

BACKGROUND

The petitioner has been employed by the Department as an Auto Machinist since 1990. He has, in the past, filed a number of grievances that were settled within the contractual grievance and arbitration procedure with the assistance of the Union. He also filed a complaint of national origin discrimination with the Equal Employment Opportunity Commission (“EEOC”) that was dismissed. In 1994, the petitioner initiated a complaint that was litigated by the Union and resulted in a judgment ordering the Department to stop assigning Machinists’ work to employees in other titles. He was also represented by the Union in several disciplinary matters in 1994.

POSITIONS OF THE PARTIES

Petitioner’s Position

The petitioner alleges that he has been transferred and otherwise retaliated against for initiating legal action that resulted in a court order to cease assigning Machinists’ work to employees in other titles. Despite the court order, the petitioner says, other employees are still doing Machinists’ work and getting paid overtime for doing it.

According to the petitioner, after filing a grievance and calling the Union for three years, he was told by the Union to file a complaint with the Inspector General’s office. The Union, he said, told him that it cannot stop the out-of-title assignments because the Superintendent is covering up the illegal assignments. The petitioner believes that the Superintendent was forced to retire after the petitioner filed complaints with the Inspector General’s office and the EEOC.

The petitioner says that “the Union then offered me \$600.00 through N.Y.C. Department of Correction for out-of-title overtime money without a labor court hearing.” As a remedy, he seeks “overtime money by the officers who have done [his] job.”

Union’s Position

The Union claims that it has always supported the Petitioner in his complaints and grievances and represented him in disciplinary matters, including several in which the Union was able to rescue the petitioner from difficult situations in which he had become enmeshed, without repercussions. In May, 1997, it says, it negotiated a transfer for the petitioner to an assignment with more opportunities for overtime, although the petitioner did not appear for the grievance arbitration. As part of the settlement, the petitioner received the equivalent of 16 hours of overtime, in the sum of \$600. The Union believes that the petitioner suspected that the City would have been willing to pay more than \$600. According to its attorney, the petitioner told him he would check with his personal attorney, and the instant claim ensued.

The Union says that the petition does not state a claim of intentional and arbitrary failure to represent the petitioner. Further, it claims, even if all the petitioner’s claims were correct, they do not state an arguable claim of improper practice under the NYCCBL. Although the petitioner claims that he complained to the Union for three years, it maintains, he does not claim that the Union ignored him, acted in bad faith, or discriminated against him.

The Union claims that the petition is untimely, since the most recent grievance was filed by the petitioner in May, 1997. The matter was resolved in the fall of 1997, the Union says, and

the final stipulation between the City and the Union was completed shortly thereafter. The Union argues that every event alleged in the petition occurred more than four months before the petition was filed and is time-barred under the NYCCBL.

City's Position

The City contends that the petition is comprised of vague and unsubstantiated allegations and lacking in specificity, including specific dates and names and the section of the statute which the petitioner believes has been violated. Consequently, the City says, it is unable to respond to the petition. Further, the City maintains, the petition fails to allege facts sufficient to maintain a charge that the Union or the Department have acted in any way that would frustrate his rights under the statute.

DISCUSSION

A charge of improper practice must be filed no later than four months after the disputed action took place.² The latest act upon which the petitioner based his claims occurred in the fall of 1997, when the stipulation of settlement in the last grievance was signed. The petition in the instant case was filed on June 15, 1998, more than four months from the date of the latest alleged

²Title 61, Section 1-07(d) of the Rules of the City of New York 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 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....

violation; therefore, the petition was outside the four-month limitations period and must be dismissed for lack of timeliness. Having so found, we need not reach the petitioner's allegations of a breach of the duty of fair representation.

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-1995-98 be, and the same hereby is, denied.

Dated: New York, New York
September 28, 1999

STEVEN C. DeCOSTA
CHAIRMAN

GEORGE NICOLAU
MEMBER

DANIEL G. COLLINS
MEMBER

JEROME E. JOSEPH
MEMBER

ROBERT H. BOGUCKI
MEMBER

RICHARD A. WILSKER
MEMBER