**STATE OF NEW YORK**
**PUBLIC EMPLOYMENT RELATIONS BOARD**

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In the Matter of

**YONKERS POLICE ASSOCIATION,**

Charging Party,

**CASE NO. U-25381**

- and -

**CITY OF YONKERS,**

Respondent.

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**QUINN, FERRANTE & MELLEA, L.L.P. (ANDREW C. QUINN of counsel), for Charging Party**

**GROTTA, GLASSMAN & HOFFMAN, P.C. (KENNETH A. ROSENBERG of counsel) for Respondent**

## BOARD DECISION AND ORDER

This case comes to the Board on exceptions filed by the City of Yonkers (City) to a decision of the Administrative Law Judge (ALJ), on an improper practice charge filed by the Yonkers Police Association (Association), finding that the City violated §209-a.1(d) of the Public Employees' Fair Employment Act (Act) when it unilaterally implemented an annual employee performance evaluation procedure for employees in the unit represented by the Association.[1]

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[1] The Association withdrew an alleged §209-a.1(e) allegation at the hearing. The ALJ dismissed an alleged §209-a.1(a) allegation for failure of proof. No exceptions have been taken to that portion of his decision.

## EXCEPTIONS

The City excepts to the ALJ's decision on the law and the facts. The City argues that the ALJ erred by finding that the City had not evaluated employees in the past without objection from the Association; that Article 20:01:06 of the parties' collective bargaining agreement did not constitute a waiver by the Association of its right to negotiate personnel procedures and policies, which would include the evaluation procedure in question; and by disallowing evidence of other personnel procedures and policies unilaterally implemented by the City without objection from the Association. The Association supports the ALJ's decision.

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

## FACTS

The facts are fully set forth in the ALJ's decision[2] and are repeated here only as necessary to address the City's exceptions.

In September 2004, the City adopted and implemented Policy and Procedure No. 1.03.09 that subjected employees of the Yonkers Police Department in the bargaining unit represented by the Association to annual performance evaluations. Prior to its implementation, the City had advised the Association that it was planning to adopt the procedure and met with the Association to consult and confer before the procedure was adopted, but there were no collective negotiations.

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[2]39 PERB ¶4580 (2006).

The Management Rights clause of the parties' 2002-2005 collective bargaining agreement, Article 20:01, provides, in relevant part:

> Section 20:01 The City, as a public employer reserves to itself, all rights of a municipality that may not be contracted away and not specifically granted to the employee organization under the provisions of the Public Employees' Fair Employment Act (as presently or hereafter amended) or in this Agreement, and not inconsistent with Civil Service Laws or other laws. The rights so reserved to the City include the control of its facilities and the maintenance of order and efficiency, but that such rights are subject to such conditions, requirements and limitations as may be applicable under law, and must be, exercised consistently with the other provisions of this Agreement. These rights include the following:
>
> .....
>
> 20:01:06 To make rules, regulations and policies concerning personnel procedures and practices, subject, however, to the procedures described in the following:
>
> The Police Commissioner will consult and confer with the Association prior to promulgation of all changes in the Rules and Regulations of the Police Department affecting the terms and conditions of employment other than those provided herein.

The City introduced evidence of other personnel policies and procedures that it had unilaterally adopted in the past, after meeting and conferring with the Association. None of the policies introduced dealt with performance evaluation procedures. While the City also offered evidence that in the past it had utilized performance evaluations of probationary employees and in promotional situations, none of the evaluation forms produced by the City at the hearing were dated after 1980. There is no record evidence of probationary or promotional performance evaluations of unit employees conducted by

the City for over 20 years. Commissioner Robert Taggert also testified that no unit employee had been subject to an annual performance evaluation since 1980.

## DISCUSSION

Neither of the parties disputes that employee performance evaluation procedures are a mandatory subject of negotiations.[3] The sole issue before the Board on the City's exceptions is the meaning of Article 20:01 generally and Article 20:01:06 specifically.

The City argues that the language of Article 20:01 does not subject the exercise of management rights to the Act's limitations and that past conduct and negotiating history demonstrate that the parties have interpreted Article 20:01 to mean that the City was free to make changes in personnel procedures and practices. There is no evidence in the record regarding the parties' negotiating history as it relates to the meaning of the restrictive language in Article 20:01. The cases cited by the City in which the restrictive language was not found to limit the employer's management rights involved negotiating history that established the parties' intent with respect to the meaning of the limitations contained therein.[4]

We find that the language in Article 20:01, the management rights clause, does not evidence a waiver of the Association's right to negotiate any mandatory subjects because the language is too broad to be considered to be a "clear, unmistakable and unambiguous" waiver.[5] The first sentence reserves to the City all rights that may not be

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[3] *Suffolk County BOCES, Second Supervisory Dist*, 17 PERB ¶3043 (1984).

[4] *See County of Allegany*, 33 PERB ¶3019 (2000); *County of Schuyler*, 31 PERB ¶4507 (1998).

[5] *Civil Service Employees Assn, Inc., et al. v Newman*, 88 AD2d 685, 15 PERB ¶7011 (3d Dept 1982), *appeal dismissed*, 57 NY2d 775, 15 PERB ¶7020 (1982).

contracted away and which were "not specifically granted to the employee organization under the provisions of the Public Employees' Fair Employment Act (as presently or hereafter amended) or in this Agreement, and not inconsistent with Civil Service Laws or other laws." The second sentence again subjects the City's rights to control its facilities and maintain order and efficiency to such "conditions, requirements and limitations as may be applicable under law".

We have analyzed management rights clauses before, with similar language that limits the exercise of those rights by the employer. In *County of Broome*,[6] the management rights clause contained language limiting the employer's rights "subject to the limitations provided in the Law" and the Board found no waiver by the employee organization of its right to negotiate. Likewise, in *City of Poughkeepsie,*[7] the Board found that a management rights clause that contained language that limited the employer's management rights by "such regulations governing the exercise of said rights as...provided in Article 14 of the Civil Service Law. . .. " did not constitute a waiver of the union's right to negotiate. Because such limiting language is also present in Article 20:01:06, the ALJ properly found that the Association did not waive its right to negotiate the evaluation procedures.

The City points to *Garden City Union Free School District,*[8] as support for its argument that the "limiting language" in Article 20:01 does not restrict its right to

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[6] 22 PERB ¶3019 (1989).

[7] 15 PERB ¶3045 (1982), *confd*, 95 AD 2d 101, 16 PERB ¶7021 (3d Dept 1983), *appeal dismissed*, 60 NY 2d 859, 16 PERB ¶7027 (1983).

[8] 27 PERB ¶3029 (1994).

exercise the management rights set forth in Article 20:01:06. In *Garden City*, *supra*, the management rights clause gave the employer the right to contract for any of its services and provided only that the employer's actions could not be "inconsistent with the Civil Service Law". The Board held there that the employer, by negotiating a contract clause that gave it the right to subcontract, had not acted inconsistently with the Act and was free to exercise the rights bargained for in the management rights clause.

Here, the language pointed to by the City is not so clear. Article 20:01:06 gives the City the right to make rules, regulations and policies concerning personnel practices and procedures, subject to the Association's right to consult and confer. While a reference to personnel practices and procedures might generally be said to cover evaluation procedures, it is not such specific language as could be found to be a clear, unmistakable and unambiguous waiver of the right to negotiate any topic that might generally fall within that broad phrase.[9]

The fact that the City introduced evidence of evaluation forms that had been used to evaluate probationary employees and those applying for promotions, all of which pre-dated 1980, is insufficient to establish a past practice of evaluating employees that would allow the City to unilaterally implement an annual employee performance evaluation procedure by which all unit employees would be subject to evaluation. Indeed, to the contrary, the record evidence establishes that the practice with respect to unit employees for over 20 years has been that there are no annual employee performance evaluations. In *County of Nassau,* 24 PERB ¶3029, *affg* 24 PERB ¶4523 (1991), the Board found that a past practice of 17 months duration was

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[9] *Civil Service Employees Assn, Inc., et al. v Newman*, 88 AD2d 685, 15 PERB ¶7011 (3d Dept 1982), *appeal dismissed*, 57 NY2d 775, 15 PERB ¶7020 (1982).

sufficient to establish a new practice that superseded the prior practice of 14 years. The other personnel policies relied upon by the City are not relevant to the issue of whether there has been a waiver because they did not specifically involve evaluation procedures.

Based on the foregoing, we find that the City violated §209-a.1(d) of the Act when it unilaterally implemented an employee evaluation procedure for all employees in the bargaining unit represented by the Association.

The City's exceptions are, therefore, denied and the decision of the ALJ is affirmed.

IT IS, THEREFORE, ORDERED that the City:

1) Rescind the employee performance evaluation procedure implemented in Policy and Procedure No. 1.03.09 on September 17, 2004;
2) Remove from unit members' personnel files any documents placed in those files as a result of the implementation of employee performance evaluation procedures, No. 1.03.09; and
3) Sign and post the attached notice at all locations normally used for communications to unit employees.

DATED: May 2, 2007
Albany, New York

Jerome Lefkowitz, Chairman

Robert S. Hite, 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 City of Yonkers in the unit represented by the Yonkers Police Association that the City will:**

1. Rescind the employee performance evaluation procedure implemented in Policy and Procedure No. 1.03.09 on September 17, 2004, and

2. Remove from unit members' personnel files any documents placed in those files as a result of the implementation of employee performance evaluation procedures, No. 1.03.09

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

.....

*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**

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In the Matter of

**LOCAL UNION 1969, CIVIL SERVICE EMPLOYEES, IUPAT, AFL-CIO,**

Charging Party,

-and-

**CASE NO. U-25506**

**BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK,**

Respondent,

- and –

**LOCAL 891, INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO,**

Intervenor.

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**BROACH & STULBERG (ROBERT B. STULBERG of counsel), for Charging Party**

**DAVID BRODSKY, DIRECTOR OF LABOR RELATIONS AND COLLECTIVE BARGAINING (KAREN SOLIMANDO of counsel), for Respondent**

**SPIVAK, LIPTON, WATANABE, SPIVAK, MOSS & ORFAN LLP (NEIL D. LIPTON of counsel), for Intervenor**

## BOARD DECISION AND ORDER

This case comes to the Board on exceptions filed by the Board of Education of the City School District of the City of New York (District) and Local Union 1969, Civil

Service Employees, IUPAT, AFL-CIO (Union) to the decision of the Administrative Law Judge (ALJ) on a charge filed by the Union alleging that the District violated §209-a.1(d) of the Public Employees' Fair Employment Act (Act) when it unilaterally transferred painting work exclusively performed by bargaining unit members in the District's Capital Task Force (CTF) projects, refused the Union's demand to negotiate the transfer of exclusive bargaining unit work, and did not respond to requests for information regarding the transfer of the work.

Local 891, International Union of Operating Engineers, AFL-CIO (Local 891) intervened in the proceeding on the basis that the work claimed by the Union to be exclusive to its bargaining unit has been performed by District employees represented by Local 891.

The ALJ found that the Union had not exclusively performed the in-issue work and dismissed that allegation, but found that the District had violated §209-a.1(d) of the Act by refusing the Union's demands to negotiate the transfer of unit work and provide information.

## EXCEPTIONS

The District excepts to the ALJ's finding that it violated the Act by refusing the Union's demand to negotiate the transfer of exclusive bargaining unit work, arguing that because the CTF work was not found to be exclusive bargaining unit work, it had no obligation to negotiate a nonmandatory subject of negotiations. The District further argues that it has no obligation to provide information to the Union for negotiations about a nonmandatory subject of negotiations.

The Union excepts to the ALJ's decision, arguing that the ALJ erred by finding that the work of painting as part of CTF projects is not exclusive bargaining unit work.

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

## FACTS

The facts are fully set forth in the ALJ's decision and are repeated here only as necessary to address the parties' exceptions.[1]

The Union represents painters and supervisor painters employed by the District to perform painting of classrooms, auditoriums and gymnasiums at the District's approximately 1,200 schools in the five boroughs of New York City. The supervising painters supervise the painters in the timely and proper performance of assigned painting tasks.

The District employs the painters represented by the Union to paint classrooms, lunchrooms and auditoriums and the custodians represented by Local 891, to paint service areas, classrooms, gymnasiums and auditoriums, general areas, corridors, walls and to do touch-up painting, with one-fifth of the required painting in each building to be accomplished in each calendar year. The District also regularly employs private contractors to complete interior and exterior painting assignments.

The Capital Task Force (CTF) was formed by the District in 1996 to renovate existing space in District facilities, primarily focusing on converting office and other space into classrooms. The CTF consists of workers from the various trades who renovate District space, from laborers who perform demolition work, to carpenters, then

[1] 39 PERB ¶4581 (2006).

plumbers and electricians, followed by plasterers who plaster and tape, so that painting can then be completed. The work done in the CTF program is funded by the School Construction Authority (SCA), administered through the Division of School Facilities and subject to capital eligibility requirements. The Union alleges that the painting done as a part of CTF programs has always been done by the painters in its bargaining unit and that any participation in such painting by Local 891 unit employees or employees of private contractors was minimal, not related to a CTF project or was otherwise not unit work.

In the spring of 2004, the Union became of aware of a District plan to reassign CTF work to employees represented by Local 891. Stephen Melish, President of the Union, testified that he saw a work summary document that purported to assign CTF project painting to custodial helpers.[2] On June 4, 2004, the Union sent a letter stating that it had become aware of the District's reassignment of unit work and demanding bargaining concerning the transfer of its exclusive unit work. The Union also demanded that the District provide a list of all bargaining unit work to be performed by nonunit employees, the financial savings the District expects to realize as a consequence of reassigning the work, copies of all documents relating to the contracting out of bargaining unit work, and the information related to the job functions of employees represented by the Union, custodial and/or custodial staff employees, or any other bargaining unit employees. This letter reiterated a request made for the same information by letters from the Union dated June 3, 2003 and November 13, 2003.

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[2] Charging Party's Exhibit 9, Transcript, pp. 62-66.

By letter dated July 14, 2004, the District responded that it did not reassign exclusive bargaining unit work, that it had been a longstanding practice for custodial staff to do painting and spackling work, the document the Union had seen was a planning document only, and because it had not reassigned exclusive bargaining unit work, the District had no information to provide to the Union. The bargaining demand was not addressed in the letter.

## DISCUSSION

In *Niagara Frontier Transportation Authority,*[3] the Board held that:

> With respect to the unilateral transfer of unit work, the initial essential questions are whether the work had been performed by unit employees exclusively (footnote omitted) and whether the reassigned tasks are substantially similar to those performed by unit employees. If both these questions are answered in the affirmative, there has been a violation of §209-a.1(d), unless the qualifications for the job have been changed significantly. Absent such a change, the loss of unit work to the group is sufficient detriment for the finding of a violation. If, however, there has been a significant change in the job qualifications, then a balancing test is invoked; the interests of the public employer and the unit employees, both individually and collectively, are weighed against each other.

In a transfer of unit work case, the first question to be answered is the definition of unit work. Here, the District argues, and the ALJ so found, that unit work is defined as painting various surfaces in the District's buildings. The Union does not dispute, and the record shows, that painting in District buildings is performed by employees in the Union's bargaining unit, the custodians and custodial helpers in Local 891's bargaining unit and by painters employed by private contractors.

The Union argues that its bargaining unit work should be defined as painting required by CTF programs and that it has performed that work exclusively. In so

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[3] 18 PERB ¶3083 at 3182 (1985).

arguing, the Union asserts that a "discernible boundary" can be drawn around painting done as part of a CTF project. The Board has held that in determining whether the work in-issue in a transfer of unit work case is exclusive unit work, the charging party must establish a discernible boundary around the claimed unit work which would appropriately set it apart from work done by nonunit personnel.[4]

The Union seeks to establish that discernible boundary by arguing that the painting of newly renovated spaces as part of a CTF project is different from repainting or maintaining existing facilities. The Union points to the fact that CTF projects are paid for from a different funding source than other painting directed by the District, the work orders are labeled as CTF work, the grade of the materials used is different in a CTF project, and a different supervisor is assigned to CTF projects.

The Board will recognize a discernible boundary when it is able to identify "a reasonable relationship between the components of the discernible boundary and the duties of unit employees."[5] But, we will not find a discernible boundary when the proposed description of the unit work is unrelated to the duties performed by unit employees. For example, we have refused to establish a discernible boundary around the transport and disposal of trash based upon the type of trash being hauled and the location of the trash containers[6] or the circumstances under which school buildings are

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[4] *County of Nassau*, 21 PERB ¶3038 (1988); *Indian River Cent Sch Dist*, 20 PERB ¶3047 (1987); *Town of West Seneca*, 19 PERB ¶3028 (1986).

[5] *Town of Brookhaven*, 27 PERB ¶3063, at 3147 (1994).

[6] *Id.*

opened and closed.[7] Likewise, in this case, we cannot accept the definition of unit work proposed by the Union based upon the funding for the CTF projects, the type of paint used or the reasons the surface needs to be painted. These factors do not have any reasonable relationship to the painting duties performed by unit members as part of a CTF project so as to establish a discernible boundary.

Because there is no discernible boundary to be drawn around the painting done by unit employees as part of a CTF project, we need not address the Union's exceptions based upon the ALJ's finding that the Union has not performed that work exclusively.

We find that the work performed by the employees in the unit represented by the Union is painting of surfaces as directed by the District, some of which are part of CTF renovation projects and some of which is painting of other surfaces. Because the painting of surfaces in District buildings is also regularly performed by employees in the bargaining unit represented by Local 891 and employees of private contractors, we do not find that this work is exclusive to employees in the Union's bargaining unit. Therefore, the District did not violate §209-a.1(d) of the Act when it assigned nonunit employees to paint as part of CTF projects.

We turn now to the District's exceptions to the ALJ's decision on the refusal to bargain upon demand aspect of the charge. The District argues that it does not have an obligation to negotiate upon demand if the subject of the demand is a nonmandatory subject of negotiations.

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[7] *Union-Endicott Cent Sch Dist*, 26 PERB ¶3075 (1993).

The ALJ found that the District violated §209-a.1(d) of the Act when it refused the Union's demand to negotiate the transfer of CTF project painting to employees represented by Local 891. The ALJ relied on the Board's decision in *Board of Education of the City School District of the City of New York*,[8] where the Board held that:

> The unilateral subcontract of unit work is itself a rejection of the bargaining process and a refusal to bargain. No demand is necessary in such circumstance. A demand to bargain is necessary only as to those §209-a.1(d) allegations which are grounded upon a refusal to bargain pursuant to a specific demand. A refusal to bargain premised upon a unilateral change in a mandatory subject of negotiation is a violation of the Act separate from a refusal to bargain pursuant to demand. ... The obligation to negotiate a mandatory subject upon demand is different and separate from the allegation of a unilateral change, even if both are based upon the same underlying action, as long as there has been a separate demand to negotiate. (citations omitted).

The ALJ found that the District violated the Act when it refused to negotiate pursuant to the Union's June 4, 2004 demand. The ALJ did not address whether the District had an obligation to negotiate upon demand about the transfer of work that was not exclusive to the bargaining unit. In the case cited by the ALJ,[9] the Board went on to find that:

> Based upon the record evidence at the time the motion to dismiss was made, the Union had established a prima facie case that the work performed by unit employees at the shop was exclusive bargaining unit work. [The] testimony is that unit employees exclusively performed work in the shop. (footnote omitted) We, therefore, find that the ALJ erred in granting the motion to dismiss the alleged refusal by the District to negotiate in good faith for lack of exclusivity by the Union over the work sought to be bargained.

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[8] 39 PERB ¶3014 at 3049 (2006).
[9] *Id.*

The Board held that if the work about which bargaining had been demanded was exclusive bargaining unit work, the employer violated §209-a.1(d) by refusing a demand to negotiate, reversing the ALJ's dismissal of the refusal to negotiate charge because the work was not exclusive bargaining unit work. In *Town of Lloyd,*[10] the Board dismissed a refusal to bargain upon demand charge relating to the transfer of unit work upon a finding that the work in-issue was not exclusive bargaining unit work.

We find, therefore, that the District did not violate §209-a.1(d) of the Act when it refused the Union's demand to bargain the transfer of unit work because the work the Union was claiming a right to negotiate was not exclusive bargaining unit work. We, therefore, reverse that part of the ALJ's decision.

The District also excepts to the ALJ's finding that it violated §209-a.1(d) of the Act when it refused the Union's demand for information to be used to bargain the issue of unit work. The District argues in its exceptions that because it does not have an obligation to bargain the transfer of the work claimed by the Union, it has no obligation to provide information to the Union to bargain the issue.

In *Board of Education of the City School District of the City of Albany,*[11] the Board held that:

> Generally stated, an employee organization may request, and is entitled to receive, information which is necessary for the preparation for collective negotiations ... and information necessary for the administration of a contract including the investigation of grievances. In both cases, the obligation of the employer would be circumscribed by the rules of reasonableness, including the burden upon the employer to provide the information, the availability of the information elsewhere, the necessity therefor, the relevancy thereof and, finally, that the information supplied

[10] 29 PERB ¶3040 (1996).
[11] 6 PERB ¶3012 at 3030 (1973).

> need not be in the form requested as long as it satisfies a demonstrated need.

We have not previously articulated a limitation that the information only need be provided by an employer if it relates to a mandatory subject of negotiations. Indeed, in *Greenburgh No. 11 Union Free School District,*[12] we found the employer's refusal to respond to an employee organization's request for information about class size, a nonmandatory subject of negotiations,[13] violated §209-a.1(d) of the Act because the information was necessary for the processing of a grievance to arbitration. The Union's asserted reason for requiring the information, bargaining with the District, is within the Union's responsibilities to represented employees. The District articulates no other objections to the Union's request for information, such as that it is a burden upon the District to produce the information or that it is otherwise available to the Union that might relieve it of its obligation to provide the requested information.

Based on the foregoing, we deny the Union's exceptions, grant the District's exception as to the refusal to negotiate upon demand aspect of the ALJ's decision, but deny its exception with respect to the requested information. As such, we affirm, in part, and reverse, in part, the decision of the ALJ.

We find, therefore, that the District violated §209-a.1(d) of the Act when it refused the Union's June 4, 2004 request for information. In all other respects, the charge is dismissed.

IT IS, THEREFORE, ORDERED that the District:

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[12] 33 PERB ¶3059 (2000).

[13] *See Queensbury Union Free Sch Dist*, 9 PERB ¶3057 (1976).

1. Provide Local Union 1969, Civil Service Employees, IUPAT, AFL-CIO with a list of all bargaining unit work to be performed by nonunit employees, the financial savings the District expects to realize as a consequence of reassigning the work, copies of all documents relating to the contracting out of bargaining unit work, and the information related to the job functions of employees represented by the Union, custodial and/or custodial staff employees, or employees of any other bargaining unit.
2. Sign and post the attached notice in all locations customarily used to post notice to unit employees.

DATED: May 2, 2007
Albany, New York

Jerome Lefkowitz, Chairman

Robert S. Hite, 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 Board of Education of the City School District of the City of New York in the unit represented by the Local Union 1969, Civil Service Employees, IUPAT, AFL-CIO that the District will:**

1. Provide Local Union 1969, Civil Service Employees, IUPAT, AFL-CIO with a list of all bargaining unit work to be performed by nonunit employees, the financial savings the District expects to realize as a consequence of reassigning the work, copies of all documents relating to the contracting out of bargaining unit work, and the information related to the job functions of employees represented by the Union, custodial and/or custodial staff employees, or employees of any other bargaining unit.

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

. . . . . .

*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**

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In the Matter of

**MOHAMMAD SAIDIN,**

Charging Party,

**CASE NO. U-26672**

- and -

**UNITED FEDERATION OF TEACHERS, LOCAL 2, AFT, AFL-CIO,**

Respondent,

- and –

**BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK,**

Employer.

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**MOHAMMAD SAIDIN, *pro se***

**JAMES R. SANDNER, GENERAL COUNSEL (JENNIFER COFFEY of counsel), for Respondent**

**JOHN CULLEN, ESQ., for Employer**

## BOARD DECISION AND ORDER

This case comes to the Board on exceptions filed by Mohammad Saidin to the decision of an Administrative Law Judge (ALJ) dismissing the improper practice charge he filed against the United Federation of Teachers, Local 2, AFT, AFL-CIO (Federation), alleging that the Federation violated §209-a.2(c) of the Public Employees' Fair Employment Act (Act), when it refused to process his grievance to Step 3 of the

contractual grievance procedure between the Federation and the Board of Education of the City School District of the City of New York (District).[1]

EXCEPTIONS

Saidin excepts to the ALJ's decision by listing certain exhibits attached to his brief to the ALJ and referencing certain findings by the ALJ to which he makes objection. His exceptions contain no legal argument.

The Federation opposes Saidin's exceptions as being confusing and appearing to contain new allegations. In addition, the Federation seeks affirmative relief from the Board to bar Saidin from filing any new improper practice charges against the Federation without first seeking permission from the Board.

Saidin also filed a document entitled "Cross-Exceptions on Amended Charge" but the document was filed after the Federation's response to Saidin's exceptions and is basically a reply to the Federation's response.[2]

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

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[1] The District is a statutory party to this action pursuant to §209-a.3 of the Act which provides "the public employer shall be made a party to any charge which alleges that the duly recognized or certified employee organization breached its duty of fair representation in the processing of or failure to process a claim that a public employer has breached its agreement with such employee organization."

[2] PERB's Rules of Procedure, §213.3, do not allow for any pleadings other than exceptions, cross-exceptions and a response thereto, unless requested by the Board or filed with the Board's authorization. Therefore, we will not address the arguments raised in Saidin's "Cross-Exceptions" as it is in the form of a reply to the Federation's statement in opposition to the exceptions, which was not authorized and was filed outside the time allowed for the filing of cross-exceptions. In two prior cases, similar pleadings filed by Saidin were disallowed. *See United Fedn of Teachers (Saidin)*, 38 PERB ¶3001 (2005) and *United Fedn of Teachers (Saidin)*, 38 PERB ¶3025 (2005).

## FACTS

The facts are fully set forth in the ALJ's decision[3] and are repeated here only as necessary to address the exceptions.

At a pre-hearing conference held in this matter on June 28, 2006, by the conference ALJ, Saidin presented the facts he alleged supported his improper practice charge. Thereafter, the conference ALJ wrote a letter to the parties dated July 10, 2006, confirming the facts as alleged by Saidin. Saidin did not dispute the accuracy of the conference ALJ's letter and on August 25, 2006, on the basis of the facts set forth in the conference ALJ's letter, the Federation moved to dismiss the charge for failure to state a cause of action.[4] Both Saidin and the Federation filed briefs on the motion.

Relying on the facts alleged in the conference ALJ's July 10, 2006 letter, the hearing ALJ issued a decision on November 29, 2006, granting the Federation's motion and dismissing Saidin's charge.

Saidin's improper practice charge alleges that the Federation refused to process a grievance he filed protesting his termination on December 31, 2003, to Step 3 of the District-Federation contractual grievance procedure. Saidin was given the reasons for the Federation's decision and appealed the decision using the Federation's internal appeals procedure. His appeals were responded to by Federation representatives and he was given an opportunity to speak to Federation representatives on February 13, 2006, about his grievance. The Federation had informed him that it would not appeal his grievance to Step 3 because he did not possess a valid New York City teaching license.

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[3] 39 PERB ¶4625 (2006).

[4] Saidin did challenge the accuracy of the conference ALJ's letter for the first time in his exceptions to the Board

He was informed at the February 13, 2006 meeting that he did not have a valid City license because of three previous unsatisfactory performance ratings he received while working for the District.

## DISCUSSION

In order to establish a breach of the duty of fair representation in violation of §209-a.2(c), a charging party must prove that the employee organization so charged acted in a manner that was arbitrary, discriminatory or in bad faith.[5] In deciding the motion to dismiss, the ALJ considered all the claims made by Saidin, as confirmed in the ALJ's July 10, 2006 letter, as true and viewed them in the light most favorable to him.[6]

Saidin's exception to the ALJ's finding that no party disputed the accuracy of the conference ALJ's July 10, 2006 letter is dismissed as the record supports the hearing ALJ's finding that Saidin did not dispute the conference ALJ's letter, until after the issuance of the hearing ALJ's decision.

Saidin's exception to the ALJ's finding that even if there were erroneous information upon which the Federation based its decision, there would be no violation of the Act, is also dismissed. The ALJ's finding accurately portrayed the undisputed record before her and the relevant case law.[7]

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[5] *Civil Service Employees Assn, Inc. v PERB and Diaz* 132 AD2d 430, 20 PERB ¶7024 (3d Dept 1987), *affirmed on other grounds,* 73 NY2d 796, 21 PERB ¶7017 (1988).

[6] *County of Nassau (Police Dept) (Unterweiser),* 17 PERB ¶3013 (1984).

[7] *Civil Service Employees Assn, Inc., Local 1000, AFSCME, AFL-CIO,* 32 PERB ¶3044 (1999). *See also Council 82, AFSCME, AFL-CIO and State of New York (Div of Parole),* 35 PERB ¶3023 (2002); *Civil Service Employees' Assn (Kandel),* 13 PERB ¶3049 (1980).

At best, Saidin has established that he disagreed with the Federation's refusal to process his grievance to a Step 3 hearing. Disagreement with the bargaining agent's decision is insufficient to establish a breach of the duty of fair representation.[8]

The Federation argues in its response that Saidin has filed numerous improper practice charges against the Federation in the past four years.[9] Each improper practice charge has alleged dissatisfaction with the Federation's handling of Saidin's complaints against the District, pointing to the Federation's handling of other unit employees' grievances and alleging discriminatory treatment. Each of the improper practice charges has been dismissed by the ALJ, in each case in which Saidin filed exceptions, the Board has affirmed the ALJ.

The Federation cites to the Board's decision in *United Federation of Teachers (Fearon)*,[10] in which we cautioned a charging party who filed numerous motions for reconsideration and re-argument of the same Board decision, that her "numerous meritless interlocutory appeals and motions to reconsider a prior Board decision might be construed as an abuse of process or tactics resulting in an unnecessary expenditure of time and resources by PERB and might warrant harsher action than a denial of a motion to reconsider."

Here, Saidin's charges all relate to different actions taken by the Federation, although they all were born from Saidin's difficulties with his City license and his

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[8] *Local 1635, District Council 37, AFSCME, AFL-CIO,* 25 PERB ¶3008 (1992).

[9] *See United Fedn of Teachers (Saidin)*, 36 PERB ¶3042 (2003); *United Fedn of Teachers (Saidin)*, 38 PERB ¶3001 (2005) and *United Fedn of Teachers (Saidin)*, 38 PERB ¶3025 (2005).

[10] 39 PERB ¶3020, at (2006).

employment by the District. He has not sought reconsideration by the Board of a prior decision so our caution in *Fearon*, *supra*, is not applicable here. However, Saidin may be cautioned about his disregard of our Rules in that he continues to file additional pleadings where he has not been directed to do so by the Board and has not sought the Board's permission.[11]

Based on the foregoing, we deny Saidin's exceptions and affirm the decision of the ALJ.

DATED: May 2, 2007
Albany, New York

Jerome Lefkowitz, Chairman

Robert S. Hite, Member

[11] *Supra*, note 2.

**STATE OF NEW YORK**
**PUBLIC EMPLOYMENT RELATIONS BOARD**

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In the Matter of

**PROFESSIONAL STAFF CONGRESS/CUNY,**

Charging Party,

**CASE NO. U-26954**

- and -

**CITY UNIVERSITY OF NEW YORK,**

Respondent.

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**SCHWARTZ, LICHTEN & BRIGHT, P.C. (STUART LICHTEN of counsel),**

**BOARD DECISION AND ORDER**

This matter comes to us on the exceptions of the Professional Staff Congress/CUNY (PSC), the charging party herein, to a decision of the Director of Public Employment Practices and Representation (Director), dismissing its improper practice charge which alleged that the City University of New York (CUNY) violated §209-a.1(a) of the Public Employees' Fair Employment Act (Act) when it "adopted and implemented" a written Employment Discrimination Complaint Procedure (Procedure). The Director dismissed the charge as untimely because it was filed more than four months after the conduct complained about.[1] The Director also dismissed the charge on

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[1] Section 204.1(a) of PERB's Rules of Procedure (Rules) authorizes the filing of an improper practice charge within four months of the action or conduct which forms the basis of the charge.

the alternate grounds that it was deficient, the right to union representation being triggered only on demand.

## EXCEPTIONS

PSC excepts to the Director's decision on the law, arguing that its charge is timely because the Procedure constitutes a "continuing" violation and that the right to union representation need not be preceded by a demand for such representation. CUNY has not responded.

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

## FACTS

The instant improper practice charge was filed on July 24, 2006. It alleges that Lehman College, one of the constituent colleges of CUNY, "has adopted and implemented a written Employment Discrimination Complaint Procedure." The charge further alleges that under the Procedure, Lehman will "discipline employees who have engaged in discriminatory conduct" and may interview employees, who are "expected to cooperate with the investigation." The Procedure further provides that "[i]nformation concerning the process will be divulged only on a need-to-know basis." The charge concludes that the Procedure does not provide for union representation for bargaining unit employees who request such representation and, as such, requires union members to submit to interviews that could result in discipline, while at the same time requiring that the interviews be kept confidential.

As part of his initial review pursuant to §204.2 of the Rules, the Director informed PSC that the charge was deficient because "the right to union representation at a

meeting with the employer at which time the employee reasonably believes that he or she is the subject of discipline is triggered on request, and disallowance. Nothing in the procedure evidences any denial of any request or even addresses the subject." PSC was invited to either amend or withdraw the charge.

PSC responded that, in the private sector, policies that require an employee to attend a meeting which the employee reasonably believes may lead to discipline, while at the same time instructing the employee that the meeting must be kept confidential, have been found to be unlawful,[2] and declined to withdraw the charge.

The Director, in his decision, first found that no relevant dates had been pled in the charge. He noted that the Procedure carried the date of "10/02". Assuming that it was the date of promulgation and referred to October 2002, the Director found the charge, filed on July 24, 2006, was untimely. He further found that there was nothing in the charge to evidence that CUNY had refused any request for union representation by employees subject to interview under the Procedure. Finding that the right to union representation during a disciplinary interview was triggered by a request for representation, he dismissed the charge on that basis also.

## DISCUSSION

PERB's Rules of Procedure, §204.1(a), require that an improper practice charge be filed within four months of when the charging party knew or should have known of the conduct alleged to constitute the improper practice.[3] PSC argues in its brief in

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[2] *See Phoenix Transit System*, 337 NLRB 510 (2002).

[3] *Board of Educ of the City Sch Dist of the City of New York*, 15 PERB ¶3050 (1982).

support of its exceptions that since the Procedure is unlawful on its face, the maintenance of the Procedure, even if unenforced, constitutes a continuing violation that can chill employees in the exercise of their rights. We have consistently declined to apply a theory of "continuing violation" in the context of our improper practice proceedings.[4] PSC cites to no PERB decisions but instead relies on certain decisions of the NLRB in support of its assertion.[5] The cases cited, however, do not articulate a theory of "continuing violation".

In any event, PERB is not bound by decisions of federal or state courts or labor relations boards, especially when there is well-established case law under the Act.[6] Further, to the extent that the NLRB recognizes a doctrine of "continuing violation", it is not the theory as espoused by PSC: that an employer's action, if improper, continues to violate the Act, unless and until it is rescinded, and a charge can be timely filed at anytime during that period.[7] Even if a violation is ongoing, a charging party cannot reach

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[4] *New York City Transit Auth*, 26 PERB ¶3081 (1993); *City of Yonkers*, 7 PERB ¶3007 (1974).

[5] *See Ivy Steel and Wire Co*, 346 NLRB 41 (2006); *Eagle-Picher Industries, Inc*, 331 NLRB 169 (2000); *Varo, Inc*, 172 NLRB 2062 (1968).

[6] Act, §209-a.6. *State of New York (State Univ of New York) v PERB,* 181 AD2d 391, 25 PERB ¶7007 (3d Dept 1992); *West Irondequoit Teachers Assn v Helsby,* 35 NY2d 46 7 PERB ¶7014 (1974).

[7] A "continuing violation" does not mean that the violation "has not stopped". As the United States Supreme Court explained, each discrete, discriminatory act is a fresh wrong, and "discrete acts that fall within the statutory time period do not make timely acts that fall outside the time period." *National RR Passenger Corp v Morgan*, 536 US 101 (2002).

back to the initial action to make timely conduct that occurs outside the statute of limitations.[8]

We, therefore, affirm the Director's determination that PSC's improper practice charge, filed four years after the promulgation of the Procedure, is not timely. Because of our determination on the timeliness issue, we need not reach the PSC's other exception.[9]

Based on the foregoing, we deny PSC's exception as to timeliness and affirm the decision of the Director.

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

DATED: May 2, 2007
Albany, New York

Jerome Lefkowitz, Chairman

Robert Hite, Member

[8] *See Machinists Local Lodge No 1424 v NLRB*, 362 US 411 (1960).

[9] We do note, however, that to the extent that PSC relies, in support of both its "continuing violation" and substantive arguments, on our earlier decision in *New York City Transit Auth*, 35 PERB ¶3029 (2002), finding that the Act extended to public employees the right to union representation upon demand when the employee reasonably believes that he or she may be subject to discipline, the Court of Appeals has recently reversed the decision of the Appellate Division affirming our determination. *New York City Transit Auth v NYS PERB*, 27 AD3d 11 (2d Dept 2005), *lv to app granted*, 7 NY3d 702 (2006), *revd*, 8 NY3d 226 (40 PERB ¶7001).

**STATE OF NEW YORK**
**PUBLIC EMPLOYMENT RELATIONS BOARD**

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In the Matter of

**VILLAGE OF MONTGOMERY POLICE BENEVOLENT ASSOCIATION,**

Petitioner,

-and-

**CASE NO. C-5627**

**VILLAGE OF MONTGOMERY,**

Employer.

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## 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 Montgomery 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 Police Officers.

Excluded: Officer in Charge, Captains and Lieutenants.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Village of Montgomery 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: May 2, 2007
Albany, New York

Jerome Lefkowitz, Chairman

Robert S. Hite, Member

**STATE OF NEW YORK**
**PUBLIC EMPLOYMENT RELATIONS BOARD**

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In the Matter of

**UNITED PUBLIC SERVICE EMPLOYEES UNION,**

Petitioner,

-and- **CASE NO. C-5631**

**TOWN OF COLONIE,**

Employer,

-and-

**SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 200 UNITED,**

Incumbent/Intervenor.

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## 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 United Public Service Employees Union 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 full-time and part-time Paramedics and Emergency Medical Technicians.

Excluded: All other Town employees.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the United Public Service Employees Union. 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: May 2, 2007
Albany, New York

Jerome Lefkowitz, Chairman

Robert S. Hite, Member

**STATE OF NEW YORK**
**PUBLIC EMPLOYMENT RELATIONS BOARD**

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In the Matter of

**UNITED PUBLIC SERVICE EMPLOYEES UNION,**

Petitioner,

-and-

**CASE NO. C-5645**

**INCORPORATED VILLAGE OF MINEOLA,**

Employer,

-and-

**TEAMSTERS LOCAL 808, INTERNATIONAL BROTHERHOOD OF TEAMSTERS,**

Incumbent/Intervenor.

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## 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 United Public Service Employees Union 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 full-time and half-time employees of the Village in the following titles: Labor Supervisor, Typist Clerk, Laborer, Multi-Keyboard

Operator, Secretary to the Board of Zoning and Appeals, Highway Supervisor, Senior Typist Clerk, Parking Meter Attendant, Messenger, Account Clerk, Automotive Mechanic, Secretary to the Water Commission, Cashier, Cleaner, Court Clerk, Recreation Attendant, Water & Sewer Servicer.

Excluded: All other employees including temporary, seasonal and part-time employees and employees in the following titles which are defined as managerial and/or confidential in the collective bargaining agreement: Village Clerk, Village Deputy Clerk, Village Treasurer, Deputy Village Treasurer, Village Accountant, Secretary to Board of Trustees, Code Enforcement Inspectors, Fire and Zoning Investigators, Superintendent of Public Works, Assistant Superintendent of Public Works, Village Court Clerk, Research Assistant to the Board of Trustees, Highway Department Supervisor, Water Department Supervisor, Parks Department Supervisor, Sanitation Department Supervisor, Village Auditor, Deputy Auditor, Supervisor of Sewer Department, Labor Supervisors, Activities Coordinator, Assistant Activities Coordinator, Superintendent of Buildings, Deputy Court Clerk.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the United Public Service Employees Union. 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: May 2, 2007
Albany, New York

Jerome Lefkowitz, Chairman

Robert S. Hite, Member

**STATE OF NEW YORK**
**PUBLIC EMPLOYMENT RELATIONS BOARD**

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In the Matter of

**ULSTER COUNTY STAFF ASSOCIATION, NYSUT, AFL-CIO,**

Petitioner,

-and-

**CASE NO. C-5654**

**COUNTY OF ULSTER,**

Employer.

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## 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 Ulster County Staff Association, NYSUT, 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: Payroll Manager, Motor Vehicle Bureau Supervisor, Personnel Analyst, Recruitment and Outreach Specialist, Senior Personnel

Analyst, Senior Projects Manager, Probation Supervisor, Assistant Director of Patient Services, Supervising Public Health Nurse, Chemical Dependency Specialist/Program Supervisor, Mental Health Specialist/Program Supervisor, Local Government Unit Program Supervisor, Secretary to the Director of Community Mental Health, Assistant Director of Social Services, Secretary to Commissioner of Social Services, Staff Development Director, Assistant Deputy Director for Clinical Services, Employee Benefits Administrator, Environmental Health Manager, Food Service Manager, Director of Maintenance, Director of Housekeeping, Section Supervisor for Highways and Bridges, Garage Supervisor, Bridge Supervisor, Sr. Staff Attorney, DSS, Department of Social Services Attorney.

Excluded: All others.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Ulster County Staff Association, NYSUT, 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: May 2, 2007
Albany, New York

Jerome Lefkowitz, Chairman

Robert S. Hite, Member

**STATE OF NEW YORK**
**PUBLIC EMPLOYMENT RELATIONS BOARD**

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In the Matter of

**TEAMSTERS LOCAL 264, INTERNATIONAL BROTHERHOOD OF TEAMSTERS,**

Petitioner,

-and-

**CASE NO. C-5666**

**TOWN OF CAMBRIA,**

Employer.

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## CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

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

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

IT IS HEREBY CERTIFIED that the Teamsters Local 264, International Brotherhood of Teamsters has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.[1]

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[1] The International Union of Operating Engineers, the employee organization representing the petitioned-for unit, disavowed any and all interest in representing employees of the Town's Highway, Sewer and Water Department, effective December 1, 2006.

Included: All full-time employees in the Town's Highway, Sewer and Water Department.

Excluded: All other employees.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Teamsters Local 264, International Brotherhood of Teamsters. The duty to negotiate collectively includes the mutual obligation to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written agreement incorporating any agreement reached if requested by either party. Such obligation does not compel either party to agree to a proposal or require the making of a concession.

DATED: May 2, 2007
Albany, New York

Jerome Lefkowitz, Chairman

Robert S. Hite, Member

**STATE OF NEW YORK**
**PUBLIC EMPLOYMENT RELATIONS BOARD**

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In the Matter of

**UNITED PUBLIC SERVICE EMPLOYEES UNION ,**

Petitioner,

-and- **CASE NO. C-5667**

**AVERILL PARK CENTRAL SCHOOL DISTRICT,**

Employer,

-and-

**AVERILL PARK CENTRAL SCHOOL DISTRICT NON-INSTRUCTIONAL EMPLOYEES ALLIANCE,**

Incumbent/Intervenor.

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## 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 United Public Service Employees Union 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 non-instructional Personnel including, but not limited to the following titles: Account Clerk, Child Care Worker, Auto Mechanic, Head Auto Mechanic, Auto Mechanic Assistant, Bus Driver, Bus Attendant, Head Groundskeeper, Groundskeeper, Messenger, Maintenance Mechanic, Custodian, Custodial Worker, Cleaner, Senior Typist, Typist, Typist Assigned to Principal, Typist Assigned to Administrator/Supervisor, Teacher Aide, Teacher Aide Assigned to the Classroom, Cook, Food Service Helper and School Monitor.

Excluded: All Supervisors and Management/Confidential employees, as well as substitute employees and employees working two (2) hours per day or less.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the United Public Service Employees Union. 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: May 2, 2007
Albany, New York

Jerome Lefkowitz, Chairman

Robert S. Hite, Member

**STATE OF NEW YORK**
**PUBLIC EMPLOYMENT RELATIONS BOARD**

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In the Matter of

**TEAMSTERS LOCAL 264, INTERNATIONAL BROTHERHOOD OF TEAMSTERS,**

Petitioner,

-and-

**CASE NO. C-5670**

**VILLAGE OF YOUNGSTOWN,**

Employer.

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## CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

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

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

IT IS HEREBY CERTIFIED that the Teamsters Local 264, International Brotherhood of Teamsters has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Included: All full-time and regular part-time employees of the Village's Department of Public Works.

Excluded: All other employees.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Teamsters Local 264, International Brotherhood of Teamsters. The duty to negotiate collectively includes the mutual obligation to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written agreement incorporating any agreement reached if requested by either party. Such obligation does not compel either party to agree to a proposal or require the making of a concession.

DATED: May 2, 2007
Albany, New York

Jerome Lefkowitz, Chairman

Robert S. Hite, Member