

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

COREY BIXBY,

Charging Party,

-and-

CASE NO. U-37300

AMALGAMATED TRANSIT UNION,
LOCAL 1321,

Respondent,

CAPITAL DISTRICT TRANSPORTATION
AUTHORITY,

Employer.

COREY BIXBY, *pro se*

LAW OFFICES OF THOMAS J. JORDAN, LLC (THOMAS J. JORDAN
of counsel), for Respondent

AMANDA A. AVERY, GENERAL COUNSEL, for Employer

DECISION OF ADMINISTRATIVE LAW JUDGE

On December 19, 2019, Corey Bixby filed an improper practice charge alleging, as amended, that the Amalgamated Transit Union, Local 1321 (Local 1321) violated §§ 209-a.2(a), (b), and (c) of the Public Employees' Fair Employment Act (Act).¹ Specifically, the charge alleges that the ATU failed to comply with its duty of fair

¹ On February 27, 2020, the parties were advised by letter that, pursuant to the Director's initial processing determination, the charge would not be processed with respect to the alleged violation of § 209-a.2(b) of the Act, as individuals lack standing to file a charge pursuant to that section. I confirm that determination here. Administrative Law Judge (ALJ) Ex 4; PERB's Rules of Procedure (Rules) § 204.2; *Transport Workers Union of America*, 27 PERB ¶ 3008 (1994).

representation when it: failed to collect dues from all members; did not enforce an increased uniform allowance for transportation supervisors; did not provide a complete printed contract book to its members; failed to contest changes made by the Capital District Transportation Authority (Authority) to its disciplinary procedure without negotiation with Local 1321; failed to process grievances filed; and allowed the Authority to pursue "old and out of date" discipline against bargaining unit members.² Local 1321 filed an answer denying the material allegations of the amended charge and asserting several affirmative defenses. The Authority joined in this matter as a statutory party, pursuant to § 209-a.3 of the Act, and filed an answer denying the material allegations of the charge.

A hearing was held on September 24, 2020, during which all parties appeared. Bixby appeared *pro se* while Local 1321 and the Authority were represented by counsel. Bixby and Local 1321 filed post-hearing briefs. The Authority declined to file a post-hearing brief.

FACTS

Corey Bixby testified on his own behalf. Bixby was employed by the Authority from December of 2006 until his termination on March 8, 2019. Bixby was a member of Local 1321 from March 1, 2007 until May 31, 2020.³ Bixby served as the President and Business Agent of Local 1321 from 2016 until 2018.⁴

² ALJ Ex 3.

³ Bixby grieved his termination with representation by Local 1321. Bixby and the Authority settled the grievance in May of 2020. Pursuant to that settlement, the parties agreed that Bixby's March 8, 2019 termination would be upheld.

⁴ The parties use the term President and Business Agent interchangeably throughout the record. For purposes of this decision, the President and Business Agent will be referred to as President.

Bixby testified that he attended the Amalgamated Transit Union Black Caucus in Buffalo from May 30, 2019 until June 2, 2019.⁵ He stated that he also attended the Amalgamated Transit Union Women's Caucus from June 20, 2019 until June 23, 2019.⁶ Bixby testified that during both of the caucuses, Local 1321 "officials" contacted the caucus officers and stated "that [Bixby] was not a member in good standing and that [he] should not be allowed to participate in th[e] caucuses."⁷ Bixby testified that he emailed Zachary Stever, financial secretary/treasurer for Local 1321, on August 23, 2019 to determine the amount of dues that he owed. The email states:

Attached is a copy of a check for Union dues for 2019.

I was terminated on March 9, 2019.

16 weeks x 16.40 = 262.40

26 weeks x 16.80 = 436.80

Total = 699.20

During several meetings, the last of which were on July 22 and August 19, I asked FS Stever what Union dues I owed and that any time that I was made aware of a lapse in dues I would bring them current immediately.

Since no correspondence has been forthcoming I provide the attached check for dues I believe are accurate for the year 2019 on August 23, 2019.⁸

Stever responded to Bixby's email on the same day, stating that, after his payment of \$699.20, he still owed \$28.00 for 2019.⁹ On March 5, 2020, Stever sent Bixby another

⁵ Charging Party's Ex 8.

⁶ *Id.*

⁷ Tr, at 16.

⁸ Charging Party's Ex 5.

⁹ *Id.*

email acknowledging receipt of a check in the amount of \$179.20 and stating that Bixby's dues were paid in full through the end of February 2020.¹⁰

Bixby testified that on August 19, 2019 he was advised that he would not be permitted to attend the Amalgamated Transit Union convention "due to failure to pay union dues and that [Bixby] was not a member in good standing."¹¹ On August 23, 2019, Bixby sent an e-mail to John Costa, President of the "international union," which states:

Please find attached an email to Local 1321 Financial Secretary Zachary Stever about Union dues since my termination on March 8, 2019. My arbitration has just recently been scheduled for December 12, 2019 so I will likely be terminated for almost a full year before I get my job back.

President Moquin notified me on Monday August 19 that he would be in contact with me and the other elected delegates to confirm travel arrangements for the ATU Convention in September. Since Monday I have been advised that President Moquin plans on sending VP Hichman, as the elected alternate, to the convention as I am not a member in good standing. This is untrue and retaliation. I[n] addition these officers attempted to undermine my attendance at the ATU Women's Caucus by calling them and saying I was not in good standing and then reversing that decision.

Steve Moquin has not paid dues between August 2012 and December 2015. Mark Hichman did not pay dues while he was out of work for an entire year. Joe Falu has not paid dues for 90 days during 2019 and he is an Albany Union rep. Other members do not pay or make up dues while they are out of work. President Moquin and VP Hichman have not told any of their friends that are not paying dues that they must be paid, so why am I being singled out?

I am duly elected as a delegate to the 2019 convention and any attempt to undermine that will need to be corrected.

Please advise.¹²

¹⁰ *Id.*

¹¹ Tr, at 19.

¹² Charging Party's Ex 9.

On cross-examination, Bixby acknowledged that he participated in the 2019 convention as a delegate without issue.¹³

Bixby testified that when he was President of Local 1321 from 2016 until 2018, he was employed and paid by Local 1321. He stated that he paid dues to Local 1321 during that time, as well as when he was employed by the Authority.¹⁴ Bixby testified that when he was President, he became aware of the process by which the Authority deducts union dues. He stated that Local 1321 submits a dues deduction authorization to the Authority, which permits the member's dues to be deducted from his or her paycheck. Bixby testified that during his tenure as President, he spoke to Authority managers about the Authority's ability to deduct dues in arrears if Local 1321 provided proof that additional dues were owed by members.¹⁵ He stated that the Authority responded, asserting that it "was only responsible for what was in the CBA and any collection of any dues in arrearage would be the responsibility of the union."¹⁶

On October 20, 2018, Local 1321 and the Authority entered into a tentative agreement setting forth the terms of the parties' CBA for June 16, 2018 through June 15, 2021.¹⁷ As Local 1321's then-President, Bixby was a signatory to the agreement.¹⁸ Bixby testified that after the ratification of the tentative agreement, Local 1321 did not "follow through" with seeking an increase in the uniform allowance for transportation

¹³ Tr, at 73.

¹⁴ Tr, at 34; see Charging Party's Ex 4.

¹⁵ Tr, at 39.

¹⁶ Tr, at 40.

¹⁷ Respondent's Ex 5. Local 1321 and the Authority negotiate separate contracts for Capital District Transit System Number One (System One) and Capital District Transit System Number Two (System Two); however, both CBAs are addressed in the tentative agreement. See Joint Ex 1; Charging Party's Ex 1.

¹⁸ Respondent's Ex 5.

supervisors.¹⁹ Regarding uniform allowances, the tentative agreement sets forth the following:

6) Article 18(c) Uniforms – Amend by increasing the following;

Operator – Currently - \$367.50
Increase amount on June 15, 2019 to \$377.50
Increase amount on June 15, 2020 to \$387.50
Increase amount on June 15, 2021 to \$400.00

7) Article 21(n) – Amend by increasing the following;

Master Tech – Currently - \$375
Increase amount on June 15, 2019 to \$400
Increase amount on June 15, 2020 to \$415
Increase amount on June 15, 2021 to \$430

Technician – Currently - \$340
Increase amount on June 15, 2019 to \$365
Increase amount on June 15, 2020 to \$380
Increase amount on June 15, 2021 to \$395

Support Tech – Currently - \$300
Increase amount on June 15, 2019 to \$325
Increase amount on June 15, 2020 to \$340
Increase amount on June 15, 2021 to \$355²⁰

Bixby testified that the tentative agreement specifically references Article 18(c), which is the article addressing uniform allowances in the System One CBA. He stated that although the System Two CBA has a different article number not referenced in the tentative agreement, System Two operators still received the uniform allowance increase.²¹ Bixby testified that the “summary of terms,” which is a document that was put together by Local 1321 summarizing the tentative agreement, also does not specifically reference increasing the uniform allowance for System Two operators.²²

Bixby testified that transportation supervisors did not receive an increase in their

¹⁹ Tr, at 46.

²⁰ Respondent’s Ex 5.

²¹ Joint Ex 1, at 27, 62, 64.

²² Charging Party’s Ex 11, at 4.

uniform allowance. According to Bixby, Local 1321 should have sought the increase on behalf of the transportation supervisors since other employees, like the System Two operators, were not specifically included in the tentative agreement but received the increase anyway.²³

On cross-examination, Bixby acknowledged that he was the President of Local 1321 when the tentative agreement was negotiated and signed. He testified that he did not raise the issue of uniform allowances for supervisors until after the tentative agreement had been ratified by the membership.²⁴ Bixby testified that he does not know whether Local 1321 approached the Authority about the issue after he left his position as President in 2019.

Bixby testified that copies of the CBA provided by Local 1321 to its members do not incorporate any of the memoranda of understanding (MOU) that were intended to be considered a part of the CBA by the Authority and Local 1321. He stated that the printed CBAs are not a "complete document" because the MOUs are omitted, and they contain several errors.²⁵ Bixby testified regarding two MOUs, one dated March 11, 2011 and another dated October 15, 2007, which he stated should have been included in the CBA. The March 11, 2011 MOU states that "the contents of this Memorandum of Understanding shall be considered part of the Collective Bargaining Agreement for purposes of challenging the implementation and enforcement of this agreement via the grievance and arbitration procedure."²⁶ The October 15, 2007 MOU, which is in the form of a letter, states: "the contents of this letter agreement shall be considered a part

²³ Tr, at 45-46.

²⁴ Tr, at 80.

²⁵ Tr, at 60.

²⁶ Charging Party's Ex 12.

of the collective bargaining agreements for each of the four respective ATU bargaining units."²⁷

Bixby testified that the Authority changed its disciplinary policy for Local 1321 members in 2019. He stated that he attended "union meetings" during that year and bargaining unit members were "consistently" told that "the discipline policy that the company had changed was being reviewed and a grievance was being filed."²⁸ Bixby testified that in September of 2019 he attended a union meeting, during which the members were advised that "no grievance has been filed, no PERB charge has been filed, and that the union was not going to proceed with any argument against the new discipline policy."²⁹ Bixby stated that "most of the members didn't agree" with Local 1321's decision not to challenge the change in disciplinary procedure.³⁰ Bixby testified that he believed that most of the members did not agree with the decision, based upon conversations that were had at union meetings. He testified that he believed the union "was not looking out for the best interests of the members...by not requiring negotiation" of the disciplinary policy.³¹

Bixby testified that he filed a grievance in 2019 when he was not promoted to a supervisor position. According to Bixby, the Authority based its decision not to promote him on "old discipline that was in [his] file."³² Generally, the Authority's policy is to remove discipline from an employee's personnel file after three years; however, Bixby

²⁷ Charging Party's Ex 13.

²⁸ Tr, at 61-62.

²⁹ Tr, at 62.

³⁰ Tr, at 65.

³¹ Tr, at 67.

³² *Id.*

testified that the Authority placed his discipline "on hold" while he was President of Local 1321.³³

Bixby stated that when he became President of Local 1321, he executed an agreement with the Authority setting forth the benefits that he would be provided while in the position. Bixby testified that he could not locate the agreement that he signed; however, he produced a copy of a January 14, 2014 MOU between the Authority and Local 1321 addressing the benefits provided to then-Local 1321 President, Steve Moquin.³⁴ According to Bixby, the January 14, 2014 MOU is similar to the one he signed. He stated that neither MOU addressed placing discipline on hold, even though they address "practically everything else."³⁵

On cross-examination, Bixby testified that the Authority could pursue discipline within three years of an occurrence.³⁶ He stated that, when he was President from 2016 through 2018, he was not performing any of the duties of a bus operator. Bixby testified that he expected any discipline in his file to "fall off" during that time, once three years had passed.³⁷ He acknowledged receiving an email from Amanda Avery, General Counsel for the Authority, on March 15, 2018 which provides, in relevant part, that "the established procedure is to place discipline on hold until [an] employee returns [to active duty]."³⁸

³³ Tr, at 67-68.

³⁴ Charging Party's Ex 2. The agreement provides, *inter alia*, that the President will be considered on a leave of absence from his position at the Authority and will continue to receive insurance and leave benefits as though he is still employed by the Authority.

³⁵ Tr, at 68.

³⁶ Tr, at 86.

³⁷ Tr, at 88.

³⁸ Respondent's Ex 7.

Bixby testified that he had filed multiple grievances and Local 1321 failed to process them.³⁹ Bixby filed three grievances, two on January 24, 2019 and one on January 23, 2019.⁴⁰ On cross-examination, Bixby acknowledged that he was terminated by the Authority on March 8, 2019.⁴¹ Bixby testified that he also filed a grievance challenging his termination and received the assistance of an attorney provided by Local 1321. When asked, on cross-examination, if he thought it was reasonable for Local 1321 to “wait and see” if his termination was overturned and he was reinstated before pursuing the grievances, Bixby testified: “that would be something that could be done, yes.”⁴² Bixby further stated that he agreed to withdraw the grievances pursuant to a settlement agreement—which also maintained his termination—in May of 2020.⁴³

Steven Moquin testified on behalf of Local 1321. Moquin is employed by the Authority as a diesel mechanic. He has been employed by the Authority for approximately 33 years. He is also President of Local 1321, a position he has held since 2019.

Moquin testified that bargaining unit members’ obligation to pay dues is set forth in Local 1321’s constitution.⁴⁴ He stated that even when a unit member has been suspended by the Authority or is on a leave of absence, they are still required to pay dues. Moquin testified that when a member’s dues are in arrears, Local 1321 sends a letter to the member advising him or her of the amount due and requesting payment so

³⁹ See Respondent’s Ex 1.

⁴⁰ *Id.*

⁴¹ Tr, at 85.

⁴² Tr, at 86.

⁴³ Tr, at 71, 86.

⁴⁴ Joint Ex 2, at 100-02.

that he or she can be reinstated as a member in good standing. On September 16, 2019, Local 1321 sent letters to 12 members whose dues were in arrears.⁴⁵ Regarding Bixby's dues, Moquin testified that Local 1321 sought the payment of his dues in arrears as it would any other member.

Regarding the supervisory uniform allowance, Moquin testified that the allowance does not apply to Bixby because he has never been employed as a supervisor by the Authority.⁴⁶ Moquin further testified that the October 20, 2018 tentative agreement between the Authority and Local 1321 did not include any language for supervisors, and only included increases in the uniform allowance for operators, technicians, support technicians, and master technicians.⁴⁷ He testified that he recalled Bixby asking about an increase in the uniform allowance for supervisors in September of 2019. Moquin stated that in response to Bixby's inquiry, he spoke with Mike Collins, Director of Financing at the Authority, who stated that "they were not going to give [a uniform allowance] to [Local 1321 supervisors] because it was not negotiated."⁴⁸ Moquin testified that he and Collins "went back and forth, round and round, for a while trying to get it resolved."⁴⁹

Moquin testified that he was aware that the Authority had revised its disciplinary policy around February of 2019. He stated that Local 1321 did not file a grievance because it considered the revised policy to be more favorable to the membership than the former policy.⁵⁰ In particular, Moquin stated that the revised policy reduced the

⁴⁵ Respondent's Ex 2.

⁴⁶ Tr, at 110.

⁴⁷ Tr, at 111; Respondent's Ex 5.

⁴⁸ Tr, at 112.

⁴⁹ *Id.*

⁵⁰ Tr, at 116; Respondent's Ex 3.

penalty for cell phone use from a 15-day suspension to a five-day suspension, it reduced the penalty for an accident from a three-day suspension to a one-day suspension, and it reduced attendance violations from a suspension to an "administrative" violation.⁵¹

Regarding Bixby's grievances, Moquin testified that the Authority agreed to hold the grievances in abeyance pending the outcome of Bixby's disciplinary arbitration.⁵² Regarding the Authority's use of "old discipline" when considering Bixby's promotion, Moquin testified that the Authority's policy is to "freeze" discipline when an employee is on a leave of absence.⁵³

On cross-examination, Moquin agreed that there are some typographical errors in the CBA book that is provided to the members. He acknowledged that page 30 of the CBA is missing language regarding the members' tool allowance and one of the salary schedules is missing from Schedule A.⁵⁴ Moquin testified that, despite these errors, he is unaware of any member who has been denied payment of a tool allowance or salary as provided for by the CBA.⁵⁵

Mark Hichman also testified on behalf of Local 1321. Hichman is employed by the Authority as a bus operator, a position he has held since February of 1994. He has also been Vice President of Local 1321 for two years. Hichman was formerly a grievance representative for Local 1321.

⁵¹ Tr, at 116; see Respondent's Exs 3 & 4.

⁵² Tr, at 117.

⁵³ Tr, at 118.

⁵⁴ Tr, at 137-38; see Joint Ex 1, at 30, 74.

⁵⁵ Tr, at 149.

Hichman testified that he knows Bixby because he was grievance representative when Bixby was the Local 1321 President. He stated that, in addition, he and Bixby were both bus operators assigned to the Authority's Saratoga Division.

Hichman testified that he is aware that the Authority revised its disciplinary policy. He stated that he agreed with Local 1321's decision not to file a grievance or improper practice charge when the change was made because "the new discipline policy was a reduction in the discipline, and it was better for the employees."⁵⁶ Hichman further testified that he was aware that the Authority intended to revise its disciplinary policy before the changes were implemented. He stated that in January of 2019 Authority Finance Director Mike Collins stated that "he was going to change the discipline policy because...he didn't want to take money out of the employee's pocket."⁵⁷

Hichman testified that he was aware of the grievances filed by Bixby in January of 2019. He stated that, as Vice President of Local 1321, he spoke with management regarding Bixby's grievances. Hichman testified that:

during the time that [Bixby] handed [the grievances] to me he was also being called into the office for disciplinary action other than the grievances. So that disciplinary action[,] we were lead to believe[,] would be grounds for termination. And I asked the then-superintendent about these, and he said he would hold them in abeyance until the outcome of Mr. Bixby's termination decision.⁵⁸

Hichman testified that it is past practice between the Authority and Local 1321 to place discipline on hold while an employee is in the position of President. Hichman stated that the practice has been in place during his entire tenure at the Authority.⁵⁹ He testified that if a President had discipline in his or her personnel file, it would remain in the file until

⁵⁶ Tr, at 159.

⁵⁷ *Id.*

⁵⁸ Tr, at 163-64.

⁵⁹ Tr, at 164-65.

he or she was no longer President and returned to active duty at the Authority. Hichman stated that the practice applies to any employee who is on leave for an extended period, not just the President. He testified that he was on medical leave for four months in 2013, during which his discipline was placed on hold.⁶⁰

DISCUSSION

As an initial matter, I find that PERB lacks jurisdiction regarding Bixby's allegation that Local 1321 violated §§ 209-a.2(a) and (c) of the Act when it failed to collect dues from all members in arrears. PERB does not exercise jurisdiction over internal union affairs, so long as such matters do not affect terms and conditions of employment.⁶¹ In particular, PERB has held that "the enforcement of dues obligations is an internal union matter that is not subject to the jurisdiction of this board."⁶² Based upon that precedent, no violation of the Act can be found with respect to this allegation.

Regarding the remaining allegations, PERB has held that in order to establish that an employee organization has breached its duty of fair representation, a charging party must demonstrate that its conduct was arbitrary, discriminatory, or in bad faith.⁶³ Negligence or an error in judgment on the part of the employee organization is not sufficient to establish a violation pursuant to those standards.⁶⁴ Likewise, disagreement with the tactics utilized or dissatisfaction with the

⁶⁰ Tr, at 173.

⁶¹ *Westchester County Dept of Correction Superior Officers' Assoc (Cummaro)*, 26 PERB ¶ 3077 (1993).

⁶² *Council of Supervisors and Administrators (Marston)*, 17 PERB ¶ 3002 (1984).

⁶³ *CSEA v. Diaz*, 132 AD2d 430, 20 PERB ¶ 7024 (3d Dept 1987), *affd on other grounds*, 73 NY2d 796, 21 PERB ¶ 7017 (1988).

⁶⁴ *Id*; *CSEA (Kandel)*, 13 PERB ¶ 3049 (1980).

quality or extent of representation does not constitute a violation of this duty.⁶⁵

Bixby asserts that Local 1321 failed to uphold its duty of fair representation by "not pursuing contractual and legal options to enforce the uniform allowance increase for supervisors."⁶⁶ The record establishes that Local 1321 and the Authority entered into a tentative agreement to include uniform allowance increases for operators, technicians, master technicians, and support technicians.⁶⁷ The terms of the agreement do not include an increase in the uniform allowance for supervisors. Bixby testified that supervisors should have received the increase because System Two operators received an increase, even though the article number for their CBA was not referenced in the tentative agreement.⁶⁸ Moquin acknowledged that Bixby had inquired about the uniform allowance for supervisors and testified that he contacted Collins about the issue. Moquin testified that he discussed the issue with Collins on more than one occasion, but the Authority's position was that it would not pay the increase to supervisors because it was not negotiated by the parties.

I find that the record evidence does not support Bixby's allegation that Local 1321 acted in an arbitrary, discriminatory, or bad faith manner when it declined to pursue an increased uniform allowance for supervisors. Indeed, the plain language of the tentative agreement does not include an increase in the allowance for supervisors.⁶⁹ On the other hand, it does plainly set forth that an increase was agreed upon for operators. Although the agreement does not specifically cite all the CBA articles

⁶⁵ *United Federation of Teachers (Fearon)*, 37 PERB ¶ 3029 (2004); *Amalgamated Transit Union/Division 726 (Pergolizzi)*, 27 PERB ¶ 4662 (1994).

⁶⁶ Charging Party's Brief, at 17; ALJ Ex 3.

⁶⁷ Respondent's Ex 5.

⁶⁸ Uniform allowances are addressed in Article 18(a) of the System One CBA and Articles 15(c) and 12(d) of the System Two CBA. Joint Ex 1, at 27, 62, 64.

⁶⁹ Respondent's Ex 5.

applicable to operators, it is reasonable to conclude that the parties intended the increase to apply to all operators. The record is devoid of any further evidence to establish that Local 1321's actions were arbitrary, discriminatory, or in bad faith. Accordingly, I find that there has been no violation of the Act with respect to this allegation.

Turning to Bixby's allegation that Local 1321 violated the Act when it failed to provide a complete printed contract book to its members, I find that Local 1321 has not violated the Act. Local 1321 publishes a book containing the CBA to provide to its members.⁷⁰ Bixby points to a number of "errors and omissions" in the book as evidence of Local 1321's "negligence" in representing its bargaining unit.⁷¹ It is well-settled that negligence does not establish a violation of the duty of fair representation.⁷² Bixby has presented no evidence to demonstrate that the errors within the contract book were anything more than mere oversights. On that basis, I find that the record does not support a finding that Local 1321 has violated the Act with respect to this allegation.

Bixby also asserts that Local 1321 violated its duty of fair representation when it did not challenge changes to the disciplinary policy that were made unilaterally by the Authority. The record reflects that the Authority implemented a new disciplinary policy in 2019. Bixby testified that he and other unit members were advised by Local 1321 that the new policy was under review. He testified that, in September of 2019, bargaining unit members were advised that Local 1321 would not be pursuing the matter either through a grievance or at PERB. According to Bixby, most of the bargaining unit members did not agree with Local 1321's decision; however, Bixby's

⁷⁰ Joint Ex 1.

⁷¹ Charging Party's Brief, at 19.

⁷² *CSEA v. Diaz*, 132 AD2d 430, 20 PERB ¶ 7024.

testimony is vague and amounts to a bare assertion that he had conversations with unnamed bargaining unit members, during which they expressed their disagreement.⁷³

Moquin and Hichman both testified that Local 1321 viewed the changes to the policy as favorable to the bargaining unit and declined to take any legal action on that basis. Bixby asserts that the new policy is not more favorable to unit members. Nevertheless, given the lack of evidence in the record establishing arbitrary, discriminatory, or bad faith conduct by Local 1321, I find that fact to be inapposite. As stated above, a charging party's disagreement with the quality or extent of representation does not establish a violation of the duty of fair representation. Indeed, PERB has routinely held that employee organizations are afforded "a wide range of reasonableness" when deciding whether and how to process a grievance.⁷⁴ The evidence presented by Bixby only establishes that he—and possibly some other bargaining unit members—disagreed with Local 1321's decision not to pursue legal action regarding the change in disciplinary policy. Bixby's disagreement is not sufficient to establish a violation of the duty of fair representation. Accordingly, I find that no violation of the Act can be found with respect to this allegation.

Bixby also alleges that Local 1321 failed to uphold its duty of fair representation when it did not process three grievances that he filed in January of 2019. Hinchman testified that shortly after the grievances were filed, the Authority issued discipline against Bixby seeking his termination. Hinchman stated that he spoke with the Authority's then-Superintendent, and they agreed to hold Bixby's grievances in abeyance until his discipline was resolved. Bixby testified that, in May of 2020, he

⁷³ Tr, at 65.

⁷⁴ *Transport Workers Union of America, Local 252, AFL-CIO (Perry)*, 38 PERB ¶ 3014 (2005), citing *Town of Huntington*, 26 PERB ¶ 3073 (1993).

voluntarily withdrew the grievances pursuant to a settlement agreement with the Authority.⁷⁵ When asked if he thought it was reasonable for Local 1321 to agree to hold his grievances in abeyance until it became clear whether he would be reinstated or his termination would be upheld, Bixby agreed that it was "something that could be done."⁷⁶

I find that the record does not support Bixby's contention that Local 1321 failed to process his January of 2020 grievances. To the contrary, Hinchman's unrebutted testimony establishes that he was aware of the grievances and agreed to forego further processing until Bixby's termination was settled. Bixby conceded that this decision was reasonable. Thus, I find that the record is devoid of any evidence to demonstrate that Local 1321's decision was arbitrary, discriminatory, or made in bad faith. For that reason, I find no violation of the Act with respect to this allegation.

Finally, Bixby alleges that Local 1321 violated its duty of fair representation when it allowed the Authority to pursue "old and out of date" discipline against bargaining unit members.⁷⁷ More specifically, Bixby asserts that the Authority relied on discipline that was more than three years old when it decided not to promote him in 2019. The record establishes that it is the Authority's policy to place discipline on hold when an employee is on an extended leave. It is not disputed that Bixby was President of Local 1321 from 2016 through 2018. During that time, Bixby was employed by Local 1321, although he continued to accrue benefits as though he was still an Authority employee. Bixby conceded receiving an e-mail on March 15, 2018 from Amanda Avery, General Counsel for the Authority, stating that the established procedure is to place discipline on hold

⁷⁵ The settlement was a global agreement encompassing Bixby's termination and his pending grievances. Bixby was not reinstated to his employment pursuant to the agreement.

⁷⁶ Tr, at 86.

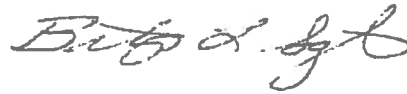
⁷⁷ ALJ Ex 3.

until an employee returns to active duty.⁷⁸ Moquin and Hinchman both testified to their knowledge of this policy. Moquin further testified that he was aware that the policy applied to him as President of Local 1321.

These facts do not support Bixby's assertion that Local 1321 arbitrarily permitted the Authority to consider discipline greater than three years old when it was contemplating his application to be promoted to a supervisor position. To the contrary, the record evidence confirms that the Authority's actions were in accordance with its policy, which was known to Local 1321 and Bixby. Accordingly, I find that there is no evidence to establish that Local 1321 acted in an arbitrary, discriminatory, or bad faith manner with respect to this allegation.

Based upon the foregoing, I find that the charge must be, and hereby is, dismissed in its entirety.

Dated at Albany, New York
this 9th day of July, 2021



Brittany L. Sergent
Administrative Law Judge

⁷⁸ Respondent's Ex 7.