Rosioreanu, 1 OCB2d 39 (BCB 2008)

(IP)(Docket No. BCB-2684-08). **aff'd** Matter of Rosioreanu v. NYC Off. of Coll. Barg., Ind. No. 116796/08 (Sup. Ct. N.Y. Co. Mar. 30, 2009) (Sherwood, J.); **aff'd**., ___ A.D.3d ___, 2010 NY Slip Op. 07797 (1st Dept. Nov. 4, 2010).

Summary of Decision: Petitioner alleged that the Union breached its duty of fair representation under the NYCCBL by failing to properly handle her grievance, and by failing to properly represent her at the arbitration proceeding. The Union averred that it handled Petitioner's grievance in accordance with its general policy and that Petitioner failed to show that the Union breached its duty of fair representation. The City asserted that Petitioner failed to allege sufficient facts to demonstrate that the Union breached its duty of fair representation, and that any independent claims against the City were untimely and, even if such were timely, Petitioner did not plead sufficient facts to establish retaliation. The Board found that Petitioner did not plead facts sufficient to state a claim that the Union breached its duty of fair representation in violation of § 12-306(b)(1) and (3). The Board also found that any independent claims against the City were untimely. Accordingly, the improper practice petition was dismissed in its entirety. ***(Official decision follows.)***

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

In the Matter of the Improper Practice Petition

-between-

CLEOPATRA ROSIOREANU,

Petitioner,

-and-

LOCAL 375, DISTRICT COUNCIL 37, AFSCME, AFL-CIO and THE CITY OF NEW YORK and THE NEW YORK CITY DEPARTMENT OF ENVIRONMENTAL PROTECTION

Respondents.

DECISION AND ORDER

On January 25, 2008, Cleopatra Rosioreanu ("Petitioner") filed a verified improper practice

petition, amended on March 18,[1] alleging that District Council 37, Local 375 ("Union" or "DC 37") violated the New York City Collective Bargaining Law (City of New York Administrative Code, Title 12, Chapter 3) ("NYCCBL") § 12-306(b)(1) and (3), throughout the course of its representation of her during grievance proceedings. Petitioner also raises independent claims against the City of New York ("City") and the New York City Department of Environmental Protection ("DEP").[2] We find that Petitioner's pleadings do not allege facts which, if established, would be sufficient to state a claim that the Union violated NYCCBL § 12-306(b)(1) or (3) and that any and all independent claims against the City are untimely. Accordingly, Petitioner's improper practice petition is denied.[3]

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[1] At a July 24, 2008 conference, Petitioner was afforded an opportunity to submit documents supplementing the allegations contained in the petition. The Union and the City both availed themselves of the opportunity to respond in writing to these materials.

[2] In her petition, Petitioner cites violations of NYCCBL § 12-306(b)(1) and (3), but Petitioner also makes allegations against DEP, which would more properly fall under NYCCBL § 12-306(a)(1) and (3). We are mindful that a *pro se* Petitioner may not be familiar with legal procedure, and we therefore take a liberal view in construing such pleadings. *See Seale*, 79 OCB 30, at 7 (BCB 2007) ("The principle that claims arise out of the facts asserted and not a petitioner's statutory citations is particularly salient with respect to a *pro se* petitioner.") (citing *Wynder v. McMahon*, 360 F.3d 73, 77 (2d Cir. 2004) ("[L]iberal pleading principles do not permit dismissal for failure in a complaint to cite a statute, or to cite the correct one . . . Factual allegations alone are what matters.").

[3] Petitioner's pleadings mention various claims she has made, including actions in federal court and at the New York City Commission of Human Rights. She also generally alleges DEP retaliated against her for whistleblowing and made improper changes to her duties, specifically, reassigning her to do distribution engineering work. While such information may be relevant as background, given the four-month statute of limitations, and the limited scope of this Board's jurisdiction, the allegations will not be discussed in detail. *See Howe*, 79 OCB 19, at 7 (BCB 2007); *Okorie-Ama*, 79 OCB 5, at 13 (BCB 2007).

BACKGROUND

The Petitioner was employed by DEP as a Civil Engineer Level I. The Union and the City are parties to a collective bargaining agreement ("Agreement") that sets terms and conditions of employment, including grievance procedures applicable to DEP employees, such as Petitioner.

In October 2006, Petitioner's supervisors assigned her certain tasks related to the hydraulic flow test unit, which Petitioner deemed a change in specialty from structural engineer to distribution engineer. As part of this new assignment, Petitioner's supervisor wanted her to learn to use Fast Look, a computer program. At an October 31, 2006 meeting, DEP managers explained the assignment to Petitioner, and Petitioner stated that she did not want to do the assignment, but stated "I will start to do what I can, but I will complain because it is a demotion." (Pet., Ex. 36-1 at 7) (internal quotations omitted). Petitioner spent time in November working on these tasks, but used paper maps instead of the Fast Look computer program, which according to her supervisor, resulted in the tasks taking longer to complete.

On November 20, 2006, Petitioner's supervisor noticed what he perceived as a "backlog" in Petitioner's work, and approached her about the status of her workload. (*Id.* at 8). Petitioner told her supervisor "I don't want to work here, and I don't want to learn Fast Look." (*Id.* at 8) (internal quotations omitted). On November 21, 2006, Petitioner's supervisor sent her an e-mail reminding her that as part of the flow test assignment, she was required to "perform daily review of individual flow tests for engineering feasibility," and to "perform daily review of incoming []-field data." (Pet., Ex. 8 at 4). Later that day, Petitioner had a discussion with her supervisor concerning her assignment; she also made "ethnic remarks" concerning the fact that her supervisor was an "Irish

descendent" [sic].[4] (Am. Pet. at 2). On December 21, 2006, her supervisor sent Petitioner an e-mail in which he asked her whether she continued to refuse to perform the flow test assignment. Petitioner responded by stating, "I must be out of this unhealthy situation as soon as possible before I become irreversibly sick . . . do not take it as a refusal, but as an explanation." (Pet., Ex. 8 at 2). On January 9, 2007, Petitioner signed a form stating "I refuse to perform the assignments asked of me," specifically "the following tasks connected with the hydraulic flow test unit" including "preliminary engineering review" and "post engineering review." (*Id.* at 1).

In a notice and statement of charges issued on December 18, 2006, and amended on January 8, 2007, Petitioner was charged with: 1) insubordination for refusing a directive to perform duties related to the "Citywide Hydraulic Flow Test Unit," 2) "engag[ing] in conduct prejudicial to good order and discipline [based on making] a disparaging remark to and about a supervisor, saying that he only had his position because he was 'of Irish descent'" and also for speaking to her supervisor in a "disrespectful tone," and 3) neglecting her duties and "assigned tasks in the Citywide Hydraulic Flow Test Unit." (Pet., Ex. 5). The notice of charges advised that an informal conference would be held on the charges.

On January 16, 2007, DEP held an informal conference in the matter. The Union representative advised Petitioner "not to respond in writing to the Disciplinary Counsel's charges,

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[4] On November 27, 2006, Petitioner's supervisor filed a discrimination complaint with DEP's Equal Employment Opportunity ("EEO") office concerning the comments Petitioner made on November 21, 2006. In his complaint, he stated that Petitioner "made a loud, offensive remark to me stating that the only reason that I have my position is because I am of Irish descent. . . . [She] made the statement in front of [the] Chief of System Operations while complaining about her qualifications to him. I believe it is unlawful for [her] to embarrass and insult me when all I'm trying to do is to keep the hydraulic flow test unit working efficiently." (Pet., Ex. 15). According to Petitioner, although EEO did not accept this discrimination complaint, DEP brought disciplinary charges against Petitioner based on the comment.

because, according to his experience, a written answer [would] be later used against [her]." (Pet., § 4.b.1 at 1) (emphasis omitted). According to the Union, its representative also advised Petitioner against submitting to the conference leader documents concerning matters not relevant to her grievance, such as those concerning a case with the New York City Commission on Human Rights, and dissatisfaction with her assigned duties. After the conference, which a Union Representative attended, the Conference Leader recommended that Petitioner be terminated. On or about January 19, 2007, the Union filed a written grievance on Petitioner's behalf, to "appeal the charges, specifications, and penalties recommended by DEP's Disciplinary Counsel on January 16, 2007" seeking that "[a]ll charges and penalties are to be rescinded and the member made whole in every way." (Pet., Ex. 1). The Union also claims that after the informal conference, the Union representative advised Petitioner to consider performing the new "flow test" duties to which she was assigned because DEP might reinstate her. Thereafter, Petitioner took sick leave from January 19, 2007, until July 31, 2007, based on what she characterized as "panic attacks," "depression" and "anxiety." (Pet., § 4.b.1 at 3).

Upon her return to work on August 1, 2007, Petitioner was suspended without pay for a period of thirty days. A Step II grievance hearing was held on August 21, 2007, at which Petitioner testified. The same Union representative that accompanied Petitioner to the informal conference was in attendance at the Step II conference. On August 22, 2007, the Step II determination was issued stating that Petitioner was terminated effective that day.

The Union appealed this determination to Step III. Throughout the Step III proceeding, Petitioner was represented by the Union's Second Vice President. The Second Vice President sent Petitioner a copy of the contract language concerning grievances and stated that Petitioner could

prepare her case in writing "[i]f [she] fe[lt] the need." (Pet., Ex. 21). The Step III grievance hearing was held on September 28, 2007. At the Step III hearing, Petitioner presented her arguments and also presented documentary evidence, which the Review Officer described as "a voluminous submission containing her narrative response, correspondence with the union, [DEP], and this office concerning the grievance procedure, e[-]mails and other documents." (Pet., Ex. 14 at 2).[5] In the Step III determination, dated October 9, 2007, the Review Officer stated that she found "no contractual violation" and that as Petitioner "did not deny, or did not provide credible evidence to refute, the substance of the charges asserted against her . . . given [Petitioner's] repeated refusal to follow directives and perform assigned duties, I find that the penalty of termination is appropriate." (*Id.* at 2). In a letter, dated October 15, 2007, the Second Vice President advised Petitioner of the Step III decision and notified Petitioner that her case was being prepared for arbitration.

Thereafter, the Union assigned an attorney, Mitchel B. Craner, to represent Petitioner at the arbitration. Craner met with Petitioner on November 7, 2007, to discuss her case and he advised her that the remedy that could be sought through arbitration was reinstatement to the position from which she was terminated. In an e-mail, dated November 12, 2007, Petitioner stated the following:

> I hope that you will help me understand which of my claims can be taken in consideration at arbitration: years of demotion, management retaliation and revenge, illegal forced change in my specialty, lack of justification for instant penalty, termination of my medical insurance without war[n]ing [on] the day when I returned to [the] office after more than six months of work place illness (severe depression, severe anxiety, panic attacks). *Regaining the position that I refused is not an incentive to me.*

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[5] The record indicates that Petitioner submitted written documents to the Review Officer at the Step III hearing, but the record is not clear on whether Petitioner submitted all documents she desired.

(Pet., Ex. 33) (emphasis added).

In February 2008, Craner notified Petitioner via letter of a May 13, 2008 hearing date and suggested that they meet in early May to prepare her case. Petitioner met with Craner on May 10, 2008.

On May 13, 2008, Craner represented Petitioner at the arbitration. He thereafter submitted a closing statement on Petitioner's behalf, dated May 30, 2008, in which he articulated arguments on her behalf. Concerning the charges of insubordination and neglect of duty, he stated that Petitioner made efforts to do the assigned tasks, but she was not given adequate training and was not interested in learning a related computer program because she hoped to leave the flow test unit, and in addition, the situation "was too stressful and making her sick." (Pet., Ex. 36-3 at 4). Concerning the charge of "conduct prejudicial to good order and discipline," he stated that her remarks about the "prevailing Irish descent of the supervisors in the unit . . . was not offered as a racial or ethnic slur, but merely as the hard truth." (*Id.* at 3). In sum, Craner argued, "[t]he charges against [Petitioner] must be found to be unproven, and she must be returned to her job."[6] (*Id.* at 5).

In the opinion and award, dated June 26, 2008, the arbitrator denied the grievance, finding that Petitioner's discharge "was not a wrongful disciplinary action in violation of [the] Agreement." (Pet., Ex. 36-1 at 25). Additionally, the arbitrator found that although "the Grievant claims that [her new duties were] an improper assignment of distribution engineer duties to a structural engineer, and a demotion . . . . [t]he Grievant's Civil Service title and Salary remained the same; clearly there was no demotion." (*Id.* at 22).

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[6] Petitioner claims that Craner ignored documents concerning a discrimination case in federal court, appearing to relate to a complaint she filed with the New York City Commission of Human Rights.

Throughout the course of this matter, Petitioner had multiple contacts with the Union's General Counsel, including in-person meetings and mail correspondence. In these communications, the Union's General Counsel advised Petitioner about the Union's procedure for handling grievances, including the type of representation provided grievants by the Union. He also advised her concerning the arbitration process and the requirement that she sign a waiver as a pre-condition to proceeding to arbitration.

As relief, Petitioner seeks the following: "[r]einstatement to DEP position created entirely in my work . . . [a] position [where] I could be of greatest value [to] DEP given my unique expertise in this area"; monetary compensation for lost salary, sick and personal time, and medical expenses; compensation for pain and distress; orders directing DEP and the Union to cease and desist from retaliating and discriminating against her; a formal memo in her personnel file; and availability to Union members of information on their right to counsel. (Pet., § 4.e. at 1).

POSITION OF THE PARTIES

Petitioners' Position

To support her claim that the Union breached its duty of fair representation in violation of NYCCBL § 12-306(b)(1) and (3), Petitioner asserts she received improper union representation at her Step III conference and at her grievance arbitration proceeding.[7] Concerning her Step III

[7] NYCCBL § 12-306(b) provides that it shall be an improper practice for a public employee organization:

> (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. . . .

(continued...)

conference, Petitioner complains that, although "according to Contract Article VI-Grievance Procedure, it is mandatory to document in writing all steps of grievance procedures," the Union did not ask for a written statement of the basis for her grievance, and in fact, "instructed [her] *not* to put [her] grievance in writing." (Am. Pet. at 1) (emphasis in original). Thus, the Union's policy of not putting the grievant's position in writing violated the Agreement. Further, the Union favored the interests of DEP as "[Petitioner's] long-time demotion, retaliation, discrimination and unfair treatment, as well as the forced, illegal, revengeful [sic] reassignment as a distribution engineer were never discussed at any of the three grievance conferences." (*Id.*) (emphasis omitted).

The Union did not consider Petitioner's grievance concerning DEP's change of her job duties from structural engineer to distribution engineer and ignored her complaints about demotion, retaliation or accelerated termination. The Union also failed to protest DEP's decision to bring disciplinary charges against Petitioner for her use of the words "Irish descendent" and failed to address DEP's termination of Petitioner's health insurance. Thus, the Union handled Petitioner's "grievance in bad faith and an arbitrary manner, interfered with, restrained, and intimidated [her] in the exercise [of her] rights, and help[ed] DEP's management in its last revengeful [sic] retaliation against" her. (*Id.* at 2) (emphasis omitted). Petitioner also expresses dissatisfaction with DC 37's advice to sign the waiver in order to proceed to arbitration.

In addition, Petitioner complains of the attorney hired by the Union to handle her arbitration. She alleges that the attorney met with her in November 2007, discussed her upcoming arbitration with her verbally, and avoided answering her written questions sent by e-mail. The attorney

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[7](...continued)

(3) to breach its duty of fair representation to public employees under this chapter.

"refused to give [her] any written documents until [they] would work together on [her] case." (Am. Pet. at 4). Also, the attorney stated that the only possible outcome he expected to address at the arbitration would be getting Petitioner's position back at DEP. The attorney never presented Petitioner's case of "long term managerial abuse" including "demotion, retaliation and revenge culminating with insubordination charges and . . . termination." (Supplement to Pet., dated July 24, 2008). The attorney also ignored documents that were in the possession of the Office of Disciplinary Counsel, including various e-mail complaints and documents concerning Petitioner's discrimination case in federal court. Indeed, the attorney accepted the "employer's version of accusation trying to make it milder." (*Id.).*

Also, the attorney did not challenge the employer's case against Petitioner for the "ethnic remarks" she made and did not discuss her supervisor's "privileged status," which Petitioner believes is attributable to the fact that he is a "member of a group of people colluding based on their common ethnicity . . . that openly creates privileged status for their members." (*Id.*). Finally, the attorney did not challenge the manner in which the employer presented "truncated documents to fit its point of view, false testimonies, [and] omitt[ed] facts that change totally the meaning of depositions." (*Id.*).

Concerning her claims against DEP, Petitioner asserts that DEP accused her of insubordination after putting her in the position of distribution engineer although she specializes as a structural engineer. Despite the fact that EEO did not accept the discrimination complaint from Petitioner's supervisor based on her use of the words "Irish descendent," DEP's Disciplinary Counsel Office built the case against Petitioner based on her use of that language. (Am. Pet. at 5). In addition, "DEP refused to take any responsibility for [her] chronic depression, a work related

disease that kept [her] more than half of [a] year on [sick] leave and disability, a disease that [she] will have to deal with the rest of [her] life." (*Id.* at 5). Further, "DEP's insubordination accusations are based on its right to use the civil engineers as it pleases, even though DEP never produced a document to prove their assertion." (*Id.* at 1). Petitioner also alleges that DEP's Disciplinary Counsel chose Petitioner's Union representative for her and that the Union representative who was chosen was a Local 1549 representative while Petitioner belongs to Local 375. Finally, DEP's decision to charge Petitioner with insubordination was motivated by "retaliation and revenge," and were "the last step in its years of incessant demotion, denial of [her] work abilities/results and retaliation, without producing any documents proving that [she] had any work problems prior to November 2006." (*Id.* at 5) (emphasis omitted).

Union's Position

The Union asserts that Petitioner fails to allege facts necessary to show that it breached its duty of fair representation. While the contract does require that grievances be filed in writing, contrary to Petitioner's assertion, it does not require that all steps of the grievance procedure be documented, nor does it require that a grievant respond in writing to any disciplinary charge. Moreover, the Union made it a practice to advise grievants against submitting a written answer to charges against them because written documents could be later used against them.

Although Petitioner questions the judgment of the Union and the attorney who handled the arbitration of her grievance, the evidence that she submitted actually demonstrates that her grievance was not handled in an arbitrary or discriminatory manner, nor was it handled in bad faith. Even though Petitioner's complaints show that she would have preferred that the Union use a different strategy regarding the presentation of evidence or the challenging of witnesses, the Union

underscores that an assertion of a difference of opinion alone is not enough to show that it breached its duty of fair representation.

Petitioner's disagreement with the Union's advice, judgment, or tactics is not actionable. Further, the Petitioner's dissatisfaction with the outcome of her grievance and arbitration proceedings is not sufficient to establish that the Union breached its duty of fair representation. As Petitioner has alleged no facts that would show that the Union or its agents acted towards her in a way that was arbitrary, discriminatory, improperly motivated, or in bad faith, the Union argues that the petition must be dismissed.

City's Position

The City asserts that Petitioner failed to allege sufficient facts to demonstrate that the Union breached its duty of fair representation; therefore, the petition must be dismissed. Petitioner presented only conclusory allegations, which are insufficient to meet her burden of establishing a *prima facie* case.

Petitioner alleged that the Union breached its duty of fair representation by telling her not to submit certain writings during the course of her grievance proceedings; however she has admitted that the Union's practice was to not submit such documents for strategic reasons. Further, any derivative claim arising pursuant to NYCCBL § 12-306(d) must be dismissed.[8]

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[8] NYCCBL § 12-306(d) provides, in pertinent part, that:

> The public employer shall be made a party to any charge filed under paragraph three of subdivision b of this section which alleges that the duly certified employee organization breached its duty of fair representation in the processing of or failure to process a claim that the public employer has breached its agreement with such employee organization.

The City also argues that any allegations of retaliation that Petitioner intended to plead under NYCCBL § 12-306(a)(1) and (3) are untimely.[9] NYCCBL § 12-306(e) and § 1-07(b)(4) of the Rules of the Office of Collective Bargaining (Rules of the City of New York, Title 61, Chapter 1) ("OCB Rules") delineate a four-month statute of limitations.[10] All alleged improper practices that occurred more than four months before Petitioner filed her improper practice petition, for example, an allegation that DEP brought insubordination charges out of retaliation, are untimely and must be dismissed.

Even if the Board finds that the petition was timely, Petitioner has not set forth the facts necessary to establish retaliation. Specifically, Petitioner did not assert that she participated in

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[9] NYCCBL § 12-306(a) provides, in pertinent part, that it is an improper practice for an employer to:

> (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.

[10] NYCCBL § 12-306(e) provides that:

> 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. Such petition may be filed by one or more public employees or any public employee organization acting on their behalf, or by a public employer, together with a request to the board for a final determination of the matter and for an appropriate remedial order.

OCB Rule § 1-07(b)(4) provides that an improper practice "petition must be filed within four months of the alleged violation."

protected activity prior to the disciplinary charges she received on December 18, 2006. Therefore, Petitioner is unable to provide a nexus between any protected activity and alleged improper action by DEP. Based on Petitioner's pleadings, it is evident the disciplinary charges were not brought in retaliation for alleged union activity. Indeed, DEP brought the charges in order to enforce its code of conduct, which is a legitimate business reason.

DISCUSSION

Pursuant to NYCCBL §12-306(e), the statute of limitations for an improper practice allegation is four months from the accrual of the claim. Although we will not grant relief based on alleged violations occurring outside the four-month period, information regarding untimely allegations may be admissible as factual background, or to illuminate the intent of the employer. *See Howe,* 79 OCB 19, at 7; *Okorie-Ama,* 79 OCB 5, at 13. Petitioner filed her petition on January 25, 2008. Therefore, alleged incidents that occurred prior to September 25, 2007, including the Union's representation at Step I and Step II, are outside the four-month statute of limitations and may not be remedied in the instant matter.

As to Petitioner's timely claims, Petitioner asserts dissatisfaction with the Union's representation at Step III of the grievance process and at arbitration. Specifically, she complained that the Union and its agents did not produce, by her estimation, sufficient written documentation and correspondence, did not give her sufficient guidance concerning the grievance and arbitration process, and did not raise certain arguments concerning her employment such as the appropriateness of her new duties as a distribution engineer, and DEP's treatment of her "ethnic remarks," and her "whistleblowing" activity. However, as this Board recently noted, "[t]he burden of establishing a

breach of the duty of fair representation cannot be carried simply by expressing dissatisfaction with the outcome of the disciplinary proceeding, or questioning the strategic or tactical decisions of the Union." *James-Reid*, 77 OCB 29, at 16 (BCB 2006).

"[T]he duty of fair representation requires the union to refrain from arbitrary, discriminatory, and bad faith conduct in negotiating, administering, and enforcing collective bargaining agreements."[11] *Edwards*, 1 OCB2d 22, at 20 (BCB 2008) (internal quotations omitted). A union "enjoys wide latitude in the handling of grievances as long as it exercises discretion with good faith and honesty." *Id.* at 21 (internal quotations omitted).

Petitioner has not alleged that the Union treated her in a discriminatory manner as compared to other members. In fact, she stated that the Union's treatment of her case was in keeping with its general policies, as according to Petitioner, "the Union procedures to advi[s]e the employees not to present in writing their arguments at all steps during the grievance procedure helps the management in abusing its power against the employees. The unlawful union collaboration with management constitutes a conspiracy against the public employees that breach[es] its duty of fair representation to them." (Pet., § 4d at 1) (emphasis omitted). Petitioner does not support these allegations with specific facts, nor does she allege that she has been treated in a disparate manner compared with other employees. *See Edwards*, 1 OCB2d 22, at 17 (BCB 2008) (a "petitioner must offer more than speculative or conclusory allegations") (internal citations omitted). Likewise, we find that the record does not evince that the Union discriminated against Petitioner. Thus, we focus

[11] As Petitioner complains of acts on the part of the attorney assigned by the Union to represent her, we note that "representation provided to a member by a designee of a union may be the predicate of a claim that the duty of fair representation has been breached, on the theory that the union, having appointed an agent to fulfill its duty, is properly held responsible for any resultant breach of that duty." *James-Reid*, 1 OCB2d 26, at 20 (BCB 2008) (internal quotations omitted).

our consideration on whether the Union acted in bad faith, or in an arbitrary or perfunctory manner.

At the outset of our inquiry into the motivations underlying the Union's actions, we observe that DC 37 represented Petitioner throughout her grievance proceedings. The Union advanced Petitioner's grievance at each step and communicated with her concerning the status of her grievance, including the steps necessary to proceed to arbitration. Prior to each of the conferences in the matter, the Union representative or attorney who would be representing Petitioner discussed her case with her and explained the outcome that could be sought in the forum in which she was appearing.

Petitioner argues that the Agreement requires that all grievances be presented in writing at all steps of the grievance process, and she appeared unsatisfied with the amount of written documentation produced by the Union, including documents submitted at grievance meetings as well as documents given to Petitioner. However, Petitioner herself submitted into the record multiple writings that the Union produced in conjunction with her grievance. While Petitioner may have preferred that the Union produce more documents than it did, its failure to meet Petitioner's expectations does not constitute a breach of its duty of fair representation. As we have held, a union "does not breach the fair representation duty merely because the outcome of a union's good faith efforts to resolve a member's complaint does not satisfy the member." *Id.* at 21 (internal quotations omitted).

Concerning the guidance that the Union General Counsel gave her about signing the waiver, the record illustrates that the Union General Counsel told Petitioner on multiple occasions that the waiver was a necessary condition to arbitration. We note that submission of the waiver is a

statutory prerequisite to arbitration pursuant to NYCCBL § 12-312(d).[12]

Petitioner also expresses dissatisfaction with the manner with which the Union represented her at the grievance proceedings. For example, she claims that the Union representatives did not raise arguments concerning DEP's treatment of her "ethnic remarks." Upon review of the documents submitted by the parties, it is clear that the Union did raise Petitioner's arguments concerning the "ethnic remarks"; such arguments are articulated clearly in the Union attorney's closing brief to the arbitrator.

Petitioner also alleges that the Union did not discuss what she called her "long term managerial abuse," her "whistleblowing activity," her newly assigned duties, her case at the New York City Commission on Human Rights, and her federal lawsuit. In addressing these allegations, we first note that a union "enjoys wide latitude in the handling of grievances as long as it exercises discretion with good faith and honesty." *Edwards*, 1 OCB2d 22, at 21 (internal quotations omitted). However, we also note that the issue to be addressed during the grievance process in the circumstances of this case was the disciplinary charges brought against the grievant.[13] Although the Board "will not substitute its judgment for that of a union or evaluate its strategic

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[12] NYCCBL § 12-312 states that:

> As a condition to the right of a municipal employee organization to invoke impartial arbitration under such provisions, the grievant or grievants and such organization shall be required to file with the director a written waiver of the right, if any, of said grievant or grievants and said organization to submit the underlying dispute to any other administrative or judicial tribunal except for the purpose of enforcing the arbitrator's award.

[13] Petitioner may have valid concerns about other matters. However, during the grievance process or during arbitration in a case involving the appeal of disciplinary action, issues regarding matters such as whistleblowing, managerial decisions, and human rights are not properly raised.

determinations," in our view, given the discrete nature of the grievance herein, the Union's decision not to discuss matters outside the purview of the grievance is inherently reasonable. *Id.* (internal quotations omitted). Therefore, we find that Petitioner's allegations do not establish that the Union handled Petitioner's case in bad faith or that it treated Petitioner's grievance in an arbitrary or perfunctory manner, "especially in light of the wide latitude to which unions are entitled in handling grievances."[14] *Id.* at 22.

Concerning claims against the City, the record shows that DEP terminated Petitioner's employment on August 22, 2007. Because the petition was not filed until January 25, 2008, all alleged actions occurring prior to September 25, 2007, including DEP's decision to bring charges against Petitioner and to assign her certain tasks, fall outside the four-month statute of limitations. *DC 37*, 1 OCB2d 5, at 50 (BCB 2008). Thus, we find that any such claims against the City are untimely and must be dismissed.[15]

[14] We find that the Union did not violate NYCCBL § 12-306(b)(3). Thus, we also find that any derivative claim against DEP pursuant to NYCCBL § 12-306(d) must also be dismissed.

[15] Assuming *arguendo* that Petitioner had made a timely claim, we note that Petitioner has not asserted that she participated in any protected union activity, as defined by the NYCCBL. Specifically, she has not asserted DEP retaliated against her due to her participation in union-related activities. Conclusory allegations of wrongdoing are insufficient to warrant a hearing, even when made by a *pro se* petitioner. *See D'Onofrio*, 79 OCB 26, at 13 (BCB 2007). Accordingly, Petitioner has not pleaded facts which, even if credited, would tend to establish a violation of the NYCCBL arising out of DEP's actions.

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 filed by Cleopatra Rosioreanu docketed as BCB-2684-08, be, and the same hereby is denied.

Dated: New York, New York
November 10, 2008

MARLENE A. GOLD
CHAIR

GEORGE NICOLAU
MEMBER

CAROL A. WITTENBERG
MEMBER

M. DAVID ZURNDORFER
MEMBER

ERNEST F. HART
MEMBER

CHARLES G. MOERDLER
MEMBER

GABRIELLE SEMEL
MEMBER