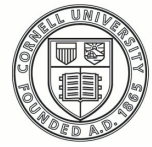
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New York State Public Employment Relations Board (PERB)

4-27-1988

State of New York Public Employment Relations Board Decisions from April 27, 1988

New York State Public Employment Relations Board

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State of New York Public Employment Relations Board Decisions from April 27, 1988

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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

MIRIAM SOFFER,

Charging Party,

-and- CASE NO. U-9794

QUEENS COLLEGE OF THE CITY UNIVERSITY OF NEW YORK,

Respondent.

MIRIAM SOFFER, pro se

BOARD DECISION AND ORDER

Miriam Soffer (charging party) excepts to the dismissal, as deficient, of her improper practice charge by the Director of Public Employment Practices and Representation (Director). The charge alleges that the Queens College of the City University of New York (Queens College) violated §209-a.1(e) of the Public Employees' Fair Employment Act (Act) when, for the spring 1988 semester, charging party was assigned a workload of 14 weekly contact hours rather than a maximum of 12 weekly contact hours as required by the expired collective bargaining agreement between Queens College and the Professional Staff Congress/CUNY, the charging party's collective bargaining agent.

The Director dismissed the charge as deficient upon the ground that only a recognized or certified bargaining agent, and not an individual bargaining unit member, has standing to file a

charge pursuant to §209-a.1(e) of the Act. The Director based the dismissal of the charge upon a decision recently issued by this Board involving the same charging party and respondent, and charging party's bargaining agent.[1/] Taking our holding in that case into account, the Director reasoned that because the bargaining agent, and not an individual employee who benefits from the result of the bargain, is the party to the negotiating process which §209-a.1(e) is intended to protect, only the bargaining agent, and not the individual employee, has standing to allege its violation.

While we fully recognize that members of a bargaining unit are substantially affected by violations by employers of §§209-a.1(d) and 209-a.1(e) of the Act, it is our determination that the right to seek redress of such violations by an employer flows to the employee's bargaining agent, which has the duty and right to negotiate on behalf of its members. Where, for arbitrary, discriminatory or bad faith reasons, an affected employee's bargaining agent fails or refuses to take appropriate action, a duty of fair representation claim may arise.[2/] Nevertheless, an individual bargaining unit member does not have the right to act

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[1/] See City University of New York and PSC/CUNY (Soffer), 20 PERB ¶3051, at p. 3111 n. 2 (1987), in which we "adopt[ed] the finding that only bargaining agents, and not their individual members have standing to claim violations of §209-a.1(e) of the Act."

[2/] UFT Local 2 (Greenburg), 15 PERB ¶4591 (1982), aff'd 16 PERB ¶3004 (1983).

independently and in the place of the bargaining agent in the filing of charges relating to alleged violations of the employer's bargaining duties. There can be no question that the purpose of §209-a.1(e) of the Act is to impose a duty upon employers to maintain the status quo pending negotiations with the bargaining agent representing its employees of a successor bargaining agreement. This provision of the Act is not intended to create a right of individual enforcement of an expired collective bargaining agreement.

Based upon the foregoing, we affirm the Director's determination that charging party is without standing to file an improper practice charge alleging a violation of §209-a.1(e) of the Act.

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

DATED: April 27, 1988
Albany, New York

Harold R. Newman
Harold R. Newman, Chairman

Walter L. Eisenberg
Walter L. Eisenberg, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

THOMAS C. BARRY,

Charging Party,

-and- CASE NO. U-9902

UNITED UNIVERSITY PROFESSIONS,

Respondent.

THOMAS C. BARRY, pro se

BOARD DECISION AND ORDER

Thomas C. Barry, charging party, excepts to the decision of the Director of Public Employment Practices and Representation (Director) which dismissed, as deficient, his charge alleging a violation by the United University Professions (UUP) of §209-a.2(a) of the Public Employees' Fair Employment Act (Act).

Barry's charge alleges that UUP's 1988-89 agency fee refund procedure "has never been officially published or acknowledged, or communicated to any other independent employees", and that UUP's procedure is deficient because it does not state on its face that "it [shall] be communicated to each independent employee by individual delivery of mail on an annual basis".

The Director dismissed the charge upon the ground that, as framed, Barry's charge is filed on behalf of "other independent employees", in contradiction of PERB's procedures, which do not permit class actions. The second ground for the Director's dismissal is that Barry's charge contains no factual allegations which could establish that UUP's duty to communicate its agency fee refund procedures to nonmembers who are in its unit arises more than three months prior to the first point at which a nonmember would have resort to the procedure.[1/] The Director, in essence, concluded that the charge failed to state any claim upon which relief could be granted with regard to the allegation that UUP violated the Act when it failed to communicate its agency fee refund procedure prior to January 15, 1988, when the charge was filed.

The Director also dismissed that portion of the charge which asserts a Taylor Law violation in the failure to specify in the agency fee refund procedure a date and means by which communication of the procedure itself will be disseminated to nonmembers. The Director determined that, because the 1988-89 UUP procedure has been approved by this Board [See UUP (Barry, Eson & Gallup), 20 PERB ¶3052 (1987)], and because Barry was a party to the case in which approval

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[1/]Under UUP's procedure, which was annexed to the charge, the period for filing objections to the use of agency fee monies for purposes not permitted by the Act over objection, began on April 15, 1988 for the 1988-89 fiscal year.

of the procedure was issued [See UUP (Barry, Eson & Gallup), 20 PERB ¶3039 (1987)] Barry is precluded from obtaining a review of that Board determination by means of a new improper practice charge, rather than by means of appeal of the earlier decision and order.

In his exceptions, Barry asserts that he does in fact have standing to allege a failure of UUP to communicate its agency fee refund procedure to all agency fee payers, notwithstanding his own personal receipt of a copy of the procedure. Second, Barry asserts that, although he was provided with a letter by the Director's designee, setting forth certain deficiencies of his charge, the deficiency letter did not contain any reference to the ground relied upon by the Director in his dismissal of the charge that the charge was, essentially, premature when filed because it was filed approximately three months before the first step in the procedure was to take place and no factually supported claim was made that a Taylor Law duty existed at that time to disseminate the procedure to affected persons. He claims that, had he had notice of this alleged deficiency, he would have been able to refute it by establishing that the procedure should have been disseminated to all agency fee payers in September 1987, when he himself received it.

Barry's third exception argues that he is in fact entitled to bring a charge alleging deficiencies in the 1988-89 agency fee procedure promulgated by UUP, notwithstanding the Board's approval of that procedure in a prior decision.

DISCUSSION

While we have held many times that PERB's procedures do not permit the filing of class action improper practice charges, and that PERB will accordingly not order remedial relief on a class-wide basis, we have also held that an agency fee payer has standing to file an improper practice charge alleging that certain aspects of an agency fee refund procedure are violative of his own Taylor Law rights, even if he has acted in conformity with a challenged procedure.[2/] Accordingly, the charging party is correct in arguing that he is not precluded from filing an improper practice charge alleging that UUP has failed to publish or otherwise communicate its agency fee refund procedure to all agency fee payers, despite the fact that he personally obtained a copy.

Secondly, while we agree with the Director's determination that the charging party may not obtain review of the written procedure previously approved by this Board in a case to which he was a party, he does, in our view, have the right to claim, as he does in this charge, that the

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[2/] In UUP (Barry, Eson & Gallup), 20 PERB ¶3039 (1987), for example, we entertained charges that the objection period provided by UUP's agency fee refund procedure was unreasonably brief and scheduled at a time when academic programs were not in session, finding Taylor Law violations as a result. We did so, notwithstanding the fact that each of the charging parties complied with the requirement that they file objections during the time frame established by UUP in its procedure. The charging parties had standing to challenge the validity of the procedure despite the fact that they were not prejudiced by it in the sense that they were unable, or failed, to comply with it.

procedure is silent as to some matter or matters which should be included therein. This is so, whether the claimed deficiency is included in the written procedure or included as a matter or practice, if not already litigated in the previous charge.

Having made these findings, we now turn to the question of whether Barry's charge sets forth allegations which, if proven, would constitute an improper practice within the meaning of §209-a.2(a) of the Act.

We find, first, that Barry's claim that "[T]here is nothing in the [agency fee refund procedure] which requires that it be communicated to each independent employee by individual delivery of mail on an annual basis" fails to establish a Taylor Law violation. There is no inherent obligation on the part of an employee organization to indicate in its written procedure when, where, and by what means an agency fee refund procedure will be communicated to agency fee payers. If, in fact, the procedure is communicated in such a manner as to give agency fee payers reasonable advance notice of the steps and requirements of the procedure, the failure to include the manner in which communication and dissemination will take place in the procedure itself does not give rise to a Taylor Law violation. We accordingly find that the omission from UUP's agency fee refund procedure of details concerning when and in what manner the 1988-89 procedure will be communicated to

agency fee payers fails to state a claim of violation of §209-a.2(a) of the Act. The Director properly dismissed so much of the improper practice charge as makes this allegation.

It remains to be considered whether the failure, in fact, of UUP to communicate its agency fee refund procedure for the 1988-89 fiscal year prior to January 15, 1988 (when the charge was filed), constitutes a violation of §209-a.2(a) of the Act. We find that it does not. Barry asserts in his exceptions that UUP violated the Act when it failed to communicate the agency fee refund procedure, not by January 15, 1988, when the charge was filed, but by September 1987, when the procedure was originally promulgated. While there would be nothing to prevent UUP from disseminating its procedure many months in advance of the first step of the procedure, there is no basis upon which it could be claimed that the failure to do so gives rise to an improper practice charge. In fact, in UUP (Eson), 11 PERB ¶3074 (1978), this Board found that only 10 days' notice of the refund procedure prior to the first step of the procedure by agency fee payers did not constitute an interference, restraint or coercion of employees in the exercise of their rights pursuant to §202 of the Act. We accordingly affirm the Director's dismissal of the charge, insofar as it alleges that UUP violated the Act when it failed to communicate its agency fee refund procedure to agency fee payers either by

January 15, 1988, the filing date of the charge, or by September 1987, the date when Barry alleges in his exceptions that the procedure should in fact have been disseminated.[3/]

Based upon the foregoing, the dismissal of the charge by the Director is affirmed, and IT IS ORDERED THAT the charge be, and it hereby is, dismissed.[4/]

DATED: April 27, 1988
Albany, New York

Harold R. Newman

Harold R. Newman, Chairman

Walter L. Eisenberg

Walter L. Eisenberg, Member

[3/]We are mindful of the point raised by Barry in his exceptions that dismissal of his charge upon a ground not included in the "deficiency" letter previously sent to him, effectively precluded him from responding at the Director's level, and have taken administrative steps to avoid such a result in the future. However, the failure to place Barry on advance notice of one of several grounds for dismissal of his charge does not constitute reversible error, since the Director is not required by our Rules to issue a "deficiency" letter or to set forth each and every ground upon which dismissal might occur. Furthermore, Barry has not, in his exceptions, alleged that any new or different facts would have been asserted by him had he received advance notice of this ground for dismissal. Accordingly, no prejudice has been established. See NYC Transit Authority, 20 PERB ¶3057, at p. 3125 n. 2 (1987).

[4/]Dismissal in this case is without prejudice to the right of Barry or other agency fee payers to file an improper practice charge alleging that they have not in fact received notice of UUP's 1988-89 agency fee refund procedure within a reasonable time prior to the first step of the procedure, which, on its face, took place on April 15, 1988.

#2C-4/27/88

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

RUSH-HENRIETTA EMPLOYEES' ASSOCIATION, BUILDINGS AND GROUNDS, BUS MECHANICS CHAPTER, NYSUT/AFT, AFL-CIO,

Charging Party,

-and- CASE NO. U-9463

RUSH-HENRIETTA CENTRAL SCHOOL DISTRICT,

Respondent.

RUSH-HENRIETTA EMPLOYEES' ASSOCIATION, TEACHERS CHAPTER, NYSUT/AFT, AFL-CIO,

Charging Party,

-and- CASE NO. U-9464

RUSH-HENRIETTA CENTRAL SCHOOL DISTRICT,

Respondent.

RUSH-HENRIETTA EMPLOYEES' ASSOCIATION, AIDES CHAPTER, NYSUT/AFT, AFL-CIO,

Charging Party,

-and- CASE NO. U-9477

RUSH-HENRIETTA CENTRAL SCHOOL DISTRICT,

Respondent.

GILBERT BIANCUCCI, Senior Field Representative, NYSUT, for Charging Parties

HARRIS, BEACH, WILCOX, RUBIN & LEVEY (JAMES A. SPITZ, JR., ESQ., of Counsel), for Respondent

BOARD DECISION AND ORDER

This matter comes to us on the exceptions of the Rush-Henrietta Central School District (District) to an Administrative Law Judge (ALJ) decision dated February 9, 1988, which, in three consolidated cases, found that the District violated §209-a.1(d) of the Public Employees' Fair Employment Act (Act) when it unilaterally prohibited smoking in all District buildings and buses. The resolution enacted by the Board of Education on April 14, 1987, to be effective May 7, 1987,[1/] superseded a practice which had permitted employees to smoke in work areas of the building, except when students were present (Stipulation of the parties). Since enactment of the Board's resolution, employees wishing to smoke may do so only outside of the District's buildings.

In concluding that the imposition of a complete ban on smoking in District buildings and buses constitutes a mandatory subject of bargaining, the ALJ found that (1) No free-standing public policy against smoking can be identified and relied upon by the District in support of its actions; (2) The blanket prohibition against smoking (as compared to the previous practice

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[1/] By resolution of April 28, 1987, the Board of Education reaffirmed its April 14 resolution following receipt of a decision of the New York State Court of Appeals in Boreali v. Axelrod, 130 A.D.2d 107 (3d Dep't 1987), aff'd, 71 N.Y.2d (1987), which struck down regulations promulgated by the Public Health Council prohibiting smoking in many public areas.

of prohibiting smoking only when students are present) primarily affects employees in the terms and conditions of their employment; (3) No legislation has been enacted which would have the effect of superseding the District's duty under the Act, if a duty exists, to bargain concerning the prohibition against smoking as a term and condition of employment; and (4) A balancing of interests is appropriate to determine whether the employer's objectively demonstrable need to act in furtherance of its mission outweighs the bargaining agent's entitlement to negotiation before changes in terms and conditions of employment can be made.

The bulk of the District's exceptions relate to the argument that the ALJ's decision fails to take into account the duty of the District to provide protection to its 5,500 students who are under its care and supervision. However, the issue before the ALJ, and before us, is not whether the District is entitled to act unilaterally to protect its students from the effects of secondhand smoke,[2/] but whether employees should be prohibited from smoking in District facilities outside the presence of students.

[2/]No evidence was presented at the hearing that the practice in effect prior to the enactment of the April 14, 1987 resolution, which prohibited smoking by employees when students were present, failed to provide adequate protection to students from exposure to secondhand smoke, or that a complete ban on smoking was necessary to provide such protection to students.

We recently had occasion to address the issue of whether unilateral imposition of a no-smoking requirement by an employer constitutes a violation of §209-a.1(d) of the Act [County of Niagara (Mount View Health Facility), 21 PERB ¶3014 (decided March 11, 1988)]. In that case, the Board concluded that no free-standing policy exists which would require a public employer to prohibit smoking in the workplace. We further held that, in the absence of legislation requiring such prohibition, regulations affecting employee smoking constitute work rules subject to the balancing test outlined in County of Montgomery, 18 PERB ¶3077 (1985), in order to determine whether unilateral promulgation of work rules constitutes a violation of the Act. Applying the County of Montgomery balancing test to the employer's prohibition in County of Niagara, we found that smoking regulations do affect terms and conditions of employment, and stated:

> In order to be accorded the right to act unilaterally insofar as smoking regulations are concerned, a public employer must demonstrate that there is a need related to its mission for the restrictions which it imposed on employees smoking in its facilities. [footnote omitted]. Further, the employer must show that those restrictions do not go beyond what is needed to further its mission.
> County of Niagara (Mount View Health Facility), supra at p. ___.

In the instant case, the record establishes that the Board of Education of the District initially met to consider enacting a resolution to limit smoking to certain specific areas of its facilities. After being informed, however, that the cost of ventilating and adapting areas for smoking would be substantial, the Board of Education voted, instead, to prohibit smoking entirely. The ALJ found, and we agree, that the decision to eliminate smoking entirely, rather than to limit it to certain specific areas, was one which was economically based, and did not depend for its enactment upon considerations necessary to its mission. There is, in fact, no evidence contained in the record to support a claim that the complete prohibition against smoking in District facilities was necessitated by evidence of a health hazard to students, since it was not established that students were coming into contact with secondhand smoke prior to enactment of the at-issue resolution.

In view of the foregoing, and in accordance with our decision in County of Niagara (Mount View Health Facility), supra, we conclude, as did the ALJ, that a balancing test is appropriate, and that application of the balancing test fully supports the ALJ's finding that the smoking ban herein is a mandatory subject of negotiations. We accordingly affirm the ALJ holding that the District violated §209-a.1(d) of the Act when it unilaterally banned smoking in District buildings and buses.

We have carefully considered the remaining exceptions raised by the District, and deny them in their entirety.

IT IS THEREFORE ORDERED that the District:

1. Rescind its April 14 and April 28, 1987 prohibitions against smoking in District buildings and buses insofar as it applies to unit employees;
2. Negotiate in good faith with the charging parties regarding the subject matter at issue; and
3. Post a notice in the form attached in all locations ordinarily used to post written communications to unit employees.

DATED: April 27, 1988
Albany, New York

Harold R. Newman

Harold R. Newman, Chairman

Walter L. Eisenberg

Walter L. Eisenberg, Member

APPENDIX

NOTICE TO ALL EMPLOYEES

PURSUANT TO

THE DECISION AND ORDER OF THE

NEW YORK STATE
PUBLIC EMPLOYMENT RELATIONS BOARD

and in order to effectuate the policies of the

NEW YORK STATE
PUBLIC EMPLOYEES' FAIR EMPLOYMENT ACT

we hereby notify all employees of the Rush-Henrietta Central School District in units represented by the Rush-Henrietta Employees' Association, Buildings and Grounds, Bus Mechanics Chapter, NYSUT/AFT, AFL-CIO, the Rush-Henrietta Employees' Association, Teachers Chapter, NYSUT/AFT, AFL-CIO, and the Rush-Henrietta Employees' Association, Aides Chapter, NYSUT/AFT, AFL-CIO, that the District:

1. Will rescind its April 14 and April 28, 1987 prohibitions against smoking in District buildings and buses insofar as it applies to unit employees, and

2. Will negotiate in good faith with the charging parties regarding the subject matter at issue.

RUSH-HENRIETTA CENTRAL SCHOOL DISTRICT

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.

11536

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

ALEXANDRIA CENTRAL SCHOOL DISTRICT,

Employer/Petitioner,

-and-

CASE NO. C-3316

ALEXANDRIA BAY SCHOOL UNIT OF THE JEFFERSON COUNTY LOCAL 823 OF THE CIVIL SERVICE EMPLOYEES ASSOCIATION,

Intervenor.

BOARD DECISION AND ORDER

On November 9, 1987, the Alexandria Central School District (employer/petitioner) filed a timely petition for decertification of the Alexandria Bay School Unit of the Jefferson County Local 823 of the Civil Service Employees Association (intervenor), the current negotiating representative for employees in the following unit:

Included: Bus Drivers, Cook, Food Service Helper, Automotive Helper, Assistant Mechanic, Custodian.

Excluded: Secretarial Personnel, Transportation Director, Cook-Manager, Head Custodian, Head Auto Mechanic.

Upon consent of the parties, a mail ballot election was held on April 5, 1988. 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: April 27, 1988
Albany, New York

Harold R. Newman

Harold R. Newman, Chairman

Walter L. Eisenberg

Walter L. Eisenberg, Member

1/ Of the 19 ballots cast, 3 were for representation and 16 against representation. There were no challenged ballots.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

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

Petitioner,

-and- CASE NO. C-3312

SOUTH ORANGETOWN CENTRAL SCHOOL DISTRICT,

Employer.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

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

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

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

Unit: Included: All full and regular part-time employees, including bus drivers, maintenance employees and custodians.

Excluded: All other employees.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO. The duty to negotiate collectively includes the mutual obligation to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written agreement incorporating any agreement reached if requested by either party. Such obligation does not compel either party to agree to a proposal or require the making of a concession.

DATED: April 27, 1988
Albany, New York

Harold R. Newman

Harold R. Newman, Chairman

Walter L. Eisenberg

Walter L. Eisenberg, Member

#3B-4/27/88

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

BOCES UNITED EMPLOYEES, NYSUT/AFT, AFL-CIO,

Petitioner,

- and - **CASE NO. C-3324**

BOARD OF COOPERATIVE EDUCATIONAL SERVICES #1 - MONROE COUNTY,

Employer,

- and -

BOCES #1 EDUCATIONAL ASSOCIATION, NEA,

Intervenor.

CERTIFICATION OF REPRESENTATION 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 and 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 BOCES United Employees, NYSUT/AFT, 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: Regularly employed full time and part time professional employees who are required to be licensed or certified, including the titles of: occupational or vocational education teacher, special education teacher, guidance counselor, counselor, school psychologist, school social worker, school nurse teacher, speech therapist, teaching assistant, registered nurse, occupational therapist, occupational therapist assistant, physical therapist, job developer, remedial reading teacher, regular substitute teacher who is employed for a term or more, school library media specialist, speech-language pathologist, special education summer school teachers who teach in the summer as an extension of a regular academic year course, and English as a second language (ESOL).

Excluded: District Superintendent of schools, assistant or associate superintendents, director, coordinator, principal, supervisor, other employees requiring certification as an administrator, substitutes other than regular substitutes, casual and temporary employees, all other employees, adult and continuing education teacher, and summer school teacher.

FURTHER, IT IS ORDERED that the above-named public employer shall negotiate collectively with the BOCES United Employees, NYSUT/AFT, AFL-CIO. The duty to negotiate collectively includes the mutual obligation to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written agreement incorporating any agreement reached if requested by

either party. Such obligation does not compel either party to agree to a proposal or require the making of a concession.

Dated: April 27, 1988
Albany, New York

Harold R. Newman, Chairman

Walter L. Eisenberg, Member