

**Social Service Employees Union, Local 371, 75 OCB 31 (BCB 2005)**

[Decision No. B-31-2005] (Docket No. BCB-2361-03), *aff'd*, *In re Soc. Serv. Empl. Union, L. 371 v. NYC Bd. of Coll. Barg.*, Index No. 116054/05 (Sup. Ct. N.Y. Co. May 30, 2006), *aff'd*, 47 A.D.3d 417 (1<sup>st</sup> Dept. 2008).

**Summary of Decision:** Union filed a verified improper practice petition claiming that the City violated the NYCCBL by interfering with Aubrey Norris's rights and discriminating against him for union activity when ACS allegedly attempted to prevent Norris from entering ACS's central office. The City contends that requiring security checks before entering an ACS building is a proper exercise of its management rights and that the Union failed to allege sufficient facts to establish a prima facie case. The Board found that the record failed to show that ACS's challenged acts were motivated by union animus. (*Official decision follows.*)

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**OFFICE OF COLLECTIVE BARGAINING  
BOARD OF COLLECTIVE BARGAINING**

**In the Matter of the Arbitration**

*-between-*

**SOCIAL SERVICE EMPLOYEES UNION, LOCAL 371,**

*Petitioner,*

*-and-*

**CITY OF NEW YORK & NEW YORK CITY  
ADMINISTRATION FOR CHILDREN'S SERVICES,**

*Respondent.*

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**DECISION AND ORDER**

On October 14, 2003, Social Service Employees Union, Local 371 ("Union" or "Local 371"), on behalf of Aubrey Norris, filed a verified improper practice petition against the City of New York and the Administration for Children's Services ("City," "ACS," or "Agency"). The Union claims that ACS violated § 12-306(a)(1) and (3), of the New York City Collective Bargaining Law (New York City Administrative Code, Title 12, Chapter 3) ("NYCCBL") by

interfering with Norris's rights and discriminating against him for union activity when ACS allegedly attempted to prevent Norris from entering ACS's central office. The City contends that requiring security checks before entering an ACS building is a proper exercise of its management rights and that the Union has failed to allege sufficient facts to establish a *prima facie* case. On several occasions, the parties requested that the hearing be postponed while they attempted to settle the case. When no settlement was reached, a hearing was held; post-hearing briefs were submitted in mid-September 2005. The Board finds that the record fails to show that ACS's challenged acts were motivated by union animus.

### **BACKGROUND**

ACS's central office is located at 150 William Street in Manhattan. It has been a longstanding practice to require visitors to present identification, state the purpose of the visit, and sign a logbook at a security desk indicating the name of the person and floor to be visited, and the time of arrival. Security first places a call to verify that the visitor is expected. If there is no verification, the visitor is denied access. Frank Harris, Director of Security at ACS's central office, testified that this procedure applies to all visitors, including union representatives, has been in place since 2000, and is posted in front of the lobby security desk. ACS employees must also show identification in order to enter ACS buildings. If they fail to present proper identification, their supervisor is contacted to verify their employment. Harris stated that he is contacted if anyone is barred from entering the building. A description of the person and the person's name is sent to lobby security.

No union representatives are barred from entering ACS's central office. ACS's Office of

Labor Relations ("OLR") notifies Harris, who in turn notifies lobby security if a union activity is scheduled. If OLR does not notify Harris and a union representative arrives to attend such an event, lobby security calls him and Harris contacts OLR for verification. When a representative visits a union member regarding a potential grievance, the representative is not required to give the name of the member but gives the name of the appropriate shop steward. Security then contacts the shop steward to verify the visit, and the union representative is allowed to enter. Clarence Jeffrey, Director of OLR, testified that to avoid disruption during the workday, all union representatives must make prior arrangements to schedule union business.

Norris has been employed by the Union for 15 years and has been Associate Director of Organization and Education ("ADOE") for approximately five years. He is officially on leave from ACS. He had previously been employed by the New York City Human Resources Administration ("HRA"). As ADOE, Norris assists the Union's Director of Organization, Beverly Brown, in decision-making, conducts field visits, assists union members in grievance proceedings, attends labor-management meetings, and monitors hiring and promotional pools at ACS and HRA. In addition, Norris is often required at ACS locations when members are subject to disciplinary actions, when a member is called in for a conference and requests the union to be present, or when disputes arise between supervisors and members. Norris visits ACS locations approximately four times a month. Occasionally, he provides advance notice if a union meeting is scheduled.

The July 9, 2003, Incident

According to Norris, on July 9, 2003, at approximately 12:10 p.m., he arrived at ACS's central office with Shirley Aldebol, Assistant to the President of the Union. Norris was

responding to a call from a member who claimed that there was a possible health and safety violation at that location. Norris and Aldebol entered the building, signed the logbook, presented identification, and indicated that they would be visiting the 8th floor. They met with the Union member during the member's lunch break, observed the alleged health and safety violation, and documented their findings. After 40 minutes, as they were preparing to leave the floor, Norris and Aldebol were approached by a manager and asked the purpose of their visit. They responded that they were investigating a possible grievance. Norris and Aldebol then returned to the Union member to obtain additional information that they were missing. They spoke to the member for approximately ten more minutes.

After Norris and Aldebol exited the building, they were approached at the corner by Security Officer Captain Anthony Rosario and Security Supervisor Julia Lugo. Norris recognized them. According to Norris, Rosario stated that Norris had disrespected him, that he had almost arrested Norris on the 8th Floor, and that if Norris came back to that ACS location, he would be arrested. Rosario then told Lugo that if Norris ever came back not to let him enter the building. Norris replied that he could not be lawfully barred from entering the building and that he intended to return to conduct legitimate union business in his capacity as an officer of the Union. According to Norris, this was not the first time that Rosario had spoken to him about his presence at ACS locations. For example, on a previous occasion, Rosario had gone to a hiring pool to verify Norris's claim that he was there to attend the pool.<sup>1</sup> Prior to the July 9 incident, Rosario had never told Norris that he was barred from entering the ACS location.

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<sup>1</sup> During a hiring pool, candidates who have successfully taken a civil service exam are interviewed and hired by the agency holding the pool. The Union monitors hiring pools to ensure that policies and procedures are adhered to; for example, that the agency follows the "one-in-three" rule, that one out of every three candidates is interviewed and hired.

Rosario testified that he was going to lunch with Lugo and noticed Norris and an unknown female at the front of the building. Rosario told Norris that he needed to follow procedure when entering the building in order to be allowed access. Rosario stated that he had previously been told by Lugo and other security officers that they had had problems with Norris. For example, Norris would indicate in the logbook that he is going to one floor but would go to another. Rosario also stated that Lugo had had ongoing problems with Norris.

Norris contacted Director of OLR Jeffrey about this incident, which he investigated. Jeffrey spoke with Rosario who stated that he had not threatened to arrest Norris but only reiterated that Norris should follow building procedure.

The September 4, 2003, Incident

On September 4, 2003, at approximately 9:30 a.m., Norris went to ACS's central office to monitor a hiring pool. Norris presented his identification and signed the logbook. He did not bring the letter that OLR had sent to notify the Union that there would be a hiring pool on that date. According to Norris, before he was given a visitor's badge, lobby security told him that they had to call the Director of Security because they had been notified not to let him enter the building. Norris then told the security officer that he was there to attend the hiring pool and that ACS management had been notified that the Union would be present. When the security officer called Harris, Norris stated that he had a right to monitor the hiring pool and attempted to walk past the security desk but was prevented by about five security guards, who formed a barrier. One of the security officers accused Norris of pushing into Lugo but Norris stated that she pushed him. According to Norris, he stepped back because he wanted to avoid any physical confrontation in light of a quadruple bypass operation he had had eight years earlier. Norris then

proceeded to make a few telephone calls. He spoke to Faryce Moore, the Union's Director of Grievances and Legal Services, who advised Norris to remain there until she called back. After an unsuccessful attempt to reach Jeffrey, he spoke with Lynette Hunkins, Appeals Officer in OLR. Hunkins came to the lobby and explained to security why Norris was there. At this time, Harris arrived. One of the security officers told Harris that Norris had pushed Lugo. According to Norris, Harris gesticulated towards him in an aggravated manner and accused him of pushing his staff. Norris told him that he was not going to discuss anything with him. After a discussion with Hunkins, Norris was allowed to proceed to the hiring pool. Norris claims that at that point, because of the stress and humiliation he had experienced, he could not give an effective presentation at the hiring pool. Norris left the building and asked Joseph Locust, an Organizer for the Union, to cover for him. Locust did not have any problems entering the building. Norris stated that he had previously attended hiring pools at ACS's central office and followed the same procedure for entering the building that he had followed on September 4. He also stated that he had never observed any Local 371 or other union representatives being prevented from entering the building. Locust testified that he has never had problems entering any ACS location.

Jose Martinez, a security officer on duty that day, testified that when Norris arrived at the security desk, he told security that he had a meeting and "was going to work" and refused to provide any further information regarding his visit. Martinez testified that when security followed procedure and called upstairs to Harris's office, Norris became upset. Norris was stopped as he attempted to push past the security desk and pushed into Lugo, who had her arms raised to stop him. Harris testified that he had not been notified about the hiring pool, and was contacted by lobby security regarding the situation. He called Hunkins, told her that Norris was

attempting to enter the building, and asked if she knew why he was there. Hunkins testified that she told Harris she did not know, and went with Harris to the lobby. Norris told Hunkins that he was there for the hiring pool and showed her a letter from the Union assigning him to the pool. Norris had not shown security the letter but had just signed "8th floor." While Hunkins was speaking to Norris, Lugo told Harris that Norris had pushed into her when he attempted to walk past her. Harris stated that when he first saw Norris, he was sitting on the steps near the lobby security desk and appeared agitated, was sweating, and refused to talk to him after he asked him whether he attempted to push past security. Hunkins testified that she told Harris that Norris was there to attend the hiring pool and that he could enter and go upstairs. Although Hunkins told Norris he could attend the hiring pool, he refused to do so. Glen Greenfield, a Director at ACS's Office of Personnel Services, was also alerted to the situation and after speaking to Harris, invited Norris to enter and attend the hiring pool, but Norris appeared agitated, refused to enter, and left the building. Jeffrey testified that he collected reports from Hunkins, Greenfield, and Harris regarding the incident. Jeffrey stated that it appeared from the reports that Norris did not provide security with the information they needed to allow him to enter.

#### The September 22, 2003, Incident

On September 22, 2003, at approximately 9:50 a.m., Norris went to ACS's central office for a scheduled labor-management meeting. Norris presented his identification and signed the logbook. According to Norris, security informed him that the meeting had been canceled and that he could not enter. Norris, who knew that the meeting had not been canceled, told security that he needed to attend the meeting. Another security officer came and said that the meeting had not been canceled and Norris could enter the building. Norris proceeded to the meeting.

According to Norris, the security guard who had detained him was someone he saw regularly, and other Local 371 representatives who attended the meeting had no problems entering.

Jeffrey testified that the meeting was originally scheduled to take place on the 6th floor but was moved to the 18th floor. Lobby security did not know of this change when Norris arrived. Jeffrey testified that Norris and another Union representative complained that Norris was told that the meeting was canceled. In response to Norris's complaint, Jeffrey spoke with Rosario, Lugo, and Harris about the incident. Lugo told Jeffrey that Norris was never told that the meeting was canceled and that Norris had complained about the visitor pass he was given to wear.

Additional Information Offered to Support Union's Claim of a Pattern of Discrimination

To support its claim of a pattern of discrimination against Norris, the Union offered background evidence. Joseph Locust, Jose Velez, Magda Santos, and Lisa Turner, all Organizers for the Union, testified that they do not encounter problems entering ACS's central office or any other ACS location when they visit by themselves in the course of their union duties. They all stated that when they arrive, they show identification, sign the logbook, and indicate the purpose of their visit. Specifically, Locust stated that he did not have problems entering ACS's central office on September 4, 2003, to replace Norris at the hiring pool. At locations he often visits, he has developed a professional rapport with security, shows his identification, and states the purpose of his visit as a formality. Velez testified that the only time he has encountered problems was when he accompanied Norris on two occasions to ACS's central office, one in 2003 and another in 2004, when security indicated that they had orders from "higher ups" not to let them in. Santos testified that on the two occasions that she visited ACS's central office with



Norris to hand out fliers, security gave him a "hard time" by calling the Director of Security Harris to verify the purpose of their visit before they were allowed to enter the building. Turner stated that in April 2003, she and other Organizers had no problems entering ACS's central office to hand out fliers, but on that same day Norris told her that he had been prevented from entering the building. Furthermore, in January 2004, when she accompanied Norris with Velez and Santos to hand out fliers at ACS's central office, security called Harris's office. Jeffrey came to the lobby and told them that they were not allowed in the building without prior authorization for the activity but that he would provide a room. Turner could not recall whether Norris had made prior arrangements for the Union to be there.

Petitioner requests that the Board order the City to cease and desist from denying Norris access to ACS's central office; cease and desist from interfering, restraining or preventing Norris from performing his duties for the Union; and cease and desist from discriminating against Norris because of his Union activity.

### **POSITIONS OF THE PARTIES**

#### **Union's Position**

The Union claims that on July 9, 2003, after performing his duties for the Union, Norris was warned by ACS security personnel to stay away from ACS's central office, threatened with arrest, and told that he was barred entry in the future. The evidence establishes that ACS's treatment of Norris was motivated by union animus. Similarly, on September 4, 2003, ACS's refusal to allow Norris access to the building to attend a hiring pool by physically preventing him from entering was also motivated by union animus. Moreover, the Union demonstrated a pattern

of discrimination against Norris by presenting evidence that ACS delayed Norris's attendance at a labor-management meeting on September 22, 2003, by falsely telling him that the meeting was canceled, and by subjecting him to scrutiny and restrictions not placed upon representatives of other unions or other representatives of Local 371. At all times, Norris has complied with the procedures to gain entry to ACS's central office. However, ACS has denied Norris access to its central office to perform his duties for the Union, and has interfered with and discriminated against Norris in the performance of Union duties in violation of NYCCBL § 12-306 (a)(1) and (3).<sup>2</sup>

**City's Position**

The City argues that ACS's procedure to require visitors to sign-in at the security desk and provide information as to the purpose of the visit is a proper exercise of its managerial rights under NYCCBL § 12-307(b) because it involves maintaining the efficiency of governmental operations and the security of ACS's offices.<sup>3</sup> ACS's actions on July 9, September 4, and

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<sup>2</sup> NYCCBL § 12-306(a) provides, in pertinent part:

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 participation in the activities of, any public employee organization; . . .

NYCCBL § 12-305 provides, in relevant part:

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.

<sup>3</sup> NYCCBL § 12-307(b) provides, in pertinent part:

It is the right of the city, or any other public employer, acting through its agencies, to determine the standards of services offered by its agencies; . . . direct its employees; . . . maintain the efficiency of governmental operations; determine the methods, means and personnel by which government operations are to be

September 22, 2003, were proper exercises of its management rights.

Alternatively, the petition must be dismissed because the Union failed to allege facts sufficient to find the City in violation of NYCCBL § 12-306(a)(1) and (3), for there is no showing that ACS's actions were undertaken for the purpose of frustrating Norris' statutory rights. Nor has the Union stated facts that establish any connection between Norris's union activity and ACS's actions. Norris, as a visitor to ACS's central office, must comply with the Agency's longstanding procedures. ACS did not attempt to deny access or deny access to Norris. On July 9, Rosario, who had been informed that Norris did not follow procedure when entering ACS's central office, told Norris to follow procedure in order to gain entry to the building. On September 4, Norris refused to inform security of the purpose of his visit and would not wait for security to confirm that he was expected. Instead, Norris attempted to force his way in. Despite Norris's disregard for Agency procedures, senior ACS personnel repeatedly invited him to enter the building, but Norris refused. On September 22, as soon as security was informed about the room change, Norris was allowed to enter to attend the meeting. The record fails to show that ACS's actions were motivated by union animus. The record does show that when Norris refused to provide required information to security officers, his access to the location was delayed until the information was obtained. Although the Union claims that Norris was discriminated against because no other Union representative has difficulty entering ACS's central office, there are no complaints from others because they follow established procedures.

The City argues that the Agency would have acted in the same manner in the absence of

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conducted; . . . and exercise complete control and discretion over its organization .  
...

union activity. Because Petitioner has failed to establish that the acts complained of were taken for the purpose of interfering with, discriminating against or frustrating statutory rights in violation of the NYCCBL, the petition must be dismissed.

### **DISCUSSION**

The issue in this case is whether ACS discriminated against Norris for protected union activity when Norris went to ACS's central office on July 9, September 4, and September 22, 2003. This Board finds that the record fails to demonstrate that ACS's challenged acts were motivated by union animus.

To determine whether an action violates NYCCBL § 12-306(a)(1) and (3), this Board uses the standard enunciated in *City of Salamanca*, 18 PERB 3012 (1985), adopted by the Board in *Bowman*, Decision No. B-51-87 at 15-16. Petitioner must demonstrate 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 a petitioner alleges sufficient facts concerning these two elements to make out a *prima facie* case, the employer may attempt to refute petitioner's showing on one or both elements or demonstrate that legitimate business motives would have caused the employer to take the action complained of even in the absence of protected conduct. See *Civil Service Bar Ass'n*, Decision No. B-17-2004.

Proof of the second element must necessarily be circumstantial absent an outright admission. *Civil Service Bar Ass'n, Local 237*, Decision No. B-5-2004 at 10; *City Employees Union, Local 237*, Decision No. B-13-2001 at 9. At the same time, petitioner must offer more

than speculative or conclusory allegations. Alleging an improper motive without showing a causal link between the management act at issue and the union activity does not state a violation of the NYCCBL. *Sergeants' Benevolent Ass'n*, Decision No. B-22-2005 at 21; *Civil Service Bar Ass'n*, Decision No. B-17-2004 at 18. Although proximity in time, without more, is insufficient to support an inference of improper motivation, timing may also be considered together with other relevant evidence. *Civil Service Bar Ass'n*, Decision No. B-17-2004 at 18.

Here, the City does not dispute it knew that Norris was acting on behalf of Local 371 members. On July 9, 2003, Norris went to ACS's central office to speak to a Union member. On September 4, 2003, Norris went to ACS's central office to monitor a hiring pool and on September 22, 2003, to attend a labor-management meeting. Since management at ACS knew the purposes of Norris's visits, which were related directly to the employment relationship and in furtherance of the collective welfare of employees, Petitioner has established the first prong of the test.

With respect to the second prong, we cannot conclude that ACS discriminated against Norris for union activity. The Union fails to show a causal connection between Norris's protected union activity and ACS's challenged acts on July 9, September 4 and September 22, 2003. Nothing in the record indicates that on these occasions, ACS's actions were motivated by union animus. Rather, ACS's procedure for entry into the building appears to have caused friction between Norris and security officers with whom he has regular contact. Indeed, Norris acknowledges that no other Union representative encounters problems entering the building. Moreover, Locust, Velez, Santos and Turner, testified that they have never encountered problems entering ACS's central office by themselves.

On the dates in question, Norris was not prevented from conducting union business and was not barred from entering ACS's office. Rather, on July 9, after leaving ACS's central office, he and Rosario had a conversation that appears to have been tinged with personal animosity on both sides. However, the record does not indicate that as a result of this conversation, Norris was barred from entering the building on future occasions to conduct union business.

Furthermore, the record does not demonstrate that ACS's delay in allowing Norris to enter the building on September 4 was motivated by union animus. Norris does not deny that initially he did not specify the purpose of his visit. When security followed procedure by calling Harris's office to verify that Norris was expected, he did not wait and attempted to walk past security. The record does not indicate that ACS's actions were undertaken to prevent Norris from conducting union business or were discriminatory in nature. Once Hunkins and Greenfield verified that Norris was going to a scheduled event, they allowed him to enter the building to attend the hiring pool, but he refused. Locust, who testified that he has never encountered problems when entering any ACS location, had no problems entering ACS's central office to cover for Norris at the hiring pool on September 4.

As to the September 22, 2003, incident, the record shows that the security officers did not know where or if a meeting was being held. When another security officer confirmed that the meeting was taking place, Norris was allowed to enter. Nothing in the record suggests that the delay in allowing Norris to enter was motivated by union animus. Indeed, Norris testified that no other Union representative who attended the meeting on September 22 had problems entering. The Union's background evidence does not demonstrate a pattern of discriminatory conduct against Norris. The additional testimony is vague and inconclusive. Velez did not recall

anything specific regarding the incidents on which he accompanied Norris. Turner stated that on one occasion she, Norris, Santos, and Velez, encountered problems entering ACS's central office. However, the Union was unable to rebut Jeffrey's testimony that Norris had not made prior arrangements to be there on that date. Although Santos experienced delays on the two occasions when she accompanied Norris to ACS's central office, the Union representatives were ultimately allowed to enter. When testifying regarding their regular visits to ACS's central office and other ACS locations on their own, Locust, Velez, Santos, and Turner, stated that they follow agency procedure and do not encounter any problems. That other Union representatives never encountered problems entering ACS locations when they appeared without Norris, and did not have problems entering ACS's central office on July 9, September 4, and September 22, 2003, lends credence to the conclusion that Norris and certain security officers at ACS's central office had an ongoing interpersonal conflict.

Thus, the record fails to demonstrate that ACS's challenged acts on July 9, September 4, and September 22, 2003, were motivated by union animus. Accordingly, the improper practice petition must be dismissed in its entirety.

**ORDER**

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, BCB-2361-03, filed by the Social Service Employees Union, Local 371, be, and the same hereby is, dismissed.

Dated: October 20, 2005  
New York, New York

MARLENE A. GOLD  
CHAIR

GEORGE NICOLAU  
MEMBER

M. DAVID ZURNDORFER  
MEMBER

ERNEST F. HART  
MEMBER

GABRIELLE SEMEL  
MEMBER