



answer on June 16, 1999 and the City filed an answer on June 25, 1999. The Petitioner did not submit a reply.<sup>3</sup> On October 14, 1999, Petitioner amended his petition by withdrawing one of the allegations against Respondent Union.

### **Background**

On October 3, 1998, Sergeant Castro was suspended and transferred from the 115<sup>th</sup> precinct because he was fighting with other members of the department. In October 1998, Police Officer Richard Tamayo attempted to collect money for Sergeant Castro, however, Captain Hall<sup>4</sup> ordered Officer Tamayo to stop. The Petitioner alleges that he complained to the SBA about the situation, however, the Union did not assist him. On November 29, 1998, after the executive officer of the 115<sup>th</sup> precinct ordered that the Petitioner's locker be opened, a member of the precinct removed Sergeant Castro's personal possessions from the locker. Petitioner alleges that he complained to the Union about this incident as well but received no assistance. On December 30, 1998, Sergeant Castro was dismissed from his position with the NYPD. He alleges that he asked that the Union fund an Article 78 proceeding in court to appeal his discharge, however, the

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<sup>2</sup>(...continued)

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> Petitioner was informed by the Office of Collective Bargaining by letter dated July 21, 1999, that he is entitled to submit a reply which may address any additional facts or new matter alleged in the respondents' answers pursuant to the Rules of the City of New York for the Office of Collective Bargaining, Title 61, Chapter 1, § 1-07 (i). He was informed that if he did not submit a reply, disposition of the matter would proceed based on the existing record.

<sup>4</sup> The pleadings refer to Captain Hall as Deputy Inspector Hall as well.

Union refused.

### **Positions of the Parties**

#### **Petitioner's Position**

The Petitioner alleges that on October 3, 1998, he was suspended from the NYPD. When Police Officer Richard Tamayo of the 115<sup>th</sup> precinct attempted to set up a collection for Sergeant Castro as is customary for NYPD members who experienced crises, Captain Hall, the commanding officer of the 115<sup>th</sup> precinct, ordered Officer Tamayo to stop the collection. Petitioner insists that he never had any dealings with Hall that would explain Hall's action. According to the Petitioner, the only explanation for Captain Hall's action is that Petitioner had complained that he was discriminated against and harassed by Lieutenant John Henry, a friend of Captain Hall. Petitioner thus concludes that Henry and Hall "conspired ... to create a hostile environment, by the disparate treatment he chose to use against [him]."

Petitioner further claims that the 115<sup>th</sup> precinct delegate Dan Spinelli told Petitioner that he was aware of the situation but did not want Captain Hall to "come down on him." No action was thus taken on Petitioner's behalf. Petitioner then spoke with Ed Conroy, Joe Toal and Tom Biscione, members of the SBA Board, who acknowledged that there was a problem but did not provide him with assistance. Petitioner then spoke to Sergeant Phil Lynch, another delegate, who discovered that there were no prohibitions against such collections. Lynch told Petitioner that no special permission was needed for a collection.

Petitioner further explains that he was involved in an "incident" on May 5, 1997. While he argues that he played an insignificant role in the incident, he was punished more severely than

those directly involved and was dismissed in December 1998. Petitioner claims that in a January 7, 1997 letter, he asked the SBA to fund an Article 78 proceeding on his behalf. He claims that he got the “run around” for several weeks, and was told by SBA President Joe Toal that the Board wanted to know more about the case before it made a decision. The SBA, however, did not take on his case.

Petitioner also claims that on Sunday, November 29, 1998, his locker in the 115<sup>th</sup> precinct was broken into and its contents removed. Petitioner’s belongings were put in a garbage bag which was placed in an unsecured area. No one “vouchered” the property or made a command log entry as was required by NYPD rules. Several articles were missing and no one has replaced Petitioner’s losses. Petitioner claims that Sergeant Ed Conroy, Queens North Trustee, erroneously told him that nothing could be done about the locker incident. Petitioner argues that, again, the Union was wrong and ineffective on this occasion.

### **Union’s Position**

The SBA asserts that none of Petitioner’s allegations constitute an improper practice. The Union also argues that all of Petitioner’s allegations are time barred because they took place more than four months before he filed his improper practice petition. The Union further argues that Petitioner has no standing to bring any of his claims because he is no longer a public employee nor an SBA member, after his dismissal from the NYPD.

The SBA also asserts that soliciting money for anyone connected with the department without the permission of the Deputy Commissioner-Internal Affairs Bureau is prohibited by § 104-1 of the Rules and Procedures of the NYPD. The Union argues that a violation of that Rule

is disciplinary in nature and is not grievable under the NYCCBL. The Union further asserts alternatively, that the person prevented from collecting the funds must be the one to bring the action and not a third party. The Union contends that there was no breach of the duty of fair representation because the SBA acted in good faith in a nonarbitrary and nondiscriminatory manner.

The Union further contends that the policy of the SBA is not to fund Article 78 proceedings for individuals. On rare occasions, however, the SBA's Legal Committee votes to make an exception to the policy when the firing is determined to be particularly egregious based upon the circumstances of the case. According to the Union, the decision not to fund the Petitioner's Article 78 proceeding was based on the merits of the case.

The Union also alleges that Petitioner's locker was entered as a consequence of a disciplinary action within the exclusive authority of the agency and which is not grievable pursuant to the NYCCBL. The SBA contends that it is not responsible for the actions taken by the NYPD. Also, the Union argues that missing personal property is a criminal allegation and should be the subject of a criminal investigation. The grievance procedure is not the forum for fact-finding in a criminal matter.

### **City's Position**

The City contends that on October 3, 1998, Sergeant Castro, after being served with charges and specifications, was suspended and transferred out of the 115<sup>th</sup> precinct for fighting with other members of the Department. Captain Hall met Lieutenant John Henry for the first time in September 1998, when he was transferred to the 115<sup>th</sup> precinct. According to the City,

Captain Hall ordered Officer Tamayo to stop collecting money for Sergeant Castro because he had not obtained the permission of the Deputy Commissioner-Internal Affairs Bureau as required by Patrol Guide 104-1.

According to the City, on November 29, 1998, due to a need for lockers, the executive officer of the 115<sup>th</sup> precinct ordered that the Petitioner's locker be opened. Although Petitioner was no longer assigned to the 115<sup>th</sup> precinct, he never removed his belongings from his locker. There was no marking on the locker identifying it as the Petitioner's.

The City explains that Petitioner was dismissed from the NYPD for providing false information during an official investigation. The City contends that the petition should be dismissed as untimely pursuant to Section 1-07 of the Rules of the OCB. According to the City, the alleged incident occurred on October 3, 1998, yet, the Petitioner did not file his improper practice petition until April 2, 1999. Furthermore, the locker incident which took place on November 29, 1998 is also untimely.

The City claims that the Petitioner fails to allege facts sufficient to maintain a charge that the NYPD has taken actions violating the NYCCBL. The City argues that the Petitioner has provided no facts to substantiate a claim that the NYPD or SBA violated § 12-305 of the NYCCBL and that Petitioner has not presented any factual allegation that the Union's conduct was discriminatory. The City concludes that the petition must be dismissed.

### **DISCUSSION**

We have consistently held that the four-month limitations period prescribed in § 1-07(d) of the Rules of the Office of Collective Bargaining bars consideration of untimely allegations in

an improper practice petition.<sup>5</sup> Petitioner filed his improper practice petition more than four months after most of the allegations in his petition took place. Petitioner's first allegation is that the SBA violated the duty of fair representation by not taking action when Officer Tamayo was told in October 1998 not to take a collection on Petitioner's behalf. This allegation is time barred because the April 2, 1999 petition was filed more than four months after the alleged incident. Petitioner's allegation that the Union committed an improper practice by not representing him in November 1998 after his locker was broken into, is also untimely. Since these allegations are untimely, they will not be considered by this Board.

The only timely issue is whether the Union violated its duty of fair representation by not funding Petitioner's Article 78 proceeding. This Board has previously held that the scope of the duty of fair representation extends to the "negotiation, administration, and enforcement of collective bargaining agreements, and not to the institution of lawsuits on behalf of unit members."<sup>6</sup> The Union did not violate its duty of fair representation when it did not represent the Petitioner in an Article 78 proceeding because it was not under any obligation to do so.

Since the petition against the Union fails, the derivative claim brought against the City pursuant to § 12-306(d) of the NYCCBL cannot stand. Accordingly, the instant improper practice petition is hereby dismissed in its entirety.

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<sup>5</sup>Section 1-07(d) of the OCB Rules provides, in relevant part, 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 §12-306 of the statute may be filed with the Board within four (4) months thereof...

<sup>6</sup> *Ismael Lopez, Pro Se v. District Council 37, et al. and the New York City Dept. of Parks and Recreation and its Representatives*, Decision No. B-31-97 at 8.

**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 be, and the same hereby is, dismissed in its entirety.

Dated: October 26, 1999  
New York, New York

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STEVEN C. DeCOSTA  
CHAIRMAN

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DANIEL G. COLLINS  
MEMBER

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GEORGE NICOLAU  
MEMBER

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JEROME E. JOSEPH  
MEMBER

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ROBERT H. BOGUCKI  
MEMBER

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RICHARD A. WILSKER  
MEMBER