STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

HAMMONDSPORT NON-TEACHING PERSONNEL ORGANIZATION,

Charging Party,

-and-

CASE NO. U-16343

HAMMONDSPORT CENTRAL SCHOOL DISTRICT,

Respondent.

JANET AXELROD, GENERAL COUNSEL, for Charging Party

BRENT D. COOLEY, ESQ., for Respondent

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by the Hammondsport Central School District (District) to a decision of an Administrative Law Judge (ALJ) finding, pursuant to an improper practice charge filed by the Hammondsport Non-Teaching Personnel Organization (Organization), that the District had violated §209-a.1(a) of the Public Employees' Fair Employment Act (Act) when it refused to deduct membership dues from long-term substitutes, when it provided a higher salary and level of benefits to one long-term substitute while denying them to another and by ordering the Organization to refrain from soliciting the long-term substitutes for membership in the Organization.

The ALJ found that long-term substitute bus driver/mechanics and cleaners were covered by the recognition clause of the

District-Organization collective bargaining agreement, that the District had provided contractual benefits to the long-term substitute bus driver/mechanic, Steve Pilgrim, and not to Kristine Akers, a long-term substitute cleaner, and that the District's Superintendent of Schools, Bruce Inglis, had instructed the Organization's president to "cease and desist the solicitation for payment of union dues from substitute workers".

The District excepts to the ALJ's decision, arguing that the ALJ erred in interpreting the collective bargaining agreement as covering long-term substitutes and in finding that the District discriminated against Akers by providing Pilgrim with contractual benefits which it denied to Akers. The District has not excepted to the ALJ's determination that the District violated the Act when it directed the Organization to stop soliciting membership dues from long-term substitute employees. The Organization supports the ALJ's decision.

Based upon a review of the record and consideration of the parties' arguments, we affirm the ALJ's decision in part, and reverse it in part.

The ALJ decided that the District violated §209-a.1(a) of the Act by providing benefits to Pilgrim while denying them to Akers. This aspect of the charge must be dismissed whether or not long-term substitutes are included within the Organization's bargaining unit. If long-term substitutes are unrepresented employees, the District is free to set their salaries and benefit levels unilaterally and differently, as it is under no obligation

to bargain with the Organization for unrepresented employees. If long-term substitutes are included in the bargaining unit and the District is not providing contractual benefits to Akers as alleged, that is a contract violation, over which PERB has no jurisdiction.[1/] In either event, the charge in this respect must be dismissed.

However, a determination as to whether the District violated the Act by refusing to accept dues deduction authorizations from long-term substitute employees requires us to determine whether or not long-term substitute employees are within the Organization's bargaining unit. The District argues that such a determination requires an interpretation of the parties' contract which is beyond PERB's jurisdiction, relying on the Appellate Division's decision in Onondaga-Cortland-Madison BOCES.[2/] There, the Fourth Department held:

> [A]bsent an allegation that an employer's alleged violation of its agreement with an employee association constitutes an improper employer practice, PERB has no jurisdiction to interpret or enforce the provisions of the agreement.

Onondaga-Cortland-Madison BOCES involved the interpretation of the parties' collective bargaining agreement for the purposes of ascertaining whether the parties' agency shop fee agreement was intended to cover employees who were later added to the

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[1/]Act, §205.5(d).

[2/]198 A.D.2d 824, 26 PERB ¶7015, at 7022 (4th Dep't 1993), motion for leave to appeal denied, 81 N.Y.2d 706 (1993).

bargaining unit pursuant to a consolidation of two BOCES. However, Onondaga-Cortland-Madison BOCES arose in circumstances in which an agency shop fee was simply a mandatory subject of negotiations for local government employees. The Act has since been amended to grant all recognized or certified employee organizations a statutory right to agency shop fees and to mandate the deduction and transmittal of such fees by public employers. Sections 208.1(b) and 208.3(b) of the Act now require that a public employer deduct and transmit membership dues and agency shop fees to the bargaining agent. The right to membership dues deductions here in issue is not a contractual one, but a statutory one which PERB has the exclusive jurisdiction to enforce.

As with many charges alleging that an employer has violated the improper practice provisions of the Act, our first inquiry is and must be whether the employees who have been affected by the employer's actions are represented by the employee organization filing the charge. Here, it is alleged by the Organization that the District has refused its demand to deduct membership dues for long-term substitute employees.[3/] If the long-term substitute employees are not within the Organization's bargaining unit, the District has no statutory obligation to make such deductions.

[3/]Although the charge also alleges that the Organization sought agency shop fee deductions from the long-term substitutes, no refusal by the District to make such deductions was pled and no evidence of such a refusal is in the record. Our decision, therefore, deals only with the District's refusal to deduct membership dues from the long-term substitutes.

If, however, the long-term substitute employees are within the Organization's bargaining unit, the District's failure to make the requested deductions is a per se violation of §209-a.1(a) of the Act.[4/] Therefore, a review of the District-Organization collective bargaining agreement, as well as any relevant established practice with respect to these employees, is necessary and proper.

The ALJ determined that the recognition clause and the listing of bargaining unit positions in the District-Organization collective bargaining agreement provided ample evidence that long-term substitutes are included in the Organization's bargaining unit. The agreement contains definitions of full-time, part-time, temporary and substitute employees and does not exclude specifically any of these classes from coverage except to note that a substitute employee is "a person not in any formal or regular employee/employer relationship with [the] District." Such a casual or short-term employee is, by contract definition, excluded from the Organization's unit.

Here, Pilgrim was appointed to fill a vacancy from July 1, 1994 to June 30, 1995. Akers was hired to fill a vacancy which lasted from November 1993 to June 1994. Both are long-term substitute employees with a formal or regular relationship with the District. Certainly, as the ALJ found, neither Pilgrim nor

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[4/] City of Troy, 28 PERB ¶¶3027 and 3035 (1995). A refusal to make agency shop fee deductions for unit employees would likewise be violative of the Act.

Akers fits the contractual definition of the substitute or casual employee because both worked for the District on a full-time basis over a continuous period of several months. In fact, Pilgrim also received benefits pursuant to the collective bargaining agreement. By its agreement with the Organization and by its treatment of Pilgrim, the District has recognized that long-term substitute employees are in the unit represented by the Organization. Therefore, the District violated §209-a.1(a) of the Act when it refused the Organization's request to deduct membership dues for these long-term substitute employees who are within the Organization's bargaining unit.

The District's exception to the ALJ's finding that it violated the Act by providing contractual benefits to Pilgrim while failing to provide them to Akers is granted because, as we have held, we have no jurisdiction over an alleged contract violation. The ALJ's decision is reversed in this regard and that aspect of the charge is dismissed. In all other respects, the District's exceptions are denied and the ALJ's decision is affirmed.

IT IS, THEREFORE, ORDERED that the District:

1. Rescind and cease enforcement of Superintendent Inglis' letter of October 13, 1994, which directed the Organization to cease and desist from soliciting the membership of long-term substitute employees.

2. Cease and desist from refusing to deduct membership dues from long-term substitutes pursuant to dues deduction authorizations signed by individual employees.

3. Sign and post the attached notice at all locations normally used by it to post notices of information to employees in the Organization's unit.

DATED: October 23, 1996
Albany, New York

Pauline R. Kinsella, Chairperson

Eric J. Schmertz, Member

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 Hammondsport Non-Teaching Personnel Organization that the Hammondsport Central School District will:

1. Rescind and cease enforcement of Superintendent Inglis' letter of October 13, 1994, which directed the Organization to cease and desist from soliciting the membership of long-term substitute employees.

2. Not refuse to deduct membership dues from long-term substitutes pursuant to dues deduction authorizations signed by individual employees.

Dated . . . . . .

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

HAMMONDSPORT CENTRAL SCHOOL DISTRICT

. . . . . .

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

GENESEE VALLEY BOCES SCHOOL RELATED PERSONNEL ASSOCIATION,

Charging Party,

-and-

CASE NO. U-17119

GENESEE-LIVINGSTON-STEUBEN-WYOMING BOCES,

Respondent.

JAMES R. SANDNER, ESQ. (IVOR R. MOSKOWITZ of counsel), for Charging Party

HARRIS BEACH & WILCOX (JAMES A. SPITZ, JR. of counsel), for Respondent

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by both the Genesee-Livingston-Steuben-Wyoming BOCES (BOCES) and the Genesee Valley BOCES School Related Personnel Association (Association) to a decision by an Administrative Law Judge (ALJ).

The Association alleges in its charge that BOCES violated §209-a.1(a), (c), (d) and (e) of the Public Employees' Fair Employment Act (Act) when it unilaterally adopted a new set of employment conditions for certain of its employees, including a reduction in health care benefits and the elimination of both salary increments and a paid lunch period.

BOCES was created by order of the Commissioner of Education (Commissioner), effective February 1, 1994, as a result of a merger of two former BOCES, the Genesee-Wyoming BOCES (GW BOCES)

and the Livingston-Steuben-Wyoming BOCES (LSW BOCES). At GW BOCES, there was a unit of teacher aides, teacher assistants and noninstructional personnel represented by the GW BOCES School Related Personnel Association, which had a contract with GW BOCES through June 1995.

As relevant to this case, there were three units at LSW BOCES:

1. A teacher aide unit represented by the Teacher Aides Association.
2. A unit of teaching assistants and certified occupational therapy assistants represented by the Teachers Association.
3. A noninstructional unit represented by the LSW BOCES Noninstructional Support Staff.

The three units at LSW BOCES were covered by contracts which expired in June 1994.

By letter to the BOCES Superintendent dated January 27, 1994, the Commissioner instructed BOCES that the existing contracts at GW BOCES and LSW BOCES were to remain in effect for each bargaining unit and that negotiations for new contracts were to begin upon expiration of those contracts.

The Association filed a representation petition on March 9, 1994, seeking to represent BOCES' noninstructional personnel. Pursuant to that petition, the Director, in late March 1995,[1/]

[1/]Genesee-Livingston-Steuben-Wyoming BOCES, 28 PERB ¶4021 (1995).

found two negotiating units to be most appropriate. One unit included the titles of teacher assistant, nurse, certified occupational therapy assistant and certified physical therapy assistant. The second unit included a number of other blue-collar and white-collar noninstructional personnel. The Association won an election in these units on June 28, 1995, and it was certified as the bargaining agent for each unit on July 20, 1995.[2/] The changes in employment conditions in issue under this charge were made during the pendency of that representation petition.

The former employees of GW BOCES who were represented by the GW BOCES School Related Personnel Association, and those former employees of LSW BOCES who were represented by the LSW BOCES Noninstructional Support Staff, participated in the Genesee Area Health Care Plan (Plan). After the merger, BOCES continued the employees' participation in that Plan. In January 1995, physicians' surgery charges were for the first time made subject to the Plan's major medical deduction. In March 1995, before the Director's decision on the representation petition filed a year earlier, these same employees were notified that an increased prescription drug co-pay would be implemented in July 1995 as would a change in major medical coverage. An inflationary escalator on both prescription and major medical coverages was also added effective in July.

[2/]28 PERB ¶3000.28 (1995).

On June 20, 1995, BOCES eliminated a paid lunch period for those former employees of LSW BOCES who had been represented by the LSW BOCES Teacher Aides Association and it also eliminated longevity increments for those former employees of GW BOCES who had been represented by the GW BOCES School Related Personnel Association.

Except as to the changes in health care benefits, the ALJ held that BOCES violated §209-a.1(a) and (c) of the Act on a per se basis by unilaterally altering the employment conditions of its employees as those conditions existed on March 9, 1994, when the Association filed its representation petition. The ALJ dismissed the (a) and (c) allegations as to the health care benefits, because the changes in benefits were consistent with the Plan and because the Plan's advisory board, not BOCES, made the changes.

The §209-a.1(d) violation was dismissed by the ALJ on the ground that BOCES had no duty to bargain with the Association until it was certified on July 20, 1995, and the changes in issue were announced and implemented before that date. The §209-a.1(e) violation was dismissed for lack of proof, without further elaboration.

BOCES excepts to the ALJ's finding that it violated §209-a.1(a) and (c) of the Act. BOCES argues that it had the right as a successor employer to establish interim terms and conditions of employment after the Director's uniting determination was issued because that determination changed the

composition of the units previously existing in GW BOCES and LSW BOCES. Given its status as a successor employer under restructured negotiating units, BOCES argues that there could only have been a violation of the Act if there had been actual proof of improper motive or actual interference with the employees' rights under the Act. There being no such evidence, BOCES argues that the ALJ should have dismissed the alleged (a) and (c) violations in all respects.

The Association argues in its exceptions that the ALJ incorrectly dismissed the allegations pertaining to changes in the health care benefits. It argues that the changes made by BOCES varied the terms of the Plan as incorporated and referenced in the collective bargaining agreements between GW BOCES and the GW BOCES School Related Personnel Association and LSW BOCES and the LSW BOCES Noninstructional Support Staff.

Having reviewed the record and considered the parties' arguments, we affirm the ALJ's decision in part and reverse in part.

We affirm the ALJ's dismissal of the §209-a.1(d) allegation. Until it was certified, the Association had no enforceable right under the Act to negotiate with BOCES and BOCES did not have any legal duty to negotiate with the Association. As the changes in issues were made before the Association was certified, BOCES could not have violated its duty to negotiate with the Association by making changes in any of its employees' terms and conditions of employment because it did not have such a duty.

The ALJ dismissed the §209-a.1(e) allegation for lack of proof. We do not consider this aspect of the charge or the ALJ's decision. On the facts of this case, the remedies issued in conjunction with our finding that the changes in employment conditions violated §209-a.1(a) and (c) of the Act mirror any we would issue on a finding that §209-a.1(e) of the Act was violated. A successor employer's obligations, if any, under §209-a.1(e) are issues of first impression which are best addressed in the context of a future case where a determination of those questions is required.

The ALJ found violations of §209-a.1(a) and (c) of the Act regarding certain changes made by BOCES in the employment conditions prevailing as of March 9, 1994 for those of its employees who were subject to the Association's representation petition filed that date. We affirm that determination.

Whether BOCES, as a new entity and successor employer of employees who were previously employed by different legal entities, was entitled to establish new terms and conditions of employment for those employees upon the date BOCES became their employer is a question not before us. From February 1994, when BOCES came into existence, through March 1995, BOCES continued the employment conditions of the former GW BOCES and LSW BOCES employees as those conditions were when those employees were last employed by GW BOCES and LSW BOCES. BOCES emphasizes that it continued the employees' pre-existing employment conditions voluntarily, but it is not material whether it did so

voluntarily, or because of the Commissioner's January 27, 1994 letter of instruction, or for other reasons. Once the Association petitioned to represent BOCES employees, BOCES was required to maintain during the pendency of that representation question the employment conditions of those employees as it had established those conditions, and on and after the Association's certification, any changes in those employees' terms and conditions of employment were subject to a duty to negotiate.

Changes in prevailing employment conditions after a bona fide representation question has been raised violate the Act on a per se basis.[3/] That result is at its most appropriate when, as here, the petition raises an issue of a union's majority status. Such changes in employment conditions inherently chill employees in their protected right to seek representation through an employee organization of their own choosing, influence the employees' choice of bargaining agent, and distort any collective negotiations resulting from the certification of a bargaining agent. The changes BOCES made in its employees' employment conditions gave it a uniform base from which to proceed in future negotiations with the Association. But that very uniformity, and any deviations therefrom, can only be obtained through the negotiation process. To give any employer the legal right to make changes in the employment conditions of its employees during

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[3/] Onondaga-Cortland-Madison BOCES, 25 PERB ¶3044 (1992), rev'd on other grounds, 198 A.D.2d 824, 26 PERB ¶7015 (4th Dep't 1993), motion for leave to appeal denied, 81 N.Y.2d 706 (1993); Hudson Valley Community College, 18 PERB ¶3057 (1985).

the pendency of a representation question and prior to the certification of a bargaining agent would afford that employer an unfair advantage in any negotiations subsequently required. Were we to extend to BOCES the privilege it seeks, the Association, and all other unions presented with unilateral changes in employment conditions after seeking certification, would be forced to bargain for a restoration of employment conditions which were once possessed by the employees who are seeking representation. There is nothing in any of our case law or in any policy of the Act which would warrant such a result.

BOCES argues that the Director's unit determination, coupled with the fact of the merger, privileged the changes it made because that unit determination destroyed the continuity of any former negotiating relationships which might be linked to it as a successor employer. The BOCES argument in this regard, however, misconstrues the basis for the violation as found by the ALJ and affirmed by us. Neither the merger nor the Director's uniting determination has any bearing on the disposition of this aspect of the charge. The (a) and (c) violations are not premised upon any contract theory, upon any notion of assumption of contract, any theory that BOCES was bound contractually by the agreements negotiated by GW BOCES or LSW BOCES, or any preexisting relationships involving the employees now represented by the Association which have ceased to exist since the merger. BOCES came into existence in February of 1994. It then became an employer of employees, including persons who were once employed

by GW BOCES and LSW BOCES. BOCES established as of February 1, 1994, the terms and conditions of employment of those employees. In March of 1994, a petition was filed by the Association seeking to become the negotiating agent for the BOCES' employees. In March of 1995, the Director made a unit determination pursuant to that petition which did not dispose of all of the questions concerning representation. Still to be decided after the Director's uniting determination was the Association's majority status, determined by election in June 1995, and its certification, which occurred on July 20, 1995. During the pendency of that representation petition, and more than one year after the establishment by BOCES of its employees' working conditions, BOCES changed the employment conditions of certain employees from what those employment conditions had been as of the date the Association's petition was filed. The critical point in our analysis is that BOCES, for whatever its reasons, itself fixed the employment conditions of its own employees. Having fixed those employment conditions, different though they were in some respects, BOCES was not permitted to change those conditions once the representation question was raised. Vis-a-vis its own employees, BOCES is identically situated to all other public employers and its rights and duties regarding changes in the employment conditions of its employees are no greater or

lesser than those of any other public employer.[4/] The employment status quo BOCES is obligated to maintain during the pendency of the representation question raised by the Association's petition is simply the one it created for itself on and after February 1, 1994, when it became the employer of those former employees of GW BOCES and LSW BOCES.

This brings us to the question of whether BOCES changed the health care benefits of certain of its employees. The ALJ found that the changes in benefits which were made did not violate the Act because those changes were consistent with the employees' health care plan. In dismissing this aspect of the charge, the ALJ relied upon the Board's decision in Unatego Central School District[5/] (hereafter Unatego). In Unatego, the employer discontinued the "Statewide Plan" and the "Group Health Insurance Option" for certain of its employees and substituted the "Empire Plan". Reversing the ALJ, who had found a violation of the Act, the Board concluded in Unatego, on the facts of that case, that the term and condition of employment of the unit employees was simply participation in the State Employees Health Insurance Plan. As the Empire Plan was offered under the State Employees Health Insurance Plan, the Board concluded that the employer had

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[4/]Given the basis for our decision, County of Clinton, 19 PERB ¶3048 (1986), reversed sub nom. Evangelisto v. Newman, 19 PERB ¶7021 (Sup. Ct. Albany County 1986), is entirely inapposite.

[5/]20 PERB ¶3004 (1987), conf'd, 134 A.D.2d 62, 21 PERB ¶7002 (3d Dep't 1987), motion for leave to appeal denied, 71 N.Y.2d 805, 21 PERB ¶7010 (1988).

not unilaterally changed the employees' terms and conditions of employment, even though the benefits and coverages under the Empire Plan were different from the benefits and coverages the employees had under either the Statewide Plan or the Group Health Insurance Option.

Unatego is strictly a fact-based decision. Nothing in Unatego stands for the proposition that the relevant term and condition of employment is, as a matter of law, the identity of the health care provider, not the benefits and coverages extended to the employees under a given health care plan. The relevant question in this case, just as it was in Unatego, is whether the term and condition of employment is benefits and coverages of particular types and levels or whether it is health insurance generally under a plan, with whatever changes in benefits or coverages may be made by the carrier or plan administrator at any given time.

The health insurance for the noninstructional employees who were formerly employed by the GW BOCES was provided under contract. That contract stated in relevant part as follows: "The current coverage is the Genesee Area Health Care Plan presently applied to the Genesee-Wyoming BOCES. This plan shall hence forth be considered the base standard." It was this benefit that BOCES continued for those former employees of GW BOCES after BOCES became their employer.

The contract for health insurance for the noninstructional employees who were formerly employed by the LSW BOCES in the unit

represented by the LSW BOCES Noninstructional Support Staff calls for a fully-paid "medical plan (now the Genesee Area Health Care Plan)" for full-time employees. As with the former employees of GW BOCES, it was this benefit which the BOCES continued for the former employees of LSW BOCES after it became their employer.

The ALJ held that the changes in health care benefits did not represent a change in the employees' terms and conditions of employment. There appear to be two distinct bases for the ALJ's holding. First, the citation to Unatego evidences clearly that the ALJ held that the employees' benefit was simply the Plan, with whatever benefits and coverages were offered at any date. The ALJ concluded that since BOCES continued to participate in that Plan, its employees' terms and conditions of employment were not changed, even though the benefits the Plan offered to them were changed. Second, the ALJ appears to have held that BOCES could not have violated the Act in this regard because the changes in the Plan were not made by BOCES, but by an advisory board of the Plan over whom the BOCES has no control. We consider each basis for the ALJ's decision in this respect separately.

As to the former employees of GW BOCES, we agree with the Association that Unatego is not controlling. The contract language defining their health insurance benefit reasonably evidences that they bargained for and obtained not simply participation in the Plan, but participation at a particular type and level of benefits and coverages. The language refers to

"current coverage" under the Plan as "presently applied", which becomes the "base standard" for the former employees of GW BOCES. The quoted words and phrases reasonably establish that the employees bargained for not only a health care provider, i.e., the Plan, but also for a minimum level of benefits existing as of the date the contract was reached. It was that benefit which BOCES extended to the former employees of GW BOCES after it became their employer. In Unatego, there was no similar evidence and what evidence there was regarding health insurance was restricted to the provider, not the benefit type or level. Although there have been periodic uncontested changes in this Plan over time, the ALJ found that the 1995 changes in issue here marked the first time benefits were reduced. Therefore, the past changes which improved benefits or clarified existing benefits do not establish that the former GW BOCES' employees' term and condition of employment was simply the Plan itself and whatever type and level of benefits its governing body decided would be made available to employees.

It is unclear to us whether the Association takes exception to the dismissal of the health care allegations pertaining to the former noninstructional employees of LSW BOCES. The exceptions refer generally to both the former employees of GW BOCES and LSW BOCES, but the supporting brief addresses only the former group. To whatever extent the exceptions are intended to cover the former employees of LSW BOCES, we affirm the ALJ's dismissal of the allegations regarding changes in their health care benefits.

Unlike the language in the contract covering the noninstructional employees of GW BOCES, the language in the contract covering the former employees of LSW BOCES is not reasonably susceptible to a conclusion that they had negotiated a type and level of health care benefits as of a certain date. The contractual language simply identifying the Plan as their medical benefit, without more, evidences only that their health care benefit was the Plan, with whatever benefits and coverages the Plan's administrators made available to them at any given date.

Our conclusion that the former noninstructional employees of GW BOCES had a guaranteed minimum level of health care coverages and benefits necessitates a consideration of the second basis for the ALJ's decision. Even were we to assume BOCES lacks control over Plan determinations, that fact would be immaterial to our conclusion. The employees' term and condition of employment in relevant respect is a minimum type and level of health care coverages and benefits. Once that type and level of benefit became unavailable under the Plan as a result of decisions made by the Plan's advisory board, BOCES was required to provide those of its noninstructional employees who were formerly employed by GW BOCES and represented by GW BOCES School Related Personnel Association that type and level of benefit through other means.

For the reasons and to the extent set forth above, BOCES' exceptions are denied, the Association's exceptions are granted in part and otherwise denied. The ALJ's decision is affirmed except insofar as the ALJ dismissed the §209-a.1(a) and (c)

allegations pertaining to changes in health care benefits for the former noninstructional employees of GW BOCES who were represented by the GW BOCES School Related Personnel Association, as to which the ALJ's decision is reversed.

IT IS, THEREFORE, ORDERED that BOCES:

1. Immediately restore for those of its employees who were the subject of the certification petition filed by the Association the employment conditions which were in effect for them on March 9, 1994.
2. Make employees in the Association's unit whole for any wages and benefits lost by reason of any changes in their employment conditions after March 9, 1994, with interest at the currently prevailing maximum legal rate.
3. Sign and post notice in the form attached at all locations ordinarily used to post notices of information to employees in the unit represented by the Association.

DATED: October 23, 1996
Albany, New York

Pauline R. Kinsella, Chairperson

Eric J. Schmertz, Member

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 Genesee Valley BOCES School Related Personnel Association (Association) that the Genesee-Livingston-Steuben-Wyoming BOCES will:

1. Immediately restore for those of its employees who were the subject of the certification petition filed by the Association the employment conditions which were in effect for them on March 9, 1994.

2. Make employees in the Association's unit whole for any wages and benefits lost by reason of any changes in their employment conditions after March 9, 1994, with interest at the currently prevailing maximum legal rate.

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

GENESEE-LIVINGSTON-STEUBEN-WYOMING BOCES

. . . . . .

T 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

GRADUATE STUDENT EMPLOYEES' UNION/ COMMUNICATION WORKERS OF AMERICA, LOCAL #1188,

Charging Party,

-and-

CASE NO. U-17302

STATE OF NEW YORK (SUNY AT BUFFALO),

Respondent.

HENNER & ASSOCIATES (PETER HENNER of counsel), for Charging Party

WALTER J. PELLEGRINI, GENERAL COUNSEL (MAUREEN SEIDEL of counsel), for Respondent

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by the Graduate Student Employees' Union/Communication Workers of America, Local #1188 (GSEU) to a decision by an Administrative Law Judge (ALJ). GSEU filed a charge against the State of New York (SUNY at Buffalo) (State) alleging that the State violated §209-a.1(d) of the Public Employees' Fair Employment Act (Act) when it appointed two nonunit student assistants (SAs) to computer lab assistant positions in the School of Information and Library Sciences (SILS) which had been filled during the 1994-95 academic year by GSEU unit graduate assistants (GAs).

After GSEU had ended its direct case at the hearing, the State moved to dismiss the charge on the ground that GSEU's unit did not have exclusivity over the work in issue. The ALJ

reserved decision on that motion. The State then called one witness in support of its case. After the record was closed, the ALJ dismissed the charge "based on the full record" because GSEU's unit did not have exclusivity over the work done by SILS computer lab assistants. The ALJ found that GSEU's unit employees lacked exclusivity over the work at issue because Jill Ortner, the SILS computing coordinator, who is in a unit represented by the United University Professions (UUP), did the same work as the SILS computer lab assistants for approximately 40% of her work week. As a separate basis for dismissal, the ALJ concluded that, even if only GAs had done the work of a SILS computer lab assistant, their appointment for only nine months during a single academic year was not a period of time sufficient to establish exclusivity.

GSEU argues in its exceptions that the ALJ erred factually and legally in holding that its unit did not have exclusivity over the work of a SILS computer lab assistant. It argues that its unit employees have been doing SILS lab assistant work since at least August 1993, long enough to establish exclusivity, but that the one, nine-month appointment during the 1994-95 academic year is nonetheless sufficient for that purpose. Ortner's work in assisting students in the computer labs is alleged by GSEU to have been occasional only, or merely incidental to her status as the GAs' supervisor or to her other duties, and did not breach the exclusivity over unit work it defines as "providing direct assistance to students". It argues, moreover, that there is

separate significance to the fact that the same two individuals who held the appointment as GAs were the ones who were appointed as SAs at less pay and with fewer benefits.[1/]

The State argues in response that the ALJ's decision is factually and legally correct and that any evidence supporting GSEU's claim that GAs held the position other than during the 1994-95 academic year cannot be considered because it was introduced into the record after the end of GSEU's direct case.

Having reviewed the record and considered the parties' arguments, we affirm the ALJ's decision.

GSEU appears to have incorporated in its exceptions its argument at the hearing that the State could properly have transferred the work in issue to SAs only if the SAs had done that work previously. If, however, GSEU's unit did not have exclusivity over SILS computer lab assistant work, the State could transfer that work out of GSEU's unit for performance by others without violating any duty to negotiate with GSEU, whether or not the persons to whom the work was transferred had ever done that work before. It is the absence of exclusivity over the work which would allow the State to transfer the work from GSEU's unit, not the identity of the persons to whom that work is transferred. Thus, the fact that the same two individuals who were GAs later accepted appointments as SAs is not material. It

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[1/]As GAs, the two individuals received a $6,700.00 stipend, health insurance benefits, a parking fee waiver and a tuition waiver for nine credit hours. As SAs, they were paid $5.00 per hour worked and were given the same tuition waiver.

is the fact that the SILS computer lab assistant work was transferred to persons outside of GSEU's unit which is central to its charge, not the identity of those nonunit personnel.

Of no greater significance is the fact that the work done by the SAs is substantially the same as that done by them when they were GAs. Although GSEU must establish a substantial similarity of the work before and after its transfer, such similarity does not establish exclusivity over the work in issue. Exclusivity and similarity of work are separate issues in a transfer of unit work case.

With the foregoing discussion, it is clear that the issue before us, as the ALJ correctly recognized, is whether GSEU's unit has exclusivity over the work of a SILS computer lab assistant. On that issue, our decision in City of Batavia[2/] (hereafter Batavia) is dispositive. In Batavia, as here, nonunit personnel, including the unit employees' supervisor, did many of the same jobs at an ice arena as the unit employees. As the relevant job duties were shared by both unit and nonunit employees, we held that the unit represented by the charging party union did not have exclusivity over the duties in issue. Therefore, the employer's unilateral subcontract of the ice arena's operations to a private contractor did not violate the employer's duty to negotiate.

[2/]28 PERB ¶3076 (1995).

This case is not distinguishable from Batavia. The GAs in the SILS computer labs had a variety of responsibilities. Their primary responsibility was to assist students with their computer use, but they also did some teaching, they proctored examinations, copied papers, assisted faculty by developing answers to students' assignments and they did some equipment troubleshooting and repair. Just as the GAs' job had several different aspects, so, too, does Ortner's. Ortner was the GAs' supervisor and, as she put it in her testimony, she does "all of the things they [GAs] do, and other things". Given that Ortner has "other things" to do, she spends less time directly assisting students than did the GAs. But, as the ALJ found, Ortner spends a substantial portion of her time on a regular basis doing the tasks which comprise the position of SILS computer lab assistant. These duties are discrete aspects of Ortner's job, not duties done merely from time to time as some incidental part of her supervisory status or her other duties.

Regardless of whether GAs have been appointed as SILS computer lab assistants since 1991, 1993,[3/] or for the one academic year only, the record does not show that GSEU's unit ever acquired exclusivity over the work in issue because there was a commingling of duties between unit members and a nonunit supervisor.

[3/] In view of our conclusion, it is unnecessary for us to decide whether evidence concerning the appointment of GAs to this or similar positions in any years before 1994-95 is properly considered.

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

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

DATED: October 23, 1996
Albany, New York

Pauline R. Kinsella, Chairperson

Eric J. Schmertz, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

CLINTON COMMUNITY COLLEGE FACULTY ASSOCIATION,

Charging Party,

-and-

CASE NO. U-17154

CLINTON COMMUNITY COLLEGE,

Respondent.

GLEASON, DUNN, WALSH & O'SHEA (RONALD G. DUNN of counsel), for Charging Party

WYSSLING & MONTGOMERY (RICHARD H. WYSSLING of counsel), for Respondent

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by the Clinton Community College Faculty Association (Association) to that portion of the decision by the Administrative Law Judge (ALJ) which dismissed its charge that the Clinton Community College (College) had violated §209-a.1(a) and (d) of the Public Employees' Fair Employment Act (Act) when it unilaterally transferred the duties formerly performed exclusively by the unit

position of College Entry Program (CEP) Coordinator to nonunit personnel.[1/]

The ALJ found that the College had not violated the Act when it transferred the CEP Coordinator's duties to nonunit personnel because the duties performed by the CEP Coordinator were not exclusive to the unit represented by the Association. The Association excepts to this conclusion of the ALJ, arguing that the duties related to the CEP program were exclusive bargaining unit work by virtue of the identity of the students participating in the CEP program. The College supports the ALJ's dismissal of this aspect of the charge.[2/]

Based upon a review of the record and consideration of the parties' arguments, we reverse the ALJ's decision as it relates to the CEP program.

[1/]The charge also alleged that the College had unilaterally transferred to nonunit employees the duties of Individual Studies Coordinator, including learning assessment duties, which were also performed exclusively by the employee who held the title of CEP Coordinator. The College admitted at the hearing that nonunit employees were now performing duties comprising one hour per semester in the CEP program, the duties of the Individual Studies Coordinator, and the duties of the Learning Assessment Coordinator, which had been exclusively performed by the CEP Coordinator. The ALJ found a violation of §209-a.1(d) of the Act by the College in transferring those duties. No exception has been taken to that part of the ALJ's decision.

[2/]No exceptions were filed to the ALJ's dismissal of the alleged §209-a.1(a) violation.

The College's CEP program,[3/] instituted in the late 1980's, was initially designed for persons associated with the Plattsburgh Air Force Base (Base). The CEP office was, in fact, located at the Base. Thereafter, and at all times relevant to this charge, the program was made available to any interested individual, regardless of his or her association with the Base, although the program was still conducted at the Base. Carl Chilson was the CEP Coordinator from the inception of the CEP program until February 23, 1995, when Chilson was notified by the College that his position was to be eliminated on August 31, 1995, due to the imminent closing of the Base.[4/] Thereafter, the College, which continued the CEP program from its campus, notified Chilson that his CEP duties were being redistributed to other College personnel. The College's Dean of Continuing Education and Associate Dean of Enrollment Management, both nonunit employees, have since performed the duties previously performed by Chilson.

[3/]CEP is a program that introduces nontraditional students to college. It targets both older students and recent high school graduates who do not look upon college as an option. It is a 45-day program in which the students take four interrelated courses in Critical Reading, English Composition, Oral Communications, and Introductory Algebra, taught to them as a group in a separate classroom. At the end of the course, students participate in graduation from the program and receive a certificate from the College.

[4/]The program was discontinued at its Base location in June 1995. Chilson continued performing tasks related to his other responsibilities out of his office at the College until his employment ceased on August 31, 1995.

The ALJ found that Chilson had performed exclusively all of the duties of administering the CEP program since its inception until the date the duties were transferred to nonunit personnel. Those duties included advertising the CEP program, recruiting students, registering them, helping them complete financial aid applications, scheduling classes, interviewing and recommending for hire the CEP faculty, advising the students while they participated in the program and presiding over the graduation ceremony held at the end of each program. However, because those same functions, albeit in relation to the College's other academic programs, had previously been performed by both unit and nonunit personnel at the College, the ALJ found that the Association had failed to establish that the duties of the CEP Coordinator were exclusive bargaining unit work. We disagree.

We have long held that the creation of a discernible boundary can permit a union to retain exclusivity over work although it would not have had exclusivity without such a boundary.[5/] Here, a discernible boundary has clearly been established by the College itself around the work related to the administration of the CEP program. The record shows that Chilson, from the inception of CEP at the College, has been solely responsible for every facet of the program, except actual instruction. The College created the CEP program as a separate and distinct program and assigned Chilson to administer it. Both

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[5/]See, e.g., Town of West Seneca, 19 PERB ¶3028 (1986).

the students in the CEP program and Chilson were functionally and physically separated from the rest of the College for several years, while the program was operated at the Base. Even now, the CEP program is separate and distinct from the other College programs, in the students attending, the curriculum utilized and even the scheduling of the classes. Under these circumstances, we find that a discernible boundary around the CEP program has been recognized and maintained by the College and that the administration of that program is, therefore, exclusive to the Association's unit.[6/] The College, therefore, violated §209-a.1(d) of the Act when it unilaterally reassigned the duties of the CEP Coordinator to nonunit personnel.

Based on the foregoing, the Association's exceptions are granted and the ALJ's decision is reversed as it relates to the CEP program.

As the College admitted that duties comprising one hour per semester in the CEP program,[7/] the duties of the Individual Studies Coordinator and the duties of the Learning Assessment Coordinator were exclusively bargaining unit work and had been unilaterally transferred to nonunit personnel, the ALJ's finding that the College had violated §209-a.1(d) of the Act, with respect to the transfer of those duties, is affirmed.

[6/]Hudson City Sch. Dist., 24 PERB ¶3039 (1991); City of Rochester, 21 PERB ¶3040 (1988), conf'd, 155 A.D.2d 1003, 22 PERB ¶7035 (4th Dep't 1989).

[7/]The duties were not identified on the record.

IT IS, THEREFORE, ORDERED that the College:

1. Cease and desist from unilaterally transferring the duties of the CEP Coordinator, the duties of the Individual Studies Coordinator and the duties of the Learning Assessment Coordinator to employees who are not in the unit represented by the Association.
2. Restore the above duties to the unit represented by the Association.[8/]
3. Sign and post the notice in the form attached at all locations normally used to post notices of information to employees in the unit represented by the Association.

DATED: October 23, 1996
Albany, New York

Pauline R. Kinsella, Chairperson

Eric J. Schmertz, Member

[8/]Pursuant to an unrelated grievance brought by the Association, an arbitrator ordered that Chilson be reinstated with back pay. The Association, therefore, sought as a remedy only the restoration of the in-issue work to the bargaining unit.

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 Clinton Community College (College) in the unit represented by the Clinton Community College Faculty Association (Association) that the College:

1. **Will not unilaterally transfer the duties of the CEP Coordinator, the duties of the Individual Studies Coordinator and the duties of the Learning Assessment Coordinator to employees who are not in the unit represented by the Association.**

2. **Will restore the above duties to the unit represented by the Association.**

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

CLINTON COMMUNITY COLLEGE

. . . . . .

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

PLAINEDGE FEDERATION OF TEACHERS,

Charging Party,

-and-

CASE NO. U-16836

PLAINEDGE UNION FREE SCHOOL DISTRICT,

Respondent.

SCHLACTER & MAURO (DAVID SCHLACTER of counsel), for Charging Party

INGERMAN, SMITH, GREENBERG, GROSS, RICHMOND, HEIDELBERGER, REICH & SCRICCA (ANNA M. SCRICCA of counsel), for Respondent

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by the Plainedge Union Free School District (District) to a remedial order entered by an Administrative Law Judge (ALJ) in a decision on a charge filed against the District by the Plainedge Federation of Teachers (PFT). PFT's charge alleges that the District violated §209-a.1(a) and (c) of the Public Employees' Fair Employment Act (Act) when an elementary school principal denied a unit employee who is a PFT building representative permission to leave work early to attend a doctor appointment. After a hearing, the ALJ held that the District had violated the Act as alleged. The ALJ found that the principal in issue "had a policy of liberally accommodating teachers' requests to leave early for doctor appointments" and that "he changed his policy" pursuant to a

February 17, 1995 instruction from the Superintendent of Schools that teachers should be made to work an entire day as defined in the applicable collective bargaining agreement. Having found that the Superintendent of Schools issued the instruction because PFT had insisted upon a right under the contract to have teachers paid directly by the District for an overnight field trip, rather than as independent contractors by a BOCES, the ALJ held that the principal's change in leave policy interfered with and discriminated against employees in violation of the Act as alleged.

The District excepts only to that part of the ALJ's remedial order requiring the District to "reinstate the prior policy of liberally allowing teachers permission to leave work early for doctor appointments." The District argues that the order as written is reasonably susceptible to a conclusion that it applies to all of the District's five schools even though the violation alleged and found involved only the actions of one principal in one school. As such, the District argues that the order is not supported by the record and is overly broad.

The PFT has not filed a response.

Having reviewed the record and considered the District's arguments, we conclude that, although the order does not require reversal, modification is needed to conform to our clarification.

The order as written refers to "the prior policy" regarding early release to attend a doctor appointment. The only policy discussed in the ALJ's decision is the early release policy at a

particular school. As an ALJ's order stems from and implements a remedy for the violation alleged and found, we read the ALJ's reference to "the prior policy" to have been intended to apply to that early release policy which existed at the elementary school in issue in this case. To eliminate any uncertainty regarding the meaning of the order as written, we hereby modify paragraph numbered "1" in the ALJ's order to read as follows:

> 1. Reinstate at the Charles E. Schwarting Elementary School the policy regarding early release from work for the purpose of enabling PFT unit employees to attend doctor appointments as that policy existed at that school immediately prior to February 17, 1995.

The notice to be posted pursuant to paragraph numbered "3" of the ALJ's order is modified accordingly, and is attached hereto.

SO ORDERED.

DATED: October 23, 1996
Albany, New York

Pauline R. Kinsella, Chairperson

Eric J. Schmertz, Member

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 Plainedge Federation of Teachers (PFT) that the Plainedge Union Free School District:

1. **Will reinstate at the Charles E. Schwarting Elementary School the policy regarding early release from work for the purpose of enabling PFT unit employees to attend doctor appointments as that policy existed at that school immediately prior to February 17, 1995.**

2. **Will not retaliate against employees in the unit represented by the PFT for the position PFT took regarding the February 1995 Greenkill trip.**

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

Plainedge Union Free School District

. . . . . .

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

ERIE COUNTY SHERIFF'S POLICE BENEVOLENT ASSOCIATION,

Petitioner,

-and-

CASE NO. C-4267

COUNTY OF ERIE and SHERIFF OF ERIE COUNTY,

Joint Employer,

-and-

TEAMSTERS, LOCAL 264,

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 Erie County Sheriff's Police Benevolent Association 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: Full-time employees of the Joint Employer in the following titles: deputy sheriff-criminal; deputy sheriff-criminal (Spanish speaking); deputy sheriff-criminal (Seneca speaking); undercover narcotics deputy; detective deputy; detective deputy arson; technical sergeant; sergeant-criminal; training director; senior detective narcotics; coordinator-domestic violence; lieutenant-criminal; captain-criminal; deputy sheriffs assigned to the "Rath Patrol".

Excluded: All other employees of the Joint Employer.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Erie County Sheriff's Police 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: October 23, 1996
Albany, New York

Pauline R. Kinsella, Chairperson

Eric J. Schmertz, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

TEAMSTERS LOCAL 317, INTERNATIONAL BROTHERHOOD OF TEAMSTERS,

Petitioner,

-and-

CASE NO. C-4524

TOWN OF HORNELLSVILLE,

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 Teamsters Local 317, International Brotherhood of Teamsters, 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 regular full-time and regular part-time motor equipment operators and all other regular full-time and regular part-time employees of the Highway Department who perform or will be expected to perform the same or similar blue-collar work.

Excluded: Clerical, Guards, Supervisory Personnel, Elected Officials and all others otherwise excluded under the Act.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Teamsters Local 317, International Brotherhood of Teamsters. 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: October 23, 1996
Albany, New York

Pauline R. Kinsella, Chairperson

Eric J. Schmertz, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

WASHINGTON COUNTY DEPUTY SHERIFFS' POLICE BENEVOLENT ASSOCIATION,

Petitioner,

-and-

CASE NO. C-4539

WASHINGTON COUNTY and WASHINGTON COUNTY SHERIFF,

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 Washington County Deputy Sheriffs' Police 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: Deputy Sheriff, Deputy Sheriff Sergeant and Senior Civil Officer.

Excluded: All other employees of the Sheriff's Department.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Washington County Deputy Sheriffs' Police 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: October 23, 1996
Albany, New York

Pauline R. Kinsella, Chairperson

Eric J. Schmertz, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

WASHINGTON COUNTY SHERIFF CORRECTION OFFICERS' ASSOCIATION,

Petitioner,

-and-

CASE NO. C-4540

WASHINGTON COUNTY and WASHINGTON COUNTY SHERIFF,

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 Washington County Sheriff Correction Officers' 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: Full-time Correction Officer, Senior Correction Officer, Assistant Corrections Administrator and Correction Officer Sergeant.

Excluded: All other employees of the Sheriff's Department.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Washington County Sheriff Correction Officers' 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: October 23, 1996
Albany, New York

Pauline R. Kinsella, Chairperson

Eric J. Schmertz, Member

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-4548

COUNTY OF HERKIMER,

Employer,

-and-

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

Intervenor.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

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

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

IT IS HEREBY CERTIFIED that the Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO has been designated and selected by a majority of the employees of the above-named public employer, in the 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: See Attachment.

Excluded: See Attachment.

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

DATED: October 23, 1996
Albany, New York

Pauline R. Kinsella, Chairperson

Eric J. Schmertz, Member

Included:

BOARD OF ELECTIONS
Senior Typist

BUILDING DEPARTMENT
Building Maintenance Mechanic
Building Maintenance Worker

COUNTY AUDITOR
Account Clerk

COUNTY CLERK AS REGISTRAR
Motor Vehicle License Clerk
Recording Clerk
Senior Motor Vehicle License Clerk
Senior Telephone Operator
Senior Recording Clerk
Supervisor, Motor Vehicle Bureau

COUNTY HOME
Activity Program Leader
Building Maintenance Worker
Cleaner
Cook
Food Services Helper
Head Cook
Institutional Aide
Laundry Worker
Medical Worker
Senior Institutional Aide

COUNTY TREASURER'S DEPT
Account Clerk-Typist
County Property Agent
Principal Account Clerk
Senior Account Clerk

DATA PROCESSING DEPARTMENT
Computer Operator
Computer Programmer
MicroComputer Specialist

DISTRICT ATTORNEY
Senior Account Clerk
Senior Stenographer

EMPLOYMENT & TRAINING ADMINISTRATION
Employment & Training Coordinator
Employment Specialist
Senior Clerk
Senior Employment Specialist

HIGHWAY DEPARTMENT
Account Clerk-Typist
Principal Account Clerk

MENTAL HEALTH
Account Clerk-Typist
Alcohol Services Program Coordinator
Alcohol Abuse Counselor
Alcohol Abuse Counselor Trainee
Psychiatric Social Worker
Senior Typist
Senior Account Clerk-Typist
Social Work Assistant
Typist

OFFICE FOR AGING
Account Clerk-Typist
Caseworker
Clerk
Typist

PERSONNEL
Personnel Clerk

PHYSICALLY HANDICAPPED
Clerk
Licensed Practical Nurse
Medical Care Coordinator

PROBATION DEPARTMENT
Principal Stenographer
Probation Officer
Senior Probation Officer
Senior Stenographer
Stenographer

Included cont'd:

PUBLIC HEALTH NURSE
Account Clerk
Account Clerk-Typist
Caseworker
Chaplain
Clerk
Coordinator of Volunteer Services
Data Entry Machine Operator (NP)
Home Health Aide
Licensed Practical Nurse
Nurse Coordinator
Outreach Worker
Public Health Nurse
Receptionist
Registered Professional Nurse
Senior Clerk
Social Worker
Social Work Assistant
Typist

PURCHASING DEPARTMENT
Account Clerk-Typist
Offset Printing Machine Operator

REAL PROPERTY TAX SERVICE AGENCY
Account Clerk-Typist
Real Property Tax Service Specialist
Senior Real Property Tax Service Aide
Senior Tax Map Technician
Tax Map Technician

SEWER DISTRICT
Account Clerk-Typist
Assistant Sewage Treatment Plant Operator
Industrial Pre-Treatment Laboratory Technician
Principal Account Clerk
Sewage Treatment Plant Maintenance Mechanic
Sewage Treatment Plant Shift Operator

SHERIFF
Account Clerk
Clerk
Correctional Services Coordinator
Principal Account Clerk
Senior Account Clerk

SOCIAL SERVICES
Account Clerk
Account Clerk- Typist
Building Maintenance Helper
Case Supervisor - Grade B
Casework Aide
Caseworker
Clerk
Homemaker
Community Service Aide
Coordinator of Child Support Enforcement
CPS Senior Caseworker
CPS Caseworker Trainee
CPS Caseworker
Data Entry Machine Operator
Employment and Training Coordinator
Home Energy Assistance Examiner
Microcomputer Specialist
Principal Stenographer
Principal Social Welfare Examiner
Principal Account Clerk
Resource Assistant
Senior Caseworker
Senior Social Welfare Examiner
Senior Data Entry Machine Operator
Senior Clerk
Social Welfare Examiner
Social Services Investigator
Staff Development Coordinator
Staff Development Supervisor
Support Investigator
Typist
Welfare Management Systems Coordinator

Included cont'd:

HC COMMUNITY COLLEGE

Account Clerk
Account Clerk-Typist
Building Maintenance Helper
Campus Security Officer
Carpenter
Clerk
Electrician
Groundskeeper
HVAC Mechanic
Maintenance Supervisor
Plumber
Receptionist
Senior Account Clerk
Senior Typist
Senior Stenographer
Stenographer
Typist

New or Amended Titles

Excluded:

BOARD OF ELECTIONS
Commissioners

BUILDING DEPARTMENT
Building Maintenance Foreperson

CIVIL DEFENSE
Director

CORONERS
Coroner

COUNTY ATTORNEY
County Attorney
Assistant County Attorney
Confidential Secretary to County Attorney

COUNTY AUDITOR
County Auditor

COUNTY CLERK
County Clerk
Deputy County Clerk

COUNTY HOME
Chaplain
County Home Superintendent
Physician

COUNTY LEGISLATURE
Legislator
Legislature Chairperson
Clerk of Legislature
Deputy Clerk of Legislature
County Administrator
Secretary to the County Administrator

COUNTY TREASURER'S DEPT.
County Treasurer
Deputy County Treasurer

COUNTY SEALER
Director of Weights & Measures I

DATA PROCESSING
Director of Data Processing

DISTRICT ATTORNEY
District Attorney
1st Assistant District Attorney
Assistant District Attorney
Secretary to District Attorney

EMPLOYMENT & TRAINING ADMINISTRATION
E&T Director II
Assistant E & T Director II

ETHICS BOARD
Chairperson
Ethics Board Member

FIRE TRAINING
Fire Coordinator

HIGHWAY DEPARTMENT
County Highway Superintendent
All other Highway Personnel

HISTORIAN
Historian

JAIL EMPLOYEES
All Jail Personnel

MENTAL HEALTH
Director of Community Services
Psychologist

OFFICE FOR AGING
Director, Office for the Aging
Nutrition Services Coordinator

PERSONNEL
Personnel Officer
Personnel Assistant

Exeluded cont'd:

PROBATION DEPARTMENT
Probation Director II
Probation Supervisor

PUBLIC HEALTH NURSES
Director of Patient Services
Hospice Program Director
Physical Therapist
Public Health Director
Supervising Public Health Nurse

PUBLIC DEFENDER
Administrator Indigent Defendants

PURCHASING DEPARTMENT
Budget Officer & Purchasing Agent

REAL PROPERTY TAX SERVICE AGENCY
Director of Real Property Tax Service II

SEWER DISTRICT
Attorney
Chief Sewage Treatment Plant Operator
Commissioner
Sewer District Chairperson

SHERIFF
Sheriff
Undersheriff
E911 Coordinator

SOCIAL SERVICES
Commissioner
Director of Social Services
Director of Admin. Services
Head Social Welfare Examiner
Welfare Attorney

STOP DWI
DWI Coordinator

VETERAN'S AGENCY
Director, Veteran's Service Agency

VETERAN'S BURIAL & HEADSTONE
Commissioner
Chairperson
Secretary

YOUTH BUREAU
Executive Director

HC COMMUNITY COLLEGE
All Administrative Personnel
All Faculty Members
Secretary to President
Stenographer (1)
Account Clerk-Typist (1)

New or Amended Title