

**Noe v Local 983, Motor Veh. Operators Union, Am.  
Fedn. of State, County & Mun. Empls.**

2022 NY Slip Op 31833(U)

June 10, 2022

Supreme Court, New York County

Docket Number: Index No. 154208/2022

Judge: Lyle E. Frank

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LYLE E. FRANK PART 11M

Justice

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JOLIFER NOE, CARMEN RODRIGUEZ, NATIVA PALMER, ERIC AUGUSTE, RICHARD RIVERA

Plaintiff,

INDEX NO. 154208/2022

MOTION DATE 05/18/2022

MOTION SEQ. NO. 001

- v -

LOCAL 983, MOTOR VEHICLE OPERATORS UNION, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, JOE ORO,

Defendant.

AMENDED DECISION + ORDER ON MOTION

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78

were read on this motion to/for INJUNCTION/RESTRAINING ORDER.

This petition arises out of a dispute regarding an upcoming election for the Local 983 Motor Vehicle Operators Union, American Federation of State, County and Municipal Employees ("Local 983").<sup>1</sup> For the foregoing reasons, the Court grants Petitioners a preliminary injunction to enjoin Respondents from conducting its election until the deficiencies in the election process are corrected.

As a threshold matter, Respondents argue that Article 78 is in inappropriate for the petitioners to seek redress in this matter. The Court agrees. The Petitioners cite Matter of LaSonde v. Seabrook, 89 A.D.3d 132, 933 N.Y.S.2d 195 (N.Y.A.D. 1st Dept. 2011) for the proposition that union members may seek redress of the Courts through an Article 78 proceeding to ensure the union's compliance with its constitution. However, the sentence cited modifies the previous sentence which discusses when this applies i.e. where the union has incorporated.

<sup>1</sup> The Court would like to thank Andrew Bronstein for his assistance in this matter.

However, an earlier sentence of the same decision does to this Court give the petitioner the opportunity to seek redress from this Court, and that is the sentence that the union's constitution constitutes a contract between the union and its member.

Therefore, although this matter was brought pursuant to CPLR Article 78, the Court exercises its authority exercise our authority under CPLR 103 (c), and in this particular case, nostra sponte convert the petition to a declaratory judgment action (*see Matter of Medicon Diagnostic Labs. v Perales*, 74 NY2d 539, 544, 549 NE2d 124, 549 NYS2d 933 [1989] [noting that the Appellate Division had sua sponte converted the article 78 proceeding to a declaratory judgment action]; *Matter of Oglesby v McKinney*, 28 AD3d 153, 158, 809 NYS2d 334 [2006], *affd* 7 NY3d 561, 858 NE2d 1136, 825 NYS2d 431 [2006] ["this (article 78) proceeding should be converted, sua sponte, to a declaratory judgment action"]). (*Matter of Scarano v City of NY*, 86 AD3d 444, 445 [1st Dept 2011]).

As such, if the Petitioners have demonstrated likelihood of success on the merits and irreparable harm and that the equities tilts in their favor, the petitioners will be entitled to injunctive relief. The Court will now turn to this.

The Court believes that the Petitioners will succeed on the merits in its argument that the Local 983 constitution has been violated by the Respondents. The Petitioners make several contentions that the constitution of Local 983 has been violated by the way the election process has been conducted. Firstly, the Petitioners contend, and the Court agrees, that an election with a hybrid or remote system of voting would violate the Local 983 constitution. The constitution states that "members must be present to vote." Respondents contend that Local 983 may conduct an election that is consistent with the Constitution by calling a meeting on June 14, 2022, to begin at 6:00 A.M. and conclude at 7:00 P.M., members will satisfy the requirement that they be

present to vote by voting at the designated times. The Court agrees with Petitioners in that the term “present” is clearly synonymous with being in person, by using the plain English application. The Court respectfully does not believe that the ongoing COVID pandemic is a sufficient reason for this part of the constitution to not be adhered to. A mask wearing requirement and social distancing could lead to adherence with the constitutional provision in question.

Petitioners also contend, and the Court agrees, that an election with a hybrid or remote system of voting would violate the American Federation of State, County, and Municipal Employees (“AFSCME”) Local Union Election Manual. The Local Union Election Manual states that “what is not proper is to change from the method used previously to a new method after the nominations have taken place. If a change from one method to another is desirable, the new procedure should be approved by membership vote (or announced by the election committee) before the nominations begin.” There was no vote by union membership, nor was an announcement of this change in procedure made before nominations. Therefore, the Court agrees with Petitioners’ contention that a hybrid or remote system of voting would violate the AFSCME Local Election Manual.

Petitioners also contend, and the Court agrees, that to the extent Respondents are planning on having an option for slate voting on the ballot, that this form of voting is improper under the Local 983 Constitution. This method not only identifies the incumbent group but is a new method of voting that Local 983 has never utilized before. The Local Union Election Manual states that “what is not proper is to change from the method used previously to a new method after the nominations have taken place. If a change from one method to another is desirable, the new procedure should be approved by membership vote (or announced by the

election committee) before the nominations begin.” There was no vote by union membership, nor was an announcement of this change made before nominations. Respondents contend that their campaign flyer does not explicitly state that there will be slate voting, and that neither the Local 983 Constitution, ASFCME Constitution, nor AFSCME’s Local Union Election Manual precludes a local union from using a slate ballot. It seems clear that Respondents’ campaign flyer indicates that slate voting will be available for the incumbents, and a change in voting methods need to either be approved by membership vote or announced by the election committee before nominations begin. Accordingly, the Court agrees with petitioners’ contention.

The Court also believes that there is irreparable harm demonstrated by petitioners and that the balance of the equities weighs in favor of the petitioners. Respondents points out that there is a process by which the Petitioners could avail themselves if they feel aggrieved. The Court is not aware of how long that process could take, and in in the interim, the union would be operating under an election result that likely violates the Local 983 Constitution. Moreover, there would certainly be harm to the reputation of the union. The equities certainly balance in favor of the Petitioners, as they have clearly demonstrated to this Court that their rights under the Local 983 Constitution would be violated by the election as it is proposed.

Accordingly, it is hereby

ORDERED that Local 983 is enjoined from holding an election until the infirmities set forth in this decision are met and this Court vacates this injunction; and it is further

ORDERED that Respondents are directed to provide a plan to the Court to hold a future Local 983 election not more than thirty days following service of this order with notice of entry that is consistent with this Decision and Order, and such plan shall be presented to the Petitioners for review at least seven days prior to such submission to the Court, with the petitioners then

having an opportunity to provide any objections to such plan to the Court not more than three days following such submission to the Court; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

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6/10/2022

DATE

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LYLE E. FRANK, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE