SSEU, L. 371, 3 OCB2d 22 (BCB 2010)

(IP) (Docket No. BCB-2778-09).

Summary of Decision*:** The Union claimed that the Manhattan DA retaliated against a member in violation of NYCCBL § 12-306(a)(1) and (3) by terminating the member in response to her request that her supervisor meet with the Union. The Union also claimed that the supervisor's anti-union statements at a staff meeting constituted interference in violation of § 12-306(a)(1). The Manhattan DA claimed that no violation has been established as the meeting request was neither protected activity nor the cause of the member's termination, which was approved prior to her meeting request. The Manhattan DA further argued that the supervisor had no anti-union animus, that it had legitimate business reasons for the termination, and that there was no independent act of interference. The Board found no retaliation, since the termination decision was made prior to the member's meeting request. However, the Board found that the supervisor's comments were inherently destructive of protected employee rights. Accordingly, the Union's petition is granted, in part, and dismissed, in part. ***(Official decision follows.)

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

In the Matter of the Improper Practice Proceeding

-between-

THE SOCIAL SERVICE EMPLOYEES UNION, LOCAL 371,

Petitioner,

-and-

THE DISTRICT ATTORNEY OF THE COUNTY OF NEW YORK,

Respondent.

DECISION AND ORDER

On June 29, 2009, the Social Service Employees Union, Local 371 ("Union") filed a verified improper practice petition on behalf of Latoya Barnes against the District Attorney of the County of New York ("Manhattan DA"). The petition alleges that the Manhattan DA retaliated against Barnes

in violation of New York City Collective Bargaining Law (New York City Administrative Code, Title 12, Chapter 3) ("NYCCBL") § 12-306(a)(1) and (3) by terminating her due to her request that her supervisor meet with the Union. The Union also claims that the same supervisor made anti-union comments when discussing Barnes' termination at a staff meeting. The Manhattan DA asserts the meeting request was not protected activity. The Manhattan DA also asserts that there is no causal connection between the meeting request and the decision to terminate Barnes, as the termination decision was made prior to the meeting request. Further, the Manhattan DA had legitimate business reasons for terminating Barnes, the supervisor had no anti-union animus, and there is no evidence supporting an independent claim of interference. The Board finds no retaliation, as the decision to terminate Barnes was made prior to her meeting request. The Board further finds that the supervisor's anti-union comments at the staff meeting were inherently destructive of protected employee rights. Accordingly, the Union's petition is granted, in part, and dismissed, in part.

BACKGROUND

The Trial Examiner held a one day hearing and found that the totality of the record established the relevant background facts to be as follows:

Barnes was hired in October 2006 in the Personnel Department as a Community Associate, a title covered by the Social Services and Related Titles Collective Bargaining Agreement ("Social Services CBA"). Manhattan DA employees, such as Barnes, have no disciplinary appeal rights pursuant to the Social Services CBA. Also, Barnes, as a non-competitive appointee with less than five years of continuous service prior to her termination, was not entitled to disciplinary appeal rights

under the New York State Civil Service Law ("CSL").[1]

Barnes testified that, when she was hired, she believed that she would be working under the Recruitment Coordinator, Mary Faughnan, and involved in recruitment. However, upon starting, she was informed by the Director of Human Resources ("HR") George Argyros that she would be reporting to Personnel Director Ann Wright and that her job would be data entry work. According to Barnes, although Wright was her supervisor, she mainly interacted with Faughnan. Barnes' primary job functions were processing new hires, sending email notices of new hires, and maintaining the New York City Automated Personnel System ("NYCAPS"). Barnes complained to Argyros and Wright that her actual job was different than the job she had anticipated. Barnes testified that she did not let her dissatisfaction impact her job performance.

Argyros testified that, in 2006, he discussed with Barnes her failure to take notes during training and that, in 2007, he observed deficiencies in Barnes' performance. According to Argyros, he verbally reprimanded Barnes three or four times a month for not completing tasks on time, not sending out necessary emails, not completing reports, and not carefully reviewing data. Argyros, however, acknowledged that, with one exception, no written criticisms of Barnes' performance existed. Also, Argyros claimed that, in August 2007, he offered Barnes a better paying position under him, that of Compensation Analyst, which constituted a pay increase of approximately 14%. According to Argyros, Barnes turned down the position. Argyros was aware that around this time Barnes had applied for two position in other departments.

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[1] CSL § 75(1) provides disciplinary appeal rights. Employees in the non-competitive appointments are only covered by CSL § 75(1) if the employee has completed five or more years of continuous service in non-competitive class positions. *See* CSL § 75(1)(c).

Barnes testified that she was never offered the Compensation Analyst position and did not turn it down. She acknowledged that she discussed it with Argyros, but testified that Argyros could not provide her with any specifics about the position and that she did not pursue it.

On November 28, 2007, Barnes received a written reprimand entitled "Work Productivity," which reads, in full:

> After ongoing review and observation, I hereby request that you limit the non-work related conversation between yourself and your co-workers. I further request that you provide the services necessary to your clients between the hours of 9am–5pm. We hope this action will help to increase work productivity and eliminate data entry errors.

(Manhattan DA Ex. 5). Argyros testified that the reprimand was based on Barnes' absences from her work location, using her cell phone, and ignoring him. Argyros claimed that he handed the reprimand to Barnes in his office.

Barnes, however, testified that she found the reprimand taped to her computer screen. Barnes contacted the Union, which set up a meeting in December 2007 between Argyros, Wright, Barnes, and a Union representative. Barnes acknowledged that Argyros did not object to the meeting. Argyros claimed that he frequently met with union representatives and that he had never denied an employee's request for union representation. Argyros noted that he had been a Union delegate and fully understood the procedures for dealing with unions. Argyros testified that after the December 2007 meeting, he continued to notice deficiencies in Barnes' performance, such as Barnes waiting by the door to leave 15 to 20 minutes before the end of the work day.

In late 2008, the Manhattan DA reorganized. The Personnel and Payroll Departments were incorporated into the HR Department. Barnes' job functions did not change, but her work space was moved and she now reported to HR Deputy Director Nelia Brooks.

Brooks testified that she found Barnes uncooperative and uncommunicative, and so informed Argyros. According to Brooks, Barnes would turn her back and not respond when Brooks said good morning. Argyros also testified that Barnes refused to communicate with him and Brooks. Barnes acknowledge that she did not have a strong working relationship with either Argyros or Brooks and would only talk to Brooks when it was absolutely necessary, and then only regarding work matters.

Brooks testified that she had concerns that Barnes was not entering data into NYCAPS in a timely manner. However, Brooks readily acknowledged that when she investigated, she found that Barnes was, in fact, timely entering the data.

In January 2009, Brooks assigned Barnes to develop a roll out plan for a new system that allowed employees to access benefit information. According to Brooks, Barnes did not complete the assignment in a timely manner and, instead of a written outline, only submitted screen shots from the new system. Barnes testified that Brooks did not criticize her performance on that project but acknowledged that the only documents she produced for the project were the screenshots.

Also in January 2009, Barnes complained to Brooks about the her data entry duties and about her work space being moved. Brooks and Barnes gave consistent descriptions of this conversation. Brooks told Barnes that if she was unhappy, she should start looking for another job because nothing was going to change. Barnes testified that she "felt threatened" by Brooks' comments and that, by January 2009, she believed that Argyros and Brooks wanted to terminate her. (Tr. 76).

Argyros testified that in 2009 he met twice with his superior, Executive Assistant Fred Watts, about terminating Barnes. Argyros could not provide exact dates for these meetings. He placed the first meeting at "[a]pproximately maybe a couple of months before" Barnes' termination. (Tr. 137). He placed the second meeting at "6 to 8 weeks" prior to Barnes' termination, "probably late

January." (Tr. 146; 170). According to Argyros, Watts agreed to terminate Barnes at the second meeting. Argyros acknowledged that no documents exist regarding the decision to terminate Barnes. Argyros testified that prior to approaching Watts, he discussed terminating Barnes with Brooks.

Brooks corroborated that the decision to terminate Barnes was made prior to the Barnes' meeting request. She testified that she was not the decision maker, but played a part in, and agreed with, the decision to terminate Barnes. Brooks did not know when Watts actually approved Barnes' termination but specifically recalled attending a meeting with Watts and Argyros at which Barnes' discharge was discussed a few days before Barnes' meeting request. Brooks also recalled discussing Barnes' termination with Argyros in February 2009. According to Brooks, they discussed not replacing Barnes, since winter was the slow season with few hires and most of Barnes' work was related to hiring.

On Thursday, March 26, 2009, Argyros sent Barnes an email requesting that she provide a detailed description of all tasks she had completed since March 16, 2009. Argyros testified that he sent the email because he was unable to locate Barnes on a number of occasions that week.

Barnes testified that the email made her nervous and uncomfortable as "[i]t threw up a bunch of red flags." (Tr. 52). Barnes believed that she was going to be replaced and that responding to the email would be "writing a book for the next person to do my job." (Tr. 52).

Barnes' entire reply to Argyros' first email was: "I have completed my daily/weekly work flow." (Union Ex. A). Argyros resent his email verbatim. Barnes testified that she showed the second email to two co-workers, asking them if they had received similar emails. Both said they had not. Barnes testified that she "knew it wasn't good" and spent nearly an hour and a half deciding how to respond. (Tr. 53). Barnes' reply reads, in full: "I am sorry I have not kept a detailed list of

my work, didn't know I was expected to. If you would like we can set up a meeting between yourself, me and my union rep[.] and discuss this in detail." (Union Ex. A). Argyros did not respond to Barnes' second email.

According to Argyros, Barnes' responses to his emails "did not decide the final outcome" as the decision to terminate her was made by Watts prior to the emails. (Tr. 140). Argyros testified that, after receiving Barnes' emails, he met with Brooks to have Barnes' termination finalized.

The next day, Friday, March 27, 2009, at approximately 4:20 pm, Brooks summoned Barnes to Argyros' office where the three briefly met. Argyros handed Barnes a letter that reads, in full: "Effective immediately, your services in the Office of the [Manhattan DA] are no longer required." (Union Ex. B). Barnes testified that no reasons for her termination were given. Argyros testified that Barnes had been terminated for poor performance and for not communicating with Brooks or him. Argyros was not asked if Barnes was informed of the grounds for her termination

Barnes testified that she learned from Faughnan that on Monday, March 30, 2009, Argyros had told Faughnan that Barnes' request "to meet with the Union had pissed him off." (Tr. 64). Faughnan, however, testified that she had no recollection of this. Argyros testified that he did not recall every having a conversation with Faughnan about Barnes' discharge.

On Tuesday, March 31, 2009, Argyros held a staff meeting to address the re-assignment of Barnes' workload. Barnes' termination was also discussed. Four of the six attendees testified as to this meeting: Alex Zorman, Patricia Miller, Argyros, and Faughnan. Brooks also attended the meeting but was not questioned about it.

Alex Zorman, a HR Analyst, testified that Argyros was angry at the staff for not doing Barnes' work. According to Zorman, Faughnan opined that Barnes' discharge was not warranted.

Zorman testified that Agyros stated "that it was his decision to dismiss [] Barnes and that he at this point was not worried about the Union's involvement or something like that." (Tr. 21). When asked if Argyros said that nobody could threaten him with the Union, Zorman replied: "Yes, I believe that was stated." (Tr. 30).

Patricia Miller, a Benefits Coordinator, described herself as a friend of Barnes. Her testimony fully corroborated the testimony of Zorman, including that Argyros was upset with the staff for not picking up Barnes' workload. Miller agreed that Argyros stated that "nobody could threaten him with the Union"; that "he could discharge anyone else"; and that "everyone just had to get over [] Barnes being discharged." (Tr. 111-112). According to Miller, the only reference Argyros made to the Union was his comment that nobody could threaten him with the Union.

Argyros testified that he called the March 31 meeting primarily to address the reassignment of Barnes' work, but also to make sure that the staff understood what had happened. Argyros emphatically denied that he ever stated that nobody could threaten him with the Union, that he said he had terminated Barnes, that he said that the staff had to get over Barnes' termination, or that he said that he could fire any of the staff.

Faughnan was absent for most of the meeting and did not hear Argyros state that nobody could threaten him with the Union. She described herself as a friend of Barnes and corroborated that she told Argyros at the meeting that she did not agree with Barnes' discharge.

As a remedy, the Union requests that the Board order the Manhattan DA to cease and desist from discriminating against Barnes or any other employee represented by the Union. The Union also requests that Barnes be reinstated with full back pay, benefits and seniority credit for the time from her discharge to her reinstatement.

POSITIONS OF THE PARTIES

Union's Position

The Union argues that the Manhattan DA violated the NYCCBL by terminating Barnes one day after she requested a meeting between herself, Argyros, and the Union. When Barnes requested the meeting, she reasonably believed that the "skids were being greased" for her discharge. Under such circumstances, her request for a meeting was protected activity.

The Union further argues that Barnes' protected activity was a motivating factor in Argyros' decision to terminate her. It is undisputed that Argyros knew of Barnes' meeting request. The Manhattan DA failed to substantiate, document or corroborate Argyros' testimony that the decision to terminate Barnes was made prior to the meeting request. Not a single piece of paper was produced establishing the date of the decision to terminate Barnes. Noticeably, the Manhattan DA failed to call Watts–a witness fully under its control–to corroborate Argyros' claim that Watts approved Barnes' termination prior to her meeting request. The Union argues that, if called, Watts would not have corroborated Argyros' testimony.

The Union claims that Argyros told Faughnan that Barnes' reference to the Union had "pissed him off." At a staff meeting, Argyros stated that nobody could threaten him with the Union, that he fired Barnes, and that he could fire the staff. These statements, combined with the temporal proximity of the termination to the meeting request, establish that Barnes' termination was motivated by anti-union animus. Argyros' denial of making anti-union statements is clearly untrue. Two disinterested witnesses testified that Argyros said that nobody could threaten him with the Union.

Further, the Union argues that the Manhattan DA's claimed legitimate business reasons are pretextual. The Manhattan DA failed to establish any work deficiencies. Other than a single

paragraph memorandum fifteen months prior to her termination, the Manhattan DA has not produced any written criticism of Barnes' work.

Manhattan DA's Position

The Manhattan DA argues that the Union has failed to establish that Barnes was engaged in protected activity. The suggestion of a meeting between Barnes, her supervisor, and her Union is not protected activity. The request was not made in the furtherance of the collective welfare of employees. Barnes' request does not implicate a right related to the collective bargaining agreement or the NYCCBL. Barnes had no statutory right to representation at her proposed meeting. Although the Union has not made an explicit *Weingarten* argument, any such argument must fail as Barnes' requested meeting would not have been investigatory or disciplinary in nature. As the NYCCBL § 12-306(a)(3) claim must fail, so to must any derivative NYCCBL § 12-306(a)(1) claim, and no evidence has been presented to establish an independent violation of NYCCBL § 12-306(a)(1).

The Manhattan DA further argues that there was no causal connection between the meeting request and Barnes' termination. Unrebutted testimony established that the decision to terminate Barnes antedated her meeting request. There is no evidence that Argyros, a former Union delegate, harbored any anti-union animus. To the contrary, Argyros testified without contradiction that he regularly meets with the Union and has a good working relationship with it. The only evidence presented by the Union is temporal proximity–that Barnes was terminated the day after she requested the meeting–which, standing alone, is insufficient to establish anti-union animus. The Manhattan DA denies that Argyros ever stated that Barnes' request for a meeting with the Union "pissed him off" or that "nobody could threaten him with the Union." The first statement was allegedly made by Argyros to Faughnan, and both testified that the statement was never made. The Manhattan DA

acknowledges that two attendees to the March 31 meeting testified that they heard the second statement. However, all witnesses "agree that there was no statement made by Argyros directly or implicitly connecting [Barnes'] termination with retaliation." (Manhattan DA Brief at 13).

Finally, the Manhattan DA argues that it had legitimate business reasons for the termination. Barnes would not perform assigned tasks, maintained an insubordinate attitude, and would not accept alternate opportunities. Barnes was a subpar employee who had received numerous verbal reprimands, one written reprimand, and would have been terminated irrespective of any Union activity. The Manhattan DA notes that it "need not demonstrate 'just cause' for her termination" as Barnes has no civil service rights, nor the ability to grieve disciplinary matters. (*Id.* at 15 n. 10).

DISCUSSION

To establish a *prima facie* showing of retaliation and violation of NYCCBL § 12-306(a)(3), and derivatively of NYCCBL § 12-306(a)(1), a petitioner must satisfy the *Bowman/Salamanca* test:

> 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.

DEA, 2 OCB2d 21, at 11-12 (BCB 2009) (citing *Bowman*, 39 OCB 51, at 18-19 (BCB 1987); *City of Salamanca*, 18 PERB ¶ 3012 (1985)). If the petitioner makes out a *prima facie* showing, "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." *DEA*, 2 OCB2d 21, at 12 (quoting *Local 371, SSEU*, 1 OCB2d 25, at 16 (BCB 2008)).

We find that the Union has made a *prima facie* showing. However, the Manhattan DA has refuted the *prima facie* showing by establishing that the decision to terminate Barnes was made prior to her request for a meeting with her Union.[2]

The Union argues that Barnes' request for a meeting between herself, her supervisor, and her Union constituted protected activity. The Manhattan DA argues that requesting a meeting under the circumstances herein does not qualify as protected activity. We find that an employee's seeking the Union's assistance to resolve concerns regarding the employment relationship is protected activity. *CSBA, L. 237*, 71 OCB 5, at 10 (BCB 2003); *Rivers*, 65 OCB 32, at 8 (BCB 2000).

The Manhattan DA and the Union dispute whether the decision to terminate Barnes was made before or after her meeting request. However, it is undisputed that Barnes was terminated the day after her meeting request. It is also undisputed that, although Barnes was aware earlier that her job was at risk, her first actual notice of her termination was after her meeting request. There is, therefore, temporal proximity between Barnes' email and her actual termination.

The Union argues that anti-union animus is established by Argyros' March 30 statement to Faughnan that Barnes' mention of the Union had "pissed him off." There is insufficient credible evidence to establish that Argyros made this statement. Faughman, a friend of Barnes who opined to her superiors that Barnes did not deserve to be terminated, credibly testified that she had no recollection of Argyros making any such statement.

The Union also argues that Argyros statements in the March 31 meeting that "nobody could threaten him with the Union"; that "he could discharge anyone else"; and that "everyone just had to

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[2] Barnes does not claim that the timing of her termination was accelerated by her meeting request. Therefore, we need not determine whether such a claim would state a cause of action.

get over Barnes being discharged" establishes anti-union animus. Argyros strongly denies making these statements. Miller and Zorman, however, testified that these statements were made. As these two versions are unreconcilable, we must make a credibility determination.

We find Miller and Zorman to be more credible. Their testimonies are entirely consistent with each other and with Faughnan's. *COBA*, 2 OCB2d 7, at 52 (BCB 2009) (corroboration strengthens credibility). We are aware that Miller's admitted friendship with Barnes may be a source of bias. However, no such concern exists regarding Zorman, whose testimony fully corroborated Miller's. Also, we note that Miller's and Zorman's testimony partially supported the Manhattan DA's position. They both testified that the focus of Argyros' ire was not the Union, but the staff for not taking over Barnes' workload.

Argyros' testimony, on the other hand, conflicted with the consistent accounts of the other witnesses. *See COBA*, 2 OCB2d 7, at 52. We note that Brooks, who attended the March 31 meeting and was in a position to refute or corroborate Argyros' testimony, was not questioned regarding the March 31 meeting. *Id.* (failure to refute or corroborate testimony when party had opportunity to question a witnesses who appeared in the matter weakens credibility); *Colella*, 79 OCB 27, at 57 (BCB 2007); *see, e.g., Schwartz v. New York City Dept. of Educ.*, 22 A.D.3d 672, 673 (2d Dept. 2005); *Brown v. Village Mobil Serv. Station, Inc.*, 167 A.D.2d 158, 159 (1st Dept. 1990).[3]

[3] We also note that there were logical inconsistencies in Argyros' testimony, such as he offered Barnes a position that paid 14% more than she was earning after he had given her over 30 verbal reprimands. *See James-Reid*, 1 OCB2d 26, at 29 (BCB 2008) (inherently illogical testimony weakens credibility); *see also COBA*, 2 OCB2d 7, at 54; *SBA*, 75 OCB 22, at 25-26 (BCB 2005); *see generally People v. Hymes*, 2001 N.Y. Misc. LEXIS 429 (Sup. Ct. Queens Co. August 16, 2001); *Corines v. State Bd. for Professional Med. Conduct*, 267 A.D.2d 796, 799-800 (3d Dept. 1999).

Therefore, we find that the Union has established a *prima facie* showing that Barnes was terminated after requesting a meeting with her Union. However, we find that the Manhattan DA has refuted the Union's showing of causation by establishing that the decision to terminate Barnes was made prior to her meeting request. *See Edwards*, 1 OCB2d 22, at 18 (BCB 2008) (allegedly retaliatory and/or discriminatory action which antedated protected union activity cannot violate the NYCCBL); *DEA*, 79 OCB 40, at 22 (BCB 2007); *Wilson v. New York City Housing Auth.*, 2007 U.S. Dist. LEXIS 25258 at * 30 (S.D.N.Y. April 2, 2007). The termination would have occurred absent Barnes' exercise of protected activity. We acknowledge that no written documentation regarding the termination was produced. Nevertheless, the Board is persuaded by Brooks' unequivocal testimony. Brooks had detailed recollections of her conversations with Argyros in February, at which the ramifications of Barnes' termination were discussed. She also clearly recalled a meeting with Watts and Argyros in late March prior to Barnes' meeting request at which Barnes' impending termination was discussed. We note that on several points, Barnes corroborated Brooks' testimony. Barnes and Brooks gave consistent accounts of the January 2009 meeting in which Brooks suggested that Barnes look for another job. Barnes also corroborated Brooks' description of her work product on the January 2009 project. Further, Brooks readily acknowledged that she was in error when she suspected that Barnes was not entering data into NYCAPS in a timely manner.

This conclusion is buttressed by Barnes' testimony that as early as January 2009 she believed that Argyros and Brooks wanted to terminate her. *See DEA*, 79 OCB 40, at 22. Thus, we find that the decision to terminate Barnes was made prior to her protected activity, and that the Manhattan DA did not violated or NYCCBL § 12-306(a)(3), or derivatively NYCCBL § 12-306(a)(1). *Id.*

We also note that, while the record reflects a poor working relationship between Barnes and her superiors, such appears to be a consequence of personal animus unrelated to union activity. It is undisputed that the parties' poor working relationship antedated the March 2009 emails. It is also undisputed that Argyros readily met with Barnes and her Union representative when Barnes so requested in December 2007. We have long held 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." *Local 1087, DC 37*, 1 OCB2d 44, at 29 (BCB 2008); *see also Warlick*, 29 OCB 1, at 7 (BCB 1982) (personality conflicts with superiors do not fall within the prohibited conduct contemplated by the NYCCBL); *Norwich City School Dist.*, 26 PERB ¶ 4533 (1993) (retaliation charge dismissed where employer's motivation stemmed from the employee's personality conflict with a supervisor).

Claimed Independent NYCCBL § 12-306(a)(1)

The Manhattan DA argues that no evidence has been presented to establish an independent violation of NYCCBL § 12-306(a)(1). We disagree. We have long recognized that conduct that "contained an innate element of coercion, irrespective of motive, [can] constitute conduct which, because of its potentially chilling effect . . . is inherently destructive of important rights guaranteed under the NYCCBL." *ADWA*, 55 OCB 19, at 40 (BCB 1995); *see also Feder*, 1 OCB2d 27, at 12-14 (BCB 2008) (explaining the inherently destructive standard for an independent NYCCBL § 12-306(a)(1) violation); *see*, *e.g.*, *NLRB v. Great Dane Trailers, Inc.,* 388 U.S. 26, at 34 (1967) (origins of the inherently destructive standard).

We have already found that, in the March 31 meeting, when discussing Barnes' termination, Argyros said that nobody could threaten him with the Union. We find this statement to be a veiled

threat. In *CSTG, L. 375*, 3 OCB2d 14 (BCB 2010), we found that a superior's comment in reference to a grievance that the employee should "let it go" was inherently destructive of employee rights. The employee "reasonably viewed . . . [the] instruction to 'let it go,' as an implicit threat and a demand that he drop his grievance." *Id.*, at 15. Here, an employee could reasonably conclude based upon Argyros' statements that any Union involvement would be detrimental to their working relationship with Argyros. Such conduct is inherently destructive of employee rights and thus constitutes a violation of NYCCBL § 12-306(a)(1). Argyros' motivation behind making these statements is not determinative. *See CSTG, L. 375*, 3 OCB2d 14, at 14; *DC 37, L. 376*, 73 OCB 6, at 11 (BCB 2004) (conduct found to be inherently destructive "[r]egardless of what [the manager's] intentions may have been, [as] the effect of her actions was to 'discourage and inhibit' the members" in the exercise of their rights). Accordingly, we find the statements to have been inherently destructive of employee rights and to thus constitute a violation of NYCCBL § 12-306(a)(1).

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, Docket No. BCB-2778-09, filed by the Social Service Employees Union, Local 371, against the District Attorney of the County of New York be, and the same hereby is, granted to the extent that the District Attorney of the County of New York has violated New York City Collective Bargaining Law § 12-306(a)(1); and it is further

ORDERED, that the improper practice petition, Docket No. BCB-2778-09, filed by the Social Service Employees Union, Local 371, against the District Attorney of the County of New York be, and the same hereby is, dismissed to the extent that the District Attorney of the County of New York did not violate New York City Collective Bargaining Law § 12-306(a)(3); and it is further

ORDERED, that the District Attorney of the County of New York cease and desist from discouraging Union members from utilizing the Union; and it is further

ORDERED, that the District Attorney of the County of New York post the attached Notice to Employees for no less that thirty days at all locations used by the District Attorney of the County of New York for written communications with the bargaining unit employees.

Dated: May 25, 2010
New York, New York

MARLENE A. GOLD
CHAIR

GEORGE NICOLAU
MEMBER

CAROL A. WITTENBERG
MEMBER

PAMELA S. SILVERBLATT
MEMBER

M. DAVID ZURNDORFER
MEMBER

CHARLES G. MOERDLER
MEMBER

GABRIELLE SEMEL
MEMBER

NOTICE
TO
ALL EMPLOYEES
PURSUANT TO
THE DECISION AND ORDER OF THE
BOARD OF COLLECTIVE BARGAINING
OF THE CITY OF NEW YORK
AND IN ORDER TO EFFECTUATE THE POLICIES OF THE
NEW YORK CITY COLLECTIVE BARGAINING LAW

We hereby notify:

That the Board of Collective Bargaining has issued 3 OCB2d 22 (BCB 2010), determining an improper practice petition between the Social Service Employees Union, Local 371, and the District Attorney of the County of New York.

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, Docket No. BCB-2778-09, filed by the Social Service Employees Union, Local 371, against the District Attorney of the County of New York be, and the same hereby is, granted to the extent that the District Attorney of the County of New York has violated New York City Collective Bargaining Law § 12-306(a)(1) by discouraging Union members from utilizing the Union; and it is further

ORDERED, that the improper practice petition, Docket No. BCB-2778-09, filed by the Social Service Employees Union, Local 371, against the District Attorney of the County of New York be, and the same hereby is, dismissed to the extent that the District Attorney of the County of New York did not violate New York City Collective Bargaining Law § 12-306(a)(3); and it is further

ORDERED, that the District Attorney of the County of New York cease and desist from discouraging Union members from utilizing the Union; and it is further

ORDERED, that the District Attorney of the County of New York post the attached Notice to Employees for no less that thirty days at all locations used by the District Attorney of the County of New York for written communications with the bargaining unit employees.

District Attorney of the County of New York
(Department)

Dated: _____
(Posted By)
(Title)

This Notice must remain conspicuously posted for 30 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.