Walker, 79 OCB 2 (BCB 2007)

[Decision No B-02-2007] (IP) (Docket No. BCB-2526-05)

***Summary of Decision*:** Petitioner alleges that in violation of the NYCCBL, the Union breached its duty of fair representation with regard to a Command Discipline Interview and for failing to pursue a grievance. The Union argues that the Petition is untimely and both the City and the Union argue that Petitioner has failed to allege sufficient facts to state a claim under the NYCCBL. This Board found that there was insufficient evidence to establish a *prima facie* case that the Union breached its duty of fair representation. **(*Official decision follows.*)**

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

In the Matter of the Improper Practice Proceeding

-between-

ROBIN WALKER,

Petitioner,

-and-

CORRECTION CAPTAINS ASSOCIATION,
THE CITY OF NEW YORK AND
THE NEW YORK CITY DEPARTMENT OF CORRECTION,

Respondents.

DECISION AND ORDER

On December 21, 2005, Robin Walker ("Petitioner") filed a verified improper practice petition against the Correction Captains Association ("CCA" or "Union"), and the City of New York Department of Correction ("DOC" or "City"). Petitioner alleges that in violation of the New York City Collective Bargaining Law (New York Administrative Code, Title 12, Chapter 3) ("NYCCBL"), the Union breached its duty of fair representation with regard to its agent's actions at a Command Discipline Interview and for failing to pursue a grievance on Petitioner's behalf.

Petitioner also alleges that she did not receive a fair Command Discipline Interview and that DOC wrongfully denied her request for a transfer. The Union argues that the Petition is untimely and both the City and the Union argue that Petitioner has failed to allege sufficient facts to state a claim under the NYCCBL. This Board dismisses the petition for failure to establish a *prima facie* case that the Union breached its duty of fair representation.

BACKGROUND

CCA is duly certified as the collective bargaining representative for the title Captain (Corrections). Robin Walker is currently employed by DOC, holds the Civil Service title of Captain (Corrections), and is assigned to the Rose M. Singer Center.[1]

DOC's Command Discipline Directive #4257 permits minor violations committed by uniformed members to be adjudicated by a Commanding Officer without resorting to formal charges and administrative hearings. Directive #4257 states that Command Discipline is "informal, non-adversarial, non-judicial punishment available to a Commanding Officer to correct minor deficiencies and to maintain discipline among uniformed members within his/her Command." When an employee is served with Command Discipline charges, a Command Discipline Interview is scheduled with the employee, who is entitled to union representation at the proceeding.[2] Section VI

[1] Walker's pleadings contained allegations of facts outside the statute of limitations period attesting to tension and conflict between Walker and Assistant Deputy Warden ("ADW") Johnson. Because these allegations of fact do not relate to protected union activity under the NYCCBL and have not been causally linked to Walker's timely claims, we do not address them.

[2] Although Directive #4257 refers to this proceeding as a "Command Discipline Interview," all the parties refer to it as a "Command Discipline Hearing" in the pleadings. For the purposes of this decision, the term "Command Discipline Interview" will be used to avoid confusion with a formal disciplinary hearing, which is not at issue in this case.

of Directive #4257 outlines the procedure as follows: At the Command Discipline Interview, the Commanding Officer reviews the specifications of the charges with the employee and allows the employee to make a statement in rebuttal and to request to obtain additional information. After the Command Discipline Interview is held, based on the evidence, the Commanding Officer recommends an appropriate penalty or dismisses the charges. When a penalty is recommended, the employee may choose to accept the findings and penalty and waive his or her right to appeal, refuse to accept the findings and request a formal hearing, or accept the findings but appeal the penalty. Section VII of Directive #4257 outlines the Command Discipline Review Process. The only basis for such a review are mitigating factors which warrant a reduction in penalty. The facts and circumstances that the employee asserts in support of his or her request for review must have been presented at the Command Discipline Interview. The Assistant Chief, or the Chief of Department, shall conduct the review and can either reduce the penalty or affirm it. When an employee requests a review of the proposed penalty, the employee must sign the Command Discipline form and execute a form for "Waiver of Disciplinary Hearing and Acceptance of Command Discipline." By executing these documents, the employee "formally agrees to Command Discipline and the Review Process and agrees to accept any reduced penalty imposed by the reviewing authority or, if the proposed penalty is not reduced, the original penalty proposed by the Commanding Officer." Directive #4257, City Ex. B.

On December 20, 2004, Walker was served with Command Discipline charges and specifications, Form #454, CD #206/04, charging Walker with violating Department Rules 3.05.120 and 2.25.010 for failing to complete an Investigating Supervisor's Report. The Command Discipline stated:

> On November 26, 2004 during the 1500 x 2331 tour, you Captain Robin Walker #406 was assigned to the B House as the supervisor. You were assigned by A.D.W. Randolph Johnson #93 to conduct an investigation into an allegation of a use of force #1165/04. Inmate Juwanna Wrotten . . . of Building 12 cell #14 made this allegation. You failed to complete the investigation by the appointed date of 12-01-2004. You indicated that the investigation should be assigned to another Captain because it happened on the 0700 x 1531 tour. You complained to Deputy Warden Eric Perry who instructed you to complete the investigation as ordered by A.D.W. Johnson. Additional time was granted to you to complete the investigation.

On January 3, 2005, Deputy Warden Vanessa Singleton conducted a Command Discipline Interview.[3] Walker was represented by Union Delegate Captain Shaarion McClain.[4] According to the City, Walker was given the opportunity to present evidence in defense of the charges and specifications filed against her. According to Walker, Singleton refused to review the documents Walker brought with her, and refused to hear testimony from witnesses on Walker's behalf. Walker also states that McClain failed to provide adequate representation because she did not properly instruct her about the process or seek to postpone the proceeding so that Walker could produce witnesses.

At the conclusion of the Command Discipline Interview, Singleton determined that the charges were substantiated and issued a penalty recommendation of loss of three vacation days. On the same day, Walker accepted Singleton's findings but appealed the penalty. According to Walker, she accepted the findings at the time because she wanted to avoid a worse penalty. Walker also states that the appeal was referred back to Singleton and that she did not receive any response.

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[3] According to Walker, ADW Johnson is the only ADW who brings charges against her, has continuously harrassed her, and that she filed an EEOC complaint against him in which she also named Singleton.

[4] According to Walker, Singleton, McClain and CCA Vice President Whitfield are friends which presents a conflict of interest in such proceedings.

On January 7, 2005, Chief Carolyn Thomas reviewed Singleton's proposed penalty and affirmed it. On March 18, 2005, Walker filed a Step I grievance alleging that DOC violated Directive #4257 § VI and VII because she had not received a fair hearing or appeal.

On March 28, 2005, Warden Michelle Mack issued a memorandum to President of CCA Peter Meringolo regarding Walker's grievance. Mack stated that she "found no evidence to support [Petitioner's] claim," noting that she had been "afforded a proper hearing . . . in the presence of her Union Delegate . . ." and if she "felt that she was not given a fair hearing she should not have accepted the penalty imposed. . . ." (City Ex. E.) Mack determined that, under the circumstances, the imposed penalty of three vacation days was fair. No Step II grievance was filed by Walker. Although Walker states that she never received a response to her March 18, 2005, Step I grievance, she does acknowledge that Mack issued the memorandum to Meringolo.

It is undisputed that prior to June 28 2005, Walker and representatives of CCA, including Union President Meringolo, had communications regarding Walker's complaints about the outcome of the Command Discipline Interview and other disciplinary matters.

On June 28, 2005, Union's counsel, Meringolo and Walker met at Union's counsel's office. During the meeting, Walker recited her complaints about the Command Discipline Interview.

According to the Union, at the meeting Union's counsel and Meringolo informed Walker that while they understood her complaints and sympathized with her position, she had accepted the findings of the Command Discipline Interview. Union's counsel told Walker that disciplinary matters are not grievable pursuant to the parties' collective bargaining agreement ("Agreement") and

that even if a grievable matter did exist, the Union would not be successful on the merits.[5] Meringolo agreed and stated that his discussions with Union representatives had led him to the conclusion that no grievance would be pursued by the Union on Walker's behalf. According to the Union, the meeting ended with Union's counsel telling Walker that she should consider the matter closed.

According to Walker, at the June 28, 2005, meeting, Union's counsel led her to believe that the grievance was being processed. Walker states that she gave Union's counsel documents to review to aid in pursuing the grievance. After the meeting, Walker claims that she repeatedly attempted to contact Union's counsel and Meringolo for an update but received no response. She also did not receive any written confirmation regarding what was discussed at the meeting. The parties agree that Walker had no further conversations with Union's counsel or Meringolo since the June 28, 2005 meeting.

On July 1, 2005, Walker submitted a request to be transferred to the Queens Detention Center. The record does not indicate whether DOC responded.

On December 9, 2005, Walker wrote to Ronald Whitfield, CCA Vice President, indicating

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[5] Article XX of the parties' Agreement provides:

> Grievance and Arbitration Procedure
> Section 1. - Definition
> For the purpose of this Agreement the term "grievance" shall mean:
> a. a claimed violation, misinterpretation or inequitable application of the provisions of this Agreement;
> b. a claimed violation, misinterpretation or misapplication of the rules, regulations, or procedures of the agency affecting terms and conditions of employment, provided that, except as otherwise provided in this Section 1(a) the term "grievance" shall not include disciplinary matters; . . .

that she had not received responses to her appeal of the Command Discipline penalty nor to her grievance regarding the violation of Directive #4257. She also stated:

> I have been led to believe that both the CCA Union and [Union's counsel] was working on matters for appropriate resolution, however, to date, there has been no resolution, nor have I been informed by anyone regarding a resolution regarding the above or the outcome or status of any of these matters.

On December 10, 2005, Walker filed a Step I grievance alleging that DOC violated Directive #2257 by not honoring her transfer request but instead transferring a male Captain with less seniority to the Queens Detention Center.[6]

DOC's Director of Labor Relations, Nicholas R. Santangelo, in a letter addressed to Walker, responded to Walker's grievance on December 23, 3005. Santangelo's letter stated:

> Please be advised, your allegation that a captain who was transferred to the Queens Detention Center had less seniority than you does not present a grievance that is cognizable under the collective bargaining agreement. Seniority is one of several factors considered on transfer requests, which ultimately remain within the full discretion of the Commissioner or his designee to grant or deny.
>
> Since you allege also that the captain transferred to the Queens Detention Center was male, I am forwarding your complaint to Luis Burgos, Deputy Commissioner for Equal Employment Opportunity, for such action as he may deem

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[6] Directive #2257 provides, in part:

I. Purpose
The purpose of this Directive is to establish a standard operating procedure for the efficient and equitable processing of requests for a change of command made by members of the uniformed force.

* * *

H. The following factors shall be considered when action is to be taken on requests for transfer; the ultimate authority for such transfer rests with the Commissioner:
1. Seniority
2. Employee's record
3. Employee's competency for the assignment
4. Reason for the employee's request

I. It is the policy of the Department that transfer requests will be processed without regard to the race, color, age, alienage, creed, religion, disability, gender, marital status, national origin or sexual orientation of the person submitting the request. (Emphasis in original.)

appropriate.

Although Walker claimed in her Petition that she never received a response to her Step I grievance filed on December 10, 2005, in another pleading she states that she did receive Santangelo's letter.

On December 27, 2005, Walker filed the instant improper practice petition. As remedies, Walker requests that the Board order DOC to expunge the Command Discipline from her personnel record, return the three vacation days imposed as a penalty, grant her a fair Command Discipline Hearing, transfer her to her desired location, and find that DOC violated Directives #4257 and #2257.

POSITIONS OF THE PARTIES

Petitioner's Position

Petitioner argues that the Union breached its duty of fair representation under the NYCCBL when it improperly handled her Command Discipline Interview. Petitioner claims that McClain failed to instruct her properly, failed to seek a postponement of the proceeding to allow Petitioner to produce witnesses, and took Singleton's side against her.

Petitioner also argues that the Union breached its duty of fair representation by failing to pursue her grievance regarding not having received a fair Command Discipline Interview or appeal. She claims that at the June 28, 2005, meeting, the Union led her to believe that they were pursuing the grievance. Indeed, she argues that she would not have left documents with Union's counsel if she had been told that the Union was unwilling to take action on her behalf.

Further, Petitioner claims that the Union has discriminated against her and subjected her to disparate treatment.

As to her claims against DOC, Petitioner argues Singleton violated Directive #4257 by not reviewing her documents and not allowing witnesses to testify on her behalf, and that there was a conflict of interest because Singleton is related to Ronald Whitfield, CCA's Vice-President, and that Singleton, Whitfied and McClain are friends. She also claims that she has knowledge of employees who have been given the same charges, had hearings with Singleton, and received lesser or no penalties. Moreover, Petitioner asserts that the appeal was improperly handled because it was referred back to Singleton, which is a conflict of interest, and she never received a response. Petitioner also claims Singleton and ADW Johnson's actions towards her are in retaliation for her filing an EEOC complaint against Johnson in which she includes Singleton.

Finally, Petitioner asserts that DOC violated Directive #2257 by refusing her transfer request and instead transferring a male Captain with less seniority. Petitioner claims that DOC intentionally discriminated against her when it refused to honor her transfer request.

Union's Position

The Union argues that the Petition is untimely and must be dismissed. The latest date that Petitioner knew or should have known that the Union would not file a grievance on her behalf was June 28, 2005, when Petitioner met with Union's counsel and Meringolo. The Petition was filed nearly six months after this date and is barred by the four month statute of limitations.

Alternatively, the Union argues that Petitioner failed to allege sufficient facts to support a claim that the Union violated NYCCBL § 12-306(b)(1) or (3). First, the Union asserts that Petitioner failed to allege facts to show that the Union interfered with Petitioner's rights under NYCCBL § 12-306(b)(1). Petitioner's sole assertion is that the Union allegedly did nothing to assist Petitioner in her complaints regarding the handling of disciplinary matters.

Second, no facts were presented to state a *prima facie* case that the Union engaged in conduct that falls within NYCCBL § 12-306(b)(3). The Union asserts that the fact that Petitioner was not satisfied with the outcome of the Command Discipline Interview does not amount to a breach of the duty of fair representation. Furthermore, the Union does not breach its duty of fair representation merely because it refused to process a grievance. Union's counsel and Meringolo spoke with Petitioner about her complaints on various occasions prior to June 2005, and met with Petitioner on June 28, 2005. The Union, in consultation with Union's counsel, refused to process Petitioner's grievance because the Union believed it was not grievable under the parties' Agreement, and even assuming that it was, the Union felt that it would not be meritorious. The Union asserts that once an employee organization has offered an explanation about a decision whether to handle a grievance, it is not obligated to repeat the explanation or to provide the explanation in a form requested by the member, so long as the explanation is communicated in a reasonable and intelligible manner. Moreover, Petitioner's dissatisfaction with the Union's decision is not sufficient to support a claim that the Union has failed to respond to Petitioner's inquiries.

Furthermore, Petitioner did not allege any facts to demonstrate that the Union has discriminated against Petitioner, or that she was subjected to disparate treatment.

Finally, the Union argues that Petitioner failed to allege sufficient facts to state a *prima facie* case under NYCCBL § 12-306(a). This statutory provision does not apply to the Union but refers to the public employer or its agents.

City's Position

The City argues that Petitioner fails to allege facts sufficient to support a claim that the City or the Union violated NYCCBL § 12-306 (a)(1) or (3).

Petitioner has not pled facts to establish that the City has taken any action with improper motivation. Petitioner alleges that she was not afforded a fair Command Discipline Interview and that the penalty of three vacation days imposed was excessive. However, Petitioner failed to show a causal connection between the alleged improper acts and Petitioner's claimed union activity. The mere fact that Petitioner is a Union member and exercised her contractual right to file a grievance is insufficient to establish a causal connection between the Union activity and the employer's alleged improper motivation.

The City asserts that Petitioner had the opportunity to refute the charges made against her at the Command Discipline Hearing and had the benefit of Union representation. Indeed, after the determination was made and the penalty recommended, Petitioner had the opportunity to raise any objections to the findings but she did not do so. Instead, Petitioner accepted the findings and merely requested a review of the penalty.

The City claims that the Command Discipline had nothing to do with the transfer request. DOC considers several factors in determining whether a transfer request will be granted, and the ultimate discretion to grant such requests lies with the Commissioner.

Furthermore, the City argues that Petitioner fails to allege facts sufficient to establish a breach of the duty of fair representation in violation of NYCCBL § 12-306 (b)(3). Petitioner has not shown that the Union's conduct was arbitrary, discriminatory or founded in bad faith. Because the Union did not breach its duty of fair representation, the Petition must be dismissed and any derivative claim against the City pursuant to NYCCBL § 12-306 (d) must also be dismissed.

Finally, the City also argues that Petitioner has failed to allege any facts to state a violation of NYCCBL § 12-306(a)(4). The Petition has no relation to collective bargaining and Petitioner has

not alleged any facts to show that the City has failed to bargain collectively over mandatory subjects of bargaining.

DISCUSSION

As a preliminary matter, we address whether Petitioner's claims are time-barred by the four month statute of limitations under § 12-306(e) of the NYCCBL. That section provides, in relevant part:

> 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 Section 1-07(d) of the Rules of the Office of Collective Bargaining (Rules of the City of New York, Title 61, Chapter 1) ("OCB Rules"); *Griffiths*, Decision No. B-3-99 at 11-12; *Tucker*, Decision No. B-24-93 at 5.

A charge of improper practice must be filed no later than four months from the time the disputed action occurred. In a petition concerning a union's duty of fair representation, that claim runs from the date the employee organization allegedly acted or failed to act on petitioner's behalf. See *Raby*, Decision No. B-14-2003 at 9; *Lasky*, Decision No. B-10-97 at 8. This Board has found that the time may begin to run from the date the union informed petitioner that it would not pursue a grievance. *Page*, Decision No. B-31-94 at 11. When a petitioner alleges that he or she did not know about the alleged breach at the time it occurred, the four month period is measured from the time the petitioner knew or should have known of the occurrence. NYCCBL § 12-306(e).

In *Raby*, Decision No. B-14-2003, the petitioner allegedly was never informed of the union's

decision to forego pursuing grievances on her behalf. The Board found that at the very latest petitioner knew or should have known that the union would not be pursuing her grievances when a year and a half had elapsed since the union last took any action on her behalf, and petitioner wrote to the union acknowledging that time gap indicating that "her patience is exhausted." The Board also stated that the fact that the petitioner continued to seek a response from the union did not toll the statute of limitations.

Here, Petitioner claims that she was not told at the June 28, 2005, meeting that the Union would not be pursuing a grievance on her behalf. She also claims that she had left documentation with the Union, which she would not have done had she known that the Union would not take any action. Petitioner claims she repeatedly attempted to contact the Union after the meeting but received no response. Petitioner's December 9, 2005, letter to the Union implied that she believed that she was not likely to receive a response and that the Union was not pursuing a grievance on her behalf. Indeed, Petitioner wrote that although she was led to believe that the Union was working on matters on her behalf, "there has been no resolution, nor have I been informed by anyone regarding a resolution regarding . . . any of these matters." Because, for at least some period of time, Petitioner believed that the Union would be taking action on her behalf, we find that the time she wrote the December 9, 2005, letter, after almost six months of not receiving a response from the Union, could be interpreted as the earliest point at which Petitioner reasonably knew or should have known of the Union's alleged breach. The Petition was filed less than two weeks later. Thus, we find Petitioner's claims timely.

The primary issue before this Board is whether the Union breached its duty of fair representation with regard to a Command Discipline Interview and by allegedly failing to pursue a

grievance on Petitioner's behalf. We find that Petitioner has failed to demonstrate that the Union's conduct was arbitrary, discriminatory or founded in bad faith.

The Supreme Court in *Vaca v. Sipes*, 386 U.S. 171, 177 (1967) defined the duty of fair representation:

> Under this doctrine, the exclusive agent's statutory authority to represent all members of a designated unit includes a statutory obligation to serve the interests of all members without hostility or discrimination toward any, to exercise its discretion with complete good faith and honesty, and to avoid arbitrary conduct.

Similarly, this Board, in interpreting NYCCBL § 12-306(b)(3), requires the union to refrain from arbitrary, discriminatory, and bad faith conduct in negotiating, administering, and enforcing collective bargaining agreements. *See Samuels*, Decision No. B-17-2006 at 12; *Del Rio*, Decision No. B-6-2005 at 12; *see also Transport Workers Union, Local 100 (Brockington*), 37 PERB ¶ 3002 (2004) (similar standard employed by the Public Employment Relations Board).

A union enjoys wide latitude in the handling of grievances as long as it exercises its discretion with good faith and honesty. See *Hodge,* Decision No. B-36-2006 at 18; *Wooten*, Decision No. B-23-94 at 15. This Board may evaluate the "arguable merit of a claim, in a limited fashion, to determine whether a union's failure to pursue" a grievance was arbitrary or perfunctory. *See Whaley*, Decision No. B-41-97 at 18; *see Anzevino*, Decision No. B-32-92 at 25. However, the Board will not substitute its judgment for that of a union or evaluate its strategic determinations. *See Grace*, Decision No. B-18-95 at 8.

When a union voluntarily undertakes to provide representation to its members that it is not otherwise contractually or statutorily obligated to do, the union violates its duty of fair representation if it renders its services in a manner that is arbitrary, discriminatory, or in bad faith. *See James-Reid*,

Decision No. B-29-2006 at 13; *see Thomas*, Decision No. B-37-97 at 10.

In the instant matter, although the Union did not have a duty under any written agreements to represent Petitioner in the Command Discipline Interview, the Union chose to assist Petitioner, and thereby assumed a duty of fair representation. Petitioner claims that Union delegate McClain failed to represent her adequately by not instructing her properly about the process and not seeking to postpone the proceeding so that Walker could produce witnesses. We cannot deem the Union's conduct to constitute a breach of the duty of fair representation based on Petitioner's dissatisfaction with the manner in which the Union handled the Command Discipline Interview. We note that by the terms of Directive #4257, Command Discipline is an "informal, non-adversarial" process. Petitioner's allegations fail to show that in the context of such a process, the Union's failure to secure more formal, even adversarial, safeguards was improper. We further note that despite Petitioner's objections to her Union representation and the manner in which the Command Discipline Interview was conducted, Petitioner accepted Singleton's findings, limiting her appeal to the penalty. Pursuant to Directive #4257, Petitioner could have rejected the findings and requested a formal hearing. Notably, Petitioner's reason for accepting the finding was a rational desire to limit her risk of higher penalty. She does not assert any facts tending to support a claim that her decision was the result of misunderstanding, duress or undue influence. *See, e.g., N.Y. City School Constr. Auth. V. Koren-DiResta Constr. Co., Inc.,* 249 A.D.2d 205 (1st Dep't 1998); *Hopper v. Lockey,* 8 A.D.3d 802 (3d Dep't 2004).

Petitioner also claims that the Union breached its duty of fair representation by failing to pursue a grievance on her behalf regarding not having received a fair Command Discipline Interview or appeal. We find that Petitioner failed to demonstrate that the Union's actions were perfunctory,

prejudicial, or in bad faith under the circumstances of this case. Even if we credit Petitioner's account of the June 28, 2005, meeting, that the Union did not inform her that it would not pursue a grievance on her behalf, Petitioner has offered no evidence of a contractual source of a right to grieve, nor alleged facts from which this Board may conclude that the Union breached its duty of fair representation. The parties' Agreement specifically excludes from the grievance and arbitration procedure disciplinary matters. The fact that the Union refused to pursue a grievance regarding a matter which does not appear to be grievable under the parties' Agreement is not an arbitrary or perfunctory decision. *See Thomas*, Decision No. B-37-97 at10-11. Furthermore, Petitioner has not provided any allegations of fact to show that the Union discriminated against her or subjected her to disparate treatment.

Since the Union has not breached its duty of fair representation, any potential derivative claims against the employer pursuant to NYCCBL § 12-306(d) must also fail. *See Samuels*, Decision No. B-17-2006 at 16. To the extent that the petition may be construed as asserting § 12-306(a) claims against the City, those claims are also dismissed. Petitioner's claim that Singleton violated Directive #4257 at the Command Discipline Interview and that the appeal was improperly handled is time-barred because the Command Discipline Interview and the appeal occurred more than four months before Petitioner filed the instant petition. As to Petitioner's claim that Singleton and ADW Johnson's actions towards her were in retaliation for her filing an EEOC complaint, we do not consider this claim because it asserts a type of employee activity and a claim of employer discrimination not covered by the provisions of the NYCCBL. *See Washington*, Decision No. B-1-2003 at 16-17. Similarly, as to Petitioner's allegation that DOC violated Directive #2257 by refusing Petitioner's transfer request and instead transferring a male Captain with less seniority, this apparent

claim of gender discrimination is not covered by the provisions of the NYCCBL and is thus outside the jurisdiction of this Board. Furthermore, the Petition presents no facts to suggest that DOC's refusal to transfer Petitioner was motivated by her union activity. Accordingly, the petition is dismissed in its entirety.

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 improper practice petition, docketed as BCB-2526-05, filed by Robin Walker, be, and the same hereby is, dismissed.

Dated: January 23, 2007
New York, New York

MARLENE A. GOLD
CHAIR

GEORGE NICOLAU
MEMBER

CAROL A. WITTENBERG
MEMBER

M. DAVID ZURNDORFER
MEMBER

CHARLES G. MOERDLER
MEMBER

GABRIELLE SEMEL
MEMBER