# *SSEU, Local 371*, 8 OCB2d 35 (BCB 2015)

(IP) (Docket No. BCB-4111-15)

***Summary of Decision***: The Union alleged that NYCHA violated NYCCBL § 12-306(a)(1) and (3) when it terminated a probationary employee in retaliation for engaging in protected union activity, including seeking union representation at a meeting and the filing of a grievance. NYCHA argued that the employee was terminated for legitimate business reasons and that the decision to terminate her was made before NYCHA was aware of the grievance. The Board found that the Union established its *prima facie* case but that NYCHA refuted the causation prong and provided legitimate business reasons for its actions. Therefore, the improper practice petition was dismissed. ***(Official decision follows.)***

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

**In the Matter of the Improper Practice Petition**

***-between-***

**SOCIAL SERVICE EMPLOYEES UNION, LOCAL 371, on behalf of its member WENDY LAMOUTH,**

***Petitioner,***

***-and-***

**THE NEW YORK CITY HOUSING AUTHORITY,**

***Respondent.***

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## DECISION AND ORDER

On April 27, 2015, Social Service Employees Union, Local 371 ("Union"), filed an improper practice petition on behalf of its member Wendy Lamouth against the New York City Housing Authority ("NYCHA"). The Union alleges that NYCHA 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"), when it terminated Lamouth, a probationary employee, in retaliation for engaging in protected union activity, including seeking union representation at a

meeting and the filing of a grievance. NYCHA argued that Lamouth was terminated for legitimate business reasons, including insubordination, and that the decision to terminate her was made before NYCHA was aware of the grievance. The Board finds that the Union established its *prima facie* case but that NYCHA refuted the causation prong and provided legitimate business reasons for its actions. Therefore, the improper practice petition is dismissed.

## BACKGROUND

The Trial Examiner held a one day hearing and found the totality of the record established the relevant background facts to be as follows:

The Union represents NYCHA employees in the Community Associate title. NYCHA and the Union are parties to a collective bargaining agreement that provides grievance rights for employees in the Community Associate title. Lamouth was a probationary employee in the Community Associate title at the time of her termination on December 29, 2014.

Lamouth was hired by NYCHA's Family Services Department ("FSD") as a Community Associate on February 11, 2013, and worked at NYCHA's Marble Hill Houses in the Bronx, New York. It is undisputed that shortly after being hired Lamouth developed a poor working relationship with a co-worker such that, prior to April 2013, NYCHA arranged Lamouth's and the co-worker's schedules to limit their interaction. On April 3, 2013, however, both were at the same work location and had an argument at Lamouth's work station. Both employees were counseled about their conduct and Lamouth acknowledged that this incident was referenced on her first performance evaluation. Lamouth's unrebutted testimony was that she otherwise received positive performance reviews and that, between October and December 2013, she received three written awards for good performance.

In May 2014, Lamouth was assigned a new supervisor, Tanya Sambourskiy.[1] It is undisputed that Lamouth and Sambourskiy had a difficult working relationship. Lamouth testified that she "had a lot of issues" with Sambourskiy, whom she described as unfairly critical of her writing and speaking skills. (Tr. 17) Lamouth also testified that she was not "bonding" with Sambourskiy and that Sambourskiy did not support her. (Tr. 18)

Sambourskiy testified that Lamouth had several work performance problems, including two incidents of insubordination, discussed below. Specifically, Sambourskiy testified that, in addition to the insubordination, Lamouth had poor writing skills, often was untimely with documentation, and had difficulty accepting constructive criticism. Sambourskiy testified that she verbally counseled Lamouth regarding all of her alleged work performance problems and addressed in emails her inadequate writing skills. Sambourskiy, however, acknowledged that she did not issue any Instructional Memoranda to Lamouth and, therefore, did not follow NYCHA's policy in addressing Lamouth's work performance problems. According to Sambourskiy, NYCHA has a four-part policy regarding work performance problems under which an employee receives verbal counseling and/or warnings which, if unsuccessful, should be followed by written counseling and/or warnings. If the verbal and written counseling/warnings fail to resolve the problem, the employee can receive an Instructional Memorandum. If the problem persists, the employee then receives a Counseling Memorandum.

**Alleged Insubordination, Counseling Memoranda, and Union Activity**

On December 15, 2014, Lamouth received two Counseling Memoranda for insubordination, one for an incident on December 1, 2014, the other for an incident on December

[1] Lamouth was on maternity leave from June 9, 2014, until October 6, 2014.

8. Sambourskiy testified that, although both Counseling Memoranda are dated December 15, 2014, she began drafting them immediately after the alleged incidents.

The December 1, 2014, incident concerned Lamouth's behavior during a telephone conversation with Sambourskiy on that day regarding Lamouth's time-keeping for Friday, November 21, 2014. NYCHA's policy requires employees to record their entrance and exit from any NYCHA facility by swiping in/out of a device known as a "KRONOS" clock. On November 21, NYCHA had a Thanksgiving lunch at its Bronx Borough Office which Lamouth attended. Lamouth left at approximately 3:00 pm and her return to her work location, the Marble Hill Houses, was recorded on a KRONOS clock but there was no KRONOS clock record of her departure from the Marble Hill Houses. Lamouth's unrebutted testimony was that the Plant Manager at the Marble Hill Houses witnessed her leaving at 5:00 pm on November 21. On Monday, November 24, after Lamouth realized that there was no KRONOS record of her November 21 departure, Lamouth submitted alternative time sheet forms ("ATS") for November 21 signed by the Plant Manager.[2] (*See* Union, Ex. D) Sambourskiy testified that Lamouth should have called or emailed her upon realizing that there was no KRONOS clock record of her November 21 departure.

On December 1, Sambourskiy received Lamouth's ATS forms, rejected them, and called Lamouth to instruct her as to the proper procedures to record her time for November 21. According to Sambourskiy, Lamouth had difficulty following her instructions, said "I am not doing this anymore," and hung up on her. (NYCHA, Ex. 2) A few minutes later, Lamouth

[2] Lamouth initially submitted an ATS that noted her "swipe out on 11/21/2014 did not register." (Union, Ex. D) Lamouth testified that she was then instructed that the ATS notation should read "KRONOS did not register" (Tr. 26) and so she submitted another ATS with the notation "KRONOS error." (Union, Ex. D) The Plant Manager for Marble Hill Houses signed off on both ATS forms.

called Sambourskiy back, stating that she wanted to speak with Marilyn Goulbourne, NYCHA's Bronx Borough Administrator, to whom Sambourskiy reported. Sambourskiy testified that when informed that Goulbourne was not in, Lamouth again hung up on her. Sambourskiy's testimony regarding the December 1 conversation was consistent with the description of the conversation in the Counseling Memorandum for that incident.

Lamouth, when asked if the Counseling Memorandum's description of the December 1 incident was accurate, testified that she could not recall the details of the conversation. Nevertheless, Lamouth testified that, during the conversation, she acted in a professional manner with a "firm" tone of voice. (Tr. 28) Lamouth further testified that Sambourskiy acted like she did not believe that Lamouth had left at 5:00 pm on November 21. Lamouth testified that "if the [Plant Manager] signed the [ATS forms], . . . why is that a problem[?] You know, he's considered the boss in that location so that should have been enough evidence." (Tr. 28).

The second alleged incident of insubordination occurred on December 8, 2014. FSD staff members, including both Lamouth and Sambourskiy, attended a training session on effective writing at NYCHA's 250 Broadway location. The training session ended around 3:30 pm, before the end of Lamouth's regular workday. Sambourskiy instructed those she supervised to wait until she determined whether the employees should swipe out at 250 Broadway or return to and swipe out at their normal work location. Sambourskiy testified that, despite her instruction, Lamouth left the training room. Lamouth testified that she assumed that she should return to Marble Hill Houses to swipe out and that she did not mind doing so because she wanted to prepare work for the next day and the Marble Hill Houses were only a block from her home.

Sambourskiy determined that the proper protocol was to swipe out at the training site and informed the trainer, who then found Lamouth and informed her of the instruction. Lamouth

then approached Sambourskiy. Sambourskiy testified that she was involved in a conversation with another supervisor when Lamouth approached. According to Lamouth, she approached Sambourskiy for instructions, who told her that she would tell her the next day what to do and then proceeded to ignore her. It is undisputed that Lamouth raised the December 1 incident. According to Lamouth, she raised the December 1 incident because she did not "want to have this situation going on again." (Tr. 34) According to Sambourskiy, Lamouth began "raising the tone of her voice" and, referring to the December 1 incident, stated: "Do you remember the last time that you questioned me?" (NYCHA, Ex. 3) Sambourskiy told Lamouth that her behavior was unacceptable. Lamouth insisted that she was very professional and did not raise her voice to Sambourskiy but "just spoke to her firmly. That's how I always speak to her because she gives me such a hard time with everything." (Tr. 35)

On or about December 10, 2014, several events occurred, but the specific order cannot be determined by the record. Goulbourne testified that she received drafts of the Counseling Memoranda from Sambourskiy and then contacted NYCHA's Human Resources department, which informed her that the "window" on Lamouth's probationary period was closing. (Tr. 124) Goulbourne discussed terminating Lamouth with the Human Resources department and concluded that termination "was the route we probably were going to go." (Tr. 132) Also around December 10, 2014, Lamouth's supervisors requested to meet with her, and Lamouth informed them that she desired to have Union representation at the meeting. The meeting was scheduled for December 15. Lamouth testified that she believed the purpose of the meeting was to address her relationship with Sambourskiy.

On December 12, 2014, Lamouth sought Union assistance in addressing her relationship with Sambourskiy because she felt "the situation wasn't being addressed" by management. (Tr.

17) Lamouth met with Michelle Blackstock, a Union grievance representative. After Lamouth described her situation, Blackstock informed Lamouth that she had an out-of-title grievance. Blackstock testified that she then called Sambourskiy, who she found to be unhelpful and who referred her to Goulbourne. Blackstock testified that she then called Goulbourne, advised Goulbourne that if the matter could not be resolved the Union would file a grievance, and that Goulbourne responded that there was nothing she could do. Both Sambourskiy and Goulbourne deny speaking with Blackstock or otherwise being informed that Lamouth was going to file a grievance. On December 12, Blackstock drafted, and Lamouth signed, an out-of-title grievance.[3] (*See* Union, Ex. B) Blackstock then referred the matter to Ronald Jones, a Union representative who handled mediations.

On December 15, 2014, Lamouth and Jones met with Goulbourne and Sambourskiy. Lamouth was presented with the two Counseling Memoranda, which both stated that Lamouth's "behavior and refusal to follow instructions is unprofessional and unacceptable." (NYCHA, Exs. 2 & 3) Both also stated that the "events recorded here and any repeated instances of the same or similar conduct may [be] the subject of a future disciplinary action." (*Id.*)

Jones testified that the meeting was "productive" and addressed the "issues" Lamouth was having with Sambourskiy. (Tr. 59) Jones further testified that he and Lamouth "left that meeting on a relatively good note." (Tr. 62) Both Lamouth and Jones also testified that they had no indication from the meeting that Lamouth was in danger of being terminated. Goulbourne testified that she had already concluded before the December 15 meeting that Lamouth would probably be terminated. Goulbourne testified that at the end of the meeting, it was clear to her

[3] NYCHA avers that it has no record of the grievance being filed. Blackstock testified that the grievance was processed according to the Union's normal practice and that, in accordance with those practices, she arranged for the grievance to be mailed to NYCHA on December 12, 2014.

that Lamouth was requesting to work under another supervisor and expected Goulbourne to "co-supervis[e]" her. (Tr. 125) However, she conceded that she gave no indication at the meeting that Lamouth was in danger of being terminated.

Immediately after the December 15th meeting, Goulbourne decided to request Lamouth's termination because she could foresee an "ongoing back-and-forth with [Lamouth] and her supervisor." (Tr. 125) Goulbourne testified as to the impact of Lamouth's poor working relationship with Sambourskiy, noting that it was time consuming and that, because FSD's caseloads were high, she "really could not afford to be going back and forth like that with one [employee]." (Tr. 127) Lamouth was already copying Goulbourne on the work product she sent to Sambourskiy. In noting this, Goulbourne testified that she could not indefinitely co-supervise Lamouth. Further, Goulbourne stated that other staff members had reported to her that they also had a poor working relationship with Lamouth and described Lamouth as "unapproachable" and lacking a "team spirit."[4] (Tr. 109)

Based on instructions from the Human Resources department, Goulbourne understood that "if we were going to take any action, that we needed to do it as soon as possible before the window period [of Lamouth's probation] was closed." (Tr. 124-125) Thus, immediately after the December 15 meeting, Goulbourne sent a Termination Request to NYCHA's FSD Director, noting Lamouth's "continued insubordination with her immediate supervisor." (NYCHA, Ex. 1) The Termination Request also referenced Lamouth's difficulties with her co-worker in April 2013. Goulbourne testified that, at the time she requested Lamouth's termination, the only union activity by Lamouth that she was aware of was Lamouth having Union representation at the

[4] Goulbourne testified that she also determined that Lamouth "didn't have the disposition to be able to accommodate" some unspecified changes that NYCHA was going through. (Tr. 118)

December 15 meeting. On December 18, 2014, NYCHA's FSD Director signed off on the Termination Request.

On December 29, 2014, Lamouth was called by Goulbourne to attend a meeting. After calling Jones, Lamouth decided to attend the meeting without Union representation because she believed that the meeting was probably to address changing her supervisor. Goulbourne and Sambourskiy attended the meeting and handed Lamouth a termination letter from NYCHA's Director of Human Resources, dated December 29, 2014.

Lamouth testified that her termination was a complete surprise and begged to keep her job. Lamouth further testified that, when she asked why she was being discharged, Goulbourne responded that she was terminated because she contacted the Union too frequently with too many complaints and that Goulbourne did not have the time to constantly meet with the Union, as she had too much other work to do. Both Goulbourne and Sambourskiy denied that these statements were made or that there was any discussion of Lamouth's union activity at the December 29 meeting.

## POSITIONS OF THE PARTIES

### Union's Position

The Union argues that Lamouth was discharged by NYCHA from her position of Community Associate because of her exercise of her rights granted in NYCCBL § 12-305.[5] Specifically, the Union asserts that Lamouth's out-of-title grievance and her request for Union representation at the December 15, 2014 meeting constitute protected activity. The Union argues

[5] NYCCBL § 12-305 provides, in pertinent 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 of such activities."

that by terminating Lamouth, NYCHA interfered with, restrained, and coerced Lamouth in the exercise of her rights granted in NYCCBL § 12-305 in violation of NYCCBL § 12-306(a)(1)[6] and discriminated against Lamouth for the purpose of discouraging membership in or participation in Union activities in violation of NYCCBL § 12-306(a)(3).[7]

As a remedy, the Union seeks an order: (a) determining that Lamouth was discharged by respondent in violation of NYCCBL § 12-306(a)(1) and (3); (b) directing NYCHA to reinstate Lamouth to her former position; (c) directing NYCHA to pay Lamouth back pay and benefits, and grant her seniority credit, from December 29, 2014, until the date of her reinstatement; (d) enjoining NYCHA from interfering with, restraining, and coercing Lamouth in the exercise of her rights granted in NYCCBL § 12-305 in violation of NYCCBL § 12-306(a)(1) and discriminating against Lamouth for the purpose of discouraging membership in or participation in Union activities in violation of NYCCBL § 12-306(a)(3); and (e) granting such other and further relief as the Board deems just and proper.

**NYCHA's Position**

NYCHA argues that Lamouth was terminated following several instances of insubordination towards her supervisor and at least one run-in with a co-worker. According to NYCHA, Lamouth's termination was wholly unrelated to any union activity. The Union has made no showing that her alleged union activity played any part in the decision to terminate Lamouth. Instead, it provides only a single unsupported, conclusory accusation that Goulbourne

[6] NYCCBL § 12-306(a)(1) provides, in pertinent part, that: "It shall be an improper practice for a public employer or its agents . . . to interfere with, restrain or coerce public employees in the exercise of their rights granted in [§] 12-305 of this chapter."

[7] NYCCBL § 12-306(a)(3) provides, in pertinent part, that: "It shall be an improper practice for a public employer or its agents . . . to discriminate against any employee for the purpose of encouraging or discouraging membership in, or participation in the activities of, any public employee organization."

told Lamouth that she was being terminated for contacting the Union too often, and Goulbourne and Sambourskiy credibly denied this assertion.

NYCHA further argues that neither Goulbourne, who requested Lamouth's termination, nor Sambourskiy, Lamouth's supervisor, were aware of Lamouth's grievance. NYCHA argues that it never received the grievance and that the timing of the grievance is questionable, coming when Lamouth knew that she was appearing to answer for disciplinary infractions. Therefore, NYCHA contends that there is no evidence that Lamouth was terminated for her union activity and the petition must be dismissed.

## DISCUSSION

The Union claims that NYCHA violated NYCCBL § 12-306(a)(1) and (3) by terminating Lamouth for engaging in union activity. We find that, although the Union established a *prima facie* case of retaliatory action, NYCHA has established that its actions were not motivated by union activity and also established legitimate business reasons that would have resulted in Lamouth's termination regardless of her protected activity. Accordingly, the petition is dismissed.

This Board, in *Bowman*, 39 OCB 51 (BCB 1987), adopted the standard enunciated in *City of Salamanca*, 18 PERB ¶ 3012 (1985), to determine whether an employer has violated NYCCBL §12-306(a)(1) or (3). This standard provides that a petitioner must demonstrate 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.

*Bowman*, 39 OCB 51, at 18-19; *Kassim*, 8 OCB2d 8, at 17 (BCB 2015). If a petitioner is able to establish a *prima facie* case, "the employer may attempt to refute [the] petitioner's showing on one or both elements or to demonstrate that legitimate business motives would have caused the employer to take the action complained of even in the absence of protected conduct." *Local 30, IOUE*, 8 OCB2d 5, at 23 (BCB 2015) (quoting *DC 37, L. 1113*, 77 OCB 33, at 25 (BCB 2006); *Local 237, CEU*, 77 OCB 24 (BCB 2006)).

Regarding the first prong, the record established that Lamouth engaged in union activity prior to her termination. It is undisputed that at the latest Goulbourne and Sambourskiy were aware that Lamouth had sought Union representation when Jones accompanied Lamouth at the December 15 meeting. *See Kaplin*, 3 OCB2d 28, at 14 (BCB 2010) (employer's knowledge of petitioner's desire to secure union assistance satisfies first element of the *prima facie* case); *DC 37, L. 376*, 77 OCB 12, at 14-15 (BCB 2006) (knowledge that member sought union assistance in addressing time and leave issues sufficient). Goulbourne testified that she made the recommendation that Lamouth be terminated after the December 15 meeting. Therefore, at a minimum, Goulbourne was aware of Lamouth's union activity prior to making the decision to terminate Lamouth.[8] Accordingly, we find that the Union has satisfied the first prong of the standard.

The second prong requires that "a petitioner must demonstrate a causal connection between the protected activity and the motivation behind management's actions [that] are the subject of the complaint." *OSA*, 7 OCB2d 20, at 19 (BCB 2014) (quoting *DC 37, L. 376*, 79 OCB 38, at 16 (BCB 2007)) (internal quotation marks omitted). It "is a rare case where there is

[8] NYCHA disputes that it received the out-of-title grievance, and Goulbourne and Sambourskiy deny knowledge that Lamouth was pursuing a grievance. We need not determine whether NYCHA had knowledge of the grievance, since it is clear it had knowledge of Lamouth's contact with the Union by December 15th and prior to the decision to terminate Lamouth's employment.

direct evidence of the employer's improper motivation." *Local 30, IOUE*, 8 OCB2d 5, at 21. Thus, "typically, motivation is proven through the use of circumstantial evidence, absent an outright admission." *Colella*, 7 OCB2d 13, at 22 (BCB 2014) (quoting *Burton*, 77 OCB 15, at 26 (BCB 2006)) (internal quotation and editing marks omitted). The Board, therefore, considers "whether the temporal proximity between the protected union activity and the retaliatory action, in conjunction with other facts, supports a finding of improper motivation." *Id.* (citing *DC 37, L. 376*, 6 OCB2d 39, at 19 (BCB 2013)). Claims of improper motivation, however, "must be based on statements of probative facts, rather than speculative or conclusory allegations." *Local 30, IOUE*, 8 OCB2d 5, at 21 (citing *DC 37, L. 983*, 6 OCB2d 10, at 29 (BCB 2013); *Morris*, 3 OCB2d 19, at 15 (BCB 2010)).

We find that the Union has also established the second prong and a *prima facie* case of retaliation. First, the Union offers direct evidence of NYCHA's improper motivation, as Lamouth testified that Goulbourne stated that she was terminated because she contacted the Union too frequently and that Goulbourne did not have the time to constantly meet with the Union. Second, the Union provided circumstantial evidence of improper motivation through temporal proximity plus other evidence of a retaliatory motive for terminating Lamouth. The decision to terminate Lamouth was made immediately after Lamouth requested and utilized Union representation in the meeting with her superiors on December 15, 2014. The close temporal proximity of the Union activity to the decision to request Lamouth's termination "raises suspicion of a retaliatory motive." *See Local 376, DC 37*, 6 OCB2d 39, at 21 (BCB 2013) (temporal proximity established where disputed act occurred two days after union activity). Further, Sambourskiy conceded that NYCHA did not follow its own policies regarding Lamouth's alleged work performance problems. NYCHA did not argue that these procedures

did not apply to Lamouth due to her probationary status or provide an explanation for its failure to follow them. Therefore, we find that the Union produced evidence sufficient to establish the *prima facie* case of retailiation. *See CSTG, L. 375*, 7 OCB2d 16, at 22 (BCB 2014) (*prima facie* case established by temporal proximity coupled with an unexplained change in performance evaluation procedures); *CSTG, L. 375*, 7 OCB2d 18, at 15 (BCB 2014) (*prima facie* case established by temporal proximity coupled with employer's failure to follow its own policies regarding promotions); *DC 37, L. 376*, 79 OCB 38 (BCB 2007) (retaliatory motive established, in part, by manager varying from his standard practice regarding discipline); *DC 37, L. 376*, 77 OCB 12, at 15 (BCB 2006) (retaliatory motive established, in part, by manager varying from his standard practice regarding performance appraisals).

Having found the *prima facie* case, our analysis shifts to employer's presentation to refute the *prima facie* case and/or establish a legitimate business reason for Lamouth's termination. *Local 30, IOUE*, 8 OCB2d 5, at 23; *DC 37, L. 1113*, 77 OCB 33, at 25; *Local 237, CEU*, 77 OCB 24. Upon consideration of the entire record, we find that the *prima facie* case has been refuted and that NYCHA has established legitimate business reasons that would have resulted in Lamouth's termination regardless of her protected activity.

On the record before us, we find that Goulbourne did not make the alleged anti-union statements attributed to her by Lamouth. Goulbourne explicitly and credibly denies making any such statements. Her denial is corroborated by Sambourskiy who was also present during the December 29th meeting. Further, the substance of the alleged animus statements simply do not make sense in the context of the undisputed facts. The records shows that Goulbourne spent ample time addressing workplace disruptions arising from Lamouth's poor working relationships with her supervisor and co-workers. In contrast, the time or effort she spent on union matters

initiated by Lamouth was minimal. At most during Lamouth's tenure with NYCHA, Goulbourne had received one phone call from Blackstock and a related out-of title grievance, neither of which had occupied any substantial amount of her time. As a result, we do not find that Goulbourne made the statement attributed to her.

We further find the *prima facie* case refuted because many of the actions taken by NYCHA to effectuate Lamouth's termination predated Lamouth's union activity. *See Kassim*, 8 OCB2d 8, at 18; *DEA*, 79 OCB 40, at 22 (BCB 2007) ("adverse actions cannot be persuasively shown to have been retaliatory in nature simply because they [pre-dated] the protected activity"). Sambourskiy began drafting the Counseling Memoranda cited in support of Lamouth's termination as early as December 2 and before any alleged union activity of Lamouth. It is also undisputed that Lamouth had a poor working relationship with her supervisor and other co-workers that pre-dated any alleged union activity. *See Kassim*, 8 OCB2d 8, at 18; *Local 1087, DC 37*, 1 OCB2d 44, at 29 (BCB 2008). While Goulbourne's final decision to request Lamouth's termination was made after the December 15, 2014 meeting with the Union representative, Goulbourne had discussed terminating Lamouth with NYCHA's Human Resources department before that meeting and was informed that Lamouth's probationary period was ending. Thus, we do not find the timing of Lamouth's discharge to be evidence of union animus, rather it was a function of the need to act before the end of Lamouth's probationary period. *See Kaplin*, 3 OCB2d 28, at 14. Accordingly, NYCHA has refuted the *prima facie* case.

In addition, we find that NYCHA has demonstrated legitimate business reasons for terminating Lamouth. Lamouth acknowledged that her supervisor considered her writing and verbal skills to be deficient. It is also undisputed that Lamouth had a poor working relationship her supervisor, Sambourskiy, which required Goulbourne to co-supervise Lamouth. While the

Union disputes that Lamouth's conduct rose to the level of insubordination, it does not dispute that the contentious conversations addressed in the Counseling Memoranda occurred. Goulbourne concluded that Lamouth's continued employment would require her direct supervisory intervention indefinitely, a time-consuming responsibility at a time when FSD was dealing with a high caseload. Goulbourne was also aware of Lamouth's difficult relationship with other co-workers, including the April 2013 incident. Goulbourne was aware of all these deficiencies prior to requesting Lamouth's termination. Particularly in light of Lamouth's probationary status, NYCHA has demonstrated that legitimate business reasons would have led to Lamouth's termination absent her protected activity. *See Kaplin*, 3 OCB2d 28, at 14 (in finding a legitmate business reason for petitioner's termination, the Board rejected the argument that as a probationary employer, petitioner was entitled to the same settlement offered to a permanent employee accused of similar misconduct). *See also Rockville Centre Union Free School District*, 32 PERB ¶ 3050 (1999), *affd sub nom. Rockville Centre Teachers Assn. v NYS Pub. Emp. Relations Bd.*, 281 AD2d 425 (2d Dept 2001) (recognizing "the wide latitude the courts have granted municipal employers with respect to termination of probationary employees."). Accordingly, we dismiss the instant petition.

**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 filed by the Social Service Employees Union, Local 371 on behalf of its member Wendy Lamouth against the New York City Housing Authority, docketed as BCB-4111-15, hereby is dismissed.

Dated: December 3, 2015
New York, New York

SUSAN J. PANEPENTO
CHAIR

ALAN R. VIANI
MEMBER

CAROL A. WITTENBERG
MEMBER

M. DAVID ZURNDORFER
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