OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of the Improper Practice Proceeding

-between-

JOAN REID,

Petitioner,

Decision No. B-4-2004 (ES)
Docket No. BCB-2386-04

-and-

RICHARD DE ARIAZ and SSEU, LOCAL 371,

Respondents.

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DETERMINATION OF EXECUTIVE SECRETARY

On February 17, 2004, Joan Reid filed a *pro se* verified improper practice petition pursuant to unspecified subsections of § 12-306 of the New York City Collective Bargaining Law (New York City Administrative Code, Title 12, Chapter 3) ("NYCCBL"). Petitioner alleges that Richard De Ariaz, a delegate for SSEU, Local 371 ("Union"), abused his power and violated the rights of other Union members in the work place. Since the petition is untimely and fails to state a claim under the NYCCBL, it is dismissed.

BACKGROUND

According to the petition, Reid is an employee at the Human Resource Administration ("HRA"). In December 2002, during her certification as a Supervisor II, she was assigned by the Director of Personnel, Mr. Rosenbaum, to the St. Nicolas Center, rather than to the Bergen Center where she believed she was supposed to go. On her first day of training and before her transfer, De Ariaz, a Supervisor I, allegedly told Petitioner that she could not supervise him because of her earlier refusal to take two workers out of his unit when she was a Supervisor I. The next day, De Ariaz "ranted and raved" that it was illegal for Rosenbaum to send her to a location other than

where she was certified to go. One week later, Rosenbaum advised Petitioner that she would have to go to Bergen.

Petitioner alleges that she went to the Union office and spoke to Glenda Lee. Lee allegedly told her that Rosenbaum's actions were "illegal." Petitioner asked how David Piersante, another worker and close friend of De Ariaz, was placed at Serviceline when he was scheduled to go to Coney Island. Lee allegedly told her that "it is unfair of [Petitioner] to call the names of other people to save [herself]." Lee also stated that it would be unfair to uproot Piersante. Petitioner alleges that Lee's statements led her to believe that there is favoritism taking place in the Union.

On her last day at the St. Nicholas Center, Lee allegedly accused Petitioner of threatening De Ariaz. When Petitioner questioned Lee, Lee stated that she had received a telephone message from a lady whose voice she did not recognize. Petitioner told Lee that she had no right to accuse her of illegal activities without facts.

Despite her objection, Petitioner was sent to Bergen. Petitioner claims she was later told that she could have gotten a "waiver" of the reassignment, but that she was not informed by Lee. After working at Bergen for seven months, Petitioner was transferred back to the St. Nicholas Center based on her childcare and travel hardship. Upon her return, De Ariaz started "another escapade" to try and have her returned to Bergen.

In September 2003, Petitioner spoke to Mr. Perry, the Site Director, about her childcare situation. Perry allowed Petitioner to bring her children into her office where they did their homework. On November 26, 2003, an HRA police sergeant informed the staff that children were no longer allowed in the office. Petitioner claims that when De Ariaz overheard a worker saying that the person who started the problem was a lonely person without children, he took offense, ran into his supervisor's office and stated that he was being blamed for everything even though he had nothing to do with the no children in the office policy.

On December 1, 2003, Petitioner states that she asked the HRA police sergeant for the

policy that was being enforced. He stated that he did not have one. On December 11, 2003, the sergeant advised Petitioner that he had contacted HRA personnel and been told that there was no policy regarding children and that it was up to the Site Director. He also told her that De Ariaz had been the one to complain and that the policy had been enforced because of him.

Petitioner alleges that on January 8, 2004, she overheard De Ariaz informing another worker that he had advised the Inspector General's office that many people were "doing a lot of things that they have no business doing" and had been told to report any improper activity.

Petitioner complains that when De Ariaz holds a meeting, he discusses matters of policy and procedure which should be done by the Site Director. Petitioner seeks removal of De Ariaz as a Union delegate on the grounds that he is abusing his power.

DISCUSSION

Pursuant to § 1-07(c)(2) of the Rules of the Office of Collective Bargaining (Rules of the City of New York, Title 61, Chapter 1) ("OCB Rules"), a copy of which is annexed hereto, the undersigned has reviewed the petition and determined that it is, in part, untimely and that it does not contain facts sufficient as a matter of law to state a violation under the NYCCBL.

As a preliminary matter, the petition against De Ariaz is dismissed. It is an improper practice for a public employer or a public employee organization to engage in certain proscribed conduct. An individual cannot commit an improper practice in his or her personal capacity. However, a public employer or a public employee organization may be held responsible for the acts of its agents. *Hassay*, Decision No. B-02-2003. Because the conduct about which Petitioner complains occurred when De Ariaz was acting as an agent of the Union, the Union is the proper party to this proceeding. *Id*; *Morgan*, Decision No. B-10-2003 (ES).

In addition, part of the petition is time-barred by the four month statute of limitations. NYCCBL § 12-306(e) 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 this section may be filed with the board of collective bargaining within four months of the occurrence of the acts alleged to constitute the improper practice or of the date the petitioner knew or should have known of said occurrence. . . .

See also OCB Rules § 1-07(b)(4). A charge of improper practice must be filed no later than four months from the time the disputed action occurred. *Griffiths*, Decision No. B-3-99 at 11-12; *Tucker*, Decision No. B-24-93 at 5. Here, the petition was filed on February 17, 2004. Thus, any claims arising during the period that Petitioner was at the St. Nicholas Center in December 2002, the entire period that she was at Bergen, and that part of her re-assignment to the St. Nicholas Center through October 16, 2003, occurred more than four months before the filing of the petition and are untimely.

Turning to the merits of Petitioner's remaining claims, the provisions and procedures of the NYCCBL are designed to safeguard the rights of public employees such as the right to bargain collectively through certified public employee organizations; the right to organize, form, join and assist public employee organizations; and the right to refrain from such activities. *Terry,* Decision No. B-42-99 at 6; *Siegel*, Decision No. B-23-91 at 8-9.

Pursuant to NYCCBL § 12-306(b)(3), it is an improper practice for a public employee organization "to breach its duty of fair representation to public employees under this chapter." The duty of fair representation requires a union to refrain from arbitrary, discriminatory, and bad faith conduct in negotiating, administering, and enforcing collective bargaining agreements. *Minervini*, Decision No. B-29-2003 at 15; *Hug*, Decision No. B-5-91 at 14. This duty "does not reach into and control all aspects of a union's relationship with its members. . . ." *Williams,* Decision No. B-48-97 at 9. Independent claims of disparate treatment based on personal relationships are not related to rights protected under the NYCCBL and may not be addressed by the Board of Collective Bargaining. *Id*; *see also Siegel*, Decision No. B-23-91 at 9; *Samuels*, Decision No. B-1-2004 at 3 (ES).

Here, Petitioner claims that after she started bringing her children to the office, De Ariaz

objected and had HRA police inform the staff that children were no longer allowed. Petitioner argues that De Ariaz targets individuals based on whom he dislikes and claims that he is jealous because she was promoted to Supervisor II. Moreover, Petitioner claims that De Ariaz is creating a hostile environment because he talks about policies and procedures and has stated that he will report the misconduct of other Union employees to the Inspector General's office. In essence, Petitioner is claiming that De Ariaz, a Union delegate, should be watching out for other employees in his union rather than enforcing management policies.

Even if these allegations are true, De Ariaz's actions do not rise to the level of the breach of the duty of fair representation because they do not relate to the negotiation, administration, or enforcement of collective bargaining agreements. Petitioner has not offered any evidence that De Ariaz's conduct has any effect on the terms and conditions of her employment (such as wages or hours) or on the Union's representation of Petitioner vis-a-vis her employer. To the extent Petitioner is claiming that De Ariaz should not be acting as both a Union delegate and a supervisor, nothing in the NYCCBL limits the rights of supervisory employees to serve as union officers. *Williams*, Decision No. B-48-97, at 8; *Lara*, Decision No. B-47-91 at 7.

Since Petitioner has not alleged that the Union committed acts in violation of the NYCCBL within four months of the filing of the instant improper practice petition, the petition is dismissed. Dismissal is without prejudice to any rights that Petitioner may have in another forum.

Dated: New York, New York
February 26, 2004

Alessandra F. Zorgniotti
Executive Secretary