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6-2-1987

## State of New York Public Employment Relations Board Decisions from June 2, 1987

New York State Public Employment Relations Board

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## State of New York Public Employment Relations Board Decisions from June 2, 1987

### Keywords

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

### Comments

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STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of  
CITY OF SARATOGA SPRINGS,

Respondent,

-and-

CASE NO. U-8759

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

Charging Party.

---

RICHARD F. MULLANEY, CITY ATTORNEY, for Respondent

MARJORIE E. KAROWE, GENERAL COUNSEL, CSEA LEGAL  
DEPARTMENT, for Charging Party

BOARD DECISION AND ORDER

This matter comes to us on the exceptions of the City of Saratoga Springs (City) to the decision of the Administrative Law Judge (ALJ) finding that the City violated §209-a.1(d) of the Public Employees Fair Employment Act (Act) when its negotiators failed to affirmatively seek ratification of an agreement reached by the parties' negotiators. The ALJ concluded that such failure resulted in a waiver by the City of any right to ratify the agreement made with the charging party, Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO (CSEA).

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The charge alleged, and the City's answer admitted, that on April 30, 1986, the chief negotiators of the City and CSEA had signed a memorandum of agreement, which was subject to ratification by the membership of CSEA and the City Council. The charge alleged and the evidence of record establishes that the City Council met on May 5, 1986, discussed the agreement in executive session and then left the executive session and voted three to two in favor of a motion that the City Council "accept the contract as discussed except the hours will have to be renegotiated to 9:00 A.M. to 5:00 P.M." CSEA alleged and the evidence of record establishes that it was notified of the Council's action and that its membership thereafter ratified, on May 13, 1986, the memorandum of agreement, modified to contain what it understood to be the change called for by the City Council's motion of approval. The City thereafter refused to execute a written agreement incorporating what CSEA alleged to be a mutually ratified memorandum of agreement.

In its answer, the City admitted that the City Council passed a motion to accept conditionally the memorandum of agreement but denied that the approval was conditioned on only one modification. The City asserted that the City Council's approval was conditioned on certain other modifications which CSEA has not accepted and refused to negotiate.

CSEA contends that the dispute in this case related only to the identification of the condition imposed in the City's ratified motion. CSEA maintains that it relied on actions of the City's negotiators in identifying that condition and that the evidence establishes that its membership ratified the agreement as modified by the City Council.

The ALJ, however, did not find it necessary to deal with the nature of the modification by the City Council in deciding the case. Rather, the ALJ found that the record evidence established that the City's negotiators failed in their affirmative duty to present the agreement to the City Council and to support its approval. Consequently, the ALJ ordered the City to execute, upon request, an agreement embodying the agreement reached by the negotiators on April 30, 1986, as modified by the agreements reached thereafter.

In its exceptions, the City does not challenge the factual findings of the ALJ. Its arguments are directed solely to the recommended order of the ALJ.

#### FACTS

The ALJ has accurately summarized the record evidence. That evidence establishes that the memorandum of agreement was presented to the City Council on May 5, 1986, by Butler, a City Commissioner and City Council member and a member of the City's negotiating team. Discussion at the City Council meeting centered on the following provision in the memorandum of agreement:

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City Hall offices shall remain open to the public between the hours of 8:30 AM to 4:30 PM Monday through Friday.

Within such office hours, employees shall work thirty-three (33) hours per week as follows:

One day per week - employees work 8:30 AM - 4:30 PM (1 hour lunch).

Four (4) days per week - employees work 8:30 AM - 4:00 PM or 9:00 AM - 4:30 PM (1 hour lunch).

The actual scheduling for office coverage during business hours shall be developed by the department head within each respective department. Employees may volunteer for specific tours within the schedule, but final determination regarding staff coverage shall be made by the department head.

The Agreement herein to abandon the regular Saturday workday is not intended to prohibit the City from assigning additional worktime on an exceptional basis beyond the regular scheduled work week.

Under the prior agreement between the parties the City Hall was open 9:00 A.M. to 4:00 P.M. on weekdays and 9:00 A.M. to noon on Saturdays, except in July and August when there were no Saturday hours. Employees at City Hall had a workweek of 33 hours with each employee's schedule corresponding to the City Hall's hours of business. At the May 5 City Council meeting, concern was expressed regarding the loss of Saturday hours, the nature of a 33-hour workweek within a 35-hour per week City Hall schedule, and changing the hour at which City Hall had historically opened. In the open session, Butler then made the motion that was approved

by the City Council. Much of the dispute thereafter centered on the meaning of the City Council's action. At the City Council's next meeting, on May 19, Butler notified the Council that an actual vote on the question of the parties' agreement would not be taken since "There are a few items . . . that need to be discussed." Instead, he suggested that the Council vote on the abolition of Saturday hours alone so that such abolition could immediately go into effect. A vote of three to two against such motion then occurred, with Mayor Jones and Butler casting the two affirmative votes.

There is no record evidence that at the May 5 meeting, Butler said a word in support of the agreement's provisions despite the opposition of the other Council members to the agreement's work hours and workweek. Butler merely presented the agreement, in its written form and through his oral presentation of its provisions, to the Council for their perusal and vote. Following this discussion, Butler did not make a motion for ratification of the agreement but for its modification. His action at the May 19 Council meeting evidences that he did not consider the May 5 motion as seeking ratification of an agreement, as he noted on May 19 that the agreement was not yet ready to be voted upon. There is no evidence that Kelly, the chief negotiator for the City, was present at either meeting nor is there evidence that

Kelly had any communication with the Council concerning the agreement during the at-issue time period. The record evidence of his silence in the face of the Council's discussions and concerns is unexplained.

#### EXCEPTIONS

The City objects to an order that requires it to execute a document embodying the agreement reached by the parties. The City claims that such an order forces a legislative body to perform a legislative act. It contends that we cannot require a legislative body to approve an agreement. The City also argues that such an order confers on CSEA a "right of mandatory review". We construe this argument to mean that CSEA would be given the right to have this Board determine what should be agreed to. As previously noted, the City does not challenge the ultimate finding that Butler failed to support the agreement and seek its ratification and that this violated the City's obligation to negotiate in good faith.

#### DISCUSSION

By its exceptions, the City indicates a misunderstanding of the respective legal responsibilities of the chief executive officer and the legislative body of a public employer regarding negotiations under the Taylor Law. The Act contemplates that negotiations will be an executive, not

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a legislative process.<sup>1/</sup> The Act specifically defines an agreement as an exchange of mutual promises between the chief executive officer and an employee organization "which becomes a binding contract" except as to any provisions which require approval by the legislative body (§§201.12, 204-a).

We have previously pointed out<sup>2/</sup> that there is an important difference between the legislative body's statutory responsibility to review an executed agreement and the power to "ratify" the entire agreement prior to execution. A legislative body may not unilaterally reserve to itself the authority to ratify the entire agreement.<sup>3/</sup> On the other hand, the parties may agree that their negotiations will be subject to the right of the legislative body to ratify the entire agreement.<sup>4/</sup> Where the legislative body directly assumes responsibilities in the negotiation process with the acquiescence of the chief executive officer and the employee organization, the members of the legislative body that negotiated the agreement may not repudiate it by

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<sup>1/</sup> §§201.12, 204-a; City of Kingston v. PERB, 16 PERB ¶7002 (Sup. Ct. Alb. Co. 1983). See CSEA v. Helsby, 21 N.Y.2d 541, 547, 1 PERB ¶702, at p. 7008 (1968).

<sup>2/</sup> Town of Dresden, 17 PERB ¶3096 (1984).

<sup>3/</sup> Falconer CSD, 6 PERB ¶3029 (1973); Jamestown Teachers Ass'n, 6 PERB ¶3075 (1973).

<sup>4/</sup> Glen Cove City School District, 6 PERB ¶3004 (1973).

claiming a different capacity as legislators.<sup>5/</sup> Thus, the right to "ratify" is entirely based upon the parties' agreement while the right of legislative approval inheres in the legislative body by virtue of the statute.

Where the parties have contemplated ratification of the agreement, the negotiators for each side have an affirmative duty to present the agreement to their ratifying entity and to support its approval.<sup>6/</sup> Failure in that duty results in a loss by the party of any right to ratify. Where a party's conduct constitutes a loss of the right of ratification, it is appropriate to require the respondent to execute the agreement that is found to have been accepted by the negotiators for both parties.<sup>7/</sup> This completes the executive's role in the negotiating process. An order directing such execution does not foreclose the legislative body from the exercise of its proper legislative function insofar as it relates to those matters requiring, by statute, legislative approval before they may be binding upon the employer.<sup>8/</sup>

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<sup>5/</sup>Sylvan-Verona Beach CSD, 15 PERB ¶3067 (1982).

<sup>6/</sup>Union Springs Central School Teachers Ass'n, 6 PERB ¶3074 (1973); City of Rochester, 7 PERB ¶3060; Sylvan-Verona Beach CSD, supra.

<sup>7/</sup>Union Springs Central School Teachers Ass'n, supra.

<sup>8/</sup>Town of Dresden, supra.

This brings us to the events of May 5, 1986. The conduct of the City Council on that date either constituted executive action--i.e. a ratification vote--or legislative action. If the former, the failure of Butler to support the agreement affirmatively constitutes a violation of the City's duty to negotiate in good faith. This was the determination of the ALJ, whose consequent conclusions of law are all proper applications of our decisions in relevant cases. If, however, the conduct of the City Council on May 5 constituted legislative action, as is claimed by the City, the meeting would have to be considered as one at which the City chose not to submit the agreement for ratification, since ratification is not properly a legislative act. Such failure to present the agreement for ratification would have the same effect as Butler's failure to support the agreement. In either view of the City Council's meeting, the City lost the right to reject the agreement through the ratification process.

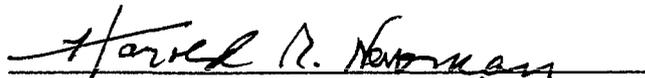
Accordingly, the City's exceptions are rejected, the decision of the ALJ is affirmed and we find that the City violated §209-a.1(d) of the Act when its negotiator failed to perform its duty of affirmatively seeking ratification of the agreement reached by the parties' negotiators and that such failure results in a loss by the City of any right to ratify.

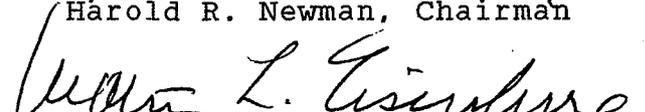
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NOW, THEREFORE, WE ORDER that the City of Saratoga Springs:

1. Execute, upon the request of the Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO, a collective bargaining agreement, effective January 1, 1986 to December 31, 1987, embodying the agreement reached by the parties on April 30, 1986 as modified by the agreements reached thereafter as found by the ALJ;
2. Negotiate in good faith under the Act with the Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO; and
3. Sign and post the attached notice at all locations used by it for written communications to members of the bargaining unit represented by the Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO.

DATED: June 2, 1987  
Albany, New York

  
Harold R. Newman, Chairman

  
Walter L. Eisenberg, Member

  
Jerome Lefkowitz, Member

# NOTICE TO ALL EMPLOYEES

PURSUANT TO  
THE DECISION AND ORDER OF THE  
NEW YORK STATE  
PUBLIC EMPLOYMENT RELATIONS BOARD

and in order to effectuate the policies of the

NEW YORK STATE  
PUBLIC EMPLOYEES' FAIR EMPLOYMENT ACT

we hereby notify the employees of the City of Saratoga Springs in the unit represented by the Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO that the City of Saratoga Springs will:

1. execute, upon the request of the Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO, a collective bargaining agreement effective January 1, 1986 to December 31, 1987 embodying the agreement reached by the parties;
2. negotiate in good faith under the Act with the Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO.

City of Saratoga Springs

Dated .....

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

*This Notice must remain posted for 30 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.*

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STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of

JACOB K. JAVITS CONVENTION CENTER OF  
NEW YORK and/or OGDEN ALLIED  
FACILITY MAINTENANCE CORPORATION,

Respondent,

-and-

CASE NO. U-8732

LOCAL 32B-32J, SERVICE EMPLOYEES  
INTERNATIONAL UNION, AFL-CIO,

Charging Party.

---

PROSKAUER ROSE GOETZ & MENDELSON (SAUL G. KRAMER, ESQ.  
and ANDREW P. MARKS, ESQ., of Counsel) for Convention  
Center Operating Corporation

MANNING, RAAB, DEALY & STURM (IRA A. STURM, ESQ.,  
of Counsel) for Charging Party

BOARD DECISION AND ORDER

This matter comes to us on the exceptions of Local  
32B-32J, Service Employees International Union, AFL-CIO  
(SEIU) to the decision of the Administrative Law Judge (ALJ)  
dismissing its improper practice charge on jurisdictional  
grounds.

The charge, filed on May 12, 1986, named as respondent  
"Jacob J.[sic] Javits Convention Center of New York and/or

Ogden Allied Facility Maintenance Corporation."<sup>1/</sup> The allegations in the charge twice refer to these entities as "joint employers". Mindful that this Board does not have jurisdiction over a joint employer consisting of a public employer and a private employer, the Director and ALJ sought clarification from the SEIU as to the public employer status of the named respondents.

SEIU delayed its response until September 5 when it stated that it was willing to amend the charge to reflect that the sole employing entity of the employees concerned is the Convention Center Operating Corporation (Convention Center), a public employer. Nevertheless, it thereafter submitted additional information to the ALJ in support of its position that the employees in question are employed by both the Convention Center and Ogden Allied Facility Maintenance Corporation (Ogden) as joint employers. Finally, however, on October 30, SEIU stated that it wished to withdraw the joint employer allegation and to proceed with the Convention Center as the sole employer.

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<sup>1/</sup>The Convention Center Operating Corporation appeared and answered the charge. Apparently, the name in the title of the charge is mistaken. The Convention Center Operating Corporation is a public benefit corporation. It is undisputed that Ogden Allied Facility Maintenance Corporation is a private corporation.

In his decision, the ALJ determined that SEIU originally intended to charge a joint public-private employer, an entity which is not a public employer under the Taylor Law. He concluded that SEIU's request in September to amend the charge to name only the Convention Center - a public employer - as the respondent, came too late. In his view, since the Convention Center is a separate legal entity from the joint employer comprising the Convention Center and Ogden, SEIU's attempted amendment constitutes the naming of a new respondent, which cannot be permitted more than four months after the complained of conduct. Having denied the amendment, the ALJ determined that the charge is directed against an alleged joint employer, one part of which is a private entity, and that, therefore, the charge must be dismissed.

In its exceptions, SEIU argues that a legitimate question existed and continues to exist as to the employing entity of the employees involved in this dispute. It asserts that its charge was intended to allege alternative theories with regard to the status of the employer and that such alternative allegations should be permitted since SEIU is not in possession of the facts. In SEIU's view, its charge alleges three "scenarios": (1) the Convention Center as employer, (2) Ogden as employer and (3) both constituting a joint employer. It seeks a hearing at which

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all the evidence of the employment relationship could be produced and, upon which evidence, the Board could determine the identity of the employer.

SEIU argues that its amendment withdrawing "scenarios" (2) and (3) should be permitted since "scenario" (1) was always incorporated in its charge. Furthermore, it urges that its amendment should not be barred by our four-month statute of limitation since it does not name a new respondent but one that is apprised of the allegations against it and will not be prejudiced by the amendment.

#### DISCUSSION

We affirm the decision of the ALJ.

The allegations of the charge explicitly refer to the Convention Center and Ogden as "joint employers". The only source of ambiguity in the charge is the use of "and/or" in the description of the respondents. Inasmuch as a charge against a joint public-private employer cannot be entertained by us,<sup>2/</sup> the Director and the ALJ sought "clarification" of the phrase "and/or". They repeatedly requested SEIU to advise whether it was charging a joint public-private employer.

We conclude that SEIU intended to, and did, file a charge with us against a joint employer consisting of a

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<sup>2/</sup>Matter of New York Public Library v. PERB,  
45 A.D. 2d 271, 7 PERB ¶7013 (1st Dep't 1974), aff'd, 37  
N.Y.2d 752, 8 PERB ¶7013 (1975).

public employer and a private employer. It is clear that SEIU's position from the time of the filing of the charge has been that the Convention Center and Ogden are joint employers. Indeed, a major purpose of the charge was to obtain a determination by us of such joint employer status. For its own reasons, evident in the materials submitted thus far in this proceeding, SEIU believed that it was in its interest to connect Ogden to the employees working at the Jacob K. Javits Convention Center. SEIU was therefore reluctant to limit its charge to the sole public employer involved, the Convention Center.

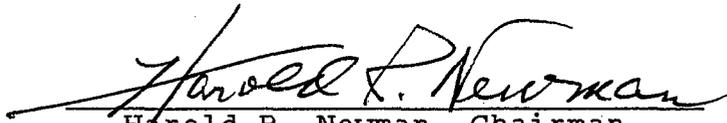
Whatever weight the Director and ALJ may have given to "and/or", the phrase cannot support the construction that SEIU urges, i.e., that it has charged three separate legal entities thereby. Its conduct throughout the proceeding establishes that it believes, and has alleged, Ogden to be the employer or part of a joint employer. SEIU's conduct further indicates that it has sought such a determination from this Board, even though this would require a dismissal of the charge on the ground that the employment in question is in the private sector. The Director and the ALJ correctly refused to process the charge on the ground that it did not allege facts which, as a matter of law, might constitute a violation of the Taylor Law.

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SEIU's request to "amend" its charge must be viewed, therefore, as a request to change the party respondent. The Convention Center is a different legal entity from the joint employer entity originally named as respondent. This change constitutes a change of substance, not simply an amendment to the title of the action. The attempt now to name the Convention Center as sole respondent is untimely. Accordingly, SEIU's request to amend its charge must be rejected and, since the charge is directed against an alleged joint employer, one part of which is a private entity, the charge must be dismissed.

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

DATED: June 2, 1987  
Albany, New York

  
Harold R. Newman, Chairman

  
Walter L. Eisenberg, Member

  
Jerome Lezkowitz, Member

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STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of  
UNIONDALE UNION FREE SCHOOL DISTRICT,  
Employer,

-and-

CASE NO. C-3005

UNIONDALE SUPERVISORS ASSOCIATION,  
Petitioner,

-and-

UNIONDALE TEACHERS ASSOCIATION,  
Intervenor.

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RAINS & POGREBIN, P.C. (TERENCE M. O'NEIL, ESQ., and  
SHERYL TEITEL WINKLER, ESQ., of Counsel) for Employer

JOSEPH M. McPARTLIN, Field Representative, NYSUT, for  
Petitioner

LOUIS N. ORFAN, ESQ., for Intervenor

BOARD DECISION AND ORDER

This matter comes to us on the exceptions of the  
Uniondale Supervisors Association (USA) and the Uniondale  
Union Free School District (District) to the decision of the  
Director dismissing the petition of the USA which sought to  
decertify the Uniondale Teachers Association (UTA) and  
certify the USA as bargaining agent for 17 department

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chairpersons employed by the District. The department chairpersons are included in a bargaining unit of all certified personnel in the District, numbering approximately 400. The District supported the petition while the UTA opposed it.

The USA and the District based their case for decertification on three factors: 1) the level of supervisory functions performed by the department chairpersons; 2) alleged subversion of their supervisory responsibilities because of their placement in the teacher bargaining unit; and 3) inadequate representation of the department chairpersons by the UTA.

The Director found that the evidence did not establish that: 1) the level of supervisory functions performed by the department chairpersons was high enough to warrant their removal from the UTA unit of which they had been a part since 1968; 2) the incidents of alleged subversion of supervisory responsibility were of the level or degree warranting the removal from the unit; and 3) the UTA had failed to adequately represent the interests of the department chairpersons.

In their exceptions, the USA and the District challenge each of these conclusions and a number of findings of fact and evaluations of testimony that the Director made in support of his conclusions.

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FACTS

1. Level of Supervisory Functions

The USA and the District produced evidence in regard to each of the five indicia of supervisory responsibilities first articulated in East Ramapo CSD, 11 PERB ¶3075 (1978):

1) observation and evaluation of teachers; 2) discipline; 3) grievances; 4) hiring of new employees; 5) curriculum.

There are two types of department chairpersons in this District, so-called building chairpersons and District chairpersons. Some chairpersons are in charge of departments in the high school, others are in charge of departments in the junior high school and still others are in charge of departments covering more than one building. The building chairpersons are accountable to the building principal and the district chairpersons are accountable to the assistant superintendent of instruction, Allegra. The chairpersons perform some teaching duties, but a majority of their time is devoted to supervisory and department-related functions.

As to observation and evaluation, the chairpersons are required to conduct a minimum of four observations and two evaluations per school year for nontenured teachers and two observations and one evaluation for tenured teachers. More can be conducted if the chairperson deems it necessary. Their observation reports become part of each teacher's

profile and are considered when the chairperson and building principal prepare their teacher evaluations or tenure recommendations. The chairperson must make recommendations concerning tenure.

In regard to discipline, the chairpersons' observations and evaluations become the basis for disciplinary action, if warranted. Their direct authority, however, is limited to the issuance of letters of reprimand, a form of discipline which does not require an Education Law §3020-a proceeding. In the event such proceeding is instituted, by decision of the superintendent, the chairpersons may testify against the teacher.

There have been instances of grievances filed by the UTA against actions taken by the District in which the chairperson played a role.

The chairpersons have input in the budgetary process and are expected to make recommendations regarding the need for additional staff or the excessing of staff. The chairpersons also have participated in interviewing applicants for new positions. The decision to hire, however, is made by the building principal or the superintendent.

Finally, the chairpersons have been given a role in the development of curriculum for their respective departments.

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## 2. Subversion of Supervisory Responsibilities

Three incidents were described in the testimony. Allegra testified to two incidents about which he concluded that a chairperson's judgment was influenced by his or her membership in the teacher unit. In one instance he stated that a chairperson refused to become involved in the process which resulted in a decision that a teacher's position should be eliminated due to a declining student/teacher ratio in the department.

He also testified to an incident where a chairperson was unwilling to give an unsatisfactory rating to a probationary teacher when the others involved were of the opinion that such a rating should be given. He concluded that the chairperson was motivated by the fact that the teacher was a unit member.

A third incident was described by Nelson, a department chairperson, who testified to an incident where a UTA representative came to her after she had made a critical observation of a probationary teacher and sought to have her change her observation. She refused to do so and nothing further was done by the UTA.

## 3. Inadequate Representation

Based on the fact that negotiations over the chairpersons' differential was one of the last issues to be settled in 1977 and in 1980, the District urges that the

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'chairpersons' negotiation interests have unduly delayed the negotiation process. On the other hand, the chairpersons' interests have been represented and negotiated at the bargaining table by the UTA. They have received two increases in their differential, as well as air conditioners and additional compensation for traveling between schools. Entire negotiation sessions have been devoted to department chairpersons' proposals.

The USA asserts that "hostility" has arisen between the UTA and the chairpersons. The UTA amended its constitution to remove the voting rights of the chairpersons' representative on its executive board. The UTA replaced the chairpersons' representative on the executive committee when he ceased to be, in the opinion of the UTA, a "member in good standing". The UTA considered that the chairpersons who organized the USA and discontinued dues checkoff were no longer "members in good standing". Certain privileges were thereafter denied to them.

#### DISCUSSION

We affirm the decision of the Director.

In considering whether supervisory personnel should be removed from a long-standing unit, evidence relating to the level of supervisory functions, alleged subversion of supervisory responsibilities, and alleged inadequate

representation, among other factors, is relevant.<sup>1/</sup>  
Having reviewed the record, we conclude that the Director has properly evaluated the evidence in regard to these factors.

With regard to the level of supervisory functions of these department chairpersons, it may be noted that there are several levels of supervisors above them - assistant principal, principal, assistant superintendent, and superintendent. Many of these chairpersons perform their supervisory functions only in a single building. With respect to hiring, while these chairpersons are involved in the interview process and make recommendations, the ultimate decision rests with the building principal and superintendent. In the area of discipline, action of a nature harsher than a letter of reprimand can be initiated only by the building principal or the superintendent. Their role in curriculum and budget is limited to their respective departments.

Whether we look at the roles of the chairpersons with respect to evaluations, discipline, grievances, hiring and curriculum separately or in concert, we agree with the Director's conclusion that they are mid-level supervisors.

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<sup>1/</sup>See County of Ulster, 16 PERB ¶3069 (1983); Hyde Park CSD, 16 PERB ¶3083 (1983); East Ramapo CSD, supra.

Removal of mid-level supervisory personnel from a long-standing unit would not be warranted unless subversion of their supervisory responsibilities or inadequate representation or hostility by their union is demonstrated.

Our review of the record compels us to agree with the Director that the testimony regarding alleged subversion of supervisory responsibilities is not sufficiently persuasive to warrant partition of the unit. The Director's evaluation of the testimony of Allegra and Nelson that the incidents of alleged subversion of supervisory responsibility were not of the level or degree warranting the removal from the unit, is supported by the record.

We also find that the claim of inadequate representation is not supported by the record. There is no evidence of a failure to represent the chairpersons in negotiations.<sup>2/</sup> There is, on the contrary, evidence of considerable influence by the chairpersons in negotiations and in other activities of the UTA. Indeed, an effort by the UTA to reduce the influence of the chairpersons in the organization to one that is commensurate with their numbers became a source of conflict. Nevertheless, the chairpersons are still represented on the executive board (albeit in a nonvoting capacity) and are represented on the negotiating committee. The denial of membership privileges to

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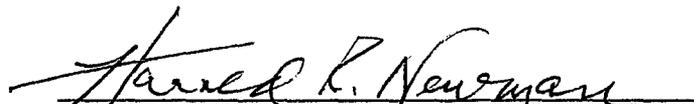
<sup>2/</sup>Compare Hyde Park CSD, supra.

chairpersons who organized the USA and discontinued dues check-off, standing alone, does not warrant granting the USA's request for a separate unit.

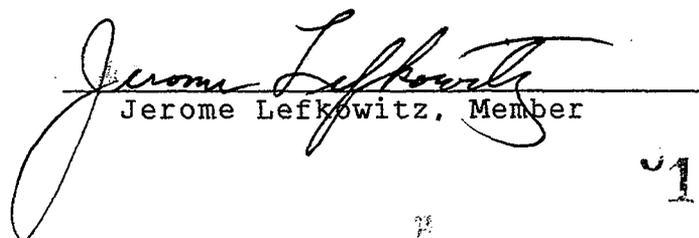
Finally, we reject the District's contention that the chairpersons should be removed from the unit because the interests of chairpersons have unduly extended negotiations between the District and the UTA. First, the record does not support such a finding. Second, the contention is inconsistent with any claim of inadequate representation. Third, acceptance of the argument would place UTA in conflict with its obligation to represent adequately chairpersons by requiring it to refrain from "unduly" extending negotiations on their behalf. This would place any union in an untenable position.

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

DATED: June 2, 1987  
Albany, New York

  
Harold R. Newman, Chairman

  
Walter L. Eisenberg, Member

  
Jerome Lefkowitz, Member

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STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of  
UNITED FEDERATION OF TEACHERS,  
Respondent,

-and-

CASE NO. U-9007

SYLVIA ZEDLAR,  
Charging Party.

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SYLVIA ZEDLAR, pro se

BOARD DECISION AND ORDER

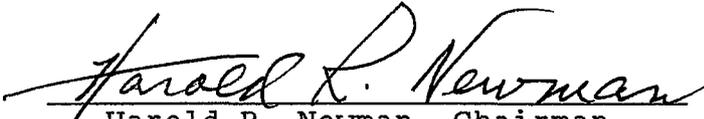
This matter comes to us on the exceptions of Sylvia Zedlar (charging party) to the decision of the Director of Public Employment Practices and Representation (Director) dismissing, as deficient, her charge against the United Federation of Teachers. The Director's decision was delivered to the charging party by certified mail on April 12, 1987. Her exceptions were dated May 7, 1987 and were received on May 12, 1987.

Section 204.10(c) of our Rules of Procedure requires exceptions to be filed within 15 working days after receipt of a decision by the Director dismissing a charge. Charging party has made no request for an extension of time to file exceptions. Charging party's exceptions are, therefore, untimely and cannot be considered.

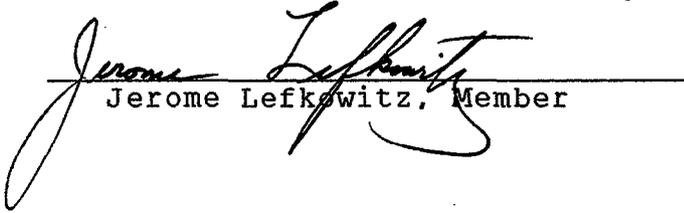
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NOW, THEREFORE, WE ORDER that the exceptions of the  
charging party be, and they hereby are,  
dismissed.

DATED: June 2, 1987  
Albany, New York

  
Harold R. Newman, Chairman

  
Walter L. Eisenberg, Member

  
Jerome Lefkowitz, Member

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of Petition for Interest  
Arbitration filed by:

CITY OF SCHENECTADY,

Petitioner,

-and-

CASE NO. M86-61

SCHENECTADY PATROLMEN'S BENEVOLENT  
ASSOCIATION,

Respondent.

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BUCHYN, O'HARE & WERNER, ESQS., Attorneys for  
City of Schenectady

GRASSO & GRASSO, ESQS., Attorneys for Schenectady  
Patrolmen's Benevolent Association

BOARD DECISION AND ORDER

Pursuant to §209.4 of the Public Employees' Fair  
Employment Act (Act) and §§205.3-.9 of our Rules of Procedure,  
the City of Schenectady (City) filed a petition for compulsory  
interest arbitration of an impasse in collective negotiations  
between the City and the Schenectady Patrolmen's Benevolent  
Association (PBA). Section 205.5 of our Rules requires that a  
response to such petition be filed within 10 working days of  
the receipt of the petition. The PBA requested the Director  
of Conciliation (Director) to grant it an extension of time to  
file its response. The Director declined to grant such  
request. The matter comes to us on an "exception" filed by  
the PBA to the action of the Director.

10984

In its papers, the PBA states that, prior to the filing of the City's petition for interest arbitration, the PBA had filed an improper practice charge against the City alleging that the City has refused to execute an agreement reached between the parties (Case U-9229). PBA asserts that it ought not be required to respond to the City's petition for arbitration until after a determination is made by the Administrative Law Judge on its improper practice charge. The PBA asserts that a response to the petition "will be totally inconsistent" with its position in the improper practice proceedings. PBA also argues that the award in the interest arbitration proceeding may be inconsistent with the decision reached in the improper practice proceeding.

#### DISCUSSION

Our Rules of Procedure contemplate that a party may raise objections to arbitrability by filing an improper practice charge within the time required to file a response to a petition for arbitration. Rule §205.5 states:

If the respondent has filed an improper practice charge related to compulsory interest arbitration under section 205.6 of these Rules, the response shall contain a reference to such charge.

There is, therefore, no basis in our Rules for permitting delay in filing a response merely because of the filing of an improper practice charge. No different result should follow because an improper practice charge is filed prior to the filing of the petition for interest arbitration.

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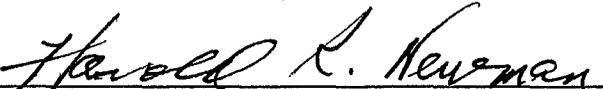
The improper practice charge filed by the PBA appears to raise a question as to the arbitrability of the dispute. Rule §205.6(c) states:

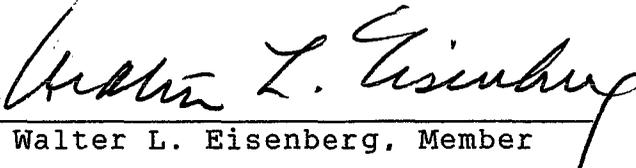
The public arbitration panel shall not make any award on issues, the arbitrability of which is the subject for an improper practice charge, until final determination thereof by the Board or withdrawal of the charge . . . .

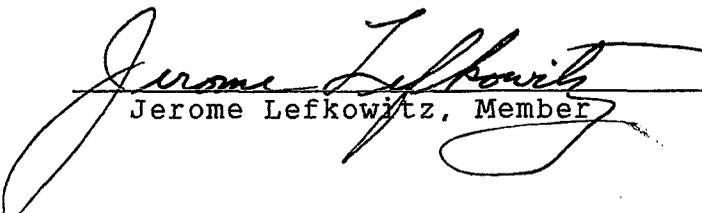
In view of that provision, we perceive no prejudice to the PBA in requiring it to file a timely response to the petition. Nothing in our Rules prevents the PBA from including in its response its position vis-a-vis the pendency of the improper practice charge.

Accordingly, WE ORDER that the "exception" filed by PBA be, and it hereby is, dismissed. This proceeding should be processed by the Director in such manner as he deems advisable.

DATED: June 2, 1987  
Albany, New York

  
Harold R. Newman, Chairman

  
Walter L. Eisenberg, Member

  
Jerome Lefkowitz, Member

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of

CAPITAL DISTRICT REGIONAL OFF-TRACK  
BETTING CORPORATION,

Employer,

- and -

CASE NO. C-3090

TEAMSTERS JOINT COUNCIL NO. 18,  
INTERNATIONAL BROTHERHOOD OF TEAMSTERS,

Petitioner,

- and -

LOCAL 2055, COUNCIL 66, AFSCME,

Intervenor.

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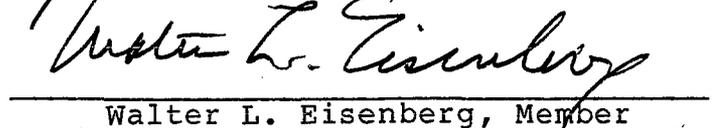
BOARD DECISION ON MOTION

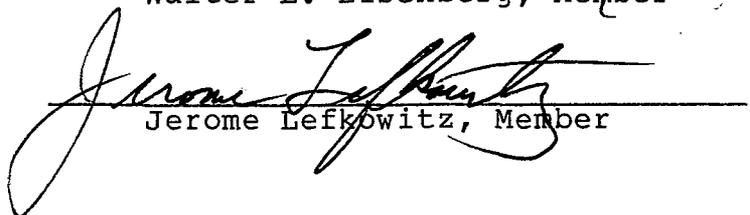
This matter comes to us on the motion of the Capital District Regional Off-Track Betting Corporation that we reconsider the decision that we issued in this matter on April 24, 1987.

The motion is denied.

DATED: June 1, 1987  
Albany, New York

  
Harold R. Newman, Chairman

  
Walter L. Eisenberg, Member

  
Jerome Lefkowitz, Member

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STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of

NORTH BABYLON UNION FREE SCHOOL DISTRICT

CASE NO. E-1282

Upon the Application for Designation of  
Persons as Managerial or Confidential.

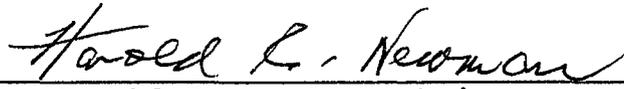
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INTERIM BOARD DECISION

The representative of the North Babylon Union Free School District Teachers Organization has requested permission, pursuant to §201.9(c)(3) of our Rules of Procedure, to appeal a ruling of the Administrative Law Judge made during the hearing in this matter denying a request for the issuance of a subpoena.

The request of the North Babylon Teachers Organization is denied. The Administrative Law Judge's ruling may be considered in the event exceptions are filed to the Director's final decision in this proceeding.

DATED: June 2, 1987  
Albany, New York

  
Harold R. Newman, Chairman

  
Walter L. Eisenberg, Member

  
Jerome Lefkowitz, Member

10988

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of

MANHATTAN AND BRONX SURFACE TRANSIT  
OPERATING AUTHORITY,

Employer,

-and-

CASE NO. C-3198

TRANSIT SUPERVISORS ORGANIZATION,

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 Transit Supervisors Organization 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: Supervising Claim Examiners.

Excluded: All other employees.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Transit Supervisors Organization. To negotiate collectively is the performance of their mutual obligation to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question rising thereunder, and the execution of a written agreement incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession.

DATED: June 2, 1987  
Albany, New York

  
Harold R. Newman, Chairman

  
Walter L. Eisenberg, Member

  
Jerome Lefkowitz, Member

10990

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of  
VILLAGE OF ALDEN,

Employer,

-and-

CASE NO. C-3176

VILLAGE OF ALDEN EMPLOYEES' ASSOCIATION,

Petitioner,

-and-

VILLAGE OF ALDEN UNIT, LOCAL 815, CSEA,  
INC., LOCAL 1000, AFSCME, AFL-CIO,

Intervenor.

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CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

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

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

IT IS HEREBY CERTIFIED that the Village of Alden Employees' 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.

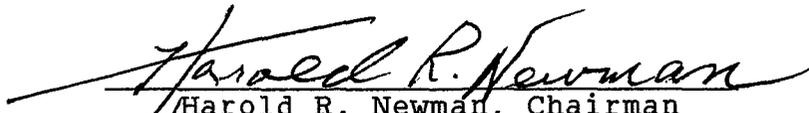
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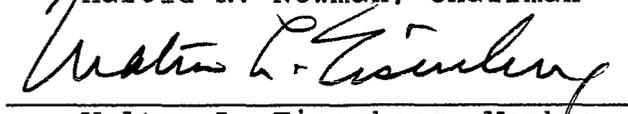
Unit: Included: All employees of the Department of Public Works in the following titles: Working Crew Chief (Foreman), Senior Water/Sewer Plant Operator, Water Sewer Plant Operator, Motor Equipment Operator, and Laborer.

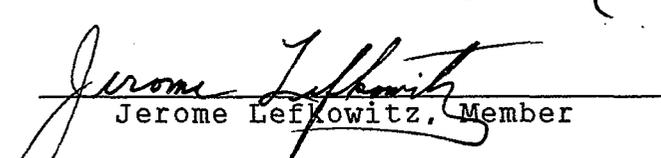
Excluded: Superintendent, clerical, CETA, part-time and seasonal employees.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Village of Alden Employees' Association. To negotiate collectively is the performance of their mutual obligation to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question rising thereunder, and the execution of a written agreement incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession.

DATED: June 2, 1987  
Albany, New York

  
Harold R. Newman, Chairman

  
Walter L. Eisenberg, Member

  
Jerome Lefkowitz, Member