CEU, L.237, IBT, et. Al v. City, 20 OCB 16 (BOC 1977) [Decision No. 16-77 (Cert.)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF CERTIFICATION
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In the Matter of

CITY EMPLOYEES UNION, LOCAL 237, I.B.T. — DECISION NO. 16-77

-and- — DOCKET NO. RU-596-77

ELEVATORS CONSTRUCTORS UNION
LOCAL NO. 1 of the INTERNATIONAL
UNION OF ELEVATOR CONSTRUCTORS,
AFL-CIO

-and-

THE CITY OF NEW YORK AND
RELATED PUBLIC EMPLOYERS
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DECISION, ORDER AND CERTIFICATION

An election was conducted in the above matter on June 29, 1977, pursuant to the Direction of Election herein (Decision No. 12-77), and it appears from the Report Upon Secret Ballot that a majority of the Elevator Mechanic's Helpers, Elevator Mechanics, and Foremen Elevator Mechanics, casting valid ballots in the election, voted in favor of representation by City Employees Union, Local 237, I.B.T., On July 6, 1977, Local 1, International Union of Elevator Constructors, AFL-CIO filed its objections to Election. The basis of the objections is the allegation that Local 237, I.B.T. "offered improper financial inducements to employees in the bargaining unit immediately prior to the election" in that "Local 237 ... specifically offered to provide ... the payment of attorneys' fees for those bargaining unit employees

who are the subject of pending civil and criminal charges for conduct arising out of the course of their employment." The objections also allege that the conduct constitutes an improper practice within the meaning of §209-a of the State Taylor Law, and that such conduct tainted the showing of interest by Local 237 prior to the election.

Local 237 responded to the Objections by letter of July 8, 1977. Local 237 alleges that the statement complained of by Local 1 was contained in a leaflet distributed in April, 1977, "giving Local 1 ample opportunity to either counter "or" raise objection, even as late as the conference at which the date for the election was selected."[1] Local 237 further alleges that "we give all our members free legal services for any job related problem... we do not represent any of our members in a criminal action and have never offered to do so."

We find the allegations of Local 1 without merit.

The promise of legal assistance made by Local 237 was contained in a flyer, entitled "Bulletin #2." This bulletin was addressed to members of the bargaining unit, and contained a description of the Local 237 "program" as follows:

"1. Full time on the job representation.
2. Free Legal Services for any job related problem.
3. An autonomous Chapter of your own.
4. You elect your own officers.
5. You elect your own negotiating committee.
6. Coverage by Local 237's Welfare Fund."

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[1] This conference was held on May 31, 1977

We find nothing improper in the Local 237 offer of "free legal services for any job related problem." Such an offer is related to the functioning of a collective bargaining agent in the discharge of its duty of fair representation. The context of the offer, moreover, does not imply a suggestion that criminal representation will be afforded by the union.

The two cases cited by Local 1 are inapposite. In NLRB v. Madisonville Cement, 95 LRRM 2001 (6th cir. 1977), the court found an unlawful "economic inducement by the union to an employee immediately before the election" in that the union had made "payments ... to take care of a traffic ticket for a bargaining unit employee." Similarly, in NLRB v. Savair Mfg. Co., 84 LRRM 2929 (1973), the Supreme Court found that it was improper for a union to waive its initiation fee only for employees who signed up before the election. Manifestly, Local 237 was not guilty herein of offering any improper economic inducement prior to the election which would unlawfully "buy" votes in the manner proscribed by the two cases discussed above. Local 237 was offering no more than appropriate service to employees it represents. Indeed, the extension of legal services to union members is becoming common place. BNA Labor Relations Yearbook, pp.187188 (1974).

We make no finding concerning the allegation of Taylor Law violations, under §205.5 thereof the proper forum to decide such issues is PERB.

Further, we need not consider the allegations relating to proof of interest. Prior to the Direction of Election herein, there was no objection from any party concerning the Board's procedures relating to proof of interest, nor would any such objection have been appropriate as it is universally acknowledged that questions relating to proof of interest are not litigable.[2]

ORDER AND CERTIFICATION

NOW, THEREFORE, pursuant to the powers vested in the Board of Certification by the New York City Collective Bargaining Law, it is hereby

ORDERED that the objections filed herein by Local 1 be, and the same hereby are, overruled; and it is further CERTIFIED that City Employees Union, Local 237, I.B.T., is the exclusive representative for the purposes of collective bargaining of all Elevator Mechanic's Helpers, Elevator Mechanics, and Foremen Elevator Mechanics, employed by the

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[2] Rule 2.3 provides: "Sufficiency of interest shall not be a litigable matter." See, NLRB v. Air Control Products of St. Petersburg, Inc., 335 F.245, 250, 56 LRRM 2904 (5 Cir. 1964); NLRB v. Swift and Co., 294 F.2d 285, 288, 48 LRRM 2699 (3 Cir. 1961); Intertype Co. et al v. NLRB, 401 F.2d 41 (4 Cir. 1968), cert. den. 393 U.S. 1049 (1969).

City of New York and related public employers subject to the jurisdiction of the Board of Certification, subject to existing contracts, if any.

DATED: New York, N.Y.
July 12, 1977

ARVID ANDERSON
CHAIRMAN

ERIC J. SCHMERTZ
MEMBER

WALTER L. EISENBERG
MEMBER

The titles and title code numbers of the employees affected by this decision are as follows:

Elevator Mechanic's Helper	90711
Elevator Mechanic	90710
Foreman Elevator Mechanic	90769