

OFFICE OF COLLECTIVE BARGAINING  
BOARD OF COLLECTIVE BARGAINING

-----X  
In the Matter of the Improper Practice Proceeding :  
 :  
-between- :  
 :  
DONALD WINKFIELD, :  
 :  
Petitioner, : Decision No. B-5-2000 (ES)  
 : Docket No. BCB-2117-00  
 :  
-and- :  
 :  
DEPARTMENT OF CORRECTION and CORRECTION :  
OFFICERS' BENEVOLENT ASSOCIATION, :  
 :  
Respondents. :  
-----X

**DETERMINATION OF EXECUTIVE SECRETARY**

On December 21, 1999, Donald Winkfield (“Petitioner”) attempted to file a verified improper practice petition against the Correction Officers’ Benevolent Association (“COBA” or “Union”) alleging a breach of the duty of fair representation pursuant to § 12-306 of the New York City Collective Bargaining Law (“NYCCBL”).<sup>1</sup> On December 22, 1999, the Office of Collective Bargaining (“OCB”) returned the petition to the Petitioner and explained that OCB cannot accept his petition for filing because it had not been served upon the designated agents of the Respondent. In addition, the Petitioner was advised that since the petition alleges a violation

---

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

of § 12-306(b)(3), the employer should be made a party to the dispute.<sup>2</sup> On January 27, 2000, the Petitioner properly filed a verified amended improper practice petition and appropriately named the Department of Correction as a Respondent (“Department”). As to the nature of the controversy, the Petitioner alleges that the Union failed to assist him when the DOC characterized him as Absent Without Leave (“AWOL”) and withheld pay while he was on medical leave. He also alleges that the employer violated departmental policies and procedure.

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 § 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 Petitioner’s complaints arise out of a line of duty injury he apparently sustained in 1998. The Petitioner alleges, essentially, that at some point after he was injured the Department improperly changed his leave status from medical leave to AWOL and discontinued his paycheck. Subsequently, according to the documents submitted by the

---

<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 employee organization.

Petitioner, the Union provided him with legal counsel to represent him at the hearings that followed. The Petitioner repeatedly complained to Union officials about this representation. Specifically, the Petitioner believed that counsel provided by the Union did not have his “best interest at heart;” he requested that the Union provide a conflict of interest attorney. By letter dated July 9, 1999, the Union refused to grant the Petitioner’s request. Accordingly, the four month limitations period began running on July 9, 1999. Because the Petitioner’s amended petition was not duly served and filed until January 27, 2000, it was untimely. The Petitioner’s claims against the Department, which fail to state a cause of action over which this Board has jurisdiction, are also untimely as they arose in 1998.<sup>3</sup>

Accordingly, the improper practice petition is dismissed in its entirety. Such dismissal is, of course, without prejudice to any rights Petitioner may have in any other forum.

Dated: March 2, 2000  
New York, New York

---

Victoria A. Donoghue  
Executive Secretary  
Board of Collective Bargaining

---

<sup>3</sup> Section 205.5(d) of the Taylor Law.