

***New York City Sheriff's Ass'n, 75 OCB 25 (BCB 2005)***

[Decision No. B-25-2005] (Docket No. BCB-2494-05).

***Summary of Decision:*** The Sheriff's Association filed an improper practice petition alleging that the Department of Finance eliminated a compressed time program without bargaining. The Board's Executive Secretary dismissed the petition on the grounds that it was not filed within the four month statute of limitations. ([\*Official decision follows.\*](#))

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

**In the Matter of**

**THE NEW YORK CITY SHERIFF'S ASS'N,**

***Petitioner,***

***- and -***

**THE CITY OF NEW YORK, and THE  
DEPARTMENT OF FINANCE,**

***Respondents.***

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**DETERMINATION OF EXECUTIVE SECRETARY**

On July 29, 2005, the New York City Sheriff's Association ("Union") filed an improper practice petition against the City of New York and the Department of Finance ("City" or "Finance"). The Union alleges that Finance violated § 12-306(a)(1) and (4) of the New York City Collective Bargaining Law (New York City Administrative Code, Title 12, Chapter 3) ("NYCCBL") when it eliminated a compressed time program for Union members in February 2005. Since the petition is untimely filed, it is dismissed.

### **BACKGROUND**

According to the petition, the Union represents members in the Family Court Warrant Unit of the Office of the Sheriff, a division at Finance. Since its inception in 1996, members in this Unit worked four days a week for ten hour a day. According to the Union, this schedule resulted “in additional field work time to the benefit of the service rate; a key indicator of the Unit’s performance.” In February 2005, Finance unilaterally discontinued the compressed time program without notifying the Union.

The Union claims that as a result of this unilateral change, there has been more than a 10% decrease in the service rate. This change has also created a hardship on a practical level in that it has affected members’ child and elder care situations because the swing shifts between tours has been altered. The Union argues that under *District Council 37*, Decision No. B-10-2005, compressed time is a mandatory subject of bargaining and that the City’s failure to bargain over this change has resulted in a violation of NYCCBL § 12-306(a)(1) and (4). The Union seeks reinstatement of the compressed time program as it existed on the date it was eliminated.

### **DISCUSSION**

Pursuant to § 1-07(c)(2) of the Rules of the Office of Collective Bargaining (Rules of the City of New York, Title 61, Chapter 1) (“OCB Rules”), a copy of which is annexed hereto, the undersigned has reviewed the petition and determined that it is untimely under the NYCCBL.

Section 12-306(e) of the NYCCBL provides:

A petition alleging that a public employer or its agents or a public employee organization or its agents has engaged in or is engaging in an improper practice in violation of this section may be filed with the board of collective bargaining within four months of the

occurrence of the acts alleged to constitute the improper practice or of the date the petitioner knew or should have known of said occurrence. . . .

*See also* OCB Rules § 1-07(b)(4). A charge of improper practice must be filed no later than four months from the time the disputed action occurred. *Raby*, Decision No. B-14-2003 at 9, *aff'd*, *Raby v. Office of Collective Bargaining*, No. 109481/03 (Sup. Ct. N.Y. Co. Oct. 8, 2003); *Tucker*, Decision No. B-24-93 at 5.

When a failure to bargain charge is based upon a unilateral action, the action is not deemed a continuing violation of the statutory bargaining duty even though it is claimed to involve a mandatory subject of bargaining. In this circumstance, the charge must be filed within four months of the date of the alleged change. *See State of New York*, 17 PERB ¶ 4612 (1997), *citing*, *Triborough Bridge and Tunnel Auth.*, 17 PERB 3017 at 3035 (1984); *City of Yonkers*, 7 PERB ¶ 3088 (1998).

Here, the petition alleges that Finance eliminated the compressed time program, a mandatory subject of bargaining, at an unspecified date in February 2005. Even assuming that this occurred on February 28, 2005, the Union's filing on July 29, 2005, is untimely because it is more than four months after the date the alleged change occurred. Therefore, the petition is barred by the applicable four month statute of limitations.

Dated: New York, New York  
August 5, 2005

Alessandra F. Zoragniotti  
Executive Secretary

Section 1-07(c)(2) of the Rules of the Office of Collective Bargaining (Rules of the City of New York, Title 61, Chapter 1):

**Executive Secretary Review of Improper Practice Petitions.**

(i) Within 10 business days after a petition alleging improper practice is filed, the Executive Secretary shall review the petition to determine whether the facts as alleged may constitute an improper practice as set forth in § 12-306 of the statute. If, upon such review, the Executive Secretary determines that the petition is not, on its face, untimely or insufficient, notice of such determination shall be served upon the parties by mail. Such determination shall not constitute a bar to defenses of untimeliness or insufficiency which are supported by probative evidence available to the respondent. If it is determined that the petition, on its face, does not contain facts sufficient as a matter of law to constitute a violation, or that the alleged violation occurred more than four months prior to the filing of the charge, the Executive Secretary may issue a decision dismissing the petition or send a deficiency letter. Copies of such decision or deficiency letter shall be served upon the parties by certified mail.

(ii) Within 10 business days after service of a decision of the Executive Secretary dismissing an improper practice petition as provided in this subdivision, the petitioner may file with the Board an original and three copies of a written statement setting forth an appeal from the decision with proof of service thereof upon all other parties. The statement shall set forth the reasons for the appeal.

(iii) Within 10 business days after service of a deficiency letter from the Executive Secretary as provided in this subdivision, the petitioner may serve an amended petition upon each respondent and file the original and three copies thereof, with proof of service, with the Board. The amended petition shall be deemed filed from the date of the original petition. The petitioner may also withdraw the charge. If the petitioner does not seek to amend or withdraw the charge, but instead wishes to file objections to the deficiency letter, the petitioner may file with the Executive Secretary an original and three copies of a written statement setting forth the basis for the objection with proof of service thereof upon all other parties. If the petitioner does not timely file an amendment or otherwise respond, the charge will be deemed withdrawn and the matter closed. Upon review of the amended petition or written objection filed by the petitioner, the Executive Secretary shall issue either a notice that the petition is not on its face untimely or insufficient or a written decision dismissing the improper practice petition.