Social Service Employees Union, Local 371, 61 OCB 12 (BCB 1998) [Decision No. B-12-98 (IP)], rev'd, Social Service Employees Union v. New York City Board of Collective Bargaining, No. 108479/98 (Sup. Ct. N.Y. Co. Apr. 5, 1999).

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

In the Matter of the Improper Practice Petition -between- SOCIAL SERVICE EMPLOYEES UNION, LOCAL 371 Petitioner, -and- NEW YORK CITY DEPARTMENT OF HEALTH, Respondent.	:	DECISION NO. B-12-98 DOCKET NO. BCB-1477-92

DECISION AND ORDER

On March 19, 1992, the Social Service Employees Union, Local 371 ("Local 371" or "Union") filed an improper practice petition against the New York City Department of Health ("DOH" or "City"), alleging that an improper practice was committed when DOH discriminated against, refused to bargain collectively and interfered with the members of Local 371, in violation of the New York City Collective Bargaining Law ("NYCCBL") §§12-306(1), (3) and (4).[1] The City filed an answer on May 25, 1992, and on June 11, 1992 the Union filed its reply.

---

[1] **§12-306 Improper practices; good faith bargaining.** a. Improper public employer practices. It shall be an improper practice for a public employer or its agents:

(1) to interfere with, restrain or coerce public employees in the exercise of their rights granted in section 12-305 of this chapter;

(3) to discriminate against any employee for the purpose of encouraging or discouraging membership in, or participation in the activities of, any public employee organization;

The original Trial Examiner to whom this case was assigned left the employ of the agency and the matter was reassigned on December 15, 1995. At that time, hearings were scheduled for January 1996, but had to be postponed due to an illness suffered by the second Trial Examiner. Hearings were subsequently rescheduled, but were adjourned several times by the Union. The matter was reassigned to a third Trial Examiner in January 1998.

BACKGROUND[2]

It is asserted that, on June 30, 1991, the City of New York instituted budget cuts, affecting the budgets and operations of DOH and specific agencies therein: the Bureau of Maternity Services,[3] which operated an Infant Mortality Initiative Program ("IMI"), a Woman's Health Line and an Adolescent Parenting Training Program, and the Commission on Disease Intervention, which operated the Bureau of HIV Program Services ("BHPS"). Individuals whose positions were eliminated, due to the budget cuts, were redeployed or offered other jobs to the extent possible, in accordance with the Civil Service Law ("CSL") and the Citywide Agreement ("Agreement") between the City and the Union. Some individuals were rehired into different titles based on their qualifications. The City was unable to redeploy all of the individuals.

---

* * *

(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.

[2] The background information herein is derived solely from information submitted by the City in its answer. The Union supplied no information in this regard in its petition; its reply denied knowledge or information sufficient to form a belief as to the truth of the allegations and assertions offered by the City, put forth in this Background section.

[3] It is asserted that prior to June 30, 1991, the Bureau of Maternity Services was operating with a budget of $7.8 million, and after that date the budget was cut by $7.1 million.

POSITIONS OF THE PARTIES

Union's Position

The Union claims that DOH replaced employees with permanent appointments in the noncompetitive civil service titles of Community Coordinator and Community Associate in the Department's BHPS unit with employees holding permanent or provisional appointments in the competitive civil service titles of Public Health Educator and Senior Public Health Educator, both of which are represented by Local 237, International Brotherhood of Teamsters ("Local 237").

The Union also states that members having attained:

i) permanent appointments in the noncompetitive civil service titles of Community Associate and Community Coordinator;

ii) provisional appointments in the competitive civil service title of Assistant Community Liaison Worker;

iii) permanent appointments in the competitive civil service titles of Community Liaison Worker and Senior Community Liaison Worker, in the Department's Maternity Services Unit,

were replaced with employees that held permanent or provisional appointments in the competitive civil service titles of Public Health Advisor and Senior Public Health Advisor, both of which are represented by Health Services Employees Local 768 ("Local 768").

The Union states that there were no discussions regarding the above-mentioned replacements because DOH has a "preference" for Local 237 and Local 768. Therefore, it is asserted that DOH has:

i) discriminated against the Union in order to discourage membership and participation therein in violation of NYCCBL §12-306(1);

ii) interfered with, restrained or coerced employees in the exercise of their rights guaranteed by NYCCBL 12-305[4] in violation of NYCCBL §12-306(1); and

iii) refused to bargain collectively in good faith, in violation of NYCCBL §12-306(4).

City's Position

The City claims that the Union's petition is untimely. It states that, pursuant to the Rules of the City of New York, Title 61, ("RCNY") §107(d),[5] an improper practice petition must be filed with the Office of Collective Bargaining within four months of an alleged violation of the NYCCBL. The City points out that there is no date mentioned in the petition as to the occurrence of the alleged improper practice. Moreover, the City asserts that none of the relevant positions in Maternity or BHPS that had originally been filled by a member of Local 371 has been replaced with individuals from Locals 237 or 768 within four months of the filing of the instant petition.

---

[4] NYCCBL §12-305, states, in pertinent part:

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

[5] OCB Rule §107(d) states in pertinent part:

> **Improper practices.** 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 §12-306 of the statute may be filed with the board within four (4) months thereof by one (1) or more public employees or any public employee organization acting in 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.

The City claims that its actions in this matter, including those challenged by the Union, are sanctioned by the management rights clause contained in NYCCBL §12-307(b),[6] and that these rights are unfettered by the collective bargaining agreement. The City states that the Union's claim that it members were being replaced with members of Locals 237 and 768 arises from the fact that DOH could not redeploy those members of Local 371 that worked at the IMI in the same positions.[7] The City views this as an incidental detrimental effect occurring due to the abolition of those positions, and further claims that attempts were made to redeploy the laid off workers into the same or similar titles at a comparable salary. The Agency's sole motivation in this matter, asserts, the City, was to provide the public the best service after the budget cuts,

---

[6] **§12-307 Scope of collective bargaining; management rights.**

(b) It is the right of the city, or any other public employer, acting through its agencies, to determine the standards of services to be offered by its agencies; determine the standards of selection for employment; direct its employees; take disciplinary action; relieve its employees from duty because of lack of work or for other legitimate reasons; maintain the efficiency of governmental operations; determine the methods, means and personnel by which government operations are to be conducted; determine the content of job classifications; take all necessary actions to carry out its mission in emergencies; and exercise complete control and discretion over its organization and the technology of performing its work. Decisions of the city or any other public employer on those matters are not within the scope of collective bargaining, but, notwithstanding the above, questions concerning the practical impact that decisions on the above matters have on employees, such as questions of workload or manning, are within the scope of collective bargaining.

[7] The City states that on or about July 17, 1991, the City allocated $3.56 million to reinstate four of the original nine IMI sites affected by the budget cuts. IMI was reconfigured to provide cost effective service and to satisfy certain minimum funding standards in order to qualify for federal funding. The services that were discontinued as a result of the reconfiguration were those performed by Assistant Community Liaison Workers and Community Liaison Workers.

while retaining as many original employees as possible; DOH was not acting out of anti union animus.

DISCUSSION

The petition, which was filed on March 19, 1992, does not contain factual allegations or other evidence to show that this proceeding was commenced within four months of any actions alleged to constitute an improper practice. The petition fails to indicate any dates on which the alleged replacement of members of Local 371 occurred. The City alleges, without specific refutation, that the budget cuts that resulted in a loss of positions took effect on June 30, 1991, and that there was a partial restoration of funding on July 17, 1991, which caused a reconfiguration of services and a resulting change in the titles utilized. The Union has not alleged that the replacement of its members occurred within four months of March 19, 1992, or that any other relevant event occurred within that time period.

We note that this matter initially was scheduled to go to hearing. However, we find that the timeliness of a petition is a threshold element which must be established in the pleadings before this Board can exercise jurisdiction over a matter;[8] in general, a dispute over this issue should be resolved by the Board before further proceedings are held. In the absence of any evidence or argument that the members of Local 371 were being discriminated against, interfered with, restrained or coerced, or that DOH refused to bargain collectively in good faith, within four months of the filing of the petition herein, we must dismiss the petition as time-barred, pursuant to RCNY §1-07(d). In light of this finding, we will not consider the merits of the controversy.

---

[8] *See,* Decision Nos. B-23-81; B-14-80.

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-1477-92 be, and the same hereby is, dismissed.

DATED: April 16, 1998
New York, N. Y.

Steven C. DeCosta
CHAIRMAN

Daniel G. Collins
MEMBER

George Nicolau
MEMBER

Carolyn Gentile
MEMBER

Jerome E. Joseph
MEMBER

Richard A. Wilsker
MEMBER

Anthony Coles
MEMBER