

TAYLOR LAW UPDATE

February 25, 2026

Good Faith Negotiations

Utica City School District, 48 PERB ¶3008

Employer ordered to provide union with names, addresses and telephone numbers of unit employees.

City of New York v. NYS Nurses Association, __ AD3d __, 48 PERB ¶7501 (1st Dep't 2015)

Union entitled to certain information pertaining to disciplinary grievances. Information was needed to represent employees under contractual disciplinary system. Pfau v. PERB, 69 AD3d 1080 (2010) distinguished.

TWU of Greater New York v. Bianco, 130 AD3d 507, 48 PERB ¶7502 (2015)

Contractual disciplinary provisions concerning employee suspension valid. CSL §75 can be supplemented, modified or waived by the terms of a collective bargaining agreement.

City of Ithaca, 49 PERB ¶3030

A union which objects to an employer's petition for compulsory interest arbitration does not waive right to bargain, but employer thereby satisfies its duty to bargain for the two years that could have been covered by an award. Board does not decide whether a union in this circumstance surrenders its right to petition for interest arbitration for an award covering the two-year period. See Director of Conciliation Dec. 23, 2016 letter ruling under Miscellaneous decisions.

County of Madison/Sheriff, 49 PERB ¶3029

Demands to have employees paid after 30 days on a pre-determination disciplinary suspension not arbitrable. Demand to increase amount of compensatory time employees can accumulate held not directly to compensation. Demand to have employer's denial of stipends paid for job related college degrees be reviewable under grievance procedure is not directly related to compensation because it is primarily procedural in nature.

Chenango County & Sheriff, 50 PERB ¶3005

Demand for premium rate to be paid for work on holidays arbitrable as directly related to compensation. Demands relating to Workers' Compensation and GML §207-c not arbitrable as certain parts are not directly related to compensation. Police canine equipment demands not arbitrable. Economic canine demands (food; vet; kenneling; dog purchase) arbitrable. Defense

and indemnification demand not arbitrable. Sale of dog to handler once dog is retired not arbitrable.

State of New York (Office of Temporary and Disability Assistance), 50 PERB ¶3009

Discussion of standards applicable to demands for information in conjunction with grievance arbitration.

City of Buffalo, 50 PERB ¶3012

Employer improperly denied documents relevant to grievance notwithstanding claims of burden, privilege and confidentiality.

Buffalo Sewer Auth. 50 PERB ¶_____

Employer violated Act by not supplying union all of the information it requested that was relevant to the union's administration of the parties' collective bargaining agreement.

State of New York, (DOCs), 50 PERB ¶3031

Information must be provided on demand in the context of a contractual disciplinary proceeding. Charge dismissed as moot because requested video was provided. See also State of New York UCS, 50 PERB ¶3042, for general discussion of duty to provide information.

City of Long Beach, 50 PERB ¶3036

CSL §71 termination procedures mandatorily negotiable.

City of Schenectady v. PERB, ___ NY3d ___, 50 PERB ¶7006

Police discipline in Second Class City held prohibited.

City of Cortland, 50 PERB ¶_____

Seniority as sole basis for job assignment held nonmandatory. Demand to release employees from obligation to disclose reason for sick leave held mandatory. Demand for overtime pay for work on "no time off days" held mandatory as was demand to require agreement before more such days are added to the work schedule. Demand for de novo arbitration of disputed GML §207-c disability claims held nonmandatory as it sought "review of the merits of the employee's claim". Demand for overtime pay to be calculated using an employee's "straight time hourly rate" held not prohibited by FLSA because demand "on its face" does not conflict with FLSA. Demand to require compensatory time in lieu of cash payment for training held mandatory because interest arbitration award treated as an "agreement" for purposes of FLSA.

Town of Cicero, 50 PERB ¶ _____

ALJ properly granted Town's motion to amend response to interest arbitration petition because amendment did not present new or regressive demands.

City of Ithaca, ___ PERB ¶ _____

Union's objection to processing of employer's petition for interest arbitration results in loss of union's right to have interest arbitration for the two – year period that could have been covered by arbitration award issued pursuant to employer's petition. Henceforth, PERB will process employer petitions for interest arbitration even if union objects to the processing. Contrary prior decisions reversed in relevant respect.

Accord, Village of Saranac Lake, ___ PERB ¶ _____ (December 2018)

City of Watertown, ___ PERB ¶ _____ (Oct. 2018)

Hazardous duty pay linked to staffing levels set by employer mandatorily negotiable and arbitrable. Confirmation of bargaining position is not a "proposal" and agency will not find a proposal to have been made by implication.

Town of Blooming Grove, ___ PERB ¶ _____ and ___ PERB ¶ _____ (Oct. 2018) (two related cases)

Minimum manning demand and training demand mandatory and arbitrable as demands seek to change non-mandatory terms in the parties' contract. Cohoes conversion theory of negotiability applicable to both demands. Demand to have employer issue correct W-2 forms to reflect that GML §207-c disability wages are not taxable income is mandatorily negotiable and arbitrable. Police discipline demand prohibited. Employer's change from 3-year proposals to 2-year proposals at arbitration held not to be "new". Demands at arbitration in excess of two-year limit to arbitration awards are not improper so long as consistent with duration of demands in negotiations as limit applies to the interest arbitration panel, not the parties.

Rochester Housing Authority, ___ PERB ¶ _____ (Nov. 6, 2019)

Employer violated Act by repudiating terms of CBA which also constituted per se interference with protected rights. Make whole relief proper without need to prove actual damages.

State of New York (OTDA), ___ PERB ¶ _____ (May 26, 2021)

State did not violate the Act by not providing requested report because union did not prove the relevance and need for report as to processing of a grievance.

City of Mount Vernon, ___ PERB ¶ ___ (May 26, 2021)

Employer violated the Act by unilaterally changing procedures for receipt of disability benefits under General Municipal Law §207-a(2) for employees upon their retirement before expiration of current CBA.

State of New York (DOCS), ___ PERB ¶ ___ (Oct. 13, 2021)

State violated Act by refusing to provide union with information pertaining to unit employee's alleged misconduct at issue in pending contractual disciplinary grievance. Union's acquiescence to an arguable improper practice in the past does not preclude it from filing charge in future alleging impropriety.

City of Long Beach v. PERB, ___ NY 3d (Oct. 25, 2022)

Procedures pertaining to Civil Service Law §71 terminations held mandatorily negotiable.

City of Yonkers, ___ PERB ¶ ___ (March 6, 2023)

Relying upon City of Long Beach v. PERB, 39 NY 3d 17 (2022) PERB holds that the procedures to be used for the implementation of an employer's right to terminate the employment of employees pursuant to CSL §71 are mandatory subjects of bargaining. City's unilateral termination of employment violated the Act.

Village of Wappingers Falls, ___ PERB ¶ ___ (March 6, 2023)

Union proposal that would allow injured employees to return to work light duty if able held nonmandatory. Demand was not subject to Cohoos conversion because demand was not sufficiently connected to terms in the parties' agreement. Union proposals that would require the employer to consider certain criteria in making a termination decision pursuant to CSL §71 and the time frame for such termination held to be prohibited subjects of negotiation on public policy grounds.

NYS Unified Court System, 56 PERB ¶3020 (2023)

Employer violated Act by refusing to negotiate procedures pertaining to mandatory COVID-19 testing and the impact of those testing policies. Charges gave fair notice of the actions to be proved as violations. Reinstatement of employees who refused to be tested denied because termination did not stem from refusal to bargain testing procedures. Remedies need not be specifically requested.

Wappingers Falls PBA v. PERB, 56 PERB ¶7013 (Albany County Sup. Ct. 2023)

Cohoes conversion theory is not satisfied by a “substantial nexus” between laws addressed in a contract and law not addressed in that contract. Proposals that would restrict employers right to terminate employment pursuant to CSL §71 not bargainable.

NYS Unified Court System, 56 PERB ¶3020 (2023)

Employer violated Act by refusing to negotiate procedures pertaining to mandatory COVID-18 testing and the impact of those testing policies. Charges gave fair notice of the actions to be proved as violations. Reinstatement of employees who refused to be tested denied because termination did not stem from refusals to bargain testing procedures. Remedies need not be specifically requested.

City of Yonkers, 57 PERB ¶6503 (2024)

Declaratory ruling petition may be filed at any point during negotiations. Demands that would infringe upon employer’s right under GML §207-c to order light duty are not mandatorily negotiable. Demand for de novo review by arbitrator under a preponderance of evidence standard held nonmandatory.

Triborough Bridge and Tunnel Authority, 57 PERB ¶3015 (2024)

Employer’s failure to provide requested information in a timely manner violated the Act. Another response, although “vague and not particularly helpful”, found sufficient. Employer ordered to stop refusing to provide relevant and necessary information upon demand.

Triborough Bridge and Tunnel Authority, 58 PERB ¶3008 (2025)

Employer violated Act by not supplying information concerning its compliance with terms of an agreement in a timely manner.

City of Albany, et al., 58 PERB ¶3037 (2025)

Pre-disclosure procedures related to FOIL requests for unit employees’ disciplinary records are mandatorily negotiable subjects. Refusal to bargain decisions concerning such procedures held unlawful. Union’s characterization of demands as “impact bargaining” not controlling.

**Unilateral Changes In Terms And Conditions Of
Employment/Discontinuation Of Expired Contract Terms**

State of New York (Comptroller’s Office), 48 PERB ¶3009

Record established a practice by which wage rates for student assistants could be increased, decreased or left unchanged from year to year in the discretion of State Civil Service and Division

of Budget. Union was on at least constructive notice of such practice. Therefore, decrease in wage rate not improper because it was consistent with practice.

State of New York (SUNY Brockport), 48 PERB ¶3013

Upon State's proper withdrawal from local agreement regarding work on holidays, State properly followed prior practice that local agreement had changed.

County of Nassau, 48 PERB ¶3014

Management rights clause giving employer the right to regulate work schedules and how many employees are on duty coupled with broad zipper clause waived union's bargaining rights. Employer could, therefore, change meal break times.

City of Albany, 48 PERB ¶3026, rev'd, ___ AD3d ___, 50 PERB ¶ _____ (3d Dep't 2017)

City did not violate Act when it unilaterally changed employees' health insurance benefits on retirement. No enforceable past practice. City had previously changed benefits and coverages without union objection. Changes negated any reasonable expectation benefits would remain unchanged. Court reverses upon conclusion evidence did not negate existence of practice of reimbursing Medicare Part B payments.

County of Cortland and Sheriff, 48 PERB ¶3028

Unilaterally imposed health insurance dependent audit improper. Negotiability analysis not done on the facts of the particular case.

County of Nassau, 49 PERB ¶3001

Contractual management rights and zipper clause waived union's right to bargain unilateral change to certain employees' vacation preference picks.

Village of Sag Harbor, 49 PERB ¶3006

Employer violated Act by removing a detective's take home vehicle. That the practice benefitted one employee not controlling. Can be an enforceable practice even if just one employee is the beneficiary of the practice.

Town of Ulster v. PERB, 49 PERB ¶7003 (Sup. Ct. Albany County 2016)

PERB's decision (47 PERB ¶3028) holding that recording of civilian dispatcher's disciplinary interview is mandatorily negotiable confirmed. Dispatchers are not "members" of police department for purposes of Town Law §155.

City of Schenectady v. PERB, 136 AD3d 1086, 49 PERB ¶7002 (3d Dep't 2016), leave to appeal granted, 27 NY3d 970 (2016)

Police discipline procedures mandatorily negotiable given that the Second Class Cities Law is expressly subordinated to later enacted laws, the Act being one.

Kent v. Lefkowitz, 27 NY3d 499, 49 PERB ¶7005 (2016), rev'g 119 AD3d 1208, 47 PERB ¶7003.

Duty to bargain wage reduction satisfied by side letter agreement giving Director of Budget discretion within specified limits to set seasonal per diem wage rates.

Town of Ulster, 49 PERB ¶3023

Town violated Act §209-a.1(d) and (e) by substituting local law disciplinary procedure for contractual system in proceedings involving civilian dispatchers. No repudiation of contract because Town's argument about civilian discipline being a prohibited subject, although "mistaken" and "unpersuasive", was not a "clearly foreclosed" interpretation of Town Law. See above court case confirming PERB's earlier decision.

Cayuga Community College, 50 PERB ¶3003

Demand to bargain is not a precondition to charge alleging a unilateral change to a mandatorily negotiable subject. Private sector law not controlling. No waiver or duty satisfaction.

State of NY (DOT), 50 PERB ¶3004

Use by employees of State car for commuting purposes was conditional benefit based on State's determination that vehicle was "for the benefit of the State". Discontinuation was consistent with condition. Therefore, no unilateral action.

Village of Scarsdale, 50 PERB ¶3007

Unilaterally promulgated policy manual is not a basis for a duty satisfaction defense. Unilateral change to procedures pertaining to sick leave use improper. Compelled employee participation in quarterly reviews of sick leave use mandatorily negotiable.

State of New York (Parks & Recreation), 50 PERB ¶3024

Removal of take-home vehicle no violation as removal was consistent with employer's reserved right at time of grant to terminate vehicle use.

State of New York (Medicaid Inspector General), 50 PERB ¶3025

Removal and issuance of parking placards are equipment and not mandatorily negotiable.

State of New York, (Office of Mental Health) 50 PERB ¶3032

Unilateral imposition of new sick leave conditions held a violation of the Act. Duty to bargain cannot be superseded by civil service regulation.

State of NY (SUNY), ___ PERB ¶ ___ (Sept. 2018)

Charge alleging unilateral creation and filling of employment positions dismissed as actions are not mandatorily negotiable.

State of New York (Parks & Rec), ___ PERB ¶ ___ (Sept. 2018)

Unilateral imposition of work schedule violation. Contract provisions regarding scheduling held not to address the conduct at issue and, therefore, no duty satisfaction or waiver of union's bargaining rights. As schedule change was for finite period since passed as of date of decision, no restoration of status quo is possible. Cease and desist and make whole order issued.

State of New York, ___ PERB ¶ ___ (Oct. 2018)

Imposition of fees for Civil Service promotion/transition exams improper as subject is mandatorily negotiable.

Central New York Regional Transportation Authority, ___ PERB ¶ ___ (Aug. 2019)

Charge is within PERB's jurisdiction to render decision if CBA does not give the charging party rights regarding the subject matter of the charge. No duty satisfaction as subject matter of charge never negotiated to agreement. FMLA does not prohibit negotiations regarding use of intermittent leave from work. Employer violated Act by changing practice of questioning employees only in fact specific circumstances to questioning regarding all use of any intermittent leave.

City of Yonkers, ___ PERB ¶ ___ (Nov. 6, 2019)

Demand to negotiate not needed in unilateral change case. No refusal to bargain in discontinuation of GML §207-a payments to retirees as retirees are not employees for purposes of the Act.

City of Albany, ___ PERB ¶ ___ (Jan. 2020)

Unilateral discontinuation of health care benefits of retirees is not improper despite past practice of providing retiree benefits. Board relies on Court of Appeals decision in Aneas McDonald PBA, 92 NY2d 326 (1998).

County of Rockland, ___ PERB ¶ ___ (Jan. 2020)

Employer violated Act by unilaterally ending practice of permitting employees to avoid prescription drug co-payments by using a particular pharmacy. Action not permitted by any clear contrast language which does not incorporate plan description documents by reference. Past practice is not an unconstitutional gift of public funds. Legislature's closure of pharmacy at County Executive's request is actionable and not outside agency's jurisdiction.

State of New York (State Insurance Fund), ___ PERB ¶ ___ (Jan. 2020)

The Employer violated the Act by unilaterally ending a practice of assigning unit employees Employer owned cars to be used for commuting to and from work.

Village of Scotia, ___ PERB ¶ ___ (April 7, 2022)

Record did not establish a past practice of granting military leave on an unlimited basis as needed. One instance of granting leave in excess of 180 hours in a year does not establish a practice.

City of Troy, ___ PERB ¶ ___ (April 7, 2022)

City violated the Act by unilaterally discontinuing practice of allowing or requiring use of paid contractual sick leave concurrently with unpaid FMLA leave. FMLA does not preempt state law collective bargaining rights.

UFT, Local 2, ___ PERB ¶ ___ (June 13, 2022)

"Flagging" on computer of employees who have been the subject of discipline changed the procedures for transfers which are mandatorily negotiable. However, requiring principals to consider prior discipline as a factor in transfer or promotion decisions held not mandatorily negotiable because it us a criterion for appointment.

City of Albany, ___ PERB ¶ ___ (March 6, 2023)

On remand from the Appellate Division (202 Ad3d 1402, 55 PERB ¶7004), PERB holds the City violated the Act when it unilaterally changed the health insurance coverage and Medicare Part B reimbursement for employees when they retire. Change affected current employees when they retire even though only retirees were notified of the change. City's duty satisfaction arguments based on terms of parties' contracts were not considered upon PERB's finding that the arguments were not properly preserved for consideration. City was ordered to rescind the change, to restore the practice for persons who were employed at the time of the notified change and to make such persons whole.

Village of Scotia, ___ PERB ¶ ___ (May 23, 2023)

Changes in military leave policies that exceed the minimum requirements in State Military Law are mandatorily negotiable. Village violated Act by unilaterally changing leave policy from calculation based on days to one based on hours per calendar year.

Utica Professional Firefighters Ass'n v. PERB, 56 PERB ¶7005

Improper practice charge alleging employer's unilateral change to disciplinary interrogation of firefighters remitted to PERB by agreement. Reconsideration of PERB's decision dismissing charge was made appropriate by enactment of N.Y. Laws 2022, ch. 674 that makes disciplinary procedures for firefighters mandatory subjects of bargaining.

City of Utica, 56 PERB ¶3018

Board declined to consider whether City violated its duty to bargain firefighter disciplinary procedures holding issue to be moot although holding discipline for firefighters to be mandatory subjects of bargaining due to enactment of Firefighter Bill of Rights Act (2022 N.Y. Laws, ch. 674). General discussion of mootness concepts.

County of Albany and Sheriff, 57 PERB ¶3001

Employer's vaccine mandate not mandatorily negotiable because employer was obligated to comply with mandate imposed by State.

City of Yonkers, 57 PERB ¶3006

City violated Act by terminating police officers on GML §207-c disability without satisfying its duty to bargain the procedures to be followed in such terminations.

City of Utica, 56 PERB ¶3018

Board declined to consider whether City violated its duty to bargain firefighter disciplinary procedures holding issue to be moot although holding discipline for firefighters to be mandatory subjects of bargaining due to enactment of Firefighter Bill of Rights Act (2022 N.Y. Laws, ch. 674). General discussion of mootness concepts.

New York State Unified Court System v. PERB, 57 PERB ¶7005 (Sup. Ct. NY. County 2024)

Employer improperly refused to bargain procedures pertaining to COVID-19 testing. Make-whole remedy appropriate.

County of Albany and Sheriff, 57 PERB ¶3011 (2024)

Employer violated Act when it unilaterally discontinued past practice of allowing deputies assigned to courthouses to have paid time off on holidays without charge to accruals when courthouses are closed. Contract revision defense not established.

Mount Markham Cent. Sch. Dist., 57 PERB ¶3013 (2024)

Employer violated the Act by unilaterally discontinuing a practice of allowing employers to exhaust paid sick leave before using unpaid leave pursuant to the FMLA.

City of Ithaca, 58 PERB ¶3017 (2025)

Unilateral changes to mandatorily negotiable terms and conditions of employment unlawful even if change affects only one employee. City violated Act by subjecting employee to new performance evaluation procedure with daily log and accounting requirements. Negotiability of subject is not determined by the employer's motivation for the action at issue.

Briarcliff Manor UFSD, 58 PERB ¶3018 (2025)

FMLA does not preempt bargaining over practice allowing employees to exhaust paid sick leave before using unpaid FMLA leave.

Town of Cicero, 58 PERB ¶3038 (2025)

One time refusal to comply with contract term not sufficient to establish a repudiation of contract within PERB's jurisdiction. Allegations show only a disagreement over whether arbitration required on the facts of the grievance.

Subcontracting/Transfer of Unit Work

Lawrence UFSD, 48 PERB ¶3007, *rev'd*, 49 PERB ¶7001 (Sup. Ct. Albany Co. 2016)

Board held school district's decision to transfer pre-kindergarten teaching functions to another institution is not mandatorily bargainable upon conclusion that Education Law §3602-e establishes legislative intent to exempt school districts from duty to bargain this issue. Court reverses, holding statute does not plainly exempt employer from Act's bargaining obligations.

State of New York, (Div. of State Police), 48 PERB ¶3012

A change in qualifications need not be affirmatively pled and proven. Facts obvious on the record. Civilianization analysis applies if work is taken from uniformed personnel and given to civilians or vice versa even if skills and training of uniformed personnel are not strictly necessary to perform at issue job tasks.

Cayuga Community College, 50 PERB ¶3003

Transfer of unit work to part-time, non-unit retiree's violation. No change in qualifications. No compelling operational need defense established.

State of New York (SUNY Buffalo), 50 PERB ¶3001

State's contractual right to subcontract to third parties satisfied duty to negotiate work transfer to a public employer that is not the State of New York.

Town of Ulster, 50 PERB ¶3008, conf'd, 50 PERB ¶7007, aff'd, ____ PERB ¶ ____ (Sup. Ct. Alb. Co.)

District Attorney's decision to have Town attorney prosecute V&T tickets instead of police officers not attributable to Town even though Town Supervisor requested the reassignment and paid for prosecution (appeal filed).

County of Chemung & Sheriff, 50 PERB ¶3022

Unit work improperly transferred from deputy sheriffs to non-unit security deputies. Make whole relief awarded.

Lawrence Union Free School District, 50 PERB ¶3034

Charge dismissed as no exclusivity over work that was transferred.

Pine Valley Cent. Sch. Dist., 50 PERB ¶ ____ (Dec. 2018)

No demand to bargain necessary in a unilateral change case. Exclusivity over work exists within discernable boundary despite "isolated events" of others doing work. Contractual management rights clause that does not speak to subcontracting specifically not waiver of union bargaining rights nor satisfaction of employer's bargaining duty.

Town of Tuxedo, ____ PERB ¶ ____ (Jan. 2020)

The Town's dispatch services were abolished, not improperly transferred to the County, upon a finding that the Town has no affiliation with the County and because the County had previously provided the dispatch services in question.

City of Niagara Falls, ____ PERB ¶ ____ (March 2021)

Subcontract of golf course maintenance work violated Act. Demand to bargain not needed in unilateral change charge. No waiver of bargaining rights as a matter of fact and law. Maintenance service not abolished on facts as employer retained more than de minimus control over work. The fiscal or operational wisdom of decision to subcontract immaterial to negotiability.

Newburgh Enlarged City School District, ___ PERB ¶ ___ (March 2021)

Subcontract of student counseling services violated the Act. Work exclusive to unit and substantially similar to work done by unit employees. That subcontractor's employees perform some extra duties does not breach unit employees' exclusivity. Belief that subcontract improved service does not entitle employer to unilaterally transfer unit work. No legislative intent in Education Law to prohibit bargaining or to render decision non-mandatory.

City of Yonkers, ___ PERB ¶ ___ (Aug. 23, 2021)

"House watch" duties improperly transferred. Supervision by others of house watch duties performed by firefighters does not destroy firefighters' exclusivity over work at issue that was transferred to DPW employees.

City of Ithaca, ___ PERB ¶ ___ (Aug. 23, 2021)

No violation because transfer to non-unit retiree was limited in time and scope so as to not breach union's exclusivity over fleet maintenance duties.

Village of Tuxedo Park, ___ PERB ¶ ___ (Jan. 13, 2022)

Employer improperly transferred work of issuing vehicle tags to Village residents. Proper remedy is to order restoration of work to unit, not reinstatement of all former unit employees. Questions as to how many unit employees need be hired to perform the particular job duty in question are for compliance proceeding if necessary.

Lawrence UFSD, ___ PERB ¶ ___ (Aug. 9, 2022)

District violated Act by unilaterally transferring exclusive unit work of District employees consisting of personal protection security duties.

County of Putnam and Sheriff, 57 PERB ¶3004

Employer violated Act by transferring unit security work at DSS post from deputy sheriffs to a non-unit civilian. Cost savings derived from transfer do not outweigh detriment caused the deputies. Contract not specific enough to create duty satisfaction defense.

Practice & Procedure

East Meadow UFSD, 48 PERB ¶3006

ALJ's credibility determinations are to be accepted unless they are manifestly incorrect.

ALJ remedial order issued upon a charge later held moot by the Board vacated.

UFT (Gibson), 48 PERB ¶3015

Timely filed exceptions were dismissed because there was no proof the exceptions were timely served on the parties.

UFT (Barnes), 48 PERB ¶3017

Exceptions filed one day late dismissed.
ALJ credibility resolutions are to be sustained unless manifestly incorrect.

Cruz v. PERB, 48 PERB ¶7003 (Sup. Ct. NY County 2015)

CPLR Art. 78 petition dismissed as untimely filed. Court holds filing period for appeals runs from service of PERB's decision and order by mail not receipt.

Elwood Teachers' Alliance, 48 PERB ¶3020

ALJs' credibility determinations to be accepted unless manifestly incorrect.

City University of New York, 48 PERB ¶3021

Exceptions not taken are waived.

Hudson Valley Community College v. PERB, 132 AD3d 1132, 48 PERB ¶7005 (3d Dep't 2015)

PERB's remedial order remitted to PERB to develop record to ascertain who is owed compensation and in what amounts as to second jobs that were "sporadic".

Spence v. Miller, 48 PERB ¶7004 (Sup. Ct. Alb. County 2015)

Union applied to court pursuant to PERB's authorization for injunctive relief as to fingerprinting and background checks. IR granted as court finds reasonable cause to believe subjects are mandatorily negotiable and without injunction there would be irreparable harm because employer would have information it is not entitled to have.

New York State Housing Finance Agency, 49 PERB ¶3002

Board reverses ALJ's merits determination in favor of charging party and remands to ALJ to consider a merits deferral of (d) and (e) allegations. County of Sullivan, 41 PERB ¶3006 distinguished.

County of Nassau, 49 PERB ¶3001

Affirmative defenses need not be specifically named. Sufficient if the answer contains enough facts to put the charging party on notice of the nature of the defense.

County of Suffolk & Sheriff, 49 PERB ¶3005

ALJ prematurely deferred charge given respondent's claim in court that underlying CBA is a nullity. Can be no deferral to grievance forum if that forum is claimed by employer to not exist.

New York City Board of Education, 49 PERB ¶3010 and 49 PERB ¶3024

Collateral estoppel applied to bar relitigation of facts and issues decided adversely to employer in prior proceeding involving different union. See 44 PERB ¶3003, conf'd, 47 PERB ¶7007, aff'd, 103 AD3d 145, 46 PERB ¶7001 (3d Dep't 2012).

New York City Board of Education, 49 PERB ¶3012

Withdrawn charge reopened because employer did not comply with conditions for withdrawal. Not exclusively a contract repudiation standard.

CSEA (Harper), 49 PERB ¶3013

Interlocutory appeal from ALJ ruling denied. No extraordinary circumstances.

County of Nassau, 49 PERB ¶3014

Board declined charging party's request to withdraw improper practice charge after Board issued decision on merits. Board will not "lightly vacate an issued decision". At a minimum, there must be a "significant showing of cognizable prejudice." Withdrawal of charge "with prejudice" constitutes a merits disposition, but Board did not decide when and whether such a withdrawal will be given res judicata or collateral estoppel effect in future improper practice case.

Greater Amsterdam City School District, 49 PERB ¶3011

Hearsay evidence admissible and can form sole basis for an administrative determination. ALJ credibility determinations accepted unless manifestly incorrect.

State of New York v. PERB, 137 AD3d 1467, 49 PERB ¶7004 (3d Dep't 2016)

Court confirms PERB's decision to not vacate parties' stipulation regarding placement of positions into unit. Director not required to hold a hearing when parties consent. Stipulations are favored and will not be set aside absent fraud or mistake or are against public policy.

State of New York (OMH) (Josey), 49 PERB ¶3022

Charging Party's unexplained failure to attend conference warrants dismissal of charge. ALJ to be confirmed unless dismissal is an abuse of discretion.

City of New York & PBA, 49 PERB ¶6501

Interest arbitration award mooted scope of negotiation issues.

City of Lockport v. Lockport Professional Firefighters Association, Inc., ___ AD3d ___, 49 PERB ¶7503

Stay of arbitration denied. Grievance regarding staffing reduction not barred. Grievance raised employee safety issues not a job security provision.

State of New York (SUNY Buffalo), 50 PERB ¶3001

ALJ correctly denied the charging party's motion for reconsideration. Evidence could have been discovered with due diligence and would not likely produce a different result.

City of Watertown, 50 PERB ¶3011

Demand for grievance arbitration will not be processed by PERB until application in court to stay arbitration has been finally determined (i.e., judicial process has been completed, including any appellate review of a Supreme Court decision on the issue of arbitrability). Agency's prior "long-established" practice of withholding processing only until a Supreme Court decision is not consistent with plain language of Rule §207.6 and will no longer be followed.

State of New York, (Office of Temporary and Disability Assistance), 50 PERB ¶3009

Lengthy discussion about ALJs' power to demand and receive offers of proof.

County of Suffolk, 50 PERB ¶3010

Interlocutory appeal from ALJ's rulings denied as no extraordinary circumstances.

Accord NYCTA (Burke), 50 PERB ¶3015

New York City Transit Auth (Ayala), 50 PERB ¶ _____

Exceptions dismissed as not timely served. Exceptions also deficient in content as not sufficient identification of basis or grounds. Board will not consider facts not of record in review of ALJ's decision. Alleged breach of contract allegations are outside PERB's jurisdiction.

State of New York, 50 PERB ¶3032

No jurisdictional deferral as contract not an arguable source of right to union. No merits deferral on facts as deferral not sought, charge was fully litigated, no grievance filed.

County of Sullivan & Sheriff, 50 PERB ¶3027

PERB will not consider new evidence on appeal absent extraordinary circumstances.

City of Cortland, 50 PERB ¶ _____

Exceptions not raised held waived.

PBA of the City of New York, ___ PERB ¶ ___ (Sept. 2018)

City's charge alleging conduct by PBA as refusal to bargain is within jurisdiction of BCB, not PERB. City's charge dismissed for lack of subject matter jurisdiction.

UFT (Martinez), ___ PERB ¶ ___ (Sept. 2018)

Exceptions timely filed but not timely served on parties dismissed.

SNY (Piller), ___ PERB ¶ ___ (Sept. 2018)

ALJ abused discretion in revoking a subpoena previously issued as document subject to the subpoena was arguably relevant to the hearing and disposition of the improper practice charge.

City of Middletown, ___ PERB ¶ ___ (Oct. 2018)

Exceptions not timely filed dismissed. No extraordinary circumstances exist to extend filing period in law office failure, preoccupation with other litigation or simple family obligations.

New York City Transit Authority, ___ PERB ¶ ___ (Oct. 2018)

Interlocutory appeal allowed upon question of whether certain hearing officers are public employees under extraordinary circumstance standard as finding upon question could end litigation. Held hearing officers are employees for purposes of Act and not independent contractors, consultants or casual employees.

Board of Education City School District of the City of New York (Smith), 50 PERB ¶ ___ (Dec. 2018)

Exceptions considered as in substantial compliance with Rules regarding content and specificity. Allegations not raised are not considered even if litigated.

New York City Board of Education (Elgalad), ___ PERB ¶ ___

Board will not consider exceptions that do not comply with the specificity requirements of the Rules when not provided in a brief and when other party objects.

Niagara Falls Police Club, Inc., (Drinks-Bruder), ___ PERB ¶ ___

Exceptions not properly presented are not considered and will not consider claims raised for first time in exceptions.

State of New York (DOCS), ___ PERB ¶ ___

An ALJ substituted for another may decide case even though substituted ALJ did not hold the hearing so long as there are no witness credibility issues.

Rockland County PBA (Lynn), ___ PERB ¶ ___

Exceptions considered although not in “technical compliance” with Rules as filed by unrepresented individual.

Niagara Falls Police Club, Inc., ___ PERB ¶ ___ (Aug. 2019)

Pro Se charging party’s exceptions considered despite noncompliance with Rules §213.2

Niagara Falls Police Club, Inc., ___ PERB ¶ ___ (Aug. 2019)

Exceptions filed one day late dismissed.

New York City Transit Authority (Burke), ___ PERB ¶ ___ (Nov. 6, 2019)

Substantial delay in issuance of decision not a basis to overturn ALJ’s decision Board’s review limited to issues raised before ALJ. Denial of requested subpoena not an abuse of discretion as no evidence requested document would be relevant to issues presented by the charge.

Fashion Institute of Technology (Callirgos) ___ PERB ¶ ___ (Nov 6, 2019)

Charge untimely filed because charging party knew of his termination and could have discovered motive by exercise of due diligence.

County of Suffolk and Sheriff, ___ PERB ¶ ___ (Nov. 6, 2019)

Interim appeal from denial of motion to intervene granted as extraordinary circumstance present. On merits, denial of motion reversed as intervenor has interests at risk if charge were to be sustained.

NYC Board of Education (Cohn) ___ PERB ¶ ___ (Jan. 2020)

Board review limited to claims and arguments that are expressly made in exceptions. Charging party duty to establish prima facie case of retaliation for exercise of protected rights cannot be met by cross examination of a respondent’s witness.

City of Yonkers, ___ PERB ¶ ___ (Jan. 2020)

Request for reconsideration of earlier decision denied as untimely under Rules §213.10(c) and because no evidence Board in earlier decision overlooked or misapprehended relevant facts or law.

County of Chenango and Sheriff, ___ PERB ¶ ___ (Jan. 2020)

Charge alleging the Employer violated the Act by submitting arbitrable subjects to fact-finding dismissed as moot because the issues were withdrawn, an Arbitration Award was issued and a successor CBA was negotiated.

City of Albany, ___ PERB ¶ ___ (Jan. 2020)

An interlocutory appeal was granted in a representation case because the exceptions if granted could end the proceeding and the exceptions raised questions about the proper interpretation of the rules.

Metropolitan Transportation Authority, ___ PERB ¶ ___ (Dec. 2020)

Exceptions deficient because they lack specificity and do not assert any basis to challenge ALJ's decision. Review limited in such circumstances to the arguments expressly raised.

Accord State of New York (Piller), ___ PERB ¶ ___ (Dec. 2020)

New York City Bd. Of Educ. (McDowall), ___ PERB ¶ ___ (May 26, 2021)

Exceptions which are not in full compliance with §213.2(b) of PERB's Rules can be considered on the merits when the gravamen of the asserted error in ALJ's decision is clear.

State of New York (PEF), ___ PERB ¶ ___ (May 26, 2021)

Interlocutory appeal from ruling denying subpoena duces tecum denied there being no showing of extraordinary circumstances.

City of Niagara Falls (Bruder), ___ PERB ¶ ___ (Aug. 23, 2021)

Exceptions cannot allege new facts Board did not decide whether a failure to notarize an amendment to a charge requires dismissal of the charge. Party may not file both exceptions and cross-exceptions or a reply brief unless filed at the Board's request or authorization.

New York City Board of Education (Peterson), ___ PERB ¶ ___ (Oct. 13, 2021)

Request for an adverse inference based on failure to testify must be made at the hearing itself, not after close of record or in brief for the first time.

CSEA (Sainpaulin), ___ PERB ¶ ___ (Jan. 13, 2022)

Exceptions considered despite being in non compliance with Rule §213.2 because asserted error in ALJ's decision is clear and can discern the arguments being made. Board will not consider new allegations raised for first time in exceptions. Accord Watervliet Teachers' Ass'n (CEA), ___ PERB ¶ ___ (Jan. 13, 2022).

NYSCOPBA (Sticht-Case), ___ PERB ¶ ___ (Jan. 13, 2022)

DFR charge dismissed as untimely because charge was not filed from notice or implementation of injury.

City of Yonkers, ___ PERB ¶ ___ (Jan. 13, 2022)

Issuance of arbitration award moots charge raising objections to the arbitrability of demands submitted to interest arbitration.

NYC Bd. of Education (Rettino) ___ PERB ¶ ___ (Jan. 13, 2022)

ALJ may request offer of proof and use offer in deciding whether a hearing is required.

Niagara Falls Police Club (Drinks-Bruder), ___ PERB ¶ ___ (July 6, 2022)

The Director may dismiss deficient charges without having to assign an ALJ.

NYS Unified Court System (Diaz), ___ PERB ¶ ___ (June 13, 2022)

PERB filing period not tolled by employee's mistaken filing of charge with the NLRB.

New York City Board of Education, ___ PERB ¶ ___ (Aug. 9, 2022)

Exceptions considered even though not in full compliance with Rules because asserted ALJ error is clear and Board can discern basis of argument.

Monroe Community College Faculty Ass'n (Felton), ___ PERB ¶ ___ (Aug. 31, 2022)

Charge untimely because it was not filed within four months of employee's knowledge, union would not file grievance as he had requested.

CSEA (De Wolf), ___ PERB ¶ ___ (Oct. 13, 2022)

Interlocutory appeal from ALJ's partial denial of subpoena request denied because ruling did not create extraordinary circumstances.

Baldwinsville Central School District, ___ PERB ¶ ___

Board approved withdrawal of charge after ALJ's decision because parties had settled the charge by agreement.

District Council 37, Local 983, ___ PERB ¶ ___ (March 6, 2023)

Case was a review by PERB of decision by the New York City Office of Collective Bargaining upon an improper practice charge. Case contains a discussion of interference principles. Action must be knowingly undertaken (i.e., deliberate); by a union agent under ordinary agency principles; and action must interfere with protected rights. Charge remanded to BCB to consider whether union agent's photo-shopped and published image of the black employee shaking hands with a person in a Ku Klux Klan robe was attempt by the union to interfere with employee's right to seek or support decertification efforts.

Transport Workers Union, Local 100 (Gallo), ___ PERB ¶ ___ (May 23, 2023)

Charge dismissed as untimely. Charge was filed more than four months after the charging party knew of the conduct alleged to violate the Act. Board's review limited to the record before the ALJ or Director.

City of Albany v. PERB, 56 PERB ¶7009 (Sup. Ct. Albany Co. 2023)

City waived defenses to improper practice charge by not filing exceptions to ALJ's failure to address defenses because charge was dismissed on the merits.

Local 983, D.C.37 v. PERB, 56 PERB ¶7010 (Sup. Ct. NY Co. 2023)

PERB's remand of improper practice charge to NYCOCB for development of more complete record not ripe for judicial review until completion of administrative proceedings.

Maine-Endwell CSD, 56 PERB ¶3013 (2023)

Mitigation of damages stemming from improper practice not properly litigated during hearing on charge. Such issues are raised in post-hearing compliance proceeding.

UFT Local 2 (Tatta-Abicca) 56 PERB ¶3015 (2023)

Exceptions electronically filed and served by unrepresented employee considered even though other parties had not consented and were not served a paper copy of exceptions

simultaneously as required by Rules. No prejudice to respondent in late receipt of paper copy of the exceptions.

New York City Board of Education (Pinkard), 56 PERB ¶3019 (2023)

Reply brief not considered as not requested or authorized by Board. New documents not considered on exceptions. Exceptions considered even though not in technical compliance with Rules. Charge duplicative of earlier filed charge is properly dismissed.

De Wolf v. Wirenus, 56 PERB ¶7011 (Albany County Sup. Ct. 2023)

County not required to produce transcript of PERB proceeding because County did not have transcript. Decision does not appear to reach question as to whether PERB has a duty under FOIL to produce a transcript.

UFT (DeBonis), 57 PERB ¶3007

Unrepresented employee's exceptions considered even though exceptions were not in full compliance with PERB Rules.

UFT (Tatta-Abicca), 57 PERB ¶3005

Motion for reconsideration of Board's earlier decision denied as no evidence presented that would establish that Board overlooked or misapprehended relevant facts or law.

Mount Vernon City Sch. Dist. 57 PERB ¶3003

Exceptions considered even though non specific because asserted ALJ's error is clear and Board can discern basis for arguments. Motion to dismiss was improperly granted by ALJ because it could not be concluded that the evidence read most favorably to the charging party was plainly insufficient to establish any violation of the Act. ALJ also erred by disallowing the charging party's attempt to call two witnesses.

Lawrence UFSD v. PERB, 57 PERB ¶7001 (Sup. Ct. Nassau County 2004)

Article 78 petition dismissed because it was untimely. Appeal time starts from date petitioner received PERB's decision. Petition was filed more than 30 days after date of receipt.

New York City Board of Education (Pinkard), 56 PERB ¶3019 (2023)

Reply brief not considered as not requested or authorized by Board. New documents not considered on exceptions. Exceptions considered even though not in technical compliance with Rules. Charge duplicative of earlier filed charge is properly dismissed.

City of Albany v. PERB, 56 PERB ¶7009 (Sup. Ct. Albany Co. 2023)

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Maine-Endwell CSD, 56 PERB ¶3013 (2023)

Mitigation of damages stemming from improper practice not properly litigated during hearing on charge. Such issues are raised in post-hearing compliance proceeding.

UFT Local 2 (Tatta-Abicca), 56 PERB ¶3015 (2023)

Exceptions electronically filed and served by unrepresented employee considered even though other parties had not consented and were not served a paper copy of exceptions simultaneously as required by Rules. No prejudice to respondent in late receipt of paper copy of the exceptions.

New York State Unified Court System v. PERB, 57 PERB ¶ 7005 (Sup. Ct. N.Y. County 2024)

Substantial evidence is not the standard for judicial review of PERB decisions because hearings are not required by law. Issue on appeal is whether PERB's decision is arbitrary and capricious.

Spence v. NYS Office of Employee Relations, 57 PERB ¶7007 (Sup. Ct. Albany County 2024)

Union's CPLR Article 78 proceeding against the employer of employees represented by the union alleging the Employer violated the Taylor Law by unilaterally designating employees as managerial or confidential was dismissed. Union was required to exhaust its administrative remedies before PERB.

DeWolf v. Wirenius, 57 PERB ¶7009 (App. Div. 3d Dept 2024)

PERB required pursuant to the State Administrative Procedure Act §302(2) to produce a copy of hearing transcript to a party upon request ad payment of statutory fee. PERB's Rule 208.3(c) making the transcripts the property of the stenographer is not a valid basis for PERB's denial of the transcript.

Southampton UFSD, 58 PERB ¶3011 (2025)

Permission to file interlocutory exceptions to ALJ's rulings denied. No showing of extraordinary circumstances.

State of New York (Office of Children and Family Services), 58 PERB ¶3010 (2025)

Unrepresented individual's exceptions considered although not filed in full compliance with the Rules.

New York City Board of Education, 58 PERB ¶2009 (2025)

Remedy ordering both physical and electronic posting of the notice of violation upheld. Electronic posting requirement not satisfied by a link to the notice posted on "Infohub".

Village of Monticello v. PERB, 58 PERB ¶7005 (Sup. Ct. Alb. County) (2025)

Court extends time to file and serve appeal to PERB's decision in the interest of justice.

DeWolf v. PERB, 58 PERB ¶7002 (Sup. Ct. Alb. County) (2025)

Lawsuit to compel release of PERB transcripts pursuant to FOIL dismissed. Employer did not possess transcripts when request for production was made and PERB had served them to petitioner.

Schwartz and CSEA, Local 830, 58 PERB ¶6004 (2025)

Application for injunctive relief denied because employer's chief legal officer did not actually receive papers before filing with PERB. Application also denied on the merits because speculation as to possible economic damages does not constitute irreparable harm.

NYC Dep't of Education, (Pinkard), 58 PERB ¶3021 (2025) and 58 PERB ¶3020 (2025)

Board will not consider new evidence submitted in exceptions. Exceptions from unrepresented employer considered even though the exceptions are not in "technical compliance" with PERB's Rules. Repeated filing of time-barred, redundant charges may constitute misconduct within meaning of PERB's Rules.

NYC Bd. of Education, 58 PERB ¶3016 (2025)

Board will not find a violation of the Act based on allegations not pleaded in charge even if litigated.

NYS Correctional Officers and PBA, Inc., 58 PERB ¶3031 (2025)

Charge timely as filing periods tolled by Governor's Executive Order during COVID pandemic. Merits dismissal of charge not considered because no exceptions filed as to that. Allegations not part of charge not considered.

Western Regional Off-Track Betting Corp., 58 PERB ¶3034 (2025)

ALJ decisions not binding on other ALJ's or Board. Exceptions considered even though not filed in full compliance with Rules because the gravamen of the employer's complaint was clear from papers.

Rockville Centre UFSD, 58 PERB ¶6008 (2025)

Injunctive relief application denied. Not filed in accordance with Rules and no showing of immediate and irreparable harm. Application not delivered to parties' chief legal officer. Economic harm not irreparable. Harm arising under laws not the Taylor Law is not within PERB's jurisdiction. Alleged DFR violation can be effectively remedied.

City of Rochester, 58 PERB ¶6007 (2025)

Refusal to bargain after placement of titles into union's unit does not constitute irreparable harm. Allegations of chilling effects not sufficiently clear, concise and convincing. Application for injunctive relief denied.

City of Rochester, 58 PERB ¶6006 (2005)

Relief sought in application obtained through negotiations. Injunctive relief not necessary.

City of Albany, 58 PERB ¶5501 (2025)

Union's application to enforce PERB's order in improper practice proceeding granted in part. Interest payment on make-whole order not mentioned in Board's order. Therefore, enforcement of this request denied. Will enforce notice posting requirement. Aspects of enforcement request requiring clarification submitted to ALJ for investigation with report and recommendation to Counsel's office to follow.

Southampton UFSD (Robles), 58 PERB ¶3040 (2025)

Leave to file interlocutory exceptions to ALJ's decision to not consolidate charges denied. No extraordinary circumstances presented by ALJ's decision.

Interference & Discrimination

East Meadow UFSD, 48 PERB ¶3006

Leafletting in support of union held not protected because Education Law §3020-a Hearing Officer had held action obstructed school traffic. Adopting Hearing Officer's findings of fact, Board holds leafletting as conducted was not protected.

Town of Tuscarora, 48 PERB ¶3011

Board's finding on motion to dismiss that charging party had established a prima facie case is not a finding conclusively proving animus. ALJ must make express findings of fact on the ultimate issues.

UFT (Gibson), 48 PERB ¶3015

Union's disagreement with union representative's recommendation to take grievance to arbitration is not improper by itself.

UFT (Leon) 48 PERB ¶3016

Matters pertaining to internal union affairs (office holding) cannot be a basis for DFR claim. There must be employment action. Conclusory allegations will not suffice to establish a DFR breach.

Elwood Teachers' Alliance, 48 PERB ¶3020

Alleged violation of union's constitution and by-laws is not an improper practice within PERB's jurisdiction. Conclusory allegations are insufficient to support a DFR breach.

Bellmore-Merrick CSD, 48 PERB ¶3022

Discriminatory refusal to hire established by record evidence. Remand on remedy due to "highly atypical circumstances".

County of Nassau, 48 PERB ¶3023

High level supervisor's verbal threats to employees unlawful. That supervisor is in the same bargaining unit as employees does not privilege statements made in his supervisory capacity and as employees' commanding officer. Statements attributable to employer under agency principles. Express condonation or authorization for statements not required.

De Oliveira v. PERB, 132 AD3d 1010, 48 PERB ¶7006 (3d Dep't 2015)

PERB's decision finding no DFR breach (47 PERB ¶3008) confirmed. Substantial evidence to support PERB's decision. No intentional or bad faith actions and good faith mistakes do not constitute a DFR breach.

DC 37, Local 372 (Candelario), 49 PERB ¶3015

Union did not breach duty of fair representation by not taking employee's discharge to arbitration. Merits based decision without basis to conclude decision was arbitrary, discriminatory or made in bad faith.

New York City Transit Authority (Burke), 49 PERB ¶ 3021

Employee's allegation that he was discriminated against for having filed improper practice charges not established.

Buffalo City School District, 49 PERB ¶3028

Employer's written and verbal statements to employees urging employees to advocate against a contractual grievance that had been filed by the union held to be improper coercion. Announced layoff of employees caused by uncertainty as to outcome of grievance not unlawful.

County of Westchester, 49 PERB ¶3031

Abolition of position because incumbent was union officer who used contractual union release time violated Act §209-a.1(a) and (c) despite absence of union animus and underlying legislative action. Arbitrator's award does not determine scope of Board's remedial authority. Reinstatement to equivalent position in different department held sufficient.

State of New York (DOT), 50 PERB ¶3004

State violated Act when it issued revised W-2s increasing the tax liability of only those employees named in improper practice charge. Asserted claim of business justification dismissed as pretext.

Mount Pleasant Central School District (Hall), 50 PERB ¶ _____

Employer did not violate Act by issuing employee a counseling memo upon ALJ's confirmed credibility determination that memo issued for legitimate business reasons related to school safety.

State of New York (DOCS, 50 PERB ¶3037

Employer's denial of union representation violated Act. Remove and destroy remedy issued.

Professional Staff Congress of CUNY, 50 PERB ¶ _____

No duty of fair representation violation as record established at most only employee's disagreement with union's grievance tactics or dissatisfaction with the representation provided by union.

CSEA (Sainpaulin), 50 PERB ¶ _____

Director erred by dismissing as deficient charge alleging DFR breach by union's unexplained failure to file timely grievance. Charge allegations were sufficient to evidence an arguable violation of the Act.

UFT (Spaulding), ___ PERB ¶ ___ (Sept. 2018)

Union's reasoned decision not to file grievance is not DFR breach even if decision is incorrect interpretation of relevant contract, law or rule provision.

Pleasantville UFSD, ___ PERB ¶ ___ (Sept. 2018)

Prohibition placed on teachers wearing union supportive t-shirts at work held to be improper interference and discrimination in violation of Act.

Board of Education City School District of the City of New York (Bagarozzi) ___ PERB ¶ ___ (Dec. 2018)

Circumstantial evidence established prima facie violation that was not rebutted by employer. Make whole remedial relief properly awarded although denied in Education Law §3020-a disciplinary proceeding.

Niagara Falls Police Club, Inc. (Drinks-Bruder) ___ PERB ¶ ___

Negligent union actions do not constitute a breach of the duty of fair representation.

State of New York (DOCS), ___ PERB ¶ _____

Timing alone is not sufficient to establish "but for" causation needed to prove a violation.

United Federation of Teachers (Konteye), ___ PERB ¶ ___ (Jan. 2020)

No DFR breach as refusal to file grievance based on merit review of grievance was not arbitrary or in bad faith. DFR standards discussed.

State of New York (OGS), ___ PERB ¶ ___ (Jan. 2020)

Employer need not reschedule disciplinary interview simply because employee's chosen representative is not available. Rescheduling is likely required if no representation were available.

City of Yonkers, ___ PERB ¶ ___ (Aug. 2020)

City did not violate Act by informing employees about potential layoffs if it were required to pay negotiated wages. Request to meet with unions and employees to discuss City's financial condition did not violate Act. Request did not constitute direct dealing.

State of New York (SUNY- Upstate Medical Ctr.), ___ PERB ¶ ___ (Aug. 2020)

Evidence set forth prima facie case of interference based on State's decision to "look at" hours of work because union agent raised issue at labor-management meeting.

Metropolitan Transportation Authority, ___ PERB ¶ ___ (Dec. 2020)

Union did not violate its duty of fair representation as no proof in conclusory allegations that union acted in an arbitrary, discriminatory or bad faith manner.

State of New York (Piller), 50 PERB ¶ ___ (Dec. 2020)

Charge dismissed as no evidence employer's agents knew of protected activity that allegedly led to discrimination and interference.

New York City Bd. Of Educ. (McDowall) ___ PERB ¶ ___ (May 26, 2021)

Temporal proximity to adverse employment action is not sufficient alone to establish needed "but for" causation. Prima facie case cannot be established by cross-examination of respondent's witnesses.

City of Niagara Falls (Bruder) ___ PERB ¶ ___ (Aug. 23, 2021)

Union did not violate its duty of fair representation. DFR Standards reiterated. No facts evidence arbitrary, discriminatory or bad faith actions. Union is not obligated to provide representation in a proceeding brought against the union itself or to pursue a non-contractual legal claim unless it has provided such representation to others in similar proceedings.

United Federation of Teachers (Imbert), ___ PERB ¶ ___ (Aug. 23, 2021)

Union did not breach its duty of fair representation by not taking a grievance to arbitration because the decision was not arbitrary. Employee's interpretation of applicable employer policy was not the only possible one.

City of Utica, ___ PERB ¶ ___ (Aug. 23, 2021)

Unilateral change to disciplinary procedures affecting firefighters employed by city of the second class held a prohibited subject of bargaining. Lengthy discussion and criticism of judicial decisions banning bargaining. City violated §209-a.1(a) of the Act by excluding two union officers from representing unit employees at disciplinary interrogations.

New York City Board of Education (Manzo), ___ PERB ¶ ___ (Oct. 13, 2021)

Employer violated Act when school principal recommend an employee be discontinued because, on facts and credibility assessments, recommendation was in retaliation for employee's exercise of rights protected by the Act.

CSEA (Sainpaulin), ___ PERB ¶ ___ (Jan. 13, 2022)

Union's failure to file grievance on time no breach of its duty of fair representation because no facts establish arbitrary, discriminatory or bad faith conduct. Honest mistake does not breach duty.

NYC Bd of Education (Rettino), ___ PERB ¶ ___ (Jan. 13, 2022)

Timing of action alone is not sufficient to establish violation of the Act.

Watervliet Teacher's Ass'n (CEA) ___ PERB ¶ ___ (Jan. 13, 2022)

Union is not required to allow unit employee to select own attorney at union's expense when there is no evidence of arbitrary, discriminatory or bad faith conduct.

Valley Central School District, ___ PERB ¶ ___ (April 7, 2022)

Employer did not discriminate against employee in its placement of employee on salary schedule. Union did not breach its duty of fair representation by not contesting the salary placement that was consistent with prevailing methodology and applied evenly to all unit employees.

Niagara Falls Police Club (Drinks-Bruder) ___ PERB ¶ ___ (July 6, 2022)

No DFR breach in union not assisting an employee with a civil discrimination complaint or in assigning an outside attorney to assist with a CSL §72 proceeding.

State of New York (Office of Children and Family Services), ___ PERB ¶ ___ (June 13, 2022)

Union president's statement that employee was a "snitch" held not protected. The comment had no legitimate union purpose as it maliciously injured a disciplinary arbitration process by causing the employee to not testify at the arbitration.

Town of Lewisboro, ___ PERB ¶ ___ (June 13, 2022)

Discrimination based on "disdain" for officer's prior employment with State Police is not Taylor Law violation as prior employment is not protected union activity.

Union's disclosure of the employee's personal opinion about the filing of a grievance not a DFR breach as employee was open about his opinion and did not treat his opinion as confidential. Employee's disagreement with union about the law regarding his termination is not a DFR breach.

UFT, Local 2, ___ PERB ¶ ___ (June 13, 2022)

Union's decision to not take an employee's grievance to arbitration is not a DFR breach. Union did not induce employee to delay filing a civil proceeding to challenge her termination.

AFSCME Council 66 (DeCarlo), ___ PERB ¶ ___ (June 13, 2022)

Union did not violate the Act in its handling of grievance at arbitration even if representation was poor. Poor representation by itself is not wholly irrational nor does it establish fraud, deceit or dishonesty. Union need not provide representation by an attorney.

State of New York (Office of Addiction Services and Support), ___ PERB ¶ ___ (June 13, 2022)

Employer's statements to employee about the merits and adverse consequences of a grievance held unlawful. Statements were threatening and coercive when viewed reasonably and in context.

New York City Board of Education (Graham), ___ PERB ¶ ___ (Aug. 9, 2022)

Negative reference letter issued to current employee can be an adverse employment action sufficient to form basis for charge depending upon the facts relating to the reference.

New York City Board of Education (UFT), ___ PERB ¶ ___ (Aug. 9, 2022)

Employer violated Act by taking several and various adverse employment actions against employee for her exercise of statutorily protected rights. Full make-whole relief ordered including reimbursement of monetary fine imposed by grievance arbitrator.

Monroe Community College Faculty Ass'n (Felton), ___ PERB ¶ ___ (Aug. 31, 2022)

Evidence did not establish that union's refusal to file grievance was arbitrary, discriminatory or done in bad faith.

UFT, Local 2 (Dourdounas), ___ PERB ¶ ___ (March 6, 2023)

Employee's allegation that union refused to provide reasons for its decision not to proceed to arbitration on a grievance were sufficient to establish an arguable breach by the union of its duty of fair representation. There was also evidence of union dishonesty and perfunctory handling of employee's grievance. Charge remanded to ALJ for hearing.

IBT, Local 264 (Waliczek) ___ PERB ¶ ___ (March 6, 2023)

Employee's allegation that union failed repeatedly to respond to inquiries from him about the status of a grievance concerning his termination sufficient to establish a possible breach of the union's duty of fair representation.

County of Madison and Sheriff, 56 PERB ¶3017 (2023)

Employer violated §209-a.1(g) of the Act by denying employee's repeated requests for representation at a meeting that turned accusatory and disciplinary. Affirmative defenses not applicable because no discipline was imposed.

Maine-Endwell CSD, 56 PERB ¶3013 (2023)

Employer violated Act by interrogating union vice-president about privileged union communications and by stating it would not deal with vice-president about terms and conditions of employment. Employer also violated Act by placing the union officer on leave and then terminating his employment because of his union activities.

UFT, Local 2 (Byam), 56 PERB ¶3016 (2023)

No DFR breach in union's representation of employee growing out of COVID vaccination mandate as union's actions were not arbitrary, discriminatory or in bad faith.

Burke v. PERB, ___ AD 3d, 56 PERB ¶7012 (2d Dept. 2023)

PERB's dismissal of charge affirmed because decision had a rational basis and was not otherwise arbitrary.

County of Madison and Sheriff, 56 PERB ¶3017 (2023)

Employer violated §209-a.1(g) of the Act by denying employee's repeated requests for representation at a meeting that turned accusatory and disciplinary. Affirmative defenses not applicable because no discipline was imposed.

Maine-Endwell CSD, 56 PERB ¶3013 (2023)

Employer violated Act by interrogating union vice-president about privileged union communications and by stating it would not deal with vice-president about terms and conditions of employment. Employer also violated Act by placing the union officer on leave and then terminating his employment because of his union activities.

UFT, Local 2 (Byam), 56 PERB ¶3016 (2023)

No DFR breach in Union's representation of employee growing out of COVID vaccination mandate as unions actions were not arbitrary, discriminatory or in bad faith.

NYC Board of Education, 57 PERB ¶3012 (2024)

ALJ need not explain reasons for not crediting the testimony of a witness while crediting another.

UFT, Local 2, 57 PERB ¶3010 (2024)

Union violated DFR when its representative did not provide employee with a written statement about an arbitration as the representative had promised to provide.

Orchard Park Teachers Association, 57 PERB ¶3014 (2024)

Union did not breach its DFR by notifying only union members about the possibility for an early release from work.

Arlington Teachers' Ass'n, 58 PERB ¶3019 (2025)

Union did not breach its duty of fair representation by not grieving employer actions that were resolved or resulted in no discipline. No breach in not litigating alleged violation of FMLA there being no evidence union had undertaken such litigation on behalf of other employees.

NYC Bd. of Education, 58 PERB ¶3016 (2025)

District did not violate Act when school principal spoke harshly to assembly of employees about union's decision not to vote on a contract issue. Speech was protected opinion that was not threatening or coercive of employees statutory rights.

Rochester City School Dist., (Bianchi), 58 PERB ¶3015 (2025)

Allegation requires proof of adverse employment action.

NYC Bd. of Education, 58 PERB ¶3014 (2025)

Prima facie case of retaliation related by employer's proof of legitimate business reasons for employee's termination.

Public Employees Federation (Brate), 58 PERB ¶3033 (2025)

Charge concerning only internal union disciplinary issues dismissed. PERB is without jurisdiction over such actions which do not affect employment.

Mount Vernon CSD, 58 PERB ¶3032 (2025)

Teachers transfer between schools not shown to be improper. Employer's agent without knowledge of teacher's protected activity and transfer was done for a legitimate business reason.

Roosevelt UFSD Administrator's Ass'n, 58 PERB ¶3039 (2025)

No DFR breach in union's rational and explained decision to not proceed to arbitration on time-barred grievance that was previously submitted to arbitration and withdrawn by employee.

Representation

City University of New York, 48 PERB ¶3021

Petitioner's affidavit in support of request to fragment peace officers from blue-collar unit was sufficient to raise questions as to conflict of interest and inadequate representation by incumbent union. Dismissal of petition reversed and case remanded for development of record.

County of Franklin & Sheriff, 48 PERB ¶3025

Corrections Lieutenant added to existing county unit. Title shares a community of interest with other unit titles.

Cayuga County & Community College, 49 PERB ¶3007

Adjunct faculty not appropriately placed with full-time faculty because of conflict of interests.

Village of Scarsdale, 49 PERB ¶3009

Employer's U/P petition to add newly created Lieutenant position to fire fighter unit dismissed. The position was vacant such that no duties were being performed nor were any performed in the past.

Village of Westhampton Dunes, 50 PERB ¶3035

Police constable/sergeants held not confidential employees. Duties not confidential and no proven confidential relationship to Mayor.

County of Chemung and Sheriff, 50 PERB ¶ _____

Employer's unit clarification petition granted as contractual recognition clause held clear as to inclusion of part-time clerks. Evidence to the contrary was, therefore, not considered.

Herkimer County and Community College, 50 PERB ¶ _____

Unions are properly certified using a majority of valid votes cast in an election. Board declines to require majority of all unit employees.

City University of New York, 50 PERB ¶ _____

Fragmentation of security titles denied as record did not establish inadequate representation or a conflict of interest.

Enlarged City School District of Troy, _____ PERB ¶ _____ (Aug. 2019)

Registered Nurses, Occupational Therapists and Physical Therapists properly fragmented from non-professional employee unit.

City of Albany, _____ PERB ¶ _____ (Jan. 2020)

Petitioner need not wait for publication of recognition to file a petition when it has knowledge of the action. Moreover, petition timely as filed more than 120 days after CBA expiration. Board will review determination that showing of interest is numerically sufficient.

City of Yonkers, _____ PERB ¶ _____ (Aug. 2020)

Managerial tests are separate. The "reasonably may be required" prong of the statutory language does not apply to policy formulation. Employee was properly placed into unit because position does not make policy. Case contains discussion of standards needed for policy formulation.

Valhalla UFSD, ___ PERB ¶ ___ (Oct. 13, 2021)

Certain substitute teachers placed into unit of certificated teachers. Those whose employment is for more than 40 days have sufficient continuity of employment to warrant coverage under the Act.

Nassau Community College, ___ PERB ¶ ___ (Jan. 13, 2022)

Unit clarification petition may not be used to fragment positions from an existing bargaining unit.

City of Yonkers, ___ PERB ¶ ___ (April 7, 2022)

Director of Traffic Engineering properly placed into white collar administrative unit as employee is not managerial within meaning of the Act. Employee as supervisor does not formulate policy.

Cheektowaga-Sloan UFSD, ___ PERB ¶ ___ (March 6, 2023)

Registered nurses properly added to teachers unit. Shared community of interest outweighs employer's administrative convenience argument advanced to support employer's preference for separate unit of nurses.

Town of Salina, 58 PERB ¶3013 (2025)

Highway Superintendent designated managerial. Employee had substantial, unfettered ability to effect policy decisions without approval from others. Employee also has statutory authority over personnel administration.

City of Rochester, 58 PERB ¶3023 (2025)

Civilian employees in City's Police Accountability Board added to existing unit of City's civilian employees. Evidence did not establish a realistic potential conflict of interest would be caused by placement that was found to be appropriate.

Western Regional Off-Track Betting Corp., 58 PERB ¶3034 (2025)

Surveillance Operators added to existing unit given absence of a meaningful conflict of interest and presence of an overall community of interest. Case remanded for consideration of affirmative defenses not addressed by ALJ.

Miscellaneous

McLaughlin v. Hankin, 132 AD3d 675, 48 PERB ¶7503 (2015)

Without DFR breach, employee's wrongful termination lawsuit against employer was dismissed. Employee required to exhaust contractual grievance procedure unless DFR violation.

City of Rensselaer, 49 PERB ¶3016

Director of Conciliation is empowered to dismiss petition for interest arbitration in its entirety because of partial invalidity of petition even after arbitration panel has been designated.

Kilduff v. Rochester City School District, 24 NY3d 505, 49 PERB ¶7501 (2014)

Tenured teacher had right from September 1, 1994 to elect Education Law §3020-a disciplinary procedures. Could not be forced to use contractual disciplinary system. Contractual process determination annulled.

Carver v. County of Nassau, 135 AD3d 888, 49 PERB ¶7502 (2016)

County charter that vested Commissioner of Police with power over police discipline controlled over language in subsequent local law and collective bargaining agreement that allowed arbitration of certain types of disciplinary charges.

City of Springfield, 49 PERB ¶8001 (2015) (Mass. Employment Relations Bd. 2015)

Installation of GPS tracking devices in vehicles driven by public works employees mandatorily bargainable.

Hyde Leadership Charter School-Brooklyn, 49 PERB ¶8002 (NLRB determination August 24, 2016)

Majority of NLRB holds charter schools are private entities within the NLRB's jurisdiction. Charters are not political subdivisions exempt from the NLRB's jurisdiction. NLRB will not decline to exercise its jurisdiction. Dissent concludes charters are political subdivisions and "alternative public schools". Moreover, charters are administered by officials who are responsible to public officials or the general electorate. In any event, dissent would decline jurisdiction.

City of Ithaca, Director of Conciliation letter ruling. (Dec. 23, 2016)

Union which objects to employer's petition for interest arbitration may not thereafter proceed to interest arbitration pursuant to its own later filed petition for the two years that could have been covered by an award that could have issued pursuant to the employer's petition if it had been processed. Expired CBA rolls over unchanged for two years. Decision reversed by PERB

on ground Director did not have authority to issue the ruling 50 PERB ¶3006 (April 10, 2017). Questions presented objections to arbitrability for decision in context of an improper practice charge.

County of Montgomery & Sheriff, 50 PERB ¶3029

Overtime procedures not arbitrable. GML §207-c medical release content not arbitrable. Paid leave demands not arbitrable.

Albany Police Officers Union v. PERB, 50 PERB ¶7009 (Sup. Ct. Alb. Co.)

No mandamus to compel PERB to issue a remedy.

PERB v. Cayuga Community College, 50 PERB ¶7010 (Sup. Ct. Alb. Co.)

Enforcement petition granted. Petition need not be verified. At most, lack of verification is technical irregularity. Compliance does not moot proceeding.

County of Rockland, 50 PERB ¶ _____

Director of Conciliation properly declined to process interest arbitration petition on behalf of “undercover investigators” in District Attorney’s office. Title is not one granted arbitration by law even though employees in title are police officers and perform law enforcement functions.

Buffalo Teachers Federation, Inc., ___ PERB ¶ ____ (Aug. 2020)

Union caused and condoned sick-out strike when union agent encouraged employees to call in sick. Strike not justified because no *bona fide* fear for employees’ personal safety. Evidence showed staff did not take seriously a threat by an outside student to “shoot up” the school.

Donohue v. Cuomo, 38 Ny3d 1 (2022)

To create a vested right to retirement health care benefits (e.g., fixed premium contribution) collective bargaining agreement must expressly provide for such benefit. No inferences of vesting from silence which does not create ambiguity sufficient to allow for extrinsic or parol evidence. See also Donohue v. Hochul, 2022 WL 1231712 (2d Cir. April 27, 2022) applying New York law to deny vesting.

Council 82, AFSCME v. City of Geneva, Sup. Ct. Ontario County (April 11, 2022)

Local law establishing a police civilian review board invalid as passed without the required mandatory referendum. Local law also violated State’s Taylor Law that requires collective bargaining over discipline because City manifested an intent to have Civil Service Law continue

to apply. Local law also violates provisions of collective bargaining agreement, provisions of Civil Service Law §75 and §76 and the powers of the City Police Chief under the City Charter.

Town of Hempstead, ___ PERB ¶ ___ (Aug. 9, 2022)

Board's approval of Town's mini-PERB suspended pending Town's submission of proof that mini-PERB's provisions and procedures are substantially equivalent to State PERB's.