

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. RICHARD LATIN PART 46M

Justice

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LOCAL 983, DISTRICT COUNCIL 37, AFSCME, AFL-CIO,
BY JOSEPH PULEO IN HIS CAPACITY AS PRESIDENT
OF LOCAL 983, NEW YORK CITY BOARD OF
COLLECTIVE BARGAINING

Plaintiff,

INDEX NO. 153160/2023

MOTION DATE 07/31/2023,
07/31/2023,
07/31/2023

MOTION SEQ. NO. 001 002 003

- v -

STATE OF NEW YORK PUBLIC EMPLOYMENT
RELATIONS BOARD, EDWARD SEABRON,

Defendant.

**DECISION + ORDER ON
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 12, 13, 14, 23, 36
were read on this motion to/for ARTICLE 78 (BODY OR OFFICER).

The following e-filed documents, listed by NYSCEF document number (Motion 002) 18, 19, 20, 21, 22,
37, 38, 39, 40, 41, 42, 52, 53, 54, 55, 56, 57
were read on this motion to/for DISMISSAL.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 24, 25, 26, 27, 28,
29, 30, 31, 32, 33, 34, 43, 44, 45, 46, 47, 48, 51, 58, 59
were read on this motion to/for DISMISSAL.


Upon the foregoing documents, it is ordered that the petition and motions to dismiss are
determined as follows:

Petitioners commenced this action seeking Article 78 relief to challenge the respondent
State of New York Public Employment Relations Board determination that remanded the matter
back to the New York City Board of Collective Bargaining to develop a fuller record. Petitioners
maintained that this order was an attempt of respondent State of New York Public Employment
Relations Board to substitute its judgment for that of the New York City Board of Collective
Bargaining.

It is well settled that “one who objects to the act of an administrative agency must exhaust available administrative remedies before being permitted to litigate in a court of law” (*Watergate II Apartments v Buffalo Sewer Auth.*, 46 NY2d 52, 57 [1978]). There is no appeal as a matter of right from a decision that remands a matter to an agency for further non-ministerial proceedings (see *Matter of Gittens v State Univ. of N.Y.*, 158 AD3d 562 [1st Dept 2018]; *Matter of Leung v Department of Motor Vehs. of State of N.Y.*, 65 AD2d 736 [1st Dept 1978]). Here, the Court finds that the respondent State of New York Public Employment Relations Board was not trying to substitute its judgment for the petitioner New York City Board of Collective Bargaining, but merely directing the petitioner, inter alia, to address the issue of whether a reasonable employee would be intimidated or dissuaded from exercising their rights under the Taylor Law within the specific factual context of the workplace, however petitioner saw fit, before even their review was ripe. Thus, Article 78 relief is not appropriate at this juncture.

Accordingly, defendants’ motions to dismiss are granted; and it is further ORDERED and ADJUDGED that the petition is denied and dismissed.

This constitutes the decision and judgment of the Court.

<u>10/13/2023</u> DATE			 _____ RICHARD LATIN, J.S.C.
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input type="checkbox"/> NON-FINAL DISPOSITION
APPLICATION:	<input type="checkbox"/> GRANTED	<input checked="" type="checkbox"/> GRANTED IN PART	<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER	<input type="checkbox"/> FIDUCIARY APPOINTMENT
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> REFERENCE	