STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

UNITED PUBLIC SERVICE EMPLOYEES UNION,

Petitioner,

-and- **CASE NO. C-6377**

ENLARGED CITY SCHOOL DISTRICT OF TROY,

Employer,

-and-

CIVIL SERVICE EMPLOYEES ASSOCIATION, INC., LOCAL 1000, AFSCME, AFL-CIO,

Intervenor/Incumbent.

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, and it appearing that a negotiating representative has been selected;[1]

Pursuant to the authority vested by the Public Employees' Fair Employment Act;

IT IS HEREBY CERTIFIED that the United Public Service Employees Union has been designated and selected by a majority of the employees of the above-named

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[1] By letter dated October 17, 2019, Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO disclaimed any interest in this unit.

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: School Registered Nurse (referenced in the job description as Registered Professional Nurse), Occupational Therapist and Physical Therapist.

Excluded: All other employees of the District.

FURTHER, IT IS ORDERED that the above-named public employer shall negotiate collectively with the United Public Service Employees Union. The duty to negotiate collectively includes the mutual obligation to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written agreement incorporating any agreement reached if requested by either party. Such obligation does not compel either party to agree to a proposal or require the making of a concession.

DATED: January 21, 2020
Albany, New York

John F. Wirenius, Chairperson

Anthony Zumbolo, Member

Monte A. Klein, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

SMITH POINT LIFEGUARD ASSOCIATION, NYSUT, AFT, NEA, AFL-CIO,

Petitioner,

-and- **CASE NO. C-6550**

COUNTY OF SUFFOLK,

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, and it appearing that a negotiating representative has been selected;

Pursuant to the authority vested by the Public Employees' Fair Employment Act;

IT IS HEREBY CERTIFIED that the Smith Point Lifeguard Association, NYSUT, AFT, NEA, AFL-CIO 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: Senior Guard 2, Senior Guard 3, Senior Guard 4, Ocean Guard 2, Ocean Guard 3, Ocean Guard 4, Ocean Guard 5, Still Water Guard 2, Still Water Guard 3, Still Water Guard 4, and Still Water Guard 5.

Excluded: All other employees.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Smith Point Lifeguard Association, NYSUT, AFT, NEA, AFL-CIO. 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: January 21, 2020
Albany, New York

John F. Wirenius, Chairperson

Anthony Zumbolo, Member

Monte A. Klein, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

TEAMSTERS LOCAL 118,

Petitioner,

-and- **CASE NO. C-6559**

COUNTY OF WAYNE & WAYNE COUNTY SHERIFF,

Employer,

-and-

WAYNE COUNTY SHERIFF'S EMPLOYEES ASSOCIATION,

Intervenor/Incumbent.

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, and it appearing that a negotiating representative has been selected;

Pursuant to the authority vested by the Public Employees' Fair Employment Act;

IT IS HEREBY CERTIFIED that the Teamsters Local 118 has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative

for the purpose of collective negotiations and the settlement of grievances.

Included: Full-time Correction Officers & Correction Sergeants.

Excluded: All other employees.

FURTHER, IT IS ORDERED that the above-named public employer shall negotiate collectively with the 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: January 21, 2020
Albany, New York

John F. Wirenius, Chairperson

Anthony Zumbolo, Member

Monte A. Klein, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

JOANN STAVOLA,

Petitioner,

-and-

CASE NO. C-6543

YORKTOWN CENTRAL SCHOOL DISTRICT,

Employer,

-and-

CLERICAL ASSOCIATION CHAPTER OF THE YORKTOWN CONGRESS OF TEACHERS,

Intervenor/Incumbent.

JOANN STAVOLA, for Petitioner

SHAW, PERELSON, MAY & LAMBERT, LLP (STEVEN M. LATINO of counsel) for Employer

LAURA DELANEY, ESQ., for Intervenor/Incumbent

BOARD DECISION AND ORDER

On November 20, 2018, Joann Stavola (petitioner) filed, in accordance with the Public Employee's Fair Employment Act and the Rules of Procedure of the Public Employment Relations Board, a timely petition for decertification of the Clerical Association Chapter of the Yorktown Congress of Teachers (intervenor/incumbent), the current negotiating representative for employees in the following negotiating unit:

Included: Secretary to School Administrator, Secretary to School Principal, Sr. Office Assistant (Automated Systems), Senior Office Assistant, Office Assistant (Automated Systems), Benefits Assistant, Payroll Clerk, Database Assistant, Staff Assistant-IT, Accountant, Account Clerk, Account Clerk Typist and Offset Printer Operator.

Excluded: Data Analyst, all managerial and confidential employees and all other employees.

Upon consent of the parties, a mail ballot election was held on May 6, 2019. The results of the election show that a majority of eligible employees in the unit who cast valid ballots no longer desire to be represented for purposes of collective negotiations by the intervenor/incumbent.

THEREFORE, IT IS ORDERED that the intervenor/incumbent is decertified as the negotiating agent for the unit.

DATED: January 21, 2020
Albany, New York

John F. Wirenius, Chairperson

Anthony Zumbolo, Member

Monte A. Klein, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

YONKERS FIREFIGHTERS, LOCAL 628, IAFF, AFL-CIO,

Charging Party,

CASE NO. U-34936

-and-

CITY OF YONKERS,

Respondent.

In the Matter of

YONKERS UNIFORMED FIRE OFFICERS ASSOCIATION,

Charging Party,

CASE NO. U-34970

-and-

CITY OF YONKERS,

Respondent.

ARCHER, BYINGTON, GLENNON & LEVINE, LLP (PAUL K. BROWN of counsel), for Charging Party Yonkers Firefighters, Local 628, IAFF, AFL-CIO

GLEASON, DUNN, WALSH & O'SHEA (RONALD G. DUNN of counsel), for Charging Party Yonkers Uniformed Fire Officers Association

COUGHLIN & GERHART, LLP (PAUL J. SWEENEY of counsel), for Respondent

BOARD DECISION AND ORDER

These cases come to us on a motion filed on November 15, 2019 by the Yonkers Firefighters, Local 628, IAFF, AFL-CIO ("Local 628") for reconsideration and reversal of this Board's decision dated November 6, 2019, in which we reversed the decision of an Administrative Law Judge (ALJ) and dismissed improper practice charges filed by Local 628 and the Yonkers Uniformed Fire Officers Association ("UFOA") (collectively, the

Unions).[1] On November 18, 2019, the UFOA filed a letter seeking to join in the motion for reconsideration. On November 19, 2019, the City of Yonkers (City) filed a response supporting the Board decision, and contending that the UFOA's filing was untimely, having been filed outside of the "five calendar days following the date of receipt of the final decision and order" provided by § 213.10 (c) of PERB's Rules of Procedure (Rules).[2]

The improper practice charges alleged that City violated § 209-a.1 (d) of the Public Employees' Fair Employment Act (Act) by ending the practice of "paying current employees certain supplemental salary payments under New York State General Municipal Law (GML) § 207-a (2), should they in the future retire with a line of duty disability," in particular, the night differential, check-in pay, and holiday pay.[3]

The ALJ found that "both the UFOA and Local 628 seek to enforce the practice only to the extent that it affects current employees; that is, individuals *who were active City employees, and not retired, as of the date that the charges were filed* and who, in the future, qualify for the at-issue benefit."[4] We reversed on the ground that the allegations in the charges and the undisputed facts of the case did not support the ALJ's finding. We stated that, although the charges asserted a claim on behalf of current employees, neither charge alleged, and the Unions did not present any evidence of,

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[1] 52 PERB ¶ 3015 (2019).
[2] City response to motion for reconsideration (City Response) at 1, n 1. We note that on December 12, 2019, the Unions each filed petitions pursuant to Civil Practice Law and Rules Article 78 seeking review of the Board's decision. As § 213 (c) (2) of the Rules provides that the filing of a motion for reconsideration "shall not operate to stay the finality and effectiveness of the decision or order of the Board," including the statute of limitations for filing an Article 78 petition, we do not view these filings as waiving or obviating the pending motions.
[3] 52 PERB ¶ 4551, at 4740, 4746.
[4] 52 PERB ¶ 4551, at 4743 (emphasis added; editing marks omitted).

such action or communication of such intent toward current employees who might elect to retire during the life of the agreement. Rather, the alleged actions of the City complained of in the charge were limited to the mailing of the December 9, 2015 letters solely to 43 retired former bargaining unit members and former employees.[5] We found that this factual showing failed to support the Unions' claim that any communication or action had been communicated to or taken toward current employees.

DISCUSSION

Section 213.10 (c) of our Rules provides that a "party may, because of extraordinary circumstances, file a request for reconsideration with the board within five calendar days following the date of receipt of the final decision or order." The Rule further provides that the party filing the motion must "state with specificity the grounds claimed and, where applicable, shall specify the page of the record relied upon." Even if the motion complies with these requirements, we have long held that "[w]e will grant a motion for reconsideration only where the moving party demonstrates that we overlooked or misapprehended the relevant facts or law."[6] We find that the Unions have not established either extraordinary circumstances or grounds upon which we could conclude that we have overlooked or misapprehended the relevant facts or law. Accordingly, the motion is denied.[7]

Local 628 asserts in its motion for reconsideration that we failed to address allegations of subsequent similar behavior on the part of the City to retirees who had

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[5] ALJ Ex 1, ¶ 14; ALJ Ex 5, ¶ 16.
[6] *County of Nassau*, 46 PERB ¶ 3014, 3030 (2013), citing *Town of Brookhaven*, 19 PERB ¶ 3010 (1986).
[7] Because we find that neither motion establishes that we overlooked or misapprehended the relevant facts or law, we do not address whether the UFOA's joining in the motion was timely.

been current employees at the time of the filing of the charge. These allegations are not in the charge, and leave was never sought to amend the charge to include any alleged further occurrences involving current employees subsequent to the filing of the charge. We have "long held that we will not find a violation of the Act upon an allegation which has not been pleaded, even if that allegation has been litigated."[8] In sum, these allegations were not properly before either the ALJ or us, as the Unions are "bound by [their] charge[s]."[9]

Moreover, in its motion for reconsideration, Local 628 asserts that it relies on the stipulation of facts between the parties in this matter, but in fact refers exclusively to a colloquy regarding the stipulation, and not to the actual document the parties executed, and which we extensively reviewed and cited.[10] Neither the stipulation of facts in this matter,[11] nor the transcript pages relied upon establishes any communication on the part of management to current employees of any unilateral change to the practice asserted, as we found in our decision.[12] Rather, the communications at issue in the charges were addressed to retirees, former employees who were no longer members of

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[8] *Cayuga Community College*, 50 PERB ¶ 3003, 3015 (2017), citing *UFT (Cruz)*, 48 PERB ¶ 3004 (2015) *petition denied, Cruz v NYS Pub Empl Relations Bd*, 48 PERB ¶ 7003 (2015) (internal quotation marks omitted) (quoting *County of Rockland*, 31 PERB ¶ 3062, 3136 (1998)); *see also County of Nassau*, 29 PERB ¶ 3016 (1996); *Arlington Cent Sch Dist*, 25 PERB ¶ 3001 (1992); *City of Buffalo*, 15 PERB ¶ 3027 (1982*); City of Mt. Vernon*, 14 PERB ¶ 3037 (1981). Indeed, even when a motion is made to conform the pleadings to the proof, the motion "is essentially a request to amend the charge. Leave to amend is not available if the effect is to add a new substantive claim otherwise barred by PERB' s four-month statute of limitations." *County of Monroe*, 36 PERB ¶ 3002, 3005 (2003), citing Rules § 204.1 (a) (1); *Town of Brookhaven*, 26 PERB ¶ 3066 (1993).

[9] *Id*.

[10] *Compare* Motion 3-7; 7-10 (citing Tr, at 180-185; 187-188) with ALJ Ex 12.

[11] ALJ Ex 12.

[12] 52 PERB ¶ 3015 (2019), text at nn 35-36, citing Joint Exs 7-19; 12.

either Local 628 or the UFOA.[13]

Other documents referred to in the colloquy in the transcript section submitted in support of the motion were characterized as referring to alleged actions taken against other retirees. However, the Unions have not, as required by § 213.10 (c) of our Rules, provided any citation in the record to these documents, and our review of the record as transmitted by the ALJ to us has established that these documents are not part of the record before the ALJ, or us.[14] In its letter seeking to join in the motion, the UFOA asserts that it "is aware of at least *six* fire officers who retired after the UFOA filed its Improper Practice Charge on April 7, 2016, and *none* of those fire officers have received Night Differential, Check-In Pay, or Holiday Pay as part of their disability benefits under GML § 207-a (2)."[15] Again, no citation to the record is provided for this conclusory statement, nor are the allegedly affected fire officers identified, to allow us to search the record for any reference to their deprivation.

Similarly, the charges refer to a stipulation in another matter that the Unions allege states that "the City does not plan to include Night Differential, Check-in Pay and Holiday Pay in its calculation of the GML Law 207-a (2) benefit for members who retire in the future."[16] However, the City in its answers to the charge, only admitted that it had "entered into certain stipulations of fact ….with those retirees who requested a pre-deprivation due process hearing," asserting that the Association could not rely on those

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[13] *Id*. ("Current employees received no similar notice regarding what to expect in the future").
[14] Contrary to the requirements of § 213.10 (c) of the Rules, no citation or page number is provided for these documents, and a thorough review of the record as transmitted to us by the ALJ did not reveal their presence in the record. (Tr 180-181, 185-186).
[15] *Id*. at 2 (emphasis in original).
[16] ALJ Ex 1, at ¶¶ 18, 17-18; ALJ Ex 5, ¶¶ 9, 20.

stipulations as it was not a party to them.[17] The City did not admit to the specific stipulation alleged. Again, the Unions do not, as required by § 213.10 (c) of the Rules, provide a citation for the stipulation in the record, and our thorough review of the record as transmitted to us by the ALJ reveals that the record does not contain a copy of that stipulation.

Accordingly, and for the reasons stated herein, the Unions' requests for reconsideration of our November 6, 2019 Board Decision are denied.

DATED: January 21, 2020
Albany, New York

John F. Wirenius, Chairperson

Anthony Zumbolo, Member

Monte A. Klein, Member

[17] ALJ Ex 2, at ¶ 4 (h); ALJ Ex 6, at ¶ 4 (h).

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

ALBANY POLICE BENEVOLENT ASSOCIATION,

Petitioner,

-and-

CITY OF ALBANY, **CASE NO. C-6545**

Employer,

-and-

ALBANY POLICE OFFICERS UNION, LOCAL 2841, COUNCIL 82, AFSCME, AFL-CIO,

Incumbent.

GLEASON, DUNN, WALSH & O'SHEA (RONALD G. DUNN of counsel), for Petitioner

ROEMER, WALLENS, GOLD & MINEAUX, LLP (ELAYNE G. GOLD of counsel), for Employer

SCHEUERMANN & SCHEUERMANN, LLP (ARTHUR P. SCHEUERMANN of counsel), for Incumbent

INTERIM BOARD DECISION AND ORDER

This case comes to us on a motion for leave to file interlocutory exceptions pursuant to § 213.4 of our Rules of Procedure (Rules) to an October 23, 2019 interim decision of an Administrative Law Judge (ALJ).[1] The motion was filed by the Albany Police Officers Union, Local 2841, Council 82, AFSCME, AFL-CIO (Council 82) in a

[1] 52 PERB ¶ 4007 (2018).

representation proceeding that was initiated by the Albany Police Benevolent Association (PBA). In that proceeding, the PBA filed a petition seeking to be certified as the collective bargaining agent for a long-standing bargaining unit of police officers and detectives employed by the City of Albany (City) represented by Council 82. The PBA filed its petition less than 30 days after the City and Council 82 agreed to sever the long standing bargaining unit into two units—one consisting of detectives, the other consisting of police officers—for which the City recognized Council 82 as bargaining agent.

In the interim decision, the ALJ held that the petition was timely filed and that it was supported by an adequate showing of interest among the employees in the petition-for, pre-severed bargaining unit. The ALJ further held that the filing of a single petition to represent the proposed unit of police officers and detectives was appropriate, rather than two petitions to represent each of the newly created separate units supported by separate showings of interest. Finally, the ALJ held that the creation of the separate bargaining units raised an issue as to the appropriateness of the petitioned-for consolidated bargaining unit, which required resolution under PERB's fragmentation standards.

EXCEPTIONS

Council 82 excepts to the ALJ's finding that the PBA's showing of interest was adequate for its effort to represent the two separate bargaining units and that the filing of a single petition to represent the pre-severed bargaining unit was appropriate. Council 82 also argues that the PBA's petition was filed prematurely, because it was filed before notice of the City's recognition of Council 82 as bargaining agent for the

separate units was published pursuant to § 201.3 (c) of PERB's Rules of Procedure (Rules). Finally, Council 82 argues that resorting to PERB's fragmentation standard to assess the appropriateness of the unit proposed by the PBA is inappropriate here and that the ALJ should assess the appropriateness of the petitioned-for unit of police officers and detectives under PERB's traditional community of interest standard.

PBA filed a response to the merits of Council 82's exceptions in which it argues that its petition is timely and should be processed pursuant to the ALJ's decision.

The City filed a letter stating that it did not oppose Council 82's motion to file interlocutory exceptions, but it did not file any formal response.

For the reasons given below, we grant Council 82's request to file an interlocutory appeal. As to the merits of the exceptions, we affirm the ALJ's determinations that the PBA's petition was timely filed; that the petition was supported by an adequate showing of interest, consisting of at least 30% of the employees in the proposed, pre-severed bargaining unit; and that the PBA was not required to file separate petitions for each of the newly created bargaining units, supported by separate showings of interest.

However, we reverse the ALJ's conclusion that the PBA's petition requires a determination under PERB's fragmentation standard as to the appropriateness of the petitioned-for, long standing bargaining unit of police officers and detectives. Rather, we find that the ALJ should conduct an investigation to decide whether the petition seeks the most appropriate unit. Accordingly, we remand the matter to the ALJ for further proceedings consistent with this decision.

FACTS

The parties have stipulated to the following facts and documents:

1. The Albany Police Benevolent Association ("PBA") is an unincorporated association seeking to be certified as the exclusive bargaining representative for a bargaining unit consisting of the patrolmen[2] and detectives employed by the City of Albany Police Department.

2. The City of Albany ("City") is the employer for the bargaining unit at issue in this proceeding consisting of patrolmen and detectives in the City of Albany Police Department.

3. The Albany Police Officers Union, Local 2841, Council 82, AFSCME, AFL-CIO ("Council 82") is the current exclusive bargaining representative for the bargaining unit for the patrolmen and detectives in the City of Albany Police Department.

4. The most recent negotiated Agreement between the [City] and [Council 82] expired on December 31, 2013. Article 1 – Recognition of the Agreement states:

   1.1. The Employer recognizes the Union as the sole and exclusive bargaining agent for the purpose of negotiating and establishing salaries, hours and other conditions of employment and the administration of grievances for the term of this Agreement for all Police Officers and Detectives employed by the Police Department of the City of Albany, New York, as certified by the Public Employment Relations Board.

5. On April 9, 2018, a PERB Interest Arbitration Panel issued an Opinion and Award for the period January 1, 2014 through December 31, 2015. That award was subsequently incorporated into an Agreement between the [City] and [Council 82] for the period January 1, 2014 through December 31, 2015.

6. On November 15, 2018, Council 82 sought voluntary recognition from the [City] for a separate unit of Detectives.

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[2] Throughout the stipulation, the parties refer to the police officers as "patrolmen." The petition and all other submissions by the parties utilize the term "police officers."

7. On November 20, 2018 the [City] recognized Council 82 as the exclusive bargaining agent for the APD's "Detectives pursuant to Civil Service Law Section 204.1."

8. [Neither] [t]he [City] nor Council 82 published a notice of recognition, though on November 30, 2018 and December 4, 2018 the *Times Union* published separate articles reporting on the formation of the separate bargaining unit of Detectives with Council 82 as its exclusive bargaining agent.

9. On December 10, 2018, the PBA filed a petition for certification of the PBA and decertification of Council 82 (the "Petition").

10. On December 28, 2018, the [City] responded to the Petition.

11. On January 3, 2019, Council 82 responded to the Petition.[3]

Council 82's November 15, 2018 letter to the City seeking voluntary recognition of the separate bargaining unit, as referenced above in the parties' stipulation, states:

> As you know, Council 82 is the certified bargaining agent for the City of Albany's Police Officers and Detectives. I write to advise you that Council 82 seeks to re-structure the bargaining unit, administratively split the Detectives from the Police Officers, and place the Detectives into a separate bargaining unit. We respectfully request that you voluntarily recognize Council 82 as the bargaining agent for the Detectives as a separate bargaining unit. The terms and conditions of employment of both the Detectives and Police Officers, of course, remain the same in all other respects.[4]

On November 20, 2018, the City responded, stating:

> The City of Albany has considered the request made in your November 15, 2018 correspondence to Mayor Sheehan. In that letter, Council 82 explained that as part of a re-structuring of the Albany Police Officers Union ("APOU"), Council 82 seeks to "administratively split the Detectives from the Police Officers and place the Detectives into a separate bargaining unit." It is the City's understanding that

[3] Joint Ex 1.
[4] *Id*, at Ex D.

> aside from a separate bargaining unit, those assigned to "Detective" will remain subject to all of the terms and conditions of employment found in the APOU Collective Bargaining Agreement (most recently dated January 1, 2014 – December 31, 2015).
>
> With that understanding, the City agrees to recognize Council 82 as the bargaining agent for the APD's "Detectives."[5]

DISCUSSION

MOTION FOR LEAVE TO FILE INTERLOCUTORY EXCEPTIONS

We will not grant leave to file interlocutory exceptions to non-final rulings and decisions unless the moving party demonstrates extraordinary circumstances.[6] The reasoning underlying the extraordinary circumstances standard stems from our:

> recognition that it is far more efficient for the Board and the parties to await a final disposition of the merits of a charge before examining interim determinations. The improvident grant of leave results in unnecessary delays in the final resolution of the factual and legal issues raised by an improper practice charge or representation petition. As a result, the Board has consistently rejected the majority of requests for permission to file [interlocutory] exceptions.[7]

In improper practice cases, we have held that a showing of extraordinary circumstances requires either a showing of "severe prejudice" or that "failure to consider the appeal would result in harm to a party which cannot be remedied by our review of the ALJ's final decision and order."[8] However, we have been more willing to grant leave

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[5] *Id*, at Ex E.
[6] *County of Suffolk and Suffolk County Sheriff*, 52 PERB ¶ 3018 (2019); *NYCTA*, 51 PERB ¶ 3031, 3133 (2018); *State of New York (UCS)*, 50 PERB ¶ 3042, 3169-3170 (2017).
[7] *Hyde Leadership Charter School*, 47 PERB ¶ 3022, 3063 (2014), quoting *Town of Shawangunk*, 29 PERB ¶ 3050 (1996).
[8] *State of New York (UCS)*, 50 PERB ¶ 3042, at 3170, citing *UFT (Fearon)*, 37 PERB ¶ 3007 (2004); *State of New York (UCS)*, 36 PERB ¶ 3031 (2003); *see also State of New York (Division of Parole)*, 25 PERB ¶ 3007, 3019-3020 (1992), citing *United Univ Professions*, 19 PERB ¶ 3009 (1986).

to file interlocutory exceptions under the extraordinary circumstances standard in cases involving representation petitions, when:

> the issue raised in the motion for leave has important statewide policy or legal implications for the processing of future representation petitions, may help insure procedural certainty in such processing or where our decision may obviate the need for further processing of the petition.[9]

Here, if we were to find merit to Council 82's exception that the PBA's petition should not have been processed, such a finding would obviate the need for further processing of the petition and the proceedings would be ended. This provides a valid basis for granting the motion to file interlocutory exceptions. The instant case also presents questions of how to interpret our Rules when processing representation petitions under § 201.3 (c) of the Rules. The application of the Rules has legal implications for the processing of this petition as well as future petitions and presents a second justification for the granting of the motion.

Accordingly, we grant the motion to file interlocutory exceptions and proceed to the merits of the exceptions.

MERITS OF THE EXCEPTIONS

First, we affirm the ALJ's findings that the PBA's petition was timely.

Section 201.3 (c) of our Rules states that "a petition for certification or decertification may be filed within 30 days after publication of notice as described in section 201.6 of this Part, or receipt of written notice, that another employee organization has been recognized. Such a petition shall be supported by a showing of

[9] *Hyde Leadership Charter School*, 47 PERB ¶ 3022, at 3063, quoting *State of New York (Division of Parole)*, 40 PERB ¶ 3007, 3019 (2007).

interest of at least 30 percent of the employees in the existing unit or the unit alleged to be appropriate by the petitioner." As the ALJ correctly found, § 201.3 (c) of the Rules does not require that the PBA wait until publication prior to filing its petition. Such a requirement would be contrary to § 201.6 (d) of the Rules, which provides that "if notice of recognition has not been published, neither the recognition nor a contract entered into pursuant thereto will bar a petition for certification."

Requiring a petitioning organization to wait for publication to file a petition to represent a newly recognized employee organization would allow the employer and the recognized organization to indefinitely postpone a challenge to the recognition simply by not publishing notice of the recognition. Indeed, here, there is no evidence that notice of the recognition has ever been published, well over a year after the voluntary recognition had taken place.

Further as to the timeliness of the petition, we agree with the ALJ that the petition is timely under §§ 201.3 (e) and 201.6 (d) of the Rules, which provides that "a petition for certification or decertification may be filed by an employee organization other than the recognized or certified employee organization . . . if no new agreement is negotiated, 120 days subsequent to the expiration of a written agreement between the public employer and the recognized or certified employee organization." There is no dispute that the CBA between the City and Council 82 is applicable to both the police officers and the detectives, and that it expired on December 31, 2015, more than 120 days before the PBA filed its petition to represent the consolidated unit of police officers and detectives.

Second, we affirm the ALJ's finding that the PBA's petition is supported by an

adequate showing of interest, because it was supported by at least 30 percent of the employees in the unit alleged to be appropriate by the PBA; that is, the employees in the unit of police officers and detectives. This meets one of the two criteria in § 201.3 (c) of the Rules and is an adequate showing of interest for a petition for both certification and decertification.[10]

Third, we affirm the ALJ's finding that the PBA's filing of a single petition was appropriate. The PBA asserts that the long standing, pre-severed unit of police officers and detectives is the most appropriate unit. In these circumstances, filing a single petition was the proper course to follow.

Finally, on the specific facts of this case, we find that our fragmentation standard is not the proper analysis for determining what constitutes the most appropriate bargaining unit. The *status quo* at the time the petition was filed was the two separate voluntarily recognized units—one of police officers and one of detectives, which neither party has sought to further subdivide. Thus, no issue of fragmentation is at issue in this matter.

Rather, we remand this case to the ALJ to allow her to conduct an investigation to determine whether the petition seeks the most appropriate unit, based upon all of the applicable evidence and facts relevant to that determination, including, but not limited to, the bargaining history.[11]

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[10] *State of New York, Unified Court System*, 15 PERB ¶ 3038, 3062 (1982).
[11] *See State of New York*, 36 PERB ¶ 3007, 3020 (2003) ("Representation proceedings are fundamentally investigations conducted by PERB"); *see also Syracuse City Sch Dist*, 37 PERB ¶ 3003 (2004); *Matter of Halley*, 30 PERB ¶ 3023 (1997);

IT IS, THEREFORE, ORDERED, that the motion of Council 82 to file interlocutory exceptions to the interim decision is granted, the ALJ's decision is affirmed as to the timeliness of the PBA's petition, the sufficiency of the showing of interest, and the propriety of filing a single petition, and the matter is remanded for further proceedings consistent with this opinion.

DATED: January 21, 2020
Albany, New York

John F. Wirenius, Chairperson

Anthony Zumbolo, Member

Monte A. Klein, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

TOWN OF TUXEDO POLICE BENEVOLENT ASSOCIATION, INC. (DISPATCHER UNIT),

Charging Party,

-and- **CASE NO. U-35288**

TOWN OF TUXEDO,

Respondent.

KEITH P. BYRON, ESQ., for Charging Party

GIRVIN & FERLAZZO, PC (CHRISTOPHER P. LANGLOIS of counsel), for Respondent

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by the Town of Tuxedo Police Benevolent Association, Inc. (Dispatcher Unit) (PBA) to a decision of an Administrative Law Judge (ALJ) dismissing its improper practice charge alleging that the Town of Tuxedo (Town) violated § 209-a.1 (d) of the Public Employees' Fair Employment Act (Act).[1] The charge alleged that the Town violated its duty to negotiate in good faith by unilaterally transferring the work of unit dispatchers to the County of Orange 911 dispatchers ("Orange County 911").

EXCEPTIONS

The PBA filed four exceptions to the ALJ's decision. First, the PBA excepts to "all parts of the ALJ's decision that were used to support the parts of the decision and order being challenged by the PBA in these exceptions."[2] The PBA's second exception

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[1] 52 PERB ¶ 4550 (2019).
[2] Exceptions at p 2.

asserts that the ALJ erred in finding that "[t]he question of exclusivity need not be reached, . . . because the Town abolished its dispatching services."[3] The PBA contends in its third exception that the ALJ erred in finding that "the Town maintains absolutely no control over the dispatching of police, fire, and EMS," and that the "Town makes no payment to the County for dispatching services."[4] Finally, the PBA excepts to the ALJ's finding that the testimony of the PBA's president regarding the transfer of dispatcher duties to police officers was "irrelevant because the charge is devoid of any allegation of such a transfer," confirming her ruling at the hearing to the same effect.

The Town filed a response supporting the ALJ's decision.

For the reasons that follow, we affirm the ALJ's decision, and dismiss the charge.

FACTS

In the spring of 2015, Anthony Solfaro, President of the New York State Union of Police Associations (NYSUPA), became aware that the Town was concerned about its fiscal condition.[5] Discussions were held between the PBA, represented by Solfaro, and the Town, about ways in which the PBA might be able to work with the Town to maintain both the police unit and the dispatcher unit. Both Solfaro and PBA President, William E. Hall, monitored Town Board meetings at which various proposals were made to move from Town-provided dispatching to dispatching by Orange County 911.

The Town Board minutes from its January 25, 2016 meeting include an "update" made by Councilmember McMillan stating, in pertinent part:

> Councilmember McMillan gave an update on the 911 migration efforts. The town will be leasing the equipment from the County for $1,800.00 a month. After 2 years the system will be changed to microwave and the cost will be absorbed by the County. In approx.

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[3] Exceptions at p 2, quoting *Town of Tuxedo*, 52 PERB ¶ 4550 at 7.
[4] *Id*.
[5] Because the PBA is a NYSUPA affiliate, NYSUPA assists the PBA in collective negotiations.

> [sic] 3 weeks it will go to testing phase with the dispatchers working with 911. When the system is working as anticipated, they will turn it over entirely to 911. Councilmember Loncar and Police Lieutenant Norton are working on the project as well.[6]

Solfaro also testified to a statement by the Town's attorney in a post-arbitration submission in an unrelated case. There, Solfaro stated that "elimination of the dispatch department alone (and the transfer of those functions to Orange County 911), resulted in a savings of approximately $225,000."[7] On or about August 4, 2016, the Town abolished the position of dispatcher, terminating two full-time dispatchers, as the third full-time dispatcher had retired prior to the abolition of her position.[8]

The three former full-time dispatchers testified on behalf of the PBA. Dawn Marie Graham, who served as a Town dispatcher for nearly 30 years, testified to the duties of a Town dispatcher, including answering all incoming phone calls, walk-in complaints, dispatching appropriate emergency personnel depending on the call, and running data for the officers. Graham, Gregory Hoffman (who had 12 years of experience), and Margaret Mary Baruffaldi (who had served as a dispatcher for 15 years) testified that dispatchers also performed clerical work for the police department, including making all initial entries into the police blotter system, keeping a log of all radio traffic, "handling" warrants, and, in Graham's and Baruffaldi's experience, performing matron duties when a female was in custody. Hoffman also addressed orders of protection, domestic incident reports, parking tickets, and payroll. Hoffman further testified that the dispatchers acted as security for the building, utilizing a buzzer system to allow people into the building.

Graham also testified that the full-time dispatchers for the Town worked three

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[6] Charging Party, Ex 1.
[7] Charging Party, Ex 4.
[8] Charge ¶ D.

different shifts, Monday through Friday. Part-time, non-unit dispatchers covered absences of full-time dispatchers and worked the majority of the weekend shifts. Graham testified that, by July 2016, she earned six weeks of vacation annually, and the other two full-time dispatchers earned four weeks of vacation. If part-time dispatchers were unavailable to provide coverage, a non-unit police officer would do so.

Graham, who is now employed by Orange County 911, further testified that she performed the same police dispatch duties of radio communications with police as a dispatcher for Orange County 911 that she performed while working for the Town.

PBA President, William E. Hall, also testified, confirming previous testimony about the hours worked by the full-time dispatchers. Hall then began to testify about full-time dispatcher duties transferred to Town police officers. After verifying that the PBA president intended his testimony to be the basis for a claim that the transfer of these duties to police officers violated the Act, the ALJ ruled this testimony was irrelevant, on the ground that the charge was devoid of any allegation of such a transfer. She affirmed this ruling in her written decision.

Town Supervisor, Michael Rost, was the Town's only witness, testifying that the Town had not provided any dispatch services since August 2016, and had not collected taxes from Town residents for dispatch services performed by Orange County 911 since August 2016. In addition, Rost testified that County taxes had not increased since August 2016, when the Town eliminated its dispatchers, and all dispatching within the Town was done by Orange County 911 for all three services within the Town, that is, police, fire and EMS.[9]

[9] According to Rost, prior to the ending of Town dispatching, the County 911 dispatched fire and EMS calls. Tr, at pp 78-79, 84 (Rost). Graham and Baruffaldi disputed this, claiming that until August 2016, the Town was the primary dispatcher for all three services. Tr, at pp 82-83 (Graham), 87 (Baruffaldi).

Rost described the process for switching dispatching services from the Town to Orange County 911. Rost testified that, because Orange County 911 equipment could not cover all areas of the Town, the Town added equipment that would both boost and filter the radio signals received from Orange County 911. In addition, Rost testified that the Town made improvements to one or more towers, and the County replaced an aging telephone line at the police department with a fiber optic line. Rost testified, without rebuttal, that the equipment improvements would have been necessary even if Orange County 911 had not taken over the Town's dispatch function.

Rost testified that the Town had gone out of the business of dispatching due to a $1.5 million shortfall in its bank balance. One of the ways the Town chose to help close this gap was to eliminate police, fire and EMS dispatching by the Town, and instead rely on Orange County 911 to do all dispatching. Rost testified that the use of Orange County 911 dispatching services yielded a savings of $225,000. Rost further testified that the Town did not enter into a shared services agreement with the County for the provision of dispatch services; rather, the County offered dispatching services that rendered the Town's redundant by duplicating the Town's services without any cost to the Town.

On surrebuttal, Baruffaldi and Hoffman testified that, prior to August 2016, if a resident called Orange County 911 to report a fire, rather than calling the Town police dispatchers, 911 would dispatch directly, and/or inform the Town dispatchers.[10]

DISCUSSION

The PBA's first exception, to "all parts of the ALJ's decision that were used to support the parts of the decision and order being challenged by the PBA in these

[10] Tr, at pp 91-93 (Baruffaldi), 96 (Hoffman).

exceptions," may be swiftly addressed. We have often found exceptions to be "deficient because they fail to comply with the requirements of § 213.2 (b) of our Rules" where the "exceptions do not set forth specifically the questions or policy to which exceptions are taken, identify that part of the decision to which exceptions are taken, or state the grounds for exceptions."[11] Where, as here, "exceptions do not comply with § 213.2 (b) of the Rules through overbroad statements absent specificity," we have repeatedly found that "such blunderbuss exceptions do not comport with [our] Rules of Procedure," and "do not preserve arguments not expressly made in the exceptions."[12]

Likewise, we are not persuaded by the PBA's exception to the ALJ's refusal to allow it to amend the charge, either expressly or *nunc pro tunc*, to allow it to assert a claim on behalf of police officers who were required to take up the clerical and security duties formerly performed by the Town dispatchers, but not taken up by County 911 dispatchers. The PBA extensively cites judicial decisions applying the New York Civil Practice Law and Rules (CPLR) to allow liberal amendment of pleadings. These decisions, however, do not establish grounds under which a claim that is, under our Rules, time-barred and does not relate back to the original charge may be revived.

As a threshold matter, we reject the PBA's suggestion that we must apply to our Rules of Procedure (Rules) decisions applying the CPLR. The CPLR applies to civil judicial proceedings. An improper practice charge before PERB is not a judicial

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[11] *Board of Educ, City Sch Dist City of New York*, 52 PERB ¶ 3001, 3004 (2019), quoting *District Council 37*, 50 PERB ¶ 3038, 3161 (2017), quoting Rules § 213.2 (b) (internal quotation and editing marks omitted).

[12] *Id*; see also *State of New York (DOCCS)*, 52 PERB ¶ 3003, 3016, n 2 (2019) (editing marks omitted), quoting *Village of Saranac Lake*, 51 PERB ¶ 3034, n 4 (2018); see also NYCTA, 47 PERB ¶ 3032, 3009 (2014), quoting *UFT (Pinkard)*, 47 PERB ¶ 3020, 3061 (2014); *Town of Orangetown*, 40 PERB ¶ 3008 (2007), *confd sub nom Matter of Town of Orangetown v NYS Pub Empl Relations Bd*, 40 PERB ¶ 7008 (Sup Ct Albany Co 2007); *Town of Walkill*, 42 PERB ¶ 3006 (2009).

proceeding, and the CPLR does not apply.[13]

We have long held that leave to amend is not properly granted if the result would be to add a new substantive claim otherwise barred by our four-month statute of limitations.[14] Pursuant to § 204.1 (a) (1) of the Rules, the four-month time period for filing a charge "commences when a charging party had actual or constructive knowledge of the act or acts that form the basis for the charge."[15] Consistent with § 204.1 (d) of the Rules, "an ALJ has considerable discretion to grant or deny a request to amend a charge so long as the decision is consistent with due process."[16]

The original charge was filed on September 13, 2016. The request to amend was not made until the hearing, on July 25, 2017.[17] Thus, the PBA had ample time to raise the new claim—that the Act was violated "by virtue of police officers taking over some of the dispatchers' duties"—during the ten months from when the charge was filed, which itself was a little over a month after the abolition of the position of dispatcher for the Town. No justification or excuse for the PBA's failure to timely move to amend the charge has been put forward.

Accordingly, the ALJ did not abuse her discretion in denying the PBA's motion to add untimely claims. The ALJ's decision that these wholly new claims were untimely

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[13] *District Council 37, AFSCME, AFL-CIO (Bacchus)*, 50 PERB ¶ 3013, 3058 (2017), citing *Matter of Fiedelman v New York State Dept of Health*, 58 NY2d 80, 82 (1983); *City of Syracuse v New York State Pub Empl Relations Bd*, 279 AD2d 98, 33 PERB ¶ 7022, (4th Dept 2000), *affg* 32 PERB ¶ 3029 (1999), *lv denied* 96 NY2d 717 (2001), 34 PERB ¶ 7025 (2001); *Public Employees Federation*, 31 PERB ¶ 3090, 3203, n 3 (1998); *Baldwinsville Cent Sch Dist*, 12 PERB ¶ 3040, 3074 (1979).
[14] *County of Monroe*, 36 PERB ¶ 3002 (2003); *Western-Regional OTB*, 14 PERB ¶ 3104 (1981).
[15] *Local 456, Intl Brthd of Teamsters (Rojas)*, 45 PERB ¶ 3031, 3072 (2012).
[16] *Id*, citing *Board of Educ of the City Sch Dist of the City of New York (Grassel)*, 41 PERB ¶ 3024 (2008); *UFT (Ayazi)*, 32 PERB ¶ 3069 (1999); *Village of Johnson City*, 12 PERB ¶ 3020 (1979).
[17] Tr, at 1, 63.

was simply correct, and has not been in any way refuted. Because these new claims were brought on behalf of different employees, asserting a different theory, and different alleged harms, they could not be deemed to relate back to the original charge.[18] Accordingly, we affirm the ALJ's refusal to allow the PBA's oral motion to amend the charge, and deny its exception to the ALJ's ruling.

The PBA's claim that the ALJ erred in declining to determine whether it had established exclusivity based on her factual finding that the Town had abolished the service of emergency dispatching is likewise unavailing. In its brief, the PBA does not flesh out its argument, but argues the question that the ALJ declined to decide, that is, whether the PBA had established exclusivity over the work in question.[19] However, that issue is only germane if the ALJ erred in finding that the Town did not violate the Act because, rather than transferring the work from unit employees, it ceased to provide the service of emergency dispatching. The PBA's claim of error here is unavailing.

In *Town of Brookhaven*, we reaffirmed that "it is a managerial prerogative to abolish a service."[20] We further explained that "[i]n considering whether a service has been abolished or merely transferred for performance by an agent, we look to the level of control exercised by the public employer."[21] In *Town of Brookhaven*, the Town had a past practice pursuant to which unit employees were assigned to transport, set up, and dismantle a portable dance floor owned by the Town and used on the occasion in question by an independent, not-for-profit corporation, the Stony Brook Theatre Dance

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[18] *Local 456, Intl Brthd of Teamsters (Rojas)*, 45 PERB ¶ 3031, at 3072.
[19] Brief in Support of Exceptions, Point I, (a)-(b), at 6-12.
[20] 28 PERB ¶ 3010, 3023 (1995), citing *City Sch Dist of the City of New Rochelle*, 4 PERB ¶ 3060 (1971).
[21] *Id*, citing *Saratoga Springs City Sch Dist*, 11 PERB ¶ 3037 (1978), *affd*, 68 AD2d 202, 12 PERB ¶ 7008 (3d Dept 1979), *lv denied*, 47 NY2d 711, 12 PERB ¶ 7012 (1979); *Co of Erie (Erie Co Med Ctr)*, 28 PERB ¶ 3015 (1995); *Board of Educ of the City Sch Dist of the City of Long Beach*, 26 PERB ¶ 3065 (1993).

Guild. In 1990, the Town informed the Guild that although it would no longer transport, set up and dismantle the dance floor, it would allow the Guild to borrow the dance floor and return it to the Town after the program was complete. Reversing the ALJ, the Board found that:

> [T]his record provides no support for a finding that the Town exercises anything but this *de minimis* control over the dance floor or its use by the Guild. What is involved in this case is a temporary loan of property *gratis.* The Town placed no restrictions on the use of the dance floor by the Guild, the manner in which it was to be transported or by whom, the locations where or the purpose for which it could be used. The Guild is unaffiliated with the Town in any way, it receives no support from the Town, it has no contractual relationship with the Town and it does not hold its performances on Town property. The only specific control exercised by the Town on this record is that it has given its permission to the Guild to use the dance floor. The Town has also tacitly approved the presence of the Guild agents on Town property to pick up and return the dance floor. This is a type and level of control markedly different from that exercised by public employers in other cases in which we have held there to have been an improper transfer of unit work.[22]

Under these circumstances, we held that "the Town did not unilaterally reassign unit work to non-unit personnel; rather it has discontinued the service altogether. Its decision to do so is not subject to mandatory negotiation."[23]

Here, as in *Town of Brookhaven*, we find that the public employer eliminated the service it had previously provided. In so finding, we note that the Orange County 911 provided dispatching services to the residents of the Town when such residents called 911 prior to the Town's abolition of its dispatchers, as testified to by Hoffman and Rost, with qualified corroboration from Baruffaldi and Graham. Further, we note that, according to Rost's uncontradicted testimony, the Town did not enter into a shared services agreement with the County to provide dispatching services.

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[22] *Id*.
[23] *Id*.

Unlike the facts before us in *City of Canandaigua*, the Town here did not depute the County to act on its behalf to fulfill an acknowledged obligation.[24] Rather, it ceased providing a service that the Orange County 911 service already provided entirely independent of the Town, rendering the Town's services essentially duplicative. No evidence was adduced to suggest that the Town in any way exerts any control over the County's provision of dispatching service, whether as to means, personnel, methodology, or otherwise, which under our reasoning in *Town of Brookhaven* and *Canandaigua*, would be required to establish an unlawful transfer of unit work.

The PBA asserts that the Town's action in facilitating the provision of dispatch services by the County should be deemed sufficient under *County of Chautauqua* to establish sufficient control, or at least a "voluntary decision" to transfer unit work, sufficing to establish a violation.[25] This argument does not address the fact that *County of Chautauqua* involved the designation of a private entity to fulfill the County's responsibilities, without negotiation. The PBA's reliance on *County of Chautauqua* fails for that very reason—the County in that matter assigned its contracts to the private entity in that case so that it "could stand in the place of the County in developing job training programs to County residents by County employees."[26]

Here, by contrast, the County is unaffiliated with the Town in any way, it receives no support from the Town, it has no contractual relationship with the Town, and the County was already providing the service when residents called its number.

Nor do the equipment enhancements undermine the ALJ's conclusion. Rost testified without contradiction that the Town would have needed to perform the

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[24] 47 PERB ¶ 3025, 3073 (2014), citing, *inter alia*, *County of Chautauqua*, 21 PERB ¶ 3057, 3123-3124 (1988).
[25] 21 PERB ¶ 3057, at 3124.
[26] 21 PERB ¶ 3057, at 3123.

upgrades whether or not it ceased providing dispatching services. The ALJ relied upon this testimony, finding it credible. As we have often stated, "[c]redibility determinations by an ALJ are generally entitled to "great weight unless there is objective evidence in the record compelling a conclusion that the credibility finding is manifestly incorrect."[27] Here, the PBA has not presented any such objective evidence compelling a finding that the ALJ's credibility was manifest error, and therefore we will not disturb it.[28] Accordingly, and for the reasons given above, we affirm the ALJ's decision, and dismiss the charge.

IT IS, THEREFORE, ORDERED that the ALJ's decision is affirmed, and the charge must be, and hereby is, dismissed.

DATED: January 21, 2020
Albany, New York

John F. Wirenius, Chairperson

Anthony Zumbolo, Member

Monte A. Klein, Member

[27] *New York City Bd of Educ of the City of New York (Elgalad)*, 52 PERB ¶ 3001, 3005 (2019), quoting *Bellmore-Merrick Cent Sch Dist*, 48 PERB ¶ 3022, at 3077; *see also Village of Scarsdale*, 50 PERB ¶ 3007, 3037, n 51 (2017); *County of Clinton*, 47 PERB ¶ 3026, 3079 (2014); *Village of Endicott*, 47 PERB ¶ 3017, 3051 (2014); *City of Rochester*, 23 PERB ¶ 3049 (1990); *Hempstead Housing Auth*, 12 PERB ¶ 3054 (1979).

[28] *Id*; *see also Central New York Regional Transp Auth*, 52 PERB ¶ 3008 (2019).