STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

LOCAL 912, AFSCME,

Charging Party,

-and- CASE NO. U-9618

CITY OF DUNKIRK,

Respondent.

RICHARD H. WYSSLING, ESQ., and CHARLES S. DE ANGELO, ESQ., for Charging Party

MICHAEL BOLENDER, City Attorney, for Respondent

BOARD DECISION AND ORDER

This matter comes to us on the exceptions of the City of Dunkirk (City) to an Administrative Law Judge (ALJ) decision finding it to have violated §§209-a.1(a) and (c) of the Public Employees' Fair Employment Act (Act) when it failed to promote James Giebner because of his activities on behalf of Local 912, AFSCME (AFSCME). In particular, the ALJ found that but for Geibner's participation in representation activity protected by the Act, he would have been appointed from a civil service eligible list from his bargaining unit position to the position of public works supervisor, a nonunit position. Based upon this finding of violation of the Act, the ALJ ordered that the City:

1. Cease and desist from interfering with, restraining, coercing or discriminating against unit employees for the exercise of rights protected by the Act;

2. Immediately promote Geibner to the public works supervisor position; [footnote omitted] and

3. Compensate Geibner for wages and benefits lost as a result of the City's failure to promote him in June of 1987, with interest on any sum owing at the maximum legal rate; and

4. Sign and conspicuously post a notice in the form attached in all locations throughout the City ordinarily used to communicate information to unit employees.

In its exceptions, the City does not challenge the ALJ's determination that Geibner would have been appointed to the supervisory position but for his union activity, nor does it contest the finding of a violation of the Act based upon that factual finding. Instead, the exceptions presented by the City relate solely and exclusively to the issue of the appropriateness and the authority of the Board to order the relief recommended by the ALJ.[1/]

In view of the limited scope of the City's exceptions, the factual findings made by the ALJ are adopted in full and will not be repeated here.[2/] However, during the oral argument before the

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[1/]At the time of oral argument before the Board on April 19, 1990, the present counsel for the City sought to introduce a supplemental brief, which, he acknowledged, raised new and additional exceptions to the ALJ decision, including the finding of violation of the Act. The request was based upon a change in City Counsel on or about January 2, 1990. The Board denied the request because the submission of new issues for its consideration was well beyond the time for filing exceptions, and no motion to amend the exceptions was made within a reasonable period of time following the change in City Counsel four and one half months earlier. Denial of the request is confirmed here.

[2/]See 22 PERB ¶4590 (1989).

Board in this matter, the parties stipulated that Geibner was appointed to the at-issue public works supervisor position on February 12, 1990. The City's exceptions to the remedial relief recommended by the ALJ assert that the Board is without authority to direct Geibner's appointment to the public works supervisor position and, because it is without authority to direct such an appointment, it is also without authority to order back pay representing the difference between the salary which Geibner was in fact paid in his lower level position and the salary which he would have been paid had he been promoted on June 22, 1987.

In support of its argument, the City contends that the recommended relief exceeds PERB's authority and jurisdiction under §205.5(d) of the Act and/or unlawfully interferes with the authority of an appointing authority to exercise unfettered discretion to make appointments from a civil service eligible list. In support of these assertions, the City cites Ruggeri v. Hall, 101 A.D.2d 934, 475 N.Y.S. 2d 939 (3d Dep't 1984), and City of Schenectady v. State Division of Human Rights, 37 N.Y. 2d 421 (1975).

The question whether the Board has the statutory authority to direct the appointment of a particular individual is rendered moot, at least in part, because the City has in fact appointed Geibner to the promotional position from the civil service eligible list effective February 12, 1990. In view of this intervening appointment, an order of appointment is no longer

necessary or required, and the ALJ's recommended order is modified accordingly. The question remains before us, however, to the extent that it may affect the Board's authority to order back pay from the date of the City's failure to appoint Geibner to the date of his actual appointment.

Section 205.5(d) of the Act empowers the Board

> to issue a decision and order directing an offending party to cease and desist from any improper practice, and to take such affirmative action as will effectuate the policies of this article (but not to assess exemplary damages), including but not limited to the reinstatement of employees with or without back pay; . . .

This broad statutory grant of remedial powers is similar to the remedial powers accorded to the New York State Division of Human Rights (see Executive Law, §297(4)(c)). In City of Schenectady, supra, the Court of Appeals reviewed a determination of the Division of Human Rights (Division) that a woman had been unlawfully denied consideration for a promotion to Police Sergeant because of her sex. The Division had ordered the employer to offer the employee the next available promotional position and to pay her an amount equal to the salary difference between that for a police officer and that for a police sergeant from the date she was certified by the local Civil Service Commission to the date of promotion. The Court reversed this remedy and held that the Division was not empowered to offer the employee the next available promotional position, stating that

> [s]uch a direction would in effect deprive the appointing authority of the power of selection. Since the award of compensatory damages is dependent upon the offer of employment and since that part of the Commissioner's order is defective, the monetary award was also invalid. 37 N.Y.2d at 430.

If this precedent is controlling, it would appear that, notwithstanding modification of the order of remedial relief recommended by the ALJ to eliminate an order of appointment of Geibner to the promotional position, the portion of the remedial relief recommended relating to back pay must necessarily be stricken.

However, in a subsequent case, State Division of Human Rights v. County of Onondaga, 71 N.Y.2d 623 (1988), the Court of Appeals clarified its holding in City of Schenectady. In County of Onondaga, the Court confirmed the Division's determination that an employee was forced to resign her position because of her race and sex. In confirming the Division's order of reinstatement, the Court discussed the theory of remedial relief generally and the limits thereon. It limited the application of City of Schenectady to those situations in which an employee has not been considered fairly for an appointment, and not to circumstances in which a finding has been made that but for unlawful considerations, the individual would have been appointed to a position.

The Court noted the breadth of the Division's remedial powers, which are limited only by the following criteria:

1. The remedy must be reasonably related to the injury to be rectified;

2. The remedy should put the employee in the position in which the employee would have been had the discrimination not taken place; and

3. A remedy which places the employee in a better position than he/she would have been but for the discrimination is inappropriate, but one which does not make the employee whole is equally inappropriate.

The Court further observed that to preclude a reinstatement order

> would allow public officials to discriminate with impunity, leaving unlawfully discharged employees no recourse for reinstatement to employment. This result, at odds with both the purpose of the Human Rights Law and the duty of the Commissioner to make whole those victimized by discrimination, cannot be accepted by this Court. 71 N.Y.2d at 634.

Applying the principles enunciated by the Court of Appeals in County of Onondaga, and in view of the uncontroverted finding of the ALJ that Geibner would have been promoted to the public works supervisor position but for the unlawful discrimination engaged in by the City, and in view of Geibner's appointment in fact to the position on February 12, 1990, the appropriate make-whole remedy is an award of compensatory damages in an amount equal to the wages which Geibner would have earned had he been appointed on June 22, 1987, until his actual appointment on

February 12, 1990.[3/] We also conclude that City of Schenectady is distinguishable on its facts from the instant case, since City of Schenectady involved a failure to consider a candidate for unlawful discriminatory reasons, while the case before us establishes a failure to appoint for unlawful discriminatory reasons. In this regard, we are especially mindful of the analysis and concern expressed by the Court of Appeals in County of Onondaga, which cautions that remedial relief should not give

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[3/] In so finding, we deem the award of compensatory damages to be entirely consistent with the relief ordered in the class of discrimination classes arising out of a refusal to hire for unlawful reasons. See, e.g., EEOC Policy Statement, adopted February 5, 1985, stating the agency's position on remedies for individual victims of employment bias, which provides in part as follows:

> Each identified victim of discrimination is entitled to an immediate and unconditional offer of placement in the respondent's workforce, to the position the discriminatee would have occupied absent discrimination, or to a substantially equivalent position, even if the placement of the discrimination results in the displacement of another of respondent's employees ("Nondiscriminatory Placement"). The Nondiscriminatory Placement may take place by initial employment, reinstatement, promotion, transfer or reassignment . . . " BNA Fair Employment Practices (FEP) Manual 405:3003

The Policy also provides that:

> Each individual discriminatee must receive a sum of money equal to what would have been earned by the discriminatee in the employment loss through discrimination ("Gross Backpay"). BNA FEP Manual 405:3003

See also Overview of Judicial Remedies, BNA FEP Manual 431:301 and Albemarle Paper Co. v. Moody, 422 U.S. 405, 10 FEP Cases 1181 (1975).

more to a victim of discrimination than that which he or she would have achieved but for the discrimination, while directing that relief should not fall short of placing an individual in the same position in which he or she would have been had the discrimination not taken place. In the instant case, if no award of compensatory damages were made, Geibner would be placed in the position of obtaining the appointment to the public works supervisor position nearly three years after he would have received it had he not been discriminated against with concomitant loss of wages. Furthermore, a failure to award compensatory damages would result in a finding of unlawful discrimination but no relief at all for the person discriminated against. The Board's broad grant of remedial process cannot be construed to produce such an anomalous result. Indeed, to find otherwise "would allow public officials to discriminate with impunity" (County of Onondaga, 71 N.Y.2d at 634).

Based upon the foregoing, the City's exceptions relating to the remedial relief recommended by the ALJ are denied. However, that portion of the remedial relief which requires the City to "immediately promote Geibner to the public works supervisor position" is stricken upon the ground of mootness, and that portion of the remedial relief relating to compensation is modified to cover the period from June 22, 1987 to February 12,

1990.[4/] The exceptions are in all other respects denied, and the decision of the Administrative Law Judge is affirmed.

IT IS THEREFORE ORDERED that the City:

1. Cease and desist from interfering with, restraining, coercing or discriminating against unit employees for the exercise of rights protected by the Act;
2. Compensate Geibner for wages and benefits lost as a result of the City's failure to promote him on June 22, 1987, until February 12, 1990, with interest on any sum owing at the maximum legal rate; and
3. Sign and conspicuously post a notice in the form attached in all locations throughout the City ordinarily used to communicate information to unit employees.

DATED: June 21, 1990
Albany, New York

Harold R. Newman
Harold R. Newman, Chairman

Walter L. Eisenberg
Walter L. Eisenberg, Member

[4/] See Rules of Procedure, §204.14(c).

APPENDIX

NOTICE TO ALL EMPLOYEES

PURSUANT TO

THE DECISION AND ORDER OF THE

NEW YORK STATE
PUBLIC EMPLOYMENT RELATIONS BOARD

and in order to effectuate the policies of the

NEW YORK STATE
PUBLIC EMPLOYEES' FAIR EMPLOYMENT ACT

we hereby notify all employees of the City of Dunkirk in the unit represented by Local #912, AFSCME, that the City:

1. Will not interfere with, restrain, coerce or discriminate against unit employees for the exercise of rights protected by the Act;

2. Will compensate James Giebner for wages and benefits lost as a result of the City's failure to promote him on June 22, 1987, until February 12, 1990, with interest on any sum owing at the maximum legal rate.

CITY OF DUNKIRK

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

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

ALBANY POLICE OFFICERS UNION, LOCAL 2801, COUNCIL 82, AFSCME, AFL-CIO,

Charging Party,

-and-

CASE NO. U-10997

CITY OF ALBANY,

Respondent.

ROWLEY, FORREST, O'DONNELL & HITE, P.C. (KEITH F. SCHOCKMEL, ESQ. and STEVEN KRAMER, ESQS., of Counsel), for Charging Party

VINCENT J. McARDLE, JR., ESQ. (WILLIAM M. GOLDSTEIN, ESQ., of Counsel), for Respondent

BOARD DECISION AND ORDER ON MOTION

This matter comes before us upon a motion by the Albany Police Officers Union, Local 2801, Council 82, AFSCME, AFL-CIO (Local 2801) to dismiss exceptions filed by the City of Albany (City) to an Administrative Law Judge (ALJ) decision dated March 28, 1990. Local 2801 moves to dismiss the exceptions upon the grounds that they are untimely filed and are not accompanied by proof of service upon it, as required by §204.10(a) of the Board's Rules of Procedure (Rules).

Section 204.10(a) Rules provides as follows:

> Within 15 working days after receipt of the decision and recommended order [of the ALJ], a party may file with the board an original and four copies of a statement in writing setting forth exceptions thereto or to any other part of the record or proceedings, including rulings upon motions or objections, and an original and four copies of a brief in support thereof shall be filed with the board simultaneously; at the same time, copies of such exceptions and briefs shall be served upon all other parties and proof of such service shall be filed with the board.

In the instant case, counsel for the City made a timely written request for an extension of time within which to file exceptions "until May 4, 1990". Notwithstanding the objection of counsel for Local 2801 to the requested extension, the request for the extension until May 4, 1990 was granted. Counsel for the City was notified in writing that "[e]xceptions will be deemed timely filed if postmarked on or before May 4, 1990".[1/] On May 8, 1990, the Board received copies of the City's exceptions and brief in support thereof in an envelope bearing a postmark of "May 7, 1990 pm". No proof of service upon the other party was included in the materials received by the Board.

According to the Motion to Dismiss Exceptions filed by Local 2801, its counsel also received a copy of the City's

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[1/] May 4, 1990 was a Friday.

exceptions and brief in an envelope on May 8, 1990, which was postmarked "May 7, 1990 pm".

The City's Affirmation and Memorandum in Opposition to the Motion to Dismiss Exceptions asserts that the exceptions and brief were forwarded from counsel's office for the City to its mailroom for mailing on May 4, 1990, but that the City's counsel learned on Saturday, May 5, that the material had been returned from the mailroom to his office unmailed. The Affirmation further asserts that, one day later, on Sunday, May 6, 1990, the City's attorney placed the exceptions and brief in a U.S. Postal Service mailbox and has no knowledge as to why the postmark on the envelope then mailed bears a stamp of "May 7, 1990 pm."

Although the City concedes that its exceptions were neither filed (i.e., actually mailed) nor postmarked on May 4, 1990, pursuant to its requested extension, it asserts that the exceptions are not in fact untimely because they were mailed before the next business day, May 7, 1990. Thus, the City asks us to construe our Rules to permit a filing not only on or before the business day when it is required, but at any time prior to the commencement of the next business day.

While it is certainly true that, pursuant to §20 General Construction Law, when the last day upon which an event may occur falls on a Saturday, Sunday or holiday, the act may be

completed on the next business day following, there is no doubt that here, the act of filing was required to be completed on a business day and no impediment to filing on that day therefore existed which would warrant the extension of the time to file by two calendar days. We reject as unsupported by any case law or provisions of the General Construction Law the argument of the City that a document required to be mailed on or before Friday, May 4 is in fact timely mailed if filed on Sunday, May 6.[2/]

The City asserts that because Local 2801 was on unofficial notice (via newspaper reporting) that the City intended to file exceptions to the ALJ decision and recommended order, and because Local 2801 received a copy of the exceptions on May 8, 1990, within a reasonable amount of time after mailing was to have taken place, there is no prejudice to it, and the Motion to Dismiss Exceptions should be accordingly denied on that basis.

In Catskill Regional OTB Corp., 14 PERB ¶3075 (1981), reconsidered and reversed at 14 PERB ¶3087 (1981), we considered a situation in which exceptions were timely filed with PERB, but proof of service upon the opposing party was not included in the filing, and it developed that the

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[2/]Notwithstanding the direction that the exceptions be postmarked May 4, 1990, which they clearly were not, we would nevertheless deem the exceptions timely filed if the act of mailing had taken place on May 4, in accordance with the definitions of filing and service contained in §200.10 Rules.

exceptions served upon the opposing party were postmarked four days beyond the due date. We initially dismissed the exceptions, but reconsidered upon submission of evidence that the exceptions were timely mailed to the employer notwithstanding their postmark. In that case, we noted (at 3134):

> We have consistently applied the timeliness provisions of our Rules strictly when an affected party to a proceeding has urged us to do so.2/

2/ See, for example, Putnam County, 8 PERB ¶3055 (1975); Nyack Union Free School District, 10 PERB ¶3053 (1977); Onondaga Community College, 11 PERB ¶3008 (1978); Westbury Union Free School District, 12 PERB ¶3107 (1979); United Federation of Teachers, 13 PERB ¶3101 (1980).

In view of the failure of the City to file and serve its exceptions on or before May 4, 1990, which it was required to do, its failure to include proof of timely service upon opposing counsel, and its failure to establish the existence of extraordinary circumstances warranting any waiver of our Rules3/, the Motion to Dismiss Exceptions is granted and

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3/The City offers no explanation whatsoever for the failure to mail or deliver the exceptions on May 4, 1990, except to state that its mailroom did not do so.

IT IS THEREFORE ORDERED that the exceptions be, and they hereby are, dismissed.[4/]

DATED: June 21, 1990
Albany, New York

Harold R. Newman, Chairman

Walter L. Eisenberg, Member

[4/]Based upon our review of the record in this matter, the credibility determinations made by the ALJ, the decision itself and the City's exceptions, we note that even if we were to reach this matter on its merits rather than dismiss it on procedural grounds, we would dismiss the exceptions and affirm the ALJ decision.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

THOMAS C. BARRY,

Charging Party,

-and- CASE NO. U-8347

UNITED UNIVERSITY PROFESSIONS,

Respondent.

In the Matter of

MORRIS E. ESON,

Charging Party,

-and- CASE NO. U-8664

UNITED UNIVERSITY PROFESSIONS,

Respondent.

In the Matter of

MORRIS E. ESON,

Charging Party,

-and- CASE NO. U-8795

UNITED UNIVERSITY PROFESSIONS,

Respondent.

In the Matter of

GORDON GALLUP,

Charging Party,

-and- CASE NO. U-8890

UNITED UNIVERSITY PROFESSIONS,

Respondent.

In the Matter of

THOMAS C. BARRY,

Charging Party,

-and- CASE NO. U-8859

UNITED UNIVERSITY PROFESSIONS,

Respondent.

THOMAS C. BARRY, pro se, in Case Nos. U-8347 and U-8859

GLEN M. TAUBMAN, ESQ., National Right to Work Legal Defense Foundation, for Charging Parties in Case Nos. U-8664, U-8795 and U-8890

BERNARD F. ASHE, ESQ. (IVOR MOSKOWITZ, ESQ., of Counsel), for Respondent in Case Nos. U-8347, U-8664, U-8795, U-8890 and U-8859

BOARD DECISION AND ORDER

These matters were the subject of a consolidated Decision and Order, issued by this Board on July 8, 1987, which held that the United University Professions (UUP) violated §209-a.2(a) of the Public Employees' Fair Employment

Act (Act) with respect to several aspects of UUP's agency shop fee refund procedures for fiscal years (FY) 1984-85, 1985-86, and 1986-87.[1/]

Thereafter, UUP appealed the Board's Decision and Order to the Supreme Court, Albany County, seeking reversal and asserting that the Board had failed to address its claims of lack of standing of Thomas C. Barry in Case Nos. U-8347 and U-8859, and its claims of untimeliness in the filing of the charges in Case Nos. U-8347 and U-8664. Pursuant to an Order of Transfer on Consent, the matter was transferred to the Appellate Division, Third Department, and, on April 27, 1989, the Appellate Division issued an opinion which affirmed the substantive findings of violation of the Act made by the Board, but modified the Board's order insofar as it directed the payment of refunds to all charging parties "without first passing on petitioner's procedural objections". Matter of United University Professions v. Newman, 146 A.D.2d 273, 22 PERB ¶7012 (3d Dep't 1989). The Appellate Division directed remittitur of the matters to this Board for determinations concerning the procedural deficiencies in the charges alleged by UUP.[2/]

[1/] See 20 PERB ¶3052 (1987).

[2/] No procedural deficiencies were the subject of exceptions in Case Nos. U-8890 and 8759, and no discussion of those cases is required herein.

UUP thereupon moved for permission to appeal to the New York State Court of Appeals. That motion was denied on October 26, 1989,[3/] rendering the Appellate Division decision a final determination in these matters. Pursuant to the order of remittitur, the Board invited the parties to submit supplemental argument or briefs to it concerning the procedural issues of standing and timeliness. The parties having declined to make any supplemental submissions, the matters are now before us for disposition.

U-8347

The first procedural claim made by UUP in connection with Case No. U-8347 is that Barry failed to allege that he is an agency fee payer and, accordingly, failed to establish on the face of the charge that he has standing to file it. However, in the Details of Charge, Barry asserts that he is an "independent" employee from whom an agency fee is collected and further alleges that "I bring this improper practise (sic) charge for myself and all other independent employees of SUNY forced to pay tribute to the UUP and the trade unions with which it is affiliated." The assigned Administrative Law Judge (ALJ) found these allegations sufficient to identify Barry's status as a member of the UUP bargaining unit and an agency fee payer, with standing to

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[3/] 74 N.Y.2d 64, 22 PERB ¶7033 (1989).

file the charge.[4/] We fully agree with the ALJ's determination, and find, based upon the allegations contained in paragraphs 1 and 2 of the Details of Charge, that Barry sufficiently identified himself and his standing to file it, since, in context, it is more than reasonable to conclude that Barry's use of the term "independent" is properly interpreted to mean a non-UUP member who is required by §208.3(a) of the Act to make agency fee payments. UUP's exception in this regard is, accordingly, denied.

UUP also asserts that Barry's charge, dated October 7, 1985, is untimely in that it challenges aspects of the agency fee refund procedure for UUP's FY 1984-85 and FY 1985-86, which run from September 1 to August 31. UUP argues that as to any aspect of the agency fee refund procedures utilized for 1984-85 and 1985-86, the charge is untimely if Barry knew or should have known about those aspects of the procedure more than four months prior to the filing of the charge, pursuant to §204.1(a)(1) of the Board's Rules of Procedure (Rules).

With respect to FY 1984-85, Barry alleges violations of the Act at numerous points in UUP's agency fee procedure, which, as in any fiscal year, commenced before the beginning of the fiscal year and ended after the conclusion of the fiscal year. Thus, Barry alleges, among other things, a

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[4/]19 PERB ¶4603, at 4741 note 1 (1986).

failure by UUP to conduct an advance reduction hearing prior to the commencement of FY 1984-85, goes on to assert that before, during and after the fiscal year UUP required him to communicate with it by certified or registered mail, and that UUP failed to issue a prompt determination at the conclusion of the fiscal year concerning the proper amount of the refund owing to him which represents the portion of agency fees representing his "pro rata share of expenditures by the organization in aid of activities or causes of a political or ideological nature only incidentally related to terms and conditions of employment." Section 208.3(a) Act. UUP argues that Barry was obligated to file his charge within four months after receiving a copy of its written agency fee refund procedure (which was published in the July 1984 issue of UUP's newspaper, The Voice) as to any and all aspects of the procedure which he contends violate the Act.

However, in Middle Country Teachers Association (Werner), 21 PERB ¶3012 (1988), the Board clarified the fashion in which the four-month limitation period is appropriately applied to the filing of improper practice charges. We there held, at 3026, that

> a party has standing to file an improper practice charge within four months after notification of a decision to perform an action alleged to be violative of the Act. The party may also await performance of the action and file an improper practice charge within four months after the intended action is

> actually implemented and the charging party is injured thereby.

While we agree with UUP that Barry could have filed his charge within four months after receipt of a copy of the refund procedure, at least with respect to the statements contained therein, we find that he also was entitled to await implementation of each aspect of the procedure and file a charge within four months after that aspect of the procedure alleged to violate the Act was implemented and he was injured thereby. Thus, if Barry was injured by a portion of the agency fee refund procedure within four months prior to the filing of his charge on October 7, 1985, the charge is timely as to that portion, although it would not be timely with respect to any aspects of the procedure completed prior to the commencement of the four-month period.

Applying these principles to the instant case, it is our finding that Barry's charge with respect to the FY 1984-85 procedure is untimely insofar as it alleges a failure to conduct advance reduction procedures prior to the commencement of the 1984-85 fiscal year, more than one year earlier. Furthermore, the portion of Barry's charge which alleges that objectors are improperly required to notify UUP by registered or certified mail of their appeals at the advance reduction step of the procedure must also be dismissed. There is no evidence before us that Barry was required to make any certified mailings concerning the 1984-

85 advance reduction procedure within four months of the filing of the charge, and he was also aware of the requirement upon publication of the 1984-85 procedure.

We are faced with a different issue with respect to the timeliness of the portion of the charge which alleges that the end-of-year decision by a neutral was not promptly completed for FY 1984-85. Because the charge was filed only five weeks following the close of that fiscal year, well before UUP could reasonably have been expected to complete its year-end audit, make a year-end fee determination, communicate that determination to agency fee payers, give them an opportunity to object to the determination, and conduct a hearing on the objections, the charge, as originally filed, failed to establish a violation of the Act.[5/] However, on April 4, 1986, Barry requested, and was later allowed, to amend his charge to allege, among other things, that he was required to object to the end-of-year refund determination for the 1984-85 fiscal year, by certified mail and that the year-end procedures for FY 1984-85 were not reasonably prompt because an end-of-year determination, based upon audits by then received by UUP, was communicated to agency fee payers on or about March 21, 1986,

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5/ See UUP (Barry), 22 PERB ¶3003 (1989), wherein this Board held that a lapse of ten weeks between the date of filing of the objection to an agency fee advance reduction determination and the date of hearing on that objection was neither excessive nor unreasonable.

with objections to be filed within 30 days thereafter. As of the date of the hearing in this matter (May 15, 1986), no refund hearing had been conducted.

On the basis of the April 14, 1986 amendment to the charge (as to which no exception was taken by UUP), we find that Barry's allegations concerning the failure to conduct a reasonably prompt end-of-year hearing and the requirement to file objections to the year-end determination by certified mail are timely.

Those portions of Barry's charge relating to aspects of the 1984-85 agency fee refund procedure which were both announced and implemented more than four months prior to the filing of the charge are untimely, and are therefore dismissed. Barry is nevertheless entitled to the refund of his agency fee, as ordered by this Board in its decision of July 8, 1987, on the bases of the charge found timely, i.e., that UUP's end-of-year refund appeal procedure was not conducted reasonably promptly and that he was required to object to the year-end refund amount by certified mail. See 20 PERB ¶3039, at 3075. The Board's order of refund of the agency fees paid by Barry for FY 1984-85 is, accordingly, confirmed.

With respect to the 1985-86 fiscal year, Barry's charge was filed within four months of the time when the advance reduction procedures for that year would or should have taken

place. In particular, Barry was required to file his objection to the amount of the advance reduction determination by certified mail, which he did on September 27, 1985, shortly before the charge was filed. He also alleges that UUP failed to conduct an advance reduction determination hearing prior to the commencement of the fiscal year, which began on September 1, 1985, also within four months of the filing of the charge. Based upon these timely allegations, which support our finding of violation of the Act with respect to various portions of the 1985-86 agency fee refund procedure, the remedial relief ordered of refund of the agency fee paid by Barry during FY 1985-86 is also confirmed.

U-8664

UUP asserts that Case No. U-8664, filed by Morris E. Eson, is untimely, in that it alleges that numerous aspects of the agency fee refund procedures utilized by UUP for the 1984-85 and 1985-86 fiscal years violate the Act, because the charge was filed on or about April 2, 1986.

To the extent that Eson alleges violations of the Act by virtue of UUP's failure to conduct advance reduction determination hearings prior to the commencement of fiscal year 1984-85, the charge is, as UUP argues, untimely, since an advance reduction determination hearing should have been held, if required by the Act, prior to or reasonably promptly after September 1, 1984.

With respect, however, to the claim of violation by failure to provide a reasonably prompt end-of-year determination and review procedure for FY 1984-85, the charge is timely, since it was filed within four months of Eson's notification by UUP, on March 21, 1986, that he "was not entitled to any further rebate" for that year. Eson's allegation that inadequate financial information was provided for FY 1984-85 for purposes of a year-end determination concerning the appropriate amount of agency fee refund is also timely, and the order of refund for 1984-85 paid by him is, accordingly, confirmed.

Finally, with respect to Eson's challenge to the 1985-86 procedure, to the extent that it alleges a violation of the Act based upon the failure to conduct an advance reduction determination hearing prior to the commencement of the 1985-86 fiscal year, the charge is timely because it was filed within four months of the time when Eson could reasonably have expected a hearing to have taken place with respect to the determination of the advance reduction amount. In view of this determination, the order of remedial relief, insofar as it directs the restoration to Eson of agency fees paid by him for FY 1985-86 is also confirmed.

U-8859

The last remaining procedural claim made by UUP, in connection with Case No. U-8859, repeats the same claim of

lack of standing and failure to allege agency fee payer status on the part of Barry, the charging party in this matter. However, No. 1 of the Details of Charge in this matter provides as follows:

> I am forced to pay a so-called "agency fee" to the UUP.

Based upon this language, we find, as we found in connection with Case No. U-8347, supra, that Barry sufficiently established his status as a member of the bargaining unit represented by UUP, and his status as an agency fee payer, and accordingly has appropriate standing to file his charge. This exception is, accordingly, denied and our determination confirmed in this regard.

Having found no other procedural exceptions not specifically addressed heretofore in these proceedings, the refund of agency fees previously ordered by this Board is confirmed for the reasons set forth herein.

DATED: June 21, 1990
Albany, New York

Harold R. Newman, Chairman

Walter L. Eisenberg, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

HAVERLING TEACHERS' ASSOCIATION, NYSUT, AFT, AFL-CIO, LOCAL 2717,

Charging Party,

-and-

CASE NO. U-10787

BATH CENTRAL SCHOOL DISTRICT,

Respondent.

DIANE McMORDIE, for Charging Party

HOGAN & SARZYNSKI, ESQS. (JOHN B. HOGAN, ESQ., of Counsel), for Respondent

BOARD DECISION AND ORDER

This matter comes to us on the exceptions of the Bath Central School District (District) to an Administrative Law Judge (ALJ) decision which found it to have violated §§209-a.1(a), (c) and (d) of the Public Employees' Fair Employment Act (Act) by abolishing an Early Literacy In-Service Course (ELIC) program in January 1989 in retaliation for a demand to negotiate made by the Haverling Teachers Association, NYSUT, AFT, AFL-CIO, Local 2717 (Local 2717). In particular, the ALJ found that the District discontinued the ELIC program because Local 2717 demanded negotiations concerning the terms and conditions of employment of those bargaining unit members who volunteered to participate in the program.

In its exceptions, the District argues that because participation in the program was "voluntary and to occur after hours . . . , participation in this voluntary after-school hour program pertaining to professional skills is not a mandatory topic of bargaining." However, as the ALJ found, it is not participation in the ELIC program which is the subject of the instant charge. What is alleged by Local 2717 is that the District had a duty to negotiate with it concerning the terms and conditions of employment of those persons who in fact volunteered to participate in the program, that the District's failure and refusal to do so constitutes a violation of §209-a.1(d) of the Act, and that the elimination of the ELIC program in its entirety constituted retaliation for the demand to negotiate those terms and conditions of employment on behalf of unit member volunteers, in violation of §§209-a.1(a) and (c) of the Act.

In essence, Local 2717 sought to negotiate the impact upon its members of the establishment of the ELIC program, which it has a statutory right to do.[1/] We therefore dismiss that portion of the District's exceptions which alleges that the ALJ improperly found a violation of the duty to negotiate in good faith with respect to a nonmandatory subject of negotiations, upon the ground that the impact of the

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[1/] See, e.g., West Irondequoit Teachers Ass'n v. PERB, 35 N.Y.2d 46, 7 PERB ¶7014 (1974); North Babylon UFSD, 7 PERB ¶3027 (1974).

District's implementation of the voluntary ELIC program upon terms and conditions of employment is a mandatory subject of negotiations.

The District next argues that because Local 2717 failed to explain, upon demand, its position with respect to the extent of the duty to negotiate the "implementation" of the ELIC program, it waived its right, if any, to negotiate. However, approximately one week after the letter demand to clarify was forwarded to Local 2717's representative, the District announced its intention to discontinue the ELIC program. At that point, clarification of the demand to negotiate was made futile. Based upon this rapid sequence of events, we find that Local 2717 did not waive its right to negotiate by virtue of its failure to clarify its demand to do so prior to the District's announcement of its intent to eliminate the program. The District's exception in this regard is denied.

The District next argues that because Local 2717 was found to have committed an improper practice (i.e. issuance of a threat of imminent strike) during the same period when the events giving rise to the instant charge took place, Local 2717 is, in effect, equitably estopped from filing its own improper practice charge. However, commission of an improper practice by one party neither negates the commission of, nor precludes the filing of a charge in connection with,

an improper practice committed by the other party except in limited circumstances[2/] which are not here present. The District does not assert that it discontinued the ELIC program because of a threat of imminent strike (see Haverling CSD, 22 PERB ¶4554 (1989)); indeed, it does not controvert the ALJ's finding that it discontinued the program because Local 2717 demanded to negotiate concerning its implementation. The District's exception in this regard is, accordingly, denied.

Finally, the District contends that the ALJ erred in directing it to "reinstate" the ELIC program and negotiate with Local 2717 the terms and conditions of employment of the ten teachers who volunteered to participate in it. However, in view of the uncontroverted finding by the ALJ that the ELIC program was discontinued in retaliation for the demand by Local 2717 to negotiate concerning terms and conditions of employment of persons who voluntarily agreed to participate in the program, so that the program would have continued in effect but for the motivation proscribed by the Act, reinstatement of the program represents appropriate remedial relief. Similarly, having concluded that Local 2717 was entitled to negotiate the impact of the creation of the voluntary ELIC program upon terms and conditions of employment, the order to the District that it negotiate such

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[2/] City of Newburgh, 15 PERB ¶3116 (1982).

terms and conditions of employment with Local 2717 is also appropriate.

Based upon the foregoing, the exceptions of the District are denied in their entirety, and the Decision and Recommended Order of the Administrative Law Judge is affirmed. IT IS THEREFORE ORDERED that the District:

1. Forthwith reinstate the ELIC program that it discontinued in January 1989;
2. Negotiate in good faith with the Association with respect to terms and conditions of employment for employees involved in ELIC;
3. Sign and post the attached notice at all locations ordinarily used to communicate with unit employees.

DATED: June 21, 1990
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 unit represented by the Haverling Teachers' Association, NYSUT, AFT, AFL-CIO, LOCAL 2717 that the Bath Central School District will:

1. Forthwith reinstate the ELIC program that it discontinued in January 1989;

2. Negotiate in good faith with the Association with respect to terms and conditions of employment for employees involved in ELIC.

.....Bath Central School District.....

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

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

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

ONEIDA COUNTY CASEWORKER ASSOCIATION,

Petitioner,

-and-

CASE NO. C-3527

ONEIDA COUNTY,

Employer,

-and-

CIVIL SERVICE EMPLOYEES ASSOCIATION, INC., LOCAL 833, AFSCME, AFL-CIO,

Intervenor.

THOMAS J. KRAJCI, for Petitioner

JOHN S. BALZANO, ESQ., for Employer

NANCY E. HOFFMAN, ESQ. (MAUREEN SEIDEL and JEROME LEFKOWITZ, ESQS., of Counsel), for Intervenor

BOARD DECISION AND ORDER

The Oneida County Caseworker Association (Association) excepts to the dismissal of its petition which seeks decertification of the Civil Service Employees Association, Inc., Local 833, AFSCME, AFL-CIO (CSEA) and its certification as the exclusive negotiating agent for employees of the County of Oneida (County) in the positions of caseworker, senior caseworker, case supervisor "B", and case supervisor "A". The Association bases its petition primarily upon a claim that the incumbent bargaining agent, CSEA, has failed

to represent adequately the interests of caseworkers, primarily with regard to efforts to achieve a salary reallocation for employees in the caseworker series, and, secondarily, with respect to resolution of automobile insurance liability and subcontracting issues.

In support of its contention that the Director of Public Employment Practices and Representation (Director) erred in dismissing its fragmentation petition, the Association contends that this Board has established, and the Director has applied, a standard for review of fragmentation petitions which contravenes the public policy outlined in the Public Employees' Fair Employment Act (Act). The standard to which the Association refers has been described by this Board as follows:

> This Board has long adhered to two ruling principles in deciding uniting questions. First, we have held that "[i]t is the policy of the Act to find appropriate the largest unit permitting for effective negotiations." [footnote omitted]. The second long-standing principle to which we have adhered is that fragmentation of existing bargaining units will not be granted in the absence of compelling evidence of the need to do so. [footnote: See, e.g. Deer Park UFSD, 22 PERB ¶3014 (1989); State of New York, 21 PERB ¶3050 (1988); Chautauqua County BOCES, 15 PERB ¶3126 (1982).] We have held that compelling need is generally established by proving the existence of a conflict of interest or inadequate representation. [footnote: id.] State of New York (Long Island Park, Recreation and Historical Preservation Commission), 22 PERB ¶3043, at 3098 (1989).

In that case we held, at 3099, that the evidence established

> neither the type of systematic and intentional disregard of the interests of the petitioned-for group, nor the neglect or indifference to the interests of the group which would warrant the fragmentation sought.

We have previously determined, and we now confirm, that the standard articulated by this Board for deciding fragmentation petitions is one which, in our view, reasonably balances the dual public policies found in the Act favoring both stability in labor relations and focus upon substantive negotiating issues on one hand, and freedom of choice with respect to a bargaining agent on the other. The Association's exception in this regard is accordingly denied.

We have carefully reviewed the record in this case, and find that the Director's dismissal of the petition should be affirmed, because the Association has failed to meet its burden of establishing proof of either intentional conduct adverse to the interests of the petitioned-for group or such disregard for the interests of the group as would warrant fragmentation.

Notwithstanding the Association's claim that CSEA sought to undermine a reallocation application considered by the County's Legislature in 1981, its claim, as found by the Director, is unsupported by probative evidence because it consists of testimony of officers of the Association who received comments eight years earlier from one or more

unidentified legislators that a question existed whether CSEA supported the petition. We deem this hearsay testimony to be too remote and unreliable to support a claim of intentional acts of conduct adverse to the interests of the group.

Since 1981, the only other activity with respect to the reallocation efforts by and on behalf of the caseworker series appears to have been the negotiation of language into the most recent collective bargaining agreement between the County and CSEA which created a committee to review reallocation requests. Pursuant to that language, a reallocation request was prepared by CSEA and submitted to the committee, which rejected the application. The Association makes no claim that CSEA intentionally withheld support for the application when last presented. Indeed, no claim is made that the reallocation application submitted by CSEA on behalf of the caseworker series was inadequate or incomplete in any way. The fact that efforts to persuade the County to reallocate positions in the caseworker series have proved unsuccessful does not establish a failure to represent adequately employees in the affected group.[1/]

For the foregoing reasons, based on the record before us, we affirm the Director's determination that, with respect to the efforts to obtain reallocation of caseworker positions

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[1/] State of New York (Long Island Park, Recreation and Historical Preservation Commission), supra, at 3099 (1989).

in the County, CSEA neither engaged in an intentional disregard of the interests of the petitioner-for group, nor neglected the interests of the group.

The Association also contends that CSEA failed to pursue adequately the question of automobile liability insurance for caseworkers engaged in County business in their own vehicles. However, the record establishes that the County was approached by CSEA concerning this issue and that an indemnification and self-insurance program is in place. While this information may not have been adequately conveyed to affected unit members, the record fails to establish a neglect of the interests of the unit members with respect to this issue.

Finally, with respect to the issue of subcontracting, the record indicates that while some subcontracting has taken place within the County, there is no evidence that such subcontracting has applied primarily or exclusively to caseworker duties, nor is there any indication that any unit member in the caseworker series has been adversely affected by the subcontracts. While CSEA may be entitled to negotiate with the County concerning subcontracts as a matter of right under the Act,[2/] its apparent policy determination that it will not challenge subcontracts unless present bargaining

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[2/] See, e.g., Saratoga Springs CSD, 11 PERB ¶3037, conf'd, 68 A.D.2d 202, 12 PERB ¶7008 (3d Dep't 1979), aff'd, 47 N.Y.2d 711, 12 PERB ¶7012 (1979).

unit members are adversely affected is one which is within its discretion to adopt and does not rise to the level of inadequate representation required to grant a fragmentation petition.

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

DATED: June 21, 1990
Albany, New York

Harold R. Newman, Chairman

Walter L. Eisenberg, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

TEAMSTERS LOCAL 294, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,

Petitioner,

-and-

CASE NO. C-3670

GREENE COUNTY,

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 Teamsters Local 294, 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: Those employees within the Solid Waste Management Department in the following

positions: transfer station operator, equipment operator and all other blue collar positions which may be established by the County.

Excluded: All other employees, including foremen, clerical, professional and technical employees, those appointed and those employed in classifications and titles of an administrative nature.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Teamsters Local 294, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. 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: June 21, 1990
Albany, New York

Harold R. Newman, Chairman

Walter L. Eisenberg, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

TEAMSTERS LOCAL 264,

Petitioner,

-and- CASE NO. C-3585

TOWN OF WARSAW,

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 Teamsters Local 264 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 motor equipment operators and the deputy superintendent of highways.

Excluded: Highway superintendent, employees who work only on snow removal on an as-needed basis, and all other employees.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with Teamsters Local 264. 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: June 21, 1990
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

TEAMSTERS LOCAL 317,

Petitioner,

-and-

CASE NO. C-3674

WESTHILL 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 Teamsters Local 317 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 regularly scheduled bus drivers and bus aides.

Excluded: Transportation supervisor and per diem substitute bus drivers and bus aides.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with Teamsters Local 317. 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: June 21, 1990
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

ONONDAGA-CORTLAND-MADISON BOCES FEDERATION OF TEACHERS, NYSUT, AFT, LOCAL 2897,

Petitioner,

-and- CASE NO. C-3464

ONONDAGA-CORTLAND-MADISON BOCES,

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 Onondaga-Cortland-Madison BOCES Federation of Teachers, NYSUT, AFT, Local 2897 has been designated and selected by a majority of the employees of the above-named public employer, in the unit found to be appropriate and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: All professionals providing direct student services including the following full and part-time employees: elementary, secondary and adult education teachers, occupational education teachers, itinerant teachers, special education teachers, speech therapists, psychologists, teacher assistants, guidance counselors, school nurse teachers, physical and occupational therapists, occupational therapy

assistants, school audiologists, school nurse and nurse practitioner, long-term substitutes who are employed for at least a semester or more for a period of five consecutive months as replacements for absent teachers who are expected to return, diversified work study coordinators, awareness placement counselors, substance abuse counselor, school librarian, school social worker, vocational evaluator, vocational evaluator assistant, employment and training counselor, employment services specialist, vocational rehabilitation counselor, program coordinator and counselor, who work more than 12 hours per week.

Excluded: District superintendent, deputy superintendent, assistant superintendent, any other supervisory position requiring administrative certification from the State Education Department, per diem substitutes, summer school teachers, teacher trainee, and adult education enrichment program teachers.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Onondaga-Cortland-Madison BOCES Federation of Teachers, NYSUT, AFT, Local 2897. 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: June 21, 1990
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

TEAMSTERS LOCAL 264,

Petitioner,

-and-

CASE NO. C-3584

TOWN OF SHELDON,

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 Teamsters Local 264 has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: All full-time and part-time motor equipment operators and the deputy superintendent of highways.

Excluded: Highway Superintendent, employees who work only on snow removal on an as-needed basis, seasonal employees and all others.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with Teamsters Local 264. 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: June 21, 1990
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

TEAMSTERS LOCAL 264,

Petitioner,

-and- CASE NO. C-3586

TOWN OF MIDDLEBURY,

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 Teamsters Local 264 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 motor equipment operators and the deputy superintendent of highways.

Excluded: Highway superintendent, employees who work only on snow removal on an as-needed basis, and all other employees.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with Teamsters Local 264. 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: June 21, 1990
Albany, New York

Harold R. Newman

Harold R. Newman, Chairman

Walter L. Eisenberg

Walter L. Eisenberg, Member