

VERIFIED IMPROPER PRACTICE PETITION

OFFICE OF COLLECTIVE BARGAINING
100 GOLD STREET, SUITE 4800
NEW YORK, N.Y. 10038
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Docket Number **BCB-4456-21**

Date Filed **10-05-2021**

INSTRUCTIONS: Consult the New York City Collective Bargaining Law, Chapter 3, Title 12 of the Administrative Code of the City of New York ("NYCCBL"), § 12-306, and the Rules of the Office of Collective Bargaining (Rules of the City of New York, Title 61, Chapter 1) ("OCB Rules"), § 1-07 and § 1-12. File original with OCB, including proof of service, and serve one copy on the designated agent for each Respondent.

1. PETITIONER INFORMATION

Name: **Edward Seabron**

Address:

Phone:

Email:

2. RESPONDENT INFORMATION

Name: **Local 983, American Federation of State, County, and Municipal Employees, AFL-CIO**

Address: **125 Barclay Street, New York, NY 10007**

Phone: **(212) 815-1234**

Email (optional):

3. ADDITIONAL RESPONDENT (if applicable)

Name:

Address:

Phone:

Email (optional):

4. NATURE OF THE CONTROVERSY (failure to provide the following may result in delay or dismissal)

(a) List subsections of NYCCBL § 12-306 claimed to have been violated: **(b)(1)**

(b) Using separate sheet(s) and numbered paragraphs, state in a clear and concise manner: the facts, including names, dates, and particular actions constituting each violation. This statement may be supported by attachments but may not consist solely of such attachments. Attach each document as a separate exhibit and explain its relevance;

(c) Attach relevant sections of agreements, rules, or policies involved;

(d) Provide an explanation why these actions constitute violations of the NYCCBL subsections specified;

(e) State the relief sought.

5. VERIFICATION

STATE OF NEW YORK)
COUNTY OF BX) SS.:

Edward Seabron

, being duly sworn deposes and says that (s)he is the petitioner above-named, or its representative, and that (s)he has read the above charge consisting of this and ___ additional pages, and is familiar with the facts alleged herein, which (s)he knows to be true, except as to those matters alleged upon information and belief, which matters (s)he believes to be true.

Signature

Date

Subscribed and sworn to before me

2 day of Oct, 2021

Carmen Y. Porrata

Signature of Notary

CARMEN Y PORRATA
NOTARY PUBLIC-STATE OF NEW YORK
No. 01PO6367882
Qualified in Bronx County
My Commission Expires 12-04-2021

**OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING**

IN THE MATTER OF THE IMPROPER PRACTICE
PROCEEDING

-between-

EDWARD SEABRON,

Petitioner,

-and-

LOCAL 983, AMERICAN FEDERATION OF STATE,
COUNTY, AND MUNICIPAL EMPLOYEES, AFL-
CIO,

Respondent.

**STATEMENT OF FACTS &
ARGUMENT IN SUPPORT OF
VERIFIED IMPROPER PRACTICE
PETITION**

Petitioner Edward Seabron, by and through undersigned counsel and pursuant to Section 1-07(b)(4) of the Rules of the Office of Collective Bargaining, hereby sets forth the following Improper Practice Charge against Local 983, American Federation of State, County, and Municipal Employees, AFL-CIO (“Local 983”), and alleges as follows:

SUMMARY OF THE CHARGE

1. Petitioner submits this verified improper practice petition to address Respondent’s unlawful interference with the rights granted him by the New York City Collective Bargaining Law, New York City Administrative Code, Title 12, Chapter 3 (“NYCCBL”), specifically his right to assist a public employee organization that was not Local 983 or District Council 37, American Federation of State, County, and Municipal Employees, AFL-CIO (“District Council 37”), to the dismay of a union official, Local 983’s First Vice President Marvin Robbins.

2. Petitioner assisted a co-worker in obtaining signatures to decertify Local 983 and District Council 37 as his exclusive representatives for collective bargaining purposes.

3. Upon notification of Petitioner's conduct, Robbins, acting in his official capacity as Local 983 First Vice President, and with Local 983's knowledge, made public statements that suggested that Petitioner is racist, accused Petitioner of lying and/or being a liar, and explicitly threatened Petitioner in order to intimidate him due to his assistance to another public employee organization.

4. In his official capacity as an official of Local 983, Robbins controls and makes use of a Facebook group ("TEA Facebook Group") directed at NYPD traffic enforcement agents, including members of Local 983.

5. Robbins controls and/or regularly posts to and comments in the TEA Facebook Group with Local 983's knowledge and/or authorization.

6. Robbins made public statements in the form of posts in the TEA Facebook Group that were unlawful conduct and in direct response to Petitioner's exercise of his right under the NYCCBL to assist a public employee organization.

7. These actions were taken by Robbins on behalf of Local 983 with the intent and effect of threatening, intimidating, and coercing Petitioner with respect to the exercise of his rights under the NYCCBL.

8. Because Respondent Local 983, by and through Robbins' unlawful conduct, violated the NYCCBL, Petitioner seeks an order from the Board of Collective Bargaining finding that Respondent violated NYCCBL § 12-306(b)(1), among other requests for relief.

FACTUAL ALLEGATIONS

Petitioner's Background

9. Petitioner is, and was at all relevant times hereto, a Traffic Enforcement Agent, Tow Truck Operator, Level III, for the New York City Police Department ("NYPD").

10. Petitioner began his employment with NYPD in or about 2000 and joined Local 983 around that time.

11. Local 983 and District Council 37 are the exclusive bargaining representatives of Petitioner's bargaining unit with the City of New York.

12. Petitioner has long disliked Local 983's representation of his bargaining unit and Robbins' performance as Local 983 First Vice President. Consequently, Petitioner resigned his union membership on or about May 27, 2021.

13. From the time Petitioner joined Local 983 and District Council 37 through his May 27, 2021, resignation, Petitioner was a member in good standing of both public employee organizations.

The TEA Facebook Group

14. Local 983, by and through Robbins, maintains the TEA Facebook Group that members and retirees of Local 983, District Council 37, and Communication Workers of America, Locals 1181 and 1182, AFL-CIO, CLC, have access to and can post in.

15. On information and belief, the TEA Facebook Group has been in existence for years, and Local 983 officials, agents, and/or members continue to use this Facebook group for official Local 983 business, including sharing documents relating to union business and official memoranda and other documents related to job conditions and responsibilities of traffic enforcement agents.

16. On information and belief, the TEA Facebook Group has approximately 1,500 members.

17. Robbins has posted to the TEA Facebook Group regularly in his official capacity as an officer of Local 983 on matters specifically relating to Local 983 business, with Local 983's knowledge.

18. On information and belief, Local 983, by and through Robbins, controls who can access the TEA Facebook Group.

Petitioner Exercises His Rights Under the NYCCBL

19. Beginning in or about early May 2021, Petitioner assisted a coworker in attempting to decertify Local 983 and District Council 37 as his exclusive bargaining representatives in support of the Independent Law Enforcement Benevolent Association (“ILEBA”).

20. While he was not on work time, Petitioner spoke with coworkers about signing an ILEBA card to show support of ILEBA.

21. Petitioner did not disrupt or otherwise interfere with NYPD’s operations while asking coworkers to support ILEBA.

Robbins’ Facebook Post

22. On June 8, 2021, Robbins made a post in the TEA Facebook Group (hereinafter “Robbins’ Facebook Post”) in direct response to Petitioner’s assisting ILEBA. A copy of Robbins’ Facebook Post is attached hereto as Exhibit A.

23. Robbins’ Facebook Post to the TEA Facebook Group included a photoshopped picture of Petitioner, who is African American, shaking hands with an individual dressed in Ku Klux Klan attire.

24. Robbins’ Facebook Post also included a picture of the ILEBA card Petitioner asked coworkers to sign with a statement from Robbins that “if you sign this form you will lose all of your DC37 benefits Dental, Optical prescriptions & legal services Education reimbursement [sic].”

25. Robbins’ Facebook Post also included a seven minute and forty-five second video of Robbins, during which he purported to speak on behalf of Local 983, and falsely accused Petitioner of lying to his coworkers, called Petitioner a “lying sack of s---,” and stated that Petitioner is “full of s---,” among other things.

26. Robbins concluded his video with the following message:

My promise to you is, and for the people that are passing it out . . . let me make this clear: I'm looking for anyone to please report to me anyone who's giving out that form . . . feel free to call me up and take a picture of them or give me a signed statement that they're the ones who gave it to you. And if they're part of DC 37, they will be dealt with. If they're part of 983, let me know. We will move to take action against any one of them that are 983 members that are passing out that form; I'm telling you right now. Gloves off. You wanna play dirty, we're gonna play dirty. You sneaky conniving son of a b-----s, it's on! We gon' play this game, we gon' play it together.

27. Petitioner denies all allegations made against him by Robbins in the June 8, 2021, Facebook Post.

28. Robbins made the Facebook Post in his official capacity as an official of Local 983, and the Post is directly related to Petitioner's exercising of his rights under the NYCCBL, because Robbins specifically discussed and referenced Petitioner's efforts to assist ILEBA throughout his video and in the other components of his post.

29. On information and belief, Local 983 is aware of Robbins' Facebook Post and has been aware of it since on or about June 8, 2021.

30. Petitioner understood from Robbins' statement that he and Local 983 would "take action" against Petitioner for supporting ILEBA as a threat to retaliate, intimidate, and deter him from supporting ILEBA.

31. Specifically, Petitioner feared that Local 983, by and through Robbins, would try to have him fined or threaten his job in some way.

32. Robbins has visited Petitioner's work location more frequently since the June 8, 2021, Facebook Post than prior to its posting without a legitimate union and/or business purpose. These more frequent visits continue through the present time.

33. On information and belief, Robbins' visits to Petitioner's work location are to determine if Petitioner will exercise his rights under the NYCCBL again.

34. Petitioner fears further coercion and threats from Local 983, by and through Robbins, should he attempt to exercise his rights under the NYCCBL in the future, especially considering the increased frequency of Robbins' visits to his work location following Robbins' Facebook Post.

35. Robbins blocked Petitioner's access to the TEA Facebook Group after June 8, 2021. To this date, Petitioner does not have access to the TEA Facebook Group.

36. Numerous public employees have seen, will see, have heard about, and will hear about Robbins' Facebook Post.

37. After June 8, 2021, Petitioner sought to secure less support for ILEBA than he would have absent Robbins' interference with the rights guaranteed to him by the NYCCBL.

38. On information and belief, the Facebook Post intimidated coworkers of Petitioner who are also represented by District Council 37 and Local 983 out of considering supporting ILEBA.

39. Several coworkers that Petitioner approached after June 8, 2021, refused to speak to Petitioner about ILEBA because of Robbins' Facebook Post.

40. Multiple employees, including Petitioner, discussed Robbins' Facebook Post after June 8, 2021, at their respective work locations, including pound locations that Robbins frequents.

41. On information and belief, Robbins still controls and posts to the TEA Facebook Group on behalf of Local 983 and with Local 983's knowledge.

42. On information and belief, Local 983 has not disciplined or otherwise taken any action against Robbins for the Facebook Post.

43. Petitioner fears further interference, deterrence, and coercive behavior from Local 983, by and through Robbins, should he exercise his NYCCBL rights in the future.

44. Petitioner objects to Local 983's interference with the rights guaranteed to him under the NYCCBL.

ARGUMENT

I. LOCAL 983 HAS COMMITTED AN IMPROPER PRACTICE BY UNLAWFULLY INTERFERING WITH PETITIONER'S RIGHT TO ASSIST ILEBA

A. Petitioner Engaged in Protected Conduct Under the NYCCBL

It is an improper practice for a public employee organization or its agents "to interfere with, restrain or coerce public employees in the exercise of their rights granted in section 12-305" of the NYCCBL. NYCCBL § 12-306(b)(1). This includes the rights of public employees "to self-organization, to form, join or assist public employee organizations," *id.* at § 12-305, and, specifically, the right to participate in union activities. *Fabbricante*, 71 OCB 30 (BCB 2003). Therefore, Petitioner's efforts in assisting ILEBA constitute protected conduct under the NYCCBL.

B. Robbins' Facebook Post as a Local 983 Official Was Coercive and Inherently Destructive, Interfering with Petitioner's Right to Assist ILEBA

"Conduct that contain[s] an innate element of coercion, irrespective of motive, [can] constitute conduct which, because of its potentially chilling effect . . . is inherently destructive of important rights guaranteed under [12-306(b)(1)]." *DEA*, 4 OCB2d 35, at 9 (BCB 2011) (quoting *SSEU, L. 371*, 3 OCB2d 22, at 15 (BCB 2010) (brackets in original)). One category of conduct that has been held to be inherently destructive of employee rights under the NYCCBL is conduct that "directly and unambiguously penalizes or deters protected conduct." *OSA*, 6 OCB2d 26, at 7 (BCB 2013) (citing *CIR*, 51 OCB 26, at 42 (BCB 1993) (internal quotation marks and citations omitted)).

Robbins' Facebook Post to the TEA Facebook Group was inherently destructive of Petitioner's § 12-305 rights. Robbins' Facebook Post was coercive because it contained explicit threats, *see* Exhibit A & ¶¶ 22–26, and also because Robbins stated that "we", *i.e.*, Robbins *and* Local 983, would "take action" against Petitioner. ¶ 26. Petitioner took this to mean that Local 983 would

try to fine him and/or threaten his job or working conditions in some way. ¶¶ 30–34. Petitioner still fears potential action and retaliation from Robbins and/or Local 983 should he assist ILEBA in the future or otherwise exercise his rights under the NYCCBL. ¶¶ 34, 43.

Aside from Robbins’ explicit threat, the photoshopped picture Robbins posted also interfered with Petitioner’s rights. Robbins’ Facebook Post insinuated that Petitioner, who is African American, associates with a member of the Ku Klux Klan and/or is racist because he assisted ILEBA. ¶ 23. The Facebook Post suggests that supporting ILEBA with Petitioner was akin to doing business with a racist. Stated plainly, there is only one reason why Robbins posted the picture, and that was to deter, chill, and/or hinder Petitioner and others in the exercise of rights under the NYCCBL.

Even absent this specific intent, Robbins knew, or reasonably should have known, that his Facebook Post would adversely impact Petitioner’s exercise of his rights under the NYCCBL. A party is presumed to have intended the consequences that it knows or should have known would inevitably flow from its actions. *See L. 375, DC 37*, 6 OCB2d 15, at 10 (BCB 2013); *see also L. 1180, CWA*, 71 OCB 28, at 9 (BCB 2003) (“Actions that are inherently destructive of important employee rights may constitute unlawful interference even in the absence of improper motive.”). Because of Robbins’ Facebook Post, Petitioner now fears exercising his NYCCBL rights in the future. ¶¶ 34, 43. Moreover, Petitioner approached fewer individuals after Robbins’ Facebook Post and fewer employees engaged with Petitioner. ¶¶ 36–40. Therefore, taken as a whole, Robbins’ Facebook Post constitutes conduct inherently destructive of Petitioner’s rights under the NYCCBL due to its threatening and coercive contents.

The circumstances under which Robbins interfered with Petitioner’s right to assist ILEBA further support Petitioner’s contention that Robbins’ Facebook Post was inherently destructive of his rights under the NYCCBL. Robbins engaged in the conduct at issue on the TEA Facebook

Group, reaching a group that has approximately 1,500 members. ¶ 16. He did *not* engage in the conduct at issue at a social event, for example, where only a handful of employees would or could witness it. *See Elmira Teachers Association*, 13 PERB ¶ 3070 (1980) (where PERB found a union official's statement that he would "get her," *i.e.*, the Petitioner, at a cocktail party on non-union property did not interfere with Petitioner's rights and was not coercive). Instead, Robbins threatened Petitioner and called and/or insinuated that Petitioner is racist on the TEA Facebook Group for some 1,500 members to witness. ¶¶ 22–26. Robbins' threat was made on the TEA Facebook Group, in a group dedicated to the union's business. ¶¶ 14–18. Robbins knew, or reasonably should have known, that many public employees would see it, and that there would be widespread dissemination of his post. Therefore, Robbins' conduct was inherently destructive of Petitioner's rights, especially when analyzed within the context of the circumstances in which it was made.

Finally, Robbins' Facebook Post had a negative impact on Petitioner in the exercise of his § 12-305 rights. As a result of Robbins' Facebook Post, Petitioner sought to obtain fewer signatures for ILEBA than he would have absent the post, ¶ 37, and, consequently, Robbins' Facebook Post chilled and/or deterred Petitioner from exercising his § 12-305 rights. Further, some employees were intimidated out of considering supporting ILEBA due to the Post. ¶¶ 38–39. Thus, Robbins deterred not only Petitioner from engaging in protected conduct, but several of Petitioner's coworkers from doing so as well.

In sum, an official of Respondent Local 983, acting in his official capacity and purporting to speak for Respondent, posted threatening and coercive statements, images, and video directed at Petitioner. And that official of Respondent, Robbins, did so in order to interfere with, restrain, or coerce Petitioner in the exercise of conduct protected by the NYCCBL. Robbins' Facebook Post was inherently destructive of Petitioner's efforts to exercise his rights under the NYCCBL.

C. Notice of Robbins' Facebook Post Must Be Imputed to Local 983

Local 983 had at least constructive notice of Robbins' Facebook Post. "A finding of constructive notice is essentially a context-specific determination of whether facts surrounding a development would reasonably have alerted a party to the development." *Uniformed Sanitationmen's Association*, 3 OCB2d 27, at 8 (BCB 2010) (citations omitted). Local 983 maintains the TEA Facebook Group with approximately 1,500 members by and through Robbins in his official capacity as a Local 983 official, ¶¶ 14–18, 29, 41, and Robbins frequently posts to the TEA Facebook Group concerning official Local 983 business and with Local 983's knowledge. *Id.* Multiple employees, including Petitioner, discussed Robbins' Facebook Post after June 8, 2021. ¶ 30. The Facebook Post was "open and obvious." See *Local 306*, 7 OCB2d 27 (BCB 2014) (where BCB found that a union, for statute of limitations purposes, could have learned of an alleged violation because the violation was "open and obvious."). Therefore, notice of Robbins' Facebook Post must be imputed to Local 983.

CONCLUSION

Petitioner is free to assist whatever public employee organization he wants pursuant to the NYCCBL. When he attempted to do so here, Robbins, acting in his official capacity as an official of Respondent, threatened Petitioner to deter Petitioner and others from supporting ILEBA or from exercising their rights under the NYCCBL. Respondent's conduct was coercive, threatening, and thus inherently destructive of Petitioner's NYCCBL § 12-305 rights. Therefore, Local 983 has committed an improper practice and violated § 12-306(b)(1).

REQUEST FOR RELIEF

WHEREFORE, Petitioner respectfully requests that the Board of Collective Bargaining grant this Petition and issue an order:

- A. Finding that Local 983 violated NYCCBL § 12-306(b)(1);

B. Ordering that a notice of the violation and the rights of employees under NYCCBL § 12-305 be posted;

C. Ordering Local 983 to:

- i. post the notice in a conspicuous location at all facilities where members of Petitioner's bargaining unit work;
- ii. cease and desist from all efforts to interfere with, restrain, or coerce Petitioner in the exercise of his rights under the NYCCBL;
- iii. remove Robbins' Facebook Post from the TEA Facebook Group and anywhere else it is posted within the control of Local 983 and its officials;
- iv. remove Robbins from the TEA Facebook Group and/or disallow Robbins from posting to the TEA Facebook Group; and

D. Providing such other and further relief as the Board of Collective Bargaining may deem just and proper.

Respectfully submitted,

Dated: October 5, 2021

s/ Tyler K. Patterson

Tyler K. Patterson

NY Attorney I.D. No. 5076930

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THE FAIRNESS CENTER

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Albany, New York 12207

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Attorney for Petitioner

VERIFICATION OF EDWARD SEABRON

I, Edward Seabron, being duly sworn, hereby verify that I am the Petitioner in this action and hereby state that the facts set forth in the *Verified Improper Practice Petition* and this *Statement of Facts & Argument in Support of Verified Improper Practice Petition* are true and correct to the best of my knowledge, information, and belief.

Date: 10/2/21

By: Edward Seabron
Edward Seabron

Subscribed and sworn to before
me this 2 day of October, 2021.

Carmen Y. Porrata
Notary Public

CARMEN Y. PORRATA
NOTARY PUBLIC-STATE OF NEW YORK
No. 01PO6367882
Qualified in Bronx County
My Commission Expires 12-04-2021

Exhibit A

June 8, 2021 Facebook Post



Marvin Robbins was live.

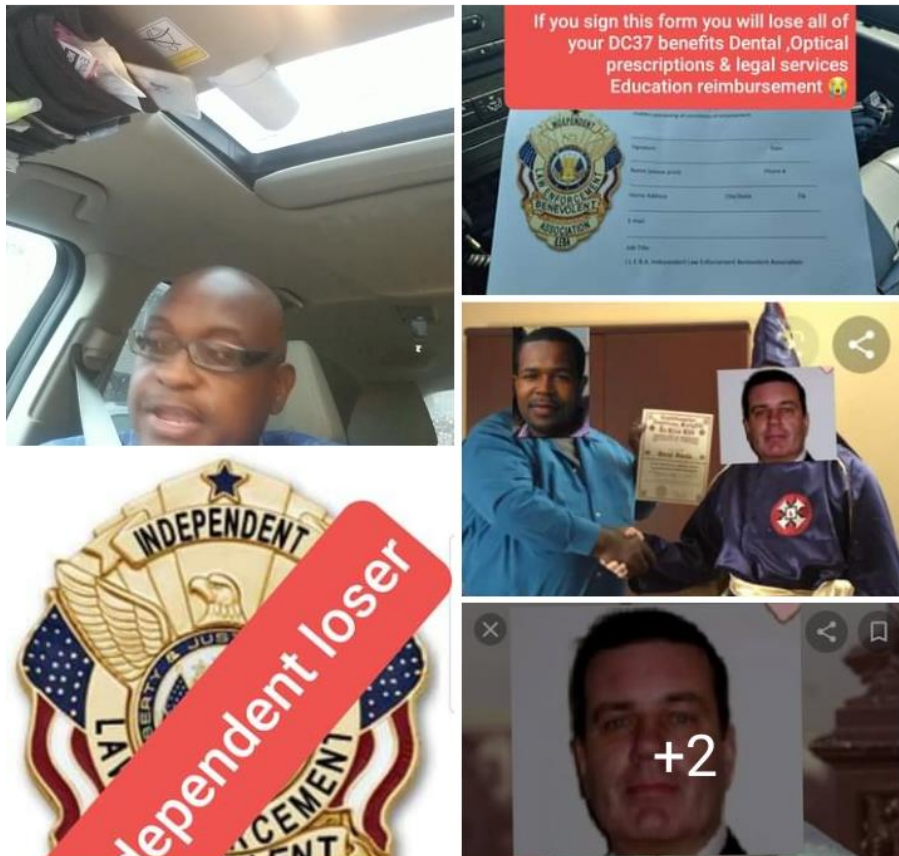
Admin • Jun 8 •

<https://www.dc37.net/wp-content/uploads/benefits/health/pdf/FullTimeBenefitBooklet.pdf>

What does Decertification mean to you the members.

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