***Patrolmen's Benevolent Association*, 77 OCB 10 (BCB 2006)**
[Decision No. B-10-2006(IP)] (Docket No. BCB-2431-04).

Summary of Decision: The Union alleged that the Mayor, in public statements on the radio and in newspapers improperly lambasted Union leaders and engaged in direct dealing with Union members. The Board found that the challenged statements did not rise to the level of direct dealing in violation of NYCCBL § 12-306(a)(1) and (a)(4) or an independent claim of interference in violation of § 12-306(a)(1) and dismissed the petition. ***(Official decision follows.)***

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

In the Matter of the Improper Practice Proceeding

-between-

PATROLMEN'S BENEVOLENT ASSOCIATION
of the CITY OF NEW YORK,

Petitioner,

- and -

THE CITY OF NEW YORK and the
HONORABLE MAYOR MICHAEL BLOOMBERG,

Respondents.

DECISION AND ORDER

On September 14, 2004, the Patrolmen's Benevolent Association ("Union" or "PBA"), filed a verified improper practice petition against the City of New York ("City") and the Honorable Mayor Michael R. Bloomberg alleging that during contract negotiations, the Mayor, or his representatives, made public statements that undermined the current leadership of the Union and that dealt directly with PBA members in violation of § 12-306(a)(1) of the New York City Collective Bargaining Law

(New York City Administrative Code, Title 12, Chapter 3) ("NYCCBL").[1] The City argues that both the context of the statements and the language itself show that these utterances do not rise to violations of the NYCCBL. This Board finds that because the challenged comments were not coercive, the Mayor did not "deal directly" with members of the PBA and did not interfere with their protected rights under the statute. Accordingly, we dismiss the petition.

BACKGROUND

On September 8, 2003, the City and the PBA entered into negotiations for a collective bargaining agreement ("CBA") for the successor period to the August 1, 2000, to July 31, 2002, impasse arbitration panel award. The award succeeded the 1995 to 2000 CBA. The parties met seven times to negotiate from September 2003 until March 2004.[2] On March 8, 2004, the PBA filed for a declaration of impasse with the Public Employment Relations Board ("PERB").[3] Despite the City's objection, on May 13, 2004, PERB appointed a mediator, who met with the parties on June 11, June 29, and July 12, 2004. According to the City, during the course of the mediation sessions, the City offered retroactive and prospective wage increases, including one proposal providing for an eight

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[1] The parties refer only to § 12-306(a)(1) in their pleadings. However, since the parties address direct dealing, we will treat the allegation as a § 12-306(a)(4) claim of bad faith bargaining. We will also analyze the claim as one of interference, an independent violation of § 12-306(a)(1).

[2] Negotiation sessions were on September 8, September 26, December 2, December 29, 2003, and February 4, February 19, and March 1, 2004.

[3] On April 7, 2004, the City filed an improper practice petition at the Office of Collective Bargaining and argued that the PBA's filing for impasse was premature and demonstrated a failure to bargain in good faith. The Board, on December 13, 2004, dismissed the claim as moot after PERB declared that the parties were at impasse and appointed a public arbitration panel. *Patrolmen's Benevolent Ass'n*, Decision No. B-21-2004.

percent wage increase if the Union could generate productivity savings. The PBA included the City's proposals in its July 2004 newsletter posted on its website. On July 28, after mediation proved unfruitful, the PBA filed a petition for interest arbitration with PERB. The petition in the instant case was filed on September 14, 2004, before the arbitration hearings were scheduled. This office takes administrative notice that on June 27, 2005, the arbitration panel issued its award. (PERB Case Nos. 1A2004-008; M-2004-024.)

As part of its petition, the Union attaches certain articles concerning the Mayor's comments in the fall of 2003 and early 2004 and concedes that these are offered solely as background to illustrate Bloomberg's stance on negotiations. On September 19, 2003, an article in *The New York Times* discussed a speech that the Mayor delivered to a conference of the Municipal Labor Committee, which met in Long Island:

> Mayor Michael R. Bloomberg gave an unusually pugnacious speech to municipal union leaders here today, teasing them for holding their annual retreat outside the city, **suggesting they were responsible for this year's layoffs and warning them not to expect raises unless they agree to money-saving concessions.**
>
> The blunt address was a departure for the mayor, who usually goes out of his way to appear mild-mannered in public. His speech effectively raised the curtain on the next act in the city's fiscal crisis: the city's attempt to reach labor settlements with its powerful unions, almost all of which are currently working without contracts.
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> The two sides are starting far apart. Mayor Bloomberg says there is no money in the city budget for raises, so the cost of any pay increases will have to be offset by what he calls "productivity enhancements." The unions call such concessions unfair givebacks and say their members need raises to meet their higher living expenses.
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> * * *
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> Mr. Bloomberg said at the outset of his speech that he did not intend to mince words. "My staff said that this is unlikely to make me labor's Man of the Year, but rather than sugar-coat things, I thought I'd tell it as it is," he said.
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> **He told the leaders that tax increases "funded your members' paychecks" and went on to say, "Parenthetically, let me add, I don't remember getting a lot of**

support from a number of you as I took the heat from the taxpayers."[4]

On January 10, 2004, when the Mayor was receiving criticism from the PBA for proposing a $400 rebate for homeowners, an article appeared in *The Daily News*:

> Bloomberg said he proposed giving homeowners a $400 rebate on property tax bills because **"these are the people that stood up when the going got tough and we needed help."**
>
> **"So they're getting help now," Bloomberg said on his weekly radio show." "Now, what you'll see is other people screaming, 'Oh, I'm not getting anything back now.' Yeah, well, you know, when you do something and help us . . . then afterward, you can get it back."**
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> **Ed Skyler, the Mayor's press secretary, confirmed Bloomberg was talking about municipal unions.**
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> **"The taxpayers . . . stepped up to the plate and bailed the city out of the fiscal crisis. The unions still haven't made any sacrifices."**
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> * * *
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> "The Mayor is fond of saying that he wishes he could pay New York City's police officers more," Police Benevolent Association President Patrick Lynch said. "Now that the economy is turning around, evidenced by a well-deserved real estate rebate, we'll see if he is sincere."

On February 11, 2004, *The Daily News* printed a story regarding the PBA members' calling for Commissioner Raymond Kelly's dismissal:

> Chanting "Kelly must go," union delegates representing the NYPD's rank and file yesterday called on Police Commissioner Raymond Kelly to resign.
>
> Angry leaders of the Patrolmen's Benevolent Association said Kelly betrayed their 23,000 members when he quickly labeled as unjustified the Jan. 24 fatal shooting of an unarmed Brooklyn teen by a cop.

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[4] The statements to which the Union objects and which are quoted in its pleadings are highlighted in bold print. The complete statements are from full transcripts of radio shows that the City has provided in its answer or from newspaper articles that the Union has provided in its petition. Unless otherwise noted, the transcripts and articles are copied verbatim, including punctuation and grammar errors.

> At a meeting in Queens, 400 PBA delegates passed a unanimous vote of no-confidence in Kelly's leadership.
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> * * *
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> But Mayor Bloomberg was quick to defend Kelly and take aim at the PBA.
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> **"We should take a no-confidence vote in the PBA,"** Bloomberg said. "We have the best police commissioner this city has ever seen. He's done exactly what's right."

A *New York Times* article appeared on March 24, 2004, after PBA President Patrick Lynch requested a citywide audit of the Police Department's crime statistics:

> The presidents of the main police union and the sergeants union said yesterday that political pressure to keep the crime rate down was leading some precinct commanders to fudge their numbers. They contend that there were more rapes, robberies and other felonies in the city than have been made public.
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> They offered little evidence to support their claim, which was made as the city and the union have been battling over wages and the failure to reach a new contract for the force.
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> The assertion drew a stinging rebuke from Mayor Michael R. Bloomberg, who, at his own news conference later in the day, suggested that in making such charges the police union leadership was implicitly insulting its own members.
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> "You can't have it both ways," he said. . . . "You can't have a billboard in Times Square claiming you're doing such a great job and therefore need a raise, and then the same guy goes out on the steps of wherever he gave his press conference and claim that the success of the N.Y.P.D. is inflated."
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> The mayor continued, **"I'm a bigger advocate, a fan, of the members of the P.B.A. than apparently the union leadership is."**

On July 19, 2004, the PBA, along with certain other unions, began "informational picketing" outside Madison Square Garden ("MSG"), where the Republican National Convention ("RNC") would take place. The PBA leadership explained its efforts during the summer to members in a PBA Newsletter (October 2004, Vol. 6, No. 3):

> The PBA and its membership, in an effort without precedent in the history of the organization, spent a great part of the summer working around the clock spreading the

> message that the city continues to mistreat New York City Police Officers in bargaining. . . . Commencing at 6 a.m. on July 19th in the pouring rain, and continuing around the clock for over a week, the PBA publicly picketed and leafletted at MSG. . . . All those coming and going at MSG . . . were greeted by our leaftletters and demonstrators communicating our message about the unfair pay structure and the City's refusal to bargain. We made clear that zeros are, and always will be, unacceptable for New York City Police Officers. . . .
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> * * *
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> To supplement the media coverage of the demonstrations, we arranged a number of press conferences with different themes to keep our issues front and center and newsworthy. This served to ensure continued coverage of what was our central theme – the contract dispute. We also took out newspaper ads, hired roving billboard trucks (which circled the Mayor at every stop), distributed flyers . . . , and participated in media interviews.

The Mayor's comments that the Union alleges violated the NYCCBL were made during the summer of 2004, when, after the three mediation sessions, both parties made statements to the media concerning bargaining. On July 23 the Mayor appeared, as usual, on the John Gambling weekly radio show on WABC, 770 AM. Gambling noted that the UFA, PBA, and United Federation of Teachers were carrying around billboards and were putting pressure on the Mayor to finalize a contract. Bloomberg responded that the City does not have much money and that the unions were not standing with him asking for a tax raise. Other unions, the Mayor said, ratified their contracts by a 95% vote, so they were happy with the settlements. The Mayor continued:

> **You have got to remember that a lot of this is not driven by what the union members want; It's driven by the union leaders who are running for re-election all of the time**. They have got to show that they are stronger than everybody else. And so they go out there and yell and scream and it has to do with the internal politics. If one of these days what happens, what will happen is, the members will say, listen: we are tired of you guys out there yelling and screaming and taking us no place, just to advance your careers, **let's change leadership of these unions and put in people who care about the union members and sit down and try to find the ways to generate productivity saving so that we can pay our municipal workers more.** What we've said is, 'We've given as much, we've offered as much money as we have and we'll pay more, but you have to help us find ways to do more with less. We are not going to lay anybody off. You downsize through attrition, we need changes in

> work rules, more flexibility. And with the monies we save, a big chunk of that will give you an even bigger raise. But no union leaders, least these union leaders, don't have the courage to stand up to their members, like some of the other union leaders did and say, 'Look the real world is even though we'd like more, the City just doesn't have any more money. And all of the yelling and screaming and posturing isn't going to do anything. Let's be rational and sit down. . . .

On July 28, the PBA along with the UFA began "shadowing" the Mayor at City Hall and at public events and did so through the RNC on September 2, 2004. PBA members carried signs such as: "Billionaire Bloomberg says pay for your own raises. Police and Firefighters pay every day . . . in blood," and "No contract, no convention!" On August 14, *The New York Times* reported on comments made during the Mayor's weekly radio address:

> **Mr. Bloomberg . . . contended that members of the Patrolmen's Benevolent Association and the Uniformed Firefighters Association could have seen an 8 percent increase in their salaries "almost overnight," which would include retroactive raises, if their leaders had been willing to agree to the city's productivity enhancements.**
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> **"The trouble is that the leaders of their unions are afraid to go back and even discuss it with them because these are unions that have a history of throwing out their leaders, you know, with monotonous regularity," he said.**
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> * * *
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> "I think it's an outright lie," said Mr. Lynch, who added that the mayor's comments would only make Mr. Lynch more popular with his members. "We've brought the insulting offers to our members and posted them on the Web site for all to see. They do not like them."

Around 1:00 o'clock in the morning on August 18, members of the PBA and the UFA rallied outside the Mayor's home. Carrying placards, they chanted, "Strike!" and called for fair pay.

During the August 20 radio address, Bloomberg responded to Gambling's point that the union leaders were saying that the City's offer was a "ridiculous" four percent raise. Bloomberg declared that a few unions refused to find ways to generate money for a raise.

> This city doesn't have any money, people don't want their taxes to go up. We've got

> half of the City's workforce who found ways so that they can get paid more; and here is a couple of unions that they think that they can intimidate the Mayor. They threaten my press secretary; they screamed 'we know where you live.' I mean that kind of behavior we're just not going to tolerate. They at 1:30 in the morning at the corner of my street started yelling and waking up everybody, that's not going to accomplish anything. They've said, they've spent a lot of their union members dues on ads, which don't accomplish anything whatsoever. And it's all designed for the union management to be able to say to their members, 'you know we tried, we tried, we tried. . . .' Last time the police union, the PBA, the management walked away from a big raise because they were afraid to go to their members and see if their members wouldn't rather have more money and a few changes in the work rules. These guys are leading from the back of the pack, not from the front, and when they sit there and say 'we can't control our members' that kind of inflammatory talk is outrageous. There will not be a strike in the city. The police department and fire department are made up of men and women who care about this city and they know what the law and they most importantly know what their responsibility is and the public will be protected. **There is a handful of union leaders that have these cushy jobs. They get paid by the police department and paid by the union and they just don't want to lose them.** And that's what you see here.

As a remedy, the Union requests that this Board direct the City to cease and desist from using the media to address the union membership and disparage the union leadership with the intent to influence future elections.

POSITIONS OF THE PARTIES

Union's Position

The Union argues that the Mayor's comments constituted direct dealing and characterizes such conduct as an interference claim in violation of NYCCBL § 12-306(a)(1).[5] According to the Union,

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[5] NYCCBL § 12-306(a) provides in pertinent part:

It shall be an improper practice for a public employer or its agents:

(1) to interfere with, restrain or coerce public employees in the exercise of their rights granted in section 12-305 of this chapter;

* * *

(4) to refuse to bargain collectively in good faith on matters within the scope of collective bargaining with certified or designated representatives of its public employees. . . .

the Mayor engaged in direct dealing by promising a benefit and by subverting PBA members' rights to organization and representation.

First, the Union contends that the Mayor's remark that the members could have had an eight percent increase in wages if the PBA leadership had been willing to accept productivity enhancements is a promise of a benefit. The Mayor made this statement even though the PBA had previously rejected that proposal in bargaining and mediation. Thus, the Union says, the City sought to sidestep elected Union officials, the negotiating agents, by outlining directly to the membership the benefits of the City's salary proposals. The message was that the employees would be better off if they abandoned the Union. The Union also claims that the Mayor promised a renewed effort to pay its workforce more if the current Union leadership were replaced, for negotiations would be more fruitful than they had been.

Furthermore, the City's attack on the Union leaders violated the rights of members to choose its representatives free of coercive influence. By saying that the Union leadership rejected the City's offers in order to win re-election and keep their "cushy jobs," the Mayor improperly encouraged members to favor candidates other than the current leadership and thus subverted the members' organizational and representational rights. Similarly, the remark that the Union leaders did not inform their members of the City's offers subverted members' rights because it was a "blatant falsehood." These statements also fostered dissent and opposition within the membership even though the comments demonstrated a fundamental misunderstanding of the members' frustration with the City's

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§ 12-305 provides in pertinent part:
Public employees shall have the right to self-organization, to form, join or assist public employee organizations, to bargain collectively through certified employee organizations of their own choosing . . . .

bargaining tactics. The Union acknowledges that its persistence and the proximity of the "floating PBA pickets" fueled the Mayor's anger and caused him improperly to lash out against the PBA leadership.

The Union states that the direct dealing is a *per se* violation because such action is inherently destructive of important employee rights. Even if the Board does not so find, the negative statements and characterization of the circumstances manifest union animus, which helps to establish interference.

In response to the City's defense that this Board, in the public interest, should extend executive immunity to the Mayor's speech concerning negotiations, the Union argues that the Speech and Debate Clause of Article III, Section 11, of the New York State Constitution does not apply in this instance. The Mayor's comments were not protected legislative acts under this clause but were made during press conferences or his weekly radio address. Nor is a direct dealing claim "congruent" with a libel claim since the latter is based on an accusation that a statement was knowingly false or made with reckless disregard for the truth.

According to the Union, the City's defense that the remedy sought is speculative and beyond the authority of the Board is unpersuasive. A cease and desist order is a common one to correct an employer's improper practice and here the request is concrete, specifically, to cease and desist from improperly addressing the membership through the media in an effort to bargain, incite dissent, and subvert future elections.

Finally, the Union concedes that any comments made earlier than the four months before the filing of the petition are not part of the Union's claim. Rather, the Board should consider these solely as background to demonstrate the Mayor's anti-union stance during the bargaining process.

City's Position

The City contends that claims concerning the Mayor's statements made before May 15, 2004, should be dismissed as untimely since the petition in this case was filed on September 14, 2004. Under the NYCCBL, claims must be made within four months of an alleged violation; therefore, the Board should not consider the statements published on September 19, 2003, January 10, February 11, and March 24, 2004.

The City contends that the Union has failed to state a *prima facie* case – the Union has not shown that any behavior was inherently destructive or, specifically, that the City engaged in direct dealing in violation of NYCCBL § 12-306(a)(1). The Mayor, the City asserts, may give information and opinions to employees as long as he does not promise a benefit, threaten reprisal, undermine employees' organizational or representational rights, or hinder reaching an agreement.

According to the City, in this case, all the Mayor's comments were within his right to state his opinions about the status of negotiations and the reasons the contract was not resolved. First, the Mayor did not promise a benefit. His remarks were directed to the public, not at the PBA members in particular. He never stated that he would give a better offer to the members if the PBA had a different executive board. The City's proposals to the PBA were based on the economy, not on Union leaders, and were consistent with the pattern set by the settlement with District Council 37. In turn, the Mayor's public comments were consistent with the offers that the City had previously made to the PBA at the bargaining table.

Second, no statements can be construed to be a threat of reprisal since the City never said that it would take adverse employment action against any PBA member engaged in protests against the Mayor. Third, the Mayor did not subvert organizational rights. His opinions concerned the

commonly-known refusal of the PBA to accept the pattern offered. Informing the public that certain leaders get salaries from two sources cannot be construed as encouragement to the rank and file to change leadership since that fact is not altered even if the leadership is changed. Moreover, the Mayor's perceptions regarding Union history and politics were legitimate communications to the public, not a subversion of rights.

Fourth, the statements during the summer of 2004 did not impede the collective bargaining process, for the proposals had already had been offered to the PBA, which had declared an impasse in March 2004. The Mayor's comment that the leadership did not inform its members of certain proposals, even if not fully accurate, did not impede bargaining, especially since the members knew of the proposals before the Mayor spoke to the press. Thus, the Mayor's comments did not constitute direct dealing or interference.

The City raises a public policy defense that the Mayor's speech to the press and the public should be protected. Comparing direct dealing claims to libel suits, the City says that immunity applied in libel cases should be extended under the NYCCBL to the Mayor's public statements concerning collective bargaining. Such a policy would encourage unfettered discussion by elected representatives and thus would be in the public interest. Here, since the PBA raised public awareness concerning negotiations, the public should be able to hear the Mayor's views without restrictions as long as the speech does not "unambiguously interfere with statutory rights."

Finally, the City argues that the remedy requested by the PBA – directing the Mayor to "cease and desist from using the media to address the union membership and disparage the union leadership with the intent to influence future elections" – is vague. The claim that the Mayor's statements may influence the electorate in violation of § 12-306(a)(1) is so speculative as to be beyond this Board's

authority. Therefore, the City says, there is no basis to provide a remedy.

DISCUSSION

We first address the timeliness issue. Under NYCCBL § 12-306(e), claims of violations of the NYCCBL must be made within four months of the occurrence alleged to constitute the improper practice.[6] *See also* § 1-07(b)(4) of the Rules of the Office of Collective Bargaining. Untimely claims may be admissible as background information when offered to establish a continual course of violative conduct. *See Patrolmen's Benevolent Ass'n*, Decision No. B-13-2004 at 9. Here, the Union concedes that certain statements it includes in the petition are untimely and should be considered only as background information. We will therefore consider those statements solely as background.

As to the merits, the issue in this case is whether Mayor Bloomberg's statements concerning the negotiations between the PBA and the City for a new contract violated the NYCCBL. Finding that the Mayor communicated his opinions or positions in a non-coercive manner, this Board determines that the challenged public comments were permissible and do not constitute improper conduct. Accordingly, we dismiss the petition.

An employer has a right to speak to its employees about, for example, the status of negotiations, the proposals made, its positions and opinions, and its reasons for those. *See NLRB v. Pratt & Whitney Air Craft Div.*, 789 F.2d 121 (2d Cir. 1986); *Town of Greenburgh*, 32 PERB

[6] NYCCBL § 12-306(e) provides in relevant part:
A petition alleging that a public employer or its agents or a public employee organization or its agents has engaged in or is engaging in an improper practice in violation of this section may be filed with the board of collective bargaining within four months of the occurrence of the acts alleged to constitute the improper practice or of the date the petitioner knew or should have known of said occurrence. . . .

¶ 3025 (1999); *see also Committee of Interns and Residents*, Decision No. B-22-92. When a union alleges that an employer has engaged in direct dealing with employees and bypassed a union, this Board, like PERB, looks to the standard enunciated in § 8(c) of the National Labor Relations Act, 29 U.S.C. § 158(c), which reads:

> The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this sub-chapter, if such expression contains no threat of reprisal or force or promise of benefit.

See *Local 1549, District Council 37, AFSCME*, Decision No. B-17-92; *City of Rochester*, 9 PERB ¶ 4542 (1976). Thus, an employer has a right to disseminate information and to "express 'any views, argument, or opinion' in any media form" as long as the expression does not include a threat of reprisal, offer a promise of a benefit, attempt to impede reaching agreement with a union, or subvert the employees' rights of organization and representation. *See Pratt & Whitney*, 789 F.2d at 134, *quoting NLRB v. Gissel Packing Co.*, 395 U.S. 575, 617 (1969); *Social Services Employees Union, Local 371*, Decision No. B-1-2002; *Committee of Interns and Residents*, Decision No. B-22-92. An employer's attempts to persuade unit employees is not improper if the efforts are not coercive. *See Committee of Interns and Residents, supra*; *City of Albany*, 17 PERB ¶ 3068 (1984).

Direct dealing in violation of § 12-306(a)(1) and (a)(4) is characterized by actions that attempt to mislead employees or to persuade them to believe that they will best achieve their objectives directly through the employer rather than through the union; in other words, the employer, by what it says or does, attempts to establish a negotiating relationship with unit employees to the exclusion of the employees' bargaining agent. *See Americare Pine Lodge Nursing and Rehabilitation Center v. NLRB*, 164 F.3d 867 (4th Cir. 1999); *City of Buffalo*, 30 PERB ¶ 3021 (1997); *see also Local 1549,*

District Council 37, Decision No. B-17-92.

In *Social Services Employees Union*, Decision No. B-1-2002 at 9, the agency negotiated with the union concerning a move to a new facility. However, without informing the union, the agency took some employees to visit the facility, during which time the members were given information different from that given to the union. The Board found that the union did not establish a *prima facie* case of direct dealing because the agency's statements did not rise to the level of subverting the members' representational rights. In *Committee of Interns and Residents*, Decision No. B-22-92, while the parties were at impasse in negotiations, the Health and Hospitals Corporation sent a letter that, the union argued, attempted to persuade the employees to choose one retirement plan over another and constituted direct dealing. The Board found that there was no showing that the union's bargaining power was compromised or that the employees' organizational or representational rights were subverted.[7]

Several PERB cases concerning claims of direct dealing address employer comments to unit employees or to the public. In *State of New York (Governor's Office of Employee Relations*), 26 PERB ¶ 4530 (1993), during impasse procedures, the Governor's Office of Employee Relations sent employees several memoranda. One included statements that the state does not "understand the union's position" on one issue, and the union's "refusal to go public" shows that it seems "reluctant to have their own delegates aware of the true positions of the parties." *Id*. at 4584. A letter from the Governor to unit employees encouraged members to communicate with the union president: "Let him know that you want full public disclosure of both [the union's] and the State's positions on the issues that separate us . . . ." *Id*. The union argued that the statements were misrepresentations and

[7] The Board analyzed the letter only as a possible § 12-306(a)(1) violation.

demonstrated that the Governor was trying to convince members that the union was not effectively bargaining on their behalf and to get members directly involved in negotiations. PERB's Director of Public Employment Practices and Representation found that "[n]either on their face language nor in the context of the status of the parties' negotiations do the statements by the State establish direct dealing . . . ."

> These communications merely seek to "persuade" unit employees to urge their bargaining agent to action, and are not coercive or threatening on their face; they are patently negotiations rhetoric, reflecting the State's apparent frustration with the lack of an agreement.

Id.

In *City of Albany*, 17 PERB ¶ 3068, at 3107, a member of the city's negotiating team told unit employees that excessive increases in salaries might lead to layoffs and presented a roster that underlined the names of those with least seniority. In addition, the Common Council President and Corporation Counsel responded to reporters by indicating the possibility of layoffs should an arbitrator award more than the city's last offer. PERB stated that the city's representatives are entitled to express opinions as to the merits of the agreement and its potential economic consequences as long as the comments are not coercive and do not subvert the authority of the union's negotiators.

Furthermore, PERB, in looking to the context as well as the language of the statement itself, has taken into account the fact that an employer responded to what it believed was a distortion or misstatement of its position. In *City of Yonkers*, 23 PERB ¶ 3055 (1990), the City Manager sent a letter along with retroactive paychecks that had been the subject of a union demonstration and of the union president's comments. After stating that he had promised to process the checks as soon as possible, the City Manager wrote:

> Any information you received that may have led you to believe otherwise is, in fact, either a blatant lie or a purposeful distortion of the truth. . . .
> No one, not Union Leader, nor City Manager, should ever use salary earned and owed as a bargaining chip. I am sincerely sorry that [the union president] put you in the middle of the difficulties he is having with my administration.
> . . . I will simply not tolerate blatant lies or purposeful distortions on the part of any City employee. This is especially true for a union representative who has been given the trust of the membership to represent their concerns and interests in a professional manner.

Id. at 3116. Although the union asserted that the letter implied that the union was responsible for delaying salary increases, that the city controlled the employees' financial destiny, and that too aggressive a union leadership would have adverse consequences for the membership, PERB held that the letter was an "opinionated response" to what the City Manager considered to be a distortion by the union president. *Id*. at 3117.

On the other hand, direct dealing was found in *Whitney Point Central School District*, 16 PERB ¶ 4574 (1983), when, during mediation with the teachers' union, a principal called three teachers individually into his office and presented them with alternative salary proposals, even though none of the teachers was on the negotiating team, which received the proposals later in the day. The administrative law judge stated that although an employer may poll employees and communicate with them and with the public, the employer may not present new salary proposals to individual members prior to presenting them to the union, for such communication bypasses the union and deprives members of their right to be represented by their chosen negotiating agent. *See also North Colonie Central School District*, 18 PERB ¶ 4600 (1985) (memorandum to individual employees containing new negotiating proposals is impermissible direct dealing); *Local 1549, District Council 37*, Decision No. B-17-92 (motion to dismiss denied and hearing on direct dealing ordered when agency took employees, many of whom had pending grievances or arbitrations, into meeting, refused to allow

union representatives to attend, and allegedly discussed working conditions, grievance filings, and troubles with union leaders).

In the instant case, we do not find that the City's conduct constituted direct dealing.[8] First, the Union contends that the Mayor's mid-August statement that the PBA "could have seen an 8 percent increase . . . if their leaders had been willing to agree to the city's productivity enhancements" was a proposal made directly to the membership even though the Mayor knew that the Union leadership had rejected the offer. We disagree with the Union's assertion that the Mayor, in his public radio address, was making a bargaining offer to members and sidestepping the elected Union officials. We do not interpret the language on its face or in context to demonstrate a promise to pay greater wages than were offered to the negotiating team if the members replaced their leaders. Bloomberg's comments explained the economic status of negotiations and did not attempt to establish a negotiating relationship with unit employees or coerce members to abandon their Union. *See City of Albany*, 17 PERB ¶ 3068, at 3107.

Second, the Mayor's comments about the Union leaders did not threaten reprisal or subvert

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[8] The majority analyzes this case based on the record before it. While the dissent refers to matters outside the record, the majority declines to consider this information, albeit public, never offered by the parties in this case.

The dissent attempts to add for the first time in its opinion here fragments of newspaper articles and a television interview to which the PBA never referred. While the majority, of course, agrees with the dissent that the Board may administratively notice public record statements (*see* dissenting opinion at 3), we refuse to reach into the pleadings of an unconsolidated similar case, which the UFA withdrew by mutual consent of the parties, to determine the outcome of this case as presented by the PBA. We find that considering public record statements outside the record unfair to the opposing party and inappropriate in this context and at this time.

Moreover, the dissent's mootness argument is irrelevant (*see* dissenting opinion at 2). In the instant decision, we fully address the merits of the case. As to the case no longer pending, which the petitioner, the UFA, has withdrawn, we will not exercise jurisdiction or address any issue whatsoever.

the members' representational rights. For example, the statement that the leaders' recalcitrance in accepting the City's offer was driven not by what the members wanted but by the leaders' desire to get re-elected was the Mayor's perception of negotiation tactics and does not demonstrate an attempt to favor one candidate over another or influence the electorate in a coercive manner. Nor was there coercion in the notion that one day the members would be tired of the "yelling and screaming" and say: "let's change leadership of these unions and put in people who care about the union members and sit down and try to find the ways to generate productivity saving so that we can pay our municipal workers more." While these opinions may not have fostered harmonious labor relations, there is no showing that members, in a subversion of their rights, were discouraged from engaging in free elections to choose their representatives.

Similarly, the Mayor's comment that "The trouble is that the leaders of their unions are afraid to go back and even discuss it [wage offer] with them [members] because these are unions that have a history of throwing out their leaders, you know, with monotonous regularity," is analogous to the Governor's lawful statement in *State of New York (Governor's Office of Employee Relations)*, 26 PERB ¶ 4530, at 4584, that the union was reluctant to have its own delegates "aware of the true positions of the parties." Even if the Mayor misrepresented that the leaders had not informed their constituents, the comment falls under what PERB calls "patently negotiations rhetoric" and did not subvert the members' organizational and representational rights. We also find that the bald allegation that Bloomberg's remarks caused dissent within the membership is insufficient to show a bargaining violation.

Furthermore, the Mayor's statements reflect his frustration and were an understandable response to the Union's informational picketing, "shadowing" him around the City, and creating a

media blitz, which included attacks on him and his proposals. *See City of Yonkers*, 23 PERB ¶ 3055. Indeed, the PBA acknowledges that some of the Mayor's statements were in reaction to the Union's persistence and proximity. In addition, the Mayor attempted to correct what he believed to be distortions. For example, to accusations that the City refused to bargain, the Mayor replied that the PBA leaders should "sit down and try to find the ways to generate productivity." Essentially, each party was laying blame on the other for failure to reach a collective bargaining agreement.

While the dissenting opinion characterizes the Mayor's statements as a "blatant attempt at intimidation," this Board determines that Bloomberg's responses to reporters' questions, even if some could be construed as intemperate, contain no threat of reprisal, promise of a benefit, attempt to impede reaching of an agreement, or attempt to subvert the employees' organizational or representational rights. We found direct dealing in *Uniformed Firefighters Ass'n*, Decision No. B-5-2002, when the commissioner, among other things, published in a newsletter sent solely to firefighters a message that criticized the union leadership and specifically attempted to persuade bargaining unit members that a City proposal would contain particular benefits for them. After closely assessing PERB decisions, we decline to follow *Uniformed Firefighters Ass'n* and are not persuaded, after examining the totality of the circumstances in that case and the cases now before us, that the Mayor's statements constituted direct dealing in violation of § 12-306(a)(1) and (a)(4).

In addition, we do not find that the City's conduct constitutes an independent interference violation under § 12-306(a)(1). Statements similar to those made here have been found not to establish interference. In *Yonkers Board of Education*, 10 PERB ¶ 3057 (1977), the union alleged that a member of the board vilified the union president at public meetings and exerted pressure on members to relinquish benefits specified in their collective bargaining agreement. PERB noted:

> He [the board member] also said that "he had talked to some teachers and that he didn't really believe that the union represented the teachers in Yonkers." He misstated Mr. Tice's [union president's] name as "mice, lice or whatever it is," and complained that Mr. Tice worked only two periods a day under the released time provisions of the agreement. This was a misstatement of facts. . . . Other comments included, "Teachers managed to increase their pensions by $1.5 million . . . they took care of themselves and not the kids," and "Mr. Tice, you are an insult to Yonkers." At [a meeting, the board member] made clear that his criticism of Mr. Tice was directed at his role as a union leader and not as a teacher or an individual.

Id. at 3101 n.2. While PERB found these statements "questionable" and "not conducive to harmonious labor relations," they did not violate the statute. *Id*. at 3102.

Similarly, when a town's Chief of Police sent employees a memorandum that called a union member's grievance a "contemptible 'act' rooted not in a deprivation of rights but of greed," and when the Chief called the union's president and attorney "sleazebags" and "shysters" at a labor-management meeting, PERB found that the comments may have been "vitriolic," but the employer did not interfere with the union because the communications were opinions and were stated in a non-coercive manner. *Town of Greenburgh*, 32 PERB ¶ 3025, at 3053-3054.

Here, remarks about PBA President Lynch or other Union leaders do not constitute interference in violation of § 12-306(a)(1) of the NYCCBL. The comment that a "handful of union leaders . . . have these cushy jobs. They get paid by the police department and paid by the union and they just don't want to lose them," is similar to the employer's statement in *Yonkers Board of Education*, 10 PERB ¶ 3057, at 3101, that the union president worked only two periods a day under the released time provisions of the parties' CBA. Although the employer in *Yonkers* misstated the facts, PERB found no interference. Nor do any of the other statements pointed out by the Union interfere with the Union as a bargaining agent or deter the members' protected activity, for the utterances were not threatening or coercive. *See Town of Greenburgh*, 32 PERB ¶ 3025, at 3054-

3055; *cf. Assistant Deputy Wardens Ass'n*, Decision No. B-19-95 at 40 (statements to employees that they would receive extra wages if they would withdraw a representation petition innately coercive).

Because we have found that the Mayor did not engage in direct dealing, in violation of NYCCBL § 12-306(a)(1) and (a)(4), or interfere with, restrain, or coerce PBA members in the exercise of their rights, in violation of § 12-306(a)(1), we dismiss the petition in its entirety. Therefore, we need not reach the City's defenses that the Mayor should receive immunity for all public statements concerning collective bargaining or that the Board has no authority to grant the remedy sought.

ORDER

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

ORDERED, that the improper practice petition, BCB-2431-04, filed by Patrolmen's Benevolent Association of the City of New York, be, and the same hereby is, denied in its entirety.

Dated: February 28, 2006
New York, New York

MARLENE A. GOLD
CHAIR

GEORGE NICOLAU
MEMBER

CAROL A. WITTENBERG
MEMBER

ERNEST F. HART
MEMBER

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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In the Matter of the Improper Practice Proceeding
-between-

PATROLMEN'S BENEVOLENT ASSOCIATION
Of the CITY OF NEW YORK

Petitioner,

Decision No. B-10-2005
Docket No. BCB-2431-04

-and-

THE CITY OF NEW YORK and the
HONORABLE MAYOR MICHAEL BLOOMBERG

Respondents

---x

DISSENTING OPINION

The majority holds that a cognizable Improper Practice is not stated where the documentary record demonstrates, without challenge, a series of increasingly strident and intemperate assaults in the media by ranking officials of the City of New York, including the Mayor of the City of New York, upon the leadership of a union that was not acceding to the City's wishes during collective bargaining. Worse, the majority sanctions a blatant appeal by the City, as expressed by its Mayor, to oust that union leadership in return for progress in the then-pending collective bargaining negotiations, a proscribed practice frequently termed "direct dealing."

I dissent. This record reflects a blatant attempt at intimidation, proscribed direct dealing and effort to undermine a union's leadership by ad hominem attacks at a most critical juncture of bargaining. Worse, the record reflects that the City made clear the promise that, if the union

leadership was ousted, the City would then "sit down" and "find a way" to pay members "more" - a blatant effort at proscribed direct dealing. If, under these circumstances, a cognizable Improper Practice is not stated, then what on earth can be said to abridge NYCCBL §§ 12-306(a)(1) and (a)(4).

Preliminarily, two observations are merited. First, this case closely tracks Stephen J. Cassidy, and the Uniformed Firefighters Association, Local 94, IAFF, AFL-CIO Dkt. No. BCB-2429-04, which was docketed contemporaneously herewith. Detailed and documented submissions were filed in both Cassidy and this case. However, as part of a contract settlement with the Uniformed Firefighters Association ("UFA") concluded after both proceedings were fully submitted and were sub judice, Cassidy was withdrawn as part of the City's belated settlement with the UFA. However, the Court of Appeals has made abundantly clear that in matters, such as this, mootness does not disable a tribunal from articulating a determination involving issues of public importance, relevant on a Statewide basis, "which are likely to recur but which typically escape review because of the time it takes" to secure review. Fosmire v. Nicoleau, 75 N.Y.2d 218, 219 (1990). See also, Soper v. Storar, 52 N.Y.2d 363, 369-70 (1981); Oliver v. Postel, 30 N.Y.2d 171, 177 (1972). And that is especially true where, as here, the facts in Cassidy were inextricably intertwined with those at issue here. Thus, the challenged attacks and proscribed direct dealing were, by and large, simultaneously aimed at the leadership of both the UFA and Petitioner, the Patrolmen's Benevolent Association ("PBA"), and simultaneously targeted the membership of both unions. For these purposes, the conduct complained of in Cassidy and here is simply indistinguishable. Hence, this dissent will focus on the totality of the relevant facts, as presented here and in the Cassidy record on file with this Board, as well as the public record

contemporaneously and quite deliberately fashioned in the public media by the City.

Second, the majority maintains that we cannot consider relevant public record materials (e.g., newspaper articles) referenced in Cassidy but not specifically cited herein, this despite the fact that those public record statements by ranking City officials referred simultaneously to the PBA and the UFA and their respective leaders. The argument lacks merit. Such background facts and public record statements, cumulatively supportive of the PBA's explicated and unambiguous charge that the City engaged in the proscribed conduct, may, as a matter of law, be judicially noticed and considered in appropriate context. See, e.g., Med. Malpractice Ins. Ass'n v. Super. Of Ins. Of the State of New york, 72 N.Y. 2d 753, 764 (1988); Grebow v. City of New York, 173 Misc. 2d 473, 479 (Sup. Ct. N.Y. Co., 1997); Bregman v. Meehan, 125 Misc. 2d 332, 340 (Sup. Ct. Nassau Co., 1984); Bucholtz v. Sirotkin Travel Ltd., 74 Misc. 2d 180 182 (Dist. Ct. Nassau Co., 1973).

The documentary record shows, by way of background, that in and before July 2004, Mayor Bloomberg, in press commentary and on the airwaves, made a series of statements sharply critical of the leadership of the PBA, as well as the UFA. Thus, on or about July 19, 2004, the Mayor and members of his public relations staff began issuing a series of attacks upon Stephen J. Cassidy, President of the UFA, and the UFA, as well as upon the leadership of the PBA. The New York Daily News[1] published on July 19, 2004 the following statement:

Bloomberg spokesman Ed Skyler, in an unusually sharp

[1]This particular public record statement and widely disseminated article was referenced in Cassidy but was not specifically cited herein. As previously noted, the Panel has the right to judicially notice this public record background statement in the context of these proceedings. More complete statements of this and the other cited media reports set forth below appear in the full transcripts of radio shows or newspaper articles that the City provided in its filed answers.

> rebuke, said the mayor had reached labor agreements with other unions representing more than half the city's workforce **because they are led by "responsible leaders who know how to negotiate."**
>
> **"The unions protesting continue to prove that the only thing their leaders are good at is grandstanding and diverting attention from the fact that they are incapable of coming to the table and getting raises for their members," Skyler said.**

(Emphasis added).

The next day, July 20, 2004, the Mayor weighed in, stating, according to Newsday [2] :

> **The first thing you have to have is responsible labor leaders who want to come to the table and try to find a way for us to generate the cash that we don't have to pay our municipal work force,"** Bloomberg said at a news conference in the Bronx.

(Emphasis added).

The intensity and focus of the vituperation sharpened when, on July 23, 2004, the Mayor stated on WABC Radio:

> **You have got to remember that a lot of this is not driven by what the union members want; it's driven by the union leaders who are running for re-election all of the time.** They have got to show that they are stronger than everybody else. And so they go out there and yell and scream and it has to do with the internal politics. If one of these days what happens, what will happen is, the members will say, listen: we are tired of you guys out there yelling and screaming and taking us no place, just to advance your careers, **let's change leadership of these unions and put in people who care about the union members and sit down and try to find the ways to generate productivity saving so that we can pay our municipal workers more.**

(Emphasis added).

[2]. See fn 1, supra.

The suggestion by the Mayor, an experienced business man, to "change leadership of these unions and put in people who care about the union members" was, unquestionably, deliberately intimidating and coercive. It plainly encouraged such action. The Mayor's further suggestion that the City would then "sit down and try to find the ways … so that we can pay our municipal workers more" was indisputably a promise of reward. It was a plain attempt at proscribed direct dealing by the City over the heads of the union leadership. Indeed, if any doubt remained, the Mayor's spokesman, invoking the Mayor's considerable wealth and experience, stated, according to a Daily News article on July 23, 2004:

> **Bloomberg spokesman Ed Skyler said, One of the reasons the mayor became wealthy is because he knows how to negotiate. If the members of these unions were fortunate, they would have leaders that were capable of doing that so they could get well-deserved raises."**

(Emphasis added).

And the next day, still another member of the mayoral public relations staff, Jordan Barowitz, was quoted in the New York Times as stating:

> **"The hard-working members of the Police and Fire Departments would be better served by union leaders who had the guts to negotiate a contract at the bargaining table instead of engaging in lame theatrics."**

(Emphasis added).

On August 11, the Mayor's senior political advisor and Communications Director, William Cunningham, joined with the Mayor's spokesman, Ed Skyler, in stating on the television program Inside City Hall …

> **Mr. Cunningham: Look, they're engaged in theatrics, they're engaged in some stunts, they're saying things that don't show**

leadership. The union leaders are not showing leadership, they should be at the table working out a better deal for their members. Instead they're raising the specter of things they can't control, they don't know, they're opening up a Pandora's box here and it's not worthy of the men and women of the police and fire departments of this city.

Mr. Skyler: I think that they're been misinformed….The reality is, both the PBA and the UFT haven't really sought to negotiate. We have come to them time and time again, with ways to get raises for their month - their members, up to eight, nine percent, if they will give productivity.

Mr. Skyler: The reality is, the union leaders are petrified of making a deal. They'd rather have the deal shoved down their throat by PERB so they can blame PERB, because they are - just don't have unfortunately the strength to make a deal and be able to sell it to their members.

Mr. Cunningham: …and Steve Cassidy and Pat Lynch got to represent their members and they're not doing it. [2]

(Emphasis added).

Further, as the majority notes, on August 14, 2004 (well within the period of limitations), the New York Times reported that in his weekly radio address the Mayor made following statement:

… the members of the Patrolmen's Benevolent Association and the Uniformed Firefighters Association could have seen an 8 per cent increase "almost overnight,' which would include retroactive raises, if the leaders had been willing to agree to the city's productivity enhancements.

The trouble is that the leaders of their unions are afraid to go back and even discuss it with them because these are unions that have a history of throwing out their leaders, you know, with monotonous regularity ….

[2] See fn. 1, supra

(Emphasis added).

NYCCBL § 12-306 (a) (4) provides in explicit terms that it is an improper practice for an employer or its agent:

> (4) to refuse to bargain collectively in good faith on matters within the scope of collective bargaining with the certified or designated representatives of its public employees.

Plainly, this attempt to go over the heads of the union leadership - by an attack on their integrity and for supposedly failing to report to the membership - and by suggesting that a specific raise was at hand but for the leaderships obduracy abridges NYCCBL § 12-306 (a) (4). Indeed, the City's public proclamation, through its Mayor, that, if the union leadership were ousted, the Mayor would "sit down" and "find ways" to pay the membership "more" says it all, especially in the context of the totality of this record. Manifestly, such conduct subverts the employee's right of organization and representation as expressed in NLRB v. Pratt & Whitney Air Craft Div., 789 F2d 121 at 134 (2d Cir. 1986), quoting NLRB v. Gissel Packing Co., 395 U.S. 575, 617 (1969)., NYCCBL § 12-306(a)(1) and (4).

Moreover, this record demonstrates, beyond cavil, abridgment of NYCCBL § 12-306 (a) (1) by attempts, in readily understandable terms, to oust the union leadership and promising then, but only then, to "sit down " and to then "find ways" to get more money for the membership. " Such action seeks to interfere with, restrain or coerce public employees in the exercise of their rights granted in section 12-305" by seeking to undermine the rights of these public employees "to bargain collectively through [the] certified employees organizations of their choosing."

The majority maintains that these comments simply "… explained the economic status of negotiations and did not attempt to … coerce members to abandon their union." The attempted

explanation is without merit. One cannot read the Mayor's statements, much less against the checkered background of like prior statements by him and his senior staff earlier in this process, and conclude this was simply a report on "the economic status of the negotiations." What, other than an attempt to undermine the duly certified union and its leadership in its efforts to bargain collectively, can be said to have been intended by the above-quoted attacks on the leadership of that union? Nothing.[3] And the point is made irrefutable by the subsequent comments of the Mayor in his August 20, 2004 radio address:

> … They've said they've spent a lot of their union members dues on ads, which don't accomplish anything whatsoever. And its all designed for the union management to be able to say to their members, 'you know we tried, we tried, we tried …' Last time the police union, the PBA, the management walked away from a big raise because they were afraid to go to their members and see if their members wouldn't

(Emphasis added). [4]

In my view a cognizable Improper Practice is manifest. That view is buttressed by this Board's holding in Uniformed Firefighters Association, B-5-2002; Cf. Local 1549 of District

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[3]The majority attempts to excuse the Mayor's excesses by divining that they are "understandable" reflections of his "frustration" with informational picketing and the like.. Peaceful informational picketing long ago received express sanction. Thornhill v. Alabama, 310 U.S. 88 (1940); See also, American Federation of Labor v. Swing, 312 U.S. 321 (1941); City of Buffalo, 15 P.E.R.B. 3123 (1982). It has been part and parcel of labor relations in both the public and private sector for decades. And there are many entirely appropriate ways in which one can express ones annoyance or can correct perceived misstatements short of the intemperate utterances at issue here. See e.g., fn 6, intra. It defies credulity to suggest that these utterances by an experienced and intellectually gifted businessman with a vast coterie of advisers had any purpose other than to undermine the union and its leadership at a crucial juncture.

[4]The concepts of released time and of dual compensation are long standing contractual provisos and practices adhered to by this Administration and predecessor administrations as to virtually all, if not all, public employee unions. To state these accepted practices - followed scrupulously by this Administration - in the pejorative terms here employed could have had no purpose other that to inflame.

> rather have more money and a few changes in the work rules. **These guys are leading from the back of the pack, not from the front, when they sit here and say 'we can't control our members' …. There is a handful of union leaders that have these cushy jobs. They get paid by the police department and paid by the union and they just don't want to lose them. And that's what you see here.**

Council #37, B-17-92. Significantly, the majority cites, but then declines to follow, the first above-cited case. Instead, the majority cites a series of administrative holdings. However, those cases (like those we cite) are all fact intensive and fact specific. As such, they provide limited guidance or meaningful precedent beyond the direct facts at issue there. To paraphrase Justice Potter Stewart's observation in Jacobellis v. Ohio, 378 U.S. 184, 197 (1964), one may not be able to articulate a bright line for what is proscribed excess and under what circumstances a cognizable improper practice is stated, "[b]ut I know it when I see it…." and this record makes it plain beyond cavil that minimal standards were knowingly abridged. At the very least, judicial guidance is warranted.

While the majority finds it unnecessary to reach the point, the conclusion stated above requires me to address Respondents' "Watergate" or Nixonian defense of Executive Immunity. The claim is ludicrous and offends intelligence. When a public official voluntarily takes to the airwaves or to press conferences to publicly tout a viewpoint he cannot then excuse his own inappropriate statements by the cry of Executive Immunity. It is reminiscent of the oft-told tale of the man who, upon committing matricide and patricide, seeks to invoke sympathy by claiming orphanage. There is nothing, either in Constitutional stricture nor in established case law, that supports that notion under these circumstances. And that is particularly true where, as here, the relief sought is not directed to that public official and his personal liability is not at issue; instead,

the thrust of the wrong and its remedy is as against the City based on the conduct of an agent or employee.

What remains, however, is a thorny First Amendment issue. There can be no question that the Mayor had an unquestioned right to speak his mind. That right is constitutionally protected. Indeed, in the totality of the circumstances, the Mayor's right to properly speak out cannot be gainsaid. Indeed, he did so repeatedly and in terms that were pointed, yet did not cross the proscribed divide noted above.[5] This proceeding does not seek to preclude or punish the Mayor from properly speaking out. Instead, it seeks a declaration, recognized by statute, that an Improper Practice, by the City has occurred within the purview of NYCCBL §§ 12-306(a)(1) and (a)(4) where, in the midst of collective bargaining, the City, through its senior officialdom engages in direct dealing by expressly attacking the union officials with which it is charged to bargain in good faith, calls for their ouster based on their position in the bargaining process and makes clear that their successors will have a more receptive audience and opportunity for a quicker and better deal.. In my view that conclusion is compelled on this record. And the precedent which would otherwise be implicated would eviscerate fundamental protections and insure repetition of practices that the statute proscribed for good reason - they undermine in vital respects collective bargaining and stability in labor relations.

I would accordingly hold that the Improper Practice petition is sustained and a finding is made that the City of New York, through its employees and agents, including the Mayor, has engaged in an Improper Practice.

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[5] See, e.g., Winnie Hu and Steven Greehouse, Unlikely Partners in a Protest for Pay Raises, New York Times, June 9, 2004; Steven Greenhouse, New York Police and Fire Unions to Picket G.O.P. Events, New York Times, July 24, 2004.

February 27, 2006

CHARLES G. MOERDLER
Member

BRUCE H. SIMON
Member