

L. 237, IBT v. City & HHC, 67 OCB 12 (BCB 2001) [Decision No. B-12-2001 (IP)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of the Improper Practice Proceeding

-between-

LOCAL 237, INTERNATIONAL BROTHERHOOD
OF TEAMSTERS,

Decision No. B-12-2001
Docket No. BCB-2077-99

Petitioner,

-and-

CITY OF NEW YORK AND NEW YORK CITY
HEALTH AND HOSPITALS CORPORATION,

Respondents.

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DECISION AND ORDER

On August 5, 1999, Local 237, International Brotherhood of Teamsters (“Union” or “L. 237”), filed a verified improper practice petition against the City of New York and New York City Health and Hospitals Corporation (“HHC”). The Union alleges that HHC interfered with L. 237's internal union election when John Joseph Perez, Assistant Director of Labor Relations at HHC’s Generation +/Northern Manhattan Health Network, assisted the opposition slate of union members who were running for union office.¹ HHC denies these allegations. For the reasons stated below, we grant the Union’s petition.

¹ The Union claims that Perez’s actions violated §12-306a(1) and (2) of the New York City Collective Bargaining Law (New York City Administrative Code, Title 12, Chapter 3) (“NYCCBL”).

BACKGROUND

Many of the basic facts are undisputed.² John Joseph Perez became a member of L. 237 in 1970 when he was hired as a Special Officer at HHC. From 1976 through 1996, Perez served as a Union Business Agent. In 1996, he was promoted to Assistant Director of the Law Enforcement Division of L. 237, but a year later, was demoted to Business Agent.³ Shortly thereafter, Perez was fired on January 12, 1998, for what he believed was an unjust reason.⁴ At the suggestion of one of the Union officers, Perez returned to work later that week, but was fired a second time on February 23, 1998, he alleges, for having filed charges against the Union. (Tr. 400.)

Perez continued to try to regain employment with L. 237. In March 1998, Perez filed charges with the NLRB and attempted to continue paying union dues by mailing a check to L. 237. Perez also filed charges with the Equal Employment Opportunity Commission (“EEOC”), the EPC, and Joint Council 16. All the charges that Perez filed were ultimately dismissed.

On April 6, 1998, Perez was hired by HHC in the title of Assistant Director of Labor Relations at Generation +/Northern Manhattan Health Network.

² A hearing in this case was held on March 27, April 11, May 24, August 3, and August 31, 2000.

In this decision, “Transcript” is denoted by “Tr.” and “Exhibits” by “Ex.”

³ He challenged the demotion by filing charges with the Ethical Practices Committee (“EPC”) and Joint Council 16 of the International Brotherhood of Teamsters. (Tr. 517-19.)

⁴ Perez received a memo stating that as a Business Agent, he must change his union membership from L. 237 to L. 840. (Ex. R7.) Perez was told that if he did not switch his union membership, he would be fired. Perez testified that he refused to change membership because he did not understand why after 20 years, he was suddenly being told to join a union that represents L. 237 employees who have no city affiliation. Perez also did not want to lose his pension.

In late 1998, David Levine of the Teamsters for a Democratic Union (“TDU”) called Perez to ask him about certain provisions of the L. 237 and Citywide agreements so that Levine could better assist union members who sought his advice. (Tr. 421-23, 645.) Conversations with Levine included the topics of Section 75 of the Civil Service Law, the Citywide Agreement, and various provisions of the parties’ collective bargaining agreement including, the assault clause, contractual rights of injured officers, the accident clause, heat days, and disciplinary procedures. (Tr. 429-30, 651-56, 678-682, 693.)

Between late 1998 and October 1999, Perez had nine to twelve conversations with Levine. (Tr. 646-49.) Of these conversations, six or seven took place between April and October 1999 at TDU headquarters on State Street in Brooklyn. (Tr. 424, 427.) Perez testified that he continued a relationship with Levine in order to seek his advice on how to file charges with various agencies and how to secure his pension. (Tr. 687, 695-701, 750-51, 448.) He felt that Levine was a good resource because Levine knew how other former Business Agents under similar circumstances had handled the situation.

On the six or seven occasions that Perez met with Levine, Perez also used a room with telephones and computers at TDU headquarters. In an adjacent room, there was generally a group of L. 237 members conducting a meeting of the Rank and File Action Committee (“Rank and File”). (Tr. 428.) The Rank and File is a group of L. 237 members who are dissatisfied with the Union leadership and gather to discuss how to make changes in the Union. The Rank and File were then in the process of developing a slate of candidates to run for Local 237's executive board in the October 1999 Local Union election. On several occasions, after attending to his

personal business, Perez spent 25 minutes to an hour speaking with Union members he knew from his prior affiliation with L. 237. (Tr. 428, 720.) During these meetings, Perez and the Rank and File members shared take-out food, but Perez paid for his own portion. (Tr. 430.)

On at least some occasions, Perez spoke with members about L. 237's collective bargaining agreements. (Tr. 429.) Other topics of discussion included Executive Order 75,⁵ the fact that some Union officers collect two salaries, changes in the Union's election procedure, the pension consequences of holding Union office, and amendments to the Union constitution and by-laws under which Business Agents are appointed rather than elected. (Tr. 721-29.) Perez explained to members of the Rank and File that one must be a union member "in good standing" in order to be eligible for union office. He also responded to questions about specific sections of the Union's by-laws. (Tr. 731, 733.)

When some Union members mentioned that he should run for office, Perez responded that he was not interested and told them that he was at the TDU only for his personal business. Any time certain Union officer's names were mentioned, Perez told the group that he was "not looking to really get involved in any of that stuff." (Tr. 734, 431.)

On April 5, 1999, L. 237's Secretary/Treasurer, Nicholas Mancuso, met with HHC Inspector General Barry Friedman and alleged that Perez was involved in the Union election. As evidence, Mancuso presented the Inspector General with HHC envelopes that contained campaign flyers for the "Rank and File." In August 1999, Mancuso sent letters to HHC requesting that Perez be fired from his position as Assistant Director of Labor Relations. HHC

⁵ Executive Order No. 75 sets forth, among other things, the procedures by which union representatives obtain time off, with or without pay, to engage in union activities.

responded that no reason existed to fire Perez.

At the hearing, the Union presented two witnesses – Randy Klein, a former member of the Rank and File, and Nicholas Mancuso. Both gave testimony regarding the extent of Perez’s involvement with the Rank and File.

Other than Perez, HHC presented three witnesses – Vincent Lattimore and Charles Mussa, members of the Rank and File, who testified that Perez had little involvement, if any, with the Rank and File, and John King, of the Inspector General’s office, who testified that the Union failed to substantiate its claim to the Inspector General’s satisfaction that Perez was involved with the Union election. (Tr. 165, 259, 324.)

On October 14, 1999, the slate of incumbents won the election for the L. 237 board.

POSITIONS OF THE PARTIES

Petitioner’s Position

The Rank and File committee began meeting weekly at TDU headquarters in January 1999 to establish a slate and launch its campaign against the incumbents for the L. 237 board election that was to take place in October 1999. (Tr. 21-22.) The Union contends that Perez interfered with the Union election when, as Assistant Director of Labor Relations at HHC, he regularly attended the weekly meetings of the Rank and File. Relying on the testimony of Business Agent Randy Klein, a member of the Rank and File from January until May or June 1999, the Union asserts that Perez regularly attended the weekly committee meetings at TDU Headquarters. (Tr. 33-34.) Klein’s testimony, the Union argues, is corroborated by Nicholas Mancuso, Secretary/Treasurer of L. 237, who testified that a Business Agent, whom Mancuso did

not name, told him that Perez attended the Rank and File meetings. (Tr. 94, 122.) In fact, Mancuso believed that Perez was even involved in making photocopies of Rank and File campaign material while at work, and Mancuso presented to HHC's Inspector General campaign flyers that were inside HHC envelopes.

The Union contends that Perez's own testimony supports its allegation that he interfered with the Union election. Perez admitted discussing the way members become eligible to run for union office under the union by-laws, the way L. 237 conducts board elections, the effects of holding a board position on one's pension, and the reasons certain union positions are elected while other are appointed. (Tr. 723-29, 731.) Furthermore, the Union alleges that Perez contributed financially to the Rank and File.

Respondent's Position

HHC alleges that the petition was filed on August 10, 1999, and therefore, the four month statute of limitations precludes the Board from considering conduct that took place prior to April 10, 1999. Furthermore, since there were allegations made for the first time in the reply, which HHC alleges was filed on September 24, 1999, the statute of limitations precludes the Board from considering conduct relating to those claims that took place before May 24, 1999. Since the Union is unable to set forth claims within the limitations periods, the petition must fail.

Furthermore, HHC contends that the petition must be dismissed because the Union has failed to meet its burden of proof. The Union does not support the allegations in its petition that Perez, while on duty, assisted candidates in the Union election by allowing them to use HHC's telephones and copiers. Since the Union does not support its claims, the petition must be

dismissed in its entirety and the Board may not consider the contents of the Union's reply.

HHC contends that Perez's testimony, in conjunction with the testimony of HHC's other witnesses, establishes Perez's non-involvement. Perez testified that he visited TDU headquarters to seek Levine's counsel concerning his right to appeal his termination under the Union by-laws. (Tr. 424-25.) Occasionally, he saw people he knew from L. 237 and spoke with them about contract matters. When he was invited to joined them for dinner, Perez paid for his share of the food. (Tr. 427-430.) Perez was not running for Union office, he did not participate in the meetings when there was discussion of the Union election, and Perez was at the TDU only to take care of his personal business. (Tr. 442-43, 448.) Furthermore, while Perez filed charges against the Local with the International and EEOC, these were lawful measures that in no way indicate that Perez was involved in illegal matters.

Vincent Lattimore and Charles Mussa, L. 237 members who ran for board positions on the Rank and File slate, corroborated Perez's testimony. They testified that they had seen Perez infrequently when they were at the TDU for Rank and File meetings, and on the few occasions that Perez joined them in the meeting room, it was merely for pizza. Perez was neither a member of the Rank and File nor a participant in the meetings. (Tr. 165, 259.) John King, of HHC's Inspector General's Office, testified that Mancuso failed to substantiate his claim to that office that Perez was involved in Union matters. (Tr. 324, 326.)

DISCUSSION

As an initial matter, this Board will address the issue of timeliness raised by HHC. This

Board may not consider alleged improper practices that occurred more than four months prior to the filing of the petition.⁶ In the present case, the alleged violations occurred between January and October 1999. Since the petition was filed on August 5, 1999, the Board will consider all incidents that occurred after April 5, 1999. While HHC contends that the Union raised new allegations for the first time in its reply, we find that allegations in the reply were clarifications of claims the Union raised in the petition and are therefore appropriate for consideration by the Board.

It is an improper practice under NYCCBL § 12-306a for a public employer or its agents:

(2) to dominate or interfere with the formation or administration of
any public employee organization⁷

The question that the Board must decide is whether Perez's actions constitute interference under the NYCCBL. Our own decisions applying NYCCBL § 12-306a(2) have not dealt with a factual situation like the one presented in this case. Since § 12-306a(2) parallels § 209-a.1(b) of the Taylor Law, we look to PERB for guidance on this issue. In *County of Rockland & Rockland County Community College*,⁸ PERB stated that the Taylor Law prohibits employer domination of an employee organization or the granting of unlawful assistance or support to an employee organization. PERB held that this prohibition against both domination and interference is "designed to prevent a public employer from meddling in the internal affairs of the organization.

⁶ NYCCBL § 12-306(e); OCB Rule § 1-07(d); see *Stapan and Local 300, SEIU & NYC Dept of Citywide Admin. Serv.*, Decision No. B-11-2000 at 5.

⁷ While the Union also alleges a violation of § 12-306a(1), the Board considers the alleged violation under only § 12-306a(2) of the NYCCBL.

⁸ 13 PERB ¶ 3089 (1980).

. . .”⁹ Furthermore, in *Monroe BOCES #1*, PERB held that a finding of employer interference does not require that “a specific motive to dominate, interfere with, or support an employee organization be established. . . .”¹⁰ We agree with PERB and adopt its holdings.

Taking into account the testimony of the witnesses for both the Union and HHC, we base our decision primarily upon Perez’s testimony because we believe that he would have no motive to overstate the extent of his involvement with the Union. Perez testified that he met repeatedly and discussed internal union matters with members of L. 237. From April to October 1999, he had at least six or seven substantive discussions lasting up to an hour with members of the Rank and File – the committee of L. 237 members that ran a slate of opposition candidates in the October 1999 Union board election. He spoke to members on matters directly related to the Union election, including election procedures, members’ eligibility to run, which positions are elected and which are appointed, and the effect of becoming an officer on a member’s city and union pensions. Moreover, Perez even explained provisions of the Union’s by-laws to the Union members.

Considering all of Perez’s admissions together, we find that his actions constitute the type of interference proscribed by the NYCCBL. As Assistant Director of Labor Relations, Perez is an upper level manager who is specifically responsible for labor relations at Generations+/Northern Manhattan Health Network. Not only did Perez engage in conversations with members of the Rank and File, which alone is questionable conduct for someone in his position, but he

⁹ *Id.* at 3143.

¹⁰ 28 PERB ¶ 3068, at 3158 (1995).

repeatedly met with them at their designated meeting place, TDU headquarters. Furthermore, Perez not only engaged in conversations relating to the collective bargaining agreements, but he also discussed provisions of the Union's internal by-laws and provided his interpretation of them, specifically in the area of board elections. Our finding that Perez's actions as a whole constitute unlawful interference is based upon the totality of the circumstances and we express no opinion as to whether any of the facts upon which we rely would, in isolation, violate the NYCCBL. We note that there is insufficient evidence to find that Perez was involved in producing flyers or photocopies for the Rank and File.

HHC contends that Perez had no intention of actively supporting the Rank and File, that he had no interest in being involved in the Union election, and that he was merely engaging in conversation with people he knew about contract provisions. Such an argument, however, is unavailing because we need not find specific motive to interfere with employee rights in order to find a § 12-306a(2) violation. Accordingly, we find that Perez's activity constitutes unlawful interference in violation of § 12-306a(2) of the NYCCBL.

ORDER

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

ORDERED, that the improper practice petition filed by Local 237, International Brotherhood of Teamsters be, and the same hereby is granted; and it is further

ORDERED, that Assistant Director of Labor Relations at HHC's Generation+/Northern Manhattan Health Network, John Joseph Perez, cease and desist from interfering with Local

237's internal union affairs.

Dated: March 28, 2001
New York, New York

MARLENE A. GOLD
CHAIR

DANIEL G. COLLINS
MEMBER

CHARLES G. MOERDLER
MEMBER

RICHARD A. WILSKER
MEMBER

EUGENE MITTELMAN
MEMBER