

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of the Improper Practice Petition

-between-

RICKY SHOEMAKER,

9 OCB2d 6 (ES 2016)
Docket No. BCB-4152-16

Petitioner,

-and-

LOCAL 237 and the NEW YORK
CITY HOUSING AUTHORITY,

Respondents.
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DETERMINATION OF EXECUTIVE SECRETARY

On February 12, 2016, Ricky Shoemaker (“Petitioner”) filed a *pro se* verified improper practice petition against Local 237, IBT (“Union”) and the New York City Housing Authority (“NYCHA”). The petition does not specify any subsections of § 12-306 of the New York City Collective Bargaining Law (New York City Administrative Code, Title 12, Chapter 3) (“NYCCBL”) that have allegedly been violated.

On February 24, 2016, the Executive Secretary issued a deficiency letter stating that the petition had been found deficient on the grounds that it (1) lacked proof of service upon the designated agents of the Union and NYCHA; and (2) failed to articulate a timely cause of action under the NYCCBL. The letter explained that, pursuant to the Rules of the Office of Collective Bargaining (Rules of the City of New York, Title 61, Chapter 1) (“OCB Rules”), the Board is unable to consider claims of violations which occurred prior to four months before the filing date of the petition and stated that, if any claims fell within the four-month statutory period, “for each

claim, please clearly describe the act(s) about which you are complaining, the name(s) of those involved, and the date, time and place on which the act(s) occurred.” The letter further stated that each claim should be in a separate numbered paragraph and should reference any relevant, attached exhibits. Petitioner was notified that he may correct the deficiencies in the petition within 10 business days after service, or object to the deficiency letter. The deficiency letter referred him to the applicable provisions of the OCB Rules.

On March 11, 2016, Petitioner filed a supplementary submission. The submission consisted of a number of letters and other documents but did not contain any specific factual allegations, nor did it explain the relevance of the documents enclosed. The submission included a signed, notarized statement that Petitioner had served the respondents.

BACKGROUND

All facts recited herein are based entirely on Petitioner’s pleadings, including the supplementary submission.

Petitioner was hired by NYCHA in 1987 and worked as a plasterer for over 17 years. By letter dated June 4, 2015, NYCHA’s Director of Human Resources (“HR Director”) notified Petitioner that disciplinary charges had been preferred against him for “incompetence or misconduct.” The letter stated that on or about October 29, 2014, Petitioner “directed verbal and/or physical expressions of hostility, threats, and/or remarks intended to provoke hostilities and/or other abusive behavior toward Ivestus Emmanuel, Supervisor of Plasterers,” in violation of NYCHA’s Standard Procedure and Human Resources Manual. It further stated that on or about February 19, 2015, Petitioner “failed to perform your duties as a Plasterer in a satisfactory manner, and/or you failed, neglected, or refused to perform your duties, when you failed to

comply with an [sic] plastering assignment correctly or at all,” in violation of NYCHA’s Human Resources Manual. The letter stated that “[i]n the event that you are found guilty of the charges, a penalty consisting of dismissal or such other punishment as is authorized by law may be imposed on you.”

By letter dated June 8, 2015, Hugo Ortega of Tanner & Ortega, L.L.P., notified Petitioner that his firm had been retained by the Union to represent him at a hearing before a NYCHA Trial Officer, scheduled to take place on June 25, 2015. Following a hearing, the Trial Officer issued a report and recommendation substantiating, in part, the charges and recommending an eight-day suspension without pay. By letter dated October 8, 2015, NYCHA’s HR Director stated, “The findings and decision of the Trial Officer that you were guilty of such misconduct as would warrant your dismissal was approved. In light of the fact that you resigned, these findings are accepted for filing purposes.”

In a February 5, 2016 letter attached to the petition,¹ Petitioner states:

I Ricky Shoemaker state that union Local 237 committed unethical labor practice. I reached out to the union for help but, was denied assistance to put my petition in court. I had to obtain an outside lawyer when filed an article 78 petition to have me reinstated to my previous position as a plaster with [NYCHA].

DISCUSSION

Pursuant to OCB Rule § 1-07(c)(2), the undersigned has reviewed the petition and determined that it must be dismissed for failure to plead facts which, if credited, could serve to establish a cause of action under the NYCCBL.² An improper practice charge “must be filed no

¹ The letter is addressed, “Dear Sir or Madam,” and does not indicate the intended recipient.

² A copy of § 1-07(c)(2) of the OCB Rules is attached hereto.

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.” *Mahinda*, 2 OCB2d 38, at 9 (BCB 2009), *affd.*, *Matter of Mahinda v. City of New York*, Index No. 117487/2009 (Sup. Ct. N.Y. Co. Oct. 7, 2010) (Scarpulla, J.), *affd.*, 91 A.D.3d 564 (1st Dept. 2012). Consequently, “claims antedating the four month period preceding the filing of the Petition are not properly before the Board and will not be considered.” *Nardiello*, 2 OCB2d 5, at 28 (BCB 2009) (citations omitted).

Here, Petitioner filed the improper practice petition on February 12, 2016. Thus, to be timely, any actions or omissions about which Petitioner complains must have occurred, or Petitioner must with reasonable diligence have discovered them, on or after October 12, 2015. The pleading raises two alleged actions taken by the Union.³ The first is the Union’s appointment, on or about June 8, 2015, of a private attorney to represent Petitioner at his June 25, 2015 hearing. Any claim that Petitioner could assert against the Union for taking this action is clearly untimely under the NYCCBL, as the appointment occurred well before the four month statutory period preceding the filing of the petition.⁴

The second action, set forth by Petitioner in his February 5, 2016 letter, is the Union’s alleged failure to “help” Petitioner and its denial of “assistance to put my petition in court.” Petitioner does not provide the date or dates on which he sought the Union’s assistance. Petitioner also does not state, nor does his letter does indicate, whether he had any contact with the Union on or after October 12, 2015. Without additional information, the facts alleged are

³ Petitioner does not assert any timely claims that NYCHA or its agents violated the NYCCBL, nor do we construe the petition as alleging facts that would demonstrate that NYCHA’s actions were improperly motivated within the meaning of NYCCBL § 12-306(a). Accordingly, we construe any allegations against NYCHA as assertions of a joinder claim pursuant to NYCCBL § 12-306(d).

⁴ Moreover, to the extent Petitioner has raised any claim against the Union that arose prior to October 12, 2015, such claims are deemed untimely.

insufficient to state a claim against the Union under the NYCCBL. *See Rosioreanu*, 1 OCB2d 39, at 15 (BCB 2008) (to establish a claim, a “petitioner must offer more than speculative or conclusory allegations,” and must support the allegations with specific factual allegations), *aff’d*, *Matter of Rosioreanu v. NYC OCB*, Index No. 116796/08 (Sup. Ct. N.Y. Co. Mar. 30, 2009) (Sherwood, J.). Accordingly, based on the facts presented, the Executive Secretary is constrained to conclude that the pleading lacks support for the claim that the Union took any action, or refused to act, in violation of the NYCCBL, during the statutory time period, i.e., on or after October 12, 2015.


Petitioner is entitled to appeal this Decision pursuant to § 1-07(c)(2)(ii) of the OCB Rules, which provides as follows:

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 parties. The statement shall set forth the reasons for the appeal.

OCB Rule § 1-07(c)(2)(ii).

Petitioner’s improper practice petition is hereby dismissed.

Dated: April 5, 2016
New York, New York


ABIGAIL R. LEVY
Executive Secretary
Board of Collective Bargaining

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.