asked if Petitioner had undergone the requested mental health evaluation. On September 16, 2024, the Union Organizer replied that the Social Worker was unable to conduct the evaluation of a fellow Union member due to the conflict of interest. The Union Organizer reminded the Director of Labor

Relations that the Union had stated this during the August 7 phone call. Nevertheless, the Union Organizer informed the Director of Labor Relations that he had spoken with Petitioner about the allegations and personally believed that Petitioner was ready and able to return to work. On September 17, the Director of Labor Relations reiterated the Bronx DA's position that Petitioner could not return to work until he passed a mental health evaluation. According to the Union, it never scheduled any evaluation and was not required to do so.

On October 4, 2024, Petitioner and the Union received correspondence from the Bronx DA stating that it had completed its investigation of Petitioner and that he was terminated, effective immediately. The letter did not contain any information about the findings of the Bronx DA's investigation.

According to Petitioner, between July 29, when he first learned he had been put on leave, and October 4, when he learned that he had been terminated, he reached out to the Union multiple times. Petitioner requested that the Union help him challenge his termination, grieve or appeal the process for his return to work, and inform him of what remedies might be available to him. Petitioner claims that the Union told him on several occasions that it would assist him but never did so. However, Petitioner acknowledges that, "[s]hortly after his termination," the Union Organizer informed him that "there was nothing further the [U]nion could do to assist him." (Answer ¶ 24, Reply ¶ 11) On October 16 and October 30, Petitioner emailed the Union to ask that someone help him challenge his termination. According to Petitioner, he never received a response.

POSITIONS OF THE PARTIES

Petitioner's Position

Petitioner argues that the Union breached its duty of fair representation by failing to adequately represent him during the disciplinary investigation that resulted in his termination. Specifically, he claims that the Union failed to facilitate or conduct the mental health evaluation requested by the Bronx DA, failed to respond to his inquiries about the investigation, neglected to assign a trained representative to assist him, and failed to help him grieve or otherwise challenge the Bronx DA's requirement that he undergo a mental health evaluation and his resulting termination.

According to Petitioner, the Union's breach of its duty of representation is egregious because it failed to perform tasks that were exclusively within its control, such as grieving his termination and failing to schedule or conduct the evaluation requested by the Bronx DA. Petitioner avers that no other organization could have performed these functions and that he was terminated directly as a result of the Union's failure to act.

In the alternative, Petitioner argues that the Union breached its duty of representation by not informing him that it was unable to schedule or conduct the evaluation on his behalf. Finally, Petitioner argues that, as a Community Assistant, he was entitled to all the due process protections contained in the Agreement.

Union's Position

The Union avers that the petition fails to state a claim under NYCCBL § 12-306(b)(3) because it does not allege any facts that demonstrate that the Union breached its duty of fair representation. The Union argues that the petition should be dismissed because, even if the facts alleged in the petition are considered true, they still do not establish that the Union acted in an arbitrary, discriminatory, or bad faith manner.

First, the Union claims that Petitioner has not demonstrated that he has a right to contest his termination or to be reinstated to his employment at the Bronx DA because he did not have due process rights under the Agreement. In addition, the Union maintains that Petitioner had also not acquired due process rights to contest his discharge under Civil Service Law § 75 since he was employed in a non-competitive title for less than five years.

With regard to Petitioner's claim that the Union did not schedule or facilitate the mental health evaluation requested by the Bronx DA, the Union argues that it was not required to do so. The Union alleges that it repeatedly told the Bronx DA that Union members were precluded from evaluating Petitioner because of a conflict of interest. The Union asserts that it never represented that it would conduct the evaluation and did not breach its duty of representation towards Petitioner by not doing so. Finally, the Union argues that Petitioner's dissatisfaction with the representation provided is insufficient to demonstrate a breach of the duty of fair representation.

DISCUSSION

Preliminarily, we must address the timeliness of Petitioner's claims. The Board's authority is limited to addressing claims that fall within the four-month statute of limitations. *See* NYCCBL § 12-306(e). We have previously held that the application of the statute of limitations is "not discretionary." *DSBA*, 18 OCB2d 1, at 33-34 (BCB 2025) (quoting *Miller*, 57 OCB 40, at 4 (BCB 1996)); *see also* Rules of the Office of Collective Bargaining (Rules of the City of New York, Title 61, Chapter 1) ("OCB Rules") § 1-07(2)(i). Therefore, notwithstanding that neither Respondent has raised a timeliness defense, we are obligated to review the claims raised in the petition to determine whether they fall within the statute of limitations and thus can be considered by this Board.

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." *Johnson*, 17 OCB2d 3, at 6 (BCB 2024) (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 violation occurred. *See Ozcan*, 15 OCB2d 16, at 11 (BCB 2022). The petition in this matter was filed on April 7, 2025. Based on this filing date, Petitioner's claims must have arisen on or after January 6, 2025, in order to be timely.

Here, we find that the petition is untimely. There is no dispute that the Union informed Petitioner in October 2024 that it could not help him. Petitioner admits that, "[s]hortly after his termination," the Union Organizer informed him that "there was nothing further the [U]nion could do to assist him." (Answer ¶ 24, Reply ¶ 11) Petitioner also alleges that he emailed the Union on both October 16 and October 30, 2024, and never received a response. Moreover, the Bronx DA's investigation and its request for a mental health evaluation occurred in the months prior to Petitioner's termination on October 4, 2024. Accordingly, nothing in the record indicates that Petitioner had any contact with the Union after October 30, 2024.

Therefore, the undisputed facts establish that Petitioner knew or should have known of his claims more than four months prior to the filing of his petition. 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 Tam*, 18 OCB2d 9, at 9 (BCB 2025) (citing *Local 306 IATSE*, 7 OCB2d 27, at 7 (BCB 2014)) (internal citations omitted). Petitioner concedes that the Union informed him that it would not be doing anything further to assist him shortly after he was terminated on October 4, 2024. Accordingly, we find that Petitioner knew or should have known of his claims at that time, and we dismiss Petitioner's claim against the Union as untimely. *See Gonzalez*, 8 OCB2d 10, at 8 (BCB 2015) (duty of fair representation petition found untimely where petitioner's letter to the union demonstrated that petitioner knew the basis of his claim more than four months before the petition was filed) (citing *Lutz*, 4 OCB2d 13, at 9 (BCB 2011).

Further, Petitioner's requests for assistance from the Union later in October do not make his claim timely. All Petitioner's communications with the Union occurred more than four months prior to the filing of the petition and therefore cannot form the basis of a timely claim. *See Johnson*, 17 OCB2d 3, at 6. Thus, Petitioner's failure to timely file "precludes us from reaching the actual merits of the complaint." *Phelan*, 12 OCB2d 35, at 6-7 (BCB 2019) (quoting *Howard*, 51 OCB 38, at 4-5); *see also Nardiello*, 2 OCB2d 5, at 28 (BCB 2009) (timeliness is a threshold question). Inasmuch as we deny the claim against the Union, the claim against the Bronx DA pursuant to NYCCBL § 12-306(d) also fails. *See Lacey*, 14 OCB2d 18, at 12 (BCB 2021) (where there is no viable NYCCBL § 12-306(d) claim against the union, there is no derivative claim against employer), *affd. sub nom.*, *Lacey v. Social Serv. Employees Union Local 371*, Index No. 101032/21 (Sup. Ct. N.Y. Co. Mar. 14, 2022) (Edmead, J.). We therefore dismiss the improper practice petition in its entirety.

ORDER

Pursuant to the powers vested in the Board of Collective Bargaining by the New York City Collective Bargaining Law, it is hereby

ORDERED, that the improper practice petition, docketed as BCB-4602-25, filed by Adam Bukowski against Social Services Employees Union, Local 371, and the Office of the District Attorney, Bronx County, is dismissed in its entirety.

Dated: August 14, 2025
New York, New York

SUSAN J. PANEPENTO
CHAIR

ALAN R. VIANI
MEMBER

M. DAVID ZURNDORFER
MEMBER

PAMELA S. SILVERBLATT
MEMBER

ALAN M. KLINGER
MEMBER