# *Nealy*, 8 OCB2d 2 (BCB 2015)

(IP) (Docket No. BCB-4062-14)

***Summary of Decision***: Petitioner alleged that the Union breached its duty of fair representation in violation of NYCCBL § 12-306(b)(1) and (3) and that DOHMH retaliated against her in violation of NYCCBL 12-306(a)(1) and (3). Respondents argued that the Union did not breach its duty of fair representation because the Union represented Petitioner in appealing her disciplinary charges and continues to represent her concerning pending grievances. The City argued that the majority of Petitioner's complaints were untimely or failed to state a claim under the NYCCBL. The Board finds that the majority of Petitioner's claims are untimely, that the Union did not breach the duty of fair representation, and that Petitioner failed to demonstrate that DOHMH's alleged actions were motivated by anti-union animus. Therefore, the petition was dismissed. ***(Official decision follows.)***

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**OFFICE OF COLLECTIVE BARGAINING**
**BOARD OF COLLECTIVE BARGAINING**

**In the Matter of the Improper Practice Petition**

***-between-***

**REGINA NEALY,**

***Petitioner,***

***-and-***

**CITY EMPLOYEES UNION, LOCAL 237, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, THE CITY OF NEW YORK, and the NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE,**

***Respondents.***

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## DECISION AND ORDER

On July 30, 2014, Regina Nealy, *pro se*, filed a verified improper practice petition against the International Brotherhood of Teamsters, Local 237 ("Union"), the City of New York

("City"), and the New York City Department of Health and Mental Hygiene ("DOHMH").[1] Petitioner alleges that the Union breached its duty of fair representation pursuant to § 12-306(b)(1) and (3) of the New York City Collective Bargaining Law (New York City Administrative Code, Title 12, Chapter 3) ("NYCCBL") by failing to properly represent her and that DOHMH violated NYCCBL 12-306(a)(1) and (3) by retaliating against her.[2] Respondents argue that the Union represented Petitioner in appealing her disciplinary charges and continues to represent her concerning pending grievances. The City argues that the majority of Petitioner's complaints are untimely or fail to state a claim under the NYCCBL. The Board finds that the majority of Petitioner's claims are untimely. The Board also finds that the Union's representation was not arbitrary, discriminatory, or in bad faith, and thus there is no breach of the duty of fair representation. Finally, the Board finds that Petitioner has failed to allege, let alone demonstrate, that DOHMH's alleged actions were motivated by anti-union animus. Therefore, the petition is dismissed.

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[1] We amend the caption *nunc pro tunc* to include the City, which was not named in the petition but is a necessary party to, and has participated, in these proceedings. *See James-Reid*, 77 OCB 16 (BCB 2006).

[2] Neither the pages nor the paragraphs of the petition are numbered. For ease of reference, the Trial Examiner has numbered the pages of the petition one through nine and will cite to those page numbers. While Petitioner does not reference any sections of the NYCCBL in the petition, she expressly states that she "was not properly represented by Local 237." (Pet., p.1) Accordingly, we find that the petition raises a claim of the breach of the duty of fair representation under NYCCBL § 12-306(b)(1) and (3). Under traditional pleading standards Petitioner did not plead any other claims. However, drawing all permissible inferences in Petitioner's favor, we also find that the numerous factual assertions concerning conduct by DOHMH raise a claim that DOHMH violated NYCCBL § 12-306(a)(1) and (3).

## BACKGROUND

Petitioner has been employed by DOHMH since February 7, 1994, in the titles Special Officer and Supervising Special Officer. These titles are responsible for providing physical security, safety and loss prevention, and for maintaining order at DOHMH facilities. The Union is the certified bargaining representative for employees in these titles at DOHMH. The City Respondents and the Union are parties to a collective bargaining agreement covering Special Officers and Supervising Special Officers, among other titles, effective from September 13, 2008, through September 25, 2010 ("Special Officers Agreement"), which remains in effect pursuant to the *status quo* provision of NYCCBL § 12-311(d).

### Disciplinary Charges

On January 2, 2014, DOHMH issued formal disciplinary charges ("Disciplinary Charges") alleging that Petitioner violated the DOHMH Standards of Conduct Rules and the Conflicts of Interest of Board ("COIB") Rules by making court appearances in a matter in which she was a defendant during scheduled work hours in May and July 2013, using an agency vehicle to transport herself to one of these non-City-related appearances, and completing and submitting falsified time records concerning the time she spent at work on those same dates. The Disciplinary Charges also allege that in September 2013, Petitioner failed to properly supervise an officer and follow protocol, failed to obey a direct order to return a City vehicle, and failed to advise DOHMH of the location of its vehicle. Additionally, in December 2012, without authorization or orders from her supervisors to do so, she falsely represented to agency staff that she was on DOHMH business and following DOHMH protocol when she questioned them about an incident.

After an informal conference held on January 15, 2014, DOHMH recommended that Petitioner's employment be terminated. Union Business Agent Al Soto ("Union Business Agent") was present at the informal conference. Thereafter, the Union assigned an attorney, Todd Rubinstein ("Union Attorney"), to represent Petitioner in her appeal of the Disciplinary Charges before the Office of Administrative Trials and Hearings ("OATH").

Petitioner alleges, and the Union denies, that the Union Attorney "verbally attacked" her during a phone conversation. (Pet., p.1) In an email dated May 5, 2014 ("May 5 Email"), Petitioner reported to Union Representative Derek Jackson that she spoke to the Union Attorney on February 24, 2014, and asked him how her case looked. Petitioner claimed that the Union Attorney told her:

> [N]ot well, you went to Housing Court in uniform. I stated I was not in uniform. [The Union Attorney] stated oh, you used the city car; its not your personal vehicle. There was some hesitation from [the Union Attorney] on given me the date and time of meeting (when he had just told me he was just getting ready to send out the letter). He finally gave me the date of March 10, 2014 at 10:00 am.

(Pet., Ex. B)

On March 10, 2014, Petitioner met with the Union Attorney. There is no dispute that initially he brought the file on another matter into the meeting, but upon discovering that he had the wrong file, he obtained the correct file and discussed Petitioner's case with her. There is also no dispute that the Union Attorney told Petitioner that he was going to seek a penalty less than termination, including a 30-day suspension.[3]

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[3] Petitioner was questioned by her supervisors about her time sheet for March 10, 2014, and specifically about the time she recorded as work time, but spent with the Union Attorney, on what her supervisors considered to be non-City business.

On March 31, 2014, Petitioner attended a hearing at OATH ("March 31 Hearing"). She alleges that on the day of the March 31 Hearing, the Union Attorney did not speak to her before the hearing commenced, did not speak on her behalf or mention that he was seeking a 30-day suspension during the hearing, and showed no concern for her job, tenure, or membership in the Union. The Union denies these claims. Petitioner also alleges, and the Union denies, that she was "verbally attacked by the attorney while she waited for the Hearing Judge to speak with the other side." (Pet., p.1) In the May 5 Email, Petitioner stated that at the March 31 Hearing, while the OATH judge was speaking to the other side, she was waiting with the Union Attorney and asked him questions about inaccuracies in her last paycheck and a delay in her receipt of the check. She alleges that the Union Attorney said:

> He would talk to [the Union Business Agent], because he doesn't want to be called to testify against me for being insubordinat[e] he is my attorney. You been here for twenty years you suppose to know that you have to use your own time to meet with me. I informed him I never had to do this before and you are my lawyer you are suppose[d] to make sure that I knew that. I also, informed him that the time on his letter was wrong. [The Union Attorney] became irate telling me that you were there for sometime waiting for me. I said you told me to be there by 10:00 am, he said yes that's the time I come in, and you were there before I got there. I informed [the Union Attorney] that I did not get to the train station until 9:25 and signed about 9:50. He went back to his phone. I also, informed [the Union Attorney] that he did not defend me. He said what was I suppose[d] to do (how can you feel comfort with attorney who said that you as a client) I informed him you should have said she's innocent. [The Union Attorney] said that does not happen at hearing. I told him you are my attorney you suppose[d] to defend me at all cost, [the Union Attorney] became irate once again telling me you don't pay for me, your dues for the last 20yrs couldn't pay my fee, I am paid by all the members of 237 and yours is just a small portion. I stated am I not a member.

(Pet., Ex. B) Petitioner admits that the Union Attorney mentioned various positions that DOHMH and COIB took in negotiating a resolution to the Disciplinary Charges, including resignation or demotion.

At the March 31 Hearing, DOHMH and the Union reached an agreement that resolved the pending claims against Petitioner before DOHMH and COIB.[4] The terms of the settlement including demotion and a probationary period were described on the record, with the understanding that the terms described there would be memorialized in a written settlement disposition. The administrative law judge asked Petitioner whether she understood the terms of the settlement. Petitioner responded "Yes." (Union Ans., Ex. C).

On or about May 7, 2014, Petitioner met with Union President Gregory Floyd, Union Representative Jackson, the Union Business Agent, and the Union Attorney.[5] According to Petitioner, she submitted all of the information concerning her case to these Union representatives and asked them to appeal the settlement. According to the Union, Petitioner stated that she regretted agreeing to the settlement and made "baseless complaints" about the representation she had received at the March 31 Hearing. (Union Ans. ¶ 10). The Union asserts that its representatives told Petitioner that if she refused to sign the negotiated settlement, she could face monetary fines up to $25,000 for each incident and the Union would not provide her

[4] A COIB representative was present at the March 31 Hearing.

[5] The Petitioner or some of the attendees may have participated in this meeting by speaker phone. It is also not clear whether this discussion occurred during one or two meetings.

with representation in connection with any proceedings before COIB since the charges had been settled.[6]

On June 6, 2014, a written settlement reflecting the terms agreed to on the record at the March 31 Hearing was signed by the parties, including Petitioner ("Settlement Agreement").[7] In the Settlement Agreement, Petitioner admitted that on May 3 and July 20, 2013, without authorization or permission, she drove a DOHMH vehicle to court to attend a proceeding on a personal matter during times when she was required to be performing services for DOHMH and that this conduct violated the DOHMH Standards of Conduct Rules and the Conflicts of Interest Law. As a result, Petitioner agreed to be demoted to a Special Officer and given a one-year probationary period during which time if she is found to have falsified any time records she would be terminated without the right to appeal. Petitioner claims that the Union did not provide her with a copy of the executed Settlement Agreement. The Union asserts that a copy of the signed Settlement Agreement was provided to Petitioner by letter dated July 9, 2014.[8]

**Petitioner's 2013 Grievances**

The record shows that Petitioner filed four grievances in 2013, and that the Union processed or is processing at least two of those grievances. On April 11, 2013, at a Step II grievance, Petitioner was awarded heat days for the summers of 2011 and 2012 as a result of her

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[6] Under the New York City Conflicts of Interest Law, employees may be subject to fines and criminal penalties for certain incidents of misconduct. *See* New York City Charter Chapter 68 and the COIB Rules.

[7] Petitioner acknowledged that private counsel accompanied her to the meeting on June 6, 2014; however, she alleges that the private attorney was not sure if he was going to take her case and wanted to see how the proceeding went. Petitioner asserts that she did not hire a private attorney. It cannot be determined from the record the degree of representation she received, if any, from private counsel in regards to the Settlement Agreement.

[8] The address listed for Petitioner on the Union's July 9, 2014 letter matches the address provided by Petitioner on her petition, except the zip codes differ.

January 8, 2013 grievance. Additionally, in a letter dated August 21, 2013, the Union demanded a Step III hearing in reference to Petitioner's June 12, 2013 grievance concerning "write-ups." The record does not reflect whether the Union processed the other two 2013 grievances.

**Petitioner's 2014 Grievances**

The record also shows that Petitioner filed several grievances in May and June of 2014. On May 30, 2014, Petitioner filed a grievance alleging that DOHMH violated the Special Officers Agreement concerning her work assignment. Also, on May 30, 2014, Petitioner filed another grievance alleging a violation of the Special Officers Agreement concerning overtime assignments. On June 9, 2014, Petitioner filed a grievance concerning four "write-ups" she received on June 3, 2014. On June 11, 2014, Petitioner filed another grievance concerning not receiving heat days for the summer of 2013.

There is no dispute that Petitioner emailed and called Union Representative Jackson repeatedly in July 2014 concerning her grievances. In addition, Petitioner met with Union Representative Randy Klein on July 2, 2014, and she had a brief conversation with Union Representative Jackson on July 16, 2014. Nonetheless, Petitioner complains that she tried to contact Union Representative Jackson via telephone and email during the week of July 12, 2014, but they did not speak until Wednesday, July 16, 2014. She also asserts that after their conversation on July 16, 2014, and before July 30, 2014, the date she filed her petition, Union Representative Jackson did not contact her or respond to her email. The Union asserts that its representatives met with or spoke to Petitioner concerning her grievances "on several occasions including on July 2, 2014" and that Union Representative Jackson advised her that "harassment by her supervisors at D[O]HMH would likely be remedied if Petitioner's attendance improved." (Union Ans. ¶ 11) The Union admits that Union Representative Jackson has not spoken to

Petitioner since mid-July because there have been no developments to report in her pending grievances.

At the conference in this matter, the Union updated the Trial Examiner on the status of the 2014 grievances: the May 30, 2014 grievances were being pursued as part of a group grievance it submitted on behalf of Petitioner and other Union members; the June 9, 2014 grievance is now the subject of formal disciplinary charges that were filed by DOHMH against Petitioner on October 7, 2014; and the June 11, 2014 grievance concerning not receiving heat days for the summer of 2013 has been resolved.

**Petitioner's Allegations Concerning DOHMH**

The petition also raises numerous factual claims that concern actions taken by Petitioner's superiors or events that occurred at her workplace that she describes as a "personal attack" and being "harassed" by her superiors. (Pet., p.3) Petitioner asserts that she has "worked for [DOHMH] for the past twenty (20) plus years. During this time there has been a clash of personality with me and my superiors, but never to this extreme." (Pet., p. 1) She further alleges that Chief Gary Ortalano and Captain Nancy Martinez "ha[ve] a personal vendetta against [her]." (Pet., p. 1)

Petitioner asserts that both before and after the Disciplinary Charges, DOHMH failed to respond to her numerous complaints concerning the actions taken by her superiors and allowed incidents of "harass[ment], mobbing, threat[s], targeting, incompetence, ignoring, workplace violence/workplace bullying, abuse of authority and mistreatment." (Pet., p. 5) Petitioner's assertions include, but are not limited to, that, both before and after the Disciplinary Charges were issued she was: written up for time and attendance and uniform issues; questioned about her time and attendance (DOHMH delayed in approving her timesheets or rejected them);

subjected to disparate treatment by her superiors concerning time and attendance, uniform, and work rules; given improper work assignments; denied approval of requested FMLA leave; ordered to remain at her assigned post; provided with documents such as her evaluation and OC Spray Training Certificate in a delayed manner; and generally subjected to closer scrutiny than other officers. Specifically, Petitioner asserts that she was brought up on charges after contacting DOHMH upper management in December 2013 and asking them to look into and monitor the approval of her time sheets. The Union and City deny these claims or deny knowledge or information sufficient to either admit or deny the claims.

## POSITIONS OF THE PARTIES

### Petitioner's Position

Petitioner argues that her claims show that DOHMH's and the Union's "operation practices are improper, unfair, bias, malicious, reckless, vindictive and personal toward their employees and members." (Pet., p. 1) In addition, she states that the Union's representation of her concerning the Disciplinary Charges was in breach of its duty under the NYCCBL. Specifically, she claims that the Union Attorney verbally attacked her during a phone call, did not bring the correct case file to the March 10, 2014 meeting, advised her that he would request a 30-day suspension in lieu of termination but failed to mention this offer at the March 31 Hearing, failed to speak to her before the March 31 Hearing commenced, did not speak on her behalf at the March 31 Hearing, verbally attacked her at the March 31 Hearing, and showed no concern for her job, tenure, or membership in the Union. Additionally, Petitioner asserts that Union Representative Jackson failed to communicate with her in July 2014. She alleges that she tried to contact Union Representative Jackson via telephone and email during the week of July 12,

2014, but was not able to reach him until Wednesday, July 16, 2014. Further, she asserts that between July 16, 2014, and July 30, 2014, Union Representative Jackson did not contact her or respond to her email.

Petitioner also alleges that she was brought up on charges after contacting DOHMH's upper management in December 2013 and asking them to look into and monitor the approval of her time sheets. Further, Petitioner asserts that DOHMH failed to respond to her numerous complaints concerning the improper actions taken by her superiors and allowed incidents of impropriety to take place. More specifically, Petitioner asserts that she was written-up for time and leave, and uniform infractions; ordered to remain at her assigned post; scrutinized and watched by other employees; subjected to disparate treatment by her superiors concerning time and attendance, uniform, and work rules; subjected to DOHMH policies and orders that she disagrees with; and given documents such as her evaluation and an OC Spray Training Certificate in a an untimely manner.

As a remedy, Petitioner requests that a fair punishment for her misconduct would be a six-month demotion, removal of all charges from her file after two years, and promotion to Captain upon completion of the six month demotion. She also seeks close monitoring of DOHMH by an independent agency and annual mandatory training for employees, upper management, and the Unions.

**Union's Position**

The Union argues that it did not breach its duty of fair representation as alleged by Petitioner. The Union maintains that it fulfilled its statutory obligation and provided Petitioner with legal counsel at no cost, and that counsel successfully negotiated a settlement of both DOHMH's and COIB's charges that provided a penalty less than termination. It further asserts

that Petitioner was advised of the terms of the settlement and stated to the OATH judge that she understood and agreed to its terms. Thereafter, the Union contends that the Petitioner met with Union representatives and expressed regret that she had agreed to the terms of the settlement. It asserts that during the May 7, 2014 meeting the Union again advised Petitioner that the penalties she faced at the COIB were serious and advised her of the consequences should she not agree to settle the Disciplinary Charges against her. The Union asserts that in connection with the settlement, Petitioner consulted private legal counsel, who reviewed the Settlement Agreement with her, and was present when Petitioner executed the Settlement Agreement. In the Settlement Agreement, Petitioner admitted that she used a City-owned vehicle on two separate dates for personal business and falsified time records to claim that she was working on dates and times that she conducted personal business.

Finally, the Union asserts that it continues to process Petitioner's grievances concerning work assignments, overtime assignments, and disciplinary actions concerning time and leave issues. Accordingly, the Union argues that it did not breach its duty of fair representation and the petition should be dismissed in its entirety.

**City's Position**

The City argues that, calculating the four month statute of limitations from the date of service of the petition, the petition is time-barred because Petitioner's claims all flow from events that occurred more than four months prior to that date, April 11, 2014. Therefore, according to the City, the Board may only consider the facts relating to the untimely claims as background for events that occurred after April 11, 2014.

Further, the City argues that Petitioner has not established that the Union breached its duty of fair representation. There is no evidence that the Union acted in a manner that was

arbitrary, discriminatory, or in bad faith. The evidence shows that the Union negotiated a resolution of both DOHMH's and COIB's charges that did not involve termination, financial penalties, or criminal penalties. Therefore, the Union's conduct prevented Petitioner from losing her job, facing significant fines, and/or criminal penalties. Accordingly, the Union exercised sound discretion and acted in good faith at all times. The City contends that Petitioner's allegations only demonstrate that she disagrees with the Union Attorney's strategic decisions or was displeased with the Union's representation and that such claims are insufficient to establish a breach of the duty of fair representation. It notes that Petitioner knowingly and willingly entered into the settlement, she admitted her misconduct in the Settlement Agreement, and there is no claim or evidence that she entered into the settlement by mistake or under fraud, duress, or coercion.

Moreover, the City maintains that many of Petitioner's allegations involve interpersonal conflicts and displeasure with DOHMH policies and supervision. These factual assertions do not state a claim under the NYCCBL and are not proper claims before the Board. The City notes that Petitioner's request for relief is also unrelated to the Union's duty of fair representation and is merely a request for a more favorable resolution than provided for in the Settlement Agreement.

Accordingly, the City requests that the claim against the Union be dismissed. Further, it argues that because Petitioner has not established that the Union breached its duty of fair representation, any derivative claim against the City and DOHMH must also be dismissed.

**DISCUSSION**

As "a *pro se*[,] Petitioner may not be familiar with legal procedure, and we therefore take a liberal view in construing such pleadings." *Rosioreanu*, 1 OCB2d 39, at 2 n. 2 (BCB 2008), *affd.*, *Matter of Rosioreanu v. NYC Off. of Collective Bargaining*, Index No. 116796/08 (Sup. Ct. N.Y. Co. Mar. 30, 2009) (Sherwood, J.), *affd.* 78 A.D.3d 401, (1st Dept. 2010), *lv. denied*, 17 N.Y.3d 702 (2011). Furthermore, in reviewing the sufficiency of the pleadings in cases where a hearing was not held "we draw all permissible inferences in favor of Petitioner from the pleadings and assume for the sake of argument that the factual allegations contained in the petition are true."[9] *Morris*, 3 OCB2d 19, at 12 (BCB 2010) (citations omitted). Here, we liberally construe the petition to be alleging violations of the duty of fair representation under NYCCBL § 12-306(b)(1) and (3). Moreover, we liberally construe the numerous complaints and factual assertions concerning conduct by DOHMH and its supervisors to be alleging a violation of NYCCBL § 12-306(a)(1) and (3). However, we find that Petitioner has failed to plead factual allegations which would, if proven, establish that the Union or DOHMH violated the NYCCBL.

**Timeliness**

Prior to proceeding to the merits, the Board finds that the majority of Petitioner's allegations are untimely. Pursuant to NYCCBL § 12-306(e):

> 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.

[9] As Petitioner did not file a reply, "additional facts or new matter alleged in the answer[s] shall be deemed admitted." Section 1-07(c)(4) of the Rules of the Office of Collective Bargaining (Rules of the City of New York, Title 61, Chapter 1) ("OCB Rules").

*See also* OCB Rule § 1-07(b)(4) (stating that a petition must be filed within four months of an alleged violation).[10] Any claims prior to "the four month period preceding the filing of the [p]etition are not properly before the Board and will not be considered." *Okorie-Ama*, 79 OCB 5, at 13 (BCB 2007). Even though such claims are not remediable, "factual statements comprising untimely claims may be admissible as background information," and are considered as background here. *Id*.

As this petition was filed on July 30, 2014, we are constrained to find that all claims arising more than four months earlier are untimely. Thus, allegations regarding events that occurred before the four month period, including, but not limited to, actions taken by the Union attorney before and during the March 10 meeting, are time-barred. We find Petitioner's remaining claims against the Union, including the Union Attorney's actions or inactions at the March 31 Hearing, and the Union's alleged failure to contact her concerning her grievances, timely.

Petitioner's complaints against DOHMH for actions that occurred prior to the four month period, including, but not limited to, the issuance of the January 2014 Disciplinary Charges, are time-barred.[11] To the extent the Petition can be read to be claiming that within the four month

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[10] OCB Rule § 1-07(b)(4) provides, in relevant part:

> One or more public employees or any public employee organization acting on their behalf … may file a petition alleging that a public employer or its agents … has engaged in or is engaging in an improper practice in violation of § 12-306 of the statute and requesting that the Board issue a determination and remedial order. The petition must be filed within four months of the alleged violation …

[11] Petitioner does not allege that her complaints against DOHMH arise from the settlement discussions or the Settlement Agreement.

period Petitioner's superiors or co-workers have harassed her or treated her in a disparate fashion through write-ups, extra scrutiny, work rules and orders, these allegations are timely.

**Breach of the Duty of Fair Representation Claims**

Pursuant to NYCCBL § 12-306(b)(3), "[i]t shall be an improper practice for a public employee organization or its agents … to breach its duty of fair representation to public employees under this chapter." This duty requires that a union must not engage in arbitrary, discriminatory, or bad faith conduct in negotiating, administering, or enforcing a collective bargaining agreement. *See Walker*, 6 OCB2d 1 (BCB 2013); *Okorie-Ama*, 79 OCB 5. The burden of pleading and proving a breach of this duty lies with the petitioner and "cannot be carried simply by expressing dissatisfaction with the outcome of the disciplinary proceeding, or questioning the strategic or tactical decisions of the Union." *Okorie-Ama*, 79 OCB 5, at 14; *see also Gertskis*, 77 OCB 11, at 11 (BCB 2005). Indeed, to meet his or her initial burden a petitioner must "allege more than negligence, mistake or incompetence" because a union "enjoys wide latitude in the handling of grievances as long as it exercises discretion with good faith and honesty." *Evans*, 6 OCB2d 37, at 8 (BCB 2013); *see also Smith*, 3 OCB2d 17 (BCB 2010).

We are not persuaded by Petitioner's claim that the Union breached its duty of fair representation by failing to adequately represent her. It is undisputed that the Union met and corresponded with Petitioner on many occasions in 2014. Further, it is undisputed that the Union appeared in the early 2014 disciplinary proceedings on Petitioner's behalf and negotiated a settlement of those charges. Petitioner orally consented to the settlement at the March 31 Hearing, and she signed the Settlement Agreement on June 6, 2014. After June 6, 2014, Petitioner continued to submit grievances and the Union continued to represent her. For

example, Petitioner's June 11, 2014 grievance has been resolved and the Union has submitted a group grievance addressing another one of her complaints.[12]

We are also not persuaded that the Union Attorney's actions or inactions during the March 31 Hearing amount to a breach of the duty of fair representation. Even if we were to assume that all of Petitioner's assertions regarding his statements or actions are true, we have long held that "Petitioner's dissatisfaction with Counsel's tactics is insufficient to demonstrate a violation of the Union's duty of fair representation." *Shymanski*, 5 OCB2d 20, at 10 (BCB 2012); *see also Walker*, 79 OCB 2, at 15 (BCB 2007). Moreover, the Board "will not substitute its judgment for that of a union or evaluate its strategic determinations." *Edwards*, 1 OCB2d 22, at 21 (BCB 2008) (citations and editing marks omitted).

Further, we do not find that the Union breached its duty of fair representation by failing to communicate with Petitioner after July 12, 2014. The record is clear that Union representatives have met with and spoken to Petitioner on multiple occasions. Indeed, it is undisputed that Petitioner met with a Union representative on July 2, 2014, and spoke over the telephone with another Union representative on July 16, 2014. The Union explained that after speaking with Petitioner in mid-July, Union Representative Jackson did not speak to Petitioner because there were no new developments in her pending grievances. Thus, we find that the Union's level of communication or lack thereof did not amount to a breach of the duty of fair representation. *See Turner*, 3 OCB2d 48 (BCB 2010) (finding that the petitioner's dissatisfaction with the quality of communication did not amount to a breach of the duty of fair representation where the record failed to show that the union did not keep the petitioner informed).

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[12] We note that a union is not obligated to advance every grievance. *See Minervini*, 71 OCB 29, at 15 (BCB 2003) (citing *Keyes*, 37 OCB 32, at 7 (BCB 1986)).

Therefore, we find that the Union's actions on behalf of Petitioner were not arbitrary, discriminatory, or in bad faith and, thus, its representation did not violate NYCCBL §12-306(b)(1) and (3).

**Claims Against DOHMH**

For the reasons explained above, we find most of Petitioner's claims against DOHMH to be time-barred. The only possible timely claims Petitioner raises against DOHMH are that since March 30, 2014, she has allegedly been: written-up for time and leave, and uniform infractions; ordered to remain at her assigned post; scrutinized and watched by other employees; subjected to disparate treatment by her superiors concerning time and attendance, uniform, and work rules; subjected to DOHMH policies and orders that she disagrees with; and given documents, such as her evaluation and an OC Spray Training Certificate, in an untimely manner. In granting Petitioner every benefit of the doubt, the Board will examine whether these complaints were violations of NYCCBL § 12-306(a)(1) and (3).

In order to determine whether an employer violated NYCCBL § 12-306(a)(3), and derivatively § 12- 306(a)(1), we apply a test pronounced in *City of Salamanca*, 18 PERB ¶ 3012 (1985), and thereafter adopted by this Board in *Bowman*, 39 OCB 51 (BCB 1987), which states a petitioner must demonstrate that:

1. the employer's agent responsible for the alleged discriminatory action had knowledge of the employee's union activity; and

2. the employee's union activity was a motivating factor in the employer's decision.

*Bowman*, 39 OCB 51, at 18-19; *see also DC 37, L. 376*, 6 OCB2d 39, at 19 (BCB 2013)

Here, we find that Petitioner has shown that she was engaged in protected activity, as she filed grievances against DOHMH. *See Edwards*, 1 OCB2d 22, at 17 (BCB 2008); *DC 37*, 1

OCB2d 5, at 64 (BCB 2008); *DC 37*, 1 OCB2d 6, at 28 (BCB 2008) (filing grievances deemed sufficient to constitute protected union activity in satisfaction of the *Salamanca* test).

However, we find that Petitioner failed to demonstrate that her protected union activity was the impetus for the alleged actions taken by DOHMH. Indeed, Petitioner does not even allege that her union activity was a motivating factor in DOHMH's actions. Instead, Petitioner alleges that the reason for DOHMH's actions was, and is, that her supervisors have a "personal vendetta" against her. (Pet., p. 1) Petitioner admits that during her 20 plus years at DOHMH "there has been a clash of personality with me and my superiors." (Pet., p. 1) Even accepting for the sake of argument Petitioner's description of her working relationship with her superiors, it is a consequence of personal animus unrelated to union activity. This Board has long held that "when an action or series of actions can be linked to personal animus alone, a claim that an employer was motivated by anti-union animus necessarily must fail." *Local 1087, DC 37*, 1 OCB2d 44, at 29 (BCB 2008); *see also Warlick*, 29 OCB 1, at 3 and 7 (BCB 1982) (personality conflicts with superiors do not fall within the prohibited conduct contemplated by the NYCCBL); *Norwich City School Dist.*, 26 PERB ¶ 4533 (1993) (retaliation charge dismissed where employer's motivation stemmed from the employee's personality conflict with a supervisor).

Therefore, we find that Petitioner failed to plead a *prima facie* case that the Union or DOHMH discriminated against her in violation of NYCCBL § 12-306(a)(3). 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 verified improper practice petition filed by Regina Nealy, docketed as BCB-4062-14, hereby is dismissed in its entirety.

Dated: February 2, 2015
New York, New York

GEORGE NICOLAU
MEMBER

CAROL A. WITTENBERG
MEMBER

M. DAVID ZURNDORFER
MEMBER

CAROLE O'BLENES
MEMBER

PETER PEPPER
MEMBER