

PERB Monthly Decision Digest



The following is a summary of decisions issued by the New York State Public Employment Relations Board in March of 2026. These include decisions of the Board, Directors, the Assistant Director, Administrative Law Judges, and Counsel's Office.

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MARCH 2026

Board Decisions:

U-39851, United Public Service Employees Union & Southampton Union Free School District & Claudia Maria Robles, dated March 30, 2026

The Board denied Charging Party's motion for leave to file interlocutory exceptions, which sought to appeal an ALJ's letter ruling declining to consolidate Case No. U-39851 with Charging Party's previously filed charges (Case Nos. U-38585, U-39247, and U-39648). The Board found that Charging Party failed to demonstrate extraordinary circumstances justifying the grant of her motion for several reasons:

- Most importantly, the ALJ handling Case Nos. U-38585 and U-39247 had already issued a decision in those matters, making it impossible to consolidate them with Charging Party's other pending cases.
- Regarding the consolidation of the remaining cases (U-39648 and U-39851), the Board found Charging Party's claims of prejudice and extraordinary circumstances to be conclusory and that no concrete harm was established.

The Board reiterated its prior finding that, while these cases may involve the same alleged wrongdoers, they concern "separate events" and do not demonstrate a "continued course of conduct" that relates back to the original charge. Each charge outlines "distinct and discrete actions."

U-40046, NYC Department of Education & UFT & Heather Eisenberg, dated March 30, 2026

The Board affirmed the Director's decision to dismiss Eisenberg's improper practice charge in its entirety. The Board found that most of Eisenberg's allegations, particularly those referencing events in May and June 2025 and earlier, were time-barred by the Board's four-month period of limitations, where the charge was filed on October 11, 2025. The Board found no merit to Eisenberg's contention that a "continuing violation doctrine" should apply, as the Board does not recognize this theory in improper practice proceedings. Even for arguably timely allegations (from September and October 2025),

the Board found that Eisenberg failed to allege facts sufficient to demonstrate that UFT breached its duty of fair representation.

U-40190, United Public Service Employees Union & Southampton Union Free School District & Claudia Maria Robles, dated March 30, 2026

The Board affirmed the Director's decision to dismiss Robles' improper practice charge against UPSEU. The Board first found that the Director did not err by not sending a deficiency notice, as PERB's rules allow the Director to dismiss a charge if the alleged facts do not, as a matter of law, constitute a violation. The Board further found that Robles provided no facts that would even arguably demonstrate arbitrary, discriminatory, or bad faith conduct by UPSEU where her own account showed that UPSEU was responsive to her concerns and explained the reasons for its actions or inactions.

UP-39036 & UP-39587, United Farm Workers of America & Porpiglia Farms, Inc., dated March 30, 2026

The Board affirmed in part and vacated in part the Hearing Officer's (HO) decision. PERB affirmed the HO's finding that Porpiglia violated § 704.6 of SERA, as amended by FLFLPA, by failing to provide certain information requested by the UFW.

The Board underscored that the obligation to provide requested, relevant information to a bargaining representative is a well-established part of the duty to bargain in good faith under various labor laws, including SERA. The Board agreed with the HO that the identity of bargaining unit workers is among the most relevant and required information for meaningful negotiations and found that a roster of employees is presumptively relevant and necessary. The Board further found that Porpiglia was under an obligation to bargain at the time most of the information requests were sent and reiterated its prior holding that the obligation to bargain continues during the pendency of a decertification proceeding.

The Board vacated the HO's finding that UFW's one-year period of insulation was stayed on March 29, 2024. PERB determined that the proper context for such a finding is a decertification proceeding, not this improper practice charge.

UP-39056 & UP-39446, United Farm Workers of America & Porpiglia Farms, Inc., dated March 30, 2026

The Board reviewed exceptions filed by both UFW and Porpiglia regarding a Hearing Officer's (HO) decision. The Board affirmed the HO's findings that Porpiglia violated §§ 704.1 (surveillance) and 704.10 (interference, restraint, or coercion) of SERA, as amended by FLFLPA, on two specific occasions. The Board emphasized that Porpiglia's actions created a fearful environment that chilled employees' willingness to speak with UFW representatives and interfered with their protected rights to organize.

The Board agreed with the HO that the "Babcock exception," which allows union

organizers access to private property when employees are "isolated" and "beyond the reach of reasonable union effort to communicate with them through usual channels," applies here. Porpiglia's reliance on *Cedar Point Nursery v. Hassid* (a U.S. Supreme Court case finding a California access regulation unconstitutional) was rejected. PERB explained that *Cedar Point* did not overrule *Babcock*, and the limited right of access for organizers is a "need-based background restriction" on property rights. The Board also found that Porpiglia's H-2A farmworkers are considered tenants and possess common law rights, including the right to invite guests of their choosing into their homes.

The Board also affirmed the HO's dismissal of the UFW's allegation that Porpiglia violated § 704.6 of SERA by repudiating a September 14, 2023, visitation agreement. PERB found that the alleged conduct amounted, at most, to a breach of agreement, not a total repudiation of the contract.

UP-39132, UP-39416, UP-39539, CU-6740 & DR-161, United Farm Workers of America & Cherry Lawn Fruit Farms, LLC, dated March 30, 2026

The Board addressed a Consolidated Motion to Dismiss Charges and Certification Petition filed by Cherry Lawn. Cherry Lawn asserted that it had ceased commercial farming operations effective January 1, 2026, and had no plans to employ farm laborers in the future. In light of its closure, Cherry Lawn requested the dismissal of unfair labor practice charges, the certification order, and proceedings related to compulsory impasse arbitration.

The Board granted Cherry Lawn's motion to dismiss Case No. UP-39132, which alleged a violation of § 704-b.2 (c) of SERA/FLFLPA (retaliation for union activity), a section of the Act that is currently enjoined by a federal court order. The Board denied Cherry Lawn's request for dismissal of the unfair labor practice charges UP-39416 (refusal to bargain by not providing information) and UP-39539 (unilateral change in working conditions and continued failure to provide information), and the declaratory ruling petition DR-161 (on arbitrability of UFW's proposals). The Board affirmed that the mere discontinuance of business does not render moot issues of unfair labor practices that were already adjudicated by a Hearing Officer. However, recognizing Cherry Lawn's claimed bona fide closure and the limitations on remedial authority in such circumstances, PERB decided to hold these matters in abeyance until the end of 2026, explaining that these cases will be administratively closed on January 4, 2027, provided there are no claims that Cherry Lawn has recommenced operations, hired farm laborers, or has a successor entity.

The Board denied Cherry Lawn's request to vacate the order certifying UFW as the exclusive bargaining representative because the certification had been duly issued by a Hearing Officer, affirmed by PERB and not appealed in court, thus remaining valid. While the closure means no current bargaining relationship exists, the certification itself was proper.

Public Sector Administrative Law Judge/Director Decisions:

U-38282, NYC Department of Education & UFT & Natasha Henry, dated March 2, 2026

The ALJ dismissed Henry's improper practice charge alleging that the UFT violated its duty of fair representation by suspending the CBA section related to the grievance process until November 12, 2021. The ALJ found that Henry failed to establish any facts that members were prevented from resolving working conditions issues or that the UFT breached its duty of fair representation. The ALJ also found that the UFT did not abandon its right to administer a grievance process, and members were not deprived of their fundamental rights to redress grievances through their representative.

U-39382, Town of Carmel & CSEA, dated March 5, 2026

The ALJ found that the Town violated § 209-a.1 (d) of the Act when it unilaterally discontinued the practice of allowing bargaining unit members in the Town's Recreation and Parks Department to use their accrued vacation days during the summer camp season. The ALJ determined that the subject matter of the change—time off and the procedures for its use—is a mandatory subject of bargaining and that CSEA successfully proved the existence of a binding past practice. It was undisputed that the Town did not negotiate with CSEA before issuing the new limitation on vacation leave during the summer camp season. Based on these findings, the ALJ concluded that the Town violated the Act.

U-38360, Smithtown Central School District & Smithtown Security Guards Assn and NYSUT & Thomas K. Lombardi, dated March 16, 2026

The ALJ dismissed Thomas K. Lombardi's improper practice charge alleging that the SSGA and NYSUT violated §§ 209-a.2 (a) and (c) of the Act by failing to appeal three of his grievances to the third step of the grievance procedure. The ALJ found that NYSUT cannot be a named respondent because it is not the certified or recognized employee organization that represents the security guards. With respect to SSGA, the ALJ found that the SSGA representatives, in good faith, believed Lombardi's grievances did not have merit and therefore did not pursue them further.

U-40134, NYC Department of Education & DC 37 & Fatima Basir, dated March 17, 2026

The Director dismissed Basir's improper practice charge alleging that the DOE unlawfully terminated her and that DC-37 violated its duty of fair representation by failing to pursue her termination grievance to arbitration. The Director found that Basir's charge against the DOE, filed more than nine months after her termination, was untimely. Even if the charge against the DOE had been timely, the Director found that Basir failed to allege facts that would arguably establish violations of the Act's relevant sections. The Director also found that Basir failed to provide any facts to suggest that DC-37's decision not to pursue her termination grievance to arbitration was arbitrary, in

bad faith, or discriminatory.

U-38585 & U-39247, United Public Service Employees Union & Southampton Union Free School District & Claudia Maria Robles, March 23, 2026

The ALJ dismissed Robles' improper practice charges in their entirety. The ALJ dismissed certain allegations before the hearing and dismissed the remainder of the claims against the District on the District's motion at the close of Robles' direct case. The ALJ found that Robles failed to meet her burden of demonstrating a "but for" relationship between any protected activity and the District's actions. The ALJ credited the District's explanations for its actions and explained that timing alone is insufficient to establish "but for" causation.

With respect to UPSEU, the ALJ found that UPSEU consistently responded to Robles' concerns and took action or explained why it could not act and that there was no evidence that UPSEU's representation was arbitrary, discriminatory, or undertaken in bad faith.

U-39593, Village of Pelham & Village of Pelham Police Benevolent Assn, dated March 24, 2026

The ALJ sustained the improper practice charge in part and denied it in part, finding that the Village violated §§ 209-a.1(a) and (d) of the Public Employees' Fair Employment Act in some instances, but not others. The charge alleged that the Village failed to comply with information requests regarding vacant sergeant positions.

E-2697, Niagara Frontier Transportation Authority, dated March 25, 2026

The ALJ granted the Niagara Frontier Transportation Authority's application to designate Jessica LaFalce as confidential, finding that she assisted managerial employees Director of Aviation Lee Weitz and Deputy Director of Aviation Russell Stark in a confidential capacity, where LaFalce has "unfettered, daily access" to all of Weitz's and Stark's emails, postal mail, telephone calls, and calendars, and was explicitly told, "there are no secrets; you can see everything coming in and everything going out" and where the ALJ determined that LaFalce acts in a confidential capacity.

U-39581, Niagara Frontier Transportation Authority, CSEA, dated March 25, 2026

The ALJ dismissed the improper practice charge filed by CSEA alleging that NFTA violated § 209-a.1(d) of the Act by refusing to provide information related to a termination grievance that CSEA intended to pursue to arbitration. The ALJ found that, at the time of adjudication, the matter no longer presented a "live controversy", making any decision advisory and therefore inappropriate, where the demand for arbitration was filed 10 days after the period allowed for in the CBA.

U-40144, County of Nassau & CSEA & Erika Lichy, dated March 25, 2026

The Director dismissed Lichy's improper practice charge alleging that CSEA violated § 209-a.2(c) of the Act when, in a MOA dated April 7, 2025, failed to include retroactive raises for employees who resigned from the County of Nassau prior to the MOA's effective date. The Director emphasized that an employee organization may negotiate a benefit that favors some unit employees while excluding others, provided it does not act in bad faith. Despite Lichy's summary allegations that CSEA's conduct was arbitrary and discriminatory, she failed to allege specific facts suggesting the omission of resignees was motivated by bad faith. The Director reiterated that mere negligence, even if acknowledged as an oversight, is insufficient to establish a breach of the duty of fair representation; the conduct must be "deliberately invidious or founded in bad faith". Since Lichy did not meet this standard, her charge was dismissed.

U-40207, County of Westchester & Westchester County Correction Superior Officers Assn, dated March 25, 2026

The Director dismissed the improper practice charge filed by the Westchester County Correction Superior Officers Association alleging that the County violated § 209-a.1(d) of the Act when it posted a job vacancy announcement for a Major Case Squad/Gang Intelligence Officer position in its Special Investigations Unit and sought applications from "eligible Correction Officers". The Director found that the charge was premature absent an allegation that the duties had been actually assigned to non-unit personnel. The Director noted that public employers are typically not obligated to negotiate over decisions to create new positions, job qualifications, or appointment criteria. Therefore, the charge was dismissed for failing to allege facts that would arguably establish a violation of § 209-a.1(d) of the Act.

C-6898, State of New York Unified Court System & CSEA & Philip Badalamenti, Jr., dated March 30, 2026

The ALJ dismissed the petition to fragment and decertify certain Court Officer titles from the bargaining unit represented by CSEA, within UCS. The ALJ found that Judiciary Law § 39 (7), which dictates that PERB is generally without authority to alter negotiating units, including those composed entirely of nonjudicial court employees, that were in existence prior to April 1, 1977 unless all affected parties consent, meant that PERB was without the authority to alter the CSEA State Judiciary Unit as petitioned. CSEA represented the non-judicial court employees before April 1, 1977 and both CSEA and UCS did not consent to the proposed alteration of the bargaining unit.

Private Sector Administrative Law Judge/Director Decisions:

UP-39914, United Farm Workers of America and Lynn-Ette and Sons, Inc., dated March 3, 2026

The Hearing Officer (HO) dismissed the unfair labor practice charges alleging that Lynn-Ette violated several sections of SERA by preparing union revocation letters, meeting with workers on work time, and coercing workers to sign these letters. The HO found that UFW failed to prove its allegations.

Copies of Decisions: Full copies of the decisions are available on Westlaw usually by the 15th of the month following issuance. Complete sets of the decisions are also available through PERB's Advance Decisions Electronic Subscription Service, issued monthly at an annual rate of \$400; if you are interested in subscribing, please email Boardsecretary@perb.ny.gov.