STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

NEW YORK STATE CORRECTIONAL OFFICERS AND POLICE BENEVOLENT ASSOCIATION, INC.,

Charging Party,

CASE NO. U-24704

- and -

STATE OF NEW YORK (DEPARTMENT OF CORRECTIONAL SERVICES),

Respondent.

HINMAN STRAUB P.C. (NATALIE A. CARRAWAY and RICHARD E. CASAGRANDE of counsel), for Charging Party

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

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by the State of New York (Department of Correctional Services) (DOCS) from a decision of an Administrative Law Judge (ALJ) that found that DOCS violated §209-a.1(d) of the Public Employees' Fair Employment Act (Act) when it unilaterally imposed restrictions on the size and number of containers that employees in the unit represented by the New York State Correctional Officers and Police Benevolent Association, Inc. (NYSCOPBA) are permitted to bring to their workstations in the correctional facilities.

DOCS filed an answer, alleging that the subject of the improper practice charge is not mandatorily negotiable and that NYSCOPBA waived its bargaining rights regarding the charge.

EXCEPTIONS

DOCS alleged in its exceptions that the ALJ erred on the facts and the law, in particular, that the ALJ misapplied the balancing test of employer-employee interests to determine the negotiability of the subject. NYSCOPBA concurs with 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.

FACTS

The facts, as relied upon by the ALJ,[1] are disputed by the parties. The facts, as we find them to be established in the record, are set forth below.

In July 2003, DOCS' Associate Commissioner, Kevin Breen, contacted NYSCOPBA's Executive Vice President, Carl Canterbury, to schedule a meeting to discuss gate procedures at the correctional facilities. On July 15, 2003, Canterbury and NYSCOPBA President Richard Harcrow met with DOCS Deputy Commissioner Lucien Leclaire and Director of Labor Relations Peter Brown to discuss a change in the method of transporting personal items and food into DOCS facilities. Leclaire had circulated a memorandum dated June 16, 2003 to all superintendents[2] and to the heads of the employee organizations that represent employees of DOCS.[3] In addition to requiring that all packages be searched, the document stated:

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[1] 37 PERB ¶4596 (2004).

[2] Charging Party Exhibit #2.

[3] Transcript, pp. 252-253.

> Effective immediately, the carrying of duffel/gym bags, back packs or other similar containers into maximum and medium security correctional facilities beyond the security man-lock is prohibited. . . .
>
> Staff who are required to carry their lunch to their job assignment will be permitted one appropriate lunch receptacle; however, they will be required to display the contents of such receptacle upon entering and leaving the correctional facility. The size of such container is limited to 10" wide by 12" long by 12" high, which is reasonable to hold the employee's food and associated food items.[4]

Canterbury stated that during the meeting "it was explained to us that basically since the advent of 9/11, that they wanted to beef up security procedures and felt it was long overdue and that's what we were there to discuss."[5] Canterbury voiced his concern over the size of the container that was proposed, stating that the size of the container may limit the amount of food an officer can bring in, and whether it would be adequate over the course of an eight-hour or sixteen-hour shift.[6]

Leclaire's and Canterbury's recollection of the conclusion of the July 15, 2003 meeting differ. Leclaire stated that he advised Canterbury "if they had any concerns that they should let us know." Canterbury's recollection is that DOCS did not want any suggestions regarding the size of the food container. Although the proposed policy was scheduled to be implemented in one to two weeks from the July 2003 meeting, DOCS did not implement the policy until September 4, 2003.

On September 8, 2003, Canterbury wrote Leclaire a letter expressing his concern again over the size of the food container. His other concern dealt with whether duffle/gym bags and backpacks would be allowed beyond the pedestrian sally-port. On

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[4] Charging Party's Exhibit 1.

[5] Transcript, p. 216.

[6] Transcript, p. 220.

October 21, 2003, Breen responded to Harcrow and informed him that NYSCOPBA's request for a meeting to discuss these concerns was untimely and, in any event, the policy had already been implemented. Breen noted that DOCS would be evaluating the policy over the next six months "to determine if any unreasonable hardships exist."

On December 12, 2003, NYSCOPBA filed its improper practice charge alleging that, prior to September 12, 2003, DOCS' policies and work rules did not require a search of every container brought into a facility by an employee. Also, DOCS did not limit the size or type of containers employees brought into the facilities. The new policy, effective September 4, 2003 and September 12, 2003, imposed the following new requirements:

> Effective immediately, all containers carried by staff into maximum and medium security facilities will be searched at the facility entrance upon entering and leaving.
>
> Effective September 12, 2003, the carrying of duffle/gym bags, backpacks or other similar containers into maximum and medium security correctional facilities beyond the pedestrian SALLY-PORT will be prohibited.
>
> Staff who carry their lunch to their job assignment will be permitted one appropriate lunch receptacle or shoulder bag (purse). The size of such containers is limited to 10" wide by 12" long by 12" high.

At the hearing before the ALJ, NYSCOPBA and DOCS stipulated that:

> there will be no issue with respect to duffle bags, knapsacks, backpacks being brought into officers' locker rooms within the correctional facilities, wherever those locker rooms may, in fact, be located, and . . . . the remaining question or questions that we have to deal with here at the hearing is the limitation on the size of the containers, bags, whatever an officer would bring, and the number of bags or containers that an officer could bring to their individual posts . . . . All the other aspects of this charge are now no longer what we're asking PERB to decide.[7]

[7] Transcript, pp. 210-212.

In addition, the parties further stipulated that:

> the issue of security of agency facilities is delegated by GOER [Governor's Office of Employee Relations] to that agency so that, in essence, GOER would not be the bargaining agent who would sit at the table to negotiate that [security] but rather the agency . . . representatives would have the ability to make agreements on the issue of security of their facilities.

NYSCOPBA produced several witnesses to testify regarding the impact of the new DOCS policy on the employees in its bargaining unit. Lyndon Johnson, Vice President of the Northern Region, stated that correction officers in his region voiced concern that the new policy restricted the amount of food and/or drink they could bring into a facility. He noted that the facilities in the Northern Region do not provide free food to the officers, but that there are vending machines to obtain various food items. Johnson's testimony also noted that none of the officers complained that they could not bring water or soda to their post under the new policy.

Paul Mikolajczyk, Vice President of the Southern Region, stated that he received complaints similar to ones received by Johnson. He also noted that food is available through vending machines. Joseph Green, Business Agent for the Western Region, expressed similar concerns voiced by the members in his region.

Lawrence Flanagan, Vice President of the Mid-Hudson Region, described the events that took place at a meeting between Leclaire, Breen, Harcrow and himself on September 15, 2003. They met to discuss NYSCOPBA's concerns with the gate procedure that had recently been implemented. The main topic of their conversation was the restriction on the size of the lunch box. Flanagan brought to this meeting his own lunch box and another for consideration. At the hearing, he produced his lunch box but was unable to describe its size. However, on further investigation, it measured 10" x 15" x 15". While he noted that he and Harcrow agreed with the DOCS representatives

that there was a need to heighten security, Flanagan stated that one of the first concerns of NYSCOPBA members was the limit on the size of the lunch box that DOCS allowed because it is too small to contain the amount of food that a correction officer brings for an eight-hour shift. He explained that, for example, an officer could not pack a submarine sandwich into the size container authorized by DOCS.

DOCS' sole witness, Leclaire, explained that he is responsible for the day-to-day operations of all 70 correctional facilities. The primary mission of DOCS is the security and control of these facilities where over 21,000 uniformed personnel are employed, a majority whom are affected by the new policy.

DOCS' policies cover the control of, and search for, contraband in correctional facilities. Leclaire noted that, prior to September 2003, there had been incidents involving staff who brought contraband into the facilities, such as television sets, video cassette recorders, computers, video games, and an electric "sawzall". He described an incident in early 2003 when an individual impersonated a correction officer and carried a bag into the facility. Although the imposter was stopped, a search of his bag found escape paraphernalia, including correction officer uniforms and a chemical agent container. Leclaire and others concluded that a vulnerability of DOCS' system had been exposed which required a reappraisal of security procedures. This incident led to developing the new procedures implemented in September 2003.

Leclaire stated that before distributing the June 16, 2003 memorandum, he deployed members of his staff to visit stores like Wal-Mart in an effort to determine the size of containers suitable to meet the needs of staff who might have to work a double shift. Leclaire produced a soft-sided container for the ALJ that measured 10" x 12" x 12" into which ten Tupperware containers were stored, together with a bottle of water.

Leclaire indicated that the policy did not require that a bottle of water be carried inside the container. Leclaire testified that there was a relationship between the size of the container and the security of the facility, because:

> correction officers only needed to carry a limited number of items beyond their uniform equipment to their job each day... the container that was allowed... provided some flexibility to carry other items [besides food] but it is also restricted in size so we could fairly expeditiously look through these as we processed dozens, if not hundreds, of staff during staff changes.[8]

Although Leclaire agreed that correction officers and correction sergeants are not at liberty to leave a facility during their scheduled shift to purchase lunch, he noted that food is delivered to facilities, there are vending machines and, in some facilities, provisions for an employee mess.

DISCUSSION

DOCS, in its exceptions, argues that the ALJ failed to consider the facts and the law when deciding that the subject matter was a mandatory subject of bargaining. In support of this argument, DOCS refers to *State of New York (DOT)*[9] where we determined that:

> [T]he Act requires negotiations about "terms and conditions of employment." In a very real sense, the determination regarding the negotiability of all terms and conditions of employment is premised upon a balancing of employer-employee interests. A very few subjects have been prebalanced . . . . A balance of interests is undertaken, directed again to the nature of the subject matter in issue.

In that decision, we rejected a "facts of the case" approach advocated by the employee organization in favor of an assessment of negotiability based upon the nature

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[8] Transcript, pp. 269-270.

[9] 27 PERB ¶3056, at 3131 (1994).

of the subject matter of the work rule.[10] We have held that "simply because a work rule relates to the employer's mission, it does not follow that the employer is free to act unilaterally in the manner in which it chooses to act."[11] However, once faced with the need to act in furtherance of its mission, we have held that:

> the employer may unilaterally impose work rules which are related to that need, but only to the extent that its action does not significantly or unnecessarily intrude on the protected interests of its employees. Thus, we must weigh the need for the particular action taken by the employer against the extent to which that action impacts on the employees' working conditions.[12]

In order to satisfy this test, however, we require that the employer demonstrate that the new work rule does not go beyond what is needed to further its mission.[13]

It is undisputed that DOCS' concern focuses on the safety and security of the facility and the community at large. The question that we must resolve is whether the new work rule goes beyond what is necessary to further DOCS' mission.

NYSCOPBA does not dispute DOCS' right to search for contraband that might be carried into a facility.

Accordingly, the issue to be resolved is the negotiability of DOCS' imposition of limitations on the size and number of containers used to carry food that officers may bring to their posts. While DOCS officials have elected to make the size of the container uniform, it is undisputed that, prior to the implementation of the new work rule, officers were allowed to carry their food in containers of different sizes and shapes. DOCS does

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[10] *Id.* at 3132.

[11] *County of Montgomery*, 18 PERB ¶3077, at 3167 (1985).

[12] *Id.*

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

not dispute the officers' prior practice of bringing their meals into the respective facilities and acknowledges that DOCS does not provide free food to its officers and, that not all facilities have an officers' mess. At best, in most facilities, food is available at the officers' expense either through vending machines or by delivery to the facility.

The ALJ correctly held that an employee's ability to bring permissible personal items to the workplace is a mandatorily negotiable subject because it directly affects the employee's comfort and convenience while on the job.[14] Here, DOCS does not prohibit its officers from bringing their meals into the facilities, but does seek to prescribe the dimensions of the containers used to bring the meals into the facility. Leclaire's reason for the new work rule was to search for contraband and to simplify that search. NYSCOPBA has conceded the need to search for contraband.

We have held that it is the nature of a balancing test that "when the circumstances approach equipoise, subtle distinctions can shift the balance from one side to the other."[15] Here, DOCS argues that safety and security related to its mission predominate over the comfort and convenience of the affected NYSCOPBA unit members.

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[14] *See County of Nassau*, 32 PERB ¶3034 (1999) (bottled water and water cooler at the work site); *County of Nassau*, 32 PERB ¶3005 (1999), *enforced*, 35 PERB ¶7003 (Sup. Ct. Nassau County, 2001) (cafeteria service); *State of New York (Dep't of Taxation and Finance)*, 30 PERB ¶3028 (1997) (office attire); *New York City Transit Auth.*, 22 PERB ¶6601, *aff'd on other grounds*, 22 PERB ¶6501 (1989) (toilet facilities); *City of Buffalo*, 15 PERB ¶3027 (1982) (uniform fabric); *Local 294, Int'l Brotherhood of Teamsters*, 10 PERB ¶3007 (1977) (air conditioning and seat style in police patrol cars); *Scarsdale Police Benevolent Assn, Inc.*, 8 PERB ¶3075 (1975) (air conditioning in patrol cars). *See also County of Saratoga and Saratoga County Sheriff,* 37 PERB ¶3024 (2004) (appeal pending) (telephone use).

[15] *See State of New York (Governor's Office of Employee Relations)*, 18 PERB ¶3064 at 3133 (1985).

We agree that DOCS' mission includes ensuring the safety and security of correctional facilities. DOCS' ability to search for contraband in food containers that officers may carry into facilities to their workstations advances the safety and security of facilities. NYSCOPBA concedes DOCS' right to search officers' food containers for contraband. However, DOCS' new policy prescribes the size and number of food containers that officers are permitted to carry into facilities. In this respect, the new policy adversely impacts the comfort, convenience, and expenses of officers in NYSCOPBA's bargaining unit more than it advances DOCS' mission of ensuring safety. We find, therefore, that restrictions on the size and number of food containers that may be carried to workstations are mandatorily negotiable.

Based upon the foregoing, we deny DOCS' exceptions and affirm the decision of the ALJ.

IT IS, THEREFORE, ORDERED that DOCS will:

1. Forthwith rescind its restrictions on the size and number of lunch containers which employees in NYSCOPBA's bargaining unit may bring to their workstations, and restore the *status quo ante*;
2. Make affected unit employees whole for losses suffered, if any, as a result of complying with the restrictions on the size and number of their lunch containers, with interest at the maximum legal rate;
3. Rescind any adverse employment-related consequences for employees' failure to comply with restrictions as to the size and number of lunch containers from the date the restrictions were imposed until such time as they are rescinded; and

4. Sign and post the attached notice at all locations customarily used to post communications to employees represented by the New York State Correctional Officers and Police Benevolent Association.

DATED: March 16, 2005
Albany, New York

Michael R. Cuevas, Chairman

John T. Mitchell, Member

NOTICE TO ALL EMPLOYEES

PURSUANT TO
THE DECISION AND ORDER OF THE

NEW YORK STATE
PUBLIC EMPLOYMENT RELATIONS BOARD

and in order to effectuate the policies of the

NEW YORK STATE
PUBLIC EMPLOYEES' FAIR EMPLOYMENT ACT

we hereby notify all employees of the State of New York (Department of Correctional Services) (DOCS) in the unit represented by the New York State Correctional Officers and Police Benevolent Association, Inc. (NYSCOPBA) that DOCS will:

1. Forthwith rescind its restrictions on the size and number of lunch containers that employees in NYSCOPBA's bargaining unit may use to bring food to their workstations, and restore the *status quo ante.*

2. Make affected unit employees whole for losses suffered, if any, as a result of complying with the restrictions on the size and number of their lunch containers, with interest at the maximum legal rate;

3. Rescind any adverse employment-related consequences for employees' failure to comply with restrictions as to the size and number of lunch containers from the date the restrictions were imposed until such time as they are rescinded.

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

State of New York
(Department of Correctional Services)
. . . . . .

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

HEWLETT-WOODMERE ADMINISTRATIVE AND SUPERVISORY ASSOCIATION,

Charging Party,

CASE NO. U-24718

- and -

HEWLETT-WOODMERE UNION FREE SCHOOL DISTRICT,

Respondent.

IRA PAUL RUBTCHINSKY, ESQ., for Charging Party

EHRLICH, FRAZER & FELDMAN (JEROME H. EHRLICH of counsel) for Respondent

BOARD DECISION AND ORDER

This case comes to us on exceptions by the Hewlett-Woodmere Administrative and Supervisory Association (Association) to a decision of an Administrative Law Judge (ALJ) dismissing an improper practice charge filed by the Association against the Hewlett-Woodmere Union Free School District (District) alleging that the District unilaterally discontinued a past practice. The practice allowed Association bargaining unit members, during non-working hours, to privately tutor for compensation students taught by teachers under the supervision of unit members. The District asserted in its answer that the charge failed to state a claim upon which relief may be granted.

EXCEPTIONS

The Association contends that the ALJ erred on the facts and the law, by finding that the District's work rule prohibiting private tutoring during non-working hours was a nonmandatory subject of bargaining. The District contends that its work rule is not a mandatory subject of bargaining and concurs with the ALJ's decision.

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

FACTS

The parties submitted stipulated facts to the ALJ on July 13, 2004, in lieu of a hearing. The facts are fully set forth in the ALJ's decision[1] and are repeated here only as necessary to decide the exceptions.

During the 2002-03 school year, the District had issued a memorandum requesting that all District personnel who desired to be on a list of private tutors which would be available to parents when requested should identify themselves, the subject(s) in which they wished to tutor, and their telephone numbers and e-mail addresses. This list contains the names of both teachers and Association bargaining unit members. A list was also generated as a result of the responses for the 2003-04 school year.

On or about September 2, 2003, the District's Superintendent of Schools, Charles Fowler, received a letter, dated August 28, 2003, from three officers of the District's Parent Teacher Association (PTA), expressing concern about a practice that involved department chairpersons and other supervisory staff engaging in private, for pay, tutoring of students in the departments or schools where they served as supervisors. On or about September 4, 2003, Fowler sent a memorandum addressed to "All

[1] 37 PERB ¶4585 (2004).

Administrative and Supervisory Personnel", directing them to "not engage in the practice of tutoring for private compensation students of Hewlett-Woodmere Public Schools who are students assigned to teachers who the administrator or supervisor directly or indirectly evaluates, or are in a program, at any level, for which the administrator or supervisor has program responsibility" because of the conflict of interest or the appearance of a conflict of interest that such tutoring engenders. According to the memorandum, the potential conflict of interest has three bases:

> (1) The administrator or supervisor in such a situation appears to gain financially to the extent that students in the subject area under the administrator or supervisor's appointed responsibility *require* or *desire* experiences beyond that provided in the program being supervised. *Ergo*, to the extent the program being administered and/or supervised is limited or inadequately implemented, those engaged in private tutoring, including such an administrator or supervisor, may benefit. (2) The administrator or supervisor in such a situation appears to gain financially to the extent that teachers under his or her supervision may recommend to parents that they seek private tutoring to enhance their child's achievement. (3) The administrator or supervisor in such a situation may have access to District information regarding test construction, student records, etc. which would enhance such private practice. (emphasis in original)

The 2003-04 list of tutors states that it was updated May 14, 2004 and does not contain the names of any Association bargaining unit members.

For several years prior to the issuance of the September 4, 2003 memorandum, Association bargaining unit members engaged in the practice of tutoring, for private compensation, students assigned to teachers who the unit members directly or indirectly evaluated, or students who were in a program, at any level, for which the administrator or supervisor had program responsibility. Unit members, however, did not tutor students in classes that they taught. The unit members provided the tutoring at times other than during regular work hours. Prior to the issuance of the September 4, 2003 memorandum, and during the years the practice was in effect, the District's

Superintendent of Schools and the Assistant Superintendent for Human Resources and Student Services were aware of and did not object to the practice.

DISCUSSION

In order to establish a past practice, a charging party must demonstrate that the practice affected a mandatory subject of bargaining, that the practice was unequivocal, and was continued uninterrupted for a period of time sufficient under the circumstances to create a reasonable expectation among the affected unit employees that the practice would continue.[2]

Neither party disputes that the practice in-issue meets the above criteria, if the subject matter is a mandatory subject of negotiations. Generally, an employer's restriction on employees' use of their nonworking time is mandatorily negotiable.[3] The Association contends that the seminal question is whether the interests of the District predominate over those of the employees. The District asserts that a balance of the competing interests renders the work rule in question a nonmandatory subject of negotiations.

In our decision in *State of New York (Department of Transportation),*[4] we discussed the procedure to be used to determine whether a particular work rule constitutes a mandatory or nonmandatory subject of bargaining. We said that the subject matter must first be identified and then the competing employer and employee

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[2] *County of Westchester*, 33 PERB ¶3025, *conf'd* 33 PERB ¶7016 (Sup Ct, Albany County (2000).

[3] *Ulster County Sheriff*, 27 PERB ¶3028 (1994); *Local 589, Int'l Ass'n of Fire Fighters*, 16 PERB ¶3030 (1983).

[4] 27 PERB ¶3056 (1994).

interests at stake balanced.[5] The subject matter here is the ability of unit employees to engage in off-duty work for pay. The interest of the employees to tutor for compensation the at-issue categories of District students must then be balanced against the concerns articulated by the District that the primary purpose of the work rule is to prevent actual or perceived conflicts of interest between the unit members' District jobs and their off-duty tutoring of District students.

The ALJ concluded that the work rule in question is designed to prevent conflicts of interest, either real or in appearance, and found that the work rule was a reasonable measure taken to avoid a conflict of interest, or the appearance thereof, relying on our decision in *New York State Thruway Authority.*[6] His reliance is misplaced. There we found that the employer had established "an objectively demonstrable need to act in furtherance of its mission" sufficient to justify the unilateral imposition of a work rule related to that need and that the work rule imposed did not significantly or unnecessarily intrude on the protected interests of its employees.[7]

Here, the Stipulation of Facts establishes only that Fowler, upon receipt of a letter from PTA officers relating to the practice, unilaterally eliminated a past practice involving a mandatory subject of negotiations. The stipulated facts offer no evidence of any real conflict of interest that existed prior to the September 4, 2003 memorandum.[8] As to any apparent conflict, the stipulation notes that, prior to the issuance of Fowler's

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[5] *See also State of New York (Department of Correctional Services)*, 38 PERB ¶3006 (2005).

[6] 21 PERB ¶3058 (1988).

[7] *County of Montgomery*, 18 PERB ¶3077 (1985).

[8] Annexed to the Stipulation of Facts are six exhibits. Although the document is also referred to as a stipulated record, it is unclear whether the parties intended the exhibits to be admitted to the record for all purposes or just to evidence the facts stipulated.

memorandum, the District circulated a list to all District personnel who were interested in tutoring on their own time with the knowledge of both Fowler and the Assistant Superintendent for Human Resources and Student Services. It is not unreasonable for us to conclude that the Board of Education knew or should have known of the practice as it existed prior to September 4, 2003 and yet, there is no claim that the practice conflicts with any established Board policy.

While the letter, dated August 28, 2003, to Fowler from the three PTA Council officers expressed their concern over the practice, it also carefully pointed out that they were not accusing any supervisors of any real or apparent conflicts of interest. Their concerns fail to establish any factual basis supporting an objectively demonstrable need to act in furtherance of the District's mission such that unilateral action was mandated.[9] Likewise, there is no evidence of any communication between the Board of Education, as the policy-making body, and Fowler that would explain the District's concern, the reasons therefor, and why Fowler decided that the memorandum of September 4, 2003 was the only means available to address his concerns.

The interests of the Association are easily understood. The interests of the District are more ephemeral, less objective and more difficult to assess with regard to impact on the District's mission. We cannot help but wonder if the conflicts of interest were so apparent, why didn't they occur to any of the parties at an earlier stage? Certainly, no one suggests that any of the parties engaged in the practice with the evil or sinister intent. On the contrary, all parties seem to suggest that all parties had only the best interests of the District's students in mind when they devise and implemented

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[9] *See County of Saratoga and Saratoga County Sheriff*, 37 PERB ¶3024 (2004) (appeal pending).

the practice. Even if we assume that bad things can result from the best of intentions, we are left to speculate as to how the perception of a conflict has actually or potentially harmed the District's mission. Without something more on the District's part, we find the interests under the Act tip in favor of the Association. We are loathe to remove this matter from the negotiations process or to presume that parties bargaining in good faith cannot reach an agreement satisfactory to all.

Having determined that, on this stipulated record, the interests of the District do not predominate, we find that the subject of the work rule, as defined in the September 4, 2003 memorandum from Fowler, predominantly impacts upon the affected Association members' ability to earn money on their own time and is, thus, a mandatory subject of bargaining. The record is clear that the District acknowledged the existence of a past practice and, until September 4, 2003, there was an expectation among the affected Association members that it would continue.[10] As the District failed to negotiate with the Association prior to implementing the September 4, 2003 memorandum, we find that the District violated §209-a.1(d) of the Act.

Based upon the foregoing, we grant the Association's exceptions and reverse the decision of the ALJ.

IT IS, THEREFORE, ORDERED that the Hewlett-Woodmere Union Free School District:

1. Immediately rescind the September 4, 2003 policy of prohibiting administrative and supervisory employees from engaging in private tutoring for compensation of District students who are assigned to teachers in the departments or schools which they supervise;

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[10] *County of Nassau*, 37 PERB ¶3014 (2004) (appeal pending).

2. Compensate and/or make whole administrators and/or supervisors for any income lost due to their inability to tutor District students as a result of the September 4, 2003 policy, with interest at the maximum legal rate; and

3. Sign and post the attached notice at all locations ordinarily used to post notices of information to employees in the unit represented by the Association.

DATED: March 16, 2005
Albany, New York

Michael R. Cuevas, Chairman

John T. Mitchell, 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 Hewlett-Woodmere Union Free School District (District) in the unit represented by the Hewlett-Woodmere Administrative and Supervisory Association (Association) that the District will forthwith:

1. Immediately rescind the September 4, 2003 policy of prohibiting administrative and supervisory employees from engaging in private tutoring for compensation of District students who are assigned to teachers in the departments or schools which they supervise;

2. Compensate and/or make whole administrators and/or supervisors for any income lost due to their inability to tutor District students as a result of the September 4, 2003 policy, with interest at the maximum legal rate.

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

HEWLETT-WOODMERE UNION FREE SCHOOL DISTRICT
. . . . . .

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

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

JOYCE E. FEARON,

Charging Party,

CASE NO. U-25422

- and -

UNITED FEDERATION OF TEACHERS,

Respondent.

SARA-ANN FEARON, for Charging Party

BOARD DECISION AND ORDER

This case comes to us on exceptions of Joyce E. Fearon to a decision of the Director of Public Employment Practices and Representation (Director) which dismissed her improper practice charge alleging that the United Federation of Teachers (UFT) violated §209-a.2(c) of the Public Employees' Fair Employment Act (Act).

EXCEPTIONS

Fearon argues in her exceptions that the Director erred in dismissing the charge as untimely.

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

FACTS

We adopt the Director's findings of fact[1] which are repeated here only as necessary to decide the exceptions.

On July 2, 2002, Fearon received a letter from the Board of Education of the City School District of the City of New York (employer) that she had been placed on the employer's ineligible list at the request of its Office of Special Investigations. On July 9, 2002, Fearon notified UFT of the letter and requested a hearing pursuant to the Chancellor's Regulation C-31. UFT represented Ms. Fearon at the hearing held on May 9, 2003. On or about August 5, 2003, Ms. Fearon received a letter from her employer notifying her that the Chancellor concurred with the hearing officer's recommendation to terminate her teaching certificate.

At that time, she requested a meeting with UFT representatives to discuss a possible appeal. On March 10, 2004, Fearon was notified by UFT that it determined that, nothing further could be done.

In all of its correspondence with Fearon, UFT maintained in its correspondence that its position with respect to an appeal had not changed. In its final letter to Fearon, dated May 28, 2004, UFT again informed Fearon that it would take no further action to appeal the Chancellor's decision of August 5, 2003.

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[1] 37 PERB ¶4584 (2004).

Fearon filed her original charge on September 25, 2004. On September 30, 2004, the Assistant Director of Public Employment Practices and Representation (Assistant Director) notified Fearon that her charge was deficient because it was filed more than four months after UFT's letter of May 28, 2004. The Assistant Director noted that UFT's letter of May 28, 2004 was merely a reiteration of its earlier position beginning with its March 10, 2004 letter. Also, the Assistant Director noted that the charge did not allege facts sufficient to establish a violation of §209-a.2(c). In response to the deficiency notice, Fearon filed an amendment to the charge adding allegations asserting that the petition is timely filed. By decision dated November 15, 2004, the Director dismissed the charge.

DISCUSSION

Our Rules of Procedure (Rules) require that a charging party file a charge within four months of the action alleged to constitute an improper practice.[2] As a general rule, in a duty of fair representation case, the time runs from the date of the at-issue union conduct.[3] We have interpreted this rule to require that a party file a charge within four months of the date when the charging party knew or should have known that his or her request to the union has not been granted. Consequently, subsequent reiterations of the union's initial decision not to grant a request do not extend the filing period or create a new one.[4]

Fearon was advised by UFT, on March 10, 2004, that there was nothing further UFT could do on her behalf. We find that Fearon's subsequent requests made to UFT

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[2] Rules, §204.1(a)(1).

[3] *Public Employees Fed'n (Levy)*, 31 PERB ¶3090 (1998).

[4] *United Fed'n of Teachers*, 23 PERB ¶3038 (1990).

to appeal the Chancellor's decision and UFT's subsequent correspondence with Fearon were merely a reiteration of their previous position. Consequently, we concur with the Director's decision that the charge filed on September 25, 2004 and the amendment thereto were untimely, having been filed more than four months after the March 10, 2004 letter from UFT.

Based upon the foregoing, we deny Fearon's exceptions and affirm the Director's dismissal of the improper practice charge.

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

DATED: March 16, 2005
Albany, New York

Michael R. Cuevas, Chairman

John T. Mitchell, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

STATE OF NEW YORK (DIVISION OF STATE POLICE),

Petitioner, **CASE NO. DR-112**

Upon a Petition for a Declaratory Ruling

WALTER J. PELLEGRINI, GENERAL COUNSEL (MICHAEL N. VOLFORTE of counsel), for Charging Party

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

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by the State of New York (State) to a Recommended Declaratory Ruling of an Administrative Law Judge (ALJ)[1] finding that certain demands submitted by the Police Benevolent Association of the New York State Troopers, Inc. (PBA) to fact-finding are mandatory subjects of negotiation.[2]

EXCEPTIONS

The State excepts to the ALJ's decision, arguing that Executive Law §215(3) makes the at-issue demands prohibited subjects of bargaining. The PBA has filed cross-exceptions alleging that the ALJ failed to dismiss the State's petition as untimely.

Based upon the record before us, we reject the recommended ruling of the ALJ and find that the at-issue subjects are prohibited subjects of bargaining.

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[1] 37 PERB ¶6601 (2004).

[2] PERB's Rules of Procedure §210.2(c), 4 NYCRR 210.2(c).

FACTS

This case had been submitted by the parties on a record consisting of a seven-page Stipulation of Facts and a Stipulated Record containing of 44 exhibits. On January 30, 2002, the PBA filed a petition with PERB's Director of Conciliation requesting fact-finding on certain non-monetary issues unresolved in the parties' negotiations and mediation.[3] A factfinder was appointed on May 28, 2002.[4] Thereafter, the factfinder held hearings, taking testimony and receiving exhibits, on four dates, the last being July 18, 2002.[5]

In City of New York,[6] the Board held that certain of the police union's demands, relating to disciplinary records and procedures, were prohibited subjects of negotiations because they involved the exercise of authority that was reserved to the discretion of the City Police Commissioner by virtue of the New York City Charter and Administrative Code. On August 29, 2003, Supreme Court confirmed that Board's decision and order.[7]

By letter dated October 1, 2003, the State formally requested that the PBA withdraw from fact-finding, as prohibited subjects, the following demands:

> Article 16 – Members' Rights (Open issue no. 1)
> The procedures set forth in Rule 3 of the NYSP Administrative Manual shall be incorporated into Article 16.
>
> Disciplinary Action (Open issue no. 2)
> Insert the existing provisions of Rule 3 into the Agreement.

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[3] Stipulated Record, Exhibit 15.

[4] Stipulated Record, Exhibit 16.

[5] Stipulation of Facts, ¶18.

[6] 35 PERB ¶3034 (2002).

[7] *Matter of Patrolmen's Benevolent Ass'n v New York State Pub. Empl. Relations Bd.*, 36 PERB ¶7014 (2003), *aff'd,* 13 AD2d 879, 37 PERB ¶7012 (3d Dep't 2004).

> Discipline (Open issue no. 5)
> All disciplinary hearings will be heard by an independent Arbitrator selected from a list maintained by PERB.
>
> Division shall turn over all documents and notations in any way associated with the investigation that led to the member being served with administrative charges, 60 days prior to the commencement of the said hearing.

In a reply letter dated October 6, 2003, the PBA rejected the State's request on the basis that it was untimely.[8] On October 8, 2003, the State filed an Improper Practice Charge alleging that the PBA, in violation of §209-a.2(b) of the Public Employees Fair Employment Act (Act), failed to bargain in good faith by failing to withdraw prohibited subjects from the assigned factfinder.[9] The Director of Public Employment Practices and Representation dismissed the charge and that dismissal was affirmed by the Board.[10] On October 15, 2003, the State filed the Petition for a Declaratory Ruling that is now before us.

DISCUSSION

The ALJ made no determination as to the timeliness of the State's declaratory ruling petition, but the timeliness of the instant proceeding is a threshold issue that must be addressed before any other. Were we to find the proceeding untimely, we would be without jurisdiction to consider the substantive issues involved.

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[8] Stipulated Record, Exhibit 18.

[9] Stipulated Record, Exhibit 22.

[10] *Police Benevolent Ass'n of the New York State Troopers, Inc.*, 37 PERB ¶4501 (2004), *aff'd* 37 PERB ¶3008 (2004).

The PBA argues that the State's Petition for a Declaratory Ruling should be dismissed as untimely because it was filed 20 months after the PBA's petition for fact-finding and 17 months after this agency's determination in *City of New York*.[11]

In support of its argument, the PBA cites to *County of Rockland*[12] and *City of New York.*[13] In response, the State argues that the cited cases are inapposite to the case at bar and that PERB has no rule establishing a time limitation for filing a Petition for a Declaratory Ruling under circumstances involving fact-finding. For the reasons stated below, we agree with the State's position on the issue and hereby dismiss the PBA's cross-exception.

Both of the cases cited by the PBA involved a Petition for a Declaratory Ruling filed after a Petition for Interest Arbitration had been filed. Section 205.6 of our Rules relates specifically to the filing of Improper Practice charges and Petitions for Declaratory Rulings related to compulsory interest arbitration. That section of the Rules does not govern the situation here, which involves a Petition for a Declaratory Ruling related to bargaining demands submitted to fact-finding. In the absence of a specific Rule that prescribes the time to file Petitions for Declaratory Rulings related to fact-finding, we must apply our Rules governing declaratory rulings generally which are contained in Part 210. Nothing in Part 210 or the other Rule provisions referenced therein, specifically §204.4 and Part 212, contain a time limitation for filing a Petition for a Declaratory Ruling.

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[11] *Supra*, note 6.

[12] 26 PERB ¶3071 (1993).

[13] 37 PERB ¶3034 (2004).

In fact, we have previously held that a Petition for a Declaratory Ruling may be filed despite a party's failure to object to the negotiability of a bargaining demand prior to the filing of the petition, and even after the conclusion of fact-finding.[14] Here we have a similar factual circumstance where the State failed to object to the negotiability of the bargaining demand until just before final submission of the case to the factfinder for a report and recommendation.

In the circumstances here, we must consider "…whether the issuance of a declaratory ruling would be in the public's interest as reflected by the policies of the Act".[15] Such broad discretion in agency issuance of declaratory rulings has been approved by the Court of Appeals.[16]

The purpose of the declaratory ruling proceeding is to provide for a less adversarial means than an improper practice proceeding for resolving an existing, justiciable issue between the parties concerning, among other matters, the character of subjects of negotiations under the Act.[17]

Here, we clearly have a justiciable issue regarding the character of certain bargaining demands. We find that a determination as to whether those bargaining demands constitute prohibited subjects of bargaining, where the same are about to be submitted to a factfinder for a report and recommendation, would further the policies underlying the Act. Our determination of the negotiability of the demands at-issue would promote harmonious and cooperative relationships between the parties by clarifying

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[14] *Town of Henrietta,* 24 PERB ¶6604, *aff'd* 25 PERB ¶3037 (1992).

[15] *Id.*

[16] *Power Auth. v. NYS Dept. of Env'l. Cons.,* 58 NY2d 427 at 434 (1983).

[17] *Supra*, note 13.

their bargaining obligations. If we determine the subjects to be prohibited subjects of negotiations, we will save the parties time and expense in their negotiations, and we will prevent the possibility of the issuance of a factfinder's recommendation containing a legally unenforceable provision. To dismiss the petition and allow the case to go to the factfinder with the status of the at-issue subjects undetermined would be to invite confusion and the potential for a factfinder's report and recommendation which is not based on the current state of the law and, which, perhaps, has no chance of acceptance if doubts about the negotiability of these demands persist. It serves the policies of the Act for us to make a determination as to the status of the at-issue demands given the time and expense the parties have invested in their negotiations to date and the length of time that these negotiations have been held in abeyance awaiting the outcome of these proceedings.

The fact that we dismissed the State's improper practice charge[18] as untimely is of no moment here. Our Rules specifically provide an outside limit of four months for a party to bring a charge alleging that another party has violated a provision of §209-a of the Act. Our prior dismissal was jurisdictional and did not reach the merits of the charge. Section 205.6 of the Rules does not apply to the instant case, and there is no rule prohibiting a party from filing both an improper practice charge and a Petition for a Declaratory Ruling based on the same facts.

Having decided that the State's petition is timely, we turn to the issue of the negotiability of the at-issue demands. The State excepts to the ALJ's decision holding that the at-issue demands are mandatory subjects of negotiation by arguing that Executive Law §215(3) makes them prohibited subjects. The PBA supports the ALJ's

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[18] *Supra*, note 10.

decision in this regard arguing that CSL §76(4) does not protect Executive Law §215(3) and, in fact, requires the State to negotiate about disciplinary procedures. We find the at-issue subjects to be prohibited subjects of negotiations.

Executive Law §215(3) is a general law of the State of New York. That section provides, in relevant part, that:

> [t]he superintendent [of the State Police] shall make rules and regulations, subject to approval by the governor for the discipline and control of the New York state police…

Civil Service Law §76(4) states, in relevant part, that:

> Nothing contained in section seventy-five or seventy-six of this chapter shall be construed to repeal or modify any general, special or local law or charter provision relating to the removal or suspension of officers or employees in the competitive class of the civil service of the state or any civil division.

The courts have repeatedly held that the above-quoted limiting language of CSL §76(4) evidences a legislative intent to prevent long established statutory disciplinary provisions from being supplanted.[19] While recognizing the applicability of these decisions to local government, the PBA argues that they do not apply to state government because of the second sentence of CSL §76(4), which reads: "Such sections may be supplemented, modified or replaced by agreements between the state and an employee organization pursuant to article fourteen of this chapter".

Given the first sentence of the section, the only rational interpretation that can be given to this second sentence is that the words "such sections" refers to CSL §§75 and 76. That state units might be governed by statutes relating to discipline, other than CSL

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[19] *City of Mount Vernon v. Cuevas,* 289 AD2d 674 (3d Dep't 2001), *lv denied* 83 NY2d 759 (2002); *Rockland County Patrolmen's Benevolent Ass'n v. Town of Clarkstown,* 149 AD2d 516 (1st Dep't 1994); *City of New York v. MacDonald,* 201 AD2d 258 (1st Dep't 1994); *Town of Greenburgh v. Ass'n of the Town of Greenburgh, Inc.,* 94 AD2d 771 (2d Dep't 1983).

§§75 and 76, is evidenced by the language in the first sentence relating to "…officers or employees in the competitive class of the civil service of the state…," which language was not amended or repealed with the later addition of the second sentence. We find that discipline of the New York State Police is governed by Executive Law §215(3) and not by CSL §§75 and/or 76. Therefore, we conclude that the Legislature intended to protect from repeal or modification Executive Law §215(3), in the same manner as the local and special laws involved in the previously cited cases.

The PBA relies on a memorandum decision in *Sabatini v. Kirwan*[20] for the proposition that the Civil Service Law is generally applicable to the state police absent clear legislative intent supporting an exception. The Appellate Division, Third Department, clarified its position in a subsequent case, *Ward v. Chesworth,*[21] where it stated:

> Although this court has recognized the "broad grant of authority given to the superintendent regarding personnel matters" (*Burke v. New York State Police,* 115 AD2d 108, 110, *appeal dismissed* 67 NY2d 870; see, *Matter of Wright v. Connelie,* 101 AD2d 902, *appeal dismissed sub nom. Matter of Ford v. Connelie,* 63 NY2d 951), we have also applied provisions of the Civil Service Law to State Police personnel where the statutory grant of authority to the Superintendent does not indicate a legislative intent to the contrary.

Here, the Legislature's grant of authority to the superintendent in Executive Law §215(3) to make rules and regulations for the discipline and control of the state police is sufficiently clear and contains no indication that the superintendent's rules and regulations are subject to supplementation, modification or replacement by agreements between the State and an employee organization.

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[20] 42 AD2d 1004 (3d Dep't 1973).

[21] 125 AD2d 912 (3d Dep't 1986), *lv denied* 69 NY2d 610 (1987).

We also find unpersuasive the PBA's argument that, since Executive Law §215(3) is silent as to the procedures incident to a hearing, the Court of Appeals decision in *City of Watertown,*[22] dictates that such procedures are mandatorily negotiable. *Watertown* held that since the statute in question, General Municipal Law §207-c, granted municipalities the right to make an initial determination of an employee's right to §207-c benefits, but was silent as to the procedure to be utilized to review such determinations, PERB's decision that review procedures were a mandatory subject of negotiations was correct. In the case before us, while the statute does not explicitly state so, it is "inescapably implicit" that the grant of authority to make rules and regulations governing discipline includes the authority to make rules and regulations governing the procedures relating to that subject.

Unlike the language of GML §207-c, the broad grant of authority given to the superintendent regarding personnel matters to make rules and regulations includes the authority to develop procedures for the discipline and control of the New York State police. In fact, such procedural rules and regulations[23] are commonly referred to within the Division of State Police as "Rule 3", which has governed the parties disciplinary processes at all times relevant hereto.

The fact that the parties may have bargained over other proposed "Rule 3" amendments as part of their 1995 – 1999 Memorandum of Understanding[24], does not change the negotiability of the at-issue demands.[25] We do not pass on the wisdom of

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[22] 95 NY2d 73 (2000).

[23] 9 NYCRR §§479 *et seq.*

[24] Stipulated Record, Exhibit 5.

[25] *City of Troy,* 10 PERB ¶3015 (1977); *Town of Henrietta, supra,* note 14.

those past negotiations, but note that any rules or regulations duly adopted enjoy a presumption of validity.

Based on the foregoing, we grant the State's exceptions, deny the PBA's cross-exception and reject the ALJ's recommended Declaratory Ruling. Accordingly, the PBA's demands are non-mandatory, prohibited subjects of negotiation.

DATED: March 16, 2005
Albany, New York

Michael R. Cuevas, Chairman

John T. Mitchell, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

VILLAGE OF FLORIDA POLICE BENEVOLENT ASSOCIATION,

Petitioner,

-and-

CASE NO. C-5459

VILLAGE OF FLORIDA,

Employer,

-and-

UNITED FEDERATION OF POLICE OFFICERS, INC.,

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 Village of Florida Police Benevolent Association has been designated and selected by a majority of the employees of the

above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Included: All part-time and full-time police officers.

Excluded: Chief of Police and all other employees.

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

DATED: March 16, 2005
Albany, New York

Michael R. Cuevas, Chairman

John T. Mitchell, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

PORT WASHINGTON WATER POLLUTION CONTROL DISTRICT MANAGEMENT ASSOCIATION,

Petitioner,

-and-

CASE NO. C-5467

PORT WASHINGTON WATER POLLUTION CONTROL 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 Port Washington Water Pollution Control District Management 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.

Included: Superintendent, Assistant Business Manager.

Excluded: Director, Foremen, Field Unit Employees and Clerical Employees.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Port Washington Water Pollution Control District Management 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: March 16, 2005
Albany, New York

Michael R. Cuevas, Chairman

John T. Mitchell, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

PORT WASHINGTON WATER POLLUTION CONTROL DISTRICT CLERICAL ASSOCIATION,

Petitioner,

-and-

CASE NO. C-5468

PORT WASHINGTON WATER POLLUTION CONTROL 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 Port Washington Water Pollution Control District Clerical 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.

Included: All Clerical/Office Staff.

Excluded: Director, Superintendent, Assistant Business Manager, Field Unit Employees and Foremen.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Port Washington Water Pollution Control District Clerical 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: March 16, 2005
Albany, New York

Michael R. Cuevas, Chairman

John T. Mitchell, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

PORT WASHINGTON WATER POLLUTION CONTROL DISTRICT FOREMEN'S ASSOCIATION,

Petitioner,

-and-

CASE NO. C-5472

PORT WASHINGTON WATER POLLUTION CONTROL 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 Port Washington Water Pollution Control District Foremen's 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.

Included: All employees in the Foreman title.

Excluded: Director, Superintendent, Assistant Business Manager, Field Unit employees and Clerical employees.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Port Washington Water Pollution Control District Foremen's 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: March 16, 2005
Albany, New York

Michael R. Cuevas, Chairman

John T. Mitchell, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 832,

Petitioner,

-and-

CASE NO. C-5491

TOWN OF NAPLES,

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 Union of Operating Engineers Local 832 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.

Included: All highway department employees.

Excluded: Superintendent of Higways.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the International Union of Operating Engineers Local 832. 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: March 16, 2005
Albany, New York

Michael R. Cuevas, Chairman

John T. Mitchell, Member