

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

BOARD OF EDUCATION OF THE CITY SCHOOL
DISTRICT OF THE CITY OF NEW YORK,

Respondent,

-and-

CASE NO. U-7776

COUNCIL OF SUPERVISORS AND
ADMINISTRATORS, LOCAL 1, AFSA,
AFL-CIO,

Charging Party.

In the Matter of

BOARD OF EDUCATION OF THE CITY SCHOOL
DISTRICT OF THE CITY OF NEW YORK,

Respondent,

-and-

CASE NO. U-7864

INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL 891,

Charging Party.

In the Matter of

BOARD OF EDUCATION OF THE CITY SCHOOL
DISTRICT OF THE CITY OF NEW YORK,

Respondent,

-and-

CASE NO. U-7868

UNITED FEDERATION OF TEACHERS,
LOCAL 2, AFT, AFL-CIO,

Charging Party.

In the Matter of

BOARD OF EDUCATION OF THE CITY SCHOOL
DISTRICT OF THE CITY OF NEW YORK,

Respondent,

-and-

CASE NO. U-7943

DISTRICT COUNCIL 37, AFSCME,

Charging Party.

THOMAS P. RYAN, ESQ. (RAYMOND F. O'BRIEN, ESQ.,
of Counsel), for Respondent

BRUCE K. BRYANT, ESQ., for Charging Party, Council
of Supervisors and Administrators, Local 1, AFSA,
AFL-CIO

VLADACK, WALDMAN, ELIAS & ENGELHARD, P.C. (MARIAN
KENNEDY, ESQ., of Counsel), for Charging Party,
International Union of Operating Engineers,
Local 891

JAMES R. SANDNER, ESQ. (J. CHRISTOPHER MEAGHER, ESQ.,
of Counsel), for Charging Party, United Federation
of Teachers, Local 2, AFT, AFL-CIO

MARY E. MORIARTY, ESQ., for Charging Party, District
Council 37, AFSCME

BOARD DECISION AND ORDER

The charges herein were filed by four employee organizations, each of which represents one or more units of employees of the Board of Education of the City School District of the City of New York (District). Each of the charges complains that the District acted in violation of

10161

§209-a.1 of the Taylor Law in that it unilaterally imposed certain financial disclosure and background reporting obligations upon unit employees and that it refused to accede to demands of the employee organizations to negotiate the matter. The Administrative Law Judges (ALJ) assigned to the four cases found merit in some aspects of each charge, but no merit in other aspects of them. Each of the matters now comes to us on the exceptions of the charging parties and of the District. Because most of the material facts are common to all four cases, as are the more important legal issues, we consolidate them for decision.

FACTS

After a scandal in the spring of 1984 involving alleged financial improprieties by its then Chancellor, the District undertook to compel its higher-paid employees to complete and file extensive background investigation questionnaires and financial report forms. It did so under the authority of subdivision 13 and 14 of §2590-g of the Education Law, which were enacted nine years earlier by Chapter 810 of the Laws of 1975.^{1/}

At a meeting held on June 20, 1984, the District's Board of Education considered two resolutions dealing with these matters. They were Resolution 35 and Resolution 26.

^{1/}The text of that statute may be found in Appendix A.

Resolution 35 was adopted at that meeting.^{2/} It is entitled "Authorization for Investigations by the City Department of Investigation of Background of Personnel Appointed or Promoted to Certain Job Titles and Positions." It provides for background investigations of the officers and employees of the District holding 27 different titles. Of these, three--acting pedagogical employees, managerial employees^{3/} and Civil Service provisionals--were to be covered only if their salaries should exceed an amount to be determined subsequently. The nature of the background investigation was also to be determined subsequently by the Board of Education or the Chancellor.

On December 11, 1984, the Chancellor issued Regulation C-115 which effectuated Resolution 35 of June 20, 1984. The regulation is a six-page document with five multipage appendices. It specifies that acting pedagogical employees, managerial employees and Civil Service provisional employees would be subject to it only if they were compensated at or above \$27,750 a year. It requires all covered employees to

^{2/}The text of Resolution 35 may be found in Appendix B.

^{3/}The reference to managerial employees does not contemplate persons who are designated managerial pursuant to §201.7 of the Taylor Law. Rather, it means exempt and noncompetitive employees who are paid in accordance with the District's managerial pay plan above the managerial level I salary.

complete and file a background investigation questionnaire which constitutes Appendix A to the regulation. That questionnaire consists of 18 pages of questions. The information sought falls into the following 13 categories: 1) personal data; 2) residence record; 3) family record; 4) military service record; 5) academic record; 6) licenses, certifications; 7) employment; 8) spouses and dependents; 9) financial information; 10) tax information; 11) court record; 12) health; 13) miscellaneous. The material relating to financial information runs six pages and contains ten multipart questions.

Resolution 26, entitled "Regulation to Require Filing of Financial Disclosure Forms", was tabled until the Board of Education's July 3, 1984 meeting and it was adopted at that time.^{4/} Its coverage was the same as that of Resolution 35 until the Board of Education amended it on October 4, 1984.^{5/} Dealing only with coverage of the three titles for which a minimum salary is a condition for application of Resolution 26, the most significant change is that it extended its application to permanent Civil Service employees whose earnings satisfied the monetary figure.

^{4/}The text of Resolution 26 may be found in Appendix C.

^{5/}The text of that amendment may be found in Appendix D.

Like Resolution 35, Resolution 26 requires implementation by the Board of Education or the Chancellor, but, unlike Resolution 35, it specifies some financial information that is required of covered employees.

On the same day as the Board of Education amended the resolution, the Chancellor issued Regulation C-120 which effectuated it. This regulation, too, is a six-page document and is accompanied by two multipage appendices. It indicates that those titles for which a salary minimum is a condition for its application must be remunerated at or above \$42,000 per year. The questionnaire, which is Appendix B to the regulation, is a 16-page document.

The contents of Resolutions 26 and 35 were included in a calendar for the Board of Education meeting of June 20, 1984 which was mailed to interested individuals and groups, including the four charging parties, on June 15, 1984. The calendar was a 42-page document containing 53 resolutions. After the meeting, minutes were mailed to most of the same individuals and groups. The minutes show the action of the Board of Education merely by cross-referencing to the resolution numbers on the calendar.

The language of Resolution 26 shows up again on the calendar for the July 3, 1984 meeting as the first laid-over matter. That calendar, too, was mailed to the charging parties. The minutes of the meeting, which were mailed on June 22, 1984, show "LO-1 - Approved Unanimously."

The record does not show whether the Council of Supervisors and Administrators, Local 1, AFSA, AFL-CIO (CSA) and the International Union of Operating Engineers, Local 891 (IUOE) actually received the minutes of the two meetings. It shows that the United Federation of Teachers, Local 2, AFT, ~~AFL-CIO (UFT) did receive them shortly after they were sent.~~ It also shows that a representative of District Council 37, AFSCME (DC-37) attended the Board of Education meetings on June 20 and July 3 and that he participated in the discussion on the resolutions.

CSA and UFT had been parties to collective bargaining agreements with the District when Resolutions 26 and 35 were adopted, but the agreements had expired before the Chancellor's regulations were issued. UFT's agreement expired on September 9, 1984 and CSA's on September 30, 1984. Neither agreement dealt explicitly with financial disclosure and background reporting obligations by unit employees. Both, however, contain clauses dealing with matters not otherwise covered by the agreement. Both provide that, with respect to such matters that are "proper subjects for collective bargaining," the District will make no change without appropriate negotiations.

On October 4, 1984, CSA demanded negotiations on the subject of the financial disclosure and background reporting obligations of the employees in its negotiating unit, and on

the impact of the District's unilateral action on those employees. The District refused to negotiate these demands and CSA filed its charge (U-7776) on October 22, 1984. Dealing with both C-115 and C-120, the charge contends that the District violated §209-a.1(d) of the Taylor Law in that ~~it engaged in unilateral action with respect to a matter that~~ it was obligated to negotiate, it refused a demand to negotiate the financial disclosure and background reporting obligations, and it refused to negotiate the impact of its unilateral action. CSA also charged that the District violated §209-a.1(e) of the Taylor Law in that it did not continue the terms of the expired agreement which required the maintenance of the status quo with respect to "proper subjects of collective bargaining."

IUOE filed its charge (U-7864) on December 6, 1984. It, too, alleged a violation of §209-a.1(d), but it alleged no violation of §209-a.1(e).^{6/} Like CSA, IUOE complains about both C-115 and C-120. The complaint, however, merely deals

^{6/}IUOE also alleged a violation of §209-a.1(a) of the Taylor Law. The ALJ found no violation on the ground that there was no evidence of improper motivation. The issue is not before us as there are no exceptions to this determination.

with the District's unilateral action.^{7/}

UFT filed its charge (U-7868) on December 14, 1984. Like CSA, it complains about a violation of §209-a.1(d) and (e) of the Taylor Law. The alleged (e) violation is the same as that specified by CSA. The alleged (d) violation, like that specified by IUOE, is limited to the District's unilateral action.^{8/} UFT's charge is limited to Chancellor's Regulation C-115. C-120 does not apply to employees in its negotiating unit because none meets the salary threshold of \$42,000.

The final charge (U-7943) was filed by DC-37. DC-37 filed its charge on January 18, 1985. Dealing with both C-115 and C-120, it complains about a violation of §209-a.1(d).^{9/} The first enumerated paragraph of the charge states that on or about October 30, 1984, the District notified it that it "would begin unilaterally on November 5, 1984 conducting

^{7/}IUOE made a demand to negotiate on January 17, 1985, which the District refused on January 25, 1985. These events occurred after the charge was filed and the charge was not amended to complain about this refusal.

^{8/}Originally, the charge complained about a refusal to negotiate. This complaint was withdrawn when UFT was unable to establish that it had ever made a demand to negotiate.

^{9/}Like IUOE, DC-37 also alleged a violation of §209-a.1(a) of the Taylor Law. Here, too, the ALJ found no violation on the ground that there was no evidence of improper motivation and there are no exceptions to this determination.

interviews and would require completed detailed personal and financial disclosure forms of selected Board of Education employees represented by the charging party." The charge further alleges that, on November 20, 1984, DC-37 "requested a labor-management meeting to discuss, negotiate and bargain over the implementation of the investigation procedure" It

continues: "On December 13, 1984, there was a meeting held . . . to discuss the union's proposal to bargain over the investigation, interviews and disclosure forms." On December 26, 1984, DC-37 informed the District of its specific objections to the actions taken by the District. The District responded on January 10, 1985 that it would not negotiate DC-37's proposals.

At the pre-hearing conference held on March 12, 1985, DC-37 moved to amend its charge and the ALJ granted the motion. The details of the amendment were put in writing by DC-37 on March 13, 1985; its letter indicates that the amendment was intended "to clarify that the charge alleges both 'a unilateral change' and 'a refusal to bargain upon demand.'"

The District's answers to the four charges all question the jurisdiction of this Board over the subject matter of the charges and their timeliness. Dealing with the merits, the answers assert that the District's actions involved nonmandatory subjects of negotiation and were therefore not subject to any bargaining obligation.

The ALJs concluded that this Board has jurisdiction over the subject matter of the charges and found them all timely. They determined that, by reason of the language of Education Law §2590-g.13 and .14, the District's decision to seek some of the information and the procedure it adopted to solicit that information constituted a management prerogative. To that extent, they dismissed the §209-a.1(d) specifications. They ruled that other aspects of the District's conduct were subject to a bargaining obligation and, to that extent, it was in violation of §209-a.1(d). They also found that the District violated §209-a.1(e) to the extent that its treatment of employees represented by CSA and UFT involved mandatory subjects of negotiation.^{10/}

Notwithstanding their determinations that certain aspects of the reporting obligations should have been negotiated, while other aspects of them need not have been, the ALJs found that the questionnaires were integrated

^{10/}In doing so, one of the ALJs found the contract language "proper subjects for collective bargaining" to mean mandatory subjects of negotiation and concluded that it did not require maintenance of the status quo with respect to nonmandatory subjects of negotiation. The other ALJ concluded that other than proper subjects could mean either prohibited subjects, or nonmandatory but permissive subjects of negotiation. Finding no evidence supporting either interpretation, he ruled that the burden of establishing the meaning of the clause fell upon the charging party, and he, too, treated the language as if it meant mandatory subjects of negotiation. Both, therefore, declined to find a violation of §209-a.1(e) by virtue of changes in other than mandatory subjects.

documents. They concluded that it would be impractical to attempt a remedy which left a part of the questionnaires intact. Accordingly, they ordered the destruction of the completed questionnaires in toto.

The matters come to us on the exceptions of all the parties. Dealing with the jurisdictional issue, the District contends that the charges raise issues of public policy and statutory interpretation that may be resolved only in the courts. It also contends that with respect to CSA and UFT, its conduct could not constitute more than contract violations because the collective bargaining agreements did not expire until after the adoption of Resolutions 35 and 26. The District argues that the ALJs erred in finding the charges to be timely insofar as they complain about unilateral action affecting provisional employees. It contends that the time to file charges complaining about such conduct ran from the date when charging parties knew or should have known of its adoption of Resolutions 35 and 26.^{11/}

^{11/}The District acknowledges that the time to file charges regarding the unilateral action affecting permanent employees ran from the amendment of Resolution 26 on October 10, 1984. Even this date, however, is more than four months prior to the amendment of DC-37's charge. The District also acknowledges that the time to file charges complaining about its refusal to negotiate on demand runs from the date of the refusal.

Directing its attention to the specific objections to some of its actions which DC-37 interposed on December 13, 1984, the District argues that this constituted a waiver of DC-37's right to contest its authority to require unit employees to participate in the investigations.

~~Both the District and the charging parties have filed~~ exceptions to the decisions of the ALJs insofar as they find some aspects of the District's conduct to involve management prerogatives. Each contends that the ALJs' decisions are in error to the extent that they were adverse to them. CSA and UFT also except to the failure of the ALJs to hold that the contract language "proper subjects for collective bargaining" extends to permissive subjects of negotiation.

Finally, the District's exceptions complain about the remedial order. Assuming arguendo that certain aspects of the reporting obligations should have been negotiated, while other aspects need not have been, it contends that a remedial order could have been tailored to this circumstance.

DISCUSSION

A. Subject Matter Jurisdiction

The primary argument of the District on jurisdiction appears to be that this Board cannot consider the charges because they complain about unilateral conduct involving nonmandatory subjects of negotiation. Whether or not the

10172

District's conduct involves mandatory subjects of negotiation requires an analysis of public policy and the Education Law which, the District argues, lies within the exclusive jurisdiction of the courts. Elsewhere, however, the District appears to concede that this Board can interpret public policy or a statute to the extent necessary to determine whether something is a mandatory subject of negotiation.

The latter is a correct statement of the law. This Board may and, on occasion, is required to interpret public policy,^{12/} State statutes other than the Taylor Law,^{13/} and, on occasion, even Federal statutes^{14/} in order to ascertain whether something is a mandatory subject of negotiation. Accordingly, this Board has subject matter jurisdiction over the charges to the extent necessary to ascertain whether the District's unilateral action and refusal to negotiate involve mandatory subjects of negotiation. Insofar as they do, this Board is empowered to find violations and to issue remedial orders. Insofar as

^{12/}See, e.g., Plainveiw-Old Bethpage CSD, 17 PERB ¶3077 (1984), aff'd, Plainview-Old Bethpage Chairpersons' Ass'n v. PERB, 17 PERB ¶7022 (Sup. Ct. Nassau Co. 1984).

^{13/}See, e.g., City of Binghamton, 9 PERB ¶3026 (1976), aff'd, City of Binghamton v. Helsby, 9 PERB ¶7019 (Sup. Ct. Albany Co. 1976).

^{14/}See, e.g., PBA of Newburgh, 18 PERB ¶3065 (1985), aff'd, City of Newburgh v. Newman, 19 PERB ¶7005 (Sup. Ct. Albany Co. 1986).

they do not, we exercise no jurisdiction over the District's conduct even if it is violative of public policy and statutes other than the Taylor Law.^{15/}

A secondary jurisdictional issue is related to the question of timeliness. If the operative conduct of the District occurred during the life of its collective bargaining agreements with CSA and UFT, it might be argued that such unilateral conduct merely constituted a violation of contract and not of statute. We reject this challenge to our jurisdiction for the same reason that we find the charges timely, *infra*;^{16/} the operative conduct occurred after the expiration of the agreements.

B. Timeliness.

As noted above, there is no question but that the charges are timely insofar as they allege a refusal to negotiate

^{15/}Of course, the matter would fall within the jurisdiction of this Board if the conduct were improperly motivated and therefore violative of §209-a.1(a) or (c) of the Taylor Law.

^{16/}In any event, we would find that the rights asserted by CSA and UFT flow from the Taylor Law rather than from the parties' collective bargaining agreement because the agreement does not deal with background and financial investigations directly and the status quo provisions are too remote from these subjects to constitute a waiver of the two employee organizations' negotiation rights. See *CSEA v. Newman*, 88 A.D.2d 685, 15 PERB ¶7011 (3d Dep't 1982), app. dismiss'd, 57 N.Y.2d 775, 15 PERB ¶7020 (1982); *City of Poughkeepsie v. Newman*, 95 AD2d 101, 16 PERB ¶7021 (3d Dep't 1983), app. dismiss'd, 60 NY2d 859, 16 PERB ¶7027 (1983).

specific demands. It is equally clear that the charge is timely with respect to unilateral action involving permanent employees. We affirm the decisions of the ALJs that the charge is also timely with respect to the unilateral action directed at provisional employees.

~~Resolution 26, and especially Resolution 35, were not~~ sufficiently complete to inform the charging parties as to what disclosures were required of covered employees. Moreover, the resolutions did not disclose which employees were covered.^{17/} We have held that work rules designed to protect public employers against theft and corruption may or may not be mandatory subjects of negotiation depending upon the intrusiveness of the work rules upon the public employees and the interests that those work rules protect. In applying this balancing test, we indicated that relatively subtle distinctions in the intrusiveness of the work rules and the public interest to which they are directed may lead to our finding that some are mandatory subjects of negotiation while other similar rules would not be.^{18/} The issuance of regulations C-115 and C-120 changed the obligations of unit employees in more than subtle ways. Neither Resolution 26

^{17/}E.g., until the issuance of Regulations C-115 and C-120, UFT did not know that its unit employees had reason to be concerned about Resolution 35, but not Resolution 26.

^{18/}Compare State of New York, 18 PERB ¶3064 (1985), with Rensselaer County, 13 PERB ¶3080 (1980).

nor 35 is susceptible to ministerial enforcement. If the District is to impose its investigative procedures upon unit employees, it must rely upon the regulations. Accordingly, these were the definitive acts imposing identifiable reporting requirements upon identifiable employees.^{19/}

There is a second reason why the charges filed by CSA, IUOE and UFT are timely. Although they may have been sent copies of the calendars and minutes of the meetings of the Board of Education of June 20 and July 3, 1984,^{20/} this was not sufficient to give them constructive notice of the adoption of and the contents of the resolutions. To gain such knowledge, the employee organizations would have had to review the extensive calendars and then to match the resolution numbers against the adoption numbers that appeared in separate documents some weeks later. It would be unreasonable to hold them accountable for constructive notice under these circumstances.^{21/} Thus, if time to file

^{19/}It is from the time that it has actual or constructive knowledge of the definitive acts of the employer that a party aggrieved has four months to file a timely charge. Monroe County, 10 PERB ¶3104 (1977); Board of Education of the New York City School District, 12 PERB ¶3070 (1979).

^{20/}The record only shows that UFT received those documents.

^{21/}Compare County of Ulster, 14 PERB ¶3008 (1981).

charges were to run from the adoption of the resolutions, only DC-37 would be time barred because it alone had actual knowledge of such adoption.

The final timeliness issue relates to DC-37's amendment of its charge on March 12 to "clarify" that it alleges both ~~"a unilateral change" and "a refusal to bargain upon demand."~~ The District argues that the amendment constituted more than a clarification of the charge in that it added a unilateral change specification when there was none in the original charge. Were this so, we would find the specification untimely because the amendment was made more than four months after DC-37 had notice of the District's unilateral action. However, we agree with the ALJ that the unilateral change specification was contained in the original charge. In complaining that the District violated §209-a.1(d) of the Taylor Law, DC-37 alleged facts constituting both a unilateral action and a refusal to bargain upon demand.

C. Waiver.

The District contends that DC-37 "admitted the Board of Education's right to conduct background investigations for unit employees" by making specific objections to some but not other actions taken by the District. This is not a reasonable interpretation of the conduct of DC-37. On November 20, 1984, DC-37 requested a meeting to "bargain over the implementation of the investigation procedure"

The District met with it on December 13, 1984 at which time DC-37 made negotiation proposals directed at some aspects of the District's procedure. We do not understand how an attempt to negotiate can be interpreted as a concession of no right to negotiate.

D. The Merits.

The proposition of the District is that the resolutions of its Board of Education and the regulations of its Chancellor involve management prerogatives. It bases this proposition both on a freestanding public policy that public employers must be vigilant in avoiding corruption and on specific mandates of Education Law §2590-g.13 and .14.

Certainly there is a public policy that public employers should avoid corruption. There are, however, two other public policies that must be considered. The first is the public policy that public employees enjoy rights of privacy.^{22/} The second is the public policy underlying the Taylor Law, that the State, local governments and other political subdivisions should negotiate with and enter into written agreements with recognized and certified public employees regarding the terms and conditions of employment of unit employees. In determining whether the District's conduct involved a mandatory subject of negotiation, we must

^{22/}Rapp v. Carey, 44 N.Y.2d 157 (1978).

apply a balancing test that considers all three public policies. In doing so, we begin by reviewing the relevant court decisions.

The first of these is Board of Education v. Associated Teachers of Huntington, 30 N.Y.2d 122, 7 PERB ¶7505 (1972). It holds that public employers must negotiate all terms and conditions of employment unless there is an explicit statutory prohibition. This broad holding was successively narrowed by two subsequent holdings of the Court of Appeals. In Syracuse Teachers Association v. Board of Education, 35 N.Y.2d 743, 7 PERB ¶7513 (1974), the Court indicated that plain and clear prohibitions in statutory or decisional law, as well as express statutory prohibitions, would preclude a bargaining obligation. Finally, in Susquehanna Valley CSD v. Teachers' Association, 37 N.Y.2d 614, 8 PERB ¶7515 (1975), the Court indicated that the duty to negotiate might be limited not only by past statutory or decisional law but also by matters of public policy.^{23/}

^{23/}Although not directly relevant to our holding here, the Susquehanna court reiterated the holding of West Irondequoit Teachers Association v. Helsby, 35 N.Y.2d 46, 7 PERB ¶7014 (1974), that certain matters not subject to a bargaining obligation might, nevertheless, be permissive subjects of negotiation.

We make this point here because the District's arguments imply that any matter which, by reason of public policy, is not a mandatory subject of negotiation is a prohibited subject of negotiation.

There are two important cases in which the courts voided aspects of collective bargaining agreements because they were against public policy. In Cohoes CSD v. Cohoes Teachers Association, 40 N.Y.2d 774, 9 PERB ¶7529 (1976), the Court ruled that a Board of Education could not surrender its right to terminate a teacher at the end of his or her probationary period. Thus, an agreement that appeared to do so was, to that extent, held to be inoperative. Similarly, in Board of Education, Great Neck v. Areman, 41 N.Y.2d 527, 10 PERB ¶7512 (1977), the Court determined that the nondelegable responsibilities of a Board of Education prevented it from agreeing not to look at teachers' personnel files. A clause of a collective bargaining agreement which purported to do so was therefore voided.

The test evolved by the Court of Appeals in Huntington-Syracuse-Susquehanna and applied in Cohoes and Great Neck is essentially similar to the one applied by this Board in scope of negotiation cases ever since New Rochelle, 4 PERB ¶3060 (1971). This Board engages in a balancing test in which the vital interests of government are measured against the intrusiveness of the public employer's actual or potential conduct upon the terms and conditions of employment of unit employees. This can be seen most relevantly in the distinction drawn by this Board between the circumstances in State of New York, 18 PERB ¶3064 (1985), and Rensselaer County, 13 PERB ¶3080 (1980). In both cases, this Board

recognized a public policy that governments should protect themselves against theft of their property by employees. We further recognized that governments could adopt work rules which imposed some burdens upon unit employees in the course of doing so. On the other hand, we recognized that those burdens, if sufficient, would trigger the public employer's obligation to negotiate because there is also a public policy that disputes involving terms and conditions of employment should be resolved through collective negotiations.

1. The Freestanding Public Policy.

The District bases its argument, that there is a freestanding public policy that governments should protect themselves from corruption which is sufficient to insulate them from having to negotiate the procedures they undertake to do so, upon Evans v. Carey, 40 N.Y.2d 1008 (1976), and Hunter v. City of New York, 44 N.Y.2d 708 (1978). In neither case, however, is there any question of collective negotiations. The Evans decision merely holds that the State's interest in preventing corruption is supported by a public policy of sufficient gravity to overcome the privacy rights of individuals when the governor issues an otherwise valid order imposing a financial questionnaire. The Hunter decision applies this same principle to New York City.

The District also cites a decision of the Second Circuit which holds that the provisions of Education Law §2590-g and Regulation C-120 are substantially related to an important

state interest to which the privacy claims of officials must yield. Kaplan v. Board of Education, 759 F.2d 256 (1985). That decision, too, did not consider collective bargaining rights, the officials involved not being in negotiating units.

~~Rapp v. Carey, supra, not cited by any of the parties,~~ is also relevant. It holds that, while governments can and ought to protect themselves against corruption, Governor Carey acted unconstitutionally when he imposed a reporting obligation by executive order. It indicated that such an obligation could be imposed unilaterally upon employees-at-will but, absent legislative authority, not upon tenured Civil Service employees or appointees with term appointments. Thus, absent legislation, the public policy of avoiding corruption is subordinate to the public policy of protecting the privacy rights of tenured public employees.

This case, too, did not deal with the question of collective bargaining obligations.

These decisions lead us to the conclusion that our analysis of State of New York, supra, and Rensselaer County, supra, is appropriate to the issue of freestanding public policy. The District's concern in this case is very similar to that of the public employers in those two cases. The

public concern in avoiding the conflicts of interest here is comparable to that of avoiding the theft in those cases. On the other hand, the District's actions are far more intrusive than the work rules imposed in State of New York and Rensselaer County. The questionnaires seek very personal information and are a greater invasion of privacy than the searches. We therefore hold that there is no freestanding public policy making the District's conduct a management prerogative.

2. The Public Policy Implications of Education Law §2590-g.13 and .14.

Education Law §2590-g.13 and .14 enumerates the powers and duties of the District's Board of Education. It contains 16 numbered paragraphs, all introduced by the sentence: "In addition the City Board shall have the power and duty to:". Insofar as the statute specifies powers of the District, it seems obvious that those powers are subject to mandatory negotiations to the extent that they involve terms and conditions of employment. Indeed, a public employer need not, and may not, negotiate demands that it take or refrain from taking actions where a statute or public policy deprives it of the power to do so. Such a contract would be void unless the power to take such action is denied the employer because it affects rights of employees which may be waived, in which event the matter

would be a permissive subject of negotiation.^{24/}

The proposition that the numbered paragraphs specify duties of the District raises a more serious problem. The plain meaning of the word would appear to be that the District must act pursuant to the statute. As the ALJs found, this has not been the District's understanding of the word. Subdivisions 13 and 14 were added to the law in 1975 and the District took no action to implement them for 10 years.

An alternative reading of the word "duty" would be that it bestows upon the District a nondelegable responsibility. If this were so, it would establish a management prerogative and a prohibited subject of negotiation.^{25/} Finally, it might be seen as a nonexclusive responsibility.^{26/} As there are no judicial interpretations of the word "duty", we must discern its meaning from the language of Education Law §2590-g.13 and .14.

Section 2590-g.13 deals with business relationships between District personnel and the District. It is narrowly

^{24/}City of Binghamton, supra, fn. 13; Antinore v. State of New York, 49 A.D.2d 6, 8 PERB ¶7513 (4th Dep't, 1975), aff'd, 40 N.Y.2d 921, 9 PERB ¶7528 (1976).

^{25/}Compare Cohoes, supra, and Great Neck, supra.

^{26/}Section 207.1(c) of the Taylor Law recognizes that, in some areas, public employers and employee organizations have a joint responsibility to serve the public.

drawn. The only choices that this statute affords to the District are whether or not to prescribe regulations and, if so, to whom the regulations should apply. Once it exercises its discretion in these regards, the nature and extent of the business relations that must be disclosed are specified in the statute. Accordingly, we hold that the District is under no duty to negotiate with the charging parties to the extent that it requires unit employees to report the details set forth in Education Law §2590-g.13.a(1) and (2) provided, however, that such reports may be required unilaterally only upon the occurrence of a business relationship covered by that statute. Furthermore, the preemptive aspects of the statute persuade us that even as to those two areas in which the District was given discretion to act, there was a legislative intent that it act unilaterally. The situation presented by subdivision 13 is analagous to the situation considered by the Court of Appeals in Cohoes, supra and Great Neck, supra. The discretion extended to the public employer is nondelegable.

To the extent that the District has unilaterally decided to solicit additional information relating to business relationships between unit employees or their families and it, it exceeded its authority under subdivision 13 and violated its duty to negotiate in good faith. Similarly, to the extent that it has rejected demands to negotiate such matters, or to negotiate the impact of its unilateral action, it has also

violated its duty to negotiate in good faith. In this connection, we note that the duty to negotiate extends to the impact of unilateral action involving nonmandatory subjects of negotiation.^{27/}

Section 2590-g.14 deals with financial reports. This ~~subdivision is much less specific than subdivision 13 in that~~ it encompasses a broader range of matters that may be covered by questionnaires. Moreover, while subdivision 13 makes no reference to the discretion of the District, subdivision 14 expressly states that the District's Board of Education may require financial reports at its "discretion."

As explained by the ALJ in U-7864, the reference to "good cause shown" has no relevance to the issue before us. The reference to discretion, however, is significant. Unlike the unmentioned and severely limited discretion afforded by subdivision 13, the discretion extended to the District by subdivision 14 is broad, extending to the substance of the reporting requirements. The focus of concern at the time when this statute was enacted was whether a public employer could, in its discretion, require financial reports from its employees without violating the public policy which protects their

^{27/}West Irondequoit Teachers Association v. Helsby,
35 N.Y.2d 46, 7 PERB ¶7014 (1974); Baldwinsville CSD,
15 PERB ¶3032 (1982).

privacy rights. In Evans v. Carey, Hunter v. City of New York and Rapp v. Carey, the Court of Appeals held that the public interest in having a public employer protect itself from corruption was sufficient for the question to be answered by a qualified yes. A public employer had such discretion but only with respect to employees who had no property interest in their jobs. For the public employer to be able to exercise that discretion by requiring reports from tenured employees, enabling legislation was required. Subdivision 14 is such a statute. The enactment of subdivision 14 therefore permitted the District to issue otherwise valid orders imposing financial questionnaire obligations upon its tenured employees. Whether or not such an order is otherwise valid, however, depends upon satisfying another public policy and statutory obligation, the duty to negotiate terms and conditions of employment. Once subdivision 14 gave the District the discretion to take certain actions, those actions became part of its Taylor Law duty to negotiate in good faith.

We find that the District violated that duty when it unilaterally imposed reporting requirements regarding the financial interests of unit employees and their spouses. We also find that it violated that duty by rejecting demands of the employee organizations to negotiate this

matter.^{28/}

Having found that the components of the questionnaires are all either mandatory subjects of negotiation or prohibited subjects of negotiation involving nondelegable responsibilities of the District, it is unnecessary for us to determine whether the language "proper subjects of collective bargaining" means permissive subjects of negotiation or prohibited subjects of negotiation.^{29/} At the very least, the "proper subjects" language in the CSA and UFT contracts covered mandatory subjects of negotiation. Accordingly, we find that the District violated §209-a.1(e) to the extent that it imposed reporting requirements upon employees represented by CSA and UFT that went beyond the business relationships covered by subdivision 13.

^{28/}There are questions asked by the District that do not relate to business relationships with it or to the financial interests of the employees. For example, there are questions regarding the membership of employees in political parties and their military record. These questions are not authorized by Education Law §2590-g.13 or .14. It may be that they intrude upon the privacy right of employees which are protected by Rapp v. Carey, supra. If so, the District cannot compel the charging parties to negotiate with respect to them (see City of Binghamton and Antinore, supra, fn. 24). This proposition was not addressed by any of the parties and need not be addressed by us here. This decision goes no further than to hold that the District may not ask such questions without first negotiating with the charging parties.

^{29/}Were we required to answer this question, we would find that CSA and UFT have not satisfied their burden of proof that the language contemplates both mandatory and permissive subjects of negotiation.

The final issue before us is the appropriateness of the remedy which did not distinguish between elements of the questionnaire involving mandatory subjects of negotiation and those involving nonmandatory subjects of negotiation. We disagree with the ALJs' determination that it is not practicable to draw such a distinction. As to those questionnaires that have already been filed by unit employees, the District can retain the information specified in subdivision 13 while destroying the remaining information. For the future, however, the District should cease using the questionnaires and should devise new questionnaires soliciting only the information referred to in subdivision 13. The solicitation of other information shall be subject to collective negotiations with the charging parties.

NOW, THEREFORE, WE ORDER the District to:

1. Immediately rescind and cease enforcement or implementation of Chancellor's Regulations C-115 and C-120 and any questionnaires, forms, or other documents issued or interviews scheduled pursuant thereto;
2. Immediately remove and destroy all reports or other documents submitted by unit employees pursuant to Chancellor's Regulations C-115 or C-120 from any files kept or maintained by the District or any of its agents, provided, however, that the District may

retain information to the extent that such information is required pursuant to Education Law §2590-g.13.

3. Negotiate in good faith with CSA, IUOE, UFT and DC-37 with respect to the terms and conditions of employment of unit employees consistent with its duty under the Act;
4. Continue all terms of the agreements with CSA and UFT which expired on September 30, 1984 and September 9, 1984 respectively until new agreements are negotiated;
5. Sign and post notice in the form attached at all locations at which any affected unit employees work in places ordinarily used to post notices of information to such unit employees.

DATED: March 4, 1986
Albany, New York



Harold R. Newman, Chairman



Walter L. Eisenberg, Member

NOTICE TO ALL EMPLOYEES

PURSUANT TO

THE DECISION AND ORDER OF THE

NEW YORK STATE
PUBLIC EMPLOYMENT RELATIONS BOARD

and in order to effectuate the policies of the

NEW YORK STATE PUBLIC EMPLOYEES' FAIR EMPLOYMENT ACT

we hereby notify all employees in the negotiating units represented by CSA, IUOE, UFT and DC-37 that we will:

1. Immediately rescind and cease enforcement or implementation of Chancellor's Regulations C-115 and C-120 and any questionnaires, forms, or other documents issued or interviews scheduled pursuant thereto;
2. Immediately remove and destroy all reports or other documents submitted by unit employees pursuant to Chancellor's Regulations C-115 or C-120 from any files kept or maintained by us or any of our agents, provided, however, that we may retain information to the extent that such information is required pursuant to Education Law §2590-g.13;
3. Negotiate in good faith with CSA, IUOE, UFT and DC-37 with respect to the terms and conditions of employment of unit employees consistent with our duty under the Act;
4. Continue all terms of the agreements with CSA and UFT which expired on September 30, 1984 and September 9, 1984 respectively until new agreements are negotiated.

APPENDIX A

This statute provides that the District shall have the power and the duty to:

13. a. Prescribe regulations and bylaws requiring members of the city board, the chancellor, and any other officer or employee in schools and programs under the jurisdiction of the city board and the chancellor, to make disclosure to the city board, within ninety days of the ~~effective date hereof for the one-year period~~ preceding such effective date, and subsequent to such effective date upon the occurrence thereof, of the following information:

(1) any direct or indirect interest of the person reporting or his or her spouse in the furnishing of any supplies or materials, or in the doing of any work or labor, including the provision of professional services, or in the sale or leasing of any real estate, or in any proposal, agreement or contract for any of these purposes, in any case in which the price or consideration is to be paid, in whole or in part, directly or indirectly, out of any public or school moneys, or any employment, labor, compensation, direct or indirect interest, membership or relationship to any individual, firm, company, corporation, business, organization or association doing business with the city of New York or the city school district of the city of New York.

(2) the source of any income, reimbursement, gift or other form of compensation for services rendered together with a description of such services arising out of interest disclosed pursuant to paragraph (1) above.

b. Regulations and bylaws authorized herein shall apply with equal force and effect to community board members, community superintendents and all other officers and employees in schools and programs under the jurisdiction of the community boards.

-2-

c. Willful failure to make full and timely disclosure shall constitute cause for removal from office of any member of the city board or for any other officer or employee disciplinary action and such other penalty as provided by law.

14. a. Prescribe regulations and bylaws requiring members of the city board, the chancellor and, for good cause shown, any other officer of ~~employee in schools and programs under the~~ jurisdiction of the city board and the chancellor, to submit to the city board, in the discretion of the city board, financial reports for themselves and their spouses.

b. The frequency and period of coverage, the designation of persons to submit such reports by name, title or income level or by a combination thereof, and the content of such reports, including minimum dollar amounts, shall be determined by the city board and such reports may include but not necessarily be limited to the following:

(1) amount and source of income for services rendered, together with a description of such services;

(2) amount and source of gifts, capital gains, reimbursements for expenditures, and honoraria;

(3) investments in securities and real property;

(4) amount of debts and names of creditors;

(5) outstanding loans and other forms of indebtedness due to person reporting or spouse, by name and amounts;

(6) trusts and other fiduciary relationships and their assets in which a beneficial interest is held.

c. Regulations and bylaws authorized herein shall apply with equal force and effect to community board members, community superintendents and all other officers and employees in schools and programs under the jurisdiction of the community boards.

(d) Willful failure to file required financial reports shall constitute cause for removal from office of any member of the city board or for any other officer of employee disciplinary action and such other penalty as provided by law.

35. AUTHORIZATION FOR INVESTIGATIONS BY THE CITY DEPARTMENT OF INVESTIGATION OF BACKGROUND OF PERSONNEL APPOINTED OR PROMOTED TO CERTAIN JOB TITLES AND POSITIONS

The following resolutions are presented for adoption:

WHEREAS, New York State Education Law provides that the City Board shall have the power and duty to be the public employer of all persons appointed or assigned by the City Board and the Community School Boards and authorizes the City Board to prescribe such regulations and bylaws as may be necessary; and the Mayor has issued Executive Order #72 requiring background investigations for certain titles; now therefore be it

RESOLVED, That a background investigation by the City Department of Investigation be required for all persons employed in certain job titles or positions, as set forth below and for other positions at the discretion of the Board of Education or the Chancellor:

Member, Board of Education
 Secretary, Board of Education
 Counsel to the Board of Education
 Inspector General
 Legislative Representative
 Assistant Secretary, Board of Education
 Assistant to Board Member

Chancellor
 Deputy Chancellor
 Chief Executive
 Assistants to the Chancellor
 Assistants to the Deputy Chancellor
 Assistants to the Chief Executives

Executive Director
 Community Superintendent
 Assistant Superintendent
 Deputy Executive Director
 Deputy Community Superintendent
 Deputy Assistant Superintendent
 Administrative Assistant Superintendent
 Director
 Deputy Director
 Executive Assistant/Secretary to Community School Board
 Executive Assistant to the Superintendent
 Acting Pedagogical Employees (salary to be determined in accordance with City policy)
 Managerial Employees (salary to be determined in accordance with City policy)
 Civil Service Provisionals (salary to be determined in accordance with City policy), Exempt and Non-competitive, above Managerial Level I salary, in accordance with the Managerial Pay Plan

;and be it further

RESOLVED, That the failure to undergo such investigation shall constitute grounds for denial of appointment, assignment or promotion to an affected position or termination of services, if employment in the position has already commenced; and be it further

RESOLVED, That the Chancellor and the Inspector General be authorized to develop the administrative procedures required to implement the intent of this resolution.

E X P L A N A T I O N

The Mayor has issued Executive Order #72, dated April 23, 1984, amending Executive Order #16, issued July 26, 1978. While the Executive Order is not binding on the Members of the Board of Education and staff included in the titles listed above, the Board is voluntarily agreeing to require background investigations for certain titles consistent with the Mayor's Executive Order, such investigations to be conducted by the Department of Investigation. Elected officials are presently exempt from compliance with this Executive Order.

Due to the sensitivity, security and public safety aspects of certain positions and titles, the list of titles for which employees must be investigated as a condition of employment by the Department of Investigation will include the list of titles and levels as indicated above.

26. REGULATION TO REQUIRE FILING OF FINANCIAL DISCLOSURE FORMS

The following resolutions are presented for adoption:

WHEREAS, New York State Education Law §§2590-g subd. 14 and 2590-e subd. 21 and the Bylaws of the Board of Education Article 6 require the Board of Education to prescribe a regulation requiring the members of the Board of Education, the Chancellor, the members of Community School Boards and Community Superintendents to file with the Board of Education, or such office as may be designated, financial reports for themselves and their spouses, and authorizes the Board of Education for good cause shown, to require filing of such reports by other employees; now therefore be it

RESOLVED, That all persons serving in the titles set forth below and in other positions for good cause shown, as determined by the Board of Education or the Chancellor, shall file annually with the Board of Education or such office as may be designated financial reports for themselves and their spouses:

Member Board of Education
Member Community School Board

Secretary, Board of Education
Counsel to the Board of Education
Inspector General
Legislative Representative
Assistant Secretary, Board of Education
Assistant to Board Member

Chancellor
Deputy Chancellor
Chief Executive
Assistants to the Chancellor
Assistants to the Deputy Chancellor
Assistants to the Chief Executives

Executive Director
Community Superintendent
Assistant Superintendent
Deputy Executive Director
Deputy Community Superintendent
Deputy Assistant Superintendent
Administrative Assistant Superintendent
Director
Deputy Director
Executive Assistant/Secretary to Community School Board
Executive Assistant to the Superintendent
Acting Pedagogical Employees (salary to be determined in accordance with City policy)
Managerial Employees (salary to be determined in accordance with City policy)
Civil Service Provisionals (salary to be determined in accordance with City policy), Exempt and Non-competitive, above Managerial Level I salary, in accordance with the Managerial Pay Plan

;and be it further

RESOLVED, That the financial disclosure form to be filed shall require the reporting of the following: amount and source of all income of \$1000.00 or more with a description of the service performed; amount and source of all gifts, capital gains, reimbursement for expenditures and honoraria of \$500.00 or more; investments in any securities and ownership of real property worth \$5000.00 or more; any indebtedness to any creditor in an amount of \$5000.00 or more for a period of at least 90 consecutive days, the name of the creditor to be provided; any beneficial interest in a trust or fiduciary relationship valued at \$2000.00 or more; and be it further

RESOLVED, That all officers and employees required to file must do so not later than October 1, 1984 and not later than July 1 of each year thereafter; and be it further

RESOLVED, That the Chancellor and the Inspector General be authorized to develop appropriate forms and administrative procedures required to implement the intent of this resolution and that such reports be deemed confidential to the extent permitted by law.

AMENDMENT OF RESOLUTION REQUIRING FILING OF FINANCIAL DISCLOSURE REPORTS

The following resolutions are presented for adoption:

RESOLVED, That the Resolution adopted by the Board of Education on July 3, 1984, relating to the filing of financial disclosure reports be amended by modifying the list of titles for which financial disclosure is required, as follows:

Delete: Acting Pedagogical Employees (salary to be determined in accordance with City policy)
Managerial Employees (salary to be determined in accordance with City policy)
~~Civil Service Provisionals (salary to be determined in accordance with City policy), Exempt and Non-competitive above Managerial Level I salary, in accordance with the Managerial Pay Plan~~

Add: All Personnel who are members of the Management Pay Plan
Appointed, Acting and Interim Acting pedagogical employees (salary to be determined in accordance with City policy)
Permanent and Provisional Civil Service Employees (salary to be determined in accordance with City policy);

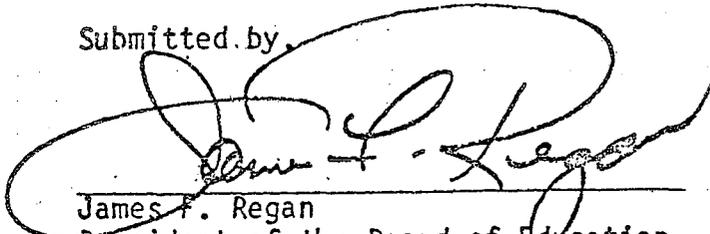
and be it further

RESOLVED, That all other provisions of the original resolution remain unchanged.

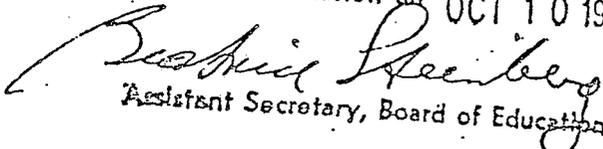
EXPLANATION

These changes are necessary in order to conform the Board of Education's requirements for financial disclosure with those of City agencies. The current City policy requires all managerial personnel and other employees earning \$42,000 or more to file financial disclosure reports.

Submitted by,


James F. Regan
President of the Board of Education

A true copy of resolution (s) adopted
by the Board of Education on OCT 10 1984


Patricia Heeney
Assistant Secretary, Board of Education

10197

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

UNITED UNIVERSITY PROFESSIONS,

Respondent,

-and-

CASE NO. U-8347

THOMAS C. BARRY,

Charging Party.

BOARD DECISION ON MOTION

The charge herein was filed by Professor Thomas C. Barry. It complains about the agency shop fee rebate procedures utilized by United University Professions (UUP). On February 5, 1986, Barry addressed a letter to this Board complaining about the manner in which this matter has been processed by Administrative Law Judge Toomey, to whom it was assigned for hearing, and by Administrative Law Judge Zahm, to whom it was assigned for pre-hearing conferencing.^{1/} The letter was referred to the Director of Public Employment Practices and Representation (Director). The Director responded to Barry on February 18, 1986, informing him that in his judgment there had been no error in the conduct of the matter by the staff of

^{1/}The letter complains that different Administrative Law Judges were assigned to the hearing and the pre-hearing conference, that Zahm erred in postponing a pre-hearing conference and that she further erred in dispensing with a face-to-face pre-hearing conference in favor of a telephonic conference.

this agency.

On February 21, 1986, Barry once again wrote to us. His letter expressed dissatisfaction with the Director's disposition of the matter and he requested that we consider the merits of his complaints before any hearing is held.^{2/}

We deny Barry's motion. Section 204.7(h) of our Rules of Procedure provides that this Board may authorize exceptions to interlocutory rulings and conduct in a proceeding. We read Barry's motion as requesting such authorization.^{3/} The basis for granting such a motion is

^{2/}Barry had made an earlier motion requesting this Board to "take direct and immediate charge of this case...." That motion was denied on November 13, 1985 (18 PERB ¶3078).

^{3/}By its terms, 204.7(h) only refers to rulings made at hearings. We do not consider whether it is available to review pre-hearing rulings because counsel to UUP has expressly indicated that he does not object to the utilization of that procedural mechanism here.

If, in the alternative, we were to read the motion as a request that we exercise administrative control over the conduct of the Director or the Administrative Law Judges, we would dismiss it on the ground that it is not directed to our jurisdiction. We are a quasi-judicial body which reviews legal rulings and determinations.

The Chairman of this Board is also the administrative head of the agency. He has delegated supervision of the Administrative Law Judges unit to the Director. He does not normally evaluate the Director's exercise of that responsibility with respect to a specific case so long as that case may be brought before him, as a member of this Board, for quasi-judicial disposition.

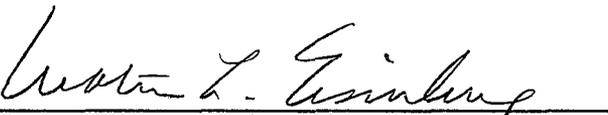
that denial would result in harm to a party that could not be remedied by us in our review of a final decision of an Administrative Law Judge. There is no indication in the papers before us that such is the case here.

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

DATED: March 4, 1986
Albany, New York



Harold R. Newman, Chairman



Walter L. Eisenberg, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

TOWN OF BROOKHAVEN

Respondent,

-and-

CASE NO. U-8291

TOWN OF BROOKHAVEN WHITE AND
BLUE COLLAR UNITS, CIVIL SERVICE
EMPLOYEES ASSOCIATION,

Charging Party.

TOWN OF BROOKHAVEN,

Employer,

-and-

BROOKHAVEN TOWN ASSOCIATION OF
MUNICIPAL EMPLOYEES,

CASE NO. C-2951

Petitioner,

-and-

LOCAL 852, CIVIL SERVICE EMPLOYEES
ASSOCIATION,

Intervenor

COOPER & SAPIR, P.C. (LEONARD COOPER, ESQ. and
DAVID M. COHEN, ESQ., of Counsel), for Town of
Brookhaven

ROGERS & CARTIER, P.C. (JAMES K. HOGAN, ESQ., of
Counsel), for Brookhaven Town Association of
Municipal Employees

ROEMER & FEATHERSTONHAUGH, P.C. (WILLIAM M. WALLENS,
ESQ., of Counsel), for CSEA

BOARD DECISION ON MOTION

BOARD DECISION AND ORDER

For a period of years the employees of the Town of Brookhaven (Town) were represented by Local 852, Civil Service Employees Association (CSEA) in three separate units -- one for blue-collar employees, one for white-collar employees and one for highway department employees. On May 29, 1985, the Brookhaven Town Association of Municipal Employees (BTAME) filed a timely petition to represent the highway department unit of the Town (Case C-2951).

The time to file a representation petition expired the following day. Sometime thereafter, the Town opposed the petition on the ground that the highway department unit was inappropriate. It contended that such a unit should be consolidated with the other two units of Town employees, or, in the alternative, with just the blue-collar unit. A hearing was held during which the parties submitted evidence on the merits of the unit issue.

While the matter was pending before the Director of Public Employment Practices and Representation (Director), CSEA demanded that the Town negotiate with respect to the terms and conditions of employment of the employees in the blue and white-collar units. The Town refused to do so and CSEA filed the charge herein (Case U-8291). On January 30, 1986, we issued a decision in the improper practice case, finding the Town in violation of its duty to negotiate in good faith. The basis of our decision was our holding that

the petition did not raise an appropriate unit question and that the Town's response, which did raise such an issue, did not do so in a timely fashion. We said:

A representation petition which merely raises a question of majority status within a unit does not place into question the appropriateness of that unit. Here, the only petition, which was filed by the independent employee organization, merely raised a question of majority status. It follows that a public employer may not diminish or delay its bargaining obligation on the ground that a unit is not appropriate unless either it makes a timely challenge to the appropriateness of the unit or that appropriateness has been placed in question by the timely petition of another party. Accordingly, there is no pending question concerning the representation rights of CSEA in the blue-collar and white-collar units. (footnote omitted)

Four days later the Director issued his decision in the representation case. Based upon our holding in the improper practice case that the appropriate unit issue had not been raised by a timely petition, he declined to consider that issue. Finding that the petition therefore merely raised the question of the majority status of CSEA in the highway unit, he ordered an election in that unit.

On the same day as the Director issued his decision, the Town moved this Board to reconsider our decision in the improper practice case. Thereafter, it filed exceptions to the decision of the Director in the representation case. Inasmuch as the Director's decision was a necessary consequence of our decision in the improper practice case, we

consolidate these two matters for decision.

The grounds for a court or administrative agency reconsidering its decision is that it has overlooked or misapprehended relevant facts or that it has misapplied a controlling principle of law.^{1/}

Having reviewed the papers which the Town has submitted to us and the record in both the representation and improper practice cases, we conclude that there are no facts which we overlooked or misapprehended in issuing our prior decision. As to the proposition that our decision misapplied a controlling principle of law, the Town argues that the decision is inconsistent with Town of Putnam Valley, 17 PERB ¶3041 (1984). In that case, we remanded a representation case to the Director to determine whether a union's petition was timely or whether it was barred by an existing agreement between the employer and the intervenor. In doing so we did not consider whether the Town made a timely objection to the petition on the ground that the existing negotiating unit was inappropriate. We distinguish that decision because the issue which is before us in the instant case was not before us in that case. We further note that in any event we are free to overrule a prior decision when new insights persuade us that doing so would be more

^{1/}West Realty Co. v. City of New York, 99 A.D.2d 708 (1st Dep't 1984).

consistent with the language of the Taylor Law and its underlying public policy.^{2/} To the extent that the procedure countenanced in Town of Putnam Valley may be inconsistent with our decisions here, it is rejected. Accordingly, we deny the Town's motion in U-8291.

The Director's decision in C-2951 is the only one that he could have reached in that case consistent with our decision in U-8291. Accordingly, we affirm that decision.

NOW THEREFORE, WE ORDER

1. that the motion in U-8291 be, and it hereby is, denied, and
2. that an election by secret ballot shall be held under the supervision of the Director among the employees in the petitioned-for unit who were employed by the Town on the payroll date immediately preceding the date of this decision, and
3. that the Town shall submit to the Director, as well as to BTAME and CSEA, within 15 working days from the date of receipt of this decision, an alphabetized list of all employees in the unit with their corresponding job titles, who were

^{2/} County of Orange, 14 PERB ¶13060 (1981).

employed by it on the payroll date immediately
preceding the date of this decision.

DATED: March 4, 1986
Albany, New York


Harold R. Newman, Chairman


Walter L. Eisenberg, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of
COMMACK TEACHERS ASSOCIATION,

Respondent,

-and-

CASE NO. U-7774

JOSEPH B. MARGOLIN,

Charging Party.

DOLORES SCHIRMER, for Respondent

JULIUS BLAUSHIELD, ESQ., for Charging Party

BOARD DECISION AND ORDER

This matter comes to us on the exceptions of Joseph Margolin to a decision of an Administrative Law Judge (ALJ) dismissing his charge against the Commack Teachers Association (Association). The charge alleges that the Association violated its duty of fair representation in that it refused to process Margolin's grievance complaining about an out-of-title assignment by the Commack Union Free School District (District) and that it did not keep him adequately informed about its handling of the grievance.

FACTS

Margolin, a social studies teacher, was assigned a "writing and reading" class which meets one period each day.

He perceived this assignment to violate Article XVIII, §18.01(K) of the Association-District collective bargaining agreement, and complained to the Association. The relevant contract provision provides:

All other factors being equal, seniority shall prevail with respect to class assignments and duties, class loads and use of portable classrooms. Such seniority rights shall be accorded to tenured teachers only and shall be based only on the total number of years teaching in the District.

Attempting to deal with Margolin's dissatisfaction informally, the Association brought it to the attention of Margolin's department chairman. The department chairman stood by the assignment and declined to give any explanation for it. The Association informed Margolin of this meeting and then brought the matter to the attention of the building principal. The building principal supported the department chairman; the record does not indicate whether she gave any explanation for this position.

At this point, the Association building committee met and decided not to file a grievance on behalf of Margolin. It based its decision on its own investigation of the circumstances of the assignment. Its reasons were that the school was facing an emergency situation because of the resignation of a teacher just prior to the opening of school, and that most of the teachers in the department had had recent out-of-title assignments.

Margolin then pursued his grievance on his own. Thinking that the Association's meeting with the department chairman had satisfied step 1 of the grievance procedure, he proceeded to step 2, a meeting with the principal. He was informed that the Association's meeting with the department chairman had been informal and that he was therefore required to begin at step 1. At Margolin's request, an Association representative appeared with him at step 1 and step 2, but the Association took no position on the merits. The grievance was denied at step 1 and step 2. It was not taken to step 3, which is arbitration, because only the Association can take a grievance to step 3.

At this point Margolin filed the charge herein against the Association. He also filed a complaint against the District with the Education Commissioner.

The Education Commissioner found for Margolin against the District. In doing so, the Commissioner concluded that the District's interpretation of the contract was not rational.^{1/} He indicated that the factors considered

^{1/}The Commissioner's decision states:

The standard of review on appeals to the Commissioner of Education involving the interpretation of a collective bargaining agreement is whether the interpretation by the board of education is unreasonable, arbitrary or capricious

by the District in making the assignment were its

"belief that the petitioner's teaching strengths, particularly the high degree of organization and structure he provides within his lessons, were very well suited to the curriculum of the writing-reading course"; and, that other factors considered were teacher certification, class load, relative strengths and weaknesses of various teachers within subject areas and the number of consecutive teaching periods.

The Education Commissioner determined that these factors were not sufficient to overcome the seniority language in the collective bargaining agreement because:

[n]o specifics whatever were offered concerning those factors enumerated by the assistant superintendent, and there is no indication that any of those factors, particularly certification status, are different with respect to the other teachers concerned.

In dismissing the charge against the Association, the ALJ found that the Association's conduct was not improperly motivated. Over the objections of the Association, she admitted some documentary evidence designed to show improper motivation, but she found that the evidence did not justify

such a conclusion.^{2/} The ALJ also rejected other documents which Margolin sought to introduce to establish improper motivation on the ground that they were not relevant. These documents relate to a dispute that Margolin had with leaders of the Association regarding a matter that arose after the charge herein was filed.^{3/}

Margolin's exceptions argue that the ALJ erred in not finding improper motivation. He also argues that the ALJ erred in rejecting the documents.

The ALJ found that the Association's conduct was not grossly negligent. Margolin argues that the Association's refusal to take the grievance was grossly negligent in that its interpretation of the relevant contract clause was not rational. In part, he relies upon the decision of the Education Commissioner for this conclusion. His exceptions

^{2/}The evidence shows that in 1984, Margolin had refused to contribute to an Association sponsored "VOTE COPE" drive because of some dissatisfaction with a local unit of the Association. An Association building representative had criticized Margolin's position as constituting an imputation of guilt by association and had told him that this was inconsistent with Margolin's religious sensibilities. Margolin was offended by the criticism.

^{3/}It had to do with a vote on proposed amendments to the Association's constitution scheduled for February 27, 1985.

argue that the ALJ erred in not receiving the Education Commissioner's decision in evidence.

Margolin further argues that the Association was grossly negligent in not taking his grievance because two fellow employees with lower seniority had been passed over in the assignment of out-of-title work. The Association's investigation showed that this was true. However, it also showed that one had been assigned a reduced teaching schedule to accommodate his duties as dean of discipline. It showed that the second was the only qualified social studies teacher available to teach psychology, and she was given a last minute assignment to teach psychology when the other qualified psychology teacher was given an emergency assignment to teach computer science.

Finally, the ALJ found no violation by reason of the Association having misled Margolin into believing that a grievance had been filed and carried through step 1. Finding that there was a misunderstanding between the Association Representative and Margolin as to what Margolin was told about the Association meeting with the department chairman, she did not reach any conclusion as to which of the two was responsible for the misunderstanding. Her reason for not resolving this issue was that it is irrelevant in that the misunderstanding, even if attributable to the Association, could not rise to the level

of gross negligence. She further noted that Margolin was not prejudiced by the misunderstanding.

DISCUSSION

We affirm the decision of the ALJ. She did not err in excluding the proffered documents which Margolin contends would have established that the Association was improperly motivated when it refused to take the grievance. As stated by the ALJ, "[t]hey related to an entirely different situation which occurred well after the filing of the instant charge . . ." and, therefore, could not establish animus as of the time of the events which precipitated the charge. We also confirm the conclusion of the ALJ that the record evidence which shows some prior differences between Margolin and the Association does not establish improper motivation.

The question whether the Association was grossly negligent in interpreting its collective bargaining agreement as not compelling the assignment of the "writing and reading" class to a fellow employee junior to Margolin turns on the contract language: "All other factors being equal, seniority shall prevail . . ." It does not appear that the District provided the Association with any reasonable explanation for its action. However, the Association's own investigation satisfied it that all factors were not equal. Its investigation revealed an emergency situation brought about by the resignation of a

teacher just prior to the opening of school which had necessitated various teacher reassignments. Those teachers junior to Margolin who were passed over for the out-of-title assignment had been given other special assignments which the Association could reasonably conclude made other factors unequal.

An unusual circumstance in this case is that the Education Commissioner found that the District acted arbitrarily in assigning the out-of-title work to Margolin.^{4/} We note, however, that the Association was not a party to the proceeding before the Commissioner and that the District offered no specifics to the Commissioner to justify its action. As the cases involve different parties and a different record, we have no compunction about finding that the Association was not arbitrary in refusing to grieve the District's action.

Finally, we affirm the ALJ's determination that the misunderstanding between Margolin and the Association representative -- as to whether its meeting with the department chairman was an informal one or the first step of the grievance procedure -- could not constitute a violation of the Association's duty of fair representation even if the

^{4/}The ALJ did not err in excluding the decision as evidence. As a quasi-judicial determination in the public domain, it is properly before us even without being admitted.

misunderstanding is attributable to the Association. The fact that Margolin was not prejudiced by it is sufficient to establish that it could not constitute gross negligence.

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

DATED: March 4, 1986
Albany, New York



Harold R. Newman, Chairman



Walter L. Eisenberg, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

WAPPINGERS CENTRAL SCHOOL DISTRICT,

Respondent,

and

CASE NO. U-7839

WAPPINGERS FEDERATION OF TRANSIT,
CUSTODIAL AND MAINTENANCE WORKERS,
NEW YORK STATE UNITED TEACHERS,

Charging Party.

RAYMOND G. KRUSE, P.C. (MAUREEN McNAMARA, Esq., of
Counsel), for Respondent

NEW YORK STATE UNITED TEACHERS by HARRY W. FAIRBANK,
for Charging Party

INTERIM BOARD DECISION

On December 6, 1985, an Administrative Law Judge (ALJ) issued a decision holding that the Wappingers Central School District (District) violated §209-a.1(d) of the Taylor Law. Later that day the decision was sent to the parties by certified mail, return receipt requested. The copy sent to the District's superintendent was received on December 9, 1985, but there is a question as to when it was received by the District's lawyer. This Board has a receipt dated December 9, 1985, which appears to bear the signature "B.

Sutter". On January 6, 1986, the District's lawyer filed exceptions to the decision of the ALJ. That filing would not be timely if the District is charged with receipt of the decision on December 9, 1985. If, however, it is not charged with the receipt of the decision before December 12, 1985, the filing is timely.^{1/}

The Wappingers Federation of Transit, Custodial and Maintenance Workers, New York State United Teachers (Federation), the charging party herein, filed a response to the exceptions which did not address their merits but merely argued that they were not timely. The basis of this argument is that both the District's superintendent and lawyer had been served before December 12, 1985. This response raises two questions:

1. Was the copy of the decision sent to the District's lawyer received by him or his agent prior to December 12, 1985?
2. Was the receipt of the decision by the District's superintendent on December 9, 1985 sufficient to commence the 15-day period of limitations for the filing of exceptions?

The parties were invited to submit memoranda addressing these questions.

^{1/}Section 204.10 of our Rules of Procedure provides that exceptions may be filed "[w]ithin 15 working days after receipt of the decision and recommended order...."

The District's lawyer submitted an affirmation in which he stated that he never employed anyone named B. Sutter or bearing a similar name. Furthermore, he stated that he does not know anyone who has that name or any similar name. He listed the attorneys and clerical employees associated with his office, the names of none of whom could be mistaken for B. Sutter. Finally, he stated that his office received the decision for the first time on December 12, 1985.

On the basis of this affirmation we conclude that neither he nor any agent of his received the decision before December 12, 1985. As our rules expressly provide that the 15-day period during which exceptions may be filed runs from the date of "receipt" of an ALJ decision, insofar as service upon the District's lawyer is concerned, the exceptions are timely.

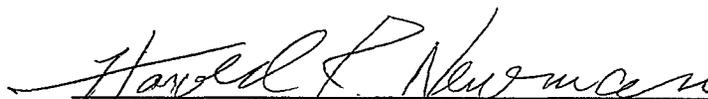
This focuses our attention on the second question. Did receipt of the decision by the District's superintendent commence the time period? We answer this question in the negative. Section 168 of the Executive law provides that any state agency exercising quasi-judicial functions, and this Board is such an agency, is required to serve all notices, other than subpoenas, upon lawyers who appear before it on behalf of parties.

Citing this statute, the Court of Appeals has said:

[O]nce counsel has appeared in a matter a Statute of Limitations or time requirement cannot begin to run unless that counsel is served with the determination or the order or judgment sought to be reviewed [citation omitted].^{2/}

~~Accordingly, we hold that receipt of the ALJ's decision by~~
the District's superintendent did not commence the running of the limitations period for the filing of the exceptions herein and that the exceptions were timely filed. We give the Federation seven working days from receipt of this decision to file a response to the exceptions on the merits.

DATED: March 4, 1986
Albany, New York


Harold R. Newman, Chairman


Walter L. Eisenberg, Member

^{2/}Bianca v. Frank, 43 N.Y.2d 168, 173 (1977).

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

CITY SCHOOL DISTRICT OF THE CITY OF
GLEN COVE,

Employer,

CASE NO. C-2957

-and-

LOCAL 810, INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN
AND HELPERS OF AMERICA,

BOARD DECISION
ON MOTION

Petitioner.

The City School District of the City of Glen Cove (District) has filed exceptions to a decision of the Director of Public Employment Practices and Representation (Director) ordering an election in a negotiating unit of clerical employees of the District. It contends that the negotiating unit in which the election is to be held is not appropriate.

On February 12, 1986, the attorney for Local 810, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (petitioner) sent us a letter transmitting a written statement issued by the District after the close of the record, and urging us to consider that statement. According to the petitioner, the statement indicates that the District was improperly motivated in challenging the appropriateness of the negotiating unit which petitioner seeks to represent. Two days later, the attorney for the District wrote to us

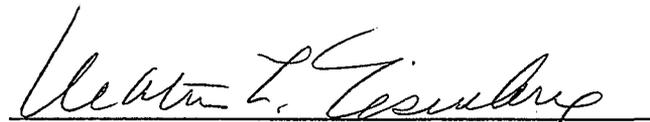
objecting to any consideration of this material.

We treat the petitioner's letter of February 12, 1986 as a motion to reopen the record to receive new evidence. One of the bases for granting such a motion is that if the evidence were introduced at the original hearing it would probably have affected the decision.^{1/} Applying that test here we decline to consider the new material submitted by the petitioner.^{2/} That material is not relevant to the representation issue before us. Improper motivation may be an element of some improper practices but it is not a factor in deciding whether a unit sought is an appropriate one under §207 of the Taylor law.

NOW, THEREFORE, WE ORDER that the motion be, and it hereby is, denied.

DATED: March 4, 1986
Albany, New York


Harold R. Newman, Chairman


Walter L. Eisenberg, Member

^{1/}Compare Adjunct Faculty Association, 18 PERB ¶3076 (1985).

^{2/}For this limited purpose, we assume, without actually reaching the merits of the matter, that the decision on appeal will be against the petitioner.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of
TOWN OF JOHNSBURG,

Employer,

-and-

CASE NO. C-3004

CIVIL SERVICE EMPLOYEES ASSOCIATION,
INC., LOCAL 1000, AFSCME, AFL-CIO,

Petitioner,

BOARD DECISION AND ORDER

On November 13, 1985, the Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO (petitioner) filed, in accordance with the Rules of Procedure of the Public Employment Relations Board, a timely petition for certification as the exclusive bargaining representative of certain employees employed by the Town of Johnsburg (employer).

Thereafter, the parties stipulated that the bargaining unit would be as follows:

Included: All full-time and regular part-time laborers and mechanical equipment operators.

Excluded: All other employees.

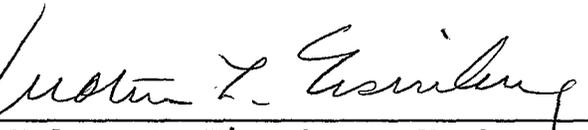
Pursuant to the stipulation, and in order for the petitioner to demonstrate its majority status, a secret ballot election was held on January 23, 1986. The results of the election indicate that a majority of the eligible

voters in the stipulated unit do not desire to be represented by the petitioner.^{1/}

THEREFORE, IT IS ORDERED that the petition be, and it hereby is, dismissed.

DATED: March 4, 1985
Albany, New York


Harold R. Newman, Chairman


Walter L. Eisenberg, Member

^{1/} Of the 12 ballots cast, none was challenged, 9 were against and 3 were for representation by the petitioner.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

MT. PLEASANT-BLYTHEDALE UNION FREE
SCHOOL DISTRICT,

Employer.

-and-

CASE NO. C-2996

BLYTHEDALE TEACHERS' ASSOCIATION,

Petitioner.

-and-

BLYTHEDALE TEACHERS GROUP,

Intervenor.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

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

IT IS HEREBY CERTIFIED that the Blythedale Teachers Group 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 employees employed in the titles of regular teacher and teacher-intern.

Excluded: All other employees.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with the Blythedale Teachers Group 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: March 4, 1986
Albany, New York


Harold R. Newman, Chairman


Walter L. Eisenberg, Member

10225

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

TOWN OF WEBB UNION FREE SCHOOL
DISTRICT,

Employer.

-and-

CASE NO. C-3016

CIVIL SERVICE EMPLOYEES ASSOCIATION,
LOCAL 1000, AFSCME,

Petitioner.

-and-

TOWN OF WEBB SCHOOLS CIVIL SERVICE
PERSONNEL,

Intervenor.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

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

IT IS HEREBY CERTIFIED that the Civil Service Employees Association, Local 1000, AFSCME, has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described

below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: All full-time and part-time custodial, cafeteria, clerical and transportation employees, in addition to School Nurse/Attendance and School Bus Drivers.

Excluded Head Custodian, Cook-Manager, Transportation Manager, District Clerk, District Treasurer, Tax Collector, and all other employees.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with the Civil Service Employees Association, Local 1000, AFSCME 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: March 4, 1986
Albany, New York


Harold R. Newman, Chairman


Walter L. Eisenberg, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

ALBION CENTRAL SCHOOL DISTRICT,

Employer,

-and-

CASE NO. C-3019

CIVIL SERVICE EMPLOYEES ASSOCIATION, INC.,
LOCAL 1000, AFSCME, AFL-CIO,

Petitioner,

-and-

ALBION CENTRAL SCHOOL BUS DRIVERS'
ASSOCIATION,

Intervenor.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

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

IT IS HEREBY CERTIFIED that the Civil Service Employees Association, Inc., Local 1000, AFSCME, 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: Bus drivers, auto mechanics and mechanic helpers.

Excluded: All other and management/confidential employees.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with the Civil Service Employees Association, Inc., Local 1000, AFSCME, 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: March 4, 1986
Albany, New York


Harold R. Newman, Chairman


Walter L. Eisenberg, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

BAYPORT-BLUE POINT UNION FREE SCHOOL
DISTRICT,

Employer,

-and-

CASE NO. C-3014

BAYPORT-BLUE POINT TEACHERS ASSOCIATION,
NYSUT, AFT, AFL-CIO,

Petitioner,

-and-

NEW YORK STATE NURSES ASSOCIATION,

Intervenor.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

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

IT IS HEREBY CERTIFIED that the Bayport-Blue Point 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 full-time, licensed registered professional nurses.

Excluded: All other employees.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with the Bayport-Blue Point 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 above unit, and shall negotiate collectively with such employee organization in the determination of, and administration of, grievances of such employees.

DATED: March 4, 1986
Albany, New York


Harold R. Newman, Chairman


Walter L. Eisenberg, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

PANAMA CENTRAL SCHOOL DISTRICT,

Employer,

-and-

CASE NO. C-3008

CIVIL SERVICE EMPLOYEES ASSOCIATION,
INC., AFSCME, LOCAL 1000, AFL-CIO,

Petitioner,

-and-

PANAMA CENTRAL SCHOOLS NON-TEACHING
ASSOCIATION,

Intervenor.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

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

IT IS HEREBY CERTIFIED that the Civil Service Employees Association, Inc., AFSCME, Local 1000, 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.

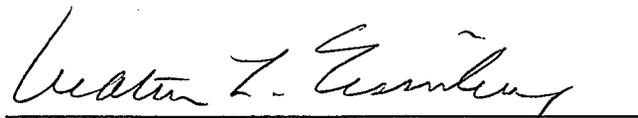
Unit: Included: Monitors, Custodians, Cleaners,
Secretary, Teacher Aide, Teaching
Assistants, Bus Driver and Bus Mechanic.

Excluded: Head Custodian, Head Bus Driver,
Cafeteria Manager, Secretary to
Superintendent, Business Manager and
Account Clerk.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with the Civil Service Employees Association, Inc., AFSCME, Local 1000, 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: March 4, 1986
Albany, New York


Harold R. Newman, Chairman


Walter L. Eisenberg, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

ANGELICA CENTRAL SCHOOL DISTRICT,

Employer,

-and-

CASE NO. C-3003

CIVIL SERVICE EMPLOYEES ASSOCIATION,
INC., AFSCME, LOCAL 1000, AFL-CIO,

Petitioner,

-and-

ANGELICA NON-TEACHING PERSONNEL
ASSOCIATION,

Intervenor.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

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

IT IS HEREBY CERTIFIED that the Civil Service Employees Association, Inc., AFSCME, Local 1000, AFL-CIO has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the

parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: All full- and part-time custodian/
bus drivers, senior custodian,
head custodian, cook, cook
manager, food service helper,
cashier, teacher aide, cafeteria
monitor, bus driver, school nurse,
mechanic/bus driver, study hall
monitor.

Excluded: All other employees.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with the Civil Service Employees Association, Inc., AFSCME, Local 1000, 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: March 4, 1986
Albany, New York

Harold R. Newman
Harold R. Newman, Chairman

Walter L. Eisenberg
Walter L. Eisenberg, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of
NISKAYUNA CENTRAL SCHOOL DISTRICT,
Employer,

-and-

CASE NO. C-3000

NISKAYUNA CENTRAL SCHOOL DISTRICT
EMPLOYEES ASSOCIATION, NEA/NEW YORK,
Petitioner,

-and-

NISKAYUNA SCHOOL DISTRICT OPERATIONAL
UNIT, CSEA, INC.,
Intervenor.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

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

IT IS HEREBY CERTIFIED that the Niskayuna Central School District Employees Association, NEA/New York 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

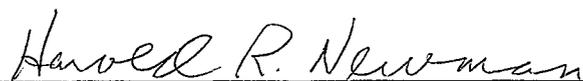
described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

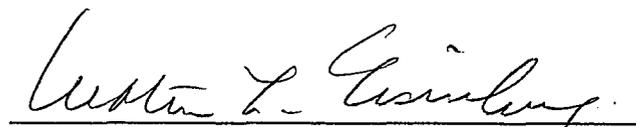
Unit: Included: Senior Bus Mechanic, Senior Maintenance Mechanic, Bus Mechanic, Building Mechanic, Maintenance, Groundsmen, Mechanic Helper, Custodian, Custodian/Bus Driver, Light Equipment Operator, Utility Man, Cleaner, full-time and part-time Bus Drivers, Dispatchers, Head Custodian, Senior Custodian, Night Head Custodian, Food Service Helpers, Cook Manager.

Excluded: All other employees.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with the Niskayuna Central School District Employees Association, NEA/New York 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: March 4, 1986
Albany, New York


Harold R. Newman, Chairman


Walter L. Eisenberg, Member

10237

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

SEWANHAKA CENTRAL HIGH SCHOOL DISTRICT,

Employer,

-and-

CASE NO. C-2999

UNITED SUPPORT ALLIANCE OF EDUCATION
SUPPORT PERSONNEL,

Petitioner,

-and-

NASSAU EDUCATIONAL LOCAL 865, CSEA,
AFSCME,

Intervenor.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

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

IT IS HEREBY CERTIFIED that the United Support Alliance of Education Support Personnel 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.

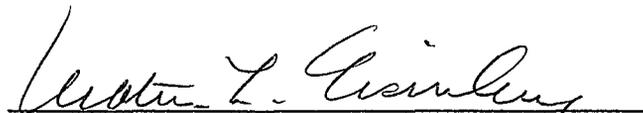
Unit: Included: All buildings and grounds classified personnel.

Excluded: Temporary and substitute personnel,
Head Custodian I, Head Custodian II,
Head Custodian III, Maintenance
Supervisor I, Supervisor of Operations
and all other employees.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with the United Support Alliance of Education Support Personnel 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: March 4, 1986
Albany, New York


Harold R. Newman, Chairman


Walter L. Eisenberg, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of
VILLAGE OF MOUNT MORRIS,

Employer,

~~-and-~~

CASE NO. C-2984

LOCAL 200, SERVICE EMPLOYEES'
INTERNATIONAL UNION, AFL-CIO,

Petitioner,

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

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

IT IS HEREBY CERTIFIED that Local 200, Service Employees' International Union, AFL-CIO has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective

negotiations and the settlement of grievances.

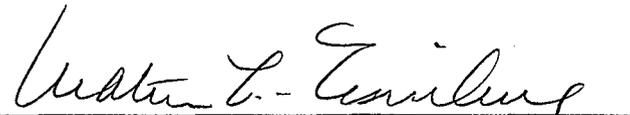
Unit: Included: All full and regular part-time employees in the following titles:
Sewer and Water Operators and Highway Laborers.

Excluded: All other employees.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with Local 200, Service Employees' International Union, 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: March 4, 1986
Albany, New York


Harold R. Newman, Chairman


Walter L. Eisenberg, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

VESTAL CENTRAL SCHOOL DISTRICT,

Employer,

-and-

CASE NO. C-2998

VESTAL EMPLOYEES ASSOCIATION/NEA,
NEA/NEW YORK,

Petitioner,

-and-

VESTAL CENTRAL SCHOOL UNIT, BROOME
EDUCATIONAL LOCAL 866, CIVIL SERVICE
EMPLOYEES ASSOCIATION, INC., LOCAL
1000, AFSCME,

Intervenor.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

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

IT IS HEREBY CERTIFIED that the Vestal Employees Association/NEA, NEA/New York 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: Employees employed on a full-time or part-time basis in the following titles: Senior Typist; Typist; Clerk Typist; Senior Account Clerk; Account Clerk; Building Maintenance Man/Offset Duplicating Machine Operator; Duplicating Machine Operator; Payroll Clerk; Senior Stores Clerk; Stores Clerk; Stenographer; Head Bus Driver; Automotive Mechanic; Head Automotive Mechanic; Automotive Servceman; Bus Driver; Bus Monitor; Cook Manager; Cook; Food Service Helper; Building Maintenance Supervisor; Building Maintenance Worker; Groundskeeper; Custodian; Head Custodian; Matron; Senior Clerk.

Excluded: All other employees.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with the Vestal Employees Association/NEA, NEA/New York 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: March 4, 1986
Albany, New York


Harold R. Newman, Chairman


Walter L. Eisenberg, Member



STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD
50 WOLF ROAD
ALBANY, NEW YORK 12205

MINUTES OF THE BOARD MEETING

March 19, 1986
Albany, New York

PRESENT: HAROLD R. NEWMAN, Chairman
WALTER L. EISENBERG, Member

Staff: Jerome Lefkowitz, Deputy Chairman
Mary Messina, Secretary to the Board

1. Minutes of the Board Meeting of March 3-4, 1986 approved.
2. Board Decisions and Orders
 - A. U-8546 - In the Matter of Brunswick Central School District, Respondent and Patricia Jackson, Charging Party. (#2A-3/19/86).
 - B. C-2957 - In the Matter of City School District of the City of Glen Cove, Employer and Local 810, IBT, Petitioner. (#2B-3/19/86).
 - C. C-2955 - In the Matter of Northport-East Northport UFSD, Employer and United Teachers of Northport, NYSUT, Petitioner. (#2C-3/19/86).
3. Board Certifications
 - A. C-2970 - In the Matter of Board of Education of the City School District of the City of Buffalo, Employer and AFSCME, Council 35, Petitioner. (#3A-3/19/86).
4. Oral Argument
 - A. U-8017 - City of Buffalo and AFSCME, Local 650 - The Board granted the request of the respondent for an opportunity to present oral argument. The argument will be held on Tuesday, April 1, 1986 at 10:30 a.m. at the Board's Albany office. The parties will be so notified.

10244

March 19, 1986

B. C-2944 - City of Schenectady and Schenectady PBA - The Board granted the request of the employer for an opportunity to present oral argument. The argument will be held on Tuesday, April 15, 1986 at 10:00 a.m. at the Board's Albany office. The parties will be so notified.

5. Board Case Discussion

A. E-1056 - City of Jamestown - The Board discussed the matters involved in this proceeding and requested that a draft decision be prepared for the next meeting of the Board.

B. U-7979 - Request of PBA of Newburgh for Reconsideration of decision of September 10, 1985 - After consideration of the request of PBA of Newburgh contained in a letter of February 24, 1986 and the response of the City of Newburgh dated March 3, 1986, the Board instructed Counsel to advise the PBA that it could not entertain the request in light of the pending Article 78 proceeding in Court. The Board also authorized Counsel to advise that, in any event, there was no proper basis for reconsideration of the Board's decision.

C. Request for Reconsideration of Panel Applicant Standards - Upon receipt of a letter from a Professor at the University of Buffalo, dated March 12, 1986, the Board instructed the Director of Conciliation to survey other agencies which administer panels of arbitration to ascertain how they treat panel applicants who are members of unions.

The next meeting of the Board will be held on March 31-April 1, 1986 at its Albany office.

Respectfully submitted,

Mary Messina

Mary Messina
Secretary to the Board

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of
BRUNSWICK CENTRAL SCHOOL DISTRICT,
Respondent,

~~and~~

CASE NO. U-8546

PATRICIA A. JACKSON,
Charging Party.

BOARD DECISION ON MOTION

On January 27, 1986, Patricia A. Jackson filed a charge in which she alleged that the Brunswick Central School District (District) violated paragraphs (a) and (d) of §209-a.1 of the Taylor Law. The basis of her charge is that the District, acting through its superintendent, "unreasonably denied the Charging Party an opportunity to obtain effective representation and willfully misused the grievance procedure to obtain information and prejudicial statements from the Charging Party in support of disciplinary charges then contemplated." Jackson's charge contains allegations of fact in support of this proposition.

On January 31, 1986, the Administrative Law Judge (ALJ) assigned to the case informed Jackson that her charge would be processed only insofar as it alleges a violation of §209-a.1(a) of the Taylor Law. Jackson understood this letter to constitute a final decision dismissing her

allegation that the District's conduct violated §209-a.1(d)^{1/} and filed exceptions to that dismissal.

The District has responded to those exceptions arguing that they are premature because the charge as a whole was not dismissed.^{2/}

Section 204.7(h) of our Rules of Procedure provides:

All motions and rulings made at the hearing shall be part of the record of the proceeding and, unless expressly authorized by the Board, shall not be appealed directly to the Board but shall be considered by the Board whenever the case is submitted to it for decision.

Although by its terms this Rule applies only to rulings made at a hearing, the policy underlying it applies, a fortiori, to pre-hearing rulings. Accordingly, we determine that Jackson may not appeal the ruling of the ALJ as a matter of right.^{3/} In doing so, we note that the alleged violations

^{1/}Section 209-a.1(d) of the Taylor Law deals with the duty of public employers to negotiate in good faith with employee organizations.

^{2/}The District also responded on the merits, but we need not reach this question.

^{3/}Rule 204.2, which provides for initial processing of a charge by the Director of Public Employment Practices and Representation (Director), authorizes the Director to dismiss a charge for failure to allege facts that constitute a violation of law. Such a dismissal is subject to exceptions under Rule 204.10(c). The ALJ's letter of January 31, 1986 does not indicate that it was sent at the initiative of the Director. In any event, however, the result would be the same because the charge was not dismissed in its entirety.

of both paragraphs (a) and (d) of §209-a.1 of the Taylor Law arise out of a single alleged series of wrongs.

Jackson asserts that she could have filed separate charges, one complaining of the violation of §209-a.1(a) and the other complaining of the violation of §209-a.1(d). She argues that the dismissal of the (d) allegation would therefore be a final order, and to treat them as integrated constitutes a raising of form over substance.

We are not persuaded by this argument. The (a) and (d) specifications of the charge constitute a single cause of action and they would constitute a single cause of action even if they had been specified in separate charges.

This is the clear implication of CPLR R. 3211 which provides that a cause of action may be dismissed if "there is another action pending between the same parties for the same cause of action" Discussing this issue, Practice Commentary C. 3211:15 states:

- (1) Do both suits arise out of the same actionable wrong or series of wrongs? and
- (2) As a practical matter is there any good reason for two actions rather than one being brought in seeking the remedy? If the first question is answered Yes and the second one No, the court should . . . dismiss the action.

Having determined that exceptions may not be filed as a matter of right, we treat the exceptions as a motion for authorization to appeal an interlocutory ruling under Rule 204.7(h). Having done so, we deny the motion. There is no showing that Jackson will be prejudiced by the ruling of the

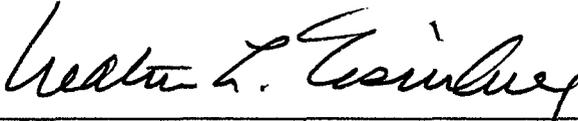
ALJ. It can be reviewed after a final decision is issued without irreparable harm having been done to her.

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

DATED: March 19, 1986
Albany, New York



Harold R. Newman, Chairman



Walter L. Eisenberg, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

CITY SCHOOL DISTRICT OF THE CITY OF
GLEN COVE,

Employer,

-and-

CASE NO. C-2957

LOCAL 810, INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN
AND HELPERS OF AMERICA,

Petitioner.

COOPER & SAPIR, P.C. (ROBERT E. SAPIR, ESQ., of
Counsel), for Employer

SIDNEY L. MEYER, ESQ., for Petitioner

BOARD DECISION AND ORDER

This matter comes to us on the exceptions of the City School District of the City of Glen Cove (District) to a decision of the Director of Public Employment Practices and Representation (Director) ordering an election in a unit of full-time and part-time secretarial, clerical and school aides personnel. The District argues that the Director erred in ordering an election in that unit because the aides should not be placed in the same negotiating unit as the secretarial and clerical employees. It also argues that the Director erred in including Anastasia Basdavanos in the negotiating unit. Basdavanos holds the position of account clerk/payroll supervisor, a position which the District asserts is confidential.

A petition to represent the employees in the negotiating unit was filed by Local 810, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Local 810) on June 12, 1985. The unit consists of approximately 40 secretarial and clerical employees and 60 aides. They have been in a single negotiating unit since 1972. That unit came to be represented by the Glen Cove Educational Secretaries' Association (ESA) in 1972. It represented the unit in the negotiation of two contracts, the last of which expired on June 30, 1983. There were no negotiations between ESA and the District after that date, and, at some subsequent time, ESA was absorbed by Local 810. Local 810 then sought recognition as the representative of the existing negotiating unit. When the District denied its request for recognition, it filed the petition herein.

The first question presented by the exceptions is whether the unit issue is properly before us. After the Director wrote his decision herein, we issued a decision in Town of Brookhaven,^{1/} which holds that a petition raising a question of majority status that is filed during a window period^{2/} does not permit another party to raise a question of

^{1/}19 PERB ¶3004 (1986), motion to reconsider denied, 19 PERB ¶3010 (1986)

^{2/}Section 201.3 (d) of our Rules of Procedure permits the filing of a petition for certification or decertification during a 30-day window period before the expiration of the period of unchallenged representation accorded recognized or certified employee organizations by §208.2 of the Taylor Law.

appropriateness of the unit unless it raises that issue during that window period. The public policy underlying this position is that a public employer should not be permitted to bring representation issues before this Board at a time when the litigation of such issues would interfere with its

bargaining obligation.^{3/} This policy does not apply in the instant situation because ESA is no longer seeking to negotiate on behalf of unit employees and the District is under no obligation to negotiate with Local 810. We therefore consider the merits of the issue of the appropriate unit.

The first issue is whether the aides should be placed in a negotiating unit apart from the secretarial and clerical employees. Having reviewed the record, we affirm the decision of the Director that they should not be split. There is a history of joint negotiations and no significant evidence of any conflict of interest between the two groups.^{4/} On the contrary, the record shows a close community of interest in that some aides and clerical employees perform functions which are almost identical and that many clerical employees were formerly aides.^{5/}

^{3/}Compare Greece CSD, 18 PERB ¶3033 (1985).

^{4/}The record affords no basis for concluding that the absence of negotiations between ESA and the District after June 30, 1983 is related to such a conflict of interest.

^{5/}The District cites Baldwinsville CSD, 12 PERB ¶3096 (1979), and Great Neck UFSD, 5 PERB ¶4028 (1971), in support of its position. Neither deals with facts similar to those in the record before us.

The second issue is whether Basdavanos should be removed from the unit on the ground that she is a confidential employee. The District argues that, like Weinheim in Washingtonville CSD, 16 PERB ¶3017 (1983), she prepares cost analyses of negotiation proposals which the District is considering and, as such, is privy to information to which the employee organization has no right. The record does not support this proposition. Using data that is not confidential, Basdavanos merely ascertains the cost of a 1% increase. The District, without Basdavanos' participation, then ascertains the cost of contemplated increases by multiplying the 1% figure by other numbers. We affirm the decision of the Director that the work performed by Basdavanos is not confidential.

NOW, THEREFORE, WE ORDER that an election by secret ballot be held under the supervision of the Director among the employees in the following unit:

Included: All full-time and part-time secretarial, clerical and school aides personnel.

Excluded: Secretary to the superintendent of schools, secretary to the assistant superintendent for business and secretary to the assistant superintendent for personnel.

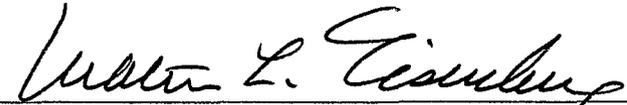
who were employed on the payroll date immediately preceding the date of this decision, unless Local 810 submits to

the Director within 15 days from the date of receipt of this decision evidence to satisfy the requirements of §201.9(g)(1) of the Rules of Procedure for certification without an election.

WE FURTHER ORDER that the District submit to the Director, as well as to Local 810, within 15 days from the date of receipt of this decision, an alphabetized list of the employees in the above unit who were employed on the payroll date immediately preceding the date of this decision.

DATED: March 19, 1986
Albany, New York


Harold R. Newman, Chairman


Walter L. Eisenberg, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

NORTHPORT-EAST NORTHPORT UNION FREE
SCHOOL DISTRICT,

Employer,

-and-

CASE NO. C-2955

UNITED TEACHERS OF NORTHPORT,
NYSUT, AFT, AFL-CIO,

Petitioner.

INGERMAN, SMITH, GREENBERG & GROSS, ESQS. (PAUL L.
DASHEFSKY, ESQ., of Counsel), for Employer

EUGENE M. KAUFMAN, ESQ., for Petitioner

BOARD DECISION AND ORDER

On June 6, 1985, the United Teachers of Northport, NYSUT, AFT, AFL-CIO (UTN) filed a petition to represent a unit of per diem substitute teachers employed by the Northport-East Northport Union Free School District (District). The Director of Public Employment Practices and Representation (Director) issued a decision on January 17, 1986 ordering an election in such a unit to ascertain whether the employees in that unit wish to be represented by UTN. The matter comes to us on the exceptions of the District.

It argues that the Director erred in finding that UTN submitted a sufficient showing of interest in support of its petition. It also argues that the Director erred in not disqualifying UTN from representing the per diem substitute teachers on the ground that such representation would conflict

with its status as representative of the regular teachers of the District.

UTN is the representative of the regular teachers of the District. On April 4, 1985, it filed a petition to represent the District's per diem substitute teachers. The showing of interest in support of that petition, which was docketed as C-2924, was solicited on the basis of a list of eligible employees provided by the District to UTN. That list identified the per diem substitute teachers to whom the District had given reasonable assurances of continuing employment during the 1984-85 school year.

The petition in C-2924 was not timely and it was withdrawn on April 24, 1985. Thereafter, UTN submitted the instant petition. It is supported by a showing of interest that is based upon the same list of names that was used to collect the showing of interest in C-2924. However, on May 24, 1985, approximately two weeks before the instant petition was filed, the District sent new letters to some of its per diem substitute teachers giving them reasonable assurance of continuing employment during the 1985-86 school year. Not all the per diem substitute teachers who had received such assurances for 1984-85 also received them for 1985-86. Some of those included in the first but not the second list may have received unemployment insurance benefits during the 1985 summer vacation.

Section 201.7(d) of the Taylor Law provides that substitute teachers are covered employees under the Taylor Law if they have:

received a reasonable assurance of continuing employment in accordance with subdivision ten of section five hundred ninety of the labor law which is sufficient to disqualify the substitute teacher from receiving unemployment insurance benefits .
. . .

It is the position of the District that per diem substitute teachers continue to be employees within the meaning of the Taylor Law from the time they receive a reasonable assurance of continuing employment until the District issues new assurances which do not include them. Thus, according to the District, those per diem substitute teachers who were issued assurances for the 1984-85 but not for the 1985-86 school year ceased being covered employees on May 24, 1985.

The Director rejected this position. In effect, he found that per diem substitute teachers who received assurance of continuing employment for 1984-85 continued to be covered employees throughout that school year regardless of whether they received assurances of employment for the 1985-86 school year. Thus, inasmuch as the petition was filed during the 1984-85 school year, the list used by UTN was appropriate.^{1/} Relying upon this list for ascertaining the adequacy of

^{1/}According to this analysis, it would be irrelevant that some of the employees received unemployment insurance compensation after the 1984-85 school year.

the showing of interest, the Director determined that it was numerically sufficient. He ruled, however, that an election, when held, would be limited to per diem substitute teachers who were employees of the District within the meaning of the Taylor Law at the time when the election would be held.

We decline to consider the District's exceptions insofar as they challenge the determination of the Director that the showing of interest is sufficient.^{2/} As we said in Board of Education of the City of Yonkers, 10 PERB ¶3100, at 3174 (1977):

The requirement of a showing of interest is to permit this Board to screen out those cases in which there is no showing of a substantial support of the petitioner by the employees, so that public funds will not be needlessly expended in the investigation and processing of those cases. It is not designed to protect an incumbent employee organization^{3/}

Turning to the District's second position, we affirm the decision of the Director, on the merits, that UTN's status as the representative of the District's regular teachers is not a

^{2/}Section 201.4(c) of our Rules of Procedure provides:

The determination by the Director as to the timeliness of a showing of interest and of its numerical sufficiency is a ministerial act and will not be reviewed by the Board.

^{3/}See also Matter of CSEA v. Helsby, 63 Misc. 2d 403, 3 PERB ¶7008 (Sup. Ct. Suffolk Co. 1970), aff'd, 35 A.D. 2d 755 (2d Dep't 1970); BOCES of Nassau Co. v. PERB, 15 PERB ¶7026 (Nassau Co. 1982), aff'd 99 A.D. 2d 930, 17 PERB ¶7006 (2d Dep't 1984); State of New York, 15 PERB ¶3014 (1982).

reason for disqualifying it from representing the District's per diem substitute teachers. The Taylor Law offers no basis for preventing a unit of public employees from selecting an employee organization to represent it on the ground that such employee organization already represents another unit of

employees of the same employer.^{4/} In this, the Taylor Law must be contrasted with §9(b) of the National Labor Relations Act and New Jersey Statute 34:13A-513, both of which reflect a statutory policy that unions which represent employees performing a particular type of work be disqualified from representing other employees performing other types of work.

The District bases its argument to the contrary on Local 342 v. Helsby, 53 A.D.2d 805, 9 PERB ¶7014 (3d Dep't 1976). Reliance on this decision is misplaced. It merely states that where there is a conflict of interest between two groups of employees, PERB may place them in separate negotiating units.

NOW, THEREFORE, WE ORDER that an election by secret ballot shall be held under the supervision of the Director among the employees in the following unit:

Included: All per diem substitutes who have received a reasonable assurance of continuing employment for the 1985-86 school year as referenced in §201.7(d) of the Civil Service Law

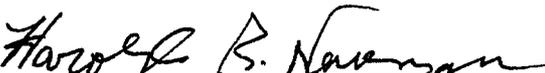
Excluded: All other employees

^{4/}North Syracuse CSD, 15 PERB ¶3108 (1982).

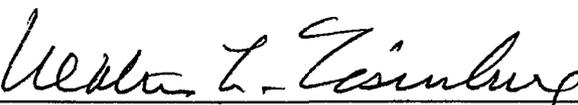
unless UTN submits to the Director within 15 days from the date of receipt of this decision evidence to satisfy the requirements of §201.9(g)(1) of our rules for certification without an election.

WE FURTHER ORDER that the District shall submit to the Director and to UTN within 15 days from the date of receipt of this decision an alphabetized list of all the employees within the unit determined above to be appropriate who worked during the 1984-85 school year and who received assurance of continuing employment for the 1985-86 school year.

DATED: March 19, 1986
Albany, New York



Harold R. Newman, Chairman



Walter L. Eisenberg, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT
OF THE CITY OF BUFFALO,

Employer,

-and-

CASE NO. C-2970

A.F.S.C.M.E., Council 35,

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 A.F.S.C.M.E., Council 35, 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 employees employed in the title of
Bus Aide.

Excluded: All other employees of the employer.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with the A.F.S.C.M.E., Council 35, 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: March 19, 1986
Albany, New York

Harold R. Newman
Harold R. Newman, Chairman

Walter L. Eisenberg
Walter L. Eisenberg, Member