

NEW YORK CITY OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

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:
CITY EMPLOYEES UNION LOCAL 237 :
INTERNATIONAL BROTHERHOOD OF :
TEAMSTERS, :
:
Petitioner, :
:
and :
:
JUMAANE D. WILLIAMS, in his capacity as Public :
Advocate for the City of New York, the CITY OF :
NEW YORK, and the NEW YORK CITY POLICE :
DEPARTMENT, :
:
Respondents.

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VERIFIED IMPROPER PRACTICE PETITION

Petitioner City Employees Union Local 237, International Brotherhood of Teamsters (“Local 237” or the “Union”), pursuant to Section 1-07 of the Rules of the Office of Collective Bargaining (“OCB”), hereby sets forth the following improper practice petition against Respondent Jumaane D. Williams, in his official capacity as Public Advocate for the City of New York (“Williams”). The Petition also names as respondents the City of New York and the New York City Police Department as parties with an interest in the outcome of the proceeding.

INTRODUCTION

1. As set out more particularly below, respondent Public Advocate Williams, an agency of the City of New York (the “City”) and a public employer within the meaning of the New York City Collective Bargaining Law (“NYCCBL”), has violated the NYCCBL by interfering with the collective bargaining relationship between Petitioner and another public employer, the New York City Police Department (“NYPD”).

2. Local 237 thus brings this petition to stop a public employer that does not employ a single Local 237-represented employee from improperly influencing and interfering with collective bargaining between Local 237 and the employer of over 5,000 Local 237 members by attempting to negotiate terms and conditions for those members both with the Union's leadership and directly with the members themselves.

3. Specifically, Public Advocate Williams has undertaken a misguided one-man crusade to fundamentally change the job duties and other terms and conditions of employment of 5,000 Local 237 members who work in New York City Public Schools as School Safety Agents ("SSAs").

4. Williams' efforts have gone beyond advocacy of public policy positions. He has made proposals to Local 237 that would eliminate or fundamentally change the duties and responsibilities of Local 237 members. He has also attempted to bypass the Union leadership by making such proposals directly to its membership and has disparaged the Union's President for rebuffing Williams' attempts to negotiate on behalf of NYPD.

5. Based on these facts, the Board should find that Williams has committed an improper practice under Section 12-306(a)(1) of the NYCCBL, order Williams to cease and desist interfering with and direct dealing with the Union and its members, and order Williams to issue a communication on the Public Advocate's official web page and Facebook page, and through its press office, to the Union's membership that he will cease such actions.

STATEMENT OF FACTS

I. THE PARTIES

6. Petitioner Local 237 is a certified employee organization pursuant to § 12-303(j) of the NYCCBL. The Union's offices are located at 216 West 14th Street, New York, New York 10011, Telephone: (212) 924-2000, Fax: (212) 675-0417.

7. Respondent Jumaane D. Williams does and has at all times relevant herein occupied the position of New York City Public Advocate, the office of which is a municipal agency and public employer pursuant to §§ 12-303(d) and (g) of the NYCCBL. The Office of the Public Advocate does not employ any employees represented by Local 237. On February 18, 2021, the Public Advocate recognized the Organized Advocates Staff Union as the collective bargaining representative of its employees. *See <https://www.pubadvocate.nyc.gov/press/public-advocate-voluntarily-recognizes-staff-union/>.*

8. Respondent City of New York is and was at all times relevant herein a municipal entity created and organized under the laws of the State of New York, and a public employer pursuant to § 12-303(g)(4) of the NYCCBL. The Petition does not allege that the City has violated the NYCCBL but names the City only because it may have an interest in the outcome of the proceeding.

9. Respondent New York City Police Department (“NYPD”) is a municipal agency and public employer pursuant to §§ 12-303(d) and (g) of the NYCCBL. As with the City, the Petition does not allege that the NYPD has violated the NYCCBL, but names the NYPD solely because it may have interest in the outcome of the proceeding.

II. LOCAL 237’S REPRESENTATION OF SCHOOL SAFETY AGENTS

10. Local 237 represents approximately 5,000 persons employed by the City in the competitive civil service classification of School Safety Agent, pursuant to Certification No. 67-68. School Safety Agents are employed by NYPD through its School Safety Division. The School Safety Division was formed in 1998 when responsibility for school safety was transferred from the New York City Department of Education to NYPD.

11. SSAs are “Special Patrolmen” and certified peace officers pursuant to Section 2.10.27 of the Criminal Procedure Law. As peace officers, they are authorized to,

among other things, make arrests, use force to prevent harm to persons or property, and seize weapons and other contraband. Crim. Pro. Law § 2.20. SSAs are required to undergo extensive training to receive their peace officer certification. *Id.* § 2.30. SSAs (and other peace officers) are distinct from police officers; section 1.20.34 of the Criminal Procedure Law sets forth the categories of law enforcement personnel who are police officers.

12. For decades, School Safety Agents have ensured the safety and security of students, faculty staff, visitors, and property in New York City’s public schools.

13. 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. SSAs are the first line of safety when dangerous incidents occur in public school facilities. While, as mentioned, they have the power to arrest individuals suspected of violating the law on school property, they typically do not perform such arrests when necessary but rather contact a NYPD precinct to dispatch NYPD police officers to conduct arrests as the situation may warrant.

14. Local 237, the City and related employing agencies (including NYPD) are parties to a Collective Bargaining Agreement (“CBA”) that governs certain terms and conditions of employment for SSAs.

15. The genesis of Williams’ attempts to interfere in collective bargaining between NYPD and Local 237 began in June 2020, shortly after a police officer in Minneapolis, Minnesota killed George Floyd, sparking a wave of protests across the country and a nationwide conversation about police use of force accountability and oversight. In the aftermath, Williams has made a number of statements regarding the practices and staffing of the NYPD. Local 237 takes no position as to those aspects of Williams’ conduct. Williams has not, however, limited

his conduct to advocacy surrounding policing, but has attempted to negotiate with Local 237 and directly with its membership over the terms and conditions of employment for its 5,000 SSA members.

16. Williams' first effort in this area was to claim authority to prevent the collection of property tax revenue, which he threatened to exercise if (in addition to an NYPD hiring freeze) school safety did not begin a "just transition" to a "restorative justice model." See <https://www.pubadvocate.nyc.gov/press/williams-calls-nypd-hiring-freeze-school-safety-reforms-final-budget-vote/>. A copy of the press release is attached as Exhibit A. Williams' statement did not clarify what this "just transition" would entail, beyond the vague buzzwords that it would "repurpose[], redistribute[] and reimagine[] public safety in schools."

17. The next day, in his statement on the City's fiscal year 2021 budget, Williams said that he opposed the budget because it did not provide for a "just transition for school safety." A copy of the press statement is attached as Exhibit B. Again, the statement provided no supporting detail as to what a "just transition" would be or how it would impact SSAs.

18. Thereafter, Williams was largely silent on his proposal for a "just transition" for school safety until March 2021, when his efforts shifted from general political advocacy to an attempt to negotiate with Local 237, and directly with its members, to make fundamental changes to the terms and conditions of SSA employment. Rather than the vague sloganeering that characterized his statements in the summer of 2020, his more recent letters and statements constitute an improper and unauthorized attempt to secure Local 237's agreement to eliminate the SSA title altogether or to radically change its duties and responsibilities.

19. Williams began laying the groundwork for his attempt to negotiate the elimination of SSAs at a City Council hearing on February 18, 2021, where he made baseless accusations that SSAs routinely engage in serious misconduct, harm students, and have no interest in furthering the education of New York City public school pupils. Attached as Exhibit C is a copy of Williams' testimony. Williams' testified that:

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 [New York City Department of Education] have a clear scope of the abuse. Both are unable to produce the number of officers in schools who commit these egregious acts....

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.

Williams went on to discuss his views as to what should happen to employees currently in the SSA title, including with respect to their salaries, and that simply transferring jurisdiction over them from NYPD to DOE would not satisfy his goals of ensuring "restorative justice" in the school system:

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.

Williams then offered his view as to what should happen to SSAs currently working in schools, namely that they should either become social workers or be transferred to entirely different titles and places of employment:

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.

School Safety Agents undergo extensive training and have highly developed skills in their current duties, namely ensuring the safety and security of New York City public schools.

Whatever Williams' "restorative justice model" may mean in the context of school safety, it would entail duties, responsibilities, training, and likely schedules that would be vastly different from their current jobs as SSAs.

20. Williams provided some additional detail on what his proposals would mean for SSAs on March 21, 2021, when his office released a document entitled "White Paper: On Reimagining School Safety," a copy of which is attached as Exhibit D. While rife with the same type of rhetoric that characterized his previous statements, including a cynical attempt to associate School Safety Agents and school safety generally with the Jim Crow South, Exhibit D at 4, the White Paper left no doubt that Williams wants to either eliminate School Safety Agents completely or redefine their duties such that they bear no resemblance to those the SSAs currently perform: "School Safety Agents as currently trained and implemented...must be phased out of City schools." *Id.* at 6. The White Paper also proposed that metal detectors, wands, and other devices SSAs use to detect and remove firearms and other dangerous weapons from schools be banned. *Id.* at 8. According to the White Paper, "School Safety Agents as currently trained and implemented, and metal detectors and other surveillance technologies may traumatize students and actually make them feel less safe," though it provided no further detail as to what aspects of SSAs' current training and implementation makes students less safe and traumatizes them.

21. On March 22, 2021, Williams went further, taking his proposals directly to SSAs in the form of an "Open Letter" explicitly addressed to SSAs and published in The Amsterdam News. In the Open Letter, Williams sought to persuade SSAs to accept the

elimination of their positions and his promises of retraining and placement in new jobs. A copy of the “open letter” is attached as Exhibit E. The very first line of the Open Letter (“To the School Safety Agents of New York City”) makes clear that it is an attempt by Williams to make his proposals concerning their jobs directly to them.

22. In the Open Letter, Williams wrote that he wanted School Safety Agents to undergo a “just transition,” to new jobs, and they should consider “employment opportunities available to agents in a restorative justice model.” The Open Letter thus urged SSAs to agree to the loss of their current jobs and accept other “employment opportunities.”

23. Williams also attempted to drive a wedge between SSAs and the Union leadership, stating that President Floyd had engaged in a “disingenuous and false line of attack” on Williams’ statements about the purported misconduct by SSAs. Most egregiously, Williams stated that while the SSAs have the best interests of the public school system at heart, Union leadership (*i.e.* President Floyd) does not:

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.

Id. The only reasonable interpretation of this statement is that the Union leadership does not share a “goal of safe schools, students, and staff” while Williams and the SSAs are aligned in that aim.

24. Williams continued to negotiate with SSA membership and disparage President Floyd in a video he posted on his Facebook page, which is available to the general public, including SSAs, on April 5, 2021. *See* <https://www.facebook.com/1046692794/videos/10222399712035417>. Williams again, fifteen minutes and thirty seconds into the video, proposed that NYPD should not play any role in

public schools and that metal detectors should be removed. He then said, sixteen minutes into the video, that SSAs who “could not be a part” of his proposals should receive new jobs with the same salaries and pensions. Then, seventeen minutes and twenty seconds into the video, Williams accused President Floyd of “foolishness” and warned SSAs to expect “texts and emails” from this “goofy dude” and “goofy brother who leads the Union,” obviously referring to President Floyd, and thus clearly implying that SSAs should ignore or dismiss communications from Union leadership.

25. After these attempts to directly negotiate with the Union’s members and attacks on its leadership, Williams then tried to negotiate with President Floyd in a letter Williams sent to him dated April 6, 2021, attached as Exhibit F. In that letter, Williams demanded that Local 237 consider his proposal for a “transition away from NYPD leading school safety.” He made clear his proposal that the Union should agree to eliminate or radically alter the day-to-day duties and responsibilities of employees in the SSA title. He also repeated and amplified his allegations that SSAs engage in widespread misconduct, including wrongful searches, harassment, and even sexual abuse.

26. Williams’ efforts to gain political currency in advance of his widely-discussed (though publicly disavowed) possible mayoral candidacy¹ by focusing on the alleged problem of School Safety Agents in schools have thus crossed the line between general policy advocacy into interference with Local 237’s bargaining relationship with NYPD and the City. He and his office have now attempted to directly negotiate terms and conditions of employment both with Local 237 leadership and directly with the SSAs themselves. Moreover, Williams’ efforts to manipulate SSAs into disregarding the Union’s position on SSA terms and conditions

¹ <https://www.nytimes.com/2020/06/11/nyregion/jumaane-williams-mayor-2021.html>.

of employment have included disparaging Local 237 President Floyd and suggesting that he is not properly representing SSAs and does not share their goals and interests.

APPLICABLE LEGAL PRINCIPLES

I. WILLIAMS' PROPOSED CHANGES TO SCHOOL SAFETY AGENT JOB FUNCTIONS ARE MANDATORY SUBJECTS OF BARGAINING.

27. Under NYCCBL § 12-307(a), mandatory subjects of bargaining are wages, hours, and working conditions and any subject with a significant or material relationship to a term or condition of employment.

28. A change in job function that alters the “essential duties and functions” of the job, or employees’ “core competencies,” is also mandatory subject of bargaining. *See UFA, L. 94, & UFOA, L. 854, 13 OCB2d 9, at 30 (BCB 2020).*

29. The transition from School Safety Agent to social worker, dispute resolution mediator, or other vocation envisioned under the so-called “restorative justice model” referenced in the White Paper, the Open Letter, and Williams’ Press Releases are similarly a mandatory subject of bargaining.

30. To the extent Williams’ proposal would entail the wholesale elimination of SSA jobs and their transfer to other existing titles, that is also a mandatory subject of bargaining.

II. IMPROPER INTERFERENCE WITH BARGAINING RELATIONSHIP.

31. Local 237 acknowledges that the Petition does not allege a run-of-the-mill NYCCBL violation, such as where an employer retaliates against employees for union activity, unilaterally implemented changes to terms and conditions of employment, or refuses to meet and negotiate in good faith.

32. Rather, the issue presented in this petition is, to Local 237's knowledge, an issue of first impression for the Board. Williams, a public employer, has improperly inserted himself into matters that are the subject of negotiation between Local 237, the City and NYPD, and held himself out as a party to that collective bargaining relationship. While Williams will no doubt argue that he has simply engaged in the advocacy of a public policy position, his statements and those issued by his office go beyond mere public debate. He has specifically proposed that the SSA title should be eliminated, that the job functions and duties of SSAs should be radically altered, and has also made promises with respect to salaries and seniority -- thereby creating the misimpression that the Office of the Public Advocate has authority to bargain with Local 237 over such terms and conditions of employment for SSAs.

33. Moreover, his proposals with regard to these terms and conditions of employment have not been directed only to the public at large. His April 6, 2021 Letter was, in sum and substance, a demand to the President of Local 237 to negotiate with him over these changes, and his Open Letter attempted to negotiate directly with SSAs over the terms and conditions of employment, as discussed further *infra*.

34. It is an improper practice in violation of NYCCBL § 12-306(a)(1) for a public employer to interfere with, restrain or coerce public employees in the exercise of their rights granted in section 12-305.

35. One of the rights guaranteed under Section 12-305 of the NYCCBL is the right of public employees to "bargain collectively through certified employee organizations of their own choosing." In improperly holding himself out as a party to the collective bargaining relationship that exists between the Local 237 and NYPD, Williams' actions are directed at the Union and its membership, and foreseeably likely to cause destructive confusion over which

public employer has authority to negotiate terms and conditions of employment for SSAs, thus interfering in Local 237's bargaining relationship with NYPD and the City.

36. This confusion is dangerous to the collective bargaining process, which is complex enough without politically-motivated interference from third parties.

37. New York Supreme Court addressed the damage inherent in allowing confusion to persist over an employing entity in *Plumbers Local Union No. 1, U.A., AFL-CIO*, 1 OCB2d 28 (BCB 2008) (Arb) (Docket No. BCB-2651-07) (A-12511-07), *aff'd*, *Matter of Plumbers Loc. Union No. 1 v. Gold*, Ind. No. 112139/08 (Sup. Ct. N.Y. Co. Feb. 2, 2010).

There, like here, a case of first impression, the City challenged the arbitrability of a grievance by the union on the basis that the Department of Education was not a municipal agency. This Board found that the Board of Education was the employer — not the DOE — and dismissed the petition for lack of jurisdiction. In affirming that decision, the New York Supreme Court acknowledged that the parties' uncertainty over the correct bargaining entity "has created confusion not only in the case law, but with the DOE and the City themselves." *Id.* at 3. The Court went further, calling the DOE "an entity of indeterminate rights and duties ... which has a decidedly Alice-in-Wonderland like quality and which has created a host of problems." *Id.* at 21.

38. Williams' improper attempts to negotiate with Local 237 and its members directly, in place of the proper bargaining counterparts, the NYPD and City, is likely to cause similar confusion. Allowing Williams to continue to hold himself out as capable of coming to an agreement with Local 237 that would eliminate or fundamentally change the job duties of the SSA title or transfer SSAs to other titles would likewise create an "Alice-in-Wonderland" alternate reality, replete with "a host of problems" directly attributable to unchecked and "indeterminate rights and duties" of the office of the Public Advocate.

39. *Plumbers* and similar litigation also have the potential to complicate genuine collective bargaining between Local 237, NYPD, and the City, and sap City and union resources. It is therefore in the public interest for the Board to put a stop to this needless confusion and misrepresentation as to which public employer Local 237 is bargaining with.

40. Additionally, there is private sector labor law precedent for finding coercion and restraint of collective bargaining rights by virtue of non-employing entity interference. *See, e.g., Nat'l Linen Serv. Corp.*, 48 NLRB 171, 203 (1943) (“National and Linen Service did thereby interfere with, restrain and coerce their subsidiary employees, i. e., the drivers and helpers of the South San Pedro Street branch of United, in the exercise of the rights guaranteed them in Section 7 of the Act.”).

41. Petitioners thus urge the Board to find that third party public employers cannot legally interfere in the collective bargaining relationship of two other, separate entities, and that such unlawful interference has occurred here. The risk of confusion between the bargaining parties, and the ensuing weakening of the bargaining relationship and process, are concrete and cognizable harms which public employees and the collective bargaining process should not suffer.

III. DIRECT DEALING, DISPARAGEMENT OF UNION AND ATTEMPTS TO UNDERMINE REPRESENTATION OF UNION MEMBERS.

42. An employer violates NYCCBL § 12-306(a)(1) when it interferes with union activity by dealing directly with union members.

43. Direct dealing often takes the form of communications addressed to union members directly, in circumvention of the lawfully designated bargaining agent.

44. “[A]n employer’s discussions with union members concerning subjects of bargaining will violate NYCCBL if there is a threat of reprisal or promise of benefit or

interference with the union's "organizational rights by compromising its bargaining position." *Patrolmen's Benevolent Ass'n of City of New York, Inc. v. New York City Off. of Collective Bargaining*, 35 Misc. 3d 1234(A), 953 N.Y.S.2d 552 (Sup. Ct. 2012) (citing *CIR v. HHC*, 49 OCB 22, at 22 (BCB 1992)).

45. As described *supra*, Williams has proposed that SSAs' current salaries and pensions be maintained. The promise of such pay and benefits alone is evidence of a NYCCBL violation. See *Patrolmen's Benevolent Ass'n of City of New York, Inc. v. New York City Off. of Collective Bargaining*, 35 Misc. 3d 1234(A), 953 N.Y.S.2d 552 (Sup. Ct. 2012) (citing *CIR v. HHC*, 49 OCB 22, at 22 (BCB 1992)) "an employer's discussions with union members concerning subjects of bargaining will violate NYCCBL if there is a threat of reprisal *or promise of benefit or interference with the union's "organizational rights by compromising its bargaining position."*)" (emphasis added).

46. An employer also violates NYCCBL § 12-306(a)(1) when it disparages a union and seeks to undermine the union to its membership. Such actions go beyond the legitimate expression of an employer's opinion and subvert the union's ability to represent its membership. It also discourages the membership from seeking the union's assistance, thus interfering with employees' Section 12-305 rights. See, e.g., *IUPAT L. 806*, 7 OCB2d 25, at 22 n.18 (BCB 2014); *SSEU L. 371*, 3 OCB2d 22, at 15-16 (BCB 2010); *c.f. L. 1183, CWA*, 41 OCB 2, at 16 n.8 (BCB 1988).

47. Here, Williams has told SSAs that Union leadership does not share their goals of student safety, and, in his April 6, 2021 video, in addition to childish name-calling, Williams told them to disregard communications, "emails and texts," from the Union.

FIRST IMPROPER PRACTICE CHARGE:
INTERFERENCE, RESTRAINT AND COERCION IN THE EXERCISE OF
PROTECTED RIGHTS THROUGH IMPROPER INTERFERENCE

48. Local 237 repeats and realleges paragraphs 1-47 above as if fully set forth herein.

49. By the interfering in the Local 237-NYPD-City collective bargaining process through the above-described actions, Public Advocate Williams has restrained and coerced Local 237's members in the exercise of their rights under the NYCCBL in violation of NYCCBL § 12-306(a)(1).

SECOND IMPROPER PRACTICE CHARGE:
INTERFERENCE, RESTRAINT AND COERCION IN THE EXERCISE OF
PROTECTED RIGHTS THROUGH DIRECT DEALING

50. Local 237 repeats and realleges paragraphs 1-49 above as if fully set forth herein.

51. NYCCBL § 12-306(a)(1) makes it an improper practice for a public employer to interfere with the independent functioning of a union, and to subvert members' organizational rights, through direct dealing with the membership.

52. Through his communications with Local 237-represented employees in the media — including through the Open Letter — Williams has attempted to bypass Local 237 and directly negotiated with Local 237's members with the goal of persuading them to accept his proposals concerning their terms and conditions of employment, namely job duties, salaries, seniority, pensions, and the very job titles they hold.

53. By this conduct, Williams has violated NYCCBL § 12-306(a)(1).

REQUEST FOR RELIEF

WHEREFORE, Local 237 respectfully requests that the Board of Collective Bargaining grant this Petition, and issue an order:

- (1) Finding that Williams violated NYCCBL § 12-306(a)(1);
- (2) Ordering that Williams cease and desist interfering in the collective bargaining relationship between Local 237, NYPD, and the City.
- (3) Ordering Williams to cease and desist attempts to deal directly with Local 237's members;
- (4) Ordering that Williams issue a communication to all Union members on the Office of the Public Advocate's official website, official Facebook page, and through its press office, informing Union members that Williams will cease and desist interfering in the collective bargaining relationship between Local 237, NYPD, and the City, and will cease dealing directly with the Union's members; and
- (5) Ordering such other and further relief as may be just and proper.

* * *

Dated: New York, New York
April __, 2021

Respectfully submitted,

/s/
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*Counsel for Petitioner
Local 237, IBT*

VERIFICATION OF GREGORY FLOYD

I, Gregory Floyd, President of City Employees Union Local 237, International Brotherhood of Teamsters, pursuant to the Office of Collective Bargaining's November 4, 2020 Notice re Statute of Limitations, verify that I am familiar with the facts alleged herein, which I know to be true.

/s/ Gregory Floyd