

UPOA & Nunz v. City, DOP, 41 OCB 12 (BCB 1988) [Decision No. B-12-88 (IP)]

OFFICE OF COLLECTIVE BARGAINING  
BOARD OF COLLECTIVE BARGAINING  
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In the Matter of the Improper  
Practice Proceeding

-between-

UNITED PROBATION OFFICERS  
ASSOCIATION AND ROBERT NUNZ,

Petitioners,

DECISION No. B-12-88

DOCKET NO. BCB-986-87

-and-

THE CITY OF NEW YORK AND THE  
NEW YORK DEPARTMENT OF PROBATION,

Respondents.

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DETERMINATION AND ORDER

On August 4, 1987, Supervising Probation officer Robert A. Nunz ("Nunz") and the United Probation Officers Association ("UPOA") filed a verified improper practice petition alleging that respondents James Payne, former Commissioner of the New York City Department of Probation ("Department") and the City of New York ("City") violated the New York City Collective Bargaining Law ("NYCCBL") when they denied petitioner Nunz a promotion because of his union activities and association. On August 28, 1987, the City, appearing by its Office of Municipal Labor Relations, filed a verified answer to the petition. On September 9, 1987, petitioners filed a verified reply.

Thereafter, on October 21, 1987, a hearing was held

before a Trial Examiner designated by the Board of Collective Bargaining ("Board"). Post-hearing briefs were submitted on December 11, 1987.

#### Facts

Petitioner Nunz has been employed in the Department of Probation since 1972 when he was appointed to the title Probation Officer ("PO"). In April 1983, he was promoted to Supervising Probation Officer ("SPO"). Employees serving in the PO and SPO titles are included in a bargaining unit represented by the UPOA.<sup>1</sup>

In 1986, Nunz took a civil service examination for the title Administrative Probation officer ("APO"), a position classified in the Managerial Service. In June 1987, petitioner learned that he had passed the APO examination and was ranked eleventh on a list of-sixty persons eligible for promotion. In July, some eighteen of the eligibles, including Nunz, were interviewed by then Commissioner James Payne. Most of the APO vacancies were in positions bearing the office title "Branch Chief"

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<sup>1</sup> The UPOA is the certified collective bargaining representative for employees in the titles of Probation Officer Trainee, Probation Officer, Senior Probation Officer and Supervising Probation Officer. Cert. No. 23-78, as amended by Decision No. 14-82.

which is the first level of managerial responsibility and involves managing a local borough unit for the Department. Some twenty of the eligibles were appointed to APO Positions. Nunz was not.

The record demonstrates that Nunz has an outstanding record with the Department. Performance evaluations for periods during 1983-84 and 1984-85 rate his performance as "superior" (the highest available rating) in all categories. Additional comments attest to his punctuality, outstanding attendance record, sense of responsibility, cooperative attitude and overall excellence. In July 1986, Nunz was one of only 39 employees in the Department to receive a merit increase. Petitioner Nunz holds a bachelor's and a master's degree and received postgraduate training in psychology and law. Before joining the Department, Nunz was a priest in the archdiocese of New York.

Since becoming a probation officer, Nunz has been an active member of the UPOA. He has served in various positions of responsibility, including Executive Board representative, delegate and as one of four union members on a joint labor-management committee. Nunz' testimony concerning examples of his union activity and opposition to management actions and policies is unrefuted:

- \_\_\_\_\_1. in a May 12, 1987 memorandum to Branch Chiefs, Nunz demanded the withdrawal of certain assignments to Pos which the UPOA considered to be out-of-title work;
2. he had "lengthy and argumentative discussions" with management members of the labor-management committee concerning a new requirement that SPOs work a 9 ½hour day;
3. during a labor-management committee meeting, Nunz objected to the Department's refusal to put its overtime policy in writing and was told "to be quiet and to behave";
4. he testified as a witness at an arbitration hearing where the UPOA sought implementation of a prior award concerning safety and health conditions in the workplace;
5. he wrote articles for the UPOA newspaper indicating his concern about excessive caseloads and the high turnover rate among probation officers; he attributed the latter problem to low job satisfaction and stated that he would seek to have that problem addressed by a labor-management committee.

It is the UPOA's contention that Nunz was denied a promotion because of his involvement in activities such as these.

On July 9, 1987, and again on July 20, 1987, Nunz was interviewed by Commissioner Payne concerning his background and qualifications for an APO position. The record shows that during these interviews the Commissioner asked Nunz at least several, and perhaps as many as

five or six, times about his involvement with the union.

According to Nunz, the Commissioner questioned whether

someone like yourself who has been so involved with the rights of union workers can perform the tasks that an administrative probation officer has to perform (Tr. 53-54).<sup>2</sup>

Payne emphasized that he needed managers who would give him their input into a decision but who would be able to abide, by any decision taken and carry it out. Nunz tried to assure the Commissioner that his union background would not interfere with his ability to perform as an APO and said that he thought he could do everything that the job required.

Commissioner Payne testified that before the first interview with Nunz he was inclined not to appoint him as an APO because he thought Nunz was immature. After that meeting he stated that he was inclined to appoint Nunz, but wanted to meet with him again because he still had some reservations. Apparently the Commissioner's sources informed him that Nunz was "vitriolic" in the performance of his union activities. When asked by Nunz for an example of what he meant by "vitriolic", the Commissioner.

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<sup>2</sup> References to the transcript of the hearing held in this matter are indicated by "Tr." followed by the page number(s).

cited an article in a recent UPOA newsletter that referred to an employee who had just given birth (and to a named Assistant Commissioner in the Department) in a manner which Payne found offensive (Petitioners' Exhibit 11). Although Nunz had nothing to do with the article, he stated that, as a union official, he would take responsibility for it.

During the second interview, the Commissioner asked Nunz what he deemed to be a critical question:

I posed to him a hypothetical where I had announced a policy or was considering announcing a certain policy, I didn't specify what type of policy it was, and I indicated that you say you had some reservations about the policy, you came in, you spoke to me about it, you told me what you thought, you told me how modifications should be done, we discussed it, and after we discussed it I indicated that the policy would go in effect, can you assure me, you know, that you could follow it through, you could take it and do exactly what you're supposed to do. And his response was that if he felt that the policy or procedure was humane, he would do it.

Q. Did he express what he would do if he did not feel it was humane?

A. He said he would have great difficulty doing it if he felt it wasn't humane. (Tr. 81)

Nunz, testifying in rebuttal, denied having used the word "humane"; according to Nunz, he told the Commissioner that if a policy was "agreed upon," he would implement it. Asked to explain what he meant by "agreed upon," Nunz stated

that the Commissioner had indicated that he would seek input and opinions from his managers before making a decision - that "basically an agreement had to be made on what has to be done" (Tr. 124).

In addition to Nunz, only two other candidates for APO positions were called to a second interview. Both were appointed. one of them was a union official.<sup>3</sup>

#### Positions of the Parties

##### UPOA Position

Petitioners contend that the record establishes "beyond a reasonable doubt" that the decision not to promote Nunz to an APO position was the result of respondent Payne's anti-union animus. Specifically, UPOA points to the following facts:

1. that Payne repeatedly inquired of Nunz during the interview process whether his union activity would interfere with his ability to perform as an APO;
2. that Payne characterized Nunz as "vitriolic" in the manner in which he espoused union positions;
3. that Payne was aware of articles written or endorsed by Nunz which appeared in the UPOA newsletter and found them to be objectionable.

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<sup>3</sup> Henry Eisig was serving as Treasurer of the UPOA at the time of his promotion to an APO position.

In addition, the union asserts that Nunz' interviews were longer than those of other APO candidates, reflecting the Commissioner's concern with Nunz' union activities. Petitioners conclude that:

[i]t is abundantly obvious that the Commissioner decided not to appoint Nunz to an Administrative Probation Officer position because of the Commissioner's anti-union animus.... Petitioner's Brief, p. 13.

Petitioners argue that the Board should accept Nunz' version of the exchange between himself and the Commissioner on the "critical question" posed by the latter at the second interview because the Commissioner was not a credible witness. UPOA points to alleged inconsistencies in Payne's testimony, i.e., that Payne "alternatively claimed that Nunz was not promoted because he (1) was immature, (2) did not respond correctly to one critical question or (3) was "vitriolic" in his manner of espousing the UPOA's cause as either a UPOA delegate or Executive Board Member" (Petitioner's Brief pp. 18-19). Further, the union suggests that a negative inference as to Payne's credibility should be drawn from the circumstances surrounding his departure from City government.<sup>4</sup> By contrast, it is

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<sup>4</sup> See Petitioner's Exhibit 12.



alleged, the testimony of petitioner Nunz "with his superior credentials, priestly background and academic attainments," is worthy of belief.

The UPOA concludes that, since petitioners have met their burden of establishing improper motivation, and the City has failed to demonstrate that Nunz would have been denied a promotion even if he were not a union activist, the petition should be granted.

#### City's Position

Respondent advances three arguments in support of its position that the petition should be dismissed. First, it asserts that, applying the test adopted by the Public Employment Relations Board ("PERB") in City of Salamanca, 18 PERB ¶3012 (1985), and by this Board in Bowman v. City of New York, Decision No. B-51-87, petitioners have failed to establish a prima facie case under the NYCCBL. According to the City, petitioners have failed to allege facts which, if proven, would demonstrate a connection between Nunz' union activities and the Commissioner's decision not to promote him. Respondent argues that it is not improper to ask a union official whether his involvement in union activities would prevent

him from being able to serve as a manager, nor is the recitation of a litany of union activities by petitioners enough to establish improper motive. The City notes further that each of the individuals ultimately appointed to the APO position was previously a member of the union and one of these was Treasurer of the UPOA at the time of his promotion. Respondent concludes that the UPOA has not offered any evidence that former Commissioner Payne harbored anti-union animus toward petitioner Nunz and moves this Board to dismiss the petition as failing to state a prima facie case.<sup>5</sup>

Second, respondent contends that, even if petitioners have established a prima facie case, the petition should be dismissed because the denial to Nunz of a promotion to an APO position was based upon legitimate business considerations and would have occurred even in the absence of union activity. The City avers that the decision not to promote was based solely on Commissioner Payne's impression, whether or not a correct one, that Nunz would not be an

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<sup>5</sup> The City moved to dismiss the petition at the close of the UPOA's evidence in the hearing in this matter. The Trial Examiner advised respondent that she did not have authority to make a ruling that would be dispositive of the case and that the motion would be submitted to the Board together with all of the evidence.

effective Branch Chief, specifically because of his alleged statement that he would have great difficulty implementing a management policy which he felt was not "humane."

As its third defense, the City asserts that it has the right pursuant to NYCCBL §12-307b unilaterally "to determine the standards of selection for employment" and the "personnel by which government operations are to be conducted." These rights, respondent maintains, include the determination of criteria to be used in the promotion process as well as the decision as to who shall be promoted. Absent a clear and explicit waiver which, the City argues, was not present here, management had the right to determine that Nunz did not meet the qualifications for promotion, which included the ability to implement Department policy.

For the foregoing reasons, the City seeks an order dismissing the petition in its entirety.

#### Discussion

The petitioners in this matter contend that the denial of a promotion to Robert Nunz constitutes a violation of §12-306a(1) and (3) of the NYCCBL, which provides that it shall be an improper practice for a public

employer:

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

\* \* \*

(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; ....

To support their claim, petitioners have offered extensive evidence of Nunz' union activity, including his positions of authority with the UPOA as well as examples of occasions on which Nunz opposed management policies and practices and/or management reproved him for actions taken in the name of UPOA. This Board has long held, however, that the mere allegation of improper motive, even if accompanied by an exhaustive recitation of union activity, does not state a violation of the NYCCBL.<sup>6</sup> In order to establish an improper practice, a petitioner must demonstrate a causal connection between protected conduct and the management action complained of.

In a recent decision (Bowman v. City of New York, Decision No. B-51-87), we announced that where it is alleged that a respondent has violated NYCCBL §12-306a

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<sup>6</sup> E.g., Decision Nos. B-2-87; B-28-86; B-12-85; B-25-81.

by acting with improper motive, we would apply the test adopted by PERB in City of Salamanca, 18 PERB ¶3012 (1985) which, we noted, is substantially the same as that set forth by the National Labor Relations Board ("NLRB") in its 1980 Wright Line decision<sup>7</sup> and endorsed by the U.S. Supreme Court in Transportation Management Corporation.<sup>8</sup> In such cases, the petitioner must show 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.

If the petitioner succeeds in establishing the above, the burden will shift to the employer who must show that the same action would have been taken even in the absence of the protected conduct.

In the case at bar, it is not disputed that former Commissioner Payne was aware of Nunz' union activity at all times relevant to this proceeding. At issue is whether, as the union alleges, Nunz' protected conduct

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<sup>7</sup> Wright Line, A Division of Wright Line, Inc., 251 NLRB 1083, 105 LRRM 1169, enforced, 662 F. 2d 899, 108 LRRM 2513 (1st Cir. 1981), cert., denied, 455 U.S. 989, 109 LRRM 2779 (1982).

<sup>8</sup> 103 S. Ct. 2469, 113 LRRM 2857 (1983).

was a motivating, or a substantial,<sup>9</sup> factor in the Commissioner's decision not to promote him.

We emphasize at the outset that the petitioner has the burden of establishing the alleged animus of the respondent.<sup>10</sup> Here, the UPOA asserts, inter alia, that Commissioner Payne's animus toward Nunz is evidenced by the former's repeated inquiries concerning Nunz' involvement with the union and whether he would be able to perform the functions of an APO given this background. We note that the State PERB has held that the questioning of a potential promotee as to a possible conflict between his union position and the responsibilities of a higher position is not, in it self, indicative of anti-union animus. PERB stated

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<sup>9</sup> In its Wright Line decision, the NLRB adopted the test of causation developed by the U.S. Supreme Court in Mt. Healthy City School District Board of Education v. Doyle, 429 U.S. 274 (1977) which asks whether protected conduct "was a 'substantial factor' - or, to put it in other words, ...a 'motivating factor' in the Board's decision not to rehire [the employee]." 105 LRRM at 1173, 1175.

<sup>10</sup> Decision No. B-51-87. See, Matter of Office of Court Administration, .8 PERB ¶4504 (ALJ 1975). See also, Wright Line, supra note 7 at 1174, n. 11 (shifting of burdens in-cases involving allegations of discriminatory motive does not undermine the established concept that the General Counsel must establish an unfair labor practice by a preponderance of the evidence).

that an employer may properly inquire into an employee's perception of a possible conflict between his union activity and the requirements of a new position. This is to be distinguished, however, from the employer's denial of an appointment on the basis of the employer's own perception of a conflict.<sup>11</sup> Matter of County of Suffolk, 20 PERB ¶3009 (1987), cited by petitioners herein, is not to the contrary for, in that case, PERB found that the promotion process was tainted by a selection committee member's own concern that an employee's union position would pose a conflict if the employee was promoted.<sup>12</sup>

In the instant matter, we are convinced that the Commissioner's inquiries concerning Nunz' union activity were proper, as they sought to establish that Nunz did not perceive a conflict between his involvement with the UPOA and the performance of managerial duties. We credit the Commissioner's testimony that he persisted in questioning Nunz concerning his union activity 'not because Payne believed that there was a conflict, but because he "thought it might mean something to [Nunz]"

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<sup>11</sup> Matter of Environmental Protection Administration, 9 PERB ¶3066 (1919); Matter of State of New York, 17 PERB ¶4595 (ALJ 1984).

<sup>12</sup> 20 PERB ¶3009 at p. 3079.

(Tr. 96). Consistent with this finding is the fact that after receiving assurances on this point during Nunz' first interview, Payne was inclined to appoint him to an APO position (Tr. 79). Moreover, petitioners have offered no evidence that the reversal of the Commissioner's position on Nunz was attributable to his own perception of a conflict between the duties of a manager and a history of union activity. Rather, the record establishes that the principal reason for the rejection of Nunz was an exchange that took place during the second interview which led the Commissioner to conclude, rightly or wrongly, that Nunz would have difficulty implementing a managerial policy which he felt was not "humane."<sup>13</sup>

The UPOA further asserts that anti-union animus should be inferred from Payne's characterization of Nunz as "vitriolic" and from his displeasure with an article published in a union newsletter. We disagree. First, it should be noted that the word "vitriolic" was not Payne's but was used by his "sources" in conveying their concern about Nunz to Payne. When cross-examined about his use of the word, Payne stated that, while he

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<sup>13</sup> We note that it is not our function to determine whether the decision not to promote Nunz was sound. Our inquiry is limited to determining whether the decision was based substantially upon improper considerations



did not object to the union positions espoused by Nunz, the manner in which Nunz expressed such positions was "sometimes vitriolic, sometimes, in my opinion, childish" (Tr. 100). We credit this testimony. It is consistent with Payne's prior testimony that he felt that Nunz was immature based, in part, upon an incident in which Nunz attempted to discuss union business with Payne when the latter was being interviewed by the press (Tr. 91-92, 100-101). The Commissioner objected to the timing of that confrontation. In our view, neither of these incidents establishes that Payne harbored animus toward Nunz.

The newsletter article to which Payne objected was one that invoked the name of an Assistant Commissioner in what Payne deemed to be an offensive and inappropriate manner (Tr. 80, 118-119). Payne accepted Nunz' statement that he had nothing to do with the article. Nevertheless, he held Nunz accountable for it because Nunz had seen the article before it was distributed and insisted on taking responsibility for it (Tr. 58-59, 80-81, 119). Undoubtedly, Payne's evaluation of Nunz was affected by his distaste for this newsletter item, as well as by his disapproval of articles he had seen in other union publications (Tr. 119). Payne also testified, however, that an article written by Nunz and published in the April 1986 "Communicator", a UPOA publication, which took issue with remarks made by Com-

missioner Payne's predecessor (the latter allegedly placed blame on experienced probation officers for the high turnover rate among younger members of the Department)<sup>14</sup> was "a perfectly good article" Mr. 95). We do not believe that taking occasional, if vigorous, exception to union publications establishes animus. We believe moreover that a distinction should be drawn between objection to the expression of union positions as a general matter (this would establish animus) and objection to the manner of such expression in isolated instances. Therefore, we decline to infer animus from the aforementioned facts.

Finally, we reject petitioner's argument that we should find animus in the facts that Nunz' first interview with the Commissioner lasted more than an hour and that he was required to submit to a second interview. Commissioner Payne's testimony that five or six other interviews took at least one hour and that two candidates in addition to Nunz were asked to come to second interviews (both of these were appointed) was unfuted (Tr. 106).

We note that our refusal to find animus on the

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<sup>14</sup> Petitioner's Exhibit 9.

facts of this case rests in large part upon our credit-  
ing the testimony of former Commissioner Payne. Peti-  
tioners have argued that Payne's testimony is not  
worthy of belief because it contains inconsistent and  
contradictory statements. We reject this argument -  
the record does not establish that Payne's testimony  
was internally inconsistent or contradictory. Peti-  
tioners also assert that the circumstances under which  
the Commissioner left his position warrant an inference  
that his testimony lacks credibility. We disagree.  
The fact that, during a period of systemic municipal  
corruption, which necessitated heightened scrutiny of  
all appointees to high level positions in City govern-  
ment, Payne failed to report an outstanding student loan  
in the amount of \$7,500 and incorrectly reported the  
dates on which he had filed his state income taxes for  
three years, which led to the Mayor's regretful request  
for Payne's resignation (Petitioners'. Exhibit 12), did  
not persuade the Trial Examiner and, therefore, does not  
persuade us that the Commissioner has a propensity to  
lie or that he did so in this case.

Based upon the foregoing, we find that petitioners

have failed to demonstrate that Nunz' union activity was a motivating factor in the decision not to promote him. Therefore, we conclude that they have failed to state a prima facie violation of the NYCCBL. We note, however, that even if petitioners had established animus, the petition herein would be dismissed because respondents have demonstrated that there were legitimate business reasons for the Commissioner's decision and that the promotion would have been-denied even in the absence of Nunz' protected activity.

It is a well-established management right to determine the criteria for promotion and to decide who shall be promoted.<sup>15</sup> In the present case, Commissioner Payne determined that the ability to implement a managerial policy, even when that policy is not in accord with an employee's own views, was an essential criterion for promotion to the position of Branch Chief. Payne questioned Nunz on this point and was sufficiently disturbed by Nunz' reply that he thereafter informed his colleagues that Nunz "just talked himself out of the appointment" (Tr. 115). Although their respective

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<sup>15</sup>NYCCBL §12-307b. See, e.g., Decision Nos. B-37-80; B-10-71; Matter of Addison Central School District, 12 PERB ¶4616 (H.O. 1979).

versions of this exchange are sharply conflicting, we need not resolve the conflict, for the important point is that Payne considered the ability to implement managerial policy to be an essential criterion for promotion and interpreted Nunz' response as an indication that he lacked this ability. <sup>16</sup>Furthermore, although the City asserts that Nunz' unsatisfactory response to Payne's critical question was the sole basis for the decision not to appoint, the record establishes that subjective factors also played an important role in the Commissioner's decision. Among other things, Payne found Nunz to be "immature" and childish." From this we may infer that the Commissioner deemed Nunz to lack the temperament and/or judgment to be an effective manager. While we find little precedent in the labor cases, courts in Title VII discrimination cases have generally accepted the use of subjective criteria in promotions to upper level positions. Specifically, it has been held that the personality of a candidate is a valid factor to consider in determining his or her

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<sup>16</sup> Even if Nunz' version of his response to the question is the more accurate, Payne might reasonably have concluded from it that Nunz would not unequivocally comply with a directive to implement a managerial policy with which he disagreed. See Tr. 123-124.

qualification for promotion to a managerial position where the ability to perform is not easily verified by objective criteria.<sup>17</sup>

In the absence of improper motivation, which was not established here, there is no basis for our interfering with the Commissioner's decision to deny petitioner Nunz a promotion to an APO position. Accordingly, we shall dismiss the petition in its entirety.

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Exceptions to Trial Examiner's Rulings

Petitioner's counsel took exception to three rulings made by the Trial Examiner in the course of the hearing in this matter. In each instance, we affirm the Trial Examiner.

(1) Arguing that the outcome of this case would turn on the credibility of witnesses, the UPOA sought to have Commissioner Payne excluded from the hearing room during the testimony of petitioner Nunz. The Trial Examiner denied the motion. Although Trial Examiners

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<sup>17</sup> Pinckney v. City of Northampton, 512 F. Supp. 989, 27 FEP 528 (E.D. Pa, 1981) aff'd, 681 F. 2d 808, 29 FEP 1472 3d Cir.1982). See also, MacDonald v. Ferguson Reorganized School District, 31 FEP 184 (8th Cir. 1983) (use of subjective criteria to screen applicants not clearly erroneous where criteria used were clearly relevant and necessary in choosing best candidate).

may be guided in the conduct of hearings by the Federal Rules of Evidence, the federal rules are not binding in quasi-judicial processings such as ours. Therefore, while Rule 615 provides for the sequestration of witnesses at the request of a party, it was within the Trial Examiner's discretion to deny such request.<sup>18</sup>

(2) In its examination of former Commissioner Payne, the City's attorney asked whether any union delegates or officers other than Nunz were considered for a Branch Chief position. Counsel for petitioners objected on grounds of relevance and materiality. The record shows that union counsel's real concern was that he not be required to establish that the Commissioner harbored anti-union animus as a general matter and that it be sufficient to prove only that Payne was motivated by animus in denying a promotion to Nunz (Tr. 83-84). We agree that a prima facie case could be established merely by showing that animus was a motivating considera-

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<sup>18</sup> It may be noted that there is a difference of judicial opinion as to whether sequestration may be demanded as a matter of right. In New York, a motion for the exclusion of witnesses is addressed to the discretion of the trial court. Richardson on Evidence §472. Moreover, even under §10(b) of the National Labor Relations Act, amended to provide that unfair labor practice proceedings shall be conducted, "so far as practicable" in accordance with the rules of evidence applicable in the federal district court (61 Stat. 136, 147 (1947)), the failure to conform to Rule 615 has been held not to constitute such an abuse of discretion as to require denial of a petition for enforcement of a Board order. National Labor Relations Board v. Stark, 525 F.2d 422 (2d Cir. 1975).

tion in Payne's rejection of Nunz' application for an APO position. However, we sustain the Trial Examiner's finding that the information sought by respondent's question was neither irrelevant nor immaterial. Clearly, an affirmative response together with responses to appropriate follow-up questions might have afforded a basis for drawing inferences as to the Commissioner's animus or the lack thereof.

(3) on cross-examination, the UPOA's attorney asked Commissioner Payne whether any special emphasis was placed on the manner in which union officials should conduct their business in the course of his undergraduate or law school studies. The Trial Examiner sustained the City's objection which was founded upon relevance, indicating however that the question was ambiguous and inviting union's counsel to rephrase it. After asking that his exception to the ruling be noted, petitioner's counsel did rephrase his question. Again, no prejudice resulted from this ruling and it shall not be disturbed.



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 improper practice petition filed by the United Probation officers Association and Robert Nunz be, and the same hereby is, dismissed.

DATED: New York, N.Y.  
April 28, 1988

MALCOLM D. MacDONALD  
CHAIRMAN

DANIEL G. COLLINS  
MEMBER

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