OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of the Improper Practice Proceeding
Between :

STEPHANIE EDWARDS, *Pro Se*,
Petitioner, :

DECISION NO. B-35-2000

--and-- :

DOCKET NO. BCB-2004-98

LOUIS MATARAZZO, as PRESIDENT of the :
PATROLMEN'S BENEVOLENT ASSOCIATION
And the OFFICE OF LABOR RELATIONS, :

Respondents. :

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DECISION AND ORDER

On July 15, 1998, Stephanie Edwards ("Petitioner") filed a verified improper practice petition against Louis Matarazzo, as President of the Patrolmen's Benevolent Association ("Union") and the New York City Office of Labor Relations ("City"). The petition alleges violation of the New York City Collective Bargaining Law ("NYCCBL") § 12-306a and § 12-306b[1] with regard to the handling of Petitioner's claimed line-of-duty injury ("LODI") in

[1] **§12-306 Improper practices; good faith bargaining. a. Improper public employer practices.** It shall be an improper practice for a public employer or its agents:

(1) to interfere with, restrain or coerce public employees in the exercise of their rights granted in section 12-305 of this chapter;

(2) to dominate or interfere with the formation or administration of any public employee organization;

(3) to discriminate against any employee for the purpose of encouraging or discouraging membership in, or participation in the activities of, any public employee organization;

(4) to refuse to bargain collectively in good faith on matters within the scope of collective bargaining with certified or designated representatives of its public employees;

(continued...)

connection with her typing duties as station house clerk.

On August 3, 1998, the Union filed an answer. The City filed an answer on August 5, 1998. Petitioner filed supplemental documents on August 2, 7, and 17 , as well as November 25, 1998. Those documents consist largely of memos and correspondence regarding her LODI claim and her employment status.

Background

Petitioner was hired as a Police Officer in June, 1992. During the relevant time period, she was assigned to the 106th Precinct in Queens. In December, 1997, Petitioner was assigned to foot patrol at which time she was involved in a dog attack. She alleges other Officers fired shots in the incident which caused her to experience some degree of hearing loss. She filed a LODI request for that injury.

A month later, while assigned to serve as station house clerk, Petitioner experienced severe pain and stiffness in the hands and arms following use of a computer keyboard and

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[1](...continued)

(5) to unilaterally make any change as to any mandatory subject of collective bargaining or as to any term and condition of employment established in the prior contract, during a period of negotiations with a public employee organization as defined in subdivision d of section 12-311 of this chapter.

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

(1) to interfere with, restrain or coerce public employees in the exercise of rights granted in section 12-305 of this chapter, or to cause, or attempt to cause, a public employer to do so;

(2) to refuse to bargain collectively in good faith with a pubic employer on matters within the scope of collective bargaining provided the public employee organization is a certified or designated representative of public employees of such employer;

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

typewriter. On January 30 and February 2, 1998, she sought to amend her original LODI report to include the arm symptoms. On March 17, 1998, her request for the hearing loss LODI designation was approved by the department's medical division.

On April 25, 1998, while typing, Petitioner again reported pain in the fingers and wrist. She went to a hospital emergency room for treatment. Her condition was diagnosed as tendinitis, but she asserts that the investigating officer at the precinct failed to note the diagnosis in his report of her LODI request and recommended against LODI designation. On April 30, 1998, Petitioner appealed the recommended denial. On May 8, 1998, Petitioner requested authorization to have her medical case reviewed by a District Surgeon other than the one who reviewed and rejected her LODI request.

By memorandum dated June 28, 1998, from Petitioner to Captain James J. Lavin, Commanding Officer of the 106th Precinct, Petitioner requested an investigation to determine why her LODI request had not been approved.[2] On July 1, 1998, she appealed to the supervising chief surgeon. On July 7, 1998, Petitioner complained to him about what she called "misinformation" about correct procedures she was to have followed in processing the LODI request.

She filed the instant petition on July 15,1998. The next day, Petitioner's request for LODI designation was denied by the departmental medical division. On July 23, 1998, she unsuccessfully appealed that denial. On July 29, 1998, Petitioner sent documentation of her

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[2] Petitioner's signature on the memorandum appears to be an original. It is unclear whether the memorandum was forwarded to Captain Lavin before its submission as a supporting document with the instant petition or Petitioner intended the memorandum to be forwarded to the Captain at the time the instant petition was filed.

LODI requests to Union Attorney James E. Flood, Jr. ("Flood"). Her cover memo stated that she was sending him "items" which had been "requested."

Petitioner asserts that at an unspecified time throughout these events, she had brought the matter to the attention of Union Trustee George Reynolds ("Reynolds") as well as to Union Attorneys Flood and John Mackin ("Mackin") "with no success." Reynolds "spoke with [her about her concerns] over the phone," she asserts, "only after [she] contacted him first through the PBA office after several attempts." She further asserts that "[n]ot one PBA representative initiated any investigation" about the matter. She states that she asked for help from PBA board members but contends neither Reynolds nor "any other PBA union representative" has attempted to "negotiate sincerely" to resolve the LODI issues.

Ultimately, Petitioner faced departmental charges for being physically unfit for patrol duty. She was suspended without pay and has left the force.

Positions of the Parties

Petitioner's Position

Petitioner argues she was subjected to a "hostile work environment" and unspecified retaliation during the time she attempted to secure LODI designation for her arm and wrist symptoms. Contending their conduct towards her is "institutionalized racism," she asserts both the Union and the Police Department are guilty of "disparate disregard" for her health and welfare. She particularly singles out District Surgeon White whom she accuses of engaging in "corrupt practices" by making what she contends are "false statements in his written evaluations

in [her] personal medical file." She asserts that White mischaracterized information from her private physician which had a bearing on the outcome of the LODI requests.

As her condition worsened, Petitioner asserts her supervisors and departmental medical personnel refused to accept her private physicians's diagnosis and told her she would have to take sick leave before being assigned to limited duty. Petitioner maintains that, throughout the relevant time period, her condition was such that her private physician had prescribed medication for the arm and wrist condition and that she experienced periods of "limited hand control," rendering her unfit for full duty. Petitioner contends that her assignment to patrol duty put her "in extreme danger," because she believed she was unable to protect herself "or anyone else."

As relief, Petitioner seeks to have the Union "properly" represent her with respect to the filing of "grievances and taking proper legal actions concerning litigation and criminal proceedings," which are not more specifically identified.

Union's Position

The Union denies the petition's allegations. It contends Trustee Reynolds had a "number of telephone conversations" with Petitioner and attempted to resolve "whatever problems" Petitioner assertedly brought to his attention. Specifically, the Union maintains that, before the instant petition was filed, Reynolds advised her to submit the denial notices and documentation to him so that appeals could be filed as soon as it was provided. The Union contends Petitioner failed to forward that documentation. The Union further asserts Reynolds advised Petitioner of the steps she needed to take in order to address the issue of her duty status, *i.e.*, whether she

should be on full duty or limited capacity due to her arm condition.

The Union argues that the petition should be denied on timeliness grounds and for failure to allege complaints involving union activities related to the negotiation, administration or enforcement of the applicable collective bargaining agreement. Not only does the Union deny that it has failed to represent Petitioner, but it also affirmatively represents that it has provided her with representation in the LODI matter. Moreover, the Union continues, Petitioner's allegations fail to establish that the Union's actions were in any way arbitrary, discriminatory or improperly motivated.

City's Position

The City argues the instant petition is devoid of any facts, including dates, which would support a finding that an improper practice has been committed under any section of NYCCBL § 12-306a. For this reason alone, the City argues, the petition should be denied as untimely. In any event, it contends, the petition fails to comply with minimal pleading requirements; thus, in the City's view, the petition should be denied for failure to state a claim even under the Board's practice of liberally construing the rules of pleading in the case of a petitioner *pro se.*

Insofar as the petition alleges the Union breached its duty of fair representation toward Petitioner, the City maintains that it bears no responsibility for any damage incurred by Petitioner should Petitioner's claims against the Union be sustained. Further, the City denies knowledge of any grievance submitted on behalf of Petitioner concerning the approval or disapproval of line-of-duty injuries.

Discussion

The instant petition alleges that the Union breached the duty of fair representation by failing to handle Petitioner's LODI requests and appeals. It alleges the Union further breached its duty by failing to handle what Petitioner describes as "litigation" and "criminal proceedings." The petition names the Department as co-respondent, and Petitioner describes actions by individual superior officers who assertedly denied the LODI requests at issue.

As a preliminary matter, the Union and the City argue that Petitioner's claim is untimely under the four-month statute of limitations set forth in § 1-07(d) of Title 61 (Rules of the Office of Collective Bargaining) of the Rules of the City of New York ("Rules"). The Union has not specified the date which it contends started the accrual of the applicable limitations period; nor has the City, but the City maintains "there are no dates stated in this improper practice [petition.]."

To be sure, the four-month limitations period under our Rules bars consideration of an improper practice petition that is untimely filed.[3] But such is not the case here. Petitioner complains about employer action taken at least as late as April 25, 1998. That was the date a supervisor recommended denial of Petitioner's request for LODI designation. It falls within four months of the filing of the instant petition. Any act by the Union, or failure to act, as a result of the supervisor's decision of April 25, 1998, would necessarily fall after that date and would be within the limitations period. Finally, we reject the City's argument that the petition is devoid of dates. Dates are clearly stated with respect to Petitioner's efforts to have her LODI requests

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[3] *See, e.g., Michael Lucchese v. L. 237, IBT, and New York City Housing Authority*, Decision No. B-22-96 and cases cited therein at n. 4.

approved.

Turning to the substantive issue of whether the Union or its agent breached a duty of fair representation to Petitioner, we have long held that a breach of the duty of fair representation may be found when the union's conduct toward a member of the collective bargaining unit is arbitrary, discriminatory, perfunctory or in bad faith."[4] The duty requires a union to act fairly, impartially and non-arbitrarily in negotiating, administering and enforcing collective bargaining agreements.[5] In the area of contract administration, a union does not breach its duty of fair representation merely because it refuses to process every complaint made by a unit member.[6] This is true even where a union may have made an error in judgment, provided the evidence does not suggest the union's conduct was improperly motivated.[7] The burden is on the petitioner to plead and prove that the union has engaged in violative conduct.[8]

In the instant case, Petitioner alleges the Union failed to represent her in connection with her request for LODI designation for symptoms she experienced arguably as a result of her job duties as station house clerk. Petitioner asserts that she spoke by phone with Union Trustee

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[4] *See. e.g., Vaca v. Sipes*, 386 U.S. 171, 87 S.Ct. 903, 17 L.ED.2d 842 (1967) at 190; *see*, also, *Lucchese v. L.237, IBT, and New York City Housing Authority*, Decision No. B-22-96 at 11.

[5] *See, e.g., Elba Rosa v. Organization of Staff Analysts and New York City Health and Hospitals Corporation*, Decision No. B-36-99 at 7–8, n. 5 and cases cited therein.

[6] *Id.*

[7] *Lucchese v. L.237, IBT, and New York City Housing Authority*, Decision No. B-22-96 at 11–12.

[8] *Elba Rosa*, Decision No. B-36-99 at 8.

Reynolds who referred her to one Union attorney who in turn referred her to another. She asserts the second attorney did not respond to her phone calls. Petitioner asserts that her "[r]equest for much needed assistance from the PBA Board members" was "unsuccessful." The petition does not specify the litigation and criminal proceedings with which she allegedly requested Union assistance and allegedly was denied.

Petitioner has not cited any provision of the applicable collective bargaining agreement which would afford her the right to grieve a denial of a LODI request through the contractual grievance procedure.[9] Moreover, Petitioner has not alleged the Union failed to provide a service for her which it provided or promised to provide for another member, such as a promise to appeal a denial of a LODI request. Absent the allegation and proof of such disparate treatment, no discrimination constituting a breach of the duty of fair representation has been stated.[10]

The Union's attorney, Flood, asserts that Trustee Reynolds had a number of telephone conversations with the Petitioner and that he attempted to resolve problems Petitioner brought to his attention. He further asserts that Reynolds advised Petitioner before she filed the instant improper practice petition that she should submit the denial notices and supporting documentation to him so that appeals could be filed. Flood states that the documentation was not received. He further states that Reynolds advised Petitioner of the steps to be taken to address the question of whether her symptoms precluded her from full duty. Inasmuch as Petitioner failed to submit a reply to the Union's answer, these allegations by the Union's attorney stand

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[9] The Police Officers' contract for the term April 1, 1995, to July 31, 2000, contains no definition of a contractual grievance that includes appeals of LODI requests.

[10] *See, e.g., McAllan v. Emergency Medical Service*, Decision No. B-14-83 at 33.

unrebutted.

The Union's contention that it did attempt to respond to Petitioner and invited her to submit documentation to appeal the LODI reports is sufficient to counter an allegation that the matter was handled in a perfunctory fashion. Petitioner does not claim that Reynolds never spoke with her; rather, she asserts that neither Reynolds nor any other representative of the Union has "tried to *negotiate sincerely* to resolve the disagreement on behalf of the petitioner concerning the above mentioned line of duties." (Emphasis added.) Her assertion does not deny that discussions took place on the matter.

Further, in support of her claim in the instant matter, Petitioner has submitted copies of documents she admittedly sent to Flood "at his request." Those documents pertain to the LODI requests which underlie the instant improper practice proceeding. Her assertion reveals at least some communication on the matter. Based on this, we are satisfied that the Union's handling of the matter was not done in a perfunctory manner.

In addition to citing the other sections of NYCCBL § 12-306a, Petitioner has also cited Subsection (4). As an individual member of a bargaining unit represented by a union, Petitioner lacks standing to assert a failure-to-bargain claim. This is so because the duty of a certified employee organization to bargain in good faith is a duty owed to the public employer, not to the union's member.[11] If Petitioner means to assert such a claim on her own behalf, we must deny it for this reason.

Any claim under a statutory scheme other than the NYCCBL which Petitioner may have

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[11] *See, e.g., Beverly Whaley v. City Employees Union, L. 237, IBT, and New York City Housing Authority*, Decision No. B-41-97 at 21, n. 29 and cases cited therein.

regarding her physical condition is also unavailing in this improper practice proceeding. Unless such a claim would also otherwise constitute an improper practice,[12] which is not the case here, the Board of Collective Bargaining is without jurisdiction to consider claims in an improper practice proceeding.[13]

As the petition contains no particulars with respect to the asserted claim concerning the Union's handling or failure to handle any litigation or criminal proceeding, we deny that claim for want of legally sufficient specificity.

For all these reasons, we find no violation of the duty of fair representation on the part of the Union. Thus, we find no derivative claim against the City. In addition, we find no assertion that the City's acts were motivated by reasons prohibited by the NYCCBL, nor any assertion that the Department's action against Petitioner was intended to, or did, affect any rights protected by the NYCCBL. In fact, the petition is devoid of any such allegations. Therefore, we find no independent allegation of improper practice against the employer.

The instant improper practice petition, therefore, is dismissed in its entirety.

ORDER

Pursuant to the authority vested in the Board of Collective Bargaining by the New York City

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[12] *Kirk Pruitt v. New York City Department of Transportation, et al.*, Decision No. B-11-95, n. 7.

[13] Section 205.5(d), Civil Service Law (Public Employees' Fair Employment Act), which is applicable to this agency, provides that "the board shall not have authority to enforce an agreement between a public employer and an employee organization and shall not exercise jurisdiction over an alleged violation of such an agreement that would not otherwise constitute an improper employer or employee organization practice. . . ."

Collective Bargaining Law, it is hereby,

ORDERED, that the improper practice petition docketed as BCB-2004-98 be, and the same hereby is, dismissed in its entirety.

Dated: New York, N.Y.
October 10, 2000

MARLENE A. GOLD
CHAIR

GEORGE NICOLAU
MEMBER

DANIEL G. COLLINS
MEMBER

RICHARD A. WILSKER
MEMBER

EUGENE MITTELMAN
MEMBER

BRUCE H. SIMON
MEMBER

CHARLES G. MOERDLER
MEMBER