

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

#2A-6/15/84

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In the Matter of  
LETCORTH CENTRAL SCHOOL DISTRICT,  
Respondent,

-and-

CASE NO. U-7260

LETCORTH CENTRAL TEACHERS  
ASSOCIATION, NEA/NY,

Charging Party.

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Christopher J. Kelly, for Charging Party

BOARD DECISION AND ORDER

This matter comes to us on the exceptions of the Letchworth Central Teachers Association, NEA/NY (Association) to a decision of the Director of Public Employment Practices and Representation (Director) dismissing its charge against the Letchworth Central School District (District).<sup>1/</sup> The charge alleges that the District violated §209-a.1(d) of the Taylor Law by failing to include §2.16 of a contract that expired on June 30, 1983 in a successor contract.<sup>2/</sup>

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<sup>1/</sup>It was dismissed under §204.2 of our rules before an answer was filed on the ground that the facts as alleged do not constitute an improper practice.

<sup>2/</sup>The provision in question is a formula for extra compensation.

According to the Association, the parties agreed that each provision of the 1981-83 contract would be carried forth into the 1983-85 contract unless either party put forth a proposal to alter, change or delete that provision. The Association further asserts that neither party put forth a proposal to alter, change or delete §2.16 of the 1981-83 agreement. Nevertheless, the Association contends, when the parties appeared to have reached a new agreement on November 14, 1983, the District denied that it continued the former §2.16. The Association alleges that in signing a memorandum of understanding which incorporated the changes from the old contract the superintendent noted in writing:

It is the superintendent and board's understanding that former Section 2.16 does not apply to this contract.

while it wrote:

This contract is being signed with the understanding of the Association that Section 2.16 is included.

Finally, the Association complains that the District then rejected its demand that §2.16 be included in the newly prepared contract.

The Director dismissed the charge on the ground that the parties had executed a memorandum of understanding which, notwithstanding the reservations expressed by its signatories, constitutes a new agreement. The dispute therefore, according to the Director, is one involving

interpretation and enforcement of an agreement, and he dismissed the charge under St. Lawrence County, 10 PERB ¶3058 (1977) which holds that a matter of contract interpretation is beyond our jurisdiction.

The Association argues that the Director misconstrued its charge, the claim being that the District reached, and then denied, an agreement. We read the charge to indicate that both parties acknowledge reaching an agreement on all issues but one and that they were prepared to effectuate the undisputed parts of their agreement immediately. They differ, however, as to whether there is an agreement regarding the continued application of \$2.16 of the prior contract and the District refused to incorporate it into a new contract.

If, as alleged, there was an agreement to continue \$2.16 of the prior contract and that agreement was repudiated by the District, it has violated §209-a.1(d) of the Taylor Law.<sup>3/</sup> The Association being given no opportunity to prove that it had an agreement with the District to continue \$2.16 and that the agreement was repudiated by the District, we remand this matter to the Director for further proceedings.

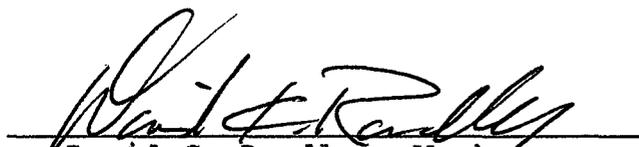
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<sup>3/</sup>Westbury UFSD v. PERB, 54 AD2d 702, 9 PERB ¶7018 (2d Dept., 1976); Sylvan-Verona Beach Common School District, 15 PERB ¶3067 (1982).

NOW, THEREFORE, WE ORDER that the charge herein be  
remanded to the Director for further  
proceedings consistent herewith.

DATED: June 15, 1984  
Albany, New York

  
Harold R. Newman, Chairman

  
David C. Randles, Member

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

#2B-6/15/84

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In the Matter of  
UNITED UNIVERSITY PROFESSIONS,  
Respondent,

-and-

CASE NO. U-7164

THOMAS C. BARRY,  
Charging Party.

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

THOMAS C. BARRY, pro se

BOARD DECISION AND ORDER

This matter comes to us on the exceptions of both the United University Professions (UUP) and Thomas C. Barry to the decision of an Administrative Law Judge (ALJ) which found merit in one part, but not in other parts, of Barry's charge against UUP. The charge alleges that by publishing a brochure which misrepresents inducements to join it, UUP coerced Barry in the exercise of his right, as specified in §202 of the Taylor Law, to refrain from joining it. The brochure specifies 23 benefits of members, all of which are available to all unit

employees.<sup>1/</sup> The theory of the charge is that this misrepresentation is in-and-of-itself coercive.

The ALJ determined that the misrepresentation is not in-and-of-itself coercive, and that it violates the Taylor Law only if the underlying benefit is one that is financed wholly or in part from agency shop fee monies and is either job related or of substantial economic value. He found that one of the benefits fell in this category and the others did not.

The brochure in question is entitled "UUP 1983-84 Membership Benefits". It begins with a letter to unit employees clearly informing them that if they are not already members of UUP, by joining they will be eligible for the membership benefits. The first group of benefits consists of various types of insurance which, presumably,

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<sup>1/</sup>These benefits are: 1) NYSUT \$2,000,000 Catastrophe Major Medical Insurance, 2) NYSUT High-Limit Accident Insurance, 3) AFT Retired Members Hospitalization/Nursing Home Plan, 4) NYSUT Extra-Value Hospital Insurance, 5) AFT Disability Income Plan, 6) NYSUT Income Protection Plan, 7) AFT Life Insurance Plans, 8) Automobile and Homeowners/Renters Insurance, 9) NYSUT/AFT Term Life Insurance, 10) Retired Members Hospitalization, Medicare Supplement, and Life Insurance plans, 11) AFT Care Plus, 12) AFT Accident Insurance, 13) AFT Hospital Indemnity Plan, 14) AFT Budget Travel Accident Insurance Plan, 15) Car Rentals at Discount, 16) AFT Auto Rental Discount, 17) NYSUT Car/puter Discount Car Purchase Plan, 18) NYSUT Legal Services Plan, 19) UUP Walt Disney Magic Kingdom Club, 20) UUP Six Flags Funseekers Club, 21) AFT Travel Program, 22) AFT Magazine Subscription Service, and 23) the NYSUT "Ready or Not" retirement program.

may be purchased at group rates.<sup>2/</sup> The brochure then lists a number of benefits such as eligibility for discounted car rentals and other services. Finally, the brochure lists a retirement counseling program which UUP acknowledges that it paid for. This is the only benefit listing which the ALJ found to constitute a violation.

In its exceptions UUP argues that the ALJ erred in finding a violation with respect to the retirement counseling program because, it asserts, that program is neither job related nor of substantial economic value. It further argues that the booklet itself was not intended to mislead unit employees and that no violation should rest upon an inadvertant ambiguity.

We are not persuaded by these arguments. When a union misrepresents the unavailability of benefits to non-members, it is irrelevant whether the benefits are job connected or have substantial economic value. We find that the brochure was intended to induce agency shop fee payers to become members of UUP. Given that purpose, we conclude that the misrepresentations were intended because an accurate statement would have completely undermined the purpose of the brochure by acknowledging that nonmembers

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<sup>2/</sup>Other types of insurance coverage are provided at union expense. The brochure specifies that these are available to agency shop fee payers as well as members.

are already eligible for the listed benefits.

Barry's exceptions argue that the ALJ applied an incorrect theory of law in that he should have ruled that any misrepresentation of fact designed to induce membership is coercive and a violation of the Taylor Law. We agree. The ALJ's reliance upon UFT (Barnett), 17 PERB ¶3023 (1984), is misplaced. In that case the Board held that a union need not furnish benefits to agency shop fee payers unless the benefits were financed in whole or in part by agency shop fees and they were either job related or of substantial economic value. It does not follow, however, that having chosen to furnish those benefits for its own reasons -- perhaps the larger group induced the insurance companies and other benefit suppliers to provide those benefits in the first place or to provide them at an attractive price -- it can misrepresent to nonmembers that the benefits are not available to them. In Auburn Administrators Association, 11 PERB ¶3086 (1978), we found the Association in violation of the Taylor Law because a false statement that it would not represent Bovi, a nonmember, "could only have been designed to coerce Bovi into joining the Association." Similarly, in UFT (Barnett), 15 PERB ¶3103 (1982), we found a violation where UFT issued a description of a medical expense plan which was misleading in that it indicated incorrectly that

only UFT members were covered.<sup>3/</sup> Accordingly, we find that UUP violated §209-a.2 (a) of the Taylor Law by misrepresenting all 23 benefits to be available to members only.

NOW, THEREFORE, WE ORDER UUP to:

1. Immediately cease distribution of the membership benefits booklet until it is revised to incorporate prominent notice that the benefits are available to agency shop fee payers as well as members and incorporate this notice in any and all literature making reference to the benefits which is prepared, published, or distributed hereafter.
2. Cease and desist from interfering with, restraining or coercing public employees in the exercise of their rights under the Act.

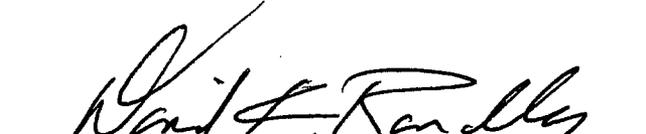
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<sup>3/</sup>In both these cases, the misrepresentations involved services that the unions were obligated to provide. The actual violation, however, was not a failure to provide those services but the misrepresentation, designed to induce union membership, that the services would not be provided. See also PEF (Muragali), 14 PERB ¶3036 (1981), in which we indicated that the absence of a duty to furnish information about certain matters does not exculpate a union which furnishes misinformation about those matters.

3. Post the attached notice in all facilities at which unit employees work in locations at which information for unit employees is ordinarily posted and to which the UUP has access by contract, practice or otherwise.

DATED: June 15, 1984  
Albany, New York

  
Harold R. Newman, Chairman

  
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** all unit members that the United University Professions:

1) Will not distribute the membership benefits booklet until it is revised to incorporate prominent notice that the benefits are available to agency shop fee payers as well as members and will incorporate this notice in any and all literature making reference to the benefits which is prepared, published, or distributed hereafter.

2) Will not interfere with, restrain or coerce public employees in the exercise of their rights under the Act.

United University Professions.....

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.*

9079

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

#2C-6/15/84

In the Matter of the

ST. REGIS FALLS UNITED TEACHERS,

Respondent,

BOARD DECISION  
AND ORDER

upon the Charge of Violation of §210.1  
of the Civil Service Law.

CASE NO. D-0236

On April 12, 1984, Martin L. Barr, Counsel to this Board, filed a charge alleging that the St. Regis Falls United Teachers Association, NYSUT, AFT, AFL-CIO (Respondent) had violated Civil Service Law (CSL) §210.1 in that it caused, instigated, encouraged, condoned and engaged in a 25 workday strike against the St. Regis Falls Central School (School) commencing January 27, 1984.

The charge further alleged that 32 full and part-time teachers, constituting the entire negotiating unit, participated in the strike.

The Respondent requested counsel to indicate the penalty he would be willing to recommend to this Board as appropriate

for the violation charged. Respondent proposed to default on the filing of its answer, and thereby admit the factual allegations of the charge on the understanding that counsel would recommend and this Board would accept, a penalty of loss of Respondent's right to have dues and agency shop fees deducted for a period of one year.<sup>1/</sup> Counsel has so recommended.

On the basis of the unanswered charge, we find that the Respondent violated CSL §210.1 in that it engaged in a strike as charged, and we determine that the recommended penalty is a reasonable one and will effectuate the policies of the Act.

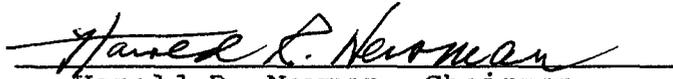
WE ORDER that the deduction rights of the St. Regis Falls United Teachers, NYSUT, AFT, AFL-CIO, be suspended, commencing on the first practicable date, and continuing for such period of time during which one hundred per cent (100%) of its annual agency shop fees, if any, and dues would otherwise be deducted. Thereafter, no dues or agency shop fees shall be deducted on its behalf by the St. Regis Falls

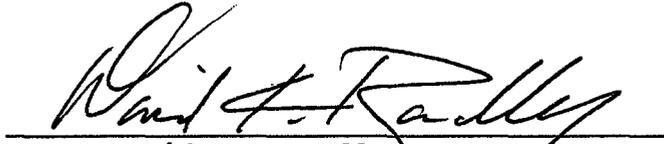
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<sup>1/</sup>The employer advises that the annual dues are deducted during a period of less than 12 months; i.e., over 20 pay periods. The recommended penalty is intended to extend over the duration of a full school year.

School until the Respondent affirms that it no longer asserts the right to strike against any government as required by the provisions of CSL §210.3(g).

DATED: Albany, New York  
June 15, 1984

  
Harold R. Newman, Chairman

  
David C. Randles, Member

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of  
GREENVILLE CENTRAL SCHOOL DISTRICT,  
Respondent,

#2D-6/15/84

-and-

CASE NO. U-7139

GREENVILLE TEACHER AIDE SERVICE UNIT,  
GREENVILLE FACULTY ASSOCIATION, NYSUT,  
Charging Party.

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CARPENTER & KEEFE, ESQS. (JAMES F. KEEFE, ESQ.,  
of Counsel), for Respondent

HARRY W. FAIRBANK, for Charging Party

BOARD DECISION AND ORDER

The charge herein was brought by the Greenville Teacher Aide Service Unit, Greenville Faculty Association, NYSUT (Association). It alleges that the Greenville Central School District (District) violated §209-a.1(a), (c) and (d) of the Taylor Law by improperly assigning the unit work of teacher aides to a nonunit employee, thereby diminishing the working time of five of the teacher aides.

The Administrative Law Judge (ALJ) dismissed allegations that this reassignment of the unit work violated §209-a.1(a) and (c), and that the District refused to negotiate the impact of this reassignment, and the Association filed no exceptions

to these parts of the decision.<sup>1/</sup>

The District excepted to the determination of the ALJ that the reassignment violated §209-a.1(d) of the Taylor Law. Unrelated to the reassignment issues, the ALJ found that the District violated §209-a.1(e) by refusing seniority-based increments after the expiration of an agreement. The District has also filed exceptions to this determination.

The record shows that the five teacher aides who worked in the District's elementary school performed photocopying and other clerical tasks. The parties stipulated that those tasks were "traditionally and exclusively" performed by them. In September 1983, the District relieved them of these clerical tasks and assigned the tasks to a clerk/typist, a nonunit position. The effect of this was that the working time of all five teacher aides was reduced until their hours were restored in November 1983.

On these facts, the ALJ determined that the District violated its duty to negotiate its decision to reassign unit work. He then ordered the District to restore "to the teacher aides the hours of work and duties that were lost by virtue of the reassignment . . ." and make them whole for lost earnings.

In its exceptions, the District notes that the ALJ found that it did not refuse to negotiate the impact of the

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<sup>1/</sup>It also filed no exceptions to a determination of the ALJ that another alleged reassignment of unit work violated §209-a.1(b).

reassignment of the tasks. It argues that the ALJ should therefore have found no violation with respect to its unilateral action in that that charge does not allege such a violation independent of the impact.

We reject this argument. The charge distinguishes between the reassignment of tasks and the impact of that reassignment, and it complains about both.

The District also argues that this specification of the charge should be dismissed because it subsequently restored the lost time of the aides by increasing other parts of their working time. This argument is relevant only to the remedial order. The ALJ's proposed order can be read to go no further than to make the aides whole for the time they actually lost and to assure them that they will not lose working time in the future by reason of the reassignment. This is what charging party seeks and we make this result more clear in our order.

With respect to the violation of §209-a.1(e) of the Taylor Law, the District argues that its refusal to pay seniority-based increments after the expiration of an agreement is not improper notwithstanding our decision in Cobleskill Central School District, 16 PERB ¶3057 (1983), aff'd Cobleskill Central School District v. Newman, not officially reported, 16 PERB ¶7023 (Sup. Ct., Albany Co., 1983), appeal pending. It asks this Board to reverse its Cobleskill decision or, in the alternative, to issue no decision until the Appellate Division has had an opportunity to review Cobleskill. We decline to do

so,<sup>2/</sup> and affirm the decision of the ALJ.

NOW, THEREFORE, WE ORDER the Greenville Central School District to:

1. Restore immediately to the teacher aides the hours of work that were lost by virtue of the reassignment of their work to a nonunit individual in September 1983, together with any loss of wages or benefits which they may have suffered by reason thereof, with interest at the legal rate;
2. Cease and desist from refusing to negotiate in good faith over terms and conditions of employment with the Greenville Teacher Aide Service Unit, Greenville Faculty Association, NYSUT;
3. Pay to each unit employee who was improperly denied a salary increase at the beginning of the 1983-84 school year a sum equal to the difference between the salary actually paid to the employee to date and the salary that would have been paid to the employee to date had the employee

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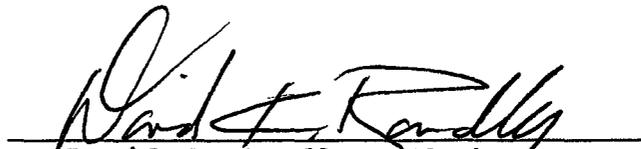
<sup>2/</sup>See Utica CSD, 17 PERB ¶3025 (1984), and Brighton CSD, 17 PERB ¶3042 (1984).

been advanced to the next salary level upon the completion of an additional year of service and paid accordingly under the 1982-83 salary schedule, with interest at the legal rate;

4. Cease and desist immediately from refusing to pay unit employees in accordance with the salary schedule contained in an expired agreement until a successor agreement is negotiated;
5. Post a notice in the form attached at all locations normally used for communication with unit employees.

DATED: June 15, 1984  
Albany, New York

  
Harold R. Newman, Chairman

  
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 in the unit represented by the Greenville Teacher Aide Service Unit, Greenville Faculty Association, NYSUT that we:

1. Will restore immediately to the teacher aides the hours of work that were lost by virtue of the reassignment of their work to a nonunit individual in September 1983, together with any loss of wages or benefits which they may have suffered by reason thereof, with interest at the legal rate;
2. Will not refuse to negotiate in good faith over terms and conditions of employment with the Greenville Teacher Aide Service Unit, Greenville Faculty Association, NYSUT;
3. Will pay to each unit employee who was improperly denied a salary increase at the beginning of the 1983-1984 school year a sum equal to the difference between the salary actually paid to the employee to date and the salary that would have been paid to the employee to date had the employee been advanced to the next salary level upon the completion of an additional year of service and paid accordingly under the 1982-83 salary schedule, with interest at the legal rate;
4. Will not refuse to pay unit employees in accordance with the salary schedule contained in an expired agreement until a successor agreement is negotiated.

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of

WINDSOR ASSOCIATION OF OFFICE  
PERSONNEL AND SCHOOL AIDES,

#2E-6/15/84

Respondent,

-and-

CASE NO. U-7167

WINDSOR CENTRAL SCHOOL DISTRICT,

Charging Party.

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In the Matter of

WINDSOR TEACHERS ASSOCIATION,

Respondent,

-and-

CASE NO. U-7168

WINDSOR CENTRAL SCHOOL DISTRICT,

Charging Party.

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WILLIAM FINGER, for Respondents

R. WHITNEY MITCHELL, for Charging Party

BOARD DECISION AND ORDER

The charges herein were brought by the Windsor Central School District. In one (U-7167), it alleged that the Windsor Association of Office Personnel and School Aides (Aides Association) improperly insisted upon the negotiation of nine nonmandatory proposals by presenting them to a fact finder. In the second (U-7168), it alleged that the Windsor Teachers Association (Teachers Associaton) improperly

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insisted upon the negotiation of ten nonmandatory proposals by presenting them to a fact finder. They were consolidated by the Administrative Law Judge (ALJ).<sup>1/</sup>

After the charges were filed, the Aides Association withdrew two of its proposals and the Teachers Association seven of its proposals. The ALJ declined to consider the specifications of the charges dealing with the proposals that were withdrawn. Of the remaining seven proposals of the Aides Association, he found two to be mandatory subjects of negotiation, four to be nonmandatory, and one to be part mandatory and part nonmandatory. Of the three remaining proposals of the Teachers Association, he found two to be mandatory and one to be nonmandatory. The matter now comes to us on the exceptions of the District to the declination of the ALJ to consider the negotiation proposals withdrawn by the two Associations. It also contends that one of the proposals of each of the Associations which the ALJ found to be mandatory should have been declared nonmandatory.

We affirm the decision of the ALJ not to consider the merits of the charges insofar as they are directed to negotiation proposals which the Associations withdrew. The

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<sup>1/</sup>A third case (U-7130) was also covered in the consolidated decision. It is not before us as no exceptions were filed to the ALJ's dismissal of that charge.

continued litigation of those issues would not have furthered the public policy underlying the Taylor Law, which is "to promote harmonious and cooperative relationships between government and its employees . . . ." <sup>2/</sup>

The proposal of the Aides Association that the District asserts was erroneously held to be mandatory is:

If any member of the bargaining unit called upon to supervise a classroom without a teacher assistant, shall receive the difference between their rate of pay per hour/mod. of a regular substitute teacher. (e.g. 5.80 per hour - \$35 day substitutes).

The District argues that any person assigned by it to supervise a classroom without a teaching assistant would, perforce, be performing the work of a teacher and would therefore not be represented by the Aides Association in connection with that assignment. The ALJ correctly found it unnecessary to consider whether an aide continues to be represented by the Aides Association when teaching a class because the proposal speaks of classroom supervision and not teaching. There is a clear difference between the two assignments. Moreover, by its terms, the proposal only applies to members of the aides unit. Accordingly, we affirm this determination of the ALJ.

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<sup>2/</sup>Section 200 of the Taylor Law; Somers Faculty Association, 9 PERB ¶3014 (1976).

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The proposal of the Teachers Association that the District asserts was erroneously held to be mandatory is:

Payment for Unused Sick Leave

Members of the bargaining unit who elect to retire in the school year upon reaching age 55 will receive the following benefits provided they exercise their service retirement. Notice to exercise ones [sic] service retirement shall be given to the district one full year prior to the actual retirement date.

Benefits for the above action are as follows:

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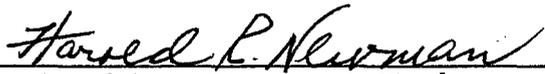
Anyone 55 years of age or older may take advantage of this benefit for the 83/84 school year only. After 83/84 the age restriction as provided in earlier portions of this provision will be binding upon prospective retirees.

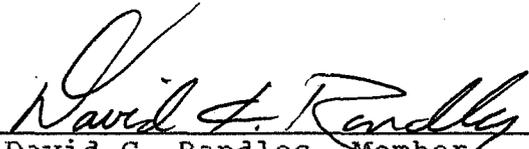
The District argues that this proposal violates §296.1 of the Human Rights Law in two particulars. First, by giving an added benefit to employees who exercise their right to retire at age 55 it discriminates on the basis of age against those who do not have that right because, having entered the service of the District late, they may not retire at that age. Second, it discriminates against employees who, by reason of disability, may have to retire before becoming 55.

The District's reading of the Human Rights Law does not appear to us to be a compelling one. It cites no judicial or administrative interpretations supporting its position, and we know of none. Accordingly, as the proposal is clearly a mandatory subject of negotiation within the meaning of the Taylor Law, we also affirm this determination of the ALJ.

NOW, THEREFORE, WE ORDER that the exceptions herein be,  
and they hereby are, dismissed.

DATED: June 15, 1984  
Albany, New York

  
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Harold R. Newman, Chairman

  
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David C. Randles, Member

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of

#2F-6/15/84

DUNKIRK CITY SCHOOL DISTRICT,

Respondent,

-and-

CASE NO. U-6729

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DUNKIRK TEACHERS ASSOCIATION,  
NYSUT/AFT, AFL-CIO, LOCAL 2611,

Charging Party.

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CHARLES G. BECKSTROM, ESQ., for Respondent

D. L. EHRHART, for Charging Party

BOARD DECISION AND ORDER

The charge herein was filed by the Dunkirk Teachers Association, NYSUT/AFT, AFL-CIO, Local 2611 (Association). It alleges that Robert E. Bennett, the Superintendent of the Dunkirk City School District (District) violated §209-a.1(a), (b), (c) and (d) of the Taylor Law by several different actions. The matter comes to us on the exceptions of the Association to the decision of an Administrative Law Judge (ALJ) which argue that the ALJ erred in dismissing some specifications and in failing to address other specifications of the charge.<sup>1/</sup> The Association also asserts prejudice on the part of the ALJ.

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<sup>1/</sup>The ALJ also found merit to certain specifications of the charge. No exceptions have been filed to those findings.

The Exceptions to the Findings of the ALJ

The Association argues that the ALJ erred in not finding that Bennett failed to process certain grievances promptly. The record shows that there was a delay in processing the grievances in question, but that this delay was the result of an inability of both parties to coordinate their schedules. Accordingly, we affirm the ALJ's conclusion that the delay did not constitute a violation by the District.

The Association next contends that the ALJ should have found that Bennett improperly established the rate of compensation for an after-school driver training position. We affirm the determination of the ALJ that Bennett's action was not improper because the position was not in the Association's negotiating unit. While the parties' collective bargaining agreement might be read to indicate coverage of the driver training program, the preponderance of the record evidence establishes that it is not.

A third exception is directed to the ALJ's determination that the District did not violate the Taylor Law when it docked an Association member one-half day's pay for an absence that it alleges was excused. We would dismiss this exception even if we were to reject the ALJ's conclusion that the Association failed to prove that the absence was excused. The relevant specification of the charge merely alleges that the docking of the pay was a breach of contract,

a matter that is not properly before us.<sup>2/</sup>

The Association also charged Bennett with improperly submitting a bill for secretarial services rendered in providing it with certain information relevant to negotiations. The Association's exceptions complain about the ALJ's dismissal of this specification of the charge, but the decision did not actually address it. Considering the allegation de novo, we find that no violation occurred. The bill was sent by mistake and no measures were taken to collect it when it was not paid.

The Association draws exceptions to the ALJ's dismissal of specifications alleging discriminatory and coercive acts against Scott, a union activist. The first was a notification to Scott that he was being considered for a "possible transfer" to another school; the second consisted of derogatory statements about Scott made by Bennett. On February 23, 1983, Bennett sent to Sweeny, the Association president, a letter which rebuked Scott and other Association activists for censuring four unit employees.<sup>3/</sup> Bennett notified Scott of the possibility of his transfer eight days after the letter of rebuke. An inference is established by the timing of the

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<sup>2/</sup>See §205.5(d) of the Taylor Law and St. Lawrence County, 10 PERB ¶3058 (1977).

<sup>3/</sup>The wording of the rebuke is set forth in the ALJ's decision and was found to have constituted a violation of the Taylor Law.

letter of rebuke and the notice to Scott that both were in response to the letters of censure to which Bennett objected. Furthermore, while Bennett testified that he contemplated the transfer to "beef up" the social studies department at the receiving school, he also testified that there was no vacancy which Scott could have filled. Other testimony also indicates that the possibility of the transfer was not known to the building principal of the providing school nor discussed by the School Board. We therefore conclude that the notification of the possible transfer was issued only to intimidate Scott and was violative of the Taylor Law.<sup>4/</sup>

By contrast, the derogatory statements were made by Bennett more than two months after the letter of censure and, thus, were too remote in time to imply a causal relationship between them. As there is no other evidentiary basis for finding that the statements were improperly motivated, we affirm the ALJ's finding that they did not constitute a violation of the Taylor Law.

Finally, the Association contends that the ALJ should have awarded Valvo, a substitute teacher and unit employee, interest at the legal rate when he awarded her one day of earnings that she would have received but for the District's

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<sup>4/</sup>City of Albany, 3 PERB ¶4507, aff'd 3 PERB ¶3096, conf'd 36 AD 2d 348 (3rd Dept. 1971), 4 PERB ¶7008; Village of Wayland, 9 PERB ¶4541, aff'd 9 PERB ¶3089 (1976).

improper failure to recall her to work.<sup>5/</sup> We agree. A make-whole remedy should provide for interest unless there are particular circumstances to warrant deviation from this principle. There are no such circumstances here.

The Unaddressed Specifications

The exceptions correctly complain that six specifications of the charge were not addressed in the ALJ's decision. Having reviewed the record, we find that each was litigated and is ready for decision.

First, the Association charged that on February 1, 1983, the District violated the Taylor Law when Bennett ordered subordinates not to attend an "in-service meeting." The District justified Bennett's conduct on the ground that the meeting in question was called by the Association without consultation with the District, contrary to the contractually required procedure. We find that the record does not establish a violation of the Act, but sets forth matters of contract construction over which we have no jurisdiction.

Similarly, the Association contends that on February 17, 1983, Bennett ordered principals not to meet with the Association with respect to grievances notwithstanding a contractual provision involving principals in the first step

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<sup>5/</sup>The ALJ found that Bennett had ordered that Valvo not be called to teach a scheduled day in reprisal for a grievance filed by her.

of the grievance procedure. This specification, too, raises a question of contract compliance that is not properly before us.

The Association also contends that the District violated the Taylor Law when Bennett placed a copy of a letter in Sweeny's file which expressed concern over the latter's 11 absences from his teaching duties. While 2 other employees, who were absent 6 and 11 times respectively, received similar letters of censure, theirs were not placed in their personnel files. Moreover, of the 11 absences, all but 2 were attributable to Association business and, indeed, Sweeny was granted paid leave by Bennett for 3 of them. Bennett's explanation of the disparate treatment between the Association's president and the other 2 unit members was that his failure to place the other 2 letters in the teachers' personnel files was a mistake. We find this explanation to be inadequate and determine that the placement of the letter in Sweeny's personnel file was violative of §209-a.1(a) and (c) of the Taylor Law.

The Association next claims that the District unilaterally altered terms and conditions of employment when, on February 22, 1983, Bennett sent Sweeny a memorandum requiring him to confirm a grievance meeting 72 hours in advance, and to provide the names of those who would attend on behalf of the Association. The memorandum also limited the duration of the meeting to one-half hour and confined its agenda to the agreed purpose. While the parties' collective bargaining agreement

contains no such requirements, Bennett testified that, in the past, Association representatives had been late or early to meetings or had not attended at all, and that he never knew who or how many people to expect. Furthermore, he claimed that meetings often extended into subjects which he had not contemplated and impinged on time he needed for other tasks. We conclude that the conditions complained of, concerning a single meeting, do not rise to the level of a unilateral change in the terms and conditions of employment in violation of §209-a.1(d) of the Taylor Law.

The charge claimed that the District violated the Taylor Law on April 12, 1983, when it abolished a special class taught by an Association member and union activist, Mahaney. The Association claims that the class was abolished in reprisal for Mahaney's filing of a grievance on November 18, 1982, and for her "other actions as a member of the union."<sup>6/</sup> However, the Association failed to establish a connection between her union activities and the abolition of the class, and these incidents are too remote in time to generate such an inference. There being no other material evidence of impropriety, we dismiss this specification of the charge.

Finally, the Association charged that on or about May 10, 1983, at a public meeting before the School Board, Bennett

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<sup>6/</sup>Mahaney was active in organizing pickets in October of 1982 and in the same year was a "crisis leader."

directed a derogatory remark toward LaSpada, the Association vice president and a union negotiator. The Association contends that the remark, concerning LaSpada's competence as a kindergarden teacher, was in reprisal for her union activities. However, LaSpada had just concluded making certain critical observations about the kindergarden program, apparently speaking individually and not as an officer of the Association. We find LaSpada's activity in Association affairs and the fact that a remark was made about her teaching competency insufficient to establish the illegality of Bennett's statement. Accordingly, we dismiss this specification of the charge.

#### The Allegation of Prejudice

The Association claims that the ALJ made prejudicial statements off the record but in the presence of witnesses on two occasions, cut off testimony, and limited the introduction of evidence during the course of the proceeding. Our review of the record indicates that much of the charging party's case was directed toward enforcement of the parties' contract, a matter over which PERB has no jurisdiction. Most of the ALJ's interruptions and rulings were an attempt to confine the scope of the litigation to issues within our jurisdiction. Furthermore, the record is devoid of any objections taken by the Association to

off-the-record discussions or comments.<sup>7/</sup> We therefore have no basis for concluding that any prejudice existed or that the hearing was conducted improperly. Accordingly, the exception is dismissed.

NOW, THEREFORE, WE ORDER the Dunkirk City School

District to:

1. Cease and desist from bypassing the Association by discussing with individuals the settlement of Association grievances.
2. Cease and desist from interfering with, restraining, coercing or discriminating against John Scott, Joseph Sweeny and other unit members because of their exercise of protected rights.
3. Remove from Joseph Sweeny's personnel file the letter dated February 18, 1983 setting forth concern over his absences.
4. Compensate Nancy Valvo for one day of substitute work plus interest at the legal rate.
5. Sign and post the attached notice at all locations normally used for communications to unit employees.

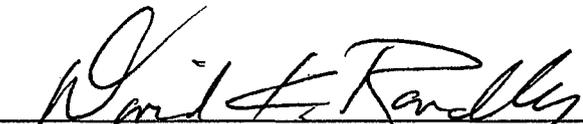
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<sup>7/</sup>See §204.7(h) of our Rules of Procedure.

In all other respects, WE ORDER that the charge herein be,  
and it hereby is, dismissed.

DATED: June 15, 1984  
Albany, New York

  
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Harold R. Newman, Chairman

  
\_\_\_\_\_  
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** employees of the Dunkirk City School District that the District will:

1. Not bypass the Dunkirk Teachers Association by discussing with individuals the settlement of Association grievances.
2. Not interfere with, restrain, coerce or discriminate against John Scott, Joseph Sweeny and other unit members because of their exercise of protected rights,
3. Remove from Joseph Sweeny's personnel file the letter dated February 18, 1983 setting forth concern over his absences, and
4. Compensate Nancy Valvo for one day of substitute work plus interest at the legal rate.

Dunkirk City School District

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

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In the Matter of

#2G-6/15/84

UNITED FEDERATION OF TEACHERS,

Respondent,

-and-

CASE NO. U-6583

DEWITT E. THOMPSON,

Charging Party.

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JAMES R. SANDNER, ESQ. (DONALD CONGRESS, ESQ., of  
Counsel), for Respondent

NOAH A. KINIGSTEIN, ESQ., for Charging Party

BOARD DECISION AND ORDER

This matter comes to us on the exceptions of Dewitt E. Thompson to the decision of an Administrative Law Judge (ALJ) dismissing his charge against the United Federation of Teachers (UFT). The charge alleges that UFT did not grieve the failure of the New York City School District to rehire Thompson after one year's service as a full-time substitute teacher.<sup>1/</sup>

As clarified at the pre-hearing conference, Thompson alleges that, after serving as a full-time substitute at

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<sup>1/</sup>There were two other specifications in the charge, both of which were dismissed by the ALJ, but Thompson does not deal with them in his exceptions.

grievance, but only that it did not file the grievance, the ALJ dismissed the charge on the ground that UFT was under no obligation to file a grievance on Thompson's behalf.

In his exceptions, Thompson argues that, under the alleged circumstances, UFT had an obligation to file the grievance. The particular circumstances are UFT's indication that the grievance had merit, that one avenue of relief was for UFT to file a grievance and that UFT never informed Thompson that it would not do so. He contends that these circumstances established a reasonable basis for him to have expected UFT to file the grievance, that he relied upon that expectation to his detriment and that UFT's disappointment of that expectation is violative of the Taylor Law.

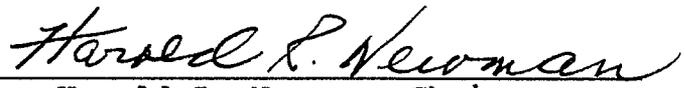
We are not prepared to accept Thompson's proposition that UFT's alleged conduct obligated it to file a grievance on his behalf. Neither, however, are we prepared to reject it without a more clear understanding of the circumstances surrounding UFT's decision not to process the grievance than is afforded by the abbreviated record.<sup>3/</sup> Accordingly, we remand the matter for further proceedings.

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<sup>3/</sup>Having determined that the charge did not allege a violation of the Taylor Law, the ALJ dismissed it without holding a hearing.

NOW, THEREFORE, WE ORDER that this matter be remanded  
to the ALJ for further proceedings  
consistent herewith.

DATED: June 15, 1984  
Albany, New York

  
\_\_\_\_\_  
Harold R. Newman, Chairman

  
\_\_\_\_\_  
Ida Klaus, Member

  
\_\_\_\_\_  
David C. Randles, Member

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of

#3A-6/15/84

COLD SPRING HARBOR CENTRAL SCHOOL  
DISTRICT,

Employer,

-and-

CASE NO. C-2753

COLD SPRING HARBOR ASSOCIATION OF  
EDUCATIONAL RESOURCE PERSONNEL, NYSUT,  
AFT, AFL-CIO

Petitioner,

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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,

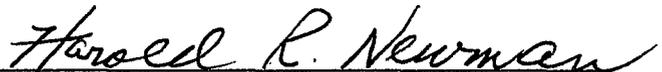
IT IS HEREBY CERTIFIED that the Cold Spring Harbor Association of Educational Resource Personnel, NYSUT, AFT, AFL-CIO has been designated and selected by a majority of the employees of the above named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

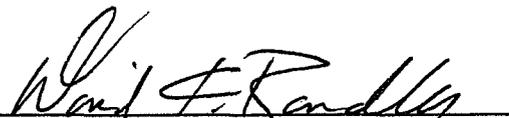
Unit:       Included:       Teacher Aide and Tutor Teacher.

          Excluded:       All other employees.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with the Cold Spring Harbor Association of Educational Resource Personnel, NYSUT, AFT, AFL-CIO and enter into a written agreement with such employee organization with regard to terms and conditions of employment of the employees in the unit found appropriate, and shall negotiate collectively with such employee organization in the determination of, and administration of, grievances of such employees.

DATED: June 15, 1984  
Albany, New York

  
\_\_\_\_\_  
Harold R. Newman, Chairman

  
\_\_\_\_\_  
David C. Randles, Member

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of

HALF HOLLOW HILLS CENTRAL SCHOOL  
DISTRICT,

#3B-6/15/84

Employer,

-and-

CASE NO. C-2746

HALF HOLLOW HILLS SUBSTITUTE TEACHERS  
ASSOCIATION, NYSUT, AFT, AFL-CIO,

Petitioner.

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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,

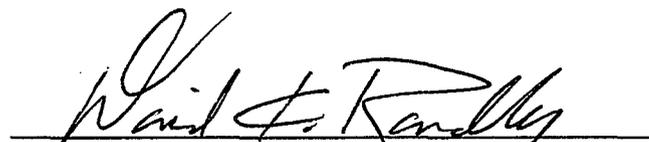
IT IS HEREBY CERTIFIED that the Half Hollow Hills Substitute Teachers Association, NYSUT, AFT, AFL-CIO has been designated and selected by a majority of the employees of the above named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit:      Included:      All per diem substitute teachers.  
         Excluded:      All other employees.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with the Half Hollow Hills Substitute Teachers Association, NYSUT, AFT, AFL-CIO and enter into a written agreement with such employee organization with regard to terms and conditions of employment of the employees in the unit found appropriate, and shall negotiate collectively with such employee organization in the determination of, and administration of, grievances of such employees.

DATED: June 15, 1984  
Albany, New York

  
Harold R. Newman, Chairman

  
David C. Randles, Member

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

#3C-6/15/84

In the Matter of

CITY SCHOOL DISTRICT OF THE CITY OF  
LONG BEACH,

Employer,

-and-

CASE NO. C-2715

LONG BEACH CLASSROOM TEACHERS  
ASSOCIATION,

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,

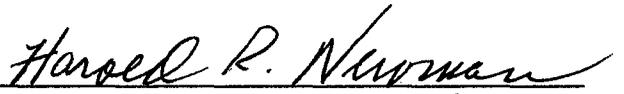
IT IS HEREBY CERTIFIED that the Long Beach Classroom Teachers Association has been designated and selected by a majority of the employees of the above named employer, in the unit described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

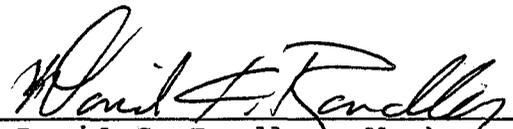
Unit:       Included:       All permanent substitute teachers.

              Excluded:       All other employees.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with the Long Beach Classroom Teachers Association and enter into a written agreement with such employee organization with regard to terms and conditions of employment of the employees in the unit found appropriate, and shall negotiate collectively with such employee organization in the determination of, and administration of, grievances of such employees.

DATED: June 15, 1984  
Albany, New York

  
\_\_\_\_\_  
Harold R. Newman, Chairman

  
\_\_\_\_\_  
David C. Randles, Member