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State of New York Public Employment Relations Board Decisions from May 7, 2003

New York State Public Employment Relations Board

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State of New York Public Employment Relations Board Decisions from May 7, 2003

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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

DEPARTMENT ADMINISTRATORS ASSOCIATION
OF SHENENDEHOWA,

Petitioner,

- and -

CASE NO. C-5260

SHENENDEHOWA CENTRAL SCHOOL DISTRICT,

Employer.

ROBERT E. SMITH, ESQ., for Petitioner

WHITEMAN OSTERMAN & HANNA LLP (ROBERT T. SCHOFIELD
of counsel), for Employer

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by the Department Administrators
Association of Shenendehowa (Association) to a decision of the Director of Public
Employment Practices and Representation (Director) dismissing a petition filed by the
Association which sought to fragment 14 administrators employed by the
Shenendehowa Central School District (District) from a unit represented by the
Shenendehowa Teachers Association (STA).

EXCEPTIONS

The Association excepts to the Director's decision, arguing that the Director
misapplied PERB's Rules of Procedure (Rules) in dismissing its petition. The District, as
well as the Association, argues that the petition should be processed. The STA filed no
response to the exceptions.

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

The Association filed a petition on November 21, 2002, accompanied by a showing of interest that consisted of a three page petition signed by employees. The first page describes the existing unit, rather than the unit sought to be represented by the Association, as the unit for which the showing of interest is submitted; the second and third pages do not contain a unit description.

The Association was advised by the Assistant Director of Public Employment Practices and Representation (Assistant Director) that its petition was deficient because the showing of interest did not comply with §201.4(b) of the Rules, which requires that the showing of interest form itself set forth the unit alleged by the petitioner to be most appropriate. The Association did not withdraw the petition; it was thereafter dismissed by the Director.

DISCUSSION

In County of Broome, a case which dealt with the identical issue raised herein, we held that:

Section 201.4(b) of the Rules, amended in 1996, clearly sets forth the requirements for a showing of interest that takes the form of an employee petition. The Rules specify that the unit sought to be represented must be described on the petition. This is to ensure that the employees signing the petition have been informed of the purpose for the petition and are signing with that knowledge. The

1 Section 201.4(b) of the Rules provides, in relevant part:

That part of any showing of interest consisting of employee petitions, signed or dated after March 15, 1996, shall be submitted on a form prescribed by the director, which shall include the name of the petitioner, the unit alleged by the petitioner to be appropriate, and shall represent that the showing of interest is in support of the certification and/or decertification petition as applicable. (emphasis added)

2 32 PERB ¶3054, at 3127-8 (1999). See also City of Binghamton, 32 PERB ¶3055 (1999).
requirement is not merely ministerial. It goes to the very essence of the purpose of the showing of interest. Neither is it an ambiguous requirement nor one that could easily be misunderstood. Therefore, we find that the SOI petition submitted by the Association in support of its certification/decertification petition does not substantially comply with the requirements of the Rules.

The Association argues that it subsequently cured the deficiency by submitting affidavits from the employees who had signed the employee petitions and that the declaration of authenticity, submitted with the showing of interest, properly describes the unit sought to be represented. Neither action cures the deficiency in the original petition. A showing of interest, which complies with all the requirements of the Rules, must be filed simultaneously with the petition.3

Based on the foregoing, we deny the Association's exceptions and affirm the decision of the Director.

IT IS, THEREFORE, ORDERED that the petition is, and must be, dismissed in its entirety.

DATED: May 7, 2003
Albany, New York

Michael R. Cuevas, Chairman

Marc A. Abbott, Member

John T. Mitchell, Member

3 Rules, §204.1(a); City of Schenectady, 20 PERB ¶3008 (1987).
STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
CHAUFFEURS, WAREHOUSEMEN, AND HELPERS
OF AMERICA, LOCAL 264,

Charging Party,

- and -

COUNTY OF ERIE AND ERIE COUNTY SHERIFF,

Respondent.

REDEN & O'DONNELL (ROBERT J. REDEN of counsel), for Charging Party

FREDERICK A. WOLF, ERIE COUNTY ATTORNEY (KATHLEEN E. O'HARA
and KRISTEN KLEIN WHEATON of counsel) for Respondent

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by the County of Erie and the Erie
County Sheriff (County) and cross-exceptions filed by the International Brotherhood of
Teamsters, Chauffeurs, Warehousemen, and Helpers of America, Local 264
(Teamsters) to a decision of an Administrative Law Judge (ALJ) finding that the County
violated §209-a.1(d) of the Public Employees' Fair Employment Act (Act) when it
refused the request of the Teamsters' counsel to provide certain necessary and relevant
documentation regarding disciplinary charges against a unit employee. The County
argued in its answer that the charge was untimely and that the parties' collective
bargaining agreement covered the at-issue dispute.
EXCEPTIONS

The County excepts to the ALJ’s decision arguing that the ALJ erred by applying the incorrect legal standard, by failing to defer the charge to the parties’ contractual grievance arbitration procedure, in failing to find that the parties had negotiated to completion their rights in disciplinary proceedings and the Teamsters had waived their statutory rights to the information, in finding that the Teamsters’ need for the information outweighed the County’s interest in maintaining confidentiality, and in rejecting the County’s arguments regarding the applicability of the public interest privilege and the Civil Rights Law to the disclosure of the information sought by the Teamsters.

The Teamsters argues in the cross-exceptions that the ALJ erred by failing to allow the Teamsters to amend the improper practice charge in its post-hearing brief to include an allegation that the County’s actions had also violated §209-a.1(a) of the Act. In all other respects, the Teamsters supports the decision of the ALJ.

Based upon our review of the record and our consideration of the parties’ arguments, we affirm the ALJ’s decision.

FACTS

The facts are largely undisputed, are set forth in detail in the ALJ’s decision¹ and are repeated here only as necessary for our consideration of the exceptions and cross-exceptions.

The Teamsters represents a unit of employees of the Erie County Sheriff’s Department (Sheriff). A deputy sheriff in the unit, Paul Bartolomeo, was discharged at a meeting held on January 4, 2002. By letter issued the same day by Undersheriff

¹ 36 PERB ¶4510 (2002).
Timothy Howard, Bartolomeo was informed of the basis of his discharge. The letter states:

On December 27, 2001 you were given an opportunity to explain your alleged inappropriate conduct on or about September 7, 2001 involving Nurse [A], your alleged conduct in a holding center stairwell with Deputy [B] during the fall of 2000, and your alleged inappropriate remarks made to [C] and Deputy [D] during the past year. Prior to this meeting, you were informed by me, both verbally and in writing, of the conduct which was being investigated and of the purpose [of] that meeting. You were also advised that the alleged conduct could result in disciplinary action up to and including termination. Further you were advised that you were entitled to union representation at that meeting.

You appeared for this meeting accompanied by Deputy Richard Carr as a Union Representation [sic]. During this meeting you were read a series of statements regarding your alleged conduct, and following each, you were given an opportunity to comment. Following this you were provided an opportunity to make any additional comments before a decision was made concerning what if any disciplinary action would be taken.

I have reviewed the information and allegations concerning your conduct as referenced above. I have also given consideration to any comments or explanations you offered. It is my determination that you violated the following official policies; [citations to Erie County Sheriff's Office Policy and Procedure Manual Sections and Erie County Holding Center Policies and Procedures omitted] ...by making unwelcome verbal and or physical sexual advances to female employees, while on duty; ...by not cooperating fully and completely with detectives of the Internal Affairs Unit during the investigation of these incidents; ...by engaging in unbecoming conduct; by engaging in sexual harassment, and having your penis exposed to female employees; by not being truthful when explaining your conduct, and by not properly performing your duties...

It is my determination that as a result of the above mentioned conduct that your employment with the Erie County Sheriff's Office be terminated immediately.  

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2 The names of the individuals identified in this letter have been deleted as their identities are not relevant to our decision in this matter.

3 Joint Exhibit 2.
Thereafter, Bartolomeo filed a grievance challenging his discharge. The Teamsters then made several requests to the County for information relative to the processing of the grievance, culminating in a letter dated April 25, 2002, from the Teamsters' counsel, requesting a "complete copy of the investigatory file, or files, including any such files from internal affairs, of the alleged incident or incidents that formed the basis of the Sheriff's decision to discharge Mr. Bartolomeo." The County has refused to provide the Teamsters with any of the requested files.

On June 7, 2000, the Teamsters gave the County a signed authorization from Bartolomeo for release to the Teamsters of his personnel file or files and any investigatory reports relative to his discipline and discharge. The County then provided the Teamsters with Bartolomeo's personnel file but has refused to provide the investigatory reports.

The files requested by the Teamsters are those from the two investigations that were conducted into Bartolomeo's conduct, one by the County Equal Employment Opportunity Office (EEO) and one by the Sheriff's Internal Affairs Unit (Internal Affairs), that resulted in Bartolomeo's discharge. The EEO file contains a "confidential" memorandum to the file by the EEO investigator, which includes a list of the persons interviewed during the investigation, a summary of each of the interviews and a conclusion; a "confidential" memorandum to Howard relaying the EEO's findings; and copies of letters issued by the investigator to the complainants and Bartolomeo. The letters contain assurances that the contents of the investigation are confidential and will not be shared with anyone who does not have a legitimate need to know. The Internal Affairs file contains a report drafted by an Internal Affairs detective, including

4 Joint Exhibit 2.
background information regarding the EEO investigation, a summary of the detective’s interview with Bartolomeo and the detective’s recommendations as to discipline.

The parties’ collective bargaining agreement contains provisions relating to grievances and discipline and discharge, as follows:

ARTICLE 21 – GRIEVANCES AND JUDICIAL REVIEW

SECTION 21.7: Rights of the Parties – Any party shall have access upon request to any written statements or records which shall be presented as evidence by the other party at any hearing provided by this Agreement in advance of said hearing. In the event sufficient time does not exist for any party to review such evidence, the hearing shall be adjourned to a later date at the request of either party.

ARTICLE 22 – DISCIPLINE AND DISCHARGE

SECTION 22.1: Investigations and/or Interrogations –

a) Every effort shall be made to conduct interrogations during an employee’s hours of work or at a time in reasonable proximity to the beginning or end of an employee’s shift.

b) An employee who remains on duty for the purpose of attending an interrogation shall be compensated at the rate of time and one half for all hours spent.

c) A Business Agent and/or Chief Steward shall be advised that an employee is to be questioned regarding an employment matter. The employee shall be given an opportunity to meet with a Business Agent and/or Chief Steward prior to the interrogation and, if the employee chooses, a Business Agent and/or Chief Steward shall be in attendance during all questioning. It is expressly understood, however, that the Business Agent and/or Chief Steward shall be in attendance as an observer only. The employee may request and shall be granted one five minute recess during the interrogation, and at that time may, if he so requests meet in private with the Business Agent and/or Chief steward. (emphasis in original)

d) If a written record of the interrogation is prepared, a copy shall be provided to the individual.
e) At the conclusion of the interrogation, the employee shall have the right to make an oral or written presentation for the record.

f) This section shall not apply to those investigations which could lead to criminal charges being brought against an employee.\(^5\)

**DISCUSSION**

Upon demand made by an employee organization, a public employer has a duty to provide information which is relevant and necessary for the administration of a collective bargaining agreement, including the investigation of grievances.\(^6\) The obligation of the employer is "circumscribed by the rules of reasonableness, including the burden upon the employer to provide the information, the availability of the information elsewhere, the necessity therefor, the relevancy thereof and, finally, that the information supplied need not be in the form requested as long as it satisfies a demonstrated need."\(^7\)

A refusal to provide information is typically the subject of a charge alleging a refusal to negotiate under §209-a.1(d) of the Act.\(^8\) Such is the case here. The charge as

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\(^5\) Joint Exhibit 1.

\(^6\) In *Board of Education of the City Sch. Dist. of the City of Albany*, 6 PERB \#3012 at 3030 (1973), the Board stated:

>[T]he obligation of an employer to negotiate in good faith is not discharged upon the execution of a negotiated agreement. The obligation of the employer to negotiate continues in the administration of the agreement to deal with representation of its employees as to grievances which may arise under the agreement.

\(^7\) *Id.* at 3030.

pled and litigated alleged only a violation of §209-a.1(d). The ALJ, therefore, found that the County's refusal to provide the Teamsters with the requested information from the EEO files and the Internal Affairs files constituted a (d) violation. We agree.

We do not find that the language in the collective bargaining agreement requires, as argued by the County, that we defer the instant charge to the parties' contractual grievance arbitration procedure. The collective bargaining agreement gives the parties certain rights to information at the grievance hearing stage of the procedure and

\[\text{9 The Teamsters argue that that the ALJ erred in not granting the Teamsters' proposed amendment of the charge to include an alleged violation of §209-a.1(a) of the Act, which was included in the Teamsters' post-hearing brief. It was not error for the ALJ not to grant the amendment, but it was error for the ALJ to fail to address the proposed amendment in her decision. As we noted in Town of Brookhaven, 26 PERB ¶3066 (1993), a review of the record does not disclose that there was any reason why the motion to add the §209-a.1(a) allegation could not have been made before or at least during the hearing. Fairness requires that parties make any motion concerning the causes of action in a charge at the first available opportunity. We do not lightly disturb an ALJ's declination to accept a post-hearing motion without evidence of good cause for the delay. No such good cause has been shown by the Teamsters here.}

\[\text{10 See City of Rochester, 29 PERB ¶3070, at 3164-5 (1996), a case where it was alleged that the employer had refused a union's request for information and in which only a violation of §209-a.1(a) of the Act was pled. The Board held that:}

Public employees' statutory rights of organization and representation have meaning only to the extent that their chosen bargaining agent is positioned to effectively represent their interests. The Act extends to a bargaining agent, both explicitly and implicitly, certain basic rights to give effect to the rights of the public employees represented by the bargaining agent. A right to the receipt of information relevant to collective negotiations and contract administration is one such fundamental right. (footnote omitted) The denial of a reasonable demand for information which is relevant to collective negotiations, grievance adjustment, the administration of a collective bargaining agreement, or the resolution of impasses arising in the course of collective negotiations impairs the union's ability to effectively represent the interests of the employees in its unit. By rendering the union less able to represent the interests of its unit employees, an employer which improperly refuses a demand for information interferes per se with the statutory rights of its employees, in violation of §209-a.1(a) of the Act.
provides for the provision of the written record of any interrogation conducted by the County. These contractual provisions do not pertain to the stage of the proceedings covered by the instant charge, neither do they cover the type of information sought by the Teamsters. The ALJ correctly declined to defer the charge to arbitration. In *Schuyler-Chemung-Tioga BOCES*

we held that “in certain matters where there is contractual language related to the subject-matter of the charge, if there exists an independent statutory right with respect to the subject-matter, we retain jurisdiction even if the respondent’s action is also arguably in violation of the contract language.”

Our analysis of the contractual language also leads us to reject the County’s argument that the Teamsters waived the statutory right for the receipt of information necessary to investigate a grievance. Waiver will be found only where there is an “intentional relinquishment of a known right with both the knowledge of its existence and an intention to relinquish it” and where the waiver is “clear, unmistakable and without ambiguity.”

As noted above, the contractual language relates to the hearing stage in the grievance procedure. It cannot be viewed as a clear and knowing waiver of an employee organization’s right to information necessary and relevant to the investigation of a grievance, up to, and including, preparation for the disciplinary grievance arbitration.

The County also argues that the Teamsters’ need for the information requested is outweighed by the County’s interest in protecting the confidentiality of the complainants against Bartolomeo. The ALJ rejected the County’s arguments in a detailed analysis of the Civil Rights Law and public policy issues, as well as relevant

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11 34 PERB ¶3019, at 3044 (2001). See also City of Buffalo, 35 PERB ¶3010 (2002).

case law. While we agree that an employer must be extremely sensitive to the confidentiality concerns of complainants in sexual harassment and misconduct investigations, the rights of the accused and the entity charged with representing the accused unit member must also be considered. We have held before that complaints against an employee, upon which an employer bases its decision to discipline or discharge the employee, even though considered "confidential", may be the subject of a request for information from the employee organization and may be required to be produced.¹³

Bartolomeo and his Teamsters' representative have already been told the names of the complainants against Bartolomeo. Additionally, the only assurance of confidentiality the County made to the complainants was that their statements would be shared only with those who had "a legitimate need to know". Certainly, the Teamsters, charged with the responsibility of investigating and defending Bartolomeo's disciplinary grievance, has a need to review the witness interviews and the documents upon which the County based its decision to investigate Bartolomeo and subsequently discharge him.

We find that the Teamsters' need to review the EEO and Internal Affairs reports in order to determine whether to go forward with Bartolomeo's disciplinary grievance and in order to prepare its case at arbitration outweighs the concerns raised by the County in this matter. We find that the County violated §209-a.1(d) of the Act when it refused to provide the Teamsters, upon request, with copies of the EEO report and those parts of the Internal Affairs report which include the recitation of the background

of the complaint against Bartolomeo and the summary of Bartolomeo's statements to
the investigator in response to the allegations against him.\textsuperscript{14}

We, therefore, deny the County's exceptions and the cross-exceptions of the
Teamsters and affirm the decision of the ALJ.

IT IS, THEREFORE, ORDERED that:

1. The County forthwith provide to the Teamsters' counsel, for the purpose of
   investigating and processing Paul Bartolomeo's disciplinary grievance, the
   EEO investigation file and that portion of the Internal Affairs report regarding
   Paul Bartolomeo which includes background and a summary of the interview
   with Bartolomeo; and

2. The County post the attached notice at all locations normally used to
   communicate with unit employees.

DATED: May 7, 2003
Albany, New York

Michael R. Cuevas, Chairman

Marc A. Abbott, Member

John T. Mitchell, Member

\textsuperscript{14} The ALJ did not order disclosure of the second portion of the Internal Affairs report,
which is the investigator's recommendations to the Undersheriff. No exception has been
taken to that limitation in the ALJ's decision. We, therefore, do not reach it.
NOTICE TO ALL EMPLOYEES

PURSUANT TO
THE DECISION AND ORDER OF THE

NEW YORK STATE
PUBLIC EMPLOYMENT RELATIONS BOARD

and in order to effectuate the policies of the

NEW YORK STATE
PUBLIC EMPLOYEES' FAIR EMPLOYMENT ACT

we hereby notify all employees of the County of Erie and Erie County Sheriff in the unit represented by the International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, Local 264 (Teamsters) that the County of Erie and Erie County Sheriff will:

Provide to the Teamsters' counsel, for the purpose of investigating and processing Paul Bartolomeo's disciplinary grievance, the EEO investigation file and that portion of the Internal Affairs report regarding Paul Bartolomeo which includes background and a summary of the interview with Bartolomeo.

Dated ............

By ..........................
(Representative)    (Title)

COUNTY OF ERIE and ERIE COUNTY SHERIFF

This Notice must remain posted for 30 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.
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.

CASE NO. U-23378

JOHN ZITO, pro se

CHARLES D. MAURER, ESQ., for Respondent

ROBERT WATERS, GENERAL COUNSEL (ORINTHIA E. PERKINS of counsel), for Employer

BOARD DECISION AND ORDER

This matter comes to us on exceptions filed by John Zito to a decision of an Administrative Law Judge (ALJ) dismissing his improper practice charge brought against the United Federation of Teachers, Local 2, AFT, NYSUT, AFL-CIO (UFT) alleging, inter alia, that UFT violated §209-a.2(c) of the Public Employees' Fair
Employment Act (Act) when it refused to process Zito’s grievance to step 3 of the grievance procedure contained in the collective bargaining agreement between UFT and his employer, the Board of Education of the City School District of the City of New York (District).¹

EXCEPTIONS

Zito excepts to the ALJ’s decision, arguing that the facts do not support the ALJ’s decision. UFT responded and supports the ALJ’s decision.

Based upon our review of the record and our consideration of the parties’ arguments, we affirm the decision of the ALJ.

FACTS

The facts in this case are discussed in detail in the ALJ’s decision,² therefore, the Board will only review the facts relevant to Zito’s exceptions.

Zito’s charge alleged that, while he was on a leave of absence without pay, the District suspended his employment and preferred charges and specifications against him pursuant to §3020-a of the Education Law. Zito argued that, notwithstanding his leave of absence without pay, the collective bargaining agreement required that the District continue to pay his salary during the period of suspension, once it commenced the §3020-a disciplinary proceedings. Zito filed a grievance following the §3020-a hearing in which the hearing officer found that “there was excessive absence but

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

² 36 PERB ¶4511 (2003).
insufficient justification for dismissal. . . .

He sought payment from the District for the period of his suspension from teaching to the date of the hearing officer's decision.

Although UFT represented Zito in the §3020-a proceeding, UFT declined to prosecute his grievance to step 3 of the grievance process. By letter dated October 19, 2001, UFT provided him with an opportunity to appeal to UFT's Administrative Committee. Zito attended a meeting of UFT's Administrative Committee on December 4, 2001. By letter dated March 20, 2002, UFT informed Zito that, after a review of all his documentation, it had been decided that his grievance cannot be pursued to arbitration.

At the hearing on the improper practice charge conducted on November 14, 2002, Zito appeared pro se and testified "that there is no other interpretation [of the collective bargaining agreement] [sic] except mine." 4

Howard Solomon, Director of UFT's Grievance Department, testified that he was present at the Administrative Committee appeal. He stated that Zito was given about 45 minutes to explain his reasons why the grievance should be arbitrated. At the conclusion of the meeting, the Committee told Zito that his materials and arguments would be reviewed. Solomon noted that a number of people at the meeting had questions about whether Zito was correct. Consequently, members of the Committee conducted an investigation and Zito heard from the Committee by letter dated March 20, 2002.

3 Charging Party's Exhibit 5.

4 Transcript p. 31.
During the course of his investigation, Solomon discovered that Zito had filed a grievance on the exact issue that had gone to the Administrative Committee for review. In reviewing that grievance, Solomon found an opinion that had been rendered by UFT's legal department, that concluded that Zito could only be paid while on suspension if he were to rescind his medical leave of absence.

Solomon testified that UFT did not pursue Zito’s grievance to step 3 because, based upon its investigation, UFT concluded that he was on an approved leave of absence to restore his health, which is an unpaid leave. Consequently, it was UFT's opinion that, if Zito withdrew and rescinded the leave of absence status, he would have been put back on the payroll and received a salary for the period of his suspension.

**DISCUSSION**

This record fails to demonstrate that UFT violated its duty of fair representation, as defined in *Civil Service Employees Association v. PERB and Diaz.* Zito has, therefore, failed to demonstrate that UFT’s conduct, or lack thereof, was deliberately arbitrary, discriminatory or done in bad faith.

The record is clear that UFT investigated Zito’s complaints subsequent to the Committee meeting. UFT came to the same conclusion it had reached in Zito’s previous grievance over the same compensation issue.

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5 See *UFT, Local 2, AFT, NYSUT, AFL-CIO (Zito)*, 34 PERB ¶3029 (2001).

6 132 AD2d 430, 20 PERB ¶7024 (3rd Dep't 1987), affirmed on other grounds, 73 NY2d 796, 21 PERB ¶7017 (1988).

7 *Supra* note 7.
Zito takes exception to the manner in which UFT handled his grievance. He disagreed with UFT's interpretation of the contract and its decision not to proceed to step 3 of the grievance process. Zito argued that the only correct interpretation of the contract is the one he put forth. However, UFT is under no statutory obligation to agree with Zito's interpretation of the collective bargaining agreement. We have consistently held that we would not substitute our judgment for that of a union's regarding the filing and prosecution of grievances, since a union is given a wide range of reasonableness in these regards. Solomon testified that UFT made an investigation and communicated its decision not to pursue his grievance to step 3. We also note from our prior Board decision, that UFT offered Zito an alternative to grievance arbitration, which he failed to pursue, in order to recoup the salary he alleged was due to him during his suspension.

We find, as did the ALJ, that UFT did not act in an arbitrary, discriminatory or bad faith manner while considering the merits of Zito's grievance or in the manner in which it was processed.

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

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9 See Dist. Council 37, AFSCME (Gonzalez), 28 PERB ¶3062 (1995).
10 Supra note 7.
IT IS, THEREFORE, ORDERED that the charge must be, and it hereby is, dismissed.

DATED: May 7, 2003
Albany, New York

Michael R. Cuevas, Chairman

Marc A. Abbott, Member

John T. Mitchell, Member
INTERIM BOARD DECISION AND ORDER

This matter comes before us on a motion by Sara-Ann P. Fearon for an interlocutory appeal of a ruling of an Administrative Law Judge (ALJ) after a pre-hearing conference that precluded Fearon's representative from making an oral motion to amend the charge filed in the above-referenced matter, from submitting a written motion to amend the charge and granting permission to file a motion with the hearing ALJ to amend the charge.

1 Fearon's employer, the Board of Education of the City School District of the City of New York, is a party pursuant to §209-a.3 of the Public Employees' Fair Employment Act (Act).
FACTS

The improper practice charge, as amended, was filed on August 2, 2002. On February 3, 2003, a pre-hearing conference was conducted. At that hearing, the ALJ determined, for the purposes of the conference, that the charge focused on the failure of the United Federation of Teachers (UFT) to prosecute Fearon's grievance to step three. Fearon disagreed and argued that the charge is also premised upon UFT's failure to respond to Fearon's July 4, 2002 letter. The ALJ advised the parties that, since the allegation was not contained in the charge, it would not be an issue for hearing. In addition, the ALJ ruled that she would not accept an oral motion to amend the charge because our Rules of Procedure (Rules) require amendments to be in writing and under oath. Consequently, any allegation regarding a letter in July 2002 not contained in the original charge would be untimely. Notwithstanding, the ALJ ruled that Fearon could file a motion with the hearing ALJ to amend the charge.

DISCUSSION

Fearon argues, in support of the motion, that she was deprived of "issue clarification" by virtue of the ALJ's ruling which precluded Fearon from amending the charge. We disagree. "As a general rule, this Board will not review the interlocutory determinations of the Director or an Administrative Law Judge until such time as all proceedings below have been concluded, and review may be had of the entire matter."2 "The purpose of that policy is to prevent the delay inherent in the piecemeal review of proceedings, and to prevent the prejudice and inefficient use of administrative resources that can result from such piecemeal review."3 "It is only when extraordinary

2 County of Nassau, 22 PERB ¶3027, at 3066 (1989).
3 United Fed'n of Teachers, Local 2 and New York State United Teachers, 32 PERB ¶3071, at 3167 (1999).
circumstances are present and/or in which severe prejudice would otherwise result if interlocutory review were denied that we will entertain a request for such review.  

Fearon has offered no evidence of any irreparable harm which she might suffer based upon the ALJ's ruling. On the contrary, the ALJ granted Fearon the right to make a motion to amend the charge before the hearing ALJ. Any adverse ruling would be reviewable upon timely exceptions taken at that time.

Under the circumstances, Fearon’s rights have not been prejudiced and the instant piecemeal review of these proceedings only serves to delay the prosecution of this charge and promote inefficient use of administrative resources. Thus, balancing any possible prejudice and inefficiencies associated with our interlocutory review, we choose, in our discretion, not to entertain this interlocutory appeal.

Based upon the foregoing, Fearon’s motion is denied without prejudice to her right to appeal the ALJ’s final determination. SO ORDERED.

DATED: May 7, 2003
Albany, New York

Michael R. Cuevas, Chairman
Marc A. Abbott, Member
John T. Mitchell, Member

4 County of Nassau, supra note 1. See also Mt. Morris Cent. Sch. Dist., 26 PERB ¶3085 (1993).
In the Matter of

CLAUDE L. HUCKABONE, JR.,

Petitioner,

-and-

TOWN OF DEERFIELD,

Employer,

-and-

UNITED PUBLIC SERVICE EMPLOYEES UNION,

Intervenor.

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 United Public Service Employees Union 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: Regular full-time Motor Equipment Operator and Laborer.

Excluded: Town Highway Superintendent, part-time employees, casual employees, seasonal employees, and all other employees.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the United Public Service Employees Union. 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: May 7, 2003
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  
GLEN COVE EDUCATIONAL SUPPORT ASSOCIATION,  
Petitioner,

-and-

CITY SCHOOL DISTRICT OF GLEN COVE,  
Employer,

-and-

LOCAL 810, INTERNATIONAL BROTHERHOOD  
OF TEAMSTERS,  
Intervenor.

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 Glen Cove Educational Support 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-time and part-time secretarial, clerical, teaching assistant and school aide personnel with the exception of the Confidential Secretary to the Superintendent of Schools, the Confidential Secretary to the Assistant to the Superintendent for Personnel, the Confidential Administrative Assistant to the Assistant to the Superintendent for Business, and the Payroll Supervisor.

Excluded: All others.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Glen Cove Educational Support 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: May 7, 2003
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 International Brotherhood of Teamsters Local 118 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: Full-time laborer II, motor equipment operator, park maintenance worker, public works maintenance worker.

Excluded: All other employees.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the International Brotherhood of Teamsters Local 118. 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: May 7, 2003
Albany, New York

Michael R. Cuevas, Chairman
Marc A. Abbott, Member
John T. Mitchell, Member