STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

COUNTY OF NASSAU (NASSAU COMMUNITY COLLEGE),

Respondent,

-and-

CASE NO. U-8301

ADJUNCT FACULTY ASSOCIATION OF NASSAU COMMUNITY COLLEGE,

Charging Party.

BEE, DE ANGELIS & EISMAN, for Respondent

AXELROD, CORNACHIO & FAMIGHETTI (MICHAEL C. AXELROD, ESQ., of Counsel), for Charging Party

BOARD DECISION AND ORDER

This matter comes to us on the exceptions of the Adjunct Faculty Association of Nassau Community College (hereinafter Association) to a decision of an Administrative Law Judge (hereinafter ALJ) dismissing its charge that the County of Nassau (Nassau Community College) (hereinafter the College) violated §209-a.1(e) of the Taylor Law. The Association argues that the College violated the Law by refusing to continue the term of an expired agreement which requires the assignment of courses to unit employees solely on the basis

of seniority.[1/]

The charge was filed after the president of the College issued a statement that the College would no longer honor the seniority provisions of its expired collective bargaining agreement with the Association "to the extent that they may require that adjunct course assignment be made solely on the basis of seniority." Almost a year before this statement was issued, the College had brought a charge against the Association complaining that the Association had violated its duty to negotiate in good faith by insisting upon the continuation in their successor contract of the seniority provision which is at issue here. The College contended that the seniority provision was not a mandatory subject of negotiation because assignment on the basis of qualification is a management prerogative.

The ALJ dismissed that charge.[2/] She concluded that the expired seniority provision would not be a mandatory subject of negotiation if it required an assignment to be made solely on the basis of seniority, but that it incorporated "an understanding that the employer's right to

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[1/]The charge had originally complained that the conduct of the College also violated §209-a.1(a), (b) and (d) of the Taylor Law. The Association has not filed exceptions to those parts of the ALJ's decision which dismissed these specifications of the charge.

[2/]Adjunct Faculty Association, 18 PERB ¶4557 (1985).

determine qualifications for appointment is unrestricted."[3/]

The ALJ dismissed the instant charge on the ground that the seniority provision of the expired agreement did not require that course assignments be made solely on the basis of seniority. In support of its exceptions, the Association argues that this conclusion is in error because the parties' past practice demonstrates that seniority had been the sole basis for assignment. We decline to consider this argument.[4/]

There is an identity of parties in both the earlier and the instant case and the ALJ resolved the very issue in question here -- whether the seniority clause in the expired agreement made seniority the sole basis for appointment or subordinated seniority to the College's right to determine

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3/Id., at 4623. In its brief to the ALJ in the earlier decision, the Association noted that other ALJ decisions had held that seniority proposals improperly restricted school districts' managerial prerogative to establish qualifications for positions, but that in the instant case "[t]here is no dispute between the parties that the County [College] has a right to establish qualifications for employment and seniority."

Neither party filed exceptions to the ALJ's decision in the earlier case. The College, however, moved this Board for an order reopening the record to take additional evidence. That motion was denied. Adjunct Faculty Association, 18 PERB ¶3076 (1985).

4/We do note, however, that there is no record evidence to support it.

qualifications. She concluded that the clause subordinated seniority to the College's right to determine qualifications. The doctrine of collateral estoppel, which is part of the broader doctrine of res judicata, precludes a party from relitigating an issue that was decided in a earlier case to which it was a party.[5/]

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

DATED: June 5, 1986
Albany, New York

Harold R. Newman
Harold R. Newman, Chairman

Walter L. Eisenberg
Walter L. Eisenberg, Member

5/K. C. Davis, Administrative Law Treatise, Second Edition, §21:2.

#2B-6/5/86

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

HARRY W. FAIRBANK, for Charging Party

BOARD DECISION AND ORDER

This matter comes to us on the exceptions of the Wappingers Central School District (District) to a decision of an Administrative Law Judge (ALJ) that it violated §209-a.1(d) of the Taylor Law by contracting out the transportation of handicapped students without having negotiated its decision to do so with the Wappingers Federation of Transit, Custodial and Maintenance Workers, New York State United Teachers (Federation).[1/] The

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1/The matter came to us previously on a motion of the Federation to dismiss the exceptions on the ground that they were not timely. We found the exceptions timely and denied the motion (19 PERB ¶3012 [1986]).

Federation complains that this contract occasioned the temporary layoff of eleven drivers.[2/]

The District acknowledges that it made a unilateral decision to contract out the transportation of handicapped students. It makes two arguments in justification of its conduct. The first is that it was free to contract out the transportation of handicapped students because it was confronted by an emergency situation. The elements of the emergency are: (1) the station wagons normally used for such transportation were unservicable; (2) the voters had defeated two resolutions authorizing the acquisition of new buses;[3/] (3) it was unable to rent buses from other school districts, boards of cooperative educational services or county vocational education and extension boards;[4/] and (4) the Commissioner of Education had permitted it to rent buses from private sources for a 90-day emergency period only.[5/] Thus, according to the

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[2/]All eleven drivers had been recalled by the time the record herein was closed.

[3/]Education Law §1709.25.a subjects the power of a board of education to purchase motor vehicles to the authorization of qualified voters.

[4/]Such rental is authorized by Education Law §1709.25.b.

[5/]The regulations of the Commissioner of Education (8 NYCRR §156.6) permit the leasing of school buses from private sector sources under emergency conditions subject to approval by the Commissioner. Such approval is for a period not to exceed 90 days, but the period may be extended by the Commissioner if an emergency persists.

District, the sole option available to it in the performance of an essential service was to contract out the transportation of handicapped students.

The District's second argument is that it was under no duty to initiate negotiations. Rather, according to the District, it is sufficient that it was willing to negotiate upon a demand of the Federation once the Federation had been notified of the contemplated contract in late September or early October 1984. Thus, the District asserts, the Federation waived its right to negotiate by making no such demand.

The conditions under which an emergency situation may allow for unilateral action are set forth in an earlier Wappinger Central School District case.[6/] It holds that the employer must first have negotiated to impasse. It may then act unilaterally with respect to a matter concerning which time is of the essence, but it must indicate its willingness to continue to negotiate thereafter. The District argues that this doctrine should be expanded to permit unilateral action without prior negotiations where the emergency is acute and immediate.

The emergency, even if acute, was not immediate. The record shows that the District knew of the emergency by August 30. It was given permission by the Commissioner of

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6/5 PERB ¶3074 (1972).

Education to rent buses from the private sector on an emergency basis for 90 days and did so. It never sought to negotiate the issue of contracting out part of its bus service, neither did it seek an extension of the 90-day emergency period. Finally, it contracted out the bus services effective 30 days before the end of the 90-day emergency period.

We conclude that the principles articulated in the earlier Wappinger Central School District case apply in these circumstances. The District should have initiated negotiations at least by August 30, 1984, when it knew of the emergency. The duty to do so falls upon the public employer contemplating a change in the terms and conditions of employment of its employees and not on the employee organization that represents them.[7/]

It is not unlikely that the parties could have reached an agreement during the 90-day emergency period during which the Education Commissioner permitted the District to rent motor vehicles from the private sector. Failing that, the negotiations might have become deadlocked, thereby triggering the exception to the prohibition of unilateral action articulated in the earlier Wappinger Central School District. Moreover, if requested to do so by the District, the Education Commissioner might have extended the 90-day

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7/County of Orange, 12 PERB ¶3114 (1979).

emergency period -- especially if the parties were seeking a mutually acceptable resolution to the problem through negotiations. Accordingly, we reject the two bases of the District's exceptions.[8/]

NOW, THEREFORE, WE ORDER the District:

1. to negotiate in good faith with the Federation concerning unit members' terms and conditions of employment;
2. unless the parties agree otherwise in such negotiations, to restore all unit work subcontracted on November 1, 1984, to unit employees, effective upon the opening of school in September 1986.

[8/]The District's exceptions give two other reasons for reversing the ALJ but they are not developed in its brief. One is that the ALJ should not have admitted the testimony of the witness named Peter Borzi because that testimony was unreliable. We find no error here. The standards for admission of evidence in an administrative hearing is very liberal. Reliance upon that testimony would have been a different matter, but the ALJ did not do so.

The other is that the parties' collective bargaining agreement contained a job security clause covering full-time workers but not part-time workers, and that the eleven laid off workers were all part-timers. The District contends that this constitutes a waiver by the Federation of its right to object to the layoff of the eleven employees. This contention is irrelevant to the issue before us. It is not the layoffs that make the contracting out improper, it is the removal of unit work (Niagara Frontier Transportation Authority, 18 PERB ¶3083 [1985]). Layoffs per se may be proper, but not if they are the result of unilateral action that is itself improper.

3. to pay to unit members any lost wages and benefits suffered as a result of such subcontracting, plus interest at the legal rate; and

4. to sign and post the attached notice at all locations customarily used to post communications to unit members.

DATED: June 5, 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 in the unit represented by the Wappingers Federation of Transit, Custodial and Maintenance Workers, New York State United Teachers, that the Wappingers Central School District:

1. Will negotiate in good faith with the Federation concerning unit members' terms and conditions of employment.

2. Will, unless the parties agree otherwise in such negotiations, restore all unit work subcontracted on November 1, 1984, to unit employees, effective upon the opening of school in September 1986.

3. Will pay to unit members any lost wages and benefits suffered as a result of such subcontracting, plus interest at the legal rate.

WAPPINGERS CENTRAL SCHOOL DISTRICT

.....

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

10384

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

In the Matter of

BOARD OF EDUCATION OF THE NORTH BABYLON UNION FREE SCHOOL DISTRICT

CASE NO. E-1158

Upon the Application for Designation of Persons as Managerial or Confidential.

SY HOROWITZ, for the Office of Personnel Chapter of the North Babylon Teachers Organization

AUGUST J. GINOCCHIO, ESQ., for the Board of Education of the North Babylon Union Free School District

BOARD DECISION AND ORDER

The application herein was filed by the Board of Education of the North Babylon Union Free School District (District) on September 24, 1985. It seeks the designation of several employees in a negotiating unit represented by the North Babylon Teachers Organization (Organization) as confidential for the purposes of the Taylor Law.[1/]

Under §201.10(b) of our Rules of Procedure, such an application could have been filed during the fourth or fifth month of the fiscal year of the District, i.e. October or November. Accordingly, the application herein was filed prematurely. This procedural infirmity was not noticed by our staff in its initial processing of the application or by the Organization when it was first served with the application.

1/See §201.7(a) of the Taylor Law.

It was therefore assigned to an Administrative Law Judge (ALJ) for a hearing on the merits of the issues formulated by it and the response of the Organization in opposition.

The prematurity of the application was first noticed by the ALJ after the passage of the period when a timely application could have been filed. He notified the District of the defect and urged it to withdraw the application. When the District refused, he returned the file to the Director who dismissed the application. In doing so, he relied upon a decision of the State Supreme Court[2/] holding that it is arbitrary and capricious for this Board to waive its own rules by processing a prematurely filed petition when doing so would prejudice the rights of a party opposing the petition.

The matter now comes to us on the exceptions of the District. It would distinguish Cattaraugus on the ground that the party opposing the petition had moved to preclude consideration of it in that case while the Organization made no motion to preclude consideration of the application here. According to the District, the Director should not have dismissed the application sua sponte after the time to file a new application had passed. It argues that the Organization would not have been prejudiced if the Director had not enforced the timeliness rule because it never relied upon that rule, but

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2/ Cattaraugus County Chapter of CSEA v. Helsby, 3 PERB ¶7005 (Rensselaer County, 1970).

it has been prejudiced by the timing of the Director's action pursuant to that rule.

Our rules, and their relevance to the instant situation, are unambiguously clear as to when a filing is timely. We may not relieve the District of the consequences of its premature filing without waiving our rules.[3/] We find it significant that prior to April 5, 1977, our rules concerning dismissal of untimely improper practice charges paralleled the rules applicable here in that they did not restrict the time when a charge could be dismissed on the ground that it is not timely. We then promulgated paragraph (1) of §204.7, which provides:

> A motion may be made to dismiss a charge, or the administrative law judge may do so at his own initiative on the ground that the alleged violation occurred more than four months prior to the filing of the charge, but only if the failure of timeliness was first revealed during the hearing. An objection to the timeliness of the charge, if not duly raised, shall be deemed waived.

There may be merit in having a similar restriction on the dismissal of representation cases on the ground of timeliness.

3/Because our ultimate conclusion is based upon timeliness, the application has not been "processed to completion" and the District may file again in October or November 1986. See §201.10(b) of our Rules of Procedure.

However, this must be considered in the context of an amendment of our rules rather than as a justification for waiving them.[4/]

Accordingly, we affirm the decision of the Director and WE ORDER that the application herein be, and it hereby is, dismissed.

DATED: June 5, 1986
Albany, New York

Harold R. Newman, Chairman

Walter L. Eisenberg, Member

4/See State Administrative Procedure Act §202.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

COUNTY OF ERIE,

Employer,

-and-

CASE NO. C-2830

UNITED PROFESSIONAL NURSES ASSOCIATION,

BOARD DECISION AND ORDER

Petitioner-Intervenor,

-and-

NEW YORK STATE NURSES ASSOCIATION,

Intervenor,

-and-

CIVIL SERVICE EMPLOYEES ASSOCIATION,

Intervenor.

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

MICHALEK, MONTROY, AMAN, MARRANO, TRAFALSKI & GORSKI, ESQS., (JEROME C. GORSKI, ESQ., of Counsel), for Petitioner-Intervenor

HARDER, SILBER & GILLEN, ESQS. (JEFFREY D. GILLEN, ESQ., of Counsel), for Intervenor

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

This matter comes to us on the exceptions of the New York State Nurses Association (NYSNA) to a decision of the Director of Public Employment Practices and Representation (Director) that an election should be held in a unit of

employees of the County of Erie (County) consisting of

Included: Full-time, regular part-time and part-time employees licensed or otherwise lawfully authorized to practice as registered nurses in the positions specified in Appendix A.

Excluded: All other employees.

NYSNA argues that the Director erred in ordering such an election because it has already satisfied this Board's requirements for certification without an election, as specified in §201.9(g)(1) of our Rules of Procedure, and because NYSNA and the County are parties to a collective bargaining agreement which was executed on December 13, 1985.

FACTS

The petition herein was filed by the United Professional Nurses Association (UPNA) on September 1, 1984. The petition was timely to raise a question concerning representation in an existing unit represented by NYSNA, and it did so. UPNA had asserted that the unit represented by NYSNA was inappropriate in that some of the employees in it should be removed and placed in a unit to be created along with certain unrepresented employees. The Director rejected this position and decided that the unrepresented employees should be added to the unit represented by NYSNA.[1/] In the course of

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1/18 PERB ¶4074 (1985). Originally, the Director dismissed the petition. 18 PERB ¶4020 (1985). UPNA filed exceptions to that decision and we reversed it in part, remanding the matter to the Director for further proceedings. 18 PERB ¶3045 (1985).

doing so, the Director denied a request of UPNA for additional time to obtain a showing of support in the unit found to be appropriate.[2/] He ordered an election in that unit unless NYSNA would submit to him, within 15 days of the receipt of his decision, evidence sufficient to satisfy the requirements of §201.9(g)(1) of our Rules of Procedure for certification without an election.

On October 31, 1985, well within the 15-day period, NYSNA submitted evidence of support sufficient for certification without an election. However, on November 19, 1985, before the Director had issued a decision indicating that NYSNA was qualified for certification without an election,[3/] UPNA submitted evidence of sufficient support to become a candidate for election by the unit employees. It simultaneously moved to be placed on a ballot. On December 3, 1985, the Civil Service Employees Association (CSEA) also filed a motion to be placed on the ballot, which motion was accompanied by an appropriate showing of interest.

[2/]UPNA's showing of interest had been sufficient for the smaller unit it claimed to be appropriate, but was not sufficient for the larger unit found to be appropriate.

[3/]The time to file exceptions to the Director's decision had not yet expired. It would have been inappropriate for the Director to act definitively before the time to file exceptions had expired.

Ten days later, NYSNA and the County executed a memorandum of agreement covering the employees in NYSNA's original unit.

The Director issued the decision herein on February 10, 1986. It determined that an election should be held, and it granted the motions of UPNA and CSEA to be placed upon the ballot. The Director reasoned that an election was required because §201.9(g)(2) of our Rules of Procedure provides that "[a]n election will be held whenever the choice available to the employees within a negotiating unit includes more than one employee organization . . . ." He rejected NYSNA's contention that its submission of evidence sufficient for certification without an election on October 31, 1985, precluded an election on the basis of submissions by UPNA and CSEA thereafter. He also rejected NYSNA's argument that the execution of its memorandum of agreement with the County bars an election. The matter now comes to us on NYSNA's exceptions to these rulings.

DISCUSSION

We affirm the decision of the Director. For the reasons stated in the Director's decision, the execution of the memorandum of agreement does not bar an election.[4/]

4/The Director had ruled that this was so because a question concerning representation involving the negotiating unit covered by the agreement was pending before this Board at the time when the memorandum of agreement was executed. For further analysis and citations of authority see the decision of the Director.

NYSNA misreads the Director's decision regarding the implications of its submission of evidence sufficient for certification without an election. Reading it in the context of the Director's earlier decision that UPNA would not be given additional time to submit evidence of support sufficient to be placed upon the ballot in the negotiating unit determined to be appropriate, NYSNA understood him as having ruled that UPNA's actions subsequent to NYSNA's submission of evidence sufficient for certification without an election would be without effect. However, the earlier decision of the Director merely holds that there would be no delay in the processing of the proceeding in order to permit UPNA to submit additional evidence of support; the Director would process the matter within the normal time frame, and UPNA's evidence of additional support would be considered only if it were submitted before a Director's decision might be issued with respect to certification without an election.

It is not an employee organization's submission of evidence sufficient for certification without an election that precludes other employee organizations from appearing on a ballot; this occurs when the Director determines that the requirements for certification without an election have been met. This is because an election is the only reliable means

of ascertaining the preferences of unit employees where there is substantial support for more than one employee organization, such as is the case here. To permit an employee organization to cut off the access of other employee organizations to a ballot by quickly submitting evidence sufficient for certification without an election would deprive the unit employees of an opportunity to express their preferences in an election. Accordingly, we hold open the possibility of an election until the Director has actually counted and evaluated the evidence submitted in support of certification without an election. This preserves the rights of the unit employees, while not delaying certification, where competing employee organizations enjoy substantial support among unit employees.

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 who were employed on the payroll date immediately preceding the date of this decision:

Included: Full-time, regular part-time and part-time employees licensed or otherwise lawfully authorized to practice as registered nurses in the positions specified in Appendix A.

Excluded: All other employees.

IT IS FURTHER ORDERED that the County shall submit to the Director and to the other parties, within fifteen days from the date of receipt of this decision, an alphabetized list of all

employees within said unit who were employed on the payroll date immediately preceding the date of this decision.

DATED: June 5, 1986
Albany, New York

Harold R. Newman, Chairman

Walter L. Eisenberg, Member

#2E-6/5/86

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

PORT JERVIS TEACHERS ASSOCIATION,

Respondent,

-and-

CASE NOS. U-8076
and U-8168

CITY SCHOOL DISTRICT OF THE CITY OF PORT JERVIS,

Charging Party.

JAMES R. SANDNER, ESQ. (JOHN H. JURGENS, ESQ., of Counsel), for Respondent

MARTIN H. SCHER, ESQ., for Charging Party

BOARD DECISION AND ORDER

In the first charge herein, the City School District of the City of Port Jervis (District) alleges that the Port Jervis Teachers Association (Association) repudiated an agreement reached in collective negotiations. That agreement was contained in a document entitled "Stipulation of Agreement" which provided that the provisions of the parties' expired agreement would continue except as modified, and specified the following as one of the modifications:

> (8) The new salary schedule each year shall be composed of the salaries received by teachers in the previous year including increments plus 6-1/2% of the gross payroll in that previous year. If the numbers of unit members is greater in 1984-85 than in 1983-84 (and thereafter for the life of the agreement), expenditures for the wages of

> the excess staff shall be in addition to the above amounts. These same increases on this same basis shall be applied effective July 1, 1985 and July 1, 1986. The distribution of this money among unit members on staff as of each September shall be determined by the PJTA, except that the PJTA's allocation shall not reduce the salary received by any unit member in the previous year. (Emphasis supplied.)

The Association prepared a table for the distribution of the money which reflected an increase of approximately 11% per teacher. It is the submission of that table by the Association which the District characterizes as a repudiation of the agreement.

At the pre-hearing conference, the Association justified the table by its interpretation of the language "gross payroll in that previous year". It asserted that the teachers were entitled to the benefit of "breakage", i.e., the savings resulting from teacher turnover, whereby lower paid new teachers replace resigning or retiring higher priced teachers.

The District then brought its second charge as an alternative to the first. It alleges that there was a mutual misunderstanding with respect to the implications of the parties' "Stipulation of Agreement" which nullified that agreement. Accordingly, it argues, the Association is under a duty to resume negotiations, and it refused to do so.

The Administrative Law Judge (ALJ) dismissed the second charge on the ground that the parties had reached an agreement on salaries, and that the Association was therefore not

obligated to negotiate the issue further. He found it irrelevant that the parties may have had different understandings as to the implications of their agreement.

After a short hearing, the ALJ declined to take further evidence with respect to the first charge on the ground that the District was attempting to use the improper practice process to impose its interpretation of the agreement. He noted that §205.5(d) of the Taylor Law provides that this Board may not enforce an agreement.[1/]

In addition to disputing the ALJ's determination on the merits, the District argues that he rejected material evidence by reason of a misapplication of the parol evidence rule.[2/] That rule precludes evidence to contradict or vary the terms of an integrated written instrument. The District argues that parol evidence was admissible because it was trying to prove that there is no agreement.

1/The ALJ dismissed the charges on November 27, 1985, and the exceptions were received on January 9, 1986. We delayed issuing a decision herein at the request of the parties. The reason for the delay was to afford the parties an opportunity to resolve the dispute between them through negotiations. The time that they requested for this purpose expired on May 21, 1986.

2/The District also objects to our consideration of materials which the Association appended to its brief to the ALJ on the ground that these materials were not part of the record. We have not considered those materials.

The record shows that notwithstanding a motion by the Association that he do so, the ALJ did not apply the parol evidence rule.[3/] On the contrary, having previously ascertained from the parol evidence of the District's witness and its attorney that the "memorandum of agreement" embodied the parties' entire agreement, he stopped the hearing when he determined that the sole issue before him involved the interpretation and enforcement of an agreement.

Having reviewed the record, we affirm the ALJ's finding that the "memorandum of agreement" embodied the parties' entire agreement. We also affirm his conclusion that there was an agreement, notwithstanding the parties' different understandings as to its implications. In Sylvan-Verona Beach CSD, 15 PERB ¶3067 (1982), we said (at 3105):

> While the District's negotiators may not have understood the implications of their agreement, such a misunderstanding is not a valid basis for repudiating the agreement. [citation omitted]

Accordingly, we conclude, as did the ALJ, that the parties agreed upon a formula for the granting of salary increases for the 1984-85, 1985-86 and 1986-87 school years, and that the charges question the meaning of the language that the parties agreed upon. The ALJ correctly held that this Board may not resolve that issue in the context of the instant charges.

[3/]We are therefore not addressing the question whether it would have been wrong for him to do so.

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

DATED: June 5, 1986
Albany, New York

Harold R. Newman, Chairman

Walter L. Eisenberg, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

PORT JERVIS TEACHERS ASSOCIATION,
AFT NO. 2937,

Respondent,

-and-

CASE NO. U-8030

JOHN THOMAS McANDREW,

Charging Party.

ROBERT G. KLEIN, for Respondent

JOHN THOMAS McANDREW, pro se

BOARD DECISION AND ORDER

The charge herein was filed by John Thomas McAndrew. He complains that the Port Jervis Teachers Association, AFT No. 2937 (Association) violated its duty of fair representation by not supporting him in connection with five grievances which he filed on October 15, 1984. Specifically he makes four complaints:

(1) The Association did not investigate the grievances adequately and it acted improperly in refusing to permit him to meet with the Grievance Committee and/or the Executive Committee to discuss the grievances.

(2) The Association did not inform him why it refused to take the grievances to arbitration.

(3) The Association acted improperly in not making three witnesses available to testify in support of the grievances.

(4) The Association did not provide him with official tapes of the hearing at Stage III (consideration by the school district's Board of Education) of the grievances.

The Administrative Law Judge (ALJ) held an extensive hearing lasting three days, after which she dismissed the charge. She found that the Association had not been negligent in its consideration of the grievances and that there was no evidence that it discriminated against McAndrew. She also found that the Association had told McAndrew why it would not take his grievances to arbitration, the reason being lack of merit. She concluded that the Association was under no obligation to provide the testimony at the grievance hearing which was sought by McAndrew, and that it was under no obligation to furnish him with an official copy of the tapes of the Stage III hearing on the grievances.

The matter now comes to us on McAndrew's exceptions. We affirm the ALJ's substantive findings of fact and conclusions of law. There is no need to treat with the ALJ's dismissal of the first and second specifications of the charge other than to affirm that they are not supported by the evidence.

Her dismissal of the third and fourth specifications, also affirmed, requires some elaboration.

In large part, the grievances complain that McAndrew was not given appropriate consideration by the school district for an assignment which he sought. The reason for this is that another employee was given that assignment in settlement of a grievance filed by that other employee. McAndrew asked the Association to produce that employee, the Association's President, and the chairman of its grievance committee as witnesses. He hoped to prove that they had acted improperly. In part, he may have believed that this would help him in connection with his grievance. At least in part, he intended to embarrass the Association's officers because he was running for Association President against a candidate supported by the current officers. In any event, the duty of fair representation does not obligate the Association to submit voluntarily to his interrogation. His request that the Association produce the three witnesses constitutes, at best, a fishing expedition.

The Association had a copy of the minutes of the Stage III hearing in its possession and offered it to McAndrew. He rejected it on the ground that it might have been altered by the Association President. The Association rejected his request for an "official" copy of the tape because it had none. In these circumstances, the "rejection" is not improper.

McAndrew directs three additional exceptions to rulings of the ALJ at the hearing. We find these exceptions, which follow, to be without merit.

The first is that the ALJ erred in not compelling the Association to produce minutes of meetings of the Executive Committee of the Association at which another grievance had been considered. He argues that this evidence would have shown discriminatory treatment of his grievances.

There is nothing in the record to show that this is the reason why McAndrew sought to introduce those minutes. On the contrary, it appears that his attempt to introduce them was part of the fishing expedition referred to above.

The second is that the ALJ erred by admitting minutes of an Association meeting in October 1983 because he was not permitted to examine the person who was President of the Association at that time regarding the manner in which the minutes were taken and whether they had been appropriately approved at a subsequent meeting.

These minutes show that procedures followed by the Association's President had been authorized at the meeting. While the record does not show whether the adoption was consistent with the requirements of the Association's bylaws, the resultant issue is one which concerns internal Association affairs and raises no question regarding the Association's duty of fair representation. To evidence a

violation of that duty, the record would have to show that grievance procedure was discriminatorily applied rather than that it was improperly adopted. It does not do so.

The third is that the ALJ erred by excluding the introduction of the Association's constitution and bylaws. McAndrew had attempted to introduce them for the purpose of showing that the procedures followed by the Association President were not authorized.

This raises the same issue that we considered under McAndrew's second argument. Our reason for rejecting McAndrew's position there is applicable here.

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

DATED: June 5, 1986
Albany, New York

Harold R. Newman, Chairman

Walter L. Eisenberg, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

MASTIC-MORICHES-SHIRLEY COMMUNITY LIBRARY,

Employer,

-and-

CASE NO. C-3039

MASTIC-MORICHES-SHIRLEY COMMUNITY LIBRARY ASSOCIATION OF MUNICIPAL EMPLOYEES,

Petitioner.

BOARD DECISION AND ORDER

On December 30, 1985, the Mastic-Moriches-Shirley Community Library Association of Municipal Employees (petitioner) filed, in accordance with the Rules of Procedure of the Public Employment Relations Board, a timely petition for certification as the exclusive negotiating representative of certain employees employed by the Mastic-Moriches-Shirley Community Library (employer).

Thereafter, the parties agreed to a negotiating unit as follows:

Included: All full-time and part-time custodial employees, clerical employees and pages.

Excluded: Head of Circulation Services, Head of Administrative Services and all other employees.

Pursuant to agreement, a secret-ballot election was

held on April 2, 1986, at which there were 17 ballots cast in favor of representation by petitioner and 21 ballots against representation by 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.[1/]

DATED: June 5, 1986
Albany, New York

Harold R. Newman, Chairman

Walter L. Eisenberg, Member

1/ The petitioner filed, but later withdrew, objections to employer conduct affecting the results of the election.

#3A-6/5/86

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

TOWN OF BROOKHAVEN,

Employer,

-and-

CASE NO. C-2951

BROOKHAVEN TOWN ASSOCIATION OF MUNICIPAL EMPLOYEES,

Petitioner,

-and-

LOCAL 852, CIVIL SERVICE EMPLOYEES 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 Local 852, Civil Service Employees Association has been designated and selected by a majority of the employees of the above-named employer, in the unit described in the attached Appendix, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with Local 852, Civil Service Employees Association and enter into a written agreement with such employee organization with regard to terms and conditions of employment of the employees in the unit, and shall negotiate collectively with such employee organization in the determination of, and administration of, grievances of such employees.

DATED: June 5, 1986
Albany, New York

Harold R. Newman
Harold R. Newman, Chairman

Walter L. Eisenberg
Walter L. Eisenberg, Member

APPENDIX

AEO
Laborer
Highway Labor Crew Leader
MM I
Heavy Equipment Operator
Highway Maintenance Crew Leader
Highway General Supervisor
HEO
MM III
MM II
Automotive Mechanic III
Dispatcher
Paint Shop Crew Leader
Sign Painter I
Construction Equipment Operator
Highway Zone Supervisor
Storekeeper
Mat. Control Clerk II
Boat Captain
Guard
Auto Mech. IV
MM IV
Auto Mech I
Ecology Project Supervisor
Material Cont. Clerk II
Groundskeeper III

#3B-6/5/86

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

PEMBROKE CENTRAL SCHOOL DISTRICT,

Employer,

-and-

CASE NO. C-3031

PEMBROKE SCHOOL-RELATED PERSONNEL FEDERATION,

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 Pembroke School-Related Personnel Federation 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 clerk-typists, typists, secretaries, receptionists, account-clerk typists, registered nurses, teacher aides, custodians, custodial workers, head custodians, maintenance men, cleaners, Xerox aides, library aides, and clerical aides.

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Excluded: Bus drivers, Secretary to the Superintendent, and Treasurer/Secretary to the Business Manager.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with the Pembroke School-Related Personnel Federation 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: June 5, 1986
Albany, New York

Harold R. Newman

Harold R. Newman, Chairman

Walter L. Eisenberg

Walter L. Eisenberg, Member

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#3C-6/5/86

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, WAREHOUSEMAN AND HELPERS OF AMERICA,

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 810, International Brotherhood of Teamsters, Chauffeurs, Warehouseman and Helpers of America has been designated and selected by a majority of the employees of the above-named employer, in the unit described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: All 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.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with Local 810, International Brotherhood of Teamsters, Chauffeurs, Warehouseman and Helpers of America and enter into a written agreement with such employee organization with regard to terms and conditions of employment of the employees in the unit found appropriate, and shall negotiate collectively with such employee organization in the determination of, and administration of, grievances of such employees.

DATED: June 5, 1986
Albany, New York

Harold R. Newman

Harold R. Newman, Chairman

Walter L. Eisenberg

Walter L. Eisenberg, Member

#5F-6/5/86

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

(518) 457-2614

June 4, 1986

Professor Thomas C. Barry
323 Lamarck Drive
Amherst, NY 14226

Dear Doctor Barry:

The Board has asked me to respond to your letter of June 2, 1986. In that letter you write about the agency fee rebate procedures adopted by UUP. You complain that UUP is not in compliance with State law or the U.S. Constitution and ask this Board to suspend UUP's right to collect agency fees.

PERB does not have authority to police the general conduct of unions with respect to agency shop fees. Indeed, you recognized this as indicated by your urging the Board to promulgate rules that you have proposed. Your proposed rule changes will be considered by the Board at a hearing which will be held on September 9, 1986 at The Hilton, in Syracuse. Until such time as the Board may adopt substantive rules governing agency shop fees, it may only deal with matters such as those referred to in your letter on a case-by-case basis where improper practice charges have been filed.

Very truly yours,

Jerome Lefkowitz
Deputy Chairman

JL/mk

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UNIVERSITY AT BUFFALO
STATE UNIVERSITY OF NEW YORK

Department of Classics
Clemens Hall
Buffalo, New York 14260
(716) 636-2153

323 Lamarck Dr.
Amherst, N.Y. 14226

TO THE BOARD

NOTICE OF VIOLATION OF NUMEROUS BOARD ORDERS, BEGINNING WITH 11 PERB 3078, BY THE UNITED UNIVERSITY PROFESSION_S AS THE RESULT OF A NEW "REBATE" PROCEDURE FOR "AGENCY FEES" WHICH IT PROMULGATED ON OR ABOUT 27 MAY 1986

AND

AN URGENT REQUEST THAT AS THE RESULT OF THE ABOVE THE PERB SUSPEND IMMEDIATELY THE RIGHT OF THIS TRADE UNION TO COLLECT ANY "AGENCY FEES" FROM INDEPENDENT EMPLOYEES AND THAT THE BOARD PROMULGATE ITSELF ASYSTEM FOR REGULATING THE RELATIONSHIP BETWEEN INDEPENDENT EMPLOYEE AND TRADE UNION THAT IS CHARACTERIZED BY PROCEDURAL JUSTICE

1. On or about 27 May 1986 I received a copy of the UUP's publication The Voice (a rag I normally throw away without looking at, but perused this time as the result of hints and references given by an attorney for respondent UUP at a hearing concerning an I.P. held on 15 May) on p. 1 of which was the notice: "New Agency Fee Rebate Procedures for 1986-87, p.4". Page 4 of the rag contained a description of a new "rebate" procedure, which I am including as ANNEX A. I have also, for purposes of comparison, included the "rebate" procedure in effect for 1985/86 as ANNEX B. Please remember it is Annex A, the new procedure, about which I am writing this notice

2. This new procedure, members of the Bd.,is by far the worst ever misconceived by the UUP, as I shall detail below. It is so horrendous and so stupid, and so coercive, that I must believe it was the result of some kind of collective malevolent incompetence which has always, though never to this extent, characterized the UUP's attitude toward independent employees.

3. First of all, I want the members of the Bd. to read ANNEX A very carefully to determine that in no respect whatsoever is it a valid refund procedure, as required by Bd. rules, because under it no independent employee is permitted to contest the actual amount of the fee, let alone receive sufficient financial information to do so. You will have observed that the only matter which independent employees are allowed to contest is the "appropriateness of the advanced reduction". Examine the document carefully and you will see that this is the only appeals procedure provid There is no relationship whatsoever between the question of the "appropriateness of the advanced reduction" and the determination based upon actual financial evidence, an upon the requirements of proof (Abood) of what was the actual amount of the service fee.

4. The Bd. understands better than anyone that while it is absolutely necessary that the union provide a system whereby I am not forced to subsidize illegal expenditures, (escrow, advanced reduction, etc) this is only the first part of the procedure to determine that I have paid only those fees which are required by law. You also understand that the SMALL level of financial information required and the lack of any possibili of proof means that any arbitrator determining "the appropriateness of the advanced reduction" is not and cannot be performing the task of determining the exact amount of the service fee.

5. It is grotesque. The "appropriateness of the advanced reduction" must be determin by the arbitrator upon some analogy withthe expenditures of earlier FY's. That is, there must be some earlier refund procedure which in fact provided a precise determin on of proper and improper expenditures, in order for the arbitrator not to be constru ing estimate upon estimate upon estimate. There must, in order for the estimate to h any meaning at all, have been some prior final determination of the correct amount of the fee. But nowhere in this new procedure is this provided for. There is no wa for any independent employee to participate in such a determination.

6 3. The scheme is riddled with internal paradox. The third paragraph states:

> The agency fee of such objectors shall be reduced for the next FY by the approximate proportion of the agency fees spent by the union for such purposes, based on the latest FY for which there is a completed and available audit.

Absurd. Where does this come from? Is it an assumption that there has been a full-scale determination of the actual fee at some earlier FY? There cannot be, because none is provided for in the new rules. Has the independent employee participated in this process? Has he received the necessary financial information? Of course not. Who has determined the accurac y of of the fees "spent by the union for such purposes' The union, of course.

7. What is going on? As closely as I can tell the arbitrator is going to be asked to examine the financial records of the union for some previous FY in order to determine what the union is now expending. Based upon what? Simply because the records have been "audited" does not mean that they in any sense accurately reflect the actual amount spent on illegal items from that previous FY where there hasm been no challenge of the actual amount.

8. Please note as well that this procedure completely eliminates the possibility that independent employees shall receive sufficient financial information to allow them to challenge the actual amount of the service fee. (13 PERB 3090)

9. Please note as well that this procedure describes itself as referring only to the expenditures of the UUP and excludes by its terms any possibility that expenditures by its affiliates would be included.

10; Oh, yes. And the requirements of "expedition"? Blown out the window, since the ac amount can never be determined by these rules. This, even for the UUP, is a new time rec

All right. The question is what are you going to do about this piece of malevolen incompetence. It isn't a matter of tinkering, of adjusting a sentemne here, a phrase ther Those days are over. The UUP has shown repeatedly that it is completely incapable

incapable of devising a system of relationships between itself and independent employees that is characterized by procedural justice. It has had nine years of trying, and has failed. This latest attempt is the worst ofall. Enough is enough! Now it is time (and past time) for you to determine and to guarantee the nature of this relationship by your promulgation of rules (cf. my proposal for Part 210 of the Bd.'s rules) which are characterized by procedural justice. This is your most urgent task. Notethat on 15 June, a matter of two weeks, these rules require that independent employees make their objection (to what?) known. You have very little time.

1. Immediately suspend the right of UUP to collect "agency fees" since it does not now have a valid refund procedure in effect. (Note the recent confirmation by the Third Dep't. in Bodanza that the UUP has no right to receive "Agency Fees" if it does not have in place a valid refund procedure, and that you have the right to determine whether it does or does not have a valid refund procedure.)

2. PROMULGATE Part 210 of your rules, as I have previously requested

3. Restore to UUP right to collect "agency fees" upon its agreement to comply with the standards contained therein.

Most Sincerely,

Thomas C. Barry, Ph.D.
Chairman Classics
Dir. Religious Studies Progr.
Fellow of the Undergrad. College
University at Buffalo

323 Lamarck Dr.
Amherst, N.Y. 14226

Copy: Jerome Lefkowitz, Esq.
Martin Barr, Esq.

AGENCY FEE REBATE PROCEDURE FOR THE 1986-87 FISCAL YEAR

Any person making service payments to the Union in lieu of dues, pursuant to Chapter 677, Laws of 1977, as amended by Chapter 678, Laws of 1977 and Chapter 122, Laws of 1978, shall have the right to object to the expenditure of any part of the agency fee which represents the employee's pro-rata share of expenditures by the Union or its affiliates in aid of activities or causes of a political or ideological nature only incidentally related to terms and conditions of employment.

Such objections shall be made, if at all, by the objector individually notifying the Union President of his/her objection by registered or certified mail, during the period between June 15 and June 30 of the year prior to the fiscal year of the Union to which the objection applies.

The agency fee of such objectors shall be reduced for the next fiscal year by the approximate proportion of the agency fees spent by the Union for such purposes, based on the latest fiscal year for which there is a completed and available audit. An objector shall be provided at the beginning of the new fiscal year with an advance payment equal to the amount of the reduction.

If an objector is dissatisfied with the reduced fee on the ground that it allegedly does not accurately reflect the expenditures of the Union in the defined area, he/she may appeal that determination in writing and send it to the Union President by certified or registered mail within thirty (30) days following receipt of the advanced reduction. The question of appropriateness of the advance reduction will be submitted by the Union to a neutral party appointed by the American Arbitration Association for expeditious hearing and resolution in accordance with its rules for agency fee arbitrations. The costs for any appeal to a neutral party shall be borne by the Union. Said appeal shall be heard expeditiously.

The Union, at its option, may consolidate all appeals and have them resolved at one hearing for that purpose. An objector may present his/her appeal in person.

The schedule of UUP expenses may be found on Page 6 of the February/March edition of The VOICE.

Rx cards to be mailed in June

In mid-June, the Public Employees Benefit Fund will mail new Prescription Drug ID cards to all eligible employees in the Professional Services Negotiating Unit (PSNU) who have completed and filed an Enrollment Card with the Fund. One Enrollment Card on file with the Fund will enable you to receive both Fund benefits — Prescription Drug and Dental. The new ID card will expire 12/31/86. The current card expires 6/30/86.

If you have individual benefit Fund coverage, the ID card will cover the member only. If you have family benefit Fund coverage, you will receive **two** drug ID cards for your convenience. The face of your ID card will show **only** the first seven letters of your eligible dependent's first name. Only those dependents listed on the card will be eligible for coverage. If a dependent child becomes 25 within this six month period, the date of the end of the month in which your dependent reaches 25 will appear next to the dependent's name. In the event that any of your eligible dependents loses his/her eligibility, the card becomes void for his/her use. If the member should become ineligible, e.g., resign from State service or retire, the ID card is valid for use until the end of the month following the month in which you last appeared on the payroll as an active State employee.

IMPORTANT: You are eligible for benefits if you are in the PSNU, and eligible for enrollment in the State Health Insurance Program.

- If you meet Fund eligibility requirements and do not receive your Prescription Drug ID card, complete an Enrollment Card (PEBF-U1) and return it to the Fund office immediately.
- If your ID cards do not show all of your eligible dependents, complete a new Enrollment Card, or a Change of Marital Status-Dependents Form (PEBF-U3). This will enable the Fund to issue you correct ID cards.
- Report any address changes to the Fund office immediately to ensure that your new ID cards are sent to the correct address.

If you do not receive your new ID cards, notify the Fund office by writing or calling: UUP/Public Employees Benefit Fund, PO Box 911, Madison Square Station, New York, NY 10159. Toll-free 1-800-522-7002 or (212) 420-1309. Be sure to include your full name, Social Security Number, address and business phone.

Four elected to NYSUT Board of Directors

Four members of UUP were elected to the NYSUT Board of Directors at the Representative Assembly held in Toronto from March 6-9.

President Nuala Dreseher was elected in at-large balloting. Voting for three UUP seats resulted in a run-off election. The final counting of the votes resulted in the election of John Reilly of Albany, Thomas Matthews of Geneseo, and Henry Steck of Cortland.

The vote count in the first election:

Reilly	8547
Steck	8354
Alfonsin	7978
Matthews	7977
Edwards	7785
Nagler	7595

In the run-off election the vote count:

Thomas Matthews	8357
Mary Edwards	7785

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UUP Option Transfer Period

APPENDIX B

1985-86 UUP

AGENCY SHOP FEE REFUND PROCEDURE

AGENCY FEE REBATE PROCEDURE FOR THE 1985-86 FISCAL YEAR

Any person making service payments to the Union in lieu of dues, pursuant to Chapter 677, Laws of 1977, as amended by Chapter 678, Laws of 1977 and Chapter 122, Laws of 1978, shall have the right to object to the expenditure of any part of the agency fee which represents the employee's pro-rata share of expenditures by the Union or its affiliates in aid of activities or causes of a political or ideological nature only incidentally related to terms and conditions of employment.

Such objections shall be made, if at all, by the objector individually notifying the Union President of his/her objection by registered or certified mail, during the period between September 1 and September 30 of each year of the fiscal year of the Union to which the objection applies.

Thereafter the agency fee shall be reduced in accordance with such objections by the approximate proportion of the agency fees spent by the Union for such purposes, based on the latest fiscal year for which there is a completed and available audit. After the end of the fiscal year, and after the audit of the books is completed, the Union shall determine the approximate proportion of agency fees actually spent by the Union for such purposes during the fiscal year. After such final rebate determination is made an adjustment, if necessary, will be made in the refund amount. Objectors will be required to refund to the Union any excess refund they may have received.

Appeals

If an objector is dissatisfied with the final rebate determination, made after the close of the fiscal year, on the ground that it assertedly does not accurately reflect the expenditures of the Union in the defined area, he/she may appeal that determination to the Union's Executive Board. This appeal shall be in writing and sent to the Union President by certified or registered mail within thirty (30) days following receipt of the final rebate determination.

If the objector is dissatisfied with the Executive Board's determination, the objector may appeal to a neutral by notifying the Union President by registered or certified mail within thirty (30) days after receipt of the Executive Board's decision. The question of appropriateness of the rebate will be submitted by the Union to a neutral party appointed by the Union from lists to be supplied by the American Arbitration Association for hearing and resolution. The costs for any appeal to a neutral party shall be borne by the Union. Said appeal shall be heard expeditiously.

The Union, at its option, may consolidate all appeals and have them resolved at one hearing for that purpose. An objector may present his/her appeal in person.

APPENDIX "1"

ALJ #9