

Lawtone-Bowles, 15 OCB2d 4 (BCB 2022)

(IP) (Docket No. BCB-4464-21)

Summary of Decision: Petitioner alleged that the Union interfered with her rights under NYCCBL § 12-306(b)(1) by excluding her from a Union meeting and appealed the dismissal of her NYCCBL § 12-306(a)(1), (a)(4), and (b)(3) claims based on the failure of the City and the Union to timely negotiate a separate contract and modify existing agreements to reflect the cost of living and wages equal to similar titles. The Board affirmed the Executive Secretary’s dismissal of claims and found that the Union did not violate NYCCBL § 12-306(b)(1) because non-union members’ attendance at union meetings is an internal union matter over which the Board does not have jurisdiction. Accordingly, the improper practice petition was dismissed in its entirety. (*Official decision follows.*)

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

In the Matter of the Improper Practice Proceeding

-between-

NICOLE LAWSTONE-BOWLES,

Petitioner,

-and-

**DISTRICT COUNCIL 37, AFSCME, AFL-CIO, and its affiliated LOCAL 983,
THE CITY OF NEW YORK, and
THE NEW YORK CITY HUMAN RESOURCES ADMINISTRATION/
DEPARTMENT OF HOMELESS SERVICES,**

Respondents.

DECISION AND ORDER

On November 8, 2021, Petitioner filed a verified improper practice petition against District Council 37, AFSCME, AFL-CIO (“DC 37” or “Union”), and its affiliated Local 983 (“Local 983”), the City of New York (“City”) and the City’s Human Resources Administration/Department of Homeless Services (“DHS”). Petitioner alleges that the City violated New York City Collective

Bargaining Law (New York City Administrative Code, Title 12, Chapter 3) (“NYCCBL”) § 12-306(a)(1) and (4) and that the Union violated NYCCBL § 12-306(a)(1), (a)(4), and (b)(3) when they failed to timely negotiate a separate contract and modify existing agreements to reflect the cost of living and wages equal to similar titles.¹ She also alleged that the Union interfered with her rights under NYCCBL § 12-306(b)(1) by excluding her from a Union meeting. On November 30, 2021, the Executive Secretary dismissed the NYCCBL § 12-306(a)(1), (a)(4), and (b)(3) claims (“ES Determination”), and Petitioner appealed the claims that were dismissed. The Board affirms the Executive Secretary’s dismissal of claims and finds that the Union did not violate NYCCBL § 12-306(b)(1) because non-union members’ attendance at union meetings is an internal union matter over which the Board does not have jurisdiction. Accordingly, the petition is dismissed in its entirety.

BACKGROUND

There are two issues before the Board in this matter. The first is Petitioner’s appeal of the dismissal of her claims by the Executive Secretary. The second issue is an allegation that the Union interfered with her rights under NYCCBL § 12-306(b)(1) by excluding her from a Union meeting. This one issue was deemed sufficiently pled by the Executive Secretary and will be addressed separately in the discussion section.

Petitioner was a Motor Vehicle Operator (“MVO”) employed at DHS. Since at least January 12, 2021, she has been out of work due to an injury.² The Union is the bargaining

¹ On November 12, 2021, the Board’s Executive Secretary found the original petition deficient, and Petitioner filed an amended improper practice petition on November 15, 2021.

² Documents attached to Petitioner’s amended petition confirm the date she became eligible for workers compensation benefits as January 12, 2021. However, she also alleged that, on an

representative of MVOs, among other titles, and Local 983 and the City are parties to a collective bargaining agreement governing unit level terms and conditions of employment effective from March 3, 2010, to September 25, 2017 (“MVO Agreement”).³

Improper Practice Petition

Petitioner alleges that, in 2014, she became disabled from an auto accident and thereafter sought reasonable accommodations from her employer. She also claims that her employer and the Union “committed crimes” against her, refused her request for a desk job, and favored other employees for overtime.⁴ (Am. Pet. ¶ 3) In January 2020, she reported to work but was told she was not fit to drive, should quit and apply for disability, and was removed from the building. Thereafter, Petitioner alleges she reached out to the Union for help, but “they did nothing to help get my rights under the American Disabilities Act.” (*Id.*) Petitioner alleged that she “had to hire outside attorneys to help secure her job, workers compensation claims, violation of the 55a program for people with disabilities and sexual harassment claims.” (Pet. ¶ 5) She claims that she exposed corruption in her agency.

In addition, Petitioner alleges that the City and the Union violated the NYCCBL by failing to “update” the MVO Agreement to “reflect the Equal Pay Act of 1964” and “the cost of living in New York State (“NYS”) or New York City (NYC”) for over 20-25 years.” (Pet. ¶ 1) She asserts that every title in the bargaining unit is underpaid and overworked and is compensated less than

unspecified date, after she “complained,” she was suspended and fired from DHS. (Am. Pet. ¶ 3) Therefore, her employment status during the events at issue is not clear. However, it is not disputed that she has not worked since January 2021.

³ We take administrative notice that MVOs are also covered by successor agreements negotiated by DC 37 containing wage increases and other economic benefits, the latest of which was executed in June 2018 and was effective from September 26, 2017, through May 25, 2021.

⁴ Petitioner also claims that her supervisor sexually harassed her and the Union did not help.

employees in similar classifications who have similar or the same licensing. She claims that, starting in July 2021, she worked with other MVOs to draft an updated Agreement to present to the Union. They completed this revision on October 10, 2021, and sometime thereafter these issues were brought to the Union's attention but they were "met with excuses" on why the Union "could not entertain giving us a new higher paying salary unit contract" (Pet. ¶ 5; Am. Pet. ¶ 2) On an unspecified date, Petitioner asserts that she encouraged Union leadership to fight for MVOs to get the same pay as City Laborers and Laborers because they perform the same duties and have the same licenses. She states that, thereafter, she was met with hostility in a group text by Union delegate and Executive Board Member Donald Chapman when she did not file a timely shop steward report.⁵ She also asserts that in the same group text someone named "Billy" called her "illiterate."⁶ (Am. Pet. ¶ 2)

Petitioner asserts that she has been a dues-paying member of the Union since August 18, 2013.⁷ However, she also asserts that she is presently out on workers' compensation, and the exhibits to her amended petition indicate she went "off payroll" in January 2021. (Am. Pet., Ex. B)

⁵ The petition does not reflect when Petitioner became a shop steward, only that after this incident she immediately stepped down from the position.

⁶ Petitioner asserts that Billy is a Caucasian employee of the Department of Parks and Recreation.

⁷ As evidence, Petitioner attaches a letter dated November 8, 2021, from the Union's Health and Security Plan noting that Petitioner went off payroll in January 2021 and may be eligible for workers' compensation starting on that date. The letter does not address Petitioner's union membership.

Petitioner alleges that on November 2, 2021, at 6 p.m. she attended a general membership meeting of the Union in Manhattan.⁸ While she was seated at a table, Petitioner alleges she was approached by Union Executive Board Member and Secretary-Treasurer Marlena Giga who yelled at her in front of other members and told her that she needed to leave because she was not a dues-paying member. In addition, Giga told her that she should not have come to the meeting with her “boyfriend” and said they “can both leave.”⁹ (Am. Pet. ¶ 1) Next, Petitioner alleges that the Union’s Sergeant-At-Arms and Executive Board Member Ralph Baselice approached her and repeated that she needed to leave. He added, “Nicole, all I have to do is punch in your Social Security number into the local 983 app on my phone and see that you are not a dues paying member.” (Am. Pet. ¶ 1)

Executive Secretary’s Determination

On November 30, 2021, the Executive Secretary found the petition sufficient only as to Petitioner’s claim that the Union violated NYCCBL § 12-206 (b)(1) “by excluding Petitioner as a dues paying member from a Union membership meeting.” (ES Determination at 1) The Executive Secretary dismissed the remaining claims for several reasons. First, to the extent Petitioner asserted that the Union failed to bargain in good faith under NYCCBL § 12-306 (a)(1) and (4) by failing to update the MVO Agreement to reflect cost of living increases, individual employees do not have standing under the NYCCBL to assert failure to bargain claims because the duty to bargain in good faith is between the Union and the employer. In addition, Petitioner’s claims that her employer retaliated against her did not set forth sufficient facts to show that the action was

⁸ Petitioner asserts that she followed the instruction to RSVP for the meeting by registering through a link on the Union’s website but did not receive a response to her registration.

⁹ Petitioner alleges that she attended the meeting with former shop steward Pete Richards. Her pleadings do not reflect whether Richards was a union member.

taken based on her union activity. Her other claims, including any allegations that the Union breached its duty of fair representation, were dismissed for untimeliness because the facts alleged occurred prior to July 8, 2021, or for lack of jurisdiction because they pertained to violations of laws other than the NYCCBL.

Petitioner's Appeal

Petitioner submitted an appeal to the Executive Secretary's dismissal of her claims.¹⁰ In that appeal, Petitioner reiterated her claim that the City and/or Union failed to bargain in good faith by its failure to update the Agreement to include wages consistent with the cost of living. She added that it also failed to address the Mayor's Executive Order No. 7, dated September 30, 2014, which provides that a Living Wage should be paid on City Economic Development Projects. According to Petitioner, the Union has failed to negotiate a successor Agreement since March 3, 2010. She alleges in her appeal that, in October 2019, she questioned a DC 37 representative about why there was no successor contract and the lack of wage parity with City Laborers and Laborers and alleges that she did not receive an answer that can "justify my understanding of contract law and Executive Order No. 7." (Appeal at 4)

Petitioner also appealed the Executive Secretary's dismissal of the claims that the Union breached its duty of fair representation and that the City retaliated against her based on her union

¹⁰ Petitioner also sent a letter to the Executive Secretary on November 30, 2021, responding to the dismissal in which she adds a few new facts not in her petition or amended petition. In addition, she sent an email on January 12, 2022, with a letter that DC 37 submitted to the NYS Division of Human Rights responding to a complaint filed by Petitioner. On January 27, 2022, she sent an email attaching the finalized MVO Agreement for the 2010 to 2017 term, which was signed on December 16, 2021. We take administrative notice that the finalized agreement does not contain any new terms. Rather, it converts a prior memorandum of agreement into a fully incorporated collective bargaining agreement. Relevant portions of any facts in these submissions are described here as new facts stated in her appeal. As addressed further in the discussion, the Board does not consider facts not alleged in the petition. *See Buttaro*, 12 OCB2d 29, at 11 (BCB 2019).

activity. In this regard, she newly asserted that she is “unable to pay union dues through the City of New York,” because she is disabled on workers’ compensation and not working.¹¹ (Appeal at 3) She further alleges that at some unspecified time, she offered to pay her dues directly to the Union, but her request was denied by Secretary-Treasurer Giga. Further, she suggests that the basis for the Union’s lack of action is that the leadership was employed by the Department of Parks and Recreation, that they are not MVOs, that the leadership considers MVOs “not as important” as other bargaining unit members or because the MVOs are minorities. (*Id.* at 5)

DISCUSSION

We recognize that a *pro se* petitioner often lacks familiarity with legal procedures, and therefore, “the Board takes a liberal view in construing a *pro se* Petitioner’s pleadings.” *Bonnen*, 9 OCB2d 7, at 15 (BCB 2016) (quoting *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)) (internal quotation and editing marks omitted). As a result, the Executive Secretary’s review of the amended petition addressed the facts alleged by Petitioner as raising potential violations of NYCCBL § 12-306(a)(1), (a)(4), and (b)(1).

As a preliminary matter, we affirm the Executive Secretary’s dismissal of Petitioner’s claims. First, the Executive Secretary correctly dismissed the NYCCBL § 12-306(a)(1) and (4) claims that the City and/or Union failed to bargain in good faith by neglecting to incorporate cost of living increases into the Agreement. To the extent this claimed violation of NYCCBL § 12-

¹¹ Petitioner’s January 12, 2022 email also clearly states, “my dues are not being paid because I am out on workers’ compensation due to my disability.”

306(a)(4) also includes the City and Union's failure to incorporate the Equal Pay Act into their Agreement, this claim also fails.¹²

This Board has consistently held that the duty to bargain in good faith under NYCCBL § 12-306(a)(4) runs between an employer and a union. *See Witek*, 7 OCB2d 10, at 10-11 (BCB 2014) (“[T]he duty to bargain in good faith runs between the employer and the Union and is enforceable by each of those parties under NYCCBL § 12-306(b)(2) (breach of a union’s duty) and § 12-306(a)(4) (breach of employer’s duty).”) (quoting *Brown*, 75 OCB 30, at 7-8 (BCB 2005); *McAllan*, 31 OCB 15, at 15 (BCB 1983) (union’s duty to bargain in good faith is a duty “owed to the public employer and not the union’s members”). Thus, individual employees lack standing to enforce the duty to bargain in good faith. *See Proctor*, 3 OCB2d 30, at 11 (BCB 2010) (citing *Brown*, 75 OCB 30, at 7-8). Accordingly, Petitioner does not have standing to claim that the City or the Union breached its duty to bargain in good faith, and those claims were properly dismissed.¹³

The Executive Secretary also correctly dismissed claims that arose more than four months prior to the filing of the petition. NYCCBL § 12-306(e) provides this Board with the jurisdiction to consider only improper practice petitions filed with the Board “within four months of the

¹² We note that the claim that the City and/or Union failed to negotiate a successor unit agreement was first raised in Petitioner’s appeal and, therefore, is not properly before us. *See Buttarro*, 12 OCB2d 29, at 11 (facts and/or claims not raised in the petition are not considered when this Board reviews an Executive Secretary determination). However, if it had been raised in the initial petition, it would also fail to state a claim under NYCCBL § 12-306(a)(1) and (4) for lack of standing.

¹³ To the extent that Petitioner claims that the Union’s failure to timely negotiate a separate unit agreement and modify existing agreements to reflect the cost of living and wages equal to similar titles is a breach of its duty of fair representation, we find this claim untimely. Petitioner knew or should have known that no successor agreement was in place when the MVO Agreement expired in 2017. In addition, the memorandum of agreement governing her wages and other economic benefits for the 2017 to 2021 term was executed in June 2018. Accordingly, such claims arose more than four months prior to the filing of the petition and are also dismissed.

occurrence of the acts alleged to constitute the improper practice or of the date the petitioner knew or should have known of said occurrence.” Here, the petition was filed on November 8, 2021. Therefore, the Board can consider only claims that occurred or that Petitioner knew or should have known on or after July 7, 2021. Accordingly, Petitioner’s factual assertions relating to her disability or injuries prior to July 2021, a failure to reasonably accommodate her injuries, alleged crimes that her employer and the Union committed against her, favoring other employees for overtime, her suspension and/or termination, and the Union’s failure to assist her on these issues are untimely and were properly dismissed. Petitioner has not been working at DHS since before January 2021. In most instances, Petitioner acknowledged that these actions occurred prior to July 2021. In a few instances where Petitioner failed to specifically plead the date on which the alleged action took place, it is clear in the context of her admitted employment history that they occurred prior to July 2021 and are, therefore, untimely.¹⁴

Finally, the Executive Secretary also correctly noted that this Board only has jurisdiction to remedy claims that arise under the NYCCBL. Therefore, the Board is unable to address any claims of sexual harassment, discrimination or retaliation based on anything other than union activity, nor can we enforce the Equal Pay Act or other laws.

We now turn to Petitioner’s claim that that she was excluded from participating in a Union meeting held on November 2, 2021. Initially, Petitioner asserted that she has paid Union dues since August 2013 but was asked to leave the November 2021 meeting on the erroneous belief that

¹⁴ As noted in the Executive Secretary’s finding that the initial petition was deficient, § 1-07(c)(1) of the OCB Rules requires that alleged acts contain the date, time, and place of occurrence. Therefore, to the extent that Petitioner has not clearly stated when certain actions took place, they are deemed insufficient and therefore dismissed. *See, e.g., Garces*, 9 OCB2d 8, at 9-10 (BCB 2016).

she was not a dues-paying member. It was on this basis that the Executive Secretary found that sufficient facts were pled to support a claim under NYCCBL § 12-306(b)(1).

NYCCBL § 12-306(b)(1) is in essence a corollary to NYCCBL § 12-306(a)(1) and provides that it is “an improper practice for a public employee organization or its agents to interfere with, restrain or coerce public employees in the exercise of rights granted in section 12-305 of this chapter. . . .”¹⁵ However, the scope of the Board’s review of intra-union business, such as the conduct of union meetings, is limited. This Board has consistently held that complaints concerning internal union matters are not actionable under the NYCCBL unless it is shown that they affect the employee’s terms and conditions of employment or the nature of the representation accorded by the union with respect to the employee’s employment. *See Brown*, 75 OCB 4, at 4-5 (BCB 2005) (citing *Fabbricante*, 61 OCB 46, at 8 (BCB 1998); *Gilmore*, 33 OCB 18, at 7 (BCB 1984); *Velez*, 23 OCB 1, at 9 (BCB 1979)); *see also Lein*, 65 OCB 6, at 2 (BCB 2000).

Here, we do not find that Petitioner has shown that the Union’s actions in excluding her from a union meeting violated the NYCCBL. At the time of the November 2021 Union meeting, Petitioner had not been working for at least ten months and raised no facts that would show that her terms and conditions of employment were impacted by her removal from that meeting. *See Rothberger*, 51 OCB 11, at 8 (BCB 1993). Accordingly, her removal did not rise to the level of a violation of NYCCBL § 12-306(b)(1).

Further, we note that in her appeal, Petitioner clarified her status as a Union member. She states that “her dues are not being paid because she is out on workers’ compensation due to my

¹⁵ NYCCBL § 12-305 provides that employees have the right to engage in union activity, such as “the right to form, join or assist” a union or to “refrain from any or all such activities.”

disability.¹⁶ (Email dated January 12, 2021) Petitioner’s ability to attend meetings as a non-member or a non-paying member is an internal union matter over which this Board lacks jurisdiction.¹⁷ *See Rothberger*, 51 OCB 11, at 6 (“It is clear that a union’s decision to exclude non-members from a union meeting generally is a matter which concerns the internal affairs of the union.”); *see also Ewings*, 52 PERB ¶ 4535, at 4673 (ALJ 2019) (finding that Petitioner’s inability to participate in social media discussion groups does not constitute a term or condition of employment, but an internal union matter, over which PERB lacks jurisdiction).

Accordingly, the petition is dismissed.

¹⁶ We have consistently held that facts and/or claims not raised in the petition are not considered when this Board reviews an Executive Secretary determination. *See Buttaro*, 12 OCB2d 29, at 11. It is clear from Petitioner’s submissions after the Executive Secretary’s dismissal of her claims, that she was not a dues-paying member of the Union in November 2021. The purpose of our reference to this clarification is to adequately explain the scope of the Board’s jurisdiction and is not intended to deviate from our prior rulings.

¹⁷ Similarly, we do not have jurisdiction over Petitioner’s claims that she was denied the ability to pay dues directly to the Union. There is no evidence that Petitioner was treated differently than other non-members. Moreover, we do not have jurisdiction over such internal union matters. *See, e.g., Velez*, 23 OCB 1, at 9.

ORDER

Pursuant to the powers vested in the Board of Collective Bargaining by the New York City Collective Bargaining Law, it is hereby

ORDERED, that the improper practice petition filed by Nicole Lawtone-Bowles, docketed as BCB-4464-21, is hereby dismissed.

Dated: February 9, 2022
New York, New York

SUSAN J. PANEPENTO
CHAIR

ALAN R. VIANI
MEMBER

M. DAVID ZURNDORFER
MEMBER

PAMELA S. SILVERBLATT
MEMBER

CHARLES G. MOERDLER
MEMBER

PETER PEPPER
MEMBER