

OFFICE OF COLLECTIVE BARGAINING  
BOARD OF COLLECTIVE BARGAINING

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In the Matter of the Improper Practice Proceeding	:
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-between-	:
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LUDMILA STEPAN,	:
	:
Petitioner,	:
	:
-and-	:
	:
SERVICE EMPLOYEES INTERNATIONAL UNION,	:
LOCAL 300 and NYC DEPARTMENT OF CITYWIDE	:
ADMINISTRATIVE SERVICES,	:
	:
Respondents.	:
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Decision No. B-11-2000  
Docket No. BCB-2071-99

**DECISION AND ORDER**

Pursuant to § 12-306 of the New York City Collective Bargaining Law (“NYCCBL”),<sup>1</sup> Ludmila Stepan (“Petitioner”) filed a verified improper practice petition on June 30, 1999, against Local 300, Service Employees International Union (“Local 300” or “Union”) alleging a breach of the duty of fair representation. Pursuant to § 12-306(d), Petitioner also named the Department of Citywide Administrative Services as a Respondent (“DCAS” or “City”).<sup>2</sup> The

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<sup>1</sup> Section 12-306(b) of the NYCCBL provides in pertinent part:  
**b. Improper public employee organization practices.** It shall be an improper practice for a public employee organization or its agents:  
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(3) to breach its duty of fair representation to public employees under this chapter.  
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<sup>2</sup> Section 12-306(d) of the NYCCBL provides:  
**d. 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

City filed a verified answer on July 16, 1999 and the Union filed a verified answer on August 11, 1999. The Petitioner did not submit a reply.

### **Background**

The Petitioner is a Quality Assurance Specialist (Metals), Level II with the Bureau of Quality Control at DCAS. On or about December 19, 1997, the Petitioner filed a Step I grievance alleging that she was performing duties that are “substantially different and more significant than the title of Quality Assurance Specialist Level II - Metals.” She alleged that she was performing the duties of an Associate Quality Assurance Specialist (Metals). There was neither a Step I or Step II determination and on March 24, 1998, the Union requested a Step III conference.

The Step III conference took place on May 18, 1998, and the grievance was denied on November 12, 1998. The determination letter stated that “Based on the cited desk audit finding and this Review Officer’s analysis of the grievant’s duties, it is determined that from December 19, 1997 to the present, the grievant has not been performing duties substantially different than those of her title and level of Quality Assurance Specialist (Metals), Level II.”

By letter dated November 17, 1998, Local 300 informed the Petitioner that the City had denied her grievance at Step III and that Local 300 would not pursue the case to arbitration because the Union did not believe that it would win. By letters dated December 4 and 20, 1998, the Petitioner urged Local 300 to reconsider its decision. In a December 23, 1998 letter, Local 300 restated to the Petitioner that it would not proceed to arbitration.

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employee organization.

On June 30, 1999, the Petitioner filed a verified improper practice petition with the Office of Collective Bargaining asserting that Local 300 violated its duty of fair representation by not proceeding to arbitration.

### **Positions of the Parties**

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

The Petitioner alleges that from 1993 until March 1, 1999, she performed out-of-title work without additional compensation. She argues that she performed the duties of an Associate Quality Assurance Specialist. She argues that the difference in salary between her title, Quality Assurance Specialist (Metals), Level II, and that of Associate Quality Assurance Specialist is \$10,000 a year.

Petitioner further argues that on December 12, 1997, she filed an out-of-title grievance with the assistance of her Union. She argues that the Union grieved the matter to Step III, but “failed and refused to proceed to arbitration, claiming it would be too expensive.” The Petitioner argues that she has been a member of SEIU for more than thirteen years in the hope of being protected and supported by the Union. She claims that she deserved to be fairly represented by her union when she sought its assistance.

#### **Union's Position**

The Union asserts that the Petitioner has failed to allege facts sufficient to support an improper practice in violation of § 12-306(b)(3) of the NYCCBL. Local 300 states that a union breaches its duty of fair representation only when its conduct toward a member is arbitrary, discriminatory or in bad faith. According to the Union, the mere refusal of a union to process a

grievance to arbitration is not a *per se* violation of the duty of fair representation.

The Union argues that it investigated and processed the Petitioner's grievance to Step III. Once the grievance was denied, Local 300 concluded based upon the merits of the case not to proceed to arbitration. According to the Union, the Petitioner's evidence was insufficient to successfully substantiate her grievance. Furthermore, the Union alleges that the Petitioner was already time-barred from grieving certain claims. Local 300 concluded that the testimony would not prove Petitioner's claim and that the Union would not prevail. The Union argues that its decision not to proceed to arbitration was based upon lawful consideration and thus the petition should be dismissed.

Further, the Union argues that the petition is untimely since the petition was filed more than four months after the act complained of in the petition. The Union maintains that the Petitioner filed her charge almost eight months after she was told that the Union would not pursue her case at arbitration. The Union concludes that the Petition must therefore be dismissed as untimely.

### **City's Position**

The City claims that the Petitioner fails to allege facts sufficient to maintain a charge that DCAS has taken actions in violation of the NYCCBL. The City argues that the Petitioner has provided no facts to substantiate a claim that the DCAS violated § 12-306(a)1, 2, 3 or 4.

The City also claims that the petition should be dismissed as untimely because the petition was filed eight months after the Petitioner either knew or should have known that the Union did not file a Request for Arbitration.

### **Discussion**

We have consistently held that there is a four-month limitations period barring consideration of untimely allegations in an improper practice petition. Section 1-07(d) of the Rules of the City of New York and § 12-306(e) of the NYCCBL provide that a petition alleging an improper practice in violation of § 12-306 may be filed within four (4) months of the improper practice. The Union argues that the limitations period began running on November 17, 1998, when the Union wrote to the Petitioner telling her that it would not proceed to arbitration. After the Union received two letters from the Petitioner in December 1998 asking that the Union reconsider its position, the Union again informed the Petitioner by letter dated December 23, 1998, that her grievance was “closed.” We find that the improper practice petition which was filed on June 30, 1999, was clearly beyond the four month limitations period and thus time-barred.

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.

**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: June 27, 2000  
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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BRUCE H. SIMON  
MEMBER

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CHARLES G. MOERDLER  
MEMBER

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RICHARD A. WILSKER  
MEMBER

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EUGENE MITTELMAN  
MEMBER