

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

.....X

CORINNE ARAZI, ROSEANN HYLEMON, and
EVELYN JULIA,

Case No. 20-cv-08837(GHW)(SDA)

Plaintiffs

-against-

COHEN BROTHERS REALTY CORPORATION,

Defendant.

.....X

**BRIEF OF AMICUS CURIAE NATIONAL EMPLOYMENT LAWYERS
ASSOCIATION/NEW YORK (“NELA/NY”) IN SUPPORT OF PLAINTIFFS’
OPPOSITION TO DEFENDANT’S PARTIAL MOTION TO DISMISS THE THIRD
AMENDED COMPLAINT**

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The National Employment Lawyers Association/New York (“NELA/NY”) respectfully submits this amicus curiae brief in support of Plaintiffs’ Opposition to Defendant’s Partial Motion to Dismiss (Dkt. No. 44). This brief is authored by the volunteer members of the NELA/NY Amicus Committee and is fully funded by NELA/NY. No party contributed to the drafting or funding of this brief.

INTEREST OF THE AMICUS CURIAE

NELA/NY is the New York affiliate of the National Employment Lawyers Association (“NELA”), a national bar association dedicated to the vindication of the rights of individual employees. NELA is the nation’s only professional organization comprised exclusively of lawyers who represent individual employees. NELA has over 4,000 member attorneys and 69 state and local affiliates who focus their expertise on employment discrimination, employee compensation and benefits, and other issues arising out of the employment relationship. NELA/NY has more than 300 members and is one of NELA's largest affiliates.

NELA/NY is dedicated to advancing the rights of individual employees to work in an environment that is free of discrimination, harassment, and retaliation. Our members advance these goals by providing legal representation to employees who have been victims of discrimination and retaliation. NELA/NY has filed numerous amicus briefs in various courts in cases that raise important questions of employment law. The organization’s aim is to highlight the practical effects of legal decisions on the lives of working people.

NELA/NY also engages in lobbying efforts, and has advocated to amend New York State’s whistleblower statute, New York State Labor Law Section 740 (“NYLL 740”), both to clarify certain provisions (including one relevant to this case) and provide additional protections (which are not relevant to this dispute). While Plaintiffs’ case brings important and viable claims alleging disability discrimination, hostile work environment, and retaliation, NELA/NY

respectfully seeks here to focus on the whistleblower claims given their importance in the COVID-19 context and in light of recent legislative developments.

INTRODUCTION

NYLL 740 protects employees who refuse to comply with an employer's illegal demands that are dangerous, unsafe, or inimical to the public welfare. *See Remba v. Fed'n Emp. & Guidance Serv.*, 149 A.D.2d 131, 134 (1989), *aff'd*, 76 N.Y.2d 801 (1990). Here, Plaintiffs refused their employer's illegal demand to work in the office when executive orders—issued for the purpose of protecting the public health—required them to stay home. By working from home and self-quarantining, and by raising complaints about their employer's risky and unlawful behavior, Plaintiffs kept (or attempted to keep) their communities and the public safe. Indeed, to obey a public-health law is precisely what it means to act in the public welfare. These whistleblowers' brave conduct—for which they were harassed and furloughed without pay—is precisely the kind of conduct that Section 740 protects. Notwithstanding the facts, Defendant Cohen Brothers Realty Corporation (“Defendant” or “Realty Corporation”) claims that Plaintiffs were not acting in the public interest.

Defendant's interpretation of what constitutes “public health or safety” is wrong as a matter of law and, to the extent it rests on the implicit premise that whistleblowers must have no concern for their own safety in order to be deemed to be acting in the public interest, it defies common sense, the realities of the workplace, and the nature of the public-health crisis here.

Accepting the Realty Corporation's position would gut the statutory protections for whistleblowers who risk their jobs to come forward and report violations of the law that endanger safety. Further, granting the motion would chill future whistleblowers from coming forward to report employers who flout the law, because they could not reasonably know what legal violations would rise to the level of a public-safety threat. Amicus Curiae are concerned

about the policy ramifications of Defendant’s argument that violations of a *public-health order* cannot be unsafe, dangerous, or contrary to the public welfare as a matter of law at the pleading stage.

ARGUMENT

NYLL 740(2) covers a claim that an employer engaged in a “violation of a law, rules, or regulation” that “create[d] and present[ed] a substantial and specific danger to the public health or safety.” While the statute nowhere defines the phrase “substantial and specific danger to the public health or safety,” courts have held that NYLL 740 “is intended to protect employees who ... refuse to engage in, employer wrongdoing which is *dangerous, unsafe, or inimical to the public welfare.*” *Remba v. Fed’n Emp. & Guidance Serv.*, 149 A.D.2d at 134 (1989) (emphasis added).

A. The Governor’s executive orders were public health orders.

Plaintiffs allege that Governor Cuomo’s Executive Orders were “issued to mitigate the spread of the coronavirus.” *See* Third Amended Complaint (Dkt. 38) ¶ 244. These were public-health laws issued in the middle of a pandemic, where thousands of New Yorkers were dying from a disease scientists were only beginning to comprehend. In response to “community contact transmission of COVID-19,” the Governor issued Executive Order No. 202.6 on March 18, 2020, mandating that each employer in the state “shall reduce the in-person workforce at any work locations by 50% no later than March 20 at 8 p.m.” Dkt. 45-2 at 3.¹ In the next two days, Governor Cuomo issued Executive Order Nos. 202.7 and 202.8, mandating that each employer reduce their in-person workforce 75% by March 21, and 100% by March 22 at 8 p.m. Dkt. 38 ¶

¹ Available online at <https://www.governor.ny.gov/sites/default/files/atoms/files/EO202.6.pdf> (last accessed June 10, 2021).

147.² All three of these orders were public-health laws issued in response to the “COVID-19 emergency disaster.”

Governor Cuomo’s public-health Executive Orders carry the full weight of the law. Amicus Curiae emphasize that on June 2, 2021, the New York State Senate voted to pass legislation that confirmed and clarified that an Executive Order is encompassed within NYLL 740’s definition of a law, rule, or regulation. *See* <https://www.nysenate.gov/legislation/bills/2021/s4394> (amending Section 1 of Section 740 to provide that “[L]aw, rule or regulation’ includes: (I) any duly enacted FEDERAL, STATE, or LOCAL statute or ordinance or EXECUTIVE ORDER, (II) any rule or regulation promulgated pursuant to [any federal, state, or local] SUCH state or ordinance or EXECUTIVE ORDER....”). *See also* Sponsor’s Memo (stating same).³ Just yesterday, on June 10, 2021, the New York Assembly voted to pass the same legislation. *See* <https://www.nysenate.gov/legislation/bills/2021/a5144/amendment/a> (indicating bill passed both houses); <https://www.nysenate.gov/legislation/bills/2021/a5144/amendment/a> (text of bill).

B. By flouting public-health orders, Defendant endangered public safety, including that of Plaintiffs and all other members of the public.

The Complaint alleges that Defendant did not comply with the Governor’s public-health orders. On March 16, 2020, the Realty Corporation ordered all of its employees to come to work. Dkt. 38 ¶ 132. On March 17, 2020, it sent a follow-up email to all employees reminding them that the Realty Corporation had no “work from home policies,” and that employees *would*

² *See* Geman Decl., Ex. 2, available online at <https://www.governor.ny.gov/sites/default/files/atoms/files/EO%20202.7.pdf> (last accessed June 10, 2021); Dkt. 45-3, available online at https://www.governor.ny.gov/sites/default/files/atoms/files/EO_202.8.pdf (last accessed June 10, 2021).

³ Geman Decl., Ex. 1.

have to use PTO if they did not come to the office to work. Dkt. 38 ¶ 135. On March 18, 2020—the same day the Governor ordered businesses to reduce in-person work by 50%—executives laughed when they were shown a screenshot of the order, calling it “fake news.” Dkt. 38 ¶ 137. On March 20, 2020, 45 minutes before the Governor’s order requiring all non-essential businesses to reduce their in-person workforce by 100% went into effect, the Realty Corporation informed all of its employees by email that its buildings remained “open and operational,” and that its employees must “make [their] own decision whether or not to come to work being guided by the time off policies previously advised.” Dkt. 38 ¶ 149. This violated public-health executive orders requiring companies to reduce, and then eliminate, in-person work during the pandemic.

By requiring employees to work in the office, the Realty Corporation endangered public health. Because COVID-19 is highly contagious, a single employee infected with COVID-19 could infect the entire office and all other persons in their immediate vicinity. Those infected by that single employee could then easily infect others with whom they interact—along their commutes, at the grocery store, in their homes, and in their neighborhoods. By putting each employee in danger, the Realty Corporation’s illegal policy endangered the health of its employees and the community at large. *See* Dkt. 38 ¶ 244. In other words, it endangered the public welfare. *Ulysse v. AAR Aircraft Component Servs.*, 841 F. Supp. 659, 678 (E.D.N.Y. 2012).

In seeking to dismiss Plaintiffs’ NYLL 740 claim, Defendant asserts various misplaced legal arguments, but amicus curiae focus in particular on the argument that Plaintiffs fail to allege a policy, practice, or activity that created a threat to public safety, because Plaintiffs’ complaints were “personal.” Dkt. 44 at 13. As an initial matter, it bears noting that the Realty

Corporation provides no support for its implied assertion that personal safety and public safety are mutually exclusive. The only case to which it cites simply holds that, under the Jones Act, a plaintiff does not state a claim if the plaintiff does not explain how the violation of a law impacts public safety. *See Reyes v. Energy Transp. Corp.*, No. 96 CIV. 3321 (JSM), 1997 WL 256923, at *4 (S.D.N.Y. May 16, 1997); *cf.* Dkt. 38 ¶ 244 (“The violation of Governor Cuomo’s Executive Orders, which were issued to mitigate the spread of the coronavirus, created and presented a substantial and specific danger to the public health or safety.”).

Fundamentally, Realty Corporation misconstrues the realities of whistleblowing and seems to impose a legal requirement of disinterestedness that does not exist (and would be hard to measure). The Realty Corporation does not understand how whistleblowing works. Whistleblowers need not *only* be concerned with the public welfare in order to blow the whistle and be covered by NYLL 740. In our experience, whistleblowers often first notice a problem if it might impact them, but they later decide to act—to speak out or complain—in order to help their co-workers and the public at large (which by definition includes them). We all have the experience where we tolerate something for ourselves that we would not want to have inflicted on others. Whistleblowers may also be in professions where protecting the public is what motivated their entire career choice. In these cases, when they ring the bell, they are concerned for the public, but also deeply troubled as a personal matter, including by the implications of knowing about a problem but staying silent. Acting to protect the public does not require the whistleblower to be the equivalent of a child’s version of a superhero: consummately brave, utterly removed, ultimately disinterested. In our experience, even the bravest and most public-focused whistleblowers are not blind to their own situation. Nor do they need to be.

As a leading paper on the motivations of whistleblowers indicates, whistleblowers rarely fit into neat categories of concern-for-self versus concern-for-public. While some blow the whistle based on ethical considerations such as public welfare, such ethical considerations can themselves be triggered by underlying emotions, including concern for the self. *See* p. 253, Ishan Jalan, *Treason or Reason? Psychoanalytical Insights on Whistleblowing*, Vol. 22, International Journal of Management Reviews, 249 (2020).⁴ Similarly, a sense of feeling betrayed can also “play a role in motivations towards whistleblowing.” *Id.* at 258. As the paper also discusses, such emotional impulses, which might be considered “personal,” nevertheless “serve the larger welfare of other people” by exposing actions that are dangerous to the whistleblower and the public at large. *Id.* These materials are consistent with NELA/NY’s own experiences in representing whistleblowers in a variety of matters under state and federal law. Defendant’s interpretations of the requirements of NYLL 740 have no basis in law or experience.⁵

These Plaintiffs are not public-health experts, but any person should know that a violation of a public-health order endangers public health. As the State of New York Department of Health stated when it recommended approval of the original law, the bill does not define what a “substantial and specific” danger is, so “it may be difficult for an employee to know whether the employer violation meets that criteria and thus insulates him from retaliatory action by his employer.” *See* State of New York Department of Health Memorandum, S. 10074 (N.Y. 1984)

⁴ Geman Decl., Ex. 3.

⁵ The Realty Corporation’s argument also rests on an improper cherry-picking of the Complaint. The Corporation refers only to paragraphs 104 through 107, which describe how the Realty Corporation did not provide anti-bacterial soap or hand sanitizer at the office. But Plaintiffs’ Section 740 claim is not based on a violation of a law requiring employers to provide soap or sanitizer. Their claim is based on the Realty Corporation’s violation of executive orders requiring the Realty Corporation to reduce its in-person workforce.

at 19.⁶ To find as a matter of law that the Realty Corporation's illegal conduct in this case cannot rise to a substantial and specific violation would chill would-be whistleblowers from coming forward in the future to report violations of public-health laws, however obvious.

Courts have held that a plaintiff adequately states a Section 740 claim when she alleges that a single renegade employee is a danger to society. *See, e.g., Calder v. Planned Cmty. Living, Inc.*, No. 93 CIV. 8882 (AGS), 1995 WL 456400, at *6 (S.D.N.Y. Aug. 2, 1995) (employee stated a claim alleging that management protected an employee who drove patients recklessly and encouraged patients to fight). Even a single inherently dangerous practice can support a claim. *Villarin v. Rabbi Haskel Lookstein Sch.*, 96 A.D.3d 1, 8 (2012) (A nurse's allegation that a school actively discouraged the reporting of suspected child abuse or maltreatment states a claim under 740). An allegation that a plaintiff was fired in retaliation for investigating an incident in which paramedics made a series of mistakes also states a claim under Section 740, because it could be part of a larger problem. *Rodgers v. Lenox Hill Hosp.*, 211 A.D.2d 248, 626 (1995) (denying a motion to dismiss); *see also Finkelstein v. Cornell Univ. Med. College*, 269 A.D.2d 114, 116 (2000) (The allegation that a plaintiff had been fired for complaining about a doctor's alleged psychotic problems could proceed to trial where the doctor's behavioral pattern might cause a patient harm.); *Calabro v. Nassau Univ. Med. Ctr.*, 424 F. Supp. 2d 465, 476 (E.D.N.Y. 2006) (A plaintiff's Section 740 claim survives where there are material facts that hospital food passes through a dirty loading dock.).

If a violation of a public health law related to COVID-19 is not a threat to public safety, what is?

⁶ Geman Decl., Ex. 4.

CONCLUSION

NELA/NY respectively submits that Plaintiffs have satisfied the pleading requirements of NYLL 740.

Dated: June 11, 2021

/s/ Rachel Geman

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CERTIFICATE OF SERVICE

I hereby certify that on June 18, 2021, a copy of the foregoing and accompanying exhibits were served upon the attorney of record for each other party through electronic mail and the Court's electronic filing service.

/s/ Rachel Geman
Rachel Geman

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CORINNE ARAZI, ROSEANN
HYLEMON, and EVELYN JULIA,

Plaintiffs,

-against-

COHEN BROTHERS REALTY
CORPORATION,

Defendant.

CASE NO. 20-cv-08837(GHW)(SDA)

**DECLARATION OF RACHEL GEMAN IN
SUPPORT OF BRIEF OF AMICUS CURIAE
NATIONAL EMPLOYMENT LAWYERS
ASSOCIATION/NEW YORK (“NELA/NY”) IN
SUPPORT OF PLAINTIFFS’ OPPOSITION TO
DEFENDANT’S PARTIAL MOTION TO
DISMISS THE THIRD AMENDED
COMPLAINT**

I, Rachel Geman, declare:

1. I am the Chair of the Amicus Committee of proposed Amicus Curiae National Employment Lawyers Association/New York (“NELA/NY”). I have personal knowledge of the facts set forth in this declaration, and if called to testify, could and would testify competently to them.

2. This Declaration is submitted in support of the Brief of Amicus Curiae National Employment Lawyers Association/New York (“NELA/NY”) in Support of Plaintiffs’ Opposition to Defendant’s Partial Motion to Dismiss the Third Amended Complaint.

3. Attached hereto as **Exhibit 1** is a true and correct copy of New York State Senate Bill S4394A, Cal. No. 1112, Feb. 4, 2021.

4. Attached hereto as **Exhibit 2** is a true and correct copy of Governor Cuomo’s March 19, 2021 Executive Order No. 202.7, which can be found online at <https://www.governor.ny.gov/sites/default/files/atoms/files/EO%20202.7.pdf>.

5. Attached hereto as **Exhibit 3** is a true and correct copy of Ishan Jalan, *Treason or Reason? Psychoanalytical Insights in Whistleblowing*, Vol. 22, International Journal of Management Reviews, 249 (2020).

6. Attached hereto as **Exhibit 4** is a true and correct copy of State of New York Department of Health Memorandum, S. 10074 (N.Y. 1984).

Dated: June 11, 2021

/s/ Rachel Geman

Rachel Geman

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EXHIBIT 1

STATE OF NEW YORK

4394--A

Cal. No. 1112

2021-2022 Regular Sessions

IN SENATE

February 4, 2021

Introduced by Sens. RAMOS, BIAGGI, GOUNARDES, JACKSON, KAMINSKY, LIU -- read twice and ordered printed, and when printed to be committed to the Committee on Labor -- reported favorably from said committee, ordered to first and second report, amended on second report, ordered to a third reading, and to be reprinted as amended, retaining its place in the order of third reading

AN ACT to amend the labor law, in relation to retaliatory actions by employers

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 740 of the labor law, as added by chapter 660 of the laws of 1984, paragraph (g) of subdivision 1 as added and paragraph (a) of subdivision 2 as amended by chapter 442 of the laws of 2006, paragraph (d) of subdivision 4 as added by chapter 24 of the laws of 2002, and subdivision 7 as amended by chapter 684 of the laws of 2019, is amended to read as follows:

§ 740. Retaliatory ~~[personnel]~~ action by employers; prohibition. 1. Definitions. For purposes of this section, unless the context specifically indicates otherwise:

(a) "Employee" means an individual who performs services for and under the control and direction of an employer for wages or other remuneration, including former employees, or natural persons employed as independent contractors to carry out work in furtherance of an employer's business enterprise who are not themselves employers.

(b) "Employer" means any person, firm, partnership, institution, corporation, or association that employs one or more employees.

(c) "Law, rule or regulation" includes: (i) any duly enacted federal, state or local statute or ordinance or executive order; (ii) any rule or regulation promulgated pursuant to [any federal, state or local] such statute or ordinance or executive order; or (iii) any judicial or administrative decision, ruling or order.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets ~~[-]~~ is old law to be omitted.

LBD00031-03-1

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(d) "Public body" includes the following:

(i) the United States Congress, any state legislature, or any ~~popu-~~
~~larly-elected~~ elected local governmental body, or any member or employ-

ee thereof;

(ii) any federal, state, or local ~~judiciary~~ court, or any member or

employee thereof, or any grand or petit jury;

(iii) any federal, state, or local regulatory, administrative, or

public agency or authority, or instrumentality thereof; ~~or~~

(iv) any federal, state, or local law enforcement agency, prosecutori-

al office, or police or peace officer~~[-]~~;

(v) any federal, state or local department of an executive branch of

government; or

(vi) any division, board, bureau, office, committee, or commission of

any of the public bodies described in subparagraphs (i) through (v) of

this paragraph.

(e) "Retaliatory ~~personnel~~ action" means ~~[the discharge, suspension~~

~~or demotion of an employee, or other adverse employment action taken~~

~~against an employee in the terms and conditions of employment]~~ an

adverse action taken by an employer or his or her agent to discharge,

threaten, penalize, or in any other manner discriminate against any

employee or former employee exercising his or her rights under this

section, including (i) adverse employment actions or threats to take

such adverse employment actions against an employee in the terms of

conditions of employment including but not limited to discharge, suspen-

sion, or demotion; (ii) actions or threats to take such actions that

would adversely impact a former employee's current or future employment;

or (iii) threatening to contact or contacting United States immigration

authorities or otherwise reporting or threatening to report an employ-

ee's suspected citizenship or immigration status or the suspected citi-

zenship or immigration status of an employee's family or household

member, as defined in subdivision two of section four hundred fifty-

nine-a of the social services law, to a federal, state, or local agency.

(f) "Supervisor" means any individual within an employer's organiza-

tion who has the authority to direct and control the work performance of

the affected employee; or who has managerial authority to take correc-

tive action regarding the violation of the law, rule or regulation of

which the employee complains.

~~[(g) "Health care fraud" means health care fraud as defined by article~~

~~one hundred seventy-seven of the penal law.]~~

2. Prohibitions. An employer shall not take any retaliatory ~~person-~~

~~nel]~~ action against an employee, whether or not within the scope of the

employee's job duties, because such employee does any of the following:

(a) discloses, or threatens to disclose to a supervisor or to a public

body an activity, policy or practice of the employer that the employee

reasonably believes is in violation of law, rule or regulation ~~[which~~

~~violation creates and presents]~~ or that the employee reasonably believes

poses a substantial and specific danger to the public health or safety~~[-~~

~~or which constitutes health care fraud]~~;

(b) provides information to, or testifies before, any public body

conducting an investigation, hearing or inquiry into any such ~~[violation~~

~~of a law, rule or regulation]~~ activity, policy or practice by such

employer; or

(c) objects to, or refuses to participate in any such activity, policy

or practice ~~[in violation of a law, rule or regulation]~~.

3. Application. The protection against retaliatory ~~personnel~~ action

provided by paragraph (a) of subdivision two of this section pertaining

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1 to disclosure to a public body shall not apply to an employee who makes
 2 such disclosure to a public body unless the employee has ~~[brought]~~ made
 3 a good faith effort to notify his or her employer by bringing the activ-
 4 ity, policy or practice ~~[in violation of law, rule or regulation]~~ to the
 5 attention of a supervisor of the employer and has afforded such employer
 6 a reasonable opportunity to correct such activity, policy or practice.
 7 Such employer notification shall not be required where: (a) there is an
 8 imminent and serious danger to the public health or safety; (b) the
 9 employee reasonably believes that reporting to the supervisor would
 10 result in a destruction of evidence or other concealment of the activ-
 11 ity, policy or practice; (c) such activity, policy or practice could
 12 reasonably be expected to lead to endangering the welfare of a minor;
 13 (d) the employee reasonably believes that reporting to the supervisor
 14 would result in physical harm to the employee or any other person; or
 15 (e) the employee reasonably believes that the supervisor is already
 16 aware of the activity, policy or practice and will not correct such
 17 activity, policy or practice.

18 4. Violation; remedy. (a) An employee who has been the subject of a
 19 retaliatory ~~[personnel]~~ action in violation of this section may insti-
 20 tute a civil action in a court of competent jurisdiction for relief as
 21 set forth in subdivision five of this section within ~~[one year]~~ two
 22 years after the alleged retaliatory ~~[personnel]~~ action was taken.

23 (b) Any action authorized by this section may be brought in the county
 24 in which the alleged retaliatory ~~[personnel]~~ action occurred, in the
 25 county in which the complainant resides, or in the county in which the
 26 employer has its principal place of business. In any such action, the
 27 parties shall be entitled to a jury trial.

28 (c) It shall be a defense to any action brought pursuant to this
 29 section that the ~~[personnel]~~ retaliatory action was predicated upon
 30 grounds other than the employee's exercise of any rights protected by
 31 this section. ~~[It shall also be a defense that the individual was an~~
 32 ~~independent contractor.]~~

33 ~~[(d) Notwithstanding the provisions of paragraphs (a) and (c) of this~~
 34 ~~subdivision, a health care employee who has been the subject of a retal-~~
 35 ~~iatory action by a health care employer in violation of section seven~~
 36 ~~hundred forty one of this article may institute a civil action in a~~
 37 ~~court of competent jurisdiction for relief as set forth in subdivision~~
 38 ~~five of this section within two years after the alleged retaliatory~~
 39 ~~personnel action was taken. In addition to the relief set forth in that~~
 40 ~~subdivision, the court, in its discretion, based upon a finding that the~~
 41 ~~employer acted in bad faith in the retaliatory action, may assess the~~
 42 ~~employer a civil penalty of an amount not to exceed ten thousand~~
 43 ~~dollars, to be paid to the improving quality of patient care fund,~~
 44 ~~established pursuant to section ninety seven aaaa of the state finance~~
 45 ~~law.]~~

46 5. Relief. In any action brought pursuant to subdivision four of this
 47 section, the court may order relief as follows:

48 (a) an injunction to restrain continued violation of this section;
 49 (b) the reinstatement of the employee to the same position held before
 50 the retaliatory ~~[personnel]~~ action, or to an equivalent position, or
 51 front pay in lieu thereof;

52 (c) the reinstatement of full fringe benefits and seniority rights;
 53 (d) the compensation for lost wages, benefits and other remuneration;
 54 [and]

55 (e) the payment by the employer of reasonable costs, disbursements,
 56 and attorney's fees;

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1 (f) a civil penalty of an amount not to exceed ten thousand dollars;
2 and/or

3 (g) the payment by the employer of punitive damages, if the violation
4 was willful, malicious or wanton.

5 6. Employer relief. A court, in its discretion, may also order that
6 reasonable attorneys' fees and court costs and disbursements be awarded
7 to an employer if the court determines that an action brought by an
8 employee under this section was without basis in law or in fact.

9 7. Existing rights. Nothing in this section shall be deemed to dimin-
10 ish the rights, privileges, or remedies of any employee under any other
11 law or regulation or under any collective bargaining agreement or
12 employment contract.

13 8. Publication. Every employer shall inform employees of their
14 protections, rights and obligations under this section, by posting a
15 notice thereof. Such notices shall be posted conspicuously in easily
16 accessible and well-lighted places customarily frequented by employees
17 and applicants for employment.

18 § 2. Subdivision 4 of section 741 of the labor law, as added by chap-
19 ter 24 of the laws of 2002, is amended and a new subdivision 6 is added
20 to read as follows:

21 4. Enforcement. A health care employee may seek enforcement of this
22 section pursuant to [~~paragraph (d) of subdivision~~] subdivisions four and
23 five of section seven hundred forty of this article.

24 6. Publication. Every employer shall inform employees of their
25 protections, rights and obligations under this section by posting a
26 notice thereof. Such notices shall be posted conspicuously in easily
27 accessible and well-lighted places customarily frequented by employees
28 and applicants for employment.

29 § 3. This act shall take effect on the ninetieth day after it shall
30 have become a law; provided, however, that effective immediately, the
31 addition, amendment and/or repeal of any rule or regulation necessary
32 for the implementation of this act on its effective date are authorized
33 to be made by the commissioner of labor of the state of New York on or
34 before such effective date.

EXHIBIT 2



State of New York

Executive Chamber

No. 202.7

EXECUTIVE ORDER

Continuing Temporary Suspension and Modification of Laws Relating to the Disaster Emergency

WHEREAS, on March 7, 2020, I issued Executive Order Number 202, declaring a State disaster emergency for the entire State of New York;

WHEREAS, both travel-related cases and community contact transmission of COVID-19 have been documented in New York State and are expected to be continue;

WHEREAS, in order to facilitate the most timely and effective response to the COVID 19 emergency disaster, it is critical for New York State to be able to act quickly to gather, coordinate, and deploy goods, services, professionals, and volunteers of all kinds; and

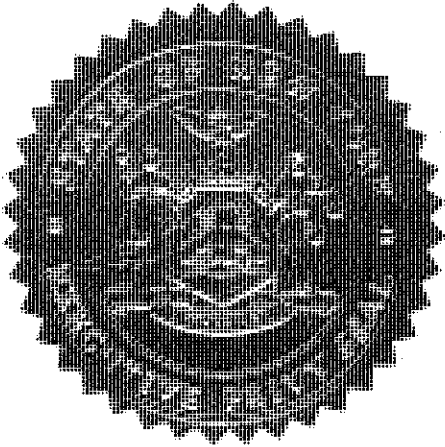
NOW, THEREFORE, I, Andrew M. Cuomo, Governor of the State of New York, by virtue of the authority vested in me by Section 29-a of Article 2-B of the Executive Law to temporarily suspend or modify any statute, local law, ordinance, order, rule, or regulation, or parts thereof, of any agency during a State disaster emergency, if compliance with such statute, local law, ordinance, order, rule, or regulation would prevent, hinder, or delay action necessary to cope with the disaster emergency or if necessary to assist or aid in coping with such disaster, I hereby temporarily suspend or modify, for the period from the date of this Executive Order through April 18, 2020 the following:

- The suspensions made to the Public Officer's Law, including provisions of Section 73 and Section 74, by Executive Order 202.6 are hereby modified to require that such suspensions and modifications shall only be valid with respect to a person hired for a nominal or no salary or in a volunteer capacity.

IN ADDITION, by virtue of the authority vested in me by Section 29-a of Article 2-B of the Executive Law to issue any directive during a disaster emergency necessary to cope with the disaster, I hereby issue the following directives for the period from the date of Executive Order through April 18, 2020:

- Any notarial act that is required under New York State law is authorized to be performed utilizing audio-video technology provided that the following conditions are met:
 - The person seeking the Notary's services, if not personally known to the Notary, must present valid photo ID to the Notary during the video conference, not merely transmit it prior to or after;
 - The video conference must allow for direct interaction between the person and the Notary (e.g. no pre-recorded videos of the person signing);
 - The person must affirmatively represent that he or she is physically situated in the State of New York;
 - The person must transmit by fax or electronic means a legible copy of the signed document directly to the Notary on the same date it was signed;
 - The Notary may notarize the transmitted copy of the document and transmit the same back to the person; and

- The Notary may repeat the notarization of the original signed document as of the date of execution provided the Notary receives such original signed document together with the electronically notarized copy within thirty days after the date of execution.
- Effective March 21, 2020 at 8 p.m. and until further notice, all barbershops, hair salons, tattoo or piercing parlors and related personal care services will be closed to members of the public. This shall also include nail technicians, cosmetologists and estheticians, and the provision of electrolysis, laser hair removal services, as these services cannot be provided while maintaining social distance.
- The provisions of Executive Order 202.6 requiring in-person work environment restrictions are modified as follows: Effective March 21, 2020 at 8 p.m. and until further notice all businesses and not-for-profit entities in the state shall utilize, to the maximum extent possible, any telecommuting or work from home procedures that they can safely utilize. Each employer shall reduce the in-person workforce at any work locations by 75% no later than March 21 at 8 p.m. Any essential business or entity providing essential services or functions shall not be subject to the in-person restrictions.



GIVEN under my hand and the Privy Seal of the State
in the City of Albany the nineteenth day of
March in the year two thousand twenty.

BY THE GOVERNOR


Secretary to the Governor



EXHIBIT 3

Treason or Reason? Psychoanalytical Insights on Whistleblowing

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This paper critically examines and reviews the dominant and mainstream perspectives and literature on whistleblowing and offers a new approach to understanding this complex phenomenon using a psychoanalytical lens. Almost all studies on whistleblowing perceive it as an ethical, moral or altruistic act on the part of the whistleblower and overlook the whistleblower's subjectivity in question. This paper offers an in-depth review of the literature to explore this and addresses the emergent but nascent discourses on whistleblower's subjectivity, offering an alternative perspective suggesting that not all whistleblowers may be prompted by moral compulsion or desire to speak truth to power. It suggests that underlying emotional and unconscious dynamics such as narcissism, in particular narcissistic rage, disillusionment and a sense of betrayal, can be possible factors in deciding to 'blow the whistle'. Furthermore, the concept of psychological defences and defence mechanisms is discussed in depth and is used to illustrate the dynamics above. In doing so, this paper draws upon extant literatures to challenge and shift existing paradigms on normative whistleblowing literature, offering novel and significant theoretical contributions and an alternative strategic platform for new directions in research and practice.

Introduction

Whistleblowing has drawn considerable attention in recent years, including to important issues such as privacy and surveillance and their impact on management practices (Kenny *et al.* 2018). It often involves disclosure of organizational wrongdoing, unethical practice, illegal activity or misconduct at workplaces in the interests of the public (Miceli and Near 1994). Some regard whistleblowers as heroes, saviours, selfless martyrs and individuals who would risk everything for the larger good (Contu 2014; Kenny *et al.* 2018; Vandekerckhove and Lewis 2012), and whistleblowing as a moral responsibility of the individual, as an act motivated by conscience (Rothschild and Miethe 1994, 1999). Others, however, explore whether whistleblowers can also be traitors, defectors and greedy individuals out to garner attention, glory and fame (see Davis 1989; Latimer and Brown 2008; McDonald and Ahern 2000). So, whilst some paint the picture almost of a heroic battle,

one of epic struggles and taking on a system that is often less forgiving of the individuals who decide to tell against it, others would see a conspiracy plot infused with revenge, malice and greed. Irrespective of how whistleblowers are regarded and portrayed, it makes for a compelling study, one that begs to explore, through the literature, the motivations of the whistleblower, his or her intentions, and their stories which prompted them to speak truth to power and rise above the obstacles. This is best captured by Graham (1993, p. 683), who writes 'the phenomenon of whistleblowing is a compelling one from a variety of perspectives because it can involve emotion-laden moral dilemmas and conflicting loyalties, heroic confrontations between individual David's and institutional Goliath's, and dramatic revelations of unsavoury organizational secrets'.

Building on these growing discourses within whistleblowing literature, this paper aims to contribute to ongoing discussions, particularly around exploring the 'emotion-laden' moral dilemmas

(Graham 1993) by adopting a psychoanalytical lens and exploring possible underlying unconscious dynamics at play that may influence the whistleblower's subjectivity and perception of the perceived wrongdoing. This would complement Kenny *et al.* (2018), who observe that most 'studies of organizational whistleblowing typically adopt a quantitative, positivist approach to "profiling" whistleblowing, attempting for example to understand the variables that will lead to a greater likelihood of people speaking out' and draws attention instead to understanding the subjectivity of the whistleblower.

The great hallmark of psychoanalysis is that it allows us to study beyond what appears on the surface, namely, the unconscious dynamics, drives and motives of individuals, groups and organizations (Gabriel 1995, 1998). Fotaki *et al.* (2012, p. 1106) write that psychoanalysis represents arguably the most advanced and compelling conception of human subjectivity that any theoretical approach has to offer. As such, its potential for illuminating issues is not being fully utilized. Similarly, Gabriel and Carr (2002, p. 348) write that psychoanalysis can help 'bring novel and often startlingly original insights into the study of organizations and management'. Of particular importance here is the concept of the 'defended self' (Holloway and Jefferson 2008). The authors note that in psychoanalytic traditions, the experience of anxiety is seen as an inherent human condition – in particular, threats to the self-create anxiety. They note that various 'defences against such anxiety are mobilised at a largely unconscious level' (p. 3), and influence people's actions, thoughts and behaviours. This implies that 'if memories of events are too anxiety-provoking, they will be either forgotten or recalled in a modified, more acceptable fashion' (Holloway and Jefferson 2008). In the context of whistleblowing, this offers a novel way of understanding the whistleblower as a 'defended self', one who is defending himself or herself from perceived external threat. This would then suggest that in the context of whistleblowing, perhaps in some cases the interests of society and/or other people come about at a much later stage in the process, one that may be the result of unconscious defence mechanisms – for example, 'rationalization' or even 'displacement' against anxiety due to perceived threat to self. This feeds into Contu's (2014) work, where she notes that the 'rationality' behind whistleblowing cannot be reduced to singular reasons, as usually documented in previous studies (p. 403), and instead suggests the need to explore the various complex psychic structures to

better understand whistleblowers' actions, something that this paper demonstrates using psychoanalytical approaches.

Thus, this review paper attempts to provide an in-depth overview of key themes and ideas on whistleblowing literature in management studies. In doing so, it also questions the ethical, moral and often altruistic perceptions of whistleblowers, suggesting that not all whistleblowers may be prompted by moral compulsion or desire to speak truth to power. Instead, there might be underlying unconscious motivations that may not wholly be ethical or moral. It suggests that narcissism, in particular narcissistic rage, disillusionment and a sense of betrayal, can be possible factors in deciding to 'blow the whistle'. The paper makes a case for moral emotions or moral compulsion as a response or reaction to 'narcissistic injuries', with little to do with the welfare of other person(s) from the start, although the actions may often be disguised as such. Lastly, the paper offers a strong analysis on how and why psychoanalysis may offer a way beyond the established either/or positions regarding whistleblowers, such as reason or emotion, betrayal or public service. Without dismissing important aspects of existing research, notably the political, philosophical and psychological issues raised by whistleblowing, the paper offers an argument on the unconscious dynamics, narcissistic rage and defence mechanisms that motivate, frame and define it.

The structure of the paper is as follows: this paper offers an in-depth review of the literature on whistleblowing, reviewing dominant perspectives and theoretical lenses used to study this phenomenon. The paper then critically examines these mainstream perspectives and offers a more novel approach to understanding the complex phenomena of whistleblowing using a psychoanalytical lens. It discusses in detail the concepts of narcissistic injury and narcissistic rage, offering a new theoretical understanding why someone may blow the whistle. In doing so, the paper addresses the emergent discourses on whistleblowers' subjectivity, an area that has received little attention.

Methodology

This review was carried out using the Web of Science (WoS) social sciences citation index, using keywords such as 'whistleblowing', 'whistle-blower' and 'whistle-blowing' as search terms in the topic field. Given the widespread literature on this topic in

various subjects such as ethics, business, sociology, nursing, medicine, health and politics, to name just a few, a total of 581 results were shown. This was narrowed down to 364 items by first selecting only journal articles; outputs such as conference proceedings, book reviews, book chapters and editorial material were not included in the selection of papers. Furthermore, only papers categorized under 'management' and organization studies were considered. However, a majority of papers (69 items) classified under 'ethics' and 'business' (88 items) were also included in this review, and these were selected based on their management context or implications for organization studies at large. On further developing the review, it became apparent that analyses of whistleblowing tend to focus on specific examples, the most popular in the years 2015 to 2019 being considerations of the situation of Edward Snowden. A further set of papers were reviewed in relation to the Snowden case, and these literatures are explored below. In addition to WoS, Google scholar was also used to explore dominant (e.g. most cited, earliest works) on whistleblowing literature, which resulted in including some key books in this review. The review of the papers showed that the vast majority of papers in the whistleblowing literature, particularly those that were categorized under 'ethics' or 'business', focused extensively on whistleblowers' antecedents, on their motivations, or consequences on the said individual, drawing mostly from positivist, empirical quantitative data (Kenny *et al.* 2018). An extensive review of the literature within management studies showed that there are limited studies on whistleblowers' subjectivities (Kenny *et al.* 2018), with only a handful drawing attention to psychoanalytical theories (e.g. Contu 2014) to explore underlying dynamics or motivations.

The following section provides an in-depth review of the whistleblowing literature, followed by key theoretical ideas that are a common denominator in these studies. The paper then draws attention to the subjectivity literature, and subsequently to the psychoanalytical ideas and literature. It concludes by offering a discussion of these ideas and a novel approach to re-examine whistleblowing within management studies at large.

Whistleblowing: key ideas

Existing studies on whistleblowing (see Dandekar 1991; Ettorre 1994; Miceli and Near 1985, 1994;

Miceli *et al.* 2008; Vandekerckhove 2006, 2010; Near and Jensen 1983; Near and Miceli 1996), in particular Miceli and Near (1992), define it as 'organization members' disclosure of illegal, immoral, or illegitimate practices under the control of their employers to persons or organizations that may be able to take action to stop the wrongdoing' (p. 45). Other scholarly research has identified whistleblowing as a form of political resistance (Rothschild and Miethe 1994, 1999) where it is seen as an act of 'collective opposition to authority taking place within a context of political conflict . . . to oppose organizational authority, to depose existing leaders, and to transform the political structures within which they work' (Perucci *et al.* 1980, p. 149). Others have attributed it to selflessness and altruism (Glazer and Glazer 1989; Singer *et al.* 1998), whereas Rothschild and Miethe (1999) in their study found that whistleblowers were mostly stirred to action by their values. Harris (2002) – quoting Rothschild – writes, 'sometimes they said that they got their sense of right and wrong from the codes of professional ethics embedded in their various occupations; sometimes they attributed their moral compass to religious upbringing or family teaching; but in nearly all cases, they said they were trying to do "the right thing"'. Contu (2014) offers an interesting perspective on whistleblowing, drawing particularly from philosophy and Lacanian lenses, exploring why whistleblowers are 'seen as unsettling and ambivalent figures', in particular, their desire (drawing from Lacan) and that 'whistleblowing has a political valence' (p. 401). Some studies have also explored whether demographic factors or differences, such as marital status, educational qualifications, religious background or seniority at work, play any role in influencing whistleblowers, and found that there was little data or research to substantiate this reasoning (Rothschild and Miethe 1999).

An in-depth review of the debate in the current literature suggests that most scholars seem to take a less critical view of whistleblowers, often suggesting that they are motivated by their need to do the right thing, acting on their values. For example, when questioning 'who is a whistleblower', Graham (1993, p. 683) writes, 'whistle-blowers are typically above-average performers who are highly committed to the organization, not disgruntled employees out for revenge'. Furthermore, the current bulk of the literature seems to address extensively the aftermath of whistleblowing (i.e. the emotions the whistleblower or the organization might exhibit after the act has taken place, the legal, ethical and moral issues that arise, the

various forms of retaliation that they have to perhaps face and what this means for policy – e.g. NHS policy to get whistleblower guardians, February 2015). Other perspectives also investigate elements that might prevent whistleblowers from acting up, such as fear of retaliation and punishment. Hollings' (2013) research makes note of some of the research that explores the motivations behind making such moral decisions and states that various disciplines – such as criminology, psychology, journalism and witness programmes – have shown interest in exploring the motivations and decision-making processes behind whistleblowers, and in particular social psychology has explored the role of emotions in their decision-making processes, and each has come up with interesting theoretical approaches. Having noted this, he is quick to add, 'There is no convincing theoretical model of why some people speak out while others do not'. Miceli (2004), in particular, explores some of the motivations and reasons behind understanding what makes a whistleblower different from other employees. She highlights that often, situational factors are responsible for prompting someone to 'blow the whistle', where 'the more serious or entrenched the wrongdoing, the more retaliation' (Miceli 2004). Furthermore, she also assertively acknowledges that a 'moral component' is one of the clear motivating factors in the decision to blow the whistle. This is further cited in the research conducted by Miceli and Near (1984, 1992), Miceli *et al.* (1991, 2001), Rothschild and Miethe (1999), who all attest to the clear presence of moral compulsion as a key factor behind whistleblowing decisions.

Dominant perspectives and alternative approaches: a critical overview

We have already identified earlier that much of the whistleblowing literature identifies moral compulsion or morality as one of the key factors in 'blowing the whistle'. Morality is understood differently by different people, as it can be influenced by sociocultural-religious perspectives. However, there are also some universal moral laws in society that collectively are frowned upon (e.g. actions such as lying, cheating or stealing). Within the context of understanding moral behaviour and emotions, Haidt (2003) notes that there has been a gradual shift in research away from moral reasoning and more towards exploring moral emotions, or emotions that lead to making moral judgements and actions. Tangney *et al.*

(2007) also notes this shift, adding that historically the link between moral decisions and behaviour was approached from a social psychological perspective and that it has now become important to further explore how moral decisions and/or moral behaviour is influenced by moral emotions.

Morality and moral emotions

In recent times, several scholars (as noted below) have noted that 'moral' emotions (e.g. shame, guilt and anger, in particular) influence and play a significant role in ethical decision-making and that this may have important outcomes for organizations. Tangney *et al.* (2007) note, 'morally relevant emotions may moderate the link between moral standards and moral decisions, and ultimately moral behaviour', whereas Gaudine and Thorne (2001) note that moral emotions play a significant role in constituting ethical behaviour in organizations and note, '[the] link between moral emotions and ethical behaviour at both the individual and organizational level of analysis is far from straightforward'. Other works have considered cognitive appraisals behind moral decisions and emotions leading to ethical behaviour and how moral emotions are negotiated (Ashkanasy 2003), suppression of moral emotions leading to silencing (Gabriel 2000), organizational or workplace consequences of displaying or acting on emotions (Lindebaum 2012) and how emotions may hinder ethical action (Lindebaum 2009) in organizations. As Haidt (2003) writes, 'whether the moral emotions are ultimately shown to be the servants, masters, or equal partners of moral reasoning, it is clear that they do a tremendous amount of work in the creation and daily functioning of human morality'. In this light, it is thus understood that moral emotions motivate doing good and avoiding doing bad (Kroll and Egan 2004); following Haidt (2003), moral emotions have been defined as 'those emotions that are linked to the interests or welfare either of society as a whole or at least of persons other than the judge or agent' (p. 276). Haidt also identifies two sets of moral emotions, namely 'other-condemning' (contempt, anger and disgust) and 'self-conscious' (shame, embarrassment and guilt), which he opines influence moral decisions and consequently ethical behaviour and actions. Tangney *et al.* (2007) expand this 'list', saying, 'as in previous decades, much research remains focused on shame and guilt. In recent years (however), the concept of moral emotions has been expanded to include several positive emotions—elevation, gratitude, and the sometimes

morally relevant experience of pride'. These are important shifts in the literature, allowing for a much greater repertoire of emotions to be questioned and examined vis-à-vis moral decision-making and ethical actions.

It is no longer contested that organizations and work spaces are 'emotional arenas' (Fineman 1993, 2000, 2003). Gabriel (2008) notes that 'a wide range of emotions, including greed, enthusiasm, envy, trust, nostalgia, gratitude, love, friendship, hope, anger, anxiety, and disappointment, have come into focus and a rich understanding of their effects is gradually emerging' within organizational and management studies (p. 87). Despite the differences in perspective and opinion amongst the wide spectrum of research in the study of emotions, ranging from biology and neuroscience to sociology, social psychology and psychoanalysis, to name just a few, what is consistent is the understanding that we may not wholly be in command of our emotions and that emotions can overpower and influence one's decisions and judgements in profound ways (Gabriel 2008). Other scholars such as Zajonc (1980, 1998, 2000) have also highlighted the unconscious nature of emotions, and how they inform value judgements and may influence decisions to approach or avoid something. This paper builds on this narrative, exploring how emotions can assert considerable force when making 'value judgements' whilst operating 'unconsciously', and specifically looks at how emotions may shape and influence whistleblowing. This necessitates the use of a psychoanalytical lens, as it is the only subject that allows us to question and interpret unconscious dynamics and other psychological processes that one may not wholly be aware of undertaking.

What we gather from some of the discourse discussed above is that dominant views exploring the interplay and dynamics between emotions, morality and ethics seem to define moral emotions *only* as those emotions that are prompted by an interest in the welfare of society and/or other people. It seems completely to overlook the possibility that moral and ethical actions may be prompted by emotions that may *not* have any interest in the other. This emphasis on moral emotions being understood and defined based on the 'other' is best captured in a quote by Haidt (2003), who notes that, 'the puzzle of the moral emotions is that Homo Sapiens, far more than any other animal, appears to devote a considerable portion of its emotional life to reacting to social events *that do not directly affect the self*. The main goal . . . is to classify and describe these emotions that go beyond

the *direct interests of the self*' (italics added by author).

Following the above assumption, it is then understood that moral emotions somehow go beyond any 'direct' interest of the self and do not concern themselves 'directly' with affecting the self (Haidt 2003). Furthermore, it appears that the literature and current perspectives engaged in exploring moral emotions and ethical behaviour tend to overlook unconscious dynamics that might precede decision or judgment-making (Gabriel 1998, 2008). Thus, there is an assumption that if ethical actions are motivated by emotions, then the emotions themselves must be morally grounded (see Miceli and Near 1992). However, this review paper argues that the above view does not take into consideration the possibility that not all whistleblowing actions are motivated by moral emotions or altruism alone. This paper contends that other factors, such as unconscious dynamics or self-interest of the individual, may also influence the whistleblowing process. In doing so, it discusses how psychoanalysis may help acknowledge the reality of altruistic and moral emotions but also qualify them as being confronted by many other emotions, including other altruistic emotions (e.g. loyalty to the organization and its people) or selfish emotions (fear of retaliation, etc.).

The above discourse outlines some of the popular and mainstream perspectives on whistleblowing and whistleblower intentions and motivations, attributing them to moral emotions, particularly anger, guilt and shame, and the need to do the 'right thing'. It confirms the literature on moral emotions as well, affirming that moral emotions imply those emotions that lead to ethical actions that benefit people other than the self, and whistleblowing seems to be one such action. However, as with the case of problematizing dominant views on moral emotion, it appears that alternative perspectives to explore what unconscious dynamics may be at play behind these moral emotions and their dynamics have largely been ignored. Whistleblowers' intentions may not always be ethical or moral, and could be stimulated by many other emotions that may not necessarily fall under the conception of moral emotions per se.

Alternative approaches: whistleblower subjectivities

When discussing alternative perspectives, there has been limited exploration on the subjectivity of the whistleblowers themselves. One key paper that does open the dialogue on this front is by Kenny *et al.*

(2018), who take a sharp detour from the mainstream literature and its focus on moral compulsion, and instead draw attention to attachment theories as motivating reasons behind blowing the whistle. They question the very nature of whistleblowers' subjectivity, opining for a new framework that 'sees the self-construction of the whistleblower as infused with passionate attachments to organizational and professional norms, even after one may experience severe reprisal', and argue that 'passionate attachments to one's organization and profession shape whistleblower subjectivity, rather than conscious risk-taking, or autonomous self-reinvention'. They critically observe that most studies on whistleblowing have a positivist approach, drawing heavily from quantitative, empirical data to understand and often predict the various antecedent factors and variables that prompt individuals to speak out. They convincingly articulate that whilst research (see Vandekerckhove and Langenberg 2012) has identified parrhesia or fearless speech as one of the key attributes of a whistleblower, there is still little that we know about how this comes about or contributes towards constructing the whistleblower's subjectivity. However, while their paper makes some very important contributions to the literature, it does not really explore the 'unconscious' dimensions of whistleblowers' subjectivity.

Treason or reason: psychoanalytical explorations

The particular relevance of using a psychoanalytic approach in this paper is that it will allow us to examine some of the hidden, unspoken and perhaps unexamined aspects of emotional motives that lie beneath the moral and ethical actions and decisions in whistleblowing. Furthermore, going back to Haidt's earlier comment on 'reacting to social events that do not directly affect the self', this paper argues to the contrary, suggesting that many moral judgements and actions have *everything* to do with the self, sitting directly within the interests of the self. As argued earlier, attributing whistleblowing solely to moral emotions or ethics, or a sense of altruism, would be grossly underplaying the role of various unconscious processes and emotional dynamics that might be taking place, as well as the primary function of the self and how the self is being affected first. What we aim to explore next is how various defence mechanisms can be mobilized to moralize one's own actions rationally.

Defence mechanisms

Defence mechanisms as understood within the psychoanalytic literature work unconsciously. Gabriel (2008, p. 75) writes, 'defence mechanisms are a group of psychological processes aimed at reducing painful and troubling feelings (notably anxiety) or at eliminating forces that are experienced as threatening the integrity or mental survival of an individual'. Similarly, Jalan *et al.* (2014) note that the existing literature (Diamond and Allcorn 1985, 1986; Fotaki 2010; Fotaki *et al.* 2012; Gabriel 1999; Stein 2000, 2011) 'has already shown how defences may be used in times of insecurity, anxiety, emotional exhaustion and stress, self-doubt, work alienation, team/group isolation, resistance to change, scapegoating, power and subjugation, and layoffs'. Following Anna Freud's¹ (1936) definition of defence mechanisms, in particular rationalization, Jalan *et al.* (2014, p. 413) note, 'rationalization as a defence is described as a way of *masking* and *denying* the symptoms that may stir anxiety... where individuals are justifying, or in other words rationalizing' their actions. Here the defence mechanism of rationalization helps the individual to *externalize* the cause that generates significant anxiety or other unpleasant emotion and *justify* it. Furthermore, Gabriel (2008, p. 74) defines 'repression', another defence mechanism, as 'the fundamental defence mechanism, through which painful or threatening desires, ideas, and emotions are prevented from reaching consciousness, being restricted to the unconscious'. Following the earlier discussion(s), it could be that for a whistleblower, his or her own association with the corrupt organization causes them to feel ashamed, corrupted or angry, all of which is perhaps repressed for quite some time, or until they are no longer able to deny what they are seeing or experiencing.

In trying to better understand *why* an individual chooses to 'blow the whistle', it is important to also explore and understand another defence mechanism, *projective identification*. This defence mechanism might explain how whistleblowers cope through what they experience, and what may provoke or motivate them to blow the whistle on their employee or organization. Melanie Klein formulated the concept

¹Anna Freud was an Austrian-British psychoanalyst, the youngest child of Sigmund Freud. Peter Gay (1988) notes that her book *The Ego and the Mechanisms of Defence* became a founding work of ego psychology, where she greatly expanded on Sigmund Freud's own work on defence mechanisms and understanding of the ego.

of 'projective identification' (Segal 2012), where individuals unconsciously split or tear certain aspects of themselves off and project them into others. It helps in order to attain or uphold a desired identity and deal with unwanted aspects of selves that may impede their own narcissistic self-image or obstruct normal functioning of the ego. As Petriglieri and Stein (2012) also observe, projective identification reduces inner conflicts and enhances one's ability to enact the desired identities credibly. What is thus of relevance here is that the individual projecting these qualities then identifies with the other whom he or she has unconsciously projected upon, because the unwanted or desired qualities then become characteristics of the other as well. In a whistleblower's case, what is useful to observe is that he or she is not necessarily projecting unwanted aspects of himself or herself onto the larger society, but instead projecting desired aspects of the self because by making it a cause that is relevant to others, the cause gets greater recognition and currency.

The secret operatives of organizations, particularly where they might be overreaching their powers and violating the rights of other people, are clearly a very personal issue for many whistleblowers, one that causes a degree of moral outrage. This paper sheds new light on the unconscious dynamics of whistleblowing, not assuming that decisions are made with the benefits of the larger society in mind from the start. Instead, whistleblowing is regarded as a very personal act, stemming from a very personal reaction to a deep narcissistic injury that takes place in the said person. As Alford (2002) succinctly puts it, 'narcissism is also a deep and powerful source of morality'.

Narcissism, betrayal and blowing the whistle

Based on the literature thus far on whistleblowing, particularly that of Kenny *et al.* (2018), this paper argues that most whistleblowers *rationalize* (a form of defence mechanism) their own act of 'betrayal' (i.e. betraying their own organization). It is to be noted that any act of whistleblowing is inherently going against one's own organization or boss, even though the aim is to expose or reveal the unethical acts/wrongdoings that may be taking place. This act of revelation is also an act of betrayal, one that will indefinitely cause guilt and shame to the self. But by rationalizing the act as being done for a higher cause, it makes the task less burdensome on one's own conscience. Thus, the act of attribution to a greater cause is *not* the primary motive, it is secondary and comes as a way of coping

with one's own sense of guilt and betrayal of loyalty. In order to better understand why this happens, it is essential to look at the Freudian concept of narcissism that lies at the root of this behavioural response.

Freud defined 'narcissism as a form of "selflove" that can assume many different forms ranging from excessive preoccupation with self-image and beauty to burning ambition to a need to be constantly the centre of attention' (Gabriel 2008). While narcissism is important and a normal part of the human psyche, excessive narcissism – or when one's narcissism is hurt – often causes an individual to react and defend themselves. Although the psychoanalytical literature deals extensively with narcissism (Gabriel 2008), in this context, two specific concepts are particularly important. First, 'narcissistic injury', a concept that loosely refers to the distress caused when an individual feels their hidden or true self has been exposed or revealed, or when they experience a 'fall from grace', or when their real motivations are exposed (Freud 1915). It is worthwhile noting that while narcissistic injury as a concept does not feature explicitly in Freud's writing (Aloupis 2005), he did allude to this idea first in his 1914 case study of the 'wolfman' (Freud 1988) and later in his seminal work *Beyond the Pleasure Principle* (1955), where he explicitly writes 'loss of love and failure leave behind them a permanent injury to self-regard in the form of a narcissistic scar'. Akhtar (2009, p. 182) states that by this concept, Freud was implying that the narcissistic scar 'can be turned into a wound by a major heart-break or a highly significant vocational setback; this is especially so when such situations evoke feelings of inferiority and exclusion'. This idea was later given much importance by Karl Abraham (1994), who saw a direct link between narcissistic injury and depression, and by Otto Fenichel (2014), who developed Freud's idea of 'narcissistic frustration' and suggested that narcissism was essential to self-esteem and loss of it could deeply frustrate or cause real injuries to the individual. However, it was Kohut (1972, 2013) who further developed this idea in great depth and suggested that narcissistic injury could also unleash a form of narcissistic rage in light of perceived threat to the self, a concept that is central to this paper.

'Narcissistic rage', as a descriptive term, was first employed by Heinz Kohut in his seminal book *The Analysis of the Self*, published in 1972 (also see Kernberg 1975; Ornstein 1998). In simple understanding, narcissistic rage is a reaction to narcissistic injury, or a perceived threat to a narcissist's self-esteem or self-worth. However, it is essential for this paper that

we explore this concept in greater depth. Kohut offers us a very nuanced understanding of how he perceives narcissistic rage. He writes, 'strictly speaking, the term narcissistic rage refers to only one specific band in the wide spectrum of experiences that reaches from such trivial occurrences as a fleeting annoyance when someone fails to reciprocate our greeting or does not respond to our joke to such ominous derangements as the furore of the catatonic and the grudges of the paranoiac' (p. 379). For him, even though narcissistic rage belongs to the wider human realm of human aggression, anger and destructiveness, it constitutes a 'specific, circumscribed phenomenon within this great area . . . it is clearly analogous to the fight component of the fight-flight reaction with which biological organisms respond to attack' (p. 379). Developing this idea further, he says that narcissistic rage occurs in many forms and 'the need for revenge, for righting a wrong, for undoing a hurt by whatever means and a deeply anchored, unrelenting compulsion in the pursuit of all these aims which gives no rest to those who have suffered a narcissistic injury—these are features which are characteristic for the phenomenon of narcissistic rage in all its forms and which set it apart from other kinds of aggression' (p. 380). Oppenheimer (2005) builds on Kohut's work and writes, 'narcissistic rage can include phenomena as different as slight annoyance, paranoiac rancour and catatonic fury. Linked to loss of control, it signals the existence of some unresolved psychic injury of an archaic, narcissistic character. Such rage aims to repair an injustice, a narcissistic wound unrelieved so long as shame persists and the witness to it is not destroyed. Thus, the need for revenge in the face of ridicule, disdain or contempt, represents an expression of narcissistic rage'. As argued earlier in the paper, the act of spoiling is an act of revenge that seeks to give voice to his contempt, rationalizing it as something that matters to others, without once mentioning it as something that matters to him, thereby displaying classic defence mechanism traits. Through projective identification, he externalizes his rage as moral outrage. Similar to Kohut, Jones (1929) also separates narcissistic rage from anger, which he clearly outlines as rage being different from anger in such that anger often acts as a defence against feelings of guilt. Akhtar (2009, p. 181) adds that narcissistic rage is a 'direct response to threatened omnipotence; the latter is sorely needed by the narcissist to ward off his covert sense of inferiority'. To further help our understanding of narcissistic rage and its position within the spectrum of human aggression, Oppenheimer (2005) says it is essential to distinguish

narcissistic rage from aggression. She says, 'aggression towards another person (or mental representation of one) should be distinguished from narcissistic rage directed at a self-object, Kohut's term for an archaic object that must not be experienced as a disappointing or failing. Although aggressivity ceases when the obstacle is lifted, narcissistic rage cannot be quelled' (p. 1115). Ronningstam (2005) further opines, based on her interpretation of Kohut, that narcissistic rage could be an attempt to turn from a passive sense of victimization to an active act of inflicting injury on others (p. 86). Similarly, Dodes (1990) notes that narcissistic rage can involve self-protection and can serve to restore a sense of internal power and safety. As a point of conclusion on these two important concepts of narcissistic injury and narcissistic rage, as well as how they are intertwined and linked, we turn to Aloupis (2005). Drawing on Kohut, Aloupis writes that the significance of narcissistic rage is that it is a reaction to narcissistic injury, as an aggressive result of shame – especially when someone is faced with a sense of deep personal failure vis à vis an external object.

Based on these discussions, this paper identifies narcissistic rage as a crucial factor in an individual's (in this case a whistleblower's) own ethical and moral purity, as well as a channel of coping and catharsis. When they experience a sense of 'narcissistic injury' or betrayal, it is not just a shame state, but also their own ego ideal is affected. Their reflection of themselves – in other words, how they perceive themselves as being good, 'moral' individuals – gets affected and just as by witnessing the corruption, they feel corrupt in themselves. The act of questioning and raising concern comes because the individual is *bothered* and not merely because he has observed some wrongdoing and wants to report it. The sense of being *bothered* stems from a state of shame and feeling corrupt in oneself, because they see themselves as part of the organization as a whole, and thus by extension the wrongdoing is a reflection of themselves too. Reporting, raising the issue and making it public is a way of self-moral cleansing, denouncing one's association with the noted wrongdoing and in doing so, starting the first steps of repairing the wounded ego. Thus, two things are taking place here: through projective identification (as discussed earlier), the individual lessens his or her own intolerance of the unpleasant feelings and generated anxiety and at the same time, through this externalization onto larger society, their own *narcissistic rage* (see Kohut 1972) can be *channeled*, and moral outrage can be *justified* – the outcome of which is a desire to inherently spoil, or devalue, what

was once deeply valued by the self. This spoiling takes place by what Klein identifies as ‘splitting’ the self into ‘good’ and ‘bad’ aspects, such that unwanted parts – or conversely the desired parts of the self – can then be projected, which ultimately leads to either a negative or a positive identification with the recipients of the projections (Petriglieri and Stein 2012). As Alford (2002, p. 79) notes, ‘not too many things will make a man or woman give up everything for his or her beliefs, but wounded narcissism is one. Some people will go to the ends of the earth to salve their wounded narcissism, devoting their lives to moral purification’.

Why go public?

What scholars appear to find compelling is the question of why some whistleblowers choose to make their identity known to the public via the press and social media? Arguably, since journalists do not usually reveal sources, whistleblowers may have had the opportunity to remain anonymous (Awad 2006) because the news would in itself be enough to spark the debate or draw attention to the wrongdoing. This decision to ‘go public’ raises the question: do whistleblowers seek glory, fame, acknowledgement or personal retribution? If the point of whistleblowing was related purely to leaking the news, then why put themselves squarely against the ‘enemy’ as many famous whistleblowers (e.g. Edward Snowden, Julian Assange, Bradley Manning) have done, and risk imprisonment or worse? To answer such questions, many recent papers have taken an interest in examining whistleblower actions more closely by using specific whistleblowers. In particular, the experiences of Edward Snowden have been presented within a range of disciplinary settings as a case study to explore this question (see Finkelde 2016; Harding 2014; Lucas 2014; Wood and Wright 2015). Presumably due to the lack of access to Snowden himself, much of this scholarly analysis focuses on the ‘grey’ literatures: the press and social media (see e.g. Di Salvo and Negro 2016).

As background, it is worth noting that Snowden’s situation, and the motivation behind his desire to ‘go public’, was at the time the subject of great speculation within the broadsheet and magazine press and within social media (Di Salvo and Negro 2016) and highbrow periodicals such as *Vanity Fair*. Harwood (2013), writing for *Huffington Post*, questioned Snowden’s motives for going public, wondering whether this was for the greater good and questioning if Snowden was a ‘selfless patriot’ or a ‘narcissistic nihilist’.

US blogger Tarzie (2017) similarly likened Snowden’s motivation to that of an actor who believes he is part of a spy ‘movie’. Seeking perhaps to raise his own profile, Tarzie argued that whistleblowers such as Snowden are ‘in showbusiness more than anything else’ (p. 351). Tarzie described Snowden as ‘ready for his close up’ (p. 252), suggesting that Snowden’s e-mails prior to disclosure were ‘cinematic’ (i.e. suggesting that Snowden planned for his story to be revealed in the form of a gripping narrative, appropriate for a spy ‘thriller’, p. 354).

Drawing upon the content of these media-driven analyses in order to better understand the phenomenon of whistleblowing through the lens of a character (Snowden) whose position and motivation was already widely debated in the public domain, scholars from a range of scholarly disciplines have analysed the Snowden story. For example, political scientist Scheurman (2014) has examined Snowden’s whistleblowing through the lens of civil disobedience, reflecting upon how far Snowden was (or was not) morally justified in his actions. Similarly, Branum and Charteris-black (2015) have explored the phenomenon of whistleblowing through the experiences of Snowden, drawing upon the lenses of media, state and state surveillance and the law in an attempt to better understand the timelines and connections between the key players and functions regarding what was occurring and how this might be characterized differently depending on who is presenting the news story. The authors used keyword analysis to compare the reporting strategies of three major UK newspapers on Snowden. Drawing from Fowler (1991), the authors argue that while newspapers ‘do not represent facts about the world’, they however throw light on beliefs, values and ideologies, and inform how news is constructed and shared, and therefore hold significant validity as sources of public and social opinion. Furthermore, Qin (2015) drew upon and developed metaphors of ‘hero’ and ‘traitor’ to examine how social media and news agencies portrayed Snowden in the public eye. Qin’s research used semantic network analysis and found that ‘social media users associated Snowden’s case with other whistleblowers, bipartisan issues, and personal privacy issues, while professional journalists associated the Snowden incident with issues of national security and international relations. Frames on social media portray Edward Snowden as a hero while the frames on legacy news make him a traitor’. This is particularly relevant in the case of whistleblowers, especially those who have ‘come-out’ in the public and

chose not to remain anonymous, because both these articles throw some light on how the public perceives a whistleblower's actions compared to the various news agencies, who can be less sympathetic and more critical in their analysis of whistleblower intentions.

Most of these scholars put forward compelling arguments about Snowden and whistleblowing from different perspectives and angles, including analysing his motivations for blowing the whistle and its impact and outcomes, to make broader observations about the construction and interpretation of what is news, what constitutes public opinion about moral behaviour, and how journalism and notions of public and state morality are linked. Similarly, complementing these different perspectives, this paper suggests that whistleblowing intentions can be interpreted in different ways, and different sections of society will perceive these actions differently (e.g. news agencies and professional journalists see it as a traitor, public and social media might see it as an act of heroism); we will never know the real 'personal' reasons why any individual would choose to blow the whistle, or go public with it. This paper attempts to address this by using a psychoanalytical lens to uncover underlying unconscious drives (such as narcissism) that might be one of the motivating factors in deciding to blow the whistle. In doing so, it allows room to further explore and understand the reasons that might prompt an individual to undertake such action.

Discussion

After reviewing dominant and mainstream perspectives and literature on whistleblowing, this paper offers – for an alternative perspective – that instead of being a purely altruistic act, whistleblowing is something very personal. It is argued that whistleblowing could be an act of narcissism and deep narcissistic rage, as a response to an external threat, one which induces narcissistic injury to one's own self-image and forces the individual to act to defend themselves (Freud 1914; Modell 1975). For example, Freud (1914) writes, 'even great criminals and humourists, as they are represented in literature, compel our interest by the narcissistic consistency with which they manage to keep away from their ego anything that would diminish it', prompting defensive measures that seek to justify, reframe, qualify or deny the ego's actions. This ties in with the earlier argument on betrayal, because when perceived social norms and relations – particularly the principles that underlie them

– are violated, the self can feel violated, trust broken, and a sense of betrayal overshadows what was earlier experienced (i.e. the association with the organization) as a source of pride and confidence for the self. This paper argues that this prompts narcissistic injury, which raises narcissistic rage and subsequently induces moral outrage in the person.

Moral outrage can be understood as an emotional reaction to something that others do. Unlike guilt, for example, which seeks to repair something one has damaged oneself, moral outrage does not come from something we have done. What is important to note is that some actions may elicit moral outrage whereas others may not. As Goodenough (1997) observes, moral outrage is 'not intrinsic in the behaviour itself but has something to do with how it relates to us and what is important to us' (p. 6). Narcissistic scarring, sense of betrayal and damage to self worth and identity cause narcissistic rage, provoking a desire for revenge and in this instance, moral outrage. Moral outrage is different from anger in that it can be seen as arising from the violation of what is felt as something that is shared socially (Goodenough 1997, p. 8). He further notes that it is 'this sense of right arising from un-verbalized principles governing social relationships that give rise to moral outrage as distinct from other forms of anger'.

Goodenough (1997) also notes that as an emotion, moral outrage is affected by processes such as rationalization, projection, and so on, alluding to the unconscious dynamics of defence mechanisms at play. Echoing Jalan *et al.* (2014, p. 412), it is important to note that an act of defending can imply two things: defending as an act of fighting to protect something one values; defending oneself from an external threat. This is of importance in this paper (i.e. trying to highlight the actions of whistleblowers as defending themselves against their own anxieties, narcissistic and moral rage, and sense of betrayal, as well as how whistleblowers themselves engage in acts of defending too, and in this way serve the larger welfare of other people). Thus, the essential delineating element is that anger is seen as something personal, stemming from issues that cannot be publicly justified, whereas moral outrage is seen as something that can be warranted externally and can be shared as something that might bother others too. Furthermore, this paper suggests that disillusionment and sense of *also being betrayed* can play a role in motivations towards whistleblowing. It need not always be for ethical reasons, or about altruism or motivated by moral emotions. It can also be about narcissism,

rage and moral outrage. It questions dominant views on whistleblowing as an act of altruism, rising to the higher cause or acting upon moral emotions such as anger, shame or guilt. It is neither always about doing what is right or looking out for the benefit of others.

Future directions

This paper offers a novel theoretical approach to whistleblower subjectivities and their importance in understanding whistleblower actions, and opens the space for future research on a number of key points. For example, other psychoanalytical approaches – such as Lacanian or Klein's object-relations theory, or Bowlby's attachment theory – could be applied to explore these dynamics from other theoretical viewpoints. Similarly, some studies, as highlighted earlier in the paper, portray whistleblowers as 'saviours' and 'heroes', and also as 'traitors' and 'defectors', and thus position whistleblowers as contested ambivalent figures (Contu 2014) in society. Perhaps further studies can be conducted to explore this ambivalence and its implications on whistleblower subjectivities. Furthermore, this paper does not discuss the nature or character of organizations, nor does it apply psychoanalytical insights to organizations themselves, as we look explicitly at whistleblower subjectivities. However, this could be something that future papers would want to explore, and important scholarly works such as *Organizations in Depth: The Psychoanalysis of Organizations* by Yiannis Gabriel (1999) or *Organizations on the Couch* by Manfred Kets de Vries (1991) could provide excellent starting points for this discussion.

The insights on the underlying mechanisms and emotions of whistleblowers' subjectivity could also inform various organizational practices, particularly those of human resources management (e.g. exploring policies to promote greater openness in the workplace that encourages individuals to 'speak-up', as well as explore ways to protect whistleblowers from damaging actions, i.e. victimization or dismissal). These insights could also encourage leaders to rethink what motivates organizational loyalty, and most importantly, recognize the role of underlying dynamics behind people's behaviours. This would build on Gabriel's existing volume of work (see Gabriel 1997, 1999, 2011; Gabriel and Griffiths 2002; Sims *et al.* 1993) that particularly draws on psychoanalytical traditions to rethink organizational behaviour, practices and leadership dynamics.

Furthermore, the paper makes a strong case for using a psychoanalytical lens to better understand individual subjectivities and unconscious motives, encouraging other management and organizational scholars to explore this approach in their studies of whistleblower subjectivities and actions. In this light, future research could use some specific techniques that might help to uncover these unconscious dynamics and assist in carrying out psychoanalytic research on whistleblowers in practice. Of particular relevance here is the free association narrative interview method that Holloway and Jefferson (2009) articulate very well. They write that the importance of meaning and context has increasingly been acknowledged in qualitative methods in recent years, but 'most of these qualitative methods such as discourse analysis and narrative analysis still assume rational, unitary subjects, if not explicitly, then by default' (p. 16). They say that the free association narrative interview method in contrast 'assumes that unconscious connections will be revealed through the links that people make if they are free to structure their own narratives' (p. 16). This method allows individuals to elicit concerns or fears that would probably not be visible using a more traditional method. Holloway and Jefferson (2009, p. 12) further say that 'free associations defy narrative conventions and enable... to pick up on incoherence's (for example, contradictions, elisions, avoidances) and accord them due significance'. This can be illustrated using the following example from the authors that might help future scholars wishing to explore whistleblowers' subjectivities using psychoanalytic approaches. Building on the rich methodological tradition of storytelling (see Gabriel 2000), Holloway and Jefferson say that storytelling 'contain(s) significances beyond the teller's intentions', and suggest that when storytelling approaches are used in interviews, it helps to 'narrativize topics' (p. 12) (i.e. 'to turn questions about given topics into story-telling invitations'). An example that the authors use is: a question such as 'what do you most fear?' might elicit a one-word answer but if altered to 'tell me about your experiences of fear', or 'tell me about a time when you were fearful' (p. 12) might invite the respondent to 'narrate' their story (Jalan *et al.* 2014, p. 414). Thus, by inviting individuals to share whatever comes to their mind, the researcher would be able to elicit stories that are not 'structured according to conscious logic, but according to unconscious logic; that is the associations follow pathways defined by emotional motivations, rather than rational intentions'

(Holloway and Jefferson 2009). To explore whistleblower subjectivities, researchers would thus be able to engage beyond the perceived moral justifications and allow the individual to freely share their own narratives, going beyond the socially constructed reasons to explore the underlying unconscious dynamics, notably defences of perceived threat to self that may have triggered the desire to blow the whistle, instead of moral or altruistic logics.

Conclusion

The paper offers a new perspective drawing from a psychoanalytic lens, suggesting that unconscious emotional dynamics must be considered when exploring whistleblower subjectivities and motivations. The paper highlights that ethical actions, irrespective of being motivated solely by moral emotions or not, always have a direct relevance to the self. The paper offers an understanding as to why some blow the whistle, whilst others may not, because it depends on the level and intensity to which the witnessed wrongdoing affects the said individual personally, affects their sense of self and the intensity with which they might feel wronged themselves. The contribution of this paper lies in showing the ‘underlying’ and often unconscious mechanisms that trigger the behaviour to act morally or ethically, rather than the consequences of such behaviours or studying the motivations from a cognitive angle. It shows that narcissistic rage, moral outrage and a sense of betrayal could play a pivotal role in a whistleblower’s motivations. It also shows that various defence mechanisms – such as rationalization, projection and projective identification – may be playing a significant role in the unconscious dynamics. What triggers moral emotional behaviour or action does not necessarily derive from a moral necessity or righteousness to do good or even altruistic dispositions, but a response to something that is deeply personal and engrained in the self. The paper also shows that whistleblowers are intrinsically and intuitively connected with what triggers them to act in a particular way, in so much that it is always a deeply personal act, and in doing so, they may be classified as ‘defended selves’. In conclusion, thus, it is argued that the act of being betrayed perhaps motivates the betrayal.

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EXHIBIT 4

APPROVAL #77

CHAPTER

LAWS OF 19

84

SENATE BILL 10074

ASSEMBLY BILL

10074

IN SENATE

June 26, 1984

Introduced by Sens. LACK, ANDERSON, BRUNO, CALANDRA, FARLEY, FLYNN, KNORR, LEVY, KOLISON, STEINFELDT, TRUNZO -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the civil service law and the labor law, in relation to protection of employees against retaliatory action by employers

H. 10074

Barbara Hansen Librarian

03

RECEIVED BY GOVERNOR:

7/23

ACTION MUST BE TAKEN BY:

8/3

GOVERNOR'S ACTION:

DATE

8/1/84

Memorandum No.

SENATE VOTE 59 Y 0 N

HOME RULE MESSAGE Y N

Date 6/28/84

Bill is disapproved

ASSEMBLY VOTE 143 Y 4 N

Date 6/29/84

Counsel to Governor

1984

SENATE

SENATE JOURNAL

JUN 23 1984

PAGE. 138

The Senate Bill
by Mr. **LACK**
Entitled: "

Calendar No. **1756**

Senate No. **10,074**
Assem. Rept. No.

10,074 LACK
An act to amend the civil service law and the
labor law, in relation to protection of em-
ployees against retaliatory action by em-
ployers

No. 1 (THREE DAY MESSAGE OF GOVERNOR)

The President put the question whether the Senate would agree to final passage of said bill, and the facts which necessitate an immediate vote thereon having been certified by the Governor, the same being upon the desks of the members in final form, it was decided in the affirmative, a majority of all the members elected voting in favor thereof and three-fifths being present as follows:

AYE	Dist.		NAY	AYE	Dist.		NAY
	51	Mr. Anderson			8	Mr. Levy	
	48	Mr. Auer			49	Mr. Lombardi	
	17	Mr. Babbush			24	Mr. Marchi	
	46	Mr. Barclay			5	Mr. Marino	
	20	Mr. Bartosiewicz			21	Mr. Markowitz	
	9	Mrs. Berman			58	Mr. Masiello	
	33	Mr. Bernstein			30	Mrs. Mendez	
	29	Mr. Bogues			23	Mr. Montalto	
	43	Mr. Bruno			42	Mr. Nolan	
	34	Mr. Calandra			27	Mr. Ohrenstein	
	25	Mr. Connor			14	Mr. Onorato	
	40	Mr. Cook			11	Mr. Padavan	
	61	Mr. Daly			54	Mr. Perry	
	47	Mr. Donovan			36		
	6	Mr. Dunne			56	Mr. Present	
	44	Mr. Farley			50	Mr. Riford	
	60	Mr. Floss			41	Mr. Rolison	
	35	Mr. Flynn			32	Mr. Ruiz	EXCUSED
	31	Mr. Galiber			39	Mr. Schermerhorn	
	13	Mr. Gold			52	Mr. Smith	
	37	Mrs. Goodhue			19	Mr. Solomon	
	26	Mr. Goodman			57	Mr. Stachowski	
	18	Mr. Halperin			45	Mr. Stafford	
	22	Ms. Jefferson			12	Mr. Stavisky	
	10	Mr. Jenkins			55	Mr. Steinfeldt	
	4	Mr. Johnson			3	Mr. Trunzo	
	53	Mr. Kehoe			7	Mr. Tully	
	15	Mr. Knorr			59	Mr. Volker	
	2	Mr. Lack			16	Mr. Weinstein	
	1	Mr. LaValle		03	38	Mrs. Winikow	
	28	Mr. Leichter					

AYES

NAYS

58
0

Ordered, that the Secretary deliver said bill to the Assembly and request its concurrence therein.

NEW YORK STATE ASSEMBLY

REPRINT NO: 001
DATE: 06/28/84DATE: 06/28/1984
TIME: 11:58:58 PM

BILL: S19974(A8552-A)

R.R. NO: 505 SPONSOR: LACK--

AN ACT TO AMEND THE CIVIL SERVICE LAW AND THE LABOR LAW, IN RELATION TO
PROTECTION OF EMPLOYEES AGAINST RETALIATORY ACTION BY EMPLOYERS

Y	ABRAMSON, E	Y	Hannon, K	Y	PASSANNANTE, WF
Y	BABARD, FJ	Y	HARENBERG, PE	Y	PATTON, SA
Y	Barnett, HN	NAY	Harris, GH	Y	Paxon, LN
Y	Barraga, TF	Y	HARRISON, J	Y	Perone, JM
Y	Becker, GR	Y	Hawley, RS	Y	PILLITTERE, JT
Y	Behan, JL	Y	Healey, PB	Y	PORDUM, FJ
Y	BENNETT, LE	Y	HEVESI, AG	Y	PROUD, G
Y	BIANCHI, IM	Y	HIKIND, D	Y	Rappleyea, CD
Y	BOYLAND, NF	Y	HINCHEY, MD	Y	Retalliate, AP
Y	BRAGMAN, MJ	Y	Hoblock, MJ	Y	RIVERA, J
Y	BRODSKY, RL	Y	HOCHBRUECKNER, GJ	Y	ROBACH, RJ
Y	Burns, GH	Y	HOYT, WB	Y	ROBLES, VL
Y	Burns, HE	Y	JACOBS, RS	Y	RUGGIERO, RS
Y	BUTLER, DU	ELB	JENKINS, C	Y	Ryan, AM
Y	Castle, AU	Y	KEANE, RJ	Y	RYAN, WJ
Y	CATAPANO, TF	Y	Kellisher, NW	Y	Saland, SM
Y	Chesbro, RT	Y	KOPPELL, GO	Y	SANDERS, S
Y	Cochrane, JC	Y	KREMER, AJ	Y	Sawicki, J
Y	CONNELLY, EA	NAY	Kuhl, JR	Y	SCHINNINGER, RL
Y	CONNERS, RJ	Y	LAFAYETTE, IC	EOR	SCHMIDT, FD
Y	CONNOR, RJ	Y	Lane, CD	Y	Sears, WR
Y	Cooke, AT	Y	Larkin, WJ	Y	SEMINERIO, AS
Y	Coombs, RI	Y	LASHER, HL	Y	SERRANO, JE
Y	DAmato, AP	Y	Leibell, VL	Y	Sheffer, JB
Y	DAndrea, RA	Y	LENTOL, JR	Y	SIEGEL, MA
Y	DANIELS, GL	Y	Levy, E	Y	SILVER, S
Y	DAVIS, G	Y	LIPSCHUTZ, GE	Y	SLAUGHTER, LM
Y	DEARIE, JC	Y	MacNeill, HS	Y	Spano, NA
Y	DEL TORO, A	Y	Madison, GH	Y	Straniero, RA
Y	DIAZ, HL	Y	MARCHISELLI, VA	Y	SULLIVAN, EC
Y	DUANE, JF	Y	MARSHALL, HM	Y	Sullivan, PM
Y	DUGAN, EC	Y	MAYERSOHN, N	Y	TALLON, JR
Y	ENGEL, EL	Y	MCCABE, JW	Y	Talome, FG
Y	EVE, AO	Y	McCann, JW	Y	Tedisco, J
Y	FARRELL, HD	Y	MCNULTY, MR	Y	TONKO, PD
Y	FELDMAN, D	Y	MCPHILLIPS, MM	Y	VANN, A
Y	FERRIS, J	Y	Miller, HM	Y	VITALIANO, EN
Y	Flanagan, JJ	Y	MILLER, MH	Y	WALDON, AR
Y	FREDA, L	Y	MURPHY, MJ	Y	WALSH, DB
Y	FRIEDMAN, G	Y	MURTAUGH, JB	NAY	Narren, GE
Y	GANTT, DF	Y	NADLER, J	Y	WEINSTEIN, HE
Y	GOLDSTEIN, R	Y	Nagle, JF	Y	NEPRIN, S
Y	GORSKI, DT	Y	NENBURGER, MW	Y	Nertz, RC
NAY	GOTTFRIED, RN	Y	NORMAN, C	Y	Nesley, RC
Y	GRABER, VJ	Y	Nortz, HR	Y	NILSON, CE
Y	GRANNIS, A	Y	Nozzolio, MF	Y	Winner, GH
Y	GREEN, RL	Y	ONeill, JG	Y	YE VOLI, LJ
Y	GREENE, A	Y	ORAZIO, AF	Y	YOUNG, GP
Y	GRIFFITH, E	Y	PARMENT, WL	Y	ZIMMER, MN
Y	HALPIN, PG	Y	Parola, FE		MR. SPEAKER

YEAS: 143

NAYS: 4

04

CONTROL: 06333353

CERTIFICATION: _____

LEGEND: Y=YES, NAY=NO, NV=ABSTAIN, ABS=ABSENT,
ELB=EXCUSED FOR LEGISLATIVE BUSINESS, EOR=EXCUSED FOR OTHER REASONS.

STATE OF NEW YORK
EXECUTIVE CHAMBER
ALBANY 12224

MEMORANDUM filed with Senate Bill Number 10074, entitled:

CHAPTER 660 "AN ACT to amend the civil service law and the labor law, in relation to protection of employees against retaliatory action by employers"

78
APPROVED

The bill, which contains a concept in my 1984 Legislative Program, will protect employees from adverse or retaliatory personnel action by their employers when they have reported information concerning the employer's activities constituting a violation of law, rule or regulation which presents a specific and substantial danger to the public health and safety.

Public employees will be permitted to assert as a defense in any disciplinary proceeding brought under statutory or collectively negotiated provisions that the punitive action of the employer would not have been taken but for the disclosures of the employee.

Private employees and public employees not covered by statutory or collectively negotiated disciplinary provisions will be permitted by the provisions of new Article 20-C of the Labor Law entitled "Retaliatory Action by Employers" to commence a civil action for relief which may include an injunction, reinstatement, back pay and restoration of fringe benefits and seniority rights. The bill requires that employees make a good faith effort to bring the activity, policy or practice in violation of law, rule or regulation to the attention of a supervisor and provide the employer a reasonable opportunity to correct the practice.

This legislation establishes a major right for employees - the right to speak out against dangerous or harmful employer practices - and balances the right with protections for employers against abuses by requiring that the employer be notified first and by imposing costs on employees who bring actions without basis in law or fact.

Encouraging employees to bring violations to the attention of their employers and shielding them from employer retaliation if they disclose wrongful conduct to authorities, will protect the welfare of the people of this State, promote enforcement of the law, and give needed protection to employees who wish to act as law-abiding citizens without fear of losing their jobs.

The bill is approved.

B-201

10-DAY BILL
BUDGET REPORT ON BILLSS-10074
Session Year: 19⁸⁴SENATE

Introduced by:

ASSEMBLY

No. 10074

Sens. Lack, Anderson, Bruno, et al

No.

Law: Civil Service
LaborSections: 75-b new
740

Division of the Budget recommendation on the above bill:

Approve: X Veto: _____ No Objection: _____ No Recommendation: _____1. Subject and Purpose:

This bill would protect public and private sector employees who disclose violations of law, rule or regulation which present a substantial danger to public health or safety by prohibiting certain types of retaliatory action by their employers.

2. Summary of Provisions: Effective September 1, 1984, this bill would:

- a. Prohibit public employers from retaliating (by means of dismissal or other adverse personnel action) against public employees who have disclosed to a governmental body information regarding violations of law, rule or regulation which present a substantial and specific danger to the public health or safety;
- b. Prohibit private employers from retaliating against employees who have disclosed (or threatened to disclose) to a supervisor or to a public body an activity, policy or practice of the employer that violates law, rule or regulation and presents a substantial and specific danger to the public health or safety. Private employers are also prohibited from retaliating against employees who provide information to a public body conducting an investigation, hearing or inquiry into violations which threaten public safety, or who object or refuse to participate in activities, policies or practices which violate law, rule or regulation;
- c. Define adverse personnel actions by public employers to include not only dismissal but any action which negatively affects compensation, appointment, promotion, transfer, assignment, reassignment, reinstatement or evaluation of performance; and,
- d. Define retaliatory personnel actions by private employers as discharge, suspension or demotion or other adverse employment action which affects the terms or conditions of employment.

3. Legislative History: This appears to be new legislation.4. Arguments in Support:

- a. Presently, public and private sector employees have no legal protection from retaliatory actions by their employers if they disclose or attempt to disclose violations of law, rule or regulation which adversely affect public health and safety. It would therefore be in the best interest of the public to protect such employees by prohibiting dismissal or other less severe personnel actions taken by employers in retaliation for such disclosures.

06

Date: _____ Examiner: _____

Disposition:

Chapter No.

Vote No.

11. Prior to disclosure by public or private employees of information regarding violations of law, rule or regulation which present a substantial danger to the public health or safety, a good faith effort must have been made to provide the appointing authority (or supervisor) with information to be disclosed, as well as reasonable time to take appropriate action except in those circumstances where there is imminent and serious danger to public health and safety. It may be argued that by providing or attempting to provide an appointing authority (or supervisor) with information prior to disclosure that such employers will voluntarily cease violations which otherwise might have seriously affected public health and safety.

12. It may be argued that this measure which affirms the statutory and contractual rights of represented employees may be of most benefit to unrepresented public and private sector employees as it recognizes and protects their right of due process by permitting such employees to initiate civil actions in a court of competent jurisdiction within one year of an alleged retaliatory personnel action.

5. Possible Objections:

a. This bill protects public and private employees only in situations where disclosure of violations of law, rule or regulation would adversely affect public health and safety. It may be argued that the scope of this measure should be broadened to protect employees who would disclose, for example, improper use of official position as well as other problems which ought to be brought to the attention of supervisors, government bodies and possibly the public.

b. This measure protects public and private employees from adverse personnel actions which include not only dismissal but other less severe penalties which are based solely upon disclosure of certain violations. It may be argued however, that employers are not precluded from retaliating against employees by means of other adverse personnel or quality of worklife actions such as changes in duties and responsibilities or work location which are not specifically enumerated within this bill.

c. It may be argued that this bill would promote inappropriate public disclosures by protecting employees, who divulge violations, which to the best of their knowledge may adversely affect the public interest.

6. Other State Agencies Interested: The Office of Employee Relations supports this bill. The Department of Civil Service would be interested.

7. Other Interested Groups: The New York State Organization of Management/Confidential Employees would be interested in this measure. Additionally, all public and private sector labor organizations, as well as public interest groups, would be likely to have an interest in this bill.

8. Budgetary Implications: There are no direct fiscal implications to the State or localities.

9. Recommendation: This measure appears to provide adequate protection to public and private sector employees who disclose certain violations of law, rule or regulation which might endanger public health and safety in addition to providing means for relief for both employers and employees in the event of a dispute regarding an alleged retaliatory personnel action. We acknowledge that this measure may not entirely allay employee fears of reprisal for disclosure of certain information but we believe that this bill strikes a reasonable balance between employee and employer concerns and is in the best interests of the public. Therefore, for these reasons we recommend that this measure be enacted.

July 20, 1984

A handwritten signature in dark ink, appearing to be "R. H. P.", written in a cursive style.

S-10074



JAMES J. LACK

DISTRICT

CHAIRMAN

COMMITTEE ON GOVERNMENT

RELATIONS

ALBANY, N.Y.

THE SENATE
STATE OF NEW YORK
ALBANY 12247

IF INDICATED, PLEASE RESPOND TO
DISTRICT OFFICE
1044 NEW YORK STATE OFFICE BUILDING
VETERANS MEMORIAL HIGHWAY
HAUPPAUGE, NEW YORK 11787
MAIN OFFICE & SMITHSON
1518 JRD 6521
TIE LINES
BROOKHAVEN 442 2521
HUNTINGTON 421 3137

July 19, 1984

TO: The Hon. Gerald C. Crotty
Counsel to the Governor

FROM: Senator James J. Lack

RE: Senate Bill 10074

The bill presently before the Governor would amend the Civil Service Law to protect workers who report illegal actions that threaten the public health or safety from retaliatory action by their employers.

This legislation would prohibit employers, both public and private, from dismissing, demoting, or initiating other punitive actions against a worker who reported to a government agency that the employer was engaged in a "violation of a law, rule, or regulations, which violation creates and presents a substantial and specific danger to public health and safety".

I urge the Governor to sign this bill into law and protect those individuals who witness or are exposed to hazardous situations, and feel obligated to report the violation to the appropriate government agency.

C-660

S-10074



THE ASSEMBLY
STATE OF NEW YORK
ALBANY

FRANK J. BARBARO
ASSEMBLYMAN 47TH DISTRICT

REPLY TO:
ROOM 713
LEGISLATIVE OFFICE BUILDING
ALBANY, NEW YORK 12248
455-5828

COMMUNITY OFFICE
1708 WEST 10TH ST.
BROOKLYN, N.Y. 11223
(212) 373-0001

CHAIR
LABOR

COMMITTEES
HIGHER EDUCATION
EDUCATION
HOUSING
RULES

SUB-COMMITTEE
MITCHELL-LAMA

July 27, 1984

Mr. Gerald Crotty, Esq.
Counsel to the Governor
Executive Chamber
State Capitol
Albany, NY 12224

Dear Mr. Crotty,

I am writing to urge the approval of Senate Bill 10074, which provides protection and remedies for persons who blow the whistle on employers' violations of health-and safety-oriented statutes and regulations.

Over the past several years, the news media has frequently pointed up situations where employees - both public and private - were fired, demoted, transferred or otherwise penalized for reporting employers' wrongdoing. These actions, in my view, are a gross abuse of the employer - employee relationship. This bill provides a positive first step toward correcting this abuse by affording both public and private sector employees remedies and recourse when they are the victims of retaliatory actions.

For this reason, I strongly support the approval of this bill.

Sincerely,

Frank J. Barbaro
Member of Assembly

NEW YORK STATE
DEPARTMENT OF SOCIAL SERVICES
40 NORTH PEARL STREET, ALBANY, NEW YORK 12243
CESAR A. PERALES
Commissioner



MEMORANDUM

TO: The Honorable Gerald C. Crotty
Counsel to the Governor

FROM: Cesar A. Perales *Cesar A. Perales*

RE: Ten Day Bill
Senate 10074

DATE: July 27, 1984

RECOMMENDATION: Approval

STATUTES INVOLVED: Section 75b, Civil Service Law, added; Article 20-c, Labor Law, added

EFFECTIVE DATE: September 1, 1984

DISCUSSION:

1. Purpose and effect of bill: The bill would provide certain protection to public and private employees who disclose information concerning violations of law.

This bill would amend the Civil Service Law to prohibit a public employer from dismissing or taking an adverse personnel action against a public employee because the employee discloses information to a governmental body regarding a violation of a law, rule or regulation which violation creates and presents a substantial and specific danger to the public health or safety. Prior to disclosure, the employee has a duty to make a good faith effort to provide this information to the appointing authority, and to wait a reasonable time for the appointing authority to take appropriate action, unless there is imminent and serious danger to public health or safety. The rules relating to disclosure would not apply where dismissal, disciplinary action, or other adverse personnel actions would otherwise have been taken regardless of the disclosure of information.

This bill would similarly amend the Labor Law to prohibit retaliatory personnel actions by private employers against their employees for (1) disclosure or threats of disclosure to a supervisor or public body of an activity, policy, or practice of the employer in violation of a law, rule, or

-2-

regulation, which violation creates and presents a substantial and specific danger to the public health or safety; (2) providing information or testimony to a public body conducting an investigation, hearing, or inquiry into such a violation; and (3) objection to or refusal to participate in such activity, policy, or practice in violation of a law, rule, or regulation. This protection only applies where the employee has brought the violation to the attention of a supervisor and has afforded reasonable opportunity for correction.

The bill provides an aggrieved employee with a remedy in the form of a civil action in a court of competent jurisdiction and provides defenses where there were other grounds for the personnel action, or where the employee is an independent contractor. The amendment enunciates the type of relief available, i.e., an injunction, reinstatement of the employee to the same or an equivalent position, reinstatement of full fringe benefits and seniority rights, restoration of retroactive benefits, and payment of court costs, disbursements, and attorney's fees by the employer.

2. Prior legislative history and other significant background: The Legislature has been interested in legislation to protect employees from retaliatory personnel actions since at least 1981, proposing the following bills: A.2566, A.7090, A.8513 (1981), S.7799 - A.9712, A.10816, S.9566 - A.12451 (1982), A.2126, A.2276, and S.1153 (1983). None of these bills has been passed by both houses.

The foregoing bills vary in their definition of protected activities, employee obligations as a condition precedent to protection, remedies available and appropriate relief. In general, these bills seek to protect an employee who reports any violation of law or lawful dangerous activity, and impose less stringent requirements of prior notification as a prerequisite for this protection.

3. Budget Implications: None.
4. Arguments in support: Where employees help the public by providing information about their employer's violation of law which causes serious danger, or where employees testify or otherwise cooperate with a public body investigating a violation, or where employees object to or refuse to participate in unlawful activity, they should not be subject to retaliatory personnel action. This bill, greatly narrowed from its predecessors, protects employees and safeguards against disloyalty by requiring "inside disclosure" with time for correction as a prerequisite.
5. Arguments in opposition: It is noted that only disclosures as to dangerous violations are protected. Moreover, public employees who uncover waste and abuse are not protected. Inadvertent disclosure of violations in public investigations are likewise unprotected, as are objections to and refusals to participate in dangerous, although lawful, activity.



LEE O SMITH
DEPUTY COMMISSIONER OF LABOR
FOR LEGAL AFFAIRS

STATE OF NEW YORK
DEPARTMENT OF LABOR
TWO WORLD TRADE CENTER
NEW YORK, NEW YORK 10047

July 9, 1984

Hon. Gerald C. Crotty
Counsel to the Governor
Executive Chamber
State Capitol
Albany, New York 12224

Re: S. 10074 - AN ACT to amend the civil service law
and the labor law, in relation to pro-
tection of employees against retaliatory
action by employers
(Before Governor for executive action)

Dear Mr. Crotty:

This very important bill provides protection for "whistle blowers" in both the public and private sectors by amending the Civil Service Law and the Labor Law to proscribe retaliatory personnel action by public and private employers.

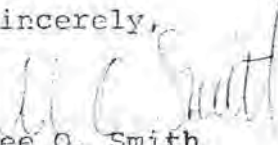
The bill provides that an employer must not dismiss or otherwise discipline a worker because they have disclosed to a governmental body information regarding violations of law which create a substantial and specific danger to public health or safety. Also, employers are prohibited from retaliation if the employee provides information to or testifies before a public body or objects to or refuses to participate in an activity which violates a law, rule or regulation. Workers who complain of retaliation because of their disclosures to a governmental or public body must have brought the subject of the complaint to the employer's attention and given the employer reasonable time to take appropriate corrective action.

The bill allows workers in the public sector to assert a "whistleblower" defense to disciplinary action, that is that the disciplinary action would not have been taken but for the protected conduct. This defense is made available regardless of the setting in which the disciplinary proceeding takes place.

For the private sector worker a civil action is available in which the court can grant full relief, including injunction and attorneys' fees. However, the private sector employer's managerial rights are protected by being allowed to show that the personnel action was predicated upon grounds other than the exercise by the employee of his whistleblower rights. In addition, if the court determines that the worker's legal action was baseless, the employer may obtain reasonable attorneys' fees, costs, and disbursements.

The Department strongly supports this bill as a way to protect workers who properly report instances of practices and wrongdoing which threaten health and safety. **Whistleblowers** serve an important function, and this bill will protect activity in the public interest while insulating employers from frivolous or harassing actions.

Sincerely,

A handwritten signature in dark ink, appearing to read "Lee O. Smith", is written over the typed name.

Lee O. Smith

LOS:gc

cc: Elizabeth Moore

8-10074



STATE OF NEW YORK
BANKING DEPARTMENT
TWO WORLD TRADE CENTER
NEW YORK, N.Y. 10047

VINCENT TESE
SUPERINTENDENT OF BANKS

July 5, 1984

BANKING DEPARTMENT
MEMORANDUM ON
BILL BEFORE THE
GOVERNOR FOR
EXECUTIVE ACTION

SENATE

10074

ASSEMBLY

Introduced by:

Sens. Lack, Anderson,
Bruno, Calandra, Farley,
Flynn, Knorr, Levy,
Rolison, Steinfeldt and
Trunzo

Recommendation:

No objection

Statute Involved:

Civil Service Law §75-b (new)
Labor Law Article 20-C (new)

Effective Date:

September 1, 1984

Summary of Provisions of Bill:

This bill would prohibit public and private employers from taking retaliatory action against employees in certain cases and provides remedies for employees who suffer such retaliatory action.

Comment:

This bill would protect employees who bring attention to violations of laws, rules or regulations under certain conditions.

oOo

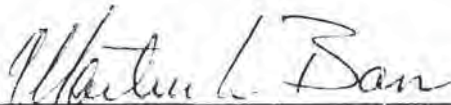
S 10074
July 6, 1984

PUBLIC EMPLOYMENT RELATIONS BOARD

TO: Hon. Gerald C. Crotty
Counsel to the GovernorRE: S. 10074 Introduced by: Senators Lack et al.RECOMMENDATION: No objectionSTATUTE INVOLVED Civil Service Law, Section 75(b)(new);
Labor Law, Article 20-C(new)EFFECTIVE DATE: September 1, 1984DISCUSSION:

The purpose of this bill is to protect both public and private sector employees from retaliatory action by their employers because of a disclosure to a governmental body of information regarding illegal conduct by the employer. The bill proposes to protect public employees by adding a new Section 75(b) to the Civil Service Law and to protect private employees by adding a new Article 20-C to the Labor Law. Insofar as public employees are concerned, the bill permits an employee to raise as a defense in any disciplinary proceeding before an arbitrator or hearing officer the claim that such disciplinary proceeding has been instituted because of the employee's "whistle-blowing." The merits of the defense may be decided by the arbitrator or hearing officer. If an employee is not covered by any contractual or statutory disciplinary procedure, he may commence an action in court under the same conditions as are set forth in the proposed new Article 20-C. This bill properly incorporates the concept of "election of remedies" so that the employees will not have multiple avenues of relief by virtue of the enactment of this bill. This bill does not contain authorization for a public employee to refuse to participate in activity which he reasonably believes is improper, an objectionable aspect of an earlier version of this bill.

The Public Employment Relations Board has no objection to the enactment of this bill.

MARTIN L. BARR
Counsel



THE BICENTENNIAL OF THE BOARD OF REGENTS AND THE UNIVERSITY OF THE STATE OF NEW YORK

COUNSEL AND DEPUTY COMMISSIONER FOR LEGAL AFFAIRS
THE NEW YORK STATE EDUCATION DEPARTMENT
ALBANY, NEW YORK 12234

July 9, 1984

TO: Counsel to the Governor

FROM: Robert D. Stone

SUBJECT: S.10074

RECOMMENDATION: No objection

REASONS FOR RECOMMENDATION:

This bill would amend the Civil Service Law by adding a new section 75-b and the Labor Law by adding a new Article 20-C to protect the rights of public and private employees, respectively, against retaliatory personnel action in regard to an employee's disclosures to a public governmental body of matters reasonably believed to violate a law, rule or policy and to constitute a substantial and specific danger to public health or safety. The bill also would provide a remedy by civil action for an employee against whom a retaliatory personnel action allegedly is taken.

5-10074

STATE OF NEW YORK



DEPARTMENT OF HEALTH

TOWER BUILDING • THE GOVERNOR NELSON A. ROCKEFELLER EMPIRE STATE PLAZA • ALBANY, N.Y. 12237

DAVID AXELROD, M.D.
COMMISSIONER

July 18, 1984

Honorable Gerald C. Crotty
Counsel to the Governor
Executive Chamber
State Capitol
Albany, New York 12224

Re: Senate 10074

Dear Mr. Crotty:

Your office has requested this Department's comments on the above-referenced bill which is before the Governor for executive action.

Senate 10074 adds a new section 75-b to the Civil Service Law which would prohibit a public employer from taking retaliatory action against a public employee who discloses information to a governmental body regarding a violation of law, rule or regulation which creates and presents a substantial and specific danger to the public health or safety. To qualify for this protection the public employee must, prior to disclosure, make a good faith effort to notify the public employer of the violation and afford a reasonable amount of time to remedy the situation, unless the violation poses an imminent danger to public health or safety.

The bill also adds a new Article 20-C to the Labor Law which prohibits retaliatory action by employers against employees for disclosure to a public body of activities, policies or practices of the employer that violate a law, rule or regulation when the violation creates and presents a substantial and specific danger to the public health or safety. The prohibition is only applicable if, prior to disclosure, the employee brings the violation to the attention of the employer and affords a reasonable amount of time to correct the violation.

Retaliatory action by employers is also prohibited against employees who either testify before a public body conducting an investigation or refuse to participate in the conduct which constitutes the violation of a law, rule or regulation.

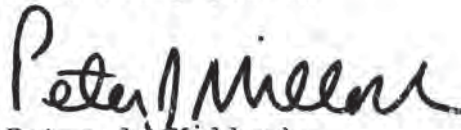
The Department wholeheartedly supports the concept of job protection for employees who disclose employer violations of the law. However, it should be noted that this bill contains some textual deficiencies.

The phrase "substantial and specific danger" is not defined in the bill. Therefore, it may be difficult for an employee to know whether the employer violation meets that criteria and thus insulates him from retaliatory action by his employer.

An employer is prohibited from taking any adverse "personnel action" in retaliation for disclosure. The bill contains a definition of "personnel action". This definition includes, among other things, compensation, promotion, transfer and evaluation of performance. It does not include "working conditions". Retaliatory action on the part of the employer could include conduct adversely affecting the employee's working conditions, yet this form of retaliation is not prohibited.

Notwithstanding these noted deficiencies, the Department of Health recommends approval of this bill.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Peter J. Millock". The signature is fluid and cursive, with a large initial "P".

Peter J. Millock
General Counsel

19



STATE OF NEW YORK
GOVERNOR'S OFFICE OF EMPLOYEE RELATIONS
AGENCY BUILDING NO. 2
ALBANY, NEW YORK 12223

THOMAS F. HARTNETT
DIRECTOR

NANCY L. HODES
EXECUTIVE DEPUTY DIRECTOR
JOSEPH M. BRESS
GENERAL COUNSEL

MEMORANDUM

July 11, 1984

TO: Honorable Gerald C. Crotty
FROM: Joseph M. Bress *JMB*
SUBJECT: S.10074

This legislation would add a new section seventy-five-b to the Civil Service Law and a new Article 20-C to the Labor Law.

This bill is designed to protect "whistleblowers" in both the public and private sector from adverse or retaliatory employment actions by their employer when they have reported information to a governmental body which constitutes a violation of law, rule or regulation and presents a specific and substantial danger to the public health and safety.

In order for an employee to be subject to the provisions of this bill prior to the disclosure of such details to the appropriate governmental body, the employee must make a good faith effort to provide the information to his or her employer and the individual must allow a reasonable time for the employer to take appropriate action unless there is serious imminent danger to the public.

This enactment will encourage employees to make their concerns known to their employers and governmental bodies about harmful conditions without fear of adversely affecting their careers and it will encourage employers to take voluntary action, when it is appropriate, in order to correct such situations.

The instant legislation demonstrates further advancement in the responsiveness of the law to the evolution of the protection of societal interests inasmuch as both employees and employers will be encouraged to act upon the discovery of serious threats to the well-being of the public. Moreover, if the employer fails to respond to the obligation to cure dangerous situations, then other governmental bodies may

be brought into the picture in order to ensure that the public health and welfare will be safeguarded.

It must be pointed out that there have been some comments that this bill does not protect all "whistleblowing" situations. The Governor's Program Bill (S.7607/A.9343) would have, if passed, responded to those comments for the public sector. Yet, it must be recognized that this bill incorporates in substantial part the Governor's Program Bill to provide whistleblowing protection to public employees. The Senate bill resulted from a determination that the public sector protection should be treated similarly to private sector coverage in order to assure acceptability of whistleblower protection in the private sector. While the exclusion of the concerns of the Program Bill may be disappointing, it is important to recognize that the bill assures that the public obtains the protection necessary from public and private entities which might threaten public health or safety through violations of laws or regulations. This bill marks a large step forward in protecting employees from adverse actions when they act to protect the public interests. Although further consideration in this area should occur to meet the concerns raised by the Governor's Program Bill, this bill marks a major new protection for both the public and the employee.

For the reason that this bill is responsive to the needs of the employee, the employers and the public-at-large, this Office strongly recommends approval of the subject legislation.

S-10074



STATE OF NEW YORK
DEPARTMENT OF LAW
TWO WORLD TRADE CENTER
NEW YORK, N. Y. 10047

ROBERT ABRAMS
ATTORNEY GENERAL

MEMORANDUM FOR THE GOVERNOR

Re: Senate 10074

This bill amends the civil service law and the labor law by creating a civil cause of action for employees subjected to retaliatory personnel action for reporting information about a violation of a law, rule or regulation to their employers or to public bodies.

The bill applies to both private and public employees and will take effect on September 1, 1984 and will apply to any retaliatory personnel action taken on or after such date.

Public attention has increasingly focused on instances in which public-minded employees lose their jobs or are retaliated against because they expose fraudulent or unlawful practices of their employers. Last March, the New York Court of Appeals, in Murphy v. American Home Products, 58 NY 2d 293 (1983) declined to provide relief for such employees in the absence of protective legislation. This bill is a first step toward providing protection for so-called "whistle blower" employees.

The bill is intended to protect employees who disclose to governmental authorities information about, or refuse to engage in, employer wrongdoing which is dangerous, unsafe or inimical to the public welfare. Employees must first bring the wrongdoing to the attention of their employer and give the employer an opportunity to correct the situation; having done so, they are protected from retaliation if they "blow the whistle" to a public body. Thus, for example, an employee who makes consumer protection agencies aware that a toy marketed by her employer contains undisclosed defects which make it harmful to children may not be fired or punished for that civic-minded act. Or an

5-10074



STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER
ALBANY, NEW YORK
12236

EDWARD V. REGAN
STATE COMPTROLLER

July 25, 1984


The Honorable Gerald C. Crotty
Counsel to the Governor
Executive Chamber
State Capitol
Albany, New York 12224

Re: S.10074

Dear Mr. Crotty:

Thank you for requesting our comments regarding Senate Bill No. 10074 . Since this bill is not within an area of direct responsibility or interest of the Office of the State Comptroller we will offer no opinion in relation to its enactment.

Very truly yours,


John F. Black
Assistant Counsel

JFB:jd

employee who makes the Labor Department aware that his employer knowingly requires employees to work in excess of the maximum hours prescribed by law, or employs minors in the workplace in violation of law cannot be retaliated against as a "disloyal" employee. New York should be proud to join the other states that have accorded recognition to the democratic precept that loyalty to the public good and to the laws that protect it must take precedence over loyalty to an employer who is violating those laws.

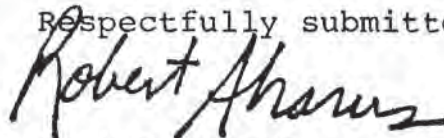
By encouraging employees to bring violations to the attention of their employers and by shielding them from dismissal if they disclose wrongful conduct to authorities, this bill will protect the welfare of the people of this state, promote enforcement of the law, and give needed protection to employees who wish to act as law-abiding citizens without fear of losing their jobs.

This bill, however, does not clearly protect all "whistle blower" employees. It is unclear whether the bill would, in all situations, provide a remedy for employees who refuse to engage in or who reveal illegal financial or accounting practices, such as filing false tax returns on the employer's behalf. If we are ever to make a dent in the wide-spread abuses known as "white collar" crime, employees who disclose such illegal practices must be confident that they, too, will be protected. I urge that this defect in the bill be cured by future legislation.

Nevertheless, this bill is a critical first step, and for the reasons stated, I urge its approval.

Dated: New York, New York
July 13, 1984

Respectfully submitted,



ROBERT ABRAMS
Attorney General

S-10074



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE
ALBANY, N. Y. 12227

RODERICK G. W. CHU
COMMISSIONER OF TAXATION AND FINANCE
PRESIDENT, STATE TAX COMMISSION

July 24, 1984

The Honorable Mario M. Cuomo
Governor of New York
State Capitol
Albany, New York 12224

Dear Governor Cuomo:

Re: Senate Bill No. 10074

You have asked for my comments on the above bill which is before you for executive action.

This bill amends the Civil Service Law and the Labor Law with respect to "whistle blowing" by employees. The bill is designed to protect employees of both public and private employers where the employer retaliates against the employee for disclosing to a governmental body information or an activity, policy or practice concerning "a violation of a law, rule or regulation which violation creates and presents a substantial and specific danger to the public health or safety". To receive this protection, a public employee must first make "a good faith effort" to inform the public employer of the information to be disclosed and must give the employer a reasonable time to take appropriate action. If the public employer then brings a statutory or collectively negotiated disciplinary proceeding against the public employee, the employee may assert the defense that the proceeding would not have been commenced but for the employee's disclosure. A successful defense would require that the proceeding be dismissed and that the employee receive back pay or such other remedies as are appropriate. If the public employer takes an adverse personnel action against the employee and if the employee is subject to a collectively negotiated agreement which prohibits such actions and which provides for binding arbitration, then the employee, upon making the good faith effort, may assert a claim that the action would not have been taken but for his disclosure.

A private employee, or a public employee who is not covered by such disciplinary proceedings or agreement, must first bring the

offending activity, policy or practice to be disclosed to the attention of his supervisor and afford the employer an opportunity to take corrective action. If the employee follows this procedure, the employer is prohibited by the bill from taking any retaliatory personnel action against the employee due to the employee's disclosure. Should the employer nonetheless undertake such retaliatory action, the employee may bring a civil court action for injunctive and monetary relief which may include attorneys' fees. While the bill states that the existence of this cause of action is not intended to diminish any other right or remedy such an employee may have, the bill does provide that the commencement of such an action by the employee will be a waiver of any such right or remedy. If this action is "without basis in law or fact" the court may award costs and attorneys' fees to the employer.

The "public health or safety" standard utilized by the bill does not seem to be appropriate in the context of the kind of duties this Department has. Thus, it is unclear under what circumstances the bill could apply to the operations of this Department.

Even though the standard used by the bill probably should be improved, I do not object to executive approval of the bill.

Sincerely,



Roderick G. W. Chu
Commissioner



STATE OF NEW YORK
INSURANCE DEPARTMENT
160 WEST BROADWAY
NEW YORK 10013

JAMES P. CORCORAN
SUPERINTENDENT OF INSURANCE

July 25, 1984

Honorable Gerald C. Crotty
Counsel to the Governor
Executive Chamber
State Capitol
Albany, New York 12224

Re: Senate Bill 10074 (Sen. Lack)

Dear Jerry:

This is in response to your request for our comments concerning the captioned bill, which would amend the Civil Service Law and the Labor Law, in relation to the protection of employees against retaliatory action by employers.

Under new Section 75-b of the Civil Service Law, as added by Section 1 of the bill, a public employer shall not dismiss or take other disciplinary or adverse personnel action against a public employee regarding the employee's employment because the employee discloses to a governmental body information regarding a violation of a law, rule or regulation which violation creates and presents a substantial and specific danger to the public health or safety. The section also provides that prior to disclosing the information, an employee must make a good faith effort to provide the appointing authority or designee the information to be disclosed and shall provide the supervisor or designee a reasonable time to take appropriate action unless there is imminent and serious danger to public health or safety.

Section 2 of the bill adds a new Article 20-C to the Labor Law in relation to prohibiting retaliatory personnel action by employers who are private employers, and sets forth the circumstances in which such retaliatory personnel action is prohibited.

By the terms of Section 75-b of the Civil Service Law, the Insurance Department would come within the definition of "public employer", and its employees would come within the definition of "public employee" or "employee". Under Section

Re: Senate Bill 10074

- 2 -


740 of the Labor Law, added by section 2 of the bill, insurance companies and a myriad of entities involved in the insurance industry would come within the definition of "employer", and their employees within the definition of "employee".

The bill would take effect September 1, 1984 and apply to retaliatory personnel action taken on or after such date.

We note that the language on page 2, lines 8 and 9, and corresponding language on page 4, lines 40-43 deal with "substantial and specific danger to the public health or safety". We do not know whether this standard would include such situations as theft or other criminal activities. We also do not know why the standard for public employees is limited to actual disclosure, while the standard in the private sector encompasses threats to disclose as well as actual disclosure.

The Insurance Department takes no position on the bill.

Respectfully,


James P. Corcoran
Superintendent of Insurance

S-10074



LEE O. SMITH
DEPUTY COMMISSIONER OF LABOR
FOR LEGAL AFFAIRS

STATE OF NEW YORK
DEPARTMENT OF LABOR
TWO WORLD TRADE CENTER
NEW YORK, NEW YORK 10047

July 9, 1984

Hon. Gerald C. Crotty
Counsel to the Governor
Executive Chamber
State Capitol
Albany, New York 12224

Re: S. 10074 - AN ACT to amend the civil service law
and the labor law, in relation to pro-
tection of employees against retaliatory
action by employers
(Before Governor for executive action)

Dear Mr. Crotty:

This very important bill provides protection for "whistle blowers" in both the public and private sectors by amending the Civil Service Law and the Labor Law to proscribe retaliatory personnel action by public and private employers.

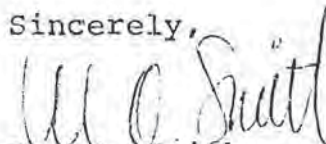
The bill provides that an employer must not dismiss or otherwise discipline a worker because they have disclosed to a governmental body information regarding violations of law which create a substantial and specific danger to public health or safety. Also, employers are prohibited from retaliation if the employee provides information to or testifies before a public body or objects to or refuses to participate in an activity which violates a law, rule or regulation. Workers who complain of retaliation because of their disclosures to a governmental or public body must have brought the subject of the complaint to the employer's attention and given the employer reasonable time to take appropriate corrective action.

The bill allows workers in the public sector to assert a "whistleblower" defense to disciplinary action, that is that the disciplinary action would not have been taken but for the protected conduct. This defense is made available regardless of the setting in which the disciplinary proceeding takes place.

For the private sector worker a civil action is available in which the court can grant full relief, including injunction and attorneys' fees. However, the private sector employer's managerial rights are protected by being allowed to show that the personnel action was predicated upon grounds other than the exercise by the employee of his whistleblower rights. In addition, if the court determines that the worker's legal action was baseless, the employer may obtain reasonable attorneys' fees, costs, and disbursements.

The Department strongly supports this bill as a way to protect workers who properly report instances of practices and wrongdoing which threaten health and safety. Whistleblowers serve an important function, and this bill will protect activity in the public interest while insulating employers from frivolous or harassing actions.

Sincerely,



Lee O. Smith

LOS:gc

cc: Elizabeth Moore



ROBERT J. SISE
Chief Administrative Judge

STATE OF NEW YORK
UNIFIED COURT SYSTEM
(OFFICE OF COURT ADMINISTRATION)
AGENCY BLDG. 4 - 20TH FLOOR
EMPIRE STATE PLAZA
ALBANY, NEW YORK 12223
(518) 474-7469

S-10074

MICHAEL COLODNER
Counsel

July 12, 1984

Hon. Gerald C. Crotty
Counsel to the Governor
Executive Chamber
The Capitol
Albany, New York 12224


Re: Senate 10074

Dear Mr. Crotty:

Thank you for requesting the comments of this Office concerning the above-referenced measure, which would amend the Civil Service Law and the Labor Law to protect public sector and private sector employees against retaliatory action by their employers in cases where the former have reported to a governmental body information concerning "a violation of law, rule or regulation which violation creates and presents a substantial and specific danger to the public health or safety."

The State's decision to provide affirmative protection for these employees is one of substantive policy. This Office has no objection to approval.

Very truly yours,


Michael Colodner

207
A-8552

NEW YORK STATE AFL-CIO

99 WASHINGTON AVENUE (Suite 1002) • ALBANY, N. Y. 12210 • PHONE 436-8516

EDWARD J. CLEARY
President



E. HOWARD MOLISANI
Secretary-Treasurer

RICHARD WINSTEN
Director of Legislation

MEMORANDUM

ENDORSE

1984
S.1153-A
Pisani, Montalto

A.8552
Barbaro, et al

This legislation provides protection from retaliation for public and private sector employees who disclose that an employer is involved in acts which are illegal or pose a threat to public health and safety. It also establishes safeguards for public employees who report incidents of gross mismanagement, waste of funds, or abuse of authority.

Under current state law, a worker who refuses to participate in wrongdoing, or reports it and cooperates in a governmental investigation of the incident, is subject to dismissal, demotion, or various forms of bureaucratic reprisal. This possible punishment deters employees from acting ethically and in the public interest.

This bill remedies this situation by protecting employees who discover activities or practices of employers which they reasonably believe to be illegal or dangerous to the health or safety of the public. It prohibits employers from taking retaliatory action against employees who object to, or refuse to participate in such activities. It allows employees to report these activities and cooperate in investigations of them without fear of punishment. The bill further protects state workers who report activities which they reasonably believe to involve substantial mismanagement, gross waste of public funds, or abuse of public authority.

This legislation also provides reasonable protections to public and private sector employers. Employers are given a chance to respond to employees complaints before legal action is taken. Employers are also protected against frivolous complaints in that they can be compensated for attorney's fees in these cases.

The New York State AFL-CIO urges your support of this bill.

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The bill also provides reasonable protections to public and private sector employers. Employers are given the opportunity to respond to employees' complaints before action is taken. They are also entitled to reasonable attorney's fees for defense against unsubstantiated charges.

This bill is particularly important to protect principled workers who act honorably. We, therefore, urge your approval of this bill.

Edward J. Cleary
Edward J. Cleary
President

Sincerely,
Richard Winsten
Richard Winsten
Director of Legislation

July 9, 1984

34

7-17-84
S-~~10074~~ 10074
Dear Gov. Cuomo,
I am writing to urge you to approve
S.10052, Calandra, Knorr, Flynn. Also, please
approve A.11975 Rules / S.10126 Schemmerhorn
and S.10074- Luck. Finally, please reject
S 4210-B. Thank you.

Sincerely,
Donald H. Fegley

NEW YORK CHAMBER

OF COMMERCE AND INDUSTRY

200 MADISON AVENUE, NEW YORK, N.Y. 10016 (212) 561-2060
90 SOUTH SWAN STREET, ALBANY, N.Y. 12210 (518) 463-4319

A-8552

DISAPPROVED

THORNTON F. BRANNIAW

Chairman & CEO

NDA Corp.

ALFRED BRITAIN III

Chairman

Harkins Food Services

SHARRIA BUFORD

President

Frederick National Bank of New York

GEORGE BUGLIARELLI

President

Highway & Transit

MANUEL A. BUSTED

President

E. J. D'AMICO

President

JOHN J. CROFTON

President

MARTIN J. D'AMICO

President

WILLIAM M. FLEISCHHAUS

President

OWEN J. FANSHAW

President

ROBERT G. FRESE

President

GEORGE J. GREENBERG

President

MAURICE H. GREENBERG

President

JOHN H. HARRIS

President

ARTHUR HANSEN

President

HARRY B. HEMLEY

President

HOWARD G. KAUFMAN

President

J. PAUL LEE

President

DAVID I. MARGOLIS

President

JOHN T. McALLISTER

President

EDWARD H. MICHAELSON

President

G. D. MICHAELSON

President

EDWARD J. MORTOLA

President

J. RICHARD MUNRO

President

EDMUND T. PRATT JR.

President

JOHN L. PROCTOR

President

VINCENT J. QUINN

President

JAMES D. ROBINSON III

President

DAVID ROCKEFELLER

President

DONALD R. ROSS

President

LEWIS RUDD

President

GEO. T. SCHARFENBERGER

President

JAMES E. SEITZ

President

RICHARD H. SHINN

President

DELBERT C. STALEY

President

PRESTON ROBERT TISCH

President

EDWARD H. TUCK

President

RICHARD F. TUCKER

President

RICHARD A. VOELL

President

EUGENE H. WEBB

President

WILMOT F. WHEELER JR.

President

JOHN C. WHITEHEAD

President

WALTER D. WRISTON

President

A. 8552
(Barbaro, et al)

S. 1153
(Pisan1, Montalto)

Status: Labor Committee

Status: Labor Committee

Subject: Protection of Employees Charging Regulatory
or Statutory Violations

The New York Chamber opposes this bill because it would open employers to false and malicious accusations without significantly changing the safeguards which employees now have.

Purpose of the Bill:

This bill would prohibit employers from dismissing employees who report on allegedly illegal activities of their employers of who report hazards to public health and safety.

Arguments Against:

The present bill has a laudable aim - protection of workers who blow the whistle on violations of the law or dangers to public safety - but this protection is already afforded in law, most notably in Article 7 of the State Labor Law.

What is new in this proposed legislation is an invitation to a "crisis mentality". In any population there will be persons who will see imminent dangers in the most innocent circumstances. Ordinary complaints, workplace conditions which are neither harmful or illegal, but merely personally disagreeable, and employment situations where individuals have been disappointed in promotions, can now become the matrix for charges of imminent danger to public health and safety.

While endeavoring to regulate employer sanctions, this bill actually invites disgruntled employees to seek redress in the news media, an unregulated tribunal. It also offers no protection to employers against false or malicious accusations which could pose a threat to its reputation.

This bill affords little actual protection for concerned employees beyond that already provided by law.

For the above reasons, the New York Chamber urges that this bill not be enacted.

Dated: April 2, 1984

Morton & Loran

NEW YORK CHAMBER OF COMMERCE AND INDUSTRY

200 MADISON AVENUE, NEW YORK, N.Y. 10016 (212) 561-2080
90 SOUTH SWAN STREET, ALBANY, N.Y. 12210 (518) 463-4319

DISAPPROVED

THOMSON T. BRADSHAW

Chairman

ALFRED BRITAINER

Chairman

SHARON BROWN

Chairman

GEORGE BROWN

Chairman

MARCEL A. BUSTILLO

Chairman

F. VIRGE CONWAY

Chairman

JOHN J. CULLEN

Chairman

MARIE J. D'AMICO

Chairman

WILLIAM M. ELLIOTT

Chairman

JOHN J. FARMER

Chairman

JOHN J. FARMER

Chairman

GEORGE J. GILBERT

Chairman

MARCEL A. BUSTILLO

Chairman

JOHN J. FARMER

Chairman

ANTHONY J. GILBERT

Chairman

NATHAN J. GILBERT

Chairman

HOWARD J. KATZ

Chairman

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RICHARD A. VELLE

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Chairman

JOHN C. WHITEHEAD

Chairman

WALTER B. WHISTON

Chairman

A. 8552
(Barbaro, et al)

Status: Labor Committee

SUBJECT: Protection of Employees Charging Regulatory
or Statutory Violations

S. 1153
(Pisani, Montalto)

Status: Labor Committee

The New York Chamber opposes this bill because it would open employers to false and malicious accusations without significantly changing the safeguards which employees now have.

Purpose of the Bill:

This bill would prohibit employers from dismissing employees who report on allegedly illegal activities of their employers or who report hazards to public health and safety.

Arguments Against:

The present bill has a laudable aim -- protection of workers who blow the whistle on violations of the law or dangers to public safety -- but this protection is already afforded in law, most notably in Article 7 of the State Labor Law.

What is new in this proposed legislation is an invitation to a "crisis mentality". In any population there will be persons who will see imminent dangers in the most innocent circumstances. Ordinary complaints, workplace conditions which are neither harmful or illegal, but merely personally disagreeable, and employment situations where individuals have been disappointed in promotions, can now become the matrix for charges of imminent danger to public health and safety.

While endeavoring to regulate employer sanctions, this bill actually invites disgruntled employees to seek redress in the news media, an unregulated tribunal. It also offers no protection to employers against false or malicious accusations which could pose a threat to its reputation.

This bill affords little actual protection for concerned employees beyond that already provided by law.

Dated: April 30, 1984

Lucy W. Cooper

S-10074

ROEMER AND FEATHERSTONHAUGH, P.C.
COUNSELLORS AT LAW

CAPITAL CENTER
90 PINE STREET
ALBANY, NEW YORK 12207

(518) 436-7063

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STEPHEN J. WILEY
MICHAEL J. SMITH
WILLIAM M. WALLINS
JOAN E. HUGGINS

DONALD BUTLER
RICHARD E. DOLING
DEBORAH E. COWIE
JEFFREY C. STAMER
JOSEPH G. MOHRBA

ALSO ADMITTED IN FLORIDA
ALSO ADMITTED IN MASSACHUSETTS

July 16, 1984

Hon. Gerald C. Crotty
Counsel to the Governor
Executive Chamber
The Capitol
Albany, N.Y. 12224

RE: S. 10074

Dear Mr. Crotty:

We understand that the above identified bill, which has passed both houses, will shortly be considered by the Governor.

The Civil Service Employees Association, Inc., for which we are counsel, strongly urges the Governor to sign this legislation.

This "whistleblower" legislation amends the Civil Service Law and the Labor Law. Its purpose is to prevent or provide a remedy for retaliatory action taken by employers against employees who disclose practices violative of law which create a substantial and specific danger to the public health or safety.

CSEA is pleased to note that this bill applies to both private and public sector employees, including employees of the State, its political subdivisions, public authorities, and other governmental agencies or instrumentalities.

It provides that an employer shall not take retaliatory personnel action against an employee for disclosure to a governmental body of policies or practices which pose a substantial and specific danger to public health or safety.

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In order to be entitled to this pprotection, however, the employee must first bring the disputed activity or policy to the attention of the appointing authority, unless delay would result in serious and imminent danger.

This bill does not provide for protection for an employee who goes directly to the news media except under the circumstances described above.

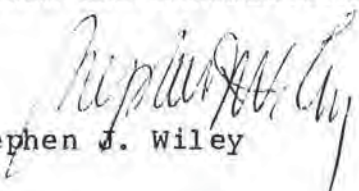
As to employees in the public sector, this legislationn generally follows United States Supreme Court decisions providing a freedom to criticize the employer (See Pickering v. Board of Education, 391 U.S. 563 [1968]). The courts of other states have judicially provided protection in "whistleblowing" situations (i.e. Tameny v. Atlantic Richfield Co., 27 Cal. 3d 167 [1980]).

In sum, this bill provides specific, and important protections which are clearly in the pubublic interesst. On the other hand, it provides no protection for irresponsible or precipitous action, since it only protects direct disclosure if such disclosure concerns an imminent and serious danager to health or safety.

We urge the Governor to sign this bill.

Very truly yours,

ROEMER AND FEATHERSTONHAUGH, P.C.


Stephen J. Wiley

SJW/m
071684m2b

ROEMER AND FEATHERSTONHAUGH, P.C.
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THOMAS A. CONWAY
STEPHEN J. WILLY
MICHAEL L. SMITH
WILLIAM M. WALLINS
DEAN J. HIGGINS

DONA S. BULLUCK
RICHARD E. DOLING[†]
FRANK L. FERNANDEZ, CPA
DEBORAH J. COWIE
JEFFREY C. STAMER
JOSEPH G. MOLICA
CLAUDIA R. McKENNA
VICTOR L. MAZZOTTI

[†] ALSO ADMITTED IN FLORIDA
^{††} ALSO ADMITTED IN MASSACHUSETTS

July 5, 1984

Hon. Gerald C. Crotty
Executive Chamber
State Capitol
Albany, N.Y. 12224

RE: S.10074

Dear Mr. Crotty:

The Civil Service Employees Association, Local 1000, AFSCME AFL-CIO, strongly urges the Governor to approve the above identified legislation.

This is the "whistleblower" bill, which applies to both public and private sector employees, and, in general, prevents adverse personnel action against an employee because the employee discloses to a governmental body, information regarding the violation of law, rule or regulation which creates and presents a substantial and specific danger to the public health or safety.

As to public sector employees, including the state, a county, city, town, village, other political subdivision or civil division, school district, governmental entity operating a public school, college, university, a public improvement or special district, a public authority, commission, or a public benefit corporation, or any other public corporation, agency, instrumentality, or unit of government exercising governmental power under the laws

of the state, this bill amends the Civil Service Law by adding a new §75-b. As indicated above, a public employer is precluded from taking disciplinary or other adverse personnel action against a public employee for disclosing violations presenting a danger to the public health or safety. Under paragraph b of subdivision 2 of the bill, the employee must have made a good faith effort to provide the employer with the information and reasonable time to take appropriate action unless there is imminent and serious danger to the public health or safety.

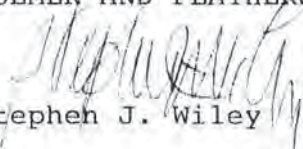
Under paragraph (a) of subdivision 3, an employee subject to dismissal or disciplinary action under either a negotiated disciplinary procedure or Civil Service Law §75 may assert that the disciplinary action would not have been taken but for the protected conduct as a defense in the proceeding, and the arbitrator or hearing officer is required to consider such defense.

Under paragraph (c) of subdivision 3, employees not subject to Civil Service Law §75 or negotiated disciplinary procedures may commence an action under Labor Law Article 20-C.

While CSEA believes that the provisions of this bill provide only partial protection from adverse personnel action, and that the rights of public employees thereunder should be strengthened in several ways, CSEA does believe that this bill should be signed.

Very truly yours,

ROEMER AND FEATHERSTONHAUGH, P.C.


Stephen J. Wiley

SJW/m

CC: PAC Committee
Statewide Officers
Bernard Zwinak
Jack Carey
Paul Burch
Mike Moran
CSEA R&F Attorneys
Regional Attorneys

Citizens Union of the City of New York
 198 Broadway, New York, N.Y. 10038 (212-693-4421)

Malcolm MacKay
 Chairman

Vance M. Bengtson
 Executive Director

Alan Rothstein
 Associate Director

July 5, 1984

Honorable Gerald C. Crotty
 Executive Chamber
 State Capitol
 Albany, New York 12224

Re: S.10074

Dear Mr. Crotty:

The main thrust of this bill is to protect employees from retaliation when they disclose, to a public body or supervisory authority, employer activities, policies or practices that violate a law, rule or regulation and pose a substantial and specific danger to public health and safety. In addition, employees would be protected when they testify at a public hearing, or object, or refuse to participate in, such violations.

Under this measure, employers sued for retaliation would be able to assert, as a defense, that the personnel action was unrelated to the employee's exercise of protected rights. In addition, either side can collect attorneys' fees, with the employee plaintiff being liable for fees upon a finding that the suit was without basis in law or in fact.

Currently employees who disclose illegal or unsafe conditions have virtually no protection against retaliation. Disclosure of such conditions serves an important public purpose. Employees are often the best sources of information on illegal and unsafe practices, and it is crucial that they be encouraged to bring these practices to the attention of the public or governmental authorities.

Citizens Union would have preferred a stronger bill. S.10074 provides only limited protection to the public because an employee's protection only extends to disclosures of illegalities that may endanger health or safety. We would have preferred that employees be protected from disclosing public dangers even if they were not sure the employer violated the law. In addition, we would have wanted protection for public employees disclosing gross waste and mismanagement, and for those who, receiving no response elsewhere, approach the media with their facts.

S.10074, however, does provide significant protection for a large class of whistleblowers. Hopefully, the Governor and Legislature will monitor the effects of the act and make changes that will further encourage employees to disclose policies and activities which harm the public.

Sincerely,

Alan Rothstein

Alan Rothstein
 Associate Director



S-10074

159 Wolf Road, Box 15-009
Albany, N.Y. 12212-5009
518-459-5400

July 24, 1984

Memorandum to the Governor regarding Senate Bill No. 10074 by
Mr. Lack et al, entitled "An Act to amend the civil
service law and the labor law, in relation to protec-
tion of employees against retaliatory action by
employers"

The purpose of this bill is to provide employees, both public and private, some measure of protection against retaliatory action by their employers when an employee discloses to a governmental body information regarding a violation of law, rule or regulation which creates or presents a specific danger to the public health and/or safety.

While the bill is very narrow in scope in that it limits such employee protection against retaliatory action only when the public health or safety is endangered, we believe it is a step in the right direction. The fact that the employer is prohibited from taking retaliatory action should encourage employees to bring wrongful actions to the attention of the employer and governmental bodies.

The New York State United Teachers strongly urge your approval of this bill.

Respectfully submitted,

Raymond C. Skuse
Director of Legislation

RCS/jk

Thomas Y. Hobart, Jr., President

Dan Sanders, Executive Vice President · Ken Deedy, First Vice President · Antonia Cortese, Second Vice President · Herb Magidson, Secretary/Treasurer



NEW YORK STATE AFL-CIO *S-10074*

Executive Council
EDWARD J. CLEARY **E. HOWARD MOLISANI**

Vice Presidents

ALBANY: J. J. ...
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451 Park Avenue South
 New York, N. Y. 10016
 (212) 689-9320

99 Washington Avenue
 Albany, N. Y. 12210
 (518) 436-8516

July 9, 1984

Hon. Mario Cuomo
 Governor
 State of New York
 Executive Chamber
 The Capitol
 Albany, N.Y. 12224

Dear Governor Cuomo:

The New York State AFL-CIO strongly urges your approval of S.10074 - Lack. This bill prohibits retaliatory action by public and private employers against employees who disclose illegal or improper employer acts which present a substantial and specific danger to the public health and safety. In the event of employer retaliation, the bill permits public employees subject to collective bargaining agreements to seek contractually guaranteed arbitration of the dispute. Those public employees not subject to collective bargaining agreements, as well as private sector workers, are provided with the right of civil court action. Court remedies may include reinstatement of position and rights, compensation for lost benefits and wages, and reasonable attorney's fees.

Under current state law, a worker who refuses to participate in wrongdoing or reports it and cooperates in a governmental investigation of the incident is subject to dismissal, demotion or various forms of bureaucratic reprisal. Under these conditions employees are deterred from acting ethically and in the public interest. This bill offers protection to public and private employees who discover activities of employers which they believe to be dangerous to the public health and safety. It prohibits employers from taking retaliatory action against employees who object to or refuse to participate in such activities. And it allows employees to report these acts and cooperate in their investigation without fear of reprisal.

The bill also provides reasonable protections to public and private sector employers. Employers are given the opportunity to respond to employees' complaints before action is taken. They are also entitled to reasonable attorney's fees for defense against unsubstantiated charges.

This bill is particularly important to protect principled workers who act honorably. We, therefore, urge your approval of this bill.

Edward J. Cleary
Edward J. Cleary
President

Sincerely,
Richard Winsten
Richard Winsten
Director of Legislation

NEW YORK STATE PUBLIC EMPLOYEE CONFERENCE

Board of Directors

Anthony Abbate
Subways Surf. Supvs. Ass'n
John Barry
Captains Endowment Ass'n
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Detectives Endowment Ass'n
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AFT Counc. Transit Supvs.
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Correction Captains Ass'n
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N.Y.C. Transit P.B.A.
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Oscar Payne
Local 1056 A.T.U.
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Police Conf. of N.Y. INC.
Murray Schneider
N.Y.S. F.E.D.S.A.
Philip Seelig
N.Y.C.C.O.B.A.
William Treary
Local 39, I.U.O.E.
Cathryn Walsh
N.Y.S. Nurses Ass'n

Chairman

HARRY FEINSTEIN, LOCAL 237, I.B.T.

Co-Chairman

VICTOR GOTBAUM, DISTRICT COUNCIL 37, AFSCME
WILLIAM MCGOWAN, C.S.E.A.
DAN SANDERS, N.Y.S. UNITED TEACHERS
ALBERT SHANKER, UNITED FEDERATION OF TEACHERS

Officers

TREAS., JOHN LAWE, LOCAL 100, T.W.U.
CORR. SEC., PHIL CARUSO, N.Y.C. PATROLMEN'S BENE. ASS'N.
REC. SEC., ROBERT GOLLNICK, N.Y.S. PROFESSIONAL FIREFIGHTERS

July 12, 1984

Hon. Mario Cuomo
Governor - State of New York
State Capitol - Executive Chamber
Albany, New York 12224

Dear Governor Cuomo:

The New York State Public Employee Conference strongly urges your approval of S.10074 - Lack. This bill prohibits retaliatory action by public employers against employees who disclose illegal or improper employer acts which present a substantial and specific danger to the public health and safety. In the event of employer retaliation, the bill permits public employees subject to collective bargaining agreements to seek contractually guaranteed arbitration of the dispute. Those public employees not subject to collective bargaining agreements, are provided with the right of civil court action. Court remedies may include reinstatement of position and rights, compensation for lost benefits and wages, and reasonable attorney's fees.

Under current state law, a worker who refuses to participate in wrongdoing or reports it and cooperates in a governmental investigation of the incident is subject to dismissal, demotion or various forms of bureaucratic reprisal. Under these conditions employees are deterred from acting ethically and in the public interest. It allows employees to report

-2-

these acts and cooperate in their investigation without fear of reprisal.

This bill is particularly important to protect principled workers who act honorable. We therefore, urge your approval of this bill.

Barry Feinstein
Chairman

S. 10074



New York State Professional Fire Fighters Association, Inc.

EXECUTIVE OFFICE
111 WASHINGTON AVENUE
SUITE 603
ALBANY, NEW YORK 12210

PHONE: (518) 436-8827

July 17, 1984

Honorable Mario Cuomo
Governor State of New York
Executive Chamber
The Capitol
Albany, New York 12224

Dear Governor Cuomo:

The New York State Fire Fighters strongly urges your approval of S.10074 - Lack. This bill prohibits retaliatory action by public and private employers against employees who disclose illegal or improper employer acts which present a substantial and specific danger to the public health and safety. In the event of employer retaliation, the bill permits public employees subject to collective bargaining agreements to seek contractually guaranteed arbitration of the dispute. Those public employees not subject to collective bargaining agreements, as well as private sector workers, are provided with the right of civil court action. Court remedies may include reinstatement of position and rights, compensation for lost benefits and wages, and reasonable attorney's fees.

Under current state law, a worker who refuses to participate in wrongdoing or reports it and cooperates in a governmental investigation of the incident is subject to dismissal, demotion or various forms of bureaucratic reprisal. Under these conditions employees are deterred from acting ethically and in the public interest. This bill offers protection to public and private employees who discover activities of employers which they believe to be dangerous to the public health and safety. It prohibits employers from taking retaliatory action against employees who object to or refuse to participate in such activities. And it allows employees to report these acts and cooperate in their investigation without fear of reprisal.

This bill also provides reasonable protections to public and private sector employers. Employers are given the opportunity to respond to employees' complaints before action is taken. They are also entitled to reasonable attorney's fees for defense against unsubstantiated charges.

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AFFILIATED WITH INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS
NEW YORK STATE FEDERATION OF LABOR - AFL-CIO-IAFF



New York State Professional Fire Fighters Association, Inc.

EXECUTIVE OFFICE
111 WASHINGTON AVENUE
SUITE 603
ALBANY, NEW YORK 12210

PHONE: (518) 436-8827

-2-

This bill is particularly important to protect principled workers who act honorably. We, therefore, urge your approval of this bill.

Sincerely,

Robert Gollnick
cw

Robert Gollnick
President

RG:cw

8-10074

Broome County Federation of Labor

335 MAIN STREET

JOHNSON CITY, N.Y. 13790

AN AFFILIATED CENTRAL BODY
OF THE
AMERICAN FEDERATION OF LABOR
and
CONGRESS OF INDUSTRIAL ORGANIZATIONS

Telephone Area Code (607) 797-1829

July 13, 1984

Hon. Mario Cuomo
Governor New York State
Executive Chamber
The Capitol
Albany, N.Y. 12224

Dear Governor Cuomo:

The Broome County N.Y. Federation of Labor AFL-CIO strongly urges your approval of S.10074 - LACK. This bill prohibits retaliatory action by Public and Private Employers against employees who disclose illegal or improper employer acts which present a substantial and specific danger to public health and safety.

We, here in labor, firmly believe that NO EMPLOYEE should be subject to dismissal, demotion or various forms of bureaucratic reprisal for reporting illegal or improper activities by his employer.

We urge you to approve this bill protecting employees.

Sincerely yours,

Leo F. Heavey (me)

Leo F. Heavey, President
BROOME COUNTY FEDERATION OF LABOR

mac opeiu #137

S-10074



UNITED AUTO WORKERS ■ REGION 9 - WESTERN NEW YORK

80 Sugg Road, Buffalo, New York 14225, (716) 632-1540

THOMAS NATCHURAS
DIRECTOR, REGION 9JOSEPH VANTOMASH
AREA DIRECTORJAMES S. MCGRAW
CHAIRPERSONMICHAEL P. O'REILLY
RECORDING SECRETARYJAMES KACZMAREK
VICE CHAIRPERSONMICHAEL J. CARPIS
FINANCIAL SECRETARY

EXE

AMGR

CAP

COMMUNITY ACTION PROGRAM COUNCIL

84 JUN 16 P4:07

PATRICK DABBY
OFFICER AT LARGEJAMES A. DUNCAN
NEW YORK STATE CAP DIRECTOR

STA

JUL 12, 1984

The Honorable Mario M. Cuomo
Governor, State of New York
Executive Chamber
The Capitol
Albany, New York 12224

Dear Governor Cuomo:

The New York State Community Action Program (CAP) Council
of the United Auto Workers urges your approval of the following
legislation.

S-10074 - Lack - this bill would protect employees from re-
taliatory action by employers because of disclosure of illegal
or improper employer acts by an employee.

A-9213-B - Barbaro, et al - provides for a written state-
ment of rights and obligations under the Workmen's Compensation
Law to an injured employee, or in the case of a death, the
employee's survivors.

A-11975 Rules/S.10126 Schermerhorn-this bill would revise
pension supplementation programs for the New York State and City
retirement systems. These revisions would directly affect those
pre-1971 retirees who are sorely in need of help.

We further ask you to reject S-4210-B which would exclude
real estate brokers and salesmen from coverage under the Unem-
ployment Insurance and Workers Compensation Laws.

Sincerely,

Thomas Natchuras, Director
Region 9 United Auto Workers

James A. Duncan, Jr., Director
New York State CAP Council
Region 9 United Auto Workers

Ted Barrett, Director
Region 9A United Auto Workers

John Flynn, Director
New York State CAP Council
Region 9A United Auto Workers

cc: Hank Lacayo
Tom Fricano
Richard Winsten

al

opeiu-494

51

510074



Security and Law Enforcement Employees Council 82

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES AFL-CIO

63 COLVIN AVENUE, ALBANY, N.Y. 12206

PHONE 518/489-8424

July 19, 1984

Honorable Mario Cuomo
Governor - State of New York
Executive Chamber - State Capitol
Albany, New York 12224

Dear Governor Cuomo:

I am writing to urge your approval of S.10074 - Lack. This bill prohibits retaliatory action by public and private employers against employees who disclose illegal or improper employer acts, when such acts present a substantial and specific danger to the public health and safety. In the event of employer retaliation, the bill permits public employees subject to collective bargaining agreements to seek contractually guaranteed arbitration of the dispute.

Under current state law, a worker who refuses to participate in wrongdoing or reports it and cooperates in a governmental investigation of the incident is subject to dismissal, demotion or various forms of bureaucratic reprisal. This bill would allow employees to report acts which they believe to be dangerous to the public health and safety without fear of reprisal.

The bill also provides reasonable protections to public and private sector employers. Employers are given the opportunity to respond to employee's complaints before action is taken. They are also entitled to reasonable attorney's fees for defense against unsubstantial charges.

This bill is particularly important to protect principled workers who act honorably. Council 82 urges your approval of this bill.

Sincerely,

John W. Burke
John W. Burke
Executive Director

52

JWB/dmf



184 washington avenue, albany, new york 12210 (518) 465-4888

Martin Y. Silberberg
Chairman
Paul H. Elisha
Executive Director

downstate office:
5 beekman street, suite 407
new york, n.y. 10038
(212) 349-1755
(212) 349-8045

July 11, 1984

The Honorable Mario M. Cuomo
Governor, State of New York
Executive Chamber
State Capitol
Albany, New York 12224

Dear Governor Cuomo:

We wish to express the thanks of our 27,000 New York State Common Cause members for your efforts in behalf of the legislation to protect "whistleblowers", recently passed by the State Legislature.

In a session already characterized as notable, for its failure to respond to key issues reflecting urgent public need, the Whistleblower legislation must be viewed as a laudable -- if not rare -- instance of concordant action on the part of our state's legislative and executive leadership.

As we have previously noted, the present form of this legislation does not provide as complete or clear protection for sincerely motivated whistleblowers as proponents had visualized. It does, however, represent a significant step which especially helps to foster a credible view that honesty in business and government is still a virtue, not only to be pursued and defended by our citizens, but exemplified by their leaders.

Our organization pledges its continued effort to strengthen this important protection for public spirited citizens and its cooperation with your efforts in the future, to make New York State's government more accessible to all citizens and more responsive to their needs.

Sincerely,

Martin Y. Silberberg
Chairman

Paul H. Elisha
Executive Director

Mayor Ronald J. Canestrari	Mayor Steven B. Carlson	Mayor Ida Frankel	Mayor Kenneth J. Herman	Mayor Robert S. Thompson	Mayor Robert G. Gardner
Mayor Philip F. Zegarelli	Mayor Thomas M. Whalen, III	Mayor James F. Lettis	Mayor Thomas P. Ryan, Jr.	Mayor Louis C. Mancuso	Mayor Robert J. Peacock
				Mayor George Tomlinson	
	John G. Lauber	Donald A. Walsh	John H. Galligan	Ross E. Muth	Charles E. Fitz-Gerald
		Donald F. Larson	Esther A. Strachman	William V. Karson, Jr.	

July 13, 1984

Hon. Gerald C. Crotty
Counsel to the Governor
Executive Chamber
State Capitol
Albany, NY 12224

RE: S. 10074

Dear Mr. Crotty:

This bill, commonly known as the **whistleblower** bill, would prohibit adverse personnel actions against a public employee due to the fact that the employee might have disclosed information regarding a public employer's violation of a law or a rule which threatened the public health or safety. The bill would in general prohibit adverse personnel actions where there is a finding that the employer's action is motivated solely by the employee's disclosure of information.

The Conference of Mayors regards legislation such as this to be unnecessary. This writer is unable to recall any disciplinary action which has been upheld where the sole basis for the disciplinary action has been an employee's disclosure of information to the public or the media. Certainly there is an exception to this in the instance of information available to individuals involved in law enforcement. Given the overwhelming percentage of public employees that have unionized in this state or who otherwise have the protections of §75 of the Civil Service Law, it cannot be said that these individuals are without protection from disciplinary actions based solely upon disclosure of information to the public.

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New York State Conference of Mayors and Other Municipal Officials

119 Washington Avenue Albany, New York 12210 (518) 463-1185

S-100,11

Alan Rothstein
Associate Director

July 5, 1984

Honorable Gerald C. Crotty
Executive Chamber
State Capitol
Albany, New York 12224

Re: S.10074

Dear Mr. Crotty:

The main thrust of this bill is to protect employees from retaliation when they disclose, to a public body or supervisory authority, employer activities, policies or practices that violate a law, rule or regulation and pose a substantial and specific danger to public health and safety. In addition, employees would be protected when they testify at a public hearing, or object, or refuse to participate in, such violations.

Under this measure, employers sued for retaliation would be able to assert, as a defense, that the personnel action was unrelated to the employee's exercise of protected rights. In addition, either side can collect attorneys' fees, with the employee plaintiff being liable for fees upon a finding that the suit was without basis in law or in fact.

Currently employees who disclose illegal or unsafe conditions have virtually no protection against retaliation. Disclosure of such conditions serves an important public purpose. Employees are often the best sources of information on illegal and unsafe practices, and it is crucial that they be encouraged to bring these practices to the attention of the public or governmental authorities.

Citizens Union would have preferred a stronger bill. S.10074 provides only limited protection to the public because an employee's protection only extends to disclosures of illegalities that may endanger health or safety. We would have preferred that employees be protected from disclosing public dangers even if they were not sure the employer violated the law. In addition, we would have wanted protection for public employees disclosing gross waste and mismanagement, and for those who, receiving no response elsewhere, approach the media with their facts.

S.10074, however, does provide significant protection for a large class of whistleblowers. Hopefully, the Governor and Legislature will monitor the effects of the act and make changes that will further encourage employees to disclose policies and activities which harm the public.

Sincerely,

Alan Rothstein

Alan Rothstein
Associate Director

5-10074

New York State

International Association of Machinists



Council of Machinists

and Aerospace Workers, AFL-CIO

RECEIVED JACK MAISEL, Legislative Director
 EXECUTIVE CHAMBER 47 EDNA DRIVE
 SYOSSET, NEW YORK 11791
 (516) 349-2200
 (516) 921-6036

'84 JUL 18 P5:10

STATE 0164-1984

The Honorable Mario Cuomo
 Governor of New York
 Executive Chambers
 Albany, New York 12224

Dear Governor Cuomo:

On behalf of the New York State Council of Machinists, AFL-CIO, I'm writing to you to consider the following four pieces of legislation that have been passed in the last session of the Legislature.

1. S. 10074-Lack. Approval of the bill is fairness. The indisputable right of any employee to present evidence of wrongdoing by an employer without suffering from punishment.
2. S. 4210-B Again approval is justice. It is unfair to deny unemployment benefits and compensation benefits from workers just because their occupation happens to be real estate brokers and salesmen.
3. A. 11975 Rules/S. 10126 Schermerhorn. We oppose this bill. It is unfair to deny increased benefits to former State employees including police and firemen just because they are retired.
4. A. 9213 - Barbaro. Again justice. Dependents of injured workers often do not know the rules of the Workers Compensation Board. Approval of this bill would enable proper and clear instructions and information with respect to claims.

We are confident that you will seriously consider our recommendations. The Machinists Union in the State of New York also know that justice and fairness are hallmarks of your administration.

Sincerely yours,

Jack Maisel

Jack Maisel
 Leg. Director



AFL-CIO CENTRAL NEW YORK LABOR COUNCIL

President
WILLIAM H. SULLIVAN

Executive Vice-President
JAMES R. COOK

First Vice-President
DAVID CUNNINGHAM

Financial Secretary-Treasurer
RAYMOND J. GREENE

Recording Secretary
JAY HAGENBUCH

Corresponding Secretary
DOMINICK TIMPANO

MAYRO BUILDING
SUITE 128
239 GENESEE STREET
UTICA, NEW YORK 13501
PHONE 315/736-3934

'84 JUL 27 P3:50

STA

July 20, 1984

VICE-PRESIDENTS

SANDRA BLISS
AFT 2657
VIRGINIA CAMAJANI
AFT 2451
VICTORIA CONVERTINO
ACTWU 215
ANTHONY DE BELLA
MESA 56
JOHN F. DEEP
ITU 62
THOMAS GRAZIANO
AFGE 2612
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IAS 58
BERNIE KASBY
UAPP 79
LAWRENCE MANCA
IAMAW 157
SALVATORE NICOLETTA
LIUNA 35
ARNOLD V. SHEA
IWOA 50
EMILY SYCZYLO
OPEIU 281
JOSEPH WOLONOWSKI
PEF REGION 6

AFL-CIO LABOR REP EX-OFFICIO

DEBRA HENSEL
MESA 56

TRUSTEES

BEN RIZZO
UFCWU 1
WILLIAM TRUDELL
IUOE 545
RAYMOND ROLEWICZ
IUOE 545

SERGEANT-AT-ARMS

JOHN MASSA
AFGE 2612

LEGISLATIVE CHAIRMAN

JOSEPH WOLONOWSKI

COPE CHAIRMAN

JAMES MARTIN
CWA 1126

EDUCATION CHAIRMAN

DAVID HAKKEN
AFT 2190

ORGANIZING CHAIRMAN

THOMAS GRAZIANO

Hon Mario Cuomo
Governor - State of New York
State Capitol - Executive Chamber
Albany, New York 12224

Dear Governor Cuomo:

The Central New York Labor Council strongly urges your approval of S.10074 - Lack. This bill prohibits retaliatory action by public and private employers against employees who disclose illegal or improper employer acts which present a substantial and specific danger to the public health and safety.

Sincerely yours,

William H. Sullivan
William H. Sullivan
President

WS/lz

cc: Richard Winsten

57

E.M.

S-10074

NEW YORK STATE CONFERENCE

International Union of Operating Engineers

101 EXECUTIVE BOULEVARD
ELMSFORD, N.Y. 10523
(914) 592-1170

AFFILIATED WITH THE
AFL-CIO

ALBANY OFFICE
112 STATE STREET
ALBANY, N.Y. 12207
(518) 463-7551

July 24, 1984 ⁸⁴ JUL 27 P3:52

STANDARD

Honorable Mario M. Cuomo
Governor
State of New York
Executive Chamber - Capitol
Albany, New York 12224

Dear Governor Cuomo:-

The New York State Conference of the International Union of Operating Engineers strongly urges your approval of S.10074 - Lack.

This bill prohibits retaliatory action by public and private employers against employees who disclose illegal or improper employer acts which present a substantial and specific danger to the public health and safety.

In the event of employer retaliation, the bill permits public employees subject to collective bargaining agreements to seek contractually guaranteed arbitration of the dispute. Those public employees not subject to collective bargaining agreements, as well as private sector workers, are provided with the right of civil court action. Court remedies may include reinstatement of position and rights, compensation for lost benefits and wages, and reasonable attorney's fees.

Under current state law, a worker who refuses to participate in wrongdoing or reports it and cooperates in a governmental investigation of the incident is subject to dismissal, demotion or various forms of bureaucratic reprisal. Under these conditions employees are deterred from acting ethically and in the public interest. This bill offers protection to public and private employees who discover activities of employers which they believe to be dangerous to the public health and safety. It prohibits employers from taking retaliatory action against employees who object to or refuse to participate in such activities. And it allows employees to report these acts and cooperate in their investigation without fear of reprisal.

This bill also provides reasonable protections to public and private sector employers. This bill is particularly important to protect principled workers who act honorably. We, therefore, urge your approval of this bill.

James Duffy
James Duffy
President

Sincerely,

Charles P. Flynn
Charles P. Flynn
Secretary-Treasurer

UPPER HUDSON VALLEY LABOR COUNCIL, AFL-CIO



512 Warren Street, Hudson, New York 12534

518-828-7691

RECEIVED
EXECUTIVE CHAMBER

July 20, 1984

84 JUL 24 P3:59

STATE OF NEW YORK

Hon. Mario Cuomo
Governor
State of New York
Executive Chamber
The Capitol
Albany, N.Y. 12224

Dear Governor Cuomo:

Bill S.10074 - Lack prohibits retaliatory action by public and private employers against employees who disclose illegal or improper employer acts which present a substantial and specific danger to the public health and safety. In the event of employer retaliation, the bill permits public employees subject to collective bargaining agreements to seek contractually guaranteed arbitration of the dispute. Those public employees not subject to collective bargaining agreements, as well as private sector workers, are provided with the right of civil court action.

Under today's state law, a worker who refuses to participate in wrongdoing or reports it and cooperates in a governmental investigation of the incident is subject to dismissal, demotion or other forms of bureaucratic reprisal. This bill offers protection to public and private employees who discover activities of employers which they believe to be dangerous to the public health and safety. This bill also provides reasonable protections to public and private sector employers.

This bill is particularly important to protect principled workers who act honorably and that is why the Upper Hudson Valley Labor Council AFL-CIO strongly urges your approval of this bill.

Sincerely,

Robert L. Redlo

Robert L. Redlo
President

RLR/dgs

EM



S-10074

84 JUL 25 P4:00

Hotel, Restaurant & Club Employees and Bartenders Union Local 6

Hotel Employees & Restaurant Employees International Union, AFL-CIO, 709 Eighth Ave., NY, NY 10036 (212) 957-8000

July 23, 1984

Hon. Mario Cuomo
Governor - State of New York
Executive Chamber - The Capitol
Albany, New York 12224

Dear Governor Cuomo:

Local 6, Hotel, Restaurant & Club Employees and Bartenders Union, AFL-CIO strongly urges your approval of S.10074 - Lack. This bill prohibits retaliatory action by public and private employers against employees who disclose illegal or improper employer acts which present a substantial and specific danger to the public health and safety. In the event of employer retaliation, the bill permits public employees subject to collective bargaining agreements to seek contractually guaranteed arbitration of the dispute. Those public employees not subject to collective bargaining agreements, as well as private sector workers, are provided with the right of civil court action. Court remedies may include reinstatement of position and rights, compensation for lost benefits and wages, and reasonable attorney's fees.

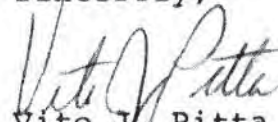
Under current state law, a worker who refuses to participate in wrongdoing or reports it and cooperates in a governmental investigation of the incident is subject to dismissal, demotion or various forms of bureaucratic reprisal. Under these conditions employees are deterred from acting ethically and in the public interest. This bill offers protection to public and private employees who discover activities of employers which they believe to be dangerous to the public health and safety. It prohibits employers from taking retaliatory action against employees who object to or refuse to participate in such activities. And it allows employees to report these acts and cooperate in their investigation without fear of reprisal.

Hon. Mario Cuomo
July 23, 1984
Page Two

The bill also provides reasonable protections to public and private sector employers. Employers are given the opportunity to respond to employees' complaints before action is taken. They are also entitled to reasonable attorney's fees for defense against unsubstantiated charges.

This bill is particularly important to protect principled workers who act honorably. We, therefore, urge your approval of this bill.

Sincerely,



Vito J. Pitta
Business Manager and
Chief Executive Officer

S-10074

EM

RECEIVED
EXECUTIVE CHAMBER

New York Hotel and Motel Trades Council Affiliated with AFL-CIO 707 Eighth Ave, NY, NY 10036 (212) 245-8100

July 23, 1984

Hon. Mario Cuomo
Governor - State of New York
Executive Chamber - The Capitol
Albany, New York 12224

Dear Governor Cuomo:

The New York Hotel and Motel Trades Council, AFL-CIO strongly urges your approval of S.10074 - Lack. This bill prohibits retaliatory action by public and private employers against employees who disclose illegal or improper employer acts which present a substantial and specific danger to the public health and safety. In the event of employer retaliation, the bill permits public employees subject to collective bargaining agreements to seek contractually guaranteed arbitration of the dispute. Those public employees not subject to collective bargaining agreements, as well as private sector workers, are provided with the right of civil court action. Court remedies may include reinstatement of position and rights, compensation for lost benefits and wages, and reasonable attorney's fees.

Under current state law, a worker who refuses to participate in wrongdoing or reports it and cooperates in a governmental investigation of the incident is subject to dismissal, demotion or various forms of bureaucratic reprisal. Under these conditions employees are deterred from acting ethically and in the public interest. This bill offers protection to public and private employees who discover activities of employers which they believe to be dangerous to the public health and safety. It prohibits employers from taking retaliatory action against employees who object to or refuse to participate in such activities. And it allows employees to report these acts and cooperate in their investigation without fear of reprisal.

62

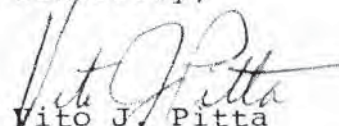
Affiliated Local Unions: International Brotherhood of Electrical Workers, Local Union No. 3 • Hotel, Restaurant & Club Employees and Bartenders Union, Local 6, Hotel and Restaurant Employees and Bartenders International Union • Hotel Maintenance Upholstery Workers, Local 43, Upholsterers International Union of North America • International Brotherhood of Firemen, Oilers and Maintenance Mechanics, Local 56 • International Union of Operating Engineers, Local 94-94A • Hotel, Hospital, Nursing Home & Allied Service Employees Union, Local 144, Service Employees International Union • Office and Professional Employees International Union, Local 153 • Hotel Maintenance Painters Union, Local 1422, Brotherhood of Painters, Decorators and Paperhangers of America • Hotel Maintenance Union.

Hon. Mario Cuomo
July 23, 1984
Page Two

The bill also provides reasonable protections to public and private sector employers. Employers are given the opportunity to respond to employees' complaints before action is taken. They are also entitled to reasonable attorney's fees for defense against unsubstantiated charges.

This bill is particularly important to protect principled workers who act honorably. We, therefore, urge your approval of this bill.

Sincerely,


Vito J. Pitta
President

O. M. BERKE
PRESIDENTGEOFFREY N. ZEH
SECRETARY-TREASURER

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

AFFILIATED WITH THE A.F.L.-C.I.O. AND C.I.O.

LEGISLATIVE DEPARTMENT

E. S. EISENHANDLER
State Legislative Representative
Box 214, Albany, NY 12240
Telephone: 518-253-2890

'84 JUL 20 P4:04

STATE OF NEW YORK

July 18, 1984

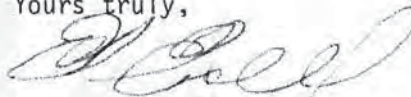
Hon. Mario Cuomo, Governor
State of New York
Executive Chamber
The Capitol
Albany, NY 12224

Dear Governor Cuomo:

The Legislative Committee of the BMWWE requests your approval of S. 10074, LACK. This bill would help to protect public and private employees who choose to disclose illegal or improper employer acts which present a substantial and specific danger to the public health and safety.

The fear of reprisal may deter some employees from coming forth with useful information that could help resolve these indiscretions. As the bill gives protection to both public and private employees, and provides the employer the opportunity to respond to the employees' complaint before action is taken, we feel that this bill would offer fair treatment on both sides of the issue.

Yours truly,


E. S. Eisenhandler,
Legislative Representative

ESE:sw

99 Washington Avenue
Albany, N. Y. 12210
(518) 436-8516

The bill also provides reasonable protections to public and private sector employers. Employers are given the opportunity to respond to employees' complaints before action is taken. They are also entitled to reasonable attorney's fees for defense against unsubstantiated charges.

This bill is particularly important to protect principled workers who act honorably. We, therefore, urge your approval of this bill.

Edward J. Cleary
Edward J. Cleary
President

Sincerely,
Richard Winsten
Richard Winsten
Director of Legislation



Chautauqua County Legislature

GERACE OFFICE BUILDING - MAYVILLE, NEW YORK 14757 - (716) 753-4215

THOMAS HARTE
Chairman

O. WINSTON BARTHOLOMEW
Clerk

June 11, 1984

Hon. Mario Cuomo
Governor of New York
State Capitol
Albany, N.Y. 12224

Dear Gov. Cuomo:

Enclosed herewith for your information are copies of the following motions which were adopted by the Chautauqua County Legislature on June 8, 1984:

Motion 19-84 An Act to Amend the Labor Law,
Relation to Protection Against Retaliatory
Personnel Action by Employers

Motion 21-84 Supporting N.Y.S. Senate &
Assembly Bills S.7519/A.8814 to Amend the
Vehicle & Traffic Law re Definition of
"Agricultural Truck"

Motion 22-84 Urge Support of Senate and
Assembly Bills, S.7392 & A.8658 & S.7546
& A.8848, re Shelter Allowance and Home Relief
Bonus

Very truly yours,

O. Winston Bartholomew, Clerk
Chautauqua County Legislature

OWB:jnr
encl. 3

Please Type

MOTION NO. 19 - 84

TITLE: An Act to Amend the Labor Law, In Relation to Protection Against
Retaliatory Personnel Action by Employers

BY: Governmental Affairs Committee

(Requested by Legstr./Chm. Harte)

WHEREAS, Senate Bill #1153/Pisani and Assembly Bill #8552/Barbaro, both commonly referred to as the "Whistle-blower" bills are now before the New York State Legislature for action, and

WHEREAS, these bills would allow an employee to go directly to court to complain without any prior investigation of the complaint, and

WHEREAS, procedures have been established in Section 75 of the Civil Service Law, Section 502 of the National Labor Relations Act, Section 11, of the Occupational Safety and Health Act, Section 27-a(10) of the State Labor Law all establish due process and forbid retaliation against employees who believe that they are faced with imminent danger in the work place, and

WHEREAS, all these statutes provide time-honored procedures that these bills provide. The only difference is that the existing procedures would provide the relief to the employee more swiftly, and the progress and disposition of such cases would be monitored by agencies possessing a high level of expertise in these areas, instead of an already overburdened court system (as this bill suggests), and

WHEREAS, the sanctions imposed by these bills are not only redundant, as demonstrated above, but they are costly and disruptive to local governments and simply inappropriate in a labor relations setting. Specifically, the bills would allow an employee to disclose alleged violations to the news media after merely informing the employer that he believes a violation exists. Allowing an employee to do this does not remedy an arbitrary action or a dangerous situation; it only exacerbates and escalates the situation and undermines the procedures already established by state and federal law. The news media cannot secure an employee's protection. Threats of serious imminent danger and arbitrary actions should be reported to the appropriate established agency so that they may be properly investigated and disposed of, and

WHEREAS, allowing an employee to go directly to court to complain without an investigation by an agency possessing expertise is equally inappropriate and clearly more costly for all parties involved. The statutes mentioned above all provide for the same relief as these bills do, without the costly and time-consuming injection of an overburdened court system. Both national and local labor relations policy is clear; litigation is not the desired method of resolving disputes in this area. Local governments can be managed much more effectively if existing procedures are adhered to and a voluntary and conciliatory method of dispute resolution is promoted and maintained. Forcing matters to litigation does not accomplish this purpose, therefore

LET IT BE KNOWN, That the Chautauqua County Legislature goes on record as opposing S-1153 and A-8552, it is therefore

MOVED, That copies of this motion be sent to Senator Present, Assemblymen Walsh and Parnett, Executive Director of NYSAC and the President of Inter-Counties Assoc.

Lawrence J. Wilson
Lawrence J. Wilson

Thomas J. Harte
Thomas J. Harte

John J. Carlson
John J. Carlson

6/8/84



NEW YORK STATE AFL-CIO

99 WASHINGTON AVENUE (Suite 1002) • ALBANY, N.Y. 12210 • PHONE 436-8510

EDWARD J. LEARY
President



E. HOWARD MOLISANI
Secretary-Treasurer

RICHARD WINSTEN
Director of Legislation

MEMORANDUM

ENDORSE

1984

11153-A
Molisan, Montalto

A.8552
Barbaro, et al

This legislation provides protection from retaliation for public and private sector employees who disclose that an employer is involved in acts which are illegal or pose a threat to public health and safety. It also establishes safeguards for public employees who report incidents of gross mismanagement, waste of funds, or abuse of authority.

Under current state law, a worker who refuses to participate in wrongdoing, or reports it and cooperates in a governmental investigation of the incident, is subject to dismissal, demotion, or various forms of bureaucratic reprisal. This possible punishment deters employees from acting ethically and in the public interest.

This bill remedies this situation by protecting employees who discover activities or practices of employers which they reasonably believe to be illegal or dangerous to the health or safety of the public. It prohibits employers from taking retaliatory action against employees who object to, or refuse to participate in such activities. It allows employees to report these activities and cooperate in investigations of them without fear of punishment. The bill further protects state workers who report activities which they reasonably believe to involve substantial mismanagement, gross waste of public funds, or abuse of public authority.

This legislation also provides reasonable protections to public and private sector employers. Employers are given a chance to respond to employees complaints before legal action is taken. Employers are also protected against frivolous complaints in that they can be compensated for attorney's fees in these cases.

The New York State AFL-CIO urges your support of this bill.

#

opeiu-153

4/2/84

69

July 13, 1984

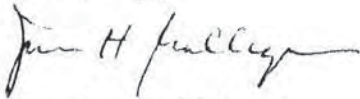
Hon. Gerald C. Crotty

RE: S. 10074

Page Two

Consequently, it is the position of this organization that this bill creates no substantive right with respect to disciplinary actions based upon an employee's disclosure of information. However, this bill represents a substantial improvement from previous proposals which have been advanced to address this issue. With the above noted exception, this bill has satisfied the previous objections of this organization to opposed whistleblower legislation. Given the position of the Conference that this bill adds nothing of substance to the law, it cannot be endorsed. However, other prior objections to this concept are removed.

Sincerely,



John H. Galligan

JHG:jml



THE CITY OF NEW YORK
OFFICE OF THE MAYOR

S - 10074

111 Washington Avenue
Albany, New York 12210
(518) 462-5611

52 Chambers Street
New York, New York 10007
(212) 566-5135

CLAUDIA WAGNER
LEGISLATIVE REPRESENTATIVE

July 19, 1984

M E M O R A N D U M

TO: Honorable Gerald C. Crotty
Counsel to the Governor

FROM: Claudia Wagner *CW*

RE: Senate Bill No. 10074 - By Senator Lack, et al.

AN ACT to amend the civil service law and the labor law,
in relation to protection of employees against
retaliatory action by employers

You have requested the comments and recommendation of
the Mayor concerning the above bill which is before the Governor
for executive action.

Please be advised that the Mayor has no objection to this
legislation.

n/o

71

Greater Glens Falls Central Labor Council

MEMORANDUM

July 10, 1984
21 West 10th Street, New York, N.Y. 10011

MEMORANDUM FOR THE HONORABLE MARIO CUOMO, GOVERNOR OF THE STATE OF NEW YORK

MEMORANDUM FOR THE HONORABLE MARIO CUOMO, GOVERNOR OF THE STATE OF NEW YORK

5-10074

JULY 10, 1984

GOVERNORS OFFICE
CAPITOL BUILDING
ALBANY, NEW YORK
12201

HONORABLE MARIO CUOMO;

THE WHISTLEBLOWER PROTECTION BILL S 10074 WOULD PROVIDE EMPLOYEES, WHO BLOW THE WHISTLE ON EMPLOYERS, FOR ACTS WHICH ARE ILLEGAL OR A THREAT TO PUBLIC HEALTH AND SAFETY, PROTECTION FROM RETALIATION OF BOSSES, SUCH AS FIRING, DEMOTION, SUSPENSION ETC.

THE GREATER GLENS FALLS CENTRAL LABOR COUNCIL URGES YOU TO SUPPORT THIS LEGISLATION.

IN SOLIDARITY

Judy Conley
JUDY CONLEY
PRESIDENT

S-10074

American Federation of State, County & Municipal Employees, AFL-CIO

New York Office:

125 BARCLAY ST., NEW YORK, N.Y. • (212) 766-1056

Albany Office:

150 STATE STREET, Fifth Floor

ALBANY, N.Y. 12207 • (518) 436-0685

NORMAN M. ADLER, Director
Political Action and Legislation

district council

37

July 11, 1984

Hon. Mario Cuomo
Executive Chamber
Capitol Building
Albany, NY 12248

FRANK MORELLI
President

VICTOR GOTBAUM
Executive Director

ELAINE ESPEUT
Secretary

ARTHUR TIBALDI
Treasurer

Vice Presidents:

Donald Afflick
Louis G. Albano
Francine Autovino
James Butler
James Carosella
Thomas DiNardo
Albert Diop
Donald J. Donohue
Charles Ensley
Victor Guadalupe
Andrew Holman
Charles Hughes
Sylvia Hutchins
Bessie Jamison
Vincent Parisi
Robert Schmidt
Edward Simon
Shiekie Snyder
Jessica Williams
Reginald Wing

Associate Director
Stanley Hill

Deputy to the
Executive Director
Al Bilik

Dear Governor:

I am writing in support of A.8552A/S.10074, which is before you for approval.

This bill provides protection to public and private employees who reveal violations of laws, rules or regulations by their employers, and who are disciplined as a result. Except in emergency situations, employees would be required to make a good faith effort to provide the employer with advance notification of the alleged violation. In the public sector, an employee who is subject to dismissal or other disciplinary action under a final and binding arbitration provision or similar contractual arrangement could raise the "whistleblowing" as a complete defense to the proposed action.

Currently, under New York State Law there is no protection against reprisal for workers who report the illegal and dangerous activities of their employers. Workers are often afraid to speak up for fear of being dismissed, demoted, or otherwise punished. An employee, for instance, can be dismissed for disclosing to the authorities a crime committed by an employer. Thus, such wrongful actions by an employer may never be brought to light.

This bill marks a first step toward remedying this unjust situation. It will provide some protection for workers who report that their employer has violated a law, rule or regulation, which violation seriously threatens the public health or safety. For example, a public employee who reveals to a governmental body the existence of an undisclosed, but substantial danger to the public on the subways, in the sewage treatment system, or on a pending or completed public works project, and is dismissed as a result, would be able to regain her job by establishing in court or at a contractual arbitration that her whistleblowing was the "but for" cause of the dismissal.

Hon. Mario Cuomo
July 10, 1984
Page Two

The proposed legislation will alter the legal environment so as to provide responsible employees with some of the protection they need. On behalf of District Council 37's 112,000 members, I urge your approval of this long overdue measure.

Sincerely,



Norman M. Adler
Director
Political Action and
Legislation

NMA:leg

cc: Michael Del Guidice
John Laccio

MARITIME PORT COUNCIL C DIJOSEPH
343 COURT ST
BROOKLYN NY 11231 13AM

Western
Union **Mailgram**



4-036807S195 07/13/84 ICS IPMMTZZ CSP ABLB
2128347829 MGMB TDMT BROOKLYN NY 101 07-13 0215P EST

THE HONORABLE MRIO CUOMO GOVERNOR STATE OF
NEW YORK
ALBANY NY 12224

THE MARITIME PORT COUNCIL AFL-CIO STRONGLY URGES YOUR APPROVAL
S10074-LACK. THIS BILL PROHIBITS RETALIATORY ACTION BY PUBLIC AND
PRIVATE EMPLOYERS AGAINST EMPLOYEES WHO DISCLOSED ILLEGAL OR IMPROPER
EMPLOYERS ACTS WHICH PRESENTS A SUBSTANTIAL AND SPECIFIC DANGER TO
THE PUBLIC HEALTH AND SAFETY. THE BILL PERMITS PUBLIC EMPLOYEES
SUBJECT TO COLLECTIVE BARGAINING AGREEMENTS TO SEEK CONTRACTUALLY
GUARANTEED ARBITRATION OF THE DISPUTE. PUBLIC EMPLOYEES NOT SUBJECT TO
COLLECTIVE BARGAINING AGREEMENTS AS WELL AS PRIVATE SECTOR WORKERS
ARE PROVIDED WITH THE RIGHTS CIVIL COURT ACTION.

EDWARD PANARELLO EXECUTIVE DIRECTOR MARITIME PORT COUNCIL
1427 EST
MGMCOMP MGM