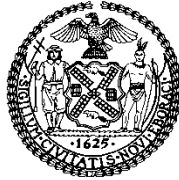


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THE COUNCIL

Briefing Paper of the Land Use Division

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SUBCOMMITTEE ON ZONING AND FRANCHISES

Mark S. Weprin, Chair

December 2, 2014

OVERSIGHT: Cablevision Franchise Agreement and Collective Bargaining

I. Introduction

On December 2, 2014, the Subcommittee on Zoning and Franchises, chaired by Council Member Mark S. Weprin will hold an oversight hearing entitled “Cablevision Franchise Agreement and Collective Bargaining.” The Subcommittee expects to receive testimony from representatives of Cablevision Systems New York City Corporation (“Cablevision” or the “Company”), and the Communication Workers of America (“CWA” or the “Union”), including local CWA unions, Cablevision employees, and other interested members of the public.

II. Background

A. The Cablevision Franchise Agreement with the City of New York

Cablevision presently holds franchises to provide cable television and related services (internet, phone, etc.) in Brooklyn and the Bronx, serving approximately 700,000 residents and 40,000 small businesses.¹ Cablevision’s earliest franchise with the City dates back to 1983 and in FY 2014, Cablevision paid the City in excess of \$38 million in franchise fees. The City and Cablevision are parties to a Cable Franchise Agreement for the Bronx and Brooklyn (the “Franchise Agreement”), which expires on July 18, 2020.²

The Franchise Agreement was entered into pursuant to an authorizing resolution adopted by the City Council in accordance with the provisions of the NYC Charter³ and contains the following provision with respect to collective bargaining:

¹ City Charter Section 362 defines a “franchise” as grant by an agency of a right to occupy or use the inalienable property of the city to provide a public service. Examples include cable television, private bus lines, bus stop shelters. A “franchise” can only be awarded in accordance with the provisions of NYC Charter Section 363. NYC CHARTER, Section 363(a).

² Franchise Agreement at § 3.1.

³ NYC CHARTER, § 363(a).

17.1 *Right to Bargain Collectively*: Franchisee (i.e., Cablevision) shall recognize the right of its employees to bargain collectively through representatives of their own choosing in accordance with applicable law. Franchisee shall recognize and deal with the representatives duly designated or selected by the majority of its employees for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, or any other terms, conditions, or privileges of employment as required by law. Franchisee shall not dominate, interfere with, participate in the management or control of, or give financial support to any union or association of its employees.

B. National Labor Relations Act and Review Board

Congress enacted the National Labor Relations Act (the “NLRA” or the “Act”) in 1935 to protect the rights of employees and employers and to encourage collective bargaining, and to curtail certain private sector labor and management practices, which can harm the general welfare of workers, businesses and the U.S. economy.⁴

The Act created the National Labor Relations Board (“NLRB”). The NLRB investigates charges made from employees, unions and employers covering a range of unfair labor practices. When that investigation finds sufficient evidence to support the charge, the NLRB issues a complaint and becomes a representative for the charging party throughout the process. The complaint is adjudicated before an NLRB Administrative Law Judge (“ALJ”) unless there is a settlement. The ALJ’s final determination on an NLRB complaint is appealable to the United States Court of Appeals.⁵

III. Complaints Filed by NLRB Against Cablevision

A. Cablevision’s Unionized Workers

Cablevision operates facilities in Brooklyn and the Bronx. In January 2012, workers of Cablevision’s Brooklyn facility, by a margin of 180 to 86, voted to unionize and authorize the

⁴ Title 29, Chapter 7, Subchapter II, United States Code.

⁵ 29 U.S.C § 160(f)

CWA to collectively bargain on their behalf. The NLRB certified the Union as the collective bargaining representative of the Brooklyn workers on February 7, 2012. In June 2012, Cablevision's Bronx workers voted against unionization⁶ (by a vote of 121 to 43).⁷

Contract negotiations between Cablevision and the CWA for the Brooklyn workers, during the course of the past 2 ½ years, have not been successful. Under the Act, if a collective bargaining agreement is not reached within one year of the NLRB certification of a union, the employees may, after collecting signatures from at least 30% of workers in a unit, file a petition with the NLRB for a vote to decertify the union. A majority of votes decides the outcome.

On January 28, 2013, CWA filed an Unfair Labor Practice charge against Cablevision alleging that the company was not bargaining in good faith and was engaged in "surface bargaining," with no real intent to reach an agreement for the Brooklyn workers.

On January 30, 2013, Cablevision "permanently replaced" 22 workers at its Brooklyn facility, alleging the workers failed to report to work in a timely manner. The CWA and the workers alleged they were fired because of their union activity, including seeking a meeting with management to air their grievances about the lack of progress in negotiations of the collective bargaining agreement.

On February 26, 2013, the Council's Subcommittee on Zoning and Franchises held an oversight hearing on the Cablevision Franchise Agreement and its obligation to collectively

⁶ The CWA alleges that when workers in the Bronx began to organize in the Spring of 2012, after the Brooklyn vote to unionize, Cablevision, in an effort to defeat unionization in the Bronx, gave raises averaging 14% (approx.. \$10,000 to \$15,000 per year) to the Bronx workers.

⁷ <http://www.nytimes.com/2014/11/08/nyregion/labor-board-says-cablevision-chief-tied-raises-to-vote-against-a-union.html>

bargain with the authorized representative of the Brooklyn workers, i.e., the CWA. The Subcommittee heard testimony from representatives of Company and the Union, as well as several of the 22 workers “permanently replaced” the month prior. Testimony alleged that the “permanently replaced” workers sought a meeting with management to discuss the company’s failure to settle a fair contract. It was alleged that the managers directed a group of workers to go to a conference room for a meeting. After about 20 minutes elapsed, the workers were told they were “permanently replaced.” Cablevision representatives denied any improper actions with respect to the permanently replaced workers, testifying that the workers were placed on a “recall” list making them eligible for reinstatement as positions became available. In the several months that followed the Subcommittee oversight hearing, it is believed that each of the 22 workers was reinstated by the Company from the recall list. Cablevision also denied allegations they were not negotiating in good faith with the CWA.

B. The 1st NRLB Complaint Against Cablevision in May 2013

In response to, and after NRLB investigation of, the CWA’s charges against Cablevision, in May 2013, the NRLB filed a complaint against the Company alleging it had engaged in unfair labor practices by interfering with, restraining, and coercing employees from exercising their rights under the NLRA and failing and refusing to bargain collectively and in good faith with the Union, as the authorized collective bargaining agent of the Brooklyn workers. The allegations included the following:

- In April 2012, Cablevision (by James Dolan) met with the employees of its Bronx facility, promising, among other things, improved wages and benefits (which

were implemented in May 2012), in an effort to discourage the Bronx employees from selecting the CWA to be its collective bargaining representative.⁸

- In June 2012, James Dolan met with Bronx employees and threatened reduced benefits and more onerous working condition if they selected CWA as their collective bargaining agent.⁹
- From May 30, 2012 through March 4, 2013, Cablevision engaged in “surface bargaining with no intent of reaching agreement” for the Brooklyn workers with the CWA and failed and refused to bargain in good faith.¹⁰
- On January 30, 2013, Cablevision improperly discharged the 22 workers at the Brooklyn facility because these employees were engaged in activities assisting the Union and sought to discourage employees from engaging in these activities.¹¹

A trial before an NRLB Administrative Law Judge was held in the fall of 2013 on the May 2013 NRLB Complaint and the ALJ’s decision is expected in the very near future.

C. The 2nd NRLB Complaint Against Cablevision in November 2014

On November 6, 2014, the NLRB issued a second complaint against Cablevision. This complaint resulted from a series of Unfair Labor Practice allegations made by the CWA against Company in regard to its alleged efforts to eliminate the Brooklyn worker’s union. The Union claimed, among other things: Cablevision high level managers met with the Brooklyn workers to hear the workers’ grievances, and then blamed the union for these problems (e.g., lack of pay

⁸ NRLB Complaint, dated May 24, 2013, at ¶¶ 6-7.

⁹ Id. at ¶ 8.

¹⁰ Id. at ¶ 12.

¹¹ Id. at ¶ 17-18.

parity with other Cablevision workers); the wrongful termination of Jerome Thompson, one of the leaders of the Brooklyn workers' effort to organize into CWA; on September 10, 2014, an improper Cablevision-sponsored vote was held, by a private polling company, Honest Ballot Association, to determine if the Brooklyn workers still supported the Union (the vote was 129 to 115 against the CWA).¹²

Specifically, the second NLRB complaint charged that Jerome Thompson was fired in retaliation for his union activity;¹³ that the company was intimidating workers, including through James Dolan's direct threat to the workers that if they did not turn against the Union, they would not receive raises and would be denied training and new technologies¹⁴; that the vote held by Cablevision (conducted by Honest Ballot Association) on Union representation was an attempt to undermine the Union¹⁵; that Cablevision improperly conducted surveillance of the workers as they voted¹⁶; and that Cablevision unilaterally changed terms and conditions of employment¹⁷.

This recently filed complaint is expected to be briefed and heard by an NLRB ALJ in 2015.

IV. Conclusion

The Subcommittee expects to hear testimony surrounding the allegations in the NLRB complaints against Cablevision in connection with its obligation under its Franchise Agreement

¹² Note: two previous applications to the NLRB to conduct a vote to "decertify" the Union, given the failure to reach a collective bargaining agreement within one year, were rejected by the NLRB because of the pendency of the unfair labor practice allegations against Cablevision in the NLRB complaints of May 2013 and November 2014.

¹³ NLRB Complaint, dated November 6, 2014, at ¶ 13.

¹⁴ *Id.* at ¶¶ 9, 15, 16.

¹⁵ *Id.* at ¶¶ 17, 18.

¹⁶ *Id.*

¹⁷ *Id.* at ¶¶ 7, 8.

to recognize the rights of its workers to collectively bargain through representatives of their own choosing. The Subcommittee looks forward to hearing testimony from all interested parties.