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-6073

BALDWIN PUBLIC LIBRARY,

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.

Included: Part-time Cleaner, Part-time Clerk, Part-time Clerk-Sub, Part-time Library Aide, Part-time Library, Part-time Librarian-Sub, Page HET, Page HET-Sub, Part-time Typist/Clerk and Part-time Typist/Clerk-Sub.

Excluded: Employees who are regularly scheduled less than eight (8) hours per pay period and 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: November 30, 2011
Albany, New York

Jerome Lefkowitz, Chairman

Sheila S. Cole, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

COUNTY OF BROOME AND BROOME COUNTY SHERIFF,

Charging Party,

-and-

CASE NO. U-30019

BROOME COUNTY SHERIFF'S LAW ENFORCEMENT OFFICERS' ASSOCIATION,

Respondent.

BROOME COUNTY SHERIFF'S LAW ENFORCEMENT OFFICERS' ASSOCIATION,

Charging Party,

-and-

CASE NO. U-30044

COUNTY OF BROOME AND BROOME COUNTY SHERIFF,

Respondent.

JOSEPH SLUZAR, COUNTY ATTORNEY (ROBERT G. BEHNKE of counsel), for County of Broome and Broome County Sheriff

JOHN M. CROTTY, ESQ., for Broome County Sheriff's Law Enforcement Officers' Association

BOARD DECISION AND ORDER

These cases come to the Board on exceptions filed by the Broome County Sheriff's Law Enforcement Officers' Association, Inc., (Association) to a decision of an

Administrative Law Judge (ALJ).[1] The ALJ rejected the Association's argument that the improper practice charge filed by the County of Broome and Broome County Sheriff (Joint Employer), Case No. U-30019, is untimely. In addition, the ALJ sustained the Joint Employer's charge, in part, by concluding that the Association violated §209-a.2(b) of the Act by submitting proposals concerning the following contract articles to interest arbitration that are not directly related to compensation as required by §209.4(g) of the Public Employees' Fair Employment Act (Act): Article 13 (Pre-Shift Reporting Pay); Article 21 (Paid Leave of Absence); Article 22 (Sick Leave); and Article 23 (General Municipal Law (GML) §207-c procedures).[2]

EXCEPTIONS

In its exceptions, the Association contends that the ALJ erred in failing to dismiss the Joint Employer's charge as untimely, and in finding that the above referenced Association proposals are not arbitrable pursuant to §209.4(g) of the Act. The Joint Employer supports the ALJ's decision.

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

DISCUSSION

The ALJ correctly held that the Joint Employer's charge is timely, pursuant to §205.6(b) of the Rules of Procedure, because it was filed prior to the date of the filing of

---

[1] 43 PERB ¶4614 (2010).

[2] The text of the at-issue Association proposals for Articles 13, 21 and 22, and a summary of the Association's GML §207-c proposal are set forth in the ALJ's decision. *Supra*, note 1, 43 PERB ¶4614 at 5044-5045.

the Joint Employer's response to the Association's petition for arbitration.[3] Therefore, we reject the Association's exception with respect to that issue.

In *Orange County Deputy Sheriff's Police Benevolent Association, Inc*[4] *(County of Orange)*, we reiterated that the applicable test for determining whether a particular demand is directly related to compensation, and therefore arbitrable under §209.4(g) of the Act, is the one first articulated in *New York State Police Investigators Association*[5] *(State Police)*:

> The degree of a demand's relationship to compensation is measured by the characteristic of the demand. If the sole, predominant or primary characteristic of the demand is compensation, then it is arbitrable because the demand to that extent *directly* relates to compensation. A demand has compensation as its sole, predominant or primary characteristic only when it seeks to effect some change in amount or level of compensation by either payment from the State to or on behalf of an employee or the modification of an employee's financial obligation arising from the employment relationship (e.g., a change in an insurance copayment).[6] [Emphasis in original.]

In *County of Orange*, we also reaffirmed the holding in *State Police* that a proposal limited to seeking an increase in the amount of accumulated leave without a wage

---

[3] *See*, *City of Elmira*, 25 PERB ¶3072 (1992); *Canton Police Ass'n*, 44 PERB ¶3019 (2011). In addition, the ALJ correctly rejected the Association's erroneous argument premised upon *South Nyack/Grand View Jt Pub Admin Bd*, 35 PERB ¶3007 (2002).

[4] 44 PERB ¶3023 (2011).

[5] 30 PERB ¶3013 (1997), *confirmed sub nom., New York State Police Investigators Ass'n v New York State Pub Empl Rel Bd*, 30 PERB ¶7011 (Sup Ct Albany County 1997).

[6] *Supra*, note 5, 30 PERB ¶3013 at 3028.

reduction is not directly related to compensation, and therefore, is not arbitrable under §209.4(g) of the Act. In addition, we concluded that when a unitary demand contains an inseparable nonarbitrable component, the demand cannot be reasonably interpreted to be solely, predominantly or primarily related to increasing the level or amount of compensation, and therefore, it does not satisfy the applicable arbitrability test under §209.4(g) of the Act.

In the present case, the proposal concerning Article 13 includes two demands that address pre-shift reporting pay. The first seeks to modify §13.6.1 of the parties' January 1, 2005-December 31, 2008 collectively negotiated agreement (agreement) by mandating for the first time that all non-supervisory employees report fifteen minutes before the commencement of their shift, and by requiring that those employees be paid overtime for that period.[7] The second demand would add a new provision to the agreement, §13.6.2 requiring all Deputy Sheriff Sergeants to report to work thirty minutes before their shift and receive overtime for that period.

Contrary to the Association's argument, the first demand is not limited to seeking a change in the rate of pay for the fifteen minute pre-shift report. It would also change the schedule for those unit members who have not previously been required to work the pre-shift period. Similarly, the second demand contains two components: a change in

---

[7] Section13.6 of the expired agreement states:

> Employees regularly required to report to work at least fifteen (15) minutes prior to the starting hour of their shift shall be compensated for this time at their regular rate of pay. (ie: 15 minutes = ¼ of the hourly rate) Any employee not reporting for the pre-shift report shall not receive pay for this time.

the schedule for the Deputy Sheriff Sergeants, and a requirement that they be paid overtime for the additional hours of work.

Both demands in the proposal concerning Article 13 are unitary; each contains the inseparable subject of scheduling, a nonarbitrable subject under §209.4(g) of the Act. Therefore, we affirm the ALJ's conclusion that the Association violated §209-a.2(b) of the Act by submitting each demand to interest arbitration.

We reach a different conclusion, however, with respect to Association's proposals regarding Article 21 and Article 22. Each of those proposals is drafted so that it includes two severable components: an increase in the accumulation of leave, and the monetization of all unused leave at the time of separation of service. We affirm the ALJ's conclusion that the proposed increases in the accumulation of leave set forth in §§21.6.1 and 22.1.3 are not arbitrable under *State Police* and *County of Orange*. We, however, reverse the ALJ to the extent that she found the severable and distinct proposals in §§21.6.1 and 22.5.1, calling for the conversion of unused leave time to cash, to be not arbitrable under §209.4(g) of the Act. As we determined in *County of Orange*, payment for unused accumulated leave when an employee separates from service is a form of deferred compensation.

Finally, we affirm the ALJ's conclusion that the proposal concerning Article 23, which seeks a comprehensive GML §207-c procedure, is not arbitrable under §209.4(g) of the Act. While portions of this unitary proposal relate to compensation, those portions are inextricably intertwined with multiple nonarbitrable subjects pursuant to §209.4(g) of

the Act, including scheduling, application procedures, medical examinations and treatment, light duty assignments and hearing procedures.[8]

Based upon the foregoing, we grant the Association's exceptions, in part, and affirm the ALJ's decision finding that the Association violated §209-a.2(b) of the Act when it submitted proposals §§13.6.1 and 13.6.2 and proposal Article 23 to interest arbitration, and when it submitted the leave accumulation demands in proposals §21.6.1 and §22.1.3 to interest arbitration.

IT IS HEREBY ORDERED that the Association withdraw proposals §§13.6.1, 13.6.2 and 22.1.3, proposal Article 23 from interest arbitration, and that it withdraw proposal §21.6.2 from interest arbitration except for the portions of the proposal that call for compensation for unused accumulated leave at the time of separation from service.

DATED: November 30, 2011
Albany, New York

Jerome Lefkowitz, Chairperson

Sheila S. Cole, Member

[8] *See, Tompkins County Deputy Sheriff's Association*, Inc., 44 PERB ¶3024 (2011); *Madison County Deputy Sheriff's PBA, Inc.*, 44 PERB ¶3035 (2011); *Highland Falls PBA, Inc.*, 42 PERB ¶3020 (2009).

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

CANANDAIGUA FIREFIGHTERS ASSOCIATION, LOCAL 2098, IAFF,

Charging Party,

CASE NO. U-29660

- and -

CITY OF CANANDAIGUA,

Respondent.

CHAMBERLAIN D'AMANDA (MATTHEW J. FUSCO of counsel), for Charging Party

BOND, SCHOENECK & KING, PLLC (TERRY O'NEIL and HOWARD M. WEXLER of counsel), for Respondent

BOARD DECISION AND ORDER

This case comes to the Board on exceptions filed by the City of Canandaigua (City) to a decision by an Administrative Law Judge (ALJ) on an improper practice charge, as amended, filed by the Canandaigua Firefighters Association, Local 2098, IAFF (Association) alleging that the City violated §209-a.1(d) of the Public Employees' Fair Employment Act (Act) when it, *inter alia*, unilaterally transferred certain firefighter duties exclusively performed by Association unit members in the Canandaigua Fire Department (Department) to volunteer firefighters. The City filed an answer denying it violated the Act and it asserted various affirmative defenses.

Following a hearing, the ALJ concluded that the City violated §209-a.1(d) of the Act when it unilaterally transferred the performance of the following unit duties to volunteer Department firefighters: driving and operating City-owned fire department

vehicles, daily maintenance duties at City fire stations and grounds and testing and cleaning fire apparatus and equipment in City fire stations. In addition, the ALJ found that the City violated §209-a.1(d) of the Act when it unilaterally transferred the testing of fire hydrants, fire inspections and firefighting services in the Town of Canandaigua to other individuals outside of the Association unit.[1]

At the request of the City, the Board heard oral argument on March 1, 2010. During the course of oral argument, the Board requested the parties to address a jurisdictional question under §205.5(d) of the Act based upon the terms of the parties' agreement. Thereafter each party submitted a supplemental brief addressing the jurisdictional issue. In its supplemental brief, the City argues that the matter requires an interpretation of the agreement, which should be deferred to arbitration.

FACTS

Pursuant to §9.7 of the Canandaigua City Charter (City Charter), the Department is composed of paid firefighters and members of at least two volunteer fire companies. The Department is headed by a Fire Chief who is appointed by the City's Director of Public Safety with City Council approval.[2] Section 9.10 of the City Charter authorizes the City Council to determine the number of paid firefighters in the Department.

The Association is the exclusive representative of all paid full-time firefighters and captains in the Department. The City and the Association are parties to a collectively negotiated agreement (agreement). Article 12 of the agreement states:

---

[1] 43 PERB ¶4563 (2010).

[2] Joint Exhibit 14, §9.8.

FIRE DEPARTMENT RULES

> Section 1. *All rules and regulations* of the Fire Department *not covered by this Agreement* shall be covered in general and special orders and by the published Fire Department Rules and Regulations book. The Association shall be consulted for suggestions in the event of any revisions of the rules and regulations. Effective January 1, 1995, *these Rules and Regulations shall include the annual testing of fire hydrants as a Firefighter work responsibility.* (emphasis supplied).

Article 16, §1 of the agreement also states:

> *The City and the Association agree that the on-duty Firefighters shall be responsible for the normal and reasonable fire station cleanliness inside and out, and that normal maintenance of the fire stations, equipment and apparatus shall be included in the duties of the on-duty Firefighters.* Normal maintenance shall not include major repairs to buildings, equipment or apparatus. (emphasis supplied).

Under Article 22, §1 of the agreement, Association members who may be appointed as fire inspectors shall receive an $800.00 stipend above their regular rate of pay under the agreement's salary schedule.

The City Council adopted separate and distinct sets of rules and regulations for paid and volunteer firefighters in the Department. The rules and regulations for paid firefighters are set forth in the Canandaigua Fire Department Career Personnel Rules and Regulations ("Career Personnel Rules and Regulations") which were adopted in 1984, and most recently revised in 1997.[3] The applicable rules and regulations for volunteer firefighters and captains are contained in the Canandaigua Fire Department Volunteer Personnel Rules and Regulations ("Volunteer Personnel Rules and

[3] Joint Exhibit 9.

Regulations"), which were adopted in 1992.[4] Under the respective rules and regulations, all salaried and volunteer firefighters are members of the Department and they are responsible for complying with all Department rules and regulations.[5] Both sets of rules and regulations identify duties and responsibilities concerning the operation of Department equipment and responding to fires and emergencies.

DISCUSSION

Pursuant to Article 12 of the parties' agreement, all terms and conditions of employment that are not covered by the terms of the agreement may be subject to modification by general or special orders or by changes to the Career Personnel Rules and Regulations and/or Volunteer Personnel Rules and Regulations. In addition, it requires the City to consult with the Association for suggestions concerning any revisions to the rules and regulations. Article 12 also contains an explicit provision regarding the testing of fire hydrants by unit members.

Section 205.5(d) of the Act provides, in pertinent part, that: "the board shall not have authority to enforce an agreement between an employer and an employee organization and shall not exercise jurisdiction over an alleged violation of such an agreement...." Inasmuch as the last sentence of Article 12 of the agreement concerning the annual testing of fire hydrants is clear and unambiguous, and is not subject to change by the process specified in the earlier sentences of Article 12, we reverse the ALJ with respect to the testing of fire hydrants, and dismiss that part of the

[4] Joint Exhibit 12.

[5] Joint Exhibit 9, §105.01; Joint Exhibit 12, §§1.5, 4.2.

charge.

It is less clear whether the first two sentences of Article 12 of the agreement constitute consent by the Association to the City's unilateral alteration of non-contractual past practices by issuing general or special orders or by the revision of Fire Department Rules. Inasmuch as nothing in the record or in the parties' briefs or arguments assist us in making or rejecting such a conclusion, rather than attempting to resolve the jurisdictional questions by either deciding them on the basis of the record before us, or reversing the remainder of the ALJ's decision and remanding the case for further evidence, we hereby choose to defer this matter to the parties' negotiated grievance arbitration procedure in accordance with *Herkimer County BOCES*.[6] We also note that the charge's allegations concerning performance of fire inspections, and maintenance and cleaning of the fire stations, grounds, equipment and apparatus appear to raise questions under Articles 16 and 22 of the agreement relevant both to our jurisdiction and the merits of the charge. It is, therefore, appropriate that we defer all these issues to arbitration in order to avoid wasteful duplication of effort.[7]

IT IS THEREFORE ORDERED THAT the charge be dismissed on jurisdictional grounds insofar as it alleges a violation of §209-a.1(d) of the Act with respect to the testing of fire hydrants.

IT IS FURTHER ORDERED THAT the determination of PERB's jurisdiction and the merits of the remainder of the charge alleging violations of §209-a.1(d) of the Act is

---

[6] 20 PERB ¶3050 (1987).

[7] *County of Sullivan and Sullivan County Sheriff*, 41 PERB ¶3006 (2008); *New York City Transit Authority (Bordansky)*, 4 PERB ¶3031 (1971).

deferred, and the charge is conditionally dismissed. The Association has the opportunity to file a timely motion to the Board at the conclusion of the contractual grievance procedure to reopen the charge in accordance with our decision herein.

DATED: November 30, 2011
Albany, New York

Jerome Lefkowitz, Chairperson

Sheila S. Cole, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

ADIRONDACK TEACHERS ASSOCIATION,

Charging Party,

CASE NO. U-28120

- and -

ADIRONDACK CENTRAL SCHOOL DISTRICT,

Respondent.

JAMES HENCK, for Charging Party

JOANNE M. NOVAK, ESQ., for Respondent

BOARD DECISION AND ORDER

This case comes to the Board on exceptions of the Adirondack Central School District (District) to a decision by an Administrative Law Judge (ALJ) on an improper practice charge filed by the Adirondack Teachers Association (Association), finding that the District violated §209-a.1(d) of the Public Employees' Fair Employment Act (Act) when it unilaterally ended a past practice of permitting unit member's children to be present at the Adirondack High School during that school's tenth period.[1]

EXCEPTIONS

In its exceptions, the District asserts that the ALJ erred in rejecting its mission-related and contract reversion defenses and in relying upon the decision in *Ostelic Valley Central School District*[2] (hereinafter *Ostelic Valley*). In addition, the District challenges the ALJ's

[1] 43 PERB ¶4548 (2010).

[2] 29 PERB ¶3005 (1996).

proposed remedy on the grounds that the Association did not present evidence that unit members incurred expenses as a result of the District's unilateral action. The Association supports the ALJ's decision.[3]

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

FACTS

The applicable facts are fully set forth in the ALJ's decision. They are repeated here only as necessary to address the District's exceptions.

The Association represents a unit composed of District teachers and other certified professional staff. The District and the Association are parties to a collectively negotiated agreement (agreement), which expired on June 30, 2010. The agreement is silent concerning the presence of children with their respective faculty member parent during the normal workday, which is 8:00 a.m. to 3:30 p.m.

Article XXVI(A) of the agreement states:

> 1. Individual Help to Students Outside of the Regular Class Period
>
> Each professional employee will provide extra and

[3] The Association has not filed a cross-exception to the ALJ's conclusion that the District violated §209-a.1(d) of the Act by only ending the practice at high school although the evidence demonstrates that the District ended a similar past practice at an elementary school, where students were permitted to be present with their respective faculty member parent before and after the normal school day but during the faculty workday. Based upon the lack of such cross-exception the issue of the change in practice at that elementary school is waived under §213.2(b)(4) of the Rules of Procedure (Rules). *See*, *Town of Orangetown*, 40 PERB ¶3008 (2007), *confirmed*, *Town of Orangetown v New York State Pub Empl Rel Bd*, 40 PERB ¶7008 (Sup Ct Albany County 2007); *Orange County Deputy Sheriff's Police PBA, Inc.*, 44 PERB ¶3023 (2011).

> individual help during the activity period. The timing and scheduling of other assistance will be set up by the individual professional employee.

There are nine periods of classroom instruction at the high school. The Monday-Thursday schedule, however, includes a tenth period, which runs from 2:45 p.m. to 3:25 p.m.. Article XXVI(A) of the agreement requires teachers to be present in their classroom during tenth period for scheduled or unscheduled remedial instruction.[4] Students are not obligated to attend the tenth period or, if present, accept remedial instruction from a teacher. As a result, there are days when a teacher may not have any high school students in attendance during the tenth period.

There is a multi-year past practice, known to the District, of children of high school teachers being present in their respective parent's classroom during the tenth period. These children are District students who attend other schools and are bused to the high school following completion of their school day. On certain Thursdays, faculty and departmental meetings at the high school are held during tenth period and remedial instruction is not offered. When such meetings are held, faculty member's children are unsupervised and without an assigned place to congregate.

During the hearing before the ALJ, the Association called one teacher to describe the past practice. He testified that, when necessary, his children would do their homework, work on a computer or go to another teacher's classroom, to ensure a proper educational environment for remedial instruction. He denied, however, remembering anyone making complaints about his children's presence at the school.

It is undisputed that James Chase (Chase), before he became Association President,

---

[4]The District has a practice of dismissing teachers early on Fridays, following the ninth period and after the students board their buses.

complained to the District about the practice of colleagues' children being present at the high school during the tenth period. Among the teachers mentioned by Chase was the same teacher who testified on behalf of the Association at the hearing. Chase's complaints to the District focused on disruptive misbehavior of children including: clapping erasers causing chalk dust to cover classroom computers; running in the hallways; being present in the faculty lounge; sword fighting with pointers; and engaging in other forms of horseplay. In addition, one parent complained to a principal that a student's remedial session was disrupted by the presence of young children.

After becoming Association President, Chase and the Association Vice-President spoke with the District Superintendent Frederick Morgan (Morgan) in August 2007, about the District ending the practice. During his unrefutted testimony, Morgan stated:

> And Mr. Chase, you know, talked to me about stopping this practice, he wanted the childcare after school stopped, the kids fooling around, he wanted that stopped. I asked if the association could do it, you know, maybe it would be better for the association, he and Ted McCall to deal with that, with the association and get it stopped, he said I don't believe I have that authority, it would be best to come from the administration, I said fine, we'll do it, okay.[5]

The issue of the past practice was discussed at the September and October 2007 meetings of the Adirondack Central School District Board of Education (Board of Education). At Chase's request, the Board of Education met with him to discuss the practice during the executive session portion of the Board of Education's meeting. During that discussion, Chase described the problems caused by the practice including misbehavior in the halls and classrooms by the children of three faculty members. In addition, Chase suggested to Board members possible means for addressing the problems associated with the childcare issue.

As a result of the October meeting, the Board of Education directed Morgan to

---

[5] Transcript, p. 52.

terminate the practice on a District-wide basis. When informed by Morgan of the District's decision to end the practice, Chase responded, "good."[6] Pursuant to the directive issued by the Board of Education, Morgan distributed a memorandum dated October 16, 2007, to Association members announcing the end of the practice.

Both Morgan's memorandum and the testimony of District witnesses demonstrate that a primary reason for the District's decision to eliminate the practice was the distraction to remedial education caused by the presence and misbehavior of teachers' children. According to District witnesses, teachers cannot be effectively provide remedial instruction if they are simultaneously supervising their own children. Two other articulated reasons for the unilateral change are concerns over safety and security: the potential for teachers' children to be injured due to the lack of supervision during faculty and departmental meetings; and the possibility that intruders may avoid detection under the new high school security system by entering the building along with teachers' children.

DISCUSSION

There are certain fundamental policy decisions at the core of an employer's primary mission that are managerial prerogatives and, therefore, not mandatorily negotiable under the Act, but are subject to impact bargaining.[7] Nevertheless, an employer's mission does not constitute a license to unilaterally act in any manner an employer deems appropriate. Rather,

---

[6] Transcript, p. 87.

[7] *See, County of Erie v. Pub Employ Rel Bd*, 12 NY3d 72, 42 PERB ¶7002 (2009); *West Irondequoit Teachers Assn v Helsby*, 35 NY2d 46, 7 PERB ¶7014 (1974); *New Rochelle City Sch Dist,* 4 PERB ¶3060 (1971).

the employer can unilaterally act only to the extent that it does not significantly or unnecessarily intrude on the protected interests of bargaining unit employees.[8]

In the present case, we find that the effective provision of remedial education during the tenth period constitutes an essential element of the District's core pedagogical mission. Unlike the facts in *Otselic Valley,*[9] the child care practice in the present case took place at a time when unit members were expected to provide remedial instruction. In addition, the District's concerns over safety during the remedial period are also mission-related.

The record includes unrefuted testimony concerning Chase's specific complaints to Morgan and the Board of Education concerning disturbances caused by misconduct of teachers' children during the tenth period. It is undisputed that Chase made these complaints before and during his tenure as Association President, and expressed agreement when Morgan informed him of the District's decision to end the past practice. Although called as a witness by the Association, Chase's testimony was short and limited to denying that as Association President "in the last year I never told anyone to end it, unilaterally end [the past practice]."[10] We draw a negative inference[11] based upon Chase's failure to refute the reasonable inferences to be drawn from his complaints to the District that the misbehavior and disturbances interfered with the District's delivery of remedial instruction during the tenth

---

[8] *County of Montgomery*, 18 PERB ¶3077 (1985); *State of New York (Department of Correctional Services)*, 38 PERB ¶3008 (2005).

[9] *Supra*, note 2.

[10] Transcript, pp. 184-185.

[11] *State of New York (Division of Parole)*, 41 PERB ¶3033 (2008); *Livingston County Coalition of Patrol Services*, 44 PERB ¶3036 (2011).

period, and the presence of the unsupervised children of unit members created an unsafe environment.[12]

While the past practice of permitting children of Association unit members to be present at the high school during tenth period is an economic benefit related to childcare expenses,[13] the unilateral decision to end that practice is necessary and proportional to meet the District's core educational mission of providing effective remedial academic assistance. The evidence of disruption and distractions caused by the presence of the Association members' children confirms the necessity of ending the practice in order for the District to meet its core mission of providing remedial education and ensuring a safe environment at the high school.

Based upon the foregoing, we conclude that the District was not required to negotiate the cessation of the child care past practice at the high school. Having reached this conclusion, it is unnecessary for us to reach the District's other exceptions.

NOW, THEREFORE, the charge is hereby dismissed.

DATED: November 30, 2011
Albany, New York

Jerome Lefkowitz, Chairman

Sheila S. Cole, Member

[12] *West Hempstead Union Free Sch Dist*, 14 PERB ¶3096 (1981).

[13] *Otselic Valley Cent Sch Dist, supra*, note 2.

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-29630**

COUNTY OF MONTGOMERY,

Respondent.

NANCY E. HOFFMAN, GENERAL COUNSEL (ERIC E. WILKE of counsel), for Charging Party

ROEMER WALLENS GOLD & MINEAUX LLP (DIONNE A. WHEATLEY of counsel), for Respondent

BOARD DECISION AND ORDER

This case comes to the Board on exceptions filed by the County of Montgomery (County) to a decision of the Assistant Director of Public Employment Practices and Representation (Assistant Director) on an improper practice charge filed by the Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO (CSEA) finding that the County violated §209-a.1(d) of the Public Employees' Fair Employment Act (Act) when it failed to provide CSEA with certain requested information and documents concerning a pending grievance under the parties' collective bargaining agreement.[1]

EXCEPTIONS

In its exceptions, the County asserts that the Assistant Director's decision should be reversed based upon the Appellate Division, Third Department's decision in *Pfau v*

---

[1] 43 PERB ¶4615 (2010).

New York State Public Employment Relations Board,[2] which affirmed the vacatur of a prior Board decision.[3] CSEA supports the Assistant's Director's decision.

Based upon our review of the record, and consideration of the parties' arguments, we affirm the decision of the Assistant Director, as modified.

FACTS

Under the terms of the parties' collectively negotiated agreement, a CSEA unit member has a contract right to file a grievance at Step 3 of the grievance procedure challenging the implementation of a disciplinary penalty.[4] Pursuant to Article XI, §4(d)(1) of the agreement, if CSEA is dissatisfied with the County's Step 3 grievance determination, CSEA may file a demand for binding arbitration with PERB under our Rules of Procedure for voluntary grievance arbitration.[5] The responsibilities and powers of the arbitrator selected to determine a grievance are delineated in Article XI, §4(d)(1) of the agreement.

In July 2009, a CSEA representative filed a grievance at Step 3 of the grievance procedure on behalf of unit member David Giovannone (Giovannone) challenging the County's implementation of a disciplinary penalty against Giovannone. Thereafter, CSEA filed a demand for arbitration with PERB, resulting in the selection of an arbitrator to determine the grievance. Following selection of the arbitrator, the County refused

---

[2] 24 Misc3d 260, 42 PERB ¶7003 (Sup Ct Albany County 2009), *affd*, 69 AD3d 1080, 43 PERB ¶7001 (3d Dept 2010).

[3] *State of New York-Unified Court System*, 41 PERB ¶3009 (2008).

[4] Stipulation of Facts, Exhibit A, Article X, §2(d), Article XI, §4(c)

[5] 4 NYCRR §207.

CSEA's requests for the production of information and documents to enable it to evaluate the pending grievance and to defend Giovannone at arbitration.

DISCUSSION

For close to four decades, we have held that under the Act an employee organization has a general right to receive documents and information requested from an employer for use by the employee organization in the administration of a collectively negotiated agreement including processing a grievance and preparing for a grievance hearing and/or arbitration. Failure of an employer to produce requested information and documents may constitute a violation of both §§209-a.1(a) and (d) of the Act.[6]

Under the Act, an employee organization is entitled to a reasonable opportunity to examine requested information and documents before determining whether to continue to process a grievance. The right to receive information and documents extends after a grievance has been processed to arbitration.[7]

Our decisions applying the Act's duty to provide information to cases involving the grievance/arbitration of disciplinary matters have been consistently upheld.[8] In

---

[6] *Board of Education, City Sch Dist of the City of Albany*, 6 PERB ¶3012 (1973); *Hornell Cent Sch Dist*, 9 PERB ¶3032 (1976); *State of New York (Dept of Health and Roswell Memorial Institute)*, 26 PERB ¶3072 (1993); *City of Rochester*, 29 PERB ¶3070 (1996); *Schuyler-Chemung-Tioga BOCES*, 34 PERB ¶3019 (2001); *County of Erie and Erie County Sheriff*, 36 PERB ¶3021 (2003), *confirmed sub nom. County of Erie and Erie County Sheriff v State of New York*, 14 AD3d 14, 37 PERB ¶7008 (3d Dept 2004).

[7] *Greenburgh No. 11 Union Free Sch Dist*, 33 PERB ¶3059 (2000).

[8] *Town of Evans*, 37 PERB ¶3016 (2004); *State of New York (OMRDD)*, 38 PERB ¶3036 (2005), *confirmed sub nom. CSEA v New York State Pub Empl Rel Bd*, 14 Misc3d 199, 39 PERB ¶7009 (2006), *affd*, 46 AD3d 1037, 40 PERB ¶7009 (3d Dept 2007); *Hampton Bays Union Free Sch Dist*, 41 PERB ¶3008 (2008), *confirmed sub nom. Hampton Bays Union Free Sch Dist v New York State Pub Empl Rel Bd*, 62 AD3d 1066, 42 PERB ¶7005 (3d Dept 2009), *mot denied*, 42 PERB ¶7006 (3d Dept 2009), *lv denied*, 13 NY3d 711, 42 PERB ¶7009 (2009).

County of Erie and Erie County Sheriff v State of New York,[9] the Appellate Division, Third Department confirmed and enforced our decision finding that an employer violated §209-a.1(d) of the Act when it refused to provide requested documents needed by an employee organization to investigate and process a disciplinary grievance to arbitration under a negotiated grievance/arbitration procedure. Two years later, the same court in *Civil Service Employees Association v New York State Public Employment Relations Board,*[10] affirmed the dismissal of an Article 78 proceeding challenging our determination that an employer violated §209-a.1(d) of the Act by refusing to provide requested relevant and necessary information needed by CSEA to defend unit members at disciplinary grievance arbitration. Subsequently, the court confirmed another Board decision finding a violation of §209-a.1(d) of the Act when a school district failed to produce requested information and documents needed to investigate the termination of a unit member.[11]

In support of its exceptions, the County misconstrues the decision in *Pfau v New York State Public Employment Relations Board.*[12] In that decision, the Appellate Division, Third Department cited with favor the above-referenced decisions upholding our determinations finding employers to have violated the Act by failing to produce requested information and documents concerning disciplinary grievances and arbitrations. The Appellate Division, however, distinguished those decisions by holding

---

[9] *Supra*, note 8.

[10] *Supra*, note 8.

[11] *Hampton Bays Union Free Sch Dist v New York State Pub Empl Rel Bd, supra*, note, 8.

[12] *Supra*, note 1.

that the duty to provide information under the Act does not extend to requiring the Unified Court System to provide prehearing disclosure to an employee organization in the context of a disciplinary procedure created by the Rules of the Chief Judge,[13] which was then incorporated into a negotiated agreement.

The holding in *Pfau v New York State Public Employment Relations Board* is inapplicable to the present case because CSEA seeks documents and information to evaluate a pending contract grievance concerning discipline and to enable it to provide representation to the at-issue unit member at arbitration pursuant to the negotiated terms of the parties' agreement.

Based upon the foregoing, the County's exceptions are denied, and the Assistant Director's decision is affirmed.[14]

IT IS, THEREFORE, ORDERED that the County provide CSEA with the following information and documents concerning the pending grievance and arbitration regarding unit member David Giovannone:

a) copies of all documents and other tangible evidence that the County may rely upon at the arbitration;

b) copies of all statements, in any form, made by the witnesses the County may call at the arbitration;

c) copies of all statements, in any form, made by any other witnesses to the events alleged to form the basis for the disciplinary action;

---

[13] 22 NYCRR §25.29.

[14] We have modified the remedial order consistent with the facts in the record.

d) identification by name, employment title, office address and office telephone number of each witness, whether or not employed by the County, that it may call at the arbitration;

e) identification by name, employment title, office address and office telephone number of any official of the County who investigated the allegations against the grievant and, if a report was put in writing, a copy of the report; and

f) sign and post notice in the form attached at all physical and electronic locations ordinarily used to post written communications to unit employees.

DATED: November 30, 2011
Albany, New York

Jerome Lefkowitz, Chairman

Sheila S. Cole, 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 County of Montgomery in the unit represented by the Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO that the County will provide CSEA with the following information and documents concerning the pending grievance and arbitration regarding unit member David Giovannone:

1. copies of all documents and other tangible evidence that the County may rely upon at the arbitration;

2. copies of all statements, in any form, made by the witnesses the County may call at the arbitration;

3. copies of all statements, in any form, made by any other witnesses to the events that form the basis for the disciplinary action;

4. identification by name, employment title, office address and office telephone number of each witness, whether or not employed by the County, that it may call at the arbitration; and

5. identification by name, employment title, office address and office telephone number of any official of the employer who investigated the allegations against the grievant and, if a report was put in writing, a copy of the report.

Dated . . . . . **By** . . . . . .
on behalf of the **County of Montgomery**

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

TOMPKINS COUNTY DEPUTY SHERIFFS' ASSOCIATION, INC.,

Charging Party,

-and-

CASE NO. U-29112

COUNTY OF TOMPKINS AND TOMPKINS COUNTY SHERIFF,

Respondent.

MARILYN D. BERSON, ESQ., for Charging Party

JONATHAN WOOD, ESQ., for Respondent

BOARD DECISION AND ORDER

Upon our review of the exceptions by the Tompkins County Deputy Sheriff's Association (Association) to the decision of an Administrative Law Judge (ALJ)[1] dismissing its charge alleging that County of Tompkins and Tompkins County Sheriff (Joint Employer) violated §209-a.1(d), and the Joint Employer's response thereto, we affirm the dismissal of the charge for the reasons set forth in the ALJ's decision. The method of distributing overtime becomes a mandatory subject of negotiations only after an employer decides to make overtime available.[2] Therefore, the charge is dismissed.

DATED: November 30, 2011
Albany, New York

Jerome Lefkowitz, Chairperson

Sheila S. Cole, Member

[1] 44 PERB ¶4580 (2011).

[2] *Buffalo Sewer Authority*, 30 PERB ¶3018 (1997).

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

NEW YORK STATE LAW ENFORCEMENT OFFICERS UNION, COUNCIL 82, AFSCME, AFL-CIO, GREENE COUNTY DEPUTY SHERIFF'S ASSOCIATION, LOCAL 2790G,

Charging Party,

CASE NO. U-27095

- and -

COUNTY OF GREENE and SHERIFF OF GREENE COUNTY,

Respondent.

ENNIO J. CORSI, ESQ. GENERAL COUNSEL (CHRISTINE CAPUTO GRANICH of counsel), for Charging Party

ROEMER WALLENS GOLD & MINEAUX LLP (DIONNE A. WHEATLEY of counsel), for Respondent

BOARD DECISION AND ORDER

This case comes to the Board on exceptions filed by the New York State Law Enforcement Officers Union, Council 82, AFSCME, AFL-CIO, Greene County Deputy Sheriff's Association, Local 2790G (Council 82) to a decision by the Assistant Director of Public Employment Practices and Representation (Assistant Director),[1] following a remand, on an improper practice charge filed by Council 82 alleging that the County of Greene and the Sheriff of Greene County (Joint Employer) violated §209-a.1(d) of the Public Employees' Fair Employment Act (Act) when it failed to disclose during

[1] 43 PERB ¶4579 (2010).

negotiations that acceptance of its health care proposals would result in an increase in co-payments for doctor office visits.

PROCEDURAL BACKGROUND

In her original decision, the Assistant Director dismissed Council 82's charge based upon a finding that the joint employer had met its burden of demonstrating its duty satisfaction defense.[2] Council 82 filed exceptions asserting that the Assistant Director erred in sustaining the duty satisfaction defense and erred in failing to determine its allegation that the joint employer violated its duty to negotiate in good faith by failing to disclose during negotiations that the financial impact associated with accepting its proposed health insurance concessions.

Following our review, we granted Council 82's exceptions, in part, and remanded the case to the Assistant Director to determine the merits of the claim that the joint employer violated §209-a.1(d) of the Act by failing to disclose the fact that the co-payments would increase as the result of accepting the joint employer's health care proposals.[3] In our decision, we stated that Council 82 may renew its exceptions with respect to the Assistant Director sustaining the duty satisfaction defense.[4]

---

[2] 42 PERB ¶4513 (2009).

[3] 42 PERB ¶3031 (2009).

[4] *Supra*, note 2, 42 PERB ¶3031 at 3116, n.14.

Upon remand, the Assistant Director concluded that Council 82 failed to demonstrate that the Joint Employer's failure to disclose the at-issue information violated §209-a.1(d) of the Act.[5]

EXCEPTIONS

In its exceptions, Council 82 asserts that the Assistant Director misconstrued the testimony of its sole witness and erred in failing to credit his testimony that following a request, the Joint Employer failed to provide the at-issue information. In addition, Council 82 contends that the Assistant Director erred in concluding that the Joint Employer had no duty to provide the information because it was available elsewhere, and that Council 82 failed to demonstrate that the parties had a past practice of fully disclosing cost information concerning health insurance benefits during negotiations.[6] The Joint Employer supports the Assistant Director's decision.

Based upon the evidence in the record before us, we affirm the Assistant Director's decision.

FACTS

The Joint Employer and Council 82 were parties to a January 1, 2003-December 31, 2005 collectively negotiated agreement (agreement). The agreement included the

---

[5] *Supra*, note 1.

[6] In its exceptions, Council 82 has not renewed its exception to the Assistant Director's original decision sustaining the Joint Employer's duty satisfaction defense. It is, therefore, waived under §213.2(b)(4) of the Rules of Procedure (Rules). *See, Town of Orangetown*, 40 PERB ¶3008 (2007), *confirmed Town of Orangetown v New York State Pub Empl Rel Bd*, 40 PERB ¶7008 (Sup Ct Albany County 2007).

following provision concerning prescription drug and doctor office visit co-payment costs for employees enrolled in the Preferred Provider Organization (PPO) plan:

> The prescription drug co-pay and doctor visit co-pays shall be the minimum cost offered by the PPO carrier. If the prescription drug co-payments and/or doctor visit co-payments increase above the minimum level, the additional costs will be the responsibility of the employee.[7]

The parties commenced negotiations for a successor agreement on January 24, 2006, and exchanged proposals at the second bargaining session on February 6, 2006. Three subsequent bargaining sessions led to the parties executing a memorandum of agreement on March 9, 2006. Two of the Joint Employer's bargaining proposals concerned health benefits. One demand proposed amending the expired agreement to add the subject of co-payments for doctor office visits to the list of topics to be reviewed by the pre-existing labor-management Health Insurance Committee.[8] The second proposal sought two health benefit concessions: elimination of the three month carry-over option regarding deductibles and a decrease of the maximum eligibility age for dependent children in college from 25 to 23.

During negotiations, the Joint Employer was fully aware that if Council 82 accepted the proposals for health benefit concessions there would be an automatic increase in the minimum co-payments for doctor office visits. This knowledge was based upon the Joint Employer's experience with other bargaining units that had

---

[7] Joint Exhibit 2, §9.2.2(B).

[8] Under the expired agreement, the Committee was authorized to review and make recommendations with respect to prescription drugs, insurance co-payments and/or deductibles.

accepted the same proposals during negotiations, which resulted in an increase in co-payments from $10 to $15. The Joint Employer's negotiations team made a conscious decision not to disclose this information to Council 82 because the expired agreement already addressed the issue of minimum costs for the co-payments and that any additional costs would be the responsibility of the unit member.

At the hearing, Council 82 representative Richard Stevens (Stevens) testified that he asked the Joint Employer's representatives during negotiations whether acceptance of the health benefit proposals would have any other consequences to unit members.[9] The Assistant Director, however, did not credit Stevens's testimony that he made such a request.[10]

On March 9, 2006, the parties entered into a memorandum of agreement (MOA) containing modifications to the expired agreement including the joint employer's two health benefit proposals. The MOA was subsequently ratified and is silent with respect to increasing the amount of co-payments for doctor office visits. In June, 2006, unit members learned, when they received their new health insurance cards, that their co-payments had been increased to $15 a visit.

---

[9] Transcript, pp. 69-70.

[10] During the hearing, Greene County Director of Personnel Audrey G. Adrezin (Adrezin) testified that she did not recall such an inquiry from Council 82 during negotiations. Transcript, p. 36.

Consistent with the MOA, on November 8, 2006, the parties executed a successor agreement for the period January 1, 2006-December 31, 2008.[11] Section 9.2.2 of the successor agreement states, in relevant part that:

> B. The prescription drug co-pay and doctor visit co-pays shall be the minimum cost offered by the HMO carrier. If the prescription drug co-payments and/or doctor visit co-payments increase above the minimum level, the additional costs will be the responsibility of the employee.
>
> C. Any change to the prescription drugs, insurance co-pays, doctor visit co-pays and/or deductibles will be referred to a Health Insurance Committee comprised of three (3) Union and three (3) County people. The Committee will review the matter and make a recommendation as to how to proceed. If the recommendation of the Committee is not accepted, the increase proposed by the carrier will be implemented. The implementation of the higher prescription drug co-pay, insurance co-payment, doctor visit co-pays or deductible will not be subject to the grievance procedure or form the basis for an improper practice charge.

DISCUSSION

It is well-settled that an employer's general duty to provide information encompasses a duty to give a response to a request for information reasonably relevant and necessary to contract negotiations.[12]

Following our careful review of the record in the present case, we affirm the Assistant Director's conclusion that Council 82 failed to prove that it made an information request during negotiations triggering an obligation upon the Joint Employer

---

[11] Joint Exhibit No. 1.

[12] *Village of Johnson City*, 12 PERB ¶3020 (1979); *State of New York (GOER)*, 25 PERB ¶3078 (1992), *confirmed sub nom, New York State Inspection, Sec and Law Enforcement Empls v Kinsella*, 197 AD2d 341, 27 PERB ¶7006 (3d Dept 1994); *Board of Educ City School Dist of the City of Albany*, 6 PERB ¶3012 (1973).

to provide information about the increase in co-payments associated with its proposals. There is no objective evidence in the record that warrants our disturbing the Assistant Director's credibility determination concerning Council 82's witness Stevens.[13] During his testimony, Stevens did not articulate any specific details concerning the purported request, including the particular session in which it was made, or the verbal interaction between the parties at the table. Furthermore, his notes from the negotiations are silent with respect to a request for information, as is Council 82's charge.[14]

We also affirm the Assistant Director's determination that Stevens's conclusory testimony alone, concerning an alleged past practice of the Joint Employer fully disclosing health care cost information in prior negotiations, is not sufficient to demonstrate that the Joint Employer violated §209-a.1(d) of the Act when it failed to volunteer the at-issue information in the present case. Therefore, Council 82 has failed to meet its burden of proof.

IT IS, THEREFORE, ORDERED that the charge is dismissed.

DATED: November 30, 2011
Albany, New York

Jerome Lefkowitz, Chairperson

Sheila S. Cole, Member

[13] *County of Tioga*, 44 PERB ¶3016 (2011).

[14] Charging Party Exhibit 3. Having affirmed the Assistant Director's creditability determination that Council 82 did not ask for the information, it is not necessary for us to reach the issue whether Council 82 could have obtained it from another source,

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

BETHLEHEM POLICE BENEVOLENT ASSOCIATION,

Charging Party,

CASE NO. U-29785

- and -

TOWN OF BETHLEHEM,

Respondent.

THOMAS J. JORDAN, ESQ., for Charging Party

HISCOCK & BARCLAY, LLP (MICHAEL J. SMITH of counsel), for Respondent

BOARD DECISION AND ORDER

This matter comes to us on exceptions filed by the Town of Bethlehem (Town) to a decision by the Assistant Director of Public Employment Practices and Representation (Assistant Director)[1] on a charge filed by the Bethlehem Police Benevolent Association (PBA) finding that the Town improperly refused to negotiate the impact of the promotion of a PBA-unit employee to a non-unit position.

The case was submitted to the Assistant Director on a stipulated record limited to four pieces of correspondence: a PBA letter dated December 3, 2009, requesting impact negotiations; a Town letter dated December 8, 2009, responding to PBA's request; a PBA letter dated December 29, 2009, modifying the substance of impact

---

[1] 43 PERB ¶4519 (2010).

negotiation demand; and a Town email dated January 14, 2010, refusing the request for impact negotiations.[2]

The Assistant Director concluded that the Town violated §209-a.1(d) of the Act when it refused PBA's December 29, 2009 demand for negotiations.

DISCUSSION

The Assistant Director found that PBA's original December 3, 2009 demand may have been a nonmandatory unitary demand because it included a nonmandatory subject, staffing.[3] The Assistant Director, however, did not reach the issue because she concluded that PBA, after receiving the Town's December 8, 2009 response, abandoned its original proposal and submitted a distinct and different proposal for impact negotiations in its December 29, 2009 letter. Following our review, we affirm the Assistant Director's conclusion that PBA abandoned its original demand. Therefore, we also reject the Town's argument that the December 3, 2009 and December 29, 2009 letters constitute a unitary demand.[4] The duration language cited by the Town merely identifies the change that is causing the impact and indicates that PBA is seeking compensation for as long as the impact-causing condition persists.

---

[2] The relevant text of the correspondence is set forth in the Assistant Director's decision, and need not be repeated here.

[3] *Supra*, note 1, n. 7.

[4] A unitary demand is a proposal containing multiple sections or paragraphs which cannot be reasonably understood to constitute severable and independent proposals. *Village of Highland Falls*, 42 PERB ¶3020 at 3072 (2009); *Pearl River Union Free Sch Dist*, 11 PERB ¶3085 (1978); *City of Oneida PBA*, 15 PERB ¶3096 (1982); *City of Newburgh*, 18 PERB ¶3065 (1985), *confirmed sub nom. City of Newburgh v Newman*, 19 PERB ¶7005 (Sup Ct Albany County 1986). The two PBA proposals are clearly severable from each other, with the latter being responsive to the Town's December 8, 2009 letter.

Finally, we reject the Town's challenge to the Assistant Director's conclusion that it is obligated to engage in negotiations concerning the December 29, 2009 demand. The proposal seeks compensation for impacted unit employees. It does not seek to interfere with the Town's managerial prerogatives.

Based upon the foregoing, we deny the Town's exceptions and order the Town to negotiate the impact of the vacancy created by the promotion of a unit employee to a non-unit position, as demanded in PBA's December 29, 2009 request, and to sign and post the attached notice at all locations normally used to communicate both in writing and electronically with unit employees.

DATED: November 30, 2011
Albany, New York

Jerome Lefkowitz, Chairperson

Sheila S. Cole, 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 Town of Bethlehem (Town) in the unit represented by the Bethlehem Police Benevolent Association (PBA) that the Town will forthwith negotiate with PBA concerning the impact of a vacancy created by the promotion of a unit employee to a non-unit position, pursuant to PBA's December 29, 2009 request.

Dated . . . . . **By** . . . . . .
on behalf of **Town of Bethlehem**

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

VILLAGE OF SOUTH GLENS FALLS,

Charging Party, **CASE NO. U-29960**

- and -

SOUTH GLENS FALLS POLICE BENEVOLENT ASSOCIATION, INC.,

Respondent.

In the Matter of

SOUTH GLENS FALLS POLICE BENEVOLENT ASSOCIATION, INC.,

Charging Party, **CASE NO. U-29987**

- and -

VILLAGE OF SOUTH GLENS FALLS,

Respondent.

JOHN M. CROTTY, ESQ., for South Glens Falls Police Benevolent Association, Inc.

ROEMER WALLENS GOLD & MINEAUX LLP (DIONNE A. WHEATLEY of counsel), for Village of South Glens Falls

BOARD DECISION AND ORDER

These cases come to the Board on exceptions filed by the South Glens Falls Police Benevolent Association, Inc. (PBA) to a decision of an Administrative Law Judge (ALJ)[1] finding that PBA violated §209-a.2(b) of the Public Employees' Fair Employment Act (Act) when it submitted to interest arbitration subsection (a) of its proposal to amend Article XV, §1, Hours of Work, of the expired collectively negotiated agreement

[1] 44 PERB ¶4551 (2011).

(agreement) between the Village of South Glens Falls (Village) and PBA, and directing PBA to withdraw that portion of its proposal. The ALJ concluded that subsection (a) is nonmandatory because it seeks to fix the days off for each tour of duty, thereby limiting the Village's right to determine its staffing needs.[2] In addition, PBA excepts to the ALJ's conclusion that the Village did not violate §209-a.1(d) of the Act by submitting its Proposal 16 to interest arbitration. According to PBA, the wage reimbursement aspect of Village's proposal constitutes a prohibited subject of negotiations under the Fair Labor Standards Act of 1938 (FLSA).[3] The Village supports the ALJ's decision.

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

DISCUSSION

It is well-settled that while an employer has the managerial prerogative to determine its staffing and deployment needs, it remains obligated under the Act to negotiate mandatory subjects such as tours of duty, shift assignments, and days to be worked, which constitute the means to meet those staffing needs.[4] We find the record unclear as to whether, in conjunction with its proposal to amend Article XV §1(a) of the agreement, PBA also seeks to delete from Article XV §1(d) of the agreement the Village's explicit retention of its prerogative to determine staffing levels. If this is PBA's intent, its proposal to amend Article XV§1(a) of the agreement is nonmandatory but if it

---

[2] The text of the at-issue proposals are set forth in the ALJ's decision, and need not be repeated here. An ambiguity exists, however, as to whether PBA's second tour of duty proposal is intended to amend Article XV §1(b) or (d).

[3] 29 USC §201, *et seq.*

[4] *City of White Plains*, 5 PERB ¶3008 (1972); *Town of Blooming Grove*, 21 PERB ¶3032 (1988);*Village of Mamaroneck PBA*, 22 PERB ¶3029 (1989); *Town of Yorktown PBA*, 35 PERB ¶3017 (2002); *City of New York,* 40 PERB ¶ 3017 (2007).

is not PBA's intent, we would find the proposal mandatory.[5]

We also affirm the ALJ's conclusion that Village Proposal 16 is a mandatory subject of negotiations. In *City of Mount Vernon*,[6] we held that a training reimbursement fee for employees who resign within three years of appointment is a mandatory subject because it is a compensation issue. Contrary to PBA's argument, the wage forfeiture aspect of the Village's proposal for expense reimbursement associated with attending police training school by employees who leave Village service within one year does not violate the FLSA because, on its face, it does not seek to deprive unit members of the federal minimum wage for any given workweek.[7]

Based upon the foregoing, we deny PBA's exceptions and affirm the ALJ's decision. Therefore, Case No. U-29987 is hereby dismissed

IT IS, THEREFORE, ORDERED that PBA withdraw subsection (a) of its proposal seeking to amend Article XV, §1 from interest arbitration or amend its proposal to retain the Village's explicit managerial prerogative to determine staffing.

DATED: November 30, 2011
Albany, New York

Jerome Lefkowitz, Chairperson

Sheila S. Cole, Member

[5] Instead of remanding the case to the ALJ for a resolution of the ambiguity, we have chosen to modify the proposed remedial order.

[6] 18 PERB ¶3020 (1985).

[7] *See, Gordon v. City of Oakland*, 627 F3d 1092 (9th Cir 2010); *Heder v City of Two Rivers*, 295 F3d 777 (7th Cir 2002). Our conclusion that the proposal is not prohibited does not excuse the Village from complying with its obligations under the FLSA.