STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

COUNTY OF RENSSELAER (HUDSON VALLEY COMMUNITY COLLEGE),

Employer,

-and-

CASE NO. C-2751

HUDSON VALLEY COMMUNITY COLLEGE NON-TEACHING PROFESSIONALS, NEA/NY,

Petitioner.

ROBERT E. GRAY, ESQ., for the Employer

HAROLD G. BEYER, JR., ESQ., for Petitioner

BOARD DECISION AND ORDER

The petition herein was filed by Hudson Valley Community College Non-Teaching Professionals, NEA/NY (NEA) for a unit of 71 non-teaching professionals (NTPs) employed by the Hudson Valley Community College of Rensselaer County (College). The College opposed the petition in part, asserting that some of the positions sought for inclusion in the unit did not belong there because they were managerial, others because they were confidential, and still others because they were supervisory. After a hearing which inquired into the parties' respective positions, the Acting Director of Public Employment Practices and Representation (Acting Director) ruled that eight of the positions were

managerial, nine of them were confidential, and four of them were supervisory. The Acting Director placed the remaining NTP's in a rank-and-file negotiating unit. Placing the four supervisory employees in a separate unit, he also included another five high-level NTPs in that unit on the ground that they share common titles, rank, executive responsibilities and participation in governance with the supervisors, thereby sharing a greater community of interest with them than with the remainder of the NTPs. Two additional high-level NTP positions were placed in the supervisors unit by the Acting Director, but it is not clear from his decison whether this was due to their own supervisory responsibilities or because they, too, shared a close community of interest with the supervisors.[1/]

The matter now comes to us on the exceptions of NEA. It argues that two of the eight positions found to be such are not managerial. The two positions addressed by this part of the exceptions are Director of Learning Resources and Coordinator of Human Resources. NEA further argues that the Acting Director erred in placing four of the positions involving supervisory duties in the supervisory unit because

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[1/]The Acting Director did not place the positions he determined to be managerial or confidential in either unit. This was appropriate because managerial and confidential employees do not have any Taylor Law right of represention. CSL §201.7(a).

the supervisory duties of such position are de minimis. These positions are Director of Physical Plant, Director of Admissions, Director of Computer Services and Registrar. Next, NEA argues that the Acting Director erred in excluding the positions found not to involve supervision. These positions are Director of Physical Education, Director of Recreation and Athletics, Director of Information Services, Director of Development and Director of Institutional Research.[2/] NEA's final argument is that the two positions that were excluded from the rank-and-file unit without any reason being given, Director of Health Services and Director of Business Services, should be restored to that unit either because they have no supervisory functions or because such functions, if any, are de minimis.

Having reviewed the record, we affirm the decision of the Acting Director, except insofar as it declares the Coordinator of Human Resources to be managerial.

The record shows that the Director of Learning Resources is a regular participant in the weekly meetings of the deans of the college. These meetings are used for the discussion of curriculum development, negotiation proposals,

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[2/]The exceptions do not refer to the Director of Institutional Research. However, as this position is not distinguishable from the others in this category in any relevant particular, we include it in our analysis of the group.

consideration of promotions and merit increases, and the formulation of proposals involving various policy matters to be presented to the College's president.[3/] His participation in these meetings is reasonably related to his primary responsibility which is "coordinating the [library and media center] services to meet the educational needs of the institution." The Director of Learning Resources is also a member of the president's cabinet. These duties involve the Director of Learning Resources in formulation of policy and give him a major role in the College's preparation for the conduct of collective negotiations and in personnel administration, any one of which would be sufficient for his designation as managerial.

The evidence in the record concerning the duties of the Coordinator of Human Resources consists of the job description for that position as qualified by the testimony of the incumbent. As thus qualified, the job description

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[3/]Even if the Director of Learning Resources' participation in these meetings were not sufficient to constitute him a managerial employee, his exposure to the many matters that are discussed at these meetings would be sufficient for his designation as confidential. For the purpose of eligibility for representation rights under the Taylor Law, the consequences of an employee's designation as managerial or confidential are identical.

shows that the incumbent's responsibilities are those of training the personnel of the College. These do not amount to a major role in personnel administration, the basis for the Acting Director's determination that she is managerial. Neither does the record evidence provide any other basis for a determination that she is managerial. This presents the question whether she should be placed in the unit of rank-and-file NTPs or with the supervisors. The relevant evidence in the record shows that the Coordinator of Human Resources exercises no supervisory responsibilities over NTPs. It also shows that she shares a similar title with the Coordinator of Affirmative Action, and that both are on the same level, each reporting to a vice-president of the College. The Coordinator of Affirmative Action's placement in the rank-and-file unit is unchallenged and we therefore place the Coordinator of Human Resources in the same unit.

NEA does not contest the Acting Director's determination that the Director of Student Development and the Director of Continuing Education have supervisory responsibilities which justify their being placed in a negotiating unit separate from the rank-and-file NTPs. It argues, however, that supervisory duties of the Director of Physical Plant, the Director of Admissions, the Director of Computer Services and the Registrar are not sufficient for their being removed from the rank-and-file NTP unit.

The Director of Physical Plant supervises two NTPs: the assistant to the director and the energy systems manager. The Director of Admissions supervises three NTPs: two senior admissions counsellors and a recruiter. The Director of Computer Services supervises three NTPs: the coordinator of computer operations, the senior computer programmer analyst, and the associate director of academic computing. The Registrar supervises two NTPs: the supervisor of student records and the scheduling officer.

NEA contends that the supervisory responsibilities of these four positions are de minimis. Presumably, the basis for its position is both the small number of employees being supervised and the relatively high level of the supervised employees, which may indicate a need for relatively little supervision. In support of its position, it points to our decision in County of Ulster, 16 PERB ¶3069 (1983), in which we held that the level of supervision is a significant factor in determing whether supervisors and rank-and-file employees may be included in a single unit.

We do not find County of Ulster to be relevant here. In that case, there had been an existing negotiating unit, voluntarily established, consisting of both supervisory and rank-and-file positions. As we indicated in that decision and in Village of Scarsdale, 15 PERB ¶3125 (1982), the test for continuing the existence of a mixed supervisors and

rank-and-file unit that has existed successfully for a long period of time is much lighter than the test for creating such a unit ab initio. We affirm the determination of the Acting Director that the four positions referred to herein have supervisory roles sufficient for them to be placed in a negotiating unit distinct from that of the rank-and-file NTPs.

In arguing that the Acting Director erred in placing several Directors who do not supervise other NTPs in the supervisory unit, NEA has misconstrued the reasoning of the Acting Director. It asserts that the Acting Director, having found there to be a small number of NTPs who supervise other NTPs, created a negotiating unit for them. However, as that unit was too small for effective negotiations, the Acting Director, according to NEA, decided to add some nonsupervisory NTPs to it in order to make it more viable. The decision of the Acting Director makes it clear that this is not what occurred. Rather, he first determined that there would be two negotiating units for NTPs, one for supervisors and the other for rank-and-file employees. Thereafter, finding that the supervisory NTPs were, with the exception of the Registrar, all Directors, he concluded that the other Directors shared a greater community of interest with the

supervisors than with the rank-and-file NTPs.[4/] We affirm this conclusion.[5/]

NEA's final argument relates to the Director of Health and the Director of Business Services. Each of them supervises a single NTP. The Director of Health Services supervises the College nurse and the Director of Business Services supervises an assistant director. We affirm the Acting Director's inclusion of these two positions in the supervisory unit both because of the supervisory responsibilities performed by them and because of the community of interest they share with other Directors.

[4/]This was because of "their common titles, rank, executive responsibilities and participation in governance of the college . . . ."

[5/]See City of Niagara Falls, 13 PERB ¶3017 (1980).

NEA acknowledges that two of the NTP positions, Director of Student Development and Director of Continuing Education, were properly excluded from the rank-and-file unit by reason of supervisory responsibilities. That would have been sufficient for the creation of a separate negotiating unit for them. Accordingly, even if we were to disagree with the finding of the Acting Director that the Directors of Physical Plant, Admissions and Computer Services had sufficient supervisory responsibilities for their exclusion from the rank-and-file unit by reason thereof, we would have included them in the supervisory unit for the reason that we included the nonsupervisory Directors in that unit. The same is true of the Registrar because, title notwithstanding, the position is comparable to that of the Directors.

NOW, THEREFORE, WE ORDER that there be two negotiating units as follows:

Unit I

Included: All employees listed in Appendix A.

Excluded: All other employees.

Unit II

Included: Director of Physical Education, Recreation and Athletics, Director of Institutional Research, Director of Information Services, Director of Development, Director of Student Development, Director of Continuing Education, Director of Physical Plant, Director of Admissions, Director of Computer Services, Director of Health Services, Director of Business Services, and Registrar.

Excluded: All other employees.

WE FURTHER ORDER that:

1. an election by secret ballot be held under the supervision of the Director among the employees in the units determined to be appropriate who were employed on the payroll date

immedately preceding the date of this decision, unless the petitioner submits to the Director within fifteen days from the date of receipt of this decision evidence to satisfy the requirements of §201.9(g)(1) of the Rules.

2. the employer shall submit to the Director and to the petitioner, within fifteen days of the date of receipt of this decision, alphabetized lists of all employees within the units determined above to be appropriate who were employed on the payroll date immedately preceding the date of this decision.

DATED: January 2, 1985
Albany, New York

Harold R. Newman, Chairman

David C. Randles, Member

APPENDIX A

Assistant Director, Student Development
Associate Director, Student Development
Associate Director, Academic Computing
Associate Director, Learning Resources
Computer Programmer Analyst
Coordinator, Alumni Affairs/Public Services
Coordinator, Computer Operations
Coordinator, Student Activities
Data Base Analyst
Assistant to the Director, Physical Plant
Energy Systems Manager
Financial Aid Officer
Scheduling Officer
Systems Engineer
Assistant Director Continuing Education
Assistant Financial Aids Officer
College Nurse
Coordinator, Affirmative Action
Coordinator, Opportunity Programs
Data Communications Technicians
Manager, Food Services
Media Specialist
Recruiter/Field Representative
Assistant Director, Business Services
Assistant Coordinator, Opportunity Programs
Assistant for Financial Anslysis
Assistant Scheduling Officer
Coordinator, Technical Services
Supervisor, Student Records
Technical Assistants
Admissions Counselor, Senior
Counselor, Senior
Counselor
Counselor, Disabled Students
Counselor, Veterans Affairs
Associate Director, Physicians Assistant Program
Coordinator of Human Resources

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

SAG HARBOR POLICE BENEVOLENT ASSOCIATION,

Respondent,

-and-

CASE NO. U-7134

INCORPORATED VILLAGE OF SAG HARBOR,

Charging Party.

SCHLACHTER & MAURO (Reynold A. Mauro, Esq., of Counsel), for Respondent

INGERMAN, SMITH, GREENBERG & GROSS (John H. Gross, Esq., of Counsel), for Charging Party

BOARD DECISION AND ORDER

This matter comes to us on the exceptions of the Incorporated Village of Sag Harbor (Village) to the decision of an Administrative Law Judge (ALJ) dismissing its charge that the Sag Harbor Police Benevolent Association (PBA) refused to execute a collective bargaining contract to which it had agreed. The problem is posed by the Village's inclusion in the contract of a clause dealing with the accrual of fringe benefits. PBA asserts that it had never agreed to such a clause.

The Village had credited its police officers with various leave accruals such as sick leave, vacation time, holiday and personal leave on January 1 of each year. Sometime in 1982, Eberhardt, one of the police officers, sustained a line-of-duty injury. The Village sought to recover the already granted leave credits while the employee was receiving benefits pursuant to General Municipal Law §207-c. This precipitated a grievance by Eberhardt.

The language which the Village included in its draft of the contract is designed to obviate its need to seek recovery of leave credits in the future by providing that future leave credits would be accrued from pay period to pay period, rather than credited on January 1 of each year. Downes, a Village negotiator, testified that he and Salargo, a member of PBA's negotiating team, had held separate negotiating meetings at which they agreed upon the terms of a contract which included the accrual of fringe benefits. He further testified that Salargo had told him that he had been authorized by PBA to conclude such an agreement. Salargo testified that no such agreement was ever reached. He further testified that he told Downes that the "Eberhardt issue" was a grievance matter which had to be taken up with PBA's lawyer, and not with him.

The ALJ dismissed the charge without ever resolving the credibility issue presented by the discrepancies between the

testimony of Downes and Salargo. The Village's exceptions argue that the case turns on this credibility issue, and that the ALJ's failure to resolve it constitutes reversible error.

The ALJ dismissed the charge on the ground that even if the allegations of fact contained in Downes' testimony were to be credited, the charge would still have to be dismissed. He determined that Downes testified that there was an agreement in principle, but he did not indicate any agreement on the specific formula for the accrual of fringe benefits that he incorporated into the contract draft.

Having reviewed the record, we find that it supports the ALJ's determination. Downes acknowledged that the subject of accrual of fringe benefits had not been considered during the formal negotiations between the teams of the Village and PBA. This is consistent with Salargo's testimony that while the issue was always "in front of everything we did", it was never actually discussed.

The impasse between the parties focused on salary levels for the second of a contemplated two-year contract. At one time Downes and Salargo engaged in a casual conversation concerning this matter. Subsequently, the two committees authorized them to negotiate it. While Downes testified that these negotiations were later expanded to include the accrual of fringe benefits issue, his recollection of what happened is that Salargo merely indicated his belief that PBA

would agree to Downes' proposal on that issue. As Downes' own testimony falls short of establishing an agreement, it was unnecessary for the ALJ to determine whether Downes' testimony was more creditable than that of Salargo, who denied that he ever made the statement that Downes attributed to him. Moreover, while Downes testified that at a later date Salargo acknowledged to him that he had agreed that there would be a clause dealing with the accrual of fringe benefits, he offered no testimony whatsoever that there was an agreement as to what such a clause would contain. On the contrary, he testified that following Salargo's agreement in principle, he himself drafted an accrual of benefits clause which was based upon his independent understanding of what such a clause might contain. That, in turn, was based upon his individual experience as an employee in the Town of Hempstead.

An accrual of fringe benefits clause might deal with some but not other types of leave, and the benefits might accrue at different times. There is no testimony that Downes ever discussed these details with Salargo or any other members of PBA's negotiating team until after PBA had refused the clause which Downes had drafted. Thus, without resolving the credibility issue presented by Salargo's testimony that he never ackowledged to Downes that an agreement had been reached on the accrual of fringe benefits, we affirm the decision of the ALJ that the parties never agreed upon the

accrual of fringe benefits clause that Downes included in the draft agreement. PBA's refusal to execute the agreement was, therefore, not improper.

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

DATED: January 2, 1985
Albany, New York

Harold R. Newman, Chairman

David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

UNITED UNIVERSITY PROFESSIONS, INC.,

Respondent,

-and- CASE NO. U-7684

SAMUEL J. BODANZA,

Charging Party.

STUART A. ROSENFELDT, ESQ., for Charging Party

BOARD DECISION AND ORDER

This matter comes to us on the exceptions of Samuel J. Bodanza (Bodanza) 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. Bodanza 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 the 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, Bodanza 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.

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

DATED: January 2, 1985
Albany, New York

Harold R. Newman, Chairman

David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

UNITED UNIVERSITY PROFESSIONS,

Respondent,

-and- CASE NO. U-7781

THOMAS C. BARRY,

Charging Party.

THOMAS C. BARRY, pro se.

BOARD DECISION AND ORDER

This matter comes to us on the exceptions of Thomas C. Barry to the decision of the Director of Public Employment Practices and Representation (Director) dismissing his charge. The sole material fact alleged by the charge is that United University Professions (UUP) has adopted an unfair agency shop refund procedure which provides for review of the amount of the refund by a UUP appointed "neutral" party. He argued that such a procedure constitutes improper conduct within the meaning of §209-a.2(a) of the Taylor Law.[1/]

Citing Hampton Bays Teachers Association, 14 PERB ¶3018 (1981) and UUP (Eson), 11 PERB ¶3074 (1978), the Director dismissed the charge on the ground that the alleged conduct

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[1/]His further contention that this Board should review the amount of the refund is not relevant to his charge against UUP.

does not violate the Taylor Law. We affirm his decision.

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

DATED: January 2, 1985
Albany, New York

Harold R. Newman

Harold R. Newman, Chairman

David C. Randles

David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

VILLAGE OF SAUGERTIES,

Employer,

-and- CASE NO. C-2838

COMMUNICATIONS WORKERS OF AMERICA,
LOCAL 1120, 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 the Communications Workers of America, Local 1120, 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.

9450

Unit: Included: Maintenance Operators, Maintenance & Meter Men, Truck and Road Workers, Assistant Supervisor.

Excluded: All Supervisors and other employees.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with the Communications Workers of America, Local 1120, 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 above unit, and shall negotiate collectively with such employee organization in the determination of, and administration of, grievances of such employees.

DATED: January 2, 1985
Albany, New York

Harold R. Newman, Chairman

David C. Randles, Member