STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

WEST GENESEE TEACHERS ASSOCIATION, NYSUT, AFT, AFL-CIO, LOCAL NO. 3106,

Charging Party,

-and-

CASE NO. U-17283

WEST GENESEE CENTRAL SCHOOL DISTRICT,

Respondent.

THOMAS J. CLERKIN, for Charging Party

BOND, SCHOENECK & KING, LLP (DAVID M. PELLOW of counsel), for Respondent

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by the West Genesee Central School District (District) to a decision by an Administrative Law Judge (ALJ) on a charge filed by the West Genesee Teachers Association, NYSUT, AFT, AFL-CIO, Local No. 3106 (WGTA). WGTA alleges that the District violated §209-a.1(a) and (c) of the Public Employees' Fair Employment Act (Act) when its agents threatened certain teachers who had been appointed by the WGTA to a building level Shared Decision Making (SDM) committee with insubordination if they attended a training session sponsored by the District for members of that SDM committee.

After a hearing, the ALJ held that the District violated the Act as alleged. The ALJ concluded that the District interfered with WGTA unit employees' rights under the Act to participate in WGTA affairs and discriminated against them for having done so when it denied training to WGTA's representatives on the SDM

committee under at least an implied threat of discipline should they attend the training.

The District argues that the ALJ erred in failing to make several findings of material fact and erred legally in concluding that the charge is within our jurisdiction and that the District violated the Act. WGTA argues in response that many of the District's exceptions are themselves immaterial and that the ALJ's decision is correct and should be affirmed.

Having reviewed the record and considered the parties' arguments, we affirm the ALJ's jurisdictional determination, but reverse his merits disposition and, accordingly, dismiss the charge.

As to the jurisdictional issue, although many matters involving shared decision making in school districts may be within the jurisdiction of the Commissioner of Education (Commissioner), the Commissioner has no jurisdiction over allegations that a public employer, by any action, has committed an improper practice in violation of §209-a.1 of the Act. That jurisdiction rests exclusively with PERB[1/] subject only to judicial review.[2/] As we consider only the improper practice allegations raised in the charge, we act clearly within the scope of our exclusive statutory jurisdiction.

[1/]The only exceptions to this exclusivity are duty of fair representation allegations, which rest concurrently within the jurisdiction of the agency and the judiciary, and improper practices within the jurisdiction of the New York City Board of Collective Bargaining.

[2/]Act §205.5(d).

Turning to the merits, the ALJ's decision assumes throughout that the teachers who were appointed to the building-level SDM committee by the WGTA held an absolute right to committee membership simply because the WGTA appointed them. But whether the teachers are members of the SDM committee is the very issue which underlies the entire dispute between these two parties. As the shared decision making regulations are silent with respect to the selection of teacher representatives to building-level SDM committees, the Commissioner has opined that the Commissioner lacks the authority under the regulations to resolve disputes centering on the selection of those representatives.[3/]

The District and WGTA have a fundamental disagreement as to whether the WGTA has a right to control absolutely the appointment of teachers to a building level SDM committee. More particularly, the disagreement appears to center on whether the WGTA can, as it did, subject the teachers' appointment to that SDM committee to rescission at the pleasure of the WGTA president. The District believes that the conditions of the teachers' appointment to the building-level SDM committee are inconsistent with the Commissioner's regulations and the District's SDM plan as approved by the Commissioner. The District believes that teachers, although selected, according to the SDM plan, "through a process developed by the WGTA", are not representatives of the WGTA itself. Rather, according to the District, the teachers represent the committee and the general

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[3/]Appeal of Roby, 34 Ed. Dep't Rep. 654 (1995).

population of teachers in the building. Therefore, in the District's view, teachers cannot be appointed by the WGTA with conditions which are arguably inconsistent with allegiance to the committee and teachers generally. WGTA's belief is distinctly to the contrary. WGTA believes that selection of teacher representatives to a building-level SDM committee is its right absolutely upon whatever terms it considers are appropriate, and that the teachers so appointed serve as WGTA representatives.

Even if we were to assume that the District is incorrect in its belief, its actions in denying WGTA appointees committee training would still not violate the Act as alleged on any theory. The dispute between these parties about the teachers' committee membership is what caused all of the District's actions, not any motive improper under the Act. The basis for the District's denial of SDM committee training was not the employees' exercise of any statutorily protected rights. They were denied training only because the District does not consider the teachers to be qualified members of the SDM committee. The District has a right to its good faith opinion that the teacher representatives on the building SDM committee are not members of that committee given the conditions attached to their appointment, just as the WGTA has a right to its contrary good faith belief.

Nor can the District be found in violation of the Act on a per se basis. The District withheld committee training from the teachers appointed by the WGTA only because it believes that they

were disqualified from membership on the building-level SDM committee given the conditions of their appointment. The District obviously has no obligation under the Act to train persons for service on an SDM committee if those persons are not members of that committee. Just because the teachers were appointed to the building-level SDM committee through a "process" determined by the WGTA does not necessarily mean that the District must treat all of WGTA's appointees as properly seated members of that committee regardless of the conditions attached to their appointment, anymore so than the District or the WGTA would be compelled to accept without question the membership status of any other person's appointment to the committee. From our perspective, there is at least an arguable difference between a "process" of appointment, which may lie within the WGTA's exclusive control under the terms of the District's SDM plan, and the conditions attached to an appointment made under the WGTA's chosen process. If the WGTA, for example, had appointed teachers to the SDM committee upon the condition that they could not speak at committee meetings, would the District be in violation of the Act if it refused to recognize those teachers as members of the SDM committee and denied them SDM committee training on that basis? We think not, and the condition imposed here is of no different character.

The District is concerned that persons who are required to serve at the pleasure of WGTA's president might not represent, as the District believes they must, the interests of the committee

and teachers generally and, therefore, it believes that those appointees are not members of the committee under the Commissioner's regulations and its own SDM plan. Whether or not we or others might share that concern or consider the District's belief reasonable, the District's actions were taken in good faith and they find at least arguable support under the terms of the SDM plan.

To find the District in violation of the Act, we would have to hold that the WGTA had the right to appoint whomever it wished to a building-level SDM committee subject to whatever conditions it wished to impose upon that appointment. As the Commissioner's regulations are silent on the issue, the regulations cannot be the source of such a right. The SDM plan cannot be the source of such an unqualified right because the plan is subject to different interpretations. In such circumstances, a simple disagreement between the parties as to the intent of an SDM plan and the parties' rights pursuant thereto cannot and should not become the basis for a violation of the Act.

Statements by District agents to certain of the teacher appointees to the SDM committee that they either should not or could not attend the committee training sessions because the District did not accept them as committee members, and that they might or would be deemed insubordinate were they to attend that training session, do not alter our previously stated analysis of the interference and discrimination allegations presented in this

case.[4/] The teacher appointees of WGTA were simply not disadvantaged or threatened because of any statutorily protected activities. They were denied training only because they were not considered by the District to be members of the SDM committee, not because they were appointed by the WGTA. Nonmembership on the SDM committee was the basis for the District's actions and statements, not the exercise by any teacher of any right protected by the Act. The teachers' arguable statutory right to work with and through the WGTA's processes for selection as an SDM committee representative is intact, but their exercise of rights in that regard does not warrant or compel the sacrifice of the District's right to question the employees' status as committee members. The District is not forced by the interference and discrimination provisions of the Act to abandon its own good faith opinion regarding committee membership and to accept WGTA's contrary opinion on that issue without question.

This record evidences nothing more than two parties with very firm opposing positions taken in good faith on issues that are unresolved by Commissioner regulation or opinion and which do not on the facts of this case implicate the exercise of any rights protected by the Act. The charge is, accordingly, properly dismissed, a dismissal ordered with an awareness that the dispute between these parties may not be subject to an adjudicatory resolution under the Commissioner's existing regulations as interpreted. The possible absence of an

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[4/]We express no opinion as to whether such statements or actions pursuant thereto would violate the District's bargaining obligations as that issue is not presented by this charge.

adjudicatory forum is not, however, a reason to create one under the Act's improper practice provisions, a mechanism ill suited, at best, to resolve such disputes. We are also concerned about the implications of a contrary decision. Subjecting disagreements about the meaning of an SDM plan to improper practice jurisdiction could involve us regularly and deeply in reviewing the shared decision making process, which we do not believe was ever intended to be adversarial to any degree or open to regular review outside of the educational context. We do not suggest that all disputes arising in the shared decision making context are never subject to review under an improper practice charge. Resolution of the particular dispute which prompted this charge, however, is best obtained through the same cooperative effort which initially gave rise to the SDM plan or through actions authorized under the Commissioner's regulations, such as an amendment, as necessary, to the SDM plan.

For the reasons set forth above, the ALJ's decision is reversed.

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

DATED: July 1, 1998
Albany, New York

Michael R. Cuevas, Chairman

Marc A. Abbott, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

TOWN OF CARMEL POLICE BENEVOLENT ASSOCIATION, INC.,

Charging Party,

-and-

CASE NO. U-17383

TOWN OF CARMEL,

Respondent.

RAYMOND G. KRUSE, P.C. (RAYMOND G. KRUSE of counsel), for Charging Party

ANDERSON, BANKS, CURRAN & DONOGHUE (STUART S. WAXMAN of counsel), for Respondent

BOARD DECISION AND ORDER

This case first came to us in 1996 on exceptions filed by the Town of Carmel Police Benevolent Association, Inc. (PBA) to a decision by an Administrative Law Judge (ALJ)[1/] rendered on the PBA's charge against the Town of Carmel (Town). In relevant part, the PBA alleges in its charge that the Town violated §209-a.1(d) of the Public Employees' Fair Employment Act (Act) when, effective January 1, 1996, it unilaterally changed a practice pursuant to which unit employees were granted vacation time which overlapped the vacation time selected

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[1/] 29 PERB ¶4612 (1996).

by other police department personnel so long as predetermined minimum staffing levels set by the Town were maintained.

After a hearing, the ALJ dismissed the charge on the ground that the restrictions on overlapping vacations[2/] effected by the Town's change in the prior practice were not mandatory subjects of negotiation because, by restricting overlapping, the Town was increasing the number of employees scheduled to be on duty at any given time. Citing City of Yonkers,[3/] the ALJ held that a decision regarding the number of employees who are to be on duty at any given time is one which an employer need not negotiate.

The PBA filed exceptions to the ALJ's decision. In a November 1996 decision and order,[4/] we declined to consider those exceptions, concluding that both jurisdictional and merits issues raised by the charge were appropriately deferred to the parties' contractual grievance procedure because the parties had reached an agreement in December 1994 on the aspect of vacation picks at issue under this charge. According to the record, the parties agreed that overlapping would be permitted, except on the Fourth of July, so long as predetermined minimum staffing levels set by the Town were maintained. Uncertainty as to whether that agreement was in effect beyond 1995 persuaded us that the charge was appropriately deferred to the parties' grievance arbitration procedures. The charge was conditionally dismissed subject to a motion to reopen. The case comes to us now on motion by the PBA, opposed by the Town, to reopen the case.

[2/]Basically, the change disallowed two or more unit employees on the same tour from being on vacation at the same time.

[3/]10 PERB ¶3056 (1977).

[4/]29 PERB ¶3073 (1996).

By award dated May 20, 1997, an arbitrator determined that the parties' 1994 agreement regarding vacation selection and approval which permitted overlapping did not apply after 1995. As determined by the arbitrator, "the parties do not have an applicable and enforceable agreement for years beyond 1995 with respect to the Town's vacation selection and approval process". There being no agreement covering vacation selections for 1996 and after, a consideration of the merits of this charge is not barred by law or policy. Therefore, we grant the PBA's motion and now consider the exceptions to the ALJ's decision.

The PBA argues that the ALJ's decision is factually and legally incorrect. The Town states in response that certain of the PBA's exceptions are themselves inaccurate. The Town otherwise argues that the ALJ's decision is correct on the material facts and the law and should be affirmed.

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

Like this case, City of Yonkers also involved a vacation pick system. The vacation system which the employer changed in City of Yonkers had enabled a large number of employees to be on vacation at what were considered prime vacation times. The employer substantially decreased the number of employees who could be on vacation at the same time by requiring an equal number of employees to select vacation during each of the many available vacation periods. In net effect, many employees in City of Yonkers were denied vacations which they could have had under the prior system. Citing an earlier decision in City of White Plains,[5/] the Board in City of Yonkers

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[5/] 5 PERB ¶3008 (1972).

held that the employer did not violate its duty to negotiate by changing the vacation pick system because the change affected not the amount of vacation time, only the number of employees scheduled to be on duty at specific times, a nonmandatory subject of negotiation.

The central premise of the PBA's exceptions is that City of Yonkers is distinguishable because the vacation pick system in this case incorporates a minimum departmental staffing guarantee of four or five officers on any given tour. As overlapping vacations were permitted under the practice which the Town changed only so long as these minimum staffing levels established by the Town were maintained, the PBA argues that the Town's managerial interests are fully protected.

The PBA's arguments misapprehend the nature of an employer's managerial interests in setting staffing levels. Minimum staffing levels are exactly what the words in the phrase suggest, i.e., changeable minimums. Just as an employer may initially fix unilaterally a specified minimum staff complement, an employer has an equal managerial right to change unilaterally those staffing levels to coincide with its belief regarding the number of personnel needed or wanted for the delivery of a service of a desired type or level. In the delivery of that chosen service, an employer may at any given point in time unilaterally increase, decrease or keep constant the staffing level fixed at an earlier point in time. By making those decisions, an employer is simply determining, for example, that one minimum is too low or too high and that a higher or lower minimum is necessary or desirable in its opinion. The Town here determined that more personnel had to be scheduled for duty to provide essential services and its actions are indistinguishable from those taken by the employer in City of Yonkers.

Although the Town's former vacation pick system, which permitted overlapping, may have ensured a minimum staff complement of four or five officers on any given day, it did not protect the full range of the Town's managerial prerogatives regarding staffing. The practice of granting early requests for overlapping vacations prevented the Town from scheduling for duty the number of employees it wanted at given times. Just as in City of Yonkers, the restrictions the Town placed upon requests for overlapping vacation only decreased the number of employees who could be on vacation at the same time, thereby necessarily increasing the number of employees scheduled for duty, so as "to provide essential patrol and supervisory personnel during vacation periods".

The changes made by the Town in this case actually affected unit employees to a far lesser degree than did the change made by the employer in City of Yonkers. For example, the Town, according to the PBA, still permits overlapping under requests for time off made later in the year and closer to the requested date off from work, so long as the Town is then persuaded that the minimum staffing levels it wants are maintained. That the Town was willing later in the year to reconsider requests for vacation, or other forms of time off earlier denied, in no way changes the negotiability of the denial of requests to overlap vacations made earlier in the year. The early denial of requests to overlap vacations necessarily affected, at least temporarily, only the number of employees scheduled for duty and when they could take vacation. City of Yonkers makes those issues nonmandatory subjects of negotiation no matter that the employer might later in its discretion change its mind and grant vacations which it had earlier denied.

In applying City of Yonkers, we emphasize that the only issue before us is the point in time vacation may be taken by some unit employees, not the amount of vacation time to which any unit employee is entitled to take. We do not hold or suggest that City of Yonkers would be properly applied in any circumstances other than those presented in this particular case. We hold only that the ALJ correctly applied City of Yonkers on the facts of this case because the vacation overlapping practice changed by the Town was necessarily and inextricably entwined with the Town's staffing determinations. As the practice embraced a nonmandatory subject of negotiation, the Town's unilateral change in that practice, and its refusal to negotiate the decision to make that change pursuant to demand, did not violate its duty to negotiate.

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

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

DATED: July 1, 1998
Albany, New York

Michael R. Cuevas, Chairman

Marc A. Abbott, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

SYRACUSE POLICE BENEVOLENT ASSOCIATION,

Charging Party,

-and-

CASE NO. U-15744

CITY OF SYRACUSE,

Respondent.

ROCCO A. DEPERNO, ESQ., for Charging Party

JOSEPH E. LAMENDOLA, CORPORATION COUNSEL (BRIAN J. LAURI of counsel), for Respondent

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by the Syracuse Police Benevolent Association (PBA) to a decision by an Administrative Law Judge (ALJ) on a charge filed by the PBA against the City of Syracuse (City). The PBA alleges that the City violated §209-a.1(d) of the Public Employees' Fair Employment Act (Act) when a Civilian Review Board (CRB), a body established by local law, unilaterally implemented procedures compelling PBA unit employees to participate in hearings before the CRB concerning citizen complaints against the police officers whom the PBA represents.

The ALJ conditionally dismissed the charge, finding that provisions in Article 16 of the parties' 1993-97 contract, in effect when the charge was filed, set forth a comprehensive disciplinary system for police officers who are called by the City[1/] to participate in investigations of citizen complaints which may lead to a police officer's discipline. Concluding that the contractual procedures arguably constituted the exclusive means by which PBA unit employees may be investigated and disciplined, and that the CRB procedures differed from those in the contract, the ALJ held that the charge presented jurisdictional issues under §205.5(d) of the Act which were appropriately deferred to the parties' grievance procedure pursuant to the jurisdictional deferral policy established under Herkimer County BOCES [2/] and expanded in Town of Carmel.[3/]

The PBA argues in its exceptions that the charge should not have been deferred jurisdictionally because the CRB's procedures constitute a process not governed by the parties' agreement and because the issue presented by the charge has "state-wide impact". The City has not responded to the PBA's exceptions.

Having reviewed the record, we affirm the ALJ's decision.

PERB is without power over improper practice charges which raise contract violations not otherwise constituting an improper practice. The jurisdictional deferral policy we have established

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[1/]For purposes of her decision, the ALJ accepted as true the PBA's allegation that the CRB is an agent of the City for all purposes relevant to this charge.

[2/]20 PERB ¶3050 (1987).

[3/]29 PERB ¶3073 (1996).

in the cases relied upon by the ALJ is the alternative to the unconditional dismissal which would otherwise be required for charges presenting only arguable violations of contract. The ALJ did not hold that the CRB's procedures are governed by the parties' contract. Nor did the ALJ hold that the CRB's procedures are not governed by the parties' contract. Those are not the relevant issues. Rather, the ALJ held correctly that the provisions in the parties' contract, reasonably read, are arguably the only ones by which any PBA unit employees can be investigated pursuant to citizen complaints. Therefore, as and to the extent the CRB's procedures are different from the contractual procedures, the City has arguably violated that contract if, as the PBA alleges, it or its agent, CRB, has required PBA unit employees to participate in CRB hearings. The PBA's charge, therefore, necessarily alleges a contract violation triggering the jurisdictional limitations in §205.5(d) of the Act. The contractual issues which are raised by the charge were appropriately deferred by the ALJ to arbitration or other appropriate forum pursuant to our jurisdictional deferral policy under Town of Carmel.

As the jurisdictional questions raised by the charge concern our power to entertain it, the perceived importance of the allegations set forth in the charge are not material to our analysis. We not do not have any power to entertain arguable contract violations even if the charge which presents those contract violations on some standard might be deemed important to one or both parties to that charge. There are only two options when this type of jurisdictional issue is presented by an improper practice charge, neither of which is a disposition of the charge on the

merits. Were we not to conditionally dismiss this charge pursuant to our jurisdictional deferral policy, the alternative would be an unconditional dismissal for lack of jurisdiction.[4/]

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

IT IS, THEREFORE, ORDERED that the charge must be, and it hereby is, conditionally dismissed subject to a motion to reopen in accordance with our jurisdictional deferral policy.

Dated: July 1, 1998
Albany, New York

Michael R. Cuevas, Chairman

Marc A. Abbott, Member

[4/] City of Rochester, 26 PERB ¶3049 (1993), conf'd sub nom. Rochester Police Locust Club, Inc. v. Kinsella, 27 PERB ¶7003 (Sup. Ct. Monroe Co. 1994) (establishment of civilian review board presented arguable violation of contractual disciplinary procedures outside PERB's jurisdiction).

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

MALCOLM G. KING

Charging Party,

-and-

CASE NO. U-18145

TRANSPORT WORKERS UNION, LOCAL 100,

Respondent,

-and-

NEW YORK CITY TRANSIT AUTHORITY,

Employer.

MALCOLM G. KING, pro se

O'DONNELL, SCHWARTZ, GLANSTEIN & ROSEN (HOWARD WEIN of counsel), for Respondent

MARTIN B. SCHNABEL, ACTING VICE-PRESIDENT AND GENERAL COUNSEL (DANIEL TOPPER of counsel), for Employer

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by Malcolm King to a decision of an Administrative Law Judge (ALJ) dismissing his charge that the Transport Workers Union, Local 100 (TWU), violated §209-a.2(c) of the Public Employees' Fair Employment Act (Act) when it failed to produce witnesses on his behalf at his disciplinary arbitration, when it failed to respond to an inquiry he had made to the TWU president about those witnesses and when TWU's attorney

was abusive to him during the disciplinary arbitration. Although no separate violation is pled against the New York City Transit Authority (NYCTA), it is a statutory party pursuant to §209-a.3 of the Act.[1]

The ALJ determined that the TWU had not breached its duty of fair representation to King and dismissed the charge, basing the decision on credibility resolutions in favor of TWU's witnesses and against King. King argues in his exceptions that the ALJ erred in crediting the TWU's witnesses' testimony instead of his testimony and that the ALJ's decision should, therefore, be reversed. Neither the TWU nor the NYCTA has responded to King's exceptions.

Based upon our review of the record and consideration of King's arguments, we affirm the decision of the ALJ.

King was employed by the NYCTA as a maintainer from 1995 until July 24, 1996, when he was terminated pursuant to a disciplinary arbitration award finding that he had reported to work late one day, had made a late sick call on another day[2] and had been loud, boisterous, abusive and insulting to a supervisor. The arbitration award was also based on King's employment record, which showed that he had received a warning, a reprimand, and two suspensions from work, coupled with a final warning, during the years of his employment. Finding that King had failed to heed that final warning, the arbitrator sustained his termination by the NYCTA.

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[1]That section of the Act requires that the employer be made a party to any improper practice charge in which it is alleged that the union has breached its duty of fair representation in the processing or failure to process a claim that the employee organization has violated the terms of the collective bargaining agreement between the union and the employer.

[2]King admitted these two charges at the arbitration hearing.

King alleged in his charge that the TWU failed to produce two witnesses he wanted to testify at the disciplinary arbitration, that the TWU president, Willie James, failed to respond to his request for information about the TWU's position regarding the two witnesses and that his TWU representative was rude and abusive to him at the disciplinary hearing. The record shows, however, that King's representatives reviewed statements obtained by King from his psychiatrist and his speech therapist and decided that they had no testimony to offer which was relevant to King's case[3] and that the TWU had a policy of not paying for "expert" witnesses for disciplinary arbitrations. This policy was explained to King by his representatives and by James, who told King, when he met with King at King's request, that the TWU could not afford to pay for expert witnesses.[4] King seemed to expect that there would be an additional response from James, but there is no record evidence supporting King's assumption. In any event, during preparations on the morning of the arbitration, King's representatives reiterated to him that the TWU would not pay for the two witnesses, but if King wanted to pay for them himself, they would obtain an adjournment.

King's final exception is that the TWU representatives were rude and insulting to him at the arbitration hearing. At one point during the proceeding, King opined to his attorney, in a loud voice, that the NYCTA witness was lying. The TWU representative called for a recess and told

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[3]In the written statements, the psychiatrist pointed out that King was being treated for stress and the speech therapist opined that King's Caribbean background and speech patterns might contribute to a misunderstanding between King and his supervisors.

[4]King was apparently referring to a request which he made during his meeting with James in May 1996 that the policy be reconsidered in his case. King alleged that he had not received a response until the day of his hearing in July 1996.

King that he could not speak in such a loud voice, that he would have a chance to testify, that his behavior was childish, and that he must allow the hearing to proceed in an orderly fashion.

The record fully supports the ALJ's findings of fact and we conclude that there is no reason in the record to disturb the ALJ's credibility resolutions. There is no evidence of the arbitrary, discriminatory or bad faith conduct which would breach TWU's duty of fair representation to King. He was represented at each step of the disciplinary grievance procedure up to and including the arbitration hearing. His request for expert witnesses was handled in accordance with what is undisputedly TWU's normal practice and King was even afforded an opportunity to seek an exception to the policy from the TWU president, with whom he met personally. Finally, there is no evidence in the record that the TWU representatives behaved inappropriately in their handling of King's arbitration hearing. The comments made to King evidence no more than a concern about, or possibly a frustration with, King's behavior at the hearing and its impact on the arbitration panel.

Based on the foregoing, King's 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: July 1, 1998
Albany, New York

Michael R. Cuevas, Chairman

Marc A. Abbott, 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-17404

CONNETQUOT CENTRAL SCHOOL DISTRICT,

Respondent.

NANCY E. HOFFMAN, GENERAL COUNSEL (PAUL BAMBERGER of counsel), for Charging Party

GUERCIO & GUERCIO (THOMAS VOLZ 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 its charge that the Connetquot Central School District (District) violated §209-a.1(c) of the Public Employees' Fair Employment Act (Act) when it required Marie Moffett, the CSEA unit president, to submit a doctor's note each time she used sick leave. The ALJ found that the requirement was not imposed upon Moffett because of her union activities.

CSEA excepts to the ALJ's decision, arguing that the business reasons given by the District for its actions were necessarily pretexts disguising anti-union animus because similarly

situated employees were treated differently than Moffett. The District has filed a response to the exceptions, arguing that the ALJ's decision is correct and should be affirmed.

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

Moffett is a bus driver for the District and has been president of the transportation unit of CSEA since 1994. Crediting the testimony of the District's witnesses, the ALJ found that the District became concerned with excessive sick leave use by bus drivers in late 1994 and early 1995. Pursuant to the terms of the collective bargaining agreement with CSEA[1], the District's Assistant Superintendent for Transportation, James Marran, directed his assistant, Judith Clemente, to conduct an attendance review. Clemente drafted a list of twenty employees with whom she intended to meet regarding their use of sick leave. Marran testified that Moffett was an

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[1/]In relevant part, the District-CSEA contract provides as follows:

> Should the employee's building administrator or supervisor be concerned with an employees's attendance record, the following steps shall be taken:
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> 1. The direct supervisor will meet with the staff member and informally discuss the nature of the concern with the employee.
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> 2. After a reasonable period of time, to be determined by the supervisor, if the absentee problem has continued, a formal letter will be sent to the employee stating the nature of the concern. In addition, the supervisor shall arrange a meeting among the affected employee, the supervisor, and the Superintendent or his designee. The employee may bring a Union representative to this meeting.
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> 3. The meeting will be held at a mutually convenient time and will be intended to produce a satisfactory resolution to the problem. Following the said meeting, the Superintendent or his designee who conducted the meeting shall issue a letter to the employee stating the administration's concern with the employee's attendance. Further, subject to the discretion of the administration, the employee may be required to:
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> a. Substantiate further use of sick days by a physician's note for up to the balance of the then current school year and/or be required to substantiate all requests for personal leave by submission of a written letter setting forth the reason(s) underlying the personal leave request for up to the balance of the then school year and the next following school year.

employee with whom Clemente met in mid-January 1995.[2] After the January meetings with employees, Clemente and Adele Mottl, the Administrative Assistant for Business, continued to monitor the bus drivers' attendance and determined that they would schedule a step 2 meeting for those employees whose attendance had not improved. Thereafter, on May 30, 1995, Mottl sent a memorandum to John Walsh, the Assistant Superintendent for Administration and Personnel, saying that she and Marran had reviewed the attendance records of the bus drivers and found that ten, including Moffett, were still having attendance problems. She requested that Walsh send each driver a letter, outline the problem and arrange for individual meetings, pursuant to the contractual attendance review procedure. Walsh sent the letters and met with Moffett in June 1995. Mottl, Clemente and Laura Spano, the Supervisor of Transportation, also attended the meeting. At the meeting, Moffett confirmed that she was often absent due to her husband's disability. The meeting also dealt with Moffett's frequent absences on Fridays and/or Mondays. By memorandum dated June 28, 1995, Walsh instructed Moffett that she was required for the coming school year to substantiate with a doctor's note absences due to her illness or family illness.

Moffett testified that there was an ongoing dispute between the District and CSEA which arose in the Spring of 1995 about the drivers' use of sick and personal leave. She believed that the District had unilaterally implemented a plan by which employees who had exhausted their sick leave would have to charge absences to personal leave, rather than taking a day without pay. At a labor-management meeting in April 1995, Moffett asserted to Marran and Clemente that such a policy violated the collective bargaining agreement and that CSEA would file a grievance if it

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[2]/Clemente is no longer an employee of the District and did not testify at the hearing.

continued. Moffett also apparently referred the District to the terms of the collective bargaining agreement covering sick leave abuse and suggested to District agents that they use the attendance review procedure to address their perception that there was excessive use of sick leave. Afterward, Moffett circulated a petiton throughout the membership which supported her position and which was signed by several unit employees.

At the next labor-management meeting in May 1995, Marran told Moffett that the District was going to follow her suggestion and begin attendance reviews of employees with attendance problems, including Moffett. In June 1995, Marran met with three of the ten employees on the list whom the District believed had not improved their attendance between January and May 1995. Meetings with the remaining employees were completed in December 1995.[3]

CSEA asserts in its exceptions that other employees had worse attendance records than Moffett and yet they were not subjected to a step 2 meeting nor were they required to bring in a doctor's note when using sick leave. This, CSEA alleges establishes that the District's articulated concern with Moffett's excessive use of sick leave was pretextual. This allegation was considered by the ALJ and we find no reason in the record to disturb his findings. Based on their demeanor and their clear, unhesitant testimony, the ALJ credited the testimony of the District's witnesses over that of CSEA's witnesses. The ALJ found that the District initially raised concerns about attendance in December 1994, and met with many employees in January 1995, well before Moffett had addressed any concerns at labor-management committee meetings about the

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[3]/Walsh testified that he was only able to meet with Moffett and two other employees in June 1995 because it was the end of the school year and the bus drivers did not work in July and August. He completed the meetings pursuant to the contractual procedure in December 1995, after Moffett questioned Marran as to whether any other employees had been interviewed a second time.

District's new policy on use of personal leave. He further found that the reasons given by the District for meeting with only three of the ten employees identified as having unimproved attendance records in June 1995 were plausible and were uncontroverted by CSEA.[4]

CSEA further argues that the District's improper motivation is also evidenced by remarks made by Spano to the effect that Moffett had "opened a Pandora's box" by mentioning in the fall of 1995 that the remaining step 2 interviews had not yet taken place. We reject CSEA's argument that Spano's remark establishes the District's animus towards Moffett. The ALJ found that Spano's remark evidenced her reluctance to conduct the attendance review and reflected her concern that she would have to complete the step 2 interviews because Moffett raised the issue.[5] The record supports the ALJ's credibility resolutions as to this issue.

The District had a legitimate concern about the attendance of several employees, one of whom was Moffett. Her treatment was not so dissimilar from the other employees as to establish that the District was improperly motivated in reviewing her sick leave use. To accept CSEA's theory, we would have to conclude that the many other employees who were included in the initial review

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[4]/CSEA claims that six employees had worse attendance records than Moffett and were not called in for attendance review. The ALJ found that the record established that only three employees had taken more sick days than Moffett subsequent to February 1995. Of those three, one could not be scheduled for step 2 meeting because the step 1 meeting had not been held in January 1995, and one had taken more sick days than Moffett, but not more total days. Additionally, Moffett had several Fridays and/or Mondays charged to sick leave, which was of additional concern to the District. Only one of the employees who had a step 1 interview had a worse attendance record than Moffett and Moffett had more absences than five of the ten employees listed for a step 2 interview.

[5]/Spano testified that she had not wanted to conduct the attendance review in the first place and thought the issue of abuse of sick leave was dead at the end of the 1994-95 school year. When Moffett raised the issue in the fall of 1995, Spano reinstituted the review procedure for the remaining seven employees.

process and those who were reviewed at step 2 were made part of those processes simply to cover-up the District's intent to retaliate against Moffett. There is nothing persuasive in the record to support such a conclusion.

Based on the foregoing, we dismiss CSEA's exceptions and affirm the ALJ's decision.

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

DATED: July 1, 1998
Albany, New York

Michael R. Cuevas, Chairman

Marc A. Abbott, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

JOAN A. VREELAND,

Charging Party,

- and -

CASE NO. U-18984

NEW PALTZ CENTRAL SCHOOL DISTRICT and NEW PALTZ UNITED TEACHERS,

Respondents.

JOHN W. WITTLESEY, ESQ., for Charging Party

SHAW & PERLSON, LLP (JAY M. SIEGEL of counsel), for New Paltz Central School District

STEVEN M. BERMAN, for New Paltz United Teachers

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by Joan A. Vreeland to a decision by the Director of Public Employment Practices and Representation (Director). In early May 1997, Vreeland filed this charge alleging, as amended, that her employer, the New Paltz Central School District (District), violated §209-a.1(a), (b) and (c) of the Public Employees' Fair Employment Act (Act) and that her union representative, the New Paltz United Teachers (NPUT), violated §209-a.2(a) and (c) of the Act. Vreeland alleges that the District is not paying her correctly under the contractual salary schedule[1] and that NPUT is not acting quickly or decisively enough to

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[1]Vreeland believes that her salary should reflect a masters degree with 60 credits, not a masters degree with 30 credits, the column under which she has been placed since she was hired by the District in 1983.

correct that contract violation, even though it filed in 1995 a salary grievance on behalf of Vreeland and several others which is still pending.

The Director dismissed the charge against the District and NPUT as deficient. As to the District, the Director determined that there were no facts pleaded to evidence that the District's calculation of Vreeland's salary was in any way related to her exercise of any rights protected by the Act. As to NPUT, the Director concluded that the allegations of statutory impropriety were both conclusory and untimely.

Vreeland argues in the exceptions that her charge, as filed and amended, is supported by numerous facts clearly establishing the violations alleged. In their responses, the District and NPUT argue that the Director's decision is correct and should be affirmed.

Having reviewed the record and considered the parties' arguments,[2] we affirm the Director's decision.

The sections of the Act allegedly violated by the District are intended to protect the rights granted employees by the Act. An employer's violation of an employee's contractual salary rights by payment to that employee at a rate lower than that allegedly required by that contract does not set forth a cognizable violation of §209-a.1(a), (b) or (c) of the Act. Similarly, an employer's refusal to respond to an employee's demand for information regarding a contractual salary dispute is not conduct proscribed by the cited sections of the Act for there again is no form of interference with statutorily protected rights.

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[2]Pursuant to §204.11 of our Rules of Procedure, we have not considered Vreeland's reply to the responses because it was neither requested nor authorized by us.

The allegations against NPUT were properly dismissed by the Director as untimely. NPUT's alleged nonresponses to inquiries Vreeland made regarding her grievance and her requests for documents relevant thereto occurred more than four months before this charge was filed.[3] Having not recognized a continuing violation concept,[4] these particular allegations against NPUT are untimely.

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

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

DATED: July 1, 1998
Albany, New York

Michael R. Cuevas, Chairman

Marc A. Abbott, Member

[3]Section 204.1(a)(1) of our Rules of Procedure requires charges to be filed within four months of the acts constituting the alleged improper practice.

[4]New York City Transit Auth., 10 PERB ¶3077 (1977); City of Yonkers, 7 PERB ¶3007 (1974).

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

LYNN S. JOWERS,

Charging Party,

- and -

CASE NO. U-19186

GREEN CHIMNEYS CHILDREN'S SERVICES,

Respondent.

LYNN S. JOWERS, pro se

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by Lynn S. Jowers to a decision rendered by the Director of Public Employment Practices and Representation (Director) on an improper practice charge filed by Jowers against the Green Chimneys Children's Services (Green Chimneys).[1] The Director dismissed the charge because there were no allegations even suggesting that her termination from employment for misconduct and "erratic behavior" was in any way related to her exercise of any rights granted her under the Public Employees' Fair Employment Act (Act).

The exceptions merely reiterate Jowers' belief that her termination from employment was unfair and unconstitutional because she did not engage in any misconduct, an allegation Jowers claims was falsely made by Green Chimneys without good cause to "discredit [her] name as a worker, and as a person".

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[1]The Director did not decide whether Green Chimneys is a public employer. By affirming the Director's dismissal of the charge, we also do not make any findings in that respect.

An employer's dismissal of an employee from employment for reasons unrelated to an exercise of rights under the Act, whether or not for good cause, is not subject to this agency's regulation or review pursuant to an improper practice charge filed by the aggrieved individual. The Director's decision is, accordingly, affirmed for the reasons stated in his decision and the exceptions are denied.

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

DATED: July 1, 1998
Albany, New York

Michael R. Cuevas, Chairman

Marc A. Abbott, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

SUSAN GIROLAMO,

Charging Party,

- and -

CASE NO. U-17904

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 72,

Respondent,

-and-

NEW YORK STATE THRUWAY AUTHORITY,

Employer.

BAPTISTE & WILDER (CHRISTY CONCANNON of counsel), for Charging Party

COHEN, WEISS & SIMON (EARL R. PFEFFER of counsel), for Respondent

SHARON O'CONNOR, GENERAL COUNSEL (RESA SEIGEL TANNER of counsel), for Employer

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by Susan Girolamo to a decision of an Administrative Law Judge (ALJ) dismissing her charge alleging that the International Brotherhood of Teamsters, Local 72 (Local 72 or Teamsters) had violated §209-a.2 (a) and (c) of the Public Employees' Fair Employment Act (Act) when it misled her about the filing of a grievance, refused to supply her with information she needed to file a grievance and refused to

process a grievance on her behalf. The New York State Thruway Authority (Authority) was made a party pursuant to §209-a.3 of the Act.[1]

The ALJ determined that the Teamsters' assessment of Girolamo's request that a grievance be filed was not arbitrary or discriminatory or made in bad faith. The ALJ further found that the record did not support a finding that representatives of the Teamsters had misled or lied to Girolamo or that it refused her grievance information. Girolamo excepts to the ALJ's decision, arguing that the ALJ erred both factually and legally. The Teamsters' response supports the ALJ's decision. The Authority has not responded.

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

Until September 25, 1995, Girolamo was president and a paid business agent of Local 72. On that date, Local 72 was placed in trusteeship by Teamsters president Ron Carey and Girolamo was removed from those positions.[2] Under the terms of the trusteeship, the appointed trustee, Joseph Padellaro, was charged with investigating the affairs of Local 72. Pursuant to his investigation, Padellaro recommended to Carey that internal union charges be filed against Girolamo for her alleged failure to report the alleged illegal activities of Vincent Trerotola, previously the principal officer and secretary-treasurer of Local 72. Padellaro also alleged that Girolamo aided and abetted Trerotola in his illegal activities and assisted him in attempting a secession of Thruway employees from Local 72. Internal union charges were filed against

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[1]/This section of the Act makes the employer a party to a charge alleging that a bargaining agent failed to process a claim that the employer breached the collective bargaining agreement.

[2]/Girolamo resigned her membership in Local 72 on November 30, 1995.

Girolamo on March 11, 1996. Carey issued a decision on November 26, 1996, sustaining the charges against Girolamo and barring her for life from membership in the Teamsters or any of its locals.

Earlier, in March 1996, Girolamo had questioned Andy Rasulo, Local 72's chief Shop Steward, about the Thruway's winter maintenance schedule. Rasulo told her that a grievance had been filed at the Middletown maintenance division that would cover all maintenance employees, including Girolamo. When Girolamo requested a copy of the grievance, Rasulo told her that she was not entitled to see it because she was an agency fee payer. Girolamo thereafter objected to Padellaro, alleging discriminatory treatment because of her gender and because she had earlier filed a complaint against the Teamsters with the State Division of Human Rights. Padellaro responded that no grievance had yet been filed and asked Girolamo to provide facts in support of her allegations of discriminatory treatment.

During this time, Local 72's representatives had been making inquiries about the winter maintenance schedule, including consulting with Thomas Fitzgerald, Director of Labor Relations for the Thruway Authority. From Fitzgerald, they obtained a 1989 consent agreement, entered into by Local 72 as a result of negotiations in which Girolamo participated, which Local 72's representatives read as giving the Thruway Authority rights to staff under a winter maintenance schedule in exchange for a lump sum monetary payment to the unit employees. After a review of the consent agreement and consultation with Local 72's counsel, Assistant Trustee Thomas Feeley decided that no grievance about the winter maintenance schedule would be filed. At Feeley's instruction, Walter Spagnola, Local 72's Business Agent, told Girolamo that Local 72 would not file a grievance because of the consent agreement, and he offered her a copy of the consent

agreement and grievance forms if she wanted to pursue the grievance on her own. Girolamo declined the offer and wrote a letter to Padellaro renewing her demand that Local 72 file a grievance about the winter maintenance schedule.

The ALJ did not credit Girolamo's testimony where it differed from the testimony of Local 72's witnesses. She found that there was no violation of the Act by Local 72 when Rasulo told Girolamo that a class grievance had been filed regarding the winter maintenance schedule and then later when Spagnola told her that a grievance had not been and would not be filed. When Girolamo first approached Rasulo about filing the grievance, Rasulo repeated to her the information he had received from Spagnola that a class grievance was being filed out of the Middletown location and that it would cover all maintenance employees. That the Local 72 representatives later determined not to file the grievance as a result of their investigation into the merits of a winter maintenance schedule grievance is not a violation of the Act. The grievance would have affected all maintenance workers, not just Girolamo. There is nothing persuasive in this record which would support a finding that Local 72 chose to forgo filing an otherwise meritorious grievance to the detriment of all maintenance workers just to retaliate against Girolamo.

There is also no evidence of any representatives lying to Girolamo. Rasulo had repeated the information he had received from Spagnola concerning a winter maintenance grievance. When Local 72 decided not to file the grievance, that decision was communicated to Girolamo promptly and she was afforded the opportunity to pursue the grievance on her own. Although Girolamo asserts that Local 72 refused to provide her with the information she needed to file the grievance, the ALJ credited Spagnola's testimony that he offered Girolamo the grievance forms

and the necessary information and she refused his offer. There is no record support for Girolamo's claim that the ALJ erred in making the credibility resolutions upon which that part of her decision is based.

Girolamo also asserts that Rasulo's statement that Girolamo was not entitled to a copy of the grievance because she was an agency shop fee payor is violative of the Act. The ALJ determined that Rasulo's comments did not violate the Act because no grievance had actually been filed so there was no grievance to show Girolamo.[3] The ALJ further found that Rasulo's comments had not in and of themselves been alleged in the charge to be a violation of the Act and, therefore, she made no finding as to whether Rasulo's statement violated the Act. Girolamo argues that this allegation is encompassed in her charge because it broadly alleges that Local 72 had failed to fairly represent her. The charge, however, focuses on the filing by Local 72 of internal union charges against Girolamo in March 1996. While Rasulo's statements are set forth in the charge, the incident is not referenced as a separate violation of the Act and we, therefore, do not reach it as it was not presented as a separate violation of the Act.

Girolamo excepts to the ALJ's determination that Local 72 did not violate the Act when it told Girolamo she could file the grievance on her own. Under Girolamo's tenure in office, employees were not allowed to file grievances on their own. Local 72's offer to Girolamo that she could file a grievance is not improper, where, as here, there is no evidence that any change in the grievance practice was arbitrary or discriminatory or made in bad faith. Indeed, if it was a change in grievance practice it appears to be an expansion of rights afforded to unit members, not a restriction on those rights.

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[3]/See Transit Supervisors Org. and Transit Supervisors Benev. Ass'n, 25 PERB ¶3046 (1992).

Finally, Girolamo alleges that the ALJ erred in making statements about her motivation which are not supported by the record. As those statements did not affect the disposition of the charge, we do not reach the exceptions in this regard.

For the reasons set forth above, Girolamo's 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: July 1, 1998
Albany, New York

Michael R. Cuevas, Chairman

Marc A. Abbott, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

KENNETH SWART,

Petitioner,

- and - **CASE NO. C-4535**

TOWN OF SAUGERTIES,

Employer,

- and -

UNITED FEDERATION OF POLICE, INC.,

Intervenor.

FRANCELLO & VAN BENSCHOTEN (DAVID VAN BENSCHOTEN of counsel), for Petitioner

QUALTERE, GRAHAM & REDDER (GEORGE W. REDDER of counsel), for Employer

THOMAS P. HALLEY, ESQ., for Intervenor

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by the United Federation of Police, Inc. (Federation), to a decision by the Director of Public Employment Practices and Representation (Director). On April 29, 1996, Kenneth Swart filed a petition seeking to decertify the Federation as the bargaining agent for a unit[1] of employees of the Town of Saugerties (Town). The

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[1]The unit consists of part-time police officers and court officers.

Federation's allegation that the petition was barred by a January 1996 Memorandum of Understanding (MOU) it reached with the Town was the subject of a hearing. Upon the hearing record, the Director held that the MOU was not a final agreement and that several items which the Federation and the Town were bargaining were still open at the date the petition was filed.[2]

The Federation argues in its exceptions that the parties had reached agreement on all substantial terms and conditions of employment before the petition was filed and that any open items were insubstantial. The Town in response argues that the Director's decision is correct as a matter of fact and law and should be affirmed. Swart did not file a response to the Federation's exceptions.

Having reviewed the record and considered the arguments presented, we affirm the Director's decision for the reasons stated in that decision with but brief additional comment.

The record clearly establishes that employment terms which were considered to be substantial in the sense that they had to be finalized as a condition to both agreement and any statutory duty to ratify[3] remained open at the date this decertification petition was filed. Therefore, the petition was not barred by any prior contract and the Director properly ordered an election to determine the Federation's majority status.

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[2]To bar a petition, a contract must be in writing, be signed by the parties, contain substantial settled terms and conditions of employment and be ratified if subject to a ratification requirement by the parties to the agreement. Capital Dist. Reg'l Off-Track Betting Corp., 20 PERB ¶3020 (1986); Farmingdale Union Free Sch. Dist., 7 PERB ¶3073, affg 7 PERB ¶4041 (1974).

[3]As did the Director, we make no findings as to whether either the Town or the Federation had a reserved right of ratification or whether the Town improperly failed to ratify either the MOU or a document tendered to it by the Federation's president on March 27, 1996. Apart from any ratification issue, neither document was final in substantial respect for purposes of the contract bar doctrine.

The Director's decision is affirmed, the Federation's exceptions are denied, and the case is remanded to the Director for further processing consistent with this decision. SO ORDERED.

DATED: July 1, 1998
Albany, New York

Michael R. Cuevas, Chairman

Marc A. Abbott, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

CIVIL SERVICE EMPLOYEES ASSOCIATION, INC., LOCAL 1000, AFSCME, AFL-CIO, ONONDAGA COUNTY CORRECTIONS DEPARTMENT UNIT #7800-09, LOCAL 834,

Charging Party,

- and -

CASE NO. U-18232

COUNTY OF ONONDAGA,

Respondent.

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

JON A. GERBER, COUNTY ATTORNEY (LAWRENCE R. WILLIAMS 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, Onondaga County Corrections Department Unit #7800-09, Local 834 (CSEA), to a decision of an Administrative Law Judge (ALJ) dismissing its charge alleging that the County of Onondaga (County) violated §209-a.1(d) of the Public Employees' Fair Employment Act (Act) when it notified CSEA that it intended to make assignments of unit work in conformity with the management rights clause of the parties' collective bargaining agreement.

The ALJ determined that a hearing was not necessary as none of the facts material to a disposition of the charge were in dispute. The parties were directed to file briefs and the decision was based on those briefs, the pleadings and related correspondence. CSEA excepts to the ALJ's decision, arguing that the ALJ erred in finding a proposed amendment to the charge untimely and in deciding that there was no violation of the Act because the charge alleged only that the County had announced its future intention of implementing unit work assignment decisions in accordance with the parties' contractual management rights clause. The County supports the ALJ's decision.

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

In its charge, CSEA alleges that its unit employees have exclusively performed the work of supervising inmates serving sentences of up to one year at the County's Jamesville Penitentiary. The County and CSEA were engaged in negotiations in late 1995 and through September 1996 over a County proposal that CSEA waive exclusivity over unit work in exchange for a job security agreement.[1] By letter dated September 12, 1996, the County's Director of Employee Relations, Peter Troiano, notified CSEA that its last proposals were unacceptable. The letter concludes:

> This will also provide notice to you that the New York State Public Employment Relations Board has affirmed the Director's decision in Case #U-16853....[2] In light

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[1]The County-CSEA collective bargaining agreement was for the term January 1, 1994 to December 31, 1996.

[2]County of Onondaga and Sheriff of the County of Onondaga, 29 PERB ¶3046 (1996), where we found that the management rights clause in the collective bargaining agreement between the Onondaga County Sheriff's Police Association and the County gave the County the right to transfer duties performed by employees in the Association's unit to job titles then represented in a separate unit by the Deputy Sheriff's Benevolent Association of Onondaga County, Inc.(DSBA).

> of this decision the Employer is terminating its participation in negotiations on this matter and intends to proceed with implementation of decisions concerning the assignment of unit work in accordance with its rights reserved under Article 3 Management Rights of our current collective bargaining agreement.

CSEA thereafter filed this charge, alleging, as amended, that the County's refusal to negotiate further and the assignment of bargaining unit work to nonunit employees violated the Act. The ALJ determined that as no material facts were in dispute, the matter did not require a hearing. CSEA was, however, given the opportunity to submit any other facts it wished to offer for the record. CSEA filed letters asserting that the charge as filed encompassed both unit work performed outside the Jamesville Penitentiary and actions taken by the County after its September 12, 1996 letter. Thereafter, CSEA sought to allege, in the alternative, that the County had made decisions to re-assign to nonunit personnel the work of supervising sentenced inmates which had been exclusively performed by CSEA unit personnel. The ALJ rejected these amendments as not being encompassed in the details of the original charge and as untimely.[3] The ALJ then dismissed CSEA's charge because the sole County action covered by the charge was the County's announcement that it intended to implement future unit work assignments in accordance with the rights reserved to it under the management rights clause of the parties' collective bargaining agreement and that such a notification was not a violation of the Act.[4]

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[3]CSEA filed letters on both March 10 and March 27, 1997, asserting that the charge as filed covered work performed by unit members both within the Jamesville Penitentiary and other County facilities and that the County's September 12, 1996 letter was not just an announcement of the County's intention to act but was in fact a unilateral action of the County to assign unit work to nonunit personnel. As the letters were filed more than four months after the action complained of, the ALJ rejected them as untimely. Our Rules of Procedure, §204.1(a), requires that an improper practice charge be filed within four months of the complained of action.

[4]See Middle Country Teachers Ass'n, 21 ¶3012 (1988).

In its exceptions, CSEA argues that both it and the County understood the language in the County's letter to be an announcement that the County was transferring supervision of sentenced inmates to nonunit personnel because the County and CSEA had been negotiating a waiver of CSEA's exclusivity and the County broke off negotiations on that subject with its letter. As the ALJ found, however, the letter is not a specific announcement of a defined future action. The County has not announced any specific action that it will take, only that in the future, assignments of work would be made in accordance with rights the County claims it has under the management rights clause of the CSEA- County collective bargaining agreement. Such an announcement of possible future action[5], consistent with existing contract rights, does not violate the Act.[6] Actual transfers of exclusive unit work would be actionable as would, perhaps, an announcement of an unequivocal intent to transfer specific unit work at a future date.[7] The nature of the County's statement simply does not lend itself to any reasonable review as to whether there has been or will be a violation of the Act in the future.

The amendments filed by CSEA in March 1997, arguing that the County had indeed acted on September 12, 1996, to reassign unit work to nonunit personnel were correctly rejected by the

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[5]CSEA alleged in its March 27 letter to the ALJ that the County had made a decision to reassign unit work to nonunit personnel by its September 12 letter. No facts were submitted in support of the allegation and the ALJ denied the proposed amendment as untimely filed.

[6]See Bd. of Educ. of the City Sch. Dist. of the City of New York, 19 PERB ¶3015 (1986), conf'd, 75 N.Y.2d 660, 23 PERB ¶7012 (1990) (intervening history omitted).

[7]The basis for our decision in this case does not require us to express any opinion about Middle Country Teachers Ass'n, supra, note 4, which permits charges to be filed within four months from the announcement of an act to take effect at a future date and/or the actual implementation date of the announced act. Nothing in this decision should be taken as an endorsement or rejection of the principles established in that case.

ALJ. The amendments were filed six months after the County's alleged improper action, well beyond the four-month filing period accorded to charging parties in §204.1(a) of our Rules.

CSEA also argues in its exceptions that the ALJ erred in failing to determine that the work of supervising sentenced inmates was exclusively CSEA's unit work, regardless of the location of the prisoners. As the ALJ dismissed the charge, it was not necessary for her to reach this argument, nor are we required to do so.

Based on the foregoing, CSEA's exceptions are denied and the ALJ's decision is affirmed. The charge must be, and it hereby is, dismissed in its entirety.

DATED: July 1, 1998
Albany, New York

Michael R. Cuevas, Chairman

Marc A. Abbott, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

FRANCIS WARD,

Charging Party,

- and -

CASE NO. U-18045

TRANSIT SUPERVISORS ORGANIZATION,

Respondent,

- and -

NEW YORK CITY TRANSIT AUTHORITY,

Employer.

ARTHUR GRAE, ESQ., for Charging Party

O'DONNELL, SCHWARTZ, GLANSTEIN & ROSEN (HOWARD WIEN of counsel), for Respondent

MARTIN SCHNABEL, GENERAL COUNSEL (DANIEL TOPPER of counsel), for Employer

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by the New York City Transit Authority (Authority) to a remedial order issued in a decision by an Administrative Law Judge (ALJ) on a charge filed by Francis Ward against the Transit Supervisors Organization (TSO). The ALJ held that TSO breached its duty of fair representation in violation of §209-a.2(a) and (c) of the Public Employees' Fair Employment Act (Act) when it failed to pursue for disciplinary arbitration the

testimony and a report of the police officers who were called to the scene of an alleged assault against Ward by his supervisor. That incident led ultimately to disciplinary charges being brought against Ward by the Authority because the Authority believed that Ward's accusation against his former supervisor was false.[1] The Authority was made a party to this charge pursuant to §209-a.3 of the Act.[2]

TSO has not filed any exceptions to the ALJ's holding that it violated the Act as alleged. The Authority argues in its exceptions that the remedial order requiring it to "hold open or reopen, as necessary, the arbitration record" is inappropriate because it does not have the power or right to control the arbitration process. There is no response to the Authority's exceptions.

Having reviewed the record and considered the exceptions, we affirm the entry of a remedial order against the Authority, but conclude that the ALJ's order should be modified.

When the legislature added §209-a.3 to the Act in 1990 to require the joinder of a public employer to certain charges alleging that a union has breached its duty of fair representation, it simultaneously authorized by amendment to §205.5(d) of the Act the entry of appropriate remedial orders against that employer, even though it had not committed any violation of the Act. The question before us, therefore, is not whether remedial relief can be entered against the

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[1]Both Ward and his supervisor have since retired from employment with the Authority. Ward is apparently pursuing the arbitration, notwithstanding his retirement, to clear his name and to recover wages he lost while he was suspended without pay.

[2]That section of the Act requires that the employer be made a party to any improper practice charge in which it is alleged that the union representing an employee has breached its duty of fair representation in the processing or failure to process a claim that the employer has violated the terms of the collective bargaining agreement between the union and employer.

Authority, only whether the particular relief ordered by the ALJ in this case is appropriate to "effectuate the policies of [the Act]."[3]

As TSO's breach of its duty of fair representation related directly to arbitration proceedings, an order affecting those proceedings is clearly appropriate. As the Authority notes, however, it alone does not shape or control the arbitration process. That is a process controlled jointly by the parties pursuant to their mutual agreement. The ALJ's order directing only the Authority to hold open or reopen the arbitration proceeding may, therefore, well be one that the Authority alone is legally incapable of performing. But TSO and the Authority together can plainly effect that result because an arbitrator serves at their pleasure and direction. The ALJ's remedial order, therefore, is appropriately modified to require the TSO and the Authority jointly to notify the designated arbitrator that arbitration proceedings on the disciplinary charges against Ward are to commence or resume pursuant to the grievance as filed and in accordance with the terms of the parties' agreement as it existed at the relevant dates.

The Authority also argues that the ALJ's order infringes on the arbitrator's power to conduct the arbitration proceeding. The ALJ's order as written, however, does not address the rights or powers of the arbitrator, only the parties. Therefore, nothing in the ALJ's or our remedial order restricts the arbitrator's power to determine the admissibility of any evidence or the arbitrator's power to decide any issues raised by the Authority's disciplinary charges or TSO's grievance, whether related to arbitrability or the merits. TSO's violation of the Act is remedied by requiring the TSO to obtain and offer the evidence in issue and by ensuring, through TSO's and the Authority's joint demand, the availability of an arbitration forum in which to offer that

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[3]Act §205.5(d).

evidence. Whether an arbitrator considers that evidence when offered and, if so, for what purposes, are decisions for the arbitrator to make, just as they would have been had the TSO obtained and offered the evidence in issue of its own volition initially upon Ward's request.

For the reasons set forth above, the ALJ's remedial order is affirmed as modified below.

IT IS, THEREFORE, ORDERED that the TSO:

1. Cease and desist from acting in bad faith in pursuing the pertinent police report and police officers' testimony for the arbitration on the disciplinary charges against Ward.
2. Forthwith undertake such action as is necessary to secure said police report and police officers' testimony for said arbitration.
3. Sign and post the attached notice at all locations normally used to post notices of information to unit employees.

IT IS FURTHER ORDERED that the TSO and the Authority jointly notify the designated arbitrator that arbitration proceedings on the disciplinary charges against Ward are to commence or resume pursuant to the grievance as filed and in accordance with the terms of the parties' agreement as it existed at the relevant dates.

DATED: July 1, 1998
Albany, New York

Michael R. Cuevas, Chairman

Marc A. Abbott, 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 New York City Transit Authority (Authority) in the unit represented by the Transit Supervisors Organization (TSO) that:

1. The TSO will not act in bad faith in pursuing the pertinent police report and police officers' testimony for the arbitration on the disciplinary charges against Francis Ward.

2. The TSO will forthwith undertake such action as is necessary to secure said police report and police officers' testimony for said arbitration.

3. The TSO and the Authority will jointly notify the designated arbitrator that arbitration proceedings on the disciplinary charges against Francis Ward are to commence or resume pursuant to the grievance as filed and in accordance with the terms of the agreement between the TSO and the Authority as it existed at the relevant dates.

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

TRANSIT SUPERVISORS ORGANIZATION

. . . . . .

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

CHARLES J. MUNAFO **CASE NO. U-18670**

BOARD DECISION AND ORDER

In May 1997, this Board received a complaint from Elena Cacavas, Esq., the assigned Administrative Law Judge (ALJ), about the conduct of Charles J. Munafo at and after a pre-hearing conference held in this case on April 30, 1997.[1] Munafo is the lay representative for the charging party, Anthony Imbriale, who alleges in the improper practice charge that his bargaining agent, the United Transportation Union, Local 1440 (UTU), engaged in an improper practice in violation of the Public Employees' Fair Employment Act (Act) by denying his request for two grievance representatives of his choice.[2] Imbriale's employer, the Staten Island Rapid Transit Operating Authority (SIRTOA), was also named as a party to the improper practice charge.

The ALJ's misconduct complaint alleges that Munafo repeatedly disrupted the conference while in progress and after its end by irrelevant, loud outbursts and physical gestures which threatened and intimidated her.

Munafo and UTU's attorney responded to the ALJ's misconduct complaint. Upon the complaint and the responses thereto, this Board determined at its meeting of May 28, 1997, to

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[1]The conference had been rescheduled by the ALJ from an earlier date in April, an action about which Munafo complained repeatedly on April 30. The conference was rescheduled because the attorney for the employer had a death in his immediate family which presented him with a conflict on the first scheduled conference date.

[2]A different ALJ has dismissed this charge because neither Imbriale nor Munafo appeared at the scheduled hearing and exceptions to that decision are pending.

conduct an investigation into the ALJ's allegations of misconduct.[3] It being apparent that the credibility of staff members would likely be in issue, it was determined that the investigation would be conducted by a disinterested person not in this Board's employ. Shortly thereafter, Sidney H. Asch, a retired judge of the Unified Court System, was appointed to conduct the investigation.

After several days of hearing, Judge Asch issued a written report and recommendations on January 22, 1998. Judge Asch found that Munafo's conduct at and after the conference was substantially as the ALJ had alleged it to be, and he concluded that the ALJ

> had bona fide reason to, and did, fear for her physical safety when Mr. Munafo appeared before her, lost control and physically followed her and confronted her.

Upon his findings, Judge Asch recommended that Munafo be "suspended from representing persons in PERB matters for six months" and that there be a "permanent revocation of his right to represent anyone in hearings" if he should engage in similar conduct in the future.

The ALJ, the charging party, and the representatives of record were issued a copy of Judge Asch's report and recommendations. Although each was invited to respond to the report and recommendations, only Munafo responded. Munafo argues that Judge Asch did not address alleged contradictions in the witnesses' testimony, a failure which Munafo argues makes Judge Asch's findings of fact suspect. Munafo argues also that Judge Asch did not consider all relevant evidence nor the ALJ's alleged failure to comply with agency procedures. Attached to Munafo's response is a copy of the arguments he submitted to Judge Asch after the close of the hearings

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[3]Section 204.7(j) of our Rules of Procedure prohibits misconduct at any hearing and authorizes the suspension or revocation of a representative's right to appear before the agency after notice and hearing. As interpreted, the rule prohibits misconduct at all stages of case processing, including conferences. Matter of Halley, 30 PERB ¶3023 (1997).

before him which incorporated many of the points Munafo makes to us in his response to Judge Asch's report and recommendations.

Having reviewed the record,[4] and having considered all arguments, we adopt the report issued by Judge Asch and the sanctions he recommended therein.[5]

Although Munafo suggests otherwise in his response, the proceedings before Judge Asch allowed all persons a full and fair opportunity to explain what happened at the conference. His findings of fact are limited to the relevant issues and those findings are entirely consistent with the hearing record. The issues Munafo raises are either based on incorrect or inaccurate representations of fact, are immaterial to the limited questions before us under this misconduct complaint, or require a reversal of Judge Asch's credibility determinations, which the record affords us no reasonable basis to even question, let alone reverse.

We further conclude that the six-month suspension recommended by Judge Asch is appropriate. Munafo's conduct on April 30, 1997, during and after the conference in this case, was egregious under any reasonable standard and was inexcusable no matter his lack of experience or qualifications or the degree of his felt provocation, regardless of nature or source. The privilege

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[4]The hearings before Judge Asch were transcribed and he properly considered only that transcribed record in making his findings and recommendations.

[5]Judge Asch also recommended that we adopt "registration requirements" for lay representatives. We share Judge Asch's concern about the qualifications of some lay persons to represent parties to proceedings before this agency. In recognition of the need to have both an informed clientele and qualified representatives, we have offered at least annually for many years a variety of training programs which are open to the public. However, legislation recently enacted, which codified a party's right to have a nonattorney serve as a PERB representative, simply does not allow us to fix minimum qualification standards for any representatives. Section 205.5(j) of the Act, as amended on September 25, 1996, permits representation by any person whom a party authorizes to act on its behalf. The Legislature intentionally left the evaluation of a representative's qualifications to the party appointing the representative, subject expressly to our misconduct rules.

of representing individuals or entities before this agency carries with it a certain set of responsibilities, not the least one of which is a simple duty to observe ordinary principles of civility, courtesy and decorum during appearances, even when frustrated or upset. The conduct exhibited by Munafo at and after the conference on April 30, 1997, was wholly inconsistent with even minimum principles of acceptable behavior and that misconduct is appropriately sanctioned.[6]

For the reasons set forth above, and upon the report and recommendations of Judge Asch, effective immediately Charles J. Munafo is suspended from representing in any manner any parties, persons or entities in any proceedings before this agency for a period of six months from the date of this decision.[7] He is further warned that his future misconduct may be cause for an order from us barring him permanently from serving as a representative at this agency. SO ORDERED.

DATED: July 1, 1998
Albany, New York

Michael R. Cuevas, Chairman

Marc A. Abbott, Member

[6]The ALJ orally amended the complaint during the hearing upon discovery that Munafo had secretly audio taped the conference despite being told before the conference began that the conference discussions were off the record. As the misconduct investigation this Board authorized did not include this allegation, we have not considered the taping in finding that Munafo engaged in misconduct or in fixing the penalty for that misconduct. Had we considered this allegation, we would have found Munafo's secret recording of the conference to be an act of misconduct, but we would not increase the penalty beyond that recommended by Judge Asch, who knew of Munafo's taping from the record developed before him.

[7]The suspension does not bar the consideration of papers filed by Munafo as a party representative prior to the date of this decision, including exceptions and motions he may have filed in this or other pending cases.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

WILLIAM TAYLOR,

Petitioner,

-and- CASE NO. C-4724

INCORPORATED VILLAGE OF ATLANTIC BEACH,

Employer,

-and-

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

Intervenor.

WILLIAM TAYLOR, for Petitioner

EPSTEIN, BECKER & GREEN, P.C.(ELLIOT MANDEL of counsel), for Employer

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

BOARD DECISION AND ORDER

On November 25, 1997, William Taylor (petitioner) filed a timely petition for decertification of the Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO (intervenor), the current negotiating representative for employees in the following unit:

Included: All full-time and part-time workers of the Department of Public Works.

Excluded: The Superintendent of Public Works and other employees.

Upon consent of the parties, a mail-ballot election was held on May 8, 1998. The results of this election show that the majority of eligible employees in the unit who cast valid ballots no longer desire to be represented for purposes of collective negotiations by the intervenor.

THEREFORE, IT IS ORDERED that the intervenor be, and it hereby is, decertified as the negotiating agent for the unit.

DATED: July 1, 1998
Albany, New York

Michael R. Cuevas, Chairman

Marc A. Abbott, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL #30,

Petitioner,

- and -

CASE NO. C-4751

HUDSON RIVER PARK CONSERVANCY,

Employer.

ADAM IRA KLEIN, ESQ. (MARK SOROKA, of counsel), for Petitioner

KAUFF, MCLAIN & MCGUIRE (CATHLEEN DAWE of counsel), for Employer

BOARD DECISION AND ORDER

On January 28, 1998, the International Union of Operating Engineers, Local #30 (petitioner) filed, in accordance with the Rules of Procedure of the Public Employment Relations Board, a timely petition seeking certification as the exclusive representative of certain employees of the Hudson River Park Conservancy (employer).

Thereafter, the parties executed a consent agreement in which they stipulated that the following negotiating unit was appropriate:

Included: Supervisor of Operations and Maintenance.

Excluded: All other employees.

Pursuant to that agreement, a secret-ballot election was held on June 1, 1998, at which a majority of ballots were cast

against representation by the petitioner.

Inasmuch as the results of the election indicate that a majority of the eligible voters in the unit who cast ballots do not desire to be represented for the purpose of collective bargaining by the petitioner, IT IS ORDERED that the petition should be, and it hereby is, dismissed.

DATED: July 1, 1998
Albany, New York

Michael R. Cuevas, Chairman

Marc A. Abbott, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

INTERNATIONAL LOCAL 182, INTERNATIONAL BROTHERHOOD OF TEAMSTERS (AFL-CIO),

Petitioner,

-and-

CASE NO. C-4503

UTICA CITY 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 International Local 182, International Brotherhood of Teamsters (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: Bus dispatcher, purchasing agent, assistant director of food service, associate director of food service, maintenance foreman.

Excluded: All other employees.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the International Local 182, International Brotherhood of Teamsters (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: July 1, 1998
Albany, New York

Michael R. Cuevas, Chairman

Marc A. Abbott, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

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

Petitioner,

-and-

CASE NO. C-4552

CITY OF AUBURN,

Employer.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

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

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

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

Unit: Included: Community development program manager, capital improvement program manager, street maintenance supervisor, water maintenance supervisor, sewer maintenance supervisor, sanitation supervisor, assistant fire chief, secretary to director of planning/economic development, director of human rights, assessor, superintendent of parks and recreation, deputy city clerk and treasurer.

Excluded: All other employees.

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

DATED: July 1, 1998
Albany, New York

Michael R. Cuevas, Chairman

Marc A. Abbott, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

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

Petitioner,

-and- **CASE NO. C-4733**

QUEENSBURY 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 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: Full-time and regular part-time cleaners, custodians, groundsmen and maintenance employees.

Excluded: All other employees.

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

DATED: July 1, 1998
Albany, New York

Michael R. Cuevas, Chairman

Marc A. Abbott, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

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

Petitioner,

-and-

CASE NO. C-4726

LINDENHURST UNION FREE SCHOOL DISTRICT,

Employer,

-and-

AIDES LEAGUE OF LINDENHURST,

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: All aides and teaching assistants.

Excluded: All others.

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: July 1, 1998
Albany, New York

Michael R. Cuevas, Chairman

Marc A. Abbott, 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-4725

NEW LEBANON CENTRAL SCHOOL DISTRICT,

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: Bus Driver, Bus Driver/Cleaner, Bus Driver/Mechanic, Cleaner Clerk, Clerical Aide, Computer System Operator, Custodian, Head Bus Driver, Head Custodian, Library Aide, Maintenance Worker, School Nurse, Teacher Aide, Teaching Assistant, Typist.

Excluded: All other employees.

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

DATED: July 1, 1998
Albany, New York

Michael R. Cuevas, Chairman

Marc A. Abbott, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

RIDGE ROAD PROFESSIONAL FIREFIGHTERS ASSOCIATION, LOCAL 3794, IAFF, AFL-CIO,

Petitioner,

-and-

CASE NO. C-4720

RIDGE ROAD FIRE 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 Ridge Road Professional Firefighters Association, Local 3794, IAFF, AFL-CIO has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: All firefighters.

Excluded: All other employees.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Ridge Road Professional Firefighters Association, Local 3794, IAFF, 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: July 1, 1998
Albany, New York

Michael R. Cuevas, Chairman

Marc A. Abbott, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

SUBWAY-SURFACE SUPERVISORS ASSOCIATION,

Petitioner,

-and-

CASE NO. C-4705

MTA-LONG ISLAND BUS,

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 Subway-Surface Supervisors 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 Transportation Coordinators, Paratransit.

Excluded: All other employees.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Subway-Surface Supervisors 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: July 1, 1998
Albany, New York

Michael R. Cuevas, Chairman

Marc A. Abbott, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

BRIARCLIFF TEACHERS ASSOCIATION/NYSUT,

Petitioner,

-and- **CASE NO. C-4704**

BRIARCLIFF MANOR 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 Briarcliff Teachers Association/NYSUT 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: Teacher Aides.

Excluded: All other employees.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Briarcliff Teachers Association/NYSUT. 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: July 1, 1998
Albany, New York

Michael R. Cuevas, Chairman

Marc A. Abbott, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

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

Petitioner,

-and-

CASE NO. C-4693

INCORPORATED VILLAGE OF AMITYVILLE,

Employer.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

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

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

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

Unit: Included: Except as specifically excluded, all employees in the titles of Clerk/Typist, Senior Clerk/Typist, Stenographer, Senior Stenographer, Principal Stenographer and Account Clerk.

Excluded: The Stenographer who serves as the Mayor's Secretary and all other employees.

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

DATED: July 1, 1998
Albany, New York

Michael R. Cuevas, Chairman

Marc A. Abbott, Member