

OFFICE OF COLLECTIVE BARGAINING  
BOARD OF COLLECTIVE BARGAINING

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In the Matter of the Improper  
Practice Proceeding

-between-

RAPHAEL RIVAS

Petitioner,

DECISION NO. B-52-93 (ES)  
DOCKET NO. BCB-1597-93

-and-

METROPOLITAN HOSPITAL,  
Respondent.

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DETERMINATION OF EXECUTIVE SECRETARY

On August 12, 1993, Raphael Rivas ("Petitioner") filed a verified improper practice petition against Metropolitan Hospital ("Respondent"), in which he alleged that Respondent terminated him unjustly in violation of Section 12-306a of the New York City Collective Bargaining Law ("NYCCBL").<sup>1</sup>

In his improper practice petition, Petitioner explains that he was terminated from his position as a Nurse's Aide Transportation Escort because he allegedly destroyed 148 patient lab result sheets. Petitioner alleges that the housekeeping worker for his floor found the lab sheets in a garbage can and

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<sup>1</sup> Section 12-306a of the NYCCBL provides as follows:

Improper public employer practices. 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 §12-305 of this chapter;
  - (2) to dominate or interfere with the formation or administration of any public employee organization;
  - (3) to discriminate against any employee for the purpose of encouraging or discouraging membership or participation in the activities of, any public employee organization;
  - (4) to refuse to bargain collectively in good faith on matters within the scope of collective bargaining with certified or designated representatives of its public employees.
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turned them over to the floor supervisor. According to Petitioner, the floor supervisor assumed he had thrown the sheets away because he comes in contact with those types of sheets as one of the duties assigned to him, even though this duty is not part of the job description for his title. Petitioner notes that no one witnessed the papers being destroyed. Petitioner further notes that the lab sheets were not stored in an area that would make them inaccessible to other employees. Petitioner requests reinstatement to his position and back pay from the date of his suspension.

Pursuant to Title 61, Section 1-07(d) of the Rules of the City of New York (formerly Section 7.4 of the Revised Consolidated Rules of the Office of Collective Bargaining, hereinafter "OCB Rules"), a copy of which is annexed hereto, the undersigned has reviewed the petition and has determined that the improper practice claim asserted therein must be dismissed because it does not allege facts sufficient as a matter of law to constitute an improper practice within the meaning of the NYCCBL. The NYCCBL does not provide a remedy for every perceived wrong or inequity. Its provisions and procedures are designed to safeguard the rights of public employees set forth therein, i.e., the right to bargain collectively through certified public employee organizations; the right to organize, form, join, and assist public employee organizations; and the right to refrain from such activities.

Petitioner has failed to allege that Respondent has committed any act in violation of §12-306a of the NYCCBL, which defines improper public employer practices. Since the instant petition does not allege that Respondent's actions were intended to, or did, affect any rights protected under the NYCCBL, it must be dismissed. I note, however, that dismissal of the petition is without prejudice to any rights the Petitioner may have in another forum.

Dated: New York, New York  
December 6, 1993

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Loren Krause Luzmore  
Executive Secretary  
Board of Collective Bargaining