CEU, L. 237, 14 OCB2d 26 (BCB 2021)

(IP) (Docket No. BCB-4425-21)

Summary of Decision*:** The Union alleged that the NYC Public Advocate violated NYCCBL § 12-306(a)(1) by interfering with the collective bargaining relationship between the Union, the City, and the NYPD and by engaging in direct dealing with Union members. The City argues that the Public Advocate is not the employer of the employees in question and therefore has no duty to bargain over legislative proposals or comments made in support of such legislation. It also argues that his actions did not interfere with employees' rights, nor did his statements constitute direct dealing since he did not make any threatening statements or promise any benefits. The Board found that the Public Advocate's statements did not rise to the level of direct dealing or an independent claim of interference in violation of NYCCBL § 12-306(a)(1). Accordingly, the petition was dismissed. ***(Official decision follows.)

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

In the Matter of the Improper Practice Proceeding

-between-

CITY EMPLOYEES UNION, LOCAL 237,

Petitioner,

-and-

JUMAANE D. WILLIAMS, in his official capacity as NEW YORK CITY PUBLIC ADVOCATE, THE CITY OF NEW YORK, and THE NEW YORK CITY POLICE DEPARTMENT,

Respondents.

DECISION AND ORDER

On April 12, 2021, City Employees Union, Local 237 ("Union") filed a verified improper practice petition against Jumaane D. Williams, in his official capacity as New York City Public Advocate ("Public Advocate"), the City of New York ("City"), and the New York City Police Department ("NYPD"). The Union alleges that the Public Advocate violated the New York City

Collective Bargaining Law (New York City Administrative Code, Title 12, Chapter 3) ("NYCCBL") § 12-306(a)(1) by interfering with the collective bargaining relationship between the Union, the City, and the NYPD and by engaging in direct dealing with Union members. The City argues that the Public Advocate is not the employer of the employees in question and therefore has no duty to bargain over legislative proposals or comments made in support of such legislation. It also argues that his actions did not interfere with employees' rights, nor did his statements constitute direct dealing since he did not make any threatening statements or promise any benefits. The Board finds that the Public Advocate's statements do not rise to the level of direct dealing or an independent claim of interference in violation of NYCCBL § 12-306(a)(1). Accordingly, the petition is dismissed.

BACKGROUND

The Union represents approximately 5,000 employees in the competitive civil service title of School Safety Agent ("SSA"). SSAs are employed by the NYPD in its School Safety Division. SSAs are "Special Patrolmen" and certified peace officers pursuant to § 2.10.27 of the Criminal Procedure Law. Their duties include "patrolling school facilities, operating scanning equipment to detect weapons and other contraband, verifying the identities of individuals on school grounds, removing unauthorized persons, and escorting visitors." (Pet. ¶ 13)

Jumaane D. Williams occupies the position of Public Advocate. The Public Advocate is an elected official and a non-voting member of the New York City Council ("City Council"), with the right to introduce and co-sponsor legislation. The Public Advocate "serves as an ombudsman for [C]ity government, providing oversight for [C]ity agencies, investigating citizens' complaints about [C]ity services, and making proposals to address perceived shortcomings or failures of those

services." (Ans. ¶ 14) The Office of the Public Advocate does not employ any individuals represented by the Union.

In June 2020, a wave of protests began across the country after the killing of George Floyd by a police officer in Minneapolis, Minnesota. According to the Union, this incident prompted "a nationwide conversation about police use of force, accountability, and oversight." (Pet. ¶ 15) On June 30, 2020, the Public Advocate issued a press release calling for a "full hiring freeze for the NYPD" and a "commitment from the Mayor and Council for a just transition away from the current school safety model towards a model truly centered on restorative justice, one that repurposes, redistributes and reimagines public safety in schools." (Pet., Ex. A)

On January 19, 2021, the City Council announced it would introduce a legislative package of 11 bills and one resolution aimed at reforming the NYPD. Within the package was a bill aimed at "reforming the role" of SSAs, such that they would "no longer make arrests, carry weapons or mechanical restraints, or wear law enforcement uniforms." (Ans., Ex. A) The bill also proposed that SSAs would also be retrained, "with a focus on areas such as restorative justice, child and youth development, and de-escalation." (*Id.*) On February 18, 2021, the Public Advocate testified at a City Council hearing on the bill, stating, in part, that:

> Councilmember Constantinides' bill, Intro 2211, seeks to ensure the NYPD be fully removed from school safety from and after June 2022, except as necessary to address an imminent risk to public safety or property. I deeply respect and commend all of my colleagues and their efforts, though I believe there are a few areas where the transition plan must go further.
>
> First, there is often one voice and experience that is often missing themselves. It's that of young people, students to be exact. And the traumas of feeling surveilled and policed from the moment they wake up to when they go to sleep. Often it seems there is more law enforcement structure than any other resources that are needed for healthy and safe growth. In addition[,] many students report verbal, physical, and sexual abuse that have been committed at the hands of

school agents. Even more troubling is that neither the NYPD nor the DOE have a clear scope of the abuse. Both are unable to produce the number of officers in schools who commit these egregious acts because there is no way for a young person to report misconduct outside of IAB – a process even adult New Yorkers have a hard time navigating.

Additionally[,] it is telling that the application process to become an agent is not through a process that begins with intent to work in education or even with young people. More often than not it begins with an interest in law enforcement. This is the framework that we are working from.

Having said that, I also want to be clear that I have worked with many SSA employees. I need to make clear that we can't paint everyone with the same brush. I have worked with some personally, back when I was a council member, to create programs and environments to enrich young people's lives. We have to be clear about that. Still, we cannot ignore the context that brings us here.

To that end a true discussion must begin to address the existing amount of current police infrastructure in schools including the high number of currently NYPD-trained school safety agents in schools, or that simply transferring jurisdictional control over SSAs with nothing else can complicate restorative justice training and practices. While removing school safety personnel from the jurisdiction of NYPD is absolutely necessary, we must commit to a true, just transition from the current SSA structure.

We must also think about the potential employment impact that can have on school safety agents, many of whom are people of more color, many of whom are women. These individuals are some of our City's most marginalized employees, and we need to ensure they can maintain their livelihoods and their family. If we are going to remove them from our schools, then we need to make certain they will receive job placements elsewhere, for those that cannot work in the new restorative justice model. That is why it is imperative that we pass Chair Treyger's bill, Intro 2226. This legislation would require the NYPD and the DOE to report on the employment turnover of school safety personnel after the transfer of jurisdiction. The data will tell us if this change will be contributing to our City's already high unemployment rate of 11.4 percent. Job security for people of more color is essential, especially during this pandemic.

(Pet., Ex. C) (reprinted verbatim) As of the date of this decision, none of the bills have been passed.

On March 2, 2021, the Public Advocate released a document entitled "White Paper: On Reimagining School Safety" ("White Paper"). (Pet., Ex. D) The Union contends that this document "left no doubt that Williams wants to either eliminate [SSAs] completely or redefine their duties such that they bear no resemblance to those the SSAs currently perform." (Pet. ¶ 20) In particular, the White Paper stated that "[SSAs] as currently trained and implemented . . . must be phased out of City schools." (Pet., Ex. D) It also proposed that metal detectors, wands, and other devices used to scan for firearms and other contraband be banned from schools.

On March 22, 2021, the Public Advocate wrote an "Open Letter" addressed to SSAs that was published in the New Amsterdam News. The letter stated:

> In the last few weeks, there have been two dialogues going on related to school safety. One has been a serious, inclusive conversation about how to reform and redefine public safety in a school setting. The other has been a disingenuous and false line of attack, insinuating in part that my citing public reports of law enforcement misconduct constituted a new accusation or attack on all School Safety Agents. While false, this notion has been misused by some and coupled with personal attacks to fan flames and avoid a substantive conversation on the issue.
>
> While I do believe that we need to transition away from the NYPD leading school safety, I want to be clear on several points. First, I do not believe in painting [with] a broad brush. I know that the vast majority of SSAs are committed to the well-being of young people and I have worked closely with them on projects in the past. Second, I believe that as we move to a new model, it is imperative to do so through a just transition that carefully considers the employment opportunities available to agents in a restorative justice model and maintains levels of pay and fringe benefits for employees while helping them engage with the community in a different but equally critical way.

> This is not a perfect solution, and it invites a broader, sustained, substantive conversation on the vision for school safety. Unfortunately, to this point, leadership has refused to engage in that conversation and has instead resorted to false and personal attacks. I know, though, that you all share a goal of safe schools, students, and staff, and I hope that we can collaborate on a path forward, together.

(Pet., Ex. E)

On April 5, 2021, Williams posted a video to his personal, public Facebook page.[1] The video was a recording of a livestream session in which the Public Advocate spoke about his proposals and interacted with and answered questions from visitors to his Facebook page. In the video, the Public Advocate again proposed that the NYPD should not play a role in public schools and that metal detectors should be removed. He also stated his desire to adopt a "restorative justice model . . . [that] allows for SSAs to be a part of that as well and for those that can't be a part of it we have to make sure there are jobs that respect their salary [and their pension] so that they don't lose that."[2] He further stated that "nobody wants to talk in that space, they want to talk in the space of foolishness and that's what the Union leader is doing. So some of y'all may get texts and emails by this goofy dude, the goofy brother who leads the Union." The Union avers that this statement was "obviously referring to [Union] President Floyd." (Pet. ¶ 24)

The following day, the Public Advocate sent President Floyd a letter that called attention to his White Paper and restated his proposals for transitioning away from the NYPD leading school

[1] The page contains a blue checkmark indicating that "Facebook confirmed this is the authentic profile for this public figure." *Available at:* https://www.facebook.com/profile.php?id=1046692794 (last visited October 5, 2021). The Office of the Public Advocate maintains a separate Facebook page.

[2] The City indicated that the Facebook video is available at: https://www.facebook.com/1046692794/videos/10222399712035417 (last visited October 5, 2021).

safety and having current SSAs take on new positions. It also stated that he was "committed to a just transition plan for all of these Agents that maintains levels of pay and fringe benefits, as well as any training required for their new positions as we transition to a restorative justice model." (Pet., Ex. F) Additionally, the letter reiterated statistics concerning complaints of misconduct committed by SSAs. It ended by stating, "I look forward to receiving your response, unless you prefer to continue your less constructive method of a one-sided discourse in the media. One allows you to appear to be addressing this issue; the other is more difficult, but actually shows leadership." (*Id*.)

POSITIONS OF THE PARTIES

Union's Position

The Union alleges that the Public Advocate violated NYCCBL § 12-306(a) (1) when he improperly inserted himself into matters that are the subject of negotiation between the Union, the City, and the NYPD, and held himself out as a party to that collective bargaining relationship.[3] The Union contends that the Public Advocate's statements and those issued by his office went beyond mere public debate. Rather, the Public Advocate specifically proposed that the SSA title be eliminated or that the SSA job functions and duties should be radically altered. He has also made promises with respect to salaries, pensions, and seniority. By doing this, the Union contends

[3] NYCCBL § 12-306(a) states 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[.]

that the Public Advocate created the "misimpression" that the Office of the Public Advocate has the authority to bargain with the Union over such terms and conditions of employment. (Pet. ¶ 33)

The Union avers that the Public Advocate's proposals were not limited to statements directed to the public. The Union characterizes the Public Advocate's April 6, 2021 letter to President Floyd as a demand that the Union negotiate with him over his proposed changes. The Union also argues that by improperly holding himself out as a party to the collective bargaining relationship, the Public Advocate's actions are likely to cause confusion over which public employer has authority to negotiate the terms and conditions of SSAs, thereby interfering in the Union's bargaining relationship with the NYPD and the City. The Union notes that there is "private sector labor law precedent for finding coercion and restraint of collective bargaining rights by virtue of non-employing entity interference." (Pet. ¶ 41) The Union therefore argues that the Board should hold that a third-party public employer violates the NYCCBL when it interferes in the collective bargaining relationship of other, separate public employer entities, as the Public Advocate has done here.

The Union also alleges that the Public Advocate has engaged in direct dealing with SSAs by proposing that SSAs' current salaries and pensions be maintained. By doing this, the Public Advocate promised pay and benefits to SSAs while bypassing their collective bargaining representative. Additionally, the Union contends that the Public Advocate attempted to discourage SSAs from listening to and communicating with the Union when he stated in his Facebook video that Union leadership does not share the goals of student safety, engaged in childish name-calling directed at President Floyd, and told SSAs to disregard communications from the Union.[4] The

[4] The Union clarified in its reply and the conference held in this matter that it is not alleging that the Public Advocate's public testimony on February 18, 2021, violated the NYCCBL.

Union argues that these actions restrained and coerced employees in the exercise of rights protected by the NYCCBL.

City's Position

The City argues that the improper practice petition should be dismissed because, as an *ex officio* member of a legislative body, the Public Advocate is under no duty to bargain with the Union over the contents of proposed legislation or the contents of his public testimony. Citing precedent from the New York State Public Employment Relations Board ("PERB"), the City argues that a legislative body's action is not reviewable as an alleged refusal to negotiate since it has neither the right nor the duty to bargain. Similarly, the Public Advocate is under no duty to bargain over contents of the White Paper, Open Letter, or press releases, in which he proposed his vision to transition school safety to a restorative justice model. Additionally, the City notes that the Office of the Public Advocate does not employ SSAs or play a role in bargaining with the Union on behalf of the NYPD or City. Since the City Council is under no duty to bargain with the Union over legislation it introduces, testifies about, or passes, the City argues that it must logically follow that the Public Advocate as an individual also has no duty to bargain over the contents of his proposals. The City also argues that the petition is not ripe for review because the proposed changes at issue have not been, and cannot be, implemented by the Office of the Public Advocate.

The City argues that there has been no independent violation of NYCCBL § 12-306(a)(1) because the Union has not alleged facts supporting an allegation that Respondents' actions were inherently destructive of rights guaranteed under the NYCCBL. In particular, the City contends that the White Paper and the Public Advocate's subsequent comments did not create a "visible and continuous obstacle" to the exercise of employee rights. (Ans. ¶ 74) The City additionally argues that no evidence has been produced to show that the Public Advocate attempted to stop SSAs from

speaking to a Union representative about their job security or pending legislation, nor did his actions in fact deter SSAs from seeking their Union's assistance. Regarding the Facebook video, the City argues that the Public Advocate's comments stating that "it is unfair to paint SSAs with a broad brush," that he has seen firsthand how many SSAs genuinely love the kids they work with, and that he would never support a plan that fires SSAs, cannot reasonably be construed as comments that are inherently destructive of employee rights. (Ans. ¶ 81) The City contends that the Public Advocate calling President Floyd "goofy" after President Floyd incessantly attacked his character in the press, is not an attack on the Union's membership as a whole. The City contends that "[i]t is absurd that this forms a basis for an entire improper practice petition, and the Board should reject the attenuated claim that this constitutes interference under the NYCCBL." (Ans. ¶ 44) According to the City, the Board cannot restrain an elected official from speaking to his constituents about their concerns or prevent him from responding to attacks on his character.

The City contends that there is also no merit to the Union's allegation that the Public Advocate's communications constituted direct dealing. The City notes that the Public Advocate is not the employer of SSAs within the meaning of the case law concerning direct dealing claims. Moreover, the City contends that the Public Advocate simply stated that he would not support potential legislation that included layoffs, pay cuts, or a loss of benefits. He did not make any explicit or implied threat that SSAs should accept future jobs or else lose their job security. Moreover, the City contends that the Public Advocate's statements that SSAs' current salaries and pensions would be maintained is not a promise of a benefit in negotiations because the Office of the Public Advocate has no duty or ability to bargain over City employees' salaries. Consequently, the City urges the Board to dismiss the instant petition.

DISCUSSION

At issue here is whether certain statements made by the Public Advocate constitute direct dealing or interference in violation of NYCCBL § 12-306(a)(1). In particular, the alleged statements are contained in the White Paper released on March 2, 2021, the Open Letter to SSAs published on March 22, 2021, the Facebook video uploaded on April 5, 2021, and the letter to President Floyd dated April 6, 2021.[5]

NYCCBL § 12-306(a)(1) provides that it is an improper practice for a public employer or its agents "to interfere with, restrain or coerce public employees in the exercise of their rights granted in section 12-305 of this chapter[.]"[6] This Board has previously stated that direct dealing "occurs when an employer, in its communications with employees, obtains or endeavors to obtain the employees' agreement to some matter affecting a term or condition of employment, whether by making either a threat of reprisal or promise of benefit, or otherwise subverting the members' organizational and representational rights." *COBA*, 14 OCB2d 10, at 71 (BCB 2021) (quoting *DC 37*, 5 OCB2d 1, at 15 (BCB 2012)) (internal quotation and editing marks omitted). "Prohibited direct dealing 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

[5] Any statements or events that occurred more than four months prior to the filing of the petition are not timely and are referenced in the Decision only as background information. *See* NYCCBL § 12-306(e); OCB Rule § 1-07(b)(4).

[6] NYCCBL § 12-305 states, 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 and shall have the right to refrain from any or all of such activities.

negotiating relationship with unit employees to the exclusion of the employees' bargaining agent." *Id*. (quoting *COBA*, 10 OCB2d 19, at 18 (BCB 2017)) (internal quotation marks omitted).

We note at the outset that the statements at issue here were made in Williams' role as the Public Advocate and non-voting City Council member in support of a legislative bill he was actively endorsing. While these statements evinced his aspirations for changes that would result from proposed legislation, the Public Advocate has no authority to effectuate these changes unilaterally. Indeed, the bills at issue here that the Public Advocate has endorsed have still not passed. We find that under the circumstances present here, the Public Advocate's statements in support of proposed legislation were made in his capacity as a member of a legislative body of City government and not as a public employer. PERB has previously stated that, "[h]aving no right or duty to bargain, a legislative body of government, acting in that capacity, cannot violate the bargaining provisions of the Act." *County of Greene and Sheriff*, 43 PERB ¶ 4527 (ALJ 2010) (quoting *City of Lockport*, 26 PERB ¶ 3048, at 3085 (1993)) (internal quotation marks omitted) (finding the adoption of a resolution that changed retiree health insurance benefits was a legislative act that was not subject to the bad faith bargaining provisions of the Taylor Law). Consistent with PERB, on the facts here we find that the Public Advocate's statements are not subject to the bad faith bargaining provisions of the NYCCBL.

Irrespective of our finding that the Public Advocate was acting in a legislative capacity, we also find that the Public Advocate did not engage in direct dealing. None of the Public Advocate's statements made any promise of benefit or threat of reprisal to SSAs. The Union alleges that some of the Public Advocate's statements made promises with respect to salaries, pensions, and seniority. Only two statements specified by the Union were addressed to SSAs and touch upon these subjects. The first is in the Public Advocate's Open Letter to SSAs in which he stated that

"it is imperative to [move to a new model] through a just transition that carefully considers the employment opportunities available to agents in a restorative justice model and maintains levels of pay and fringe benefits for employees while helping them engage with the community in a different but equally critical way." (Pet., Ex. E) The second statement was made in the Public Advocate's Facebook video in which he stated that for those SSAs that "can't be a part of" his restorative justice model "we have to make sure there are jobs that respect their salary [and their pension] so that they don't lose that."

While these statements discuss the Public Advocate's goal that SSAs' salaries and benefits be maintained if the restorative justice model he urges is adopted, they contain no specific promises nor threats. To the contrary, the statements are in support of maintaining existing pay and benefits. Additionally, there is no evidence that the Public Advocate has the authority to implement changes to SSAs' terms and conditions of employment. *See IUPAT, L. 806*, 7 OCB2d 25, at 24 (BCB 2014) (where managers held meeting with employees in which they attempted to persuade employees that furloughs were in their best interest, the Board found no direct dealing occurred because the managers had no power to determine whether furloughs would in fact occur, they did not attempt to directly secure an agreement with the employees, and they did not promise a benefit in exchange for an agreement). Under these circumstances, we do not find that any of the Public Advocate's statements constitute impermissible direct dealing.[7]

The Union also alleges that the Public Advocate engaged in interference under the NYCCBL by causing confusion over which public employer has the authority to negotiate the

[7] We also do not find that the Public Advocate's letter to President Floyd constitutes direct dealing since such a violation must entail an attempt to obtain an agreement with bargaining unit members—not with union leadership. *See COBA*, 14 OCB2d 10, at 71 (emphasis added) (direct dealing occurs when an employer tries to obtain the *employees'* agreement to a matter affecting a term or condition of employment).

terms and conditions of employment and by discouraging SSAs from listening to or communicating with the Union. NYCCBL § 12-306(a)(1) provides that it is an improper practice for a public employer or its agents "to interfere with, restrain or coerce public employees in the exercise of their rights granted in section 12-305 of this chapter[.]" This Board has previously held that "an employer violates NYCCBL § 12-306(a)(1) when communication with employees, regardless of the employer's motive, contains an element of coercion because of its potentially chilling effect on union activity that is inherently destructive of rights protected by the NYCCBL." *IUPAT, L. 806*, 7 OCB2d 25, at 20 (citing *OSA*, 6 OCB2d 26 (BCB 2013) (finding certain statements by an assistant commissioner "deterred employees from engaging in protected activity and diminished the Union's capacity to effectively represent its members"); *CSTG, L. 375*, 3 OCB2d 14 (BCB 2012) (finding a union member's reasonable perception that a statement by a superior was an implicit threat and demand to drop a grievance was inherently destructive regardless of the superior's motive)).

As stated above, there is no evidence that the Public Advocate has the authority to negotiate the terms and conditions of employment for SSAs, and it is clear that his statements at issue were made in support of proposed legislation. Although it is possible that an SSA may be unaware of the Public Advocate's statutory role or misunderstand the import of his statements, we have not previously found any similar statements to constitute interference with protected union activity. To the contrary, we have found that alleged misrepresentations regarding the Union's involvement in negotiations or the implementation of terms and conditions of employment do not necessarily constitute interference under the NYCCBL. *See COBA*, 14 OCB2d 10, at 72 (finding that misrepresentations concerning the level of union involvement or approval of a new directive did not constitute unlawful interference under the NYCCBL); *PBA*, 77 OCB 10, at 19 (BCB 2006)

(finding no direct dealing when the Mayor allegedly misrepresented that union leaders had not informed their constituents of bargaining proposals).

Moreover, we find nothing in the Public Advocate's statements that could reasonably be interpreted as an attempt to deter or discourage employees from engaging with the Union. First, with respect to the White Paper, although it discusses the Public Advocate's proposal that SSAs be "phased out of City schools," it does not at any point mention the Union or the collective bargaining process. (Pet., Ex. D) Thus, we do not find that the White Paper deterred SSAs from participating in union activity or seeking assistance from the Union.

The Open Letter to SSAs also does not specifically mention the collective bargaining process. It does, however, state "leadership has refused to engage" in a conversation regarding the Public Advocate's proposals "and has instead resorted to false and personal attacks." (Pet., Ex. E) Additionally, the Public Advocate in his Facebook video stated that "nobody wants to talk in that space [of a restorative justice model,] they want to talk in the space of foolishness and that's what the Union leader is doing. So some of y'all may get texts and emails by this goofy dude, the goofy brother who leads the Union."

With respect to these statements concerning Union leadership, the record demonstrates that the Public Advocate made these remarks in response to comments President Floyd made publicly in the media.[8] The Board has previously found that statements responsive to what is perceived as a personal attack, "even if . . . construed as intemperate" did not constitute improper interference

[8] In his letter to President Floyd, the Public Advocate accused him of a "a one-sided discourse in the media." (Pet., Ex. F). We take administrative notice that following the Public Advocate's testimony at the City Council on February 18, 2021, and the publication of his White Paper on March 2, 2021, there were multiple reports in the media containing comments made by President Floyd about the Public Advocate.

where, as here, they "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." *PBA*, 77 OCB 10, at 20. While we do not condone the Public Advocate referring to President Floyd as "goofy," we do not find that his statement that SSAs may receive text messages and emails from the President interfered with SSAs' communications with the Union. This statement constituted the Public Advocate's opinion of President Floyd and was in no way coercive as it did not make any threats as to what could happen if an SSA communicated with the Union. *See id*. at 21 (citing *Town of Greenburgh*, 32 PERB ¶ 3025, at 3053-3054 (1999) (where Chief of Police called the union's president and attorney "sleazebags" and "shysters" at a labor management meeting, PERB did not find impermissible interference because the communications, though "vitriolic," were opinions and were stated in a non-coercive manner)).

Consequently, we find that the Public Advocate did not engage in direct dealing, or interfere with, restrain, or coerce Union members in the exercise of their rights in violation of NYCCBL § 12-306(a)(1). We therefore dismiss the petition in its entirety.[9]

[9] Having made this finding, it is not necessary to consider the City's argument that the Public Advocate is not the employer of SSAs.

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, docketed as BCB-4225-21, filed by City Employees Union, Local 237, against Jumaane D. Williams in his official capacity as New York City Public Advocate, the City of New York, and the New York City Police Department, hereby is dismissed in its entirety.

Dated: October 5, 2021
New York, New York

SUSAN J. PANEPENTO
CHAIR

ALAN R. VIANI
MEMBER

M. DAVID ZURNDORFER
MEMBER

CAROLE O'BLENES
MEMBER

I dissent. CHARLES G. MOERDLER
MEMBER

I dissent. PETER PEPPER
MEMBER