

Zimmerman & Bas v. DC 37 & L. 375, DC 37, 65 OCB 3 (BCB 2000) [Decision No. B-3-2000 (ES)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of the Improper Practice Proceeding :

-between- :

John R. Zimmerman and Thomas Bas, *pro se*, : Decision No. B-3-2000 (ES)

Petitioners, : Docket No. BCB-2112-00

-and- :

District Council 37 and Local 375 of District :
Council 37, :

Respondents. :
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DETERMINATION OF EXECUTIVE SECRETARY

On January 10, 2000, John R. Zimmerman and Thomas Bas, *pro se* (“Petitioners”) filed a verified improper practice petition alleging a violation of Section 12-306b(3) of the New York City Collective Bargaining Law (“NYCCBL”),¹ in which they name District Council 37 and Local 375 of District Council 37 as Respondents. As to the nature of the controversy, the Petitioners complain that the Respondents failed to follow through on grievances concerning the employer’s alleged violation of procedures and past practices covering promotions to Senior Air

¹ NYCCBL §12-306b provides, in relevant part:

b. Improper public employee organization practices. It shall be an improper practice for a public employee organization or its agents:

* * *

(3) to breach its duty of fair representation to public employees under this chapter.

* * *

Pollution Inspector.

Pursuant to Title 61, §1-07(d), of the Rules of the City of New York (“RCNY”), a copy of which is annexed hereto, the undersigned has reviewed the petition and has determined that the improper practice claim asserted therein is untimely on its face. Under RCNY §1-07(d), a petition alleging that a public employer or a public employee organization has engaged in an improper practice in violation of Section 12-306 of the NYCCBL must be filed with the Office of Collective Bargaining (“OCB”) within four (4) months of the date the alleged improper practice occurred.

In the present case, the petition, which was filed with OCB on January 10, 2000, complains that the Respondents failed to follow through on grievances they filed on May 10, 1999. According to the documentation Petitioners submit in support of their allegations, the “potential” grievances were investigated by a Grievance Representative of the Respondents who, in turn, sought the advice of Respondent’s legal counsel. On or about June 7, 1999, the Petitioners were informed by the Grievance Representative that their complaints had no merit and, therefore, would not be pursued further by the Respondents. On October 10, 1999, the Petitioners wrote to Lee Saunders, Administrator of District Council 37, and Roy Commer, President of Local 375, District Council 37, asking that the matter be reviewed.

According to the Petitioners own documentation, they were notified on June 7, 1999, that the Respondents would not file a grievance on their behalf. The fact that the Petitioners continued to complain to officers of the Respondents on October 10, 1999, does not stay the

running of the applicable four month limitation period, which began to run on May 24, 1999.²

Moreover, the Petitioners have not alleged that the Respondents gave them any reason to believe that their October 10, 1999 letter to Saunders and Commer, requesting a review, was under consideration.³ Thus, I find that the Petitioners filed their claims in an untimely manner.

Accordingly, the instant improper practice petition is hereby dismissed in its entirety.

Dated: New York, New York
 February 23, 2000

Victoria A. Donoghue
Executive Secretary

² *Griffiths v. NYSNA and HHC*, Decision No. B-3-99.

³ *HHC v. CIR*, Decision No. B-40-96.