

At IAS Part 9 of the Supreme Court of the State of New York, held in and for the County of New York, at the Courthouse thereof, 71 Thomas Street, New York, New York on the 12th of September, 2003.

PRESENT: HON. HAROLD B. BEELER,
Justice

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Application of
LILLIAN RABY

Petitioner,

For a Judgment Pursuant to CPLR Article 78

-against

OFFICE OF COLLECTIVE BARGAINING,
BOARD OF COLLECTIVE BARGAINING,

Respondents,

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INDEX NUMBER 109481/03
MOTION SEQUENCE 001
DECISION & JUDGMENT

Petitioner moves to reverse respondents' determination denying and dismissing her improper practice petition against her union, Local 1180 Communications Workers of America ("CWA"), on the grounds it was untimely. Respondents do not oppose.

Petitioner was employed in New York City civil service positions for 25 years retiring in 2000 from the Human Resources Administration ("HRA"). The Board of Collective Bargaining ("the Board") is a part of the Office of Collective Bargaining, a public agency charged with hearing improper practice claims filed against employers or unions. On August 26, 2002 petitioner filed an improper practice petition with respondents regarding a series of grievances with HRA management from September 4, 1997 to May 4, 2000. She claimed CWA "neglected" and "ignored" her defense and right of representation in these matters.

The Board denied her petition on April 22, 2003 as untimely. CWA had argued that petitioner's last grievance was May 2000 and the statute of limitations was not tolled when she subsequently telephoned and wrote CWA representatives complaining about union support.

On May 23, 2003, the instant petition was served requesting reversal of respondents' determination. Petitioner argues that the determination was arbitrary, capricious and an abuse of discretion because it ignored her communications to the union as recently as a letter to the president in June 2002 which would have made her August 26, 2002, petition timely.

CWA filed 11 grievances in petitioner's behalf from July 1997 to May 2000. Most were resolved, not always in her favor. Some the union dropped for cause. Petitioner wanted to press on. CWA in an affidavit to the Board disputed her claims that she got no response to her calls and letters. When, for instance, she was asked by letter to call the union representative, she instead wrote to the president complaining of being ignored.

NYC Collective Bargaining Law (NYCCBL) § 12-306(e) states:

A petition alleging that a public employer or its agents or a public employee organization or its agents has engaged 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.

Respondents were not arbitrary and capricious in finding petitioner untimely in filing her improper practice petition. Petitioner did not have to take "No" for an answer in her dealings with CWA, but the Court cannot offer her relief when she chose to spend

years trying to get the attention of CWA leadership instead of exercising her legal rights pursuant to NYCCBL § 12306(e) or even responding to CWA's communications.

Accordingly the petition to reverse respondents' determination denying and dismissing petitioner's improper practice petition against her union is denied.

This is the decision and judgment of the Court.

DATE: September 12, 2003

At IAS Part 9 of the
Supreme Court of the State
of New York, held in and for
the County of New York, at
the Courthouse thereof, 71
Thomas Street, New York,
New York on the 8th of
October, 2003.

PRESENT: HON. HAROLD B. BEELER
Justice

Application of
LILLIAN RABY,
Petitioner,
For a Judgment Pursuant to CPLR Article 78

INDEX NUMBER 109481/03
MOTION SEQUENCE 002
DECISION & JUDGMENT

-against-

OFFICE OF COLLECTIVE BARGAINING,
BOARD OF COLLECTIVE BARGAINING,
LOCAL 1180, COMMUNICATIONS WORKERS
OF AMERICA, AFL-CIO, and CITY OF NEW
YORK & HUMAN RESOURCES
ADMINISTRATION,
Respondents,

Petitioner moves by amended petition to reverse the Board of Collective Bargaining's ("the Board") determination denying and dismissing her improper practice petition against her union, Local 1180 Communications Workers of America ("CWA"), on the grounds it was untimely. The Board and the Office of Collective Bargaining ("OCB") together, CWA and the City of New York's Human Resource Administration ("HRA") oppose. HRA cross-moves to dismiss the petition for failure to state a cause of action.

Petitioner was employed in New York City civil service positions for 25 years

retiring in 2000 from HRA. The Board is a part of OCB, a public agency charged with hearing improper practice claims filed against employers or unions. On August 26, 2002 petitioner filed an improper practice petition with respondents regarding a series of grievances with HRA management from September 4, 1997 to May 4, 2000. She claimed CWA "neglected" and "ignored" her defense and right of representation in these matters.

The Board denied her petition on April 22, 2003 as untimely.

This amended petition essentially duplicates the petition served on May 23, 2003 with the addition of CWA and HRA as respondents. The Court, by Decision and Judgement dated September 12, 2003, denied the earlier petition. Adding two respondents has no effect on that Decision and Judgment.

Accordingly the amended petition to reverse the Board of Collective Bargaining's determination denying and dismissing petitioner's improper practice petition against her union is denied. In light of this decision, HRA's cross-motion to dismiss is moot.

This is the decision and judgment of the Court.

DATE: October 8, 2003