

OSA, 13 OCB2d 2 (BCB 2020)

(Docket No. BCB-4274-18)

Summary of Decision: The Union and a public employee claimed that HHC violated NYCCBL § 12-306(a)(1) and (3) when it terminated the employee in retaliation for her participation in a union organizing campaign. HHC argued that the employee does not have standing to assert a violation of the NYCCBL since she was a managerial employee at the time of her termination. It further argued that her termination was not improperly motivated and that she was instead terminated due to poor work performance and productivity. The Board found that Petitioners established a *prima facie* claim of retaliation. The Board further found that HHC's proffered legitimate business reasons for the employee's termination were pretext for retaliation. Accordingly, the petition was granted. (*Official decision follows.*)

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

In the Matter of the Improper Practice Petition

-between-

**ORGANIZATION OF STAFF ANALYSTS and
LETITIA BIGGS,**

Petitioners,

-and-

NEW YORK CITY HEALTH + HOSPITALS,

Respondent.

DECISION AND ORDER

On May 25, 2018, the Organization of Staff Analysts ("Union" or "OSA") and Letitia Biggs (collectively, "Petitioners") filed an improper practice petition against NYC Health + Hospitals ("HHC").¹ Petitioners allege that HHC violated § 12-306(a)(1) and (3) of the New York

¹ We refer to the New York City Health and Hospitals Corporation as "New York City Health + Hospitals" or "HHC" throughout this Decision and Order.

City Collective Bargaining Law (New York City Administrative Code, Title 12, Chapter 3) (“NYCCBL”) by terminating Biggs from her employment at HHC in retaliation for her participation in a union organizing campaign. HHC argues that Biggs does not have standing to assert a violation of the NYCCBL since she was a managerial employee at the time of her termination. It further argues that her termination was not improperly motivated and that she was terminated due to poor work performance and productivity. The Board finds that Petitioners established a *prima facie* claim of retaliation. The Board further finds that HHC’s proffered legitimate business reasons for Biggs’ termination were pretext for retaliation. Accordingly, the petition is granted.

BACKGROUND

The Trial Examiner held two days of hearing and found that the totality of the record, including the pleadings, exhibits, and briefs, established the relevant facts set forth below.

HHC hired Biggs on January 19, 2016, and terminated her approximately two years later, on January 25, 2018. During her relevant employment with HHC, Biggs worked as an Assistant Director of Nursing (“ADN”) in HHC’s Home Care program (“Home Care”).² Her functional, in-house title was Transitional Care Nurse (“TCN”). As a TCN at Home Care, Biggs’ primary responsibilities were to generate referrals of patients who were being discharged from a hospital to Home Care, to assist the individuals with obtaining necessary paperwork, to process the referrals

² Biggs has been a Registered Nurse for over 30 years. She testified that she worked six to ten non-continuous years in various positions at HHC. The Home Care program offers nursing, physical therapy, social work, care management, and care coordination services for individuals in need of special care and support after a hospital stay or help with managing a chronic health condition. These services are offered to patients at various HHC facilities in Manhattan, Queens, Brooklyn, and the Bronx.

using a computer system known as the “EPIC” system, and to convert the patient referrals into admissions to Home Care. Biggs reported directly to the Director of At Home Skilled Nursing, Jacqueline House, who in turn reported to Chief Nursing Officer (“CNO”) Hope Iliceto.³

TCNs have monthly productivity goals regarding how many patient referrals they are expected to generate. In order to get credit for a referral, the patient’s information must be processed through the EPIC system, the patient’s insurance must be verified, and if the patient is covered by Medicare or Medicaid, a “face-to-face” attestation form must be obtained from the patient’s physician. (Tr. 61) A referral turns into an admission after all the information is processed and approved, and a nurse begins visiting the patient in his or her home.

Biggs initially worked at Harlem Hospital. She testified that as soon as she began training, she experienced what she described as a “hostile work environment,” in which she could not ask questions “without being retaliated against.” (Tr. 90) In November 2016, Biggs learned that OSA was seeking to represent the titles “Assistant Director, Hospitals” and “Associate Director, Hospitals.” Due to issues she experienced on the job, Biggs thought that having union representation could be beneficial, so she contacted OSA Chairperson/President Robert Croghan and inquired into whether OSA could organize the ADN title as well. Croghan told her that the Union would consider it, and sometime around December 2016, he began allocating resources towards this effort and recruited Biggs to assist with organizing. She did so by speaking with co-workers about the Union, soliciting them to sign union cards, and organizing informational meetings. Biggs testified that the ADNs were very interested in joining the Union because they wanted the protection to “speak out without reprisals.” (Tr. 95) However, she also stated that she

³ Home Care is alternately referred to as “At Home.”

understood the dangers of organizing and the need to be “secret and respectful” so that she didn’t “scare management for any reason.” (Tr. 94)

Eugene Ferguson, a TCN who worked at Jacobi Hospital, testified that he first met Biggs when she introduced herself during a monthly meeting for all of the TCNs. He later became more familiar with her in or around January 2017, when she began communicating with him in her efforts to organize her co-workers. Twice a week, Ferguson shared an office with At Home Director House at Jacobi. According to Ferguson, on one of these days shortly after Biggs began organizing, he overheard House making “unfavorable” comments to someone over the phone stating that Biggs was “[s]omeone that was causing problems, and also someone that was organizing the Union against the [Home Care] program.” (Tr. 49)

Shortly after Biggs began organizing for OSA, in December 2016, she was transferred to Woodhull Hospital (“Woodhull”). According to Ferguson, Woodhull was essentially “a dying hospital” with the lowest amount of patient referrals. (Tr. 50) Indeed, Biggs testified that it was difficult to obtain patient referrals at Woodhull because it had a strict policy forbidding TCNs from going on rounds or walking throughout the hospital and seeking the referrals directly from patients and doctors, as was done in other hospitals. Referrals could only be received from the Social Work department, and Biggs stated that she was competing with other home care providers for the referrals. Ferguson testified that between the comments he overheard about Biggs and her transfer to Woodhull, he concluded that HHC management “pretty much had it out for her.”⁴ (*Id.*)

⁴ Ferguson testified that sometime after Biggs was transferred to Woodhull, he overheard House complaining about having to “go all the way out to Brooklyn” to “hold [Biggs’] hand” because every time she turned around there was a problem with Biggs. (Tr. 51)

Biggs testified that prior to when she initiated organizing on behalf of the Union, her supervisors had never raised any issues with her productivity. However, shortly after she was transferred, in December 2016, she attended a meeting with CNO Iliceto and At Home Director House during which Biggs described that she was “badgered and told that I owe the company money and they’re going to hire someone who could produce better than me for half my salary.” (Tr. 107) Biggs stated that she tried to explain the issues she was facing at Woodhull during this meeting but that she wasn’t allowed to talk or defend herself much.

Shortly thereafter, on January 10, 2017, CNO Iliceto e-mailed the Director of Human Resources (“HR”), Kia Lee, stating: “I need to let Letitia Biggs, the TCN from Woodhull go due to lack of productivity. Want to discuss with you.” (HHC Ex. 3) Ferguson testified that he became aware of HHC’s desire to terminate Biggs when he overheard At Home Director House stating that she was being directed to “get rid of her.” (Tr. 52) After he heard this, Ferguson called Biggs to warn her that HHC was attempting to terminate her, and he e-mailed her some job prospects that he suggested she look into.

On February 1, 2017, CNO Iliceto sent an e-mail titled “Yesterday’s Troubled Volume Statistics” to 18 employees, including Biggs and other TCNs, as well as At Home Director House. (Union Ex. 3) In it, Iliceto stated that the referral volume received the prior day was “unusually low” at only 92% of the anticipated daily average. (*Id.*) The e-mail went on to state that “[t]he only TCNs who either HIT or exceeded their ‘daily average referral numbers’ were Leticia Biggs” and four other TCNs. (*Id.*) (emphasis in original)

During this same time period, Biggs was soliciting TCNs to attend a Union meeting that was scheduled for February 9, 2017. According to Biggs, after she was contacted by Ferguson, she was suddenly scheduled to meet with CNO Iliceto on the same day as the upcoming Union

meeting. Ferguson testified that based on the conversations he overheard, he believed that Biggs was going to be terminated at this meeting. Ultimately, due to a snowstorm that occurred on February 9th, both the Union meeting and the meeting between Biggs and HHC management were cancelled.

HR Director Lee testified that sometime after she received CNO Iliceto's January e-mail requesting to terminate Biggs she advised Iliceto to hold a meeting with her to understand the challenges that were preventing her from meeting productivity goals. After the February 9 meeting was cancelled, it was rescheduled and Iliceto met with Biggs the following week.⁵ During the meeting, Biggs described the issues she was having at Woodhull. According to an e-mail sent on February 15, 2017, from Iliceto to Lee, in the meeting Biggs "really emphasized her entrepreneurial skills . . . especially regarding how she competed with [other vendors] to seek out NEW opportunities . . . to gain admissions for the [Home Care program.]" (HHC Ex. 4) (emphasis in original) In the e-mail, Iliceto also stated that Biggs' "interest and stamina intrigued me and I want to offer her a schedule that migrates her from Woodhull 2-3 days per week to perhaps KINGS to add some competition there in the clinics as she is obviously an enterprising person." (*Id.*) (emphasis in original) However, Biggs was not notified of HHC's plan to transfer her until March 22, 2019.

Meanwhile, sometime in late February or early March, OSA President Croghan requested a meeting with HHC Labor Relations because he was convinced that Biggs was being set up to be fired. On March 1, 2017, an Assistant General Counsel from OSA sent Biggs an e-mail invite for the meeting, which was scheduled for March 3. Thereafter, Biggs received an e-mail from At Home Director House accepting the Union's meeting invite, despite the fact that House was never

⁵ Senior Associate Director Richard Akobi also attended this meeting.

sent the invite. Biggs therefore became suspicious that House had somehow gained access to her e-mails. Soon after March 1, 2017, Biggs' suspicions were confirmed when one of her co-workers told her that House had called or visited her and stated, "tell your friend Letitia I am monitoring her e-mails."⁶ (Tr. 119)

On March 3, 2017, Biggs, President Croghan, and OSA's Assistant General Counsel met with HHC's Assistant Vice President ("AVP") for Labor Relations Matthew Campese and the Deputy Director of Labor Relations. President Croghan explained that Biggs was an OSA representative who was organizing on their behalf and that he believed she was being targeted for her role as such. According to Biggs, AVP Campese apologized to her and told her that he would speak to CNO Iliceto's boss and instruct her that what was happening was unacceptable. Biggs later told Croghan that after this meeting "the pressure seemed to be off her entirely," and things improved for a while. (Tr. 28)

On March 22, 2017, Biggs once again met with CNO Iliceto and At Home Director House. At this meeting, Biggs was advised that her schedule was being changed such that she would work three days per week at Woodhull and two days at Kings County Hospital ("Kings"). Biggs testified that she objected to this plan since she felt like she was being set up for failure.⁷ However, her supervisors were insistent on the change.

⁶ Biggs also asked Woodhull IT technicians about the situation, and they confirmed that House was indeed monitoring her e-mails.

⁷ According to Biggs, the TCN that preceded her at Woodhull was also forced to split her time between two facilities, and she quit because the arrangement made reaching productivity goals difficult.

According to Biggs, working in two different locations made obtaining referrals even more difficult. At Woodhull, she had just begun to foster relationships with some of the social workers and was able to obtain patient referrals from them. However, because she was now absent for part of the week, referrals were being given to other home care agencies. In addition, at Kings, Biggs had to compete with two other co-workers for referrals. Moreover, since she was only at each facility for part of the week, retrieving face-to-face forms from physicians became more difficult, and this decreased her productivity.

Ferguson also testified about the difficulty of obtaining face-to-face forms and other system-wide problems that impacted the overall productivity of TCNs. According to Ferguson, other home care agencies he worked for had couriers that would assist in tracking down doctors and obtaining the forms, but TCNs in Home Care were not given similar support.⁸ As a result, “hundreds” of face-to-face forms went unsigned by a physician, which meant that Home Care could not collect payment from the federal government for these particular patients. (Tr. 61) Additionally, TCNs at Home Care were expected to market Home Care as well as do intake, but they were not given any training or support in this regard. Problems also existed with the transition from a paper to a computerized intake system. Furthermore, there were nursing shortages at times that made it difficult for referrals to be turned into admissions. At times, TCNs were even advised that they could not process any new referrals due to the nursing shortages.⁹

⁸ Ferguson noted that one of the reasons that it was difficult to obtain the forms was that many physicians worked at more than one hospital and were only at each for a few days a week.

⁹ Nursing shortages also meant that patients sometimes were not visited by a nurse within the required 24-hour period after discharge. According to Ferguson and Biggs, two babies who had not been visited within the required time period died at home, and this was a “terrible black mark for the agency.” (Tr. 137)

Biggs testified that despite all of these problems and her multiple transfers, beginning in April 2017, she began meeting or exceeding her productivity goals, and her numbers consistently went up.¹⁰ This was partly because she reached out directly to the Director of Marketing, who accompanied her to Woodhull and instructed individuals there to begin giving her more referrals. However, for various reasons, this strategy did not work similarly at Kings. Biggs stated that, despite the fact that her overall numbers continued to go up, At Home Director House continued to complain that Biggs could not make the same referral strategies work at Kings.

On October 11, 2017, Biggs completed a self-evaluation form for the period of July 1, 2016, through June 30, 2017, in which she rated herself as “meets expectations” for a number of business and individual goals as well as core competencies. (Union Ex. 7) There is no evidence that Biggs’ self-evaluation was disputed by her supervisors.

On January 13, 2018, HHC management held a mandatory meeting for all TCNs to discuss productivity expectations. Biggs testified that tensions were very high at the meeting since it occurred shortly after the death of the babies and the agency was under a state investigation. Biggs stated that despite these issues and the continuing nursing shortage, the TCNs were instructed to generate even more referrals, which “shocked” and “frustrated” them. (Tr. 137) A PowerPoint handout from this meeting titled “TCN Expectations” stated that TCNs were currently expected to process 25 admissions per week. (Union Ex. 14) In a section titled “How are we doing now?” the handout indicates that TCNs were performing below productivity and that “AVG is 16 adm./wk.”¹¹ (Union Ex. 14) The handout also indicated that there were 171 patients being serviced for whom

¹⁰ Biggs testified that the only exception to this trend was August 2017, when she took a two-week vacation.

¹¹ The PowerPoint handout does not indicate the average number of referrals per week.

a face-to-face form had not been obtained, which translated to \$807,000 in payments that Home Care was unable to collect.

Biggs testified that at the meeting, which was headed by CNO Iliceto and the CEO of Home Care, she brought up some of the issues she was facing at Woodhull. This included difficulties in obtaining the face-to-face forms. According to Biggs, the CEO said that he would help her, stating: “Don’t worry, you give me your problems, I’ll . . . get those face-to-faces for you.” (Tr. 138) Biggs stated that it was clear from the look on Iliceto’s face that she was not happy that the CEO offered to help her. Biggs also made a suggestion at this meeting that Home Care adopt a “coordination of care model” that was followed at other agencies, which she thought could lead to better communication and alleviate some system-wide problems. (*Id.*) Biggs stated that Iliceto got visibly upset by this recommendation as well and began pacing back and forth.

Three days later, on January 16, 2018, CNO Iliceto created a document entitled “Unsatisfactory Perform [*sic*] Notice” (“UPN”) for Biggs that she subsequently sent to HR Director Lee. (HHC Ex. 8)¹² It states, in part:

The expectations of the Agency were to produce an average of 80 referrals per month which need to translate to 60 admissions. This standard has consistently fallen short of expectations by an average of 20% on referrals and 24% conversion on admissions. (The new expectations for the TCN level staff are that they produce 100 referrals per month with a 75% admission conversion rate. Leadership is concerned that this employee is not able/willing to meet the current standards and will undoubtedly result in her failure to succeed in meeting the heightened standards for success.)

The employee was met with by leadership on June 6th, 2017, where her poor productivity was discussed and future productivity

¹² The document’s status is labelled as “Canceled.” HR Director Lee testified that she reviewed this document, however, she could not explain why it was labelled this way. There is no evidence that Biggs ever received this document.

expectations were reviewed and discussed. She was offered the opportunity to work in addition to Woodhull, at Kings County Hospital, to build volume and relationships, but the employee refused, offering multiple excuses.¹³ Ms. Biggs performed above average for the month of the June 2017 meeting with 85 referrals and then continued to produce less than expectations thereafter, to the current date. (see attached documentation)

Ms. Biggs met with her Intake Director Ms. Zoya Chesky, on January 9th, who reviewed productivity standards and work expectations in person with the employee. Ms. Chesky reported that Ms. Biggs's responses were contradictory to the mission of the Agency and that she expressed an unwillingness to meet the productivity expectations of the role of [TCN].¹⁴

In summary, based upon the productivity results, lack of follow up with [face-to-face] expectations and lack of motivation to meet . . . the standards of the Agency it is the recommendation of leadership that the employee be terminated as TCN as leadership believes that the new standards will far exceed her capabilities and willingness to comply.

(*Id.*)

Attached to the UPN was the following chart showing Bigg's alleged productivity for 2017:

¹³ There is no evidence in the record concerning a meeting in June 2017, and the record demonstrates that the meeting in which Biggs was notified that she would begin working at Kings in addition to Woodhull occurred on March 22, 2017. While Biggs testified that at the March meeting she objected to working at two different sites for numerous reasons, the evidence demonstrates that she did not refuse to do so.

¹⁴ There is no evidence in the record concerning a January 9, 2018 meeting regarding Biggs' productivity. HHC did not call Chesky to testify in these proceedings and did not question Biggs about this alleged meeting.

**TCN PRODUCTIVITY
LETITIA BIGGS**

Referrals		Admissions	
1/31/2017	61	1/31/2017	40
2/28/2017	40	2/28/2017	31
3/31/2017	58	3/31/2017	25
4/30/2017	66	4/30/2017	43
5/31/2017	76	5/31/2017	50
6/30/2017	85	6/30/2017	51
7/31/2017	78	7/31/2017	49
8/31/2017	45	8/31/2017	26
9/30/2017	65	9/30/2017	51
10/31/2017	74	10/31/2017	57
11/30/2017	57	11/30/2017	34
12/31/2017	70	12/31/2017	56
Total	775	Total	513
Avg.	64.583	Avg.	42.750

***Expected Productivity Per Month Avg. 80.0**

(Id.)

HR Director Lee testified that CNO Iliceto contacted her again regarding her desire to terminate Biggs sometime in January 2018. Lee testified that when she receives a request for termination of an employee, she reviews the reasons for the termination request and any steps that were implemented to correct the issues prior to the request for termination. With regard to Biggs, Lee testified that she reviewed the UPN Iliceto created on January 16, 2018, as well as various e-mails that Iliceto had forwarded to her over the past year that summarized meetings and/or issues

related to Biggs' employment at Home Care. According to Lee, Iliceto took At Home Director House's input into consideration when making the termination request.¹⁵

Some of the documents that HR Director Lee reviewed included e-mails between Biggs and Alexandra Mercado, Home Care's Director for Intake.¹⁶ Director Mercado testified that Biggs' work generally "required a lot of corrections, [and] a lot of revisions."¹⁷ (Tr. 214) In addition to errors made in the computerized intake system, Mercado stated that Biggs was often missing required face-to-face forms. Mercado testified that when these issues arose, initially she would call Biggs to discuss the problem. However, she stated that the calls "were not productive" because Biggs "would get very defensive . . . [and] tell me that I was not a clinician, I was not qualified to redirect her or to advise her how to correct her errors." (Tr. 215-16) Thereafter, Mercado testified that she began e-mailing Biggs and her supervisors when an issue arose with Biggs' referrals.¹⁸ After an incident on November 29, 2017, in which Biggs made an error in

¹⁵ Neither Iliceto nor House were called to testify in the proceedings. Lee testified that she did not have any personal knowledge of Biggs' performance and was not aware of Biggs' status as an OSA representative or of her organizing efforts until the improper practice petition at issue was filed.

¹⁶ Mercado was in charge of the department that processed the TCNs' patient referrals. Processing referrals includes screening patients for eligibility and making sure that insurance requirements and authorizations are correctly put in place, and that all necessary documentation is present, including face-to-face forms when necessary.

¹⁷ Mercado also testified that she produced a statistical analysis of Biggs' alleged rate of referral error in comparison to others. However, she could not recall when, or even in which year, she produced this analysis. When questioned further, Mercado testified that this analysis was "an e-mail . . . counting how many cases submitted in a short time frame . . . required correction" that she sent to CNO Iliceto. (Tr. 242) According to Mercado, this analysis included all of the TCNs. HHC did not produce Mercado's e-mail or any other analysis concerning TCNs' referral errors.

¹⁸ HHC introduced into evidence e-mail chains from March 24, November 21-22, and November 29-December 1, 2017, between Mercado, Biggs, House, and Iliceto, in which issues with referrals being processed incorrectly were discussed. (See HHC Exs. 6; 9; 10-14)

processing a referral, CNO Iliceto arranged for her to have a re-training on the computer systems. Mercado testified that Biggs' referrals showed improvement after this training.

On January 18, 2018, HR Director Lee prepared a memorandum supporting CNO Iliceto's request to terminate Biggs ("Termination Memo").¹⁹ The Termination Memo begins by stating that Biggs "has not improved her performance to an acceptable level over the past year." (HHC Ex. 2) It then discusses the meeting Iliceto had with Biggs in February 2017, and outlines the workplace issues Biggs identified as well as the steps HHC took to purportedly resolve the issues. The Termination Memo then states, in pertinent part:

Letitia has also had issues correctly processing her referrals, which has led to the referral not being visible in the system to be captured for service. In March 2017, when Letitia was given guidance from the Central Intake Director on how to properly complete a referral in the system so that it will generate appropriately and capture the patient for services, Letitia recoiled at the fact that this guidance was coming from someone other than her supervisor, completely side stepping the fact that the patient would not have received services due to the nature of the referral she placed in the system.

Since [June 2017], while Letitia's productivity continued to fluctuate, behavioral issues continued to surface, including her emailing [Iliceto] when she arrived and departed work, notifying (not requesting) her supervisor she would be in late the next morning due to her using comp time earned the night before.²⁰

¹⁹ The memo was copied to Iliceto, the Vice President of Human Capital, the Executive Director of Home Care, and a Senior Counsel. The record does not reflect whether Biggs received a copy of the memo.

²⁰ HHC produced an e-mail chain in which Biggs sent CNO Iliceto an e-mail at 7:23 p.m. on June 7, 2017, stating "Good night, Off duty." (HHC Ex. 7) At 8:40 p.m., Iliceto replied: "With all due respect, I don't require these emails as I know you are working until the job gets done." (*Id.*) The following day Biggs responded by saying "Ok. Thank You." (*Id.*) The record does not contain any evidence that Biggs notified Iliceto that she would be using comp time on June 8th, nor does it contain any other evidence that Biggs improperly requested or used comp time on June 8th or any time thereafter.

In November 2017 another issue was brought to [the] surface regarding the manner in which Letitia generated referrals from the system. When brought to her attention, Letitia took no ownership for the error first stating that she brought this to [Mercado's] attention the day before, then stating the referral didn't link due to a system issue for two simultaneously open encounters. [Mercado] corrected the referral so the patient could receive services.

Finally, due to At Home operational needs, the decision has been made to increase the weekly referral productivity goal to 25. This productivity goal is in alignment with the industry average for other like businesses (e.g.-VNS). Letitia has already told her supervisor that she refuses to do it (January 2018).

At Home has spent a lot of time and plenty of effort trying to supply this Nurse with the tools she needs to be successful to no avail. When comparing her 2017 productivity to that of her colleagues, Letitia's productivity is the lowest (yearly goal= 960, Letitia's output= 515).²¹ Five other nurses have generated referral output in the thousands.

A UPN has been completed to document her ongoing performance concerns. At Home Leadership is formally making the recommendation of termination of employment and is willing to take prompt action, if supported by the Organization. This matter has already been reviewed with Legal, who supports this action.

(*Id.*) HR Director Lee testified that although she authored the Termination Memo, CNO Ilceto was ultimately responsible for the decision to terminate Biggs.

On January 25, 2018, Biggs was notified that her employment was being terminated. According to Ferguson, once Biggs was terminated, TCNs became afraid to speak out at meetings because they saw her termination as a strong-arm tactic to keep them "in line." (Tr. 68) Additionally, President Croghan testified that immediately after Biggs was fired, he received calls

²¹ As will be discussed later, in the memorandum the listed annual goal is for referrals while Biggs' listed annual output is the number of admissions she generated, not referrals. According to the statistics in the January 16, 2018 performance notice, Biggs' annual referrals were 775, not 515.

from TCNs who were scared to continue engaging with the Union because they believed Biggs was fired for her Union activity and that it could happen to them as well. Croghan stated this set the Union's organizing campaign back quite a bit. However, he decided to hire Biggs to work for OSA as a full-time, paid organizer to keep the campaign going.²²

POSITIONS OF THE PARTIES

Union's Position

The Union argues that HHC violated NYCCBL § 12-306(a)(1) and (3) when it terminated Biggs in retaliation for her participation in a union organizing campaign. It asserts that, although it is not clear exactly when management became aware of Biggs' union activity, by mid-January 2017, her supervisor At Home Director House began making negative comments about her efforts to organize the ADN title. Then, shortly after Biggs began organizing, CNO Iliceto made her first attempt to terminate her, and the evidence demonstrates she intended to do so on the same day that Biggs had organized a union meeting for ADNs to attend. The Union contends that although Biggs was ultimately not terminated on that date due to the intervention of HHC Human Resources, the facts demonstrate that Biggs' union activity precipitated a year-long process at the end of which HHC ultimately did terminate her. As such, the Union asserts that it has demonstrated a *prima facie* showing of retaliation.

The Union next contends that the purported legitimate business reasons given by HHC for Biggs' termination were merely pretext for retaliation. First, with respect to HHC's assertion that

²² The eligibility of the ADN title is pending in two representation petitions, which were subsequently consolidated: RU-1654-18, in which the Union seeks to represent Assistant Directors of Nursing and others, and RE-1655-18, in which HHC seeks a managerial and/or confidential designation for the titles. A hearing on the issues presented has not yet commenced.

Biggs did not meet productivity goals, HHC did not present any direct evidence to establish that this was the case. Instead, it introduced only a cancelled performance notice purportedly created by CNO Iliceto, which included an attachment that allegedly demonstrated Biggs' referral and admissions numbers for each month in 2017. The Union asserts that, according to this unsubstantiated document, Biggs achieved an average of 81% of the productivity goals for referrals and 76% of the productivity goals for admissions.²³ Furthermore, even if this document is to be relied upon, it demonstrates that the Termination Memo created by HR Director Lee contained incorrect information, as it compared the yearly goal for *referrals* to Biggs' total *admissions* for the year, "creating a grossly distorted impression" of her productivity. (Union Br. at 12-13)

The Union contends that CNO Iliceto first suggested that Biggs should be terminated for poor productivity at a time when Biggs had just been reassigned to Woodhull and no meaningful assessment had been made of her productivity at that location. Moreover, no monitoring or comparative metrics had been done for Biggs' 2016 productivity at the time of Iliceto's recommendation for termination. The Union also contends that HHC's multiple reassignments of Biggs were efforts to interfere with her success. In particular, Woodhull was known to be a hospital that was low-producing. Additionally, the Union asserts that Biggs was the only TCN who was required to split her schedule between two different facilities, and she testified to the multitude of problems this caused.

²³ The Union notes that these percentages do not make any adjustments for the two weeks in August 2017 that Biggs was on a vacation or address the setbacks she experienced as a result of being reassigned multiple times.

HHC did not introduce productivity statistics for any TCNs other than Biggs. However, a PowerPoint presentation given by management at the January 13, 2018 meeting stated that, TCNs were only performing at 75% of the productivity goal for admissions in 2017. The record therefore does not substantiate an assertion that Biggs' productivity was actually worse than her co-workers, or that any other TCN had been terminated or disciplined for their productivity. The Union contends that if HHC had any statistics to prove that Biggs' productivity was worse than her peers, it surely would have produced it. Consequently, it argues that a negative inference should be drawn from HHC's failure to produce such evidence.

The Union contends that the allegation that Biggs was terminated because she failed to submit face-to-face forms is similarly pretextual. It notes that Ferguson testified that all TCNs struggled to obtain face-to-face forms. Moreover, the January 13, 2018 PowerPoint presentation supports this testimony, since it shows 171 outstanding face-to-face forms for the entire TCN team.²⁴ The Union argues that if HHC had any evidence that Biggs was among the worst performers with respect to face-to-face form submissions, it presumably would have introduced this, and a negative inference should be drawn from the fact that it did not. Likewise, it did not present any evidence to show that any other TCN was terminated or disciplined because of outstanding face-to-face forms.

Finally, the Union asserts that the allegation that Biggs was terminated because of issues entering referrals into the computer system is also pretextual. It argues that while Mercado testified that in general Biggs' work required a lot of corrections or revisions, HHC introduced only three

²⁴ The Union points out that the report attached to Iliceto's cancelled performance evaluation states that Biggs had 21 outstanding face-to-face forms, which would suggest that only about 12% of the total outstanding forms could be attributed to Biggs. The Union asserts that this is not an unusually large percentage given that there were only 10-12 TCNs.

e-mail chains to substantiate alleged instances where a referral entered by Biggs contained problems that might have been caused by her own error. Additionally, there is no evidence to suggest that there were any concerns with the referrals Biggs submitted after she received additional training on the computer system on November 30, 2017. Moreover, while Mercado testified that she had conducted a statistical analysis of Biggs' referral errors, she had no recollection of when this was done and stated that the analysis counted only the number of cases submitted in a short period of time. The Union contends that if this analysis supported Mercado's testimony that Biggs' work required a lot of corrections and revisions, HHC would have produced it. Instead, the Union asserts that the evidence shows that over the twelve months in which Biggs submitted somewhere between 775 and 1,000 referrals, she made, at most, three errors. There is nothing in the record to support that Biggs actually made more errors than other TCNs or that any other TCN was disciplined because of computer errors.

Consequently, the Union argues that the Board should grant the petition. As a remedy, it requests that the Board order HHC to reinstate Biggs to her position with full back-pay and benefits; direct HHC to "pay to OSA the full value of all salary and benefits paid to . . . Biggs during the period of January 25, 2018[,] until such time as she is reinstated to HHC"; direct HHC to send a formal notice to all ADNs, and conduct a meeting with all ADNs, stating that its actions in terminating Biggs violated the NYCCBL; direct HHC to post notices of its violations; and order any and all further just relief as may be appropriate to make OSA and Biggs whole. (Union Br. at 26)

HHC's Position

HHC first argues that Biggs does not have standing to assert a claim of improper practice because it is undisputed that she was a "Group 11" managerial employee at the time of her

termination and no Board of Certification determination regarding her title existed at the time the instant petition was filed. As such, HHC contends that Biggs did not have any rights or protections under the NYCCBL at the time she was terminated.

Regarding the merits of the improper practice claim, HHC asserts that the Union has failed to demonstrate a *prima facie* claim of retaliation. First, HHC contends that HR Director Lee had the ultimate authority to terminate Biggs and was unaware of Bigg's union activity. Moreover, Biggs did not allege that at any point during the course of her employment any member of Home Care management acknowledged her work with the Union, and in fact Biggs was careful not to discuss her union activity at work.

Second, HHC asserts that the Union has failed to demonstrate that Biggs' union activity was the motivating factor in her termination. With respect to Ferguson's testimony regarding comments he overheard House making, HHC contends that the conversations are "inconsistent with that of management concerned with anything *other* than performance issues." (HHC Br. at 14) (emphasis in original) In particular, House's statement that she had to hold Biggs' hand is consistent with a manager having to correct performance issues of her employees, and HHC contends that "there is no amount of hand-holding that can change union activity." (*Id.*) Additionally, HHC notes that Biggs did not allege that House or any other HHC manager confronted her about her union organizing efforts, nor did she allege that anyone attempted to coerce her into ceasing these activities.

HHC also contends that the complaints reviewed by Lee in approving the request to terminate Biggs stemmed from Biggs' subpar performance with processing referrals and her general attitude problems. According to HHC, these shortcomings had a financial cost as they hindered At Home's ability to bill for services provided. Moreover, although Biggs was warned

that her actions were costing HHC money, she did not correct her actions, even after additional trainings. In fact, she even rejected help from Mercado, telling her that she wasn't qualified to advise her on how to correct her errors.

HHC argues that even assuming, *arguendo*, that Petitioners can establish that anti-union animus was a motivating factor in HHC's decision to terminate Biggs, this does not automatically equate to a violation of the NYCCBL. Rather, HHC contends that it has established that Biggs' inability to complete her work correctly and her failure to collect face-to-face forms and fill out referrals properly led to a loss of revenue, which undeniably provided HHC with a legitimate business reason for terminating Biggs even in the absence of any union activity. As such, HHC argues that the petition must be dismissed.

Finally, HHC argues that if the Board finds that HHC committed an improper practice when it terminated Biggs, "any claim for relief in the form of reinstatement and backpay must . . . fail because the Board cannot compel [HHC] to reinstate or order the payment of backpay to a managerial public employee who was in a title not represented by any union at the time of termination." (HHC Br. at 16)

DISCUSSION

We first address the standing issue raised by HHC following the conclusion of the hearings in this matter. NYCCBL § 12-306(e) states that a petition alleging that a public employer has engaged in an improper practice may be filed with this Board "by one or more public employees or any public employee organization acting on their behalf . . ."²⁵ In an interim decision denying

²⁵ Similarly, § 1-07(b)(4) of the Rules of the Office of Collective Bargaining (Rules of the City of New York, Title 61, Chapter 1) ("OCB Rules") states that: "One or more public employees or any

HHC's motion to dismiss the petition, the Board found that OSA had standing to file this improper practice petition on behalf of an employee who is not a union or bargaining unit member. *See OSA*, 11 OCB2d 40 (BOC 2018). However, the Board declined to make a finding as to Biggs' standing at that time because the "nature and scope of the hearing would be the same irrespective of whether Biggs has standing." *Id.* at 12.

This Board has previously been presented with a situation in which an employer asserted that a petitioner did not have standing to file an improper practice petition where the petitioner's title was the subject of a pending representation petition. *See Procida*, 39 OCB 2 (BCB 1987). The Board there stated that, although the employer "would have us conclude that the petitioner's duties warrant a finding that he is a managerial and/or confidential employee and is without standing to pursue the instant claim," only the Board of Certification ("BOC") has jurisdiction to consider such questions.²⁶ *Id.* at 9-10 (denying the employer's motion to dismiss because "[u]ntil such time as the [BOC] may determine that petitioner is managerial and/or confidential within the meaning of the NYCCBL . . . petitioner retains his present status as a 'public employee' and may initiate an Improper Practice proceeding pursuant to [OCB's Rules]").²⁷

In our interim decision on this petition, we noted that "the BOC's determination on the [pending] representation petitions [concerning the ADN title] may have an impact on our ultimate

public employee organization acting on their behalf . . . may file a petition alleging that a public employer or its agents . . . has engaged in or is engaging in an improper practice"

²⁶ NYCCBL § 12-309(b)(4) provides that the BOC has the exclusive statutory "power and duty . . . to determine whether specified public employees are managerial or confidential."

²⁷ The Board noted that the BOC "has issued six decisions in which it has determined the employee status of many individuals in [petitioner's] series of titles, but not that of the petitioner herein." *Id.* at 9. The improper practice petition was ultimately dismissed on the merits, as the Board found that the petitioner failed to demonstrate a *prima facie* claim of discrimination.

determination of the merits of the claims presented here and/or the possible remedies.” *OSA*, 11 OCB2d 40, at 12. At the conclusion of the improper practice hearing, those representation petitions were in abeyance pursuant to the parties’ request pending settlement discussions. Accordingly, on August 9, 2019, the Trial Examiner sent the parties a letter informing them that the Director of the Office of Collective Bargaining was referring the issue to the BOC in order to determine whether Biggs was managerial or confidential under the NYCCBL and, thus, excluded from collective bargaining.²⁸

The BOC reviewed the record of the improper practice case, a representation survey completed by Biggs concerning her duties, and the parties’ supplemental briefs. On November 13, 2019, the BOC issued a determination finding that HHC did not present evidence sufficient to overcome the statutory presumption that Biggs was eligible for collective bargaining rights at the time of her termination. *See OSA*, 12 OCB2d 34 (BOC 2019). It therefore referred the matter back to this Board to make a determination on the improper practice claims.

We now find that Biggs had standing to file the instant improper practice petition following her termination. HHC has not presented any compelling argument as to why Biggs should not have been considered a “public employee” under the NYCCBL at the time she was terminated, particularly since the BOC had not determined that Biggs was a managerial employee. The BOC has now examined Biggs’ duties and found that, indeed, they did not render her a managerial or confidential employee at the time of her termination. Consequently, we now turn to the merits of the improper practice petition.

²⁸ The parties were given the opportunity to place additional facts concerning Biggs’ duties into the record, but both declined to do so. They instead filed briefs addressing the issue of Biggs’ employee status.

To determine whether an action violates NYCCBL § 12-306(a)(1) and (3), this Board applies the test enunciated in *City of Salamanca*, 18 PERB ¶ 3012 (1985), and adopted by the Board in *Bowman*, 39 OCB 51 (BCB 1987), and its progeny. This test states that, to establish a *prima facie* claim of retaliation, 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; *see also Feder*, 4 OCB2d 46, at 42 (BCB 2011).

Regarding the first prong, there is no dispute that Biggs' efforts to organize other TCNs to join OSA constituted protected union activity. *See UFT, L. 2, AFL-CIO*, 4 OCB2d 4, at 23 (BCB 2011) (employees organizing to be represented by a union are engaged in protected activity under the NYCCBL). Additionally, the record demonstrates that HHC management was aware of Biggs' union activity at the time she was terminated in January 2018. First, Biggs' direct supervisor, At Home Director House, made comments regarding her union activity sometime in or around January 2017. Then, in March 2017, Biggs and OSA President Croghan had a meeting with members of HHC's Labor Relations Department, at which Biggs' union activity was announced. According to unrebutted testimony, AVP Campese apologized to Biggs at that meeting and stated that he would speak with CNO Iliceto's boss about the situation. Thus, by March 2017, both of Biggs' supervisors, as well as managers in HHC's Labor Relations Department, had knowledge of Biggs' union activity.

As to the second prong of the *Bowman* test, "a petitioner must demonstrate a causal connection between the protected activity and the motivation behind management's actions which are the subject of the complaint." *OSA*, 7 OCB2d 20, at 19 (BCB 2014) (quoting *DC 37, L. 376*,

79 OCB 38, at 16) (internal quotation marks omitted). “[T]ypically, motivation is proven through the use of circumstantial evidence, absent an outright admission.” *Colella*, 7 OCB2d 13, at 22 (BCB 2014) (internal quotation and editing marks omitted) (quoting *Burton*, 77 OCB 15, at 26 (BCB 2006)). Consequently, the Board 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 must be based on statements of probative facts, rather than speculative or conclusory allegations. *See DC 37, L. 983*, 6 OCB2d 10, at 29 (BCB 2013) (citing *Morris*, 3 OCB2d 19, at 15 (BCB 2010)).

Here, we find that Petitioners have presented sufficient evidence of an improper motivation for Biggs’ termination. The timing of HHC’s actions and attempts to terminate Biggs fall in close proximity to her union activity. Biggs’ un rebutted testimony was that before she began organizing for the Union, she was never called into meetings with her supervisors and did not receive any complaints about her work productivity. However, around the same time that she began organizing, in December 2016, she was suddenly transferred to a facility that was known to be a difficult place to generate patient referrals. The record does not contain any explanation as to the reason for this transfer. Only a few weeks later, on January 10, 2017, while Biggs was still adjusting to the new work location, CNO Iliceto first e-mailed HR Director Lee expressing her desire to terminate Biggs due to alleged low productivity. During this same time period, TCN Ferguson overheard At Home Director House complaining about Biggs’ organizing efforts and stating that she was being directed to “get rid” of Biggs. (Tr. 51) The timing of these actions, taken together with un rebutted evidence of anti-union animus, suggests that Iliceto and House’s actions prior to March 2017 were motivated by a desire to punish Biggs for her union activity.

While there are no alleged retaliatory actions taken for the nine months after March 2017, the record reflects that during a January 13, 2018 meeting led by CNO Iliceto and Home Care's CEO, Biggs spoke up about system-wide problems with obtaining necessary paperwork and suggested that Home Care adopt a "coordination of care" model to address other perceived issues. Biggs' un rebutted testimony was that Iliceto was visibly upset that she made these comments. Three days later, Iliceto once again contacted HR Director Lee requesting to terminate Biggs.

We find that all of this evidence taken together suggests that CNO Iliceto's motive for requesting Biggs' termination for a second time was likely due to Biggs' comments at the January 2018 meeting. We also find that Biggs' comments, made during a meeting discussing issues faced by all TCNs, are related to the collective welfare of TCNs and constitute protected activity under the NYCCBL. *See DC 37, L. 3621*, 11 OCB2d 35, at 24 (BCB 2018) ("for union activity to be protected under the NYCCBL, it must be related, even if indirectly, to the employment relationship and must be in furtherance of the collective welfare of employees.") (quoting *Local 1087, DC 37*, 1 OCB2d 44, at 25 (BCB 2008) (internal quotation marks omitted). Although there may have been a hiatus in actions taken against Biggs after HHC's Labor Relations department intervened, Iliceto's request to terminate Biggs for a second time occurred almost immediately after her exercise of protected rights. This in combination with evidence of anti-union animus in early 2017 establishes the second prong of the *Bowman* test. We therefore find that Petitioners have proffered a *prima facie* claim of retaliation.

Once a union has demonstrated a *prima facie* case, "the employer may attempt to refute this showing on one or both elements or demonstrate that legitimate business reasons would have caused the employer to take the action complained of even in the absence of protected conduct." *DC 37, L. 1113*, 77 OCB 33, at 25 (BCB 2006) (quoting *Local 237, CEU*, 77 OCB 24 (BCB

2006)). Here, we find that HHC has not rebutted the elements of the Union's *prima facie* claim of retaliation. First, although HR Director Lee testified that she was unaware of Biggs' union activity, we do not find that the absence of such knowledge rebuts Petitioners' *prima facie* case. HR Director Lee testified that she did not have any personal knowledge of Biggs' work performance, and that the ultimate decision to terminate Biggs was made by CNO Iliceto. While the Termination Memo authored by Lee included incidents outside of Iliceto's UPN, the evidence demonstrates that these incidents were raised by Iliceto in additional information she provided to Lee. It is clear that Lee did not conduct an independent investigation and that her involvement was only to review and compile the Termination Memo. See *Local 30, IUOE*, 8 OCB2d 5, at 25 (2015) (where Associate Director approved a supervisor's recommendation to reassign a group of employees without any independent analysis, evidence did not support the employer's assertion that the Associate Director was the primary decision-maker).

We also reject HHC's contentions that At Home Director House's comments, which were overheard by Ferguson, pertained solely to issues regarding Biggs' work performance. Ferguson's un rebutted testimony was that House spoke unfavorably about Biggs' union activity, stating that she was "causing problems" in "organizing the Union against the [Home Care] program." (Tr. 49) HHC did not call House to testify or present any evidence to explain or refute these statements. As such, we find that the Union presented sufficient evidence to show that Bigg's protected activity formed a basis for her termination and that HHC failed to rebut such evidence.

We must therefore examine whether HHC nevertheless had a legitimate business reason to terminate her. "When examining the employer's proffered legitimate business reasons, 'this Board will look to whether the record supports their contentions. When the reasons provided are unsupported and/or inconsistent with the record, this Board will find that the employer committed

an improper practice.” *Local 30, IUOE*, 8 OCB2d 5, at 23 (quoting *SBA*, 75 OCB 22, at 24 (BCB 2005)).

The UPN written by CNO Iliceto cites alleged low productivity as the primary reason for the recommendation that Biggs be terminated. At the outset, we note that HHC did not call Iliceto to testify regarding the contents of the UPN. As such, we evaluate the reliability of the contents of this document and its attached chart showing Biggs’ alleged productivity in conjunction with other supporting evidence, if any. *See OSA*, 7 OCB2d 20, at 23 (quoting *DC 37*, 77 OCB 33, at 35 (BCB 2006)) (legitimate business reason defenses that are “unsupported by or inconsistent with the record . . . will not be credited by this Board”); *see also DC 37*, 1 OCB2d 5, at 65-66 (BCB 2008) (quotation and citations omitted) (declining to give weight to “unreliable hearsay accounts” that “lack[ed] indicia of reliability” or were uncorroborated by the person who made the alleged statements).

Based on the totality of the evidence presented, we are not persuaded that Biggs would have been terminated had she not engaged in union activity. The Termination Memo created by HR Director Lee states that “[w]hen comparing [Biggs’] productivity to that of her colleagues, [her] productivity is the lowest (yearly goal= 960, [Biggs’] output=515).” (HHC Ex. 2) Lee relied upon information provided to her by CNO Iliceto, who did not testify. Additionally, the information Iliceto provided was only an assertion that Biggs was the lowest-performing TCN, not actual data that compared her productivity to other TCNs. HHC did not otherwise present any data concerning TCN productivity statistics during the hearing in this matter.²⁹ The only evidence concerning the productivity of other TCNs was the PowerPoint handout that indicates that the

²⁹ HHC also did not present any evidence to show that Biggs’ productivity for 2017 had significantly declined from 2016.

entire group was performing below expectations. Furthermore, the numbers cited in the Termination Memo concerning Biggs' productivity compare her goal for *referrals* to her output for *admissions*, not to her output for referrals. According to the chart attached to the UPN, Biggs' referral output was 775 for the year, not 515 as listed in the Termination Memo.³⁰ This chart also indicates that during the month of December 2017, Biggs's productivity for admissions was her second-highest of the year, falling only four admissions short of her monthly goal. Given that Illiceto recommended termination approximately two and a half weeks after this month ended, we do not credit HHC's assertion that Biggs needed to be terminated due to continuous low productivity.³¹

We also find that concerns regarding the quality of Biggs' work were not a legitimate business reason for HHC's decision to terminate Biggs. HHC alleges that Biggs made errors in the computer system that required correction or additional information and hindered some of her patient referrals from being processed into admissions. Although Director Mercado testified that at some point in time she created a chart demonstrating the number of computer errors made by all TCNs, there was no data produced to show that Biggs' rate of error was higher than that of other TCNs. The evidence presented shows only that generally Biggs made some errors in November 2018 that led HHC to provide her with re-training on the computer system. Moreover,

³⁰ Assuming that the number listed in the Termination Memo was an error and not a deliberate attempt to manipulate Biggs' productivity, there remains no support in the record for the assertion that Biggs was the lowest-producing TCN. *See OSA*, 7 OCB2d 20, at 23.

³¹ We also note that while the UPN and the Termination Memo allege that in January 2018, Biggs told an Intake Director that she was "unwilling" or "refused" to meet newly implemented productivity goals, no evidence was provided to support this assertion. (HHC Exs. 8 & 2) The Intake Director was not called to testify, and Biggs was never questioned about her alleged comments to the Intake Director. As such, there is nothing in the record to substantiate this claim. *See Local 30, IUOE*, 8 OCB2d 5, at 25; *OSA*, 7 OCB2d 20, at 23.

once Biggs received the re-training, there is no evidence that her errors continued. Thus, HHC has not presented sufficient evidence for the Board to determine that these errors were legitimate business reasons that would have led to Biggs' termination in January 2018 in the absence of her protected union activity.

We also do not find persuasive HHC's allegation that a "failure to collect face-to-face attestation forms" led to Biggs' termination. (HHC Br. at 15) Both Ferguson and Biggs' unrebutted testimony demonstrates that difficulty obtaining these forms was a system-wide problem faced by all TCNs. This is also reflected in HHC's PowerPoint presentation given on January 13, 2018, which stated that there were 171 outstanding face-to-face forms at that time. According to the UPN, Biggs was responsible for 21 of those outstanding forms. As the Union has pointed out, this represents approximately 12% of the forms. HHC has not presented any evidence to demonstrate that this is a significant percentage of outstanding forms in comparison with other TCNs. Moreover, we credit Biggs' unrebutted testimony that splitting her time between two hospitals made obtaining face-to-face forms more difficult for her than other TCNs, since this requires the TCN to locate particular physicians who may only work at a hospital a few days a week.

Finally, we do not find that the "behavioral issues" cited in HR Director Lee's memorandum were a legitimate factor that would have led to Biggs' termination in the absence of her union activity. (HHC Ex. 2) While the record reveals one instance in which CNO Iliceto told Biggs it was unnecessary to notify her when she finished work for the evening, there is no evidence that Biggs was ever counselled for improperly requesting or using comp time.

In light of all of the above, we find that HHC's proffered reasons for terminating Biggs are not legitimate and are instead pretextual. We cannot conclude based on the evidence that Biggs

would have been terminated were it not for her efforts to organize the Union. Consequently, we find that HHC violated NYCCBL § 12-306(a)(1) and (3) when it terminated Biggs in retaliation for her protected Union activity.

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 Organization of Staff Analysts and Letitia Biggs, docketed as BCB-4274-18, be, and the same hereby is, granted; and it is further

ORDERED, that the New York City Health + Hospitals Corporation and its agents cease and desist from retaliation against Letitia Biggs in the exercise of rights protected by the NYCCBL; and it is further

ORDERED, that the New York City Health + Hospitals Corporation reinstate Letitia Biggs to her former position; and it is further

ORDERED, that the New York City Health + Hospitals Corporation make Letitia Biggs whole for lost wages and benefits resulting from its retaliatory actions against her; and it is further

ORDERED, that the New York City Health + Hospitals Corporation post or distribute the Notice of Decision and Order in the manner that it customarily communicates information to employees. If posted, the notice must remain for a minimum of thirty days.

Dated: February 3, 2020
New York, New York

SUSAN J. PANEPENTO
CHAIR

ALAN R. VIANI
MEMBER

M. DAVID ZURNDORFER
MEMBER

CHARLES G. MOERDLER
MEMBER

GWYNNE A. WILCOX
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Pamela S. Silverblatt

DEPUTY CHAIRS

Monu Singh
Steven Star

**NOTICE
TO
ALL EMPLOYEES
PURSUANT TO
THE DECISION AND ORDER OF THE
BOARD OF COLLECTIVE BARGAINING
OF THE CITY OF NEW YORK
And in order to effectuate the policies of the
NEW YORK CITY COLLECTIVE BARGAINING
LAW**

We hereby notify:

That the Board of Collective Bargaining has issued 13 OCB2d 2 (BCB 2020), determining an improper practice petition between the Organization of Staff Analysts and Letitia Biggs and the New York City Health+ Hospitals Corporation.

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 Organization of Staff Analysts and Letitia Biggs, docketed as BCB-4274-18, be, and the same hereby is, granted; and it is further

ORDERED, that the New York City Health + Hospitals Corporation and its agents cease and desist from retaliation against Letitia Biggs in the exercise of rights protected by the NYCCBL; and it is further

ORDERED, that the New York City Health + Hospitals Corporation reinstate Letitia Biggs to her former position; and it is further

ORDERED, that the New York City Health + Hospitals Corporation make Letitia Biggs whole for lost wages and benefits resulting from its retaliatory actions against her; and it is further

ORDERED, that the New York City Health + Hospitals Corporation post or distribute the Notice of Decision and Order in the manner that it customarily communicates information to employees. If posted, the Notice must remain conspicuously posted for a minimum of thirty days from the date of posting, and must not be altered, defaced, or covered by any other material.

The New York City Health + Hospitals Corporation
(Department)

Dated: _____(Posted By)
(Title)