11-18-1999

State of New York Public Employment Relations Board Decisions from November 18, 1999

New York State Public Employment Relations Board

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State of New York Public Employment Relations Board Decisions from November 18, 1999

**Keywords**
NY, NYS, New York State, PERB, Public Employment Relations Board, board decisions, labor disputes, labor relations

**Comments**
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In the Matter of

NEW YORK STATE LAW ENFORCEMENT OFFICERS UNION, COUNCIL 82, AFSCME, AFL-CIO,

Charging Party,

- and -

STATE OF NEW YORK (DEPARTMENT OF HEALTH),

Respondent.

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

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by the State of New York (Department of Health) (State) to a decision of an Administrative Law Judge (ALJ) on an improper practice charge filed by the New York State Law Enforcement Officers Union, Council 82, AFSCME, AFL-CIO (Council 82). Council 82 charged that the State violated §209-a.1(d) of the Public Employees' Fair Employment Act (Act) when it

1After the hearing in this case, the New York State Correctional Officers Police Benevolent Association (NYSCOPBA) succeeded Council 82 as the bargaining agent for employees of the State in the security services unit. State of New York, 32 PERB ¶3000.21 (1999).
unilaterally reassigned the duties of Chief Safety/Security Officer (Chief Safety Officer) at St. Albans Veterans Home\(^2\) to Phoenix Security, Inc. (Phoenix), a private company, and failed to negotiate, upon demand, the impact of the decision to subcontract the at-issue work.

The ALJ dismissed the improper practice charge insofar as it alleged that the State violated the Act by unilaterally reassigning unit work to Phoenix, on the basis of her finding that Council 82 lacked exclusivity over the duties of the Chief Safety Officer at St. Albans.\(^3\) However, the ALJ found that the State violated the Act when it refused Council 82's demands to negotiate the impact of the transfer of unit work.

The State excepts to the ALJ's decision on both procedural and substantive grounds. The State argues that the ALJ erred in determining that PERB had jurisdiction over the charge, in not crediting the entire testimony of a witness, in determining that the work at St. Albans was distinguishable from security services at other State facilities, and in finding that the State refused to negotiate impact on demand. Neither Council 82 nor NYSCOPBA has filed exceptions to the ALJ's decision or a response to the State's exceptions.

\(^2\)St. Albans is a State facility operated by the Department of Health to provide residential skilled nursing care to veterans and their dependents.

\(^3\)See Niagara Frontier Transp. Auth., 18 PERB ¶3083 (1985), where we held that the initial essential questions in a unilateral transfer of unit work case are whether the work has been performed by unit employees exclusively and whether the transferred work is substantially similar to the work previously performed by unit employees.
Prior to the hearing in this matter, the State moved to defer the charge to the
parties' contractual grievance procedure. The basis of the State's argument was that
the subject matter of the charge was covered by §25.8 of the 1995-1999 collective
bargaining agreement between Council 82 and the State, which follows:

The Employer shall not contract out for goods and services performed by employees which will result in any employee being reduced or laid off without prior consultation with the Union concerning any possible effect on the terms and conditions of employment of employees covered by this Agreement.

Council 82 had not filed a grievance alleging a violation of §25.8 by the State. The ALJ declined to defer the charge as the State did not agree to waive objections to the timeliness of a grievance filed by Council 82. The ALJ then determined that PERB had jurisdiction over the charge because §25.8 of the contract was not a reasonably arguable source of right to Council 82.

The State excepts to the ALJ's denial of its motion to defer the instant charge and the finding that PERB has jurisdiction over this matter, arguing that it was error to decide the jurisdiction issue before the hearing and arguing that the ALJ misapplied PERB precedent in reaching her decision. On the basis of our review of the record and consideration of the State's arguments, we affirm the ALJ's decision on deferral and

4The ALJ relied upon our decision in Town of Carmel, 29 PERB ¶3073 (1996), where we held that a charging party may move to reopen a charge that has been jurisdictionally deferred if the employer successfully raises in arbitration any argument which forecloses a decision on the merits of the grievance.

jurisdiction. We have had an opportunity to review §25.8 of the Council 82 - State contract before. In State of New York (Department of Correctional Services) (hereafter, DOCS), we determined that the at-issue clause was not a reasonably arguable source of right to Council 82 and did not, therefore, divest us of jurisdiction. The State did not present any evidence that would warrant a contrary finding here.

However, while we determined in DOCS that the clause was not a waiver of Council 82's right to negotiate the transfer of its unit work to other nonunit State employees, we did note that §25.8 was a source of right to the State to contract out to a third party services previously performed by unit employees. The State argues here that the clause, therefore, divests us of jurisdiction. The State misapplies our decisions on jurisdiction. That a contract covers a topic or is a source of right to an employer does not divest us of jurisdiction, although such a clause might evidence duty satisfaction, or waiver. In County of Nassau, we clarified the difference between lack of jurisdiction and waiver:

[U]nless the agreement is a reasonably arguable source of right to the charging party with respect to the same subject matter as the improper practice charge, no contract violation may be established, and our jurisdiction is clear. That an agreement may "cover" the issue raised in an improper practice charge is not enough to divest PERB of jurisdiction over that charge pursuant to §205.5(d) Act [sic]. Of course, if the agreement is a source of right to the employer, an issue of waiver of the right to negotiate may be presented. However, waiver of the right to negotiate is a matter which

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627 PERB ¶3055 (1994).

7 Supra, note 5, at 3108 (1990).
necessarily lies within PERB's jurisdiction. A determination whether a party has waived the right to negotiate an issue goes to the disposition of the charge on its merits, but not to PERB's power to reach those merits.

Here, the State raised waiver as a defense to the charge. However, the ALJ dismissed the charge without deciding the State's waiver defense. We consider this defense raised by the State and find, as we did in DOCS, that §25.8 of the State-Council 82 contract satisfies the State's duty to negotiate with Council 82 the subcontracting of unit work to a third party. The charge, insofar as it alleges the State violated §209-a.1(d) of the Act by unilaterally subcontracting the work of the Chief Security Officer at St. Albans to Phoenix, must, therefore, be dismissed.

Based upon our finding as to duty satisfaction, we do not reach the State's other exceptions related to the decision to subcontract. However, the State also excepts to the ALJ's finding that it violated §209-a.1(d) of the Act when it refused to negotiate upon demand the impact of its decision to subcontract. The State first argues that it agreed to meet with Council 82 to allow it to demonstrate that its decision to subcontract the duties of the Chief Security Officer to Phoenix had impacted mandatory subjects of negotiation. However, the record shows that the offer to meet and discuss the issue of impact was not made by the State until after the instant charge had been filed. The State's willingness to negotiate impact after the improper practice charge was filed would not preclude a finding that it refused to negotiate pursuant to the demand, it would only affect the remedy to be ordered.⁸

⁸See Eastchester Union Free Sch. Dist., 15 PERB ¶3086 (1982).
It is undisputed that the State did not respond to Council 82's demand to negotiate the impact of the decision to subcontract in a timely fashion and that even when it did, it conditioned impact negotiations on Council 82 first establishing to the State's satisfaction that there had been an impact. The duty to negotiate impact is not discharged by conditioning a willingness to meet upon the bargaining agent's prior proof of impact.\(^9\)

However, ""like all bargaining obligations,...an employer's duty to negotiate the mandatorily negotiable effects of its managerial decisions can be satisfied.""\(^10\) Section 25.8 of the contract between Council 82 and the State clearly states the parties' intent to consult ""concerning any possible effect [of subcontracting] on the terms and conditions of employment of employees covered by this Agreement."" The State's duty to meet and discuss the effects of its decision to subcontract to Phoenix is fixed by the terms of §25.8 of the contract. The State's failure to negotiate impact, therefore, may violate this contract provision but, by the parties' own agreement, it does not violate the Act.\(^11\) The ALJ's finding that the State violated §209-a.1(d) of the Act by refusing to negotiate impact upon demand must, therefore, be reversed.

\(^9\)North Babylon Union Free Sch. Dist., 7 PERB ¶4512, aff'd, 7 PERB ¶3027 (1974). See also City of Newburgh, 15 PERB ¶4624, aff'd, 15 PERB ¶3116 (1982), conf'd on other grounds, 97 A.D.2d 258, 16 PERB ¶7030 (3d Dep't 1983), aff'd, 63 N.Y.2d 793, 17 PERB ¶7017 (1984).

\(^10\)County of Nassau (Police Dep't), 31 PERB ¶3064, at 3142 (1998). See also County of Nassau, 32 PERB ¶3052 (1999).

Based on the foregoing, the decision of the ALJ is affirmed, in part, for the reasons set forth herein and reversed, in part.

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

DATED: November 18, 1999
Albany, New York

Michael R. Cuevas, Chairman

Marc A. Abbott, Member

John T. Mitchell, Member
BOARD DECISION ON MOTION AND ORDER

This case comes before us at this time pursuant to a motion filed by the charging party, the Greenburgh #11 Federation of Teachers (Federation), to strike parts of the exceptions and supporting affidavits and documents filed by the respondent, the Greenburgh #11 Union Free School District (District). The District has filed exceptions to a decision of an Administrative Law Judge (ALJ) finding that the District violated §209-a.(a) and (d) of the Public Employees' Fair Employment Act (Act) when it unilaterally implemented the use of metal detectors and other security devices, as well as armed security guards and off-duty police officers, at grievance hearings held at a location not on District property.
The Federation argues that the affidavits filed in support of the exceptions are not properly before us and the anonymous letters attached to the affidavits are not part of the record before the ALJ. The Federation asks that we confine our review to the record before the ALJ.

The District argues that it had received anonymous letters which prompted its actions in instituting such stringent security measures. The District alleges that it sought to have the ALJ review the anonymous letters in camera, fearing that a review of the letters by the Federation would enable the Federation to ascertain the identity of the letters' authors and that retribution would follow. The District further alleges that when the ALJ denied its request for in camera review, the District withdrew the letters and any reference to them from the record before the ALJ. The District now argues that because of the extraordinary circumstances in this case, it should be allowed to introduce the letters now. The affidavits which accompany the District's exceptions are offered in support of the District's position. The District opposes the motion to strike.

A motion to strike all or part of the exceptions is not authorized by our Rules of Procedure (Rules). Indeed, in only one other case, New York City Transit Authority, have we been called upon to decide a motion to strike. There, we determined that such a motion should be considered in the same manner in which we consider interlocutory appeals from an ALJ's rulings or interim determinations. We held that "in the absence of a PERB rule or statute authorizing a motion to strike, we have authority to consider interlocutory appeals from ALJ's rulings or interim determinations."
of a showing of substantial prejudice, we should and do defer the review of the issues raised by this type of motion until such time as the entire case is ready for decision.\textsuperscript{3}

We conclude that the Federation's motion to strike should be deferred as the Federation's arguments against acceptance of the District's affidavits and the anonymous letters can be fully reviewed as appropriate under the exceptions and the Federation's response thereto. We therefore deny without prejudice the Federation's motion to strike parts of the exceptions and the accompanying affidavits and anonymous letters.

The Federation is hereby granted an extension of time to file a response to the District's exceptions. A response to the exceptions will be deemed timely if filed and served within seven working days from receipt of this decision. SO ORDERED.

DATED: November 18, 1999
Albany, New York

\textSignature{Michael R. Cuevas, Chairman}

\textSignature{Marc A. Abbott, Member}

\textSignature{John T. Mitchell, Member}

\textsuperscript{3}New York City Transit Auth., supra, at 3015.
This case comes to us on exceptions filed by Maryam J. Ayazi to a decision of an Administrative Law Judge (ALJ) dismissing her improper practice charge. The charge alleged that the United Federation of Teachers (UFT) violated §209-a.2(c) of the Public Employees' Fair Employment Act (Act) by failing to afford her proper representation in several matters. Ayazi's employer, the Board of Education of the City
School District of the City of New York (District), is made a party to this proceeding pursuant to §209-a.3 of the Act.¹

Ayazi was employed by the District as a teacher of English as a Second Language (ESL). In February 1997, she was hired as a probationary teacher of ESL at Grover Cleveland High School. In June 1997, she was notified that her probationary appointment would be discontinued because of unsatisfactory performance. The UFT represented Ayazi at her probation discontinuance appeal hearing held on December 18, 1997. On March 31, 1998, Ayazi was notified that the probationary discontinuance panel had denied her appeal.

Ayazi thereafter requested legal representation from UFT to appeal the determination. Peter Mayglothling, Ayazi's UFT representative, informed her on April 22, 1998, that her appeal raised no legal issues and that the UFT was, therefore, unable to assist her in any such action.²

Thereafter, Ayazi again sought full-time employment with the District and, beginning in January 1998, began making complaints to the UFT that she was unable

¹Section 209-a.3 of the Act provides:

The public employer shall be made a party to any charge filed under [§209-a.2] 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 the public employer has breached its agreement with such employee organization.

²Ayazi brought suit in Kings County Supreme Court against the District, seeking judicial review of the decision of the probation discontinuance panel.
to obtain full-time employment with the District. Ayazi, who suffers from post-polio weakness, claimed to UFT that her inability to obtain such employment with the District was a result of impermissible notations in her District personnel file regarding her medical condition. Ayazi filed a grievance in April 1998, claiming that the District owed her back pay beginning in September 1997 because of its refusal to hire her as a full-time teacher. By letter dated May 7, 1998, UFT informed Ayazi that it did not believe that the grievance would be successful and declined to pursue it. By his May 26, 1998 letter, Mayglothling informed Ayazi that UFT’s investigation of her complaints showed that the District was denying her full-time employment because of her previous discontinuation of employment and not because of her medical condition. He confirmed UFT’s refusal to pursue Ayazi’s salary grievance. On June 8, 1998, Ayazi filed the instant improper practice charge.

By letter dated June 9, 1998, Ayazi informed UFT that she was appealing its decision not to pursue the salary grievance to arbitration. Ayazi claims that she was thereafter told by a UFT representative, George Fesko, that UFT would no longer represent her because she had filed an improper practice charge. In its answer, UFT disputed Ayazi’s characterization of the conversation, alleging instead that Fesko had left a message for Ayazi that UFT could not discuss matters with her that were the subject of the improper practice charge, but that it would continue to represent her in all other matters.

The conference ALJ limited the matters to be heard to seven paragraphs in Ayazi’s July 3, 1998 amendment to the charge. The seven paragraphs are set forth
Annexed hereto as Exhibit D is a true copy of an article from a UFT news article confirming that they have represented teachers for not having had a pre-observation conference when they were in danger of receiving unsatisfactory ratings. This was the same situation charging party experienced.

She was advised that the UFT could force the committee to meet a second time to consider violations of ADA as a factor in her discontinuance.

She was told that legal representation would be provided her depending on the points raised in the appeal.

On February 2, 1998, charging party wrote George Fesko explaining that she felt she was being retaliated against by her employer because she still did not have a full-time position despite having 2 licenses in a shortage area.

At this meeting George Fesko erroneously told charging party that the UFT could not help her in this matter because employer [District] had a new policy of not hiring teachers with discontinuance of probationary services, despite the fact that many teachers in charging parties same situation were working full-time.

Annexed hereto as Exhibit N is a true copy of this letter to Garry Sprung which shows that she requested clarification on a matter. She has never received this correspondence.

On June 23, 1998, George Fesko told charging party that she could no longer receive representation from his office as a result of her suit against UFT with PERB (Public Employment Relations Board) in violation of law.

At the hearing, the ALJ requested that Ayazi state the basis of her charge for the record, limiting her remarks to the charge as limited after the conference. Ayazi then described her charge as alleging: (1) that she had not received legal representation
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regarding the discontinuance of her probationary status; (2) that UFT did not represent her with regard to her allegations that the District had hired teachers without certification while she had not been rehired despite holding two certifications, all in violation of the collective bargaining agreement, District regulations and provisions of the Education Law; (3) that UFT did not represent her with respect to her allegations that the District retaliated against her for seeking a medical accommodation and for filing an EEOC (Federal Equal Employment Opportunity Commission) complaint; and (4) that UFT had retaliated against her for filing the instant charge.

UFT objected to the second and third allegations, arguing that they were not encompassed in the charge as limited. Ayazi then made an offer of proof, at the ALJ’s direction, that basically realleged the points she had made in her summary of the charge. UFT moved to dismiss the charge and the ALJ reserved judgement on the motion. After the close of the hearing, Ayazi attempted to file a third amendment to the original charge. The ALJ denied Ayazi’s request to so amend the charge. As the motion did not contain any newly discovered evidence, the ALJ correctly determined not to accept the proffered amendment.3

After the parties’ post-hearing submissions, the ALJ dismissed the charge, holding that the charge did not encompass the second and third allegations Ayazi made at the hearing, as limited. As to the remaining allegations, the ALJ decided that the

3See Town of Brookhaven, 26 PERB ¶3066, at 3120 (1993), where we held that “[t]he decision to grant or deny an amendment to a charge is normally a matter reserved to an ALJ’s discretion, to be exercised consistently with basic due process considerations and within certain limits we have fixed by case law.” (footnotes omitted)
proof Ayazi offered at the hearing was not sufficient to support a finding that UFT breached its duty of fair representation.

Ayazi excepts to the ALJ's decision, arguing that the ALJ erred as a matter of fact and law. UFT supports the ALJ's decision.4

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

The ALJ correctly held that a violation cannot be found if it is not alleged in an improper practice charge or a timely amendment thereto.5 Ayazi argued that paragraphs 57 and 68 of the amended charge include her second allegation and that paragraphs 57, 68 and 111 of the charge, as amended, covers her third allegation. The ALJ held that the amended charge, as limited after the conference, cannot be fairly read as containing the second and third allegations Ayazi raised at the hearing. Therefore, the ALJ dismissed the charge as to the second and third allegations, as a party is bound by the allegations in the charge.6

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4Ayazi sought leave to file a response to UFT's response to the exceptions, alleging that UFT had raised new issues in its response. Pursuant to §213.3 of our Rules of Procedure, such pleadings will not be requested or authorized by the Board unless the preceding pleading properly raises for the first time issues that are material to the disposition of the matter. As UFT's response does not raise any new issues material to the disposition of Ayazi's charge, Ayazi's request to file a response to UFT's response was denied.


6City of Mount Vernon, 14 PERB ¶3037 (1981).
Turning to the remaining allegations, we have held, in deciding a motion to dismiss, that an ALJ is to assume the truth of all of the charging party’s evidence and to give the charging party the benefit of all reasonable inferences that may be drawn from that evidence. Applying that standard, the ALJ concluded that, even giving Ayazi every reasonable inference, her offer of proof did not establish a prima facie case.

While Ayazi argues that the ALJ applied “too restrictive” a definition of the duty of fair representation, the standard the ALJ used to analyze Ayazi’s case is the one set forth by the courts in Civil Service Employees Association v. PERB and Diaz:

In order to establish a claim for breach of the duty of fair representation against a union, there must be a showing that the activity, or lack thereof, which formed the basis of the charges against the union was deliberately invidious, arbitrary or founded in bad faith.

...An honest mistake resulting from misunderstanding or lack of familiarity with matters of procedure does not rise to the level of the requisite arbitrary, discriminatory or bad-faith conduct required to establish an improper practice by the union.

As the ALJ concluded, Ayazi’s offer of proof did not set forth any facts upon which to make a finding that UFT’s handling of the discontinuance of Ayazi’s probationary service was in breach of its duty of fair representation. That Ayazi disagreed with UFT’s

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7 See State of New York (Dep’t of Correctional. Servs.), 29 PERB ¶3015 (1996); County of Nassau (Police Dep’t), 17 PERB ¶3013 (1984).

8 132 A.D.2d 430, 20 PERB ¶7024, at 7039 (3d Dep’t 1987), aff’d on other grounds, 73 N.Y.2d 796, 21 PERB ¶7017 (1988).
position and believed that the discontinuance should have been further appealed is not sufficient to establish a violation of the Act.  

Finally, as to Ayazi's claim that UFT retaliated against her for filing the instant improper practice charge, the ALJ found that she offered insufficient evidence in support of this allegation. Ayazi points to the alleged statement by her UFT representative that UFT would no longer represent her because she had filed an improper practice charge. UFT admitted that Ayazi was told that UFT would not communicate with her about matters that were the subject of this improper practice charge. Such a reservation, without more, does not rise to the level of a violation of the Act. Indeed, by Ayazi's own admission in her exceptions to the ALJ's decision, the UFT has continued to communicate with her about matters unrelated to those that are the subject of this proceeding.

It is clear from Ayazi's voluminous and often repetitive pleadings and the attached documentation that the District gave her an unsatisfactory rating as a classroom teacher and that rating has resulted in her being denied any other full-time employment with the District. UFT has assisted her in several forums and on several occasions.

See Dist. Council 37, AFSCME and Bd. of Educ. of the City Sch. Dist. of the City of New York (Gonzalez), 28 PERB ¶3062, at 3138 (1995), where we held:

The duty of fair representation is breached only by conduct which is arbitrary, discriminatory or in bad faith. Indeed, it has been widely held that allegations that a union has been careless, inept, ineffective or negligent in the investigation and presentation of a grievance do not evidence a breach of the union's duty of fair representation.
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occasions in her various attempts to obtain such employment. That UFT's representation of Ayazi has not been successful and has, at times, been denied to her is not a violation of the Act. As we have often held, an employee organization has no duty to process every grievance or to take every grievance to arbitration. It is entitled to a broad range of discretion in determining which grievances it will pursue and to what level.\textsuperscript{10}

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

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

DATED: November 18, 1999
Albany, New York

\textit{\begin{center}
\underline{\text{Michael R. Cuevas, Chairman}}
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\underline{\text{Marc A. Abbott, Member}}
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\underline{\text{John T. Mitchell, Member}}
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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

RIVERHEAD CENTRAL FACULTY
ASSOCIATION, NYSUT, AFT, AFL-CIO,

Charging Party,

- and -

RIVERHEAD CENTRAL SCHOOL DISTRICT,

Respondent.

TRICIA ALLEN, for Charging Party

KEVIN SEAMAN, ESQ., for Respondent

BOARD DECISION AND ORDER

The Riverhead Central School District (District) has filed exceptions to the decision of an Administrative Law Judge (ALJ) which found that the District violated §209-a.1(a) and (c) of the Public Employees' Fair Employment Act (Act). The ALJ held that the District unlawfully transferred Barbara Barosa, a teacher, from the District's high school to an elementary school because she exercised a right to union release time under the terms of a collective bargaining agreement (CBA) between the District and the Riverhead Central Faculty Association, NYSUT, AFT, AFL-CIO (Association).

The ALJ ordered the District to immediately reassign Barosa to her former position and to maintain that assignment in accordance with District policy and practice,
to make her whole for any loss of wages or benefits transfer caused, and to post a notice.

The District takes exception to the ALJ's finding that the Board has jurisdiction over the charge because the source of the rights allegedly violated is not the CBA. It also takes exception to the ALJ's determination that the transfer was based on Barosa's use of contractual release time, and it takes exception to the finding of a violation. The District argues that the record shows that it transferred Barosa because she chose to stop coaching athletics. In addition, the District argues, the transfer enhanced rather than impaired the availability of negotiated release time. According to the District, the Association failed to show that the District would not have transferred Barosa but for her alleged protected activity, while the District itself showed that it had a legitimate business reason for transferring her. It also takes exception to the remedy. The Association maintains that the ALJ's decision is correct in all respects.

We reverse and remand this proceeding to the ALJ.

The following evidence appears undisputed, except as noted. When the District transferred Barosa to the elementary school in August 1998, she had been a physical education teacher at the District's high school for eighteen years. For seventeen of those years, she had coached at the high school, but she chose not to coach during the 1997-98 school year, when she became president of the Association, an office she still holds. Although she did not coach, Barosa continued to teach at the high school during the 1997-98 school year.
In various situations before August 1998, Barosa publicly advocated the Association's interests and positions, often in conflict with the District's interests or positions, and often in the presence of, or with the knowledge of, Dr. Robert J. Holmes, the District's superintendent. In separate conversations on August 18, 1998, Holmes and George Duffy, the high school building principal, told Barosa that she was being transferred to the Roanoke Elementary School to teach because she was no longer coaching at the high school.

The District presented evidence at the hearing that it tries to reserve the physical education teaching positions at the high school for teachers who are coaching, because this enhances the quality of its physical education program. Holmes testified on cross-examination that Barosa's absences "because of union duties" were a reason for the transfer.¹

Article III (B) of the parties' CBA provides, in relevant part:

1. The President of the Association, if at the secondary level, will have no duties, or if at the elementary level will have no duty assignment and a minimum of four (4) hours per week, exclusive of planning and lunch periods, in which to carry on Association business. . . .

2. The President of the Association, or a designee, with permission of the Superintendent may use a maximum of ten hours in any month to investigate written grievances or to conduct Association business.

As president of the Association, Barosa used contractual release time.

¹We do not reach the issue of whether this evidence and testimony should be credited, or proves or tends to prove these alleged facts.
Barosa filed a pending grievance, which alleged that her transfer to the elementary school violated Article V of the CBA, “Teacher Assignments.” The CBA gives certain bargaining unit members certain rights in regard to assignments, such as seniority rights and a right to consultation. The contractual grievance procedure ends in final and binding arbitration.

As a preliminary matter, we affirm the ALJ’s rejection of the District’s argument that the charge should be deferred to the grievance procedure. No allegation of a contract violation triggers our jurisdictional deferral policies, and no contractual grievance implicates our merits deferral policies, unless something in the parties’ contract gives the charging party a reasonably arguable source of contractual right with respect to the matter in issue under this charge.\(^2\) The District has not identified any contractual provision that is a reasonably arguable source of right to the Association with respect to the subject matter of this charge, which is the District’s alleged interference with, and discrimination on the basis of, employee and employee organization rights under the Act. In addition, deferral is discretionary, and we do not usually defer a charge alleging a violation of only §209-a(1)(a) and (c).\(^3\)

Turning now to the substance of the exceptions, in *New York City Transit Authority*,\(^4\) we suggested that an employer may violate the Act if it interferes with or

\(^2\) *City of Utica*, 31 PERB ¶3039 (1998).

\(^3\) *See Addison Cent. Sch. Dist.*, 17 PERB ¶3076 (1984).

\(^4\) 23 PERB ¶3016 (1990).
discriminates against an employee because of the employee's exercise of a contract right. In *County of Albany,*\(^5\) which the ALJ relied on here, we did not conclusively define all the possible elements of such a violation of the Act, but we stated our belief "that such a violation requires minimally that the employee's contract right be clear and that the employer's interference or discrimination be taken without colorable claim of corresponding right."\(^6\)

The ALJ correctly applied that standard here to the limited number of facts he found.\(^7\) As president of the Association, Barosa had a clear contract right to use release time for the union's business, and the District has advanced no colorable claim of a corresponding contractual right. While the District may have a contractual right to transfer a teacher in certain specified circumstances, which is the issue in the pending grievance, the District has not identified any colorable claim of a contractual right that corresponds to Barosa's clear right to release time. A corresponding contract right necessarily involves the same subject matter as the contract right at issue in a charge.

*County of Albany* prescribes the minimal elements of a charge that an employer interfered or discriminated because an employee exercised a contractual right. It does

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\(^6\)Id. at 3058.

\(^7\)The ALJ received evidence regarding legitimate business reasons. Because he viewed the charge as based on two distinct theories of a violation of the Act, one involving participation in protected activities and the other action because of the use of contractual release time, and based his decision on only the second theory, he limited the scope of the determination of facts in his decision.
not hold, however, that any proof of the employer's legitimate business reasons for its conduct is irrelevant to such a charge. On the contrary, in County of Nassau, which cites to County of Albany, we held that when an employer acts because of an employee's use of contractual release time, the employer's motives are relevant and can even be dispositive.

Therefore, the ALJ here erred in not considering the District's evidence of a legitimate business reason for transferring Barosa, in conjunction with any other relevant and credible evidence in the record. We reverse the finding of a violation and the recommended remedial order, and remand the charge to the ALJ to decide the charge consistent with this decision.⁹

DATED: November 18, 1999
Albany, New York

Michael R. Cuevas, Chairman

Marc A. Abbott, Member

John T. Mitchell, Member

⁸County of Nassau, 27 PERB ¶3011 (1994), conf'd, 221 A.D. 2d 339, 28 PERB ¶7014 (2d Dep't 1995).

⁹While we have considered the District's remaining exceptions, we do not reach them, without prejudice to the District renewing them in regard to any decision and order the ALJ issues pursuant to our decision here.
Ronald Grassel, the charging party, has filed exceptions to an interlocutory decision of an Administrative Law Judge (ALJ) on a motion. The charge alleges that the United Federation of Teachers (UFT) and New York State United Teachers (NYSUT) breached a duty of fair representation to Grassel when NYSUT, as UFT's agent, discontinued legal representation of Grassel in a disciplinary proceeding because of his alleged failure to cooperate.
The ALJ's September 1, 1999 ruling granted NYSUT's motion to dismiss the charge as against it. The decision found that NYSUT is not the negotiating agent on behalf of the charging party and is not a party to any agreement between the UFT and the Board of Education of the City School District of the City of New York. The ALJ found that NYSUT therefore had no duty under the Act to represent the charging party and was not properly a respondent.

NYSUT has filed a motion to dismiss the exceptions on the ground that the charging party did not timely serve them on NYSUT.

The parties do not dispute that Grassei timely filed his exceptions with PERB on September 24, 1999. Neither do they dispute that the exceptions were postmarked that same day, but incorrectly addressed. The envelope was addressed to NYSUT's attorney, but bore the wrong zip code and incorrectly used "Park Avenue," instead of "Park Avenue South," in the street address. In opposition to the motion, Grassei asserts that those errors were inadvertent and did not prejudice NYSUT. When the postal service returned the undeliverable envelope, it was readdressed, and NYSUT received it on October 6, 1999.

A party may make an interlocutory appeal from a ruling made in conjunction with the processing of a case only by permission under §212.4(h) of our Rules of Procedure.¹ As a general rule, this Board will not review an Administrative Law Judge's

interlocutory ruling before proceedings conclude.  The purpose of that policy is to prevent the delay inherent in the piecemeal review of proceedings, and to prevent the prejudice and inefficient use of administrative resources that can result from such piecemeal review.

We have recognized, however, that delay, prejudice, and inefficiencies can sometimes also result if we do not permit an interlocutory appeal. Thus, our policy is to entertain a request for interlocutory review when extraordinary circumstances are present or where severe prejudice will result if we deny interlocutory review.

Neither extraordinary circumstances nor the potential for severe prejudice appear to be present here. If we deny interlocutory review, Grassel may still attempt to show in this proceeding that NYSUT's alleged conduct violated a duty of fair representation that UFT allegedly owed him. If he prevails, the relief awarded will likely be substantially similar to any relief that would have been awarded if he had also been permitted to show that NYSUT's alleged conduct violated such an alleged duty of its own. In any event, on the basis of our decision here, whether Grassel prevails or not, he does not lose his appeal to pursue a charge against NYSUT. Balancing the possible prejudice and inefficiencies associated with each course available to us in these unique

\[2\text{County of Nassau, 22 PERB ¶3027 (1989).}\]

\[3\text{Greenburgh No. 11 Union Free Sch. Dist., 28 PERB ¶3034 (1995).}\]

\[4\text{See, e.g., County of Nassau, supra.}\]

\[5\text{Id.}\]
circumstances, we choose, in our discretion, not to entertain this interlocutory appeal. Therefore, we do not reach the merits of either the motion to dismiss or the exceptions.

The charging party's interlocutory exceptions are dismissed, without prejudice to his right to appeal the ALJ's ruling dismissing the charge as against NYSUT upon exceptions, if any, to the ALJ's recommended decision and order at the close of the proceeding.

DATED: November 18, 1999
Albany, New York

Michael R. Cuevas, Chairman

Marc A. Abbott, Member

John T. Mitchell, Member
In the Matter of

CIVIL SERVICE EMPLOYEES ASSOCIATION, INC., LOCAL 1000, AFSCME, AFL-CIO, ROCKLAND COUNTY LOCAL 844, TOWN OF RAMAPO, UNIT 8358,

Charging Party,

- and -

TOWN OF RAMAPO,

Respondent.

NANCY E. HOFFMAN, GENERAL COUNSEL (DAREN L. RYLEWICZ of counsel), for Charging Party

ALAN SIMON, TOWN ATTORNEY (JACK SCHLOSS of counsel), for Respondent

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by the Town of Ramapo (Town) to a decision of an Administrative Law Judge (ALJ) finding that the Town violated §209-a.1(d) of the Public Employees' Fair Employment Act (Act) when it unilaterally instituted a daily work log for Building, Planning and Zoning Department inspectors, represented by the Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO, Rockland County Local 844, Town of Ramapo, Unit 8358 (CSEA).
The ALJ found that the unilateral implementation of a requirement that employees fill in a daily log of activities where none was previously required was an impermissible imposition of employee assistance in a managerial decision as a function of the employees' duties and was violative of the Act.

The Town excepts to the ALJ’s decision, arguing that the ALJ erred because the daily work log has a greater impact on a managerial prerogative than it does on terms and conditions of employment, that the potential discipline component of the requirement is not the sole test of negotiability, that there has been no impact on the employees’ workload, that the ALJ improperly characterized a witness’ testimony and that the ALJ’s decision is against public policy. CSEA supports the ALJ's decision, but argues that the Town’s exceptions must not be considered as they were not filed in accordance with PERB’s Rules of Procedure (Rules).

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

Preliminarily, we consider the argument by CSEA that the Town's exceptions and supporting brief were not filed as separate documents as required by our Rules. While filed as one document, the Town's exceptions are separated from the arguments supporting them. Therefore, we and CSEA are reasonably able to distinguish between the exceptions and the arguments, thereby materially achieving the result §213.2 of the
Rules is intended to effect. CSEA's objection to the form of the exceptions is, accordingly, denied.¹

It is undisputed that for at least five years before the Town implemented its daily work log requirement in the Building, Planning and Zoning Department, inspectors were not individually required to keep any kind of log or record of daily activities. In November 1998, the Director of Building, Planning and Zoning, Brian Brophy, created the log requirement, after the Town and CSEA had two meetings regarding the Town's felt need to require such recordkeeping by the inspectors. Brophy testified that he wanted to know where the employees were every day, the volume of work performed and the time required to do it so he could monitor employees' locations and workload.²

The employer imposition of a record keeping function on unit employees where none previously existed violates §209-a.1(d) of the Act. As we found in Newburgh Enlarged City School District:³

[An employer's] basic managerial right to maintain a record of attendance and presence of its employees is not in issue. That right exists by virtue of its accountability for the expenditure of public funds and for the acts of its employees. The maintenance of such a record by the

¹New York State Canal Corp., 30 PERB ¶3070 (1997); Uniondale Union Free Sch. Dist., 27 PERB ¶3077 (1994).

²These inspectors include building inspectors, assistant building inspectors, chief fire safety inspectors, assistant fire safety inspectors, and code enforcement officers who receive their daily work assignments from Brophy. The inspectors then determine individually the order for their inspections and schedule the inspections based upon their individual assessment of how much time each inspection will require.

³20 PERB ¶3053, at 3116-17 (1987).
employer is beyond the scope of mandatory negotiations. An employer may not, however, without agreement of the employees’ negotiating representative, require its employees to participate in the recording process. Applying our usual balancing test, we conclude that the clear and direct primary impact of such a work rule is on conditions of employment and not upon essential managerial responsibilities.4

The Town argues that it has no intent to use the daily logs for discipline and that no employee has been disciplined for failing to complete the log in a timely fashion. As we have previously held, an employer’s direction to employees to use a form to record attendance, work location or work activities constitutes a direction that the form be completed by the employee and returned to the employer. A disciplinary component must, therefore, be said to exist for the failure to comply with an employer work order.5

That no disciplinary action has been taken or threatened when unit employees failed to submit the forms is not controlling; the possibility of discipline remains outstanding.6

4It is well settled that the unilateral delegation to unit employees of the responsibility for employer record keeping violates the Act. See City of Schenectady, 26 PERB ¶3025 (1993); Spencerport Cent. Sch. Dist., 16 PERB ¶3074 (1983); County of Nassau, 13 PERB ¶4612 (1980), exceptions dismissed, 14 PERB ¶3014 (1981), aff’d, County of Nassau v. PERB, 14 PERB ¶7023 (Sup. Ct. Nassau County 1981). See also Police Ass’n of New Rochelle, New York, Inc., 13 PERB ¶3082 (1980).

5See State of New York (Office of Mental Health - Cent. New York Psychiatric Ctr.), 31 PERB ¶3051, at 3106, where we held that “all employer directives to employees carry with them, at least implicitly, the possibility of an employment consequence for noncompliance.”

6The record reveals one instance when an inspector did not fill out a daily log. Brophy testified that he spoke with the employee, impressing upon him the importance of fulfilling the requirement. No formal discipline apparently followed.
The Town indeed may have a legitimate need to record assignments of work, location and workload. We hold only that the Town cannot meet that need by unilaterally imposing a record keeping responsibility on unit employees without negotiating the requirement with CSEA.

Based upon the foregoing, we deny the Town's exceptions and affirm the ALJ's decision.

IT IS, THEREFORE, ORDERED that the Town rescind its November 1998 directive that inspectors in its Building, Planning and Zoning Department complete a daily work log.

IT IS FURTHER ORDERED that the Town sign and post the attached notice in all locations customarily used to post notices to unit employees.

DATED: November 18, 1999
Albany, New York

Michael R. Cuevas, Chairman

Marc A. Abbott, Member

John T. Mitchell, Member
NOTICE TO ALL EMPLOYEES

PURSUANT TO
THE DECISION AND ORDER OF THE

NEW YORK STATE
PUBLIC EMPLOYMENT RELATIONS BOARD

and in order to effectuate the policies of the

NEW YORK STATE
PUBLIC EMPLOYEES’ FAIR EMPLOYMENT ACT

we hereby notify all employees of the Town of Ramapo in the unit represented by the Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO, Rockland County Local 844, Town of Ramapo, Unit 8358 (CSEA), that the Town will forthwith rescind its November 1998 directive that inspectors in its Building, Planning and Zoning Department complete a daily work log.

Dated . . . . . . . . .

By . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .
(Representative) (Title)

Town of Ramapo

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.
This matter comes to us on exceptions filed by the New York State Supreme Court Officers Association, ILA (Association) to a decision of the Director of Public Employment Practices and Representation (Director). The Director dismissed an amended improper practice charge in which the Association alleged that the New York State Office of Court Administration (OCA) violated §209-a.1(a) and (d) of the Public Employees’ Fair Employment Act (Act). Pursuant to his authority under §204.2 of PERB’s Rules of Procedure (Rules), the Director determined that the amended charge did not plead sufficient facts to support the alleged violation of §209-a.1(a), and that
PERB lacked jurisdiction over the dispute insofar as it alleged a violation of §209-a.1(d).¹

Our review of a determination made under §204.2 of the Rules is limited to whether the pleaded facts can support the alleged violation under any recognized or acceptable legal theory, after giving those facts all reasonable inferences that can be drawn.² Here, the Association's charge, as amended, states in its entirety:

The Collective Bargaining Agreement in place between the union and the charging party [sic] specifies the mechanics for making Transfer Requests. On May 13, 1999, the Respondent, by Major Edward S. McLaughlin and Major Jewel Williams-Skinner issued a memorandum altering the method for making Transfer Requests. This had the effect of unilaterally changing the terms and conditions of employment. This constitutes an act of repudiation of the Collective Bargaining Agreement and the Board should therefore neither defer nor dismiss this charge.

In an apparent misunderstanding of the Director's order, the Association argues to us that it was error for him to "defer" the dispute. It contends that OCA should not be permitted to "change the plain terms of the Collective Bargaining Agreement with impunity, and face no statutory sanctions." OCA did not respond to the exceptions.

Noting that PERB has jurisdiction over an alleged failure to continue terms and conditions of employment in an expired collective bargaining agreement, the

¹The Association does not take exception to the Director's decision to dismiss the alleged violation of §209-a.1(a).

²See New York State Office of Court Admin., 32 PERB ¶3063 (1999); City of Yonkers, 23 PERB ¶3055 (1990).
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Association argues in support of its exceptions that the agreement “in effect between the [parties], sets forth specific procedures for transferring members of the Bargaining Unit from assignment to assignment had expired.” [Emphasis added.] Whatever this statement may mean, the amended charge itself does not plead that the parties’ agreement has expired. On the contrary, it pleads that the agreement is “in place.” An agreement that is alleged to be “in place” cannot, without more, be considered to be expired for purposes of the Act. Therefore, we find that the Director properly held that the amended charge alleges a breach of an existing agreement over which PERB does not have jurisdiction, not a failure to continue the terms of an expired agreement over which PERB has jurisdiction.

However, the Association emphasizes to us that the charge pleads a repudiation of the collective bargaining agreement, not merely a breach. It contends that OCA treated the at-issue contractual obligation as a nullity. Although we have held that the repudiation of an agreement may constitute a violation of §209-a.1(d), the Association’s amended charge pleads no facts from which to infer such a violation. PERB’s Rules require a charging party to plead a clear and concise statement of the facts giving rise to the charge.

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3See State of New York (SUNY Health Science Ctr. of Syracuse), 30 PERB ¶3019, at 3042 (1997).

4Act, §205.5(d).


to the alleged violation. Although inferences may be drawn from pleaded facts, the Association's conclusory allegation that OCA repudiated the contract is not a sufficient factual basis to establish a repudiation of an agreement under PERB's jurisdiction. Therefore, we find that the Director properly concluded that the dispute, as pleaded, falls outside of our jurisdiction.

The Association's reliance on our decision in State of New York (SUNY Health Science Center of Syracuse), supra, is misplaced. There, PERB had jurisdiction over the dispute, not only because the parties' agreement had expired, but because the charging party also alleged facts to support an independent failure to negotiate in good faith. We declined to exercise our jurisdiction over the alleged failure to continue the terms of the expired agreement under our merits deferral policy, but we retained jurisdiction over the alleged independent failure to negotiate in good faith. In contrast, here the charge does not allege that the parties' agreement has expired, and it pleads no facts to establish an independent failure to negotiate in good faith.

For the above reasons, the exceptions are denied, and the decision of the Director is affirmed.

\(^7\)Rules of Procedure §204.1(b)(3).
IT IS, THEREFORE, ORDERED that the charge is dismissed in its entirety.

DATED: November 18, 1999
Albany, New York

Michael R. Cuevas, Chairman

Marc A. Abbott, Member

John T. Mitchell, Member
BOARD DECISION AND ORDER

On July 1, 1999, we ordered that a determination of this Board dated February 8, 1968, approving the enactment establishing the Public Employment Relations Board of the Syracuse City School District (Syracuse PERB), be suspended, subject to reinstatement upon an application and demonstration by the Syracuse PERB that the continuing implementation of its local provisions and procedures is substantially equivalent to the implementation of the provisions and procedures of the Public Employees' Fair Employment Act (Act) by this Board.

We also gave notice that unless such application was filed by August 2, 1999, that we would, without further notice, rescind, pursuant to §212 of the Act, our order dated February 8, 1968, approving the Syracuse City School District's local enactment and such other orders as approved amendments to, or the reinstatement of, its local

32 PERB ¶3045 (1999).
enactment, upon the ground that the continuing implementation of said local enactment and amendments thereof is no longer equivalent to the provisions and procedures that apply to and are implemented by this Board.

The Syracuse PERB has filed no application for reinstatement.

NOW, THEREFORE, pursuant to §212 of the Act, we rescind our order dated February 8, 1968, approving the Syracuse City School District’s local enactment and such other orders as approved amendments to, or the reinstatement of, its local enactment, upon the ground that the continuing implementation of said local enactment and amendments thereof is no longer equivalent to the provisions and procedures that apply to and are implemented by this Board.

DATED: November 18, 1999
Albany, New York

Michael R. Cuevas, Chairman

Marc A. Abbott, Member

John T. Mitchell, Member

3 PERB ¶3008 (1970); 4 PERB ¶3012 (1971); 4 PERB ¶3086 (1971); 6 PERB ¶3010 (1973); 6 PERB ¶3061 (1973); 7 PERB ¶3063 (1974); an order dated March 3, 1978; and 19 PERB ¶3078 (1986).
STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

THOMAS J. SOULES,

Petitioner,

-and-

WATERTOWN HOUSING AUTHORITY,

Employer,

-and-

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

Intervenor.

THOMAS J. SOULES, pro se

STEVEN G. MUNSON, ESQ., for Employer

NANCY E. HOFFMAN, GENERAL COUNSEL (MIGUEL ORTIZ of counsel), for Intervenor

BOARD DECISION AND ORDER

On September 14, 1999, Thomas J. Soules filed a timely petition for decertification of the Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO (intervenor), the current negotiating representative for employees of the Watertown Housing Authority in the following unit:

Included: All employees.
Excluded: Executive director, maintenance supervisor, tenant relations coordinator, modernization coordinator, principal account clerk and account clerk/typist.

Upon consent of the parties, a mail ballot election was held on November 3, 1999. The results of this election show that the majority of eligible employees in the unit who cast valid ballots no longer desire to be represented for purposes of collective negotiations by the intervenor.¹/

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

DATED: November 18, 1999
Albany, New York

Michael R. Cuevas, Chairman

Marc A. Abbott, Member

John T. Mitchell, Member

¹/ Of the 12 ballots cast, 1 was for representation and 11 against representation. There were no challenged ballots.
On September 3, 1999, Jeffrey Inman filed a timely petition for decertification of CWA, Local 1126 (intervenor), the current negotiating representative for employees of the Town of Whitestown in the following unit:

Included: Full-time and part-time working foreman, heavy equipment operator, motor equipment operator and laborer.

Excluded: All other employees.
Upon consent of the parties, a mail ballot election was held on November 1, 1999. The results of this election show that the majority of eligible employees in the unit who cast valid ballots no longer desire to be represented for purposes of collective negotiations by the intervenor.1/

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

DATED: November 18, 1999
Albany, New York

Michael R. Cuevas, Chairman

Marc A. Abbott, Member

John T. Mitchell, Member

1/ Of the 16 ballots cast, 7 were for representation and 9 against representation. There were no challenged ballots.
STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of
CITY OF AUBURN ASSISTANT FIRE CHIEF'S ASSOCIATION,
Petitioner,

-and-

CITY OF AUBURN,
Employer.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

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

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

IT IS HEREBY CERTIFIED that the City of Auburn Assistant Fire Chief's Association has been designated and selected by a majority of the employees of the above-named public employer, in the unit found to be appropriate and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Included: Assistant Fire Chiefs,

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

DATED: November 18, 1999
Albany, New York

Michael R. Cuevas, Chairman

Marc A. Abbott, Member

John T. Mitchell, Member
STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

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

Petitioner,

-and-

FREEPORT UNION FREE SCHOOL DISTRICT,

Employer.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

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

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

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

Excluded: All other District employees.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Civil Service Employees Association, 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 18, 1999
Albany, New York

Michael R. Cuevas, Chairman

Marc A. Abbott, Member

John T. Mitchell, Member
STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of
TEAMSTERS LOCAL UNION 529,
Petitioner,

-and-

TOWN OF WHEELER,
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 Teamsters Local Union 529 has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Included: All employees of the Town of Wheeler Highway Department.
Excluded: Confidential employees, managerial employees, temporary employees and elected officials.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with Teamsters Local Union 529. 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 18, 1999
Albany, New York

Michael R. Cuevas, Chairman

Marc A. Abbott, Member

John T. Mitchell, Member