

OFFICE OF COLLECTIVE BARGAINING
 BOARD OF COLLECTIVE BARGAINING

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    In the Matter of the Improper Practice Proceeding      :
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          -between-                                       :
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    LOCAL 768, DISTRICT COUNCIL 37, AFSCME,              :
    AFL-CIO,                                             :
                                                           :
          Petitioner,                                     :
                                                           :
          -and-                                           :
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    NEW YORK CITY DEPARTMENT OF HEALTH,                 :
                                                           :
          Respondent.                                     :
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Decision No. B-15-1999
 Docket No. BCB-1293-90

DECISION AND ORDER

On June 11, 1990, Local 768, District Council 37, AFSCME, AFL-CIO, ("Union") filed a verified improper practice petition alleging that the New York City Department of Health ("DOH") violated §12-306(a)(1) and (3) of the New York City Collective Bargaining Law ("NYCCBL")¹ when, in retaliation for her activism on behalf of the Union, DOH demoted

¹ Section 12-306 of the NYCCBL provides, in relevant part:

Improper practices; good faith bargaining. a. 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 section 12-305 of this chapter;
- * * *
- (3) to discriminate against any employee for the purpose of encouraging or discouraging membership in, or the participation in the activities of, any public employee organization;
- * * *

Section 12-305 of the NYCCBL provides, in relevant part:

(continued...)

Barbara Henderson from her position as a provisional Supervising Public Health Advisor ("PHA") to Senior PHA. The Union seeks Henderson's reinstatement to the position of Supervising PHA and back pay for the period in dispute.²

After requesting and receiving an extension, DOH, appearing by the Office of Labor Relations ("City"), filed a reply on July 26, 1990. Hearings were originally scheduled for the beginning of April 1991 and then, due to the reassignment of counsel and scheduling conflicts, were postponed to September of that year. In November 1991, after again having been rescheduled at the request of the parties, the Union requested an adjournment on the matter with hearings to be held on March 31, 1992 and April 1, 1992. The City agreed to this arrangement and hearings were held on March 31, 1992, April 1, 1992, June 5, 1992, June 12, 1992, September 23, 1992, October 1, 1992, May 21, 1993, and June 11, 1993. After the hearings, the Union and the City requested numerous extensions in which to file briefs.³ Post-hearing briefs were submitted on August 8, 1994 by the Union and on March 7, 1995 by the City.

BACKGROUND

¹(...continued)

Rights of public employees and certified employee organizations. 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.

² The Union waived the back-pay remedy, if any, for the fourteen (14) months during which the case was held in abeyance at its request.

³ By agreement, the Union's claim for pay differential awarded, if any, was suspended for the periods between May 27, 1993 to June 10, 1993 and October 13, 1993 to August 8, 1994.

Barbara Henderson was hired by the City in 1971 and was assigned to DOH's Bureau of Dentistry. In December 1984, she was appointed to a permanent PHA position and was assigned to the Bronx Unit of DOH's Bureau of Tuberculosis ("Bureau") at which time she joined the Union. In October 1986, Henderson was promoted to Senior PHA and was assigned to the Homeless Unit in the Bronx.

In November 1988, Henderson was promoted by Donato (Dan) Ruggiero, Program Management Officer for the Bureau, and Craig Studer, the Bureau's Director of Field Services to the position of Supervising PHA on a provisional basis and was assigned to the Morrisania Chest Clinic in the Bronx. They decided to promote Henderson because of her experience with tuberculosis despite having reservations about her supervisory and communication skills. As a Supervising PHA, Henderson was responsible for a staff comprised of six to nine PHAs and one to two Senior PHAs. Henderson was responsible for training her staff, assigning work to them and implementing Bureau policies and procedures in her unit.

At the time of her promotion, Henderson was active in various capacities on behalf of the Union and was elected shop steward in the spring of 1989. Henderson held numerous offices, served on committees, and attended many Union sponsored meetings. Ruggiero testified that prior to and following Henderson's promotion, he was aware that she was a Union member, but had no knowledge of any special functions or activities that she performed on the Union's behalf.

In the spring of 1989, approximately the time that Henderson became a shop steward, the Bureau began to institute internal procedural changes. As a supervisor, Henderson was responsible for implementing these changes in her unit. Instead, Henderson often challenged the

new procedures and inquired with management as to whether the Union had been consulted about the changes. On several occasions, Henderson challenged Bureau management's decisions and argued that additional assignments, responsibilities, and procedures were beyond the scope of the PHAs' job specifications. When told to implement the new procedures in her unit, Henderson asked for written documentation on the new Bureau policy and advised her staff members that if they thought a particular job assignment was outside their job description, they should file a grievance. Henderson alleges that Ruggiero was aware that she was apprising the staff of the option to grieve and that on at least one occasion Rencher overheard her suggest this to a group of PHAs.

One of the new procedural changes that the Bureau implemented was an employee log. In January 1989, the Bureau began creating a daily log in order to monitor PHAs who were in the field. Bureau management as well as supervising PHAs attended a series of meetings to discuss drafting and implementing the log. At the meetings, Henderson raised concerns about the unilateral implementation of the daily log without notifying the Union and she also questioned whether requiring PHAs to complete the log was considered out-of-title work. According to Henderson, Bureau management basically ignored her comments.

On or about May 15, 1989, Rencher instructed Henderson to begin implementing the daily log in her unit and to inform the staff of its purpose. When Henderson communicated this information about the log to her staff, the PHAs expressed great concern and a heated discussion ensued. They felt the log was unnecessary and unproductive because it duplicated the reporting that the PHAs were already doing and it was extremely time consuming to complete. The Bronx

PHAs met during lunch to discuss what they could do in opposition to the new log requirement and decided to inquire about the opinion of PHAs in the other boroughs on the matter.

On or about May 15, 1989, Venetia Lewis, a PHA in the Bronx, drafted a memo that was to be circulated to PHAs in each borough in order to arrange for a meeting to discuss the log. Alicia Dominguez, another PHA, made copies of the memo and attempted to place the copies in PHA mailboxes at DOH headquarters at 125 Worth Street. Ruggiero confronted Dominguez while she was attempting to distribute the memos and ordered her to stop. He confiscated the memos and ordered the entire Bronx PHA staff to report to his office for a meeting.

On or about May 23, 1989, the PHAs whose names appeared on the memo reported as a group to Ruggiero's office. Ruggiero, however, called them individually into his office to discuss the content of the memo. PHAs Lewis, Dominguez and Louise Square testified that Ruggiero questioned each of them about who was responsible for the memo and that he also insinuated that Henderson was at its source. Even after Lewis admitted to drafting the memo, Ruggiero continued to press for information that would prove that Henderson was responsible for, or played a role in, drafting the memo. According to the PHAs, Ruggiero also informed them that they could not get together to discuss working conditions even on their own time and that they should avoid such conduct in the future.

On or about May 24, 1989, the day after her staff was interviewed, Henderson was called to Ruggiero's office where he told her that he was concerned about "communications" in the Bronx. Rencher also attended this meeting. When Ruggiero informed Henderson about the memo that the Bronx PHAs had written, she asked to see it. Her request was denied by Ruggiero

who again asked what she knew about PHA involvement in this matter. When Henderson replied that she did not know what he was talking about and again asked to see the memo, Ruggiero denied her request and repeated his question. After Henderson asked for a third time permission to see the memo, Ruggiero became angry, pounded the table and told her, that he held her responsible for her staff's lunchtime meeting and the memo that the PHAs wrote. He told Henderson "I'm not going to have this. I'm tired of this." At that point he made comments that prompted Henderson to request the presence of a shop steward and the meeting came to an end.

Shortly after this incident, the Bureau's management called a Bureau-wide staff meeting for May 30, 1989, to discuss some of the newly instituted work assignments, including the daily log and the use of city-owned cars to monitor patients. The meeting was held in the Chelsea District Office. Approximately eighty to a hundred Bureau employees, including PHAs, Senior PHAs, Supervising PHAs and management attended. During the meeting, a number of questions were raised regarding the new assignments and the staff expressed its concerns about them. Henderson was openly opposed to the requirement that PHAs be responsible for maintenance of city-owned vehicles and that they be required to transport patients in them. She stated that these duties were outside the Task and Standards for PHAs, and were thus out-of-title.

After the meeting, the Bronx PHAs asked Henderson what could be done about the issue of holding the PHAs responsible for vehicle maintenance. Henderson informed them they could grieve this additional responsibility as out-of-title. At that point the Bronx PHAs began to discuss filing such a grievance. According to the testimony of Alicia Dominguez, it was during this time period that Ruggiero called Henderson a "troublemaker." Shortly after the Bureau-wide

staff meeting, the subject of vehicle maintenance was raised at a Union meeting. The Union scheduled a Labor-Management meeting for August 8, 1989 to discuss several issues with Bureau management.

On June 2, 1989, Rencher issued a memo addressed to Henderson criticizing her supervision and communication skills. The letter focused on the lunch meeting of the Bronx PHAs that took place on or about May 15th and the memo that the staff drafted and attempted to circulate to the other PHAs. The memo blamed Henderson for her staff's "inappropriate behavior," and accused Henderson of failing to "clearly and positively" communicate Bureau policies to the PHAs.

Henderson was outraged by Rencher's memo and responded to the memo by asking Rencher to elaborate on the reasons for his negative opinion of her. She also requested a meeting with Rencher, Christine Larkin, another Bureau manager, and Helen Greene then a chief shop steward. At the meeting, Rencher and Larkin admitted that the memo was given to Henderson as a result of the staff's union activities. They also told Henderson that they held her responsible for her staff members' behavior. In a June 22, 1989 memo, Rencher further explained that he held Henderson responsible for the PHAs opposition to the daily log, that some PHAs misunderstood patient confidentiality, and he accused her of irresponsibly objecting to using the City vehicles.

On or about August 8, 1989, a Labor-Management meeting was held. Some of the issues discussed were the maintenance of city-owned vehicles by the PHAs and the transportation of patients by the PHAs in these automobiles.

In September 1989, Henderson became involved in filing a grievance about the Bureau's

vehicle transportation and maintenance policies, after employees from her unit approached her about the matter. Henderson drafted the grievance and forwarded it to the Union. It was ultimately signed by Union members and formally filed. Ruggiero acknowledged his receipt of the grievance on October 3, 1989.

On November 2, 1989, Rencher presented Henderson with her performance evaluation for the period of November 1, 1988 to September 30, 1989. He gave her a conditional rating.⁴ Rencher felt that Henderson had not satisfied all the requirements of a Supervising PHA and that she did not display good judgement in many areas. He stated on her evaluation that she “does not accept work orders as given which results in duplication of work.” He commented that she instructed infection control nurses to send TB 76s, the documents that initiate patient monitoring, directly to her which is contrary to the Bureau policy which requires that cases be reported to the Central Record System. He also commented that “management policy and procedures are not always communicated in [a] clear and positive manner to staff ie. daily log...” In addition, Rencher felt that the Senior PHA, Valerie Bailey, was underutilized, that the staff was using time for non-program related activities, and that Henderson was not conducting three-month evaluations.⁵

⁴ Employees are rated in one of six categories -- outstanding, very good, good, conditional, unsatisfactory and unratable (new to the task). A conditional rating is defined as, “Improvement is necessary in some areas to meet the full responsibilities of the job. Results are generally below the standard level of performance, and are at best minimally acceptable; needs frequent direction; unable to satisfy all the requirements of the position. Performance can be good with some effort.”

⁵ Rencher wrote, “There is major concern that management policy and procedures are not
(continued...) ”

Rencher claims that he rated Henderson as a conditional employee based on his own observations and from feedback that he received from Bronx PHAs as well as individuals in other agencies with whom Henderson had contact. Rencher testified that management was concerned that reporting TB 76s directly to Henderson would lead to confusion and delay because it was contrary to Bureau policy. He also testified that Bureau policy was to accept EPIs, documents that alert Supervising PHAs that a patient has listed contact names, and attempt to follow-up on them within 48 hours. Henderson, however, often returned the EPIs asking for corrections, noting errors, and making comments on them. Management believed that this was unnecessary and slowed down the monitoring of tuberculosis.

Rencher explained that several employees under Henderson's supervision complained of her disparate treatment of them, her unclear and conflicting instructions, and personal problems they were encountering in working under her direction. According to Rencher, because of constant conflict between Henderson and Valerie Bailey, the Senior PHA under Henderson, Bailey was not being utilized as a Senior PHA to the detriment of the unit.

According to Bureau rules, a follow-up performance evaluation of Henderson was scheduled to be performed three months after the first evaluation. In February 1990, a second review was completed by Rencher. He gave Henderson an unsatisfactory rating in his review. He based his rating on the lack of documentation and organization in Henderson's department;

⁵(...continued)
clearly and positively communicated to staff.”

“Inquiries by staff are not adequately addressed, which is seen as a major failure in communication and leadership. This has resulted in staff actions including ... gripe session/labor-management meeting.”

that she failed to accompany staff into the field to supervise and evaluate them; that Henderson had problems in maintaining working relationships with area hospitals; that policies and procedures were inconsistently and inaccurately communicated; and that the staff had complained of disparate treatment which contributed to the low morale in the unit.

Based on the unsatisfactory evaluation, management decided to demote Henderson from the position of provisional Supervising PHA to her permanent civil service position of Senior PHA.

POSITIONS OF THE PARTIES

Union's Position

The Union alleges that DOH, by demoting Henderson, was retaliating against her because of her union activity. The Union argues that, “Any management activity which interferes with the protected rights of public employees and with the administration of union business constitutes a violation of Section 12-306(a) of the NYCCBL.” The Union argues that Bureau management was both aware and angry that Henderson was involved in questioning the legitimacy of certain policy initiatives. Management was also aware that she advised her staff members to file grievances if they believed that their assignments were out-of-title. In fact, the Bureau sent her memos criticizing her union activity.

While the City argues that the reason for Henderson’s demotion is that she displayed poor supervisory skills, the Union alleges that this argument is merely pretextual. The Union argues that if management had a problem with Henderson’s supervisory skills, management should have met with her early on to discuss any problems. The Union also argues that Henderson was rated

unfairly because she was unaware of the standard to which she was being held. The Union argues that Henderson had never been presented with Tasks and Standards appropriate for the Supervising PHA position and that she was never trained as a supervisor. The Union contends that clearly the reason for Henderson's demotion was that she expressed strong pro-union feeling. Rencher and Ruggiero viewed her as the cause of the PHA lunch meeting, the memo that the PHAs circulated, the Labor-Management meeting, and numerous requests for written policy resulting in a formal grievance challenging the vehicle assignment program as out-of-title. For the foregoing reasons, the Union requests that the Board find that the DOH improperly retaliated against Henderson, order her reinstatement, and award her back pay as appropriate.

City's Position

The City contends that the testimony of Henderson's supervisors and subordinates demonstrates that from the beginning of her tenure as a Supervising PHA, she had difficulty performing the duties required of her position. The City argues that Henderson was unable to clearly and positively communicate management procedures to her staff and that she did not make good use of her staff. The City also contends that Henderson's unit's charts lacked documentation of staff activity and patient monitoring and that the files that existed were completely disorganized. In fact, Cheryl Butler, the Supervising PHA who took over the position after Henderson was demoted, testified that she had to start a filing system from "scratch" because when she attempted to review the case status tracking system, she discovered that logs were not kept and cases were not tracked.

The City argues that Henderson was incompetent and was thus demoted from her

position. Management's primary concern was Henderson's failure to implement the daily log in her unit for the PHAs to document their activities. The City argues that Henderson's inability to properly inform her staff about the daily log led the PHAs to draft a memo requesting that all PHAs gather in order to discuss the log.

The City also contends that Henderson was a poor supervisor because she was unable to maintain a good working relationship with her subordinates. Valerie Bailey, the Senior PHA assigned to the unit wrote a letter to Rencher in January 1989 expressing concern over the way Henderson treated her. She said that Henderson would often belittle her and comment that she lacked certain skills. Furthermore, certain PHAs reported to Rencher that they had been given a larger workload than others and that Henderson treated them differently. Louise Daniels testified that there was a distinct separation between the new staff and old staff and that Henderson favored the old staff. Daniels also alleged that Henderson put her safety in jeopardy when Henderson ordered her to drive alone to Maspeth even though she had recently obtained her drivers license and was uncomfortable driving on highways. On another occasion, Henderson directed Daniels to visit a client in his home who had harassed her by making suggestive remarks to her in the past. Daniels testified that she told Henderson that she was frightened to go to the client's home and that Henderson threatened to bring Daniels up on charges if she refused. Finally, the union shop steward intervened on Daniels' behalf.

The City contends that another issue that led to Henderson's demotion is that she directed the infectious control nurse from North Central Bronx Hospital to report all cases of tuberculosis directly to her. Such a procedure is contrary to Bureau policy which requires that all cases of

tuberculosis be reported directly to the Bureau's Central Record System. The City was concerned that Henderson's directive would create a tremendous amount of confusion in the system and would disrupt the control of tuberculosis.

The City argues that the decision to demote Henderson was unrelated to her union activity and that the Union has failed to establish that Henderson's supervisors had any knowledge of her union activity. Furthermore, the City argues that management was unaware that Henderson was at all involved in filing a grievance with the Union, especially since her signature did not appear on the document.

Furthermore, the City argues that the Union has failed to demonstrate that Henderson's union activity was the motivating factor in management's decision to demote her to Senior PHA. The only argument that the Union makes to prove a connection between Henderson's union activity and her demotion is that the timing of the Bureau's criticism of her is close in time to her conditional and unsatisfactory evaluations. The City argues that this mere assertion is insufficient to prove that Henderson's union activity was the motivating factor leading to her demotion. In fact, the City argues that the demotion was within management's statutory right to assign and direct its employees granted by §12-307(b) of the NYCCBL.⁶

⁶ Section 12-307(b) of the NYCCBL provides, in relevant part:

It is the right of the city, or any other public employer... to direct its employees; take disciplinary action; ... maintain the efficiency of government operations; determine the methods, means and personnel by which government operations are to be conducted; ... and exercise complete control and discretion over its organization and the technology of performing its work.

* * *

In addition, the City argues that the Board's jurisdiction is limited to the interpretation and enforcement of the provisions of the NYCCBL. Alleged violations of labor agreements are generally to be redressed through the grievance and arbitration procedures of the agreements. The City argues that Henderson alleges contractual violations, such as she was not provided with the tools necessary to become a good supervisor. The City maintains that such an argument is an inappropriate basis for an improper practice claim.

DISCUSSION

The petition alleges that DOH's termination of Henderson was in violation of § 12-306 (a)(1) and (3) of the NYCCBL. The mere assertion of discrimination or retaliation is not sufficient to establish that a management action constitutes an improper practice.⁷ In cases in which such a violation is alleged, we have applied the test set forth by the New York State Public Employment Relations Board ("PERB") in *City of Salamanca*⁸ and adopted by this board in Decision No. B-51-87. The *Salamanca* test requires that a petitioner demonstrate the following:

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 of persuasion shifts to the employer to either attempt to refute the petitioner's showing or to establish that its actions were

⁷ *Local 1182, Communications Workers of America v. New York City Department of Transportation*, Decision No. B-26-96 at 19; *Darren Baker et al. v. Lacy C. Johnson et al.*, Decision No. B-61-89 at 12.

⁸ 18 PERB ¶ 3012 (1985).

motivated by legitimate business reasons which do not violate the NYCCBL.⁹

In the present case, we find that the Petitioner has satisfied the first prong of the *Salamanca* test because Bureau management knew that Henderson was involved in union activity. Management was also aware that she was advising her staff members that if they believed certain Bureau policies were out-of-title, they should file a grievance with the Union. Time and again, Henderson would request from Rencher and Ruggiero written information about the new bureau policies and she would argue that the new policies needed Union approval. Henderson openly objected to the daily log and vehicle assignment programs at supervisory meetings, the Bureau-wide meeting on May 30, 1989 and the Labor-management meeting on August 8, 1989.

Management also held Henderson accountable for a memo that certain PHAs drafted on May 15, 1989 suggesting that all PHAs contact the Bronx PHA staff concerning “very important issues.” Ruggiero accused Henderson of being the source of the memo, even though her name did not appear anywhere on the document and he blamed her for the staff’s lunchtime meeting to discuss the new programs. Clearly, management was aware of Henderson’s union activity.

As for the second prong of the *Salamanca* test, we recognize that it is difficult to prove that an employee’s activity was a motivating factor in the employer’s decision to act; it requires that the Board ascertain the employer’s state of mind. In the absence of outright admission of

⁹ *Velyn Hennings, pro se v. Administration for Children’s Services*, Decision No. B-45-98 at 5; *Ronald Perlmutter v. Uniformed Sanitationmen’s Association, Local 831, et al.*, Decision No. B-16-97 at 4; *City of Salamanca*, 18 PERB ¶ 3012 (1985).

improper motive, proof of this element must be circumstantial.¹⁰ If a petitioner demonstrates a sufficient causal connection between the act complained of and the protected activity, improper motive may be inferred.¹¹

Upon review of the record, we believe that the Union has demonstrated a causal connection between Henderson's protected activity and her demotion. Rencher and Ruggiero met with Henderson and blamed her for her staff's union activity. They also accused her of instigating the May 15, 1989 memo written by the PHAs in her unit which called for all PHAs to get together to discuss issues that affected them. At the meeting with Henderson, Ruggiero pounded his fist on the table and said that he was "tired of this." Alicia Dominguez, a PHA in Henderson's unit testified that when Ruggiero accompanied her on one occasion in the field, he told her that Henderson was a "troublemaker." Henderson's constant questioning of management's actions annoyed both Rencher and Ruggiero. She complained for months to management that the daily log and vehicle maintenance programs were out-of-title and recommended to the PHAs to file a grievance with the Union. The grievance was ultimately filed in October, Henderson then received her conditional evaluation in November, and three months later as a result of her unsatisfactory follow-up evaluation, she was demoted.

¹⁰ *Local 1182, Communications Workers of America v. New York City Department of Transportation*, Decision No. B-26-96 at 20-21; *Local 1549 et al. v. The City of New York et al.* Decision No. B-2-93 at 16; *Communications Workers of America, Local 1180 v. New York City Department of Finance*, Decision No. B-17-89 at 13.

¹¹ *Local 1182, Communications Workers of America v. New York City Department of Transportation*, Decision No. B-26-96 at 21; *Local 1549 et al. v. The City of New York et al.* Decision No. B-2-93 at 16.

In light of these circumstances, we find that the Union has made a *prima facie* showing that Henderson's union activity was a motivating factor in management's decision to demote her. Accordingly, we find that the Union has satisfied its burden under the *Salamanca* test and that the burden of persuasion has shifted to the City to establish that demoting Henderson was motivated by legitimate business reasons and would have been taken even in the absence of the protected union activity.

We find that the City has established that Henderson would have been demoted irrespective of her union activity. As a supervisor, Henderson was responsible for making sure that the PHAs in her unit were performing their jobs correctly as well as making sure that Bureau policy was being carried out in her unit. Fulfilling her role as a supervisor would ensure that DOH would meet its goal of properly caring for its patients. It was imperative that Henderson's unit maintain the appropriate files tracking the patients as well as PHA activity. Even if she believed that the Bureau was wrong in implementing the daily log without consulting with the Union, it was nevertheless her responsibility to institute the daily log in her unit. Furthermore, Henderson's decision to alter the procedures for dealing with EPIs and TB 76s had potential to harm patients. Ordering the nurses to report tuberculosis cases to her first as opposed to the Central Record System and returning EPI forms instead of immediately following up on them posed a potential danger to the entire system.

Henderson also had difficulty maintaining working relationships with her staff members. The record reflects that she promoted divisiveness among her staff, underutilized key staff members and used poor judgment in delegating assignments.

The record indicates that DOH has established a sound basis for evaluating Henderson's performance as unsatisfactory and for demoting her after concluding that her continued employment as a supervisor would be detrimental to the Bureau. We conclude that Henderson's job performance was unacceptable and that the DOH would have demoted her upon the basis of the facts presented even without regard to her union activity. We find that while the Union has established a *prima facie* case indicating that Henderson's union activity was a motivating factor in the decision to demote her, the City has overcome that showing by establishing that the decision to demote Henderson was motivated by legitimate business reasons and would have been made even in the absence of protected union activity.

In dual or mixed motive cases, even if it is established that a desire to frustrate union activity is a motivating factor, the employer is nevertheless held to have complied with the NYCCBL where it is proven that the action complained of "would have occurred in any event and for valid reasons."¹² Since the City has met this burden and established that Henderson would have been demoted in any event for valid business reasons, we find that the City did not violate Section 12-306(a)(1) and (3) of the NYCCBL when it demoted Henderson from her position as Supervising PHA. The Union's improper practice petition must, therefore, be dismissed.

ORDER

Pursuant to the powers vested in the Board of Collective Bargaining by the New York

¹² *Communications Workers of America, Local 1180 v. New York City Department of Finance*, Decision No. B-17-89 at 19 (citing *Lithographers Local 1 v. NLRB*, 729 F. 2d 172, 115 LRRM 3161 (2d Cir. 1984)).

City Collective Bargaining Law, it is hereby,

ORDERED, that the improper practice petition submitted by Local 768, District Council 37, AFSCME, AFL-CIO be, and the same hereby is, dismissed.

Dated: June 7, 1999
New York, New York

STEVEN C. DeCOSTA
CHAIRMAN

DANIEL G. COLLINS
MEMBER

GEORGE NICOLAU
MEMBER

RICHARD A. WILSKER
MEMBER

ANTHONY P. COLES
MEMBER

THOMAS J. GIBLIN
MEMBER

ROBERT H. BOGUCKI
MEMBER