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State of New York Public Employment Relations Board Decisions from November 9, 2004

New York State Public Employment Relations Board

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State of New York Public Employment Relations Board Decisions from November 9, 2004

Keywords

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Comments

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**STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD**

In the Matter of

CITY OF NEW YORK,

Petitioner,

- and -

CASE NO. DR-114

PATROLMEN'S BENEVOLENT ASSOCIATION,

Respondent.

DEBORAH GAINES, GENERAL COUNSEL, and PROSKAUR ROSE (DAVID ZURNDORFER of counsel), for Petitioner

GLEASON, DUNN, WALSH & O'SHEA (RONALD G. DUNN of counsel) and KAYE SCHOLER LLP (JAY W. WAKS of counsel), for Respondent

BOARD DECISION AND ORDER

On August 11, 2004, the City of New York (City) filed a Petition for a Declaratory Ruling pursuant to Part 210 of the PERB's Rules of Procedure (Rules) seeking a ruling as to the scope of negotiations of certain demands submitted to the Board by the Patrolmen's Benevolent Association of the City of New York, Inc. (PBA) in a Petition for Interest Arbitration filed on July 28, 2004. On September 14, 2004, the Director of Public Employment Practices and Representation (Director) transferred the City's petition and PBA's response to the Board for expedited determination pursuant to §§204.4 and 210.2(c) of the Rules.

FACTS

The parties' collective bargaining agreement, covering the years 1995-2000, expired on July 31, 2000. When voluntary negotiations failed to produce a successor agreement, PBA filed a Declaration of Impasse with PERB. When PERB's assigned mediator was unsuccessful in bringing the parties to agreement, PBA filed a Petition for Interest Arbitration. On September 4, 2002, an interest arbitration panel rendered an award, covering the period of August 1, 2000 through July 31, 2002.

On September 8, 2003, PBA submitted its demands for a successor collective bargaining agreement to the City, and certain of these demands were subsequently modified through negotiations. The final negotiation session ended on March 1, 2004. On March 8, 2004, PBA filed a Declaration of Impasse with the Board and, on March 31, 2004, the City filed its response in opposition to the Declaration of Impasse.

On May 31, 2004, the Board, through its Director of Conciliation, appointed a mediator. The City filed exceptions to the appointment of a mediator. Nevertheless, while the exceptions were pending before the Board, the parties met with the mediator on June 11 and 29, and July 12, 2004.

On July 28, 2004, PBA filed a petition for interest arbitration with the Board that included a list of 13 bargaining demands. On August 12, 2004, the City filed its response in opposition to PBA's petition for interest arbitration and a Petition for Declaratory Ruling in which it objected to the submission of certain PBA demands to interest arbitration on the grounds that the demands are nonmandatory subjects of negotiation.

On September 17, 2004, PBA formally withdrew six demands from consideration by the interest arbitration panel. The remaining seven demands are:

III. Benefits

A. Health and Welfare Funds

- i. Effective 8/1/2002 and for each year thereafter through the end of the term of the contract, the City shall contribute an additional \$200 per annum for each active and retired member.
- ii. The employer shall be liable for the payment of all health care expenses (including the cost of prescription drugs) arising from a line-of-duty injury.

III. D. Interest

Interest shall be paid at the annual rate of 10% from the effective date of any monetary benefit until payment is made.

IV. Productivity

B. Work Schedule

- i. Adopt a modern chart for patrol officers which shall include, for example, 10 hours or 12 hours per appearance.
- ii. A Joint Labor-Management Committee shall be convened upon the resolution of all other wage and benefit issues to work out expeditiously the details of this modern work chart.
- iii. Savings realized from the new patrol chart shall be shared equally among all active police officers.

IV. E. Defibrillator

Each police officer immediately will be trained and certified in the use of a defibrillation unit. Upon the conclusion of training, each police officer will receive 3% of basic salary and longevity, over and above the police officer's contractual rate of pay. This defibrillation/first response pay shall be increased annually by the same percentages by which the police officer's salary increases and shall be pensionable.

VI. Improved Working Conditions

A. Seniority

- i. Seniority shall be the primary factor in the selection of shifts, discretionary assignments and vacation picks.
- ii. Seniority shall be the primary factor in awarding overtime.

VII. Contract Maintenance

A. Grievance Procedure

- ii. All panel arbitrators must make available sufficient consecutive days to complete an arbitration. If the panel arbitrator selected from the rotation cannot make available the appropriate number of days in the required six-month period, the arbitration shall be assigned to the next panel arbitrator in the rotation.

VII. C. Written Collective Bargaining Agreement

Reduce to writing and incorporate into the successor written collective bargaining agreement terms and conditions of employment not presently embodied in the existing collective bargaining agreement, as amended by the September 4, 2002 arbitration award, including:

1. Work Schedules
2. Provisions for Meal
3. Personals
4. Procedure for Vacation Selection

Relevant to subpart (i) of demand III. A. (Health and Welfare Funds), is that the City and PBA are signatories to the Municipal Labor Committee (MLC) agreement, which sets forth certain terms and conditions of employment for represented City employees, including those represented by PBA. Included in the MLC agreement is health insurance contributions for current employees and retirees. On May 1, 2004, during negotiations, PBA submitted the following clarification regarding IV. Productivity B. Work Schedule: Clarified during negotiations - For all police officers, the NYPD will

complement duty schedules that will require 208 scheduled appearances per year and 10 hour tours.

DISCUSSION

The City contends that PBA's demands are nonmandatory and, therefore, not properly before the interest arbitration panel. We address PBA's demands individually.

Health And Welfare Funds

The first of PBA's disputed demands is to modify the language of Article III.A (i), Health and Welfare Fund. The City contends that since the demand is made for an additional annual contribution to the fund for each active *and retired member*, the demand is nonmandatory.

PBA contends that the language of the first part of the demand merely tracks the language from the 1995-2000 agreement which requires contributions by the City for both current members and retired members. The 2000-2002 interest arbitration award continued these provisions. The 2004 MLC agreement also provides for City contributions for retirees as well as current employees. PBA argues that our *Cohoes* conversion theory of bargaining articulated in our decision in *City of Cohoes* (hereafter, *Cohoes*)¹ makes this demand a mandatory subject before the interest arbitration panel. We disagree.

The instant proceeding is both factually and legally distinguishable from our decision in *Cohoes*. There, we determined that the City's demand to increase

¹ 31 PERB ¶3020 (1998), *confirmed sub nom. Uniform Firefighters of Cohoes Local 2562 v. Cuevas, et al.*, 276 AD2d 184, 33 PERB ¶7019 (3^d Dep't 2000), *motion for leave to appeal denied*, 96 NY2d 711, 34 PERB ¶7018 (2001).

prescription drug deductibles was mandatorily negotiable because the demand applied to current employees who later retire. Here, the language of PBA's demand is specific to current employees and current, not future, retirees.

The issue raised by this demand is PBA's authority under the Act to advance a demand on behalf of retirees, persons not covered by the Act. Our decision in *City of Troy*² is dispositive of the issue before us. The employee organization in *City of Troy* sought to present a demand in interest arbitration for health insurance coverage for retired employees and their families. While we noted that parties are encouraged to negotiate over nonmandatory subjects, we also noted that the employer had no statutory duty, and the employee organization had no statutory right, to negotiate for retirees.³ An employee organization's right to negotiate is limited to the terms and conditions of employment of current employees in its negotiating unit.⁴ PBA's history of negotiations over this subject with the City is irrelevant because PBA cannot advance demands to interest arbitration on behalf of individuals whom they do not represent.

The City argues that subpart (ii) of PBA's Article III.A demand is a prohibited subject of bargaining because it seeks to modify existing law. The City's reliance upon the *Matter of Town of Greenburgh*, 94 AD2d 771 (1983), in support of this argument is misplaced. *Town of Greenburgh* involved compulsory interest arbitration of disciplinary procedures. While discipline is generally a mandatory subject of negotiations, the Court in that case concluded that Civil Service Law §76(4) and the Westchester County Police

² 10 PERB ¶3015 (1977).

³ *Cohoes Police Benevolent and Protective Ass'n*, 27 PERB ¶3058 (1994).

⁴ *City of Oneida Police Benevolent Association*, 15 PERB ¶3096 (1982).

Act together evidenced a legislative intent to remove police discipline from collective bargaining and interest arbitration. There is no such legislative intent expressed in the New York City Administrative Code, §12-127, which provides that the City shall pay the cost of hospital care and treatment for a member of the uniformed forces of the police department injured in the line of duty. This Code section is further supplemented by an addendum to the expired agreement, acknowledging the City's statutory obligation to pay the cost of prescription drugs for PBA members injured in the line of duty. Since PBA's demand merely seeks to duplicate in contract language the City's obligation to pay the health care costs of a PBA member injured in the line of duty, and the City has not demonstrated any legislative intent to foreclose collective negotiations on this subject, we find that under the *Cohoes* statutory reiteration doctrine,⁵ the demand is a mandatory subject of negotiation.

Interest

PBA's second demand seeks to modify contract language in Article XVI, Section 13, Interest Payments. The City contends that this demand is vague and ambiguous. The City's reliance on *Fairview Fire District*, 12 PERB ¶3083 (1979), and *City of Rochester*, 12 PERB ¶3010 (1979), is misplaced. In those cases, the Board found certain demands nonmandatory, but not vague or ambiguous. In this case, PBA's demand affects wages, a mandatory subject of negotiation under the Act. We, therefore, deny the City's objection to PBA's demand for interest payments.

⁵ *Supra*, note 1.

Productivity

The City objects to PBA's third demand, which seeks to introduce a new work schedule, on the grounds that it is a unitary demand, containing both mandatory and nonmandatory subjects, thus rendering the entire demand nonmandatory.⁶ The City argues that subpart (i) is vague and ambiguous and, as such, nonmandatory and that it cannot negotiate subparts (ii) and (iii) because they are inextricably linked to subpart (i). During negotiations, PBA clarified duty schedules in subpart (i) of its demand as "208 scheduled appearances per year and 10 hour tours." Based upon PBA's clarification, we do not find the demand vague or ambiguous. Further, a change in tours of duty which does not interfere with an employer's right to determine its staffing needs is a mandatory subject of negotiations.⁷ Subpart (ii) of PBA's demand is likewise mandatory because its purpose is to convene a joint labor-management committee to resolve the details of the change in tours.⁸ Subpart (iii) is a mandatory subject because it involves compensation.⁹ We find, therefore, that PBA's demand entitled *Work Schedule*, as clarified, is a mandatory subject of negotiations.

Defibrillator

The City objects to PBA's fourth demand, IV. E. Defibrillator, because it contains both mandatory and nonmandatory subjects. As to the mandatory subject,

⁶ See *Police Benevolent Ass'n of the City of White Plains, Inc.*, 33 PERB ¶3051 (2000).

⁷ *Town of Blooming Grove*, 21 PERB ¶3032 (1988); *City of Buffalo*, 14 PERB ¶3053 (1981).

⁸ *Somers Faculty Ass'n*, 9 PERB ¶3014 at 3026 (1976).

⁹ Act, §201(4).

compensation, the demand seeks increased pay for police officers who are trained and certified in the use of a defibrillation unit. As to training, which the City asserts is nonmandatory, PBA contends that an exception to the general rule that training is a nonmandatory subject is when it is required by statute, rule, or regulation and relies on the Public Health Law, §3000-b(1), (2) and (3); 20 NYCRR §800.15(d).¹⁰ We have long held that the decision to train, without more, including defibrillation training, is a managerial prerogative and, thus, a nonmandatory subject of negotiation.¹¹ As the PBA's demand for compensation is inseparable from the rest of the demand, it is a unitary demand and, therefore, a nonmandatory subject of negotiations.¹²

Improving Working Conditions

The City objects to PBA's fifth demand, III. A. Improved Working Conditions, regarding seniority. PBA contends that the demand does not restrict management in the delivery of services because it provides that seniority should be only one of the factors to be considered when filling vacancies in job titles.¹³ We concur and find the demand mandatory.

Contract Maintenance

PBA's sixth demand, VII., Contract Maintenance, Grievance Procedure, involves a procedure for the selection of grievance arbitration panels and requires an arbitrator selected by the parties to commit to sufficient consecutive days in order to complete a

¹⁰ See also *City of Newburgh*, 16 PERB ¶3030 (1983).

¹¹ *New York State Office of Court Administration*, 32 PERB ¶3063 (1999).

¹² *Pearl River UFSD*, 11 PERB ¶3085 (1978).

¹³ *City of Schenectady*, 21 PERB ¶3022 (1988).

particular arbitration hearing. The City contends that this demand is outside of the employer's control and, therefore, nonmandatory. We disagree. The Act provides that a public employer shall be required to negotiate with the employee's representative regarding the administration of grievances.¹⁴ PBA's demand merely requires the City to abide by a new selection process that will enable grievances to be processed more expeditiously. The onus is on the arbitrator selected to commit to certain days in order to hear a grievance. If the arbitrator cannot make such a commitment, then another arbitrator is selected from the rotating list. PBA's demand is, therefore, a mandatory subject of negotiation.

Written Collective Bargaining Agreement

The City objects to PBA's seventh demand, VII.C. Written Collective Bargaining Agreement, as a nonmandatory subject of negotiations. PBA's demand seeks to include in the successor agreement, the following terms and conditions of employment that are set forth in the interest arbitration award of September 4, 2002:

1. Work Schedules
2. Provisions for Meals
3. Personals
4. Procedures for Vacation Selection

Our decision in *Town of Southampton*¹⁵ determined that an interest arbitration award establishes the *status quo* of the parties' negotiations as to the terms it contains. When taken individually, each of these subjects is a term and condition of employment.

¹⁴ Act, §204.2.

¹⁵ 34 PERB ¶13007 (2001), *confirmed*, 307 AD2d 428, 36 PERB ¶17013 (3d Dep't 2003), *aff'd*, 2 NY3d 513, 37 PERB ¶17001 (2004).

and, therefore, a mandatory subject of negotiation. PBA's demand does not, as the City contends, interfere with the City's right to determine its staffing needs, deployment of staff or how it renders services to the public. Thus, we find PBA's seventh demand to be mandatory.

We find that the following demands are properly submitted to interest arbitration:

- III. A (ii) Benefits. Health and Welfare Funds
- III. D. Interest
- IV. Productivity, B. Work Schedule
- VI. Improved Working Conditions
- VII. Contract Maintenance
- VII.C. Written Collective Bargaining Agreement

Demand III.A (i) Health and Welfare Fund and IV. E. Defibrillator, are nonmandatory subjects of negotiation not properly submitted to interest arbitration, and must be withdrawn.

SO ORDERED.

DATED: November 9, 2004
Albany, New York



Michael R. Cuevas, Chairman



John T. Mitchell, Member

**STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD**

In the Matter of

**PATROLMEN'S BENEVOLENT ASSOCIATION OF
THE CITY OF NEW YORK, INC.**

Petitioner,

- and -

CASE NO. DR-115

CITY OF NEW YORK,

Respondent.

**GLEASON, DUNN, WALSH & O'SHEA (RONALD G. DUNN of counsel) and
KAYE SCHOLER LLP (JAY W. WAKS of counsel), for Petitioner**

**DEBORAH GAINES, GENERAL COUNSEL, and PROSKAUR ROSE (DAVID
ZURNDORFER of counsel), for Respondent**

BOARD DECISION AND ORDER

On September 20, 2004, the Patrolmen's Benevolent Association of the City of New York, Inc. (PBA) filed a Petition for Declaratory Ruling pursuant to Part 210 of PERB's Rules of Procedure (Rules) seeking a ruling as to the scope of negotiations of certain demands submitted by the City of New York (City) to interest arbitration. PBA then filed an amended Petition for Declaratory Ruling on October 8, 2004. On October 28, 2004, the City filed its response to PBA's amended Petition for Declaratory Ruling. On November 3, 2004, the Director of Public Employment Practices and Representation (Director) transferred PBA's petition and the City's response to the Board for expedited determination pursuant to §§204.4 and 210.2(c) of the Rules.

The instant petition is a companion case to the Petition for Declaratory Ruling (Case No. DR-114) filed by the City¹ and decided by us today.

FACTS

PBA filed its Petition for Interest Arbitration on July 28, 2004. The City filed its verified response on August 11, 2004, setting forth the parties' bargaining history, referencing the City's bargaining demands that were annexed to the response as an exhibit, stating that no agreement had been reached on these demands, and indicating that the City's bargaining demands were the same as those the parties had been negotiating throughout their bargaining for a successor agreement

PBA initially filed its Petition for Declaratory Ruling on September 20, 2004 complaining that the City's response to the Petition for Interest Arbitration had not clearly set forth the bargaining demands the City sought to pursue at arbitration and, therefore, the City failed to comply with §205.5 of the Rules

The Director thereafter advised PBA that its petition was deficient because it did not set forth a *prima facie* case in that it only complained that the City's response to the Petition for Interest Arbitration had not set forth the City's specific demands. PBA filed an amended Petition for Declaratory Ruling on October 8, 2004, alleging that the City was seeking to place a new wage proposal before the arbitration panel that was time-barred. The amended petition referred to the City's proposals submitted to the Chairman of the arbitration panel, Eric J. Schmertz, on September 24, 2004.² Those proposals are the same proposals submitted by the City in its verified response to the

¹ 37 PERB ¶3033 (2004).

² Amended Petition for Declaratory Ruling, Exhibit E .

Petition for Interest Arbitration. The only exception, as noted by the cover letter to Schmertz, is to the text of the City's proposal on wages.

DISCUSSION

The purpose of the declaratory ruling proceeding is to provide a less adversarial means than an improper practice proceeding for resolving an existing justiciable issue between parties in two areas: whether an employee, an employer, or an employee organization is covered by the Act, and whether, as here, a matter is a subject of mandatory negotiations under the Act.³ A petition to determine whether a matter is a mandatory subject of negotiation must be filed in accordance with our Rules.⁴

PBA argues that the City's verified response to the Petition for Interest Arbitration is not a response to a Demand for Interest Arbitration as required by the Rules and, as such, the City is barred from introducing affirmative proposals in the pending interest arbitration. In the alternative, PBA seeks a ruling that the City's proposals are non-mandatory subjects of negotiation and, therefore, may not be submitted to interest arbitration.

We disagree with PBA's assessment of the City's response to the Petition for Interest Arbitration. PBA argues that the City's response did not clearly set forth a list of the bargaining demands it sought to pursue before the arbitration panel. Our Rules, however, require only that the respondent set forth the terms and conditions of employment that were resolved by agreement and its position as to those not so

³ *City of Hornell and NYS Conference of Mayors and Municipal Officials*, 36 PERB ¶3033 (2003).

⁴ Rules, §205.6.

resolved. Proposed language may be attached to the response.⁵ The City's response sets forth the parties' bargaining history, references the City's bargaining demands that were annexed as an exhibit, and indicates that no agreement was reached on these demands. Additionally, the City stated that it amended its wage proposal when the parties were in mediation, but did not attach a copy of its amended wage proposal. We, therefore, find that the City's response complies with our Rules. As the City's response, was filed August 11, 2004, PBA's Petition for Declaratory Ruling was required to be filed no more than ten working days after receipt of the City's response.⁶ If PBA felt that the City's response was defective under the Rules, it should have made its objection known by the timely filing of a Petition for Declaratory Ruling or an Improper Practice Charge as the examples of the bases for such filings contained in the Rules are illustrative only, and the intent of the Rules is that all objections be made in a timely manner so that these matters can be expeditiously resolved.⁷ PBA's Petition is clearly time-barred, having not been filed until September 20, 2004.

The Director accepted the PBA's amended petition for filing and consideration. We disagree. An amendment to a petition may be permitted under such terms as are just and consistent with due process.⁸ Here, the PBA seeks to amend its petition to include a new factual allegation – the receipt of the City's letter to the chair of the interest arbitration panel, and a new theory – that the amended wage demand had not previously been the subject of negotiations between the parties. An amendment,

⁵ Rules, §205.5(b)

⁶ Rules, §205.6(c).

⁷ See *South Nyack/Grand View Joint Police Administrative Bd.*, 35 PERB ¶3007 (2002).

⁸ Rules, §204.1(d).

however, to add an untimely allegation will be denied.⁹ The PBA's amended Petition for Declaratory Ruling is, therefore, denied.

Were we to allow the amendment of the PBA petition, the amendment, filed October 28, 2004, would relate back to the City's filing on August 11, 2004, of its verified Response setting forth its demands for interest arbitration. The amendment, too, would, therefore, be untimely.¹⁰

Finally, the amended petition does not concern either a Petition for Interest Arbitration or a response to such a petition. Our rules contemplate only objections to these two types of documents. While the purpose of the rules is to ensure the timely disposition of the arbitrability of matters to be heard by an interest arbitration panel, our rules also contemplate that the conduct of the arbitration proceeding, once the panel is designated, is under the exclusive jurisdiction and control of the interest arbitration panel.¹¹ The letter here involved was solicited by the chair of the arbitration panel, seeking clarification from the City, and was directed to him, not to the Board. As such, any issues concerning that document are under the jurisdiction and control of the interest arbitration panel.

As PBA's Petition for Declaratory Ruling is untimely, it is unnecessary for us to consider its alternate argument regarding the mandatory or nonmandatory nature of the City's demands.

We find, therefore, that PBA's Declaratory Ruling Petition filed on September 20, 2004 is untimely and must be dismissed.

⁹ See *County of Onondaga*, 31 PERB ¶3011 (1998).

¹⁰ Rules, §205.6(c). See *Middle Country CSD*, 23 PERB ¶3045 (1990).

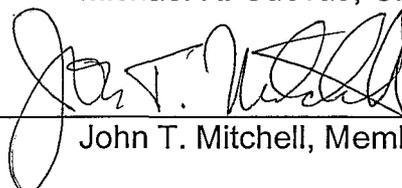
¹¹ Rules, §205.8

SO ORDERED.

DATED: November 9, 2004
Albany, New York



Michael R. Cuevas, Chairman



John T. Mitchell, Member

**STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD**

In the Matter of

CALVIN CUAVERS,

Charging Party,

- and -

CASE NO. U-25026

**UNITED FEDERATION OF TEACHERS AND BOARD
OF EDUCATION OF THE CITY SCHOOL DISTRICT OF
THE CITY OF NEW YORK,**

Respondent.

CALVIN CUAVERS, *pro se*

BOARD DECISION AND ORDER

This case comes before us on exceptions filed by Calvin Cuavers to a decision of the Director of Public Employment Practices and Representation (Director) dismissing Cuaver's improper practice charge which alleged that the United Federation of Teachers (UFT) had violated §209-a.2(c) of the Public Employees' Fair Employment Act (Act), when it failed to properly represent him through the grievance procedure on a charge of teacher misconduct by his employer, the Board of Education of the City School District of the City of New York (District).¹

The Director dismissed the improper practice charge, finding that it was procedurally deficient because it was not filed within four months of the date that the

¹ The District is also made a statutory party to the proceedings, pursuant to §209-a.2(c) of the Act.

conduct constituting the alleged improper practice, it was not filed with the requisite four copies, and because his final amendment was not notarized.

EXCEPTIONS

Cuavers excepts to the Director's decision, arguing that the improper practice charge was timely because he was told by the UFT not to get a "third party" involved in his case until the final appeals decision of the District was issued, that he failed to file the requisite four copies because he "truly forgot" that four copies were required, and that he did not notarize his third amended letter because notarizing the previous amendment was sufficient. Neither the UFT nor the District has filed a response to the exceptions.

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

FACTS

Calvin Cuavers filed this improper practice charge on April 25, 2004, alleging that the UFT breached its duty of fair representation in violation of §209-a.2(c) of the Act. Cuavers also named the District as a respondent, but the charge does not specify a provision of the Act that the District has violated or any facts to support a violation by the District. In the charge, Cuavers references a grievance he had filed against the District seeking removal of a letter placed in his school file in 2000 concerning closure of an earlier grievance which had alleged a violation of a Chancellor's Regulation. Although Cuavers' charge refers to events in 2000, 2001, 2002, and 2003, the only act that is alleged to have occurred in 2004 is the issuing of a Chancellor's Committee

Decision on January 21, 2004, denying Cuavers' appeal of an "unsatisfactory" rating due to misconduct that was placed in his file.

Cuavers was advised by the Director on April 29, 2004 that his charge was deficient in several respects and that it could be amended. Cuavers amended his charge three times, but each time, deficiencies remained. The Director then dismissed the charge as procedurally deficient in the three respects previously set forth.

DISCUSSION

Section 204.1(a)(1) of PERB's Rules of Procedure (Rules) requires that an improper practice charge be filed within four months of the date of the conduct constituting the alleged improper practice. In *Board of Education of the City School District of the City of New York (Loiacono)*,² we held that the four-month period of limitations is not tolled while internal proceedings to review a decision that is the subject of the charge are pursued by, or on behalf of, the charging party. It is the acts or omissions of UFT in processing Cuavers' grievance that form the bases of this charge.³ Cuavers was not privileged to wait for the final decision on the grievance to complain about UFT's alleged breach of its duty of fair representation during the course of the grievance proceeding in 2000, 2001, 2002 and 2003. His charge should have been filed within four months of each of UFT's actions about which he complains, not within four months of the Chancellor's decision on his grievance. The charge is, therefore, untimely.

² 19 PERB ¶3066 (1986).

³ See *Transport Workers Union, Local 100*, 32 PERB ¶4536, *aff'd*, 32 PERB ¶3037 (1999).

A charging party must submit a original and four copies of a charge.⁴ In *Board of Education of the City School District of the City of New York (Assante)*,⁵ the Director held that the improper practice charge and its amendment were procedurally deficient because they were not filed with the requisite four copies and, therefore, the charge was “subject to dismissal for failure to prosecute as required by the Board’s rules.”

Here, Cuavers did not file the necessary four copies of the original charge, and failed to file four copies of his three subsequent amendments. Cuavers stated in his exceptions that he did not do so because he “truly forgot”. His excuse must be rejected as insufficient because our Rules and case law require that four copies be filed, without exception. Accordingly, we find his charge must be dismissed.

A charge must be “signed and sworn to before any person authorized to administer oaths.”⁶ This requirement also applies to amendments to the charge.⁷ Cuavers’ last amendment to his improper practice charge alleged certain facts for the first time but was not notarized. Cuavers states in his exceptions that he did not notarize his last amended letter because he thought notarizing the previous amendment would be sufficient. We reject this argument and find that Cuavers’ charge is procedurally deficient.

Further, even if Cuavers had corrected the procedural deficiencies, his charge must be dismissed as substantively deficient because he failed to set forth sufficient

⁴ Rules, §204.1(a)(1).

⁵ 30 PERB ¶4589, at 4689 (1997).

⁶ Rules, §204.1(a)(3).

⁷ *United Fed’n of Teachers (Gench)*, 31 PERB ¶3079 (1998).

facts establishing UFT's conduct as arbitrary, discriminatory or in bad faith, so as to constitute a breach of the duty of fair representation under §209-a.2(c) of the Act.

Based on the foregoing, Cuavers' exceptions are denied, and the decision of the Director is affirmed.

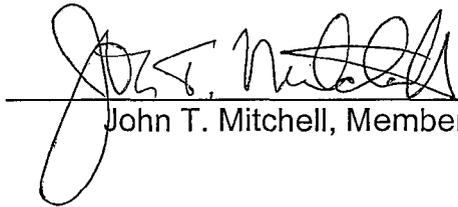
We, therefore, find that the improper practice charge must be dismissed because it was not timely filed, the requisite number of copies were not filed and the charging party failed to notarize his last amendment to the charge.

SO ORDERED.

DATED: November 9, 2004
Albany, New York



Michael R. Cuevas, Chairman



John T. Mitchell, Member