STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

CITY OF SCHENECTADY,

Charging Party,

-and- CASE NO. U-9509

SCHENECTADY PATROLMENS BENEVOLENT ASSOCIATION,

Respondent.

BUCHYN, O'HARE AND WERNER (MARGARET D. HUFF, ESQ., of Counsel), for Charging Party

GRASSO & GRASSO (JANE K. FININ, ESQ., of Counsel), for Respondent

BOARD DECISION AND ORDER

This matter comes before us on the exceptions of the City of Schenectady (City) and the cross-exceptions of the Schenectady Patrolmens Benevolent Association (PBA) to an Administrative Law Judge (ALJ) decision which found that the PBA violated §209-a.2(b) of the Public Employees' Fair Employment Act (Act) by submitting to interest arbitration certain demands which allegedly constituted nonmandatory subjects of negotiation.[1/] The ALJ found certain demands submitted by PBA to be nonmandatory, and accordingly found violations of the Act to have occurred in those respects, and found others to be mandatory and, accordingly, not in

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[1/]The parties do not except to the finding of the ALJ in Case No. U-9494, a charge brought by the PBA against the City.

Our response to these assertions is twofold. First, we are not persuaded by the PBA's claim that the commission by the City of an improper practice in violation of §209-a.1(d) of the Act constitutes a defense to the City's claim that the PBA violated the Act. Commissions of improper practices by both sides (assuming that they took place) do not serve to cancel each other out. However, the PBA has not filed an improper practice charge alleging that the City violated the Act by failing to comply with the agreed upon ground rule, nor has it raised its claim in response to the petition for interest arbitration filed by the City. Moreover, PBA's response to the petition for interest arbitration makes no claim at all of prematurity in the filing of the petition pursuant to the parties' ground rules. The response does nothing more than present substantive demands, several of which are at issue in the instant case, for determination by the interest arbitration panel. Second, the documentary evidence provided by the PBA's response to the City's petition for compulsory interest arbitration (PERB's Case No. 86-61) clearly establishes that the PBA's position before the interest arbitration panel was that "Provisions of the 1983-85 agreement should be continued . . . ", with certain exceptions not material to this case. The PBA's pursuit of the demands at issue herein to interest arbitration is accordingly beyond dispute and gives rise to no issue of fact

violation of the Act. In addition to its cross-exceptions, asserting that the ALJ incorrectly found certain demands made by it to be nonmandatory subjects of negotiation, the PBA claims that certain procedural errors were committed in the proceedings below. We will respond to the procedural objections raised by the PBA before turning to both parties' arguments relating to the ALJ's findings on the underlying demands.

The PBA asserts, first, that the ALJ erred in failing and refusing to grant a hearing at which it could present evidence in support of one of its defenses, that it cannot, as a matter of law, be found to have insisted upon negotiating nonmandatory subjects of bargaining because the City had agreed, in a ground rule, that it would place the PBA on notice of any claim that a demand was nonmandatory before an improper practice charge could be filed. PBA alleges that the City failed to comply with this agreed upon ground rule before filing the instant improper practice charge, which establishes the City's failure to negotiate in good faith, and that this violation gives rise to a defense by PBA to the City's claim that it violated the Act. PBA further appears to assert that it is not "insisting upon" taking nonmandatory subjects to interest arbitration because it remains ready and willing to comply with the ground rule and cull out any nonmandatory subject from its demands.

for which a hearing would have been warranted. No improper practice charge against the City claiming a failure to abide by the asserted ground rule is before us, and the purported violation by the City would not, even if proven, constitute a defense to the instant charge in view of the documentary evidence that the PBA pursued the allegedly nonmandatory subjects to interest arbitration. The determination of the ALJ not to conduct a hearing in connection with the alleged failure of the City to comply with a ground rule pertaining to the culling out of nonmandatory subjects of negotiations is accordingly affirmed.

The PBA's second exception asserts that the ALJ erred in refusing to accept revised demand language[2/] submitted on behalf of the PBA at the pre-hearing conference held in this case. We believe that the ALJ correctly construed the PBA's offer to be in the nature of a settlement proposal to the City. Inasmuch as the City rejected the proposal and sought a determination on the merits of its charge, the ALJ properly proceeded with the case. The PBA's second exception is denied.

PBA's third exception asserts that the ALJ erred in failing to "rule on whether the entire paragraph should be

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[2/] The ALJ found the proposed changes to constitute substantive changes in the PBA's negotiating demands rather than mere clarifications of those demands. We agree with this finding.

stricken as nonseverable in Article VI, Section D and Article XII, Section 1" of the parties' existing collective bargaining agreement, which the PBA sought to include in the successor agreement.

Article VI, Section D of the parties' agreement is entitled "Management Rights and Responsibilities." PBA sought the continuation of the entire paragraph in a successor agreement, and presented it, in its entirety, to the interest arbitration panel. The City asserts in the instant charge that the last two sentences of the paragraph constitute a nonmandatory subject of bargaining, and the ALJ agreed. While not excepting to the finding that the last two sentences of the paragraph are nonmandatory, the PBA claims that the ALJ erred in failing to strike down the entire paragraph.

With respect to Article XII, Section 1 entitled "Hours of Employment, Vacation, Sick Leave, Leave of Absences, etc.", the City alleged in its charge that the last two sentences of the paragraph are nonmandatory and should be stricken from the PBA's demands to the interest arbitration panel. While the PBA disagrees with the ALJ determination that the last two sentences of Article XII, Section 1 are nonmandatory, it asserts that, if the ALJ is correct in so finding, the last two sentences should not have been stricken

alone, but this paragraph also should have been stricken in its entirety.

The PBA's contention that the ALJ improperly failed to strike down portions of demands which were not placed at issue before him is without merit. The ALJ was constrained, as are we, to pass upon the merits of improper practice charges as they are presented. We are not free to engage in an intensive survey of any other demands made by the parties which have not been placed at issue in the improper practice charge in order to rule upon whether those other demands are mandatory or nonmandatory. For us to do so would constitute an undue interference with the negotiation process which is neither warranted nor authorized by the Act.

We accordingly decline to rule upon whether other portions of demands presented by the PBA to interest arbitration should be stricken upon the ground that the portions that are not before us for determination are related to the portions which are before us. The PBA's exception in this regard is hereby denied.

We turn now to the exceptions raised by both parties to the specific findings made by the ALJ upon the merits of the improper practice charge before him.

1. Article II: Purpose and Intent

> The general purpose of this Agreement is to set forth terms and conditions of employment and to promote orderly and peaceful labor relations for the mutual interest of the [City], in its capacity as an Employer,

> the Employees, the [PBA], and the people of the [City], in accord with the intent of the Public Employee's (sic) Fair Employment Act of 1967.
>
> The parties recognize that the interest of the community and the job security for the employees depend upon the [City's] success in establishing proper service to the community.
>
> To these ends the [City] and the [PBA] encourage to the fullest degree friendly and cooperative relations between their respective representatives at all levels and among all employees.

Notwithstanding the PBA's exception to the ALJ decision, which found the foregoing article to be a nonmandatory subject of negotiation, we agree with the ALJ that the demand is in the nature of a general prefatory statement which does not propose terms and conditions of employment and is therefore a nonmandatory subject of negotiation.[3/]

2. Article III (I): Definitions

> "Grievance" shall mean a claimed violation, misinterpretation or inequitable application of the existing rule, procedures or regulation covering working conditions applicable to the members of the Department and shall include all of the provisions of this agreement.

The PBA excepts to the ALJ determination that the foregoing language is nonmandatory. Consistent with our decision in Pearl River UFSD, 11 PERB ¶3085 (1978), we affirm the ALJ's determination that a definition of a grievance which extends the grievance procedure to nonmandatory subjects of negotiation is itself a nonmandatory subject of

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3/ Onondaga Community College, 11 PERB ¶3045(1978).

negotiation. In the instant case, the grievance definition extends beyond the four corners of the parties' proposed agreement, to include other matters about which the parties may have no duty to bargain which may be incorporated into rules, procedures or regulations "covering working conditions", but which may not, in fact, constitute terms and conditions of employment within the meaning of the Act. The PBA's exception is accordingly denied and the determination of the ALJ affirmed.

3. Article II (N): Definitions

> "Safety Committee" means a committee appointed by the President of the [PBA] with the approval of the Executive Board whose duties will be to investigate the complaint of any police officer that equipment he is required to use is inadequate or unsafe, and to certify the condition of such equipment to the [PBA] and the Chief of Police.

On the basis of our holding in Uniformed Fire Fighters Association, Inc., Local 273, IAFF[4/], the ALJ held that the definition of a safety committee is a mandatory subject of bargaining. We concur with the ALJ, and find that there is nothing in the language of the PBA demand, as phrased, which would render it nonmandatory. In so finding, we recognize that we are reversing a finding of this Board in New York State Professional Firefighters Ass'n Inc., Local 461 (9 PERB ¶3069 [1976]), which found identical language to be nonmandatory upon the ground that it might be construed to

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4/ 10 PERB ¶3078 (1977).

imply that the employer would be required to take out of operation equipment reported as unsafe. Notwithstanding this possible interpretation of the language of the safety committee definition considered by the Board in New York State Professional Firefighters Ass'n, Inc. Local 461, we do not find the language to be so ambiguous as to preclude its designation as a mandatory subject of bargaining, consistent with the Board's subsequent decision in Uniformed Fire Fighters Association, Inc., Local 273, IAFF. The City's exception in this regard is accordingly denied and the ALJ determination affirmed.

4. Article VI (F): Management Rights and Responsibilities

> It is agreed by the City, the Department and the [PBA] that the City is obligated, legally and morally, to provide equality of opportunity, consideration and treatment of all members of the Department and to establish policies and regulations that will insure equality to opportunity, consideration and treatment of all members employed by the Department in all phases of the employment process.

The ALJ found the foregoing language to be nonmandatory, both because it refers to moral obligations in addition to legal obligations, and because it constitutes a restatement of federal and state statutory and constitutional rights. In so doing, the ALJ relied upon our decision in City of Saratoga Springs, 16 PERB ¶3058 (1983). In that case, we considered language which is identical in all substantive respects to the language at issue herein, and declared it to

be nonmandatory. No basis is presented by the PBA in the instant case for reversing that determination, and we accordingly affirm the finding of the ALJ that the foregoing language constitutes a nonmandatory subject of negotiation.

5. Article VII (A) (B) (C): Rights of Employees

> A. Members of the force hold a unique status as public officers in that the nature of their office and employment involves the exercise of a portion of the police power of the municipality.
>
> B. The security of the community depends to a great extent on the manner in which police officers perform their duty. Their employment is thus in the nature of a public trust.
>
> C. The wide ranging powers and duties given to the Department and its members involve them in all manner of contacts and relationships with the public. Out of these contacts may come questions concerning the actions of members of the force. These questions often require immediate investigation by superior officers designated by the Chief of Police or the Mayor. In an effort to ensure that these investigations are conducted in a manner which is conducive to good order and discipline, the following rules are hereby adopted.
>
> (1.) Unless the exigencies of the investigation dictate otherwise, the interrogation of a member of the force shall be at a reasonable hour and when the member of the force is on duty. When, however, the exigencies of the situation dictate that a member of the force be interrogated when he is not on duty, he shall be reassigned to a tour of duty covering the period of interrogation.
>
> (2.) The interrogation shall take place at a location designated by the investigating officer. Usually it will be at Police Headquarters or the location where the incident allegedly occurred.
>
> (3.) The member of the force shall be informed of the nature of the investigation before any interrogation commences. The addresses of complainants and/or witnesses need not be disclosed; however, sufficient information to reasonably apprise the member of the

allegations shall be provided. If it is known that the member of the force is being interrogated as a witness only, he should be so informed at the initial contact.

(4.) The questioning shall be completed with reasonable dispatch. Reasonable respites shall be allowed. Time shall be provided also for personal necessities, meals, telephone calls, and rest period as are reasonably necessary.

(5.) The member of the force shall not be subject to any offensive language nor shall he be threatened with transfer, dismissal or other disciplinary punishment. No promises of reward shall be made as an inducement to answering questions.

(6.) The complete interrogation of the member of the force shall be recorded mechanically or by a department stenographer. There will be no "off-the-record" questions. All recesses called during the questioning shall be recorded.

(7.) If a member of the force is under arrest or is likely to be, that is, if he is a suspect or the target of a criminal investigation, he shall be given his rights pursuant to the current decisions of the Supreme Court of the United States.

(8.) In all cases, in the interest of maintaining the usually high morale of the force, the Department shall afford an opportunity for a member of the force, if he so requests, to consult with counsel and/or his Association representative before being questioned concerning a violation of the Rules and Procedures. Counsel and a representative of the [PBA] may be present during the interrogation of a member of the force.

The ALJ found that Article VII (A) and (B) are nonmandatory, because they contain general prefatory language which do not propose terms and conditions of employment.[5/] The PBA does not except to the ALJ

[5/] Onondaga Community College, supra.

determinations in this regard, and does not appear to except to a similar finding that Article VII, paragraph (C) (first paragraph) is for the same reason, also nonmandatory. The PBA's exceptions are directed, instead, to the ALJ's findings insofar as they concluded that Article VII (C)(1) through (8) are nonmandatory because the language of Article VII (C)(7) indicates that the procedure is applicable to criminal investigations as well as to internal disciplinary investigations.

We concur with the ALJ's reading of Article VII (C)(7), which affords a bargaining unit member who is a target of a criminal investigation the right to a statement of his constitutional rights. The ALJ perceived the language of this section to mean (and we agree) that this additional right applies if the investigation involves possible criminal wrongdoing, but that the remaining rights and procedures contained in paragraph (C) are applicable to not only internal disciplinary investigations but criminal investigations also. The entire series of substantive rights associated with such investigations is thereby rendered nonmandatory in nature.[6/]

[6/] Police Association of the City of Mount Vernon, Inc., 13 PERB ¶3071 (1980); Amherst Police Club, Inc., 12 PERB ¶3071 (1979); City of Rochester, 12 PERB ¶3010 (1979).

6. Article VII (E): Rights of Employees

> Notification within forty-eight (48) hours shall be given to each employee of any entry added to his personnel file which may have an immediate or future effect of a derogatory nature upon his status, seniority rights, promotional possibilities or relationship with his fellow police officers or superiors.

Notwithstanding the City's exception to the ALJ finding that the foregoing demand constitutes a mandatory subject of negotiation, we concur with the ALJ that the right of an employee to review his personnel file bears a direct and significant relationship to working conditions, including possible demotion, promotion and discipline, rendering the demand mandatorily negotiable.[7/]

7. Article IX (C): Grievance Procedure

> Immediate supervisors and commanding officers shall consider promptly all grievances presented to them and, within the scope of their authority, take such timely action as is required.

The City excepts to the ALJ finding that the foregoing language is mandatory upon the ground that the word "promptly" is unduly vague and ambiguous. We disagree. The demand covers, as a general proposition, a mandatory subject of bargaining and any question concerning what was meant by the term "promptly" can be readily resolved within the grievance procedure, if necessary. The City's exception in this regard is accordingly denied.

[7/] City of Oneida PBA, 15 PERB ¶4530 (1982).

8. Article XII (1) (second and third sentences): Hours of Employment, Vacations, Sick Leave, Leaves of Absence, etc.

> . . . . In view of the requirement that the City be protected twenty-four (24) hours per day, seven (7) days per week, the Department shall schedule assignments and tours of duty to provide maximum coverage with a minimum of inconvenience to personnel. The schedules and tours of duty presently in effect shall remain unchanged during the term of this Agreement unless modified by the mutual consent of the parties.

We affirm the ALJ finding that the first sentence of this demand is nonmandatory, not only because it is prefatory and relates to manning, but also because its reference to maximum coverage with a minimum of inconvenience to staff is vague and ambiguous. We also concur with the ALJ's determination that the second sentence of the demand is nonmandatory, although not because it unduly restricts the City's right to determine manpower needs, but because we are unable to ascertain from the language of the demand the meaning of the terms "schedules and tours of duty", which may be defined as either schedules of working hours for individual bargaining unit members or a structure for the scheduling of shifts and pass days within which the City would have the discretion to establish manning levels. Because we are unable to ascertain from the text of the language which of these definitions applies, and are

therefore unable to say that the demand does not relate to manning levels, we find the demand to be nonmandatory.[8/]

8. Article XIV (D): Seniority

> The City is in accord with the principle that seniority should be the major factor in filling work assignments by superior officers, unless the senior employee is not qualified to perform the duties required. Provided that if he so requests, the senior officer shall be given an on the job training course in said duties and, if he fails to qualify for the job within a reasonable period he may then be passed over. The determination of qualification after the training period shall be made by the Mayor or his designee. However, it is recognized that the public safety must not be jeopardized through artificial constraints resulting from the application of the principle of strict seniority.

Notwithstanding the grounds provided by the City in support of its exception to the ALJ's finding that the foregoing demand is a mandatory subject of negotiation, we affirm the finding below, for the reasons and based upon the case authorities, set forth in the ALJ decision. Seniority, as a factor in making assignments, is a mandatory subject of negotiations.

9. Article XVI (1) (B): Transfers

> B. Vacancies to preferable assignments shall be posted immediately and all police officers shall submit their written request therefor to the Chief of the Department. The Department shall prepare a list of such applicants, and appointments thereto shall be made by seniority unless the assignments require special qualifications which

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[8/] Police Association of the City of Mount Vernon, Inc., 13 PERB ¶3071 (1980); Town of Haverstraw, 11 PERB ¶3109 (1978); Pearl River UFSD, 11 PERB ¶3085 (1978).

> the senior applicant is not eligible to meet. Any officer who is bypassed in selection for such assignment shall be advised of the reason therefor, and may, if he believes the Department to be in error file a grievance with the Association and the Department concerning the same.

The PBA excepted to so much of the ALJ decision in relation to Article XIV as found paragraph (1)(B) thereof to be nonmandatory. The basis upon which the ALJ found the paragraph to be nonmandatory was that it appears on its face to make grievable whether a determination by the Department that special qualifications are needed for a particular assignment, a determination which is within the prerogative of the Department to make. Because the language at issue appears to make a nonmandatory subject (determination of the need for special qualifications) subject to the grievance procedure, the demand itself is rendered nonmandatory. (See Pearl River UFSD, 11 PERB ¶3085 (1978).)

The ALJ decision is accordingly affirmed in this regard and the at-issue paragraph of Article XVI is declared to be a nonmandatory subject of negotiation.

10. Article XVII: Newly Created and Vacant Positions

> Newly created and vacant positions shall be filled from Civil Service Lists immediately. However, nothing contained herein shall limit the authority of the City to create new positions or to abolish existing positions.
>
> If the Department decides to create a new position, the criteria therefor shall be discussed with the [PBA] and a civil service examination shall be held to establish an eligibility list for the same. If it is necessary that the position be filled

> temporarily until the list is propounded, the Department shall post the position and eligible candidates shall apply for the temporary job. The person filling the job temporarily shall be paid at the rate that the permanent position will pay.
>
> Every applicant for such newly created position, or for promotion, must be eligible for appointment within six months of the date of the examination before he shall be permitted to take the examination.
>
> Subject to the provisions of the Civil Service Law, assignments to new positions, or to promotional positions from a civil service list shall be filled in the following manner:
>
> The City, subject to the approval of the [PBA], will appoint a committee consisting of three (3) disinterested persons, not residents of the City, one of whom shall be an expert in the field, who will examine the qualifications of the ranking applicants.
>
> The committee will recommend to the Mayor the name of the applicant, who, in their opinion, is the best qualified to fill the position. Such recommendation shall be advisory, but failure to accept the same or to follow the criteria required by the Civil Service Law shall be the basis for a grievance.
>
> The recommendation of the committee shall be reduced to writing, certified by the members, and copies thereof, submitted to the City and the [PBA].

The PBA excepts to the ALJ decision which found the demand relating to newly created and vacant positions to be nonmandatory because it would restrict the City's prerogative to determine the criteria for creating and the qualifications for filling new positions, requires that vacant positions be filled immediately from a Civil Service

list, and relates to matters reserved to the jurisdiction of the Civil Service Commission. We agree with the PBA that certain aspects of the demand would, if made separately, constitute mandatory subjects of bargaining (e.g. rate of pay for positions filled on a temporary basis, posting and bidding opportunities, etc.). However, these mandatory issues are so integrated into the whole of the demand, which contains nonmandatory material, so as to require the conclusion that the entire article is nonmandatory, in accordance with the principle set forth in City of Rochester, supra, fn.4.

Based upon the foregoing, the exceptions of the City and of the PBA are denied in their entirety.

IT IS THEREFORE ORDERED that the PBA withdraw from interest arbitration those demands found herein to be nonmandatory.

DATED: April 11, 1988
Albany, New York

Harold R. Newman, Chairman

Walter L. Eisenberg, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

SACHEM CENTRAL TEACHERS ASSOCIATION,

Charging Party,

-and- CASE NO. U-9144

SACHEM CENTRAL SCHOOL DISTRICT,

Respondent.

KAPLOWITZ, GALINSON & JOHNSON (DANIEL GALINSON, ESQ., of Counsel), for Charging Party

INGERMAN, SMITH, GREENBERG, GROSS, RICHMOND, HEIDELBERGER & REICH, ESQS. (JOHN H. GROSS, ESQ., of Counsel), for Respondent

BOARD DECISION AND ORDER

The Sachem Central Teachers Association (Association) excepts to the dismissal of its charge against the Sachem Central School District (District), on motion, by the assigned Administrative Law Judge (ALJ). The Association's charge asserts that the District violated §209-a.1(d) of the Public Employees' Fair Employment Act (Act) when it assigned teaching duties of two classes per day to guidance counselors, who had not previously been required to perform teaching duties. The District responded to the charge by asserting, inter alia, that the Association had waived any right to negotiate such assignments when it agreed to the

following clause, contained in the parties' 1985-89 collective bargaining agreement:

> All terms and conditions of employment not covered by this agreement shall continue to be subject to the Board's direction and control and shall not be the subject of negotiations until the commencement of the negotiations for a successor to this agreement.

The District asserted, in its motion to dismiss the Association's improper practice charge, that the foregoing agreement constituted a waiver by the Association of its right to negotiate this and any other term or condition of employment during the life of the parties' agreement.

The ALJ held that the contract language at issue, although very broad, was nonetheless clear, explicit and unambiguous in its complete waiver of the right to bargain concerning terms and conditions of employment by the Association during the contract term.

In considering the question before us, we note that these parties have already litigated the same contract waiver question in the context of another improper practice charge filed with PERB. In that case, another ALJ dismissed a charge of improper unilateral action in an area not covered by the parties' collective bargaining agreement, upon the ground that the identical clause contained in the parties' 1982-85 agreement constituted a waiver by the Association of the right to negotiate terms and conditions of employment

during the contract term.[1/] That decision was not appealed by the Association and, notwithstanding the ALJ decision, no change was made in the parties' contract language during negotiations for the current agreement which is now before us. Although that ALJ decision is not binding upon this Board, the continuation of the contract language considered in that case in the current agreement, without change, suggests, at least, the parties' acceptance of the premise of the ALJ's decision, that the at-issue contract language permits unilateral changes by the District in terms and conditions of employment not covered by the collective bargaining agreement.

In State of New York (SUNY Albany),[2/] the Appellate Division, Third Department, stated the standard for determining whether a waiver of the right to negotiate has taken place, as follows:

> "A waiver is 'the intentional relinquishment of a known right with both knowledge of its existence and an intention to relinquish it' [citations omitted]" (City of New York v. State of New York, 40 NY2d 659, 669). Such a waiver must be clear, unmistakable and without ambiguity. This record contains no evidence of an explicit, unmistakable, unambiguous waiver of [the employee organization's] right to negotiate. 15 PERB ¶7011, at 7021-22.

[1/] Sachem CSD, 16 PERB ¶4643 (1983).

[2/] 10 PERB ¶4578 (1977), aff'd, 11 PERB ¶3026 (1978), rev'd in part sub nom. CSEA v. Newman, 88 A.D.2d 685, 15 PERB ¶7011 (3d Dep't 1982), appeal dismissed, 57 N.Y.2d 775, 15 PERB ¶7020 (1982).

Applying these principles to the instant case, we find that the particular language agreed upon by the parties does constitute a waiver of the Association's right to negotiate any and all terms and conditions of employment not covered by the parties' agreement during its term. We so find because it both waives the right to negotiate and grants direction and control of non-covered terms and conditions of employment to the District.

In most instances in which a waiver is found, it is found on the basis of a determination that the specific issue now being unilaterally changed by the employer was considered and waived as a subject of negotiations by the employee organization. However, if an employee organization has the authority to waive its Taylor Law right to bargain concerning a specific term and condition of employment, it follows that it must also have the authority to waive the right to bargain concerning any and all terms and conditions of employment not addressed in the collective bargaining agreement.[3/] It is our determination that the language at issue in the instant case does exactly this. Although, as pointed out by the ALJ, the waiver is extremely broad in scope, it is, given the history of the clause, nevertheless clear, explicit and unambiguous. We distinguish those cases

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[3/] In Onondaga-Madison BOCES, 18 PERB ¶3040 (1985), we found language identical to the contract language at issue herein to be a mandatory subject of negotiations.

in which general management rights and zipper clauses have been found not to give rise to a waiver of the right to negotiate a specific term or condition of employment on the ground that the language in this case, unlike those, evidences an intention to waive the statutory right to bargain mid-contract term.[4/] Here, in the absence of any contradictory evidence, the continuation of this contract language in the face of the earlier determination must be presumed to have been accomplished with an acceptance of that meaning and effect.

Based upon the foregoing, the decision of the ALJ is affirmed, and it is hereby ordered that the charge be, and it hereby is, dismissed in its entirety.

DATED: April 11, 1988
Albany, New York

Harold R. Newman, Chairman

Walter L. Eisenberg, Member

[4/] Compare Onondaga-Madison BOCES, 12 PERB ¶4581, aff'd 13 PERB ¶3015 (1980), in which the parties' contract language included a statement that "all terms and conditions of employment of concern have been discussed during the negotiation leading to this agreement . . . ." No such restriction appears in the language here at issue.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

RHINEBECK ADMINISTRATORS ASSOCIATION,
SCHOOL ADMINISTRATORS ASSOCIATION OF
NEW YORK STATE,

Petitioner,

-and- CASE NO. C-3181

RHINEBECK CENTRAL SCHOOL DISTRICT,

Employer.

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 Rhinebeck Administrators Association, School Administrators Association of New York State 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: High school principal, middle school principal, elementary school principal, and high school assistant principal.

Excluded: All other employees.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Rhinebeck Administrators Association, School Administrators Association of New York State. The duty to negotiate collectively includes the mutual obligation to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written agreement incorporating any agreement reached if requested by either party. Such obligation does not compel either party to agree to a proposal or require the making of a concession.

DATED: April 11, 1988
Albany, New York

Harold R. Newman, Chairman

Walter L. Eisenberg, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

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

Petitioner,

-and-

CASE NO. C-3266

VILLAGE OF WEBSTER,

Employer.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

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

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

IT IS HEREBY CERTIFIED that the Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: All full-time employees (that is, employees who regularly work at least 40 hours per week) employed in the Village's Water, Waste Water, and Public Works Departments with the following functional titles: Working Foreman, Assistant Chief Waste Water Plant Operator, Mechanic, Operator-Laborer, Operator-Laborer Trainee, Operator-Serviceman, Grade II-B Operator, and Laborer.

Excluded: Supervisors, managerial and confidential employees, and all other employees.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO. The duty to negotiate collectively includes the mutual obligation to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written agreement incorporating any agreement reached if requested by either party. Such obligation does not compel either party to agree to a proposal or require the making of a concession.

DATED: April 11, 1988
Albany, New York

Harold R. Newman

Harold R. Newman, Chairman

Walter L. Eisenberg

Walter L. Eisenberg, Member

#3C-4/11/88

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

UNITED FEDERATION OF POLICE OFFICERS INC.,

Petitioner,

-and-

CASE NO. C-3265

TOWN OF MARLBOROUGH,

Employer,

-and-

DISTRICT COUNCIL 82, AFSCME,

Intervenor.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

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

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

IT IS HEREBY CERTIFIED that the United Federation of Police Officers, Inc. 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 police officers.

Excluded: Chief of Police.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the United Federation of Police Officers, Inc. The duty to negotiate collectively includes the mutual obligation to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written agreement incorporating any agreement reached if requested by either party. Such obligation does not compel either party to agree to a proposal or require the making of a concession.

DATED: April 11, 1988
Albany, New York

Harold R. Newman

Harold R. Newman, Chairman

Walter L. Eisenberg

Walter L. Eisenberg, Member

#3D-4/11/88

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

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

Petitioner,

-and- CASE NO. C-3309

VILLAGE OF PERRY,

Employer,

-and-

VILLAGE OF PERRY, P.B.A.,

Intervenor.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

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

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

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

for the purpose of collective negotiations and the settlement of grievances.

Unit 1 Included: All full- and part-time patrolmen.

Excluded: Chief, Sergeant, Secretary-Police and all other employees.

Unit 2 Included: Motor Equipment Operator, Mechanic, Laborer, Waste Water Treatment Plant Operator, Water Plant Operator, Water Plant Chief Operator, Waste Water Treatment Plant Chief Operator, Meter Reader, Secretary-Police.

Excluded: Clerk-Treasurer, Deputy Clerk, Superintendent, and all other employees.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO. The duty to negotiate collectively includes the mutual obligation to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written agreement incorporating any agreement reached if requested by either party. Such obligation does not compel either party to agree to a proposal or require the making of a concession.

DATED: April 11, 1988
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

CALEDONIA-MUMFORD SUPPORT STAFF,
NYSUT/AFT, AFL-CIO,

Petitioner,

-and- CASE NO. C-3330

CALEDONIA-MUMFORD CENTRAL SCHOOL,

Employer.

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 Caledonia-Mumford Support Staff, NYSUT/AFT, AFL-CIO has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: All full and regular part-time employees in the following titles: bus drivers, cafeteria employees, maintenance employees, secretaries, aides, regular substitute bus drivers, dental hygienist, bus monitor and nurse.

Excluded: Supervisors, administrators, secretary to superintendent, secretary to business manager, treasurer and tax collector.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Caledonia-Mumford Support Staff, NYSUT/AFT, AFL-CIO. The duty tonegotiate collectively includes the mutual obligation to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written agreement incorporating any agreement reached if requested by either party. Such obligation does not compel either party to agree to a proposal or require the making of a concession.

DATED: April 11, 1988
Albany, New York

Harold R. Newman

Harold R. Newman, Chairman

Walter L. Eisenberg

Walter L. Eisenberg, Member