STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2A - 2/23/84

In the Matter of

COUNTY OF ERIE,

Employer,

-and-

CASE NO. C-2605

ERIE COUNTY CORRECTION OFFICERS BENEVOLENT ASSOCIATION,

Petitioner,

-and-

LOCAL 815, ERIE COUNTY CIVIL SERVICE EMPLOYEES ASSOCIATION, INC.,

Intervenor.

EUGENE F. PIGOTT, JR., ESQ. (MICHAEL A. CONNORS, ESQ., of Counsel), for Employer

BRIAN G. LIEBLER, for Petitioner

ROEMER & FEATHERSTONHAUGH, ESQS. (WILLIAM M. WALLENS, ESQ., of Counsel), for Intervenor

BOARD DECISION AND ORDER

This matter comes to us on the exceptions of the Erie County Correction Officers Benevolent Association (Association) to a decision of the Director of Public Employment Practices and Representation (Director) dismissing its petition to represent approximately 130 correction officers employed by the County of Erie. Those correction officers are now represented by Local 815, Erie County Civil Service Employees Association, Inc. (Local 815), in a unit of

about 4,000 white-collar employees. This unit has been in existence since 1969 and has negotiated four agreements with the County, the last of which covered the three-year period between January 1, 1981 and December 31, 1983.

The Director determined that the record did not present a sufficient basis for fragmenting the existing unit. In support of its exceptions the Association argues that the correction officers were not afforded adequate representation and service. It also argues that the Director erred in not finding that the correction officers' peace officer status is per se a basis for unit separation.

Having reviewed the record, we affirm the finding of the Director that there is no evidence that the correction officers were singled out for unusually poor service or indeed that the service provided by Local 815 was poor. We also affirm his conclusion that the correction officers' peace officer status is not per se a basis for unit separation.[1/]

1/There is one allegation in the exceptions which does not deal with the findings and conclusions of the Director but must be addressed. The Association complains that the trial examiner engaged in a "possible impropriety" by having traveled on the same commercial flight and stayed at the same hotel as did counsel to Local 815. The Association nevertheless asserts that it is not questioning the integrity of the trial examiner.

We find no impropriety in such conduct.

NOW, THEREFORE, WE ORDER that the petition herein be, and it hereby is, dismissed.

DATED: February 23, 1984
Albany, New York

Harold R. Newman, Chairman

Ida Klaus, Member

David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

#2B -2/23/84

CIVIL SERVICE TECHNICAL GUILD, LOCAL 375,

Respondent,

-and-

CASE NO. U-7014

WILLIAM P. JAGERBURGER, DOM MARINI, SAMUEL RUBIN and ALEX DENEBERG,

Charging Parties.

WILLIAM P. JAGERBURGER and DOM MARINI, for Charging Parties

BOARD DECISION AND ORDER

This matter comes to us on the exceptions of William P. Jagerburger, Dom Marini, Samuel Rubin and Alex Deneberg (Charging Parties) to a decision of the Director of Public Employment Practices and Representation (Director) dismissing their charge against Civil Service Technical Guild, Local 375 (Local 375).

Charging Parties are employees of the New York Transit Authority who work in positions that are represented by Local 375. Each of the Charging Parties pays agency shop fees to Local 375 and each sought, and was given, a partial refund of the fees paid for 1983. Their charge alleges that Local 375 did not provide them with adequate financial information regarding the receipts and disbursements of its "affiliates" when it gave them that refund. It also alleges that the refund procedure was inadequate in that it does not provide recourse to "an impartial tribunal".

The Director found the first specification of the charge deficient on the ground that it merely alleges a violation of our remedial order in a related case. Civil Service Technical Guild, Local 375, 16 PERB ¶3008 (1983). In that case we found that Local 375 violated the Taylor Law by not providing sufficient information to persons receiving agency shop fee refunds along with the refunds for 1980 agency shop fee payments. That case presented no question regarding Local 375's "affiliates", but our remedial order provided, inter alia:

> at the time of making any other and future refunds, [Local 375 is ordered] to furnish, together with those refunds, an itemized, audited statement of its receipts and disbursements, and those of any of its affiliates receiving any portion of its revenues from agency fees . . . including identification of those disbursements that are refundable and those that are not. (emphasis supplied)[1/]

The instant charge alleges that the Charging Parties received financial statements from the American Federation of State, County and Municipal Employees (AFSCME), District Council 37 (DC 37) and Local 375, along with the 1982 refund. It complains, however, that these statements, each of which was

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1/Another similar charge was filed with respect to Local 375's 1981 agency shop fee refund before we issued the above cited decision. Among other things, that charge raised the question of what organizations were affiliates of Local 375. The hearing officer determined that AFSCME, DC 37 and its locals were affiliates of Local 375, but that, on the evidence before him, the AFL-CIO and other specified organizations were not. Civil Service Technical Guild, 16 PERB ¶4534 (1983).

attached to the charge, lacked an itemized and audited statement of receipts and disbursements of those of its affiliates which were given any portion of the agency shop fees that each received. Focusing on the language of our order in the 1980 refund case directing Local 375 to furnish financial statements of its affiliates when making future refunds, the Director determined that the charge merely alleged a violation of that order.[2/]

In their exceptions, Charging Parties assert that their charge goes beyond our order in the 1980 refund case in that it reaches for "affiliates" of Local 375 in addition to AFSCME and DC 37. They complain that the 1982 refunds were not accompanied by statements from such other "affiliates" and that the other "affiliates" are not even identified by Local 375.

We find merit in Charging Parties' assertion that their charge goes beyond the matters encompassed by our order in the 1980 refund case. Nevertheless, we conclude that Charging Parties' allegations do not set forth a violation of the Taylor Law. We conclude that labor organizations other than DC 37 and AFSCME are too remote from Local 375 to be deemed its affiliates within the meaning of our order at 16 PERB

2/Charging Parties asked Counsel to this Board to seek enforcement of the Board order in the 1980 refund case. He denied the request, concluding that Local 375 was in substantial compliance with the Board order in that the reference to "affiliates" in it merely contemplated AFSCME and DC 37.

¶3008.[3/] This relieves Local 375 of the obligation to furnish itemized audited statements of the receipts and disbursements of such remote organizations. It does not, however, relieve Local 375 of the obligation to report the proportion of its disbursements to such organizations which was spent in aid of activities or causes of a political or ideological nature only incidentally related to terms and conditions of employment.

The charge itself reveals that Local 375 fulfilled this responsibility.[4/] Accordingly, we affirm the Director's decision dismissing the first specification of the charge.

The Director found the second specification of the charge deficient on the ground that an employee organization's internal refund procedure need not include a determination by an impartial. In support of their exceptions, Charging

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3/The basis for our determination that an employee organization must furnish an itemized audited statement of the receipts and disbursements of its affiliates is found in UUP (Eson), 11 PERB ¶3068 (1978); aff'd UUP v. Newman, 77 AD2d 709, 13 PERB ¶7010, 3d Dept., 1980; lv. to app. den. 51 NY2d 707, 13 PERB ¶7016 (1980). In that case we addressed the intimate relationship between a local union and its national and State "parents", meaning affiliates. Local 375's relationship to AFSCME and DC 37 in the instant case parallels UUP's relationship to its national and state parents in UUP (Eson).

4/The financial report of Local 375 indicates that it disbursed money to only three identified labor organizations other than AFSCME and DC 37. The report specifies that 100% of the agency shop fee monies given to the first two organizations were rebatable as being expenditures of a political or ideological nature and that none of the agency shop fee monies given to the third was rebatable. The DC 37 statement discloses that it made no disbursements to any organizations, affiliated or otherwise. AFSCME's statement shows disbursements to unidentified labor organizations, approximately two-fifths of which were rebatable.

Parties cite Warren v. Board of Education, 99 M2d 251 (Sup. Ct., Monroe Co., 1979). That decision holds that a union should make recourse to an impartial tribunal available to a unit employee seeking a refund, but it indicates that recourse to a court might satisfy this requirement. We have consistently held that recourse to a neutral determination is not an essential element of the internal refund procedures of an employee organization. Hampton Bays Teachers Association, 14 PERB ¶3018 (1981); St. Lawrence-Lewis County BOCES Teachers Association, 15 PERB ¶3113 (1982). Accordingly, we affirm the Director's decision dismissing the second specification of the charge.

NOW, THEREFORE, WE ORDER that the charge herein be, and it hereby is, dismissed.

DATED: February 23, 1984
Albany, New York

Harold R. Newman, Chairman

Ida Klaus, Member

David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2C - 2/23/84

In the Matter of

UNITED UNIVERSITY PROFESSIONS, INC.,

Respondent,

-and-

CASE NO. U-6878

THOMAS C. BARRY,

Charging Party.

BOARD DECISION ON MOTION

On January 24, 1984, upon careful consideration, we dismissed the charge made by Thomas C. Barry against United University Professions, Inc. on its merits. UUP (Barry), 17 PERB ¶3008 (1984). The matter comes to us once again on Barry's motion for reconsideration. The material supporting that motion contains no new evidence and affords no other basis for further reconsideration.

ACCORDINGLY, WE ORDER that the motion herein be, and it hereby is, denied.

DATED: February 23, 1984
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

In the Matter of

#2D - 2/23/84

CATSKILL REGIONAL OFF-TRACK BETTING CORPORATION,

Employer,

-and-

CASE NOS.
C-2658 & C-2659

UNITED FEDERATION OF POLICE OFFICERS, INC.,

Petitioner.

BOARD DECISION AND ORDER

On August 17, 1983, the United Federation of Police Officers, Inc. (petitioner) filed, in accordance with the Rules of Procedure of the Public Employment Relations Board, two timely petitions for certification as the exclusive negotiating representative of certain employees employed by the Catskill Regional Off-Track Betting Corporation (employer). One, C-2658, sought a unit of rank-and-file employees, and the other, C-2659, a unit of supervisors.

Thereafter, the parties agreed to two negotiating units as follows:

Included: All cashiers and customer aides.

Excluded: All other employees.

Included: All employees employed in the title of supervisor.

Excluded: All other employees.

Pursuant to agreement, secret-ballot elections were held at which there were 79 ballots cast in favor of representation by the petitioner and 103 ballots cast against representation by the petitioner in C-2658, and 13 ballots cast in favor of representation by the petitioner and 43 ballots cast against representation by the petitioner in C-2659.

Inasmuch as the results of the elections indicate that a majority of the eligible voters in each of the agreed-upon units who cast valid ballots do not desire to be represented for purposes of collective bargaining by the petitioner, IT IS ORDERED that the petitions should be, and they hereby are, dismissed.

DATED: February 23, 1984
Albany, New York

Harold R. Newman, Chairman

Ida Klaus, Member

David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

#2E - 2/23/84

UNITED UNIVERSITY PROFESSIONS, INC.,

Respondent,

-and-

CASE NO. U-7129

MORRIS E. ESON,

Charging Party.

BERNARD ASHE, ESQ. (IVOR R. MOSKOWITZ, ESQ., of Counsel), for Respondent

STUART A. ROSENFELDT, ESQ., for Charging Party

BOARD DECISION AND ORDER

This matter comes to us on the exceptions of Morris E. Eson (Eson) to a decision of the Director of Public Employment Practices and Representation (Director) dismissing his improper practice charge, which alleged that the amount of an agency fee refund determined by a neutral, pursuant to the refund procedure of the United University Professions, Inc. (UUP), was incorrect. Eson asserts that the failure to

refund the correct amount was an improper practice in violation of §209-a.2(a) of the Act.

The Director dismissed the charge on the basis of our decision in Hampton Bays Teachers Association, 14 PERB ¶3018 (1981). In that decision, we held that we do not have jurisdiction to consider a charge that alleges only that the amount of an agency fee refund is incorrect. We stated (at 3032):

> . . . a substantive determination as to the correctness of the amount of the refund produced by the application of the procedure is beyond the statutory power and special competence of this Board.

In his exceptions, Eson urges that this interpretation of the statute is incorrect. He also argues that our interpretation of the statute violates the due process rights of agency fee payers.

We are not persuaded by charging party's arguments that our prior determination was improper. Accordingly, for the reasons set forth in our decision in Hampton Bays Teachers Association, 14 PERB ¶3018 (1981), we determine that the instant charge should be dismissed.

WE, THEREFORE, AFFIRM the decision of the Director, and WE ORDER that the charge herein be, and it hereby is, dismissed.

DATED: February 23, 1984
Albany, New York

Harold R. Newman, Chairman

Ida Klaus, Member

David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2F - 2/23/84

In the Matter of

TRIBOROUGH BRIDGE AND TUNNEL AUTHORITY,

Respondent,

-and-

CASE NO. U-6957

BRIDGE AND TUNNEL OFFICERS BENEVOLENT ASSOCIATION,

Charging Party.

JOSEPH BULGATZ, ESQ., for Respondent

BIAGGI & EHRLICH, ESQS. (JAMES T. CLERKIN, ESQ., of Counsel), for Charging Party

BOARD DECISION AND ORDER

This matter comes to us on the exceptions of the Bridge and Tunnel Officers Benevolent Association (Association) to a decision of the Director of Public Employment Practices and Representation (Director) dismissing its charge against Triborough Bridge and Tunnel Authority (TBTA). The charge, filed on July 28, 1983, complains that TBTA violated both §209-a.1(d) and (e) in that it permitted the sale of tokens by employees other than bridge and tunnel officers and at locations other than toll booths after the expiration of a collective bargaining agreement on December 31, 1981. The Director determined that the charge was both untimely and deficient in that the facts as alleged do not constitute an improper practice.

The charge alleges that the parties' collective bargaining agreement covering the calendar years 1977-78 provided that only bridge and tunnel officers "shall sell tokens and only from the toll booths." It then alleges that the parties entered into two successor agreements, one covering calendar years 1980-81 and the other the 30-month period of January 1982 through June 30, 1984. It does not indicate what, if anything, the 1980-81 agreement said about the matter, and the only provision of the current agreement that is claimed to be relevant provides: "The present terms and conditions of employment shall remain in full force and effect during the term of this agreement except as modified therein."

The charge next alleges that throughout negotiations for the 1982-84 collective bargaining agreement, which were concluded on July 16, 1982, TBTA refused to negotiate the issue of the sale of tokens, and that in April 1982, TBTA unilaterally changed the practice of restricting the sale of tokens to bridge and tunnel officers and at toll booths. Finally, the charge alleges that on April 18, 1983, an arbitrator issued an award dismissing a grievance complaining about the unilateral change on the ground that "the issue of token selling is a nonmandatory subject of negotiation."

In dismissing the charge, the Director determined that TBTA's conduct which might constitute a violation of §209-a.1(d) by virtue of constituting unilateral action

occurred in April 1982, more than four months prior to the filing of the charge. Accordingly, he ruled that this part of the charge was not timely.[1/] He also determined that the allegations did not set forth a violation of §209-a.1(e) because the alleged refusal to continue the terms of an expired agreement occurred during a period covered by a successor agreement.[2/]

The Association argues that the allegation of a (d) violation is timely because the violation is a continuing one. This argument was first considered by this Board and rejected in City of Yonkers, 7 PERB ¶3007 (1974). In that decision the Board said that unilateral action could not constitute a continuing violation of §209-a.1(d) because the refusal to negotiate in good faith occurs at the precise time when a public employer withdraws an employee benefit during the course of negotiations. Accordingly, we reject this argument.

The Association next argues that, if the violation is not deemed a continuing one, the time to file the charge runs from April 18, 1983, when the arbitrator issued her award,

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1/See §204.1(a)(1) of our Rules of Procedure.

2/The Director noted that the charge did not allege a violation of the duty to negotiate impact nor that the Association had ever demanded such negotiations. The Association's exceptions do not address the issue of impact bargaining.

because it was only on that date that the Association had a reasonable basis for knowing that a statutory violation rather than a violation of contract had occurred. We reject this argument, too. In effect, the Association is arguing that the filing of a grievance tolls the four-month period of limitation for the filing of an improper practice charge. There is no basis in law for this view. In practice it can only lead to the undesirable result of successive challenges to a single action by a party in different forums. Moreover, there is no basis for the Association to have reasonably concluded that TBTA's alleged unilateral action in April 1982 constituted a violation of the contract. The parties had no collective bargaining agreement at that time.

Finally, the Association argues that the allegation of an (e) violation should have been entertained because the provisions restricting the sale of tokens are contained in an expired agreement. This argument overlooks the fact that the alleged unilateral action occurred more than four months prior to the filing of the charge and, in any event, well before the July 29, 1982 effective date of §209-a.1(e) of the Taylor Law and therefore could not have violated that section.[3/] Accordingly, this argument must also fall.

[3/]Cf. Cobleskill Central School District, 16 PERB ¶3057 (1983), aff'd Cobleskill Central School District v. Newman, 16 PERB ¶7023 (Sup. Ct., Albany Co., 1983).

NOW, THEREFORE, WE AFFIRM the decision of the Director, and

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

DATED: February 23, 1984
Albany, New York

Harold R. Newman, Chairman

Ida Klaus, Member

David C. Randles, Member

NOT ISSUED
(See Minutes of the
Board Meeting 3/19-20/84)

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2G-2/23/84

In the Matter of

NEW YORK CITY CONCILIATION AND APPEALS BOARD,

Employer,

-and-

CASE NO. C-2655

DISTRICT COUNCIL 37, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO,

Petitioner.

ELLIS S. FRANKE, ESQ., for the New York City Conciliation and Appeals Board

BEVERLY GROSS, ESQ. (CHARMAINE HENDERSON, ESQ., of Counsel), for District Council 37, American Federation of State, County and Municipal Employees, AFL-CIO

BURNS, SUMMIT, ROVINS & FELDESMAN, ESQS. (PAUL J. SCHREIBER, ESQ., of Counsel), for the Rent Stabilization Association of New York City, Inc.

JOSEPH M. BRESS, ESQ. (SUSAN G. WHITELEY, ESQ., of Counsel), for State of New York, Governor's Office of Employee Relations

BOARD DECISION AND ORDER

The petition herein was filed by District Council 37, American Federation of State, County and Municipal Employees, AFL-CIO (DC 37) to represent a unit of clerical and administrative employees and accountants employed by

the New York City Conciliation and Appeals Board (CAB). Both DC 37 and CAB agreed upon the appropriateness of the negotiating unit proposed in the petition and, on November 23, 1983, the Director of Public Employment Practices and Representation (Director) ordered that there be an election in that unit unless DC 37 submitted evidence to satisfy the requirements of §201.9(g)(1) of our Rules of Procedure for certification without an election. DC 37 submitted such evidence and, on December 20, 1983, the Director determined that it was entitled to be certified as the exclusive negotiating agent in the stipulated unit.

Before issuing this order, the Director concluded that CAB was a public employer within the meaning of the Taylor Law and that the unit personnel are public employees. The status of CAB and its employees had been placed in question by the Rent Stabilization Association of New York City, Inc. (RSA), which also moved to intervene in the proceeding on the ground that it is a joint employer of the unit personnel, and a party in interest. The Director denied this motion.

This matter now comes to us on the exceptions of RSA to the decision of the Director denying its motion. The exceptions also argue that the Director erred in concluding that CAB and its employees are covered by the

Taylor Law.[1/]

CAB is a nine member agency, all of the members of which are appointed by the Mayor of the City of New York subject to the approval of the City Council. It was created pursuant to §YY51-1.0 et seq. of the New York City Administrative Code and under the authority of Chapter 21 of the Laws of 1962 to enforce New York City's Rent Stabilization Law of 1969. Its powers were subsequently expanded by Chapter 576 of the Laws of 1974. It alone is responsible for hiring, firing and directing the work of its employees. RSA is an organization of landlords who own property in the City of New York. It supplies the funds that are required to meet the budget of CAB. It may challenge the amount of money which CAB claims it needs to perform its function by complaining to the City's Department of Housing Preservation and Development, which

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[1/]We also have before us a motion by the State of New York (State) to reopen and to intervene on the ground that it is a party in interest because the function of CAB will become a State operation on April 1, 1984, at which time those employees of CAB whom the Commissioner of the State Division of Housing and Community Renewal requires to perform this function will be transferred to the State.

The State was aware of these proceedings from the onset and sent an observer to the pre-hearing conference. Having made no effort to intervene before the issues were considered by the Director, it should not be permitted to do so at this time. Buffalo Teachers Federation, 16 PERB ¶3018 (1983), aff'd. Board of Education v. PERB, not officially reported, 17 PERB ¶7004 (Sup. Ct., Albany Co., 1984). Accordingly, we deny this motion.

is empowered to resolve such a dispute. RSA has no other connection with CAB and has no role in CAB's employment of its staff.

On the facts, we affirm the determination of the Director denying RSA's motion to intervene. It is neither a joint employer of the unit personnel nor in any other way a party in interest.[2/] Having done so, it is unnecessary for us to consider RSA's substantive challenges to the decision of the Director as it has no standing to raise them.[3/]

NOW, THEREFORE, WE ORDER that the decisions of the Director of November 23, 1983 and December 20, 1983 be, and they hereby are, affirmed, and

WE HEREBY CERTIFY that DC 37 has been designated and selected by a majority of the employees of CAB, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of

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2/It is not unusual for a governmental regulatory function to be financed by a charge upon the private sector, e.g. the State Banking and Insurance Departments, Banking Law §17 and Insurance Law §32-a.

3/Were those issues before us, we would affirm the material findings of fact and conclusions of law of the Director.

NOT ISSUED
(See Minutes of the Board
Meeting 3/19-20/84)

collective negotiations and the settlement of grievances.

Unit: Included: All clerical and administrative employees and accountants.

Excluded: Attorneys, paraprofessionals, and all other employees.

FURTHER, WE ORDER CAB to negotiate collectively with and enter into a written agreement with DC 37 with regard to terms and conditions of employment of the employees in the unit found appropriate, and to negotiate collectively with such employee organization in the determination of, and administration of, grievances of such employees.

DATED: February 23, 1984
Albany, New York

Harold R. Newman
Harold R. Newman, Chairman

Ida Klaus
Ida Klaus, Member

David C. Randles
David C. Randles, Member