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State of New York Public Employment Relations Board Decisions from December 18, 1981

New York State Public Employment Relations Board

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State of New York Public Employment Relations Board Decisions from December 18, 1981

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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of WESTERN REGIONAL OFF-TRACK BETTING CORPORATION, Respondent, -and- SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 222, Charging Party.	#2A-12/18/81 BOARD DECISION AND ORDER CASE NO. U-5408

MOOT, SPRAGUE, MARCY, LANDY, FERNBACH & SMYTHE, ESQS. (JOHN B. DENNING, ESQ., of Counsel), for Respondent

DAVIDSON, FINK, COOK & GATES, ESQS., for Charging Party

The charge herein was filed by the Service Employees International Union, Local 222 (SEIU). On its face, it merely alleges a contract violation by the employer, Western Regional Off-Track Betting Corporation (OTB). Charging party asserts that the parties entered into a memorandum of understanding which, inter alia, limited the number of "buddy parlors" that OTB could operate and guaranteed the presence of a branch manager at each branch. The creation of a "buddy parlor" involves the combination of two branches, thereby reducing the number of supervisors required by OTB. The charge further states that, after it ratified the agreement, OTB opened more "buddy parlors" than were authorized by the agreement and that it also opened a "mini parlor" which did not require a full complement of supervisory employees. As specified in the charge, the relief sought by SEIU is an order

requiring OTB to comply with the parties' agreement.

Noting that SEIU had initiated a grievance dealing with the same subject matter as that dealt with in the charge, OTB urged the hearing officer to defer consideration of the issue to the arbitration process. It also argued that the alleged memorandum of understanding had never been accepted by the parties and, therefore, could not have been violated by it. Based upon this part of OTB's response, SEIU argued to the hearing officer that she should not defer consideration of the charge to the arbitration process because OTB was repudiating the memorandum of understanding and that such repudiation constituted an improper practice that could not be reached by an arbitrator. It did not, however, seek to amend its charge to assert that OTB had repudiated the memorandum of understanding and there is no indication in the record whether such an amendment would have been timely.[1/]

Finding that the charge pleaded only a contractual dispute, the hearing officer dismissed the charge subject to its reconsideration in accordance with the standards set forth in New York City Transit Authority, 4 PERB ¶3031 (1971). SEIU takes exception to this decision and supports its position by reasserting the argument that an arbitration award could not possibly reach the question whether OTB repudiated its agreement.[2/]

[1/] Like the charge itself, an amendment of a charge that raises new issues may only complain about matters that occurred within four months thereof.

[2/] The hearing officer also disposed of Case No. U-5409, a related case involving the same parties. As no exceptions were filed in that case, her disposition of it is not before us.

Having reviewed the record, we conclude that the charge merely alleges a contract violation. Although SEIU's briefs to the hearing officer and to us both raise a question as to whether OTB repudiated a memorandum of understanding, that question is not raised by SEIU's charge. We have held that a charging party is bound by its charge and "will not find an improper practice which is not alleged in a charge or a timely amendment thereto." City of Mount Vernon, 14 PERB ¶3037 (1981) at p. 3063. The doctrine of deferral is not applicable when no improper practice is alleged in a charge. The hearing officer should, therefore, have dismissed the charge outright because this Board does not

> "have authority to enforce an agreement between an employer and an employee organization and shall not exercise jurisdiction over an alleged violation of such an agreement that would not otherwise constitute an improper. . .practice." Section 205.5(d) of the Taylor Law. 3/

NOW, THEREFORE, WE ORDER that the charge herein be, and it hereby is, DISMISSED.

DATED: December 17, 1981
Albany, New York

Harold R. Newman, Chairman

Ida Klaus, Member

David C. Randles, Member

3/ See also St. Lawrence County, 10 PERB ¶3058 (1977).

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of BOARD OF COOPERATIVE EDUCATIONAL SERVICES OF SULLIVAN COUNTY, Employer, -and- SULLIVAN COUNTY LOCAL 853, CIVIL SERVICE EMPLOYEES ASSOCIATION, INC., Petitioner.	#2B-12/18/81 BOARD DECISION AND ORDER CASE NO. C-2211

ROSENBERG & UFBERG, ESQS. (SHELDON ROSENBERG, ESQ., of Counsel), for Employer

ROEMER AND FEATHERSTONHAUGH, ESQS. (WILLIAM M. WALLENS, ESQ., of Counsel), for Petitioner

This matter comes to us on the exceptions of the Board of Cooperative Educational Services of Sullivan County (BOCES) to a decision of the Director of Public Employment Practices and Representation that Sullivan County Local 853, Civil Service Employees Association, Inc., (CSEA) is entitled to be certified as the exclusive negotiating representative of two units of employees of BOCES.

By the petition herein, which was filed on February 2, 1981, CSEA sought certification in a single unit of employees of BOCES.[1/] As BOCES questioned the appropriateness of the proposed negotiating

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[1/] The unit sought consisted of:

"teacher assistants, teacher aides, home-school coordinator, typists, stenographer, clerk of the BOCES Board, treasurer, account clerk, superintendent of buildings and grounds (head custodian), custodians, cleaners, laborers, electrician, cafeteria manager and food service helpers."

unit, the matter was sent to hearing, and on September 22, 1981, the Acting Director of Public Employment Practices and Representation determined that there should be three negotiating units.[2/] He then ordered that there be an election in each of the units:

> "unless the petitioner submits to me within ten days from the date of receipt of this decision evidence to satisfy the requirements of §201.9(g)(1) of the Rules for certification without an election."[3/]

CSEA disclaimed any interest in representing Unit 3 and sought certification without an election in the other two units. As the designation cards submitted by CSEA as its showing of interest were more than six months old by that time, it obtained

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[2/] The three units were defined as follows:

"Unit 1-Included:	All full-time employees as follows: teacher aide, typist, stenographer, custodian, cleaner, laborer, electrician, food service helper and full-time CETA employees in those job titles.
Unit 2-Included:	All full-time employees as follows: teacher assistant, home-school coordinator.
Unit 3-Included:	All full-time employees as follows: superintendent of buildings and grounds (head custodian), cafeteria manager.
Excluded:	Clerk of the BOCES board, treasurer, account clerk and all other employees."

[3/] Rule 201.9(g)(1) provides:

> "Certification without an election. If the choice available to the employees in a negotiating unit is limited to the selection or rejection of a single employee organization, that choice may be ascertained by the Director on the basis of dues deduction authorizations and other evidences instead of by an election. In such a case, the employee organization involved will be certified without an election if a majority of the employees within the unit have indicated their choice by the execution of dues deduction authorization cards which are current, or by individual designation cards which have been executed within six months prior to the certification."

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new designation cards, all of which were obtained between September 24 and September 28, 1981. On October 21, 1981, the Director of Public Employment Practices and Representation (Director) determined that there were 39 employees in Unit 1 and that 27 of them had signed current authorization cards indicating their desire to be represented by CSEA. He further determined that there were eight employees in Unit 2, five of whom had signed current authorization cards indicating their desire to be represented by CSEA.

BOCES now argues that the Director erred in determining that 27 of 39 employees in the first unit had indicated their support of CSEA. In support of this argument, it submits a document which it asserts to be a letter dated April 23, 1981 that indicates that seven of the unit employees who had previously signed showing of interest designation cards repudiated those cards. This document is not part of the record before us as it was never submitted as evidence in the proceeding. BOCES further argues that the unit consists of 42 rather than 39 employees.[4/] Thus, according to BOCES, CSEA merely established support from 20 of 42 unit employees and is not entitled to certification without an election.

As the document purporting to show the withdrawal of support for CSEA by seven unit employees was not submitted to the Director and is not a part of the record in the proceeding, it could not have

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[4/] This is based on two letters sent to the Acting Director of Public Employment Practices and Representation; one on October 16, 1981, five days before the Director issued his decision, and the other on October 29, 1981, which was after the issuance of that decision.

been considered by him, and cannot be considered by us in reviewing the correctness of his action. Moreover, the letter would, in any event, be immaterial as the record shows that the designation cards relied upon by the Director for certification without an election were new current cards executed many months after the alleged letter. Accordingly, CSEA would be entitled to certification without an election in the first unit, even if BOCES' factual assertions were accepted as true.

With respect to Unit 2, BOCES argues that the execution of designation cards by five of eight unit employees merely gives CSEA a majority of one, and that a majority of one should not be deemed sufficient for certification without an election. There is no basis for this position in the Rules or decisions of this Board, and we reject it.

NOW, THEREFORE, WE ORDER that the exceptions herein be, and they hereby are, DISMISSED.

DATED: December 17, 1981
Albany, New York

Harold R. Newman
Harold R. Newman, Chairman

Ida Klaus
Ida Klaus, Member

David C. Randles
David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

BOARD OF COOPERATIVE EDUCATIONAL SERVICES OF SULLIVAN COUNTY,

Employer,

-and-

SULLIVAN COUNTY LOCAL 853, CIVIL SERVICE EMPLOYEES ASSOCIATION, INC.,

Petitioner.

Case No. C-2211

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 Sullivan County Local 853, Civil Service Employees Association, Inc.

has been designated and selected by a majority of the employees of the above named public employer, in the unit described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit(1):Included: All full-time employees as follows: teacher aide, typist, stenographer, custodian, cleaner, laborer, electrician, food service helper and full-time CETA employees in those job titles.

Excluded: Clerk of the BOCES board, treasurer, account clerk and all other employees.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with Sullivan County Local 853, Civil Service Employees Association, Inc.

and enter into a written agreement with such employee organization with regard to terms and conditions of employment, and shall negotiate collectively with such employee organization in the determination of, and administration of, grievances.

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Signed on the 17th day of December, 1981

Harold R. Newman

Harold R. Newman, Chairman

Ida Klaus

Ida Klaus, Member

David C. Randles

David C. Randles, Member

PERB 58.4

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

BOARD OF COOPERATIVE EDUCATIONAL SERVICES OF SULLIVAN COUNTY,

Employer,

-and-

SULLIVAN COUNTY LOCAL 853, CIVIL SERVICE EMPLOYEES ASSOCIATION, INC.,

Petitioner.

Case No. C-2211

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 Sullivan County Local 853, Civil Service Employees Association, Inc.

has been designated and selected by a majority of the employees of the above named public employer, in the unit described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit(2):Included: All full-time employees as follows: teacher assistant, home-school coordinator.

Excluded: Clerk of the BOCES board, treasurer, account clerk and all other employees.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with Sullivan County Local 853, Civil Service Employees Association, Inc.

and enter into a written agreement with such employee organization with regard to terms and conditions of employment, and shall negotiate collectively with such employee organization in the determination of, and administration of, grievances.

Signed on the 17th day of December, 1981

Harold R. Newman

Harold R. Newman, Chairman

Ida Klaus

Ida Klaus, Member

David C. Randles

David C. Randles, Member

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PERB 58.4

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of UNITED UNIVERSITY PROFESSIONS, INC., Respondent, -and- CHARLES R. IDEN, Charging Party.	#2C-12/18/81 BOARD DECISION AND ORDER CASE NO. U-4991

BERNARD F. ASHE, ESQ. (IVOR R. MOSKOWITZ, ESQ., of Counsel, for Respondent

STUART A. ROSENFELDT, ESQ., for Charging Party

This matter comes to us on exceptions of both the charging party (Iden) and the respondent (UUP) to a hearing officer's decision which dismissed in part and sustained in part an improper practice charge against the respondent. No hearing was held since the hearing officer concluded that there was no factual dispute.

UUP is the certified bargaining agent for the unit which includes Iden. He, as a non-member of UUP, pays agency fees to UUP pursuant to CSL §208.3(a). Iden applied for and received a refund for the 1978-79 fiscal year. He pursued the appellate steps of UUP's refund procedure, but when notified of the date and place of the hearing before the neutral - the last step in such procedure - he abandoned the refund procedure and on October 8, 1980, filed the instant improper practice charge.

The hearing officer construed the charge as setting forth the following allegations:

1. The UUP agency fee refund procedure for the 1978-79 fiscal year took longer than the allotted time (August 31, 1980) to be completed;

2. UUP has not provided Iden with the information necessary to verify the correctness of the refunded amount;

3. The selection of the neutral by UUP was improper;

4. The amount refunded by UUP for 1978-79 was inadequate;

5. The selection of the date and the site of the hearing was improper.

The hearing officer dismissed all of the allegations except the last, on the ground that each such issue had previously been decided by the Board and that any further relief can only be sought through enforcement of prior PERB orders. She sustained that aspect of the charge relating to the selection of the date and site of the hearing by the neutral.

DISCUSSION

Upon consideration of the entire record, including the exceptions filed by the parties, we conclude that the material issues raised in this case are identical to those raised in UUP and Barry, Case No. U-4983, decided concurrently herewith. For the reasons set forth in that decision as well as those in UUP and Barry, Case No. U-4775, also decided concurrently with this case, we conclude that the aspect of this charge challenging

the length of time taken to implement and complete the 1978-79 process should be considered and determined and, accordingly, should be remanded to the hearing officer for hearing and taking of evidence. If a violation is found to have occurred, we would then consider what remedial action is warranted.

For the reasons set forth in the above cited decisions, decided concurrently herewith, we reverse the hearing officer and dismiss that aspect of the charge which alleges that the selection of the site of the hearing by the neutral was in violation of CSL §209-a.2(a).

For the same reasons set forth in those decisions, we affirm the dismissal of all other aspects of the charge herein. In light of this decision, we do not adopt the hearing officer's recommended remedy.

NOW, THEREFORE, we order that

1. With respect to the aspect of the charge relating to the length of time taken to complete the refund procedure, the matter is remanded to the hearing officer for action consistent with this decision, and

2. In all other respects the charge be, and it hereby is, dismissed.

DATED: December 17, 1981
Albany, New York

Harold R. Newman
Harold R. Newman, Chairman

Ida Klaus
Ida Klaus, Member

David C. Randles
David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2D-12/18/81

In the Matter of

UNITED UNIVERSITY PROFESSIONS, INC.,

Respondent,

-and-

THOMAS C. BARRY,

Charging Party.

BOARD DECISION AND ORDER

CASE NO. U-4775

BERNARD F. ASHE, ESQ. (IVOR R. MOSKOWITZ, ESQ., of Counsel), for Respondent

THOMAS C. BARRY, pro se

This matter comes to us on the exceptions of Thomas C. Barry to a hearing officer's decision which dismissed his improper practice charge against the United University Professions, Inc. (UUP).

UUP is the exclusive negotiating representative of the Professional Services Unit of the State University of New York. Pursuant to §208.3(a) of the Act, UUP receives agency fee deductions from the salaries of unit employees who are not its members. As required by §208.3(a), UUP has established a procedure under which agency fee payers may apply for a refund. The procedure provides that upon objection made by an agency shop fee payer at the end of UUP's fiscal year, UUP's officers shall determine the amount of the refund. Successive appeals may be taken by a dissatisfied agency shop fee payer to UUP's Executive Board, Delegate Assembly and a

neutral appointed by UUP from a list furnished by the American Arbitration Association.

Barry applied for and received a refund for the 1977-78 fiscal year. He then exhausted the appellate steps of UUP's procedure, which culminated in a decision by a neutral dated June 6, 1980. Through all steps, the initial determination was affirmed.

In his charge, filed June 23, 1980, Barry claimed that UUP failed to properly maintain its refund procedure and thereby violated CSL §209-a.2(a) by:

1. Refunding an inadequate amount to him for the 1977-78 fiscal year.
2. Taking over 21 months, from charging party's request for a refund to the decision of the neutral, to complete the refund procedure.
3. Not providing him with an explanation or justification of the amount refunded when it initially made the refund.
4. Not permitting him to participate in the selection of the neutral appointed to review the refund determination.
5. The neutral setting the date and site of the hearing without his participation and over his objection.
6. The neutral conducting the hearing in an improper manner which was prejudicial to him.

7. The neutral issuing a decision five months after the hearing.

8. The neutral incorrectly determining the amount of the refund.

After filing an answer, UUP moved to dismiss the charge on various grounds. The hearing officer, without conducting a hearing, granted the motion.

The hearing officer dismissed the complaint relating to the amount of refund paid by UUP (Item 1) on the basis of our decision in Hampton Bays Teachers Association, 14 PERB ¶3018 that we do not have jurisdiction to review the correctness of the amount of the refund.

The complaints relating to the duration of the refund procedure (Item 2), the failure to provide financial information in support of the refund at the time of refund (Item 3) and the procedure whereby the neutral was selected by UUP without participation by Barry (Item 4) were each dismissed by the hearing officer on the basis that each complaint had been the subject of a prior charge decided by this Board (UUP (Eson) 12 PERB ¶3093; UUP (Barry) 13 PERB ¶3090; and UUP (Eson) 11 PERB ¶3074, respectively).

As to Item 2, the hearing officer concluded that inasmuch as the Board had directed that the 1977-78 refund procedure should by completed by January 31, 1980, any further complaint concerning

the duration of the procedure should be brought to the Board either in a request for an investigation as to compliance with the order in UUP (Eson) 12 PERB ¶3093 or a request for institution of a proceeding in court pursuant to §213 of the Act to enforce said order and, presumably, the seeking of penalties for failure to comply with the court order obtained. In addition, as to Item 2, the hearing officer held that the complaint was not timely since the charge in this case was not filed until more than four months after January 31, 1980, the directed date of completion in our prior order.

As to Item 3, the hearing officer found that we had already considered the fact of UUP's failure to provide financial information at the time of its 1977-78 refund in UUP (Barry) 13 PERB ¶3090 and, for reasons set forth in that decision, had not required such information to be provided for the 1977-78 refund.

As to Item 4, the hearing officer concluded that inasmuch as the Board had, in UUP (Eson) 11 PERB ¶3074, approved the UUP's refund procedure which specifically permitted the selection of the neutral by the UUP without any input by the agency fee objector, the complaint in this case as to such procedure should be dismissed.

The complaint relating to the neutral's selection of the date and site of the hearing without the complainant's participation (Item 5) was dismissed as untimely because the charge herein was filed more than four months after the complainant was

notified of the action of the neutral.

The complaints that the conduct of the hearing by the neutral was improper and prejudicial (Item 6), that a five-month delay between hearing and decision by the neutral was improper (Item 7) and that the amount of the refund determined to be proper by the neutral was incorrect (Item 8) were all dismissed on the basis that the proper way to challenge the neutral's procedural and substantive rulings is through a court proceeding.

Barry excepted to all of the hearing officer's rulings.

DISCUSSION

We affirm the hearing officer's dismissal of all items of the charge except that relating to Item 2.

The complaint relating to the correctness of the amount of the refund initially paid by UUP (Item 1) was properly dismissed by the hearing officer for the reasons set forth in our decision in Hampton Bays Teachers Association, 14 PERB ¶3018.

We also agree that the complaint as to UUP's failure to provide financial information in support of the refund at the time of refund (Item 3) and the procedure whereby the neutral was selected by UUP without participation by Barry (Item 4) should be dismissed because each of those complaints raises issues which are identical to those dealt with and disposed of in prior decisions of this Board. (UUP (Barry) 13 PERB ¶3090 and UUP (Eson) 11 PERB ¶3074).

Those aspects of the charge relating to the procedural and

substantive rulings of the neutral must also be dismissed. These complaints involve the setting of the date and site of the hearing by the neutral without Barry's participation (Item 5), certain rulings by the neutral, including the refusal to disqualify himself, his defining of the issue before him and his view of the scope of the inquiry (Item 6), the length of time he took to render his decision (Item 7) and the amount determined by him to be refundable (Item 8). The hearing officer dismissed Item 5 as untimely and the others on the basis that the courts, and not PERB, are the appropriate forum to review the procedural and substantive rulings of the neutral. We affirm their dismissal.

When we accepted UUP's refund procedure containing review by a neutral, we determined that the objector should be free "to initiate plenary action regarding the amount of the refund as determined by the neutral party" (UUP (Eson) 11 PERB at page 3114). Subsequently, we held that it is the courts, and not PERB, that must ultimately review the correctness of the amount of the refund (Hampton Bays Teachers Association, 14 PERB ¶3018). On the reasoning of that decision, we now conclude that complaints concerning the conduct and rulings of the neutral are properly to be dealt with, if at all, in a plenary court action, as they are essentially a part of the challenge to the correctness of the amount of the refund.

The allegation of the charge relating to the length of time it took UUP to complete its refund procedure for the year 1977-78

(Item 2) should not be dismissed.

The hearing officer dismissed this allegation on two separate grounds: the inappropriateness of an improper practice charge as the vehicle for relief in view of our decision and order in UUP (Eson) 12 PERB ¶3093, and the untimeliness of this aspect of the charge. We reject both of these grounds.

The hearing officer apparently reasoned that Barry's claim that his rights were interfered with by the length of time it took UUP to complete its refund procedure, could only constitute a claim that UUP failed to comply with PERB's prior order. We do not so view it. Our determination in UUP (Eson) 12 PERB ¶3093 does not preclude consideration of this charge. In that case, upon a charge that the basic structural aspects of UUP's refund procedure were invalid as established, we conducted an investigation as to whether UUP was in compliance with a condition of our approval of the basic structural aspects of its refund procedure that it be completed in an expeditious manner. As a result of that investigation, we supplemented the condition of our approval with the requirement that UUP should in practice complete its actual refund process for its 1977-78 fiscal year by January 31, 1980, and the refund process for later fiscal years by August 31 of the year following the refund application[1/]. Thus

1/ Judicial enforcement of this order has been obtained, but further relief in regard to the 1977-78 refund proceeding should properly be the subject of a new improper practice charge. After confirmation of our order (UUP v. Newman 77 AD2d 709, lv. to app. den. 51 NY2d 707) an enforcement order was obtained from Supreme Court, Albany County on April 29, 1981, after the completion of UUP's 1977-78 refund proceeding in June 1980. It may be noted that in that case, Judge Cholakis concluded that the Board could conduct a compliance investigation of its prior order, but could not consider whether UUP had maintained a proper refund procedure unless a new charge was filed (UUP v. Newman, 12 PERB ¶7013 (Supreme Court, Albany County, July 23, 1979)).

we passed only on the structural adequacy of the procedure as designed. Unlike that case, the issue raised by the charge herein is whether the time it actually took to complete the refund proceeding, under the basic design, for the 1977-78 fiscal year - approximately 22 months - constituted interference with this charging party's rights. Not only is this issue not identical to that considered in our prior case, but if we were to determine that the length of time taken by UUP to implement and complete its refund procedure interfered with Barry's rights in violation of CSL §209-a.2(a), this charge could properly be the basis for appropriate remedial action not incorporated in our prior order.

Since the basis for this charge is, therefore, not a claimed violation of our prior order, we conclude that the charge in this respect is timely, having been filed within four months of the date of completion of the refund procedure, i.e., the issuance of the neutral's decision.

Accordingly, we shall remand this proceeding to the hearing officer for the holding of a hearing and taking of evidence in regard to Item 2 of the charge. If a violation is found to have occurred, we would then consider what remedial action is warranted.

NOW, THEREFORE, we order that

1. With respect to the aspect of the charge relating to the length of time taken to complete the refund procedure, the matter is remanded to the hearing

officer for action consistent with this decision, and

2. In all other respects the charge herein be, and it hereby is, dismissed.

DATED: Albany, New York
December 17, 1981

Harold R. Newman, Chairman

Ida Klaus, Member

David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2E-12/18/81

In the Matter of UNITED UNIVERSITY PROFESSIONS, INC., Respondent, -and- THOMAS C. BARRY, Charging Party.	BOARD DECISION AND ORDER CASE NO. U-4983

BERNARD F. ASHE, ESQ. (IVOR R. MOSKOWITZ, ESQ., of Counsel), for Respondent

THOMAS C. BARRY, pro se

This matter comes to us on exceptions of both the charging party (Barry) and the respondent (UUP) to a hearing officer's decision which dismissed in part and sustained in part an improper practice charge against the respondent. No hearing was held since the hearing officer concluded that the pleadings presented no factual dispute.

UUP is the certified bargaining agent for the unit which includes Barry. He, as a non-member of UUP, pays agency fees to UUP pursuant to CSL §208.3(a). Barry applied for and received a refund for the 1978-79 fiscal year. He pursued the appellate steps of UUP's refund procedure, but when notified of the date and place of the hearing before the neutral - the last step in such procedure - he abandoned the refund procedure and on October 6, 1980, filed the instant improper practice charge.

That charge alleged in general terms that UUP's refund procedure, as implemented in regard to UUP's 1978-79 fiscal year, was "grossly coercive, burdensome, unlawful and inadequate", thus constituting an improper practice within the meaning of CSL §209-a.2(a). His charge also alleged that the amount refunded to him for the 1978-79 fiscal year was not correct, also constituting an improper practice in violation of CSL §209-a.2(a).

As clarified by particularization, required pursuant to §204.3(b) of this Board's Rules, and at a conference and by subsequent correspondence, the hearing officer construed the charge as setting forth the following bases for alleging that UUP committed improper practices:

1. The UUP refund procedure for 1978-79 was not completed by August 31, 1980;

2. UUP has not refunded monies used for insurance benefits during 1978-79;

3. UUP has not provided adequate financial information for its expenditures and the expenditures of its affiliates for 1978-79;

4. The appointment of the neutral by UUP is improper;

5. The amount refunded for 1978-79 is inadequate;

6. The date and site of the hearing before the neutral were improperly selected.

The hearing officer dismissed all of these allegations except the last on the ground that each such issue had previously been decided by the Board. She sustained that aspect of the

charge relating to the selection of the date and site of the hearing by the neutral. The neutral determined that a single hearing would be held for all objectors on October 6, 1980, in Syracuse since that was the area in which most of the agency fee objectors then resided. Barry lives and works in the Buffalo area, approximately 150 miles from Syracuse. Barry did not attend this hearing because of the time and expense involved. The hearing officer concluded that the scheduling of the hearing at one location had a chilling effect on agency fee objectors and that such action was coercive and in violation of §209-a.2(a) of the Act since it was done pursuant to UUP's refund procedure.

Barry excepted to the dismissal of a portion of his charge. He argues that the hearing officer did not properly construe his "particularization" of his charge. He urges that issues of fact do indeed remain and should have been the subject of a hearing. He also urges that elements of his charge are not covered by any Board decision and should not have been dismissed on that ground.

UUP excepts to sustaining of that aspect of the charge relating to the neutral's selection of the time and place for hearing. It relies upon that provision of UUP's refund procedure which states "the union, at its option, may consolidate all objections and have them resolved at one hearing to be held for that purpose". UUP notes that this provision was included in the procedures accepted by the Board in UUP Eson, 11 PERB ¶3074.

It also excepts to the remedy recommended by the hearing officer which is that UUP refund to Barry all agency fees collected from him for 1978-79 with interest at 6%.

DISCUSSION

We do not agree in all respects with the hearing officer's interpretation of Barry's particularization of his charge. Having originally alleged that the UUP's refund procedure was "coercive, burdensome, unlawful and inadequate", Barry was properly required to specify in what respect this was so, without simply relying on a recitation of facts concerning the refund proceeding for the 1978-79 fiscal year. In response, Barry - not represented at any time by an attorney - submitted a document which attempted to particularize separately each of the words quoted above from his charge.

Under the heading "unlawful", he asserted a violation of our order in UUP (Eson) 12 PERB ¶3093 - a failure to complete the procedure by August 31, 1980; a violation of our order in UUP (Eson) 12 PERB ¶3117 - a failure to refund monies used for insurance benefits; a violation of the hearing officer's order in UUP (Barry) 13 PERB ¶4541 - a failure to provide adequate financial information at the time of refund (apparently failing to recognize that this order was modified by our final order in the proceeding); and a failure to give an adequate refund for the year 1978-79.

Under the heading "coercive", he stated that the 1978-79 appeals process had "so far" taken 15 months and that "the

net effect of this dilatory procedure is to discourage anyone from pursuing such an appeals process"; that the failure to provide financial information also discourages the exercise of rights under the Taylor Law; that the effect of the entire procedure is to coerce him into becoming a member; and that UUP's sole right to select and pay for the neutral is destructive of his rights. Under "burdensome", he complains of the "incredible length and complexity" of the refund procedure and the selection of the hearing site by the neutral. Under "inadequate" he complains of the inadequate refund and of the "complete absence of fairness" of the procedures.

In our view, Barry's charge in this case raises the same issue with regard to the length of time taken to implement and complete the 1978-79 refund procedure as he raised in regard to the 1977-78 refund in Case No. U-4775 - UUP and Barry, decided by us concurrently with this case. For the reasons set forth in our decision in that case, we conclude that this aspect of the charge may be considered and should therefore be remanded for hearing and decision in conjunction with the hearing on the charge in Case No. U-4775. If a violation is found to have occurred, we would then consider what remedial action is warranted.

In regard to that aspect of the charge herein relating to the failure to provide financial information at the time of the 1978-79 refund, we have previously considered Barry's complaint relating to the specific issue (UUP (Barry), 13 PERB ¶3090) and,

for the reasons set forth in our prior decision, we declined to order UUP to furnish the information for the 1978-79 refund. Accordingly, the hearing officer properly dismissed this part of the charge on the basis of that decision.

Barry's present complaint regarding UUP's purported failure to refund monies used for insurance benefits relates specifically to our decision and order in UUP (Eson) 12 PERB ¶3117 and future enforcement of that order. The hearing officer properly dismissed this aspect of his charge.

That part of Barry's charge which consists of allegations that the amount of refund for 1978-79 was inadequate or incorrect was properly dismissed on the basis of our decision in Hampton Bays Teachers Association, 14 PERB ¶3018.

We also agree that Barry's challenge to the procedure whereby the neutral is selected and compensated by UUP without participation by the objector should be dismissed since the precise question was dealt with by us when we approved the procedure (UUP (Eson) 11 PERB ¶3074) and we are not persuaded that this procedure is unreasonable so long as the objector retains the right to initiate a plenary action regarding the amount of the refund as determined by the neutral party.

We reverse the hearing officer's finding of merit to that part of Barry's charge which alleges that the selection of the site of the hearing by the neutral was coercive. As we have concluded in Case No. U-4775, complaints concerning the conduct and rulings of the neutral are properly to be dealt with, if at

all, in the plenary court action available to objectors, as they are essentially a part of the challenge to the correctness of the amount of the refund (see UUP (Eson) 11 PERB ¶3074 and Hampton Bays Teachers Association 14 PERB ¶3018).

Accordingly, we shall remand this proceeding for the holding of a hearing and taking of evidence in regard to that aspect of the charge relating to the length of time taken to complete the refund procedure. In light of this decision, we do not adopt the hearing officer's recommended remedy.

NOW, THEREFORE, we order that

1. With respect to the aspect of the charge relating to the length of time taken to complete the refund procedure, the matter is remanded to the hearing officer for action consistent with this decision, and

2. In all other respects the charge be, and it hereby is, dismissed.

DATED: December 17, 1981
Albany, New York

Harold R. Newman
Harold R. Newman, Chairman

Ida Klaus
Ida Klaus, Member

David C. Randles
David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2F-12/18/81

In the Matter of

STATE OF NEW YORK and SECURITY AND LAW ENFORCEMENT EMPLOYEES, DISTRICT COUNCIL 82, AFSCME,

Respondents,

-and-

THOMAS J. DUNBAR,

Charging Party.

BOARD DECISION AND ORDER

CASE NO. U-4868

MORGAN, MELHUISH, MONAGHAN AND MEYER, ESQS., for Charging Party

JOSEPH M. BRESS, ESQ. (FLORENCE T. FRAZER, ESQ., of Counsel), for Respondent, State of New York

ROWLEY AND FORREST, ESQS., for Respondent, Security and Law Enforcement Employees, District Council 82, AFSCME

The charge herein was filed by Thomas J. Dunbar against both the State of New York (State) and Security and Law Enforcement Employees, District Council 82, AFSCME (DC 82). It alleges that the State brought a disciplinary action against him in retaliation for his having filed an earlier improper practice charge against it. It further alleges that DC 82 did not provide him with a copy of the award of the arbitrator in the disciplinary proceeding which found merit in the disciplinary charge.[1/] This matter comes to us on the exceptions of Dunbar to a hearing officer's decision

[1/] The charge had also alleged that DC 82 had failed to represent Dunbar properly in the disciplinary proceeding. This part of the charge is insufficient in that no facts are alleged that might constitute an improper practice. In any event, Dunbar's exceptions do not deal with this part of his charge.

dismissing his charge on the ground that it was not timely filed.

The charge herein was filed July 31, 1980. The record shows that the State served a notice of discipline upon Dunbar on September 28, 1979. A disciplinary arbitration proceeding was then held in which Dunbar was represented by DC 82. The arbitration award was issued on January 18, 1980. It held that Dunbar was guilty of the charges contained in the notice of discipline and that the penalty of discharge was appropriate. He was terminated that same day. The process of Dunbar's termination was completed on February 14, 1980, when he appeared at the regional headquarters office of the State's Office of Parks and Recreation to return equipment that had been issued to him.

Dunbar spoke to DC 82's field representative on February 2, 1980, about the arbitration award and complained that he had not received a copy of it. The field representative promised to send Dunbar a copy of the award and testified that he did so.[2/]

We affirm the determination of the hearing officer that the charge herein was not timely filed. The alleged violation of the State occurred on or about September 28, 1979, and was known to Dunbar at that time. The alleged violation of DC 82 was known to Dunbar on February 2, 1980. Assuming that Dunbar could have reasonably anticipated that DC 82 would send him a copy of the arbitration award after February 2, 1980, it would have been unreasonable for him to hold to that expectation for more than a

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[2/] The evidence presented by the parties raises a question as to whether DC 82 actually furnished a copy of the arbitration award to Dunbar. In view of our determination that Dunbar's charge was not timely, it is unnecessary to reach this question.

few days and it would have been even more unreasonable for him to continue waiting after the process of his termination by the State was completed on February 14, 1980. Nevertheless, he did not file the charge herein until some ten months following the alleged violation by the State and some five and one-half months following the alleged violation by DC 82. Section 204.1(a)(1) of our Rules provides, however, that a charge may be filed only within four months of the conduct complained about.

NOW, THEREFORE, WE ORDER that the charge herein be, and it hereby is, DISMISSED.

DATED: December 17, 1981
Albany, New York

Harold R. Newman, Chairman

Ida Klaus, Member

David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2G-12/18/81

In the Matter of

STATE OF NEW YORK, UNIFIED COURT SYSTEM

Upon the Application for Designation of Persons as Managerial or Confidential

BOARD DECISION ON REMAND

Case No. E-0411

PAUL A. FEIGENBAUM, ESQ. (MICHAEL COLODNER, ESQ., and NORMA MEACHAM CROTTY, ESQ., of Counsel), for the State of New York

ROEMER and FEATHERSTONHAUGH (STEPHEN J. WILEY, ESQ., of Counsel), for CSEA

BLUM, HAIMOFF, GERSEN, LIPSON, SLAVIN & GARLEY (JAMES P. DOLLARD, JR., ESQ., of Counsel), for the Law Assistants Association of the City of New York

On September 12, 1977, the Unified Court System of the State of New York, through its Office of Court Administration (OCA), filed an application seeking the designation of many of its employees, including those in titles of Law Assistant and Law Clerk, as managerial or confidential. After certain intermediate proceedings and dispositions not herein at issue, the Director of Public Employment Practices and Representation (Director) dismissed the application, finding, in relevant part, that law assistants and law clerks do not "formulate policy", and thus do not warrant designation as managerial under §201.7(a)(i) of the Taylor Law. In this regard, the Director held that policy formulation is the province of administrative employees of the Unified Court System, such as the Chief Judge and Chief Administrator. He dismissed OCA's claim that judges make "policy" within the meaning of

§201.7(a)(i) when they render court decisions and that law assistants and law clerks "formulate" such policy by advising and assisting the judges in the performance of that function.

Upon the exceptions of OCA to the Director's decision, we affirmed the dismissal of the application. We did not, however, find it necessary to determine whether judges formulate policy when they issue decisions. We held that even were that the case, the technical professional help provided them by the law clerks and law assistants, as delineated in the record before us, did not likewise amount to policy formulation.

OCA appealed our decision to the Supreme Court, Albany County. By decision dated November 5, 1981, that Court, by Justice Pitt, found that since the record indicated that law assistants and law clerks advise and make recommendations to judges, they have "meaningful participation in the decisional process," thereby satisfying our definition of the term "formulate", as previously set out in State of New York, 5 PERB ¶3001 at 3005 (1975). The Court therefore remanded the proceeding to us for a determination as to whether a judicial decision in an action or proceeding constitutes the formulation of "policy".

POSITIONS OF THE PARTIES

In its exceptions and supporting brief, OCA advances three arguments. First, it contends that under the Board's "traditional" definition of policy as set out in State of New York, judicial decisions amount to "policy" decisions within the meaning of §201.7(a)(i). Next, it argues that the exclusion of judges from

the Taylor Law definition of "public employee" represents a legislative conclusion that judges make "policy" and are thereby managerial. Finally, OCA contends that judicial decisions in public employment litigation create public employment policy, and that a strong appearance of impropriety exists where employees who are union members influence that policy.

Both the Civil Service Employees Association, Inc. (CSEA) and the Law Assistants Association of the City of New York (LAA) filed briefs in opposition to OCA's exceptions. Both contend that "policy" for purposes of §201.7(a)(i) refers to administrative decisions designed to accomplish the overall objectives or mission of a government, such as those made by the Chief Judge and Chief Administrator of the Courts. Both assert that the Legislature did not conclude that judges are "managerial" policy-makers under the Taylor Law, but, instead excluded them from the definition of "public employee" for public policy reasons. Addressing OCA's third contention, LAA argues that it lacks substance and is based upon the invalid assumption that the employees at issue create public policy.

DISCUSSION

We affirm the Director's conclusion that judges do not make "policy" within the meaning of §201.7(a)(i) of the Taylor Law when they render decisions in court actions and proceedings. Consequently, we hold that the advisory role of law assistants and law clerks in the decisional process does not make them formulators of policy entitled to designation as managerial under that

statutory provision.

This Board has consistently held that "policy" decisions are those which shape and define an employer's overall operation, direction and objectives in furtherance of its institutional mission. In State of New York, 5 PERB ¶3001 (1975), this Board held that

> "In government, policy would thus be the development of the particular objectives of a government or agency thereof in the fulfillment of its mission and the method, means and extent of achieving such objectives."

More recently, in City of Binghamton, 12 PERB ¶3099 (1979), we reaffirmed this definition:

> "To formulate policy is to participate with regularity in the essential process involving the determination of the goals and objectives of the government involved and of the methods for accomplishing those goals and objectives that have a substantial impact upon the affairs and the constituency of the government."

The mission of the Unified Court System may fairly be described as the administration and implementation of a system or structure by which judicial business can be efficiently dispatched and justice thereby served. Decisions regarding the methods of accomplishing this mission, are, as the Director found, vested by Article 6, Section 28 of the State Constitution and Article 7-A of the Judiciary Law in the Chief Judge of the Court of Appeals, the Chief Administrator of the courts, the Administrative Board of the Courts, the Judicial Conference, and certain of their designees. Indeed, Article 7-A of the Judiciary Law contains a lengthy list of subjects in regard to which "the chief judge, after consultation with the administrative board, shall establish

standards and administrative policies for general application to the unified court system throughout the state. . . .[1/] It contains a similarly detailed list of the chief administrator's functions as supervisor of the "administration and operation of the unified court system".[2/] Related functions and powers are prescribed for the administrative board and the judicial conference.[3/] Decisions made with regard to these subjects and in furtherance of these powers amount to "policy" formulation within the meaning of Section 201.7(a)(i). These decisions provide the institutional framework within which the daily business of the judiciary is conducted. In large measure, the work of the judges, including their issuance of decisions in actions and proceedings, is that daily business. Judges are directly engaged in the judicial process and as such their work is the lifeblood of the courts. The decisions they render, however, are not "policy" decisions

1/ Among these are policies and standards relating to "the dispatch of judicial business", "the adoption...and implementation of rules and orders regulating practice and procedure in the courts", "administrative methods and systems of the unified court system", "the examination of the operation of the courts and the state of their dockets and the investigation of criticisms and recommendations". See Judiciary Law §211.

2/ Among these functions are to "prepare the itemized estimates of the annual financial needs of the unified court system", "establish the hours, terms and parts of court, assign judges and justices to them, and make necessary rules therefor", "make recommendations to thelegislature and the governor for laws and programs to improve the administration of justice and the operation of the unified court system", "promote cooperation and coordination between the unified court system and other agencies of the state or its political subdivisions", "establish educational programs...for the judicial and non-judicial personnel of the unified court system", "promulgate rules of conduct for judges and justices", "adopt rules and orders regulating practice in the courts". See Judiciary Law §212.

3/ See Judiciary Law §§213 and 214.

within the meaning of the Taylor Law but rather the ultimate work product of the court system. The overall operation and direction of the court system is not shaped by judicial interpretations of procedural and substantive law in day to day litigation.

We also reject OCA's contention that the exclusion of judges from the definition of "public employee" in §201.7 represents a legislative conclusion that judges are managerial by virtue of their decision-making function. When the Legislature wished to deem particular employees "managerial" it did so specifically. Thus, paragraphs (b) and (c) of §201.7 designate assistant attorneys general, assistant district attorneys, certain fire department personnel and others as "managerial" employees. Questions as to the managerial status of most other employees were left to be resolved by PERB in accordance with the criteria set out in §201.7(a)(i) and (ii). As regards judges and justices of the Unified Court System, however, the Legislature neither designated them "managerial", nor left the question of such designation to PERB. Instead, judges and justices, along with persons in the state militia and those who do not hold their positions by "appointment" and "employment", e.g., elected officials, were simply excluded from the definition of "public employee" without any regard to "managerial" status. These persons were denied collective negotiation rights for public policy reasons, and <u>not</u> because the Legislature believed judicial decisions constitute "policy" within the meaning of §201.7.

Finally, OCA's contention that an appearance of impropriety may arise should unionized law assistants and clerks work on public employment cases raises a public policy question which can only be

addressed by the Legislature. As a public policy argument it is similar in nature, although not necessarily in fact, to that which caused the Legislature to exclude judges and justices from the definition of "public employee" without regard to managerial considerations. Whatever its merit, the argument is not relevant to the statutory criteria this Board must follow in making managerial designations. As we have already stated hereinabove, judicial decisions, whether in the area of public employment law or any other subject area, do not constitute "policy" decisions within the meaning of §201.7(a)(i).

NOW, THEREFORE, we affirm the decision of the Director and

WE ORDER that the application for the designation of law assistants and law clerks as managerial or confidential be, and it hereby is, dismissed.

DATED: Albany, New York
December 18, 1981

Harold R. Newman
Harold R. Newman, Chairman

Ida Klaus
Ida Klaus, Member

David C. Randles
David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2H-12/18/81

In the Matter of	
EAST MORICHES TEACHERS ASSOCIATION, NYSUT, AFT, AFL-CIO	BOARD DECISION AND ORDER
	CASE NO. D-0226
Upon the Charge of Violation of Section 210.1 of the Civil Service Law.	

MARTIN L. BARR, Esq. (JEROME THIER, Esq., of Counsel), for Charging Party

JAMES R. SANDNER, Esq. (RICHARD E. CASAGRANDE, Esq., of Counsel), for Respondent

On October 22, 1981, Martin L. Barr, Counsel to this Board, filed a charge alleging that the East Moriches Teachers Association, NYSUT, AFT, AFL-CIO (Respondent) had violated Civil Service Law (CSL) §210.1 in that it caused, instigated, encouraged, condoned and engaged in a strike against the East Moriches Union Free School District on September 9, 10 and 11, 1981. The charge further alleges that on said dates, approximately 31 employees in a negotiating unit consisting of approximately 34 professional teachers and teaching assistants participated in the strike.

The respondent did not file an answer, thus admitting all of the allegations of the charge, upon the understanding that

the charging party would recommend, and this Board would accept, a penalty of loss of its dues and agency shop fee deduction privileges to the extent of forty percent (40%) of the amount which would otherwise be deducted during a year.[1/] The charging party has so recommended.

On the basis of the unanswered charge, we find that the respondent violated CSL §210.1 in that it engaged in a strike as charged, and we determine that the recommended penalty is a reasonable one and will effectuate the policies of the Act.

NOW, THEREFORE, WE ORDER that all dues deduction privileges of the East Moriches Teachers Association, NYSUT, AFT, AFL-CIO and agency shop fee deduction privileges, if any, be suspended, commencing on the first practicable date, and continuing for such period of time during which forty percent (40%) of its annual dues and any agency shop fees would otherwise be deducted. Thereafter, no dues or agency shop fees shall be deducted on its behalf by the East Moriches Union Free School District until the East Moriches Teachers Association, NYSUT,

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1/ This is intended to be the equivalent of a five-month suspension of the privileges of dues and agency shop fee deductions, if any, if such were withheld in twelve monthly installments throughout the year. In fact, the annual dues of the respondent are not deducted in this manner.

AFT, AFL-CIO, affirms that it no longer asserts the right to strike against any government, as required by the provisions of CSL §210.3(g).

Dated: Albany, New York
December 17, 1981

Harold R. Newman, Chairman

Ida Klaus, Member

David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2I-12/18/81

In the Matter of the Application of the CITY OF SYRACUSE, for a determination pursuant to Section 212 of the Civil Service Law.	BOARD DECISION AND ORDER DOCKET NO. S-0016

At a meeting of the Public Employment Relations Board held on the 18th day of December, 1981, and after consideration of the application of the City of Syracuse made pursuant to Section 212 of the Civil Service Law for a determination that Chapter 30 of the Revised General Ordinances of the City of Syracuse as last amended by General Ordinance No. 40-1981 is substantially equivalent to the provisions and procedures set forth in Article 14 of the Civil Service Law with respect to the State and to the Rules of Procedure of the Public Employment Relations Board, it is

ORDERED, that said application be, and the same hereby is, approved upon the determination of the Board that the Ordinance aforementioned, as amended, is substantially equivalent to the provisions and procedures set forth in Article 14 of the Civil Service Law with respect to the State and to the Rules of Procedure of the Public Employment Relations Board.

Dated: Albany, New York
December 18, 1981

Harold R. Newman
HAROLD R. NEWMAN, Chairman

Ida Klaus
IDA KLAUS, Member

David C. Randles
DAVID C. RANDLES, Member

7259

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of COBLESKILL CENTRAL SCHOOL DISTRICT, Employer, -and- COBLESKILL UNITED TEACHERS, NYSUT/AFT, Petitioner, -and- COBLESKILL TEACHERS ASSOCIATION, NYEA/NEA, Intervenor.	#3A-12/18/81 Case No. C-2323

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

Cobleskill Teachers Association, NYEA/NEA

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

Unit: Included: Full-time, certified classroom teachers; less than full-time, certified classroom teachers; librarians; school nurse teachers; guidance counselors and administrative assistant to the elementary principal.

Excluded: Chief school administrator; school business administrator; middle school and high school administrators; elementary school administrators; director of guidance and pupil-personnel services; itinerant substitute teachers

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with

Cobleskill Teachers Association, NYEA/NEA

and enter into a written agreement with such employee organization with regard to terms and conditions of employment, and shall negotiate collectively with such employee organization in the determination of, and administration of, grievances.

Signed on the 18th day of December, 1981
Albany, New York

Harold R. Newman, Chairman

Ida Klaus, Member

David C. Randles, Member

PERB 58.3

7260

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of COUNTY OF ALBANY (ALBANY COUNTY NURSING HOME AND ANN LEE HOME), Employer, -and- LOCAL 200, GENERAL SERVICE EMPLOYEES' UNION, SEIU, AFL-CIO, Petitioner.	#3B-12/18/81 Case No. C-2305

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

Local 200, General Service Employees' Union, SEIU, 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 representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: Full-time and regular part-time employees in the following titles: registered professional nurse, employee health services nurse, patient care coordinator, rehabilitation registered nurse

Excluded: All other employees

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with

Local 200, General Service Employees' Union, SEIU, AFL-CIO

and enter into a written agreement with such employee organization with regard to terms and conditions of employment, and shall negotiate collectively with such employee organization in the determination of, and administration of, grievances.

Signed on the 18th day of December, 1981
Albany, New York

Harold R. Newman
Harold R. Newman, Chairman

Ida Klaus
Ida Klaus, Member

David C. Randles
David C. Randles, Member

PERB 58.2