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3-5-2007

# State of New York Public Employment Relations Board Decisions from March 5, 2008

New York State Public Employment Relations Board

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# State of New York Public Employment Relations Board Decisions from March 5, 2008

**Keywords**

NY, NYS, New York State, PERB, Public Employment Relations Board, board decisions, labor disputes, labor relations

**Comments**

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STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of

**KAREEN DELAHAYE,**

Charging Party,

**CASE NO. U-27908**

- and -

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**AMALGAMATED TRANSIT UNION,**

Respondent,

- and -

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

Employer.

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**KAREEN DELAHAYE, *pro se***

**BOARD DECISION AND ORDER**

This case comes to the Board on exceptions by Kareen Delahaye (Delahaye) to a decision<sup>1</sup> of the Director of Public Employment Practices and Representation (Director) on an improper practice charge filed by Delahaye alleging that the Amalgamated Transit Union (ATU) violated §209-a.2(c) of the Public Employees' Fair Employment Act (Act) when it allegedly failed to properly represent her during an April 25, 2007 disciplinary conference held pursuant to Chancellor's Regulation C-100 of the Board of Education of the City School District of the City of New York (District).

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<sup>1</sup> 40 PERB ¶14608 (2007).

### EXCEPTIONS

Delahaye excepts to the decision by the Director to dismiss the improper practice charge pursuant to §204.2(a) of the Rules of Procedure (Rules) on the grounds that the charge, as amended, is untimely and that it fails to allege sufficient facts to constitute an improper practice by the ATU.

### FACTS

For purposes of our review of the Director's decision to dismiss the improper practice charge for failure to allege sufficient facts to state a violation of the Act, we will treat the allegations of the charge as true, granting all reasonable inferences to the pleaded facts.<sup>2</sup>

Delahaye is a school bus monitor and is in a bargaining unit represented by ATU. On September 18, 2006, Delahaye was suspended following a dispute with another employee. Following the suspension, a complaint was filed against Delahaye with the District's Office of Pupil Transportation (OPT) pursuant to Chancellor's Regulation C-100. Following an investigation, OPT concluded that Delahaye's bus escort certification should be permanently revoked based on its finding of merit to an allegation made against her of inappropriate behavior.

Thereafter, Delahaye filed an appeal to the District's Office of Appeals and Review (OAR) contesting OPT's recommendation and requesting a disciplinary conference. On April 25, 2007, Delahaye attended the disciplinary conference where she was represented by an ATU representative. On May 14, 2007, Delahaye was sent a letter from Deputy Chancellor Kathleen Grimm concurring with OPT's conclusion that Delahaye's bus escort certification should be permanently revoked.

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<sup>2</sup> *City of Yonkers*, 23 PERB ¶3055 (1990); *UFT (Saidin)*, 40 PERB ¶3003 (2007).

**DISCUSSION**

It is well-settled that pursuant to §204.1(a)(1) of the Rules an improper practice charge must be filed within four months of the conduct that forms the basis for the alleged violation of the Act.<sup>3</sup>

In the present case, Delahaye's improper practice charge was filed on October 11, 2007 alleging that the ATU did not provide her with proper representation at the April 25, 2007 disciplinary conference. As such, Delahaye's improper practice charge is untimely because it was filed over four months following the alleged improper representation by the ATU.<sup>4</sup>

Based on the foregoing, we deny Delahaye's exceptions and affirm the decision of the Director.<sup>5</sup>

WE, THEREFORE, ORDER that the improper practice charge must be, and hereby is, dismissed in its entirety.

DATED: March 5, 2008  
Albany, New York

  
\_\_\_\_\_  
Jerome Leikowitz, Chairman

  
\_\_\_\_\_  
Robert S. Hite, Member

<sup>3</sup> CSEA (*Braham*), 28 PERB ¶13072 (1995).

<sup>4</sup> We also concur with the Director's alternative basis for finding the charge deficient due to the lack of factual specificity.

<sup>5</sup> We note that the record is unclear as to whether Delahaye is a public employee as defined in §201.7(f) of the Act. It appears that she may be employed by a private contractor rather than the District. Based on our ruling today, however, we do not need to remand this matter for further inquiry into the jurisdictional issue.

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

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In the Matter of

**BERNADETTE DANNA,**

Charging Party,

**CASE NO. U-27886**

- and -

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**ROCHESTER TEACHERS ASSOCIATION,**

Respondent.

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**BERNADETTE DANNA, *pro se***

**BOARD DECISION AND ORDER**

This case comes to the Board on exceptions by Bernadette Danna (Danna) to a decision of the Director of Public Employment Practices and Representation (Director) on an improper practice charge filed by Danna alleging that the Rochester Teachers Association (Association) violated §209-a.2(c) of the Public Employees' Fair Employment Act (Act) when it decided not to arbitrate her contract grievance seeking personal injury benefits under the collectively negotiated agreement (agreement).<sup>1</sup>

**EXCEPTIONS**

Danna excepts to the decision by the Director to dismiss the improper practice charge pursuant to §204.2(a) of the Rules of Procedure (Rules) on the ground that the charge and the amendment fail to allege sufficient facts to constitute an improper practice by the Association. In her exceptions, Danna contends that because the Association processed her grievance, filed a demand for arbitration and discussed the

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<sup>1</sup> 40 PERB ¶4603 (2007).

grievance with her, the Association's September 7, 2007 decision not to pursue her grievance constituted a violation of the Act. In support of her exceptions, Danna has alleged additional facts not included in the improper practice charge and has submitted documents that were not attached to the charge.

### FACTS

For purposes of our review of the Director's decision to dismiss an improper practice charge for failure to allege sufficient facts to state a violation of the Act, we will treat the allegations of the charge as true granting all reasonable inferences to the pleaded facts.<sup>2</sup> We will not, however, consider the newly alleged facts and additional documents contained in Danna's exceptions.<sup>3</sup> All relevant factual allegations and documents should have been submitted to the Director.

On or about October 6, 1997, Danna was assaulted and sustained injuries at work. In 2000, she filed a grievance seeking personal injury benefits under a provision of the agreement between the Association and the Rochester City School District (District). On March 22, 2001, the District concluded that Danna was entitled to those benefits.

On November 9, 2005, at Danna's request, the Association filed a demand for arbitration with respect to her grievance. In 2007, Danna submitted various documents to the Association in support of her grievance. The Association examined Danna's documents along with a District response, dated August 31, 2007, stating that it had already determined that she was entitled to the contractual benefits.

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<sup>2</sup> *City of Yonkers*, 23 PERB ¶3055 (1990); *UFT (Saidin)*, 40 PERB ¶3003 (2007).

<sup>3</sup> *Nassau County Local 830, CSEA (Haugen)*, 19 PERB ¶3024 (1986).

On September 7, 2007, the Association sent a letter to Danna informing her that it would not be pursuing her grievance. In the letter, the Association explained that after reviewing the entire record, including Danna's documentation and the District's response, the Association concluded that her grievance lacked sufficient merit to proceed to arbitration.

### DISCUSSION

It is well-settled that an employee organization is entitled to a wide range of reasonable discretion with respect to the filing and prosecution of grievances under the Act.<sup>4</sup> As the Board stated in *New York State Public Employees Federation (Frisch)*<sup>5</sup>:

[A]n employee organization has no duty to process every grievance or to take every grievance to arbitration and is entitled to a broad range of discretion in determining which grievances it will pursue and to what level.

In the present case, after filing a demand for arbitration the Association declined to proceed to arbitration. The Association's decision was made following a review of the entire grievance record including supplemental documentation submitted by Danna. While Danna may disagree with the Association's decision, she does not allege any facts in the charge and amendment which would support a conclusion that the Association was arbitrary, discriminatory or acted in bad faith when it reviewed the record and concluded that her grievance lacked sufficient merit to proceed to arbitration.

Based on the foregoing, we deny Danna's exceptions and affirm the decision of

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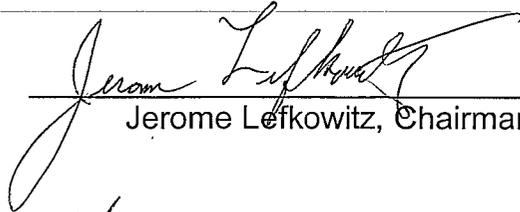
<sup>4</sup> See, *District Council 37, AFSCME (Gonzalez)*, 28 PERB ¶3062 (1995).

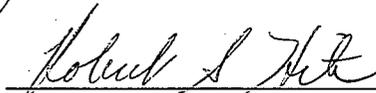
<sup>5</sup> 29 PERB ¶3019 at 3045 (1996).

the Director.

WE, THEREFORE, ORDER that the improper practice charge must be, and hereby is, dismissed in its entirety.

DATED: March 5, 2008  
Albany, New York

  
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Jerome Lefkowitz, Chairman

  
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Robert S. Hite, Member

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of

**CANISTEO-GREENWOOD ADMINISTRATORS'  
ASSOCIATION,**

Petitioner,

-and-

CASE NO. C-5741

**CANISTEO-GREENWOOD CENTRAL SCHOOL  
DISTRICT,**

Employer.

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**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,

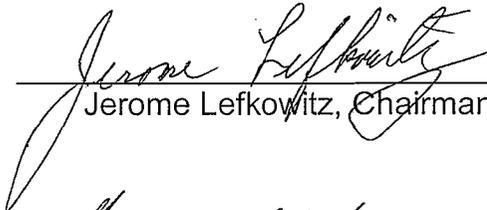
IT IS HEREBY CERTIFIED that the Canisteco-Greenwood Administrators' Association has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Included: High School Principal, Middle School Principal, Elementary School Principal, Director of Special Education, Director of Transportation and Director of Facilities.

Excluded: All other titles.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Canisteo-Greenwood Administrators' 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: March 5, 2008  
Albany, New York

  
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Jerome Lefkowitz, Chairman

  
\_\_\_\_\_  
Robert S. Hite, Member

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

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In the Matter of

**LOCAL 317, INTERNATIONAL BROTHERHOOD  
OF TEAMSTERS, CHAUFFEURS,  
WAREHOUSEMEN AND HELPERS OF AMERICA,**

Petitioner,

-and-

CASE NO. C-5745

**TOWN OF CAZENOVIA,**

Employer.

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**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 Local 317, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America 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 employees assigned to the Town of Cazenovia Highway Department in the following titles: Heavy Equipment Operator, Motor Equipment Operator, Working Foreman, Laborer and Mechanic.

Excluded: All elected officials, the Deputy Superintendent of Highways, office clerical employees, part-time and seasonal employees and all other Town employees.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Local 317, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. 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: March 5, 2008  
Albany, New York

  
\_\_\_\_\_  
Jerome Lefkowitz, Chairman

  
\_\_\_\_\_  
Robert S. Hite, Member

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of

**LOCAL UNION NO. 17, LABORERS'  
INTERNATIONAL UNION OF NORTH AMERICA,**

Petitioner,

-and-

**CASE NO. C-5755**

**TOWN OF JEWETT,**

Employer.

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**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,

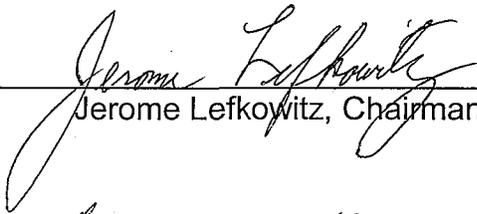
IT IS HEREBY CERTIFIED that the Local Union No. 17, Laborers' International Union of North America has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

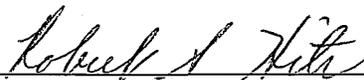
Included: All full-time and part-time Highway Department employees.

Excluded: Highway Superintendent and clerical staff.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Local Union No. 17, Laborers' International Union of America. 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: March 5, 2008  
Albany, New York

  
\_\_\_\_\_  
Jerome Lefkowitz, Chairman

  
\_\_\_\_\_  
Robert S. Hite, Member

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of

**LOCAL 264, INTERNATIONAL  
BROTHERHOOD OF TEAMSTERS,**

Petitioner,

-and-

**CASE NO. C-5758**

**VILLAGE OF CUBA,**

Employer.

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**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 Local 264, International Brotherhood of Teamsters 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 Heavy Motor Equipment Operators in the Department of Public Works.

Excluded: All others.

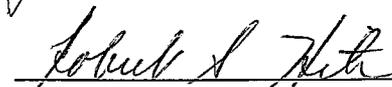
FURTHER, IT IS ORDERED that the above named public employer shall

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negotiate collectively with the Local 264, International Brotherhood of Teamsters. 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: March 5, 2008  
Albany, New York

  
\_\_\_\_\_  
Jerome Lefkowitz, Chairman

  
\_\_\_\_\_  
Robert S. Hite, Member

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of

**UNITED FEDERATION OF TEACHERS, NYSUT,  
AFT,**

Petitioner,

-and-

**CASE NO. C-5771**

**MERRICK ACADEMY-QUEENS PUBLIC  
CHARTER SCHOOL,**

Employer.

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**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 Federation of Teachers, NYSUT, AFT 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.

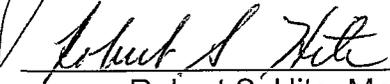
Included: Teachers, Teacher Assistants (Cooperating Teachers), Fine Art Coordinator and Student Mentor.

Excluded: All other employees.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the United Federation of Teachers, NYSUT, AFT. 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: March 5, 2008  
Albany, New York

  
\_\_\_\_\_  
Jerome Lefkowitz, Chairman

  
\_\_\_\_\_  
Robert S. Hite, Member

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of

TEAMSTERS LOCAL UNION NO. 693,  
INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN  
& HELPERS OF AMERICA,

Petitioner,

-and-

CASE NO. C-5683

TOWN OF COLCHESTER,

Employer.

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**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 Teamsters Local Union No. 693, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America 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

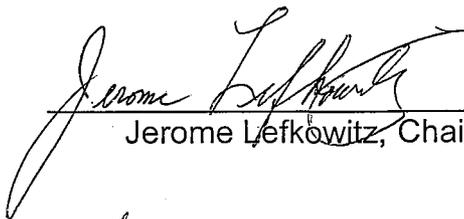
below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

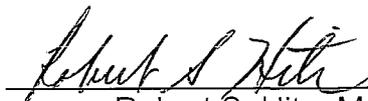
Included: All full-time and part-time employees assigned to the Town of Colchester Highway Department - including those employees who work for the Town year-round but who are assigned to the Highway Department on a seasonal basis - in the following titles: Heavy Equipment Operator, Motor Equipment Operator and Mechanic.

Excluded: Superintendent and Deputy Highway Superintendent.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Teamsters Local Union No. 693, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. 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: March 5, 2008  
Albany, New York

  
\_\_\_\_\_  
Jerome Lefkowitz, Chairman

  
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Robert S. Hite, Member