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# State of New York Public Employment Relations Board Decisions from December 14, 1984

New York State Public Employment Relations Board

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## Keywords

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

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

HUNTER-TANNERSVILLE TEACHERS' ASSOCIATION,

Respondent,

-and-

CASE NO. U-6576

HUNTER-TANNERSVILLE CENTRAL SCHOOL DISTRICT,

Charging Party.

HARRY W. FAIRBANK and KEVIN BERRY, for Respondent,

HANCOCK & ESTABROOK, ESQS. (JAMES P. BURNS, 3d, and JOHN J. McCANN, ESQS., of Counsel), for Charging Party.

BOARD DECISION AND ORDER

This matter comes to us on the exceptions of the Hunter-Tannersville Central School District (District) to a decision of an administrative law judge (ALJ) dismissing its charge against the Hunter-Tannersville Teachers' Association (Association). The charge alleges that the Association refused to negotiate pursuant to a reopener clause dealing with health insurance.[1/] The ALJ determined that the Association's

[1/]At an earlier stage of this proceeding, a hearing officer had dismissed the charge on the ground that there was no clear reopener and, therefore, the charge was one of contract enforcement over which subject matter jurisdiction did not lie. We reversed the hearing officer's decision on the ground that, in its pleadings, the Association had acknowledged that it had agreed to a contract negotiation reopener, and we remanded the matter to the ALJ. 16 PERB ¶3109 (1983). The decision now before us is that of the ALJ upon remand.

conduct fulfilled its obligations under the reopener and, therefore, satisfied its duty to negotiate in good faith.

FACTS

The "reopener" clause of the parties' agreement provides that the Association and the District shall meet to examine insurance coverage offered by companies other than the carrier. It further provides for a committee to consider alternative health coverage, including self-insurance and, "[i]f the committee finds and agrees to a different bona fide [plan offering comparable coverage,] . . . it will be adopted".

An 11-person committee was appointed consisting of 2 representatives of the District, 5 of the Association, 2 of other units, 1 retired teacher and 1 person whose reason for being on the committee is not stated. The District asserts that it submitted information to the committee indicating that the "Catskill Self-Benefits Program" provides health coverage comparable to that provided by the existing program.

The record shows that the committee met five times. At the early stages the parties explored both insurance and self-insurance alternatives to the existing program and, according to the District's own witnesses, the Association representatives appeared enthusiastic about finding an

alternative to the existing plan. However, when it appeared that no insurance carrier alternative would provide significant savings, the interest of the District focused upon self-insurance, and the Association representatives lost their enthusiasm for the work of the committee. Their further participation consisted of efforts to demonstrate the inadequacy of self-insurance plans.

The District then invited representatives of the Catskill program to make a presentation at a meeting of its Board of Education, and it urged the committee members to attend. The Association members did so reluctantly, and asked no questions of the "Catskill Program" representatives. The District asserts that this is evidence of a closed mind and surface bargaining. When, at the next meeting of the committee, the District asked the committee to vote on the "Catskill Program", the Association members refused to do so and the committee process collapsed. There were a couple of subsequent meetings between the Association and the District but the parties did not reach any agreement.

## DISCUSSION

The District's first argument is that the Association was obligated to evaluate alternative health insurance programs and to approve an alternative if it would provide

protection comparable to the existing program. Thus, according to the District, the Association violated its duty to negotiate by not approving the "Catskill Program" when it had demonstrated that the program would provide coverage at the existing level. The ALJ rejected this argument on the ground that the duty to negotiate does not contemplate that a party is required to agree to any substantive program on the basis of a showing that the program meets predetermined standards. We agree. To the extent that such an obligation might be imposed by the parties' former agreement, it is not a Taylor Law duty to negotiate but a substantive contractual requirement which we may not enforce.[2/]

The District's alternative argument is that the performance of the Association members on the committee evidenced a closed mind and constituted surface bargaining.

We find that the parties never engaged in Taylor Law negotiations over alternative health insurance options; instead, the District merely initiated a contractually provided committee process which did not constitute negotiations. Not having been called upon to negotiate, it follows that the Association did not violate its duty to negotiate in good faith.

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2/See §205.5(d) of the Taylor Law.

Furthermore, even if we were to treat the committee meetings as negotiations, the evidence shows that the Association members entered the process with an open mind, but became disillusioned as the position of the District narrowed. Moreover, as time passed both the District and the Association became less inclined to compromise. Accordingly, we would conclude that the Association's participation in the committee meetings satisfied any duty to negotiate in good faith.[3/]

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

DATED: December 14, 1984
Albany, New York

Harold R. Newman, Chairman

David C. Randles, Member

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[3/]We do not, of course, reach the question whether, as asserted by the District, the parties' agreement merely imposed upon the committee a mechanical function of determining whether a specific change in health insurance was mandated by ascertainable conditions. Such a function would not constitute negotiations within the meaning of §204.3 or §209-a.2(b) of the Taylor Law in that the parties would lack the discretion to grant or withhold agreement. Accordingly, we do not consider whether the Association members of the committee failed to perform such a function.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of

DUTCHESS COUNTY BOCES FACULTY ASSOCIATION, NEA/NY,

Respondent,

-and-

CASE NO. U-7309

DUTCHESS COUNTY BOARD OF COOPERATIVE EDUCATIONAL SERVICES,

Charging Party.

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ROBERT D. CLEARFIELD, ESQ. (HAROLD G. BEYER, JR., ESQ., of Counsel), for Respondent

PLUNKETT & JAFFE, P.C. (JOHN M. DONOGHUE and ROCHELLE J. AUSLANDER, ESQS., of Counsel), for Charging Party

BOARD DECISION AND ORDER

The charge herein was brought by the Dutchess County Board of Cooperative Educational Services (BOCES). It complains that the Dutchess County BOCES Faculty Association, NEA/NY (Association) violated its duty to negotiate in good faith by insisting upon the negotiation of a nonmandatory subject of negotiation in that it presented its demand to a fact finder.[1/] The Association does not contest the allegation that it has insisted upon the negotiation of the demand in question, but it asserts that the demand is a mandatory subject of negotiation.

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[1/] Rockville Centre Principals Association, 12 PERB ¶3021 (1979).

The contested demand is for seniority in selection of assignments. It includes a series of procedural proposals about which BOCES does not complain. BOCES objects, however, to that part of the demand which provides:

> If more than one (1) teacher has applied for the same position, the teacher best qualified for that position shall be appointed, and qualifications being substantially equal, seniority in the school system shall usually control.

The Administrative Law Judge (ALJ) ruled that the demand constitutes a mandatory subject of negotiation, and the matter now comes to us on BOCES' exceptions.

BOCES argues that the assignment of teachers is a management prerogative because Education Law §1711.5.e authorizes a school superintendent to transfer teachers. It also finds support for its position in Sweet Home CSD, 90 A.D.2d 683 (4th Dept. 1982), aff'd, 58 N.Y.2d 912 (1983).

The provisions of Education Law §1711.5.e authorizing a school superintendent to transfer teachers is not dispositive of the question whether seniority as a standard for such transfers is a mandatory subject of negotiation. The general rule is that a public employer must negotiate terms and conditions of employment, the determination of which it could have made unilaterally but for the enactment of the Taylor

Law. UFSD No. 3, Huntington v. Associated Teachers of Huntington, 30 N.Y.2d 122, 5 PERB ¶7507 (1972).[2/] Only where a statute or public policy intends such determinations to be the nondelegable responsibility of the public employer are such negotiations prohibited. Susquehanna Valley CSD v. Susquehanna Valley Teachers' Assn., 37 N.Y.2d 614, 8 PERB ¶7515 (1975).[3/]

BOCES' reliance upon Sweet Home CSD is for the proposition that the assignment of teachers is, by virtue of statute or public policy, a nondelegable responsibility. That case, like the one before us, involved the assignment of a teacher. There, the school district involuntarily transferred a music teacher from one position to another in violation of a contractual provision. The arbitrator issued an award which had two parts. The first required the District to follow the procedural rules specified in the

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2/Ordinarily, it is where statutory mandates deprive a public employer of discretion to act that negotiations are not mandated. Thus, proposals regarding maternity leave were held nonmandatory because statutory mandates of the Human Rights Law covered the matter at issue. City of Rochester, 12 PERB ¶3010 (1979).

3/Cohoes City School District v. Cohoes Teachers' Assn., 40 N.Y.2d 774, 9 PERB ¶7529 (1976), cited by BOCES in support of the proposition that the assignment of teachers is a nonmandatory subject of negotiation, merely holds that the award of teacher tenure is a nondelegable responsibility of boards of education.

contract by reviewing with the grievant all open music teacher positions which it determined to be appropriate to his qualifications and to give him the opportunity to select among them. The second directed that, at his choice, the grievant should be permitted to return to his former position. The Appellate Division affirmed the first part of the award but reversed the second, and the Court of Appeals affirmed this decision.

We find that the line between the two parts of the decision is not a clear one. On the one hand the court said:

> [T]he authority to assign and reassign teachers is essential to maintaining adequate standards in the classroom and is a nondelegable responsibility imposed upon the school superintendent subject to the approval of the board of education . . . . Public policy prevents a school district from bargaining away this responsibility . . . . (at 683)

On the other hand it upheld that part of the arbitration award which gave the grievant the right to select among job opportunities for which he was qualified, saying:

> The arbitrator, therefore, acted within his powers under the agreement when he directed the district to follow the procedural rules by reviewing with the grievant all open music teachers positions appropriate to his qualifications and giving him the opportunity to select among them. (at 684)

This is inconsistent with the court's language declaring assignment to be a nondelegable responsibility of school management.

We find no statutory bar to the negotiation of a demand for seniority in the selection of assignments. Neither do we find any clear and unambiguous judicially declared public policy that such assignments are the nondelegable responsibility of a school district. As we have already indicated, the implications of Sweet Home CSD are unclear. Furthermore, we note that the Education Law considers seniority to be an appropriate criterion for establishing the order of layoff and recall of tenured teachers.[4/]

In the absence of any clear statutory provision or public policy declaring assignment to be the nondelegable responsibility of a public employer, we affirm the decision of the ALJ that the seniority demand herein is a mandatory subject of negotiation. His decision is based upon our holding in White Plains PBA, 9 PERB ¶3007 (1976), in which we said:

> Seniority clauses in contracts always inhibit the flexibility of employers, but they do involve terms and conditions of employment. It may be that there is, on the merits, a particularly persuasive case for restricting the use of seniority. . . . Whether or not this is so should be resolved by the parties during the negotiations process. (at 3009)

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[4/]See Education Law §2585, subdivisions 3 and 4.

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

DATED: December 14, 1984
Albany, New York

Harold R. Newman, Chairman

David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of

COUNTY OF NASSAU,

Respondent,

-and- CASE NO. U-2846

ANGELINA SINICROPI,

Charging Party.

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EDWARD G. McCABE, ESQ., Nassau County Attorney, for Respondent

ANGELINA SINICROPI, pro se

BOARD DECISION AND ORDER

The charge herein was filed on August 18, 1977 by Angelina Sinicropi, a former employee of the Probation Department of Nassau County (County). It alleges that, on that day, the County seized a grievance form that Sinicropi was photocopying which complained about County conduct. The County acknowledged that it had confiscated the grievance form but it denied that it did so for the purpose of depriving Sinicropi of rights protected by the Taylor Law. According to the County, its Director of Probation (Director) took the forms to use as evidence against Sinicropi in a

disciplinary proceeding it instituted the following day.[1/]

Sinicropi was discharged as a consequence of the disciplinary proceeding, and her appeal from that discharge was dismissed by the courts.[2/]

In addition to the court appeal and the instant charge, Sinicropi filed a second charge (U-3691) in which she complained that her discharge was improperly motivated. The two charges were withdrawn by stipulation on April 10, 1979, to await resolution of the court action, and were reinstated on December 12, 1983, when the Court of Appeals upheld the discharge without reaching the improper practice issues.

The administrative law judge (ALJ) then dismissed the charge in U-3691 on the ground that it was not timely, and we

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[1/]Among other things, the disciplinary charge alleged:

> On August 18, 1977 at the main office of the Department of Probation County of Nassau contrary to specific instructions of the Director of Probation, Louis J. Milone, of the County of Nassau, you did utilize County paper and the County zerox [sic] machine for personal reasons beyond the scope of your employment, that upon being informed by Louis J. Milone, Director of Probation of the County of Nassau to cease and desist in the use of said zerox [sic] machine you did continue to do so, all of the aforesaid constituting insubordination of [sic] your part.

[2/]Sinicropi v. Bennett, 92 A.D.2d 309 (2d Dept., 1981), aff'd, 60 N.Y.2d 918 (1983).

affirmed that determination.[3/] After a hearing, he dismissed the instant charge on the ground that it merely specified a violation of §209-a.1(b), and that the record did not show that the County dominated CSEA, the union which represented Sinicropi, or meddled in CSEA's internal affairs.

Sinicropi's exceptions allege 28 instances of improper conduct by the ALJ, this Board, CSEA and the County. Many of these complain about our dismissal of U-3691. They, of course, are not considered by us because U-3691, having been decided, is no longer before this Board. Sinicropi also complains that the ALJ did not permit her to litigate the U-3691 issues in the instant proceeding, that too many adjournments were granted to the County in 1977 and 1978, which is before the stipulation of withdrawal, and that CSEA had failed to represent her fairly in the two cases.[4/] None of these are relevant to the basis of the ALJ's decision.

We are, however, sympathetic to Sinicropi's assertion that it was by inadvertence that her "quickly drafted" charge omitted references to §209-a.1(a) and (c) of the Taylor Law. These are the provisions that prohibit a public employer from interfering with the protected rights of public employees

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[3/] County of Nassau, 17 PERB ¶3078 (1984)

[4/] There is no charge against CSEA before this Board.

"for the purpose of depriving them of such rights;" or discriminating against them because of their exercise of such rights in order to discourage the exercise of such rights. Reviewing the record, we find that the instant case was litigated both by Sinicropi and the County, without objection, as if it alleged a violation of §209-a.1(a) and (c). Thus, the County was not prejudiced by Sinicropi's failure to cite those subdivisions. Moreover, Sinicropi, a pro se litigant, was thereby not made aware of the need to seek an amendment of her charge, an opportunity that would have been afforded her had she sought it.

Accordingly, we do not affirm the ALJ's disposition of the charge herein on the basis of Sinicropi's citation of the wrong subdivision of the Taylor Law. The ALJ's reliance upon East Moriches Teachers Assn, 14 PERB ¶3056 (1981), is not compelling. There, we refused to base a decision upon facts which were not alleged in the charge. The mere failure to cite the precise subdivision of the Taylor Law that is applicable to facts which were alleged is a different matter.

Having reached the merits of the charge, we, nevertheless, conclude that it must be dismissed. The County had acted within its rights when it told Sinicropi not to type or photocopy grievances or conduct other personal business during working time, and not to use County office equipment for such purposes. The record shows that Sinicropi disregarded this instruction, the instant grievance being

typed and photocopied on office equipment. The Director told her to stop photocopying the grievance and he turned off the photocopy machine. Sinicropi disregarded these instructions, restarted the machine and continued to photocopy her grievance. At this point, the Director took the papers for use as evidence of insubordination in the disciplinary proceeding which ensued.

On the facts before us, we do not find that the Director's action was motivated by an intention to interfere with Sinicropi's Taylor Law rights. While a public employer's seizure of grievance forms might, if unexplained, be sufficient to establish improper motivation, there is an adequate explanation here. Accordingly, no improper practice was shown to have occurred.

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

DATED: December 14, 1984
Albany, New York

Harold R. Newman, Chairman

David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of

LOCAL 343, IAFF, AFL-CIO,

Respondent,

-and-

CASE NO. U-7428

CITY OF SARATOGA SPRINGS,

Charging Party.

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GRASSO and GRASSO (Robert L. O'Keefe, Esq., of counsel), for Respondent

DAVID H. WILDER, ESQ., Assistant City Attorney, for Charging Party

## BOARD DECISION AND ORDER

This matter comes before us on the exceptions of the City of Saratoga Springs to a decision of an administrative law judge (ALJ) finding a demand for emergency medical training to be a mandatory subject of negotiation.[1/]

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[1/] This and a companion case which the ALJ dealt with in a consolidated decision (U-7461), involved demands submitted to an interest arbitrator. No exceptions were taken to the ALJ's resolution of the other specifications of the two charges.

The demand is:

> The City shall pay the cost of emergency medical technician (EMT) training on behalf of any member requesting such training, and provide such necessary release time off from duty without loss of pay as may be required in order for the members to attend such training sessions.

The ALJ concluded that there are two parts to the demand. One is for paid time off to take emergency medical training. The other is that the City pay the cost of such training. She determined that time off with pay is a mandatory subject of negotiation whether or not the employer derives any benefit from the employees use of his time off. She also determined that reimbursement of the cost of training is simply a form of compensation and is, therefore, a mandatory subject of negotiation, whether or not the training is work related.

In its exceptions, the City argues that the proposal would interfere "with the exercise of a management prerogative to determine whether, on a given work day, the employer will provide its employees with training or require them to perform their regular job duties." The City also argues that the demand is nonmandatory because it interferes with the management prerogative of deciding what training is required to assist employees in the performance of their regular job duties.

We reject these arguments and affirm the conclusions of the ALJ. We do not read the first demand as affecting the

right of the City to determine the number of employees it requires to work on any given day. To do so would logically indicate that a demand for personal leave is not a mandatory subject of negotiation.

The City's second argument is based upon a reading of the demand as indicating that the City will have to require emergency medical training. The demand does not do so. It merely permits an employee to seek such training. An employee might do so because it gives him a useful skill in dealing with emergencies involving family and friends no less than because the skill might be helpful in dealing with fire victims.

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

DATED: December 14, 1984
Albany, New York

Harold R. Newman

Harold R. Newman, Chairman

David C. Randles

David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of

COUNTY OF ONEIDA and ONEIDA COUNTY SHERIFF,

Joint Employer,

-and-

CASE NO. C-2773

ONEIDA COUNTY DEPUTY SHERIFF'S BENEVOLENT ASSOCIATION,

Petitioner,

-and-

TEAMSTERS LOCAL NO. 182,

Intervenor.

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BOARD DECISION ON MOTION

On November 14, 1984, we affirmed a decision of the Director of Public Employment Practices and Representation (Director), ordering an election in a unit of all full-time employees of the Oneida County Sheriff's Department (17 PERB ¶3112). The matter had come to us on the exceptions of Teamsters Local No. 182 (Teamsters), the incumbent employee organization, which had asserted that the petition had been filed without any proper authorization from the employee organization on behalf of which it was submitted. The basis of this position was that the president of the

petitioner, who had filed the petition, and its directors, who had authorized the filing, were all elected improperly in that the election did not satisfy the "election mandates" of the Not-For-Profit Corporation Law.

The Director had rejected this argument on the ground that the election of petitioner's officers was an internal union matter and

> it would not effectuate the purposes of the Act to allow for collateral litigation into the internal affairs of the petitioner, which exercise will only subject the [representation] election process to lengthy delay.

We affirmed the Director's decision, noting among other things, that "[t]here is no requirement in the Taylor Law that a union must be incorporated for its petition to be processed, nor that the president of the local file the petition." We also noted that whether or not he was properly elected pursuant to the Not-For-Profit Corporation Law was irrelevant in that the petitioner's president had been authorized to file the petition by its directors.

The matter now comes to us on the Teamsters' motion for reconsideration. It argues that the authorization of the petitioner's directors is no more efficacious than the filing by the petitioner's president standing alone because both he and they were improperly elected.

Having considered this argument of the Teamsters, we nevertheless adhere to our earlier decision. We do so for the reasons set forth in the Director's decision. Moreover, as we said in our earlier decision:

> [I]f a majority of the petitioner's members do not support the filing of the petition, they will have the opportunity of demonstrating their position by denying it their support in the election ordered by the Director.

NOW, THEREFORE, WE ORDER that the motion herein be, and it hereby is, denied

DATED: December 14, 1984
Albany, New York

Harold R. Newman

Harold R. Newman, Chairman

David C. Randles

David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of

VILLAGE OF HAMBURG,

Employer,

-and- CASE NO. C-2836

HAMBURG POLICE BENEVOLENT ASSOCIATION,

Petitioner,

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CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

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

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

IT IS HEREBY CERTIFIED that the Hamburg Police Benevolent Association has been designated and selected by a majority of the employees of the above named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: All employees in the Police Department of the Village.

Excluded: Part-time employees, civilian employees, seasonal employees, the Chief and Assistant Chief of the Department, and employees having the rank of Captain or Lieutenant.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with the Hamburg Police Benevolent Association and enter into a written agreement with such employee organization with regard to terms and conditions of employment of the employees in the unit found appropriate, and shall negotiate collectively with such employee organization in the determination of, and administration of, grievances of such employees.

DATED: December 14, 1984
Albany, New York

Harold R. Newman

Harold R. Newman, Chairman

David C. Randles

David C. Randles, Member

#3B-12/14/84

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of

TOWN OF GUILDERLAND,

Employer,

-and-

CASE NO. C-2817

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

Petitioner,

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CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

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

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

IT IS HEREBY CERTIFIED that the 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.

Unit: Included: Dispatchers, Animal Control Officers, and Clerk Typist.

Excluded: All other employees.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with the Civil Service Employees Association, Inc., Local 1000, AFSCME/AFL-CIO and enter into a written agreement with such employee organization with regard to terms and conditions of employment of the employees in the above unit, and shall negotiate collectively with such employee organization in the determination of, and administration of, grievances of such employees.

DATED: December 14, 1984
Albany, New York

Harold R. Newman

Harold R. Newman, Chairman

David C. Randles

David C. Randles, Member