



employees in retaliation for their union activity. HHC filed a verified answer on January 18, 2000. The Union did not submit a reply.<sup>2</sup>

### **BACKGROUND**

Local 237 and HHC are parties to a collective bargaining agreement (“Special Officer’s Contract”) that governs the terms and conditions of employment for employees at Jacobi Medical Center and covers the period from January 1, 1995 to December 31, 1999. The Union has filed the improper practice petition on behalf of seven Special Officers who work at Jacobi Medical Center. The Special Officers are Barbara Thomas, Mary Hennessy, Mariano Clemente, Audrey Anthony, Nelson Cintron, Dean Fusco and Jonathan Munez. The Officers are all supervised by Taormina. The Union alleges specific incidents between Taormina and the Special Officers that took place on various occasions between February 1998 and October 1999.

### **POSITIONS OF THE PARTIES**

#### **Union’s Position**

The Union alleges that in violation of the NYCCBL, Taormina retaliated against seven Special Officers under his supervision because of their union activity.

#### **City’s Position**

HHC contends that a number of the Union’s allegations regard incidents that took place more than four months before it filed its improper practice petition and are therefore untimely. HHC also contends that management has the right to discipline its employees and Taormina did not commit an improper practice when he disciplined the individual officers. Furthermore, HHC

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<sup>2</sup> On September 13, 2000, over the objection of HHC, the Union requested permission to submit a belated reply. The Trial Examiner, however, denied the request.

alleges that Taormina's actions were for business reasons irrespective of any union activity. HHC also claims that a number of the Union's allegations fail to state a claim under the NYCCBL.

### **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>3</sup> Since a number of the allegations in the petition took place more than four months before the Union filed its improper practice petition, those allegations must be dismissed.<sup>4</sup>

The actions that the Union alleges Taormina took against Special Officer Barbara Thomas are all time-barred. The Union alleges that on December 10, 1998, Taormina threatened Thomas with disciplinary action and on December 31, 1998, she was served with a Notice of Statement of Charges. According to the Union, on January 7, 1999, at a Disciplinary Conference, Taormina made threats to Thomas regarding her Union. These allegations are all time-barred because the alleged incidents took place more than four months before the December 15, 1999 petition was filed. The Board will therefore not consider any claim of improper practice

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<sup>3</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>4</sup> Untimely claims of wrongful acts, however, may be considered as background information when offered to establish an ongoing and continuous course of violative conduct. See *Daniel Schweit v. N.Y.C. Dept. of Correction, Health Management Division and the Correction Officers Benevolent Assoc.* Decision No. B-26-98 at 13; *John J. Fabricante, Pro Se v. Al Somma, Shop Steward, et al.* Decision No. B-43-97 at 7.

based upon these allegations.

Similarly, the allegations against Nelson Cintron are time-barred. The incidents relating to this Officer are all claimed to have taken place on or about March 11, 1999, more than four months before the petition was filed. Allegations regarding threats that Taormina made to Dean Fusco relating to his February 1998 grievance are time-barred as well.

The Union alleges that Taormina committed an improper practice when Mary Hennessy withdrew a grievance that she filed against Taormina because “she felt she would be subject to threats, intimidation and retaliation by Taormina if she pursued the matter.” We find that this claim is conclusory and not based upon allegations that Taormina took actions to produce Hennessy’s belief. Thus, these allegations fail to state a claim under §12-306(a) of the NYCCBL and we must therefore dismiss this claim.

The Union’s claim that Taormina changed Audrey Anthony’s evaluation after she was interviewed by HHC’s Inspector General’s office about a co-worker’s EEOC complaint is also dismissed for failure to state a claim under §12-306(a) of the NYCCBL. The Union fails to allege or demonstrate that Anthony’s participation in this interview was protected activity under the NYCCBL.

The pleadings reflect disputes as to allegations of fact which, if proven true, could amount to a violation of the NYCCBL. The Union’s claim regarding Mariano Clemente presents a question of fact as to whether Taormina committed an improper practice when he suspended Clemente on October 6, 1999. There are also disputed facts regarding the Union’s claim that Taormina committed an improper practice when he changed Audrey Anthony’s tour on October

1, 1999, after she filed a grievance. Allegations regarding threats that Taormina made to Dean Fusco on October 29, 1999, concerning the Deputy Director of the City-Wide Division of L. 237 are also disputed by HHC. In addition, a question of fact has also been raised regarding the reason Taormina ordered a security lock (boot) be place on Jonathan Munez's car. All of these issues of fact are best resolved by a hearing and we shall order accordingly.

**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 claims discussed above which are untimely or fail to state a claim under NYCCBL are hereby dismissed; and it is further

ORDERED, that a hearing take place to resolve the existing issues of fact in the remaining allegations of the improper practice petition.

Dated: November 28, 2000  
New York, New York \_\_\_\_\_

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