

Richards, 15 OCB2d 14 (BCB 2022)

(IP) (Docket No. BCB-4470-21).

Summary of Decision: Petitioner alleged that the Union violated the NYCCBL by failing to request documents from HHC, verbally attacking him, removing him as a Shop Steward, and failing to explain his removal in writing. In addition, he alleged that HHC violated the NYCCBL by failing to provide the documents he requested. The Union argued that the Board does not have jurisdiction over internal union matters, that the petition was untimely, and that it did not establish a breach of the duty of fair representation. HHC argued that Petitioner lacked standing to allege a breach of its duty to bargain by failing to furnish information and that his document requests fell outside its duty under the NYCCBL. The Board found that verbal criticism of Petitioner’s performance as a Shop Steward, his removal as a Shop Steward, and the failure to explain the reasons for his removal as a Shop Steward are internal union matters over which it does not have jurisdiction. It held that the claim that the Union failed to request documents from HHC was timely but did not establish a breach of the duty of fair representation and that Petitioner lacked standing to assert the failure to bargain claim against HHC. (*Official decision follows.*)

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

In the Matter of the Improper Practice Proceeding

-between-

PETE RICHARDS,

Petitioner,

-and-

**LOCAL 983, DISTRICT COUNCIL 37, AFSCME, AFL-CIO,
KINGS COUNTY HOSPITAL CENTER, and
NYC HEALTH + HOSPITALS,**

Respondents.

DECISION AND ORDER

On December 3, 2021, Petitioner filed a verified improper practice petition against Local 983 (“Local 983”), an affiliate of District Council 37, AFSCME, AFL-CIO (“DC 37”) (collectively

“Union”), the Kings County Hospital Center (“Kings County Hospital”), and NYC Health + Hospitals (“HHC”).¹ He alleges that the Union violated § 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 request documents regarding his unequal distribution of overtime claim, verbally attacking him in a voicemail, removing him as a Shop Steward, and failing to explain why it removed him as a Shop Steward in writing. In addition, he alleges that HHC violated the NYCCBL by failing to provide the documents he requested. The Union asserts that the Board does not have jurisdiction over internal union matters, that the petition is untimely, and that it does not establish a breach of the duty of fair representation. HHC argues that Petitioner lacked standing to allege a breach of its duty to bargain by failing to furnish information and that his document requests fell outside its duty under the NYCCBL. The Board found that verbal criticism of Petitioner’s performance as a Shop Steward, his removal as a Shop Steward, and the failure to explain the reasons for his removal as a Shop Steward are internal union matters over which it does not have jurisdiction. It held that the remaining claim against the Union, that it failed to request documents from HHC, was timely but did not establish a breach of the duty of fair representation and that Petitioner lacked standing to assert that HHC violated its duty to provide information. Accordingly, the Board dismissed the petition in its entirety.

BACKGROUND

Petitioner was a Motor Vehicle Operator (“MVO”) employed at HHC’s Kings County Hospital in the Non-Emergency Transportation department.² The MVO title is represented by DC

¹ Since Kings County Hospital is a part of HHC, we have amended the caption to include HHC.

² Petitioner was employed by HHC until late December 2021.

37 in a bargaining unit that includes Motor Vehicle Supervisor (“Supervisor”), among other titles. Petitioner was a Shop Steward for Local 983 from June to November 2021.

Days after being elected a Shop Steward, Petitioner informed Local 983’s Recording Secretary, Donald Chapman, that he intended to look into the inequitable distribution of overtime in the department and to ask then Supervisor Bill Zavala to refrain from taking the keys to an HHC vehicle home with him.³ The Recording Secretary asked to be kept in the loop.⁴

In July 2021, Petitioner had several conversations with the Recording Secretary concerning overtime and assignment issues. The Recording Secretary told Petitioner that there was an overlap in duties between MVOs and Supervisors.⁵ On July 13, 2021, Petitioner contacted Local 983’s Vice President, Victor Shannon, seeking assistance in finding contract language to support his position that Supervisors could perform the work of MVOs only when the department was short-staffed or there was an emergency.

On August 2, 2021, Petitioner emailed Local 983’s President, Joe Puleo, its Vice President, its Recording Secretary, and DC 37’s Associate General Counsel, Steven Sykes. Petitioner acknowledged that “I have been told a few times that supervisors can or are allowed to work.” (Pet., Ex. 3) He provided salary information gathered from the internet to the Union purportedly

³ Zavala had been assigned to drive the Chief Executive Officer (“CEO”) of Kings County Hospital for almost 20 years. According to Petitioner, while Zavala was an MVO for most of this time, he continued to chauffeur the CEO after being appointed a Supervisor in March 2020.

⁴ A few days later, Petitioner emailed Juan Checo, the Director of Hospital Police who oversees Kings County Hospital’s Non-Emergency Transportation department, requesting that Supervisor Zavala cease taking home the keys to a HHC vehicle and cease performing the work of MVOs. According to Petitioner, these practices stopped for a few days but then resumed.

⁵ HHC’s Job Specification provides that a Supervisor “occasionally drives motor vehicles.” (Union Ans., Ex. A) The MVO title is also utilized by the City of New York (“City”). We take administrative notice that the City job specification also provides that “[a]ll personnel perform related work and may perform duties of lower level employees.”

showing that the two Supervisors in his department earned more than \$20,000 in overtime in 2020, asserted that MVOs did not earn nearly that much, and requested assistance from “anyone in the upper echelons of the Local/Union to address this matter.” (*Id.*) On August 4, Petitioner received a call from the Recording Secretary instructing him to stop his inquiry into Supervisor Zavala and restating that Supervisors could perform the duties of MVOs.⁶

On August 10, 2021, an Assistant Director at HHC, Tonya Moore, held a meeting with MVOs at which she addressed, among other subjects, Petitioner’s concern about both Supervisors’ driving and overtime assignments. According to Petitioner, Assistant Director Moore stated that she or her superiors signed off on the Supervisors’ time sheets. She also stated that there was no contractual language prohibiting Supervisors from driving and that if the CEO requested that a Supervisor drive him to meetings then a Supervisor would be assigned to do so. Petitioner notified the Recording Secretary about the meeting and again requested his assistance in locating relevant contract language.

The following day, Petitioner emailed bargaining unit members about the meeting. He reported that he had investigated whether there was contract language limiting Supervisors’ ability to perform MVO duties and confirmed that Assistant Director Moore was correct when she stated at the meeting that there was no written prohibition. He noted, “I contacted one of the attorneys for DC37, who also confirmed that there is no written language as well.” (Union Ans., Ex. B)

Petitioner asserts that he contacted Local 983’s President, DC 37’s Associate General Counsel, and Local 983’s Recording Secretary to obtain an “information request form” to seek more information about overtime distribution. (Rep. to Union ¶ 35) According to Petitioner, they

⁶ According to the Union, at some point, the Recording Secretary reached out to other MVOs about the distribution of overtime and found that Supervisor Zavala’s assignments did not result in the inequitable distribution of overtime.

informed him that there was no official form for information requests. DC 37's Associate General Counsel told him he could use a grievance form, and Local 983's President advised him to use the phrase "inequitable distribution of overtime."

On September 13, 2021, Petitioner filed an information request with HHC on a grievance form seeking all documents, such as Supervisors' job descriptions and procedures, to support Assistant Director Moore's statement that Supervisors can engage in MVOs' day-to-day driving assignments when the department is fully staffed. On October 5, 2021, he filed a second information request, in which he sought a copy of all the MVO and Supervisor overtime reports since May 2020 in order to address the alleged unequal distribution of overtime within the Non-Emergency Transportation department. In a third information request, filed on October 18, 2021, he sought Supervisor Zavala's trip sheets and all dispatch reports since May 2020. Petitioner asserts that he did not receive a response to these information requests.

On October 19, 2021, Petitioner had a discussion with four Union members that included how an improper practice petition alleging a breach of the duty of fair representation ("DFR") "can be utilized." (Pet. ¶ 6) The following day, October 20, 2021, Local 983's Secretary-Treasurer, Marlene Giga, left him a voicemail:⁷

Mr. Richards, it's Ms. Giga. Please give me a call back, ... I am in charge of all the Shop Stewards. I have put you on payroll but I'm getting reports now from our ... employees and the president that you wanna put a grievance in against ... one of our representatives, we do not pay people to go against us. We pay people that are on our side, that we work together to benefit all of the members whether they're, whether they're MVOs or MVO supervisors, so I cannot pay you if this is what's gonna start right away. We work on the same team here, alright, call me back and you let me know what you want to do, either we work as a team or we don't work together at all. Goodbye

⁷ Petitioner provided an audio-recording of the voicemail, which we have transcribed.

According to Petitioner, in a conversation with the Secretary-Treasurer later that day, she told him that she had heard that he intended to file a grievance against one of the Union officials and that he was not informing the local Union leadership about his investigations. In an email to the Secretary-Treasurer, dated October 21, 2021, Petitioner stated that she should have thoroughly investigated the allegations before leaving him the voicemail.⁸ He asserted that whoever made the allegations against him neglected to mention that he had discussed his workplace investigation with Local 983's President, its Recording Secretary, and an attorney at DC 37.

On the morning of November 2, 2021, Petitioner sent an email to Local 983's Executive Board in which he criticized the Secretary-Treasurer and the Recording Secretary. He asserted that "representing the workers and the supervisors" is an unethical conflict of interest. (Pet., Ex. 20 at 2) In contrast, he thanked Local 983's President for "bring[ing] a certain level of respect" to the few conversations that they had over the past few months "even when we disagree on different subject matters." (Pet., Ex. 20). Similarly, he praised DC 37's Associate General Counsel for "correcting him on different subject matters without us going at each other's throats." (*Id.*)

That evening, Petitioner attended Local 983's General Membership meeting with a former Shop Steward, Nicole Lawtone-Bowles.⁹ According to Petitioner, Local 983's Secretary-Treasurer "verbal[ly] attack[ed]" him when they arrived. (Pet. ¶ 7) He asserts that, in the course of that conversation, she told him that Local 983 does not discuss DFRs with members and that he

⁸ Petitioner submitted to OCB text messages from 14 MVOs, and a voicemail from one of them, indicating that they did not make a complaint against him to Local 983 during his tenure as Shop Steward.

⁹ Lawtone-Bowles was asked to leave the meeting because she was no longer a dues-paying member. *See Lawtone-Bowles*, 15 OCB2d 4, at 2 (BCB 2022) (dismissing the petition because "non-union members' attendance at union meetings is an internal union matter over which the Board does not have jurisdiction").

should “refrain from doing so.”¹⁰ (*Id.*) After the meeting, the Recording Secretary asked to speak with Petitioner outside and informed him that the Executive Board had unanimously voted to remove him from the position of Shop Steward.¹¹

Two days later, on November 4, 2021, Petitioner requested “written notice” explaining why he was removed as Shop Steward and all documents used in the decision-making process. (Pet., Ex. 21) He alleges that he has not received a response.

POSITIONS OF THE PARTIES

Petitioner’s Position

Petitioner argues that the Union violated the NYCCBL by failing to request documents from HHC, verbally attacking him in a voicemail, removing him as a Shop Steward, and failing to explain the basis for his removal in writing. He asserts that Local 983’s Executive Board did not take any action to rectify the inequitable distribution of overtime between Supervisors and MVOs, did not ask HHC to produce the documents he requested, and did not investigate the issue on behalf of MVOs. Petitioner argues that it is a conflict of interest for Supervisors and MVOs to have the

¹⁰ Petitioner’s Shop Steward Monthly Activity Report, dated October 31, 2021, indicated that, on October 1, he “[i]nformed the MVO’s about the Duty of Fair Representation process.” (Pet., Ex. 17 at 1) He stated that he “[e]xplained what DFR is and how it works. Also informed them that it is a protected right embedded in Federal Law, the National Labor Relations Act and Equal Employment Opportunity Commission.” (*Id.*)

¹¹ Petitioner submitted to OCB a statement from six MVOs indicating that Petitioner was a good Shop Steward and that they were displeased that he was removed as Shop Steward.

same Union representation.¹² According to Petitioner, the Union chose to agree with the employer without reviewing all the relevant documents.

While the Recording Secretary informed Petitioner in several conversations in July 2021 that “there is an overlap between the duties” of Supervisors and MVOs, Petitioner asserts that he continued to pursue his grievance in accordance with the AFSCME’s Steward Handbook.¹³ (Rep. to Union ¶ 30) Petitioner notes that the Recording Secretary did not submit proof to OCB that he reached out to other MVOs regarding the distribution of overtime in the bargaining unit. Further, Petitioner disputes that any member of the bargaining unit complained about him to the Union and argues that the Secretary-Treasurer should have investigated the alleged complaints before leaving him a threatening voicemail. He asserts that the Union’s willingness to attack him via voicemail demonstrates that it is not in touch with or concerned about its members. Similarly, he asserts that the Union’s position that it does not owe him a response regarding the reasons for his removal is disrespectful to their stewards and members. As a remedy, he requests that the Board order the

¹² Petitioner alleges violations of the Conflict of Interest Law set forth in Chapter 68 of the New York City Charter. In addition, he asserts that Local 983’s Executive Board disregarded its Oath of Office, AFSCME and DC 37/Local 983’s Constitution and By-Laws, and AFSCME and DC 37/Local 983’s Shop Steward and Advanced Grievance Handling training courses. Further, he contends that their actions may have been motivated by his race. Petitioner filed a complaint against the Union with the New York State Division of Human Rights (“DHR”) regarding the October 20, 2021 voicemail and his removal as a Shop Steward and submitted the Union’s response to the DHR complaint to OCB.

¹³ Petitioner asserts that 99% of the Supervisor job specification pertains to administrative duties and notes that it does not state that a Supervisor “acts as a chauffeur to an official,” as provided in the MVO job specification. He claims that assigning Supervisors to perform the day-to-day duties of MVOs without exhausting efforts to find an MVO for the assignment, including paying Zavala at a Supervisor’s rate to perform the duties of an MVO, violates the collective bargaining agreement (“Agreement”), the City’s Fleet Management Manual, the Conflict of Interest Law, and Executive Order No. 7 of 1990, entitled “Control of Overtime and Part-Time Hours.” (Rep. to Union ¶ 28)

resignations of Local 983's President, Secretary-Treasurer, and Recording Secretary, and bar them from running for any Union official positions for 15 years.

Petitioner also asserts that HHC violated the NYCCBL and disregarded the Agreement's grievance process by failing to provide the information he requested via the grievance process. He disputes that gathering the documents is cumbersome and denies that he did not follow up on his request. As a remedy, he requests that the Board order HHC to produce the documents he requested.¹⁴ In addition, Petitioner seeks an order that Supervisors cease and desist from engaging in the daily work activities of MVOs.

Union's Position

The Union argues that allegations regarding internal union operations, including the appointment and removal of its representatives, are not within the Board's jurisdiction. Therefore, the Union asserts that Petitioner's removal from the Shop Steward position does not constitute a breach of the duty of fair representation. According to the Union, members' ability to serve as a Shop Steward is not governed by the NYCCBL or the collective bargaining agreements; instead, Shop Stewards serve at the will of the Executive Board.

Similarly, the Union asserts that the Secretary-Treasurer did not threaten Petitioner but merely expressed dissatisfaction with his conduct and informed him that he would be unable to remain a Shop Steward if he continued to file grievances without the Union's approval. It argues that the duty of fair representation does not establish requirements for the tone of communications between a union and its members and that, since the conversation centered on Petitioner's performance as a Shop Steward, it was an internal union matter not within the Board's jurisdiction.

¹⁴ In his replies, Petitioner also requests additional documentation from both the Union and HHC.

In addition, the Union maintains that Petitioner's claims that it refused to pursue his grievance regarding Supervisor Zavala's assignment to drive the CEO and the distribution of overtime are untimely because he first learned that the Union would not pursue his grievance prior to August 4, 2021, which is more than four months before the petition was filed. The Union asserts that Petitioner had several conversations with the Recording Secretary in July 2021, also more than four months prior to the filing of the petition, in which the Recording Secretary informed him that HHC's Job Specification permitted Supervisors to drive motor vehicles.

The Union argues that, even if Petitioner's claims were timely, he does not allege facts sufficient to show a breach of the duty of fair representation. The Union asserts that it investigated his complaints by reviewing the job specifications and the collective bargaining agreements, and by speaking with other MVOs, and found the complaints to be without merit. It found driving to be within the Supervisor job specification, and that the collective bargaining agreement prohibits assignment of duties that are "substantially different" from the job specification. (Union Ans. ¶ 51) According to the Union, Petitioner was aware that the collective bargaining agreements do not contain reverse out-of-title language after his conversations with the Recording Secretary and one of DC 37's attorneys. Further, Supervisor Zavala has long been the only employee assigned to drive the facility's CEO, whether it is on overtime or not. Since overtime opportunities other than driving the CEO were available to MVOs, the Union concluded that Supervisor Zavala's assignment did not violate the collective bargaining agreement's overtime provisions. The Union communicated its position to Petitioner several times, and while Petitioner made demands for written explanations, the duty of fair representation does not require that it communicate in the format preferred by the member.

HHC's Position

HHC argues that Petitioner lacks standing to allege that it violated NYCCBL § 12-306(a)(4) and (c)(4) by not responding to his information requests.¹⁵ The duty to furnish information is part of the duty to bargain in good faith, which runs between a public employer and public employee organization. Since Petitioner was not a Shop Steward when he filed this improper practice petition, HHC asserts that he filed as an individual employee and thus lacks standing.

Further, HHC argues that the information requests Petitioner filed as a Shop Steward fell outside the scope of its duty under the NYCCBL. According to HHC, the September 2021 information request regarding Supervisors' job description and responsibilities sought information to which the Union had access since it represents the Supervisor title. HHC also asserts that the October 2021 information requests were burdensome and warranted a sufficient time to respond because they sought records for all the employees in the department for a period of over a year. HHC notes that Petitioner did not advance the grievances in the short period before he was removed as a Shop Steward and that the Union did not continue the request or advance the grievances after Petitioner's removal. To the extent that Petitioner alleges that the assignment of overtime or job duties violated the Citywide Agreement or the Motor Vehicle Operators Unit

¹⁵ NYCCBL § 12-306(a)(4) provides that “[i]t shall be an improper practice for a public employer or its agents ... to refuse to bargain collectively in good faith on matters within the scope of collective bargaining with certified or designated representatives of its public employees.”

NYCCBL § 12-306(c)(4) provides that “[t]he duty of a public employer and certified or designated employee organization to bargain collectively in good faith shall include the obligation ... to furnish to the other party, upon request, data normally maintained in the regular course of business, reasonably available and necessary for full and proper discussion, understanding and negotiation of subjects within the scope of collective bargaining.”

Contract, or that HHC failed to respond to grievances, HHC contends that the issues should be deferred to the grievance procedure.

Lastly, HHC argues that the Union did not breach its duty of fair representation and thus, any derivative claims against it must fail. HHC notes that Petitioner acknowledged that he could not find support for his overtime issues in either the contract or the job description and that nothing prohibited Petitioner from advancing the issues to the next step of the process. It asserts that the Union's review of the issues and its determination that Petitioner's allegations were without merit cannot form the basis for a breach of the duty of fair representation.

DISCUSSION

“Recognizing that a *pro se* Petitioner may not be familiar with legal procedure, 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). Here, Petitioner alleged a violation of NYCCBL § 12-306 “section 3 and section 4.”¹⁶ (Pet. at 1) Considering this allegation in the light most favorable to Petitioner, we deem the petition as alleging that the Union violated NYCCBL § 12-306(b)(1) and (3) by failing to request documentation to support an unequal distribution of overtime claim, verbally attacking him, removing him from his position as a Shop Steward, and failing to explain

¹⁶ NYCCBL § 12-306(b), which defines improper practices by a union, does not have a section 4.

why it removed him as a Shop Steward.¹⁷ Similarly, we further construe the petition as alleging that HHC violated NYCCBL § 12-306(a)(4) and (c)(4) by not responding to Petitioner's document requests.

It is well established that this Board does not have jurisdiction over internal union matters. *See, e.g., Lawtone-Bowles*, 15 OCB2d 4, at 10; *Velez*, 23 OCB 1, at 9 (BCB 1979). We find that the verbal criticism of Petitioner's performance as a Shop Steward, his removal as a Shop Steward, and the failure to explain the reasons for his removal as a Shop Steward are all matters involving internal union business, and therefore, we do not have jurisdiction over these claims.¹⁸ *See Vasquez*, 75 OCB 36, at 9-10 ("Issues regarding the discipline or removal of a union business agent concern an internal union matter over which the Board has no jurisdiction."); *Braxton*, 59 OCB 9, at 18 (BCB 1997) (finding that "[t]he impeachment proceedings of a [u]nion officer is strictly an internal [u]nion matter and is one over which the Board does not have jurisdiction"); *Sharon*, 27 OCB 1, at 1 (BCB 1981) (dismissing a claim that petitioner was "harassed, abused, and otherwise prevented from speaking, and also was threatened with reprisals" at a union meeting because she was "critical of recent official union activities," for lack of jurisdiction); *see also Bishop*, 51 PERB ¶ 4562, at 4766 (ALJ 2018) (dismissing a petition alleging retaliatory removal of employee from Shop Steward position for lack of jurisdiction).

¹⁷ NYCCBL § 12-306(b)(1) 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, or to cause, or attempt to cause, a public employer to do so." NYCCBL § 12-305 provides, in relevant part that "[p]ublic employees shall have the right to self-organization, to form, join or assist public employee organizations, to bargain collectively through certified employee organizations of their own choosing and shall have the right to refrain from any or all of such activities."

¹⁸ To the extent that the Secretary-Treasurer was criticizing Petitioner's discussion of DFRs with members, we do not find that the Union discouraged members from filing improper practices.

Thus, the only claims properly within our jurisdiction concern the Union's alleged breach of the duty of fair representation for failure to request documents from HHC and HHC's failure to respond to Petitioner's document requests. As explained below, we find that the claim against the Union is timely but does not establish a breach of the duty of fair representation, and that Petitioner does not have standing to assert the claim against HHC.

The NYCCBL provides that an improper practice petition may be filed "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." NYCCBL § 12-306(e). Here, as the petition was filed on December 3, 2021, allegations concerning events that occurred or that Petitioner knew or should have known occurred on or after August 2, 2021, are timely.

The Union asserts that Petitioner's claim is untimely because Local's 983's Recording Secretary notified Petitioner in July 2021, more than four months prior to the filing of his petition, that Supervisors were permitted to drive motor vehicles. It is true that Petitioner acknowledged in his August 2, 2021 email that he had been told that Supervisors could drive. Nevertheless, his claim is limited to the assertion that the Union alleged breach of the duty of fair representation by its failure to request documents. Petitioner requested the information in September 2021. Therefore, the breach of duty of fair representation claim is timely.

NYCCBL § 12-306(b)(3) makes it 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." *Nealy*, 8 OCB2d 2, at 16 (BCB 2015) (citing *Walker*, 6 OCB2d 1, at 8 (BCB 2013); *Okorie-Ama*, 79 OCB 5 at 14 (BCB 2007)). However, "a union is entitled to broad discretion . . . [, and] the Board will not

substitute its judgment for that of a union or evaluate its strategic determinations.” *Sicular*, 79 OCB 33, at 13 (BCB 2007) (citations omitted). 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 . . . or questioning the strategic or tactical decisions of the Union.” *Nealy*, 8 OCB2d 2, at 16 (quoting *Okorie-Ama*, 79 OCB 5, at 14) (quotation marks omitted); *see also Gertskis*, 77 OCB 11, at 11 (BCB 2006).

Here, Petitioner sought the Union’s assistance to pursue his claim challenging the assignment of the Supervisor to drive and the distribution of overtime in the department. While the Union did not request documents from HHC on Petitioner’s behalf, it is undisputed that the Union consistently provided assistance to Petitioner on both of these issues. It answered his questions regarding assignments and overtime and responded to his inquiry regarding an information request form. DC 37’s Associate General Counsel indicated that he could use a grievance form to request documents. In addition, Local 983’s President advised him to use the phrase “inequitable distribution of overtime.”

“We have consistently held that a union has the discretion to determine whether and how it will address a claim.” *McNeil*, 10 OCB2d 8, at 7 (BCB 2017) (citing *Edwards*, 1 OCB2d 22, at 21 (BCB 2008)); *see Bonnen*, 9 OCB2d 7, at 19 (BCB 2016) (“To the extent that Petitioner is dissatisfied with the Union’s conclusions, tactics, or outcomes, such claims are ‘insufficient to demonstrate a violation of the Union’s duty of fair representation.’”) (quoting *Shymanski*, 5 OCB2d 20, at 9 (BCB 2012)). Petitioner has shown no evidence upon which we can conclude that the Union’s failure to request documentation from HHC was arbitrary, discriminatory, or in bad faith. At all times relevant here, the Union made it clear to Petitioner that it did not consider the assignment of Supervisor Zavala to drive the CEO to be outside the job specification or a violation

of the Agreement. Further, although Petitioner asserts that it is a conflict of interest for the Union to represent both MVOs and Supervisors, this bargaining unit configuration is not uncommon.¹⁹ Unions often represent a variety of titles in a single bargaining unit, and the interests of these titles can vary. The duty of fair representation does not require that a union's actions benefit of all its members at all times. Instead, we have said that “[w]here the union undertakes a good-faith balancing of the divergent interests of its membership and chooses to forgo benefits which may be gained for one class of employees in exchange for benefits to other employees, such accommodation does not, of necessity, violate the union's duty of fair representation.” *Civil Serv. Bar Assn., Local 237 v. City of New York*, 64 N.Y.2d 188, 197 (1984); *see Barillaro*, 12 OCB2d 4, at 10 (2019) (finding that the refusal to jeopardize other bargaining unit members' transfers did not rise to the level of a breach of the duty of fair representation); *Valentine*, 27 OCB 26, at 8 (BCB 1981) (“[T]he duty to represent all employees impartially does not necessarily prevent a union from making a contract which is disadvantageous to some members of the unit in relation to others.”); *see also Cummaro*, 26 PERB ¶ 3077, at 3150 (1993) (finding that “an employee organization does not breach its duty of fair representation *per se* when it takes a position which benefits some unit members to the detriment of others, absent a showing of discrimination or improper motivation”). Accordingly, we find that the Union did not breach its duty of fair representation in violation of the NYCCBL § 12-306(b)(3) by its failure to seek the information Petitioner requested.²⁰

¹⁹ The NYCCBL expressly allows for the combination of supervisory and non-supervisory employees in the same bargaining unit. *See* NYCCBL § 12-309(b)(1); *OSA*, 78 OCB 5, at 45 (BOC 2006).

²⁰ To the extent that Petitioner is asserting that the Union should have taken steps to compel the production of information on his behalf, we reach the same conclusion.

Regarding Petitioner's claims against HHC, the duty to furnish information under the NYCCBL is a part of the duty to bargain in good faith. *See* NYCCBL § 12-306(c)(4).²¹ Since the duty to bargain in good faith runs between the public employer and the certified bargaining representative, we have consistently held that, "individual bargaining unit members lack standing to assert claims under [NYCCBL § 12-306(c)]." *Jones*, 11 OCB2d 3, at 8-9 (BCB 2018).

While Petitioner was a Shop Steward when he requested information regarding Supervisors' assignments and overtime, he no longer held a Union position when he filed his improper practice petition. The Union's response here makes clear that Petitioner was not acting on its behalf when he sought to compel the production of the information. Accordingly, we find that Petitioner lacks standing to assert that HHC violated NYCCBL § 12-306(a)(4) and (c)(4) by not responding to his September and October 2021 document requests. *See Jones*, 11 OCB2d 3, at 8-9 (upholding the dismissal of a union member's claim that HHC did not provide her private attorney with requested documents); *Witek*, 7 OCB2d 10, at 11 (BCB 2014) (finding that an individual employee lacked standing to assert a claim regarding HHC's failure to provide information).

Therefore, we dismiss the petition in its entirety.

²¹ NYCCBL § 12-306(c) provides, in relevant part:

The duty of a public employer and certified or designated employee organization to bargain collectively in good faith shall include the obligation:

* * *

(4) to furnish to the other party, upon request, data normally maintained in the regular course of business, reasonably available and necessary for full and proper discussion, understanding and negotiation of subjects within the scope of collective bargaining[.]

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 Pete Richards, docketed as BCB-4470-21, is hereby dismissed.

Dated: June 1, 2022
New York, New York

SUSAN J. PANEPENTO
CHAIR

ALAN R. VIANI
MEMBER

M. DAVID ZURNDORFER
MEMBER

CAROLE O'BLINES
MEMBER

CHARLES G. MOERDLER
MEMBER