

Seabron, 18 OCB2d 6 (BCB 2025)

(IP) (Docket No. BCB-4456-21)

Summary of Decision: Upon remand from the New York State Public Employment Relations Board to further develop the record concerning the impact of a photoshopped image of Petitioner posted by Union leadership on a private Facebook page, Petitioner argued that the image was coercive and inherently destructive of his and other employees' rights under the NYCCBL. The Union argued that Petitioner failed to allege facts sufficient to establish a violation of NYCCBL § 12-306(b)(1). The Board found that the Union official's actions did not violate NYCCBL § 12-306(b)(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-

EDWARD SEABRON,

Petitioner,

-and-

DISTRICT COUNCIL 37, LOCAL 983, AFSCME, AFL-CIO,

Respondent.

DECISION AND ORDER

On October 2, 2021, Petitioner filed an improper practice petition against District Council 37, Local 983, AFSCME, AFL-CIO ("Union") alleging that the Union violated § 12-306(b)(1) of the New York City Collective Bargaining Law (New York City Administrative Code, Title 12, Chapter 3) ("NYCCBL") when a Union official insulted Petitioner in a post on a Union Facebook group that included a photoshopped image of Petitioner. On June 1, 2022, this Board issued a Decision and Order dismissing the petition, holding that the Facebook post did not violate the

NYCCBL. *See Seabron*, 15 OCB2d 17, at 10 (BCB 2022). Petitioner appealed that decision to the New York State Public Employment Relations Board (“PERB”) pursuant to § 205.5 (d) of the Public Employees’ Fair Employment Act (“Taylor Law”). On March 6, 2023, PERB issued a decision upholding most of the Board’s Decision but stated that it was not able to determine, based on the record, whether a photoshopped image included in the post would interfere with a reasonable employee’s exercise of their protected rights. *See Seabron*, 56 PERB ¶ 3008, at 13 (2023). PERB remanded the case to this Board to further develop the record. Accordingly, a hearing was held on the limited issue remanded to the Board regarding the photoshopped image, at which Petitioner and the Union were provided a full and fair opportunity to present witnesses and additional documents. Petitioner argues that the photoshopped image interfered with employees’ exercise of their protected rights. The Union argues that the image did not communicate any threat to working conditions, was protected speech, and did not inhibit any employees’ exercise of their statutory rights. The Board finds that the Union official’s posting of the photoshopped image did not violate NYCCBL § 12-306(b)(1). Accordingly, the petition is dismissed.

BACKGROUND

The Trial Examiner held two days of hearings and found that the totality of the record, including the pleadings, exhibits, transcripts, and briefs, established the relevant facts set forth below.

Petitioner was employed as a Traffic Enforcement Agent (“TEA”) Level III at the New York City Police Department (“NYPD”). As such, he was represented by the Union for purposes

of dues check-off, grievance processing, and receipt of welfare fund contributions.¹ The primary responsibilities of TEAs Level III are towing illegally parked vehicles and placing boots on vehicles with unpaid tickets.

In 2021, Petitioner voluntarily resigned his Union membership because he was dissatisfied with its representation. Specifically, Petitioner felt the Union was not responsive to complaints about safety conditions in the field, emergency situations, and how management dealt with subordinates. He discussed his dissatisfaction with Associate TEA David Casey, who was establishing a new union called the Independent Law Enforcement Benevolent Association (“ILEBA”). *See Ind. Law Enforcement Benevolent Assn.*, 14 OCB2d 27, at 5 n. 6 (BOC 2021). Together, Petitioner and Casey created decertification cards and began soliciting Union members to sign them in order to seek representation from ILEBA.

On June 8, 2021, in response to Petitioner’s decertification efforts, the Union’s First Vice President, Marvin Robbins, posted a collection of images and a video to a Facebook group for active and retired Traffic Enforcement employees at NYPD. Robbins testified that the Facebook group, which he created and administers, is private and can only be seen by those whom he has approved to join. At issue here is a photoshopped image that was included in the post, showing Petitioner’s face pasted over the face of a Black man shaking hands with a white man wearing Ku Klux Klan attire. Casey’s face is pasted over the face of the white man.² It is obvious that the

¹ The Traffic Enforcement bargaining unit is jointly represented by District Council 37 (“DC 37”), Communication Workers of America, and Local 237, International Brotherhood of Teamsters. *See DC 37*, 7 OCB2d 15, at 2 (BOC 2014); *Ind. Law Enforcement Benevolent Assn.*, 14 OCB2d 27, at 4 (BOC 2021).

² The Facebook post also included a video of Robbins speaking about the decertification campaign, which is not part of the remand. The video ends with Robbins asking viewers to inform him of anyone distributing the decertification cards and stating:

image is a photoshopped creation and not an actual image of Petitioner shaking hands with a Klansman, nor of Casey actually wearing Ku Klux Klan robes. *See Seabron*, 15 OCB2d 17, at 3.

Robbins testified that he was familiar with Casey because he had fielded complaints from Union members in Queens who alleged that Casey, their supervisor, referred to them as “n****rs” and “bitches,” that he micromanaged them, and that he ran the tow pound “like a plantation.” (Tr. 111) In addition, Casey was disciplined by NYPD in 2014 for saying “I ain’t no bitch ass n****r” and for using the words “bitch” and “n*****r” on numerous occasions in the workplace. (Union Ex. 3) Robbins, who is Black, testified that Casey is white, whereas the majority of TEAs represented by the Union are not white. He estimated that over half the Union’s members are “Blacks, Hispanics and Africans,” and another 10-15% are South Asian. (Tr. 80) He also estimated that 15-20% of the Union’s members did not speak English as a first language. Robbins testified that he believed Casey to be a racist who did not have the best interests of the Union’s membership at heart but did not believe Casey was an actual member of the Ku Klux Klan.

Robbins testified that he created the image he posted by searching for the original photo on Google. The photo he chose was from a documentary about a Black man attempting to build a bridge between Blacks in the South and the Ku Klux Klan. According to Robbins, the Black man in the photo was “working with the [Ku Klux Klan] to give them insight into what it was to be

We will move to take action against any one of them that are [Union] members that are passing out that form; I’m telling you right now. Gloves off. You wanna play dirty, we gonna play dirty. You sneaky, conniving son of bitches, it’s on! We gon’ play this game, we gon’ play it together.

Seabron, 15 OCB2d 17, at 4. The Board found, and PERB agreed, that this video did not violate Petitioner’s rights. *See Seabron*, 15 OCB2d 17, at 9-10; *Seabron*, 56 PERB ¶ 3008, at 26 (affirming “the finding of the BCB that the statements comprised in the transcript and the online video were not, as to *Seabron*, coercive or intimidating”).

Black[.]” (Tr. 117) Robbins testified that his intention in posting the image was to send the message to Union members that Casey was “a racist bigot” and that Petitioner was “buddy-buddy, shaking hands, riding around with him.” (Tr. 119) According to Robbins, he wanted to discredit Casey and Petitioner’s efforts because they were “spreading misinformation to my members,” specifically that “they were giving people cards to decert[ify the Union as their representative] but they were telling the members that they would keep their benefits.”³ (Tr. 127)

The Union presented expert testimony from Dr. Jared Gardner, a professor of English at Ohio State University who specializes in Comic Studies. Dr. Gardner explained the historical use of familiar imagery from other contexts as the basis for political cartoons. Dr. Gardner shared five examples, dating as far back as the 19th century and as recently as 2019, in which an imitation of a famous painting or film poster was combined with a caricature of a political figure to send a particular message. According to Dr. Gardner, viewers do not need to have familiarity with the original sources to understand these cartoons, but those who were familiar would grasp an additional layer of meaning. Dr. Gardner testified that he was able to determine that the original source photograph used in the photoshopped image had appeared in several newspapers and that there was a PBS documentary about the Black man in the photograph, who had embarked on a project of attempting to undermine racism by developing personal relationships with individual members of the Ku Klux Klan. According to Dr. Gardner, that project was criticized by many in the African American community. Dr. Gardner interpreted the photoshopped image as a cartoon because “there is no intent to make this appear as if these are really their faces” and it was created using a familiar source image. (Tr. 179)

³ We take administrative notice that TEAs represented by the Union receive benefits through the DC 37 welfare fund. If the Union were no longer the certified bargaining representative, TEAs would no longer be covered by this fund.

Dr. Gardner opined that the image having been distributed via a post to a closed Facebook group showed it was “clearly targeted for an audience that already knows something about these issues” and that it was designed to “communicate a message and a critique as quickly and as emphatically as possible.” (Tr. 179-180) Conceding that he did not know much about the situation that prompted the creation of the photoshopped image, Dr. Gardner stated that the meaning he inferred from it was that the man on the left (Petitioner) was, perhaps with good intention, engaged in conduct that gave publicity or cover to racists and was “naively and foolishly making an alliance with the gentleman on the right, who bodes no good for the community, particularly for the African American community[.]” (Tr. 182)

Petitioner, who is Black, testified that he found the image disturbing because there was “nothing positive that can be associated with someone donning a Ku Klux Klan outfit” and because his own parents had suffered trauma associated with the Ku Klux Klan during their childhoods. Specifically, he stated that there were occasions when his parents were harassed on the way to school by white children throwing rocks at them and writing “KKK” in the dirt. (Tr. 35-36) He explained that he felt angry, sad, and shocked when he saw the image. He emphasized, “I don’t condone any type of [Ku Klux Klan] activity.” (Tr. 36) Petitioner acknowledged that Casey had used racially offensive language in the workplace but testified that he did not consider Casey to be a racist and did not believe him to have any racist intentions.

According to Petitioner, when he and Casey first began soliciting Union members to sign the decertification cards, “a lot” of his colleagues were dissatisfied with the Union and were happy to talk about decertification. (Tr. 32) Petitioner initially testified that after the image was posted, “a lot” of his coworkers approached him to ask if he had seen Robbins’ post and that he “became the butt of all jokes because it was a comedy thing to people[.]” (Tr. 39) Later, he stated that after

the post “when people actually saw me coming they kind of went in a different direction. Or if I did happen to . . . start a conversation about the Union decertification, they found a way to shift the conversation.” (Tr. 40)

Despite the reactions to the post, Petitioner testified that he did not stop his decertification efforts but continued going from tow pound to tow pound to talk about decertification. When asked at the hearing whether the Facebook post was brought up while he was talking about decertification with his co-workers, Petitioner testified that Facebook came up in one instance while he was speaking to a group of employees at a Queens tow pound about decertification:

Marvin Robbins . . . was pretty active in posting negative things on the social media site. [W]hen I . . . spoke with one individual . . . he said, you see what Marvin is doing? Nothing is going to change because he keeps doing what he’s doing on social media. Nothing is going to happen. The situation with us – meaning the tow operators in the workplace – is going to pretty much stay the same because he’s been in the position [f]or so long that nothing is going to happen. So he didn’t want to sign the decertification card.

(Tr. 40-42)

The Union presented Facebook posts made by Robbins in 2022, to which at least one Union member responded in the comments with criticisms and insults directed at Robbins. Petitioner provided screenshots of three additional Facebook posts Robbins made in April 2022, which included photographs of Petitioner and referred to him as a scab and anti-union.

In 2023, almost two years after the Facebook post at issue, 12 TEAs Level III ran as part of a slate of candidates opposing Robbins’ slate for Union leadership. Another 24 candidates running against Robbins’ slate were TEAs of other levels. The slate that ran against Robbins’ slate were active campaigners who openly criticized Robbins and his fellow officers in campaign literature. Petitioner testified that he assisted the efforts of the opposition slate by creating a flier notifying his colleagues of the upcoming election and posting it on the Union bulletin boards at

various locations. The opposition slate got approximately 25% of the total votes. After the election, some members of the opposing slate sued the Union alleging internal union election improprieties.⁴

POSITIONS OF THE PARTIES

Petitioner's Position⁵

Petitioner argues that the photoshopped image interfered with employees' protected rights in violation of NYCCBL § 12-306(b)(1). Petitioner asserts that the Board and PERB have already found that the posting of the photoshopped image was a deliberate action attributable to the Union under ordinary agency principles. Petitioner contends that the image was a "false statement" because Casey is not a member of the Ku Klux Klan. According to Petitioner, the image sent the message that Petitioner was "in league with someone who commits acts of physical violence against racial minorities—not just [engaged in] prejudicial rhetoric as Mr. Casey has admittedly done[.]" (Pet. Br. at 7). Petitioner adds that Casey was only accused of and disciplined for using racial slurs, not for holding racist beliefs.

According to Petitioner, after the image was posted, his coworkers actively avoided speaking to him in any context, including those unrelated to decertification. He alleges that he became "a social leper" in the workplace. (Pet. Br. at 7). Petitioner asserts that this is because none of his coworkers "wished to be seen with someone who had been tangentially linked to the

⁴ We take judicial notice that this claim was dismissed by the Appellate Division; it is not clear whether it was appealed thereafter. *Matter of Noe v. Local 983*, 213 A.D.3d 460 (1st Dept 2023).

⁵ We summarize Petitioner's position only with respect to the limited matter that is currently before us. Petitioner's arguments about Robbins' statements in the video that was included in the Facebook post, and assertions concerning the impact of subsequent Facebook posts that were not alleged in the petition, are not issues before the Board on remand.

epitome of racism in America[.]” (*Id.*)

Petitioner argues that Robbins acknowledged that he only published the image because of Petitioner and Casey’s participation in the decertification effort and alleges that this statement proves Robbins’ intention was to “prohibit” Petitioner’s protected decertification efforts. (Pet. Br. at 8) Petitioner avers that the image conveyed Robbins’ “acute contempt” for him, which Robbins broadcast to as many of Petitioner’s coworkers as possible by posting it in the Facebook group. (Pet. Br. at 8)

Union’s Position

The Union argues that the photoshopped image did not violate the NYCCBL because the Facebook post is an internal union affair and had no adverse effect on the employee’s terms and conditions of employment or the union’s representation of the employee. The Union points to several PERB cases dismissing claims of retaliation in the context of contested union elections or decertification petitions by rival unions. The Union notes that these cases hold that a union is not restricted from taking action against a member so long as such action is confined to internal union operations and does not affect the employee’s employment. The Union contends that these cases demonstrate that there can be no violation of the NYCCBL without an impact or threatened impact on employee terms and conditions of employment, neither of which is present here.

The Union asserts that Petitioner has not identified any way in which the terms and conditions of his employment were affected by the photoshopped image nor provided any evidence that the Union refused to represent him in any capacity. The Union argues that the photoshopped image did not contain a threat to retaliate against anyone for supporting decertification. It avers that Petitioner has not provided any evidence that the Union threatened not to represent Petitioner or his supporters in contract negotiations or contract enforcement; nor is there anything in the

record to suggest the Union threatened that working conditions might change in retaliation for Petitioner or any of his colleagues seeking to exercise their protected rights. Further, Petitioner has not alleged that there were any changes to his duties, assignments, or hours or that he lost any pay, benefits, or work opportunities.

The Union asserts that Robbins has a protected right to engage in union activity, just as Petitioner does, and that the posting of the photoshopped image is protected union activity. The Union argues that Robbins, in posting the image, “retains his protection unless his statements are shown to indicate an ‘intent to falsely or maliciously injure the respondent.’” (Resp. Br. at 26, quoting *Plainedge Pub. Schs.*, 13 PERB ¶ 3037, at 3056 (1980)) The Union maintains that there is no evidence that Robbins’ purpose in posting the photoshopped image was to inhibit Petitioner from exercising his protected rights. According to the Union, the record shows that Robbins’ intention was to let Union members know that Casey, the leader of the rival union and co-organizer of the decertification effort, was a racist and that Petitioner was allied with him. The Union contends that Robbins had a good faith belief that Casey was racist and that this was meaningful information to the Union membership facing a choice regarding a change in their representatives, a majority of whom were people of color. Moreover, the Union argues Robbins had a legitimate reason for communicating this information with an image, specifically that a substantial minority of Union members do not speak English as their first language and that using an image is an effective way to communicate with all members.

The Union stresses that it is irrelevant that the speech is offensive and that PERB has rejected the notion of some minimum standard of labor relations civility. Moreover, while the Union maintains the photoshopped image did not convey a falsehood, it asserts that whether the image or the message it conveyed was true or false has no relevance to whether it was prohibited

speech. The Union contends Petitioner has not established that Robbins intended to falsely or maliciously injure Petitioner.

The Union argues that the record shows that the photoshopped image did not interfere with employees' exercise of their protected rights. The Union points out that several Union members ran a slate opposing Robbins' slate in an election for leadership of the Union after the June 8, 2021 Facebook posting and that Petitioner assisted their effort. It notes that the opposition campaign was openly critical of Robbins and his leadership, including in comments to Robbins' posts in the TEA's private Facebook group.

The Union asserts that Petitioner has not established that any employees felt intimidated or threatened by the photoshopped image and has not provided any specifics about how other employees responded to the image. While Petitioner alleges the posting of the image was a turning point in his decertification campaign, he did not provide any testimony to explain why that would be. The Union notes that even if it is true that Petitioner's colleagues lost interest in decertification after Robbins posted the image, it could very plausibly have been because they did not want to support a union founded by a racist. Petitioner never testified that he or any of his colleagues were inhibited from exercising their rights under the NYCCBL.⁶

Finally, the Union argues that the message Robbins communicated with the image is speech protected by the United States Constitution, namely that the rival union was founded by a racist and that Petitioner was allied with that individual. The Union urges that all speech on "matters of public concern" are within the ambit of the First Amendment. (Union Br. at 36) It

⁶ The Union argues that a negative inference should be drawn from the fact that Petitioner initially indicated he would be calling five witnesses other than himself but ultimately did not call any of them. The Union asks the Board to infer that the testimony of the five uncalled witnesses would have established that Robbins' posting of the image did not inhibit employees from exercising their rights.

notes that the United States Supreme Court has found far more offensive speech to be protected by the First Amendment, citing picket signs held by members of the Westboro Baptist Church near military funerals with messages such as, “Thank God for Dead Soldiers.” The Union avers that the First Amendment prohibits restricting speech simply because it is upsetting, arouses contempt, or is outrageous. It contends that the First Amendment also protects the rights of the Union’s members to receive the information contained in the image and that Article I, § 8 of the New York State Constitution also protects Robbins’ speech. Accordingly, it argues that finding a violation of the NYCCBL under these facts would run afoul of the United States and New York State constitutions.

DISCUSSION

Based on the fully developed record, we now reconsider whether the Union’s posting of the photoshopped image of Petitioner and Casey violated NYCCBL § 12-306(b)(1). We find that Petitioner has not established that the image interfered with, restrained, or coerced employees in the exercise of their protected rights under the law.

NYCCBL § 12-306(b)(1) provides that 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 this chapter, or to cause, or attempt to cause, a public employer to do so.” This Board has consistently found that “there is no violation of statutory rights such as those guaranteed by [NYCCBL § 12-305] where the alleged union conduct does not affect the employee’s terms and conditions of employment and has no effect on the nature of the representation accorded to the employee by the union.” *Velez*, 23 OCB 1, at 9 (BCB 1979); *see also Lawtone-Bowles*, 15 OCB2d 4, at 10 (BCB 2022). PERB has similarly held that it has no

jurisdiction over internal union affairs, as the “Board is not the forum to regulate the internal affairs of an employee organization. . . . [T]here is a distinction between actions taken by an employee organization to discipline a member, and action taken against that member as an employee which would have an adverse effect upon the terms and conditions of his employment or upon the nature of the representation accorded him by [the union] as a member of the negotiating unit.” *Civil Serv. Emps. Ass’n (Bogack)*, 9 PERB ¶ 3064, at 3110 (1976); *see also United Fed. of Teachers, L. 2 (Leon)*, 48 PERB ¶ 3016, at 3055-56 (2015).

This Board has recognized a broad right to free speech in the context of union representation disputes. *See LEEBA*, 7 OCB2d 21, at 14 (BCB 2014). As a result, the Board does not closely regulate statements made by employees, employers, or unions during organizing campaigns. For example, in a case alleging a rival union made “false and misleading” statements during a representation election, we held that “[r]egardless of whether the statements are true or false, we do not consider them to be improper interference because an average employee would surely be able to recognize the statements as campaign propaganda which, by its very nature, is intended to persuade employees to take a certain action.” *Id.* In so doing, this Board followed PERB’s holding that “the mere act of [a union] issuing a statement which is not wholly accurate . . . does not give rise to a violation of § 209-a.2(a) of the Act, where. . . a reasonable member of the class could not have been misled.” *United Univ. Professions (Barry)*, 20 PERB ¶ 3056, at 3123 (1987) (union’s inaccurate statements regarding agency fees charged to non-members to induce them to sign membership cards did not interfere with protected rights).

The record establishes that the photoshopped image was posted by Robbins in response to a decertification campaign by Petitioner. It appeared in a private Facebook group administered by Robbins in his capacity as First Vice President of the Union and was seen by many of Petitioner’s

colleagues who were members of the group. In addition, the image was just one of several components of the post that were critical of Petitioner, Casey, and/or their decertification efforts. In determining whether the posted image violated the NYCCBL, our analysis is limited to the factors articulated in our prior caselaw, specifically, whether the image would have interfered with, restrained, or coerced a reasonable employee in the exercise of their protected rights.⁷

We conclude from the collective testimony of Petitioner, Robbins, and Dr. Gardner that the message reasonably perceived by Petitioner's colleagues when they saw the image was that Robbins believed ILEBA's founder was a racist and that Petitioner, by seeking decertification in favor of ILEBA, was either knowingly or through ignorance assisting an organization led by a racist. The record establishes that Robbins believed that Casey was a racist and that Robbins' belief was founded upon the undisputed fact that Casey had repeatedly used the "N word" in the workplace and was disciplined for it.⁸

Most importantly, we find no evidence that the photoshopped image threatened or impacted Petitioner's or other employees' working conditions. It did not convey any message concerning terms and conditions of employment. Nor do we find any evidence that a reasonable employee might have construed the image as conveying a threat that the Union was going to take action that

⁷ We note that though Petitioner stated that the image made him sad, angry, and shocked, and reminded him of trauma his parents had experienced, the evidence reflects that posting the image did not discourage or inhibit his protected activity. The record establishes that after the photoshopped image was posted, Petitioner continued to support the decertification effort and encourage his colleagues to do so. He solicited decertification cards and campaigned on behalf of a group of his colleagues who ran against the current Union leadership in the 2023 Union election.

⁸ While Petitioner's testimony indicated that he thought the image suggested he condoned the Ku Klux Klan or racist conduct, Robbins testified that he intended the image to convey that ILEBA's founder was racist and that Petitioner was allied with him. Dr. Gardner, an expert in comic studies and an objective viewer, interpreted the image in a manner that was consistent with Robbins' stated intent. We credit Dr. Gardner's interpretation and, in conjunction with evidence of Casey's discipline for racist conduct, we do not find that the image conveyed a knowingly false statement.

would impact working conditions or fail to represent bargaining unit members who supported ILEBA or decertification.

Even without evidence that Casey had been disciplined for racist statements, we would find that the image did not violate NYCCBL § 12-306(b)(1) because it was easily recognizable as campaign propaganda and did not contain any actual or implied threat connected to working conditions or union representation. *See LEEBA*, 7 OCB2d 21, at 14 (“Regardless of whether the statements are true or false, we do not consider them to be improper interference because an average employee would surely be able to recognize the statements as campaign propaganda which, by its very nature, is intended to persuade employees to take a certain action.”) Similarly, in the context of union elections, PERB only finds pre-election conduct to be interference with union activity when there has been: “a) a material misrepresentation, b) made at a time so shortly before the scheduled date of the election so as to preclude an effective reply, and c) the employees could not reasonably be expected to themselves evaluate the truth or falsity of the statements.” *N.Y. State Thruway Auth.*, 2 PERB ¶ 4007, at 4173 (1969), *affd.*, 2 PERB ¶ 3060 (1969) (citing *Hollywood Ceramics*, 140 NLRB 221 (1962)). Even assuming such standard were applicable here, there is nothing to suggest that employees could not reasonably be expected to evaluate the truth or falsity of the image or the message it conveys, and Petitioner has not shown that he was precluded from providing an effective response. To the contrary, he testified that he continued his activity in support of ILEBA and communicating with members after the image was posted.

We do not find any resonance between this case and *Lake Shore Cent. Sch. Dist.*, 18 PERB ¶ 4058 (ALJ 1985), referenced by PERB in its remand decision. In *Lake Shore*, the president of the incumbent union told the membership that if the rival union won in an upcoming election for representation, the concerns of those who supported the rival would be addressed last during

negotiations and that the union would “look the other way” or not fight vigorously for those supporters if the employer asked to subcontract the work performed by them. PERB’s finding of a violation of the Taylor Law was based on its conclusion that the president’s statements were “threats” within the control of the union that would potentially impact rival union supporters’ terms and conditions of employment. We do not find that the image posted by Robbins contained any threat that Robbins or the Union would not represent supporters of decertification in negotiations or would not address valid contractual concerns they raised. Nor do we find any resemblance between this case and *County of Nassau*, 48 PERB ¶ 3023 (2015), also referenced by PERB in its remand. That case involved comments made by an employer suggesting working conditions were going to worsen if employees approached their union with complaints. Therefore, it contained an implied threat to terms and conditions of employment that is simply not present here.

Nor do we do not find any other evidence adduced at the hearing supports the finding of a violation of the NYCCBL. According to Petitioner, his colleagues found the image humorous and mocked him because of it. Petitioner testified that he did not find the image funny and that he became “the butt of all jokes.” Feeling personally upset or maligned by the image does not demonstrate that employees perceived the image as conveying a promise of a benefit or threat of a reprisal that could impact the terms and conditions of their employment.

Similarly, the purported loss of interest in decertification by TEAs after the image was posted does not demonstrate that the post was perceived as a promise or threat that interfered with their union activity. Petitioner’s only evidence as to how the image impacted others was a hearsay statement he attributed to a single, unnamed colleague, who, without making any reference to the image, indicated that Robbins’ frequent social media activity was an indication that things, or purportedly union leadership, were unlikely to change. In addition, although after the image was

posted, Petitioner may have felt ridiculed or avoided by his colleagues and ILEBA may have lost support from the bargaining unit, these facts do not show that the image unlawfully interfered with employees' protected rights.

In sum, after a full and complete opportunity to build a record, Petitioner did not provide any additional context to support his allegation that the image interfered with, coerced, or restrained him or other Traffic Enforcement employees from exercising their protected rights. We find that there is no evidence that the image conveyed any threat to working conditions or terms and conditions of employment of bargaining unit members or their representation by the Union. For the reasons given above, we do not find that the Union violated NYCCBL § 12-306(b)(1), and we dismiss the petition in its entirety.⁹

⁹ In its remand, PERB suggested that being “publicly traduced” could be coercive and asked us to expand on the “workplace culture and milieu” in which the conduct occurred. *Seabron*, 56 PERB ¶ 3008, at 12 and 13. To the extent PERB intended such an inquiry as independent from the standard applied herein, we find no precedent supporting such an analysis as part of the applicable legal standard. Moreover, we note that there is no evidence that the culture of the TEA workplace was such that the image would reasonably be perceived as threatening or coercive. To the contrary, the record shows that Petitioner’s colleagues found the image humorous, and that Petitioner continued his efforts to promote decertification unabated.

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-4456-21, filed by Edward Seabron against District Council 37, Local 983, AFSCME, AFL-CIO, hereby is dismissed in its entirety.

Dated: May 21, 2025
New York, New York

SUSAN J. PANEPENTO
CHAIR

ALAN R. VIANI
MEMBER

M. DAVID ZURNDORFER
MEMBER

ALAN M. KLINGER
MEMBER

JEFFREY L. KREISBERG
MEMBER