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State of New York Public Employment Relations Board Decisions from October 12, 1988

New York State Public Employment Relations Board

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State of New York Public Employment Relations Board Decisions from October 12, 1988

Keywords

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Comments

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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

CIVIL SERVICE EMPLOYEES ASSOCIATION,
INC., LOCAL 1000, AFSCME, AFL-CIO,
NEW ROCHELLE HOUSING AUTHORITY -
WESTCHESTER 860,

Charging Party,

-and-

CASE NO. U-10001

NEW ROCHELLE HOUSING AUTHORITY,

Respondent.

MARJORIE E. KAROWE, ESQ. (JEROME LEFKOWITZ, ESQ., of
Counsel), for Charging Party

BOARD DECISION AND ORDER

This matter comes to us on the exceptions of the Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO, New Rochelle Housing Authority - Westchester 860 (CSEA) to the dismissal by the Director of Public Employment Practices and Representation (Director), as deficient, of its improper practice charge against the New Rochelle Housing Authority (Authority), which alleges a violation of §209-a.1(d) of the Public Employees' Fair Employment Act (Act).

In particular, CSEA's charge alleges that on January 1, 1988, three bargaining unit members employed as maintenance workers were terminated in contemplation of the sale of the Authority building in which they worked. Although the

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planned sale failed to occur, the laid off workers were not rehired, but the work was redistributed to the remaining maintenance employees, who are required to do the work of the terminated employees in addition to their other duties. CSEA asserts that the layoff of employees without a curtailment of services and, accordingly, with a concomitant increase in workload for the remaining employees, constitutes a mandatory subject of bargaining, and that the Authority's actions, taken without negotiation with CSEA, constitute a violation of the Act.

The Director dismissed the charge for failure to set forth a claim which if proven would constitute a violation of the Act upon the ground that an employer is not obligated under the Act to negotiate with an employee organization concerning the number of employees it deems necessary or appropriate to deliver its services. The Director further found that, to the extent that the Authority's reduction in its work force had an impact upon terms and conditions of employment of remaining bargaining unit employees, it was obligated to negotiate the impact only, and then only upon demand.^{1/}

In its exceptions, CSEA argues that the elimination of bargaining unit jobs is a nonmandatory subject of bargaining

^{1/}There is no claim in the instant charge of refusal, on demand, to negotiate the impact of the Authority's reduction in force.

only when a simultaneous curtailment of services or abolition of functions takes place. In support of this proposition, it cites the following language from this Board's decision in City School District of the City of New Rochelle, 4 PERB ¶3060, at p. 3706 (1971).

Decisions of a public employer with respect to the carrying out of its mission, such as a decision to eliminate or curtail a service, are matters that a public employer should not be compelled to negotiate with its employees [footnote omitted].

However, we stated our conclusion in that case in the following manner:

[T]he decision of the School Superintendent involving budgetary cuts with concomitant job elimination is not a mandatory subject of negotiations between the [union] and the employer. We conclude further, however, that the employer is obligated to negotiate with the [union] on the impact of such decisions on the terms and conditions of employment of the employees affected [footnote omitted] (at p. 3707).

Notwithstanding CSEA's contention that our holdings in New Rochelle make layoffs a nonmandatory subject of bargaining only if accompanied by a curtailment of service, we read our decision more broadly to hold generally that the decision to lay off employees is not a mandatory subject of bargaining.^{2/}

It is our conclusion that the Authority's decision to

^{2/}See General Brown Teachers Association, 10 PERB ¶3041 (1977).

reduce its work force by laying off employees, even when no curtailment of service takes place, is not itself a mandatory subject of bargaining.^{3/} Even though such a decision obviously affects the terms and conditions of employment of the laid off employees, the decision itself to lay off employees and cut expenditures accordingly is a management prerogative. As stated by the Director, and as we held in New Rochelle, supra, the impact of the decision to lay off employees is subject to bargaining on demand.

Notwithstanding our holding that the decision to lay off employees, even without a curtailment of service, is a management prerogative over which an employer does not have a statutory duty to bargain, CSEA raises before us the interesting question of whether the burden of the concomitant increase in workload on the remaining employees is in any respect a mandatory subject of bargaining. In this regard, the term "workload" is subject to at least two different meanings. If the term is interpreted as meaning, in the context of this case, an increase in the number of buildings to be cleaned and maintained, without more, an increase in "workload" may not affect terms and conditions of employment, because the additional work may be distributed over a longer time frame, with no change in the amount or scope of work required on a day-to-day basis. However, if increase in

^{3/}See Oswego CSD, 5 PERB ¶3011 (1972).

workload means that bargaining unit members are required to accomplish significantly more work in the course of a workday, a change in terms and conditions of employment may have taken place, and the balancing test between employer mission and employee interest in terms and conditions of employment enunciated by this Board in a number of cases might apply.^{4/}

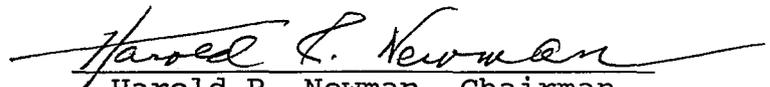
We are unable to ascertain the meaning attributed to the term "workload" as it is used in CSEA's charge, although the clarification statements made by CSEA, on request of the Director's designee, may reasonably be construed to mean that the term "workload" as used in the charge is defined as an increase in the amount of work required of bargaining unit members on a day-to-day basis. In any event, in view of the ambiguity in the terminology used, we deem it appropriate to remand the matter to the Director for further proceedings, including further clarification, submission of an answer and/or hearing to determine whether the Authority's reduction in force primarily affected terms and conditions of employment.^{5/}

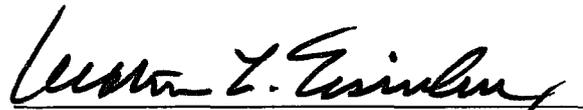
^{4/}See, as one example, State of New York, 18 PERB ¶3064 (1985).

^{5/}See, Northport UFSD, 9 PERB ¶3003 (1976).

IT IS ACCORDINGLY ORDERED that the charge be, and it hereby is, remanded to the Director for further proceedings not inconsistent herewith.

DATED: October 12, 1988
Albany, New York


Harold R. Newman, Chairman


Walter L. Eisenberg, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

VERNETTA R. GARVIN,

Charging Party,

-and-

CASE NO. U-9240

UNITED UNIVERSITY PROFESSIONS, INC.,

Respondent.

SHELLMAN D. JOHNSON, for Charging Party

BERNARD F. ASHE, ESQ. (IVOR R. MOSKOWITZ, ESQ.,
of Counsel), for Respondent

BOARD DECISION AND ORDER

Vernetta R. Garvin (Garvin), charging party, excepts to the dismissal of an improper practice charge alleging, as amended, that the United University Professions, Inc. (UUP) breached its duty of fair representation under the Public Employees' Fair Employment Act (Act) when it failed to process to arbitration a grievance against her employer, the State University of New York (SUNY). The Administrative Law Judge (ALJ) assigned to the case dismissed the charge, on motion of UUP, at the conclusion of Garvin's direct case, upon the ground of failure to present a prima facie case.

UUP cross-excepts to the refusal of the ALJ to dismiss the charge upon two threshold grounds: first, the charge was improperly amended to change the subsection of the Act alleged to have been violated because it was purportedly amended by Garvin's

representative in an unverified letter, in violation of §204.1(a)(3) of PERB's Rules of Procedure (Rules), and second, the original charge, which alleged a violation of §209-a.2(b) of the Act, required dismissal upon the ground that Garvin lacks standing to make such a charge.

The ALJ found that, while UUP correctly asserted that an individual, as compared to an employee organization, is without standing to allege a violation of §209-a.2(b) of the Act, Garvin, by her representative, adequately amended the charge to allege a violation of §209-a.2(a) of the Act on the premise that it is within the discretion of an ALJ to accept an amendment which conforms the subsection of law alleged to have been violated to the facts alleged in the charge.^{1/} In so finding, the ALJ identified the requirement contained in our Rules for verification of a charge as applying particularly to verification of the facts alleged in support of the charge, rather than to the legal conclusion to be drawn concerning what subsection(s) of the Act may have been violated. In reaching her finding, the ALJ took into account that the charge was litigated by the parties as a §209-a.2(a) charge and that no prejudice, or even claim thereof, resulted from amendment of the charge. In support of her rulings, the ALJ cited our decisions in County of Nassau

^{1/}Section 204.1(d) of the Rules permits the amendment of a charge "upon such terms as may be deemed just and consistent with due process."

(Sinicropi), 17 PERB ¶3119 (1984), and UUP (Barry), 19 PERB ¶3082 (1986).

We concur with and affirm the ALJ's finding that the charge is properly construed as an alleged violation of §209-a.2(a) of the Act and that the amendment of the charge to correct the section of law alleged to have been violated to accord with the allegations contained in the charge is contemplated by our Rules of Procedure and does not violate our Rule requiring verification of a charge. UUP's motion to dismiss upon these grounds was, accordingly, properly denied.

We now turn to the exceptions of the charging party to the dismissal of the charge by the ALJ at the conclusion of the charging party's case upon the ground of failure to present a prima facie case of breach of the duty of fair representation pursuant to §209-a.2(a) of the Act.

At the hearing in this matter, Garvin testified on her own behalf and introduced three documents into evidence. These documents consisted of a June 15, 1984 letter of resignation prepared by Garvin's supervisor, which he requested, and which she refused to sign; a copy of a grievance signed by Garvin against her employer; and an October 17, 1986 letter from Garvin to Dr. Nuala Drescher, President of UUP, in response to UUP's determination that Garvin's grievance would not proceed to arbitration. The collective bargaining agreement upon which the

at-issue grievance was allegedly based was not offered or received in evidence.^{2/}

One of Garvin's exceptions asserts that the ALJ improperly failed to rule on the question of whether UUP's failure to process Garvin's grievance was racially motivated and was the result of racial discrimination. Contrary to Garvin's claim, we note that the ALJ, at page 8 of her decision, did address the issue of race discrimination, finding that there is "no" factual support in the record for Garvin's accusation that SUNY, OER and UUP acted against her because of race, even assuming that such might be a violation of the Taylor Law [footnote omitted]." Our review of the record supports the ALJ finding, and Garvin cites no evidence in the record which would contradict the finding or would support in any respect a race discrimination claim necessary to establish a duty of fair representation breach finding, as required by our Rules [Rules §§204.10(b)(3) and (4)].

^{2/}On appeal to this Board, Garvin sought to introduce a copy of the collective bargaining agreement between UUP and her employer. Garvin was informed, by letter, and it is here confirmed, that this Board will consider only the evidence accepted and made a part of the record before the ALJ, unless one of the exceptions before us is an alleged erroneous refusal by the ALJ to accept proffered material into evidence or unless some other extraordinary circumstance, such as newly discovered evidence, exists. Since no request was made of the ALJ at the hearing in this matter to receive a copy of the collective bargaining agreement, or relevant portions thereof, in evidence, such material is not properly before us at this time, and may not be considered. This ruling also applies to a motion made by Garvin to introduce to the Board a 1985 performance evaluation not offered to the ALJ. That motion is accordingly denied.

The remaining exceptions to the ALJ decision relate to the ALJ's finding that a prima facie case of breach of the duty of fair representation had not been presented during the charging party's direct case. Garvin established that she had filed a grievance on or about October 1, 1985, that the grievance proceeded through the first three steps of the UUP-State of New York grievance procedure, and that, prior to the arbitration step, UUP informed her that a determination had been made that "there is no sound contractual basis which would justify taking [the grievance] to step 4 (arbitration) of the union's grievance procedure." Garvin presented no evidence that the claimed basis for denial of arbitration by UUP was pretextual or that the decision not to arbitrate her grievance was made in bad faith or for arbitrary or discriminatory reasons, as she was required to do to support her claim.^{3/}

Garvin failed to establish by any probative evidence that her grievance set forth allegations which would constitute a violation of the collective bargaining agreement between the State of New York and UUP, and she further failed to establish that the UUP abused its discretion in any fashion in refusing to proceed to arbitration on her behalf. Garvin relies on her October 17, 1986 letter of response to UUP President Drescher as

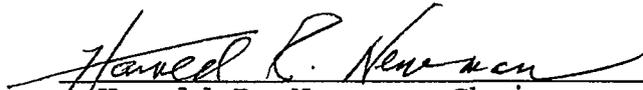
^{3/}Brighton Transportation Association, 10 PERB ¶3090 (1977); CSEA (Kandel), 13 PERB ¶3049 (1980); Local 32, Long Island Public Service Employees (MacLeon), 20 PERB ¶3045 (1987) (appeal pending).

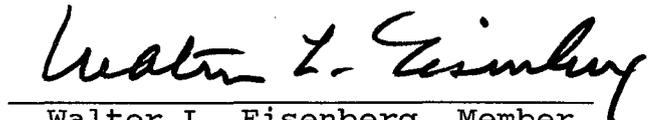
her basis for claiming that the refusal to proceed to arbitration was an arbitrary or capricious decision or one made in bad faith. However, that document, while containing argument in support of Garvin's desire to proceed to arbitration, does not constitute evidence that her grievance had merit or that UUP acted in an arbitrary or capricious fashion in refusing to proceed further.

In the absence of any probative evidence supporting a claim of breach of duty of fair representation, the burden of proof did not shift to the UUP and the ALJ properly dismissed the charge at the conclusion of the direct case.^{4/}

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

DATED: October 12, 1988
Albany, New York


Harold R. Newman, Chairman


Walter L. Eisenberg, Member

^{4/}See County of Nassau (Police Department), 17 PERB ¶3013 (1984).

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

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

Charging Party,

CASE NO. U-9268

-and-

COUNTY OF NASSAU,

Respondent.

MARJORIE E. KAROWE, ESQ. (JOSEPH E. O'DONNELL,
ESQ., of Counsel), for Charging Party

BEE, DE ANGELIS & EISMAN, ESQS. (PETER A. BEE,
ESQ., of Counsel), for Respondent

BOARD DECISION AND ORDER

This matter comes to us on the exceptions of the Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO (CSEA) to the decision of the Administrative Law Judge (ALJ) dismissing its improper practice charge against the County of Nassau (County). CSEA alleged in its charge that the County violated §§209-a.1(a) and (c) of the Public Employees' Fair Employment Act (Act) by terminating a unit employee, Freeman, in retaliation for his filing of two grievances which were sustained at arbitration.

Freeman was employed by the County as a nurse's aide for 15 years and had regularly worked the 3:00 p.m. to 11:00 p.m. shift. On May 29, 1985, Freeman allegedly abused an elderly

patient. The next day, the County discharged Freeman. Within a week, CSEA filed a grievance on Freeman's behalf, which grievance was sustained on October 16, 1985. The arbitrator found that the County had failed to prove patient abuse and directed Freeman's reinstatement. The County thereupon reinstated Freeman to his former 3:00 p.m. to 11:00 p.m. shift.

On April 4, 1986, the County received notification that, on April 1, 1986, Freeman had been convicted after trial of harassment based upon a complaint arising from the incident which occurred on May 29, 1985. On April 21, 1986, Freeman received notice of reassignment to the 7:00 a.m. to 3:00 p.m. shift at the laundry effective May 6, 1986. Upon receipt of such notification, Freeman told his supervisor that he could not work the 7:00 a.m. to 3:00 p.m. shift because he had to take care of his children during the daytime. He was told to report to the shift or stay home. Freeman failed to report on May 6, 1986, and, on June 16, 1986, the County terminated Freeman. CSEA filed a grievance on his behalf.

On January 23, 1987, the arbitrator ordered Freeman reinstated, finding that the verbal instruction to report was ambiguous. The County, on January 30, 1987, notified Freeman to report to work on the 7:00 a.m. to 3:00 p.m. shift at the laundry. Freeman never reported for such work and, on February 17, 1987, the County discharged him.

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In her decision, the ALJ observed that in order to sustain its charge, CSEA had the burden of proving, among other things, that the County would not have taken the action it did but for Freeman's exercise of protected rights. The ALJ found that the County credibly showed that the reassignment of Freeman was prompted solely by Freeman's criminal conviction and that the assignments to the day shift in both April, 1986 and January, 1987 were based on the County's concern that Freeman be assigned to a shift that would remove him from patient care and would allow the County to exercise a greater degree of supervision over him.

In its exceptions, CSEA argues that the reasons given by the County may have justified transfer to the laundry but not the change of shift. CSEA urges that the County, having been made aware of Freeman's inability to work the day shift because of his family situation, could have removed him from a patient care role, but still accommodated his continuing on the 3:00 p.m. to 11:00 p.m. shift. Thus, CSEA contends, it was error for the ALJ to find that the County was motivated by legitimate business reasons.

DISCUSSION

We affirm the ALJ's finding that the assignments to the day shift in both April, 1986 and January, 1987 were a proper exercise of management authority.

CSEA asks us to infer that the County acted in retaliation for Freeman's successful exercise of his grievance rights. The evidence does not permit us to draw such a conclusion. The County took no action against Freeman after the first arbitration award. Only after the County had been notified of his criminal conviction did the County act to change his assignment and shift in April, 1986. The credible testimony of the County's witness establishes that the County was motivated to take such action at that time solely by a desire to remove him from direct patient care and bring him under the greater supervision available on a day shift when more supervisors work. Furthermore, the record is clear that the County was not aware of Freeman's family situation when it first directed the change of assignment. Freeman's subsequent refusal to work the day shift was, of course, the subject of the second arbitration award. After the arbitrator sustained Freeman's grievance because the County's order to report was ambiguous, the County reiterated its reassignment of Freeman in January, 1987.

The record does not support a finding that the County had a different motivation in January, 1987 than it had in April, 1986. We agree with the ALJ's conclusion that the County was still motivated by the same concerns that prompted the original decision to reassign Freeman. There is nothing in this record that could support a finding that the County

could reasonably have taken other steps to accommodate Freeman's family situation while, at the same time, assuring his removal from patient care and allowing greater supervision over him. We must conclude, therefore, that the County's assignment was not improperly motivated and that Freeman's termination was the result of his own unwillingness or inability to comply with the County's order, and that such termination was not in violation of §§209-a.1(a) and/or (c) of the Act.

NOW, THEREFORE, WE ORDER that the charge be, and hereby is, dismissed in its entirety.

DATED: October 12, 1988
Albany, New York


Harold R. Newman, Chairman


Walter L. Eisenberg, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

COUNTY OF NASSAU

Case No. S-0002

for a determination pursuant to
Section 212 of the Civil Service
Law.

BOARD DECISION AND ORDER

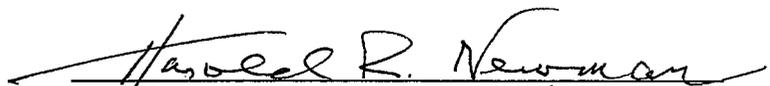
Pursuant to §212 of the Civil Service Law, the County of Nassau has submitted an application by which it seeks a determination that its Ordinance No. 549-1981, as amended on June 20, 1988 by Ordinance No. 292-1988, is substantially equivalent to the provisions and procedures set forth in Article 14 of the Civil Service Law with respect to the State. Specifically, the amendment brings the County of Nassau's ordinance into conformity with Chapter 204 of the Laws of 1987, which extended the Taylor Law's interest arbitration provisions for an additional two years.

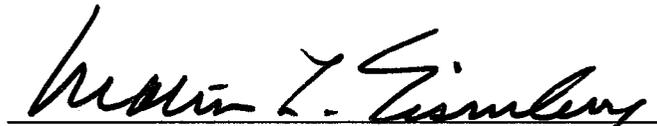
Having reviewed the application and having determined that the subject ordinance, as amended, is substantially equivalent to the provisions and procedures set forth in Article 14 of the Civil Service Law with respect to the State,

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IT IS ORDERED that the application of the County of Nassau be, and it hereby is, approved.

DATED: October 12, 1988
Albany, New York


Harold R. Newman, Chairman


Walter L. Eisenberg, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of
STATE OF NEW YORK,

Employer/Petitioner,

-and-

CASE NO. C-2827

SECURITY UNIT EMPLOYEES, COUNCIL 82,
AFSCME, AFL-CIO,

Intervenor.

RICHARD J. DAUTNER, ESQ., for Employer/Petitioner

ROWLEY, FORREST and O'DONNELL, P.C., for
Intervenor

BOARD DECISION AND ORDER

The State of New York (State) excepts to so much of a decision of the Director of Public Employment Practices and Representation (Director) as dismissed its petition to remove the titles of Correction Sergeant, Supervising Environmental Conservation Officer, Environmental Investigator II and Forest Ranger II from the Security Services Unit represented by Security Unit Employees, Council 82, AFSCME, AFL-CIO (Council 82) and to place them in the Security Supervisors Unit.^{1/} In particular, the State alleges that the Director failed to accord proper weight to the supervisory

^{1/}The petition sought 21 titles, but agreement was reached on 17 of them, 5 of which were removed. No appeal was taken from the Director's decision placing these 5 titles in the Security Supervisors Unit.

responsibilities of the individuals holding the at-issue titles and failed to accord appropriate weight to the State's evidence concerning the adverse effect of retaining sergeants in the Security Services Unit. The State also asserts that the Director erred in failing to find that Local 1873 of Council 82^{2/} engaged in actual subversion of the functions of supervisors in the bargaining unit, claiming that such subversion constitutes an adequate basis for removing supervisory positions from the Security Services Unit, citing our decisions in East Greenbush CSD, 17 PERB ¶3083 (1984), City of White Plains, 16 PERB ¶3096 (1983), and other cases.

After carefully reviewing the record and written submissions of the parties, and after hearing oral argument in this matter, it is our determination that the decision of the Director should be affirmed. In so finding, we note our well established policy that a bargaining unit of long standing^{3/} will not be disturbed in the absence of compelling evidence that the existing bargaining unit does not meet or no longer meets the statutory standards which applied or should have applied to the creation of the unit at its

^{2/}Local 1873 represents Environmental Conservation Officers (ECO's), Supervising ECO's, Environmental Investigators and Forest Rangers in the New York State Department of Environmental Conservation.

^{3/}See State of New York, 2 PERB ¶3037 (1969).

outset.^{4/} Those standards are set forth in §207.1 of the Public Employees' Fair Employment Act (Act), which directs this Board to

define the appropriate employer-employee negotiating units taking into account the following standards: (a) the definition of the unit shall correspond to a community of interest among the employees to be included in the unit; (b) the officials of government at the level of the unit shall have the power to agree, or to make effective recommendations to other administrative authority or the legislative body with respect to the terms and conditions of employment upon which the employees desire to negotiate; and (c) the unit shall be compatible with the joint responsibilities of the public employer and public employees to serve the public.

In applying these standards, the Board has consistently held that a considerable burden rests upon a party seeking to change a unit previously held to be appropriate. We have held that several factors are relevant to the determination of whether fragmentation of supervisory employees from a unit which includes rank-and-file members, including the following: evidence of actual subversion of effective supervision (County of Ulster, 16 PERB ¶3069 (1983)), "the level of supervisory functions of the employees involved, the nature and size of the existing and proposed units, the nature of the service performed by the employees involved and

^{4/}See, e.g., County of Rensselaer (HVCC), 18 PERB ¶3001 (1985); City of Schenectady, 19 PERB ¶3027 (1986).

any special working relationship between them." (County of Ulster, supra, at p.3111).

In a situation where, as here, both the rank-and-file and the supervisors units are long established, we must decide more than whether the supervisors here at issue are "more like" or "share a greater community of interest with" their subordinates or with their own supervisors, who are in the Security Supervisors Unit. We must further decide whether their current unit placement is compatible with the public interest, and whether experience has established the existence of a conflict of interest within that unit which interferes with the public interest. We will discuss consider these issues with respect to Correction Sergeants and the Department of Environmental Conservation titles separately.

Correction Sergeants

The Director found, and we agree, that the community of interest shared by the Correction Officers and Sergeants is at least as great, if not greater than, the community of interest shared by the Sergeants, Lieutenants and other supervisory titles. In so finding, of particular significance is the evidence concerning the similarity in working conditions of the Correction Officers and Sergeants (working almost exclusively "in population", with its attendant specialized risks and responsibilities, and the similarity of duties [supervisory responsibilities comprise

only a portion of the duties expected of Sergeants, who otherwise perform duties substantially similar to those of Correction Officers]).

We also agree with the Director that the State has not established actual subversion of supervisory functions with respect to the Correction Sergeant title. We adopt the findings of the Director in this regard.

We further find, as did the Director, that the supervisory duties performed by Correction Sergeants are not of a sufficiently high level to warrant a finding that those duties create an inherent conflict of interest between them and those whom they supervise. In so finding, we note that the supervisory responsibilities of Correction Sergeants are strictly circumscribed with respect to work assignments and working conditions. Correction Sergeants play no role in the hiring process or assignment of Correction Officers to facilities, and evaluations and counseling performed by Sergeants, as well as misconduct reports, are in the nature of recommendations only, and do not have effect until they have been approved by Lieutenants. Sergeants do not play any role in the formal grievance procedure contained in the Council 82-State collective bargaining agreement. Based upon the foregoing, it cannot be said that those supervisory duties performed by Sergeants create an inherent conflict of

interest between them and the other employees in the bargaining unit.

Department of Environmental Conservation Titles

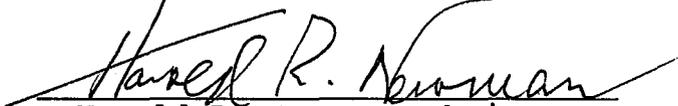
In his decision the Director detailed his reasoning, and the evidence in support thereof, for the determination that the supervisory duties of persons holding the titles of Supervising Environmental Conservation Officer, Environmental Conservation Investigator II and Forest Ranger II are not of such a high level as to require their removal from the Security Services Unit and their placement in the Security Supervisors Unit. The Director's findings appear in his decision at 21 PERB ¶4024 (1988), and will not be repeated here. We also affirm the Director's decision insofar as it finds that the State failed to meet its burden of proving that retention of persons in these titles in the Security Services Unit would or does have an adverse effect upon the fulfillment of its responsibilities as a public employer or the employees' fulfillment of their responsibilities as public employees, in their service to the public.

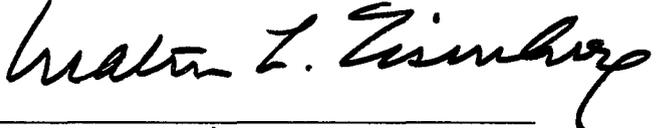
Finally, we concur with the Director in his finding that the evidence adduced by the State in support of the proposition that active subversion of effective supervision has taken place by virtue of the publication of two Council 82 publications pertaining to the at-issue supervisory titles, is factually insufficient to establish that Council 82 has engaged

in an attempt to subvert the supervisory individuals in carrying out their functions. See City of White Plains, 16 PERB ¶3096 (1983).

Based upon the foregoing, IT IS ORDERED THAT the ~~decision of the Director is affirmed, and it is further~~ ordered that the petition be, and it hereby is, dismissed insofar as it seeks to remove the aforementioned four titles from the Security Services Unit and place them in the Security Supervisors Unit.

DATED: October 12, 1988
Albany, New York


Harold R. Newman, Chairman


Walter L. Eisenberg, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

TEAMSTERS LOCAL UNION, LOCAL 693, AFL-CIO,

Petitioner,

-and-

CASE NO. C-3407

VILLAGE OF WALTON,

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 Teamsters Local Union, Local 693, 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.

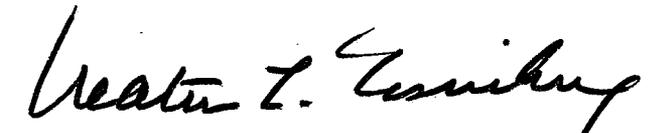
Unit: Included: Motor Equipment Operator, Operator Trainee, Senior Operator, Heavy Equipment Operator, Mechanic, Recreation Leader, and Police Clerk.

Excluded: Public Works Superintendent, Assistant Public Works Superintendent, Chief Operator and all other employees.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Teamsters Local Union, Local 693, 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: October 12, 1988
Albany, New York


Harold R. Newman, Chairman


Walter L. Eisenberg, Member

11777

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

SUBSTITUTES UNITED IN BROOME, NYSUT, AFT,
AFL-CIO,

Petitioner,

- and -

CASE NO. C-3381

VESTAL 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,

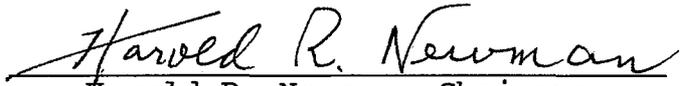
IT IS HEREBY CERTIFIED that the Substitutes United In Broome, NYSUT, AFT, AFL-CIO has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective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

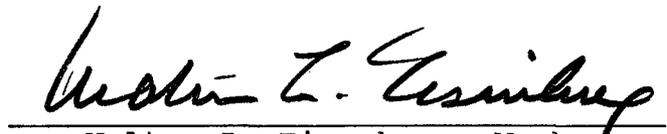
Unit: Included: All per diem substitute teachers who have received a reasonable assurance of continuing employment as referenced in Civil Service Law §201.7(d).

Excluded: All other employees.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Substitutes United in Broome, 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: October 12, 1988
Albany, New York


Harold R. Newman, Chairman


Walter L. Eisenberg, Member