State of New York Public Employment Relations Board Decisions from August 16, 2001

New York State Public Employment Relations Board

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State of New York Public Employment Relations Board Decisions from August 16, 2001

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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

YONKERS FEDERATION OF TEACHERS,
LOCAL 860, AFT, AFL-CIO,

Respondent,

upon the Charge of Violation of §210.1 of
the Civil Service Law

BOARD DECISION AND ORDER

This matter comes to us on the application of the Yonkers Federation of Teachers, Local 860, AFT, AFL-CIO (Federation), for restoration of the dues and agency shop fee deduction privileges afforded under §208 of the Civil Service Law (CSL). The Federation’s privileges were suspended by an order of this Board dated December 20, 1999. At that time, we determined that the Federation had violated CSL §210.1 by engaging in a strike against the Yonkers City School District (District) for four workdays from October 1, 1999 to October 6, 1999. As a consequence of this strike, we ordered that the Federation’s dues and agency shop fee deduction privileges be suspended indefinitely, provided, however, the Federation could apply to this Board for restoration of said privileges at any time after the expiration of eighteen (18) months from the commencement of the suspension.

132 PERB ¶3075 (1999).
The application to this Board was to be on notice to all interested parties, supported by proof of good faith compliance with CSL §210.1 since the violation, and accompanied by an affirmation that the Federation no longer asserts the right to strike, as required by CSL §210.3(g).

The Federation has submitted an affirmation that it does not assert the right to strike and we have ascertained, through the letter of support from the District and other documents found in its petition, the Federation’s good faith compliance with the statute and our order. The documentary evidence demonstrates that the Federation successfully negotiated a successor agreement, among other things, and, therefore, has not engaged in, caused, instigated, encouraged, condoned or threatened a strike against the District since the above-stated violation.

NOW, THEREFORE, WE ORDER that the indefinite suspension of the dues and agency shop fee deduction privileges of the Yonkers Federation of Teachers, Local 860, AFT, AFL-CIO be, and hereby is, terminated, effective immediately.

DATED: August 16, 2001
Albany, New York

Michael R. Cuevas, Chairman

Marc A. Abbott, Member

John T. Mitchell, Member
In the Matter of

HOPE SOBIE,

Charging Party,

- and -

NEW ROCHELLE FEDERATION OF SCHOOL EMPLOYEES, LOCAL 280, AFT/NYSUT, AFL-CIO,

Respondent,

-and-

THE CITY SCHOOL DISTRICT OF THE CITY OF NEW ROCHELLE,

Employer.

MERRIL SOBIE, ESQ., for Charging Party

JAMES R. SANDNER (CHRISTOPHER M. CALLAGY of counsel), for Respondent

McGUIRE, KEHL & NEALON, LLP (JEFFREY A. KEHL of counsel), for Employer

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by Hope Sobie to a decision of an Administrative Law Judge (ALJ), dismissing her improper practice charge which, as amended, alleged that the New Rochelle Federation of United School Employees, Local 280, AFT/NYSUT, AFL-CIO (Federation) violated §209-a.2(c) of the Public
Employees' Fair Employment Act (Act) when it refused to represent her or assist her in a grievance alleging that her employer, the City School District of the City of New Rochelle (District), had failed to pay her a longevity increment included in the recently negotiated collective bargaining agreement between the Federation and the District.¹

At the hearing, the ALJ closed the record at the end of Sobie's case to afford the parties the opportunity to brief the issue of timeliness of the improper practice charge and the sufficiency of Sobie's proof. The ALJ thereafter dismissed the charge on her own motion, finding that the untimeliness of the charge was first revealed at the hearing.² She did not decide whether Sobie's direct case was otherwise sufficient.

EXCEPTIONS

Sobie excepts to the ALJ's decision, arguing that the relevant dates were apparent from the pleadings and that neither the Federation nor the District raised timeliness as an affirmative defense in their answers. Sobie further argues that the charge is, in fact, timely. The Federation and the District support the ALJ's decision and argue, in addition, that Sobie's charge fails for lack of proof.

FACTS

The facts of the case are recited in detail in the ALJ's decision and will be repeated here only as required by this decision.

¹The District is made a statutory party to the case pursuant to §209-a.3 of the Act.

²Section 212.4(I) of PERB's Rules of Procedure (Rules) provides that an ALJ may dismiss a charge on his or her own motion if the failure of timeliness is first revealed at the hearing.
Sobie is a school psychologist employed by the District and her title is in the unit represented by the Federation. Sobie believes that she is entitled to a longevity increment provided for in the parties’ 1998-2001 collective bargaining agreement. The increment is payable to unit employees “on the 22nd anniversary of actual teaching service in the District”. Sobie did not receive the increment in September 1999 and, when she contacted the District, she was informed that she was not eligible for the increment because she did not have sufficient years of service.³ In the amended charge, Sobie alleges that she contacted the Federation in October and November 1999 to request their assistance and the Federation refused.⁴ Sobie further alleges that she subsequently asked the Federation to meet with her and the District to informally resolve the issue and the Federation refused. She also alleges that, in December 1999, she requested that the Federation file a grievance and the Federation refused. Finally, Sobie alleges that she requested the Federation to take her grievance to arbitration on December 21, 1999, and that the Federation refused her request on January 13, 2000.

In her testimony at the hearing, Sobie stated that she had conversations with Gerry O’Brien, the Federation president, and Ted Ackerman, one of the members of the Federation’s negotiating team, in October and November 1999. During those

³Sobie was employed by the District from 1967 to 1970. She resigned in 1970 and was subsequently rehired in 1976 as a part-time employee. She became a full-time District employee in 1986.

⁴In an offer of proof at the outset of the hearing, the Federation stated that Sobie had not requested that the Federation file a grievance on her behalf in October or November 1999 and that the first time that Sobie sought the involvement of the Federation was her January 2000 request that the Federation take her grievance to arbitration.
Board - U-21606

conversations, she requested the Federation's support of her grievance. She was refused because the Federation, relying on the collective bargaining agreement's provisions regarding seniority for its computation of Sobie's longevity, had determined that she did not have twenty-two year's of service with the District.

Sobie and her counsel subsequently met with the District and, when her concerns were not resolved, filed a grievance on December 9, 1999. The District denied the grievance on December 17, 1999, noting that Sobie did not have sufficient years of service to be entitled to the increment. Sobie, by letter dated December 20, 1999, requested that the Federation appeal the denial to arbitration. Sobie and her counsel met with the Federation's grievance committee on January 11, 2000, and reiterated the basis for her belief that she was entitled to the increment. By letter dated January 13, 2000, the Federation informed Sobie that it would not pursue her grievance because, based upon the collective bargaining agreement and its negotiating history, the Federation concluded that Sobie had only 19.6 years of service as of June 30, 1999, and was, therefore, not entitled to the increment.

DISCUSSION

Neither the Federation nor the District raised timeliness as an affirmative defense in their answers to the improper practice charge. Therefore, the charge may be dismissed as untimely only if the failure of timeliness was first revealed at the hearing.⁵ The amended charge alleges that Sobie first asked the Federation to file a grievance for her in December 1999. The charge, filed on April 6, 2000, appeared on its face to be

⁵Rules, §212.4 (I). See also City of Binghamton, 31 PERB ¶3088 (1998); Nassau Comm. Coll., 20 PERB ¶ 3010 (1987); PEF, 15 PERB ¶3066 (1982).
Board - U-21606

timely filed. However, at the hearing, Sobie did testify that she requested the Federation's assistance in November 1999 in filing a grievance and that her request was refused. At the close of the charging party's case, the ALJ, upon her own motion, closed the record and directed the parties to brief the issue of timeliness. Following receipt of the transcript, the ALJ further directed the parties to brief the issue of whether Sobie's direct case was sufficient under the standards enunciated in *County of Nassau (Police Department) (Unterweiser)* (hereafter, *Unterweiser*). She thereafter dismissed the charge as untimely as it was filed more than four months after the untimeliness of the charge first became apparent at the hearing. We do not agree.

In October and November 1999, the Federation discussed with Sobie its reasons for believing that she was not entitled to the increment, explaining the contract provisions it relied upon and the negotiating history of those provisions, and the mathematical computation of Sobie's years of service using those provisions. Sobie responded by filing the grievance on her own. Sobie thereafter requested that the Federation take her grievance to arbitration. The Federation grievance committee met with Sobie and her representative. Sobie's request was denied by the Federation's January 13, 2000 letter, in which the Federation outlined the reasons for its refusal.

The amended charge, complaining of the Federation's refusal to take Sobie's grievance to arbitration, is timely on its face and neither the Federation nor the District raised timeliness in their answers to the charge. Indeed, in its offer of proof to the ALJ


7A charge must be filed within four months of the action which forms the basis of the charge. Rules, §204.1(a)(1).
Board - U-21606

at the opening of the hearing, the Federation stated that there had been no request from Sobie prior to the January 2000 demand for arbitration for it to process a grievance on her behalf. Given the pleadings, the Federation’s offer and Sobie’s somewhat confused testimony as to what she actually discussed with O’Brien and Ackerman, we find that there is insufficient conflict between the facts alleged in the amended charge and those adduced at the hearing on the issue of timeliness to support a motion pursuant to §212.4(l) of the Rules.

Because of her decision on the timeliness issue, the ALJ did not reach the second issue presented by Sobie’s direct case - the sufficiency of the proof in light of the standards enunciated in Unterweiser. We find it appropriate, therefore, to remand this matter to the ALJ for a decision on that issue.

Based on the foregoing, we grant Sobie’s exceptions and reverse the decision of the ALJ. The matter is, therefore, remanded to the ALJ for further processing consistent with this decision. SO ORDERED.

DATED: August 16, 2001
Albany, New York

Michael R. Cuevas, Chairman

Marc A. Abbott, Member

John T. Mitchell, Member
STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

JOHN ZITO,

Charging Party,

- and -

UNITED FEDERATION OF TEACHERS,
LOCAL 2, AFT, NYSUT, AFL-CIO,

Respondent,

- and -

BOARD OF EDUCATION OF THE CITY SCHOOL
DISTRICT OF THE CITY OF NEW YORK,

Employer.

JOHN ZITO, pro se
CHARLES D. MAURER, ESQ., for Respondent
DALE C. KUTZBACH, GENERAL COUNSEL (JERRY N. ROTHMAN and
SUSAN MANDEL of counsel), for Employer

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by John Zito (Zito) to a decision by an
Administrative Law Judge (ALJ) on a charge against the United Federation of Teachers,
Local 2, AFT, NYSUT, AFL-CIO (UFT). The charge alleges that UFT violated §209-
a.2(c) of the Public Employees' Fair Employment Act (Act) by not processing a
grievance that Zito filed against the Board of Education of the City School District of the
City of New York (Board of Education). The Board of Education is made a party to this proceeding pursuant to §209-a.3 of the Act.¹

EXCEPTIONS

In his exceptions, Zito argues, in substance, that the ALJ erred in applying the facts to the law. UFT supports the position of the ALJ. The Board of Education has not filed a response.

FACTS

A full exposition of the facts is set forth in the ALJ's decision.² For the purpose of our decision, we will confine our review to the salient facts relevant to the exceptions filed by Zito.

Zito was a tenured math teacher employed by the Board of Education since 1985. As the result of two separate incidents at Lafayette High School in March 1999, he sustained personal injuries for which he was granted a line-of-duty-injury leave from April 1999 to April 2000. He utilized his sick leave, borrowed sick days, and also received a grace period for the line of duty leave of absence.

However, in June 1999, Zito suffered a heart attack which resulted in hospitalization. In either August or September 1999, he applied for a leave of absence

¹Section 209-a.3 of the Act provides:

The public employer shall be made a party to any charge filed under [§209-a.2] which alleges that the duly recognized or certified employee organization breached its duty of fair representation in the processing of or failure to process a claim that the public employer has breached its agreement with such employee organization.

²See 34 PERB ¶4553 (2001).
to restore his health. This leave was granted without pay and it ran from September 1999 to June 2000.

During Zito's leave of absence, he received, on November 3, 1999, a letter from Chancellor Rudolph Crew advising him that he was being suspended with pay from his teaching duties pending a hearing in accordance with Education Law §3020-a. The specifications allege that Zito had excessive absences during the period September 1998 to April 1999 and, as a result, neglected his teaching duties.

In April 2000, Zito filed a Step 2 grievance seeking "to drop the suspension with pay and the 3020-a". Zito testified that the reason for the delay was that because "... [he] had not gotten any help from the union, [he] decided to take it upon [himself] to do something." Under the terms of the collective bargaining agreement, teachers have the right to process grievances at Steps 1 and 2. "Contractually, the [UFT] reserved the right to approve grievances to proceed to Step 3 or arbitration to Step 4."

Zito's suspension had been under investigation by the UFT. On or about January 14, 1999, UFT representative Helen Doughty sent a memo regarding Zito's grievance to Howard J. Bloch, UFT Grievance Chair, recommending that UFT not

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3The record demonstrated that Zito had not been paid by the Board of Education while on restoration of health leave.

4See charging party exhibit 3.

5Transcript p. 35.

6See Transcript pp. 50-51 (Fresko testimony).
Board - U-21928

proceed to Step 3.7 Subsequently, on May 9, 2000, Howard Schoor, Chairman, UFT Grievance Committee, advised Zito that UFT would not take his case to Step 3 of the grievance procedure and that, if Zito wished to appeal this decision, to contact Helen Doughty.8 On or about October 4, 2000, Zito received a letter from George Fesko, Assistant to the UFT President, advising Zito that the internal appeal committee of UFT, Grievance Committee of the Ad Com, had denied his appeal and gave its reasons for the denial.

Fesko testified that there was no contractual provision that covered Zito’s complaint, i.e. “that he got a letter saying he was suspended with pay while he was on . . . unpaid restoration to health leave.”9 Zito sought to convert unpaid status to paid status. However, at the time he received the suspension letter and subsequent thereto, he could not perform any duties.10

Even though UFT decided not to pursue Zito’s grievance to Step 3, it pointed out to him the remedy of medical arbitration. As Fesko testified, “we said that we would look into whether or not we could expedite it . . . because if he won his medical arbitration, he would have a paid status . . . .”11 However, Fesko testified that Zito postponed the medical arbitration hearing. Zito was advised by letter that the Medical

7See Respondent’s Exhibit 2 (Note: the date is a typographical error and should read January 14, 2000).

8See Charging Party Exhibit 4.

9See Transcript p. 55 (Fesko’s testimony).

10See Transcript pp. 30-33 (Zito’s cross-examination).

11See Transcript pp. 54-55 (Fesko’s testimony).
Bureau wanted him to reschedule and a third letter had been sent to Zito to reschedule or consider the arbitration abandoned.\(^{12}\)

**DISCUSSION**

Zito argues in his exceptions that the ALJ was deceived into believing the legal advice UFT received was unbiased. He supports this argument with documents which were not introduced by him at the hearing and may not be considered by us through his exceptions.\(^{13}\)

The record fails to demonstrate that UFT violated the standard for a duty of fair representation charge found in *Civil Service Employees Association v. PERB* and *Diaz*.\(^{14}\) Zito has failed to demonstrate that UFT's conduct, or lack thereof, was deliberately invidious, arbitrary or done in bad faith.

The record is clear that UFT investigated Zito's grievance over his suspension and found it to be without merit. He did not like UFT's decision. A union is not required to agree with a unit employee's interpretation of the contract.\(^{15}\) We have consistently held that we would not substitute our judgment for that of a union's regarding the filing and prosecution of grievances, for a union is given a wide range of reasonableness in

\(^{12}\)See Transcript p. 56 (Fesko's testimony).


\(^{14}\) 132 AD2d 430, 20 PERB ¶7024 (3d Dep't 1987), affirmed on other grounds, 73 NY2d 796, 21 PERB ¶7017 (1988).

these regards. Fesko testified that UFT gave the reasons for its decision not to pursue his grievance to arbitration and, in fact, offered him alternatives to arbitration which he did not pursue.

Based upon the foregoing, we deny Zito's exceptions and we affirm the decision of the ALJ.

IT IS, THEREFORE, ORDERED that the charge must be, and it hereby is, dismissed.

DATED: August 16, 2001
Albany, New York

Michael R. Cuevas, Chairman

Marc A. Abbott, Member

John T. Mitchell, Member

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16 See District Council 37, AFSCME (Gonzalez), 28 PERB ¶3062 (1995).
STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

MICHAEL W. CIOCE,

Charging Party,

- and -

WESTCHESTER COUNTY CORRECTION OFFICERS BENEVOLENT ASSOCIATION, INC.,

Respondent,

-and-

COUNTY OF WESTCHESTER,

Intervenor.

MICHAEL W. CIOCE, pro se

GOODSTEIN & WEST (ROBERT DAVID GOODSTEIN of counsel), for Respondent

CHARLENE INDELICATO, COUNTY ATTORNEY (LORI ALESIO of counsel), for Employer

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by Michael W. Cioce to a decision of the Director of Public Employment Practices and Representation (Director) dismissing his improper practice charge which, as amended, alleged that the Westchester County Correction Officers Benevolent Association, Inc. (COBA) violated §209-a.2(c) of the
The Director found that COBA had tabled discussion of whether the grievance would proceed to arbitration until its next meeting in order to give Cioce an opportunity to speak because he had failed to appear at the February 23, 2001, grievance committee meeting. Finding that such action was neither arbitrary, discriminatory nor taken in bad faith, the Director dismissed the charge.

EXCEPTIONS

Cioce alleges in his exceptions that the Director erred in dismissing his improper practice charge because he did not consider other grievances that Cioce had previously filed and because he did not consider COBA's further actions with respect to the at-issue grievance after the filing of the improper practice charge. Neither COBA nor the County have responded.

Based upon our review of the record and our consideration of the arguments made, we affirm the decision of the Director.

FACTS

Cioce is a corrections officer employed by the County. He filed a grievance with COBA on November 13, 2000, alleging that the County violated the COBA-County collective bargaining agreement in the handling of his Workers' Compensation and

1The County of Westchester (County) is a statutory party pursuant to § 209-a.3 of the Act.
Board - U-22298

General Municipal Law (GML) §207-c claims arising out of alleged on-the-job injuries going back to 1994.

COBA alleged in its answer that the grievance had been denied at Step 1 of the parties’ contractual grievance procedure and that it was scheduled for February 23, 2001, for discussion by COBA’s grievance committee and a decision as to whether COBA would take the grievance to arbitration. COBA alleged that Cioce had been invited to attend the meeting to discuss the grievance and that he neither responded to the invitation nor appeared at COBA’s February 23 meeting. COBA, therefore, tabled discussion of the grievance until such time as another meeting could be scheduled for Cioce to attend. Cioce filed the instant charge alleging that COBA had taken no action on the November 13, 2000, grievance and had taken no action on a number of grievances he had filed since 1996.²

Thereafter, the Administrative Law Judge (ALJ) scheduled a pre-hearing conference at which both Cioce and representatives of COBA appeared.³ Summarizing the discussions at the conference in a March 15, 2001, letter, the assigned ALJ informed the parties that unless his characterization of the facts was disputed, the case would be assigned to another ALJ for decision and would likely be dismissed. He set

²See Westchester County Correction Officers Benev. Ass’n, 33 PERB ¶4638 (2000), where Cioce’s charge that COBA had not timely responded to his November 13, 2000, grievance, filed seven days after Cioce had filed the grievance, was dismissed because that time frame was not, per se, unreasonable. Cioce’s allegations that COBA had not properly processed previous grievances were also dismissed.

³The County did not appear.
forth the facts as stated above and noted that COBA had, in fact, taken an action on Cioce’s November 13, 2000, grievance by taking it to Step I and by scheduling it for discussion at its February 23 grievance committee meeting. Cioce’s response, which was filed as an unnumbered improper practice charge, argued that there is nothing in the collective bargaining agreement or “arbitration law” which requires a grievant to meet with his employee organization before a decision can be made to arbitrate a pending grievance. Cioce also referred to his alleged on-the-job injuries and his prior grievances as evidencing COBA’s unwillingness to process any grievances he filed.

In his March 30, 2001 letter, the ALJ confirmed that Cioce did not dispute the characterization of the facts but only disputed that his participation at the grievance review meeting was necessary and proper. The matter was thereafter submitted to the Director for decision on the stipulated record. COBA filed a brief in which it alleged that it had scheduled Cioce’s November 13, 2000, grievance for discussion at its May 1, 2001, grievance committee meeting and that Cioce had indicated that he would not attend. Neither Cioce nor the County filed briefs with the Director.

DISCUSSION

Cioce attempts in his pleadings submitted to the ALJ and in his exceptions to this Board to argue the merits of his GML §207-c and Workers’ Compensation claims, as well as the merits of all his prior grievances. He has filed, both with the ALJ and the Board, extensive submissions which have previously been filed with the County and COBA detailing his case, which began with an alleged on-the-job injury in 1994. His
reference to these past actions provides an historical perspective to his current improper practice charge, but cannot form the basis for separate improper practices.  

His charge, as pled and as litigated, alleges only that it was a breach of the duty of fair representation for COBA to table discussion on his grievance until he was present to join in the discussion. There are no facts pled by Cioce which, if proven, would support a finding that COBA’s action was arbitrary, discriminatory or taken in bad faith. Indeed, COBA’s action in inviting Cioce to discuss and explain his grievance before COBA’s grievance committee made a decision about arbitration could be said to be the antithesis of such conduct.  

His allegations in the exceptions relating to events which occurred after the charge was filed are not properly before us. COBA’s further actions were taken after the Director issued his decision and may not, therefore, be considered.  

Based on the foregoing, we deny Cioce’s exceptions and affirm the decision of the Director.

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4 See Guilderland Teachers Aide Ass’n, 32 PERB ¶3023 (1999).

5 See CSEA v. PERB and Diaz, 132 AD2d 430, 20 PERB ¶7024 (3d Dep’t 1987), affirmed on other grounds, 73 NY2d 796, 21 PERB ¶7017 (1988).

6 See Law Enforcement Officers Union Council 82, AFSCME (Gardner), 31 PERB ¶3076 (1998) and cases cited therein.
IT IS, THEREFORE, ORDERED that the charge must be, and it hereby is, dismissed.

DATED: August 16, 2001
Albany, New York

Michael R. Cuevas, Chairman

Marc A. Abbott, Member

John T. Mitchell, Member
This case comes to us on exceptions of Sara-Ann P. Fearon to the decision of the Director of Public Employment Practices and Representation (Director) which dismissed her improper practice charge alleging that the Board of Education of the City School District of the City of New York (District) and the United Federation of Teachers (UFT) violated, respectively, §209-a.1(a) and §209-a.2.(c) of the Public Employees’ Fair Employment Act (Act).

FACTS

Fearon filed her improper practice charge on April 4, 2001, alleging, *inter alia,*

that:

The United Federation of Teachers by letters dated January 24, February 5 and February 27, 2001, arbitrarily refused to reconsider its erroneous position to not process my incomplete Step 3 process expeditiously to arbitration. The Chancellor abused his discretion
Board - U-22492

as per Articles 22B4g and 22c. This case is ripe for PERB review; I believe there is an ongoing conspiracy between the UFT and Board of Education to not resolve the outstanding Step 3 grievance issues, even though grieved year after year as per the enclosed September 14, 2000 letters. See enclosed affidavit of particularization of the charge of improper practice.

The first letter dated September 14, 2000, from Howard Schoor, UFT Grievance Committee Chairman, refers to the subject grievance case No. A-017-K16295 (Faculty Conferences). In that letter, Schoor informs Fearon that “this office is persuaded that your case has merit and we wish to pursue the appeal to the third step.” The second letter dated September 14, 2000, from Fearon to Chancellor Harold O. Levy requested a conference pursuant to Art. 22B1c of the UFT-District collective bargaining agreement.

On April 10, 2001, the Director advised Fearon of the deficiencies of her charge pursuant to §204.2(a) of the PERB's Rules of Procedure (Rules). Fearon was advised to correct the following deficiencies on or before April 24, 2001, or the charge would be deemed withdrawn:

The pleading in the above-referenced matter is deficient for the reasons set forth below.

It cannot be determined what act, or action, constitutes the alleged violations. In any event, no act committed by the employer within four months of the filing of the charge appears to be identified, nor are there any facts to establish a violation of Section 209-a.1(a)

As against the union, the only acts within the four-month statute of limitations are Mr. Bloch's letters of January 24, February 5 and February 27. [However], [t]here are no facts to establish that those letters are arbitrary, discriminatory or in bad faith.
On April 18, 2001, Fearon filed an Amended Charge alleging, *inter alia*, that ...

Howard Bloch, Director United Federation of Teachers (UFT) Grievance Committee, engaged in bad faith and/or improper practice when he arbitrarily and invidiously stayed processing my Step 3 grievance to arbitration, in light of questions concerning the Chancellor’s non-compliance with Step 3 contractual grievance process. See designated paragraphs “8”-“17” of the affidavit of particulars and subsequent amendment dated April 13, 2001 to the affidavit of particulars. Also, my Exhibit “B” three Bloch letters dated January 24, February 4, and February 27 are probative to the truth of my allegations that Bloch arbitrarily stayed processing said grievance. See designated paragraphs “15” and “16” to my affidavit of particulars.¹

In amended companion subsection 209-a.1(a) the Chancellor’s non-compliance with the Step 3 decision and it being withheld from me was known to Howard Bloch since October 28, 2000. See Exhibit “A” appended hereto and designated paragraphs “2”-“9” of the original particulars that satisfy, in my view, the alleged conspiracy theory identifying complicity of the employer within the four month statute of limitations as charged. **Prima Facie.** [emphasis in original] There is no dispute that the Chancellor’s November 11, 2000 decision raises questions of my employer’s compliance with the Step 3 requirements.

Exhibit A of the Amended Petition contains a letter from Sara-Ann Fearon to Howard Bloch. In this letter, Fearon expressed her dissatisfaction with the manner in which UFT handled her grievance #A-017-K16295.

On May 2, 2001, Fearon’s representative, Shellman Johnson, submitted an unsolicited letter to the Director purporting to explain the amended charge. This letter was not considered by the Director because it was submitted after the filing date of April 24, 2001.

On May 8, 2001, the Director issued a decision in accordance with §204.2(a) of the Rules, dismissing the improper practice charge.

¹The letters from Howard Bloch are annexed to the original petition as Exhibit B.
Fearon, in conjunction with exceptions to the Director’s decision, moved to reopen the Director’s decision on July 9, 2001. This motion was predicated on new evidence allegedly withheld from her and thereby unavailable to cure the deficiency found by the Director. Fearon also moved to consolidate the pending matter with a new charge.²

EXCEPTIONS

Fearon’s exceptions allege in substance that the Director’s decision is biased in favor of the respondents and that he misapplied PERB case law.

DISCUSSION

Fearon argues, among other things, that the Director “appears to testify for the UFT and the District.” She alleges that the collective bargaining agreement is clear that the “Chancellor shall communicate his decision in writing to the aggrieved employee.” Consequently, she argues that her exception must be sustained as a matter of law. We disagree.

Fearon filed an amended charge on April 18, 2001, rather than supplement the original charge in response to the Director’s deficiency letter. The amended charge supersedes the original charge. Thus, the original charge forms no part of the record and the case proceeds as if the original charge had never been served.³

A review of the amended charge alleges that “Howard Bloch arbitrarily and

²Fearon filed the new improper practice charge directly with the Board. It has been forwarded to the Director for further processing (Case No. U-22693). The Board does not accept charges filed at the Board level; all improper practice charges must be filed with the Director. (Rules, §204.1(a)(1)).

³6 Carmody-Wait, 2d §34:8.
invidiously stayed processing my Step 3 grievance ...." In support of this allegation, Fearon relies upon a letter sent by her to Bloch on October 28, 2000.

In that letter, Fearon outlines the errors UFT committed. Under our Rules and case law, it was October 2000 that commenced the time to file her charge with PERB. Our Rules do not provide for any extension of time to file an improper practice charge. We have also determined that the filing period is not tolled while ancillary proceedings [grievance arbitration] are being pursued by or on behalf of a charging party, even when those proceedings have the potential to effectively moot the improper practice alleged. Since the basis of the charge against both respondents occurred in October 2000, which is more than four months prior to the filing of the original charge on April 4, 2001, the charges against the respondents are time-barred. The Director's timeliness determination was correct and the charge was properly dismissed.

As to the motion to reopen, this motion is denied because it is also predicated upon the same facts and circumstances of the improper practice charge, which occurred sometime in 1999. Fearon and her representative misapprehend the timeliness rule. That Fearon has obviously been engaged in a protracted labor dispute with both UFT and the District, as we previously stated, does not toll the running of our

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4Section 204.1(a)(1) of PERB's Rules of Procedure mandates that improper practice charges be filed within four months of the date of the conduct which is the subject of the charge.

5See PEF (Mankowski), 33 PERB ¶3032 (2000).

6See Transport Workers Union, Local 100 (Hokai), 32 PERB ¶3019 (1999).

7See United Fed'n of Teachers (Fearon), 33 PERB ¶3003 (2000), motion to reconsider denied, United Fed’n of Teachers (Fearon), 33 PERB ¶3011 (2000). See also United Fed’n of Teachers (Fearon), 33 PERB ¶4635 (2000).
four-month rule. The reason behind this rule is to avoid the prosecution of stale claims. Our Rule, §204.2, states clearly "that [if] the alleged violation occurred more than four months prior to the filing of the charge, it shall be dismissed by the director ...." Consequently, in order for us to invoke our jurisdiction over a charge which may have as its subject matter the failure to process a grievance or the manner in which a grievance has been processed, the charge must have been filed within four months of the alleged improper practice. The time limit is not tolled while the parties exhaust their grievance remedies under the collective bargaining agreement.

As to the motion to consolidate, this motion is denied.

Based on the foregoing, the exceptions are denied and the Director's decision is affirmed. The motion to reopen is denied as well as the motion to consolidate.

IT IS, THEREFORE, ORDERED that the charge be, and hereby is, dismissed in its entirety.

DATED: August 16, 2001
Albany, New York

Michael R. Cuevas, Chairman

Marc A. Abbott, Member

John T. Mitchell, Member
STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

SERVICE EMPLOYEES INTERNATIONAL UNION,
LOCAL 200-D/1199,

Petitioner,

-and-

COUNTY OF ALBANY,

Employer.

CASE NO. C-5118

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that the Service Employees International Union, Local 200-D/1199 has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.
Included: All regularly scheduled full-time and part-time Registered Professional Nurses and Nurse Managers (Head Nurses) employed by the Albany County Department of Residential Health Care Facilities.

Excluded: Health Services Director, Assistant Health Service Director, Senior Nursing Supervisor, Assistant Director of Nursing, In-Service Director, Supervising Registered Nurses and all other employees.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Service Employees International Union, Local 200-D/1199. The duty to negotiate collectively includes the mutual obligation to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written agreement incorporating any agreement reached if requested by either party. Such obligation does not compel either party to agree to a proposal or require the making of a concession.

DATED: August 16, 2001
Albany, New York

Signature:
Michael R. Cuevas, Chairman

Signature:
Marc A. Abbott, Member

Signature:
John T. Mitchell, Member
CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that the CSEA, Local 1000, AFSCME, AFL-CIO, Lackawanna City School Unit, Erie Educational Local 868 has been designated and
selected by a majority of the employees of the above-named public employer, in the unit as agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Included: All non-teaching employees of the Lackawanna City School District.

Excluded: Supervisor and Assistant Supervisor of Buildings and Grounds, Clerk of the Board of Education and those people who are designated as Management and Confidential Employees under ARTICLE 14, Section 214 of the Public Employees’ Fair Employment Act.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the CSEA, Local 1000, AFSCME, AFL-CIO, Lackawanna City School Unit, Erie Educational Local 868. The duty to negotiate collectively includes the mutual obligation to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written agreement incorporating any agreement reached if requested by either party. Such obligation does not compel either party to agree to a proposal or require the making of a concession.

DATED: August 16, 2001
Albany, New York

Michael R. Cuevas, Chairman

Marc A. Abbott, Member

John T. Mitchell, Member
CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that the NSEA Per Diem Professional Association has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.
Included: All per diem teachers, per diem registered nurses, and per diem teaching assistants who have received a reasonable assurance of continuing employment as referenced in Civil Service Law, §201.7(d).

Excluded: All other employees.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the NSEA Per Diem Professional Association. The duty to negotiate collectively includes the mutual obligation to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written agreement incorporating any agreement reached if requested by either party. Such obligation does not compel either party to agree to a proposal or require the making of a concession.

DATED: August 16, 2001
Albany, New York

Michael R. Cuevas, Chairman
Marc A. Abbott, Member
John T. Mitchell, Member
CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that the Wayland Police Benevolent Association has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.
Included: All full and part-time police officers.

Excluded: Chief of Police.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Wayland Police Benevolent Association. The duty to negotiate collectively includes the mutual obligation to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written agreement incorporating any agreement reached if requested by either party. Such obligation does not compel either party to agree to a proposal or require the making of a concession.

DATED: August 16, 2001
Albany, New York

Michael R. Cuevas, Chairman

Marc A. Abbott, Member

John T. Mitchell, Member