STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

UNITED FEDERATION OF TEACHERS and
BOARD OF EDUCATION OF THE CITY SCHOOL
DISTRICT OF THE CITY OF NEW YORK,

Respondents,

-and-

CASE NO. U-8071

DeWITT E. THOMPSON,

Charging Party.

BOARD DECISION AND ORDER

DeWitt E. Thompson filed a charge on March 30, 1985 against the Board of Education of the City School District of the City of New York (District) and the United Federation of Teachers (UFT). It specified that the District committed an improper practice in that it refused to ameliorate an unsafe working environment and that UFT committed an improper practice in that it refused to assist him in the filing of a grievance.

An Administrative Law Judge (ALJ) dismissed the specification against the District on the ground that this Board lacks jurisdiction over a claim that the working environment is unsafe. He dismissed the specification against UFT on the ground that:

> [t]he record establishes that Thompson never requested that UFT file or assist his filing a grievance . . . . It appears, moreover, that the UFT responded to every request by Thompson in a manner which cannot be faulted in this record.

The ALJ's decision was served upon Thompson on March 24, 1986. Three days later, Thompson wrote a letter to this Board requesting an extension of time in which to file exceptions to the decision of the ALJ. In doing so, he did not comply with §204.12 of our Rules of Procedure which provides that:

> [a] party requesting an extension of time shall notify all the parties to the proceeding of its request and shall indicate to the Board the position of every other party with regard to such request.

However, in consideration of the fact that Thompson was appearing pro se and there was still sufficient time for the appropriate inquiries to be directed to the other parties, a member of our staff made those inquiries on his behalf. This having been done, Thompson was advised on April 10, 1986 that his request for an extension of time during which to file exceptions was granted and that his exceptions would:

> be considered timely if mailed or delivered to the Public Employment Relations Board not later than May 5, 1986, with a copy served upon the other parties on the same day.

No such exceptions were received. Instead, on June 18, 1986, Thompson wrote to this Board requesting a further extension of time in which to file exceptions. He indicated that he had not filed the exceptions within the time originally granted to him because he had been preoccupied with other litigation and that the effects of this litigation were exacerbated by UFT's failure to represent him in such litigation.

Section 204.12 of our Rules of Procedure provides that we may extend the time during which a party may request an extension of time because of extraordinary circumstances. We treat Thompson's letter of June 18, 1986 as a motion for a further extension of time because of extraordinary circumstances, but we deny that motion. Preoccupation with other litigation may be sufficient grounds for the granting of an extension of time in which to prepare and file exceptions. It is not, however, such an extraordinary circumstance as would prevent a timely request for extension.[1/]

[1/] Compare UFT (Thompson), 18 PERB ¶3014 (1985), in which a request by Thompson in an earlier case for an extension of time because of extraordinary circumstances was denied. Thompson had alleged that the District had harassed him at the time when he should have requested the extension and that he was further disconcerted by UFT's failure to support him in his charge against the District. We denied his motion on the ground that the reasons for it were not such extraordinary circumstances as would have reasonably interfered with the filing of timely exceptions. See also Westbury UFSD, 12 PERB ¶3107 (1979), in which a vacation was not deemed such an extraordinary circumstance, and Board of Education of the City School District of the City of New York, 16 PERB ¶3051 (1983), in which physical injury which did not actually incapacitate the individual requesting an extension was not such an extraordinary circumstance. On the other hand, in Auburn Industrial Development Authority, 15 PERB ¶3075 (1982), we found extraordinary circumstances where the attorney who should have filed exceptions had become mentally and emotionally ill and had been incapacitated from requesting an extension.

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

DATED: July 10, 1986
Albany, New York

Harold R. Newman

Harold R. Newman, Chairman

Walter L. Eisenberg

Walter L. Eisenberg, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

COUNTY OF CLINTON and SHERIFF OF COUNTY OF CLINTON,

Respondents,

-and-

CASE NO. U-8547

DEPUTY SHERIFF's UNIT, LOCAL 810, CIVIL SERVICE EMPLOYEES ASSOCIATION, INC., LOCAL 1000, AFSCME, AFL-CIO,

Charging Party.

THEALAN ASSOCIATES (ANTHONY DI ROCCO, of Counsel), for Respondent

ROEMER & FEATHERSTONHAUGH, P.C. (PAULINE R. KINSELLA, ESQ., of Counsel), for Charging Party

BOARD DECISION AND ORDER

This matter comes to us on the exceptions of Deputy Sheriff's Unit, Local 810, Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO (CSEA) to a decision of the Director of Public Employment Practices and Representation (Director) dismissing its charge that the County of Clinton and Sheriff of County of Clinton (Joint Employer) violated §209-a.1(e) of the Taylor Law by not extending the terms of an expired agreement covering unit employees. Allegedly, the Joint Employer refused to provide

a scheduled holiday and the payment of scheduled salary increments. The Director dismissed the charge on the ground that the facts alleged do not make out a prima facie case because §209-a.1(e) of the Taylor law does not apply to the relationship between CSEA and the Joint Employer.

FACTS

CSEA had long represented a unit of persons employed in a two-employer bargaining unit, one employer being Clinton County and the other employer being the County and the Sheriff as a joint employer. The two employers and CSEA were parties to a collective bargaining agreement scheduled to expire on December 31, 1985, when, on April 10, 1985, CSEA asked the two employers to consent to a split of the unit so that there would be two units, one covering the employees of each employer. The request was denied and CSEA filed a petition for decertification of the existing unit and its certification in a separate unit of the employees of the Joint Employer. This petition was granted over the objection of the employers and CSEA was certified in the Sheriff's Department unit on October 4, 1985.[1/] There was no certification of CSEA in the residual unit, its status as the representative of that unit never having been questioned.

[1/] County of Clinton and Sheriff of County of Clinton, 18 PERB ¶3070.

The collective bargaining agreement in effect between CSEA and the two employers at that time contained general provisions covering the unit as a whole and other provisions that were applicable exclusively to employees in the Sheriff's Department. Both the County and the Joint Employer continued to abide by the terms of that agreement between October 4, 1985 and the expiration of that agreement on December 31, 1985.

After December 31, 1985, the charge alleges, the Joint Employer refused to comply with the provisions of the expired agreement dealing with holidays and salary increments.[2/] The Director concluded that this would not constitute a violation of §209-a.1(e) of the Taylor Law. He reasoned that the Joint Employer was not obligated by the Law to maintain the terms of the expired agreement with respect to the Sheriff's Department unit because there was no substantial continuity in the negotiating relationship linking CSEA and the Joint Employer to the parties to the expired agreement.

DISCUSSION

The right of an employee organization to negotiate with a public employer is set forth in §204 of the Taylor Law.

2/For the purposes of this review of the decision of the Director that the facts alleged did not make out a prima facie case, we must assume those allegations to be true.

Subdivision 3 of that section indicates that this right is "to negotiate collectively." This implies that the primary right to negotiate inheres in the group of employees who "collectively" constitute a negotiating unit, and that the right of a recognized or certified employee organization derives from the primary right of the "collective" that it represents.[3/]

A consequence of this is that if one employee organization succeeds another as the representative of a negotiating unit while a collective bargaining agreement covering that unit is still in effect, the agreement continues to bind the public employer, and the new employee organization succeeds to the rights and obligations of its predecessor. In effect, there has been a custodial transfer of the negotiating unit from one employee organization to another which carries with it the collective bargaining agreement which is the property of such negotiating unit.[4/] On the other hand, where there has been a significant change in the composition of a negotiating unit, the rights and obligations of the public employer and the employee organization set forth in a collective bargaining agreement between them are

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3/Thus, in Fraternal Order of New York State Troopers, 5 PERB ¶3060 (1972), aff'd, PBA v. Helsby, 73 Misc.2d 184, 6 PERB ¶7001 (Sup. Ct. Alb. Co. 1973), we said (at p. 3106): "The authority of an employee organization is derivative and not independent; it derives from the employees who select it and whom it represents."

4/Fraternal Order of New York State Troopers, supra.

terminated.[5/] This is because the "collective" of employees, on whose behalf the agreement was negotiated, has ceased to exist. Neither of the two units is a successor to the old unit.

The termination of an agreement because one of the parties to it has ceased to exist has different consequences from the expiration of an agreement by its own terms. No contract rights survive the termination of an agreement, and §209-a.1(e) of the Taylor Law does not compel a public employer to abide by them.[6/]

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

DATED: July 10, 1986
Albany, New York

Harold R. Newman, Chairman

Walter L. Eisenberg, Member

5/Accretions to a negotiating unit or such changes as would be affected by a petition for unit clarification or placement under §201.2(b) of our Rules are not significant changes in a unit.

6/Unilateral changes by a public employer of the terms and conditions of employment of unit employees would, nevertheless, constitute a violation of §209-a.1(d) of the Taylor Law even where there was no relevant prior agreement. Livingston, Steuben, Wyoming BOCES, 8 PERB ¶3019 (1975).

#2C-7/10/86

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

TEAMSTERS LOCAL 687,

Respondent,

-and-

CASE NO. U-8567

TOWN OF POTSDAM,

Charging Party.

ROCCO A. DePERNO, ESQ. (FREDERICK W. MURAD, ESQ., of Counsel), for Respondent

INGRAM, INGRAM, CAPPELLO & LINDEN, P.C. (FRANCIS P. CAPPELLO, ESQ., of Counsel), for Charging Party

BOARD DECISION AND ORDER

The Town of Potsdam (Town) and Teamsters Local 687 (Local 687) were parties to a collective bargaining agreement which expired on December 31, 1985, and no new agreement has been negotiated by the parties. Article 15 of that expired agreement provides:[1/]

> Article 15: Resolution of Deadlocks in Collective Negotiations
>
> 15.1: The parties agree to conduct meetings for the purpose of collective bargaining during the period of one hundred and twenty

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1/Notwithstanding the expiration of the agreement, its terms still apply. Section 209-a.1(e) of the Taylor Law.

> (120) days prior to any fiscal budget year for the purposes of attempting to mutually agree upon amendments to this Agreement.
>
> 15.2: The parties hereby agree that an impasse in such negotiations shall be identified by the failure of the parties to have achieved an understanding or agreement sixty (60) days prior to the date of the vote on the annual budget.
>
> 15.3: In the event of an impasse, the parties agree to submit the unresolved issue to the Public Employees (sic) Relations Board for mediation and/or factfinding. In the event the unresolved issues are not settled by mediation and/or factfinding, such issues shall be submitted to a Public Employees Relations Board arbitrator for a final and binding decision.

Local 687 insists that the provision for binding interest arbitration be included in the new agreement, and the Town alleges that such insertion is an improper practice because interest arbitration is not a mandatory subject of negotiation.[2/] The Administrative Law Judge (ALJ) found merit in this charge and the matter now comes to us on the exceptions of Local 687.

Local 687 first argues that the demand for interest arbitration is a mandatory subject of negotiation because it would apply only to substantive demands which are themselves mandatory subjects of negotiation. The Town responds that both the demand, on its face, and Local 687's past negotiation posture has been for interest arbitration of all

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2/See Monroe Woodbury Teachers Association, 10 PERB ¶3029 (1977).

substantive negotiation demands whether or not they are mandatory subjects of negotiation. We find it unnecessary to resolve this dispute.[4/] The Town's alternative argument is that a demand for interest arbitration is not a mandatory subject of negotiation even if the interest arbitration is limited to substantive proposals that are themselves mandatory subjects of negotiation. We agree with this proposition.

A recognized or certified employee organization is given a statutory right to negotiate terms and conditions of employment.[5/] Section 209 of the Taylor Law governs the process of such negotiations. Subdivision 2 of §209 authorizes parties to enter into written agreements setting forth procedures for the resolution of negotiation impasses but a distinction must be made between such agreements and agreements on terms and conditions of employment. If no agreement is reached in collective negotiations, the terms and conditions which will govern the employment relationship will be those set forth in the parties' expired agreement, if any;[6/] the existing practices to the extent that there is

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[4/] In the past we have permitted a party to amend its demand in the face of a charge that such demand is not a mandatory subject of negotiation. Amherst Police Club, Inc., 12 PERB ¶3071 (1979).

[5/] Sections 204.2 and §208.1(a) of the Taylor Law.

[6/] Section 209-a.1(e) of the Taylor Law.

no prior agreement;[7] a determination by the legislative body of certain types of governments;[8] and, in the case of police and fire fighters, an interest arbitration award.[9] However, notwithstanding the variety of procedures that are made available to resolve negotiation impasses, the underlying public policy is that public employers and employee organizations should reach agreements with respect to terms and conditions of employment.

Agreements regarding the process of negotiations are of a different character. There is no public policy that public employers and employee organizations should enter into such agreements. On the contrary, subdivisions 3 & 4 of §209 of the Taylor Law provide a comprehensive negotiation process. Subdivision 2 of §209 merely affords public employers and employee organizations the opportunity to devise alternative negotiation procedures for their own use. No public employer or employee organization is under a statutory duty to negotiate with respect to such alternative procedures.[10]

7/Livingston, Steuben, Wyoming BOCES, 8 PERB ¶3019 (1975).

8/Section 209.3(e) of the Taylor Law.

9/Section 209.4 of the Taylor Law.

10/Town of Shelter Island, 12 PERB ¶3112 (1979). Also, compare §200(b), which requires public employers to negotiate with employee organizations, with §200(c), which only encourages them to agree upon dispute resolution procedures.

Our conclusion that a demand for interest arbitration is not a mandatory subject of negotiation is consistent with decisions of the National Labor Relations Board and various courts in the private sector.[11/]

Local 687 argues further that, even though interest arbitration may not be a mandatory subject of negotiation generally, the clause herein is a mandatory subject of negotiation because it has a direct and immediate bearing on the employment relationship. This argument is based upon a misconstruction of an NLRB decision holding that an employer committed an unfair labor practice by refusing to abide by an agreement to arbitrate a current interest dispute and, instead, unilaterally implemented its last wage offer.[12/] That case is distinguishable, however, in that there was no demand to negotiate for interest arbitration. Rather, the parties had agreed to interest arbitration of a current impasse and the employer reneged on that agreement. Under

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11/NLRB v. Massachusetts Nurses Association, 557 F.2d 894 (1st Cir. 1977); NLRB v. Sheet Metal Workers International, etc., 575 F.2d 394, 98 LRRM 2147 (2d Cir. 1978); NLRB v. Greensboro Printing Pressmen and Assistants Union, 549 F.2d 308 (4th Cir. 1977); NLRB v. Columbus Printing Pressmen & Assistants, 543 F.2d 1161, 93 LRRM 3055 (5th Cir. 1976); Sheet Metal Workers v. Aldrich Air Conditioning, Inc., 717 F.2d 456, 114 LRRM 2657 (8th Cir. 1983); Sheet Metal Workers, Local 252 v. Standard Sheet Metal, Inc., 699 F.2d 481, 112 LRRM 2878 (9th Cir. 1983).

12/Sea Bay Manor Home, 253 NLRB 739, 106 LRRM 1010 (1980), enf., NLRB v. Sea Bay Manor Home, 685 F.2d 425, 111 LRRM 2608 (2d Cir. 1982).

those limited circumstances, the NLRB found that the agreement to submit the current dispute to interest arbitration had taken on the characteristics of the substantive mandatory subjects of negotiation that were then being negotiated.

Local 687 also argues that the demand herein is a mandatory subject of negotiation because it would insert the interest arbitration clause in an amendment to an existing collective bargaining agreement and not in "a contract yet to be formed." It is not clear what Local 687 means by this argument. Apparently it is contending that interest arbitration can be used to perpetuate interest arbitration clauses by the expedient of treating contract renewals as merely constituting contract amendments. Thus, in effect, according to Local 687, once parties have agreed to an interest arbitration clause, its perpetuation is a mandatory subject of negotiation. We reject this argument. We have long held that incorporation of permissive subjects of negotiation into an agreement does not convert them into mandatory subjects for future negotiations.[13/]

For the reasons set forth herein, we affirm the decision of the ALJ and WE ORDER Local 687 to cease and desist from insisting upon negotiations for the inclusion of

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13/Troy UFFA, 10 PERB ¶3015 (1977).

an interest arbitration clause in a collective bargaining agreement to succeed its agreement with the Town that expired on December 31, 1985.

DATED: July 10, 1986
Albany, New York

Harold R. Newman

Harold R. Newman, Chairman

Walter L. Eisenberg

Walter L. Eisenberg, Member

#2D-7/10/86

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

CITY OF SCHENECTADY,

Respondent,

-and- CASE NO. U-8325

SCHENECTADY PATROLMEN'S BENEVOLENT ASSOCIATION,

Charging Party.

BUCHYN, O'HARE & WERNER, ESQS., for Respondent

GRASSO & GRASSO, ESQS., for Charging Party

BOARD DECISION AND ORDER

This matter comes to us on the exceptions of the City of Schenectady (City) to a decision of an Administrative Law Judge (ALJ) that it violated the Taylor Law by unilaterally imposing a procedure for the application for benefits under General Municipal Law §207-c upon employees in a negotiating unit represented by Schenectady Patrolmen's Benevolent Association (PBA). Section 207-c of the General Municipal Law provides for the payment of the full amount of regular salaries and wages to policemen who sustain an injury or illness resulting from the performance of their duties. In the case of a policeman who is permanently disabled, such

payments continue until the policeman is granted an accidental disability retirement allowance upon his own application or the application of his employer.

Among other things, the new procedure imposed by the City prescribes time limits for notifying it of the injury or illness, techniques for the investigation of §207-c claims, including medical examinations, such as would be required for the receipt of benefits under the Workers Compensation Law, and the appointment of a "risk manager" to monitor the process. The failure of a claimant to comply with the procedures, to the extent that they are applicable to him, precludes the claimant from receiving benefits under §207-c.

The ALJ found that some of the provisions of the new procedure involve management prerogatives. These include the creation of the position "risk manager" and the establishment of procedures to investigate claims made pursuant to §207-c. She found that other provisions of the new procedure were nonmandatory subjects of negotiation because they merely reiterated procedural requirements set forth in §207-c. However, those provisions which impose new procedural requirements that involve the participation of claimants and go beyond the terms of the statute were found by the ALJ to constitute mandatory subjects of negotiation. To that extent, she found the City's unilateral action to violate §209-a.1(d) of the Taylor Law.

The City makes four arguments in support of its exceptions. The first is that this Board lacks jurisdiction over §207-c claimants because, by virtue of their claims, they cease to be public employees and are therefore no longer covered by the Taylor Law. It supports this argument by citing Chalachan v. City of Binghamton[1/] for the proposition that the status of disabled police officers who receive benefits under §207-c "as employees even after disability has occurred is strictly a matter of statutory right."[2/] This, according to the City, means that the disabled employees are employees for the purposes of the General Municipal Law but not the Taylor Law.

We do not find Chalachan to be relevant to the issue before us. The §207-a beneficiaries in the Chalachan case are former employees but not by virtue of the fact that they receive benefits under the General Municipal Law. Rather, it is because they are retirees.[3/] The Chalachan case is therefore consistent with our decision in City of

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1/55 N.Y.2d 989 (1982).

2/Chalachan actually deals with the status and rights of fire fighters under General Municipal Law §207-a, but for purposes of the issue before us the applicability of §207-a to fire fighters and §207-c to police officers are parallel.

3/The opinion of the Appellate Division states "Each of the petitioners either separated from service or was retired while in good standing during the year 1979." Chalachan v. City of Binghamton, 81 A.D. 973 (3rd Dep't 1981).

Binghamton.[4/] That decision holds that fire fighters who receive benefits under §207-a as a result of line of duty injuries continue to be employees of the municipality which hired them until they are properly separated from service by virtue of voluntary or involuntary retirement. It follows that the terms and conditions of disabled employees who have not retired are mandatory subjects of negotiation, while similar terms and conditions affecting those who have already retired are permissive subjects of negotiation.[5/]

In addition to its reliance upon Chalachan, the City cites several other court decisions in support of its position, but we find that none of these avail it. For example, Mashnouk v. Miles[6/] and Klonowski v. City of Auburn[7/] both deal with retired employees, and Cook v. City of Binghamton,[8/] deals with the constitutionality of involuntary retirement of disabled employees, an issue that is not relevant to the question before us.

4/10 PERB ¶3092 (1977). See also City of Binghamton, 12 PERB ¶3089 (1979), aff'd, City of Binghamton v. Newman, 13 PERB ¶7005 (Sup. Ct. Alb. Co. 1980).

5/Troy UFFA, 10 PERB ¶3015 (1977); City of Oneida PBA, 15 PERB ¶3096 (1982). This, too, is consistent with Chalachan, as that decision holds that vacation benefits explicitly provided to retired disabled employees by a collective bargaining agreement are enforceable.

6/55 N.Y.2d 80 (1982).

7/58 N.Y.2d 398 (1983).

8/48 N.Y.2d 323 (1979).

Elliot v. City of Binghamton [9/] comes closest to being relevant. It holds that a City did not exceed its authority when it promulgated a procedure by which employees could claim benefits under §207-c. However, there was no issue in that case as to whether the City was obligated to negotiate with respect to the promulgation of such procedure. The duty to negotiate terms and conditions of employment is applicable precisely where a public employer has authority to act and, but for the Taylor Law, could have acted unilaterally. There is no duty to negotiate where explicit statutory mandates dictate conduct to such an extent that a public employer cannot impose variations of such conduct.[10/]

The City's second argument is that the ALJ's decision subordinated its constitutional obligations to inconsistent Taylor Law obligations. The City's brief does not fully articulate the reasoning behind this argument. It merely states that the ALJ's decision "would violate constitutional prohibitions against . . . unauthorized payments". This suggests that the City is arguing that benefits received by

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9/94 A.D.2d 887 (3rd Dep't 1983), aff'd without opinion, 61 N.Y.2d 920 (1984).

10/Harrison Association of Teachers, 6 PERB ¶3017 (1973); City of Albany, 7 PERB ¶3078 (1974); Scarsdale PBA, 8 PERB ¶3075 (1975). See also, Huntington Board of Education v. Associated Teachers of Huntington, 30 N.Y.2d 122, 5 PERB ¶7507 (1972).

disabled employees would constitute gifts of public funds prohibited by Article 8, §1 of the State Constitution. Such an argument must be rejected. Benefits provided as a consequence of the negotiation of mandatory or nonmandatory but permissive subjects of negotiation do not violate the Constitution.[11/]

The City's third argument is that PBA waived its right to negotiate in that it had given PBA sufficient notice of an intention to promulgate a rule imposing the new procedure and that PBA did not make a timely request to negotiate the matter.

Having reviewed the record, we find that the City gave PBA notice of its intention to adopt a new procedure unilaterally and of a willingness to negotiate only the impact of the new procedure. We further find that PBA's response was that it wished to negotiate the substance rather than the impact of the new procedure. The City then offered to negotiate the substance of the procedure itself, but only during a specific two-week period, with the implementation of the procedure to take place four days thereafter. Although

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11/Huntington v. Teachers, supra. See also Chalachan v. City of Binghamton, supra, which indicates that vacation benefits may be negotiated even for retirees.

no such negotiations took place during the two-week period, this was because PBA's negotiator was not available at that time.

On the basis of these facts, we conclude that PBA did not waive its right to negotiate[12/] and the City is therefore required to do so regarding those aspects of the procedures unilaterally adopted by the City which constitute mandatory subjects of negotiation.[13/] We further conclude that the City had made a unilateral decision to adopt these procedures and that it was not prepared to negotiate that decision in good faith. Moreover, even if the offer to negotiate during the two-week period evidences a willingness to negotiate in good faith, and PBA could be faulted for not commencing negotiations during that period, the failure of the parties to reach an agreement during that period would not be sufficient to justify the unilateral action of the City thereafter.[14/]

12/CSEA v. Newman, 88 A.D.2d 685, 15 PERB ¶7011 (3rd Dep't 1982), aff'd, 61 N.Y.2d 1001, 17 PERB ¶7007 (1984).

13/The exceptions herein direct no question to the ALJ's determination as to which elements of the procedure involve mandatory subjects of negotiation and which do not.

14/Wappingers CSD, 5 PERB ¶3074 (1972), and Cohoes CSD, 12 PERB ¶3113 (1979).

The City's final argument is a technical one. It contends that the ALJ erred in not ruling upon its motion to dismiss PBA's charge. The City made such a motion and the ALJ reserved judgment on it. Eventually, she decided the matter in favor of PBA on the merits without having explicitly denied the City's motion. This action of the ALJ did not prejudice the City. Her decision was an implicit denial of the City's motion.

NOW, THEREFORE, WE AFFIRM the decision of the ALJ that the City violated §209-a.1(d) of the Taylor Law by unilaterally changing terms and conditions of employment of employees represented by PBA, and

WE ORDER the City to:

1. Rescind immediately and cease enforcement or implementation of its "207-c procedure" and any forms or other documents required pursuant thereto, except as to those provisions which create the title of "risk manager", allow investigation by the City of unit employees' claims under §207-c of the General Municipal Law without the participation of unit employees or their agents, and/or which reiterate specific requirements set forth in §207-c of the General Municipal Law;

2. Remove immediately and destroy all reports or other documents submitted by unit employees and all disciplinary documents issued by the City pursuant to the City's "207-c procedure" from any files kept or maintained by the City or any of its agents;

3. Negotiate in good faith with the Schenectady Patrolmen's Benevolent Association with respect to terms and conditions of employment of unit employees consistent with its duty under the Taylor Law;

4. Sign and post notice in the form attached at all locations on the City's premises where written communications for unit employees are ordinarily posted.

DATED: July 10, 1986
Albany, New York

Harold R. Newman, Chairman

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 negotiating unit represented by the Schenectady Patrolmen's Benevolent Association that the City of Schenectady will:

1. Rescind immediately and cease enforcement or implementation of its "207-c procedure" and any forms or other documents required pursuant thereto, except as to those provisions which create the title of "risk manager", allow investigation by the City of unit employees' claims under §207-c of the General Municipal Law without the participation of unit employees or their agents, and/or which reiterate specific requirements set forth in §207-c of the General Municipal Law;

2. Remove immediately and destroy all reports or other documents submitted by unit employees and all disciplinary documents issued by the City pursuant to the City's "207-c procedure" from any files kept or maintained by the City or any of its agents;

3. Negotiate in good faith with the Schenectady Patrolmen's Benevolent Association with respect to terms and conditions of employment of unit employees consistent with its duty under the Taylor Law.

City of Schenectady

.....

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

10493

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

TOWN OF PAWLING,

Employer,

-and-

CASE NO. C-3054

LOCAL 456, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN 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 456, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America 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 blue-collar employees of the Highway Department.

Excluded: All other employees.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with Local 456, International Brotherhood of Teamsters, Chauffeurs, Warehousemen 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 above unit, and shall negotiate collectively with such employee organization in the determination of, and administration of, grievances of such employees.

DATED: July 10, 1986
Albany, New York

Harold R. Newman

Harold R. Newman, Chairman

Walter L. Eisenberg

Walter L. Eisenberg, Member

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