2A- 4/27/93

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

JAMES E. BIXBY,

Petitioner,

- and - **CASE NO. C-4050**

TOWN OF GREENE,

Employer,

- and -

TEAMSTERS LOCAL 693,

Intervenor.

JAMES E. BIXBY, pro se

TWINING, NEMIA & STEFLIK (JOSEPH STEFLIK of counsel), for Employer

THOMAS THAYNE, for Intervenor

BOARD DECISION AND ORDER

On December 14, 1992, James E. Bixby filed a timely petition seeking decertification of Teamsters Local 693 (Local) as the current negotiating representative of a unit of employees of the Town of Greene (Town).

Thereafter, the parties agreed to conduct an election in a unit of employees as follows:

Included: All full-time employees in the following titles:

Foreman, MEO/HEO, MEO, Mechanic.

Excluded: All other employees.

Pursuant to that agreement, a mail ballot election was held on March 23, 1993. Three ballots were cast in favor of

representation by the Local and four ballots were cast against representation. There was one challenged ballot. An objection to the election has not been filed.

A public employer is obliged to negotiate only with a recognized or certified employee organization, and an organization can be certified only if it demonstrates majority status among unit employees.[1/] The issue raised by the instant petition is whether the Town's employees desire to be represented for the purpose of collective negotiations by the Local. A majority of the eligible voters who cast valid ballots have shown that they do not desire to be represented for purposes of collective negotiations by the Local.[2/] Accordingly, it is ordered that the Local be, and it hereby is, decertified as the negotiating agent for the unit previously described.

DATED: April 27, 1993
Albany, New York

Pauline R. Kinsella, Chairperson

Walter L. Eisenberg, Member

Eric Schmertz, Member

1/ Rules of Procedure, §201.9 and §201.12(h).

2/ The one challenged ballot could not affect the outcome of the election. Even if it were cast in favor of representation by the Local, a tie vote would result, and decertification would still be required. See Mohawk Valley Nursing Home, 26 PERB ¶3009 (1993); Village of Perry, 14 PERB ¶4019 (1981); Akron Cent. School Dist., 11 PERB ¶4010 (1978).

2R- 4/27/93

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

CHARLES J. SEMOWICH,

Charging Party,

-and-

CASE NO. U-12808

STATE OF NEW YORK (DEPARTMENT OF SOCIAL SERVICES),

Respondent.

CHARLES J. SEMOWICH, pro se

WALTER J. PELLEGRINI, GENERAL COUNSEL (RICHARD W. McDOWELL of counsel), for Respondent

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by the State of New York (Department of Social Services) (State) to a decision by the Assistant Director of Public Employment Practices and Representation (Assistant Director). After a hearing, the Assistant Director found that the State had violated §209-a.1(a) and (c) of the Public Employees' Fair Employment Act (Act) by giving Charles J. Semowich an "effective" job performance rating[1/] in September 1991 because he had filed a contract grievance.

The State argues in its exceptions that the record is insufficient as a matter of law to support the violations found by the Assistant Director and that the remedial order, under

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[1/]An employee's performance may be rated "outstanding", "highly effective", "effective", "effective, but needs substantial improvement" or "unsatisfactory".

which the State is required to give Semowich a "highly effective" rating, is arbitrary and inappropriate.

Semowich argues in response that the Assistant Director's decision and order is correct, reasonable and should be affirmed.

For the reasons set forth below, we affirm the Assistant Director's decision and order.

The Assistant Director did not, as the State argues, rely upon only the temporal proximity between Semowich's grievance and his effective rating. Nor did the Assistant Director find that another employee's higher rating was sufficient by itself to raise an inference that would shift the burden of proof to the State. In addition to the timing of the State's action and the other employee's higher rating, the record also shows that Semowich's prior ratings and evaluations were consistently "highly effective", that Semowich's grievance involved his performance rater's behavior towards him, that no explanation was given for his lowered rating, that there were no suggestions or comments from Semowich's rater regarding recommended training, development or performance improvement activities, and that Semowich apparently was the only employee of five whose rating was lowered. As the unrebutted record facts were sufficient to establish the violations the Assistant Director found, the State's exceptions afford us no basis upon which to reverse the Assistant Director's decision.

To remedy the violations found, the Assistant Director ordered that Semowich be given a "highly effective" rating. The

Assistant Director ordered this remedy on the ground that a reconsideration of Semowich's rating without regard to his grievance activity would not adequately remedy the violations found. On the particular facts of this case, we find that the remedy ordered by the Assistant Director is appropriate.

Our remedial orders are designed generally to place an employee in the position in which he or she would have been without regard to the employee's exercise of protected rights.[2/] The conclusion underlying the Assistant Director's decision is that Semowich's rating would not have been lowered from "highly effective" to "effective" had he not filed and pursued a grievance. Given that conclusion, the only order which will fully remedy the violation found is one under which Semowich is given the rating he would have received but for his grievance.

Our decision is limited to the facts of this particular case. We are mindful that an employee's evaluation is a sensitive function where subjective judgments may have a proper and legitimate role and into which we should not unnecessarily intrude.[3/] However, the evidence presented here of a performance rating lowered due to activity protected by the Act, which was unrebutted by any evidence of an independent, unrelated reason for the rating, compels the remedial relief ordered.

[2/]City of Dunkirk, 23 PERB ¶3025 (1990).

[3/]See New York Inst. of Technology v. State Div. of Human Rights, 40 N.Y.2d 316 (1976)

For the reasons set forth above, the State's exceptions are denied and the Assistant Director's decision is affirmed.

IT IS, THEREFORE, ORDERED that the State:

1. Cease and desist from giving Semowich a lower performance evaluation rating because he filed or prosecuted a contract grievance.
2. Immediately rescind the rating given Semowich for the September 17, 1990 - September 16, 1991 rating period and remove it and any reference thereto from its files.
3. Rate Semowich "highly effective" for the September 17, 1990 - September 16, 1991 rating period.
4. Sign and post the attached notice at all locations normally used to communicate information to employees of the Office of Administrative Support Services in the bargaining unit to which Semowich belongs.

DATED: April 27, 1993
Albany, New York

Pauline R. Kinsella, Chairperson

Walter L. Eisenberg, Member

Eric J. Schmertz, 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 Office of Administrative Support Services of the Department of Social Services in the bargaining unit represented by the Public Employees Federation that the State:

1. Will not give Charles J. Semowich a lower performance evaluation rating because he filed or prosecuted a contract grievance.

2. Will immediately rescind the rating given Semowich for the September 17, 1990 - September 16, 1991 rating period and remove it and any reference thereto from its files.

3. Will rate Semowich "highly effective" for the September 17, 1990 - September 16, 1991 rating period.

State of New York
(Department of Social Services)

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.

2C- 4/27/93

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

NASSAU CHAPTER CIVIL SERVICE EMPLOYEES ASSOCIATION, LOCAL 1000, AFSCME, AFL-CIO, NASSAU LOCAL 830,

Charging Party,

-and-

CASE NO. U-12989

COUNTY OF NASSAU,

Respondent.

NANCY E. HOFFMAN, GENERAL COUNSEL (JEROME LEFKOWITZ of counsel), for Charging Party

BEE & EISMAN (PETER A. BEE and DANIEL E. WALL of counsel), for Respondent

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by the Nassau Chapter Civil Service Employees Association, Local 1000, AFSCME, AFL-CIO, Nassau Local 830 (CSEA) to a decision by an Administrative Law Judge (ALJ). Although the ALJ dismissed several of CSEA's other charges against the County of Nassau (County), the exceptions are addressed only to his dismissal of Case U-12989. CSEA alleges in that charge that the County violated §209-a.1(a) and (d) of the Public Employees' Fair Employment Act (Act) by announcing, and later implementing, a furlough plan, limited to CSEA unit employees, which was intended to negate a 5.5% salary increase provided by the parties' then

current 1990-92 collective bargaining agreement.[1/] According to the allegations in the charge, the furlough violates §209-a.1(a) of the Act because it is both inherently destructive of CSEA's and unit employees' rights and it repudiates the salary provisions of the contract. Section 209-a.1(d) of the Act is allegedly violated because the unilaterally imposed furlough diminished employees' salaries.

The ALJ dismissed the §209-a.1(d) allegation for lack of jurisdiction under §205.5(d) of the Act.[2/] He held that CSEA's allegation that the furlough plan caused a diminution in negotiated salary levels merely stated an arguable violation of the employees' contractual right to receive wages at the negotiated level. Having concluded that the contract was a "reasonably arguable source of right"[3/] to CSEA with respect to the subject matter of that aspect of its charge, the ALJ dismissed that allegation.

Finding no material facts in dispute on a case submitted largely on documents, the ALJ dismissed the §209-a.1(a) interference allegations on the ground that the County had shown that the furlough was implemented under a colorable claim of

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[1/]The furlough was actually implemented for only a short time and was then discontinued by the County.

[2/]That section of the Act provides that the Board shall neither enforce an agreement nor entertain a charge of a violation thereof which would not otherwise violate the Act.

[3/]County of Nassau, 23 PERB ¶3051, at 3108 (1990).

contractual management right and for legitimate financial reasons in the midst of a budget crisis.

CSEA argues in its exceptions that the ALJ erred in dismissing the subparagraph (d) allegation for lack of jurisdiction. It also argues that the furlough was not implemented under a bona fide claim of contractual right, but that it was retaliatory and/or a per se violation of §209-a.1(a) of the Act.

The County argues that the ALJ's jurisdictional dismissal was correct on the facts and the law, as was his dismissal of the interference allegations.

Having considered the parties' arguments, including those made at oral argument, we affirm the ALJ's decision.

The jurisdictional limitation in §205.5(d) of the Act is triggered if it can be claimed arguably and reasonably that the action subject to the improper practice charge violated the parties' contract.[4/]

The subject of this charge is an employee furlough plan which CSEA alleges was intended to deny its unit employees the full salary raise due them in the last year of the contract. We find in this respect, as did the ALJ, that CSEA's charge constitutes an alleged contract violation because the furlough

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[4/]State of New York-Unified Court System, 25 PERB ¶3035 (1992).

plan allegedly diminished employees' contractual salaries.[5/] The arguable violation of those contractual salary provisions would be sufficient by itself to necessitate a jurisdictional dismissal of the §209-a.1(d) allegations. There is, in addition, however, a second source of arguable contract right to CSEA which even more clearly establishes the contractual nature of the §209-a.1(d) allegation and necessitates its jurisdictional dismissal.

Under the contractual management rights clause, the County may "relieve its employees from duty" if there is a "lack of work" or if there are "other legitimate reasons". Although the clause is plainly, and perhaps primarily, a source of contractual rights to the County, this particular clause is also a source of right in relevant respect to CSEA.[6/] The source of right to CSEA in the management rights clause is found in the clear restriction on the right otherwise reserved to the County to relieve employees from duty. As we read the clause, unit employees may not be relieved from work except and unless either

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[5/]We express no opinion, of course, as to the merits of any contract questions raised by the furlough.

[6/]Compare the management rights clause in another furlough case in which the employer's right to "direct, deploy and utilize the work force" was not similarly conditioned or restricted. State of New York, 10 PERB ¶4578 (1977), aff'd, 11 PERB ¶3026 (1978) (subsequent case history omitted). Therefore, we had no reason to conclude in that case that the management rights clause was also a source of right to the union.

of the two noted conditions is present. In this case, for example, if CSEA is correct in its allegation that the County's reasons for the furlough were not "legitimate" (i.e., retaliatory), the unit employees' contractual right to work is at least arguably abridged.

Considering the salary provisions of the contract and CSEA's rights under the management rights clause, we conclude that the contract is a reasonably arguable source of right to CSEA with respect to the furlough plan, which divests us of jurisdiction over the §209-a.1(d) allegations.

We also affirm the ALJ's dismissal on the merits of the subparagraph (a) allegations.

The §209-a.1(a) allegations are grounded primarily upon a claimed per se interference with contractual salary rights or a repudiation of contract. Although we have recognized causes of action under both theories, common to each is the need to establish that the respondent's conduct is taken without any colorable claim of right.[7/] In these respects, we find, in agreement with the ALJ, that the acknowledged budget crisis facing the County gave it at least a colorable claim of legitimate reason to relieve employees from duty in accordance with its rights under the management rights clause. As in County of Albany, certainly the County's claim that it had legitimate

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[7/]County of Albany, 25 PERB ¶3026 (1992) (interference with contract right); Bd. of Educ. of the City School Dist. of the City of Buffalo, 25 PERB ¶3064 (1992) (repudiation).

reasons to relieve its employees from work for a period of time is no more or less valid than CSEA's claim that the County did not. That colorable claim of right defeats CSEA's §209-a.1(a) claims to the extent they rest on an alleged interference with contract rights or contract repudiation.

CSEA argues alternatively, however, that the County's furlough was intended, in fact, to retaliate against CSEA for having asserted its statutory right under the Act to refuse to reopen the salary provisions of the contract. In support of its retaliation allegations, CSEA relies primarily on the fact that only CSEA unit employees were to be furloughed and then only for the period of time necessary to recoup the 5.5% salary increase. CSEA also relies on the fact that all unit employees were subjected to the furlough even though the furlough of a few of them did not save the County money because they were in State-funded positions.

With respect to this theory of violation, there has been made what is, at times, admittedly a subtle but necessary distinction between impermissible retaliation for the assertion of a protected right and permissible response taken to avoid the consequences of that assertion of right.[8/] Upon our review of the record as a whole, we conclude that CSEA's proof of retaliation is insufficient to satisfy its burden to establish

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[8/]See, e.g., County of Nassau v. PERB, 103 A.D.2d 274, 17 PERB ¶7016 (2d Dep't 1984); City of Albany, 17 PERB ¶3068 (1984).

that the County was improperly motivated in adopting and implementing a furlough plan. On this record, therefore, the furlough plan must be seen as only a statutorily permissible response to a decision by CSEA which presented economic consequences to the County which it felt constrained to address.

The County was admittedly facing a budget deficit of significant proportions. It first sought wage concessions from CSEA before it knew that CSEA would not renegotiate the salary raise for the last year of the contract. The County had sought and obtained economic concessions from its other employees. There is no showing that the burden actually imposed upon CSEA unit employees was disproportionate to that imposed upon other County employees. There is no proof that the amount of money saved by the furlough of CSEA unit employees was more than was reasonably necessary in light of the acknowledged budget deficit. Nor are there any statements by County agents[9/] or other direct evidence which would establish an improper motive for the furlough. Consideration must also be given to the breadth of the relief from duty provisions in the parties' contract. From the County's perspective, the furlough plan was a logical, and arguably contractually sanctioned, response to make regarding the

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[9/]CSEA had alleged in a separate charge, for example, that the County Executive had stated publicly that the County was singling out CSEA for potential layoffs because CSEA was unwilling to reopen its contract. The ALJ dismissed that charge for failure of proof and no exceptions have been filed as to that dismissal.

employees represented by CSEA. Although the furlough plan might have been crafted somewhat differently, we are persuaded on this record that CSEA has not shown that the County's motive for it was retaliatory.

For the reasons set forth above, the exceptions are denied and the ALJ's decision is affirmed.

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

DATED: April 27, 1993
Albany, New York

Pauline R. Kinsella, Chairperson

Walter L. Eisenberg, Member

Eric J. Schmertz, Member

2D- 4/27/93

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

WILLIAM T. BRUNS,

Charging Party,

-and- **CASE NO. U-13349**

STATE OF NEW YORK (DIVISION OF PAROLE) and COUNCIL 82, AFSCME,

Respondents.

KATHLEEN C. BRUNS, for Charging Party

WALTER PELLEGRINI, GENERAL COUNSEL (LAUREN DE SOLE of counsel) for Respondent State of New York

CHRISTOPHER H. GARDNER, ESQ., for Respondent Council 82, AFSCME

BOARD DECISION AND ORDER

This case is before us on exceptions filed by William T. Bruns to a ruling[1/] by the Assistant Director of Public Employment Practices and Representation (Assistant Director). Bruns filed this charge against the State of New York (Division of Parole) (State) and Council 82, AFSCME (Council 82), his bargaining agent. The charge against the State alleges violations of §209-a.1(a) and (c) of the Public Employees' Fair Employment Act (Act). Council 82 is alleged to have violated its duty of fair representation under §209-a.2(c) of the Act. The charge, inter alia, alleges that the State retaliated against

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[1/]Section 204.7(h)(1) of our Rules of Procedure permits us to entertain such exceptions.

Bruns because he has filed contract grievances, that the State has violated the terms of the contract between it and Council 82, that Council 82 has failed to pursue grievances for Bruns, settled one of his grievances improperly and otherwise generally failed to render him proper representation.

In January, 1993, Bruns requested that all proceedings on this matter be held in abeyance pending a decision from an Administrative Law Judge (ALJ) on a different charge Bruns filed against the State and Council 82 and Bruns' receipt of information from a federal agency on certain wages paid to him and on hours worked by him. The ALJ's determination on the other charge and the wage and hour information are, according to Bruns, relevant to the adjudication of this case, a claim the State and Council 82 dispute. On objection from Council 82's attorney, the Assistant Director, by letter dated March 2, 1993, denied Bruns' request for an adjournment. The case is presently assigned to an Administrative Law Judge (ALJ) and hearings are scheduled to commence on May 10 and 18, 1993.

The scheduling of a case for hearing is a matter reserved to the Director's and the ALJ's discretion. The Assistant Director's declination to postpone all proceedings in this case did not violate any controlling rule and was consistent with agency practice which contemplates that the charging party has the factual information necessary to support his/her claims and to prove his/her case at the time the charge is filed. There was no clear abuse of discretion in refusing to postpone the

proceedings in their entirety for an indefinite period of time over the objection of one of the parties. There is no reason offered or apparent as to why the hearings may not at least begin on this multi-faceted charge without benefit of the ALJ's determination on the other charge or the wage and hour information. Future adjournment requests grounded upon the need and relevancy of the disposition on the other charge and the wage and hour information can be considered by the presiding ALJ at such point in the proceedings as may be warranted by the circumstances then prevailing. Bruns argues also that denying him a postponement in this case is burdensome because he has obligations in conjunction with the appeal and litigation of this and other charges he has filed. Obligations incurred as a direct result of charges Bruns elected to file afford him no basis for an indefinite postponement of proceedings in this case nor do they outweigh the right asserted by a respondent, as here, to a reasonably prompt litigation and disposition of a charge against it.

For the reasons set forth above, the exceptions to the Assistant Director's ruling are denied. SO ORDERED.

DATED: April 27, 1993
Albany, New York

Pauline R. Kinsella, Chairperson

Walter L. Eisenberg, Member

Eric J. Schmertz, Member

2E- 4/27/93

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

CHARLES ACEVEDO,

Charging Party,

-and-

CASE NO. U-12386

CATSKILL REGIONAL OFF-TRACK BETTING CORPORATION,

Respondent.

HOLLIS GRIFFIN, ESQ., for Charging Party

MARK D. STERN, ESQ., for Respondent

BOARD DECISION AND ORDER

This matter comes to us on the exceptions of the Catskill Regional Off-Track Betting Corporation (Corporation) to an Administrative Law Judge (ALJ) decision which found the Corporation to have violated §209-a.1(a) and (c) of the Public Employees' Fair Employment Act (Act) when, on December 26, 1990, it terminated the employment of Charles Acevedo in retaliation for his efforts to organize fellow employees for the purposes of collective negotiations.

Acevedo was suspended and thereafter terminated by the Corporation after fourteen years of employment following an incident which occurred at an off-premises, off-hours Christmas party conducted by the Corporation on December 16, 1990. At that

party, Acevedo said to Sherry Brenner, newly appointed Personnel Manager, and Steven Pasquale, the Corporation's Field Auditor:

> [T]hat guy over there [pointing to Arthur Weinfeld, the Corporation's Vice President and Director of Operations], that guy is a dick. That guy is a dick. He fired my best friend. He's a dick.

Weinfeld, who overheard at least a portion of Acevedo's statements as he was walking by the group, asked what was being said.

On the following day, after receiving memoranda from Brenner and Pasquale detailing the incident, and from Jay Gettinger, the Corporation's General Services Administrator, who had not heard the remarks, but had a subsequent private conversation with Acevedo, during which Acevedo referred to Weinfeld as "that prick", Weinfeld had a meeting with Acevedo. At that meeting, Acevedo initially denied the incident and then attributed it, assuming he had made the remark, to his consumption of too much alcohol at the party, and apologized for it.[1/] Weinfeld immediately thereafter suspended, and then terminated, Acevedo.

In support of his claim that his termination would not have occurred, notwithstanding the incident, but for his protected activities, Acevedo established that he had, within six months prior to his termination, engaged in union organizing activity and an election, which was unsuccessful, although by a lesser

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[1/]The sincerity and extent of the apology are in issue between the parties.

margin than two elections held during the early 1980s. Acevedo also established that his employer was aware of his protected activities, thus meeting the second prong of the test for establishing unlawful discrimination under the Act.[2/] In support of his claim that he would not have been terminated but for his protected activity, Acevedo sought to establish a number of prior incidents of alleged disparate treatment of him. Without deciding whether disparate treatment had in fact taken place in the prior incidents asserted by Acevedo, the ALJ looked to an earlier history of findings of unlawful interference with protected activities, based upon cases decided by this agency, and involving at least some of the same managerial individuals involved in the instant case, including Weinfeld.[3/] In addition to this case law history, the ALJ placed weight upon his determination that the penalty of termination imposed upon Acevedo was excessive, particularly when viewed in light of the more serious nature of the offenses which had in other cases given rise to penalties of termination by the Corporation, such as substantial and repeated cash shortfalls. The ALJ also determined the penalty of termination to be excessive in light of Acevedo's apology to Weinfeld for his conduct and the

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[2/]See, e.g., City of Salamanca, 18 PERB ¶3012 (1985).

[3/]The ALJ referenced the following cases involving the Corporation: 15 PERB ¶3023 (1982), aff'g 14 PERB ¶4054 (1981); 15 PERB ¶3022 (1982); 14 PERB ¶4518 (1981); 14 PERB ¶4011 (1981); and 13 PERB ¶4028 (1980).

circumstances of the incident, which involved off-duty, off-premises drinking.

In its exceptions, the Corporation makes two main assertions. First, it argues before us that the ALJ erred in relying upon case determinations made by PERB concerning events which occurred eight or ten years earlier as being both too remote in time and considered sua sponte, that is, without any argument by Acevedo that the case determinations issued earlier had any relevance to the instant proceedings. The Corporation further asserts that the ALJ should have made determinations concerning each of the claimed instances of disparate treatment upon which Acevedo relied, and which the parties litigated, to determine whether they in fact constituted instances of disparate treatment, in order to evaluate the merit of Acevedo's claim that his termination was part of a continuing course of disparate treatment. According to the Corporation, if those assertions of disparate treatment were found to be without basis, Acevedo's claim of disparate treatment with respect to his termination must fail.

Second, the Corporation asserts that the ALJ erred in basing his determination of disparate treatment with respect to the termination of Acevedo upon a value judgment regarding the excessiveness of the penalty in relation to the offense committed. The Corporation asserts that the ALJ's evaluation of the penalty cannot properly provide a basis for determining that

the penalty, however excessive it might have been, constituted proof of anti-union animus, particularly since there were no prior cases presented which involved similar conduct with different outcomes. Indeed, no evidence was presented which established an incident remotely similar to the December 16, 1990 incident involving Acevedo.

While we agree with the ALJ that the prior case history involving the Corporation, and the determinations made several years earlier but involving some of the same Corporation representatives, are relevant to the case now before us, we cannot conclude that such determinations of prior misconduct are dispositive of the present claim of misconduct. Without evidence of anti-union animus closer in time and more directly related to Acevedo's protected activities, it cannot be said that the prior determinations constitute dispositive proof of a continuing course of conduct which resulted in the action complained of.

The ALJ's determination that the penalty imposed of termination for the at-issue incident was excessive is not unreasonable in light of the circumstances surrounding the incident. These include Acevedo's fourteen years of satisfactory service; the absence of any prior incidents of this type involving Acevedo; the fact that the evidence established only that three managerial persons, Weinfeld, Brenner and Pasquale, and no one else, even standersby in close proximity to Acevedo, heard any portion of the remarks; that the incident occurred at a

social event rather than at the workplace; and that Acevedo tendered an apology for his remarks. However, notwithstanding these circumstances, we must disagree with the ALJ's determination to the extent it concludes that the excessiveness of the penalty constitutes dispositive proof of improper motivation or otherwise establishes that but for the incident, Acevedo would not have been terminated.

If the entire evidence presented by Acevedo had consisted of the foregoing, we would be constrained to reverse the ALJ's determination and dismiss this charge. However, the record establishes that Acevedo sought to prove other instances of disparate treatment of him proximate in time to the December 16, 1990 incident. He also sought to establish a workplace practice which included the use of foul language in the presence of supervisors, which, if proven, might establish that the type of language used on December 16, 1990, had been accepted without reprimand on other occasions; that Acevedo was under the influence of alcohol when he made the remarks, and thereafter apologized in a sincere fashion for them; and that remarks evidencing anti-union animus were made to him.

Findings of fact with regard to the foregoing evidentiary issues are most appropriately made by the ALJ who heard the testimony and had the opportunity to observe the demeanor of the witnesses. It would not be appropriate for us, ab initio, to make such findings, particularly since credibility determinations

may be necessary to resolve issues of fact. It is, therefore, necessary that we remand this matter to the assigned ALJ for further findings, which he declined to make in the decision now before us, and for a new determination based upon those findings of fact.

IT IS, THEREFORE, ORDERED that this matter be, and it hereby is, reversed and remanded for further findings of fact and conclusions of law not inconsistent with this decision and order.

DATED: April 27, 1993
Albany, New York

Pauline R. Kinsella, Chairperson

Walter L. Eisenberg, Member

Eric J. Schmertz, Member

2F- 4/27/93

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

RICHARD W. GLASHEEN,

Charging Party,

-and- **CASE NO. U-13463**

COUNTY OF SUFFOLK and SUFFOLK ASSOCIATION OF MUNICIPAL EMPLOYEES,

Respondents.

RICHARD W. GLASHEEN, pro se

BOARD DECISION AND ORDER

By decision dated October 27, 1992, the Director of Public Employment Practices and Representation (Director) dismissed this charge filed by Richard W. Glasheen (Glasheen), acting pro se, against the County of Suffolk (County). The charge, as amended, alleges that the County and the Suffolk Association of Municipal Employees (AME) violated §209-a.1(a), (b) and (c) and §209-a.2(a) and (b), respectively, of the Public Employees' Fair Employment Act (Act) by conspiring to undermine his supervisory authority and remove him from his position at Suffolk County Community College (College).

The Director dismissed the charge after advising Glasheen that the charge, as amended four times, was deficient, on several grounds. First, the charge of a violation of §209-a.2(b) of the Act was dismissed summarily as the Director found Glasheen had no standing to allege a violation of the duty to negotiate in good

faith; second, nearly all of the conduct about which Glasheen complains is time-barred from consideration, having occurred more than four months before the charge was filed.

The only allegation which falls within the four-month limitation period provided by our Rules is that on December 31, 1991, Glasheen received a memorandum from his supervisor which Glasheen characterizes as a letter of reprimand.[1/] Glasheen argues that he received the memorandum as a result of complaints by AME, the bargaining agent for employees supervised by him. The Director found that these asserted facts would not establish that the County's conduct in issuing the memorandum on December 31, 1991 was motivated by Glasheen's exercise of rights protected by the Act. Accordingly, the Director dismissed the portion of the charge alleging a violation of §209-a.1(c) of the Act.

In his exceptions, Glasheen argues that due to the animus of AME employees toward him, disciplinary action, in the form of a letter of reprimand, was taken against him and that the College has improperly limited his authority in unspecified ways.

In a prior decision,[2/] we dismissed a charge filed by Glasheen which alleged that he was transferred from one location

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[1/]Despite being requested to do so, Glasheen has declined to submit a copy of that memorandum in support of his charge, and it is accordingly impossible to determine its content or the relevance, if any, of the memorandum to any alleged violation of rights protected by the Act.

[2/]25 PERB ¶3019 (1992).

to another at the College also as a result of complaints by AME and its members concerning his supervisory conduct. We there said (at 3040):

> Thus, even if, as Glasheen alleges, the communications between the County and AME may have affected Glasheen's employment relationship, that circumstance alone does not constitute improper interference with Glasheen's rights under §209-a.1(a) of the Act or improper support of AME under §209-a.1(b) of the Act. [footnote omitted].

For the same reason that we dismissed his prior charge, we dismiss the instant charge also. There is nothing in the allegations made by Glasheen here which would constitute a violation of the Act by either the County or AME, even if, as Glasheen asserts, a letter of reprimand would not have been issued to him but for the complaints of AME and its members to the County. For these reasons, we deny Glasheen's exceptions, affirm the Director's decision, and dismiss the charge.

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

DATED: April 27, 1993
Albany, New York

Pauline R. Kinsella, Chairperson

Walter L. Eisenberg, Member

Eric J. Schmertz, Member

2G- 4/27/93

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

SCHENECTADY POLICE BENEVOLENT ASSOCIATION,

Charging Party,

-and-

CASE NOS. U-12538 & U-13100

CITY OF SCHENECTADY,

Respondent.

GRASSO & GRASSO (KATHLEEN R. DeCATALDO of counsel), for Charging Party

ROEMER & FEATHERSTONHAUGH, P.C. (ELAYNE G. GOLD of counsel), for Respondent

BOARD DECISION AND ORDER

The Schenectady Police Benevolent Association (PBA) has filed exceptions to the dismissal by the Assistant Director of Public Employment Practices and Representation (Assistant Director) of its charges in Case Nos. U-12538 and U-13100, which allege that the City of Schenectady (City) violated §209-a.1(d) and §209-a.1(a), (c) and (d) of the Public Employees' Fair Employment Act (Act), respectively. In Case No. U-12538, the PBA alleges that the City required unit employees hired on or after July 12, 1988, to complete and sign a "Residency Affidavit". In Case No. U-13100, the PBA alleges that the City, by a unilaterally issued September 10, 1991 memorandum, imposed the residency requirement and a procedure for appealing determinations thereunder, made residency a criterion for

promotion, and required all covered employees to sign a form acknowledging receipt of the memorandum.

We affirm the Assistant Director's dismissal of the allegations regarding the imposition of the residency requirement, its appeals procedure, and the creation of a promotional criterion based on residency for the reasons set forth in his decision. As he noted, the residency requirement and its appeals procedure were the subjects of a final and binding decision of a PERB Administrative Law Judge[1/] in March 1989[2/] pursuant to an improper practice charge filed by the PBA in November 1988. That decision upheld the residency requirement as a nonmandatory subject of negotiations, but found that the unilateral imposition of the appeals procedure violated the Act. As to the residency requirement, therefore, the September 1991 memorandum did not reflect a change, but merely a reaffirmation of the 1988 policy. Nor will the PBA be permitted to relitigate the prior determination that the residency requirement is a nonmandatory subject of negotiations.

The PBA's assertion in its brief that the September 1991 memorandum imposes the residency requirement on a class of employees not previously covered is without merit. The PBA relies on the uncontroverted fact that the City did not provide

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[1/] No exceptions to the ALJ's decision were perfected by either party. Rules of Procedure, §204.14(b) and (c).

[2/] City of Schenectady, 22 PERB ¶4527 (1989). While this decision is correctly cited by the Assistant Director, the text of his decision misdates it as March 1988.

notice of the residency requirement to the at-issue employees until issuance of the September 1991 memorandum. It argues that, absent notification at time of hire, said employees were not hired pursuant to the residency requirement and, therefore, that the City's September 1991 memorandum imposes the residency requirement on them for the first time. However, as relevant here, the 1988 City ordinance applies by its express terms to all unit employees hired on or after July 12, 1988. The PBA assumes that, as a matter of law, a residency requirement is not imposed absent express notification to an employee upon hire, but cites no legal support for its assumption, which is unfounded. The PBA does not cite the language of the ordinance itself in support of its argument. We note that while the ordinance does direct that covered employees be placed on notice of its terms, such notice is not a condition precedent to the existence of the residency requirement under the Act.[3/] The PBA's exception is therefore dismissed.

Regarding the appeals procedure, a remedial order was issued by PERB in the 1989 decision. Section 213 of the Act provides the sole procedures for the enforcement of PERB's orders and an improper practice charge is not one of them. As to the promotional criterion based on residency, the Assistant Director correctly noted that promotional criteria are nonmandatory

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[3/]Whether the ordinance can be challenged in other forums based on alleged failure to comply with the notification requirement is not relevant here. Absent repeal of the ordinance, neither claimed nor evidenced here, it, and the residency requirement therein, exist for purposes of the Act.

subjects of negotiations. Therefore, any imposition of residency as a criterion for promotion, even if newly imposed,[4/] would not violate the Act.

The Assistant Director's dismissal of the remaining allegations of the charge in Case No. U-12538, on the basis that the City did not order the affidavit completed or threaten discipline for noncompliance, must be reversed. It is undisputed that in May 1991 the City sent a "Residency Affidavit" to all employees hired on or after the July 12, 1988 effective date of the residency requirement. The form calls for the provision of the employee's years of employment, residence address and duration of residency at that address, for the employee's acknowledgement that a violation of the City's residency requirement could result in termination, authorizes the City to request records,[5/] and directs the attachment of copies of the employee's driver's license and voter registration card. An employer's service on employees of forms, as here, with areas for completion, lines upon which to execute them, and/or instructions for the attachment of documents, without indication, express or through known practice, that they are informational only constitutes a direction that they be completed and returned. Further, a disciplinary component exists as it does regarding the

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[4/]The Assistant Director did not make a finding on whether the September 1991 memorandum actually sets such a criterion. Based on our determination above, we need not specifically address this issue.

[5/]The Assistant Director assumed that the request was to be made to the employee. There is no reason to question that conclusion.

failure to comply with any employer work order. Here, the departmental rules and regulations state that disobedience of an order and insubordination may result in disciplinary action, and that violation "of a rule or regulation of the Department, or of the provisions of any order...or of disobedience of orders..." may result in dismissal or "such other punishment as the City Manager may direct." That no disciplinary action was taken or threatened when the unit employees failed to submit the forms is not controlling; the possibility of discipline remains outstanding. We therefore find that the City unilaterally required employee completion of the forms and that a disciplinary component existed.[6/]

We reject the City's assertion in its brief that the issue of employee completion of the affidavit[7/] was raised for the first time in the PBA's brief to this Board and is, therefore, not properly before us and that the only issue for decision is whether notice was received. As to the former, the charge in Case No. U-12538 clearly and at length alleges that the required completion of the affidavit violated the Act. As to the latter, that the notice may have been the only factual dispute between the parties does not make it, and it is not, the only issue for decision.

[6/]Based on this determination, we need not address the remainder of the PBA's exceptions on these issues.

[7/]Based on our determination infra, we need not reach the City's identical claim regarding the form in Case No. U-13100.

As to the mandatory nature of the employee action required, it is well settled that the unilateral delegation to unit employees of the responsibility for employer recordkeeping violates the Act.[8/] While certain changes in the method of recordkeeping may not rise to the level of a change in terms and conditions of employment,[9/] substantial changes in the type or amount of information recorded affect terms and conditions of employment and therefore must be bargained.[10/] Here, the employees have in the past been required to keep the City apprised of any changes in address, and have filed a form to do so. The City's argument that its right to impose the residency requirement carries with it the implicit right to employee participation in the compliance-tracking process need not, therefore, be decided. It already has a practice of employee participation in the recordkeeping process. The relevant inquiry is whether the at-issue form reflects merely, as the City asserts in its brief, a "mechanical", and not a qualitative, change in unit employees' participation. It does not. The at-issue form is substantially different from the one previously filed, including a monetary component, as the employee may have to pay a

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[8/]See, e.g. Newburgh Enlarged City School Dist., 20 PERB ¶3053 (1987); Spencerport Cent. School Dist., 16 PERB ¶3074 (1983); BOCES I, Suffolk County, 15 PERB ¶4622 (1982); County of Nassau, 13 PERB ¶4612 (1980), exceptions dismissed, 14 PERB ¶3014 (1981), aff'd, County of Nassau v. PERB, 14 PERB ¶7023 (Sup. Ct. Nassau Co. 1981); Hampton Bays School Dist., 10 PERB ¶4596 (1977).

[9/]Island Trees Union Free School Dist., 10 PERB ¶4590 (1977); Newburgh Enlarged City School Dist., supra.

[10/]See supra note 8.

notary fee in order to get the required notarization, and the required provision of a voter registration card, which alone raises a significant privacy issue.[11/] Also unlike the earlier form, the at-issue form requires the provision of a copy of the employee's driver's license and the number of years of continuous residence at the employee's present address, that the employee agree to the open-ended release of other unidentified records at the City's request, that the employee acknowledge the accuracy of the description of the City's ordinance set forth therein, the applicability of the Penal Law to any false statements and that lack of proper residence can result in termination, and signature under acknowledged penalty of perjury.

As we noted recently in a case between these same parties involving General Municipal Law (GML) §207-c:[12/]

> The City has processed GML §207-c claims for years under procedures different from those it adopted in February and March 1990, thereby establishing that the new procedures were not minimally necessary to the implementation of GML §207-c. The City may have found those earlier procedures to be inadequate to its current purposes, but that does not permit the City to avoid its obligation under the Act regarding the imposition of the new GML §207-c requirements.

[11/]See the discussion of privacy in Bd. of Educ. of the City School Dist. of the City of New York, 19 PERB ¶3015, at 3033 (1986), conf'd, 21 PERB ¶7001 (Sup. Ct. Albany Co. 1988), rev'd, 147 A.D.2d 70, 22 PERB ¶7014 (3d Dep't 1989), rev'd, 75 N.Y.2d 660, 23 PERB ¶7012 (1990).

[12/]City of Schenectady, 25 PERB ¶3022, at 3047 (1992), conf'd in relevant part, 25 PERB ¶7009 (Sup. Ct. Alb. Co. 1992).

Here, the City does not even claim that the recordkeeping procedure it has devised is "minimally necessary" to implement its residency requirement.[13/] Even if it had, the record would not support it.[14/]

While the City also appears to argue that it had a compelling need to send the affidavit, such a defense is not properly before us, as it was not raised before the Assistant Director.[15/] Even if considered on its merits it would fail, most obviously because the party claiming compelling need must negotiate to the point of impasse and hold itself out to negotiate after the change.[16/] Here, the City did neither. In any event, the delay of approximately three years between

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[13/]See also County of Niagara (Mount View Health Facility), 21 PERB ¶3014 (1988).

[14/]Further, Public Officers Law §30 is devoid of any language supporting the authorization the City claims, nor does the City rely on any statutory language therein or point to any case law thereunder. City of Schenectady, supra. The same is true regarding any City reliance on its local ordinance for such authority. In any event, a local law generally cannot supersede the requirements of a state statute, here, the duty to negotiate under the Act. See, e.g., Avon Cent. School Dist., 20 PERB ¶4564 (1987). See also the discussion and cases cited in Bd. of Educ. of the City School Dist. of the City of New York, 19 PERB ¶3015, at 3033 (1986), conf'd, 21 PERB ¶7001 (Sup. Ct. Albany Co. 1988), rev'd, 147 A.D.2d 70, 22 PERB ¶7014 (1989), rev'd, 75 N.Y.2d 660, 23 PERB ¶7012 (1990); Clarkstown Cent. School Dist., 24 PERB ¶4544, aff'd on other grounds, 24 PERB ¶3047 (1991).

[15/]New York City Transit Auth., 20 PERB ¶3037 (1987), conf'd, 147 A.D.2d 574, 22 PERB ¶7001 (2d Dep't 1989), motion to amend granted, 156 A.D.2d 689, 23 PERB ¶7002 (2d Dep't 1989).

[16/]See, e.g., Cohoes City School Dist., 12 PERB ¶3113, at 3204 (1979).

upholding the residency requirement and the City's efforts to ascertain compliance negate any claim of compelling need.[17/]

As regarding the "Residency Affidavit" above, the City's provision of the acknowledgement form in Case No. U-13100 constituted an order that it be executed and returned. However, the PBA's allegation that that action violated §209-a.1(d) of the Act is dismissed. An employee acknowledgement of receipt has, at best, de minimus effect on terms and conditions of employment.

Finally, the PBA's objection to the Assistant Director's refusal to accept its reply brief is rejected. As PERB's Rules of Procedure contain no provision for reply briefs, the Assistant Director's ruling was not inappropriate.

Based on the above, we find that the City violated §209-a.1(d) of the Act by requiring employees hired on or after July 12, 1988 in the unit represented by the PBA to complete, sign and return to the City a "Residency Affidavit".

The PBA's exceptions are in all other respects denied, the charge in Case No. U-13100 dismissed in its entirety and the charge in Case No. U-12538 dismissed except as set forth above.

[17/]See, e.g., Bd. of Educ. of the City School Dist. of the City of New York, 18 PERB ¶4621 (1985), aff'd, 19 PERB ¶3015 (1986), conf'd, 21 PERB ¶7001 (Sup. Ct. Albany Co. 1988), rev'd, 147 A.D.2d 70, 22 PERB ¶7014 (1989), rev'd, 75 N.Y.2d 660, 23 PERB ¶7012 (1990).

If any further reason were necessary, there is, as stated above, no record evidence that such employee participation was necessary in order to ensure compliance.

NOW, THEREFORE, WE ORDER the City to:

1. Immediately rescind and cease enforcement or implementation of the "Residency Affidavit" as to unit employees;

2. Immediately remove and destroy all reports or other documents submitted by unit employees or generated by the City or its agents pursuant to its requirement that they complete, sign and return to the City the "Residency Affidavit" from any files kept or maintained by the City or any of its agents;

3. Sign and post notice in the form attached at all locations at which any affected unit employees work in places ordinarily used to post notices of information to such unit employees.

DATED: April 27, 1993
Albany, New York

Pauline R. Kinsella, Chairperson

Walter L. Eisenberg, Member

Eric J. Schmertz, 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 City of Schenectady in the bargaining unit represented by the Schenectady Police Benevolent Association that the City:

1. Will immediately rescind and cease enforcement or implementation of the "Residency Affidavit" as to unit employees;

2. Will immediately remove and destroy all reports or other documents submitted by unit employees or generated by the City or its agents pursuant to its requirement that they complete, sign and return to the City the "Residency Affidavit" from any files kept or maintained by the City or any of its agents;

CITY OF SCHENECTADY . . . . . .

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.

2H- 4/27/93

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

VERNON G. DICKTEN, SR.,

Petitioner,

-and- CASE NO. C-4023

GREENWOOD LAKE UNION FREE SCHOOL DISTRICT,

Employer,

-and-

LOCAL 807, INTERNATIONAL BROTHERHOOD OF TEAMSTERS,

Intervenor.

VERNON G. DICKTEN, SR., pro se

JOHN M. CANZONERI, for Employer

ROBERT RABBITT, for Intervenor

BOARD ORDER

On March 24, 1993, the Director of Public Employment Practices and Representation issued a decision in the above matter finding that the petition filed by Vernon G. Dickten, Sr., (petitioner) to decertify Local 807, International Brotherhood of Teamsters as negotiating representative for certain of its employees should be granted for lack of opposition.[1/] No exceptions have been filed to the decision.

1/ 26 PERB ¶4020 (1993).

IT IS THEREFORE ORDERED that Local 807, International Brotherhood of Teamsters be, and it hereby is, decertified as the negotiating representative of the following unit of employees of the employer:

Included: All bus drivers.

Excluded: All other employees.

DATED: April 27, 1993
Albany, New York

Pauline R. Kinsella, Chairperson

Walter L. Eisenberg, Member

Eric J. Schmertz, Member

3A- 4/27/93

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

NEW YORK STATE INSPECTION, SECURITY AND LAW ENFORCEMENT EMPLOYEES, DISTRICT COUNCIL 82, AFSCME, AFL-CIO,

Petitioner,

-and-

CASE NO. C-3991

COUNTY OF SCHENECTADY AND SCHENECTADY COUNTY SHERIFF,

Employer,

-and-

SCHENECTADY COUNTY SHERIFFS' BENEVOLENT ASSOCIATION,

Intervenor.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

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

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

IT IS HEREBY CERTIFIED that the Schenectady County Sheriffs' Benevolent Association 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: Principal Typist, Senior Typist, Cook, Civil Enforcement Officer, Patrol Officer, Physician's Assistant, Correction Sergeant, Correction Lieutenant, Senior Account Clerk Typist, Typist, Correction Officer, Dispatcher Sheriff, Dispatcher Sergeant, Patrol Lieutenant.

Excluded: All other employees.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Schenectady County Sheriffs' Benevolent Association. 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 27, 1993
Albany, New York

Pauline R. Kinsella, Chairperson

Walter L. Eisenberg, Member

Eric J. Schmertz, Member

3B- 4/27/93

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

SCHOOL ALLIANCE OF SUBSTITUTES IN EDUCATION, NEW YORK STATE UNITED TEACHERS, AFT, AFL-CIO,

Petitioner,

-and-

CASE NO. C-4053

SCOTIA-GLENVILLE CENTRAL SCHOOL DSITRICT,

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 School Alliance of Substitutes in Education, New York State United Teachers, 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 per diem substitute teachers, including long-term itinerant substitute teachers.

Excluded: All other employees of the District.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the School Alliance of Substitutes in Education, New York State United Teachers, AFT, 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 27, 1993
Albany, New York

Pauline R. Kinsella, Chairperson

Walter L. Eisenberg, Member

Eric J. Schmertz, Member

3C- 4/27/93

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

UNITED PUBLIC SERVICE EMPLOYEES UNION LOCAL 424, A DIVISION OF UNITED INDUSTRY WORKERS DISTRICT COUNCIL 424,

Petitioner,

-and-

CASE NO. C-4059

COUNTY OF ROCKLAND,

Employer,

-and-

LOCAL 823, NEW YORK COUNCIL 66, 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 Public Service Employees Union, Local 424, A Division of United Industry Workers District Council 424 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: Employees of the Division of Construction and Maintenance of the Rockland County Highway Department in the following titles: Laborer I, Laborer II, Motor Equipment Operator I, Assistant Automotive Mechanic, Assistant Building Maintenance Mechanic, Highway Maintenance Mechanic, Motor Equipment Operator II, Storekeeper (Highway), Automotive Mechanic, Motor Equipment Operator III, Road Inspector, Skilled Laborer, Yard Supervisor, Highway Maintenance Supervisor I, and Shop Supervisor.

Excluded: Highway Maintenance Supervisor II, Highway Maintenance Supervisor III, and all other employees of the Rockland County Highway Department.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the United Public Service Employees Union, Local 424, A Division of United Industry Workers District Council 424. 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 27, 1993
Albany, New York

Pauline R. Kinsella, Chairperson

Walter L. Eisenberg, Member

Eric J. Schmertz, Member