STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

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

Petitioner,

-and-

CASE NO. CP-409

CITY OF WATERVLIET,

Employer.

NANCY E. HOFFMAN, GENERAL COUNSEL (ROBERT REILLY of counsel), for Petitioner

JAMES F. MONAGHAN, CORPORATION COUNSEL (PETER M. TORNCELLO of counsel), for Employer

BOARD DECISION AND ORDER

The City of Watervliet (City) has filed exceptions to a decision by the Director of Public Employment Practices and Representation (Director) on a unit clarification/placement petition filed by the Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO (CSEA). CSEA alleges in its petition that the newly created title of water systems supervisor either is in its existing unit or, if not, it should be placed in its unit.

After a hearing, the Director dismissed the unit clarification aspect of the petition, but granted the unit placement aspect. In adding the water systems supervisor to CSEA's unit, the Director rejected the City's arguments that CSEA had waived by agreement any right to file this type of petition,

and that the incumbent, James Bulmer, is a managerial employee exempt from coverage under §201.7(a) of the Public Employees' Fair Employment Act (Act).

The City excepts on the grounds that the decision had to be rendered by the Administrative Law Judge who conducted the hearing, that it had not agreed that the title should be added to CSEA's unit if Bulmer was held to be a covered employee, and that Bulmer is managerial because the job description[1/] for his position states that the incumbent represents management and assists the City in collective negotiations.

CSEA has moved to dismiss the exceptions upon the ground, as established by affidavits, that the City did not serve it with the exceptions as required by §201.12(a) of our Rules of Procedure (Rules). The City has not responded to CSEA's motion.

Our Rules require both service of exceptions and the filing of proof of service. According to the evidence before us, the City has done neither. The failure to serve the exceptions in accordance with the requirements of the Rules necessitates dismissal of the exceptions pursuant to CSEA's motion.[2/] As

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[1/]The job description was not offered into evidence at the hearing. As Bulmer had not then had any role in negotiations, the Director concluded that it would not be appropriate to base a managerial determination on speculation about what Bulmer's role might be in future negotiations. Neither the Director's decision nor ours prohibits the City from seeking a managerial designation for Bulmer pursuant to an application filed under §201.10 of the Rules of Procedure based upon new evidence or changed circumstances.

[2/]Catskill Regional Off-Track Betting Corp., 14 PERB ¶3075 (1981) (subsequent history omitted).

timely service is a component of timely filing,[3/] the merits of the exceptions are not properly before us.

For the reasons set forth above, the exceptions must be, and hereby are, dismissed. SO ORDERED.

DATED: April 30, 1997
Albany, New York

Pauline R. Kinsella, Chairperson

Eric J. Schmertz, Member

[3/] Id.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

JAMES H. BRANCH,

Charging Party,

-and- **CASE NO. U-14896**

YONKERS CITY SCHOOL DISTRICT,

Respondent.

JAMES H. BRANCH, pro se

ANDERSON, BANKS, CURRAN & DONOGHUE (SUZANNE JOHNSTOWN and LAWRENCE THOMAS of counsel), for Respondent

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by James H. Branch to a decision of an Administrative Law Judge (ALJ) dismissing his improper practice charge alleging that the Yonkers City School District (District) violated §209-a.1(c) of the Public Employees' Fair Employment Act (Act) when it denied him tenure and thereby terminated his employment. Branch alleges that the District's actions were taken in retaliation for his exercise of rights protected by the Act.

The ALJ found that although Branch became a building representative of the Yonkers Federation of Teachers in September 1992, and was denied tenure and terminated in June 1993, the District's action was not taken because of his assumption of the

union post but because of Branch's deteriorating performance, his increased absences from work, and complaints about him from parents, students and co-workers. The ALJ, therefore, dismissed the charge in its entirety.

Branch's exceptions were filed by mail and were received by us on December 10, 1996. The District has sought dismissal of the exceptions on the ground, inter alia, that Branch did not comply with §204.10(a) of our Rules of Procedure (Rules). That section of the Rules requires that a copy of the exceptions be served upon all parties at the same time as the exceptions are filed and that proof of such service be filed with us. No proof of service of the exceptions on the District was filed simultaneously with the exceptions. In response to our inquiry, Branch asserts that he served the exceptions on the District in accordance with the requirements of the Rules but he has failed to provide proof of service. The District, in its affidavit in opposition to the exceptions, alleges that it was not served with the exceptions by Branch.[1/]

We have consistently applied the service requirements of our Rules strictly when a party to a proceeding has raised an objection to a failure of service, as timely service is a

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[1/]The District was later sent a courtesy copy of the exceptions by the Board's Deputy Chairman and Counsel. This transmission did not satisfy the service requirements of the Rules nor cure the service defect.

component of timely filing.[2/] Branch did not serve the exceptions as required by our Rules, and indeed has no proof of service on the District at all.[3/] As the District has objected to their consideration, the exceptions must be, and hereby are, dismissed. SO ORDERED.

DATED: April 30, 1997
Albany, New York

Pauline R. Kinsella, Chairperson

Eric J. Schmertz, Member

[2/] Catskill Regional Off-Track Betting Corp., 14 PERB ¶3075 (1981). (subsequent history omitted)

[3/] There is no indication on the exceptions Branch filed with PERB that he copied the District. Branch also did not file an affidavit of service with the exceptions when he filed with PERB.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

THOMAS P. HALLEY, ESQ.,

CASE NOS. C-4411 & C-4413

Upon a Complaint of Misconduct Pursuant to the Rules of Procedure of the Public Employment Relations Board.

THOMAS P. HALLEY, ESQ.

FURY & KENNEDY, ESQS. (JOHN K. GRANT of counsel), for Complainant

BOARD DECISION AND ORDER

By letter dated May 1, 1996, Anthony V. Solfaro requested that we investigate alleged misconduct by Thomas P. Halley, Esq., during the processing of the captioned representation petitions. In C-4411, the Putnam Valley Police Benevolent Association, Inc. (PBA) sought to replace the New York State Federation of Police, Inc. (NYS Federation) as the bargaining agent for an existing unit of police officers employed by the Town of Putnam Valley. In C-4413, the New Paltz Police Association (Association) sought to replace the New Paltz Police Department Local, United Federation of Police Officers, Inc. (United Federation) as the bargaining agent for an existing unit of full-time and part-time police dispatchers employed by the Town of New Paltz. Solfaro represented both petitioners; Halley represented both incumbent unions.

At its meeting of June 19, 1996, this Board reviewed Solfaro's request and authorized an investigation into Halley's alleged misconduct. On September 18, 1996, a hearing was held before the Administrative Law Judge (ALJ) assigned to conduct the

investigation. On February 14, 1997, the ALJ issued a report and recommendations. The ALJ concluded that the allegations of misconduct were properly before us for review and that Halley had, as alleged, deliberately engaged in misconduct of an aggravating character for the purpose of delaying the decertification of his clients.[1/]

The parties were invited to respond to the ALJ's report and recommendations and Halley has done so in the form of exceptions. Halley argues that the misconduct complaint is not properly before us for review because Solfaro's letter refers to an inapplicable section of our Rules of Procedure (Rules), because it is time barred, and because his alleged misconduct did not take place at a "hearing". On the merits, Halley argues that his objections to the petition in the Town of New Paltz were made in good faith and that the election in the Town of Putnam Valley proceeded as scheduled despite his alleged misconduct.

Having reviewed the record and considered the parties' arguments, we find that the complaint is properly before us for investigation and that Halley's actions constituted misconduct.

This is the first time the Board has received a formal complaint that a party's representative has engaged in misconduct in conjunction with the processing of cases before the agency. Therefore, this proceeding and Halley's response raise threshold questions regarding our power to investigate and sanction

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[1/]The PBA won the election in C-4411 by a vote of 14 to 1. In C-4413, the Association won the election by a vote of 5 to 1.

misconduct and the meaning of the section of our Rules under which this investigation was conducted.

Part 201 of our Rules governs the filing and processing of representation petitions. Section 201.9(e)(3) of that Part provides as follows:

> Misconduct at any hearing before an administrative law judge, the director or the board shall be grounds for summary exclusion from the hearing. Such misconduct, if of an aggravating character and engaged in by an attorney or other representative of a party, shall be grounds for suspension or disbarment from further practice before the board or its agents after due notice and hearing.

Substantially similar rules apply to other of our proceedings.[2/] Solfaro's complaint refers incorrectly to §203.8 of the Rules. Part 203 of the Rules pertains to proceedings to approve or review the procedures of a mini-PERB established pursuant to §212 of the Public Employees' Fair Employment Act (Act). Solfaro's citation error, however, does not deny us the power to investigate the allegations of misconduct nor did it, as Halley claims, result in a denial of his "due process" rights.

We are empowered to investigate allegations of misconduct whether or not the complainant cites authority for the conduct of an investigation. If Solfaro's letter alleging misconduct by Halley had not cited to any rule, it could not be argued persuasively that we would thereby be rendered powerless to proceed pursuant to the complaint if we concluded that the nature of the

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[2/]Rules, §§202.7(b); 203.8(g)(5)(iii); 204.7(j); 206.6(e)(3); 210.2(c).

allegations warranted investigation. Only if the incorrect citation misled or prejudiced Halley in his defense of the misconduct allegations would there be any merit to his argument. For several reasons, however, there is no valid argument in this regard.

First, the section of the Rules cited by Solfaro is substantively identical to §201.9(e)(3) of the Rules. Second, Halley has been on written notice from the ALJ since at least mid-July 1996 that this investigation was being conducted pursuant to §201.9(e)(3) of the Rules, a statement reiterated by the ALJ at the hearing held on September 18, 1996. Moreover, Halley has been on notice since the complaint was filed as to the exact nature of the several allegations of misconduct being raised against him and he has been afforded several opportunities to respond orally and in writing to those allegations. Accordingly, Halley's due process rights have been fully satisfied.

Halley also argues that we cannot consider the complaint because it was not filed until several months after the alleged misconduct took place. This argument misconstrues both the nature of the alleged misconduct and the purpose of our investigation into it.

The misconduct alleged is not a single or isolated event. The ALJ found it to be a pattern and practice of baseless delaying tactics in several forms, which began soon after the petitions were filed in May 1995 and ran through the filing and clarification of election objections in October and November 1995. The PBA was not

certified in C-4411 until December 27, 1995, and the Association was not certified in C-4413 until January 31, 1996. Solfaro's complaint was dated May 1, 1996.

For good reason, our Rules pertaining to the investigation of misconduct do not contain any time limits for filing complaints. We investigate allegations of misconduct to protect the rights of all persons and parties who appear before us, the statutory provisions pursuant to which they appear, and our own regulatory processes. To establish by decision a specific time limit for the filing of complaints of misconduct would constitute an abandonment of our obligations to the public, the Act and our Rules. Complaints of misconduct should be entertained if they are filed with reasonable expedition so long as there is no prejudice to the party being investigated. Solfaro's complaint was brought to our attention within approximately three months of the date the second of the two petitions was processed to completion, a reasonable period of time under any arguably analogous standard.[3/] More importantly, Halley does not allege any prejudice to his ability to defend himself caused by the timing of the filing of the misconduct complaint. The complaint, therefore, is not time barred on any legal or equitable theory.

Halley's last "jurisdictional" defense is that his alleged misconduct escapes our review because the misconduct did not occur

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[3/]An improper practice charge may be filed within four months of the alleged violation of the Act. Strike charges have no fixed filing period.

at a "hearing". Halley's argument in this regard rests on a mistaken assumption regarding the meaning of the word "hearing" in the rule and the intent in adopting that rule.

Halley's argument assumes that the word "hearing" has but one meaning for all purposes in the administrative context. The assumption is that a hearing can be only a formal, trial-like proceeding at which witnesses are called, examined and cross-examined. Although that is certainly a familiar type of hearing, it is not the only one. As recognized by the United States Supreme Court, the "term 'hearing' in its legal context undoubtedly has a host of meanings."[4/] Particularly in the context of our representation proceedings, which are investigatory in nature, and are often completed without a formal hearing, the term "hearing" includes all of the stages of party involvement upon which a record is developed for the purpose of enabling us to define the appropriate bargaining unit and to determine a union's majority status.[5/] Misconduct occurring at any of the several stages made available to the parties for the presentation of evidence or argument relevant to the disposition of the questions presented to the agency for decision must fall within our power to investigate if the agency is to fulfill its statutory mandates regarding the disposition of representation questions.

[4/]United States v. Florida E. Coast R.R. Co., 410 U.S. 224, 239 (1973).

[5/]Act §207.

This interpretation of our rule is further supported by its language and the absurdity of a contrary interpretation.

As to the former, §201.9(e)(3) of the Rules refers to a "hearing" before the Board and the Director of Public Employment Practices and Representation (Director). The Board does not itself hold trial-like hearings and the Director serves as a presiding officer at a formal hearing only occasionally. The Director is, however, actively involved with the pre-testimonial phases of a representation investigation, as is the Board actively involved with the post-testimonial phases of that investigation through its appellate review functions. The reference in the rule to the Board and the Director, therefore, clearly indicates that the rule was never intended to be restricted to misconduct occurring during a formal, trial-like hearing. Rather, those references plainly evidence an intent to give the word "hearing" a meaning which authorizes the investigation and sanction, as appropriate, of any misconduct which occurs at any point during the agency's gathering of the information upon which its decision will be made.

As to the latter, adoption of Halley's interpretation of the rule would leave even admitted gross misconduct beyond our review and sanction if the party or representative engaged in that misconduct other than at a formal hearing, such as in the presentation of stipulations or offers of proof in lieu of testimony. The rule should not be read in a way to effect such an

objectionable result.[6/] We could not effectively fulfill our statutory duty to resolve representation disputes if we did not also have the power to regulate practice before us at all stages of a proceeding before us. So obvious is this need to regulate practice[7/] that an interpretation producing results wholly at odds with its satisfaction must be rejected as unreasonable and contrary to agency intent.

Halley argues further that we must give the word "hearing" in our rule the narrow reading he gives it because the National Labor Relations Board (NLRB) had given "hearing" in its comparable rule[8/] the interpretation he advances. The argument is entirely unpersuasive.

The issue is not what the NLRB meant by its rule. The issue is what the Board meant when it adopted its rule in 1967. The NLRB's interpretation of its rule is not dispositive of the meaning of our rule and its intent is irrelevant to an assessment of our intent, just as the language of our rule and the intent in adopting it is irrelevant to the NLRB's interpretation of its rule.

[6/]Just as statutes are to be construed to avoid objectionable results, hardship, injustice, mischief, or absurdity, so, too, should an agency's rules. See N.Y. Stat., §§141-53 (McKinneys 1971 & Supp. 1997).

[7/]The power to regulate practice has been described as "organic" to a labor agency's very authority to conduct administrative proceedings. Association of City Employees and City of Jacksonville, 21 FPER ¶26,237 (Fla. Public Employees Relations Comm'n, Order No. 95E-197, 1995).

[8/]As the ALJ noted in her report, the NLRB, in January 1997, adopted final rules making misconduct at any stage of its proceedings grounds for sanction.

Halley's argument might have had some merit if the NLRB's interpretation of its rule had been announced prior to the adoption of our rule. In that circumstance, and to the extent the language of the two rules was comparable, some argument perhaps could have been made that the intent underlying our rule matched that of the NLRB. As the ALJ observed, however, the NLRB's decision announcing that its rule applied only to misconduct occurring at a formal hearing issued many years after our rule was adopted.[9/]

Having rejected Halley's jurisdictional defenses, only the merits of the misconduct allegations remain for discussion. In that regard, Halley takes only a limited exception to the ALJ's findings regarding the merits of the misconduct complaint.

He argues first that he had a valid objection to the unit definition in C-4413. His claim in this respect is that he and the United Federation had a good faith doubt as to whether part-time dispatchers were in the existing unit either because they had no evidence that any part-time dispatchers were employed or, if so, no evidence that they were paying dues to the United Federation.

The ALJ addressed this argument at some length in her report and we adopt her findings and conclusions, which are wholly supported by the record. The record establishes beyond doubt that Halley and the United Federation knew that part-time dispatchers were employed by the Town of New Paltz. In addition to other evidence proving that fact conclusively, the very document Halley

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[9/]H.P. Townsend Mfg. Co., 317 NLRB No. 174, 149 LRRM 1281 (1995).

submitted to the Director to support his contrary claim shows part-time dispatchers employed. Nor is there any doubt that Halley and the United Federation knew that part-time dispatchers were in the existing unit in the Town of New Paltz. Again, in addition to other conclusive evidence, the United Federation's president, Ralph M. Purdy, wrote to the Town of New Paltz on June 27, 1995, demanding that the Town deduct dues on behalf of the Town's part-time dispatchers precisely because they were in its unit. Halley received a copy of that letter. Moreover, Halley knew that the United Federation had for years, pursuant to an arrangement with the Town, collected dues directly from part-time unit employees and he knew or should have known that, since July 1995, pursuant to the United Federation's specific demand, the Town had been taking payroll deductions for the dues and fees of part-time dispatchers.

Notwithstanding Halley's knowledge that part-time dispatchers were employed by the Town of New Paltz and that they were in the United Federation's unit, Halley raised and continued to raise in as many ways as possible a claim that part-time dispatchers were not and never had been in the United Federation's unit. When pressed for factual support for this claim, Halley submitted a single document which we find he knew inaccurately reflected the true state of fact and he knew would mislead the agency personnel to the advantage of his client, at least temporarily.

As to C-4411, Halley had no valid objection whatever to that petition or an election pursuant thereto. Nonetheless, he persisted in linking that case with claims and arguments unique to

C-4413. He thereby caused the rescheduling and delay of the election in C-4411 for no reason, never informing the Director that there was no objection to the unit in C-4411 until after he had filed the election objections in that case, months after the petition was filed.

As there are no exceptions taken to any other of the ALJ's findings regarding other acts of misconduct, and as those findings are completely supported by the record, we affirm and adopt them as our own.

Halley's last argument is that any misconduct he may have committed should not be deemed to be of an "aggravating" character. That is an issue which is relevant under the rule only to suspension or disbarment from practice before the agency. As we are not suspending or disbarring Halley from practice before us, we need not determine whether his misconduct could be considered aggravating within the meaning of the rule. By any standard, however, Halley's misconduct was serious and inappropriate. His actions cannot be characterized and then justified as mere zealous advocacy. Zealous advocacy is appropriate and expected. It does not, however, include nonresponse where response is required, selective disclosure of facts with an intent to mislead and cause delay, or the persistent raising of issues and arguments lacking any good faith basis in law or fact.

We can only conclude from this record that Halley's actions were intended to delay, without any arguable basis in fact or law, the processing of these two petitions to completion to enable his

clients to continue as the bargaining agents for the units for as long as possible. His misconduct compromised the statutory rights of these petitioners and the employees they were seeking to represent, and it has caused this agency to waste time and resources investigating meritless allegations and deciding frivolous issues. We are mindful, however, that this is the first misconduct investigation the Board has had to undertake and, as such, our views regarding the expected conduct of parties and representatives have not found prior written expression in relevant respect. We also note that Halley has not been accused of having engaged in related or other misconduct previously or since. We censure Halley's conduct and warn him that his future misconduct in conjunction with any cases before the agency will warrant harsher disciplinary action, including possible suspension or disbarment from practice before this agency.

DATED: April 30, 1997
Albany, New York

Pauline R. Kinsella, Chairperson

Eric J. Schmertz, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

NEWBURGH FIREFIGHTERS ASSOCIATION, LOCAL 589, IAFF, AFL-CIO,

Charging Party,

-and-

CASE NO. U-14952

CITY OF NEWBURGH,

Respondent.

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

HITSMAN, HOFFMAN & O'REILLY (ALISON C. FAIRBANKS of counsel), for Respondent

BOARD DECISION AND ORDER

This case comes to us on exceptions and cross-exceptions filed by the Newburgh Firefighters Association, Local 589, IAFF, AFL-CIO (Association) and the City of Newburgh (City) to a decision of an Administrative Law Judge (ALJ) dismissing the Association's charge that the City violated §209-a.1(d) of the Public Employees' Fair Employment Act (Act) when it unilaterally imposed a new procedure for financial disclosure on fire fighters receiving General Municipal Law (GML) §207-a benefits from the City.

In March 1986, the Association and the City entered into a collective bargaining agreement for January 1, 1986 through December 31, 1987. They eliminated from that contract and each subsequent contract any reference to a GML §207-a procedure.

Instead, the parties agreed that a new GML §207-a procedure would be incorporated into the rules and regulations of the City's Fire Department. As here relevant, the procedure contains the following provisions:

Section 13

> An individual who is receiving benefits under §207-a shall not engage in outside employment.

Section 18

> (a) The Chief may periodically review cases of members receiving disability benefits for the purpose of determining whether the individual continues to be entitled to disability benefits, and in furtherance thereof may take such action as is appropriate under the law.

Section 21

> Any claim of violation, misapplication, or misinterpretation of the terms of this procedure shall not be subject to review under the contractual grievance arbitration procedure, but shall be subject to review only by judicial proceeding.

The procedure has remained in effect since 1986.

At the hearing, the former president of the Association, Arthur Wilcox, testified that the Association agreed to the new §207-a procedure in exchange for certain contractual concessions and to remove the procedure for dealing with the denial of claims from the parties' contractual grievance procedure. Both Wilcox and John O'Reilly, the City's labor counsel, testified that the previous procedure of utilizing an arbitrator was unwieldy, time-consuming and expensive. As Wilcox noted in his testimony:

> A. Yes. I mean what we were looking for was a procedure that treated all individuals in the 207-a process the same way and that it had due

> process and a realistic way to proceed with things.
>
> Q. Okay. Now --
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> A. And the other thing was that if the procedure didn't work at that point - we set it straight out to John O'Reilly and Chief Barry - we always had court action to challenge or decide whether the law was being followed.

O'Reilly testified that the Association's representatives intended to turn the whole procedure over to the City and that it was the Association's articulated position that the individual fire fighters involved would work through the procedure with the City. Only if there was a dispute that the law was not being followed, would the Association go to court on the unit member's behalf. Wilcox's testimony differed from O'Reilly's in one relevant respect:

> And again, you know, if we weren't happy with the procedure, we still had open the avenue of going to court. If the City went beyond their 207-a powers, we would -- we could go to court. Or if they attempted to get into areas that were mandatory topics of negotiation, we could demand negotiations or end up here on an IP or end up back in court if we weren't happy with the process.

On June 10, 1993, the City Manager sent a letter to a unit employee who had been receiving GML §207-a benefits instructing him to complete an affidavit stating that he had not engaged in outside employment for the last three years and further directing him to provide the City with his tax returns for the three prior years and his spouse's W-2 forms, if they had filed jointly.[1/]

[1/]The City also sent a number of similar letters to fire fighters who had retired pursuant to the disability retirement provisions of GML §207-a.

When the employee did not respond, the City sent him another demand. Subsequently, the employee executed the affidavit regarding outside employment, but he refused to provide the City the tax returns it had demanded. The Association thereafter filed this charge which, as amended, alleges:

> The negotiated procedure contains no provision for the procedures or affidavits referred to in the June 7 and June 24, 1993 letters and the [City's] attempt to include these procedures and affidavits as a part of the previously negotiated procedure constitutes a unilateral change in the §207-a GML procedure as negotiated between the parties and agreed to by the [Association].

In its answer, the City raised as defenses to the charge timeliness, lack of jurisdiction and waiver. The ALJ decided that PERB had jurisdiction over the charge, but he held that §21 constituted a waiver by the Association of any right to file a charge with PERB.

The Association excepts to the ALJ's decision, arguing that the ALJ erred in dismissing the charge because there was no waiver. The City, in its cross-exceptions, argues that the ALJ erred by failing to dismiss the allegations in the charge relating to the letters it sent to retired fire fighters because they are not "public employees" within the meaning of the Act,[2/] by not finding that the City had a managerial right to require financial disclosure, and by not finding that the City bargained in good faith with the Association.

[2/]The Association made clear on the record that the charge did not apply to retired fire fighters, whom it did not consider to be "public employees" within the meaning of the Act.

Based upon our review of the record and our consideration of the parties' arguments, we reverse the decision of the ALJ.

Relying upon our decision in County of Nassau[3/], the ALJ found that PERB had jurisdiction over the charge because the agreed upon procedure did not afford the Association "a reasonably arguable source of right" with respect to the subject of the improper practice charge. However, the ALJ nevertheless went on to determine that the Association was alleging a "violation, misapplication or misinterpretation" of the terms of the negotiated §207-a procedure, thus triggering §21 of the procedures under which the Association had to proceed only in court with its challenges to the City's actions. We agree that the charge is within our jurisdiction, but on different grounds.

The procedure as negotiated by the parties is a comprehensive GML §207-a system which sets forth the rights and obligations of unit members represented by the Association, and the rights and obligations of the City.[4/] Section 18 of that contractual §207-a procedure prohibits the Chief from taking any action in reviewing continuing eligibility to receive benefits which is inappropriate under the law. There being no stated

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[3/]23 PERB ¶3051 (1990).

[4/]The GML §207-a procedure was negotiated by the parties and was placed in the Fire Department's rules and regulations pursuant to agreement. The incorporation of this agreement into the departmental rules and regulations is immaterial to an assessment of our jurisdiction. It is not the form or the location of an agreement which determines our jurisdiction, but whether there is an agreement between the parties which arguably gives a charging party contract rights regarding the actions placed in issue under the improper practice charge.

exceptions, the "law" referenced is reasonably read to include provisions of the Act. This limitation on the Chief's power of review is a grant of a contractual right to the Association. The Chief is prohibited by the agreement of the parties from reviewing GML §207-a eligibility in any manner that violates the law. If, as the Association alleges in this charge, the Chief's new requirements constitute a unilateral change in a mandatorily negotiable subject, he has acted inappropriately under law and, therefore, necessarily in violation of the Association's contractual rights. However, such an action also, and independently, would be in violation of §209-a.1(d) of the Act. The charge, therefore, rests on both an arguable violation of contract and a violation of §209-a.1(d) of the Act.

While §205.5(d) of the Act deprives us of jurisdiction over a violation of a contract "that would not otherwise constitute an improper employer...practice," we maintain jurisdiction when all that is alleged is a violation of the Act.[5/] Even though the alleged action might also constitute a violation of the parties' collective bargaining agreement, if the language of the collective bargaining agreement merely incorporates rights under the Act, we are not divested of jurisdiction pursuant to §205.5(d) of the Act.

The basic purpose of §205.5(d) of the Act is to prevent the interpretation of collective bargaining agreements except as necessary to the performance of our statutory functions. In this

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[5/]City of Saratoga Springs, 18 PERB ¶3009 (1985).

case, the issue does not center on the contractual intent of the parties. As relevant to this proceeding, the contract right in Section 18 is defined entirely by reference to the rights and obligations of the parties under "law", which we have held includes the Act. If the Act has been violated, then the contract has been violated. The issue presented, therefore, is not a matter of contract interpretation. Rather, it centers completely on the meaning of the Act and the application of statutory policy, standards and criteria. Only questions of law within the special competence of this agency are raised by Section 18, not any issue of contract interpretation for resolution in other appropriate forums.

In Saratoga Springs, supra, we held that we had jurisdiction over an alleged §209-a.1(d) violation which asserted a breach of an obligation flowing from the Act, even though the contractual language might have indirectly covered the subject matter of the charge. Saratoga Springs makes apparent, therefore, that there are certain limited circumstances in which there exists an improper refusal to negotiate under §209-a.1(d) of the Act even though the conduct in issue might also breach one or more provisions of an existing collective bargaining agreement. In our opinion, this case offers an even clearer example of the type of contract violation which is within our jurisdiction under §205.5 (d) of the Act.[6/]

[6/]The language of Section 21 precludes us from deferring this charge to the parties' contractual grievance procedure because the parties there specifically removed disputes arising under the §207-a procedure from that grievance procedure.

The ALJ, holding that PERB had jurisdiction, nonetheless dismissed the charge, finding that the Association, by negotiating an alternative forum to litigate disputes over the application of the §207-a procedure, had knowingly and intentionally waived its right to bring an improper practice charge before PERB. We disagree.

The ALJ relied on our decision in Board of Education of the City School District of the City of Buffalo (Buffalo CSD)[7/] and Wilcox's testimony that the Association "always had a court action to challenge or decide whether the law was being followed" to support his decision to dismiss the charge. In Buffalo CSD, the parties had agreed that if the employee organization challenged an action through the contractual grievance procedure, it could not thereafter file an improper practice charge on that action. The employee organization filed a grievance and it subsequently filed an improper practice charge which dealt with the same subject matter as the grievance. We found that the employee organization had waived its right to proceed in more than one forum when it agreed at the bargaining table that an occurrence that had been grieved would not thereafter be the subject of an improper practice charge. We dismissed the charge, stating:

> While it is certainly true that §205.5(d) of the Act confers "exclusive nondelegable jurisdiction" upon PERB for the disposition of improper practice charges, we do not and have not construed this language to mean that parties may not waive rights conferred by the Act.... (at 3106)

[7/]22 PERB ¶3047 (1989).

> While...we would not require parties to bargain concerning creation of a contractual remedy for violations of the Act, if parties choose to so negotiate, we construe their actions as constituting nothing more than a waiver of a statutory right to file a charge and not as a divestiture of our jurisdiction. (at 3107)

Here, we find that the language in Section 21 of the parties' §207-a procedure does not evidence a knowing, clear and unmistakable waiver of the Association's right to file an improper practice charge alleging that the City has violated the Act by requiring financial disclosure by employees receiving §207-a benefits.[8/] If a party is to be denied access to this agency for the determination of alleged violations of the Act, the language of the waiver must be such as to permit no other interpretation. The language in Section 21, however, is susceptible to a reasonable interpretation that the Association merely waived the right to grieve the City's application of or alterations in the §207-a procedure. There is no reference in Section 21 to the Act in general, to PERB or to improper practices. Additionally, the testimony of Wilcox evidences that it was the Association's intention that issues involving mandatory subjects of negotiation would still be within the cognizance of PERB. As the language of the parties' agreement, both on its face and as testified to by the parties, does not evidence a clear, knowing and explicit waiver of its right to

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[8/]See State of New York (SUNY Albany), 11 PERB ¶3026 (1978), rev'd in part sub nom. CSEA v. Newman, 88 A.D.2d 685, 15 PERB ¶7011 (3d Dep't 1982). See also Sachem Cent. Sch. Dist., 21 PERB ¶3021 (1988); Board of Educ. of the City Sch. Dist. of the City of New York, 8 PERB ¶3011 (1975).

proceed before PERB, the ALJ's dismissal of the charge on this ground must be reversed.

The ALJ did not decide the timeliness of the charge, as raised by the City, or the merits of the charge. It is, therefore, necessary to remand the charge to the ALJ for such other proceedings as are consistent with this decision.

Based on the foregoing, the decision of the ALJ is reversed and the matter is remanded to the ALJ.

DATED: April 30, 1997
Albany, New York

Pauline R. Kinsella, Chairperson

Eric J. Schmertz, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

CLAUDIA S. COCKERILL,

Charging Party,

-and-

CASE NOS. U-12187 & U-13887

BRENTWOOD UNION FREE SCHOOL DISTRICT,

Respondent.

CLAUDIA S. COCKERILL, pro se

BERNARD T. CALLAN, ESQ., for Respondent

BOARD DECISION AND ORDER

These cases come to us on exceptions filed by Claudia S. Cockerill to a decision of an Administrative Law Judge (ALJ) dismissing her improper practice charges alleging that the Brentwood Union Free School District (District) violated §209-a.1(a), (b) and (c) of the Public Employees' Fair Employment Act (Act) by retaliating against her for her exercise of statutorily protected rights. In Case No. U-12187, Cockerill alleges that her request for a reassignment for the 1990-91 school year was denied and she was assigned to three school buildings that year because she had earlier filed two improper practice charges and had taken other actions against the District. Cockerill alleges in Case No. U-13887 that the District again denied her a reassignment for the 1992-93 school year and issued various disciplinary memoranda to her in retaliation for filing the earlier improper practice charges.

The District's answers denied the charges and raised the defenses of timeliness and res judicata.

The ALJ dismissed the §209-a.1(b) allegations for failure of proof.[1/] The ALJ further determined that Cockerill had been engaged in protected activity[2/] and that the District was aware of her actions, but that the District had not been improperly motivated in its actions toward her and dismissed the §209-a.1(a) and (c) allegations in both charges.

Cockerill excepts to the ALJ's decision, arguing that the ALJ erred both factually and legally. As its response, the District filed a copy of its brief to the ALJ, which sought dismissal of both charges.

After a review of the record and consideration of the parties' arguments, we affirm the decision of the ALJ.

For the 1986-87 school year, Cockerill, who has been a school psychologist employed by the District since 1965, was assigned to two of the District's secondary schools. Thereafter, she was reassigned to one secondary school and two elementary schools for the 1987-88 school year and to only elementary schools for the 1988-89 school year. She filed two improper practice charges, alleging that those transfers were in retaliation for the exercise of protected rights. Both charges were dismissed because there was no causal link between Cockerill's exercise of protected rights and her involuntary

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[1/]Cockerill does not except to this part of the ALJ's decision.

[2/]The filing, prosecution and appeal of two earlier improper practice charges are the activities relied upon for this finding.

transfers.[3/] It was determined that the District had transferred Cockerill out of one of the secondary schools at the principal's request, and that the record supported the District's articulated need for a bilingual psychologist at one of the secondary schools and more psychologists at the District's elementary schools.

Thereafter, Cockerill made repeated assignment requests for the school years 1989-90 through 1993-94. Since 1987, Cockerill has sought to be assigned to one or more of the District's secondary schools and has, as an alternative, sought transfer from certain elementary school assignments. While some of her reassignment requests have been granted, she has never been reassigned to a secondary school.

Edyth Welch, the District's Coordinator of Health, Psychological and Social Work Services since 1987, is the administrator who makes the annual assignments of the District's psychologists and social workers. The ALJ found, and the record supports the finding, that Welsh was not improperly motivated in making her assignment decisions for the two school years covered by the instant charges. The ALJ found that the assignments were based upon the District's staffing needs, the personnel available to fill those needs, the assignment requests of the staff involved, and the preferences of the building principals. As there was no credible evidence of improper motivation in the

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[3/] Brentwood Union Free Sch. Dist., 24 PERB ¶4510, aff'd, 24 PERB ¶3021 (1991), motion to reconsider denied, 25 PERB ¶3027 (1992), appeal dismissed, 25 PERB ¶7003 (Sup. Ct. Alb. Co. 1992).

assignment decisions affecting Cockerill[4/], the ALJ dismissed those aspects of the two improper practice charges. The ALJ likewise dismissed that portion of Case No. U-13887 which alleges that Cockerill received counselling memoranda and negative evaluations in 1990 and 1992 because of her protected activities, finding no evidence of improper motivation on Welch's part. Finally, the ALJ rejected Cockerill's claim that the timing of the District's actions, which coincided with the issuance of the decisions in the earlier improper practice charges and Cockerill's appeal of those decisions, both to us and to the courts, established that the District was improperly motivated in the actions which are the subject of these two charges. The ALJ determined, overall, that the District's decisions regarding Cockerill's assignments, her evaluations and counselling memoranda, were motivated by legitimate business concerns.

There is nothing in Cockerill's exceptions or the record taken as a whole which warrants or requires reversal of the ALJ's factual determinations or legal conclusions. What is apparent from the record is that Cockerill is an aggressive advocate of the children in the schools to which she is assigned. Throughout her tenure with the District, the methods and means of her advocacy have led certain school administrators, specifically in

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[4/]Cockerill testified that an incident occurred involving Wayne Brodsky, the District's Director of Special Services, wherein he taunted her for losing the prior improper practice charges and told her that Welch should get her after everything died down. Brodsky denied that the event ever occurred and the ALJ credited his testimony. There is nothing in the record which would warrant disturbing the ALJ's credibility resolution.

the District's secondary schools, to refuse Cockerill's requests for assignment to their schools. The first of these requests pre-date any exercise of protected rights; indeed, they formed the basis for her initial improper practice charges. Welch has attempted to accommodate Cockerill's requests for reassignment but is limited because of the decreasing number of schools whose administrators will accept Cockerill as the assigned school psychologist. The record also establishes that there are additional reasons that Cockerill's assignment requests have not been granted, such as the need for bilingual psychologists (which Cockerill is not), the need for more psychologists in the elementary schools, and testing demands which vary from year to year.

We find, therefore, that Cockerill has failed to establish that the District violated §209-a.1(a) and (c) of the Act with respect to her assignments for the 1990-91 and 1992-93 school years and in its issuance of the at-issue memoranda and evaluations.

Based on the foregoing, the exceptions are denied and the decision of the ALJ is affirmed.

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

DATED: April 30, 1997
Albany, New York

Pauline R. Kinsella, Chairperson

Eric J. Schmertz, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

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

Charging Party,

-and-

CASE NO. U-17593

STATE OF NEW YORK (DEPARTMENT OF TAXATION AND FINANCE),

Respondent.

NANCY E. HOFFMAN, GENERAL COUNSEL (JEROME LEFKOWITZ 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 Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO (CSEA) to a decision of an Administrative Law Judge (ALJ) dismissing as untimely its charge that the State of New York (Department of Taxation and Finance) (State) violated §209-a.1(d) of the Public Employees' Fair Employment Act (Act) when it unilaterally imposed a new office dress policy for unit members working in the State's Buffalo Taxation and Finance (Tax) office.

The charge relates solely to employees at the Buffalo Tax office. Since at least 1982, a state-wide policy relating to appropriate dress has been contained in the State's employee handbook and has been applicable to these employees. In relevant part, it provides:

Dress Code

> The department does not have a "dress code" and does not attempt to dictate the type or style of clothing worn by employees but it does insist apparel be consistent with reasonable standards of social acceptability, cleanliness, safety, and decency. Dress should also be appropriate to the type of work to which employees are assigned, taking into consideration such factors as public visibility, sensitivities of fellow employees, health, and comfort.
>
> You should be aware that your personal appearance does affect public opinion and the impression you make on your co-workers. It reflects upon you and the department which you represent.

Uncontroverted testimony offered by CSEA at the hearing establishes that, for several years, employees at the Buffalo Tax office have worn blue denim jeans to work, whether they were assigned to the office for the entire day or were there for part of the day before or after a tax seizure or auction out of the office. Indeed, one unit employee who frequently wore blue denim jeans was promoted in 1993. The record further establishes that unit employees in other Tax branch offices in Rochester and Brooklyn regularly wear blue denim jeans in the office without consequence. All unit employees are subject to the provisions relating to dress as set forth above in the employees' handbook.

Donald Denny became tax compliance manager at the Buffalo Tax office in 1993. He testified that on several occasions from that time until December 1995, he had spoken to tax compliance agents and tax compliance representatives about wearing what he considered to be inappropriate office attire, such as short

shorts and blue denim jeans.[1/] He did concede that he could not see all of the unit employees at all times and that, as a result, there were occasions when unit employees had worn blue denim jeans and he had not spoken to them. On August 9, 1995, Denny issued the following memorandum to the Buffalo staff:

> Although the Department has no specific "dress code," daily dress should be appropriate based upon reasonable standards and the amount of contact with the public.
>
> For the remainder of the summer, however, you may dress in a casual manner on Fridays, as long as you are not scheduled to be in the field and/or meeting with members of the public. "Dress down" days will end on Friday, September 15, 1995.
>
> Please keep in mind this is a place of business and be reasonable in your choice of clothing. (Emphasis added.)

Attached to the memorandum was a copy of the above-referenced portion of the employee handbook.

On December 21, 1995, Denny informed a tax compliance agent that he could not deal with the public that day because he was wearing blue denim jeans. On December 26, 1995, Denny issued the following memorandum to all Buffalo unit employees.

> Subject: "appropriate dress"
>
> It has been brought to my attention that some staff are coming to work with inappropriate dress. Back in August I sent out a memo in reference to "dress down days". Along with it I attached a copy of the policy for dress code.
>
> My wording also includes the following: "Although the Department has no specific dress code, daily dress should be appropriate based upon reasonable standards and the amount of contact with the public. Please keep

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[1/]CSEA represents tax compliance agents, tax compliance representatives and clerical employees.

> in mind that this is a place of business and be reasonable in your choice of clothing." A short while ago, I had someone point to one of our employees as they were going through the door and ask, "Is that the maintenance man, I need to speak to him." Obviously this individual could not have been dressed appropriately or this would not have happened.
>
> If any further inappropriate instances come up, the individual employee will be asked to return home to change. This is done on the employee's own time. For the individuals that have been and/or are doing the appropriate thing, thank you for your cooperation and professionalism.
>
> If you have any questions or comments please see your supervisor or myself. Thanks.

This charge was then filed, alleging that Denny's prohibition of blue denim jeans on December 21 was a unilateral change in the office policy on appropriate dress because the wearing of blue denim jeans had previously been permitted and no negotiations had taken place between the State and CSEA which resulted in an agreement that blue denim jeans were not appropriate office attire.

On March 28, 1996, Denny called four unit employees into his office and advised them that the blue denim jeans they were wearing were inappropriate. He told them that if they wore blue denim jeans again, they would receive a counselling memo and be sent home, on their own time, to change. CSEA amended its charge to include this incident. It is, however, undisputed that Denny's directive has not been implemented and no employee has yet been disciplined for wearing blue denim jeans.

The ALJ found that unit employees had been consistently counselled about inappropriate dress since 1993 and that

Denny's August 9, 1995 memorandum reiterated this policy. The December 26, 1995 memorandum and the March 28, 1996 incident were, he found, simply restatements of a long-established policy. He, therefore, determined that the charge, filed more than four months after the issuance of the August memorandum, was untimely. Alternatively, the ALJ also found that there had been no change in practice because of the long-standing policy on appropriate office dress enunciated in the employee handbook.

CSEA excepts to the ALJ's decision, arguing that the ALJ erred in finding the charge untimely and in determining that there had been no change in the past practice of permitting blue denim jeans to be worn. The State supports the ALJ's decision.

After a review of the record and a consideration of the parties' arguments, we reverse the ALJ's decision.

The charge is timely filed. The first time CSEA became aware that Denny considered blue denim jeans to be inappropriate office attire came when Denny advised a unit employee of his prohibition against blue denim jeans on December 21, 1995. CSEA's charge was filed on February 13, 1996, well within four months of when CSEA first became aware of Denny's interpretation of the State's policy relating to appropriate office attire.[2/] The second announcement of Denny's prohibition against denim blue jeans came on March 28, 1996. The amendment, filed on May 9, 1996, is likewise timely. The ALJ measured the timeliness of the charge from Denny's August 9, 1995 memorandum. That memorandum,

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[2/]Rules of Procedure, §204.1(a)(1).

however, is silent on the subject of blue denim jeans and nothing in the record even suggests that CSEA knew or should have known that Denny interpreted appropriate office attire as excluding blue denim jeans before the December 21 incident was reported.

As the charge is timely, we turn to its merits. The State violated §209-a.1(d) of the Act if its prohibition against wearing blue denim jeans constitutes a unilateral change in a mandatorily negotiable subject.

We have not had an opportunity before to decide the negotiability of a general dress code. We have, however, in the context of uniform requirements for law enforcement personnel, had occasion to determine that grooming standards involve terms and conditions of employment and are, generally, mandatory subjects of negotiation.[3/] An office attire policy, not involving uniformed and/or para-military personnel, is a mandatory subject of negotiation.

Our conclusion that the additional restrictions on dress imposed by Denny are mandatory subjects of negotiation is also consistent with our prior decisions on work rules[4/], employee safety[5/] and decisions on dress codes and grooming requirements

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[3/]City of Buffalo, 15 PERB ¶3027 (1982).

[4/]Spencerport Cent. Sch. Dist., 16 PERB ¶3074 (1983); Stueben-Allegany BOCES, 13 PERB ¶3096 (1980); Police Ass'n of New Rochelle, 13 PERB ¶3082 (1980).

[5/]CSEA, Inc., Niagara Chapter, 14 PERB ¶3049 (1981).

of the National Labor Relations Board[6/] and other labor relations agencies.[7/]

We also believe that Denny's prohibition of the wearing of denim blue jeans by certain unit employees in the Buffalo Tax office changed the State's dress code policy. The State has only a general policy requiring appropriate office attire. That policy does not require or prohibit the wearing of any particular type of clothing. In this case, the State allowed unit employees to wear blue denim jeans without apparent restriction for several years. No employees were counselled or disciplined, indeed, an employee who regularly wore blue denim jeans was promoted shortly before Denny came to the Buffalo Tax office. Further, employees in other of the State's Tax offices wore blue denim jeans without hindrance from the State and still do. The unit employees, therefore, had a reasonable basis to believe that blue denim jeans were included in the definition of appropriate office attire. Denny's actions in December 1995 and March 1996 clearly impose greater restrictions on dress than the State has ever required before in that office and greater than those currently

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[6/]Bay Diner, 104 LRRM 1407 (1980); Transp. Enter., Inc., 100 LRRM 1330 (1979); Concord Docu-Prep, Inc., 85 LRRM 1416 (1973).

[7/]Town of Dracut, Case No. MUP-3699 (Mass. Labor Relations Comm'n, May 28, 1980), aff'd CCH Public Employees Bargaining Reporter, 1980-83 Transfer Binder ¶42,027 (Sept. 30, 1980) (police grooming standards); Seward Educ. Ass'n, Case No. 34, Neb. Court of Industrial Relations (March 26, 1971), aff'd on other grounds, 1 PBC ¶10,134 (Neb. Sup. Ct. 1972) (teacher dress code); Town of Stratford, Case No. MPP-3552, Dec. No. 1471 (Conn. State Bd. of Labor Relations 1976)(police dress code and grooming regulations).

existing in other offices. Moreover, for the first time, the code as created by Denny includes a disciplinary component for noncompliance.

While an employer may announce the standards it will be utilizing in determining whether employees are in compliance with an existing employer policy,[8/] here Denny has changed the policy itself, imposing a restriction that never existed and which does not exist for other, similarly situated, employees of the State.

We find, therefore, that the State, by Denny's directives in December 1995 and March 1996, unilaterally changed the terms and conditions of employment of unit employees without negotiation with CSEA, in violation of §209-a.1(d).[9/]

CSEA's exceptions are granted and the decision of the ALJ is reversed.

IT IS, THEREFORE, ORDERED that the State

1. Immediately rescind and cease enforcement of Donald Denny's December 26, 1995 memorandum and directives of December 21, 1995 and March 26, 1996 regarding a prohibition against wearing blue denim jeans in the Buffalo Tax office;

2. Remove from unit employees' personnel files any reference to or reprimand for wearing blue denim jeans in the Buffalo Tax office; and

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[8/] Poughkeepsie City Sch. Dist., 19 PERB ¶3046 (1986).

[9/] In finding a violation premised upon a unilateral change in a mandatory subject of negotiation, we of course make no finding as to the reasonableness of the prohibition against the wearing of blue denim jeans.

3. Sign and post the notice in the form attached at all locations normally used by the State to post notices of information to unit employees at the Buffalo Tax office.

DATED: April 30, 1997
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 of the State of New York (Department of Taxation and Finance) in the unit represented by Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO and working in the Buffalo Taxation and Finance Office (Office) that the State will:

1. **Immediately rescind and cease enforcement of Donald Denny's December 26, 1995 memorandum and directives of December 21, 1995 and March 26, 1996 regarding a prohibition against wearing blue denim jeans in the Office.**

2. **Remove from unit employees' personnel files any reference to or reprimand for wearing blue denim jeans in the Office.**

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

STATE OF NEW YORK

. . . . . .

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

WELLSVILLE SUBSTITUTE TEACHERS ASSOCIATION,

Petitioner,

-and-

CASE NO. C-4620

WELLSVILLE CENTRAL SCHOOL DISTRICT,

Employer.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

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

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

IT IS HEREBY CERTIFIED that the Wellsville Substitute Teachers 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: All substitute teachers who have received, and not responded negatively to, letters of reasonable assurance of continued employment in accordance with §590 of the Labor Law.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

WELLSVILLE SUBSTITUTE TEACHERS ASSOCIATION,

Petitioner,

-and-

CASE NO. C-4620

WELLSVILLE CENTRAL SCHOOL DISTRICT,

Employer.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

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

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

IT IS HEREBY CERTIFIED that the Wellsville Substitute Teachers 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: All substitute teachers who have received, and not responded negatively to, letters of reasonable assurance of continued employment in accordance with §590 of the Labor Law.

Excluded: All other employees.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Wellsville Substitute Teachers 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 30, 1997
Albany, New York

Pauline R. Kinsella, Chairperson

Eric J. Schmertz, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

VILLAGE OF PAWLING POLICE BENEVOLENT ASSOCIATION, INC.,

Petitioner,

-and- CASE NO. C-4628

VILLAGE OF PAWLING,

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 Village of Pawling Police Benevolent Association, Inc. 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 part-time and full-time police officers.

Excluded: Police Commissioner and/or Chief of Police.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

VILLAGE OF PAWLING POLICE BENEVOLENT ASSOCIATION, INC.,

Petitioner,

-and-

CASE NO. C-4628

VILLAGE OF PAWLING,

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 Village of Pawling Police Benevolent Association, Inc. 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 part-time and full-time police officers.

Excluded: Police Commissioner and/or Chief of Police.

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

DATED: April 30, 1997
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 687,

Petitioner,

-and- **CASE NO. C-4631**

VILLAGE OF NORWOOD,

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

Unit: Included: All full-time and part-time employees of the Village of Norwood classified as foremen and motor equipment operators.

Excluded: All elected officials and management staff.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

TEAMSTERS LOCAL 687,

Petitioner,

-and- CASE NO. C-4631

VILLAGE OF NORWOOD,

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

Unit: Included: All full-time and part-time employees of the Village of Norwood classified as foremen and motor equipment operators.

Excluded: All elected officials and management staff.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Teamsters Local 687. 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 30, 1997
Albany, New York

Pauline R. Kinsella, Chairperson

Eric J. Schmertz, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

NEW YORK STATE AFL-CIO DIRECTLY AFFILIATED LOCAL UNION #24730,

Petitioner,

-and-

CASE NO. C-4614

BAY SHORE SCHOOL DISTRICT,

Employer.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

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

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

IT IS HEREBY CERTIFIED that the New York State AFL-CIO Directly Affiliated Local Union #24730 has been designated and selected by a majority of the employees of the above-named public employer, in the unit found to be appropriate and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: All full-time and regularly scheduled part-time security guards.

Excluded: All others.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

NEW YORK STATE AFL-CIO DIRECTLY AFFILIATED LOCAL UNION #24730,

Petitioner,

-and- **CASE NO. C-4614**

BAY SHORE SCHOOL DISTRICT,

Employer.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

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

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

IT IS HEREBY CERTIFIED that the New York State AFL-CIO Directly Affiliated Local Union #24730 has been designated and selected by a majority of the employees of the above-named public employer, in the unit found to be appropriate and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: All full-time and regularly scheduled part-time security guards.

Excluded: All others.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the New York State AFL-CIO Directly Affiliated Local Union #24730. 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 30, 1997
Albany, New York

Pauline R. Kinsella, Chairperson

Eric J. Schmertz, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

SPACKENKILL SUPPORT STAFF ASSOCIATION,

Petitioner,

-and- CASE NO. C-4599

SPACKENKILL UNION FREE SCHOOL DISTRICT,

Employer.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

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

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

IT IS HEREBY CERTIFIED that the Spackenkill Support Staff 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: All full-time and part-time typists, aides, monitors and stenographers.

Excluded: Managerial/confidential employees, district office clerical staff, security and all others.

STATE OF NEW YORK
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Unit: Included: All full-time and part-time typists, aides, monitors and stenographers.

Excluded: Managerial/confidential employees, district office clerical staff, security and all others.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Spackenkill Support Staff 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.

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