



Cornell University
ILR School

Cornell University ILR School
DigitalCommons@ILR

Board Decisions - NYS PERB

New York State Public Employment Relations
Board (PERB)

7-3-2008

State of New York Public Employment Relations Board Decisions from July 3, 2008

New York State Public Employment Relations Board

Follow this and additional works at: <https://digitalcommons.ilr.cornell.edu/perbdecisions>

Thank you for downloading an article from DigitalCommons@ILR.

Support this valuable resource today!

This Article is brought to you for free and open access by the New York State Public Employment Relations Board (PERB) at DigitalCommons@ILR. It has been accepted for inclusion in Board Decisions - NYS PERB by an authorized administrator of DigitalCommons@ILR. For more information, please contact catherwood-dig@cornell.edu.

If you have a disability and are having trouble accessing information on this website or need materials in an alternate format, contact web-accessibility@cornell.edu for assistance.

State of New York Public Employment Relations Board Decisions from July 3, 2008

Keywords

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

Comments

This document is part of a digital collection provided by the Martin P. Catherwood Library, ILR School, Cornell University. The information provided is for noncommercial educational use only.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

LOCAL 30, I.U.O.E., AFL-CIO,

Petitioner,

- and -

CASE NO. C-5792

HUDSON RIVER PARK TRUST,

Employer.

**ARCHER, BYINGTON, GLENNON & LEVINE, LLP (MARTY GLENNON, ESQ.,
of Counsel), for Petitioner**

LAURIE SILBERFELD, GENERAL COUNSEL, for Employer

BOARD DECISION AND ORDER

On March 12, 2008, the Local 30, I.U.O.E., AFL-CIO (petitioner) filed, in accordance with the Rules of Procedure of the Public Employment Relations Board, a timely petition seeking certification as the exclusive representative of certain employees of the Hudson River Park Trust (employer).

Thereafter, the parties executed a consent agreement in which they stipulated that the following negotiating unit was appropriate:

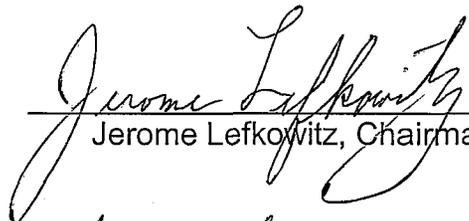
Included: All regular full-time Horticulturist, Assistant Director of Maintenance, Maintenance Technicians, Mechanic, Motor Pool Specialist, Chief Facility Engineer and Facility Maintenance Technician.

Excluded: All other employees, including seasonals.

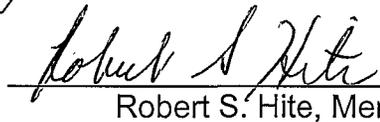
Pursuant to that agreement, a secret-ballot election was held on June 3, 2008, at which a majority of ballots were cast against representation by the petitioner.

Inasmuch as the results of the election indicate that a majority of the eligible voters in the unit who cast ballots do not desire to be represented for the purpose of collective bargaining by the petitioner, IT IS ORDERED that the petition should be, and it hereby is, dismissed.

DATED: July 3, 2008
Albany, New York



Jerome Lefkowitz, Chairman



Robert S. Hite, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

**TRANSPORT WORKERS UNION OF
GREATER NEW YORK, LOCAL 100,**

Charging Party,

-and-

CASE NO. U-27600

NEW YORK CITY TRANSIT AUTHORITY,

Respondent.

EDWARD PICHARDO, ESQ., for Charging Party

**MARTIN B. SCHNABEL, GENERAL COUNSEL AND VICE PRESIDENT
(ROBERT K. DRINAN and MICHELLE L. SHERIDAN of counsel), for
Respondent**

BOARD DECISION AND ORDER

This case comes to the Board on exceptions filed by the Transport Workers Union of Greater New York, Local 100 (TWU) to a decision by the Administrative Law Judge (ALJ) dismissing its charge, as amended, alleging that the New York City Transit Authority (NYCTA) violated §209-a.1(d) of the Public Employees' Fair Employment Act (Act) when it unilaterally implemented a uniform requirement for the title of Revenue Equipment Maintainer (REM) in the TWU bargaining unit and when it failed to negotiate with TWU the subject of providing REM employees with bullet proof vests.¹

¹ 41 PERB ¶4503 (2008).

The ALJ dismissed TWU's allegation that NYCTA violated the Act by unilaterally imposing the uniform requirement based on NYCTA's duty satisfaction defense. With respect to the portion of the charge alleging a failure to negotiate bullet proof vests for REM employees, the ALJ concluded that TWU abandoned the claim by failing to address the issue in its post-hearing brief.

EXCEPTIONS

In its exceptions, TWU contends that the ALJ erred in finding merit to NYCTA's duty satisfaction defense arguing that the ALJ misinterpreted the parties' agreement. In addition, TWU asserts that the ALJ erred in concluding that TWU abandoned its claim with respect to the bullet proof vests.

Based upon our review of the record and our consideration of the parties' arguments, we affirm, in part, and reverse in part, the decision of the ALJ.

FACTS

At the scheduled hearing, the case was submitted to the ALJ on a stipulated record. The stipulated record is limited to the pleadings, correspondence between the parties and other documents including portions of the 2002 collectively negotiated agreement (agreement) between NYCTA and TWU, portions of the parties' 1966 agreement and a 1968 memorandum and supplementary letter describing changes to working conditions for hourly rate employees.² No evidence was presented with respect to the parties' history of negotiations.

² Due to the sparsity of the record, certain facts have been discerned from admissions contained in the pleadings. ALJ Exhibit 3, Appendix, ¶¶10-14; ALJ Exhibit 4, ¶¶11-14.

TWU represents a bargaining unit that includes the title of REM. At times, REM employees work with employees in the title of Collecting Agents (CA) who are armed and wear bullet proof vests. A CA is present when a REM services Metrocard vending machines.

Article VI(C) of the parties' 1966 agreement states:

Effective January 1, 1966, where the Authority requires an employee subject to the terms of this agreement to be in uniform, the Authority will supply such uniform.

The 1968 supplementary letter states:

The Authority will require employees in the title of Railroad Watchman to be in uniform as soon as is practicable.

Article II of the 2002 agreement contains various general provisions including §2.18 which states:

Where the Transit Authority requires an employee covered by this Agreement to be in uniform, the Transit Authority will supply such uniform.

In addition, §4.4 of the agreement includes specific provisions applicable to REM employees with respect to safety equipment, tools, foul weather gear and work shoe benefits. Subsection 4.4(L), the applicable provision with respect to REM safety equipment, states:

1. Employees shall be provided, without cost to themselves, with such safety equipment as may be authorized by the Head of the Department.
2. Revenue Equipment Maintainers assigned to Rapid shall be provided with prescription safety glasses. The Transit Authority reserves the right to strictly enforce the safety rules and Revenue Equipment Maintainers failing to wear safety glasses as required shall be subject to loss of differential pay in addition to disciplinary action. The Union agrees to cooperate

with the Transit Authority in seeing that safety rules are observed.

3. One (1) employee, designated by the Union shall be permitted to attend each regular local safety committee meeting, conducted normally once (1) a month by supervision, without loss of pay for such attendance. At the time of designation the Union shall state which local meeting the designated employee shall attend.

In 2003, 2004, 2005 and 2007, NYCTA and TWU exchanged a series of letters with respect to NYCTA's intention to mandate that REM employees wear a uniform. Several such letters were included in the stipulated record. In its letters, TWU opposed the uniform plan for various reasons and asserted that a requirement obligating REM employees to wear a uniform constitutes a mandatory subject of negotiations. In contrast, NYCTA's letters stated that §2.18 of the 2002 agreement grants it the authority to require employees to wear uniforms so long as it supplies the uniforms. In a letter, dated March 21, 2003, from NYCTA to TWU, NYCTA offered to meet with TWU to discuss styles and materials for the uniforms being considered for REMs. On May 16, 2003, TWU wrote back stating that "failure to negotiate concerning *impact* is an improper practice" (emphasis added), and challenging NYCTA's right to unilaterally impose a uniform requirement on REMs. In a follow-up letter from NYCTA to TWU, dated June 23, 2003, NYCTA described the parties' practices under §2.18 in the following manner:

As you know, Section 2.18 of our collective bargaining agreement gives New York City Transit the right to require employees to be in uniform so long as Transit supplies such uniforms. In exercising that right, Transit has, in the past, sought input from the Transport Workers Union. In fact, the uniforms being proposed are comprised of items currently being issued to Transit employees in other titles. All such

items were thoroughly discussed with the TWU over the course of several joint labor-management uniform committee meetings.

The stipulated record does not include a TWU refutation of NYCTA's description of the practice under the contract provision.

In January 2007, NYCTA informed TWU that NYCTA would be proceeding with the distribution of uniforms to REM employees and offered to meet with TWU to discuss any issues it may have with respect to the uniforms.

On March 21, 2007, NYCTA issued Bulletin No. 07-12 announcing to REM employees that they will be required to wear NYCTA issued uniforms. The bulletin describes the type and amount of uniforms to be provided to each REM employee and sets forth instructions for the proper wear and maintenance of the uniforms.

On April 18, 2007, NYCTA and TWU met to discuss the issue of REM uniforms. During the meeting, TWU raised concerns about employee comfort when wearing the uniforms in winter and summer. In addition, TWU demanded at the meeting that REMs be furnished with bullet proof vests.³

DISCUSSION

The ALJ concluded that the NYCTA did not engage in unilateral action with respect to a mandatory subject in violation of §209-a.1(d) of the Act when it imposed a uniform requirement on REM employees because it had satisfied its duty to bargain the subject in §2.18 of the agreement. We agree.

The Board has held that where an employer and employee organization have bargained a specific subject to completion and have reached an agreement with respect

³ No further facts about the parties' discussions at the meeting are contained in the record.

to that subject, the employer has satisfied its duty to negotiate and, therefore, cannot act unilaterally in violation of the Act when it takes an action permitted under the specifically negotiated term of the agreement.⁴ Similarly, a party may unilaterally end a past practice, without violating the Act, by reverting to the terms of a specifically negotiated provision.⁵ The burden rests with a respondent to plead and prove a duty satisfaction or contract reversion defense through negotiated terms that are reasonably clear on the specific subject at issue.⁶

In *Town of Shawangunk*⁷ the Board emphasized that:

Just as the standards for waiver have been formulated in a way that guards against an improvident loss of bargaining right, so also must the standards for duty satisfaction be shaped to avoid too ready a finding that bargaining obligations have been fulfilled. A satisfaction of the duty to negotiate necessitates record evidence of facts establishing that the parties negotiated an agreement upon terms which are reasonably clear on the subject presented to us for

⁴ *County of Nassau*, 31 PERB ¶3064 (1998); *County of Nassau*, 31 PERB ¶3074 (1998); *State of New York (Workers Compensation Board)*, 32 PERB ¶3076 (1999). See also, *Roma v Ruffo*, 92 NY2d 489 (1998).

⁵ *State of New York-Unified Court System*, 26 PERB ¶3013 (1993).

⁶ *NYCTA*, 20 PERB ¶3037 (1987), *confd*, *NYCTA v New York State Pub Empl Rel Bd*, 147 AD2d 574, 22 PERB ¶7001 (2d Dept 1989); *Town of Shawangunk*, 32 PERB ¶3042 (1999). We note that §205.5(d) of the Act denies PERB authority to enforce a collectively negotiated agreement, and declares that it "shall not exercise jurisdiction over an alleged violation of such an agreement that would not otherwise constitute an improper ... practice." This provision does not, however, prohibit us from interpreting an agreement to determine, *inter alia*, whether it contains a waiver of a charging party's right to negotiate or a satisfaction of the respondent's duty to negotiate. *CSEA v Newman*, 88 AD2d 685, 15 PERB ¶7011 (3d Dept 1982), *app dismissed*, 57 NY2d 775, 15 PERB ¶7020 (1982) *affd*, 61 NY2d 1001, 17 PERB ¶7007 (1984) (subsequent history omitted). See also, *County of Saratoga and Saratoga County Sheriff*, 37 PERB ¶3024 (2004) *rev*, *County of Saratoga v New York State Pub Empl Rel Bd*, 21 AD3d 1160, 38 PERB ¶7013 (3d Dept 2005).

⁷ *Supra*, note 6, 32 PERB at 3094-3095.

decision. We reject any lesser standard for it would compromise the right and duty to negotiate and the public policies underlying the creation of that right and duty.

When determining whether parties have, in fact, negotiated an at-issue subject to completion, we apply standard principles of contract interpretation.⁸ Such principles are applicable whenever the interpretation of an agreement is necessary for the resolution of the merits of an improper practice charge.⁹ In construing an agreement, our focus is aimed at discerning the parties' intent by giving a practical interpretation to the language utilized. If, as here, the contract language is reasonably clear but, nevertheless, susceptible to more than one interpretation, extrinsic evidence, such as negotiation history and/or a past practice, is admissible to determine the intent of the parties. But, were the contract language clear and unambiguous, consideration of evidence outside the four corners of the agreement would be inappropriate.

In the present case, we reverse the ALJ's finding that §2.18 of the agreement constitutes an unambiguous grant of authority to NYCTA to unilaterally require employees to wear a specific uniform in exchange for NYCTA providing the uniform.

Although we agree that the first clause in §2.18 unambiguously grants NYCTA the right to require employees to wear a uniform, we conclude that on its face the second clause in §2.18, "the Transit Authority will supply such uniform", is susceptible to more than one reasonable interpretation: it can be construed either as granting NYCTA the right to select the particular uniform to be worn, or as requiring NYCTA to order and pay for a uniform, or both. A comparison of §§2.18 and 4.4(L)(1), the latter section being

⁸ *County of Livingston*, 30 PERB ¶3046 (1997). See also, Bornstein, Gosline, Greenbaum, *Labor and Employment Arbitration*, 2d ed, Ch. 9 (2008)

⁹ *County of Saratoga v New York State Pub Empl Rel Bd*, *supra*, note 5.

applicable to NYCTA providing safety equipment to REMs, does not resolve the ambiguity in §2.18.

Therefore, in order to properly construe the parties' intent, we turn to parol evidence in the record. The stipulated record does not contain specific negotiations history with respect to §2.18 of the agreement other than it is an apparent derivation from a provision in the parties' 1966 agreement. The record does include NYCTA's unrebutted description of the parties' practice under §2.18 in which NYCTA selects the uniform after discussions with TWU. This practice constitutes persuasive parol evidence that §2.18 constitutes a specifically negotiated term with respect to uniforms that satisfies NYCTA's obligation to negotiate the subject under the Act.¹⁰ Therefore, although certain aspects of a decision to impose a uniform requirement are mandatorily negotiable¹¹ we find that NYCTA has satisfied its statutory duty to negotiate the decision.

The fact that NYCTA satisfied its duty to negotiate the subject does not preclude TWU from demanding to negotiate the impact of the decision. However, the duty to negotiate impact arises only upon a valid request,¹² and it does not forestall employer

¹⁰ TWU's reliance on the 1968 supplemental letter regarding railroad watchmen is misplaced. The letter, without additional evidence about its context, does not shed light on the meaning of §2.18. In addition, we note that in TWU's brief it makes reference to what it describes as the parties "traditional interpretation" of §2.18. However, there is nothing in the record that supports that conclusory statement.

¹¹ See, *County of Onondaga and County of Onondaga Sheriff*, 14 PERB ¶3029 (1981); *City of Buffalo*, 15 PERB ¶3027 (1982); *New York State Canal Corp*, 30 PERB ¶3070 (1997).

¹² *City of Rochester*, 17 PERB ¶3082 (1984).

action.¹³ Upon our review of the record, we conclude that TWU did not allege in its improper practice charge that it demanded impact negotiations over NYCTA's decision and/or that NYCTA refused to engage in impact negotiations. Even if TWU's pleading is construed differently, TWU's May 16, 2003 letter, which makes a general reference to the duty to negotiate impact under the Act, does not constitute a demand for impact negotiations.¹⁴ In fact, TWU's subsequent letters clearly show that it sought to negotiate the decision to require uniforms for REMs.

We next turn to TWU's exception challenging the ALJ's dismissal of the charge as it relates to bullet proof vests. The ALJ dismissed that portion of the charge on the grounds that TWU had abandoned its claim by failing to address the claim in its post-hearing brief.

Pursuant to §212.5 of PERB's Rules of Procedure (Rules), the filing of post-hearing briefs containing proposed statements of facts and conclusions of law is at a party's discretion unless ordered by the ALJ. The mere fact that TWU did not fully address the issue of bullet proof vests in its post-hearing brief does not establish an intention by TWU to abandon its claim. In reaching our conclusion, we note that the ALJ did not direct the parties to brief the issue.¹⁵ Therefore, we reverse and remand the

¹³ *Town of Oyster Bay*, 12 PERB ¶3086 (1979).

¹⁴ See, *Lackawanna City Sch Dist*, 28 PERB ¶3023 (1995); *County of Suffolk and Sheriff of Suffolk County*, 29 PERB ¶3002 (1996); *NYS Office of Court Administration*, 32 PERB ¶3063 (1999).

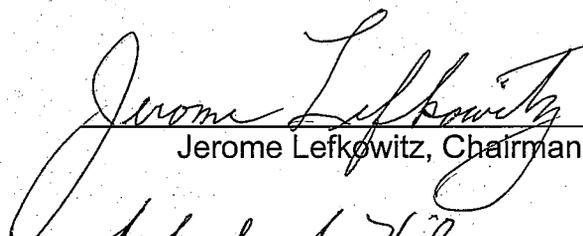
¹⁵ In *City of New York*, 40 PERB ¶3017 (2007), the Board held that under certain circumstances, the subject of bullet proof vests may constitute a mandatory subject of negotiations.

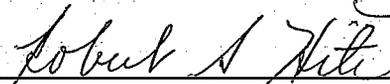
charge to the ALJ to examine the merits of TWU's claim with respect to bullet proof vests.¹⁶

Based on the foregoing, we grant TWU's exceptions in part, reverse the decision of the ALJ and remand the case.

IT IS, THEREFORE, ORDERED that the improper practice charge is dismissed except to the extent that it alleges that NYCTA violated §209-a.1(d) of the Act by failing to negotiate the subject of bullet proof vests for REMs, which is reinstated, and the matter is remanded for further processing with respect to that allegation only.

DATED: July 3, 2008
Albany, New York


Jerome Lefkowitz, Chairman


Robert S. Hite, Member

¹⁶ A remand in this case is necessitated by the fact that NYCTA did not plead a duty satisfaction defense with respect to the issue of bullet proof vests based on §4.4(L) of the 2002 agreement.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

BERNICE MALCOLM,

Charging Party,

CASE NOS. U-28121,
U-28122 & U-28123

- and -

**HONEOYE FALLS-LIMA CENTRAL SCHOOL DISTRICT
and HONEOYE FALLS-LIMA EDUCATION
ASSOCIATION, NYSUT,**

Respondents.

BERNICE MALCOLM, *pro se*

BOARD DECISION AND ORDER

This case comes to the Board on exceptions filed by Bernice Malcolm (Malcolm) from decisions of the Director of Public Employment Practices and Representation (Director) dismissing three improper practice charges, as amended, Case Nos. U-28121, U-28122 and U-28123, alleging that the Honeoye Falls-Lima Central School District (District) violated §§209-a.1(a), (b), (c), (d) and (e) of the Public Employees' Fair Employment Act (Act) and that the Honeoye Falls-Lima Education Association, NYSUT (Association) violated §§209-a.2(a), (b) and (c) of the Act.

After the Director granted Malcolm the opportunity to amend each of her charges to correct certain deficiencies, the Director dismissed the amended charges finding that

each charge failed to allege facts that, as a matter of law, constitute violations of the Act.

EXCEPTIONS

In her exceptions, Malcolm contends that the Director erred in dismissing the charges on the grounds that each charge alleges that: a) the Association failed to file improper practice charges on her behalf; b) violations of a collectively negotiated agreement constitute improper practices under the Act; and c) other unspecified facts support her allegations. In addition, Malcolm asserts that all three charges are timely.

Based upon our review of the record and our consideration of Malcolm's arguments, we must dismiss her exceptions as untimely.

DISCUSSION

Pursuant to §213.2(a) of PERB's Rules of Procedure (Rules), within 15 working days after receipt of a decision, a party may file exceptions with the Board. The Rule requires the party filing exceptions to submit proof of service to the Board demonstrating that the exceptions were also served on all other parties within the same 15 working day period.

Based on our review of the record, the evidence establishes that the District and the Association were not served with the exceptions within the time period required under the Rules. The Director issued his decisions on March 25, 2008 and Malcolm received the decisions on April 5, 2008. On April 21, 2008, the Board received Malcolm's exceptions, dated April 15, 2008, without proof of service on the District and the Association, as required by §213.2(a) of the Rules.

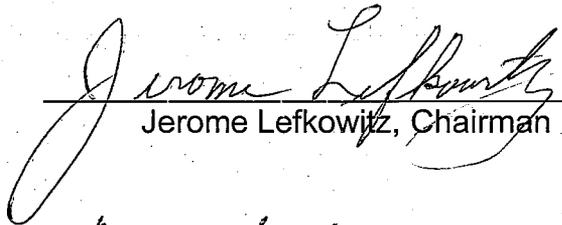
On May 7, 2008, the Board sent Malcolm a letter requesting that she submit to the Board proof of service of her exceptions on the other parties. On May 13, 2008,

Malcolm submitted documentation to the Board demonstrating that on May 10, 2008 she made a mailing to the District and the Association by certified mail, return receipt requested.¹

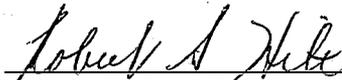
Consistent with the Rules, the Board has held that timely service of exceptions upon all other parties constitutes a necessary component for the timely filing of exceptions.² In the present case, Malcolm failed to serve her exceptions on the District and the Association within 15 working days of her receipt of the Director's decisions; therefore, Malcolm's exceptions are untimely and they must be dismissed. Based on the foregoing, we need not reach the merits of the exceptions.

IT IS, THEREFORE, ORDERED that the exceptions are hereby dismissed in their entirety.

DATED: July 3, 2008
Albany, New York



Jerome Lefkowitz, Chairman



Robert S. Hite, Member

¹ Malcolm's proof of service does not indicate what she mailed to the District and Association. For purposes of this decision, we will assume that she mailed to the other parties copies of her exceptions.

² *Town/City of Poughkeepsie Water Treatment Facility*, 35 PERB ¶3037 (2002); *Yonkers Fedn of Teachers (Jackson)*, 36 PERB ¶3050 (2003). See also, *Catskill Regional OTB*, 14 PERB ¶3075 (1981)(subsequent history omitted).

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

RONALD GRASSEL,

Charging Party,

- and -

CASE NO. U-28124

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

Respondent.

RONALD GRASSEL, *pro se*

**DAVID BRODSKY, DIRECTOR OF LABOR RELATIONS (RUSSELL J.
PLATZEK, of counsel), for Respondent**

BOARD DECISION AND ORDER

This case comes to the Board on a motion filed by Ronald Grassel (Grassel) seeking leave to file exceptions, pursuant to §§212.4(h) and 213 of the Rules of Procedure (Rules), for the disqualification of an Administrative Law Judge (ALJ) with respect to an improper practice charge, dated June 22, 2007, alleging that the Board of Education of the City School District of the City of New York (District) violated §§209-a.1(a) and (c) of the Public Employees' Fair Employment Act (Act).

The District filed an answer to the charge denying that it violated the Act and raising various affirmative defenses.

PROCEDURAL BACKGROUND

On April 15, 2008, the parties were notified that a hearing with respect to the

improper practice charge would take place before an ALJ on June 13, 2008. Immediately prior to the commencement of the hearing on June 13, 2008, the ALJ engaged in off-the-record discussions with the parties about documents that would be received into evidence as ALJ exhibits as well as clarification as to the allegations of the improper practice charge. Following those off-the-record discussions, the hearing commenced with the ALJ placing twelve ALJ exhibits into evidence. Thereafter, there was a colloquy between the ALJ and the parties with respect to the substantive nature of the allegations contained in the improper practice charge. Following the colloquy, the ALJ granted a District request for leave to file a motion to dismiss the charge and the hearing was adjourned.

MOTION FOR LEAVE TO FILE EXCEPTIONS

On June 13, 2008, Grassel filed a motion for leave to file exceptions with the Board simultaneously with a motion filed with the ALJ requesting that the ALJ recuse himself, pursuant to §212.4(g) of the Rules, from hearing the improper practice charge. Both motions contain similar allegations about purported conduct of the ALJ during the off-the-record discussions with the parties prior to the hearing. Following receipt of the recusal motion, the ALJ granted the District until July 2, 2008 to respond to Grassel's motion. The motion for recusal remains pending before the ALJ.

DISCUSSION

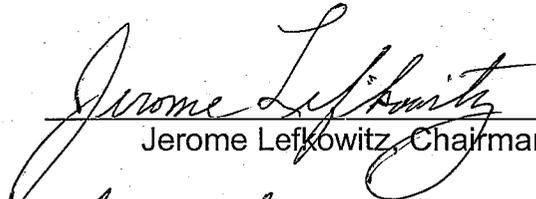
It is well-settled that the Board will grant leave to file interlocutory exceptions to non-final rulings and decisions, pursuant to §212.4 of the Rules, in situations where the moving party demonstrates extraordinary circumstances.¹ In the present case, Grassel's

¹ *State of New York (Division of Parole)*, 40 PERB ¶3007 (2007); *UFT (Grassel)*, 32 PERB ¶3071 (1999).

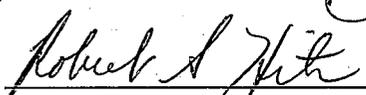
motion for leave to file exceptions fails to identify a non-final ruling or decision by the ALJ that he seeks to have reviewed. In fact, the motion is premature because the ALJ has not yet ruled on the motion for recusal. Finally, the motion fails to demonstrate extraordinary circumstances that would warrant the granting of leave to file exceptions.

WE, THEREFORE, ORDER that the motion seeking leave to file exceptions must be, and hereby is, denied in its entirety.

DATED: July 3, 2008
Albany, New York



Jerome Lefkowitz, Chairman



Robert S. Hite, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

**INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
LOCAL 118,**

Petitioner,

-and-

CASE NO. C-5744

TOWN OF SODUS,

Employer.

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 and part-time Motor Equipment Operators in the Town's highway department.

Excluded: Town Highway Superintendent and 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: July 3, 2008
Albany, New York



Jerome Lefkowitz, Chairman



Robert S. Hite, Member