

ENFORCEMENT OF PERB DECISIONS AND ORDERS

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INTRODUCTION

The Taylor Law grants the PERB Board broad remedial powers to address violations of the Taylor Law, but PERB's orders are not self-enforcing. This presentation will cover the procedure to enforce a PERB remedial order when a party fails or refuses to comply.

STATUTORY LANGUAGE: CSL § 213

The Taylor Law provides that the PERB Board's final orders are enforceable by the Board in a CPLR Article 78 proceeding. CSL § 213 (a) (ii). Therefore, only the Board, through Office of Counsel, may bring an enforcement action.

The Taylor Law provides for no time limitation within which to file an enforcement action. If Office of Counsel brings an enforcement action prior to the 30 day statute of limitations within which to challenge a Board decision, respondent may raise in their answer any questions allowed in a standard Article 78 action challenging the decision; if respondent raises the issue that the Board's decision is not supported by substantial evidence, the matter may be transferred to the Appellate Division for disposition. CSL § 213 (c).

The court in which the enforcement proceeding is brought has the power to grant a restraining order or other appropriate temporary relief. CSL § 213 (d). The court also has the power to enforce, modify and enforce, or set aside in whole or in part the order of the Board. CSL § 213 (d).

ENFORCEMENT: PRACTICE AND PROCEDURE

The Board's remedial orders are typically worded in broad terms to allow the parties an opportunity to negotiate an outcome which suits their particular needs. PERB does not monitor the actions of the parties following the issuance of its decisions and orders; the Board assumes its remedial orders are being followed unless and until Office of Counsel receives a request for enforcement from a party. If a respondent has not complied with an order, in whole or in part, charging party bears the obligation to bring the matter to the attention of Office of Counsel.

As the Taylor Law provides no time limit within which PERB must bring an enforcement action, Office of Counsel may do so at any time. Immediate action may be taken in circumstances where noncompliance is apparent or in cases involving repeated or grave violations of the statute.

The Taylor Law does not provide any standards for review of a request for enforcement; Office of Counsel has determined the procedures internally and consistent with PERB's Rules of Procedure (Rules). The procedure for requesting that PERB seek a judicial order enforcing its remedial order is contained in PERB's Rules § 213.11. A charging party seeking enforcement of a Board order may file a request for enforcement, with supportive affirmations, electronically with Office of Counsel at officeofcounsel@perb.ny.gov.¹ PERB does not provide a particular application or petition form for use in an enforcement request. Rules § 213.11 (b). The letter, supported by affidavits signed by persons with personal knowledge of the facts, must state the reasons why a judicial order of enforcement is necessary, and provide a clear explanation of the circumstances at hand, the unsuccessful attempts by charging party to secure the ordered relief from respondent, and affirmatively state which portion(s) of the Board's order with which respondent has failed to comply. The submission filed with PERB must include proof that it was served upon all other parties to the underlying administrative action. *Id.*

Upon receipt of a request for enforcement, Office of Counsel will review the submission and contact respondent electronically, with copies to all parties, setting a schedule by which respondent and the other parties before the Board may file responses in support of the enforcement request or stating why an enforcement action is not necessary. Rules § 213.11 (c). Responses should also be filed electronically, with copies to all parties, and must also include proof of service upon all other parties. *Id.*

¹ Please reference PERB's rules for electronic filing with Office of Counsel, found on PERB's website at www.perb.ny.gov/electronic-filing.

After receipt of all submissions, Office of Counsel will schedule a conference with all parties in an attempt to clarify the issues and resolve the matter. Rarely, where material issues of fact arise, Office of Counsel may refer the matter to an ALJ for a limited review of the existing record to address those issues and provide a recommendation to Office of Counsel. See, e.g., *Catskill Regional Off-Track Betting Corp.*, 31 PERB ¶ 3071 (1998). Typically, upon agreement by the parties, the matter is placed on a limited hold to allow the parties an opportunity to resolve the matter informally. Failing such agreement, Office of Counsel will review all submissions, including the information obtained during the conference, and, as appropriate, a recommendation from the assigned ALJ, and decide whether or not a petition for a judicial order of enforcement is appropriate. Rules § 213.11 (d). Office of Counsel's decision is sent in writing to all parties.

Where compliance with the Board's order requires cooperation from charging party, for example, the production of relevant data to calculate a make-whole remedy, and charging party fails or refuses to provide necessary information, Office of Counsel will not proceed with an enforcement action. *Maine-Endwell Transp. Ass'n. and Main-Endwell Cent. Sch. Dist.*, 57 PERB ¶ 5502 (2024). Also, Office of Counsel may be satisfied upon a finding that there is substantial compliance with the Board's order. *Uniformed Fire Officers Ass'n for City of Yonkers and City of Yonkers*, 57 PERB ¶ 5501 (2024). However, Office of Counsel will petition the court solely on the basis that respondent failed to properly post the Board's notice. *NYS PERB v Bd. of Educ. Of the City Sch. Dist. of City of NY*, 52 PERB ¶ 7011(2019). This is because notice to the bargaining unit that their rights are protected forms the heart of PERB's remedial order. Also, Office of Counsel may petition the court for enforcement where the specific calculations for individual relief have not yet been made, but compliance with the Board's order has been refused. *NYS PERB v City of Kingston*, 49 PERB ¶ 7008 (2016).

Should Office of Counsel determine that it will not proceed, it will issue a letter decision to the parties. If Office of Counsel decides that action is required, it will advise the parties and prepare the papers necessary to move

for judicial enforcement of the Board's order. PERB's Rules provide no time limitations for Office of Counsel's issuance of these notifications.

THE COURT ACTION

Office of Counsel will initiate an enforcement action pursuant to CPLR Article 78 via an order to show cause and petition, served on respondent, to provide respondent an opportunity to be heard on the injunction. Parties to the underlying administrative proceeding may intervene in the enforcement proceeding.

Although PERB may bring an enforcement action immediately upon the Board's issuance of its order, as a practical matter, Office of Counsel does not bring an enforcement action until after the 30-day statute of limitations within which to challenge the Board's decision has expired. Further, whenever a Board decision is challenged, Office of Counsel typically raises a counter claim for enforcement in its answer to the petition. This allows the court to grant PERB's request for enforcement as part of the pending case, without Office of Counsel having to initiate a second Article 78 action for enforcement after the court has decided the challenge. However, as it is separate from an aggrieved party's Article 78 proceeding, an enforcement action may be brought separately. *NYS PERB v United Univ. Professions, Inc.*, 14 PERB ¶ 7014 (Sup Ct, Albany County 1981).

Where there is no challenge to the Board's remedial order, and an enforcement action is brought beyond the 30-day time period, no challenge to the Board's order or remedy may be raised in the enforcement proceeding, except to the extent that the order issued is wholly beyond PERB's jurisdiction. See e.g. *NYS PERB v Buffalo Bd. of Educ.*, 39 NY2d 86, 9 PERB ¶ 7004 (1976); *NYS PERB v Village of Geneseo*, 95 AD2d 915, 16 PERB ¶ 7019 (3d Dept 1983).

When reviewing a remedial order in an enforcement proceeding, the court determines only whether PERB's order is a proper exercise of its remedial authority; respondent's claims that it had actually complied are barred at this juncture. *NYS PERB v County of Westchester*, 280 AD2d 849 (3d

Dept 2001); *NYS PERB v Buffalo Bd. of Educ.*, *supra.*; *NYS PERB v City of White Plains*, 19 PERB ¶ 7019 (Sup Ct, New York County 1986); *NYS PERB v Elba Cent. Sch. Dist.*, 17 PERB ¶ 7011 (Sup Ct, Genesee County 1984); *NYS PERB v Peekskill Mun. Housing Auth.*, 15 PERB ¶ 7005 (Sup Ct, New York County 1982); *City of Albany v Helsby*, 56 AD2d 976, 10 PERB 7006 (3d Dept 1977). Courts have long deferred to PERB's expertise, holding that the remedies to be ordered under an improper practice charge are matters particularly within PERB's jurisdiction. See, e.g., *Village of Scotia v NYS PERB*, 241 AD2d 29, 31 PERB ¶ 7008 (3d Dept 1998); *NYC Transit Auth. v NYS PERB*, 31 PERB ¶ 7012 (2d Dept 1998); *United Univ. Professions v Newman*, 86 AD2d 734, 15 PERB ¶ 7001 (3d Dept 1982), *leave to appeal den'd* 56 NY2d 504, 15 PERB ¶ 7010 (1982); *City of Albany v Helsby*, 29 NY2d 433, 5 PERB ¶ 7000 (1972); *Yonkers Fed'n of Teachers v Helsby*, 45 AD2d 132, 7 PERB ¶ 7011 (3d Dept 1974).

An enforcement action is the first of two prongs of a compliance proceeding. The first petition Office of Counsel files requests that the court issue an order directing that respondent comply with the Board's order. Disobedience of the court's order of enforcement is punishable through contempt proceedings. See, e.g., *NYS PERB v County of Westchester*, *supra.*; *NYS PERB v Bd. of Educ. Of the City of Buffalo*, 10 PERB ¶ 7004 (Sup Ct, Erie County 1980). Should respondent fail to follow the court's order to comply, Office of Counsel will move the court for a contempt order, seeking sanctions as appropriate. See *NYS PERB v County of Nassau*, 14 PERB ¶ 7003 (Sup Ct, Albany County 1980); *NYS PERB v Bd. of Educ. of the City of Buffalo*, *supra.*

Where Office of Counsel obtained the court's order for enforcement through a counter claim in an Article 78 action challenging a Board decision, it will perform the same investigation as described above, and may move directly for a judicial contempt order.

Contempt will be found where a lawful order of the court, clearly expressing an unequivocal mandate, was in effect; there is a reasonable certainty that the order has been disobeyed, and the party to be held in contempt must have had knowledge of the court's order, although formal

service of the order upon the party is not required; and prejudice to the right of a party to the litigation must be demonstrated. *NYS PERB v Catskill Reg. Off-Track Betting Corp.*, *supra.*, citing *McCormick v Axelrod*, 59 NY2d 574 (1983); *Chambers v Old Stone Hill Rd. Assocs.*, 66 AD3d 944 (2d Dept 2009).

COMMON ENFORCEMENT ISSUES

I. PERB REMEDIAL ORDERS

It is well settled that the intent of the Board's remedial make whole orders are just that: to make the effected employee whole, as he/she was prior to the employer's violative act, and no more. See *e.g.*, *Matter of Civ. Serv. Employees Ass'n v NYS PERB*, 180 Misc2d 869 (1999), citing *Burnt Hills-Ballston Lake Cent. Sch. Dist.*, 25 PERB ¶ 3066 (1992). In *City of Troy*, 28 PERB ¶ 3027(1995), the Board stated that “[u]nder § 205.5 (d) of the Act, it is our right and obligation upon finding an improper practice to have been committed to order such remedial relief as will effectuate the policies of the Act and it is that principle which both guides and limits our remedial determination.” See *International Brotherhood of Teamsters, Local 182 (Hoke)*, 30 PERB ¶ 3005 (1997) (make-whole relief is intended to place aggrieved parties in the position they would have been in had the statutory improper practice not been committed).

During an enforcement proceeding, questions may arise regarding the calculation of a make whole order. For example, a back pay period typically runs from the date of the unlawful activity to the date the employee is offered unconditional reinstatement. See, *e.g.*, *New York City Transit Auth.*, 21 PERB ¶ 3007 (1988), *confirmed sub nom. New York City Transit Auth v New York State Pub Empl Rel Bd*, 154 AD2d 680, 22 PERB ¶ 7036 (2d Dept 1989), *order modified*, 154 AD2d 680, 22 PERB ¶ 7037 (2d Dept 1989).

A. Interest

The Board has declared its stated policy that any monetary make-whole relief should include interest unless there are circumstances that would justify a deviation from this principle. See *Bd. of Educ. of City Sch. Dist. of City of Long Beach*, 35 PERB ¶ 3020 (2002), citing *Dunkirk City Sch. Dist.*, 17 PERB ¶ 3064, 3099 (1984).

In *County of Erie*, 43 PERB ¶ 3016 (2010), *confd County of Erie v New York State Pub Empl Rel Bd*, 81 AD3d 1313, 44 PERB ¶ 7002 (4th Dept 2011), PERB stated:

[p]ursuant to § 205.5 (d) of the Act, the Board has the authority to . . . take such affirmative action that will effectuate the policies of the Act, and to issue a make-whole remedy for the loss of wages and benefits, with interest at the maximum rate permitted by law, to any employees harmed as the result of the improper practice. Any factual disputes regarding the proper application of the remedial order to particular employees can be addressed during a compliance proceeding following judicial enforcement, pursuant to § 213(a) of the Act.

The purpose of an interest award was addressed in *Waverly Cent. Sch. Dist.*, 19 PERB ¶ 3080 (1986). In that case, the parties had agreed to a retroactive contract which made the employees whole for wage increases that had been denied them, and gave up back pay. However, the union claimed it was owed interest on money withheld from employees. Rejecting the union's claim for interest, PERB explained that interest was not proper because there was no monetary relief order. The Board reasoned that any interest under such circumstances would go beyond making the injured party whole and constitute exemplary damages. See also *City of Troy*, 28 PERB ¶ 3027 (1995) (finding that the ALJ exceeded the scope of the PERB's purely remedial relief powers by ordering the City to pay exemplary damages); *Op. PERB Counsel*, 27 PERB ¶ 5002 (1994) (the purpose of ordering back wages with interest is to put the individual who was wronged, back into the position he would have been, had wages not been wrongfully withheld. In other words, the interest on such an order is compensatory, not punitive); *Frankfort-Schuyler Teachers Association*, 26 PERB ¶ 3057 (1993) (awarding interest at the current prevailing rate of nine percent is not punitive); *State of New York (DOCS)*, 43 PERB ¶ 3039 (2010) (interest cannot be awarded if it goes beyond making an injured party whole).

Interest on backpay is calculated after any appropriate offsets have been taken against the gross amount. *Op. Counsel*, 27 PERB ¶ 5002 (1994).

PERB has found that it is in keeping with the policies of the Act to award interest at the maximum legal rate. The legal rate is currently based upon CPLR § 5004 and other statutes that are relevant to the status of the employer, such as New York State General Municipal Law § 3-a. See *Westbury Teachers Assn*, 14 PERB ¶ 3063 (1981); *Frankfort-Schuyler Cent Sch. Dist.*, 26 PERB ¶ 3057 (1993); *BOCES, Rockland Cnty.*, 8 PERB ¶ 3018 (1975).

The interest rate has changed over time from three percent to the current uniform nine percent rate. In *Gates-Chili Teachers Association*, 15 PERB ¶ 3062, fn. 4 (1982), the Board recognized that CPLR § 5004 as amended by L. 1981 c.258 raised the interest on litigated obligations from six percent to nine percent effective June 25, 1981.

In *Frankfort-Schuyler Teachers Association*, 26 PERB ¶ 3057 (1993), the Board held that it has “adopted as our interest rate the interest rates set forth in CPLR 5004, and General Municipal Law § 3-a, which are currently fixed at 9% per annum . . .” See, e.g., *City of Albany*, 42 PERB ¶ 3005 (2009) (ordering City of Albany to make whole any unit employees with interest at the maximum legal rate); *City of Oswego*, 41 PERB ¶ 3011 (2008) (ordering City to make whole unit employee with interest at the maximum legal rate).

B. Duty to Mitigate

Although there are not many decisions issued by the Board on this issue, PERB has endorsed the principle that an employee has an obligation to mitigate damages; therefore, any award of back pay in a discharge case is subject to the employee’s duty to mitigate. In *Half Hollow Hills Community Library*, 6 PERB ¶ 3043 (1973), the Board offset against the back pay order amounts the employee could have earned through the exercise of due diligence. Following the parties’ request, the Board subsequently reopened the case to determine whether employees granted backpay for discriminatory discharges had attempted to mitigate damages by diligently seeking employment after they were discharged. *Half Hollow Hills Comm. Library*, 7 PERB ¶ 3029 (1974). The burden of proving a lack of diligent effort to mitigate

rests with the employer. See, *Okun v S. Parker Hardware Co., Inc.*, 50 AD2d 781 (1st Dept 1975), citing *Milage v Woodward*, 186 N.Y. 252 (1906).

The duty to mitigate damages typically requires an employee to accept offers of substantially equivalent employment. A back pay order can be denied if the employee to be reinstated has rejected an offer from the employer of employment which is substantially similar to the lost employment. In *Hilton Cent. Sch. Dist.*, 14 PERB ¶ 3038 (1981), PERB removed from the ALJ's proposed order the requirement that the District reimburse the affected employees for lost wages and other benefits. Prior to their termination, the District offered the employees substantially equivalent, alternative employment that would have provided them with same pay and retention of all benefits, but the employees rejected this offer. See also *Spencer-Van Etten Cent. Sch. Dist.*, 21 PERB ¶ 3015 (1988); *County of Broome*, 22 PERB ¶ 3019 (1989).

That an offered position pays less than the position lost does not necessarily make the offer of employment dissimilar because the employer remains liable for any difference. See, e.g., *Gross v Elmsford Union Free Sch. Dist.*, 78 NY2d 13 (1991).

C. Offsets

A make-whole award will be reduced by amounts actually earned by the employee subsequent to the adverse action. In *Maine-Endwell Central School District*, 57 PERB ¶ 5502 (2024), PERB explained that an employer is permitted to offset from reimbursement amounts owed pursuant to a backpay order, outside income earned by an improperly discharged employee. See also *Town of Rochester*, 12 PERB ¶ 3078, (1979) (ordering Town to compensate employees for any wages and benefits lost as a result of the violations found together with interest at the rate of three percent, less the amount of wages actually earned by each from the date of layoff until reinstatement).

Because interest is compensatory only and part of make-whole relief, interest on back pay is properly calculated after any appropriate offsets have been taken against the gross amount of back pay. *Op. Counsel*, 27 PERB ¶ 5002 (1994).

PERB typically does not specifically order offsets for statutory benefits. Generally speaking, unemployment compensation does not constitute interim earnings; it is a separate, collateral benefit. *City of Niagara Falls*, 31 PERB ¶ 3085 (1998) (make-whole order encompasses such offsets for earnings denied as a result of the employees' loss of employment or unemployment insurance benefits received, as appropriate); *but see County of Erie Board of Elections*, 19 PERB ¶ 3069 (1986) (order compensating employee for lost wages and benefits offset any unemployment insurance, workers compensation, or earnings from other employment benefits received by the employee). The State retains the right to recoup identified overpayments from the employee. See CSL § 75 (3).

II. EXAMPLES OF ENFORCEMENT CASES

1. In *NYS PERB v Catskill Regional Off-Track Betting Corporation*, 29 PERB ¶ 7013 (Sup Ct, Albany County 1996); *NYS PERB v Catskill Reg. OTB*, 31 PERB ¶ 7014 (1998), PERB filed a petition for enforcement of order which, *inter alia*, concluded that the employer would not have discharged visible union activist for misconduct at a holiday party but for employee's organizing activities. Court granted PERB's petition for enforcement but denied petition for contempt remanding to PERB as remedial Order could not be complied with (could not be reinstated to specific branch office as that branch had closed).

2. *Matter of Manhasset Union Free School Dist. v NYS PERB*, 61 AD3d 1231 (3d Dept 2009), the petitioner brought an Article 78 review of a determination of PERB, which found that district violated its collective bargaining obligations by transferring student bus transportation work to outside contractors. The respondents, including PERB, counterclaimed to enforce PERB's Order. The Supreme Court, Appellate Division, Third Department, found that PERB's remedial Order, which required petitioner to cease transferring the unit work of transporting public school students to non-unit employees, should be modified because its enforcement would be unreasonable. The court reasoned that because the petitioner had already sold its buses and leased its garage, compliance with the Order could require taxpayer approval. Therefore, the court remanded the matter to PERB "to fashion a remedy that will allow for the contingencies that could prevent petitioner's compliance."

3. *Town of Islip v NYS PERB*, 23 NY3d 482 (2014), the Town brought an Article 78 proceeding to review a determination of PERB that the Town violated § 209–a.1 (d) when it unilaterally discontinued the practice of permanently assigning town-owned vehicles to certain employees. PERB cross-petitioned to enforce its Order. PERB's remedial Order required the Town to “[f]orthwith restore the vehicle assignments for commutation between home and work to those unit members who enjoyed the benefit . . .” The court found that this remedial Order would be unduly burdensome on the Town because the town had sold some or all of the cars that had been assigned to unit employees. The court held that forcing the Town to invest significant taxpayer dollars to replace these vehicles was unduly burdensome under the circumstances and does not further the goal of reaching a fair negotiated result. *Id.* Therefore, the Court of Appeals remanded the case back to PERB to revise the remedy.

4. In *City of Niagara Falls v NYS PERB*, 55 PERB ¶ 7006 (Sup Ct, Albany County 2022), the petitioner City commenced an Article 78 proceeding to reverse PERB’s Order that the City violated § 209-a.1 (d) when it unilaterally subcontracted all of the maintenance work associated with the operation of the City's municipal golf course to a private corporation. PERB filed a counterclaim for enforcement of its remedial Order that required the City, among other things, to restore the work to the bargaining unit. The court denied PERB’s counterclaim because it found that its remedial Order was unreasonable under the circumstances. The court reasoned that “[a] remedy fashioned by PERB for an improper practice should be upheld if reasonable. It is for the courts to examine the reasonable application of PERB's remedies.” (internal quotations and citations omitted). The court found that it would be problematic for the City to have to comply with the remedial Order because it would require the City to break a contract. The court further indicated that PERB had not provided any information as to how the Order could be enforced. See *County of Chautauqua*, 21 PERB ¶ 4588 (1988).

5. In *NYS PERB v County of Westchester*, 280 AD2d 849 (3d Dept 2001), PERB sought enforcement of its order that the respondent had violated the collective bargaining agreement by subcontracting nursing services to private entity. *Id.*, at 849. The respondent did not seek judicial review of PERB’s Order

within the 30-day limitations period of CSL § 213. The County argued it could not comply with order reinstating terminated nurses because the facility was removed from County's control and replaced by public benefit corporation. According to the court, "a party's ability to comply with a PERB order is immaterial to a court's consideration of an enforcement petition, as the facts surrounding a party's failure or inability to comply with the order is a subject to be addressed not during the enforcement proceeding, but during a subsequent contempt proceeding, should one be initiated."

6. *NYS PERB v Nassau Health Care Corp.*, 35 PERB ¶ 7003 (Sup Ct, New York County 2001). Determination by PERB that County of Nassau violated its bargaining obligation by unilaterally discontinuing food service operations and changing cafeteria hours was enforceable against NHCC as successor employer. Court rejected NHCC's argument that it was not a party to the improper practice charges and cannot be bound, citing Public Authorities Law to find that the State Legislature anticipated the successor would stand in the shoes of the County relative to the obligations and duties of the former employer. Court ordered the County to reimburse per PERB's Order, and NHCC to keep the cafeteria open.

7. In *NYS PERB v Brookhaven-Comsewogue Union Free School District*, 23 PERB ¶ 7009 (1990) (Sup Ct, Albany County 1990), PERB sought enforcement of its Order holding that the District engaged in unlawful interference and violated its bargaining obligation by unilaterally granting salary increases to certain unit employees, and requiring the District to pay the money improperly paid. The respondent District consented to the issuance of the court's order directing it to comply with PERB's Order.

8. *NYS PERB v United Univ. Professions, Inc.*, 14 PERB ¶ 7014 (Sup Ct, Albany County 1981), PERB sought enforcement of its Order and the respondent moved to dismiss on the ground that PERB had waived its right to bring an enforcement action because it failed to counterclaim for enforcement of its Order in a prior Article 78 proceeding brought by respondent. The court held that PERB did not waive its right to seek enforcement of its Order, reasoning that under New York practice, all counterclaims are permissive, rather than mandatory, and a defendant who

has claim against plaintiff may assert it as counterclaim or may bring separate action on it. Further, the court held that the Taylor Law specifically provides means by which Board shall enforce its orders by initiating separate proceeding in Supreme Court.

9. *NYS PERB v City of Kingston*, 49 PERB ¶ 7008 (Sup Ct, Albany County 2016), PERB commenced an action to enforce part of its Order requiring the City to make unit employees whole for wages and benefits lost. The City had not sought judicial review of PERB's determination under Article 78. The City argued that the proceeding was premature with respect to the Order for make whole relief because there was no finding that unit employees had suffered any lost wages and benefits, and the petition did not set forth the benefits or wages lost. The court found that the remedial Order was a reasonable exercise of PERB's broad remedial authority, citing well-settled law that "In enforcement proceedings, (the Court's) review is limited to determining whether PERB's orders were a proper exercise of its remedial power." (citations omitted).

10. In *NYS PERB v Bd. of Educ. of the City Sch. Dist. of the City of NY*, 52 PERB ¶ 7011 (Sup Ct, Albany County 2019), PERB filed a petition for enforcement of a final ALJ's remedial Order that required a District to post notice at "all physical and electronic locations customarily used to communicate with unit employees." The District argued that that it had complied with the remedial Order by posting a link to the PERB Notice within its Employee InfoHub website, and that PERB's interpretation of the remedial Order to require posting at physical work locations and dissemination by electronic mail to all UFT members employed by the District exceeded the scope of the remedial Order. The court determined that the District waived those arguments because it did not timely seek review of PERB's remedial Order. The court also found that the District's posting of the PERB Notice at a single electronic location, buried within the District's website, fell short of satisfying PERB's directive to provide employees with notice of the improper practice finding.

11. *NYS PERB v City of White Plains*, 73 Misc2d 1046 (Sup Ct, Albany County 1972), *aff'd* 45 AD2d 819 (1974). A respondent's claims that it had been complying with PERB's Order to negotiate in good faith and that an

enforcement order should not be entertained until the administrative procedures governing improper practices had been exhausted was rejected.

12. *NYS PERB v County of Nassau*, 35 PERB ¶ 7010 (Sup Ct, Albany County 2002). Court granted PERB an enforcement order where the County, PERB, and the Union negotiated an agreement satisfactory to all parties, but the County Legislature had not yet approved it.