STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2A-3/12/82

In the Matter of

PUBLIC EMPLOYEES FEDERATION,

Respondent,

-and-

GEORGE R. RATERMAN, PATRICK A. CHAMBERS, DAVID H. COOPER AND MICHAEL GRANIERI,

Charging Parties.

BOARD DECISION AND ORDER

CASE NO. U-5173

JAMES R. SANDNER, ESQ. (JAMES C. MEAGHER, ESQ., AND RICHARD A. CASAGRANDE, ESQ., of Counsel), for Respondent

GEORGE R. RATERMAN, PATRICK A. CHAMBERS, DAVID H. COOPER AND MICHAEL GRANIERI, pro se

The charging parties are employees of the State of New York who are in the Professional, Scientific and Technical Unit, which is represented by the Public Employees Federation (PEF). They are not members of PEF, but pay an agency shop fee. The hearing officer found merit in their charge that PEF violated §209-a.2(a) of the Taylor Law by not furnishing them with financial information explaining its determination of the amount it refunded to them for the 1979-80 fiscal year at the time when it provided the refund.[1/] The remedial order of the hearing officer requires PEF to refund all agency shop fee monies deducted from the charging parties' salaries during the 1979-80 fiscal year with interest at the rate of six percent per annum because it did not maintain a valid refund procedure, to furnish appropriate financial information along with the refunds, and to post a notice

[1/] The hearing officer's decision dismissed other specifications of the charge and the charging parties have taken no exception to that part of her decision.

to unit employees that it will comply with the substantive provisions of the order.

PEF specifies six bases for its exceptions: (1) This Board lacks subject matter jurisdiction. (2) PEF was not obligated to provide financial information to the charging parties explaining its determination of the amount of the refund, because they never requested such information. (3) Charging parties were not entitled to such information because they had previously decided not to utilize the union's appellate procedures. (4) Even if it should have provided such information to the charging parties, its failure to do so did not invalidate the refund procedure. (5) The order of the hearing officer requiring PEF to refund the charging parties' agency shop fees plus interest thereon is unwarranted. (6) The rest of the hearing officer's remedial order is also unwarranted.

We have dealt with most of the issues raised by the exceptions in UUP (Barry), 13 PERB ¶3090 (1980), affirmed UUP v. Newman, ___ App. Div. 2d ___ (3rd Dept., 1982), 15 PERB ¶7001. In that case the Appellate Division expressly rejected the allegation that we lacked jurisdiction over a charge that a union did not inform a person paying an agency shop fee of the basis for its determination as to the amount of the refund. While the charging party in UUP (Barry) had requested itemized financial information explaining the refund, our order directed the union to furnish all individuals who apply for and receive refunds, and not just those who requested it, an itemized audited statement of the basis of its determination of the amount of the refund. That order proceeded from the premise that a union's duty to furnish information flows, not from a

request for information, but from its statutory duty to provide the refund. Thus, in Professional Staff Congress (Rothstein), 15 PERB ¶3012 (1982), we specifically held that the statutory obligation to make a refund necessarily carries with it the simultaneous companion duty to explain how the amount of the refund was determined.

The third basis of PEF's exceptions presumes that a person receiving an agency shop fee refund must exhaust the appellate procedures offered by a union before the conduct of the union may be challenged in an administrative or judicial tribunal. This proposition has been rejected by us in Professional Staff Congress (Rothstein).

We reject the fourth basis of the exceptions. In East Moriches Teachers Association, 14 PERB ¶3056 (1981), we said that the employee organization's failure to provide adequate financial information as to the basis of the refund at the time the refund was made "constitutes a failure to maintain a proper refund procedure under §§202 and 209-a.2(a) of the Act." The language of the hearing officer's conclusion here: "the employee organization [did not] maintain a valid refund procedure", is substantively indistinguishable from our language in East Moriches.

In a different context, we found merit in the fifth basis of the exceptions in both East Moriches and Professional Staff Congress (Rothstein). In those cases, the hearing officer directed employee organizations which did not provide financial information along with refunds to return all the agency shop fees collected from the charging parties during the period covered by

the refund. We deleted this part of the remedial orders in those cases because the refunds had been made before our decision in UUP (Barry).[2/] It was in UUP(Barry) that we first stated that financial information must accompany the refund. Here, the refunds were made after our decision in UUP (Barry).[3/] Accordingly, we affirm the hearing officer's order directing PEF to refund to charging parties the full amount of the agency shop fees deducted from their salaries for 1979-80 with interest.

Finally, we determine that the remaining parts of the hearing officer's remedial order are reasonable and appropriate and we, therefore, reject the sixth basis of the exceptions.

NOW, THEREFORE, WE ORDER the Public Employees Federation:

1. to refund to the charging parties the total amount of the agency shop fees deducted from their salaries for 1979-80 with interest at the rate of six percent per annum on this sum from November 25, 1980, the date when

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2/ See also Middle Country Teachers Association (Werner), 15 PERB ¶3004 (1982) and Westbury Teachers Association (Handy), 14 PERB ¶3063 (1981). In Westbury the employee organization failed to furnish financial information along with the agency shop fee refunds. The hearing officer directed that its right to collect agency shop fees be suspended, but we modified that remedy because the refunds were furnished before our decision in UUP (Barry).

3/ Our decision in UUP (Barry) was issued on 11/11/80 and was received by both UUP and New York State United Teachers (NYSUT), UUP's representative in the case, on 11/17/80. PEF's letter transmitting the refund was dated 11/25/80 and the refund was received by Raterman on 12/2/80. Like UUP, PEF was represented by NYSUT, as were East Moriches, Professional Staff Congress, Middle Country and Westbury. Although NYSUT knew that lack of knowledge of UUP (Barry) was the reason why East Moriches, Professional Staff Congress, Middle Country and Westbury were not ordered to return agency shop fees collected from the charging parties in those cases, it made no claim of lack of knowledge on behalf of PEF. We, therefore, presume that PEF knew of the UUP (Barry) case at the time when it made the refund.

charging parties were notified of the refund determination, until June 25, 1981, and at the rate of nine percent per annum thereafter.[4/]

2. At the time of any future refund or notice that a refund will not be made, to furnish to all objectors an itemized, audited statement of its receipts and expenditures and those of any of its affiliates which receive, either directly or indirectly, any portion of its revenues from agency fees, together with the basis of its determination of the amount of the refund, including identification of those disbursements determined by it and its affiliates to be refundable and those determined not to be refundable.

3. To post a copy of the notice attached hereto on all bulletin boards regularly used by it to communicate with unit employees.

DATED: March 11, 1982
Albany, New York

Harold R. Newman, Chairman

Ida Klaus, Member

David C. Randles, Member

[4/] See CPLR §5004 as amended by L. 1981, c. 258. This amendment raised the interest on litigated obligations from 6% to 9% effective June 25, 1981.

APPENDIX

NOTICE TO ALL EMPLOYEES

PURSUANT TO

THE DECISION AND ORDER OF THE

NEW YORK STATE
PUBLIC EMPLOYMENT RELATIONS BOARD

and in order to effectuate the policies of the

NEW YORK STATE
PUBLIC EMPLOYEES' FAIR EMPLOYMENT ACT

we hereby notify all employees that:

1. PEF will refund to George Raterman, Patrick Chambers, David Cooper and Michael Granieri the total amount of agency fees deducted from their salaries for 1979-80 with interest at the rate of six (6) percent per annum on this sum from the date they were notified of the refund determination, November 25, 1980, until June 25, 1981, and at the rate of nine (9) percent per annum thereafter.

2. PEF will, at the time of any future refund or notice that a refund will not be made, furnish to all objectors an itemized, audited statement of its receipts and expenditures and those of any of its affiliates which receive, either directly or indirectly, any portion of its revenues from agency fees, together with the basis of its determination of the amount of the refund, including identification of those disbursements determined by it and its affilitates to be refundable and those determined not to be refundable.

Public Employees Federation
.....
Employee Organization

Dated..... **By**.....
(Representative) **(Title)**

This Notice must remain posted for 30 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Application of the COUNTY OF SUFFOLK for a determination pursuant to Section 212 of the Civil Service Law.	#2B-3/12/82 Docket No. S-0006

At a meeting of the Public Employment Relations Board held on the 12th day of March, 1982, and after consideration of the application of the County of Suffolk made pursuant to Section 212 of the Civil Service Law for a determination that its Local Law No. 4-1978 as last amended by Local Law No. 2-1982 is substantially equivalent to the provisions and procedures set forth in Article 14 of the Civil Service Law with respect to the State and to the Rules of Procedure of the Public Employment Relations Board, it is

ORDERED, that said application be and the same hereby is approved upon the determination of the Board that the Local Law aforementioned, as amended, is substantially equivalent to the provisions and procedures set forth in Article 14 of the Civil Service Law with respect to the State and to the Rules of Procedure of the Public Employment Relations Board.

Dated: Albany, New York
March 12, 1982

Harold R. Newman, Chairman

Ida Klaus, Member

David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of	#2D-3/12/82
CATSKILL REGIONAL OFF-TRACK BETTING CORPORATION, Respondent, -and- LOCAL 32-E, SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO, Charging Party.	BOARD DECISION AND ORDER CASE NO. U-5333

HERBERT J. FABRICANT, ESQ., for Respondent

ARNOLD W. PROSKIN, P.C., for Charging Party

This matter comes to us on the exceptions of Local 32-E, Service Employees International Union, AFL-CIO (Local 32-E) to a hearing officer's decision dismissing its charge that the Catskill Off-Track Betting Corporation (OTB) violated §209-a.1(a) of the Taylor Law by posting a memorandum that coerced unit employees and interfered with their right of organization.[1/] The charge grows out of an election in which the unit employees had voted against representation by Local 32-E and which was set aside because, among other things, OTB had unilaterally raised the wages of unit employees during the election campaign and promised them another wage increase thereafter (14 PERB ¶4011 [1981]). Another earlier

[1/] We have issued three decisions in this matter since the exceptions were filed. First, we dismissed the exceptions on the ground that they were not timely served on OTB. Then we granted Local 32-E's motion to reconsider and gave Local 32-E an opportunity to submit affidavits that it had mailed the exceptions on time. After receiving the affidavits, we set aside the first decision.

election in which the unit employees had voted against representation by Local 32-E had also been set aside for a similar reason (13 PERB ¶4028 [1980]). This conduct of OTB was also the subject of an improper practice charge and the hearing officer found that OTB had violated §209-a.1(a) of the Taylor Law. Among other things, the hearing officer ordered OTB to "cease and desist from granting cost of living and wage increases in violation of the Act during the pendency of the representation petition" and to post a notice informing its employees that it would do so (14 PERB ¶4518 [1981]). OTB complied with this order, but it also posted the memorandum in issue which stated:

"To: All Employees

From: Donald J. Groth, President

Subject: Public Employee Relations Board (PERB)

PERB has voided the recent union election!

Due to OTB having granted various increases and added benefits during the past several years (they call it coercing you and restraining you), PERB has now determined that:

1. A new election will be held.

2. OTB will reimburse the union for its campaign costs in the past election.

3. OTB 'will cease and desist from granting cost of living and wage increases and other benefits in violation of the Act during the pendency of the representation petition.'

4. OTB 'will not interfere with, restrain or coerce its employees in the exercise of their rights to form, join or participate in, or refrain from forming, joining, or participating in any employee organization of their own choosing.'

5. OTB will conspicuously post various PERB notices in each work location.

> To those employees for whom this comes as happy news, my congratulations.
>
> To those employees for whom this comes as unhappy news, my regrets.
>
> It would appear that anything short of ignoring your existence out there will be cause for still more of this."

It is this memorandum about which the charge complains.

The hearing officer determined that the posting of it did not constitute a threat to the unit employees and, therefore, was not an improper practice. In its exceptions, Local 32-E argues that the posting was intended to, and does, carry an implication that interferes with the right of unit employees to organize; the implication being that employee support for Local 32-E would cost them future wage increases.

We find merit in this argument. The memorandum implies that the presence of Local 32-E makes it necessary for OTB to ignore the existence of the unit employees, which in the context of its past conduct means not granting wage increases. Thus, the memorandum did carry the threat that employee support for and participation in the affairs of Local 32-E would result in the loss of future benefits that OTB might have provided. This is a violation of §209-a.1(a) of the Taylor Law. Posted as it was along side the required notice, the memorandum also appears to us to cast doubt on OTB's good faith intention to comply with the provisions of the Law.

NOW, THEREFORE, WE ORDER the Off-Track Betting Corporation to:

1. cease and desist from interfering with, restraining or coercing its employees in the exercise of their right to form, join

or participate in or refrain from forming, joining or participating in any employee organization of their own choosing;

2. to conspicuously post the attached notice in places normally used to communicate with its employees.

DATED: March 11, 1982
Albany, New York

Harold R. Newman, Chairman

Ida Klaus, Member

David C. Randles, Member

APPENDIX

NOTICE TO ALL EMPLOYEES

PURSUANT TO

THE DECISION AND ORDER OF THE

NEW YORK STATE
PUBLIC EMPLOYMENT RELATIONS BOARD

and in order to effectuate the policies of the

NEW YORK STATE
PUBLIC EMPLOYEES' FAIR EMPLOYMENT ACT

we hereby notify our employees that:

We will not interfere with, restrain or coerce public employees in the exercise of their right to form, join or participate in or refrain from forming, joining or participating in any employee organization of their own choosing.

.....
Catskill Regional Off-Track Betting Corp.

Dated..... **By**.....
(Representative) **(Title)**

This Notice must remain posted for 30 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

7396

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of	:	#2C-3/12/82
CATSKILL REGIONAL OFF-TRACK BETTING CORPORATION,	:	BOARD DECISION
Employer,	:	AND ORDER
-and-	:	
LOCAL 32-E, SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO,	:	CASE NO. C-1870
Petitioner.	:	

HERBERT J. FABRICANT, Esq., for Employer

ARNOLD W. PROSKIN, P.C., For Petitioner

This matter comes to us on the exceptions of Local 32-E, Service Employees International Union, AFL-CIO (Local 32-E) to a decision of the Director of Public Employment Practices and Representation (Director) dismissing its objections to conduct affecting an election in which, by a vote of 168 to 72, the unit employees voted against representation by Local 32-E.[1/] On two prior occasions the unit employees had voted against representation by Local 32-E, but both elections were set aside because OTB had, among other things, unilaterally raised the wages of unit employees during the election campaign periods.

1/ We have issued three decisions in this matter since the exceptions were filed. First we dismissed the exceptions on the ground that they were not timely served on OTB. Then we granted Local 32-E's motion to reconsider and gave Local 32-E an opportunity to submit affidavits that it had mailed the exceptions on time. After receiving the affidavits, we set aside the first decision.

FACTS

On April 5, 1981, one day before the ballots were mailed to unit employees in the third election, Teubert, a unit employee, asked Weinfeld, OTB's Director of Operations, for a list of the names and addresses of unit employees. With the approval of OTB's Counsel, he gave her the list on the following day and on Tuesday, April 7, 1981, she used it to send a letter opposing representation by Local 32-E.

Upon receiving a copy of Teubert's letter, Acevedo, a fellow employee, asked Weinfeld on Friday, April 10, 1981, for a second list so that he could write a response. Acevedo was not scheduled to work on Saturday, Sunday or Monday, but when on Monday he had not received the list, he called Weinfeld to ask about it. There is a disagreement between him and Weinfeld as to what happened on Friday and Monday, but there is no disagreement that the list was offered to him unconditionally on Tuesday and that he declined to take it, saying that it was too expensive to mail so many letters.

Acevedo's version of what happened during the interim was that, when he called on Monday, Weinfeld said that he thought that Acevedo offered to show him his letter before he gave Acevedo the list. Acevedo testified that, although he had not made the offer on Friday, he was not distressed by what Weinfeld said because he had nothing to hide and he then told Weinfeld that he would show him his letter. He also testified that Weinfeld told him on Monday that the list could not be furnished to him until Weinfeld checked with OTB's Counsel and that he had not yet done

so. Weinfeld's version is that, on Friday, April 10, Acevedo offered to show him the letter he intended to send, and that he had never required this as a condition for providing the list. Weinfeld further testified that the reason he had given on Monday for not yet having sent the list was that OTB's Counsel had not yet returned the call that he had made to him on Friday. He explained that he had been reluctant to release the list without authorization from Counsel despite having given it to Teubert earlier because Acevedo's request for the list had been made several days after the ballots had been mailed and, therefore, the request might not really be related to the election. Thus, the request reflected a concern that the list might be used for an inappropriate purpose.

DISCUSSION

In his decision, the Director states that the record does not support the claim that Weinfeld failed to offer the mailing list to Acevedo under the same conditions that he did to Teubert. He further found that Weinfeld's reason for consulting with OTB's Counsel the second time was not pretextual. Finding no disparity in Weinfeld's treatment of the two requests for the list, the Director dismissed the objections.

In support of its exceptions, Local 32-E relies upon Acevedo's version of the facts and argues that OTB's demand to see the letter before the list was provided, although rescinded on April 14, was nevertheless coercive. Moreover, notwithstanding Acevedo's own testimony, it was the coercive effect of this demand, and not the

cost of the postage, that persuaded Acevedo to change his mind about seeking the list. Local 32-E further argues that Weinfeld's decision to consult with OTB's Counsel about providing the list was a pretext for delay in that Counsel had already approved the furnishing of the earlier list to an opponent of Local 32-E.

Having reviewed the record, we affirm the Director's findings of fact and conclusions of law.[2/]

NOW, THEREFORE, WE ORDER that Local 32-E's petition herein be, it hereby is, DISMISSED.

DATED: March 11, 1982
Albany, New York

Harold R. Newman
Harold R. Newman, Chairman

Ida Klaus
Ida Klaus, Member

David C. Randles
David C. Randles, Member

2/ In a companion case (U-5333), we have decided today that OTB interfered with the rights of the unit employees to organize by posting a memorandum that implied that employee support for and participation in the affairs of Local 32-E would result in the loss of future benefits that OTB might have provided. The Director did not inquire into this posting and its surrounding circumstances because Local 32-E specifically declined to make it part of its objections. We agree with his treatment of this matter. Moreover, the passage of nine weeks between the improper posting and the mailing of the ballots was sufficient time for Local 32-E to respond to the notice to dissipate its effect.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of	#2E-3/12/82
COUNTY OF SUFFOLK AND SUFFOLK COUNTY LEGISLATURE, Respondents,	BOARD DECISION AND ORDER
-and-	
SUFFOLK COUNTY CHAPTER OF THE CIVIL SERVICE EMPLOYEES ASSOCIATION, LOCAL 852, Charging Party.	CASE NO. U-5090

KIMMELL & ZISKIN, ESQS., for County of Suffolk

CEDAR, STRAUSS, HOLT, SERWER & SEGAL, P.C. (LAWRENCE J. HOLT, ESQ. and STEPHEN N. STRAUSS, ESQ., of Counsel), for Suffolk County Legislature

ROEMER AND FEATHERSTONHAUGH, ESQS. (MARJORIE E. KAROWE, ESQ., of Counsel), for Charging Party

The charge herein was filed by the Suffolk County Chapter of the Civil Service Employees Association, Local 852 (CSEA). It complains that the County of Suffolk (County) violated paragraphs (a) and (d) of subdivision 1 of §209-a of the Taylor Law in that the Suffolk County Legislature (Legislature) adopted three resolutions which interfered with negotiations between it and the County Executive (Executive) and unilaterally changed terms and conditions of employment. The charge was filed after the first of the resolutions had been adopted, but was amended to complain about the second and third resolutions. The hearing officer found a violation of paragraph (a) with regard to each of the resolutions and a violation of paragraph (d) with regard

to the first resolution only. The matter now comes to us on the exceptions of the Legislature.[1/]

In September 1980, the Legislature adopted Resolution No. 885-1980 which provided for step advances within grades for twelve job titles of unit employees. These step increases constituted unilateral salary increases. The expressed reason for the increases was that the County was having difficulty in recruiting employees for the twelve titles so long as employees in those titles were paid at less than the highest step in the grades. The resolution was approved by the Executive and put into effect. In June 1981, the Legislature adopted two further resolutions which granted step increases to other groups of unit employees. The first was No. 583-1981. The expressed reason was that the employees affected had received promotions but were earning less than they would have earned had they served in their original titles and received step advances. The second resolution was No. 619-1981. The expressed reason was that the County was having difficulty retaining personnel in the twenty covered job titles.

The record indicates that:

> "From time to time, over a period of approximately ten years, resolutions affecting salaries have been adopted and implemented without consultation with CSEA. During this period there were collective bargaining agreements

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[1/] The Executive and the Legislature have appeared separately and the Executive does not support the exceptions. On the contrary, in its brief to the hearing officer it did not address the question of its own conduct and it argued that the Legislature violated the Taylor Law. CSEA does not except to the hearing officer's dismissal of so much of its charge as complains that the second and third resolutions violate CSL §209-a.1(d).

> in effect covering unit employees' salaries. The instant charge is the first Improper Practice Charge filed by CSEA against the County relating to the above typed resolutions."

The parties have agreed, however, that "there has never been a prior instance similar to Resolution 583-1981."

On these facts, the hearing officer determined that the adoption of all three resolutions constituted violations of §209-a.1(a). Although there was no direct evidence of improper motivation, he concluded that the conduct of the Legislature constituted a per se violation because the bypassing of a union in granting raises is so destructive of the union's status that the Legislature must be deemed to have had actual or presumptive knowledge that its action would be coercive.[2/] The hearing officer found that the first of the resolutions also constituted a violation of §209-a.1(d), but that the remaining two resolutions did not because they were not put into effect.

In support of its exceptions, the Legislature argues that, by its failure to complain about similar resolutions in the past, CSEA had waived its right to object. It further contends that its own action was consistent with, and not in violation of, a long-standing past practice which must be deemed to have been incorporated into the parties' collective bargaining contracts.

Having reviewed the record and considered the arguments of the parties, we sustain the decision of the hearing officer that the implementation of Resolution 885-1980 constituted a unilateral

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[2/] See Cohoes, 12 PERB ¶3065.

change in the terms and conditions of employment and violation of §209-a.1(d) of the Taylor Law. In County of Ulster, 14 PERB ¶3008 (1981), we found a violation when that County granted merit increases even though it had been doing so for ten years saying:

> "Merit increases are a mandatory subject of negotiation. A public employer violates its duty to negotiate in good faith when it unilaterally decides to award merit increases. The fact that Ulster County committed such a violation for ten years does not mean that it is privileged to continue to do so."

We do not, however, find that the adoption of Resolution 885-1980 violates §209-a.1(a).[3/] Given the ten-year history of granting step increases without any complaint by CSEA, the County cannot be deemed to have had actual or presumptive knowledge that its action was so inherently destructive of the union's status as to interfere with employee rights.[4/] On the contrary, CSEA's acquiescence in the past resolutions indicates that CSEA did not think that they were so destructive of its status. Based upon the acknowledged circumstances, the Legislature had reason to assume that CSEA knew of the past resolutions. They were public acts of the Legislature affecting groups of employees and intended to be publicly known. For example, Resolution 885-1980 affected twelve job titles. Moreover, recruitment for vacant positions

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[3/] In County of Ulster, too, we dismissed so much of the charge as alleged a violation of §209-a.1(a) because there was no factual basis for that part of the charge.

[4/] It is the inherent "chilling" effect of a public employee's conduct on the exercise of protected employee rights that establishes a per se violation. State of New York, 12 PERB ¶3009 (1979).

in these titles would not have been eased unless information that vacant positions would be filled at the highest step of the salary grade were widespread.

The adoption of Resolutions 583-1981 and 619-1981 are a different matter. They were adopted after the charge herein had been filed. The Legislature was, therefore, on notice that CSEA had complained and no longer acquiesced in the unilateral granting of step advances to unit employees. The subsequent resolutions of the Legislature are, therefore, deemed to have been adopted in the knowledge that they would be so destructive of CSEA's status as to interfere with the right of the unit employees to organize. Such is the inevitable effect of salary increases granted by an employer unilaterally over the objections of a union. We, therefore, determine that the adoption of these resolutions violated §209-a.1(a) of the Taylor Law. Moreover, the parties have stipulated that Resolution 583-1981 was not similar to any that had been promulgated in the past. Thus, in the case of that resolution, there is no basis for finding any past acquiescence by CSEA.

NOW, THEREFORE, WE ORDER the County:

1. to cease and desist from unilaterally granting step advancements to employees within the CSEA negotiating units, or passing legislative resolutions of similar intent;

2. to cease and desist from interfering with its employees in the exercise of their rights guaranteed by Article 14 of the Taylor Law;

3. to negotiate in good faith with CSEA over terms and conditions of employment of employees in the two negotiating units;

4. to post the attached notice in all locations normally used for communicating with employees

in the CSEA negotiating units.

DATED: March 11, 1982
Albany, New York

Harold R. Newman, Chairman

Ida Klaus, Member

David C. Randles, Member

APPENDIX

NOTICE TO ALL EMPLOYEES

PURSUANT TO

THE DECISION AND ORDER OF THE

NEW YORK STATE
PUBLIC EMPLOYMENT RELATIONS BOARD

and in order to effectuate the policies of the

NEW YORK STATE
PUBLIC EMPLOYEES' FAIR EMPLOYMENT ACT

we hereby notify our employees that the County of Suffolk will:

1. Not unilaterally grant step advancements to employees within the CSEA negotiating units, or pass legislative resolutions of similar intent;

2. Not interfere with our employees in the exercise of their rights guaranteed by Article 14 of the Civil Service Law (Taylor Law);

3. Negotiate in good faith with CSEA over terms and conditions of employment of employees in the two negotiating units.

County of Suffolk
.....
Employer

Dated..... **By**.....
(Representative) **(Title)**

This Notice must remain posted for 30 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

7403

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2F-3/12/82

In the Matter of

MAINE-ENDWELL CENTRAL SCHOOL DISTRICT,

Respondent,

BOARD DECISION AND ORDER

-and-

MAINE-ENDWELL TEACHERS ASSOCIATION,

Charging Party.

CASE NO. U-5135

HOGAN & SARZYNSKI, ESQS. (JOHN B. HOGAN, ESQ.), for Respondent

NEW YORK EDUCATORS ASSOCIATION (JOHN B. SCHAMEL), for Charging Party.

This matter comes to us on the exceptions of the Maine-Endwell Teachers Association (Association) to a hearing officer's decision dismissing its charge that the Maine-Endwell Central School District (District) violated §209-a.1(a), (c) and (d) of the Civil Service Law (CSL). The charge, as clarified by the evidence at the hearing, alleged that the District:

1. Increased the length of the periods in the senior high school by three minutes (from 40 to 43 minutes), thereby resulting in the elimination of one of several "unassigned" periods during which teachers are available to help students;

2. Imposed supervisory duties upon guidance counselors;
3. Discontinued the practice of permitting the Association to conduct meetings during the student activity period, which is the last period of the day at the high school;
4. Changed the practice of allowing teachers to leave after student dismissal on Fridays, the day preceding vacation or a holiday, and open-house days.
5. Discontinued an elementary school book exchange which eliminated 15 minutes of preparatory time for elementary school teachers every sixth day.

The Association asserts that these actions of the District not only constitute a refusal to negotiate in good faith (CSL §209-a.1(d)), but because they were taken for the purpose of interfering with the rights of the employees, violated subsections (a) and (c) of CSL §209-a.1.

At the close of the Association's case, the hearing officer dismissed those specifications of the charge which alleged violations of subsections (a) and (c) of CSL §209-a.1, finding no evidence had been offered to substantiate those allegations. Upon reviewing the entire record, we affirm this holding of the hearing officer.

The specifications of the charge dealing with unilateral changes in terms and conditions of employment were dismissed by the hearing officer on the ground that each of the actions taken by the District was authorized by the provisions of the collective

bargaining agreement between the parties set forth in his decision. Having reviewed the hearing officer's analysis of the facts and the contractual provisions, we affirm his decision on the basis of his analysis.

NOW, THEREFORE, WE AFFIRM the hearing officer's decision,

and

WE ORDER that the charge herein be, and it hereby is,

DISMISSED.

DATED: Albany, New York
March 11, 1982

Harold R. Newman, Chairman

Ida Klaus, Member

David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of	:	
BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT OF THE CITY OF BUFFALO, Employer,	:	#3A-3/12/82
-and-	:	Case No. C-2337
BUFFALO EDUCATIONAL SUPPORT TEAM, NYEA/NEA, Petitioner,	:	
-and-	:	
LOCAL 264, AFSCME, Intervenor.	:	

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 of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that Local 264, AFSCME

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.

Unit: Included: All teacher aides and school aides employed by the employer on a regular basis, at least 6 hours per day.

Excluded: All other employees of the employer.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with Local 264, AFSCME

and enter into a written agreement with such employee organization with regard to terms and conditions of employment, and shall negotiate collectively with such employee organization in the determination of, and administration of, grievances.

Signed on the 11th day of March, 1982
Albany, New York

Harold R. Newman
Harold R. Newman, Chairman

Ida Klaus
Ida Klaus, Member

David C. Randles
David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

WEST HEMPSTEAD UNION FREE SCHOOL DISTRICT, Employer,	#3B-3/12/82
-and-	Case No. C-2346
LOCAL 144/DIVISION 100, SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO, Petitioner.	

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 of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that Local 144/Division 100, Service Employees International Union, 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.

Unit: Included: All full-time and part-time employees in the following titles:
cleaner, custodian, cleaner attendant, groundskeeper, motor equipment operator, head custodian, supervising groundskeeper and maintainer.

Excluded: All other employees.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with Local 144/Division 100, Service Employees International Union, AFL-CIO

and enter into a written agreement with such employee organization with regard to terms and conditions of employment, and shall negotiate collectively with such employee organization in the determination of, and administration of, grievances.

Signed on the 11th day of March, 1982
Albany, New York

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Harold R. Newman, Chairman

Ida Klaus
Ida Klaus, Member

David C. Randles
David C. Randles, Member

PERB 58.3