

**Local 1087, DC 37, 1 OCB2d 44 (BCB 2008)**  
(IP) (Docket No. BCB-2492-05).

**Summary of Decision:** The Union claims that the City and DOC violated NYCCBL § 12-306(a)(1) and (3) by transferring a locksmith who was a Union shop steward out of a facility and filing disciplinary charges against him in order to discourage his participation, and other Union members' participation, in Union activity. After an evidentiary hearing, the Board found that DOC did not discriminate or retaliate against the locksmith by taking such actions and that it also had legitimate business reasons for taking the actions. (*Official decision follows.*)

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

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

*-between-*

**LOCAL 1087, DISTRICT COUNCIL 37,**

*Petitioner,*

*-and-*

**CITY OF NEW YORK and the  
NEW YORK CITY DEPARTMENT OF CORRECTION,**

*Respondents.*

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**DECISION AND ORDER**

On July 21, 2005, Local 1087, DC 37 ("Union") filed a verified improper practice petition against the City of New York ("City") and the New York City Department of Correction ("DOC"). The Union claims that the City and DOC violated § 12-306(a)(1) and (3) of the New York City Collective Bargaining Law (New York City Administrative Code, Title 12, Chapter 3) ("NYCCBL") by transferring a locksmith who was a Union shop steward out of a facility and filing disciplinary charges against him in order to discourage his participation, and other Union members' participation,

in Union activity. The City contends that the Union failed to set forth facts that show that the locksmith participated in any activity that is protected by the NYCCBL, that the Union failed to set forth a *prima facie* case because it did not show that management was aware of any alleged Union activity, that protected activity was not the motivating factor in the decision to transfer the locksmith, and that it had a legitimate business reason for transferring him. Based on an evidentiary hearing, this Board finds that DOC did not discriminate or retaliate against the locksmith, Alfred Vignola, by taking such actions and that it also had legitimate business reasons for its actions.

### **BACKGROUND**

After seven days of hearing in this matter, the Trial Examiner found that the totality of the record established the relevant facts as follows.

DOC provides for the care, custody, and control of persons accused or convicted of crimes and sentenced to one year or less of jail time as well as inmates awaiting transfer to State correctional facilities. Operation of the correctional facilities is safety-sensitive work because of the inmate population. In this regard, DOC maintains strict rules at all levels of operation, including for its civilian employees.

DOC employs civilians as part of the maintenance staff in the title of Locksmith to install, maintain, and repair the locks and locking systems found in the various correctional facilities. Civilian employees whose jobs include the use of tools must comply with stringent inventory procedures in order to avoid loss of a tool, which could be used as a weapon. On March 26, 1999, DOC issued to its civilian employees Operations Order No. 07/99 (“Order”), which sets forth the regulations and procedures for securing tools. The policy was set forth to “ensure[] an accurate

accountability of all tools and equipment within facilities at all times.” (Ans. Ex. 2). The Order sets forth specific procedures for maintaining the tool inventory, storage, and assignment of tools as well as the destruction of broken/defective tools. It provides that all tools must be engraved with the first two letters of the facility’s abbreviation, call letters that correspond with the letter and number of the individual responsible for the tool, and a tracking number for the tool. It also mandates that in the event a tool cannot be accounted for and is believed to be lost or stolen, the Tour Commander should be notified immediately and a search will be conducted. Also, the Order states that the failure to safeguard or report the loss of tools in a timely fashion will result in disciplinary action.

Alfred Vignola is a DOC employee in the civil service title of Locksmith. Vignola has worked for DOC for approximately 20 years and worked in the George R. Vierno Center (“GRVC”), a high-security correctional facility for males located on Riker’s Island, until his transfer out on March 21, 2005. At the time of the filing of the petition, Vignola had been a Union Shop Steward for approximately 17 years and Recording Secretary of the Union for approximately 11 years.

In August 1999, a five-inch vise grip that was assigned to Vignola and listed on his tool inventory was not accounted for. Vignola insisted that the tool was not lost, but that he “found a tool to be missing.” (Tr. 186). He also averred that while the tool was assigned to him, on his inventory list, and stored in his locksmith shop, that an electrician also had access to the shop. (Tr. 186-7). No disciplinary charges were filed against him for the missing tool.

On December 31, 2001, a GRVC Tool Crib Officer who was responsible for maintaining inventories of the maintenance staff’s tools conducted a regular inventory of a toolbox that was stored in Vignola’s locksmith shop. The Tool Crib Officer discovered that a six-inch flat head screwdriver could not be accounted for. According to a January 2, 2002, report submitted by the

Tool Crib Officer, Vignola could not recall where he had last seen the tool. (City Ex. 4). After two searches, the screwdriver was not found. (*Id.*). When asked about the lost tool, Vignola again maintained he did not lose it, but that it “turned [up] missing,” and that several other individuals had access to the toolbox. (Tr. 194-195).

On January 9, 2002, a Captain at GRVC recommended to the then-Warden that disciplinary charges be filed against Vignola for the loss of the tool. (City Ex. 5). The report and an accompanying memorandum noted that Vignola was the last person to have used the tool, and since the tool was assigned to him, he was ultimately responsible for it. (*Id.*). The Captain noted that the last time the tool had been accounted for was on the last date the tools had been inventoried, on December 18, 2001. (*Id.*). In his own memorandum to the warden regarding the incident, Vignola wrote that “the last time the tool would have possibly been needed was on Wednesday, December 26, 2001, when we were [repairing down cells],” which was five days prior to the December 31 inventory. (Ans. Ex. 6). On January 17, 2002, the Warden submitted a Memorandum of Complaint (“MOC”) to the Chief of Department regarding the incident. In the MOC, the Warden delineated violations of two sections of the Rules and Regulations and recommended the loss of five vacation days as a penalty.

Vignola testified that the Administrative Deputy Warden at the time told him that the charges would be forwarded to the Office of Administrative Trials and Hearings (“OATH”) for further consideration, but he did not hear anything after the charges were submitted. Vignola postulated that “[He guesses that OATH] didn’t think it was important.” (Tr. 115).

On April 7, 2003, Vignola received a performance evaluation, which gave him an overall rating of “Very Good,” from his then-supervisor. The evaluation did not specify the time frame

involved. Vignola testified that he liked his then-supervisor, as well as his prior supervisors, and that they deferred to his judgment on matters that involved locksmithing. (Tr. 132-135). The relationship between Vignola and his then-supervisor could be described as cordial, and his supervisor testified that they have been in contact since he left the facility. (Tr. 778).

On either September 30 or October 1, 2003, an emergency release linkage which allows the cells to be released in the event of an emergency or power outage, broke in a certain area of GRVC. According to Vignola, the linkage had been problematic since the facility was built, and he suggested a modification to the system, which would involve drilling the system covers, the removal of screws, and the installation of 5,000 bolts, among other things, to repair it. (Tr. 40-41). Vignola estimated that the repairs would take two weeks with a staff of about six: an electrician, two locksmiths, “a couple of” maintenance workers, and a welder. (Tr. 43-44). During this time, the cells would have to remain empty.

In the first week of October 2003, the facility’s warden was demoted, and Vignola’s supervisor, who supervised the tradesmen at GRVC, was brought up on charges and then transferred out of GRVC because of an August incident that involved a lack of water pressure to the cells over several days because of a plumbing issue. Two plumbers were also brought up on charges and transferred. (Tr. 691). At this point, Vignola had just begun to analyze and repair the broken linkage. Since there was no one available to assign the necessary staff to the project, and doing the work on his own with his assigned electrician would take weeks, he attended to other work that needed to be completed. (*Id.*). In the meantime, the area of the facility, called 11B, remained closed. The electrician assigned to work with Vignola was transferred and was not immediately replaced.

In October 2003, Lawrence Davis was appointed to replace the prior warden at GRVC. On

October 14, 2003, Lindley Niles became the Supervisor of Mechanics (“SOM”) at GRVC. He was to supervise the approximately 19 tradesmen. Although Warden Davis had never worked with Niles, he testified that through a biweekly meeting attended by maintenance supervisors, including Niles, he became familiar with Niles’ work ethic and experience in maintenance and selected him because he thought Niles’ talent was being “wasted” at a facility that was closed. (Tr. 570-571).

When Warden Davis arrived at the facility, he testified that he paid special attention to the maintenance section of GRVC because inmate disturbances had resulted from the August plumbing incident and because he wanted to improve the efficient operation of the facility in that area. (Tr. 581-582). He testified that in the months following Niles’ assignment to GRVC, Niles decreased the amount of backlogged maintenance work orders and oversaw a significant decrease in overtime. (Tr. 582-583).

When Niles first arrived at the facility, he held a meeting with the maintenance staff to introduce himself and tell them what his expectations were. (Tr. 460). He mentioned the August 2003 plumbing incident that caused some to be transferred and/or demoted and told them that the entire staff, including him, would be under scrutiny because of the incident. (*Id.*). He testified that he told them not to be surprised if “IG” was watching all of them regarding the performance of their duties and that he wanted to keep them out of the spotlight. (*Id.*).

In late October or early November 2003, Niles saw the partially-started work on the emergency release linkage in 11B and asked Vignola about it. Niles testified that Vignola told him that: “[h]e was in the process of making modifications that would make it easier for him to service the gates.” (Tr. 403). Niles testified that Vignola told him that the work would take six weeks and six workers assigned exclusively to complete the repair. (Tr. 404). Niles deemed that time frame

to be excessive because none of the tradespeople's other duties would be able to be completed during that time, creating a significant work backlog. (Tr. 405, 407). He also felt uncomfortable that many of the structures involved with the release were being modified or removed to affect the repair. (*Id.*). Niles reasoned that if the project were authorized, in order to prevent a backlog of work in other areas, the job would require overtime work as well. (Tr. 407). After considering what was involved, he determined that he wanted a second opinion on how to fix it. (Tr. 408).

Niles consulted his supervisors, Thomas Burke, the Divisional Maintenance Manager, and a Deputy Warden for advice on how to proceed. (Tr. 405). Niles testified that the Deputy Warden spoke to Vignola and, after having done so, told Niles that he concurred with Niles' opinion that the modifications by Vignola should not be performed. (Tr. 486). Burke testified that he was told by Niles that the project would take five to six weeks. (Tr. 520). He also spoke to Vignola, who told him that the system was inadequate and needed modifications. (Tr. 521). Vignola testified that when Burke and others stressed to him on one occasion that the project needed to be finished quickly, his statement to them was: "Well, where have you been for five weeks? I've been asking and nobody has been coming forward with anything." (Tr. 45).

Burke testified that he wanted to do some investigating into the time frame because moving inmates out of the area would mean an extensive discussion throughout GRVC regarding sufficient bed space and other considerations. (Tr. 520-521). After inquiring, Burke was told that "there was not going to be a six-week time frame" by the custody management division, through Warden Davis. (Tr. 522). At this point, he decided to seek out a second opinion from a locksmith, James Garrity, and a machinist, Thompson Alexander, who worked together doing repairs on cells at different facilities and whom Burke supervised. (*Id.*). Burke testified that he called them in similar situations,

whenever he needed to troubleshoot or do a quick repair. (*Id.*).

Warden Davis testified that he also spoke to Vignola about the repair and the time frame. After Vignola explained his reasons for the modifications and the time frame, Warden Davis testified that he told Vignola that like any other business, sometimes it is good to get a second opinion on the repair. (Tr. 574). Warden Davis testified that, although Vignola had to accept what he said, he could tell that Vignola was not happy that he agreed with Niles and the Deputy Warden. (Tr. 574-575). According to Warden Davis, Vignola stated that he did not see how Niles could make the determination since Niles was not a locksmith. (*Id.*).

Shortly thereafter, a number of people, including Burke, Vignola, Niles, Garrity, and Alexander, met in 11B to examine the situation. Garrity testified that when he and Alexander arrived at the scene, Vignola got off of the ladder on which he had been working, appeared surprised and irritated, then walked out and muttered, "You fix it." (Tr. 352). After reviewing Vignola's work, Garrity testified that he didn't think that Vignola's modifications, which included the use of a reciprocating saw to permanently remove part of the linkage, were appropriate because they extensively changed the manufacturer's design. (Tr. 345-350). Garrity testified that the system was designed by engineers, that each part was there for a reason, and that he had had trouble in the past when he tried to modify things instead of adhering to the manufacturer's specifications. (Tr. 250). Garrity also testified that Vignola told him that his reason for removing part of the linkage was because he could not fit his arms in the apparatus with the part in there as well and that he would get cut when he tried to insert his arm. (Tr. 348). Although Alexander did not recall Vignola's demeanor, he agreed with Garrity's assessment of the repair, which involved adjusting and aligning the parts of the linkage, performing preventative maintenance, and re-creating the parts that had been



cut by Vignola. (Tr. 377).

According to both Garrity and Alexander, they went in and performed the repairs over three days with overtime and then had the system tested. (Tr. 351, 383). Vignola estimates that the work was done over the weekend of November 19 or 20, 2003, and that the inmates were returned to 11B on December 19. (Tr. 46.). Niles testified that when Garrity and Alexander arrived at the job to start working, Vignola came to the area and was commenting that they were not performing the repairs correctly and that they should be doing the repairs the way he wanted to do them. (Tr. 416-417). Niles noted that “the atmosphere was becoming tense,” so he went to the Deputy Warden and told him that Vignola was being somewhat confrontational. (Tr. 417). According to Niles, the Deputy Warden then asked Vignola to stay away from the area. (*Id.*).

Vignola testified that on December 21 there was a power failure in 11B, and the linkage broke again. (Tr. 46-48). Vignola also wrote a memorandum, signed as “A.J. Vignola 23890, Locksmith G.R.V.C.,” to Warden Davis describing the incident and suggesting a course of action for fixing the problem. (Pet. Ex. B). Vignola copied the director of the DC 37 Blue Collar Division and the Local 1087 Shop Steward. Niles testified that he does not recall the linkage breaking again and checked to see if there were any subsequent work orders for that area. There was no record of a further repair on 11B. (Tr. 487). He also testified that he did not receive a “down cell report” for that area, which would indicate that the cells were malfunctioning. (Tr. 488). Garrity and Alexander testified that they were either not aware of any further problems with the linkage or not called back to repair it. (Tr. 365, 388).

In January 2004, Niles had a death in his family and was out of GRVC for several weeks. (Tr. 50-51). On January 26, 2004, Vignola wrote another memorandum to the Deputy Warden,

signed as a Locksmith, regarding his ideas for the repairs to the linkages that he felt were necessary throughout other areas of the facility. (Union Ex. 6). On February 19, 2004, the Council Representative of the Blue Collar Division, Chandler Henderson, wrote to the DOC Director of Labor Relations to request a labor-management meeting on behalf of the locksmiths at GRVC. (City Ex. D). He placed three issues on the agenda: 1) the assignment of “unqualified personnel” to perform the duties of locksmiths, 2) the need for an additional locksmith, and 3) the supervisory skills of Niles. (*Id.*).

On March 16, 2004, Vignola, Henderson, DOC Director of Labor Relations Nicholas Santangelo, Burke, and the Deputy Warden all attended the labor-management meeting. Henderson described the discussion at the meeting as revolving around the fact that Vignola felt that Niles was not taking into account the years of experience that Vignola had as a locksmith and that Vignola had safety issues with the way the linkages were being repaired. (Tr. 303-304). Part of what Vignola had originally wanted to discuss was the fact that Niles had not assigned him a new electrician with whom to work after the other one had been transferred, but Vignola testified that: “[a]s far as working alone, that was addressed while Mr. Niles was out on bereavement [leave].” (Tr. 256). Vignola testified that while Niles was out, he had the employee who filled in for Niles assign him an electrician for at least some repairs. (Tr. 257). Henderson testified that, at the time of the meeting, Vignola was working alone, which presented safety concerns to them. (Tr. 305). During the meeting, Vignola advocated for his plan to address repairs that he felt needed to be completed in the other areas of the facility. (Tr. 672-676). Santangelo testified that the meeting concluded with a refusal to assign more locksmiths to GRVC, but that the Deputy Warden would look at the need for repairs in other areas that Vignola had identified in his January 26 memorandum. (*Id.*). Further,

he stated that he had spoken to Warden Davis, who was very much satisfied with the way Niles was getting work accomplished, reducing work order backlogs and overtime. (*Id.*).

In June of 2004, Vignola found unmarked tools in an area in which he was working and turned them in to a Security Captain. (Pet. Ex. C; Tr. 97-98). Vignola testified that Niles was unhappy that he had “jumped the chain of command” by going to security to report it but not telling Niles about it. (Tr. 99).

On Friday, August 13, 2004, Vignola discovered that Niles had not submitted required Worker’s Compensation forms for an injury that Vignola sustained in July 2004. When Vignola asked Niles about the omission, Niles replied that he would submit the paperwork. On August 19, 2004, when Vignola discovered that Niles still had not submitted the paperwork, he made arrangements to have them submitted through someone else. He also discovered that Niles hadn’t submitted Worker’s Compensation forms for another injury that Vignola had sustained in February 2004. Regarding the papers related to the February incident, Niles testified that there was no one around to show him what to do when he took over the office, that it took him a significant period of time to get the office organized, and that some of his reports were filed late. (Tr. 512, 515). Vignola believes that the fact that the few days he was out for these injuries were recorded as “undocumented illness” and not as due to injury prevented him from being named employee of the month in June 2004. In a memorandum to Warden Davis describing the circumstances, dated August 20, 2004, Vignola described how he was told that he was disqualified for contention because of excessive absences. He signed the memorandum as a Locksmith. (Ans. Ex. D). In the memorandum, he stated that other maintenance men had injuries and their paperwork was processed, and he wondered why his was not. (*Id.*). The Worker’s Compensation issue was later resolved without the loss of any

time or money to Vignola.

On September 16, 2004, Vignola left the locksmith shop at the end of his shift and returned after five minutes because a colleague needed to retrieve keys that he had left in the shop. Vignola discovered Niles along with two maintenance people in the shop. (Tr. 82). Niles explained that the reason he entered the shop with the two maintenance workers was that a maintenance worker asked him for a telephone for his shop and noted at the same time that Vignola had two in the locksmith shop. (Tr. 424-426). Niles testified that as far as he knew, Vignola did not have permission to possess any phones. (*Id.*). He testified that it was “pretty much a courtesy” that an employee could have one phone. He found an additional phone, a computer, a printer, and other related computer items that Niles felt Vignola did not have permission to possess in the locksmith shop. (Tr. 425, 441). When asked if it was fair to say that he did not have permission to have the phone in the locksmith shop, Vignola was evasive and then replied, “Possibly.” (Tr. 167).

Vignola claims that he asked Niles “not so politely” to leave, locked up the shop, and then went directly to Warden Davis and complained to him about the incident. (Tr. 82). In a memorandum that memorialized a conversation between Vignola and Warden Davis, Vignola reiterated his version of the events. (Pet. Ex. E). This memorandum was signed “A.J. Vignola Sr. 23890, Locksmith G.R.V.C.” and copies were sent to the Union. (*Id.*). Vignola claimed that the locksmith shop was a restricted area and wrote that he had no idea why Niles was in his shop with two “unauthorized personnel.” (*Id.*). He then wrote that “in light of the tools missing from [three other maintenance workers’] tool boxes and the two unmarked tools I found in the annex cell linkage housings I can only wonder what nefarious deeds he might have been up to.” (*Id.*). He went on to state, “As I mentioned to you Mr. Niles and I have butted heads since his arrival at G.R.V.C. last

October. We have argued over the proper repair of the emergency release mechanisms in the annex, which are still not working properly. Mr. Niles has repeatedly disregarded my training and my nineteen years experience of working on these systems in most of the facilities in the Department.” (*Id.*).

At the request of Vignola and a Union representative, Warden Davis had the lock changed on the locksmith shop and had two new keys made. He gave one key to Vignola and kept the other. Warden Davis explained that he did this to protect both Niles and Vignola because Vignola expressed a concern that Niles would plant something in the shop, and Warden Davis wanted to take Niles out of the equation. (Tr. 577-578). In describing the incident to Warden Davis, Vignola described the root of his concerns as he and Niles not seeing eye to eye. When asked what Warden Davis thought Vignola meant by that, Warden Davis answered, “Basically, it just started off with the fact that Mr. Niles sought a second assessment on the locking devices in [11B].” (Tr. 578).

That weekend, Vignola drafted a petition and had it signed by 15 of the maintenance staff, including himself, on the following Monday, September 20, 2004. The petition read:

We, the undersigned maintenance staff of G.R.V.C. request the immediate reassignment of [Niles].

Since Mr. Niles was assigned to G.R.V.C. in October 2003 he has created a hostile work environment. First, his argumentative demeanor, displayed by his consistent dismissal of his experienced tradesmens’ advice in solving the problems of the facility is counterproductive to the efficient and safe operation of the various systems employed in this facility. Second, his show of favoritism to certain staff members and retaliatory tactics to others has had a demoralizing effect on the staff. These are just a few of the conditions that have led to numerous EEO complaints by staff members against Mr. Niles. (Pet. Ex. F).

Warden Davis testified that he did not see the petition but was aware of the maintenance staff’s unhappiness. He called for an “open forum” meeting with them on September 24, 2004. He

stated that he held the meeting so that he could answer their questions and they could bring whatever they wanted to his attention in an attempt to address any issues they had. (Tr. 584). Vignola and his Shop Steward, among others, attended this meeting. Warden Davis testified that Vignola's complaints were the same as the ones he had in his private meetings: he did not like the way Niles spoke to him, did not like that Niles disagreed with his assessment of the linkage problem, and did not like the way Niles was managing the maintenance department as a whole. (Tr. 585-586). The other maintenance men complained that maintenance men at other facilities were being paid overtime for things that they were required to do on straight time or without overtime, and they felt it was not fair. (Tr. 586). Warden Davis explained to them that Niles "is basically the new sheriff in town and that no one, no two people work alike. [The former maintenance supervisor] was gone, and I would expect them to follow [Niles'] lead." (Tr. 587). According to Warden Davis, he also stated that he expected them to treat Niles as a professional, that he expected them to have a safe work environment, that they were free to come to him at any time to voice their objections to the work environment or work requirements, and that he would have a follow-up meeting to see if there were any improvements. (Tr. 587).

Vignola testified that at the meeting Warden Davis also said, in reference to Vignola's inference that Niles had something to do with missing tools, that he thought someone was "playing games, but he did not believe that it was Mr. Niles." (Tr. 90). According to Vignola, Warden Davis said that he felt that the maintenance workers were just being careless and that Niles had a different story from them when it came to the description of what had occurred when Niles entered the locksmith shop. (*Id.*).

Warden Davis explained that he thought Niles was disliked by the maintenance employees

because he had asked employees to increase productivity on straight time while reducing the amount of overtime: “Anyone that is going to come in and one, cut back on the overtime that is available and then also require them to do more work on their regular tour of duty obviously would not be someone that they would consider to be popular or a boss that they would like.” (Tr. 582-583). Warden Davis testified that overtime was important to the employees in maintenance, as some depended on it. (Tr. 583). (Tr. 583).

After the meeting, Warden Davis spoke with Niles as well. According to Warden Davis, he let Niles know that he had held a meeting with the maintenance staff and told Niles what he expected from him as a supervisor, that he wanted to make sure that Niles was treating the maintenance staff professionally, and that he did not want to see anyone abusing their authority. (Tr. 588). Warden Davis also told Niles that he was going to have a follow-up meeting with the maintenance staff to determine whether or not there had been any improvement in the situation. (*Id.*).

Shortly thereafter, at Henderson’s request, Vignola, Henderson, a representative for another union, and Santangelo had a meeting with Warden Davis to discuss the incident where Niles entered the locksmith shop. (Tr. 311). At the meeting, Henderson voiced his concerns to Warden Davis that Niles was not the appropriate person to be performing shop searches. According to Henderson, Warden Davis stated that he had taken the keys away from Niles and was concerned about what had transpired, but felt that “he had a bunch of men acting like bitches.” (Tr. 312). Vignola claims he also heard Warden Davis use that phrase. (Tr. 92). Warden Davis denies using that phrase because he was in front of the other union representative for the first time, did not know him, and therefore, would not have used that profanity. (Tr. 630-631). He testified that he may have referred to them as some sort of name, such as “whiners.” (*Id.*). Santangelo testified that he did not recall Warden

Davis using the term “bitches.” (Tr. 716).

On October 27, 2004, Henderson spoke to Santangelo about the issues that Vignola had raised regarding Niles’ alleged use of outside contractors despite the fact that Union locksmiths were available. Vignola testified that on a couple of occasions, he found unmarked tools that were left behind, sparking concerns that outside workers were being hired by Niles to do locksmith work. (Tr. 97-98).

During the period of time beginning with Niles’ assignment to GRVC to beyond the transfer of Vignola in March 2005, Santangelo received several phone calls from Henderson always complaining about Niles. According to Santangelo, the complaints were that Niles did not take into account the advice of Vignola “and one call or another that Supervisor Niles should be transferred, that Supervisor Niles should be disciplined and demoted, always impugning the competence of Supervisor Niles.” (Tr. 667-668). Santangelo further testified that “there was a crusade...over the period of time by Mr. Henderson against Supervisor Niles, the object of it clearly being to get Mr. Niles out of GRVC. On the other hand, Warden Davis very much wanted to keep Supervisor Niles because he valued his work.” (Tr. 688)

Warden Davis testified that he attended a meeting with the DOC Commissioner and the heads of other facilities that involved an extensive discussion about an incident where a tool had been lost at another facility. (Tr. 589-590). Warden Davis testified that he was directed to go back and make sure all tools were marked and that the employees were following tool accountability guidelines. (*Id.*). As a result, on November 15, 2004, Niles held a meeting with the maintenance staff to remind them about proper tool accountability procedures, which Vignola attended. At this meeting, the maintenance staff were directed to search their work areas and relinquish any unmarked



tools to the Tool Crib Officer or Niles. The maintenance staff were asked to sign a form attesting that they would do so, and Vignola signed such form. (Ans. Ex. 3).

On February 5, 2005, Henderson encountered an employee of DOC's trials and litigation unit at OATH and inquired about how it would be possible to have an employee served with disciplinary charges for the kinds of actions Niles had taken with respect to Vignola. (Tr. 316).

According to an Incident Report Form dated February 19, 2005, on the day prior, an inmate assigned to the sanitation detail found an unmarked tool that was later determined to be a lock pick while sweeping the floor and turned it in to an official at DOC. (Ans. Ex. 9). The only other person who had control of lock picks accounted for all of the picks in their inventory. In a memorandum, Vignola stated that he had work in the area near where the pick had been found and, that he thought that he took only two picks with him and brought two back to the shop. However, he also stated that he may have taken three and that one might have fallen out of his pocket. (Ans. Ex 11). In a memorandum attached to the Incident Report, the Captain who investigated the matter recommended that Vignola be "made subject to command discipline due to his negligence in safely securing a significant security item in his possession." (Ans. Ex. 9). The memorandum noted that while the Captain interviewed Vignola, "he did not appear to be concerned about the loss. He was not aware as to the number of lock picks he had in his possession when he retrieved them from a cup on his desk. He did not confirm that he had a total of five picks when he returned to the shop." (*Id.*). On March 8, 2005, Warden Davis completed an MOC regarding the lost lock pick and suggested charges of failing to secure tools, failing to perform duties, and engaging in conduct unbecoming of a DOC employee. (Ans. Ex. 8). The MOC was referred to the DOC Trials and Litigation Division for further evaluation.

According to a February 28, 2005 memorandum prepared by the Tool Crib Officer, on that date, she performed a physical tool inventory of all tools assigned to Vignola. At that time, the Tool Crib Officer discovered that Vignola was not in possession of a 6-inch open-end wrench that was assigned to him. (Ans. Ex. 15). During the inspection, she found two unmarked tools that were never issued to Vignola. When she inquired about them, Vignola allegedly responded that he found them. (*Id.*). Vignola self-reported the loss of the tool that same day and wrote a memorandum to that effect. (Ans. Ex. 16). Two Incident Report Forms, dated March 2, 2005, and March 18, 2005, by two different Captains memorialized the findings of the investigation into the loss. (Ans. Ex. 13, 14).

On March 21, 2005, Vignola was transferred from GRVC to the George Motchan Detention Center. Warden Davis was asked for his reasons why he felt Vignola should be transferred. He replied:

Well, I was beginning to think that he was somewhat irresponsible to be a locksmith and let these types of tools get away from him in a jail, in a jail where we hold our most dangerous inmates. . . . The inmates at GRVC in that facility, because it is all cells, no dormitories.

Basically, these inmates are charged with very, very serious crimes. Some are being held there waiting to go upstate . . . to do a lot of time based on the crimes they have committed and were convicted of. . . .

I felt at that point, with several incidents of misplaced, losing tools was jeopardizing the security and the safety of the facility.

I felt at that point that I needed to put together evidence to present a request to have him transferred to another facility. . . . because the losing of tools to me was very, very dangerous.

The fact that he gave an impression he wasn't at any point going to follow the supervision of Mr. Niles, and at the end of the day I just had to make a decision who was more valuable to me.

I decided Mr. Niles was more valuable to me from the point of view of running, operating the facility than Mr. Vignola, I would opt to get another locksmith.

(Tr. 595-596).

On April 4, 2005, Henderson had a telephone conversation with Warden Davis regarding Vignola's transfer. Henderson alleges that Warden Davis said that Vignola was "more trouble than he was worth and considered him to be a rabble-rouser." (Tr. 317). Henderson also testified that Warden Davis explained that "he felt that Mr. Vignola was the individual who initiated the petition against Mr. Niles and he felt that he was, as he would say, riling up the natives, and he felt that it was better for the facility if Mr. Vignola was transferred out." (*Id.*). When asked about the alleged comments, Warden Davis testified that he said that he did not recall the words he used, but that he did express his difficulties with the fact that he thought that Vignola "had went from being an employee to someone who was just trying to keep organized confusion going on." (Tr. 603). When asked what he meant by that, he replied:

I mean, basically, when the maintenance – after I had the meeting with the maintenance men . . . they was pretty appreciative of me meeting with them. It's something wardens don't do.

I'm sure if you canvass the men on that group they have never been to an open forum with a warden.

The fact that I took the time out of my schedule to meet with them and find out what the problem was and try to mediate or come to some resolution, they thought that was noble and they were very appreciative of that. That gave them somewhat hope the thing was going to be rectified, whatever the issue was.

I think that basically, that's something that didn't sit well with Mr. Vignola. They were sort of standing down, backing off, they weren't 'Rah, Rah, let's give it to Mr. Niles' platform.

As a result, the statement – that's the purpose of my statement, or I would not recall making that particular statement.

(Tr. 603-604).

On April 4, 2005, Warden Davis referred three charges against Vignola for losing the wrench to the Trials and Litigation Division in an MOC. (Ans. Ex. 12). On that same date, Vignola received an evaluation from Niles that outlined ratings of "conditional" or "unsatisfactory." (Pet. Ex. D).

On November 29, 2005, Vignola agreed to a Negotiated Plea Agreement for Settlement of Disciplinary Matters Within the Department of Correction for the loss of the tools in December 2001 and the two in February 2005, and as a penalty, he agreed to forfeit 25 vacation days. (Joint Ex. 1). As part of his closing memorandum on the matter, the Agency Attorney handling the matter referred to Vignola's casual demeanor regarding the loss of the tools and his responsibility for them. (Tr. 501). The Closing Memorandum on the matter, which was drafted by the Agency Attorney, noted DOC's argument that Vignola was still attempting to place blame on Niles for the loss of the tools. (City Ex. F).

As a remedy, the Union asks that the Board order DOC to reassign Vignola to his position at GRVC, to rescind the charges preferred against Vignola, to cease and desist from interfering with, restraining, or coercing Petitioners' members in the exercise of Union activity, to cease and desist from engaging in discriminatory and retaliatory behavior against Union members, and to post an appropriate notice.

## **POSITIONS OF THE PARTIES**

### **Union's Position**

The Union argues that DOC discriminated and retaliated against Vignola for engaging in protected union activity by transferring him out of GRVC and recommending that disciplinary charges be proffered against him, in violation of NYCCBL § 12-306(a)(1) and (3).<sup>1</sup> The Union

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<sup>1</sup> NYCCBL § 12-306(a)(1) provides, in pertinent part:  
It shall be an improper practice for a public employer or its agents:

(1) to interfere with, restrain or coerce public employees in the exercise of their rights granted in section 12-305 of this chapter;

argues that it has amply demonstrated Vignola's involvement in union activity. Not only had he attended a labor-management meeting with his union representative, Henderson, in March 2004, Vignola also had his shop steward accompany him to the September 2004 maintenance staff meeting with Warden Davis. Moreover, Vignola copied his union representatives on reports he submitted to the administration regarding different working conditions.

The Union asserts that it showed that the employer's decision to transfer Vignola was based on his engagement in concerted activity. Warden Davis specifically mentioned that the work entailed meetings with the Union and admitted telling Henderson, during a telephone conversation after Vignola's March 2005 transfer, that Vignola was more trouble than he was worth. It is also undisputed that the administration believed that Vignola was the driving force behind the GRVC maintenance staff's dissatisfaction with Niles as their supervisor, as they explicitly said so.

Although the City claims that it had a legitimate business reason for transferring Vignola, it dredged up charges that were filed against him in 2001 and filed disciplinary charges against him, concluding with proceedings at OATH. Of the charges and resolution of charges of employees who reportedly lost department-assigned tools, only two arose at GRVC at or before the time that Vignola was assigned to work there. Vignola's situation is also distinguishable from the other GRVC

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\* \* \*

(3) to discriminate against any employee for the purpose of encouraging or discouraging membership in, or participation in the activities of, any public employee organization;

NYCCBL § 12-305 provides, in relevant part:

Public 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.

employees who were charged in that there had been a practice of retaliatory action taken against him by Niles.

Vignola's Union representative sought a labor-management meeting to discuss the employee's working conditions under Niles. Shortly thereafter, Niles neglected to process Vignola's Workers' Compensation claim. After Vignola reported finding unmarked tools in June 2004, Niles again neglected to process a second Workers' Compensation claim for Vignola. When Vignola reported Niles's failure to process the Workers' Compensation claims to his union representative and Warden Davis, Niles decided to search the locksmith workshop for unauthorized equipment in the absence of Vignola. Notwithstanding Niles's cover story that he went into the shop because another employee wanted a telephone, remarkably he did not see fit to put this in his own report of the incident just one day later.

Further, by retaliating against Vignola through transfer, disciplinary charges, and a poor evaluation, DOC engaged in conduct that was inherently destructive of important employee rights, in violation of NYCCBL § 12-306(a)(1).

**City's Position**

The City argues that Petitioner fails to allege specific acts by Vignola that constitute protected union activity. In a majority of the memos that Vignola submitted to Warden Davis complaining about Supervisor Niles, only one of them he signed as a Shop Steward. All the other memos were signed as A. Vignola, Locksmith GRVC. Furthermore, none of the memos submitted to Warden Davis were on union stationery, nor did Vignola utilize the grievance process and file grievances related to any of the complaints he brought to Warden Davis' attention. Therefore, it would be virtually impossible to attach any correlation between the labor-management meeting held

and the subsequent actions taken by management to ensure it has a secured facility.

Although Vignola attended a labor-management meeting, which is arguably a union activity, and one of the issues discussed at this meeting was Niles' supervisory abilities, there is no correlation between Vignola's attendance at the labor-management meeting and management's subsequent transfer of Vignola. The transfer of Vignola was done exactly a year after his attendance at the meeting and shortly after he lost two tools. Warden Davis testified that the decision was made to transfer Vignola to another facility because he continually lost tools, which became a safety hazard in the facility. Additionally, it was clear that Vignola had no intention of allowing Niles to supervise him.

Furthermore, the City contends that given the nature of DOC operations and the offenses committed by Vignola, it had legitimate business reasons for disciplining Vignola. Each charge against Vignola was filed because he failed to follow the proper procedures for securing his tools. Vignola did not deny the charges. The 2005 charges filed against Vignola included his flagrant disregard for DOC's safety policies. Vignola ultimately accepted the penalty imposed by pleading guilty to the charges. Neither Niles nor Warden Davis had anything to do with negotiating the penalties. Both Officer Lynch and the Agency Attorney who handled the charges testified that, when Vignola was asked about the tools he lost in February 2005, his responses were very nonchalant, and he did not comprehend the seriousness of his actions.

The City also argues that it had a legitimate business reason for transferring Vignola. DOC operates jails. In order to ensure the safety and security of the jails, orders and directives from the employees' superiors must be followed. Vignola's actions of losing tools repeatedly in the facility affected the security of the jail, which made Warden Davis very concerned. Warden Davis testified

repeatedly that it became clear that Vignola had no intention of being supervised by Niles. Additionally, Warden Davis as well as Burke had confidence in Niles' abilities and did not want to lose him. Vignola's continual demands for Niles' removal from GRVC in addition to Vignola's repeatedly losing his tools and creating a safety hazard in the facility made it apparent to Warden Davis that in order to maintain an effective work environment, it was best to transfer Vignola to another facility.

Therefore, based upon the above, the City contends that Petitioner has failed to establish that Respondent retaliated against Vignola by disciplining him for losing tools and subsequently transferring him to another facility in violation of NYCCBL § 12-306 (a)(1) and (3).

### **DISCUSSION**

The issue in the instant matter is whether DOC's transferring and taking other disciplinary actions against Vignola was done in retaliation for Vignola's protected union activity and, as such, violated NYCCBL § 12-306(a)(1) and/or (3). Based upon the totality of the record, we find that DOC did not discriminate or retaliate against Vignola by taking such actions. We further find that DOC had legitimate business reasons for transferring him out of a high-security facility because he was not able to maintain control of the tools in his inventory.

In considering discrimination and/or retaliation cases under the NYCCBL, this Board, in *Bowman*, 39 OCB 51 (BCB 1987), adopted the test enunciated in *City of Salamanca*, 18 PERB ¶ 3012 (1985), and its progeny, which states that, to establish a *prima facie* case, a petitioner must demonstrate that:

1. The employer's agent responsible for the alleged discriminatory action had knowledge of the employee's union activity; and



2. The employee's union activity was a motivating factor in the employer's decision.

*Bowman*, 39 OCB 51, at 18-19; *see also DC 37*, 1 OCB2d 6, at 27 (BCB 2008).

If the petitioner alleges sufficient facts concerning these two elements to make out a *prima facie* case, "the employer may attempt to refute petitioner's showing on one or both elements or demonstrate that legitimate business motives would have caused the employer to take the action complained of even in the absence of protected conduct." *Local 371, SSEU*, 1 OCB2d 25, at 16 (BCB 2008) (citing *SBA*, 75 OCB 22, at 22 (BCB 2005)); *see also CEU, Local 237, IBT*, 77 OCB 24, at 18-19 (BCB 2006).

We find that the Union has satisfied the first element of the *Salamanca* test. For activity to be protected under the NYCCBL, it must be related, even if indirectly, to the employment relationship and must be in furtherance of the collective welfare of employees. *Finer*, 1 OCB2d 13 (BCB 2008); *see Archibald*, 57 OCB 38, at 18 (BCB 1996); *McNabb*, 41 OCB 48, at 14-17 (BCB 1988). Participating in a labor-management meeting on behalf of other employees is a protected activity. *Local 376, DC 37*, 73 OCB 15, at 13 (OCB 2004); *see Local 2627, DC 37*, 71 OCB 27, at 9 (OCB 2003); *United Probation Officers Ass'n*, 45 OCB 53 (BCB 1990). If management has knowledge of that activity, a petitioner establishes the first prong of the *prima facie* case. *Local 376, DC 37*, 73 OCB 15 at 13.

The first evidence of protected activity that management would have been aware of was the February 19, 2004 letter from Henderson to Santangelo to arrange for an initial labor-management meeting regarding Vignola's problems with Niles, as documented in the proposed agenda. This was followed by the labor-management meeting to discuss those issues on March 16, 2004, which was attended by Vignola, Henderson, Santangelo, Burke, and the Deputy Warden. The issues discussed

at that meeting related to the employment relationship and to the furtherance of the collective welfare of employees, as the assignment of more locksmiths was discussed, as well as the issue of Vignola working alone.

Though Vignola listed the Union as a recipient of copies of memoranda that he wrote to management on occasions prior to that date, there is no evidence that the issues Vignola raised in the memoranda constitute protected activity. These issues related to him as individual and he was not pursuing collectively bargained rights on his own behalf. *Finer*, 1 OCB2d 13, at 15 (finding that the conduct in question must “at least be in furtherance of the collective welfare of employees, as distinguished from the welfare of an individual”); *see SSEU*, 79 OCB 34, at 9 (BCB 2007); *COBA*, 53 OCB 17, at 11 (BCB 1994); citing *McNabb*, 41 OCB 48, at 13 (quoting *Bd. of Educ. of Deer Park Union Free Sch. Dist.*, 10 PERB ¶ 4594, at 4689 (1977), *aff’d*, 11 PERB ¶ 3043 (1978)).

We now move to the second prong of the *Salamanca prima facie* test, which addresses the motivation behind the employment action in question. “[T]ypically, this element is proven through the use of circumstantial evidence, absent an outright admission.” *DC 37*, 1 OCB 2d 5, at 65 (BCB 2008); *see also CEU, Local 237*, 67 OCB 13, at 9 (BCB 2001); *CWA, Local 1180*, 43 OCB 17, at 13 (BCB 1989). However, our consideration of circumstantial or indirect evidence does not constitute a waiver of our pleading requirements, as “petitioner must offer more than speculative or conclusory allegations.” *SBA*, 75 OCB 22, at 22. Rather, “allegations of improper motivation must be based on statements of probative facts.” *Edwards*, 1 OCB2d 22, at 17; *see also SSEU, Local 371*, 77 OCB 35, at 15 (BCB 2006). If a *prima facie* case is established, “then the employer may attempt to refute this showing by demonstrating that legitimate business reasons would have caused the

employer to take the action complained of even in the absence of protected conduct.” *SSEU, Local 371*, 77 OCB 35, at 18; *see also Lamberti*, 77 OCB 21, at 17 (BCB 2006).

Although the relationship between Vignola and Niles could be described as fraught at best, we find that the deterioration of that relationship preceded Vignola’s protected union activity and that the animosity that continued between the two after the protected activity was based upon the conflict in personalities between Niles and Vignola, and not Vignola’s union activity. Before Niles arrived at GRVC, Vignola enjoyed a cordial relationship with his former supervisor, who accepted Vignola’s judgment seemingly at all times and possessed a demeanor, which, while he was on the stand at the hearing, could be best described as easy-going and deferential, at least in regard to his attitude toward Vignola.

After the August 2003 plumbing incident that caused inmate unrest, GRVC personnel were brought up on charges, demoted, and/or transferred out of the facility, including the then-warden, Vignola’s supervisor, and two plumbers. Taking the plumbing incident and the aftermath into account, it is credible that the incoming Warden would be particularly cognizant of the activities of the maintenance staff and have a desire to maintain a certain amount of vigilance over it, as Warden Davis had testified. It is also credible that the incoming supervisor, Niles, would share that viewpoint, as evidenced by Niles’ statements at the meeting he held with the maintenance staff when he first arrived at the facility.

Niles’ demeanor as a supervisor appeared to be completely different from his predecessor’s, and the conflict that resulted between him and Vignola became evident when Niles questioned Vignola’s large-scale modification to 11B. When confronted with a project that was estimated to take six workers either two weeks, according to Vignola, or six weeks, according to others, and

significantly modify the system, it was not unreasonable, considering his fresh tenure at GRVC, for Niles to consult his superiors, and, ultimately, another locksmith for their opinion on how to handle such a repair. Vignola, by his own admission and as observed by others at that early point, resented that a second opinion was even being solicited. Vignola did not even wait for Garrity and Henderson to begin looking at the linkage or profess an opinion on how to fix it, an opinion which very well could have been the same as Vignola's, before telling them in an irritated way, "You fix it." (Tr. 352). We also credit Niles' testimony that, when Garrity and Alexander began to work on the linkage, Vignola directed hostile comments at them, which made the atmosphere tense and led the Deputy Warden to tell him to stay away from the area.

Further, Vignola took advantage of the fact that his new supervisor, Niles, was on bereavement leave to have an electrician assigned to work with him by the acting supervisor, at least on some projects. His behavior up to this point shows that he already seemed to reject Niles as his supervisor. Additionally, the March 16, 2004 labor-management meeting, while including topics that were relevant to the employment relationship and that were in furtherance of the collective welfare of employees, appeared to be an artifice designed to enable Vignola to air his complaints about Niles' supervisory style and Niles' perceived temerity to seek a second opinion on the proposed extensive repairs to the linkage in 11B and other repairs.

This is not to say that Niles acted in an unimpeachable manner. The delayed submission of Vignola's two Worker's Compensation forms is suspect, and Niles' entrance into the locksmith shop, accompanied by two other witnesses, though he had the authority to do so, was ill-advised considering the circumstances. However, we find the evidence is more consistent with an animus related to a personal dislike and/or suspicion that Niles developed because of Vignola's both

demonstrated and perceived lack of respect for him as a supervisor, rather than animus based upon the fact that Vignola was a Shop Steward or was actively enforcing the collective bargaining agreement. Vignola's actions against Niles, which he attempts to cloak in the garb of protected activity, included the defiance of orders, accusations that Niles stole employees' tools in an effort to discredit them, and repeated attempts to undermine Niles' authority. Vignola could not accept that Niles was his supervisor and that he would have to obey his orders, so it appears that Vignola started a personal campaign against him. Conversely, Niles could not effectively manage Vignola and appeared to use petty means to irk Vignola. The fact that Vignola was occasionally aided by Henderson, his Union representative, does not change our analysis under these circumstances.

This conclusion is consistent with the Board's and the Public Employment Relations Board's rulings that when an action or series of actions can be linked to personal animus alone, a claim that an employer was motivated by anti-union animus necessarily must fail. *Edwards*, 1 OCB2d 22, at 18 (BCB 2008), citing *Warlick*, 29 OCB 1, at 3 and 7 (BCB 1982) ("personality conflict with one of his superiors" does not fall within the prohibited conduct contemplated by the NYCCBL and thus, this Board cannot remedy such a complaint); see *Norwich City School Dist.*, 26 PERB ¶ 4533 (1993) (union's charge of retaliation was dismissed where evidence showed that employer was motivated by employee's insubordinate conduct in context of personality conflict with a supervisor); *State of New York (Dept. of Transp.)*, 29 PERB ¶ 3011; see generally, *Hale*, 37 OCB 8, at 6 (BCB 1986).

Furthermore, it cannot be said that Vignola's transfer or the disciplinary charges pressed against him were a result of animus, anti-union or otherwise, despite Warden Davis' unwise comments. Before Niles and Warden Davis even arrived at GRVC, Vignola had lost tools on two separate occasions, which evinced a casual attitude toward securing his tool box inventory. On one

of those occasions, the then-warden completed an MOC, which was then forwarded to DOC's Administrative Trials and Hearings Division for further action. These charges were eventually pursued by the DOC when Vignola was charged with losing two additional tools on two separate occasions within a month in 2005. Vignola's loss of the additional tools in February 2005 represents a continuation of his casual attitude toward inventory that management reasonably believed had to be rectified in some manner, considering the concerns of a high-security facility where almost any item could be used as a weapon, let alone a lock pick, a screwdriver, wrench, or vise-grip.

The Union claims that Vignola was treated disparately from other employees who were assigned to GRVC at the time. The record shows no compelling evidence of such treatment, but instead shows an attempt by Vignola to shield himself from the consequences of his actions by virtue of his status as a Union official. Beyond that, it appears that no other employee lost tools with such frequency as Vignola.

Further, we find that the Employer had a legitimate business reason for transferring and disciplining Vignola. As mentioned above, Vignola, a locksmith, lost tools which could be used as weapons or for opening locks (in conjunction with another tool), on four separate occasions in a high-security facility, and he lost two of those less than a month before management transferred him and filed charges against him. His transfer and the filing of charges against him also occurred within days of the Captains' investigation, which found that he had failed to keep diligent track of his tools. This close proximity in time indicates that the transfer had more to do with security concerns than Union activity and lends credence to Warden Davis' concerns about security. Further, Vignola did not accept any responsibility for losing his tools and, indeed, attempted to blame others for the losses, which is a concern in such a high-security facility.

Additionally, it may have become apparent that, after all of the different means used by management to try to ameliorate the personality conflict between Vignola and Niles failed, transfer would be one of the few means left to resolve the difficulties. Warden Davis admits that he had to choose between Niles, a supervisor he valued, and Vignola in this personality conflict—he did not attempt to hide or gloss over the tension between the two men and admitted he had no easy answer to resolve it, except to transfer Vignola.

We attach no credence to Vignola's speculative and unsupported claims that Niles orchestrated the disappearance of his tools. Vignola's tools were lost in February 2005, a full six months after Warden Davis changed the locks on the locksmith shop. During that time, the tools were inventoried and accounted for. Vignola is responsible for tracking his tools and showed an alarming nonchalance about losing them, as noted by a DOC Captain during his investigation, by the Agency Attorney who processed his disciplinary charges, and observed by this Board at the hearing. Up to the date of his testimony in this hearing, he still maintained that he was not responsible for the February 2005 lost tools despite the overwhelming evidence that he had lost them and that they were his responsibility.

Therefore, we find that the Union failed to show that DOC retaliated against Vignola for engaging in protected Union activity in violation of NYCCBI § 12-306(a)(1) and (3) and, further, that the Union did not present any compelling evidence that DOC interfered with the exercise of Vignola's rights as an employee, which would constitute an independent violation of NYCCBL § 12-306(a)(1). Accordingly, we dismiss the petition in its entirety.

**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 docketed as BCB-2492-05, be and the same hereby is, dismissed as to any claims arising under NYCCBL § 12-306(a)(1) and (3).

Dated: New York, New York  
December 17, 2008

MARLENE A. GOLD  
CHAIR

GEORGE NICOLAU  
MEMBER

CAROL A. WITTENBERG  
MEMBER

M. DAVID ZURNDORFER  
MEMBER

PAMELA S. SILVERBLATT  
MEMBER

GABRIELLE SEMEL  
MEMBER