

Kassim, 8 OCB2d 8 (BCB 2015)
(IP) (Docket No. BCB-4087-14)

Summary of Decision: Petitioner alleged that the Union breached its duty of fair representation in violation of NYCCBL § 12-306(b) by not adequately pursuing her complaints about HHC's treatment of her and by failing to keep her informed of the grievances that it was pursuing. Petitioner also alleged that HHC's treatment of her violated the NYCCBL. Respondents argued that Petitioner's claims are time-barred and that the Union has not violated its duty of fair representation as it continues to pursue Petitioner's grievances and has kept her informed. HHC argued that Petitioner's allegations against it do not constitute a violation of the NYCCBL. The Board found that Petitioner's timely allegations do not establish that the Union acted in an arbitrary, discriminatory, or bad faith manner or that HHC violated the NYCCBL. Therefore, the improper practice petition was denied. (*Official decision follows.*)

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

In the Matter of the Improper Practice Petition

-between-

KEISHA KASSIM,

Petitioner,

-and-

**DISTRICT COUNCIL 37, AFSCME, AFL-CIO, and THE NEW
YORK CITY HEALTH AND HOSPITALS CORPORATION,**

Respondents.

DECISION AND ORDER

On October 31, 2014, Keisha Kassim, *pro se*, filed an improper practice petition alleging that District Council 37, AFSCME, AFL-CIO ("Union"), breached its duty of fair representation in violation of § 12-306(b) of the New York City Collective Bargaining Law (New York City Administrative Code, Title 12, Chapter 3) ("NYCCBL") by not adequately pursuing her

complaints about her employer, the New York Health and Hospitals Corporation (“HHC”), and by failing to keep her informed of the grievances that it was pursuing.¹ Petitioner also argues that HHC’s treatment of her violated the NYCCBL. Respondents argue that Petitioner’s claims are time-barred and that the Union has not violated its duty of fair representation as it continues to pursue Petitioner’s grievances and has kept her informed. HHC also argues that Petitioner’s allegations against it do not constitute a violation of the NYCCBL. The Board finds Petitioner’s timely allegations do not establish that the Union acted in an arbitrary, discriminatory, or bad faith manner or that HHC violated the NYCCBL. Therefore, the petition is denied.

BACKGROUND²

Petitioner began her employment at HHC in August 2005 and is currently a Clerical Associate Level II. For her entire career at HHC, Petitioner has worked in the Admitting Department of Coney Island Hospital (“CI Hospital”). The Union and HHC are parties to the Clerical Administrative Unit Contract (“Unit Contract”).

Allegations Concerning Pre-2014 Activity

Petitioner has had the same immediate supervisor (“supervisor”) for her entire career at HHC and avers that they have always had a contentious relationship. Petitioner further avers that her supervisor has repeatedly tried to “discredit” her work and has refused to give Petitioner adequate information regarding new procedures and policies in order to make her look

¹ While the petition was initially deemed insufficient, it was supplemented on November 13, 2014, and then deemed sufficient. Petitioner raised additional allegations at the January 15, 2015 conference in this matter (“OCB Conference”). As Petitioner is *pro se*, we have also taken these allegations, as well as the Union’s and HHC’s responses to them, into consideration.

² Petitioner submitted extensive documentation spanning her entire career, consisting of 14 exhibits exceeding 360 pages. While we have reviewed all of Petitioner’s allegations and documentation, we present here only the facts directly relevant to this decision.

“incompetent.” (Pet. ¶ 21)³ Petitioner states that her supervisor’s improper treatment of her began in 2005 and describes it as “on going.” (Pet. ¶ 21) Petitioner believes that her supervisor’s behavior is in retaliation for Petitioner reporting to HHC management that her supervisor was sleeping on the job and sending management a picture of her supervisor sleeping at her desk.

Petitioner avers that the lack of proper training and supervision during her initial orientation period, beginning in 2005, violated HHC’s Personnel Policies and that when she complained to her supervisor, her supervisor told her to complain to her Union. Petitioner avers that she was only recently able to put all the “pieces” together and realize that this was a “set up” to create documentation that would support subsequent adverse employment actions against her. (Pet. ¶ 20)⁴ Petitioner alleges that her first contact with a Union official was with a shop steward in July 2006. (*See* Bates Stamp 011)

Petitioner avers that in early 2006, her supervisor directed her to enter incorrect information and that this resulted in Petitioner’s pay being docked. Petitioner further avers that her supervisor entered many “questionable” codes on Petitioner’s time sheet in 2006. (Pet. ¶ 3)

Petitioner alleges that her supervisor is the “sole reason” for her difficult relationship with other HHC employees as her supervisor has relayed false and inaccurate information about Petitioner to her coworkers and HHC management. (Pet. ¶ 3) Petitioner argues that because of her supervisor’s misrepresentations about her, co-workers assume that Petitioner is “confrontational.” (Pet. ¶ 20) Petitioner avers that her supervisor falsely described her as having

³ The petition did not contain numbered paragraphs; numbers were added to facilitate Respondents’ answers and those paragraph numbers are used in the decision.

⁴ Petitioner’s used the term “set up” in the OCB Conference.

a mental disorder, resulting in a 2010 recommendation by HHC management that Petitioner go to the Union's Personal Service Unit for mental health counseling.

Petitioner alleges that other negative ramifications of her supervisor's actions include being inappropriately marked as "needs improvement" on her performance evaluations and being unable to transfer out of the Admitting Department despite obtaining five training certificates. (Pet. ¶ 8) Petitioner refers to one instance in 2009 in which another department considered her for a position until senior management in the Admitting Department gave her a negative referral. Petitioner further avers that within a year of her permanent appointment in May 2010, she should have, but did not, receive a Level increase.

Petitioner alleges that in October 2011 she informed the Union President that her Union representative was "never prepared" and that the Union President ignored her request to have her Union representative changed. (Pet. ¶ 32) The Union denies this allegation. Petitioner acknowledges that the Union has represented her over the years, including a grievance concerning overtime that was withdrawn in 2011 at Petitioner's behest. (*See* Union Ans., Ex. B)

Allegations Concerning 2014 Activity

On May 1, 2014, Petitioner discussed her desire for a tour transfer with HHC's Equal Employment Opportunity Officer, who recommended that Petitioner contact CI Hospital's Human Resources ("HR") Department, look for a position outside of the Admitting Department, and contact the Union's Personal Services Unit for counseling. (*See* Bates Stamp 313) Petitioner alleges, and HHC denies, that when Petitioner requested a tour change from CI Hospital's HR Department, the Associate Director told her that she "had no interpersonal skills" and "should resign because our work relationship was no longer working." (Pet. ¶ 15)

Petitioner also alleges that since May 2014, she has had difficulty communicating with her Union, having reached out to it “countless” times, “continuously” called it, and physically gone to the its office to find someone to help her. (Pet. ¶ 7) Petitioner claims that Union personnel have spoken to her in a disrespectful manner and made her feel unwanted. According to Petitioner, a Union official informed her that since July 2014, the local Union office viewed her as “intimidating” and has been referring to her as “the crazy lady.” (Pet. ¶¶ 7; 37) Petitioner also claims to have a tape recording of a Union Supervisor telling the Union President that she has had to “entertain[.]” Petitioner whenever Petitioner comes to the office. (Pet. ¶ 37) The Union denies these allegations.

In 2014, the Union filed two grievances on Petitioner’s behalf: one concerning the denial of Petitioner’s request for a tour change (“Tour Grievance”), the other concerning her base salary and shift differential (“Salary Grievance”).

Regarding the Tour Grievance, Petitioner, except for a few months in 2006, has always worked Tour I, the midnight to 8:00 am shift, and has long sought a transfer to a day shift. Petitioner alleges that HHC hired two new employees to work the shift she desired, Tour II, the 8:00 am to 4:00 pm shift. In the petition, Petitioner alleges that three co-workers have received “preferential treatment” in scheduling their tours. (Pet. ¶ 15) HHC rejected Petitioner’s 2014 request for a tour transfer on June 4, 2014. On June 9, 2014, the Union filed the Tour Grievance at Step I. (*See* Union Ans., Ex. D) On June 16, 2014, having received no response from HHC, the Union filed the Tour Grievance at Step IA. (*See* Union Ans., Ex. E) On July 14, 2014, the Union requested that the Tour Grievance proceed to Step II.

Regarding the Salary Grievance, Petitioner alleges that HHC has never acknowledged her official date of employment and that her supervisor reported her as absent on days that she

worked, which negatively impacting her salary and benefits.⁵ On July 3, 2014, the Union filed the Salary Grievance. (*See* Union Ans., Ex. C) Petitioner alleges that she never received a written copy of the Salary Grievance but acknowledges that, on July 28, 2014, Petitioner and a Union representative met with CI Hospital's Assistant Payroll Director to discuss the Salary Grievance. Petitioner complains that, in the July 28 meeting, the Union representative "did not represent me." (Pet. ¶ 10) The Union denies this allegation. On September 26, 2014, Petitioner met with Union officials to discuss Petitioner's salary. The Union officials informed Petitioner that they believed that her salary and benefits were correct. Petitioner avers that she "did not agree" with the Union officials' conclusion and that the meeting "did not resolve" her concerns. (Pet. ¶¶ 30, 34) The Union continued to pursue the Salary Grievance.

Solely for the purposes of the Step II hearing, the Salary and Tour Grievances were consolidated. The Step II hearing was held on October 15, 2014. Petitioner avers that she never received written notice of the Step II hearing. The Union avers that Petitioner had been provided verbal notice of the Step II hearing. Petitioner acknowledges attending, and claims to have recorded, the Step II hearing.

Petitioner was not notified that the Step II hearing would address both the Salary and Tour Grievances until the day of the Step II hearing. The Union explained that the decision to consolidate the grievances for the purposes of the Step II hearing was made unilaterally by HHC and that the Union only learned of that decision the day before the Step II hearing. Petitioner alleges that at the Step II hearing, she tried, unsuccessfully, to have the hearing officer also address her concerns regarding her interactions with co-workers, which she characterized as a

⁵ Petitioner further alleges that she learned in March 2012 that her enrollment date in the pension system did not match her appointment date and that proper payroll contributions to her pension did not begin until August 2012 when, according to Petitioner, they should have begun years earlier.

workplace violence issue. Petitioner referred to a February 2010 incident in which a co-worker allegedly threatened her and an October 2014 incident in which a co-worker allegedly called her a “tramp.” (Pet. ¶ 11) According to Petitioner, the CI Hospital’s Director of Labor Relations, who conducted the Step II hearing, responded to her request by informing her that he was also CI Hospital’s workplace violence coordinator, that she should file a report, and then “reach out to him.” (Pet. ¶ 11)

On November 19, 2014, by letter to the Union, HHC denied the Step II Salary Grievance. (See Union Ans., Ex. H) HHC concluded that Petitioner was being paid the correct base salary and shift differential. On November 20, 2014, by letter to the Union, HHC denied the Step II Tour Grievance, stating that tour changes are solely at the discretion of management and that there were no vacancies on Tour II.⁶ (See Union Ans., Ex. F) Petitioner avers that she had to take medical leave to deal with stress caused by the Step II denials.

The Union acknowledges that it did not communicate with Petitioner regarding her grievances between the Step II hearing on October 15, 2014, and the filing of the Union’s answer on December 19, 2014. The Union explained that it had no information regarding Petitioner’s grievances to relate to her until it received the Step II denials and that copies of those denials were attached to its answer to the petition. Its answer also noted that the Union had filed at Step III for both grievances.

⁶ In the Step II denial of the Tour Grievance, HHC discussed the February 2010 incident raised by Petitioner at the hearing. Petitioner, in 2010, had complained to HHC about having to work alone with a co-worker that had threatened her. (See Bates Stamp 229-230) In response, also in 2010, HHC decided that Petitioner and the co-worker needed to be separated and, as the co-worker had less seniority than Petitioner, HHC transferred the co-worker from Tour I to Tour III, the 4:00 pm to 12:00 am shift. The co-worker was one of the employees Petitioner named in her petition as receiving preferable scheduling. To accommodate the co-worker’s transfer, a Clerical Associate Level II assigned to Tour III was transferred to Tour II.

POSITIONS OF THE PARTIES

Petitioner's Position

Petitioner asserts that her claims that the Union and HHC have violated the NYCCBL are timely.⁷ Petitioner argues that she did not have knowledge of the definitive acts supporting her claims until June 2014 when she met with HHC management regarding her tour transfer request. Petitioner notes that, while the Union and HHC have judged her claims as if the hardship she faces happened years ago and then stopped, the hardships are still happening to this present day.

Petitioner claims that the Union's handling of her work complaints have, from the beginning of her career to the present, breached its duty of fair representation.⁸ Specifically, Petitioner argues that, in 2011, her Union representative was never prepared and that the Union President ignored her request to have her Union representative changed. Petitioner further argues that, in the July 2014 meeting regarding her Salary Grievance, the Union representative did not adequately represent her. Petitioner argues that the Union's conduct in the September 2014 meeting regarding her Salary Grievance violated the NYCCBL because Petitioner "did not agree" with the Union official's conclusion that Petitioner's salary was correct and because the meeting "did not resolve" her concerns. (Pet. ¶¶ 30, 34)

⁷ Taking a liberal construction of her pleadings, which cites numerous sections of the NYCCBL not pertinent to the factual claims alleged, we construe the petition as raising claims that the Union violated its the duty of fair representation under NYCCBL § 12-306(b)(3) and that HHC violated NYCCBL § 12-306(a) and (3). See *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) (As "a *pro se*[,] Petitioner may not be familiar with legal procedure, and we therefore take a liberal view in construing such pleadings.").

⁸ NYCCBL § 12-306(b)(3) provides, in pertinent part, that: "It 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."

Petitioner also argues that the Union failed to keep her properly informed. According to Petitioner, since May 2014 she has had difficulty communicating with her Union and has been spoken to in a disrespectful manner by Union personnel, who, in July 2014, started referring to her as “the crazy lady.” (Pet. ¶¶ 7; 37) The Union failed to send her any written documentation regarding the grievance process, including the grievances themselves and notices of hearings. Petitioner argues that the Union’s failure to send her written notices was an attempt to make her miss the Step II hearing. Further, the Union did not, until the day of the Step II hearing, inform her that the Salary and Tour Grievances would be consolidated for the hearing.

Regarding HHC, Petitioner alleges that HHC’s treatment of her violates the NYCCBL.⁹ Specifically, Petitioner argues that the following constitute violations of law: (i) HHC’s failure to address her concerns regarding her supervisor, including her supervisor disparaging her and failing to adequately train her; (ii) HHC’s failure to pay her the proper salary, accurately record the days and hours she worked, and recognize her appointment date; (b) HHC’s failure to address at the Step II hearings her concerns regarding working with a co-worker that threatened her and being called a tramp; (c) HHC’s falsely implying that Petitioner had a mental disability; (d) HHC’s failure to grant Petitioner’s tour transfer request while hiring people to work on the tour she desired and giving other employees preferential treatment in scheduling; (e) and HHC’s preventing Petitioner from transferring out of the Admitting Department. Petitioner argues that

⁹ NYCCBL § 12-306(a)(1) and (3) provides, in pertinent part, that:

It shall be an improper practice for a public employer or its agents:

(1) to interfere with, restrain or coerce public employees in the exercise of their rights granted in [§] 12-305 of this chapter;

* * *

(3) to discriminate against any employee for the purpose of encouraging or discouraging membership in, or participation in the activities of, any public employee organization;

HHC violated its Corporate Compliance Program by not properly investigating her reports of the intimidation and retaliation by her supervisor. Petitioner argues that HHC violated its Personnel Policy by not paying her the proper salary. Petitioner also complains that HHC has refused to provide her the documents she requested.¹⁰

As a remedy, Petitioner requests that the Board order: HHC to correct her salary and pay differential, grant her a Level increase, and back pay with interest; HHC to transfer her to the 8:00 am to 4:00 pm tour; and any other relief necessary to make her whole.

Union's Position

The Union argues that Petitioner's claims are untimely. The statute of limitations is four months and begins to run upon Petitioner having actual or constructive knowledge of the definitive acts which put her on notice of the need to complain. As the petition was filed on October 31, 2014, the Union argues that all claims that pre-date June 27 must be dismissed.

The Union argues that the Petitioner's allegations are insufficient to establish that the Union breached its duty of fair representation. The petition offers only conclusory allegations and does not plead facts showing that the Union acted in an arbitrary, capricious or discriminatory manner. The Union describes the crux of Petitioner's claim as her belief that the Union has failed to be sufficiently attentive to her myriad concerns and provide her with the answer she seeks. Unions, however, have wide discretion in the handling of grievances. According to the Union, the facts do not support Petitioner's contention that she is being ignored or that her rights are being neglected. The Union notes that the petition itself identifies seven

¹⁰ Liberally construed, we find that the claims that HHC violated its own policies allege a breach of the Unit Agreement. The Board, however, "does not have jurisdiction to consider a breach-of-contract claim that does not otherwise state an independent claim of improper practice." *White*, 69 OCB 25, at 6 (BCB 2002). Petitioner further argues that HHC violated Civil Service Law, § 75-b(2)(a), which also lies outside of the jurisdiction of the Board. *Id.* Accordingly, we do not address these claims.

Union officials who have worked in 2014 in some capacity to diligently and professionally address Petitioner's concerns. Petitioner's disagreement with the Union officials' conclusions, advice, and actions is insufficient to sustain a duty of fair representation charge. The Union filed the Salary and Tour Grievances and continues to pursue them through Step III. Thus, the Union argues, Petitioner has not met her burden and the petitioner must be dismissed.

HHC's Position

HHC argues that any of Petitioner's claims that pre-date July 2, 2014, are untimely as the statute of limitations is four months and the petition was filed on October 31, 2014.

HHC argues that Petitioner has failed to allege facts sufficient to establish a breach of the duty of fair representation as the petition is devoid of any facts showing that the Union acted in an arbitrary, discriminatory, or bad faith manner. Petitioner's allegations consist of claims that the Union did not inform Petitioner of the hearing dates and that it gave her answers that she did not want to accept. Petitioner merely equates the Union providing her objective answers as ineffective representation. Such, however, does not establish a violation of the NYCCBL as honest decisions, even if erroneous, do not breach the duty of fair representation. The Union has represented Petitioner through Step II and has filed at Step III. As the Union did not breach its duty of fair representation, any derivative claim against HHC must also fail.

HHC argues that, to the extent the Board finds a timely pled claim, the petition fails to set forth facts establishing that HHC violated NYCCBL § 12-306(a)(1) and (3).

DISCUSSION

We find that, to the extent such claims are timely, Petitioner has not established that the Union or HHC violated the NYCCBL. We therefore dismiss the petition.

The Board, recognizing that a “*pro se* Petitioner may not be familiar with legal procedure . . . take[s] a liberal view in construing” a *pro se*’s petition. *Rosioreanu*, 1 OCB2d 39, at 2 n. 2; *see also Abdal-Rahim*, 59 OCB 19, at 3 (BCB 1997). Accordingly, our review is “exercised with an eye to establishing whether the facts as pleaded support any cognizable claim for relief and [we do] not define such claims only by the form of words used by Petitioner.” *Feder*, 1 OCB2d 23, at 13 (BCB 2008). Furthermore, “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.” *Morris*, 3 OCB2d 19, at 12 (BCB 2010) (citations omitted). We therefore construe the petition to be alleging that the Union violated its duty of fair representation under NYCCBL § 12-306(b)(3) and that HHC violated NYCCBL § 12-306(a)(1) and (3).

Timeliness

As “timeliness is a threshold question” and Petitioner’s claims span from 2005 through 2014, we first address whether Petitioner’s claims are time-barred. *Nardiello*, 2 OCB2d 5, at 28 (BCB 2009). The NYCCBL requires that an improper practice charge “must be filed no later than four months from the time the disputed action occurred or from the time the petitioner knew or should have known of said occurrence.” *Raby*, 71 OCB 14, at 9 (BCB 2003), *affd.*, *Raby v. Off. of Collective Bargaining*, Index No. 109481/03 (Sup. Ct. New York Co. Sept. 12, 2003) (citing NYCCBL § 12-306(e) and OCB Rule § 1-07(d))¹¹

¹¹ NYCCBL § 12-306(e) 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.

The instant petition was filed on October 31, 2014. Therefore, only claims arising after June 30, 2014, are timely. While Petitioner's claims that antedate June 30, 2014, are not remediable, "factual statements comprising untimely claims may be admissible as background information." *Okorie-Ama*, 79 OCB 5, at 13 (BCB 2007); *see also Nealy*, 8 OCB2d 2, at 15 (BCB 2015).

Accordingly, regarding Petitioner's claims against the Union, the timely claims consist of the alleged insufficiency of the Union's representation in its handling of the Salary Grievance, including the July 28, 2014 meeting with HHC management and the September 26, 2014 meeting with Union officials, and the pursuit of the Tour Grievance after June 30, 2014, including the Step II grievance, which was filed on July 14. Also timely are Petitioner's claims concerning her communications with the Union after June 30, 2014, including the alleged failure of the Union to be responsive to her inquires, keep her informed of the grievance process, and provide written notices. Petitioner's concerns regarding the Union's earlier representation of her, such as the allegation that in October 2011 the Union President ignored her request to change her Union representative or statements made prior to June 30, 2014, are untimely.

Regarding HHC, Petitioner's only timely claim is that HHC did not grant her request that the October 2014 Step II hearing also address her concerns regarding Petitioner's relationship with her co-workers. The remainder of Petitioner's claims against HHC are time-barred, including the allegations forming the basis of the Salary and Tour Grievance as both grievances concern decisions of HHC that pre-date June 30, 2014. Also untimely are claims related to

OCB Rule § 1-07(d) provides, in relevant part: "A petition alleging that a public employer or . . . a public employee organization . . . 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 . . ."

HHC's failure to transfer Petitioner out of the Admitting Department in 2009, the handling of the incident between Petitioner and a co-worker in February 2010, and claims stemming from the supervisor's pre-June 30, 2014 treatment of Petitioner such as that the supervisor failed to adequately train Petitioner in 2005, instructed Petitioner to incorrectly enter codes in 2006, failed to properly record Petitioner's time, and made false and inaccurate statements about Petitioner.

Alleged Breach of the Duty of Fair Representation

Unions owe their members a duty of fair representation, and it is, under NYCCBL § 12-306(b)(3), "an improper practice for a public employee organization or its agents . . . to breach its duty of fair representation to public employees under this chapter." The duty of fair representation "requires that a union must not engage in arbitrary, discriminatory, or bad faith conduct in negotiating, administering, or enforcing a collective bargaining agreement." *Nealy*, 8 OCB2d 2, at 17; *see also Walker*, 6 OCB2d 1 (BCB 2013). The "burden of pleading and proving a breach of this duty lies with the petitioner." *Id.* To meet this burden, a petitioner must "allege more than negligence, mistake or incompetence." *Evans*, 6 OCB2d 37, at 8 (BCB 2013). The duty of fair representation is not breached "simply by expressing dissatisfaction with the outcome . . . or questioning the strategic or tactical decisions of the Union." *Okorie-Ama*, 79 OCB 5, at 14; *see also Gertsakis*, 77 OCB 11, at 11 (BCB 2005). A union "enjoys wide latitude in the handling of grievances as long as it exercises discretion with good faith and honesty [and] 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); *see also Smith*, 3 OCB2d 17 (BCB 2010).

Regarding the Union's handling of her grievances, even under a liberal reading of the pleadings, Petitioner has not pled that the Union's actions were discriminatory or arbitrary.

Petitioner does not allege that the Union has or would have treated another Union member in a similar situation differently. Nor does Petitioner allege that the Union failed to rationally consider her grievances.

However, as a *pro se* petitioner's pleadings are accorded a liberal construction, we construe the petition as alleging that the Union acted in bad faith. Although Petitioner has not explicitly pled that the Union had an improper motive for its actions, the pleadings do allege that the Union has been unresponsive and disrespectful. Nevertheless, we find that the pleadings do not establish that the Union breached its duty of fair representation. It is undisputed that, during the four months preceding the filing of the petition, the Union pursued, and is still pursuing, Petitioner's grievances and has met with Petitioner and HHC regarding her grievances. Indeed, although not required to pursue every grievance, the Union continues to pursue the Salary Grievance even though it disagreed with Petitioner's analysis. *See Minervini*, 71 OCB 29, at 15 (BCB 2003). Therefore, we do not find that the Union acted in bad faith.

Petitioner argues that the Union failed to adequately represent her because she "did not agree" with the Union officials and because the Union "did not resolve" her concerns. (Pet. ¶¶ 30, 34) The crux of Petitioner's allegations are her disagreement with the Union's conclusions, tactics, and outcomes. However, "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). Furthermore, Petitioner's "dissatisfaction with the outcome of [her] case is insufficient to ground a claim that a union has breached its duty." *Id.*, at 9 (quoting *Rivera-Bey*, 73 OCB 20, at 11 (BCB 2004)).

We also find that, even accepting the facts as pled by Petitioner as true, the difficulties Petitioner alleges regarding her communications with the Union do not constitute a breach of the

duty of fair representation. The Union has “a responsibility to communicate with a grievant, including responding to the grievant’s inquiries on the matter and keeping [her] apprised of its status.” *Morales*, 5 OCB2d 28, at 26 (BCB 2012) (citing *Krumholz*, 51 OCB 21, at 12 (BCB 1993)). The record establishes that the Union has done so. While Petitioner desired written notifications as well as more prompt and respectful communications, the record is clear that Petitioner was able to communicate her concerns to her Union and that the Union kept her informed. *See Turner*, 3 OCB2d 48, at 16 (BCB 2010) (finding that a petitioner’s dissatisfaction with the quality of communication did not amount to a breach of the duty of fair representation where the record showed that the union kept the petitioner informed). Union representatives met with Petitioner on multiple occasions. While written notifications may not have been sent to Petitioner, Petitioner received sufficient notice of the grievance process in order to attend and participate in the meetings and hearings related thereto. It is undisputed that Petitioner received almost no prior notice that the grievances would be consolidated for the purpose of the Step II hearing. However, the Union itself received less than 24 hours notice. While the Union did not communicate with Petitioner regarding the grievances after the Step II hearing and prior to the petition being filed, the record indicates that there was no information for the Union to relate to Petitioner until the Step II denials, which occurred after the petition was filed.

Claims Against HHC

The only timely claim raised by Petitioner against HHC is its failure to address her concerns regarding her co-workers at the October 2014 Step II hearing. Liberally construing the petition, we find that the petition alleges that HHC violated NYCCBL § 12-306(a)(1) and (3), which prohibit an employer from interfering with employees exercising the rights granted to them under the NYCCBL and from retaliating against employees for exercising such rights. To

determine if NYCCBL § 12-306(a)(1) and (3) have been violated, the Board applies the test pronounced in *City of Salamanca*, 18 PERB ¶ 3012 (1985), and adopted by this Board in *Bowman*, 39 OCB 51 (BCB 1987). This test requires that a petitioner 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)

The only union activity alleged by Petitioner is seeking Union assistance regarding her complaints against HHC and it is undisputed that the Union pursued grievances on her behalf. *See Nealy*, 8 OCB2d 2, at 18-19 (filing grievances deemed sufficient to constitute protected union activity); *see also Edwards*, 1 OCB2d 22, at 17. As it is undisputed that HHC was aware of Petitioner's union activity, Petitioner has satisfied this part of the test.

Petitioner has not satisfied the second part of the test. Petitioner's timely claim is that HHC allegedly failed to address at the Step II hearing her concerns regarding her relationship with co-workers. For the purposes of this decision, Petitioner's factual allegations are accepted as true. Petitioner alleges that the "sole reason" for her difficult relationship with her co-workers is her supervisor relaying false information about her to her coworkers. (Pet. ¶ 3) Petitioner opines that her supervisor's motivation for doing so was not union activity, but retaliation for Petitioner reporting to management that her supervisor slept on the job. Thus, Petitioner has pled that the acts of which she complains are "a consequence of personal animus unrelated to union activity." *Nealy*, 8 OCB2d 2, at 18-19. It is well established 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).

Further, according to Petitioner, her supervisor's inappropriate conduct pre-dates her union activity. Petitioner alleges that her supervisor's inappropriate activity began in late 2005 and that she first went to the Union in 2006. Accordingly, Petitioner's union activity cannot be the motivation for the alleged retaliation. *See DEA*, 79 OCB 40, at 22 (BCB 2007) ("adverse actions cannot be persuasively shown to have been retaliatory in nature simply because they antedated the protected activity"); *see also Edwards*, 1 OCB2d 22, at 18.

Accordingly, after a thorough review of the record, we find that the allegations do not state facts which would, if proven, establish that the Union breached its duty of fair representation or that HHC violated the NYCCBL.

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 Keisha Kassim, docketed as BCB-4087-14, against District Council 37, AFSCME, AFL-CIO, and the New York Health and Hospitals Corporation hereby is dismissed in its entirety.

Dated: March 26, 2015
New York, New York

SUSAN J. PANEPENTO
CHAIR

GEORGE NICOLAU
MEMBER

CAROL A. WITTENBERG
MEMBER

M. DAVID ZURNDORFER
MEMBER

CAROLE O'BLINES
MEMBER

PETER PEPPER
MEMBER