

Grazioli , 37 OCB 2 (BCB 1986) [Decision No. B-2-86 (IP)], aff'd, Grazioli v. Anderson, No. 2759/86 (Sup. Ct. N.Y. Co. Jan. 29, 1987).

OFFICE OF COLLECTIVE BARGAINING  
BOARD OF COLLECTIVE BARGAINING

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In the Matter of the Improper  
Practice Proceeding

-between-

DECISION NO. B-2-86

MITCHELL GRAZIOLI,

DOCKET NO. BCB-789-85

Petitioner,

-and-

DEPARTMENT OF CORRECTION,  
CITY OF NEW YORK,

Respondent.  
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**DECISION AND ORDER**

This proceeding was commenced on June 10, 1985, with the filing of a verified improper practice petition by Mitchell Grazioli (herein "petitioner"), a corrections officer, against the New York City Department of Correction (hereinafter "respondent" or "City"). On June 25, 1985, the City filed a verified answer. No reply was filed by petitioner.

**The Petitioner's Position**

The petition alleges that, on March 30, 1985, the warden at the Manhattan House of Detention ordered correction officers to participate in a survey conducted

by the National institute of Corrections (hereinafter "NIC") and threatened them with discipline if they did not do so although petitioner, a representative of the Correction Officers Benevolent Association (hereinafter "COBA"), informed the warden that COBA had recommended that the officers not participate in the survey.

**The City's Position**

Preliminarily, the City states that the National Institute of Corrections is a professional organization which conducts surveys of correction facilities nationwide, and publishes reports based on analyzes of the survey data. Such reports are intended to be used by NIC constituents to evaluate and/or improve efficiency. The City admits distributing the NIC questionnaire to corrections officers on March 18 and 19, 1985, and, on March 20, 1985, requesting that corrections officers submit to personal interviews by NIC personnel. The City states that the questionnaires were collected by a nonsupervisory corrections officer and given directly to NIC personnel, and that the Department neither knows which officers participated in the survey nor received any data or verbal reports relating to

the Survey from NIC personnel. The City also, asserts that no corrections officer was disciplined in connection with the survey.

Inasmuch as petitioner did not submit a reply denying any of the new facts above alleged in the City's answer, they are deemed to be admitted under Section 7.9 of the Revised Rules and Regulations of the Office of Collective Bargaining.

The City takes the position that the petition fails to state a claim inasmuch as no facts are alleged which amount to a violation of Section 1173-4.2(a) (1) or (3) of the New York City Collective Bargaining Law as amended (hereinafter "NYCCBL"); that requesting participation in such a survey falls within management's right to "direct employees" under Section 1173-4.3(b) of the NYCCBL; that hypothetical allegations of discipline are insufficient to raise a prima facie case; and that Grazioli, as an individual petitioner, lacks standing to raise improper practice claims on behalf of other corrections officers.

#### Discussion

The petitioner alleges that respondent committed an improper practice by ordering employees to participate

in the NIC survey and by threatening discipline if they did not comply. Nowhere, however, does petitioner state that any action of a City official was based upon motives prohibited by NYCCBL Section 1173-4.2(a); how any such conduct interfered with or otherwise violated the rights to organize and to bargain collectively (or to refrain from doing so) granted by Section 1173-4.1; or how such conduct discriminated against petitioner or any other employee. Nor is there any allegation that any employee was actually disciplined in connection with participation or nonparticipation in the survey. More over, we note that Section 1173-4.3(b) of the NYCCBL specifically provides that the City has the right to, inter alia,

determine standards of services to  
be offered by its agencies; ...  
direct its employees; ... maintain  
efficiency of governmental operations; ...

In the absence of specific facts which support petitioner's conclusion, we find that a request or requirement by the City that employees participate in the NIC survey appears to fall within the realm reserved to it by Section 1173-4.3(b).

In sum, the record herein is devoid of any evidence that respondent undertook any action which was intended

to or did, in fact, interfere with or diminish petitioner's rights under the NYCCBL. In the absence of a showing of a denial or violation of rights guaranteed by our law or any inhibition of protected activity, we cannot find that a violation of the NYCCBL has been stated against the Department of Correction.<sup>1</sup>

For the reasons set forth above, we are compelled to dismiss the instant improper practice petition.

**O R D E R**

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 petition filed herein by Mitchell Grazioli seeking a finding of an improper practice on

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<sup>1</sup> Decision Nos. B-12-84; B-2-84.

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be, and the same hereby is, dismissed.

DATED: New York, N.Y.  
January 22, 1986

ARVID ANDERSON  
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