



the City as a necessary party<sup>2</sup> and explaining how to do so. Included with the letter was a copy of Sections 1-07 and 1-13 of the Rules of the City of New York (“OCB Rules”), which set forth the rules for filing and marking pleadings before this Board. The letter stated that the OCB was unable to accept or docket the petitioner’s improper practice petition unless it conformed with the OCB Rules.

On May 10, 1999, the petitioner filed a verified improper practice petition against Local 1182, Communications Workers of America (“Union”), its president, Robert Cassar, and the New York City Office of Labor Relations (“City”). The petitioner claimed that the Union failed adequately to represent him against allegations that he had an alcohol abuse problem; that the Union conspired with the City to deprive unit members of their rights during a merger with the New York City Police Department; and that Cassar and the Union wrongfully caused the death of a bargaining unit member by failing adequately to take action when she was denied sick leave.

Pursuant to Title 61, Section 1-07(d) of the Rules of the City of New York (“OCB Rules”)<sup>3</sup> the Executive Secretary of the Board of Collective Bargaining reviewed the petition and

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<sup>2</sup>Section 12-306(d) of the NYCCBL provides

**Joinder of parties in duty of fair representation cases.** 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.

<sup>3</sup>Section 1-07(d) (“Improper Practices”) of the New York City Collective Bargaining Law (“NYCCBL”) provides, in relevant part:

**(d) 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

(continued...)

determined that the charges of inadequate representation and conspiracy with the City were untimely, and that the charge of wrongful death was outside the jurisdiction of this Board . Accordingly, in a determination dated July 1, 1999, the petition was dismissed.<sup>4</sup>

The determination was delivered to the petitioner by certified mail on July 21, 1999. A copy of Section 1-07(d) of the OCB Rules was attached to the determination. On August 2, 1999, the petitioner filed an appeal.

### **THE PETITION**

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<sup>3</sup>(...continued)

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. Within ten (10) days after a petition alleging improper practice is filed, the executive secretary shall review the allegations thereof to determine whether the facts as alleged may constitute an improper practice as set forth in §12-306 of the statute. If it is determined that the petition, on its face, does not contain facts sufficient as a matter of law to constitute a violation, or that the alleged violation occurred more than four (4) months prior to the filing of the charge, it shall be dismissed by the executive secretary and copies of such determination shall be served upon the parties by certified mail. If upon such review, the executive secretary shall determine that the petition is not, on its face, untimely or insufficient, notice of the determination shall be served on the parties by certified mail, provided, however, that such determination shall not constitute a bar to the assertion by respondent of defenses or challenges to the petition based upon allegations of untimeliness or insufficiency and supported by probative evidence available to the respondent. Within ten (10) days after receipt of a decision of the executive secretary dismissing an improper practice petition as provided in this subdivision, the petitioner may file with the Board of Collective Bargaining an original and three (3) copies of a statement in writing setting forth an appeal from the decision together with proof of service thereof upon all other parties. The statement shall set forth the reasons for the appeal.

<sup>4</sup> Decision No. B-20-1999(ES).

The petitioner is employed as a Traffic Enforcement Agent by the New York City Police Department and is a member of a bargaining unit represented by the Union. He was suspended on October 30, 1998 and December 1, 1998 for refusing to report to in-patient treatment for alcohol abuse. According to the petitioner, he told his employer on both instances, and Cassar and other Union officials on December 1, 1998, that he did not need treatment for alcohol abuse. It was his contention that there has never been an on-the-job incident which warranted his referral for substance abuse treatment and his employer never had reason to complain that he was unable to perform his job. The petitioner claimed that the Union failed adequately to represent him against allegations that he had an alcohol abuse problem

The petitioner said he discovered in October, 1997, that the Union had conspired with the City by maliciously failing to inform its membership that they had the right to protest a merger with the New York City Police Department and, by so doing, had assisted the City in reducing staff. When the merger took place, he said, Cassar and the Union fraudulently told the membership that they were subject to the rules and regulations of the Police Department, which caused 300 members to lose their jobs.

By this deception, the petitioner maintained, Cassar and the Union also wrongfully caused the death of a bargaining unit member, Ramona Davis, who died on February 12, 1998. He said that Davis was denied sick leave by the Department under rules that the Union and its officials knew did not apply to Davis at the time. When, in his capacity as shop steward, he told Cassar that Davis had been denied sick leave, the petitioner asserted, Cassar told him that “management has the right to manage and they can deny sick leave.”

The petitioner sought a number of remedies. They included the ability to protest the unit's transfer to the Police Department; an investigation of Davis' death; prosecution of Cassar and other Union officials for the wrongful death of Davis; reinstatement of terminated unit members with full back pay; replacement of Cassar and other Union officials; a \$50 million scholarship fund for each child of Ramona Davis; legal expenses; and \$30 million dollars for mental anguish, pain and suffering.

#### **EXECUTIVE SECRETARY'S DETERMINATION**

In Decision No. B-20-1999(ES), the Executive Secretary found that the petition was untimely on its face as to the allegations that the Union failed in its duty to represent bargaining unit members. Under §1-07(d) of the OCB Rules, a claim alleging conduct in violation of § 12-306 of the NYCCBL must be filed within four (4) months of the date the alleged improper practice occurred. In the instant case, such allegations included the Union's alleged failure to investigate the circumstances of the Petitioner's two suspensions in 1998; the Union's alleged conspiracy to deprive unit members of their jobs by withholding information in 1997; and the Union's alleged failure to investigate denial of sick leave to Ramona Davis before her death in 1998. None of these actions were alleged to have occurred within four months of the date that the petitioner filed this petition.

The petitioner's other allegations were dismissed because they related to claims, such as wrongful death, which are outside the jurisdiction of this Board. The Executive Secretary noted that the provisions and procedures of the NYCCBL are designed to safeguard the rights of public

employees set forth therein, *i.e.*, the right to bargain collectively through certified public employee organizations; the right to organize, form, join, and assist public employee organizations; and the right to refrain from such activities. They do not, however, extend to criminal or other civil claims.

### **THE APPEAL**

By letter dated July 29, 1999 and filed with the OCB on August 2, 1999, the petitioner sought to appeal Decision No. B-20-1999(ES). In support of his appeal, the petitioner says:

My December suspension was in a timely manner. Because the green card I received was signed and dated April 21, 1999. This is within the (4) months period as per 12-306 of the statute.<sup>5</sup> As you see it was not dated May 10<sup>th</sup> as indicated in your decision.

### **DISCUSSION**

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<sup>5</sup>Section 12-306(e) of the NYCCBL provides:

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.

We have reviewed the record that was before the Executive Secretary and find that both the defective petition of April 19, 1999, which was returned by the OCB, and the petition of May 10, 1999, which was accepted and docketed by the OCB, were untimely. A charge of improper practice must be filed no later than four months after the disputed action took place.<sup>6</sup> The latest act upon which the petitioner based his claims occurred on December 1, 1998, when, the petitioner claims, he was suspended and Cassar and the Union did not respond adequately. The petitioner's defective petition was filed on April 19, 1999, and his second petition was filed on May 10, 1999. Both dates are more than four months from the date of the latest alleged violation; therefore, both petitions were filed outside the four-month limitations period.

Since the petitioner has not alleged any basis for overturning the Executive Secretary's ruling, we confirm Decision No. B-20-1999 (ES) and dismiss the petitioner's appeal.

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<sup>6</sup>Section 1-07(d) of the OCB Rules.

**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 appeal filed by Moses L. Green, Jr. and the Concern Agents of Traffic be, and the same hereby is, denied; and it is further

ORDERED, that the determination of the Executive Secretary in Decision No. B-20-1999(ES) be, and the same hereby is, confirmed.

Dated: New York, New York  
August 31, 1999

STEVEN C. DeCOSTA  
CHAIRMAN

DANIEL G. COLLINS  
MEMBER

GEORGE NICOLAU  
MEMBER

RICHARD A. WILSKER  
MEMBER

SAUL G. KRAMER  
MEMBER

CAROLYN GENTILE  
MEMBER

THOMAS J. GIBLIN  
MEMBER