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State of New York Public Employment Relations Board Decisions from July 19, 1985

New York State Public Employment Relations Board

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State of New York Public Employment Relations Board Decisions from July 19, 1985

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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

NORTHPORT-EAST NORTHPORT UNION FREE
SCHOOL DISTRICT,

Employer,

-and-

CASE NO. C-2884

ROSE BOCCIA et al.,

Petitioner,

-and-

LOCAL 144, DIVISION 100, SERVICE
EMPLOYEES INTERNATIONAL UNION, AFL-CIO,

Intervenor.

BOARD DECISION AND ORDER

On November 29, 1984, Rose Boccia and others employed at the Northport-East Northport Union Free School District (employer) filed a timely petition for decertification of Local 144, Division 100, Service Employees International Union, AFL-CIO (intervenor), the current negotiating representative for employees in the following unit:

Included: Cook, Assistant Cook, Full and Part-Time Food Service Workers, Lead Food Service Worker and Food Service Worker Driver.

Excluded: All other employees.

Upon consent of the parties, a secret ballot election was held on June 14, 1985. The results of this election show that the majority of eligible employees in the unit

who cast valid ballots no longer desire to be represented for purposes of collective negotiations by the intervenor.^{1/}

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

DATED: July 19, 1985
Albany, New York

Harold R. Newman
Harold R. Newman, Chairman

David C. Randles
David C. Randles, Member

Walter L. Eisenberg
Walter L. Eisenberg, Member

^{1/} Of the 41 ballots cast, 5 were for representation and 36 against representation. There were no challenged ballots.

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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

NEW YORK STATE PUBLIC EMPLOYEES
FEDERATION, AFL-CIO,

Respondent,

-and-

CASE NO. U-7950

DAVID G. LEEMHUIS,

Charging Party.

DAVID LEEMHUIS, pro se

BOARD DECISION AND ORDER

This matter comes to us on the exceptions of David G. Leemhuis to a decision of the Director of Public Employment Practices and Representation (Director) dismissing Leemhuis' charge against the New York State Public Employees Federation, AFL-CIO (PEF). Leemhuis is an employee of the State of New York, and is in a negotiating unit represented by PEF. He is not a member of PEF, but pays an agency shop fee.

In his charge Leemhuis complains that PEF violated Section 209-a.2(a) of the Taylor Law, (1) by failing to refund the proper amount of his agency shop fee payment for the fiscal year ending March 31, 1984,^{1/} and (2) by failing to provide

^{1/}Section 208.3(a) of the Taylor Law requires the refund of that "part of an agency shop fee deduction which represents the employee's pro rata share of expenditures by the organization in aid of activities or causes of a political or ideological nature only incidentally related to terms and conditions of employment."

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sufficient financial information along with such refund. The Director dismissed the charge on the ground that it did not allege facts which constitute a violation of the Taylor Law,^{2/} the first specification on the ground that a complaint relating to the amount of money refunded does not fall within the jurisdiction of this Board, the second on the ground that the facts alleged indicated that PEF provided sufficient financial information at the time of the refund.

Both parts of the Director's determination are based upon our decision in Hampton Bays Teachers Association, 14 PERB ¶3018 (1981). With respect to the first specification we held that this Board does not have jurisdiction to consider a charge alleging only that the amount of an agency shop fee refund is incorrect. Leemhuis contends that this holding was wrong and should be overruled. In support of this proposition he cites Leemhuis v. PEF, 17 PERB ¶7518 (Sup. Ct., Sch. Co., 1984) for the proposition that this Board has jurisdiction over complaints that a refund is inadequate, as evidenced by the court's direction that he exhaust his remedies before PERB before filing a law suit.

The court decision does not support Leemhuis. In stating that he failed to exhaust his remedies before PERB, the lower court, citing Hampton Bays, noted "that PERB will

^{2/}Section 204.2 of our Rules of Procedure.

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refuse to review the inadequacies of an agency shop fee rebate . . .", but that Leemhuis failed to exhaust his remedies before PERB by not raising other issues before this agency. We also note that the State Supreme Court has recently confirmed a decision of this Board which restated the proposition that we do not have jurisdiction over charges merely complaining about the inadequacies of the amount of a refund, Bodanza v. PERB, 18 PERB ¶7008 (Sup. Ct., Albany Co., 1985).

Relating to Leemhuis' second specification, we held in Hampton Bays that the minimum information that must be provided by an employee organization along with an agency shop refund is

the basis of the Association's determination of the amount of the refund, including identification of those disbursements of the Association and its affiliates that are refundable and those that are not.^{3/}

The Director found, and the record establishes, that the Federation provided such information to Leemhuis. He argues, however, that the Federation is required to go further and provide "clear and convincing" evidence of the accuracy of the information it provides. We find that the Taylor Law does not impose such a burden upon an employee

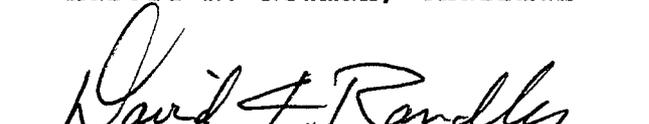
^{3/}14 PERB ¶3018, at p. 3031 (1981). See also footnote 2 of the cited decision which elaborates upon the extent of the duty to provide information.

organization. Public Employees Federation v. PERB, 93 AD2d 910, 16 PERB ¶7016 (3d Dept., 1983) cited by Leemhuis does not support his position. In that decision the Appellate Division cited, with approval, our Hampton Bays decision and the standard contained therein for information to be provided along with agency shop fee refunds.

ACCORDINGLY, WE AFFIRM the decision of the Director, and,
WE ORDER that the charge herein be, and it
hereby is, dismissed.

DATED: July 19, 1985
Albany, New York


Harold R. Newman, Chairman


David C. Randles, Member


Walter L. Eisenberg, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

BOARD OF EDUCATION OF THE CITY SCHOOL
DISTRICT OF THE CITY OF NEW YORK and
UNITED FEDERATION OF TEACHERS,

Respondent,

-and-

CASE NO. U-7377

BRUCE W. MARKENS,

Charging Party.

JERRY ROTHMAN, ESQ., for the Board of Education of
the City School District of the City of New York

JAMES R. SANDNER, ESQ. (STEPHEN MENDELSON, ESQ., of
Counsel), for the United Federation of Teachers

BRUCE W. MARKENS, pro se

BOARD DECISION AND ORDER

In November 1982, the Board of Education of the City School District of the City of New York (District) decided to close Hughes High School and to reopen it as Humanities High School. It informed the United Federation of Teachers (UFT) that it did not consider itself bound to offer the Hughes teachers positions at Humanities because the academic program would be different. Markens was a teacher at Hughes and served as UFT Chapter Chairman

there. He wrote several letters to UFT on his own behalf and on behalf of his fellow teachers complaining that the District's refusal to assign them to Humanities was a violation of the collective bargaining agreement. UFT filed a grievance on behalf of all the affected teachers. Markens and several of the other teachers also filed individual grievances.

While pressing for his return to Hughes/Humanities, Markens applied to several other schools as alternatives. Among the other schools to which he applied were Middle College High School and the High School of Art and Design. However, when school reopened in September 1983, Markens was not assigned to any of the three. He then filed a grievance complaining that he was not appointed to Middle College. He filed no grievance with respect to Art and Design but complained that he was not appointed there because UFT feared that he might run successfully for the position of Chapter Chairman at that school, thereby depriving a favored union member of the position.

Eventually the UFT grievance involving Hughes/Humanities was settled. By its terms, Markens was to be returned to that school on February 1, 1984, if there were a vacancy, and in any event, not later than September 1, 1984. In fact, Markens was assigned to

Humanities in February 1984. At this point, UFT ceased processing Markens' grievance regarding Middle College. Its reason was that it had understood Markens' primary interest to be his return to Hughes/Humanities. It did not, however, tell this to Markens, the record indicating that there was some confusion in their understanding of one another.

Markens' charge contains several specifications complaining about UFT. The complaints relate to: (1) a claimed failure to process his Humanities grievance; (2) a claimed failure to keep him informed as to the progress of the UFT Humanities grievance; (3) a claimed failure to process his Middle College grievance expeditiously; (4) a claimed failure to inform him that it was dropping that grievance; and (5) UFT's alleged collusion with the District, in depriving him of a position at Art and Design.

The charge also specifies several violations by the District. These include complaints that the District violated its contract with UFT in not appointing him to Humanities, and that it acted collusively with UFT in denying him an appointment to Art and Design.

As the charge was unclear, the ALJ found it necessary to hold three pre-hearing conferences to clarify it. The last of these was held immediately prior to the first

scheduled hearing. At that time, the ALJ dismissed the charges against the District. Those complaining about a violation of the collective bargaining agreement were dismissed on jurisdictional grounds. Those complaining about collusion between the District and UFT in denying Markens an appointment to Art and Design were dismissed on the ground that the charge contained no relevant allegations of fact, there being only conclusory statements.

The ALJ dismissed Markens' specifications against UFT complaining of collusion in denying him an appointment to Art and Design for the same reason. Dealing with Markens' specifications alleging a violation of duty of fair representation in the handling of the Humanities and Middle College grievances, the ALJ found that the evidence did not establish any violation.

The matter now comes to us on Markens' exceptions. In addition to appealing from the ALJ's decision dismissing his several specifications, he also complains that: (1) the ALJ denied him a hearing on the Art and Design specifications; (2) the ALJ held the first hearing immediately after the third pre-hearing conference instead of waiting five days as required by §204.6 of our Rules of

Procedure;^{1/} and (3) the ALJ permitted UFT to present evidence on January 7, 1985 instead of closing the hearing on November 29, 1984.

Having reviewed the record, we affirm the decision of the ALJ.

With respect to Art and Design, the charge did not contain allegations of fact as required by §204.1(b)(3) and §204.2(a) of our Rules. Accordingly, the ALJ properly dismissed these allegations notwithstanding the conclusory statements alleging collusive action between the District and UFT. It follows that the ALJ properly refused to hold a hearing on these specifications of the charge.

With respect to Markens' complaint that there was a violation of the collective bargaining agreement, this Board does not have jurisdiction over such an allegation.^{2/}

The record supports the ALJ's determination that UFT kept Markens sufficiently informed as to the progress regarding the Humanities grievance. The ALJ was also

^{1/}Rules, §204.6 provides:

At least five working days prior to the scheduled date for the formal hearing, the administrative law judge designated by the Director shall hold a pre-hearing conference for the purpose of clarification of issues.

^{2/}Civil Service Law, §205.5(d).

correct in determining that UFT's handling of the Humanities grievance was reasonable and appropriate.

The ALJ properly determined that there was no violation of the duty of fair representation in UFT's handling of the Middle College grievance. While it did not tell Markens its reasons for not pressing the grievance after it won him reinstatement to Humanities, this failure was a result of a misunderstanding and did not amount to gross negligence or irresponsibility. The ALJ complied with Rule §204.6. The third pre-hearing conference, which was held the same day as the hearing, was nothing more than an off-the-record discussion which was held to further clarify issues that had not been made clear during the two prior conferences. We do not read this Rule as precluding such an off-the-record discussion before the commencement of a hearing.

It was not an abuse of discretion for the ALJ to grant UFT an adjournment in order to present its evidence^{3/} because several of Markens' causes of action were made clear only on the day of hearing.

^{3/}Rules, §204.7(k) provides:

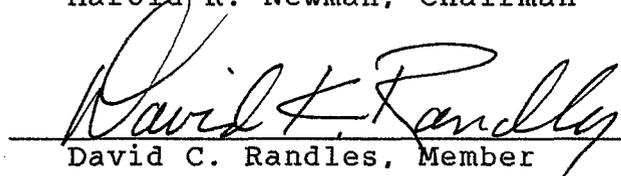
At the discretion of the administrative law judge, the hearing may be continued from day to day or to a later day or another place, by announcement thereof at the hearing or by other appropriate notice.

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

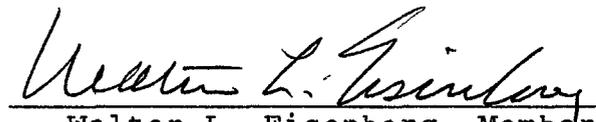
DATED: July 19, 1985
Albany, New York



Harold R. Newman, Chairman



David C. Randles, Member



Walter L. Eisenberg, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

COUNTY OF ST. LAWRENCE,

Respondent,

-and-

CASE NO. U-7957

ST. LAWRENCE COUNTY UNIT #8400, CIVIL
SERVICE EMPLOYEES ASSOCIATION, AFSCME,

Charging Party.

STEPHEN J. EASTER, COUNTY ATTORNEY, for Respondent

ROEMER & FEATHERSTONHAUGH, P.C. (CLAUDIA R.
MCKENNA, ESQ., of Counsel), for Charging Party

BOARD DECISION AND ORDER

The charge herein was filed by the St. Lawrence County Unit #8400, Civil Service Employees Association, AFSCME (CSEA). It alleges that the County of St. Lawrence (County) violated §209-a.1(e) of the Taylor Law by not paying longevity increments after December 31, 1984, as required by a collective bargaining agreement which expired that day. In its answer the County asserts that the expired agreement contained a sunset provision applicable to longevity pay which relieved it of any obligation to make such payments after December 31, 1984.

The Administrative Law Judge (ALJ) dismissed the charge without reaching its merits because she found that the collective bargaining agreement had not expired. Before the expiration of that agreement, the parties commenced negotiations for its successor. In connection with those negotiations the parties agreed upon ground rules which were executed on September 13, 1984, by Stephen Ragan, a CSEA field representative, and John Krol, Administrative Assistant to the County Board of Legislators. One of the ground rules was: "The present contract will remain in effect until a new agreement is reached".

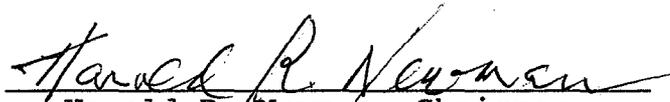
The ALJ determined that the matter is governed by City of Saratoga Springs, 18 PERB ¶3009 (1985), in which we found that an extension of benefits clause in a collective bargaining agreement precluded a violation of §209-a.1(e). The matter now comes to us on the exceptions of CSEA. It argues that agreed upon ground rules for negotiations are distinguishable from an extension of benefits clause in a collective bargaining agreement. It contends that the ground rules do not meet the criteria for an agreement set forth in §201.12 of the Taylor Law and that they are, therefore, not enforceable as a contract right.

We find no convincing basis in either law or logic for

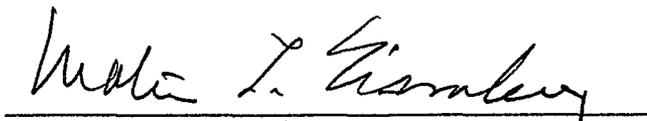
distinguishing between a clause of an agreed upon ground rule and one of a prior collective bargaining agreement with respect to the extension of the prior agreement. In the course of determining the ground rules, the parties entered into, and executed, what we conclude to be a supplementary written agreement providing for the extension of that basic agreement. Accordingly, we affirm the determination of the ALJ that the parties' basic agreement has not expired and that no violation of §209-a.1(e) of the Taylor Law has occurred^{1/}.

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

DATED: July 19, 1985
Albany, New York


Harold R. Newman, Chairman


David C. Randles, Member


Walter L. Eisenberg, Member

^{1/}There is a grievance pending which raises the question whether the County violated the collective bargaining agreement by failing to pay increments. Nothing herein shall preclude CSEA from renewing its charge before this Board if the grievance fails because a court or an arbitrator concludes that the basic agreement expired in that it was not extended.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

STATE OF NEW YORK and LOCAL 418,
CIVIL SERVICE EMPLOYEES ASSOCIATION,
INC., LOCAL 1000, AFSCME, AFL-CIO,

Respondents,

-and-

CASE NO. U-5998

LUIS DIAZ,

Charging Party.

JOSEPH M. BRESS, ESQ. (MAURICE L. MILLER, ESQ. and
SCOTT E. KRESCH, ESQ., of Counsel), for the State
of New York

ROEMER AND FEATHERSTONHAUGH, P.C. (MICHAEL J. SMITH,
ESQ, of Counsel), for Local 418, Civil Service
Employees Association, Inc., Local 1000, AFSCME,
AFL-CIO

AUGUST J. GINOCCHIO, ESQ., for Luis Diaz

BOARD DECISION AND ORDER

Luis Diaz, a long-time employee of New York State's Department of Mental Hygiene, was suspended and then fired by the State of New York (State) for allegedly abusing a patient at the Pilgrim Psychiatric Center. He was a member of the negotiating unit represented by Local 418, Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO (CSEA), and he sought its assistance in filing a grievance.

CSEA's contract with the State provided for mutually exclusive alternative procedures. Ordinary grievances were to be filed with the State, and could go through several steps culminating in arbitration, but where an employee was

suspended there was an option of seeking immediate arbitration. To invoke this procedure, the demand for arbitration had to be filed with the American Arbitration Association (AAA) rather than with the State.

Diaz, after consultation with Bertini, the CSEA grievance representative, decided on immediate arbitration. However, Bertini filed the papers with the State instead of with the AAA. He did not discover his mistake until the time for filing with the AAA had passed. When he did so file, the State objected that the filing was not timely and the arbitrator dismissed the grievance.

Using a private attorney, Diaz challenged the arbitrator's award and he was successful at Special Term. The State appealed and CSEA supported the position of the State. The Special Term decision was reversed and the arbitration award was reinstated.

In the charge herein Diaz complains:

1. That the State coerced two of his fellow employees into making statements that were critical of him. The Administrative Law Judge (ALJ) dismissed this specification on the ground that it did not constitute a violation of the Taylor Law. Diaz' exceptions challenge the ruling.
2. That CSEA was grossly negligent and irresponsible in misfiling the demand for arbitration. The ALJ dismissed this specification on

the ground that Bertini's conduct constituted no more than ordinary negligence. Analyzing our decisions and those of the NLRB and the various federal courts in duty of fair representation cases, the ALJ concluded that ordinary negligence is not sufficient to constitute a violation of that duty. The ALJ also rejected, as irrelevant, the proposition that if Bertini had been better trained by CSEA, he would have avoided his mistake. Diaz' exceptions challenge these conclusions.

3. That CSEA had a special obligation to him, by reason of its negligence, which it violated by not supporting his challenge to the dismissal of the arbitration award. Moreover, according to Diaz, CSEA compounded its violation of this obligation by supporting the State's appeal from a court decision finding merit in this challenge.

This specification duplicates one made in an earlier charge. That charge was dismissed by this Board in Local 418, CSEA (Diaz), 16 PERB ¶3108 (1983), and our decision was affirmed by the State Supreme Court, Luis F. Diaz v. PERB and Local 418, CSEA, 17 PERB ¶7013 (Albany Co., 1984). The ALJ determined that this specification should be dismissed on the grounds of res judicata. Diaz' exceptions challenge this determination.

We affirm the determination of the ALJ that the specification of the charge complaining about the conduct of the State does not allege a violation of the Taylor Law. We also affirm his determination that the specification of the charge complaining about CSEA's conduct with respect to the appeal from the arbitration award is barred by res judicata. The remaining specification, that CSEA acted irresponsibly or was grossly negligent by reason of Bertini's conduct and the inadequacy of the training that it gave Bertini, requires further consideration.

The ALJ correctly stated that the test for whether a union violates its duty of fair representation is to ascertain whether its action was improperly motivated, irresponsible or grossly negligent. This test was articulated by us in Nassau Educational Chapter, CSEA, Inc., 11 PERB ¶3010 (1978), and is consistent with the weight of opinion in the private sector.^{1/} There is no record evidence that CSEA was

^{1/}The opinion of the ALJ provides a thorough analysis of the varient opinions of the several circuit courts. These range from the 7th Circuit's position that only intentional misconduct can establish a breach of the duty of fair representation, even grossly negligent mistakes not being sufficient, to that of the 6th Circuit which has opined that a grievance representative's good faith ignorance of controlling contractual provisions might constitute a violation. The ALJ's decision also correctly reports the majority view, that negligence alone does not establish a breach of the duty of fair representation, but egregious conduct does establish such a breach.

improperly motivated either in its handling of the grievance or its training of the grievance representative. Attention must therefore be focused on whether CSEA's conduct was irresponsible or grossly negligent.

In resolving this question, we find it necessary to define these terms with more precision than previously required. New York Jurisprudence draws a distinction between ordinary negligence and gross negligence.^{2/} It indicates that ordinary negligence involves the absence of that degree of care and vigilance which a reasonable person would use. Gross negligence, on the other hand, is explained as a failure to exercise even slight diligence. Another perspective on the meaning of these words can be gleaned from Penal Law §15.05 which defines both recklessness and criminal negligence, the criminal law analogs of the civil law concepts of irresponsibility and gross negligence.

The Penal Law indicates that a reckless person is one who:

is aware of and consciously disregards a substantial and unjustifiable risk The risk must be of such a nature and degree that disregard thereof constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation.

A criminally negligent person, on the other hand, is one who:

^{2/41} NY Jur., Negligence, §27.

fails to perceive a substantial and unjustifiable risk The risk must be of such a nature and degree that disregard thereof constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation.

The difference between recklessness or irresponsibility on the one hand and criminal negligence or gross negligence on the other goes to the knowledge of the negligent person. In both instances, however, the risk taken by the negligent person must be egregious or a gross deviation from what a "reasonable person would observe in the situation." Thus, while the culpability of the grossly negligent person is obviously less than that of the irresponsible offender, it is appreciably greater than that required for finding ordinary negligence by reason of the degree of the risk involved and the gross deviation from ordinary standards of care. Whether or not CSEA's conduct violated these standards involves a conclusion of fact and not of law.

The first action of CSEA that is alleged to be irresponsible or grossly negligent is that Bertini misfiled the grievance. This alone is clearly insufficient to indicate irresponsibility or gross negligence. The situation, however, is complicated by the fact that after Bertini filed the grievance, he was advised by the State's designee for agency level hearings that he should check on the matter because no arbitration had been set up. Alerted by this cautionary advice, Bertini made some inquiries to

ascertain whether he had followed the correct procedure. A local CSEA field representative was not sufficiently knowledgeable to correct his mistake and CSEA's administrator of arbitrations was on vacation. Accordingly, Bertini did not discover his error in time.

We find that Bertini was negligent in his handling of Diaz' grievance in that his failure to read the instrument establishing the grievance procedure carefully evidenced the absence of that degree of care that a reasonable person would have used under the circumstances. We do not find, however, that this omission amounted to gross negligence, since the language of the instrument is not so easily understood. Further, his efforts after the filing did not constitute a gross deviation from the standard of conduct that a reasonable person would observe in the situation as his questioning of other CSEA representatives did not disclose his filing error, and the information given to him by the State's representative did not apprise him, with certainty, that there had been a mistake.

It follows a fortiori that Bertini's conduct was not irresponsible as Bertini did not know of, and disregard, the risk that Diaz' grievance would not qualify for arbitration.

Rejecting the ALJ's view that the issue is irrelevant, we next address the question of whether CSEA was irresponsible or grossly negligent in that it did not provide adequate training to its grievance representative or provide

sufficient organizational support for a neophyte. The record shows that Bertini had been appointed to his position only a few months prior to the filing of the Diaz grievance and that Diaz' case was his first involving a suspended employee. It further indicates CSEA's expectation that its grievance representatives would learn by on-the-job exposure to actual situations. This approach involves some risk. CSEA contends, however, that its conduct does not constitute irresponsibility or gross negligence. We disagree.

The right of public employees to be represented in grievances is one of the most important afforded by the Taylor Law.^{3/} Indeed, it is one of the fundamental reasons why employee organizations are granted certification or recognition.^{4/} Although, in particular cases, an employee organization may decide not to file or support a grievance,^{5/} it must evaluate and process grievances conscientiously.^{6/} By delegating its responsibility to represent its unit

^{3/}Section 203 of the Taylor Law.

^{4/}Section 208.1(a) of the Taylor Law.

^{5/}Scio-Allentown Teachers Assn, 10 PERB ¶3050 (1977).

^{6/}Compare Union of Security Personnel of Hospitals, 251 NLRB 219, 1983-84 CCH NLRB Decisions ¶15,911 (1983), in which a union was found to violate the duty of fair representation because its handling of a grievance was perfunctory.

members in grievances to a representative who is inadequately prepared to perform this function and without providing that representative with adequate organizational support, an employee organization violates a fundamental responsibility. This is true whether the representative is a paid employee of the employee organization or volunteer fellow employee of the grievants.

At the oral argument, CSEA pointed out that Bertini had been appointed a grievance representative only a few months before Diaz sought his assistance, and it argued that, by reason of its size, the number of its grievance representatives, and the turnover among such representatives, it could not maintain a fully trained cadre of grievance representatives. Given the importance of this post, we are not persuaded by this argument. On the contrary, in the absence of evidence as to the efforts it made to satisfy its obligation to provide adequately trained grievance representatives to its unit members, CSEA's argument suggests that it made a value judgment to try to represent unit members with inadequately trained grievance representatives. If so, it may have consciously disregarded a substantial and unjustifiable risk that Bertini would not perform his assignment adequately, in which event its conduct would have been irresponsible. We do not, however, have to reach this conclusion to find that CSEA violated its duty of fair

representation to Diaz. It is sufficient that we find that it failed to apprehend the risk, that such failure constituted a gross deviation from the standard of conduct that it should reasonably be held to, and that such failure had a proximate relationship to Bertini's mistake in the filing for arbitration.

The last substantive matter that we address is an argument raised by CSEA that it cannot be found to have violated its duty of fair representation because its conduct was not "deliberate" and that §209-a.2 specifies that only actions taken deliberately may constitute improper employee organization practices.

We find that the use of the word "deliberate" in §209-a.2 does not mean that a violation occurs only when an employee organization intends the consequences of its action. It is sufficient that the action or omission was deliberate in that the conduct itself, rather than its consequence, was intended. This is made clear by §209-a.1 of the Taylor Law which specifies employer improper practices. There, too, we find reference to the word "deliberately" but for some violations that word is supplemented by the phrase, "for the purpose of". In that context, deliberately must mean that the act is intended while "for the purpose of" must mean that the consequences are intended.

Having determined that CSEA violated its duty of fair representation to Diaz by not furnishing him with an

adequately trained grievance representative, we are confronted with the question of what remedy is appropriate. The Taylor Law provides that an offending party may be directed to take such affirmative action as will compensate an employee for lost wages, but not to pay exemplary damages.^{7/} Applying this principle here, we note the holding of the United States Supreme Court that a union may not be held liable for those damages suffered by an employee because of the employer's alleged breach of contract, but increases, if any, in those damages caused by the union's failure to process a grievance may properly be charged to the union.^{8/} Thus, the 7th Circuit^{9/} refused to enforce an order of the NLRB directing a union to make whole an employee who had been discharged by her employer. It indicated that absent a determination on the merits that the employee was improperly discharged, the make whole remedy might constitute a windfall for her and reward her for her misconduct, while constituting exemplary damages against the union.

^{7/}CSL §205.5(d).

^{8/}Vaca v. Sipes, 386 U.S. 171 (1967) at 195.

^{9/}United Steel Workers v. NLRB, 692 F.2d 1052, 95 LC ¶13,824 (1982).

Unfortunately, we cannot order that CSEA submit this matter for a determination on the merits by an arbitrator because there has already been a determination that arbitration is barred. Under such circumstances, in the private sector, the normal procedure where the union has violated its duty of fair representation by ineptly filing a grievance^{10/} is to order the union to pay the claimant's fees for independent counsel^{11/} in connection with a law suit to be filed by the claimant against his employer under §301 of the Labor Management Relations Act.^{12/} Such an action is available in the private sector where a claimant has been denied the opportunity to arbitrate the merits of his claim by reason of the union's violation of its duty of fair representation.

No New York State statute parallels LMRA §301. However, the Appellate Division 4th Department has ruled that none is required because the right to bring such an action is grounded in the common law of this State.^{13/}

^{10/}See Dutrisac v. Caterpillar Tractor Co., 511 F. Supp. 719, 95 LC ¶13,765 (ND, Cal., 1981).

^{11/}This is done where, as here, the union cannot satisfy its duty to represent the employee in an action against the employer because its interests and those of the employee have become adverse.

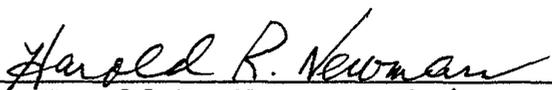
^{12/}29 U.S. §185.

^{13/}Jackson v. Regional Transit Service, 54 A.D.2d 305 (1976).

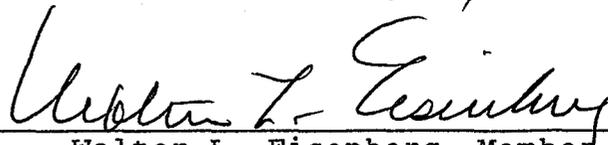
We find that it is an appropriate remedy to direct CSEA to pay Diaz' reasonable legal fees and expenses in a common law action which he may choose to bring against the State. In doing so, we express no opinion as to whether the State may successfully raise procedural defenses to a judicial consideration of the merits of its discharge of Diaz.^{14/}

NOW, THEREFORE, WE ORDER CSEA to reimburse Diaz for his reasonable legal fees and expenses in connection with a lawsuit against the State for unlawful discharge, should he choose to bring such a lawsuit.

DATED: July 19, 1985
Albany, New York


Harold R. Newman, Chairman


David C. Randles, Member


Walter L. Eisenberg, Member

^{14/}It is premature to consider alternative procedures for ascertaining whether Diaz was improperly discharged. Cf. United Steel Workers v. NLRB, supra, and Goolsby v. City of Detroit, ___ Mich. ___ (Dec. 10, 1984) at fn. 14.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

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

Respondent,

-and-

CASE NO. U-6953

BEATRICE KAUDER,

Charging Party.

JAMES R. SANDNER, ESQ. (STEPHEN MENDELSON, ESQ., of
Counsel), for Respondent

BEATRICE KAUDER, pro se

BOARD DECISION AND ORDER

This matter comes to us on the exceptions of Beatrice Kauder to a decision of an Administrative Law Judge (ALJ) dismissing her charge against the United Federation of Teachers, Local 2, AFT, AFL-CIO (UFT). Kauder had worked for the City School District of the City of New York (District) for three years as a secretarial intern and then became a regular school secretary. The District gave her one year's salary credit for her three years' work as a secretarial intern. Claiming that she was entitled to three years' salary credit, Kauder asked UFT to file a grievance on her behalf, but UFT refused to do so.

The charge alleges that UFT breached its duty of fair representation to Kauder in that 1) it refused to file the

grievance, and 2) it gave her an inadequate and incorrect explanation for its refusal to do so.

The ALJ dismissed the first specification, finding that UFT refused to file the grievance because it concluded that Kauder was only entitled to one year's salary credit for her three years' work as a secretarial intern. He dismissed the second specification, finding that it gave her a full and correct explanation.

Reviewing the record, we affirm the decision of the ALJ. UFT concluded that Kauder's right to salary credit for her work as a secretarial intern is determined by Part C of §491 of the bylaws of the District's Board of Education. It provides that salary credit for experience as a school secretary "may be allowed as follows:

For two years of such experience . . . 1 year
For four years of such experience. . . 2 years"

As Kauder had more than two but less than four years of experience as a secretarial intern, UFT agreed with the District's action allowing her one year's salary credit. We find no basis in the record for finding that UFT's conclusion was not reached in good faith.

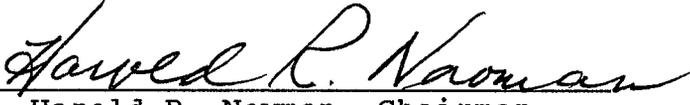
We also find that the record establishes that UFT informed Kauder of the basis for its determination.

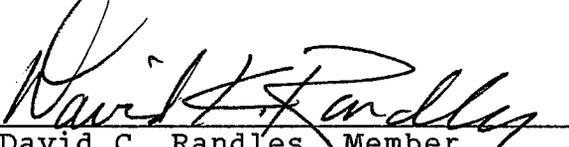
In her exceptions, Kauder now argues that UFT engaged in discriminatory behavior against her and the other secretarial interns in that it had not "negotiated the benefit of full

salary credit." This allegation was not specified in the original charge and is dismissed for that reason.^{1/} We do note, however, that the duty of fair representation does not preclude an employee organization from reaching agreements in negotiations that are more favorable to some unit employees than to others.^{2/}

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

DATED: July 19, 1985
Albany, New York


Harold R. Newman, Chairman


David C. Randles, Member


Walter L. Eisenberg, Member

^{1/}City of Mount Vernon, 14 PERB ¶3037 (1981); East Moriches Teachers Assn., 14 PERB ¶3056 (1981).

^{2/}State of New York, 14 PERB ¶3043 (1981); Plainview-Old Bethpage CSD, 7 PERB ¶3058 (1974).

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of
CITY OF MOUNT VERNON,

Respondent,

-and-

CASE NO. U-7438

POLICE ASSOCIATION OF THE CITY OF
MOUNT VERNON,

Charging Party.

RAINS & POGREBIN, P.C. (TERENCE M. O'NEIL, ESQ.
and ERNEST R. STOLZER, ESQ., of Counsel), for
Respondent

SCHLACHTER & MAURO, for Charging Party

BOARD DECISION AND ORDER

This matter comes to us on the exceptions of the Police Association of the City of Mount Vernon (Association) to a decision of an Administrative Law Judge (ALJ) dismissing its charge against the City of Mount Vernon (City). The charge alleges that the City violated its duty to negotiate in good faith by submitting to interest arbitration a demand which constitutes a nonmandatory subject of negotiation.

The demand complained about would disqualify certain unit employees from health insurance coverage under the

parties' collective bargaining agreement:

if they are eligible for coverage under the plan of a spouse, provided the spouse's coverage is comparable to the health insurance plan being provided by the City for other members of the bargaining unit.

This disqualification would apply to newly hired employees and to present employees who withdraw from the current plan and later seek to reenter it.

In arguing that the demand is not a mandatory subject of negotiation, the Association first contends that it is prohibited by Executive Law §296.1(a). That law prohibits, inter alia, discrimination by an employer because of the "marital status of any individual."

It is clear that the City's negotiation demand would discriminate between unit employees based upon the circumstance that a unit employee is, or is not, married to someone who is covered by a health insurance plan that meets certain specifications. The ALJ determined that such discrimination does not violate Executive Law §296.1(a). She based her conclusion upon a decision of the New York State Court of Appeals in Pizza Hut v. Human Rights Appeal Board, 51 N.Y.2d 506 (1980).

In that case the Court of Appeals found that an employer's antinepotism policy did not violate the

statute. It held that the statute merely precluded discrimination because of the "marital status" of a person, that is, whether the person is "divorced, separated, widowed, or single." It distinguished marital status from marital relationships, a term it used to refer to "an identification of one's present or former spouse and . . . the spouse's occupation."^{1/} The ALJ analogized a spouse's insurance coverage to a spouse's occupation and determined that distinctions based upon the former, no less than upon the latter, are not unlawfully discriminatory under Executive Law §296.1(a). We affirm this determination.

The Association's second argument is that the City's demand is a nonmandatory subject of negotiation because its provisions would affect persons who are not parties to the collective bargaining agreement. To support this proposition the Association cites Schmitt v. Leonard, 77 Misc.2d 435 (Nassau Co. 1974), aff'd, 45 A.D.2d 991 (2d Dept. 1974), a case in which a clause of a collective bargaining agreement was held not to limit the authority of a municipal civil service commission which was not party to the agreement. The ALJ determined that this

^{1/}See also Campbell Plastics, Inc. v. Human Rights Appeal Board, 81 A.D.2d 991 (3rd Dept. 1981).

decision is not applicable to the instant case. We affirm this determination. The demand in the instant case would impose no restrictions upon anyone who is not a party to the parties' collective bargaining agreement.

Finally, the Association argues that the demand should be declared nonmandatory because it might deny health insurance coverage to a unit employee if a spouse ceases to be covered by a comparable insurance policy or if both the unit employee and spouse are covered by collective bargaining agreements with provisions denying eligibility for health insurance where a spouse is covered. Assuming that these would be the consequences of the City's demand,^{2/} they are relevant to the merits of the demand but not to the mandatory nature of its negotiability. Accordingly, we find this argument is not a basis for reversing the decision of the ALJ.

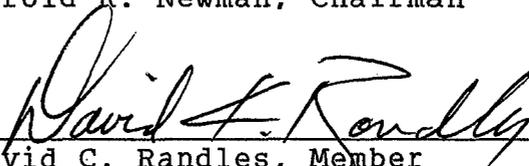
^{2/}It is far from clear that this would be the case. The demand is for a clause declaring unit employees to be ineligible "for health insurance by the City if they are eligible for coverage under the plan of a spouse" (emphasis supplied)

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

DATED: July 19, 1985
Albany, New York



Harold R. Newman, Chairman



David C. Randles, Member



Walter L. Eisenberg, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

NORTH TONAWANDA UNITED TEACHERS,

Respondent,

CASE NO. D-0238

upon the Charge of Violation of
§210.1 of the Civil Service Law.

BOARD DECISION AND ORDER

On June 20, 1985, Martin L. Barr, this agency's Counsel, filed a charge alleging that the North Tonawanda United Teachers (NYSUT, AFT, AFL-CIO) (Respondent) had violated Civil Service Law (CSL) §210.1 in that it caused, instigated, encouraged, condoned and engaged in a four (4) workday strike against the North Tonawanda City School District (District) commencing May 21, 1985.

The charge further alleged that from 288 to 301 employees, out of a 329-member negotiating unit, principally teachers, participated in the strike.

The Respondent requested Counsel to indicate the penalty he would be willing to recommend to this Board as appropriate

for the violation charged. Respondent proposed not to file an answer, and thereby admit the factual allegations of the charge, on the understanding that Counsel would recommend and this Board would accept, a penalty of loss of Respondent's right to have dues and agency shop fees deducted for a period of six months, commencing with the start of the 1985-86 school year.^{1/} Counsel has so recommended.

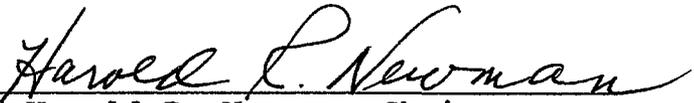
On the basis of the unanswered charge, we find that the Respondent violated CSL §210.1 in that it engaged in a strike as charged, and we determine that the recommended penalty is a reasonable one and will effectuate the policies of the Act.

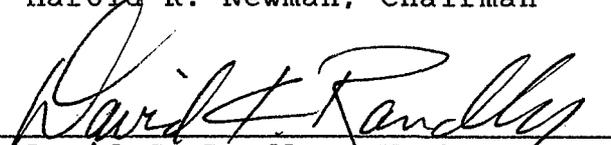
WE ORDER that the dues and agency shop fee deduction rights of the North Tonawanda United Teachers be suspended, commencing on the first practicable date after September 1, 1985, and continuing for such period of time during which fifty per cent (50%) of its annual agency shop fees, if any, and dues would otherwise be deducted. Thereafter, no dues or agency shop fees shall be deducted on its behalf by the North

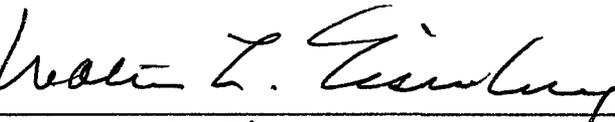
^{1/}The employer advises that the annual dues are deducted over 20 pay periods because almost all unit employees receive no paychecks during the summer vacation months.

Tonawanda City School District until the Respondent affirms that it no longer asserts the right to strike against any government as required by the provisions of CSL §210.3(g).

DATED: July 19, 1985
Albany, New York


Harold R. Newman, Chairman


David C. Randles, Member


Walter L. Eisenberg, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of
COUNTY OF ERIE,

Employer,

-and-

CASE NO. C-2830

UNITED PROFESSIONAL NURSES
ASSOCIATION,

Petitioner,

-and-

NEW YORK STATE NURSES ASSOCIATION,

Intervenor.

EUGENE F. PIGOTT, JR., ESQ. (MICHAEL A. CONNORS, ESQ.,
of Counsel), for Employer

MICHALEK, MONTROY, AMAN, MARRANO, TRAFALSKI & GORSKI,
ESQS. (JEROME C. GORSKI, ESQ., of Counsel), for
Petitioner

HARDER, SILBER & GILLEN, ESQS. (JEFFREY DANA GILLEN,
ESQ., of Counsel), for Intervenor

BOARD DECISION AND ORDER

The petition herein was filed by the United Professional Nurses Association (UPNA), which sought to represent 167 nurses employed by Erie County's Community Health Division. Of these, 124 are full-time employees, all of whom are in a county-wide unit of about 700 nurses represented by the New York State Nurses Association (NYSNA), which intervened in the proceeding. The remaining 43 employees sought by UPNA are

unrepresented part-time nurses who work 18 hours a week.^{1/}

As an alternative to the unit of 167 nurses, UPNA also sought a unit of the 43 part-timers.

The Director of Public Employment Practices and Representation (Director) determined that the record does not support fragmentation of the existing unit by removing the 124 full-time nurses of the Community Health Division from it, and UPNA has not filed exceptions to this part of his decision. He also found that a separate unit of the unrepresented part-time nurses was not appropriate because "they would appear to be an appropriate addition to the existing unit of their professional peers." However, instead of adding them to that unit, he dismissed the petition because "neither the intervenor nor the employer at this time seeks such an addition, and . . . the petitioner has expressed no interest in representing a larger unit"

The matter comes to us on UPNA's exceptions to this part of the Director's decision. It argues that the decision "does not effectuate the purposes of the act" in that it precludes the representation of employees. NYSNA has filed a response in which it supports the Director's decision dismissing the petition, but asserts that it had taken the position that the unrepresented nurses should be added to its existing unit. The

^{1/}The NYSNA unit contains part-time nurses who work at least 40 hours per bi-weekly pay period.

record supports this assertion. Erie County filed no papers in response to the exceptions; it stands upon its position before the Director, which is that the 43 part-timers do not constitute an appropriate unit by themselves, and "[t]he question of whether or not a larger unit of part-time nurses would be appropriate is not at issue and, therefore, not addressed."

While affirming the determination of the Director that the 43 part-timers do not constitute an appropriate unit by themselves, we are nevertheless mindful of the concern expressed in the exceptions that dismissal of the petition might deprive employees of representation rights afforded them by the Taylor Law.^{2/} This undesirable result would be avoided if the most appropriate unit for the part-timers is one which combines them with all or some of the employees of the unit represented by NYSNA, and includes no employees now in any other unit.^{3/} Such alternative unit structures can, and should, be considered.

^{2/}If the Director's decision is affirmed and the petition dismissed, the part-timers will have no representation at least until the next window period, when NYSNA may file a petition to represent them. As NYSNA is currently in negotiation for a collective bargaining agreement, that window period may be several years off, depending upon the length of the contract to be negotiated.

^{3/}The unchallenged decision of the Director merely holds that they do not belong in a separate unit with the full-timers employed at the Community Health Division. As noted by Erie County, a unit of all part-time nurses has not been considered.

In the past, this Board dismissed a petition for a unit consisting of summer school teachers because it determined that the summer school teachers belonged more appropriately in the existing unit of all-year teachers.^{4/} That decision did not add the summer school teachers to the unit of all-year teachers because the latter unit was then protected by a statutory period of unchallenged representation.^{5/} Here, there is no period of unchallenged representation protecting the existing unit. On the contrary, the petition included a timely challenge to NYSNA's unit.

We are not otherwise precluded from defining a unit that combines the 43 part-timers with all, or some of the employees in the NYSNA unit.^{6/} However, we cannot do so on the record before us because alternative unit structures have not been addressed by the parties. Accordingly, we remand this matter for further proceedings.

^{4/}Great Neck Board of Education, 4 PERB ¶13017 (1971).

^{5/}The decision said: "It is our opinion that after the expiration of the period of unchallenged representation, representation should be on the basis of the combined unit."

^{6/}CSEA v. Helsby, 32 A.D.2d 131, 2 PERB ¶7007 (3d Dept. 1969), aff'd, 25 N.Y.2d 842, 2 PERB ¶7013 (1969); Great Neck Board of Education, supra.

NOW, THEREFORE, WE ORDER that this matter be remanded to
the Director for further proceedings.

DATED: July 19, 1985
Albany, New York

Harold R. Newman

Harold R. Newman, Chairman

David C. Randles

David C. Randles, Member

Walter L. Eisenberg

Walter L. Eisenberg, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

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

Employer,

-and-

CASE NO. C-2190

COMMUNICATIONS WORKERS OF AMERICA,
AFL-CIO,

Petitioner,

-and-

ORGANIZATION OF STAFF ANALYSTS,

Intervenor.

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 Organization of Staff Analysts has been designated and selected by a majority of the employees of the above-named employer, in the unit described below, as their exclusive representative for the purpose of

collective negotiations and the settlement of grievances.

Unit: Included: Staff Analysts and Associate Staff Analysts.

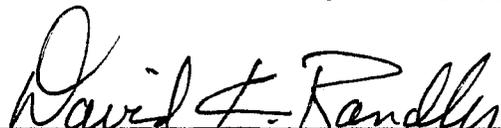
Excluded: Employees in the above titles found to be managerial or confidential and all other employees.

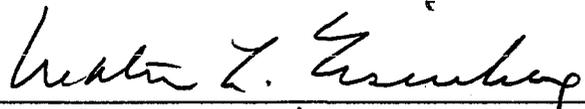
Further, IT IS ORDERED that the above named public employer shall negotiate collectively with the Organization of Staff Analysts and enter into a written agreement with such employee organization with regard to terms and conditions of employment of the employees in the unit found appropriate, and shall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

DATED: July 19, 1985
Albany, New York



Harold R. Newman, Chairman


David C. Randles, Member


Walter L. Eisenberg, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

NORTHPORT-EAST NORTHPORT UNION FREE SCHOOL
DISTRICT,

Employer,

-and-

CASE NO. C-2862

NORTHPORT-EAST NORTHPORT TEACHER AIDE
ASSOCIATION,

Petitioner,

-and-

LOCAL 144, DIVISION 100, SERVICE
EMPLOYEES INTERNATIONAL UNION,
AFL-CIO,

Intervenor.

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 Northport-East Northport Teacher Aide 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 Teacher Aides

Excluded: All other employees.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with the Northport-East Northport Teacher Aide Association 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: July 19, 1985
Albany, New York


Harold R. Newman, Chairman


David C. Randles, Member


Walter L. Eisenberg, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

NORTHPORT-EAST NORTHPORT UNION FREE
SCHOOL DISTRICT,

Employer,

-and-

CASE NO. C-2863

NORTHPORT CLERICAL ASSOCIATION,

Petitioner,

-and-

LOCAL 144, DIVISION 100, SERVICE
EMPLOYEES INTERNATIONAL UNION, AFL-CIO,

Intervenor.

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 Northport Clerical 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: Clerk, Clerk Typist, Stenographer, Senior Stenographer, Senior Clerk Typist, Account Clerk, Switchboard Operator, Senior Clerk, Duplicating Machine Operator, Account Clerk Typist, Photocopy Machine Operator, and Principal Stenographer.

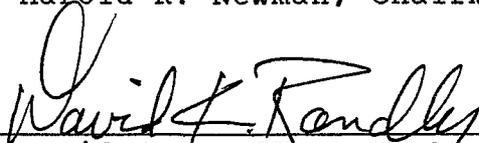
Excluded: All other employees.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with the Northport Clerical Association 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: July 19, 1985
Albany, New York



Harold R. Newman, Chairman



David C. Randles, Member



Walter L. Eisenberg, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

WEST GENESEE CENTRAL SCHOOL DISTRICT,

Employer,

-and-

CASE NO. C-2870

ONONDAGA COUNTY LOCAL 834, CIVIL
SERVICE EMPLOYEES ASSOCIATION, INC.,
LOCAL 1000, AFSCME, AFL-CIO,

Petitioner,

-and-

WEST GENESEE CUSTODIAL ASSOCIATION,

Intervenor.

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 Onondaga County Local 834, 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 employer, in the unit described below, as their exclusive representative for the purpose of

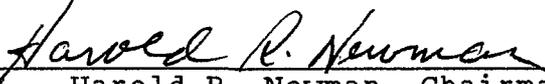
collective negotiations and the settlement of grievances.

Unit: Included: All full-time and regular part-time custodial and laundry employees.

Excluded: Superintendent of Buildings and Grounds, Head Custodians, Custodian I Maintenance Workers, Summer Employees Work Experience Employees, On-Call Employees.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with the Onondaga County Local 834, 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 unit found appropriate, and shall negotiate collectively with such employee organization in the determination of, and administration of, grievances of such employees.

DATED: July 19, 1985
Albany, New York



Harold R. Newman, Chairman



David C. Randles, Member



Walter L. Eisenberg, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

GREAT NECK WATER POLLUTION CONTROL
DISTRICT,

Employer,

-and-

CASE NO. C-2910

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

Petitioner.

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: Sewer Servicer; Laborer

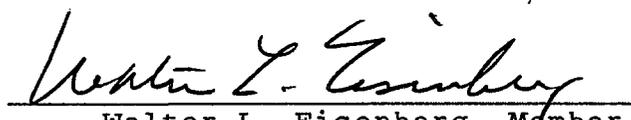
Excluded: All supervisory, clerical, managerial or confidential employees.

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: July 19, 1985
Albany, New York


Harold R. Newman, Chairman


David C. Randles, Member


Walter L. Eisenberg, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

SUFFOLK REGIONAL OFF-TRACK BETTING
CORPORATION,

Employer,

-and-

CASE NO. C-2916

LOCAL 21-S, PRODUCTION SERVICE AND
SALES DISTRICT COUNCIL, H.E.R.E.,
AFL-CIO,

Petitioner.

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 Local 21-S, Production Service and Sales District Council, H.E.R.E., 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: Managers, Assistant Managers,
Line/Telephone Supervisors.

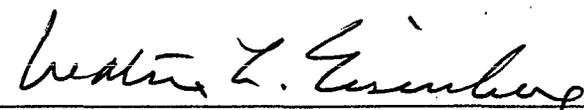
Excluded: All other employees.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with the Local 21-S, Production Service and Sales District Council, H.E.R.E., 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: July 19, 1985
Albany, New York


Harold R. Newman, Chairman


David C. Randles, Member


Walter L. Eisenberg, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

LOCKPORT CITY SCHOOL DISTRICT,

Employer,

-and-

CASE NO. C-2923

LOCKPORT ADMINISTRATORS AND SUPERVISORS
ASSOCIATION,

Petitioner.

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 Lockport Administrators and Supervisors 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.

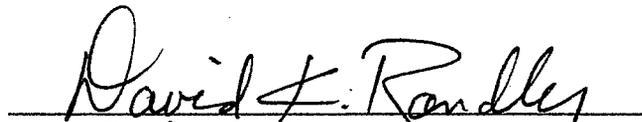
Unit: Included: Principals, Assistant Principals and
Supervisor of Physical Education,
Sports and Safety.

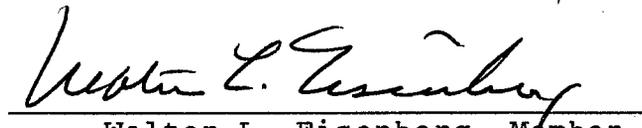
Excluded: All other employees.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with the Lockport Administrators and Supervisors Association 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: July 19, 1985
Albany, New York


Harold R. Newman, Chairman


David C. Randles, Member


Walter L. Eisenberg, Member