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6-23-1988

## State of New York Public Employment Relations Board Decisions from June 23, 1988

New York State Public Employment Relations Board

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## State of New York Public Employment Relations Board Decisions from June 23, 1988

### 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  
MARCELLUS CENTRAL SCHOOL DISTRICT,  
Charging Party,

-and-

CASE NO. U-9369

MARCELLUS FACULTY ASSOCIATION,  
Respondent.

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In the Matter of  
MARCELLUS FACULTY ASSOCIATION,  
Charging Party,

-and-

CASE NO. U-9662

MARCELLUS CENTRAL SCHOOL DISTRICT,  
Respondent.

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DENNIS E. JONES, for Marcellus Central School District  
THOMAS CLERKIN, for Marcellus Faculty Association

BOARD DECISION AND ORDER

This matter comes to us on the exceptions of the Marcellus Faculty Association (MFA) to an Administrative Law Judge (ALJ) finding that it violated §209-a.2(b) of the Public Employees' Fair Employment Act (Act) (Case No. U-9369), and to the dismissal of its charge against the Marcellus Central School District (District) alleging a violation by the District of §209-a.1(d) of the Act (Case No. U-9662).

In Case No. U-9369, the District alleges that the MFA violated §209-a.2(b) of the Act when, on March 30, 1987, it insisted upon the stenographic transcription of negotiating sessions for a collective bargaining agreement. The MFA denied that its actions violated the Act, and subsequently filed a charge, Case No. U-9662, on September 2, 1987, alleging that the District violated §209-a.1(d) of the Act when, at a pre-hearing conference held before the ALJ on June 17, 1987, the District "stated that it would not proceed with negotiations if verbatim minutes were taken of the proceedings by any means or any individual". In its answer, the District denied the portion of the MFA's charge which alleged that it had made such a statement.

Thereafter, the parties entered into a Stipulation of Facts and agreed that a hearing would not be required based thereon. The ALJ found that the MFA did violate §209-a.2(b) of the Act when it insisted upon the stenographic transcription of its negotiating sessions with the District and directed that the MFA negotiate in good faith accordingly. With respect to the charge filed by the MFA against the District, the ALJ concluded that the charge was untimely because the June 17 statement allegedly made by the District constituted merely a reiteration of a position which the District had taken on March 30, 1987, rendering the charge untimely.

The exceptions to the ALJ decision filed by the MFA assert, first, that the position taken by the District on June 17, 1987 was a new position, broader in scope than the position which it had taken on March 30, 1987, rendering the charge timely. Second, the MFA asserts that the District had a burden, which it failed to meet, of proving that the presence of a stenographer was likely to inhibit the free flow of discussion at negotiations, as a prerequisite to a finding that insistence upon stenographic transcription constitutes a failure to negotiate in good faith. The MFA's third exception asserts that the District waived its right to object to the use of stenographic transcription when it participated in a negotiating session recorded by a stenographer on March 11, 1987, without protest.

We deny the MFA's first exception upon the ground that it raises an issue which is not properly before us. The record in this case establishes that the MFA alleged in its charge that the District made a new and significantly broader statement of a negotiating position on June 17, 1987, in violation of the Act. The District, in its answer, denied the portion of the improper practice charge which contains this allegation, thus creating, at the outset, an issue of fact concerning whether the statement was made or not. Thereafter, however, the MFA agreed to enter into a Stipulation of Facts and to waive its right to a hearing at which it would have had the opportunity

to prove other or additional facts in both Case No. U-9369 and Case No. U-9662. The Stipulation of Facts makes no reference whatsoever to the alleged June 17, 1987 statement, or that such statement constituted a new and/or different position taken by the District concerning the conduct of negotiations. There was accordingly no fact established in the record which would support the MFA's claim that a new and/or different position was taken by the District within four months prior to the filing of the MFA's charge. Stipulation No. 7 of the Stipulation of Facts entered into between the parties provides as follows:

The District continues to refuse to negotiate with the MFA in the presence of the stenographer as long as the stenographer's record is taken using a transcription machine or taken by any other means which could have the appearance of being a "verbatim" record of negotiations or purported to be a "verbatim" record.

This stipulation, without more, fails to establish that a different violation occurred on June 17, 1987. To the extent that the stipulation may be treated as reflecting a reiteration of the refusal of the District to accede to the MFA's original demand to negotiate with stenographic machine transcription, it might arguably give rise to a timely charge.<sup>1/</sup> However, based upon our finding infra that insistence upon stenographic transcription of negotiating sessions violates the MFA's duty

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<sup>1/</sup>See Village of Malone, 8 PERB ¶3045 (1975).

to negotiate in good faith, a fortiori a claim that the District's refusal to participate in negotiations being stenographically transcribed must fail. We accordingly find that the ALJ properly dismissed the MFA's charge against the District in Case No. U-9662, even if timely, based upon the record before him.

In its second exception, the MFA asserts that a party seeking to establish that stenographic transcription of negotiating sessions violates the duty to negotiate in good faith must first establish that the presence of a stenographer is likely to inhibit the free flow of discussion. In support of its position, the MFA makes certain factual allegations in its exceptions concerning a history of use of verbatim minutes by the parties. However, these allegations do not appear in either of the charges or in the Stipulation of Facts, and are not properly before us. In any event, the findings previously made by this Board, that demands to stenographically transcribe negotiating sessions constitutes a failure to negotiate in good faith, have never been preconditioned upon proof that stenographic transcription inhibits bargaining.<sup>2/</sup> These cases have turned on the finding that transcription of negotiation proceedings is a preliminary issue to collective bargaining negotiations, and that, as with ground rules generally, such

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<sup>2/</sup>See CSEA Local 832, 15 PERB ¶3101 (1982); Shelter Island PBA, 12 PERB ¶3112 (1979).

preliminary matters are subordinate to substantive negotiations and should not be permitted to interfere with the progress of negotiations. Insistence upon stenographic transcription of negotiating sessions as a precondition of bargaining violates §209-a.2(b) of the Act. We accordingly deny the MFA's second exception to the ALJ decision.

The MFA's third exception, which asserts that the District waived its right to object to the use of stenographic transcription when it participated in a March 11, 1987 negotiating session without protest, is also denied. There is nothing in either the charge or in the Stipulation of Facts which establishes the facts necessary to support a waiver,<sup>3/</sup> and we therefore find it unnecessary to reach the question of whether a failure to object to stenographic transcription on one occasion, if established, would give rise to a waiver of the right to object thereafter.

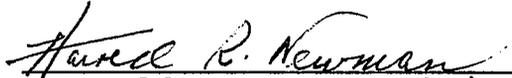
Based upon the foregoing, the decision of the Administrative Law Judge is affirmed, and it is hereby ORDERED that:

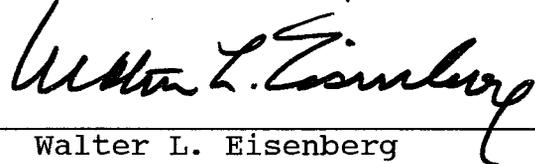
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<sup>3/</sup>A waiver must be established by proof of an intentional relinquishment of a known right, with both knowledge of its existence and an intention to relinquish it, and must be clear, unmistakable and unambiguous. CSEA v. Newman, 88 A.D.2d 685, 15 PERB ¶7011 (3d Dep't 1982), aff'd, 61 N.Y.2d 1001, 17 PERB ¶7007 (1984) (Case history on remand and appeal omitted).

1. The Marcellus Faculty Association cease and desist from insisting upon the stenographic transcription of negotiations and negotiate in good faith with the District;
2. The Marcellus Faculty Association sign and post the attached notice at all locations customarily used to communicate information to unit employees.
3. The charges are in all other respects dismissed.

DATED: June 23, 1988  
Albany, New York

  
\_\_\_\_\_  
Harold R. Newman, Chairman

  
\_\_\_\_\_  
Walter L. Eisenberg

# 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 in the unit represented by the Marcellus Faculty Association that the Association will not insist upon the stenographic transcription of negotiations with the Marcellus Central School District and will negotiate in good faith with the District.

MARCELLUS FACULTY ASSOCIATION

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.*

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of

NEWBURGH ENLARGED CITY SCHOOL DISTRICT,

Charging Party,

-and-

CASE NO. U-9157

NEWBURGH TEACHERS ASSOCIATION, NYSUT,  
AFT, AFL-CIO,

Respondent.

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In the Matter of

NEWBURGH TEACHERS ASSOCIATION, NYSUT,  
AFT, AFL-CIO,

Charging Party,

-and-

CASE NOS. U-9289  
and U-9554

NEWBURGH ENLARGED CITY SCHOOL DISTRICT,

Respondent.

---

DAVID S. SHAW, ESQ. (DAVID S. SHAW and GARRETT L.  
SILVEIRA, ESQ., of Counsel), for Newburgh Enlarged  
City School District

JEFFREY R. CASSIDY, for Newburgh Teachers Association,  
NYSUT, AFT, AFL-CIO

BOARD DECISION AND ORDER

This matter comes to us on the exceptions of both the Newburgh Enlarged City School District (District) and the Newburgh Teachers Association, NYSUT, AFT, AFL-CIO (Association) from an Administrative Law Judge (ALJ) decision on three consolidated improper practice charges. Case No. U-9157, filed by the District, alleges that the Association violated §209-a.2(b) of the

Public Employees' Fair Employment Act (Act), and Case Nos. U-9289 and U-9554, filed by the Association, allege that the District violated §§201-a.1(a), (d) and (e) of the Act. The allegations contained in all of the charges relate to the parties' rights and obligations concerning the negotiation and implementation of an annual professional performance review plan which is required by the Rules and Regulations of the Commissioner of Education.<sup>1/</sup>

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<sup>1/</sup>8A NYCRR 100.2(o) of the Commissioner's Regulations requires that every school district and board of cooperative educational services review annually the performance of all professional personnel. The regulation provides, in its parts most relevant to the instant charges, as follows:

§100.2(o) Annual Professional Performance Review . . .

(1) Each superintendent, in consultation with teachers, administrators and other school service professionals, selected by the superintendent with the advice of their respective peers, shall develop formal procedures for the review of the performance of all such personnel in the District . . . . Formal procedures for the review of the performance of all such personnel shall include:

(i) Criteria by which all such personnel shall be reviewed and a description of the review procedures;

(ii) A description of review activities, including:  
(a) the minimum number of observations; (b) the frequency of observations; and (c) provisions for a follow up meeting for the reviewer to commend strengths of performance and discuss the need for improvement, if necessary, with the staff person being reviewed;

(iii) Methods used to review results; and

(iv) Procedures used to: (a) insure that all such personnel are acquainted with the performance review procedures; and (b) insure that each individual who is reviewed in accordance with the provisions of this subdivision has the opportunity to provide written comment on his or her performance review.

The parties' 1984-86 collective bargaining agreement contained criteria and procedures for the evaluation of professional personnel in the District. In the course of negotiations for a successor agreement, and following enactment of Commissioner's Regulation 100.2(o), the District took the position that the Commissioner's Regulation preempts the field concerning annual professional performance reviews, rendering the promulgation of evaluation procedures nonmandatory subjects of bargaining and authorizing "input" only by Association representatives. The Association, on the other hand, asserts in its charges that the Commissioner's Regulation does not, and cannot, extinguish its Taylor Law right to bargain concerning the promulgation of procedures for evaluation of its bargaining unit members and that the District's refusal to negotiate with it violates §209.a.1(d) of the Act. In support of its position, the Association cites numerous cases decided by this Board which have held generally that evaluation procedures constitute a mandatory subject of negotiations.

The ALJ decision describes in detail the chronology and facts giving rise to the charges before us<sup>2/</sup> and they will not be repeated here. However, two factual points are of special relevance to our consideration of the issues. The first is that in the course of contract negotiations, the parties entered into an agreement concerning evaluation procedures which was reflected

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<sup>2/</sup>21 PERB ¶4521 (1988).

in a Memorandum of Agreement.<sup>3/</sup> The language was not, however, included in the contract prepared and presented by the District for signature by the Association. The District asserts, in support of its exclusion of the language, that it confers no substantive rights, and is solely directory and instructional.

The District further asserts that the language is, in any event, mooted by the passage of time, because it purports only to apply until December 1, 1986, and the agreement was not tendered until May 1987. The Association claims, on the other hand, that the language contained in the memorandum of agreement does contain substantive rights extending beyond December 1, 1986. In particular, the Association contends that the Memorandum of Agreement reflects an agreement between the parties to negotiate concerning development of a plan with the understanding that if agreement could not be reached on the plan by December 1, 1986,

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<sup>3/</sup> Paragraph 1 of the Memorandum of Agreement provides as follows:

1. Delete Article X(I) and the Appendix "I" at pps. 12, 56-62. In consideration for this Agreement, the parties shall meet for the purpose of negotiating, within the meaning of the Taylor Law, regarding the District's Part 100 Professional Performance Evaluation Plan. If agreement cannot be reached on or before December 1, 1986, the District may implement its last proposed plan. (Until December 1, 1986 the evaluations forms and criteria from the 1984-86 agreement shall be applied.) The District's Part 100 Professional Performance Evaluation Plan shall be appended to the Agreement in place of Appendix I by no later than December 1, 1986.

the District's plan would be put in place until such time as a negotiated plan was developed.

The second point which is of special relevance to the disposition of this case is that the parties attended a meeting on December 16, 1986 (following the December 1, 1986 deadline) which was convened by a PERB-appointed factfinder. At the session, the District raised six outstanding issues with respect to the plan, and the Association argued against the six issues presented by the District, while seeking a recommendation from the factfinder of the items which the plan should contain. The Association made no specific affirmative demands concerning what the plan should contain. At the session, upon being informed anew that the Association considered the issue of promulgation of the plan to be a mandatory subject of bargaining, the District refused to participate further, on the assertion that the subject was preempted by the Commissioner's Regulation and was a nonmandatory subject of bargaining.

#### DISCUSSION

At the outset, we must decide whether the ALJ correctly concluded that the Association did not waive any right which it may have had to bargain after December 1, 1986 concerning the development of a performance evaluation plan. We adopt the ALJ's finding that the District failed to meet its burden of proving by a preponderance of the evidence that the Association intentionally relinquished a known right, with both knowledge of its existence and an intention to relinquish it, in a clear, unmistakable and

unambiguous fashion.<sup>4/</sup> In so doing, the reasoning of the ALJ at 21 PERB ¶4521 is also adopted.

Having so found, and implicit in our finding, is the determination that the language contained in the parties' memorandum of agreement arguably confers a substantive right extending beyond December 1, 1986. In fact, the District's argument that the language contained in the Memorandum of Agreement supports its claim that the Association waived the right to negotiate beyond December 1, 1986, constitutes to some degree at least, acknowledgement by the District that the language has a bearing upon the substantive right and duty to negotiate. We, therefore, find that the District violated §209-a.1(d) of the Act when it failed and refused to include the language contained in the Memorandum of Agreement in the contract submitted to the Association for signature. Similarly, we find that the ALJ correctly concluded that, having failed to prove that the Association waived its right, if any, to negotiate an evaluation plan after December 1, the District's charge that the Association violated its duty to bargain by seeking to continue negotiations after December 1 must be dismissed, unless the Commissioner's Regulation renders the subject nonmandatory.

The District complains that the ALJ decision implicitly finds that at least some aspects of the development of a performance

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<sup>4/</sup>See CSEA v. Newman, 88 A.D.2d 685, 15 PERB ¶7011 (3d Dep't 1982), aff'd, 61 N.Y.2d 1001, 17 PERB ¶7007 (1984) (case history on remand and appeal omitted).

evaluation plan for teachers constitutes a mandatory subject of bargaining, and that such implicit finding is erroneous, because the Commissioner's Regulation evidences a public policy against bargaining the issue, or supercedes a duty which would otherwise exist. The ALJ did not reach the question of whether a demand to bargain concerning certain aspects of a performance evaluation plan constituted mandatory subjects for negotiations because he found that the Association had not made any specific demands which could be reviewed for such a determination. We agree with the ALJ that the Association, at the December 16, 1986 factfinding session, failed to present demands specific enough to render them mandatory because it simply opposed the District's demands and sought a sua sponte recommendation from the factfinder of what a plan should contain. We also agree with the ALJ that it is unnecessary to decide what specific demands might be made in connection with a performance evaluation plan, except to state that the Part 100 Regulation issued by the Commissioner of Education does not serve to reverse the line of cases issued by this Board which have found that the promulgation of employee evaluation procedures constitutes a mandatory subject of bargaining.<sup>5/</sup> We find that the Commissioner's Regulation does not

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<sup>5/</sup>In this regard, we approve of the reasoning contained in Avon CSD, 20 PERB ¶4564 (1987), in which another ALJ considered the question of whether §100.2(o) of the Commissioner's Regulations supercedes the Taylor Law duty to bargain which we have otherwise found to exist. See, e.g., Suffolk County BOCES II, 17 PERB ¶3043 (1984); Elwood UFSD, 10 PERB ¶3107 (1977); Somers Faculty Association, 9 PERB ¶3014 (1976); Monroe-Woodbury Teachers Association, 3 PERB ¶3104 (1970).

supercede the Taylor Law duty to bargain, nor does it evidence a public policy which supercedes the public policy contained in the Taylor Law, that encourages collective bargaining as to terms and conditions of employment. As stated by the Court of Appeals in Board of Education of Union Free School District #3 of the Town of Huntington v. Associated Teachers of Huntington, Inc.:

Under the Taylor Law, the obligation to bargain as to all terms and conditions of employment is a broad and unqualified one, and there is no reason why the mandatory provision of that Act should be limited, in any way, except in cases where some other applicable statutory provision explicitly and definitively prohibits the public employer from making an agreement as to a particular term or condition of employment. 30 N.Y.2d, 122, 5 PERB ¶7507, 7510 (1972).

Having found that the Commissioner's Regulation does not preempt Taylor Law negotiations, and having recognized the long line of cases finding evaluation plan procedures to be mandatory subjects of bargaining, the ALJ correctly assumed that specific demands relating to the professional performance review procedure would constitute mandatory subjects of bargaining, if made. Because no such demands by the Association were properly before him, however, it was unnecessary for him to squarely so hold.

We have carefully reviewed the remaining arguments of both parties, and find that they are sufficiently addressed by the ALJ whose decision we adopt here.

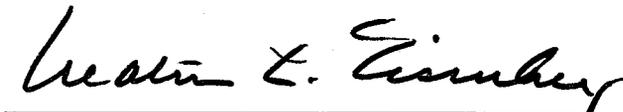
IT IS THEREFORE ORDERED that:

1. The Association and the District negotiate in good faith with respect to the terms and conditions of employment of unit employees.

2. The District prepare and submit to the Association for signature a contract which incorporates all of the parties' agreements reached during collective negotiations, including the first numbered paragraph of the August 18, 1986 Memorandum of Agreement as initialed by the parties' representatives that date;
3. The Association and the District sign and post notices in the form attached at all locations ordinarily used by the parties to post notice of information to unit employees.

DATED: June 23, 1988  
Albany, New York

  
Harold R. Newman, Chairman

  
Walter L. Eisenberg, 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** all employees in the unit represented by the Newburgh Teachers Association, NYSUT, AFT, AFL-CIO (Association) that the Association will negotiate in good faith with the Newburgh Enlarged City School District with respect to the terms and conditions of employment of unit employees.

Newburgh Teachers Association,  
NYSUT, AFT, AFL-CIO.....

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.*

# 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 in the unit represented by the Newburgh Teachers Association, NYSUT, AFT, AFL-CIO (Association) that the Newburgh Enlarged City School District will:

1. Negotiate in good faith with the Association with respect to the terms and conditions of employment of unit employees;
2. Tender to the Association's authorized representatives for signature a contract which incorporates all of the parties' agreements reached during collective negotiations, including the first numbered paragraph of the August 18, 1986 memorandum of agreement as initialed by the parties' representatives that date.

.....Newburgh Enlarged City 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.*

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of

ERIE II-CHAUTAUQUA-CATTARAUGUS BOCES  
ADMINISTRATIVE MANAGEMENT ASSOCIATION,

Petitioner,

-and-

CASE NO. C-3250

ERIE II-CHAUTAUQUA-CATTARAUGUS BOCES,

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 Erie II-Chautauqua-Cattaraugus BOCES Administrative Management 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.

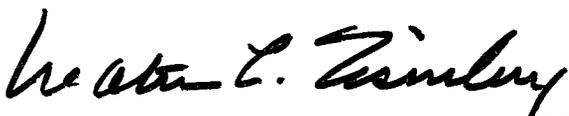
Unit: Included: Supervisor, Special Education; Coordinator, Computer Resources; Coordinator, Elementary Science; Principal; Coordinator/Instructor; Coordinator, Health, Safety and Energy; Coordinator School Library System; Staff Development Specialist; Staff Development Specialist/Elements of Instruction; SETRC Training Specialist; Growing Healthy Specialist.

Excluded: All others.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Erie II-Chautauqua-Cattaraugus BOCES Administrative Management Association. 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: June 23, 1988  
Albany, New York

  
\_\_\_\_\_  
Harold R. Newman, Chairman

  
\_\_\_\_\_  
Walter L. Eisenberg, Member

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of  
UNITED FEDERATION OF POLICE OFFICERS, INC.,  
Petitioner,

-and-

CASE NO. C-3268

VILLAGE OF SUFFERN,  
Employer.

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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,

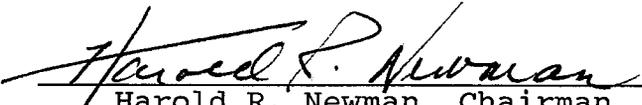
IT IS HEREBY CERTIFIED that the United Federation of Police Officers, Inc. has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations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

Unit: Included: Police Department record clerks, typists and dispatchers.

Excluded: All other employees.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the United Federation of Police Officers, Inc. 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: June 23, 1988  
Albany, New York

  
Harold R. Newman, Chairman

  
Walter L. Eisenberg, Member

11631

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of

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

Petitioner,

-and-

CASE NO. C-3384

WAYNE 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., AFSCME, Local 1000, 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 regularly scheduled full and part-time employees in the following titles:

Senior Stenographer, Senior Typist, Senior Account Clerk, Account Clerk, Library Clerk, Typist, Switchboard Receptionist, Clerk, Teacher Aide, Senior Custodian, Stores Clerk, Custodian, Cleaner, Courier, Groundskeeper, Head Mechanic, Mechanic, Bus Driver, ~~Transportation Clerk, Food Service Helper,~~ Registered Nurse, Cook Manager, Noon Monitor.

Excluded: All management and confidential employees and all other employees.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Civil Service Employees Association, Inc., AFSCME, Local 1000, 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: June 23, 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

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In the Matter of

NEWARK CENTRAL SCHOOL AIDES, NYSUT,  
AFT, AFL-CIO,

Petitioner,

-and-

CASE NO. C-3391

NEWARK 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,

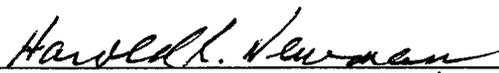
IT IS HEREBY CERTIFIED that the Newark Central School Aides, NYSUT, AFT, AFL-CIO has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

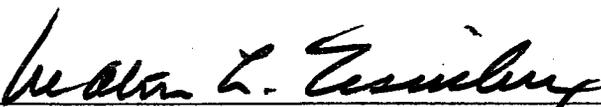
Unit: Included: Teacher aides, teacher assistants, monitors/aides, bus monitors, and library aides.

Excluded: Administrators, supervisors, nurses, and all other employees.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Newark Central School Aides, 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: June 23, 1988  
Albany, New York

  
\_\_\_\_\_  
Harold R. Newman, Chairman

  
\_\_\_\_\_  
Walter L. Eisenberg, Member



NEW YORK STATE  
PUBLIC EMPLOYMENT RELATIONS BOARD  
50 WOLF ROAD  
ALBANY, NEW YORK 12205  
(518) 457-2614

PAULINE R. KINSELLA  
SPECIAL COUNSEL  
TO THE BOARD

June 23, 1988

David B. Gubits  
Jacobowitz & Gubits, Esqs.  
158 Orange Avenue P.O. Box 367  
Walden, NY 12586-0367

Reynold A. Mauro, Esq.  
Schlachter & Mauro  
353 Veterans Memorial Highway  
(Vet. Highway at Northern State Pkway.)  
Commack, NY 11725

Re: Case No. U-9527  
Town of Blooming Grove

Gentlemen:

I have been directed by the Board to write to you in response to Mr. Gubits' letter dated June 21, 1988, wherein he requests a corrective revision to the Notice attached to the Board Decision and Order issued in the above referenced matter on June 14, 1988.

Because the Board was unaware when it issued its Decision and Order that the United Federation of Police, Inc. represents two units in the Town, its Notice failed to specify the unit to which it applies. However, as correctly pointed out by Mr. Gubits, the Board's intention was that the Notice apply only to the sergeants' unit which initiated the charge. Accordingly, the request to revise the Notice was granted by the Board on today's date, and the enclosed corrected Notice should be annexed to the Decision and Order previously issued by the Board.

I trust that the foregoing resolves the matter raised by Mr. Gubits in a manner satisfactory to both parties.

Very truly yours,



Pauline R. Kinsella  
Special Counsel to the Board

PRK/mn

cc: Harold R. Newman  
Walter L. Eisenberg

11637

JACOBOWITZ AND GUBITS

GERALD N. JACOBOWITZ  
DAVID B. GUBITS  
JOHN H. THOMAS, JR.  
GERALD A. LENNON  
PETER R. ERIKSEN  
LINDA F. MADOFF  
HOWARD PROTTER  
RONALD J. COHEN  
DONALD G. NICHOL

COUNSELORS AT LAW  
158 ORANGE AVENUE  
POST OFFICE BOX 367  
WALDEN, NEW YORK 12586-0367

914-778-2121  
914-427-2101  
FAX: 914-778-5173

June 21, 1988

LARRY WOLINSKY\*  
LAWRENCE H. WEINTRAUB  
J. BENJAMIN GAILEY  
MARK A. KROHN\*\*  
ANTHONY G. AUSTRIA, JR.  
JO ANN VISLOCKY\*  
JEFFREY G. SHAPIRO

\*ALSO ADMITTED IN N.J.  
\*\*ALSO ADMITTED IN FLA.

PETER M. LOVI, AICP  
PROFESSIONAL PLANNER

N.Y.S. PUBLIC EMPLOYMENT  
RELATIONS BOARD

RECEIVED

JUN 22 1988

Pauline Kinsella, Esq.  
Special Counsel  
Public Employment Relations Board  
50 Wolf Road  
Albany, New York 12205-2670

Re: Case No. U-9527  
Town of Blooming Grove  
Our file #991-721

Dear Ms. Kinsella:

This is to acknowledge receipt of the Board Decision and Order in the above referenced matter and to request a corrective revision to the Notice which the Town must post.

The United Federation of Police, Inc. represents two units in the Town: 1) the sergeants' unit consisting of the three sergeants and 2) officers' unit consisting of all police officers except chief and sergeants.

Since I believe that the Board intended the Notice to apply only to the sergeants' unit which initiated the charge, I respectfully request that the Notice be revised to specifically refer to the sergeants' unit.

Thank you very much.

Very truly yours,

*David B. Gubits*  
David B. Gubits

DBG:RN  
Enc  
cc: Schlachter and Mauro, Esqs.  
misc-d34

Federal Express  
Air bill #8855492903

11638

# 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 Town of Blooming Grove in the sergeants' unit represented by United Federation of Police, Inc. that the Town will negotiate in good faith with the Federation concerning the assignment of bargaining unit members to days off.

.....  
TOWN OF BLOOMING GROVE

Dated .....

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

Corrected notice  
June 23, 1988  
per New York State Public Employment Relations Board

*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.*

**11639**