STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of

TOWN OF WEST SENECA,

Respondent,

-and-

CASE NO. U-8019

WEST SENECA BLUE COLLAR UNIT, LOCAL 815, CSEA, INC., LOCAL 1000, AFSCME, AFL-CIO,

Charging Party.

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WESTON, KANE & MOEN, P.C. (TIMOTHY J. KANE, ESQ., of Counsel), for Respondent

ROEMER & FEATHERSTONHAUGH, P.C. (STEPHEN J. WILEY, ESQ., of Counsel), for Charging Party

## BOARD DECISION AND ORDER

This matter comes to us on the exceptions of the Town of West Seneca (Town) to the decision of an Administrative Law Judge (ALJ) that it violated §209-a.1(a) and (d) of the Taylor Law by reason of transferring unit work to nonunit employees.

## FACTS

The West Seneca Blue Collar Unit, Local 815, CSEA, Inc., Local 1000, AFSCME, AFL-CIO (CSEA) represents a unit of 94 full-time, blue-collar employees of the Town, some of whom

work in the highway and sanitation departments. The sanitation department work is lower paid. New employees are hired as sanitation laborers and, as vacancies occur, they are moved to highway laborer positions.

For several years before the filing of the charge the Town hired seasonal employees, mostly students, for the period of late May through the end of August. By agreement between the Town and CSEA these seasonal employees were not in the negotiating unit. They were paid less than unit employees and were assigned sanitation department work to cover for unit employees who were on vacation or for those sanitation men who were covering for vacationing highway department personnel.

On December 17, 1984, the Town hired 12 seasonal laborers in the sanitation department to work from January 21 to May 31, 1985. These seasonal laborers were paid more than the summer seasonals, but less than unit employees. Subsequently, the new seasonal employees were assigned highway department work and, on May 30, 1985, some of them were rehired for a new season.

The status of the new seasonal employees was raised in negotiations between the Town and CSEA. The Town explained that they were needed because the number of laborers in the highway and sanitation departments had dropped in the past and the remaining employees were not sufficient to perform the work of the departments. It noted that no unit employees

had lost their positions as a result of the hiring of any seasonal employees. The parties' negotiations broke down when an impasse was reached over CSEA's demand and the Town's refusal to include the new seasonal employees in the negotiating unit.

DISCUSSION

The Town makes four arguments in support of its exceptions:

1. It did not assign unit work to nonunit employees because the work of the laborers had never been reserved to unit employees.

2. The exclusion of seasonal workers from the unit was bilateral and not unilateral.

3. It had not refused to negotiate with respect to its employment of the new seasonal employees. Hence, their employment could not violate §209-a.1(d) of the Taylor Law.

4. Its decision to employ the new seasonal employees was not motivated by a design to interfere with, restrain or coerce the unit employees in the exercise of rights protected by the Taylor Law. Hence, it could not have violated §209-a.1(a) of the Taylor Law.

Having reviewed the record and considered the arguments of the parties, we conclude that the Town violated §209-a.1(d), but not §209-a.1(a) of the Taylor Law.

There was a past practice of hiring nonunit seasonal employees to perform laborer work, but before December 1984, that practice was clearly circumscribed. It was limited to the summer vacation period and thus facilitated vacations by unit employees. Furthermore, it was limited to the sanitation department, which permitted unit employees in that department to work temporarily in the highway department for higher wages. In all other respects, unit employees exclusively performed unit work.[1/]

The actions of the Town complained of in the charge broke the perimeter of the past practice. It was improper for the Town to do so unilaterally. It is irrelevant that no unit employees were laid off. A public employer may not assign tasks of unit employees to nonunit employees unless the tasks or the qualifications for the job have been substantially changed.[2/]

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[1/] In 1972 and 1973, there were CETA employees working for the Town. The record does not indicate the duties of the CETA employees or whether they were in the negotiating unit.

[2/] Niagara Frontier Transportation Authority, 18 PERB ¶3083 (1985). No claim is made by the Town that any of the tasks or qualifications for the unit positions have been significantly altered. Although no employees were laid off as a result of the assignments, this was so only because the Town first permitted the number of unit employees to decrease through attrition and then replaced the lost employees by seasonals.

The Town's arguments regarding the §209-a.1(d) violation also are not persuasive. While there had been some negotiations with respect to the unit work issue, these negotiations had not been exhausted and the City was therefore prohibited from acting unilaterally.[3/] The City's argument that seasonal employees were bilaterally excluded from the negotiating unit is irrelevant. The violation found by the ALJ was not that the Town hired nonunit seasonal employees, but that it improperly assigned unit work to them.

Although the conduct of the Town violates §209-a.1(d) of the Taylor Law, there is no evidence that it also constitutes a violation of §209-a.1(a). The ALJ cites our decision in East Rockaway UFSD, 18 PERB ¶3069 (1985), in support of her finding of such a violation. In that case, an ALJ had dismissed a charge alleging a violation of §209-a.1(a) in that the employer had created a new nonunit position, the duties of which were identical with those of an eliminated unit position. We found that the ALJ erred in not permitting further inquiry because, if not explained, the conduct of the employer would be a violation of §209-a.1(a) of the Taylor Law. Here, however, a hearing has been held and the record

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3/For an example of circumstances under which a public employer may act unilaterally, even though negotiations have not been exhausted, see Wappinger CSD, 5 PERB ¶3074 (1972), and Cohoes CSD, 12 PERB ¶3113 (1979).

is complete. On that record we find that the Town has a claim of right which, albeit not sufficient to justify its conduct, is sufficient to negate the proposition that its action was improperly motivated.

NOW, THEREFORE, WE ORDER the Town to

1. Cease and desist from assigning unit work to nonunit personnel other than summer seasonals who work in the sanitation department.
2. Restore to the unit that work assigned to nonunit personnel other than summer seasonals who work in the sanitation department.
3. Negotiate in good faith with CSEA concerning the terms and conditions of employment of unit employees.
4. Sign and post the attached notice at all locations normally used to post communications to unit employees.

DATED: May 6, 1986
Albany, New York

Harold R. Newman

Harold R. Newman, Chairman

Walter L. Eisenberg

Walter L. Eisenberg, Member

APPENDIX

# NOTICE TO ALL EMPLOYEES

## PURSUANT TO

**THE DECISION AND ORDER OF THE**

## NEW YORK STATE
## PUBLIC EMPLOYMENT RELATIONS BOARD

**and in order to effectuate the policies of the**

## NEW YORK STATE
## PUBLIC EMPLOYEES' FAIR EMPLOYMENT ACT

**we hereby notify** all employees of the Town of West Seneca in the unit represented by the West Seneca Blue Collar Unit, Local 815, CSEA, Inc., Local 1000, AFSCME, AFL-CIO that the Town of West Seneca

1) Will not assign unit work to nonunit personnel other than summer seasonals who work in the sanitation department.

2) Will restore to the unit that work assigned to nonunit personnel other than summer seasonals who work in the sanitation department.

3) Will negotiate in good faith with CSEA concerning the terms and conditions of employment of unit employees.

Town of West Seneca
.....

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

10346

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

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of

STATE OF NEW YORK (STATE UNIVERSITY OF NEW YORK AT BINGHAMTON),

Respondent,

-and-

CASE NO. U-8096

CIVIL SERVICE EMPLOYEES ASSOCIATION, INC.,

Charging Party.

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JOSEPH M. BRESS, ESQ. (RICHARD J. DAUTNER, ESQ., of Counsel), for Respondent

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

BOARD DECISION AND ORDER

This matter comes to us on the exceptions of the Civil Service Employees Association, Inc. (CSEA) to a decision of an Administrative Law Judge (ALJ) dismissing its charge against the State of New York (State University of New York at Binghamton) (State). The charge alleges that the State violated §209-a.1(d) of the Taylor Law by unilaterally imposing a vehicle registration fee at the Binghamton campus of the State University.

The record shows that on April 1, 1985, the State unilaterally imposed a $3.00 registration fee upon all

vehicles that regularly use the SUNY Binghamton campus. It further shows that approximately 12,000 people are subject to the registration fee, of whom about 650 are represented by CSEA, 9,500 are not employed by the State, and the remaining affected persons are employees who are not represented by CSEA.

The sole issue is whether the action taken by the State involved a mandatory subject of negotiation which was therefore beyond its authority to take unilaterally. CSEA relies upon State of New York, 6 PERB ¶3005 (1973). It holds that free parking for public employees is a mandatory subject of negotiation, and, therefore, that the unilateral imposition of parking fees at work locations where employees had previously enjoyed free parking privileges was a violation of §209-a.1(d) of the Taylor Law. CSEA also relies upon City of New York, 9 PERB ¶3076 (1976) which holds that the City violated §209-a.1(d) of the Taylor Law by unilaterally withdrawing a benefit enjoyed by unit employees -- riding City-owned ferries without charge even though the general public had to pay for such rides.

CSEA's position is based upon a misconstruction of the two cases. CSEA interprets the State of New York case as standing for the proposition that parking fees are per se a mandatory subject of negotiation. The holding of that case, however, is that parking fees which are uniquely applicable to public employees are a mandatory subject of negotiation.

The reason for this is that the fees affect both the compensation of the employees, certainly a term of employment, and parking opportunities, a fringe benefit of employment. Where, however, a public employer operates parking lots that are used by the public in general, and only incidentally by public employees, the holding would be otherwise.

This distinction was noted by the ALJ in his reliance upon another State of New York case, 13 PERB ¶3099 (1980). There, we held that the imposition of an application fee for nonpromotional Civil Service examinations was not a mandatory subject of negotiation, saying (at p. 3159):

> The action of the State may be analogized to that of a government that maintains a bridge, the use of which has been toll-free. If that government decided to impose a toll for the use of the bridge, its employees, as well as other constituents, would be affected. The same would be true thereafter if the government decided to increase the toll. Notwithstanding the financial impact of such action upon the government's employees, there would be no duty to negotiate with the union representing its employees before imposing or raising the tolls.

The City of New York decision relied upon by CSEA deals with a different situation. Although there was a charge for use of ferries imposed upon the public at large, there had been a past practice of exempting unit employees from that charge. The change in the past practice did not affect the public at large, but only the unit employees. As such, because its application was uniquely applicable to those employees, it involved a mandatory subject of negotiation.

Here, the action of the State was designed to and does affect a universe of which CSEA-represented employees constitute less than 6% of the whole. As found by the ALJ, "It applies to the public at large in the same manner as it applies to unit employees, and is totally unrelated to employment status." We conclude, therefore, that it does not involve a mandatory subject of negotiation. However, as noted by the ALJ and recognized in the State's memorandum of law, a different conclusion would be required if the unique status of the unit employees were involved, for example, if CSEA demanded to negotiate an exemption from the fee.

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

DATED: May 6, 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

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In the Matter of

UNITED UNIVERSITY PROFESSIONS,

Respondent,

-and- CASE NO. U-8347

THOMAS C. BARRY,

Charging Party.

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BOARD DECISION ON MOTION

This matter comes to us on what purports to be an appeal by Thomas C. Barry from interlocutory rulings of an Administrative Law Judge (ALJ). The rulings complained about relate to a letter he wrote to the ALJ on April 9, 1986, conditionally agreeing to hearing dates. The conditions were:

1. That I be allowed to amend the I.P. to reflect Hudson.

2. That the ALJ undertake to provide assurances that following the hearing she would treat the I.P. with the greatest expedition.1/

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1/ In an earlier letter to the ALJ, which Barry has attached to his purported appeal, he wrote:

> You, . . ., will produce your decision in this matter within thirty days of the hearings, say by 15 June, and will urge the Bd., either in the body of that decision, or in a letter attachment, to give this decision its first priority for attention, as I will likewise do on my appeals papers.

The ALJ did not rule on Barry's request to amend his charge, but she expressly rejected his second condition for agreeing to the hearing dates on the ground that he was attempting to dictate the procedures that should be followed by the ALJ.

A party has no right to appeal from an interlocutory ruling of an ALJ but may request permission to do so pursuant to §204.7(h) of our Rules of Procedure. Assuming that Barry's "appeal" is a motion for permission to file exceptions to interlocutory rulings, we deny that motion on the ground that the rulings of the ALJ are proper and fully consistent with our Rules. As noted by the ALJ, Barry is attempting to dictate the procedures that should be followed by the ALJ. He has no right to do so.[2/]

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2/Board of Education of the City School District of the City of New York (Behrens), 14 PERB ¶3034 (1981). In a letter dated April 17, 1986, addressed to the ALJ and the attorney for United University Professions, Barry instructed them not to proceed with the processing of this matter because he had filed an appeal with this Board. Until a final decision is issued by the ALJ, it is she, and not a litigant, who determines the procedure that must be followed. The filing of a request for permission to file exceptions to interlocutory rulings does not alter this situation unless this Board grants such a motion and stays the proceeding before the ALJ.

NOW, THEREFORE, WE ORDER that the motion herein be, and it hereby is, denied.[3/]

DATED: May 6, 1986
Albany, New York

Harold R. Newman, Chairman

Walter L. Eisenberg, Member

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3/While Barry has written to the ALJ "it is imperative that you now begin to settle this matter with great dispatch," he has indicated that he is prepared to participate in hearings only if conditions which he sets are accepted. He may not impose such conditions. The ALJ should set reasonable dates for hearings and should proceed at that time. She should dismiss the charge for failure to prosecute if Barry does not participate because his conditions have not been met.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of

BRIGHTON CENTRAL SCHOOL DISTRICT,

Respondent,

-and-

CASE NO. U-8482

BRIGHTON TRANSPORTATION ASSOCIATION, NYSUT, AFT, AFL-CIO, LOCAL #3889,

Charging Party.

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ROBERT SWAYZE, for Charging Party

BOARD DECISION AND ORDER

This matter comes to us on the exceptions of the Brighton Transportation Association, NYSUT, AFT, AFL-CIO, Local #3889 (Association) to the decision of the Director dismissing its charge against the Brighton Central School District (District).

The charge contains two specifications. One is that the District refused to negotiate its decision to subcontract bus services to a private company called Golden Arrow. The other is that notwithstanding the promise of the District that Golden Arrow would employ all the District's bus drivers, Golden Arrow refused to employ Bruce Crance, a District bus

driver for seventeen years.[1/]

The Director dismissed the charge on the ground that it is not timely.[2/]

The charge alleges that the District decided to subcontract its transportation system on April 1, 1985 and that the parties commenced bargaining on that decision two weeks later. It further recites that on April 22, 1985, the District announced that it was subcontracting its transportation system to Golden Arrow. Nevertheless, as stated in the charge, when negotiations reached an impasse, the dispute was submitted first to mediation and then to fact finding. Finally, the charge alleges that on or about

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1/The charge implies, but does not allege, that Crance was not employed by Golden Arrow because he had engaged in conduct protected by the Taylor Law. The charge states that Crance had been employed by the District as a bus driver for over seventeen years, that he had filed many grievances against the District and had been involved in several improper practice charges against it, that the District stated that it structured the subcontracting bids in such a way to guarantee all current bus drivers with job offers from the subcontractor, and that the subcontractor refused to offer Crance a job.

2/Section 204.1(a) of the PERB's Rules of Procedure requires that the charge be filed "within four months" of the act claimed to be violative of the Taylor Law.

The Director also dismissed the specification of the charge alleging that Crance was not hired by Golden Arrow, on the ground that it merely complained about the conduct of a private sector entity which is not subject to the jurisdiction of this Board, there being no allegation of any exercise of improper influence over Golden Arrow by the District. Inasmuch as we affirm the decision of the Director that the charge was not timely, we do not reach this question.

July 15, 1985, the District announced that it would subcontract its bus system regardless of what a fact finder might recommend. All of these events occurred more than four months prior to the filing of the charge.

The only event relating to the negotiations which occurred within the four month time frame covered by the charge was the District's rejection of a fact finder's recommendation on August 27, 1985. That, by itself, could not constitute a violation of a District's duty to negotiate in good faith. While the other allegations in the charge might be read as background information designed to show that rejection of the fact finder's report was improperly motivated and, therefore, a violation of the District's duty to negotiate in good faith, we do not read the charge in this way. The Association's exceptions show that it focused on the statement that the District would not accept a fact finder's report which did not endorse its position, the actual rejection merely being corroboratory. In any event, there is little reason to confront the issue of whether the District violated its duty to negotiate in good faith by subcontracting its transportation service in this charge. The issue has already been raised in a timely charge filed by the Association.[3/]

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[3/] Brighton CSD, U-8102. It was withdrawn two weeks ago. See UFT (Barnett), 17 PERB ¶3113 (1984), in which we stated that a charge may be dismissed because it was so closely related to a prior charge by the same party that it was subsumed by that charge.

With respect to the specifications that Crance was not hired by Golden Arrow, the charge shows that he was informed of his rejection on July 31, 1985. The Association argues that the time to file the charge should run from the time of opening school in September 1985 because that is when Crance first actually suffered the consequences of not being hired. We reject this argument. The time to file a charge runs from the date when a party becomes or should have become aware of the conduct which allegedly constitutes the violation.[4/]

The Association also argues that its time to file a charge was extended because Crance asked Golden Arrow on August 27, 1985, why he was not being rehired. According to the Association, Crance was invited to submit his inquiry in writing and he did so on September 5, 1985, but he never received a reply. These events did not extend the Association's time to file the charge. Whether Golden Arrow was or was not willing to explain why Crance had not been hired is irrelevant. The decision not to rehire him had been communicated to him on July 31, 1985, and was not

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4/ City of Yonkers, 7 PERB ¶3007 (1974); County of Cattaraugus, 8 PERB ¶3062 (1975).

being reconsidered.[5/]

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

DATED: May 6, 1986
Albany, New York

Harold R. Newman, Chairman

Walter L. Eisenberg, Member

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5/Compare Board of Fire Commissioners, Brighton Fire District, 10 PERB ¶3091 (1977). In any event, we note that the allegation that the reason Crance was not hired by Golden Arrow was the District's desire to retaliate against him for the exercise of protected activities is a subject of another charge which was also withdrawn two weeks ago, Brighton CSD, U-8119.

#2E-5/6/86

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of

ALL PUBLIC EMPLOYEE UNIONS BENEFITING UNDER SECTION 208.3 OF THE CIVIL SERVICE LAW,

Respondents,

-and-

CASE NO. U-8673

THOMAS C. BARRY,

Charging Party.

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THOMAS C. BARRY, pro se

BOARD DECISION AND ORDER

This matter comes to us on the exceptions of Thomas C. Barry to a decision of the Director of Public Employment Practices and Representation (Director) dismissing his charge against "All Public Employee Unions Benefiting Under Section 208.3 of the Civil Service Law." The charge alleges that:

> none or practically none of the public employee trade unions presently receiving benefits under sec. 208.3 of the CSL ("agency fees") conform to and comply with the ruling contained in the decision of the US Supreme Ct. in Hudson (19 PERB sec. 7502)

Barry then states that, as a remedy, this Board should notify all such unions of their obligations under the Supreme Court decision and should investigate compliance with that decision.

The Director dismissed the charge on the ground that Barry has no standing to file a charge complaining about the agency shop fee procedures followed by public employee organizations other than the one which represents him because no other employee organization owes him any statutory duty in this regard. The Director also noted that this Board has no general investigatory responsibilities.

We affirm the decision of the Director for the reasons stated therein.

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

DATED: May 6, 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

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In the Matter of

CITY OF SCHENECTADY,

Employer/Petitioner,

-and- CASE NO. C-2944

SCHENECTADY PATROLMEN'S BENEVOLENT ASSOCIATION,

Intervenor.

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BUCHYN, O'HARE & WERNER, ESQS. (DOMINIQUE POLLARA, ESQ., of Counsel), for Employer/Petitioner

GRASSO AND GRASSO, ESQS. (JANE K. FININ, ESQ., of Counsel), for Intervenor

## BOARD DECISION AND ORDER

This matter comes to us on the exceptions of the City of Schenectady to a decision of the Director of Public Employment Practices and Representation (Director) dismissing the petition of the City to remove captains and lieutenants from a long-standing negotiating unit which includes patrolmen, officers, investigators and sergeants.[1/] The

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[1/] The petition also sought the exclusion of sergeants from that negotiating unit. The City has not filed exceptions to that part of the Director's decision which determined that sergeants should be left in the unit. In a related case, the Director dismissed an application of the City for the designation of captains, lieutenants and sergeants as managerial employees. The two cases had been consolidated by the Director for decision. There are no exceptions to the dismissal of the application.

petition and exceptions are opposed by the Schenectady Patrolmen's Benevolent Association (PBA).

The table of organization of the City's police department shows one chief and two assistant chiefs, all of whom are managerial employees; four captain positions, one of which is vacant; four lieutenants; twenty sergeant positions with one additional sergeant assigned; ninety-one patrol officers and twenty-two investigators. The positions of captain, lieutenant, sergeant, patrol officer and investigator have been in a single unit since 1967.

The legal issues are framed by County of Ulster, 16 PERB ¶3069 (1983) and to a lesser extent by Board of Education of the City School District of the City of Buffalo, 14 PERB ¶3051 (1981). In Buffalo, this Board held that cook-managers who perform supervisory functions should not be removed from a long-standing unit of rank-and-file employees. The opinion states that there is an a priori assumption that a conflict of interest exists between rank-and-file employees and supervisors but that in the particular instance, the assumption was overcome by evidence to the contrary. We found that no party had presented any evidence or argument in support of the proposition that the City was suffering any administrative inconvenience by reason of the existing unit. In this connection, we noted that a major indication of administrative inconvenience would be a showing that effective supervision by the supervisors was being subverted by reason of the unit structure.

County of Ulster narrowed our decision in Village of Scarsdale, 15 PERB ¶3125 (1982), which had placed greater emphasis on the subversion of supervision test. Ulster held that proof of actual subversion of supervisory responsibilities is not required in order to establish a basis for removing supervisory employees from a rank-and-file unit on the ground of administrative convenience. It indicated that such administrative convenience could be established in the absence of actual proof of subversion of supervision, based upon the following factors:

> the level of supervisory functions of the employees involved, the nature and size of the existing and proposed units, the nature of the service performed by the employees involved and any special working relationship between them.

The most effective argument of the City is that the chief and assistant chiefs work the same 40-hour week, which means that the subordinate officers control the department 128 out of 168 hours a week.

In response, the PBA contends that there is no evidence that the officers perform functions which have been held to constitute high level supervision. Specifically, it argues that there is no evidence that officers: 1) assign work and overtime, 2) prepare work schedules, 3) interview prospective employees and make effective recommendations for hiring, 4) make effective recommendations for promotions, 5) evaluate employees' job performances, 6) make effective recommendations for disciplinary action, and 7) receive and approve requests

for leave and sick time. It further argues that there is no evidence that captains or lieutenants are even engaged in: 1) direction of work assignments either at the police station or at crime scenes, 2) evaluation of probationary employees, 3) imposition of minor discipline and temporary transfer of personnel, and 4) supervision and assignment of extra training.

Having reviewed the record, we find that the authority of the captains and lieutenants in running the department is severely limited, particularly in matters concerning labor relations. In matters other than labor relations, there is evidence that captains may take independent steps to meet emergency situations. Thus, during a strike at General Electric, a captain temporarily reorganized the department into two 12-hour shifts. This, however, was an unusual exercise of authority under unusual circumstances.

As a general matter, captains and lieutenants investigate complaints of infractions by lower level staff. However, they issue charges only upon the approval of the chief. Those charges are signed by the captains who prefer them as well as by the chief or the mayor but recommendations by captains or lieutenants that charges be preferred are not accepted automatically. A captain or lieutenant may, however, suspend a subordinate temporarily, pending charges.

Captains and lieutenants have no significant role in hiring and firing. They have little discretion in the granting of leave or time off, these matters being covered in detail by

the contract. There is, however, some discretion with respect to the granting of compensatory time off. The practice is for grievances to go directly to the chief.

These facts do not indicate a high level of supervision such as would require the partition of the long-standing unit.

As to the issue of PBA subversion of supervisory responsibility in the long-standing unit, the record shows that in one instance it brought charges against a captain who was then working as an acting assistant chief because it disapproved of some aspect of his conduct. This was not an attempt to subvert the supervisory authority of a unit employee.

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

and

WE ORDER that the petition herein be,

and it hereby is, dismissed.

DATED: May 6, 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

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In the Matter of

MOUNT MARKHAM TEACHERS' ASSOCIATION,

Respondent, CASE NO. D-0239

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

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BOARD DECISION AND ORDER

On April 3, 1986, Martin L. Barr, this agency's Counsel, filed a charge alleging that the Mount Markham Teachers' Association (Respondent) had violated Civil Service Law (CSL) §210.1 in that it caused, instigated, encouraged, condoned and engaged in a 3-workday strike against the Mount Markham Central School District commencing February 7, 1986.

The charge further alleged that of the 111 employees in the negotiating unit, 78 to 80 full and part-time employees participated in the strike.

The Respondent requested Counsel to indicate the penalty he would be willing to recommend to this Board as appropriate for the violation charged. Counsel proposed a penalty of the loss of Respondent's right to have dues and agency shop fee deduction privileges to the extent of forty per cent (40%) of

the amount which would otherwise be deducted during a year[1/] and agreed to recommend that this penalty not take effect sooner than September 1, 1986. Upon the understanding that Counsel would recommend and this Board would accept that penalty, the Respondent did not file an answer to the charge. Counsel has so recommended.

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

WE ORDER that the dues and agency shop fee deduction rights of the Mount Markham Teachers' Association be suspended, commencing on the first practicable date, but no sooner than September 1, 1986, and continuing for such period of time during which forty per cent (40%) of its annual agency shop fees, if any, and dues would otherwise be deducted. Thereafter, no dues or agency shop fees shall be deducted on its behalf by the Mount Markham Central School

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1/This is intended to be the equivalent of a 5-month suspension of privileges of dues and agency shop fee deductions, if any, if such were withheld in 12 monthly installments throughout the year. The School District advises that the annual dues are deducted during a period of less than 12 months, i.e., over 10 pay periods.

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

DATED: May 6, 1986
Albany, New York

Harold R. Newman, Chairman

Walter L. Eisenberg, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of

TOWN OF CATON,

Employer,

-and- CASE NO. C-3034

TEAMSTERS LOCAL UNION NO. 529,

Petitioner.

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BOARD DECISION AND ORDER

On December 16, 1985, the Teamsters Local Union No. 529 (petitioner) filed, in accordance with the Rules of Procedure of the Public Employment Relations Board, a timely petition, seeking certification as the exclusive representative of certain full-time, blue-collar employees of the Town of Caton (employer) in the following unit:

Included: Laborers, Truck Drivers, Equipment Operators and Mechanics

Excluded: All guards, supervisory personnel, clericals and all other employees.

Thereafter, a secret-ballot election was held pursuant to the consent agreement signed by the parties, at which all three ballots were cast against representation by the petitioner.

Inasmuch as the results of the election indicate that a majority of the eligible voters in the unit who cast ballots do not desire to be represented for the purpose of

collective bargaining by the petitioner, IT IS ORDERED that the petition should be, and hereby is, dismissed.

DATED: May 6, 1986
Albany, New York

Harold R. Newman, Chairman

Walter L. Eisenberg, Member