

L. 237, IBT v. HHC & Metropolitan Hosp Ctr (Matos), 69 OCB 12 (BCB 2002) [Decision No. B-12-2002 (IP)]

OFFICE OF COLLECTIVE BARGAINING  
BOARD OF COLLECTIVE BARGAINING

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In the Matter of the Improper Practice Petition

-between-

CITY EMPLOYEES UNION, LOCAL 237, IBT, AFL-CIO,

Petitioner,

Decision No. B-12-2002  
Docket No. BCB-2205-01

-and-

NEW YORK CITY HEALTH AND HOSPITALS  
CORPORATION and METROPOLITAN  
HOSPITAL CENTER (CAPTAIN REINALDO MATOS,  
DIRECTOR of SECURITY),

Respondents.

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**DECISION AND ORDER**

On April 9, 2001, Local 237, City Employees Union (“Union”), filed a verified improper practice petition alleging that New York City Health and Hospitals Corporation (“HHC”) and Metropolitan Hospital Center (“MHC”)(collectively referred to as “HHC”) discriminated against certain Union members for engaging in union activity in violation of § 12-306a(3) of the New York City Collective Bargaining Law (New York City Administrative Code, Title 12, Chapter 3)(“NYCCBL”), interfered with those members in the exercise of their rights in violation of § 12-306a(1), and dominated and interfered with the administration of the Union in violation of § 12-306a(2). HHC argues that the Union did not allege any facts showing that HHC interfered with the rights of any employee or discriminated against any employee for their union activity. Since the Union failed to show that HHC discriminated against the Union members because of

union activity, and failed to show that HHC dominated or interfered with the administration of the Union, but has shown that HHC interfered with union members in the exercise of their rights, the petition is denied in part and granted in part.

### **BACKGROUND**

Generations+ Health Network (“Network”) is responsible for the administration of HHC facilities in northern Manhattan and the south Bronx. Those facilities include MHC, Harlem Hospital Center, Lincoln Medical and Mental Health Center, among others.

Rogelio Rosario is employed by HHC as a Special Officer in the Department of Hospital Police. Until February 5, 2001, Rosario reported to MHC. He was active an Alternate Shop Steward for Local 237, and his signature often appeared first on grievances. On April 12, 2000, Rosario filed a grievance in which he alleged, in part, that Captain Reinaldo Matos, a Special Officer and member of Local 237, had harbored animus towards him.

In November 2000, Local 237 posted a notice for the Shop Steward election at MHC. The Union asserts that Rosario was the only member of Local 237 who placed his signature in nomination for that position. The election for Shop Steward at MHC did not take place due to a procedural error, and was rescheduled for February 15, 2001.

On December 7, 2000, Richard Nieves, Network Associate Director of Hospital Police, sent a memorandum to all Hospital Police Officers informing them of a new plan that would require the reassignment of all Special Officers in the Network. The memorandum explained that the transfers were necessary because a major disaster may call for Officers from other facilities to assist at an unfamiliar hospital, and Nieves wanted the Officers to become familiar

with those hospitals so that they could assist quickly and efficiently should the need arise. The memorandum stated that the transfers were not a form of punishment and that, ultimately, Officers would return to their original posts. Rosario, on December 8, 2000, was the first to sign a petition protesting the plan. Sergeant Mitchell Bogan, a Special Officer assigned to MHC, also signed the petition. The petition was sent to Carl Haynes, President of Local 237, the Office of Collective Bargaining, Daniel Matias, and to various other people unnamed by the Union.

Starting on January 2, 2001, HHC notified Special Officers of the dates of their reassignments to other facilities: between January 2, 2001 and January 19, 2001, four Special Officers at other hospitals in the Network received reassignment notices. Rosario received a transfer memorandum from Matos on January 19, 2001, effective February 5, 2001. After Rosario received his transfer memorandum, Matos informed Daniel Matias, Local 237 Organizer, that if Rosario won the Shop Steward election, Rosario could not represent the employees at MHC because he was being transferred to another hospital. On January 26, 2001, Officer Juan De La Cruz received a transfer memorandum from Matos, effective February 12, 2001, and on February 15, 2001, Bogan received his transfer memorandum from Matos.

On February 2, 2001, Rosario filed a grievance alleging that, on January 3, 2001, Matos ordered Sergeant Charles Rodriguez to force open a locked file cabinet that was used by Local 237. The grievance further alleges that Matos, in the presence of Bogan and Rodriguez, removed and destroyed the contents of the file cabinet without prior authorization. According to the grievance, Bogan advised Matos that the contents of the file cabinet belonged to Shop Stewards from all three tours at MHC.

## **POSITIONS OF THE PARTIES**

### **Union's Position**

The Union contends that HHC, through its employees, representatives, officials, and agents, has exhibited a pattern of conduct towards the Union and its members which violates § 12-306a(1), (2), and (3) of the NYCCBL.<sup>1</sup> The Union argues that the decision to transfer the Union members was a pretext for the unlawful interference in the exercise of rights guaranteed under § 12-305 of the NYCCBL, and that the transfers were made in retaliation for union activity. Matos certainly knew that Rosario and De La Cruz were both actively involved in Local 237 activities, and Bogan signed the petition protesting the transfer plan. Also, the fact that there are only 65 Special Officers assigned to MHC makes it virtually impossible for management not to know of the members' active Union participation.

The Union argues that in order to stop Rosario from becoming a Shop Steward, Matos decided to transfer him prior to the election and told members of the bargaining unit that if they voted for Rosario, he would not be able to represent them since he was being transferred. Rosario was the first Special Officer to be transferred from MHC, even though he was one of the

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<sup>1</sup> Section 12-306a of the NYCCBL states that it is 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;
- (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 in, or participation in the activities of, any public employee organization. . . .

most senior Officers at MHC, and, prior to January 1, lateral transfers within the Network were, for the most part, voluntary and lasted less than two weeks. Additionally, the Union asserts that both Rosario and De La Cruz were specifically told that the transfers were permanent, even though the Nieves memorandum states that the transfers were temporary.

Furthermore, Matos' action, in ordering that the contents of the Local 237 file cabinet be removed and destroyed, violates § 12-306a(1), (2), and (3) of the NYCCBL. The Union contends that, contrary to HHC's contentions that the file cabinet had to be moved for renovations, the cabinet was never moved from its location and is still located in the same room. Even if the file cabinet had to be moved, HHC has not offered any reasonable explanation as to why it had to be unlocked or why the contents had to be destroyed.

The Union asks that the Board order HHC to: cease and desist from restraining and/or coercing Rosario, Bogan and De La Cruz in the exercise of their rights granted in § 12-305 of the NYCCBL; cease and desist from attempting to dominate or interfere with the administration of Local 237; cease and desist from discriminating against Rosario for the purpose of discouraging participation in the lawful activities of Local 237; rescind the reassignments of Rosario, De La Cruz, and Bogan, and return them to their position at MHC; and order that Rosario be allowed to conduct union activities on behalf of Local 237 without coercion or interference by HHC.

### **HHC's Position**

HHC argues that the Union failed to allege any facts showing that HHC interfered with the rights of any employees or their organization. HHC contends that §12-306a(1) may be independently violated only in cases in which the employer's conduct is severe, and the conduct at issue in this matter does not rise to that level. The Union has also failed to allege facts

sufficient to show that HHC or its agents have dominated or interfered with the formation or the administration of Local 237 in violation of § 12-306a(2) of the NYCCBL.

The Union has not stated any facts nor given any indication that Nieves, the person who made the decision to reassign Rosario, De La Cruz, and Bogan, had any knowledge that they filed grievances: Matos had no involvement with the decisions to transfer them.

Furthermore, the Union has not stated any facts nor given any indication that there is any causal connection between the decision to reassign the Union members and any union activity. The Union's mere allegation of improper motive does not constitute a violation of the NYCCBL, and proximity in time between two events is not alone sufficient to support a conclusion of anti-union animus. Additionally, the Union has failed to show any causal connection between the removal of the file cabinet and any union activity.

Moreover, HHC asserts that the decision to reassign the individuals named in the petition was motivated solely by a legitimate business reason and thus was a proper exercise of managerial rights. This is evident by the fact that petitioners were not the only individuals reassigned and they were not the first to be reassigned in the Network. As indicated in Nieves's December 7, 2000, memorandum, HHC wanted Special Officers to become familiar with each facility, so the Network could be assured that any Special Officer, from any facility, would be able to assist in a constructive manner if there is a reason to mobilize officers.

Similarly, the decision to remove the file cabinet was motivated by the need to reconstruct the office space to accommodate the Detective Unit and was thus a proper exercise of managerial rights. HHC notes that the file cabinet belonged to a Local 237 former Shop Steward, Officer Bannano. He was the only individual to use the file cabinet and had been voluntarily

transferred to another hospital several months earlier. Matos, also a Local 237 member, tried but failed to locate the key to the file cabinet. Because of the need to clear the area, Matos ordered that the lock be broken and the contents removed. The only contents that were destroyed concerned individuals who no longer worked at MHC. The remaining contents were put aside for Bannano to retrieve. He has never objected to Matos' decision to break the lock and empty the contents of the file cabinet. Due to the wholly conclusory and speculative nature of the Union's allegations, as outlined in these arguments, the petition must be dismissed.

### **DISCUSSION**

It is an improper practice under § 12-306a of the NYCCBL 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;
- (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 in, or participation in the activities of, any public employee organization. . . .

To determine whether alleged discrimination or retaliation violates § 12-306a(1) and (3), this Board uses the standard enunciated in *City of Salamanca*, 18 PERB ¶ 3012 (1985), adopted by this Board in *Bowman*, Decision No. B-51-87. *Bowman* requires that Petitioner show that:

1. the employer's agent responsible for the alleged discriminatory act had knowledge of the employee's protected activity; and
2. The employee's protected activity was the motivating factor in the employer's decision.

If Petitioner shows both of these elements, then the employer may try to refute the evidence or attempt to establish that its actions were motivated by a legitimate business reason.

The Union has not shown that the employer's agent responsible for the transfers had knowledge of the employees' protected activity. HHC contends, and the Union does not deny, that the Directors of Hospital Police for each facility decided who would be transferred and when. The Union has presented no persuasive evidence that the Director was aware of any of the Union members' protected activity.

Though Matos's name appears on the transfer memoranda, the Union does not argue, and the evidence does not show, that Matos informed those in charge of the transfers of the Union members' activity. The petition protesting the transfers was not addressed to any management representative that could have effected the decision-making process, and the record does not show that the petition ultimately reached any them. These transfers appear to be in accordance with Nieves's December 7, 2000, memorandum explaining his decision to transfer all Special Officers, and we note that several other Officers were reassigned prior to Rosario. Moreover, assuming that the employer knew of Rosario's, De La Cruz's, and Bogan's union activity, there is no evidence that they were singled out for transfer because of that activity. Thus, we find that HHC did not violate § 12-306a(3) of the NYCCBL.

However, we find that the removal and destruction of the Union's documents from the file cabinet constitutes an independent violation of §12-306a(1). Section 12-306a(1) may be independently violated by such improper employer conduct such as threatening employees for exercising their rights granted in §12-305. *Local 2021, District Council 37*, Decision No. B-36-93; *Local 1180, Communications Workers of America*, Decision No. B-47-89.

Section 12-305 of the NYCCBL states in relevant part that:



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 such activities.

HHC admits that the file cabinet was broken into and certain documents were destroyed; the Union implicitly argues that Matos was acting as an agent of HHC when he broke into the file cabinet. Regardless of the need to remove the cabinet, the documents belonged to the Union, and HHC was in no position unilaterally to destroy them, order their destruction, identify their value, or determine to whom the documents “belonged.” Thus, the conduct rises to the level of direct interference with the employees’ §12-305 right to assist a public employee organization. *See Assistant Deputy Wardens Ass’n*, Decision No. B-19-95; *Committee of Interns and Residents*, Decision No. B-26-93.

We find that the remainder of the Union’s assertions, relating to the alleged domination and interference with the formation or administration of the Union in violation of § 12-306a(2), are conclusory and speculative. *See Simmons*, Decision No. B-53-90 (allegations based on conjecture and surmise are insufficient to sustain a charge of improper practice against an employer). Accordingly, we grant the petition as it relates to an independent violation of §12-306a(1), but deny the petition as it relates to §12-306a(2) and (3) and a derivative violation of §12-306a(1).

### **ORDER**

Pursuant to the powers vested in the Board of Collective Bargaining by the New York City Collective Bargaining Law, it is hereby,

DETERMINED, that the removal and destruction of documents from a Union file cabinet constitutes an improper public employer practice in violation of §§ 12-306a(1) of the NYCCBL;

and it is therefore

ORDERED, that the improper practice petition filed herein be, and the same hereby is, granted in relation to the alleged violation of § 12-306a(1) of the NYCCBL; and it is further

ORDERED, that the improper practice petition filed herein be, and the same hereby is, denied in relation to the alleged violation of § 12-306a(2) and (3).

DIRECTED, that the City shall cease and desist from interfering with Local 237 members in the exercise of their rights granted in §12-305of the NYCCBL.

Dated: April 30, 2002  
New York, New York

MARLENE A. GOLD  
CHAIR

GEORGE NICOLAU  
MEMBER

CHARLES G. MOERDLER  
MEMBER

BRUCE H. SIMON  
MEMBER

Dissenting in part to the determination.

RICHARD A. WILSKER  
MEMBER

Dissents as to part of Decision  
concerning removal of documents.

EUGENE MITTELMAN  
MEMBER