

**Gill, 16 OCB2d 21 (BCB 2023)**

(IP) (Docket No. BCB-4518-23)

**Summary of Decision:** Petitioner appealed the determination of the Executive Secretary of the Board of Collective Bargaining dismissing her petition for failure to plead facts sufficient to establish a violation of the NYCCBL. Petitioner argued that she pled sufficient facts to establish that the Union breached the duty of fair representation. The Board found that the Executive Secretary properly deemed the petition insufficient and denied the appeal. (*Official decision follows.*)

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

**In the Matter of the Improper Practice Proceeding**

*-between-*

**THOMASA GILL,**

*Petitioner,*

*-and-*

**DISTRICT COUNCIL 37, AFSCME, AFL-CIO,  
LOCAL 1549, THE CITY OF NEW YORK, and  
NEW YORK CITY POLICE DEPARTMENT,**

*Respondents.*

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**DECISION AND ORDER**

On April 14, 2023, Petitioner Thomasa Gill filed a verified improper practice petition, amended on May 5, 2023, alleging that District Council 37, AFSCME, AFL-CIO, Local 1549 (“Union”) breached § 12-306(b)(3) of the New York City Collective Bargaining Law (New York City Administrative Code, Title 12, Chapter 3) (“NYCCBL”) by refusing to provide her with a copy of her union files.<sup>1</sup> Pursuant to § 1-07(c)(2) of the Rules of the Office of Collective

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<sup>1</sup> Petitioner also cited several other provisions of the NYCCBL. Petitioner cited NYCCBL §§ 12-302; 12-303(j), (l)(1) and (2), (m), (o), (q); 12-304(a), (b), and (d); 12-305 (i) and (ii); and 12-

Bargaining (Rules of the City of New York, Title 61, Chapter 1) (“OCB Rules”), the Executive Secretary of the Board of Collective Bargaining dismissed the petition on the ground that Petitioner’s claims were insufficient to establish a violation under the NYCCBL (“ES Determination”). Petitioner appealed the ES Determination (“Appeal”). The Board finds that the Executive Secretary properly deemed the petition insufficient and denies the Appeal.

## **BACKGROUND**

### **The Petition**<sup>2</sup>

Petitioner is a Police Administrative Aide employed by the New York City Police Department (“NYPD”). She is represented by the Union for purposes of collective bargaining. In May of 2022, the NYPD sent Petitioner a notice directing her to appear for an interview concerning an unspecified December 2, 2014 incident.<sup>3</sup> She appeared for the interview on May 17, 2022, and two Union representatives appeared to represent her. Petitioner declined representation by the Union and refused to cooperate with the investigation without legal counsel. The interview was rescheduled by the NYPD Investigator. On May 24, 2022, Petitioner appeared a second time and requested the interview be further postponed as she needed additional time to obtain legal counsel. The NYPD Investigator declined to reschedule, informing Petitioner that he would put her down

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306(d) and (e), which do not provide any cause of action. Petitioner further cited NYCCBL §§ 12-306 (1), (2) and (3), by which we infer she intended §§12-306(a)(1), (2) and (3). In addition, Petitioner cited NYCCBL §§ 12-306(b)(1) and (2). The Board finds that the facts alleged do not support a claim under any of these provisions. Finally, Petitioner cited NYCCBL §§ 12-306(b)(4) and (5), which are not provisions of the NYCCBL.

<sup>2</sup> All facts recounted here are taken from the improper practice petition and the attached exhibits.

<sup>3</sup> We take administrative notice from the petition docketed as BCB-4299-18 (filed by Petitioner on November 13, 2018, and dismissed by the Executive Secretary as insufficient) that Petitioner was previously disciplined by the NYPD for conduct she engaged in on December 2, 2014.

as an uncooperative witness and move on without her.

On October 30, 2022, Petitioner spoke with Local 1549 Assistant Director Kenneth Mulligan via telephone and requested a copy of her “union file.” According to Petitioner, Mulligan stated he would make the file available, but did not follow up or provide her with access. On February 22, 2023, Petitioner emailed Mulligan recounting what had occurred with the NYPD’s attempts to interview her in May 2022 and summarizing her and Mulligan’s October 30, 2022 phone call. On March 17, 2023, Mulligan emailed Petitioner a request to meet and asked her availability. On April 12, 2023, Petitioner responded via email agreeing to meet, but indicating that she wanted the “union file” before the meeting. Mulligan responded via email the same day, informing Petitioner, “I don’t have a file for you and [] if you decide to have the meeting it will have to be virtual because I have several meetings on that same day.” (Am. Pet., Ex. 2) Two days later, Petitioner filed this petition.

### **The Executive Secretary’s Determination**

On May 18, 2022, the Executive Secretary issued the ES Determination pursuant to OCB Rule § 1-07(c)(2), dismissing the petition. The Executive Secretary found some allegations untimely and found that the events alleged that fall within the four month statute of limitations did not state a cause of action under the NYCCBL.

The Executive Secretary noted that Petitioner described certain events that transpired before December 13, 2022, and that any such allegations fell outside the four-month statute of limitations and were untimely. The Executive Secretary found that the allegation based on the April 2023 exchange regarding Petitioner’s union file was timely, but that Petitioner had not pled any facts to suggest that the Union breached its duty of fair representation. Specifically, Petitioner did not articulate any facts to support a claim that the Union’s failure to provide her with a copy of her file was arbitrary or discriminatory towards her or that the Union had acted in bad faith.

The petition did not reflect why Petitioner was requesting the file, what she thought the file contained, or why she believed she was entitled to review the file. Accordingly, the Executive Secretary dismissed the petition.

### **The Appeal**

On May 28, 2023, Petitioner filed an appeal of the ES Determination. In that appeal, she clarified that her only claim was that she should have been given access to her union files. Petitioner argued that the Union never gave any valid reason why she could not have her files, that no New York law prohibits her from accessing her files, and that she should be granted access because she pays dues to the Union. She reiterated that she needs access to the files to discuss “her case” during her meeting with Mulligan.<sup>4</sup>

### **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 omitted)). “Since no hearing was held, in reviewing the sufficiency of the petition, 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.” *Noonan*, 15 OCB2d 6, at 6 (BCB 2022) (quoting *Morris*, 3 OCB2d 19, at 12 (BCB 2010)).

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<sup>4</sup> Petitioner did not explain what “case” she was referring to.

To establish a breach of the duty of fair representation in violation of NYCCBL § 12-306(b)(3), a petitioner must establish that the union has engaged in “arbitrary, discriminatory, or bad faith conduct in negotiating, administering and enforcing collective bargaining agreements.” *Id.* at 8 (quoting *Walker*, 6 OCB2d 1, at 7 (BCB 2013)). “[A] petitioner must allege more than negligence, mistake, or incompetence to meet its burden.” *Hyppolite*, 12 OCB2d 10, at 9 (BCB 2019) (quoting *Bonnen*, 9 OCB2d 7, at 17). “Even errors in judgment do not rise to the level of a breach of this duty, unless it can be shown that the union’s actions were arbitrary, discriminatory, or in bad faith.” *Noonan*, 15 OCB2d 6, at 8; *see also Crescente*, 63 OCB 45, at 7-8 (BCB 1999).

We find that the Executive Secretary correctly determined that Petitioner failed to set forth facts to demonstrate that the Union acted in an arbitrary, discriminatory, or bad faith manner with respect to a claimed breach of the duty of fair representation. Based on the alleged facts, it is clear that Petitioner contacted the Union, and the Union offered to meet with her. Petitioner does not allege that the Union has failed to take any action related to contract negotiation, administration, or enforcement on her behalf. The facts pled do not indicate that Petitioner has asked the Union to pursue any grievance on her behalf, only that she has asked for a copy of her “union file.” Petitioner does not allege that she was treated differently from other union members.

The Board has long held that a Petitioner’s “dissatisfaction with the quality or extent of representation does not constitute a breach of the duty of fair representation.” *Ruiz*, 15 OCB2d 41, at 12 (BCB 2022) (quoting *Shymanski*, 5 OCB2d 20, at 11 (BCB 2012)); *see also Evans*, 6 OCB2d 37, at 8-9 (BCB 2013); *Sicular*, 79 OCB 33, at 13 (BCB 2007). Here, the Union arranged to meet with Petitioner; her only claim is that the Union did not provide her with a copy of her “union file” in advance of the scheduled meeting.<sup>5</sup> We find that Petitioner’s complaint goes to the quality or

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<sup>5</sup> The record does not reflect whether the meeting ultimately took place.

extent of representation and does not establish that the Union breached its duty of fair representation. Moreover, “[t]he duty of fair representation does not extend to the provision of information unrelated to the negotiation, administration and enforcement of a collective bargaining agreement.” *Vazquez*, 75 OCB 36, at 10 (BCB 2005);<sup>6</sup> *see also Shapiro*, 37 OCB 9, at 14-15 (BCB 1986) (holding petitioner failed to show a breach of the duty of fair representation with respect to his request for information from the union). As such, the facts alleged do not show that the Union violated its duty of fair representation. For these reasons, we affirm the dismissal of the improper practice petition and deny the Appeal.

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<sup>6</sup> We note the *Vazquez* does *not* stand for the proposition that the duty of fair representation extends to all information requests related to the negotiation, administration and enforcement of a collective bargaining agreement. Claims pertaining to such requests are evaluated on a case-by-case basis under the appropriate legal standard to determine whether the union acted in a manner that was arbitrary, discriminatory or in bad faith.

**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 Executive Secretary's Determination dismissing the improper practice petition docketed as BCB-4518-23 is affirmed, and the appeal is denied.

Dated: August 3, 2023  
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