

'SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: HAROLD B. BEELER, J.S.C.

PART 9

0109481/2003

RABY, LILLIAN
vs
OFFICE OF COLLECTIVE

SEQ 1
ARTICLE 78

INDEX NO.

109481/2003

MOTION DATE

10/1

MOTION SEQ. NO.

001

MOTION CAL. NO.

The following papers, numbered 1 to _____ were read on this motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

SCANNED

OCT 10 2003

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

is denied,

see annexed Order.

MOTION/ORDER IS RESPONDED TO
JUSTICE

Dated: 9/12/03

HAROLD BEELER J.S.C.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION

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

Application of
LILLIAN RABY,
Petitioner,

For a Judgment Pursuant to CPLR Article 78

-against-

OFFICE OF COLLECTIVE BARGAINING,
BOARD OF COLLECTIVE BARGAINING,
Respondents,

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 § 12-306(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

ENTER:



HAROLD B. BEELER, J.S.C.

HAROLD BEELER
J.S.C.