



Cornell University  
ILR School

Cornell University ILR School  
**DigitalCommons@ILR**

---

Board Decisions - NYS PERB

New York State Public Employment Relations  
Board (PERB)

---

1-24-1989

## State of New York Public Employment Relations Board Decisions from January 24, 1989

New York State Public Employment Relations Board

Follow this and additional works at: <https://digitalcommons.ilr.cornell.edu/perbdecisions>

Thank you for downloading an article from DigitalCommons@ILR.

**Support this valuable resource today!**

---

This Article is brought to you for free and open access by the New York State Public Employment Relations Board (PERB) at DigitalCommons@ILR. It has been accepted for inclusion in Board Decisions - NYS PERB by an authorized administrator of DigitalCommons@ILR. For more information, please contact [catherwood-dig@cornell.edu](mailto:catherwood-dig@cornell.edu).

If you have a disability and are having trouble accessing information on this website or need materials in an alternate format, contact [web-accessibility@cornell.edu](mailto:web-accessibility@cornell.edu) for assistance.

---

## State of New York Public Employment Relations Board Decisions from January 24, 1989

### Keywords

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

### Comments

This document is part of a digital collection provided by the Martin P. Catherwood Library, ILR School, Cornell University. The information provided is for noncommercial educational use only.

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

---

In the Matter of

UNITED UNIVERSITY PROFESSIONS,

Charging Party,

-and-

CASE NO. U-10321

STATE OF NEW YORK (GOVERNOR'S OFFICE  
OF EMPLOYEE RELATIONS),

Respondent.

---

RUBY P. LOCKHART, for Charging Party

BOARD DECISION AND ORDER

This matter comes to us on the exceptions of the United University Professions (UUP) to the dismissal, as untimely, of its improper practice charge against the State of New York (Governor's Office of Employee Relations) (State). The charge alleges that a bargaining unit employee, Dr. K. Duffy, was discriminated against with respect to promotion and discretionary salary increases because of her union activity, in violation of §§209-a.1(a), (b) and (c) of the Public Employees' Fair Employment Act (Act). Upon the ground that the charge was filed more than four months after the denial of promotion and discretionary salary increases, the Director of Public Employment Practices and Representation dismissed

the charge as having been untimely filed<sup>1/</sup> under §204.1(a)(1) of PERB's Rules of Procedure.<sup>2/</sup>

UUP asserts that it filed, on Dr. Duffy's behalf, a sex discrimination complaint in January 1988, in connection with the same claims of denial of promotion and discretionary salary increases as alleged in the instant charge. In an April 1988 letter of determination, a committee designated to investigate and review the sex discrimination complaint found no evidence of sex discrimination, although it did make a finding of disparate treatment of Dr. Duffy in relation to similarly situated colleagues. UUP asserts that this determination constitutes the point from which our limitation period should run, because it was upon issuance of this determination that Dr. Duffy became aware that her union activity<sup>3/</sup> was the motivation for her disparate treatment. We agree with the Director that the actions complained of in

---

<sup>1/</sup>UUP alleges that, prior to and during 1987, Dr. Duffy was denied promotion to full professor and was denied discretionary salary increases granted to bargaining unit members in the fall of each year from 1984 to 1987. The instant charge was filed on August 17, 1988.

<sup>2/</sup>Section 204.1(a)(1) of the Rules requires that an improper practice charge be filed within four months of the alleged improper practice.

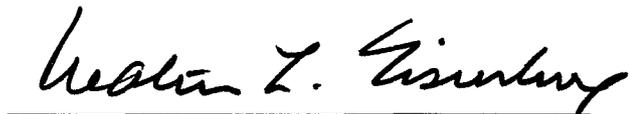
<sup>3/</sup>The Committee's determination (annexed to the charge) ascribes no motive to the disparate treatment found, and makes no mention of Dr. Duffy's union activity. However, UUP alleges that the Committee, subsequent to issuance of its determination, stated to Dr. Duffy its belief that "it was Dr. Duffy's union activities which caused the discrimination."

the charge (i.e., the denial of promotion and discretionary salary increases) were known by Dr. Duffy and her representative to have occurred prior to and during 1987, and that our Rules require that a charge be filed within four months after such adverse action took place. The limitation period contained in our Rules runs from the date the adverse action took place or could reasonably have been discovered, and not from the date when improper motivation is ascribed to it.<sup>4/</sup> The Director accordingly properly dismissed the charge as having been untimely filed.

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

DATED: January 24, 1989  
Albany, New York

  
Harold R. Newman, Chairman

  
Walter L. Eisenberg, Member

---

<sup>4/</sup>See Board of Education of the CSD of the City of New York (Chamberlin), 15 PERB ¶3050 (1982).

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

---

In the Matter of

ERIE COUNTY WATER AUTHORITY UNIT, LOCAL  
#815 CSEA, INC., LOCAL 1000,  
AFSCME, AFL-CIO,

Charging Party,

-and-

CASE NO. U-9991

ERIE COUNTY WATER AUTHORITY,

Respondent.

---

JOSEPH E. O'DONNELL, ESQ., for Charging Party

JOHN P. NOBLE, ESQ., for Respondent

BOARD DECISION AND ORDER

This matter comes to us on the exceptions of the Erie County Water Authority Unit, Local #815 CSEA, Inc., Local 1000, AFSCME, AFL-CIO (CSEA) to the dismissal of its improper practice charge against the Erie County Water Authority (Authority). That charge alleges that the Authority violated §209-a.1(d) of the Public Employees' Fair Employment Act (Act) when, on October 29, 1987, the Authority unilaterally established an overtime work rule which limited the number of overtime hours permitted to be worked by unit employees to 15 hours within a 24-hour period, except in an emergency or except as necessary to complete a single overtime assignment. CSEA alleges that this overtime work rule violates past practices of the parties, and constitutes a unilateral change in terms and conditions of employment.

According to the stipulated record before the assigned Administrative Law Judge (ALJ), CSEA had filed numerous contract grievances protesting various applications of the overtime work rule, asserting that the implementation of the work rule violated Articles II and VI of the parties' collective bargaining agreement, but these grievances were subsequently withdrawn by CSEA. Finding that CSEA's withdrawal of its contract grievances rendered moot the question of whether PERB should defer the matter, or, at the outset, decide whether it has subject matter jurisdiction, pursuant to our decision in Herkimer County BOCES, 20 PERB ¶3050 (1987), the ALJ turned to the question of whether PERB has jurisdiction over the issue raised by the improper practice charge.

The ALJ found that while the parties' collective bargaining agreement covers the issue of assignment and distribution of overtime and dismissed the charge pursuant to §205.5(d) of the Act,<sup>1/</sup> deferral to arbitration would be inappropriate under the circumstances of this case. Our decision in Herkimer County BOCES, supra, contemplates

---

<sup>1/</sup>Section 205.5(d) of the Act provides: "[T]he board shall not have authority to enforce an agreement between an employer and an employee organization and shall not exercise jurisdiction over an alleged violation of such an agreement that would not otherwise constitute an improper employer or employee organization practice."

deferral in those situations in which the charging party has grieved as well as filed an improper practice charge on the same matter. We concur in this determination by the ALJ, inasmuch as CSEA has withdrawn its grievances in connection with this issue, the ALJ appropriately addressed the issue of PERB's jurisdiction without deferral.

We also affirm the ALJ's determination that the language of the parties' collective bargaining agreement evidences negotiation of the subject of overtime authorization and distribution. That agreement provides: "Overtime work shall be performed only in cases of emergency and when authorized by an employee's immediate supervisor or department head", and "When overtime is required and authorized, the Authority shall endeavor to equitably distribute such overtime work among qualified employees within the job classification in which the overtime is worked."

Because the parties' agreement covers the issue of overtime and its distribution, it is manifest that negotiations have taken place between the parties on the subject. Accordingly, the ALJ correctly found that CSEA's complaint is a question of contract interpretation only and that it has failed to meet its burden of establishing a unilateral change in terms and conditions of employment.<sup>2/</sup>

---

<sup>2/</sup>See St. Lawrence County, 10 PERB ¶13058 (1977).

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

DATED: January 24, 1989  
Albany, New York

  
Harold R. Newman, Chairman

  
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-9779

UNITED UNIVERSITY PROFESSIONS,

Respondent.

---

THOMAS C. BARRY, pro se

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

BOARD DECISION AND ORDER

This matter comes to us on the exceptions of United University Professions (UUP) and the cross-exceptions of Thomas C. Barry (Barry) to an Administrative Law Judge (ALJ) decision which upheld in part, and dismissed in part, an improper practice charge filed by Barry which alleges that the agency shop fee procedure adopted by UUP for its 1987-88 fiscal year violates §209-a.2(a) of the Public Employees' Fair Employment Act (Act)<sup>1/</sup> in six aspects.

---

<sup>1/</sup>Section 208.3(a) of the Act requires that an employee organization receiving agency fees from bargaining unit members who do not join the employee organization develop and maintain "a procedure providing for the refund to any employee demanding the return [of] any part of an agency shop fee deduction which represents the employee's pro rata share of expenditures by the organization in aid of activities or causes of a political or ideological nature only incidentally related to terms and conditions of employment."

The six aspects of the procedure alleged by Barry to violate the Act are the following:

1. The 15-day period in June for the filing of the initial objection to agency fees for the upcoming fiscal year is unreasonably short and occurs at a time when school is not in session.
2. The procedure does not provide for the furnishing of financial information prior to the filing of objections by agency fee payers.
3. The requirement that objectors notify UUP by certified or registered mail of their objection and at each step of the appellate procedure is coercive.
4. The advance reduction determination is not based upon an outside audit of those expenditures which are deemed refundable and those which are not.
5. There is no provision for placing the amount of fees reasonably in dispute in an interest-bearing escrow account pending the neutral's determination.
6. Hearing as to the correctness of the advance reduction is not held within a reasonable time period.

The ALJ dismissed as untimely Claim No. 1, Claim No. 2 and so much of Claim No. 3 as alleges that UUP's agency fee refund procedure requires that submission of initial objections to the use of agency fee monies for purposes not permitted by the Act be filed by certified or registered mail. To the extent that Claim No. 3 alleges that UUP's procedure contains a certified mail requirement for other communications falling within four months of the filing of the charge, the ALJ determined that this aspect of the charge was timely filed.

It is our determination that the ALJ correctly applied the principles contained in our recent decision in Middle Country Teachers Association (Werner), 21 PERB ¶3012 (1988), and §204.1(a)(1) of PERB's Rules of Procedure (Rules), which requires that improper practice charges be filed within four months of the act or omission complained of. The dismissal of Claim No. 1, Claim No. 2 and the portion of Claim No. 3 relating to the filing of initial objections is affirmed on the grounds set forth in the ALJ decision, which will not be repeated here. Accordingly, those aspects of the charge are dismissed.

We further affirm the ALJ's determination that, as to the portion of Claim No. 3 which is timely, UUP's requirement that filings pursuant to its procedure be made by certified or registered mail violates §209-a.2(a) of the Act, in accordance with our findings in UUP (Barry, Eson, Gallup), 20 PERB ¶3039 (1987). We there found the certified mail requirement to be unduly burdensome upon objecting agency fee payers, in terms of relative cost and the availability of other reasonably reliable methods of filing.<sup>2/</sup> We also note the absence of any reciprocal use of this type of service on the part of the employee organization in fulfilling its obligations under the procedure.

With respect to Claim No. 4, the ALJ made two specific findings of violation of §209-a.2(a) of the Act. First, she

---

<sup>2/</sup>20 PERB ¶3039, at 3077.

found that UUP failed to present any evidence that it had conducted any "outside audit" at all of its chargeable and nonchargeable expenses. We agree with the ALJ that UUP had the burden of establishing the conduct of an audit of its chargeable and nonchargeable expenditures and that it failed to meet that burden. Inasmuch as such an audit is required by our previous decision, we affirm the ALJ's finding that UUP violated §209-a(2)(a) of the Act when it failed to conduct an audit and failed to provide Barry with its results as part of the information needed by him to determine whether to challenge UUP's advance reduction determination.<sup>3/</sup>

Second, she found that the audits conducted of UUP's affiliate organizations, NYSUT and AFT, do not meet the "outside audit" requirement imposed by this Board, because they are not "independent", as required by our decision in UUP (Barry, Eson, Gallup), supra. The ALJ based this determination upon language contained in the written audit report procedures submitted by the auditors which state as follows:

---

<sup>3/</sup>UUP argues in its brief that our decision in UUP (Eson, Barry, Gallup), supra, issued on July 8, 1987, allowed it to continue its 1987-88 agency fee refund procedure until a new procedure was presented by UUP and approved by this Board, and that its failure to conduct an outside audit of chargeable and nonchargeable expenses was thereby protected. Our decision does not, nor was it intended to, allow for such a result. The authorization given by this Board to UUP to proceed with its agency fee refund procedure, rather than direct a discontinuance of collection of agency fees, did not constitute an imprimatur of approval on UUP's 1987-88 procedure implemented prior to our final decision, nor did it constitute a bar to the filing of charges challenging the procedure.

We have applied certain agreed-upon procedures to the schedule with respect to the allocation of expenses as between amounts chargeable and nonchargeable to agency fee payers for the year ended August 31, 1986. Our procedures included the following:

- (a) We reviewed the underlying assumptions for reasonableness.
- (b) We tested the allocation for mathematical accuracy.

Because the foregoing procedures do not constitute an examination made in accordance with generally accepted auditing standards, we do not express an opinion on any such allocations. However, nothing came to our attention that caused us to believe that the allocations should be adjusted. Had we performed additional procedures, matters might have come to our attention that would have been reported to you. (Emphases supplied.)

The ALJ found that these audits were not sufficiently "independent", as required by this Board in earlier decisions, because some unspecified procedures were "agreed upon" between them and their auditing firms, implying a lack of independence and customary discretion on the part of the accounting firm.

The ALJ also found that the obligation imposed by this Board to conduct an outside audit of refundable and nonrefundable expenditures must be construed as requiring that the audit be conducted in the usual and customary fashion for the conduct of audits. She accordingly held that the statement contained in the audit reports submitted to NYSUT and AFT by their auditing firms that the audits were not conducted "in accordance with generally accepted auditing standards" requires the conclusion that the audits do not

meet minimum standards and are thus violative of §209-a.2(a) of the Act.

The record establishes that NYSUT's audit was conducted by the accounting firm of Buchbinder, Stein, Tunick & Platkin, CPAs, and that the AFT's audit was conducted by KMG Main Hurdman, CPAs. On their face, then, it appears that the audit reports were conducted by "independent" certified auditors. We also note that the determination as to whether expenses of an employee organization are chargeable or not chargeable to agency fee payers calls for legal conclusions, and not auditing conclusions.<sup>4/</sup> The determination as to whether expenses are chargeable or nonchargeable to an agency

---

<sup>4/</sup>See Hohe v. Casey, 695 F. Supp. 814, USDC, MDPa (September 15, 1988), wherein the court quoted the decision of the Second Circuit Court of Appeals in Andrews v. Education Ass'n of Cheshire, 829 F. 2d 335, at 340, as follows:

Appellants' claim that Hudson requires that both the union's expenditures and its allocation of expenses to chargeable and nonchargeable categories be audited turns on an interpretation of the purpose of an audit. Appellants' approach to this problem would have the auditor making a legal, not an accounting, decision regarding the appropriateness of the allocation of expenses to the chargeable and nonchargeable categories. We believe, however, that Hudson's auditing requirement is only designed to insure that the usual function of an auditor is fulfilled. That usual function is to insure that the expenditures which the union claims it made for certain expenses were actually made for those expenses. The union's plan satisfies this requirement. The appellants' interpretation of Hudson's auditing requirement is overly broad because it seeks to have the auditor function both as an auditor in the traditional sense and as the independent decision maker as to chargeable expenses.

fee payer is one for the neutral decision maker, also required by Chicago Teachers Union v. Hudson, 475 U.S. 292, 109 S. Ct. 1066, 19 PERB ¶7502 (1986) and our decision in UUP (Barry, Eson, Gallup), supra.

However, even accepting these limitations upon the scope of an independent auditor's report with respect to chargeable and nonchargeable expenses, a question of fact is created by the language contained in the audit reports which requires further information before any determination can be made as to whether the reports meet the minimum standards set forth in Hudson, supra, and our decision in UUP (Barry, Eson, Gallup), supra. We accordingly reverse so much of the ALJ decision as finds that UUP's affiliate organizations' audit reports are inadequate as a matter of law, based upon the language contained in the audit reports, and remand the matter for further proceedings to determine the independence and scope of the audit reports and the extent to which departure from generally accepted auditing standards occurred and may have affected Barry's entitlement to an independent audit.

As to Claim No. 5, which alleges a violation of the Act by virtue of UUP's failure to place the amount of fees reasonably in dispute in an interest-bearing escrow account pending a neutral's determination, we affirm the finding of the ALJ that this aspect of the charge should be dismissed upon the basis that, in light of the provision of a "10 percent cushion" in the advance reduction payment made by

UUP, an interest-bearing escrow account is not required by the Act.<sup>5/</sup> This aspect of the charge is accordingly dismissed.

Finally, we reach the question of whether UUP scheduled and conducted a hearing as to the correctness of its advance reduction determination within a reasonable period of time, as required by Hudson, supra, and UUP (Barry, Eson, Gallup), supra. In reliance upon our decision in UUP (Barry, Eson, Gallup), supra, the ALJ concluded that the hearing on the appropriateness of the advance reduction determination made by UUP was not held within a reasonable period of time.

The record establishes that Barry's initial objection to the use of his 1987-88 agency shop fees for purposes not required by the Act was filed on June 26, 1987. He received an advance reduction payment on August 25, 1987, and a second, 10 percent cushion payment on September 23, 1987. UUP began to collect agency fee payments following the start of its fiscal year on September 1, 1987. Barry timely appealed the amount of the advance reduction on October 1, 1987. By letter dated November 2, Barry was notified of the date of the hearing on his appeal, which was scheduled to be held on December 14, 1987.

Thus, UUP issued notification, less than four weeks following expiration of the objection period, of the availability of a hearing date to persons who had filed

---

<sup>5/</sup>See UUP (Barry, Eson, Gallup), supra, at 3114.

objections. The hearing was actually conducted less than six weeks following notification of the hearing date. As pointed out by UUP in its brief, the hearing date must be scheduled sufficiently far in advance to enable objecting agency fee payers to prepare for and schedule their appearance at the hearing. Under these circumstances, it does not appear that a lapse of 2 1/2 months from the filing by Barry of his objection to the agency fee advance reduction determination made by UUP to the date of the hearing is excessive or unreasonable. This is particularly so in light of the fact that hearings may not appropriately be scheduled until all objections have been filed and reviewed to determine the appropriateness of geographical location(s) of the hearing, the number of objectors wishing to participate in the hearing, and in light of the process necessary to obtain the name of an arbitrator from the American Arbitration Association (the independent organization utilized by UUP to arrange for a neutral decision maker to hear the advance reduction determination case) and to schedule the hearing with the arbitrator designated.

Our holding in this case is not inconsistent with our decision in UUP (Barry, Eson, Gallup), supra. In that case we affirmed the ALJ's finding that UUP failed to schedule a hearing on its 1986-87 reduction determination within a reasonable time. In that case, however, we based our finding solely upon a lack of evidence that such a hearing had ever

been scheduled or held.<sup>6/</sup> We did not adopt the ALJ's dictum that if an advance reduction determination hearing had been scheduled for December 1, 1986, it would not have been reasonably prompt.

Based upon the foregoing, the ALJ determination in the instant case that UUP failed to conduct its advance reduction determination hearing within a reasonable time period is reversed, and this aspect of the charge is dismissed.

IT IS, ACCORDINGLY, ORDERED that:

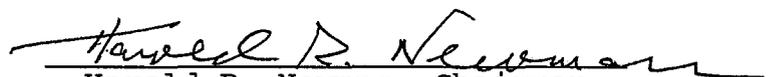
1. This matter is remanded to the ALJ for a determination concerning the appropriateness of the audits conducted by the accounting firms retained by UUP affiliate organizations of those expenditures which are deemed refundable and those which are not;
2. UUP forthwith refund to Barry the amount of agency fees deducted from his salary payable to UUP, and not forwarded to its affiliates, for the 1987-88 fiscal year, with interest at the maximum legal rate, and;

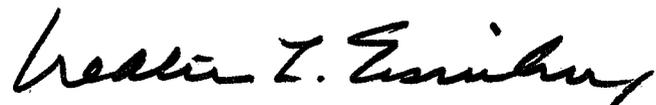
---

<sup>6/</sup>The evidence in that case established that a hearing was scheduled for December 1, 1986, but there was no indication of its purpose - that is, whether it was a year-end review for 1985-86 or for some other purpose.

3. UUP forthwith, upon presentation of appropriate proof, remit to Barry the expenses incurred by him in meeting the certified or registered mail requirement of its agency fee refund procedure for appealing UUP's determination of the amount of the advance reduction for the 1987-88 fiscal year, with interest at the maximum legal rate.

DATED: January 24, 1989  
Albany, New York.

  
Harold R. Newman, Chairman

  
Walter L. Eisenberg, Member

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

---

In the Matter of

POLICE BENEVOLENT ASSOCIATION OF THE  
VILLAGE OF BUCHANAN,

Charging Party,

CASE NO. U-9259

-and-

VILLAGE OF BUCHANAN,

Respondent.

---

SCHLACHTER AND MAURO, ESQS. (REYNOLD A. MAURO,  
ESQ., of Counsel), for Charging Party

FERRARO, MILLER, DRANOFF, GREENBAUM, GOLDSTEIN,  
YATTO & JOHNSON, ESQS. (ARTHUR J. FERRARO, ESQ., of  
Counsel), for Respondent

BOARD DECISION AND ORDER

The Village of Buchanan (Village) appeals from an Administrative Law Judge's (ALJ) decision and order which found that the Village violated §209-a.1(d) of the Public Employees' Fair Employment Act (Act) by unilaterally assigning to a nonunit employee, the Chief of Police, road patrol duties which had previously been performed exclusively by patrolmen represented by the Police Benevolent Association of the Village of Buchanan (PBA).

Decision of the Administrative Law Judge

On the basis of the record before him, the ALJ found that from sometime prior to the time that Charles Cretara

became Acting Chief of Police of the Village in 1982,<sup>1/</sup> the Village police force had grown from a Chief and one patrolman to a Chief and five patrolmen. During this period of growth, the performance of routine patrol work by the Chief of Police diminished. When Cretara was appointed in 1982, he had occasion to perform some patrol work during the first month. Thereafter, he performed none until ordered to do so in 1987.

In the fall of 1986, the police force diminished to the Chief and three patrolmen. In February, 1987, the Mayor, without reaching agreement with the PBA, which represents a unit of all those performing patrol duties and does not include the Chief of Police, issued a memorandum ordering the Chief to "perform patrol duties during your scheduled 7:00 a.m. to 3:00 p.m. shift, Monday through Friday (excluding holidays), in the absence of a regularly scheduled police officer". Complying with this order, Cretara has performed road patrol duties approximately two to four times a month. Prior to this order, when a regularly-scheduled patrolman was unavailable, another one was assigned to perform the patrol duties on an overtime basis. When no other patrolman was available, the department shut down and calls for assistance were channeled to the New York State Police. This was particularly common during the late night and early morning shifts.

---

<sup>1/</sup>He became the Chief of Police in 1985.

The ALJ concluded that the road patrol duties were the exclusive work of the unit represented by the PBA. He therefore found that performance of these duties by the Chief pursuant to the order of the Mayor constituted a unilateral transfer of unit work to nonunit personnel in violation of §209-a.1(d) of the Act. The ALJ ordered restoration of all road patrol duties to the unit and that unit members be made whole for any lost wages resulting from the performance of road patrol duties by nonunit personnel.

Exceptions of the Village

The Village excepted to the ALJ's decision and order on the following grounds:

1. The Decision and Recommended Order is contrary to the law in that it improperly denies the Mayor of the Village of Buchanan the ability to perform his statutorily mandated duties as owed to the public. Furthermore, such duties may not be superseded by any collective bargaining agreement nor by an estoppel argument based on the alleged failure of the Mayor to perform such duties in the past.
2. The Decision and Recommended Order is contrary to previous P.E.R.B. decisions which clearly indicate that unless uncontradicted proof can be shown that specific work is exclusive to a unit, then, as in the instant case, the assignment of unit work to other than unit members is not a violation.
3. The Decision and Recommended Order finding that the present Police Chief Charles Cretara has not performed any road patrol work whatsoever in the past and that the in-issue road patrol duties are exclusive unit work, is unsupported by the record evidence.
4. The Decision and Recommended Order requiring the Employer "to make unit members whole for

lost wages owing to the performance of road patrol duties by nonunit personnel" is unwarranted because if the road patrol duties in issue were to be assigned to the unit personnel, then the performance of such additional duties would constitute overtime work and the complaining unit members have an [sic] inherent right nor collective bargaining right to overtime work unless authorized or approved.

The essence of the Village's first exception and the argument in its brief in support of that exception is that the Mayor has a nondelegable, statutory duty to enforce the laws and run the police department. It asserts that this nondelegable duty authorizes the Mayor to unilaterally assign road patrol to nonunit employees, even if it has been unit work. In support of this claim, it relies upon Village Law §4-400.1(b) and (e), which provide:

1. It shall be the responsibility of the mayor:

\* \* \*

b. to provide for the enforcement of all laws, local laws, rules and regulations and to cause all violations thereof to be prosecuted;

\* \* \*

e. to exercise supervision over the conduct of the police and other subordinate officers of the village;

It is our view that the Mayor's responsibilities with respect to the police department do not authorize him unilaterally to transfer unit work, such as road patrol, to nonunit employees. There are very few instances in which a governmental duty may not be delegated. They are the limited

ones in which the delegation would violate public policy. One of the rare examples is the duty of a board of education to make tenure decisions. Board of Education v. Areman, 41 N.Y.2d 527, 10 PERB ¶7512 (1977); Cohoes City School District v. Cohoes Teachers Association, 40 N.Y.2d 774, 9 PERB ¶7529 (1976). It is obvious that the statutory law enforcement duties of the Mayor relied upon in the Village's brief do not preclude the assignment of some of those duties to subordinate officials.

The second and third exceptions of the Village will be dealt with together. The Village claims that it demonstrated in the hearing before the ALJ that road patrol was not exclusively unit work, which we have held is a prerequisite to the finding of a violation. Niagara Frontier Transportation Authority, 18 PERB ¶3083 (1985). The Village asserts that the record shows that the Chief performed road patrol duties prior to the Mayor's directive. It also claims that the record shows that the State Police performed road patrol duties and has also performed emergency services when the Village department was shut down. With respect to the so-called road patrol duties by the Chief, we agree with the ALJ that the fact that he was seen on occasion, as testified to by several of the Village's witnesses, driving a police car within the Village, is not evidence that the Chief was performing road patrol. In this context, we note that in the performance of administrative and supervisory duties, a

police chief can be expected to be seen driving through the jurisdiction supervised by him. This is far different from performing assigned patrol duties. We therefore affirm the ALJ's finding that the Chief has not done this work in years and that the work is "unit" work.

The fact that the State Police has performed patrol and other police services in the Village, over which it has concurrent jurisdiction, is not relevant to whether the road patrol duties were exclusively unit work. To the extent that police duties in the Village are performed by the State Police, such police work is not the work of the Village. Only if the Village were to contract out and in some manner, directly or indirectly, pay for the work, would it be Village work.

The fourth exception of the Village asserts that the ALJ's order to make unit members whole for any lost wages owing to the performance of road patrol duties by nonunit personnel is incapable of accomplishment. We reject this exception, too. The transcript of the hearing before the ALJ sets forth the system by which road patrol duties were assigned in the absence of the regularly-scheduled police officer. The system utilized an overtime list, with the person at the top of the list being asked first. This system can be utilized to make the unit personnel whole.

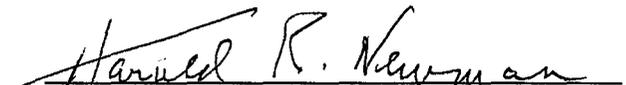
On the basis of the foregoing, we affirm the ALJ's

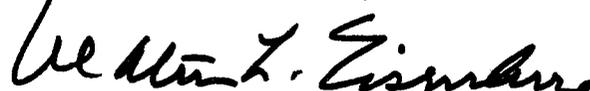
decision and find that the Village violated §209-a.1(d) of the Act.

NOW, THEREFORE, WE ORDER that the Village:

1. Rescind the Mayor's memorandum dated February 3, 1987 ordering the Chief of Police to perform patrol duties;
2. Cease and desist from assigning patrol duties to nonunit personnel;
3. Make unit members whole for any lost wages owing to the performance of road patrol duties by nonunit personnel;
4. Negotiate in good faith with the PBA concerning unit members' terms and conditions of employment; and
5. Sign and post the attached notice at all locations customarily used to post notices to unit members.

DATED: January 24, 1989  
Albany, New York

  
Harold R. Newman, Chairman

  
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 in the Unit represented by the Police Benevolent Association of the Village of Buchanan that the Village of Buchanan:

1. Will rescind the Mayor's memorandum dated February 3, 1987 ordering the Chief of Police to perform patrol duties;
2. Will not assign patrol duties to nonunit personnel;
3. Will make unit members whole for any lost wages owing to the performance of road patrol duties by nonunit personnel;
4. Will negotiate in good faith with the PBA concerning unit members' terms and conditions of employment.

Village of Buchanan

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

---

In the Matter of

COURT OFFICERS BENEVOLENT ASSOCIATION OF  
NASSAU COUNTY, INC.

Petitioner,

-and-

CASE NO. C-3271

STATE OF NEW YORK (UNIFIED COURT SYSTEM),

Employer,

-and-

CSEA, INC., LOCAL 1000, AFSCME, AFL-CIO,

Intervenor.

---

In the Matter of

SUFFOLK COUNTY COURT EMPLOYEES  
ASSOCIATION, INC.,

Petitioner,

-and-

STATE OF NEW YORK (UNIFIED COURT SYSTEM),

CASE NO. C-3273

Employer,

-and-

CSEA, INC., LOCAL 1000, AFSCME, AFL-CIO,

Intervenor.

---

JOSEPH A. FARALDO, ESQ., for Petitioner Court Officers  
Benevolent Association of Nassau County, Inc.

SCHLACHTER & MAURO, ESQS., for Petitioner Suffolk County  
Court Employees Association, Inc.

HOWARD A. RUBENSTEIN, ESQ., for Employer State of  
New York (Unified Court System)

JEROME LEFKOWITZ, ESQ., for Intervenor CSEA, Inc.,  
Local 1000, AFSCME, AFL-CIO

BOARD DECISION AND ORDER

This matter comes to us on the exceptions of the State of New York (Unified Court System) (State), the Court Officers Benevolent Association of Nassau County, Inc. (COBA) and the Suffolk County Court Employees Association, Inc. (SCCEA), to a decision of the Director of Public Employment Practices and Representation (Director) dismissing representation petitions filed by COBA and SCCEA which seek to reconfigure the currently existing units of nonjudicial employees of the State who are assigned to certain courts in Nassau and Suffolk Counties. In particular, COBA seeks to establish a single unit consisting of all currently represented nonjudicial titles within Nassau County, taking unit members from the State Judiciary Unit represented by the Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO (CSEA) and from certain units of employees in the City Court of Glen Cove and the City Court of Long Beach, also represented by CSEA. The SCCEA seeks the creation of a unit within Suffolk County consisting of all nonjudicial

employees in the County, taking unit members from the State Judiciary Unit represented by CSEA employed in the Suffolk County Supreme Court and the Suffolk County Office of the Administrative Judge and Commissioner of Jurors.

The State supports the COBA and SCCEA petitions, while both are opposed by CSEA.

The Director found persuasive CSEA's argument that §39.7 of the Judiciary Law<sup>1/</sup> precludes PERB from entertaining petitions which would alter the composition of pre-existing units of the State's nonjudicial employees without the mutual consent of all affected parties, and dismissed both petitions accordingly.

---

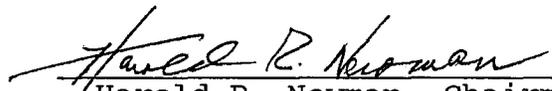
<sup>1/</sup>Section 39.7 of the Judiciary Law provides as follows:

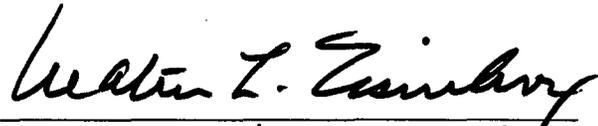
Upon the termination of the period of unchallenged representation of any employee organization certified or recognized to represent employees of the court or court related agencies of the unified court system, petitions may be filed with the public employment relations board to alter negotiating units in accordance with the standards set forth in section two hundred seven of the civil service law; provided, however, that such board shall not alter any such negotiating unit comprised exclusively of such employees or that part of any other negotiating unit comprised of such employees. The provisions of this subdivision shall be applicable in any case in which the negotiating unit is so defined on the effective date of this subdivision in accordance with the provisions of either section two hundred seven or section two hundred twelve of the civil service law, as the case may be. Nothing herein shall preclude the merger of negotiating units of such employees with the consent of the administrative board of the judicial conference and the recognized or certified representatives of the negotiating units involved.

We have carefully considered the exceptions and briefs filed in this matter, and have heard oral argument in connection therewith. The arguments made before this Board are the same as the arguments made to, considered, and addressed by the Director in his decision. Based upon the reasoning set forth in his decision, which we adopt, we hereby affirm per curiam the Director's finding that §39.7 of the Judiciary Law requires dismissal of the instant petitions.

IT IS THEREFORE ORDERED that the petitions be, and they hereby are, dismissed.

DATED: January 24, 1989  
Albany, New York

  
Harold R. Newman, Chairman

  
Walter L. Eisenberg, Member

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

---

In the Matter of

JOSEPH WERNER and MARY VERDON,

Charging Parties,

-and-

CASE NOS. U-9680  
& U-9682

MIDDLE COUNTRY TEACHERS ASSOCIATION,  
NYSUT, AFT, AFL-CIO,

Respondent.

---

NATIONAL RIGHT TO WORK LEGAL DEFENSE FOUNDATION  
(GLENN M. TAUBMAN, ESQ., of Counsel), for  
Charging Parties

JAMES R. SANDNER, ESQ. (J. CHRISTOPHER MEAGHER, ESQ.,  
of Counsel), for Respondent

BOARD DECISION AND ORDER

The Middle Country Teachers Association, NYSUT, AFL-CIO (MCTA) excepts, in part, to an Administrative Law Judge (ALJ) decision which found that its agency fee refund procedure for the 1987-88 fiscal year violates §209-a.2(a) of the Public Employees' Fair Employment Act (Act) in several respects.<sup>1/</sup>

The MCTA's exceptions are as follows:

1. The ALJ's finding that the MCTA's financial information was deficient because of the absence of audited and independent statements of chargeable and nonchargeable expenses is in error.

---

<sup>1/</sup>Except as to those matters which are the subject of exceptions before this Board, the ALJ's findings are not addressed herein.

(a) Financial statements allocating expenses to chargeable and nonchargeable categories need not be audited.

(b) The ALJ's finding that caveats in the audited financial statements of the MCTA's affiliates mean that the audits were not conducted in regular fashion and negates their independence is in error.

2. The ALJ erred in ordering full restitution of the charging parties' agency fees.

3. The ALJ erred in ordering the mailing of the posting notice to all unit employees.

These exceptions are separately addressed below.

Exception No. 1(a)

MCTA asserts that, notwithstanding our decision in UUP (Barry, Eson, Gallup), 20 PERB ¶3039 (1987) (appeal pending), in which we held, inter alia, that an advance reduction determination must be based upon an independent audit of those expenditures which are deemed refundable and those which are not, an independent audit of such expenditures is not required by the Act. In essence, MCTA seeks reconsideration of our prior holding in this regard.

We have considered MCTA's arguments and find no basis for disturbing our prior holding. Indeed, subsequent federal court interpretations given to the U.S. Supreme Court decision in Chicago Teachers Union v. Hudson, 475 U.S. 292, 109 S. Ct. 1066, 19 PERB ¶7502 (1986), upon which we placed great reliance in making our findings in UUP (Barry, Eson,

Gallup), supra, support our own interpretation of that decision.<sup>2/</sup> Exception 1(a) is accordingly denied, and the ALJ decision is affirmed in this regard.

Exception No. 1(b)

The ALJ found that certain language contained in the audited financial statements of chargeable and nonchargeable expenses submitted for MCTA's affiliates, NYSUT and AFT, establish an absence of independence required by our decision in UUP (Barry, Eson, Gallup), supra, and cases cited therein. The statements contained in the audited financial statements submitted by the firm of Buchbinder, Stein, Tunick and Platkin, CPAs, on behalf of NYSUT and by Main Hurdman, CPAs for the AFT, contain virtually the same language:

We have applied certain agreed-upon procedures to the schedule with respect to the allocation of expenses as between amounts chargeable and nonchargeable to agency fee payers for the year ended August 31, 1986. Our procedures included the following:

- (a) We reviewed the underlying assumptions for reasonableness.
- (b) We tested the allocations for mathematical accuracy.

---

<sup>2/</sup>See, in particular, the Second Circuit Court of Appeals decision in Andrews v. Education Ass'n of Cheshire, 829 F.2d 335, 340 (1987), where the court stated, in connection with the scope of the audit requirement for chargeable and nonchargeable expenses: "Hudson's auditing requirement is only designed to insure that the usual function of an auditor is fulfilled. That usual function is to insure that the expenditures which the union claims it made for certain expenses were actually made for those expenses."

Because the foregoing procedures do not constitute an examination made in accordance with generally accepted auditing standards, we do not express an opinion on any such allocations. However, nothing came to our attention that led us to believe that the allocation should be adjusted. Had we performed additional procedures, matters might have come to our attention that would have been reported to you.

In a decision issued simultaneously herewith, UUP (Barry), 22 PERB ¶3003, we hold that a question of fact is created by the language contained in the audited reports which requires further information before any determination can be made as to whether the reports meet the minimum standards set forth in Hudson, supra, and our decision in UUP (Barry, Eson, Gallup), supra. For the reasons set forth in that decision, we decline to find at this time that MCTA's affiliate organizations' audit reports are inadequate as a matter of law, based upon the language contained in the audit reports, and remand the matter for further proceedings to determine the independence and scope of the audit reports and the extent to which departure from generally accepted auditing standards occurred and may have affected the charging parties' entitlement to an independent audit of chargeable and nonchargeable expenses. We accordingly remand this aspect of the charge to the ALJ for further evidence on this issue.

Exception No. 2

MCTA asserts that restoration of agency shop fees for 1987-88 to the charging parties results in a "windfall benefit". We disagree. The numerous aspects of the MCTA's agency fee refund procedure found to violate §209-a.2(a) of the Act (most of which are not at issue before us) do not lend themselves to apportionment. We accordingly affirm the ALJ's remedial order, directing the refund of agency fees paid by the charging parties for the 1987-88 fiscal year, except insofar as fees for that year have been forwarded to MCTA's affiliates. As to those fees forwarded to MCTA's affiliates, a determination will be made by the ALJ concerning whether the audited financial statements provided are adequately "independent" to meet the requirements of Hudson, supra, and our decision in UUP (Barry, Eson, Gallup), supra, and if not, those fees forwarded to MCTA's affiliates shall also be refunded to the charging parties.

Exception No. 3

Having found that the MCTA agency fee refund procedure violates the Act in numerous respects, the ALJ found that the usual requirement that a respondent post notice at work locations in all places normally used by it to communicate information with bargaining unit employees is inadequate,

because agency fee payers may not read notices contained on MCTA bulletin boards. She accordingly directed a posting of the notice and a direct mailing of it to all bargaining unit members. In UUP (Barry, Eson, Gallup), supra, we recognized the potential for the problem of agency fee payers not reading employee organization bulletin boards. We there addressed it by directing the posting of the required notice in the customary manner, and by directing the inclusion of the notice prominently in the next available issue of the employee organization's newspaper. We find that the same approach is appropriate here, if the MCTA issues a newspaper directly to all bargaining unit members. If it does not, MCTA is directed to both post the required notice and mail it to all agency fee payers identified in the payroll deduction list immediately preceding such mailing.

Except as otherwise indicated herein, the decision of the ALJ is affirmed and IT IS THEREFORE ORDERED that:

1. This matter is remanded to the ALJ for a determination concerning the appropriateness of the audits conducted by the accounting firms retained by MCTA affiliate organizations of those expenditures which are deemed refundable and those which are not;
2. MCTA forthwith refund to Werner and Verdon the amount of agency fees deducted from their salaries

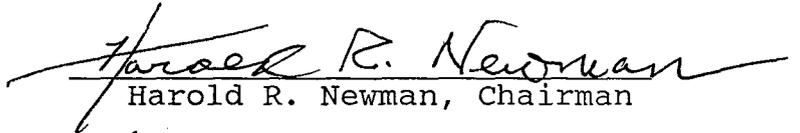
payable to MCTA and not forwarded to its affiliates, for the 1987-88 fiscal year, together with any costs incurred by them in meeting the certified or registered mail requirement of its agency fee refund procedure for the 1987-88 fiscal year, with interest at the maximum legal rate.

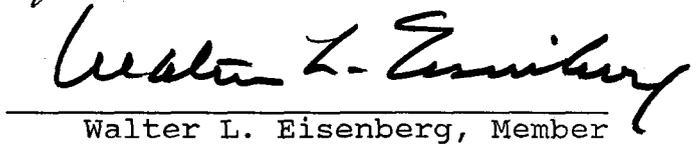
3. Amend its agency fee refund procedure, for the 1988-89 and future fiscal years, to provide at least a 30-day period to file initial objections to the agency fee deduction; to provide that, prior to the period for filing initial objections, agency fee payers shall be given an audited statement of chargeable and nonchargeable expenses for the latest fiscal year for which such an audit is available; to provide for placing the amount of agency fees reasonably in dispute, plus a 10% cushion, in an interest-bearing escrow account while challenges are pending or for the addition of a 10% cushion to the advance reduction payment; and to delete the requirement that objections and appeals be made by certified or registered mail.
4. In the future, insure that the financial information provided to agency fee payers is audited and sufficiently categorized so as to

permit them to determine whether utilization of the refund procedure is warranted.

5. Forthwith post the attached notice at all work locations ordinarily used by MCTA to communicate information with bargaining unit employees.
6. Include such notice prominently in the next available issue of an MCTA newspaper which is distributed directly to all bargaining unit members, or, in the alternative, mail the attached notice to the last known residence address of all agency fee payers in the MCTA unit, based upon the most recent payroll deduction list prior to such mailing.

DATED: January 24, 1989  
Albany, New York

  
Harold R. Newman, Chairman

  
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 in the unit represented by the Middle Country Teachers Association (Association), that the Association:

1. Will forthwith refund to Werner and Verdon the amount of agency fees deducted from their salaries payable to MCTA and not forwarded to its affiliates, for the 1987-88 fiscal year, together with any costs incurred by them in meeting the certified or registered mail requirement of its agency fee refund procedure for the 1987-88 fiscal year, with interest at the maximum legal rate.

2. Will amend its agency fee refund procedure, for the 1988-89 and future fiscal years, to provide at least a 30-day period to file initial objections to the agency fee deduction; to provide that, prior to the period for filing initial objections, agency fee payers shall be given an audited statement of chargeable and nonchargeable expenses for the latest fiscal year for which such an audit is available; to provide for placing the amount of agency fees reasonably in dispute, plus a 10% cushion, in an interest-bearing escrow account while challenges are pending or for the addition of a 10% cushion to the advance reduction payment; and to delete the requirement that objections and appeals be made by certified or registered mail.

3. Will, in the future, insure that the financial information provided to agency fee payers is audited and sufficiently categorized so as to permit them to determine whether utilization of the refund procedure is warranted.

.....  
MIDDLE COUNTRY TEACHERS 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

---

In the Matter of

CATTARAUGUS-ALLEGANY-ERIE-WYOMING  
COUNTIES BOCES UNIT OF CATTARAUGUS  
COUNTY LOCAL 805, CSEA, INC.,  
CSEA/AFSCME LOCAL 1000, AFL-CIO,

Charging Party,

-and-

CASE NO. U-10219

CATTARAUGUS-ALLEGANY-ERIE-WYOMING  
COUNTIES BOCES,

Respondent.

---

MARILYN S. DYMOND, ESQ., for Charging Party

PETER K. HULBURT, ESQ., for Respondent

BOARD DECISION AND ORDER

This matter comes to us on the exceptions of the Cattaraugus-Allegany-Erie-Wyoming Counties BOCES Unit of Cattaraugus County Local 805, CSEA, Inc., CSEA/AFSCME Local 1000, AFL-CIO (CSEA) to an interim decision of the Administrative Law Judge (ALJ) which held, pursuant to §205.5(d) of the Public Employees' Fair Employment Act (Act),<sup>1/</sup> that the Public Employment Relations Board (PERB) lacks jurisdiction over one aspect of CSEA's charge against

---

<sup>1/</sup>Section 205.5(d) of the Act provides, in relevant part, as follows: "[T]he board shall not have authority to enforce an agreement between an employer and an employee organization and shall not exercise jurisdiction over an alleged violation of such an agreement that would not otherwise constitute an improper employer or employee organization practice."

the Cattaraugus-Allegany-Erie-Wyoming Counties BOCES (BOCES).

CSEA alleges in its charge that teacher aides employed at certain facilities of the BOCES, who are hourly employees, were informed by memorandum dated February 9, 1988, that they would not receive pay for regularly scheduled hours not worked as a result of unscheduled closings or early dismissals. CSEA alleges that this policy was utilized on March 28 and 29, 1988, when teacher aides were directed by BOCES not to report to work and they were not paid for those days. CSEA asserts that this policy, and its implementation, constitutes a unilateral change in terms and conditions of employment prohibited by §209-a.1(d) of the Act.

The evidence before the assigned ALJ establishes that CSEA, contemporaneously with its filing of the improper practice charge, also filed a contract grievance alleging that the employer's promulgation and implementation of its policy concerning nonpayment to teacher aides for hours not worked violates several articles of the parties' collective bargaining agreement.<sup>2/</sup>

---

<sup>2/</sup>The contract language primarily relied upon by BOCES in support of its claim that the contract covers the instant issue and that dismissal of the charge is accordingly required, provides as follows: "all teacher aides covered by this contract shall work on a 180 (one hundred eighty) day year and/or periods of pupil attendance between the first day of school in September and June 30th each year with daily work scheduled between Monday and Friday set by BOCES management."

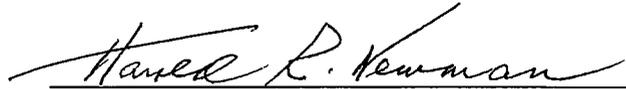
Based upon the fact that CSEA had filed a contract grievance, the ALJ determined, pursuant to §205.5(d) of the Act, that PERB lacks subject matter jurisdiction over the issue raised by CSEA's charge because the charge seeks nothing more than enforcement of the parties' collective bargaining agreement. The ALJ dismissed this aspect of the charge with prejudice.

CSEA's exceptions to the ALJ decision assert that the ALJ erred in finding that the right to payment claim by CSEA derives from its collective bargaining agreement and that PERB lacks subject matter jurisdiction. It also asserts that, rather than dismissing the charge with prejudice, the ALJ should have conditionally dismissed the charge, deferring the question of PERB's subject matter jurisdiction to the conclusion of the contract arbitration process, pursuant to this Board's decision in Herkimer County BOCES, 20 PERB ¶3050 (1987). In that case we considered the question whether "the filing of a contract grievance automatically takes the action complained of outside the scope of PERB's jurisdiction", Herkimer County BOCES, supra, at 3109, and found that it did not. We there stated further that deferral of the determination of PERB's jurisdiction "when there is a pending contract grievance is a more equitable result than outright dismissal of the charge with prejudice." In keeping with our

decision in Herkimer County BOCES, we modify the ALJ's dismissal of the at-issue aspect of this improper practice charge, dismissing the charge only conditionally.

IT IS THEREFORE ORDERED that the determination of PERB's jurisdiction over the charge alleging a violation of CSL §209-a(1)(d) is deferred, and the charge is conditionally dismissed, with opportunity to the Association to file a timely motion to the Director at the conclusion of the contract grievance procedure to reopen the charge upon the ground that the jurisdictional limitations contained in CSL §205.5(d) do not apply to its charge.

DATED: January 24, 1989  
Albany, New York

  
Harold R. Newman, Chairman

  
Walter L. Eisenberg, Member

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

---

In the Matter of

GREECE TEACHERS ASSOCIATION, NEA/NY,

Charging Party,

-and-

CASE NO. U-9787

GREECE CENTRAL SCHOOL DISTRICT,

Respondent.

---

CHRISTOPHER J. KELLY, for Charging Party

STANTON AND VANDER BYL, ESQS. (WAYNE A. VANDER BYL, ESQ.  
of Counsel), for Respondent

BOARD DECISION AND ORDER

The Greece Teachers Association, NEA/NY (GTA) excepts to an Administrative Law Judge (ALJ) decision which dismissed its charge against the Greece Central School District (District). The charge alleges that the District violated §§209-a.1(d) and (e) of the Public Employees' Fair Employment Act (Act) when it increased from four to five the number of assigned teaching periods for seventh and eighth grade teachers.

For the 1987-88 school year, seventh and eighth grade teachers were required to teach one additional academic class period in exchange for supervision of one study hall period. Five days after the charge was filed, the GTA ratified a collective bargaining agreement which contained the following

provision: "Seventh and Eighth grade teams shall teach 5 classes effective upon ratification of this contract."

At issue before the ALJ, then, was whether the District's requirement that seventh and eighth grade teachers teach a fifth academic period from the commencement of the academic year until November 11, 1987, when ratification of a successor contract occurred, violated the Act.

The ALJ's dismissal of the charge was based upon a determination that a unilateral increase in student contact hours, which does not otherwise increase the teachers' workday or decrease their free time, does not constitute a violation of §209-a.1(d) of the Act, citing this Board's decisions in East Ramapo CSD, 17 PERB ¶3001 (1984), and Wyandanch UFSD, 16 PERB ¶3012 (1983).

The ALJ also dismissed so much of the GTA's charge as alleges that the District violated §209-a.1(e) of the Act when it failed to continue the terms of the parties' expired agreement until negotiation of a successor agreement. The language of the expired collective bargaining agreement relied upon by the GTA is as follows:

Article XV Section 3(b)(3) - The parties agree that the District may reorganize the secondary schools and that the effects of any such reorganization upon the terms and conditions of employment shall be negotiated between the parties.

Having found that the increase in the number of academic teaching periods for seventh and eighth grade teachers from

four to five is not a mandatory subject of negotiation and is accordingly not a "term and condition of employment" within the meaning of the Act, the ALJ concluded that the contractual agreement to negotiate "terms and conditions of employment" upon reorganization of the secondary schools has no application to the increase in teaching periods. Because no evidence was presented establishing an intent by the parties to give a different meaning to the language of the contract than has been given to the statutory language, the ALJ dismissed that aspect of the charge also.

The only exceptions before us are the following:

1. The Administrative Law Judge erred in her determination that Troy Uniformed Firefighters Association, 10 PERB ¶3015 (1977) and other cases cited in footnote 15 on page 10 are dispositive of the status of the negotiability of nonmandatory subjects of negotiations.

2. The Administrative Law Judge erred in her conclusion of fact that the unilateral assignment of an additional period does not constitute a violation of Article [sic] 209-a.1(e) because it was not covered by the terms of the expired agreement.

The GTA alleges, in support of its exception No. 1, that, in essence, the District was equitably estopped from unilaterally implementing an increase in teacher academic class periods because, at the time of such implementation, it was engaged in negotiations concerning the subject with the GTA. It does not except to the ALJ's finding or contend that

the increase in teacher academic class periods is a mandatory subject of negotiation,<sup>1/</sup> and we accordingly do not address that issue here. The GTA contends that unilateral implementation of a nonmandatory subject of negotiation, at the same time that negotiations on the subject are taking place, per se constitutes bad faith bargaining. We disagree.

In Troy Uniformed Firefighters Association, 10 PERB

¶3015 (1977), we held (at 3031):

Parties may negotiate over non-mandatory subjects of negotiation and are encouraged to do so. However, in doing so they do not alter the character of a demand from non-mandatory to mandatory; neither do they obligate themselves to negotiate over such a matter in the future. [footnote omitted]

An employer is prohibited by §209-a.1(d) of the Act only from unilaterally changing those matters about which it has a duty to bargain. If an employer does not have a duty to bargain over a subject because it is nonmandatory, it follows that it may unilaterally implement a change without running afoul of that section of the Act.<sup>2/</sup> Here, there is no evidence whatsoever that the District made material misrepresentations of its positions or that the GTA relied to its detriment thereon, such that a failure to negotiate in good faith may

---

<sup>1/</sup>Cf. New Rochelle Housing Authority, 21 PERB ¶3054 (1988).

<sup>2/</sup>See, e.g., Spencerport CSD, 12 PERB ¶3074 (1979), conf'd 80 A.D.2d 704, 14 PERB ¶7007 (3d Dep't 1981), motion for leave to appeal denied, 53 N.Y.2d 605, 14 PERB ¶7016 (1981).

be inferred. The unilateral implementation of a subject matter not alleged to be mandatory in nature does not give rise to a violation of the Act simply because negotiations are ongoing. To find otherwise would discourage rather than encourage negotiation of nonmandatory subjects of bargaining, a result which would be inconsistent with one of the purposes of the Act. Exception No. 1 is accordingly denied and the ALJ decision is affirmed in this regard.

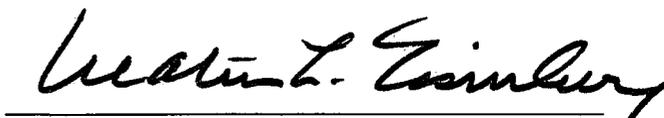
We also deny exception No. 2. The ALJ correctly found that, in the absence of testimony establishing an intent by the parties to give a different meaning to the language "terms and conditions of employment" contained in the parties' agreement than as the term is used in the Act, the language must be construed as a term of art and interpreted in accordance with its customary meaning in public sector labor relations in this State. Having found that the language relied upon by the GTA in its collective bargaining agreement has no application to the at-issue charge, the ALJ properly dismissed so much of the charge as alleges a violation of §209-a.1(e) of the Act.

The exceptions before us having been denied in their entirety, the decision of the ALJ is affirmed, and

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

DATED: January 24, 1989  
Albany, New York

  
Harold R. Newman, Chairman

  
Walter L. Eisenberg, Member

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

---

In the Matter of

WESTERN REGIONAL OFF-TRACK BETTING  
UNION, LOCAL 222, SEIU, AFL-CIO, CLC,

Charging Party,

-and-

CASE NO. U-10157

WESTERN REGIONAL OFF-TRACK BETTING  
CORPORATION,

Respondent.

---

CRIMI & CRIMI, ESQS. (CHARLES F. CRIMI, JR., ESQ.,  
of Counsel), for Charging Party

MOOT & SPRAGUE (JEREMIAH J. MC CARTHY, ESQ.,  
of Counsel), for Respondent

BOARD DECISION AND ORDER

This matter comes to us on the exceptions of Western Regional Off-Track Betting Union, Local 222, SEIU, AFL-CIO, CLC (Local 222) to an Administrative Law Judge (ALJ) decision which dismissed its improper practice charge against the Western Regional Off-Track Betting Corporation (Corporation). The charge alleges that the Corporation violated §209-a.1(d) of the Public Employees' Fair Employment Act (Act) when it refused to negotiate modifications to the existing collective bargaining agreement between the parties upon the terms sought by Local 222. In particular, Local 222 alleges that, notwithstanding the 1974 and 1975 certifications by this Board of two separate bargaining units, comprised of rank-

and-file employees and supervisory employees respectively, both of which were represented by Local 222, the parties had, in fact, merged the units by practice, creating a single unit covered by single collective bargaining agreements over a period of years. Local 222 further asserts that the Corporation violated its duty to negotiate in good faith when it refused to negotiate modifications to the existing single collective bargaining agreement, and notified Local 222 that it would only negotiate separate agreements for each unit.

The ALJ held that, notwithstanding some history of treatment of the two units as one for the purposes of negotiations and contract administration, there is evidence of acknowledgment of the existence of two units also.<sup>1/</sup> In addition, Local 222 has, in other proceedings before this Board, and in the instant case, acknowledged the existence of

---

<sup>1/</sup>The parties agreed in a 1975 letter of intent as follows:

Unit Determination: The parties agree that the New York State Public Employment Relations Board has determined that separate units were formed as designated. The terms and conditions of the basic collective bargaining agreement, are considered to be applicable to both units except as otherwise provided in a separate memorandum of understanding executed by the parties. For the purpose of determining promotions, it is agreed that the avenue of promotions exists from senior ticket machine operators to assistant branch managers, without prejudice to the position of either party in any future agreement.

two separate units, in contradiction of its claim that only one unit exists in fact.<sup>2/</sup>

Based upon the language of the original agreement to negotiate jointly for both units and the subsequent acknowledgments of two separate bargaining units, the ALJ concluded that our holdings in County of Rensselaer, 15 PERB ¶3127 (1982), do not apply to the instant charge.<sup>3/</sup>

Having found two separate bargaining units to exist, the ALJ turned to the question of whether a demand to engage in coalition negotiations constitutes a mandatory subject of bargaining. Relying upon a number of cases decided by this Board in relation to negotiation of ground rules and/or negotiating procedures, which we have held to be nonmandatory,<sup>4/</sup> the ALJ concluded that the Corporation's

---

<sup>2/</sup>In August, 1987, in relation to a May 29, 1987 petition filed by the Corporation which sought to "reaffirm the existence of two separate bargaining units certified by PERB on October 9, 1974 and January 9, 1975 . . . ", Local 222 executed a statement which provided as follows: "This will acknowledge the continued existence of the two separate bargaining units referred to in OTB's decertification petition." Subsequent correspondence confirmed Local 222's acknowledgement, as detailed by the ALJ in her decision at 21 PERB ¶4603 (1988).

<sup>3/</sup>In that case we held that, under certain circumstances, two separately certified units could be deemed to have been merged into one by the parties' conduct. However, the ALJ found that the parties' conduct and statements in the instant case did not give rise to such a merger of units and declined to find as a fact the existence of a single unit.

<sup>4/</sup>See Marcellus CSD, 21 PERB ¶3035 (1988); CSEA Local 832, 15 PERB ¶3101 (1982); Shelter Island PBA, 12 PERB ¶3112 (1979).

refusal to engage in coalition negotiations did not violate §209-a.1(d) of the Act.

Local 222's exceptions are to these two ALJ findings. It asserts that the statements made acknowledging the existence of separate rank-and-file and supervisory units merely constituted an acknowledgment that this Board has not certified a single unit. However, the language of the acknowledgments in numerous writings detailed by the ALJ in her decision does not support Local 222's construction, and this exception is accordingly denied.

Local 222 further asserts that even if two separate units are found to exist, the Corporation violated its duty to negotiate in good faith because it breached a 1975 agreement which provided that the terms of the collective bargaining agreements negotiated between the parties were to apply to both units, except as otherwise agreed. The ALJ found that to the extent that Local 222 asserts a violation of its agreement with the Corporation, it merely seeks enforcement thereof, a matter over which we lack jurisdiction pursuant to §205.5(d) of the Act. The ALJ properly dismissed this aspect of the charge and her decision is affirmed.

Local 222 finally alleges that a unilateral refusal to engage in coalition negotiations violates §209-a.1(d) of the Act. We disagree. While coalition negotiations may often be both an effective and efficient means of conducting

negotiations for units having an identity of parties, a party may not be compelled to negotiate the issue of whether coalition negotiations will take place. To find otherwise would unduly delay and complicate the negotiation process and otherwise interfere with the policies of the Act.<sup>5/</sup>

Having found that a demand to engage in coalition negotiations for two bargaining units is a nonmandatory subject of bargaining, the Corporation's unilateral refusal to engage in such coalition negotiations does not give rise to a violation of §209-a.1(d) of the Act. The ALJ decision dismissing the charge is accordingly affirmed in its entirety.

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

DATED: January 24, 1989  
Albany, New York

  
Harold R. Newman, Chairman

  
Walter L. Eisenberg, Member

---

<sup>5/</sup>See cases cited at footnote 3, supra.

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

---

In the Matter of

LOCAL 74, SERVICE EMPLOYEES  
INTERNATIONAL UNION, AFL-CIO,

Charging Party,

-and-

CASE NOS. U-9279,  
U-9290, U-9370,  
U-9392

MONTICELLO CENTRAL SCHOOL DISTRICT,

Respondent.

---

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

ROSENBERG & UFBERG, ESQS. (SHELDON ROSENBERG,  
ESQ., of Counsel), for Respondent

BOARD DECISION AND ORDER

Consolidated before us are four<sup>1/</sup> improper practice charges filed by Local 74, Service Employees International Union, AFL-CIO (SEIU) which allege numerous violations of §209-a.1 of the Public Employees' Fair Employment Act (Act) by the Monticello Central School District (District). The assigned Administrative Law Judge (ALJ) conducted a hearing, after which she issued a decision finding several violations of the Act by the District and dismissing other aspects of the charges. These findings are the subject of the

---

<sup>1/</sup>A fifth charge, U-9224, was dismissed without exceptions and is therefore not here in issue.

District's exceptions and SEIU's cross-exceptions, which are addressed together in relation to each charge.

U-9279

The ALJ found as a fact (to which no exception has been taken) that, in response to a request by some bargaining unit employees, the District changed the contractual holiday of December 31, 1986 to January 2, 1987, without negotiation with SEIU and as the result of direct dealing with bargaining unit members.

The District asserts that both its change of the contractual holiday and its direct dealing with bargaining unit members are specifically authorized by Article 10(d) of the parties' collective bargaining agreement which provides as follows:

When an employee is required to work on a contract holiday, he will be paid straight time for all hours actually worked plus holiday pay if he is eligible, or, at the sole discretion of the Superintendent, a total of straight time for all time actually worked on the contract holiday, plus another day off with pay at straight time. The day off shall be decided by mutual agreement of the employee and the Superintendent or his designee, but in no event will it be taken later than thirty (30) days after the contract holiday.

In view of the ALJ's undisputed finding that the District changed the contractual holiday, and did not simply require employees to work on a contractual holiday, the ALJ appropriately concluded that the discretion granted to the District by Article 10(d) of the agreement to deal directly

with affected employees concerning selection of another day off as compensation for having worked a contractual holiday does not apply to the holiday change. She accordingly found that Article 10(d) does not constitute a defense to the claim of violation of §209-a.1(a) of the Act. We agree with the ALJ's findings that the District had no contractual privilege for its direct dealings with unit members, and that such direct dealing is inherently destructive of employees' §202 rights.<sup>2/</sup> The ALJ's finding of violation of §209-a.1(a) of the Act is accordingly affirmed.

In its cross-exceptions, SEIU asserts that the ALJ erred in deferring to arbitration that portion of its charge which alleges a unilateral change in terms and conditions of employment by virtue of the District's change of a contractual holiday specifically established pursuant to the parties' collective bargaining agreement. We agree with the ALJ's conclusion that deferral is appropriate under the circumstances of this case.<sup>3/</sup> As found by the ALJ, holidays

---

<sup>2/</sup>See Wyandanch UFSD, 15 PERB ¶3069 (1982). See also County of Cattaraugus, 8 PERB ¶3062 (1975).

<sup>3/</sup>SEIU's cross-exceptions assert that deferral should not have been ordered in the instant case because the District "had never pleaded as an affirmative defense that this issue be deferred to arbitration, that the record is devoid of any evidence to suggest that [the District] was even willing to arbitrate, or to waive the time limitations on the filing of the grievance." These requirements do not apply here.

are covered by Article X of the expired contract,<sup>4/</sup> SEIU has grieved the District's change in holidays, and the said contract provides for binding arbitration. We have long maintained and favored binding arbitration for the resolution of disputes which are solely contractual in nature.<sup>5/</sup> Accordingly, this charge is conditionally dismissed, subject to our Bordansky criteria.<sup>6/</sup>

U-9290

The allegations contained in the second charge, U-9290, relate to a March 9, 1987 meeting at which a pending grievance was to be discussed. SEIU alleged violations of §209-a.1(a), (c) and (d) of the Act on the grounds that Assistant Superintendent of Schools Corwin's behavior at the meeting prevented the employees from presenting their grievance.<sup>7/</sup> The ALJ found Corwin's conduct to be violative of §209-a.1(a) and (d) of the Act in that his patterned behavior evidenced a refusal to meet with the employees and

---

<sup>4/</sup>Article 10(a) of the parties' agreement identifies dates for observance of holidays, including "New Year's Eve day", the holiday at issue here.

<sup>5/</sup>New York City Transit Authority (Bordansky), 4 PERB ¶4504, aff'd, 4 PERB ¶3031 (1971); City of Buffalo, 17 PERB ¶3090 (1984). See also Fulton-Montgomery Community College, 16 PERB ¶4560 (1983).

<sup>6/</sup>New York City Transit Authority (Bordansky), supra.

<sup>7/</sup>The details of this meeting are discussed in the ALJ's decision at 21 PERB ¶4577, at 4694 (1988), and do not require recitation here.

an unwillingness to discuss a pending grievance in good faith. The District excepts to the ALJ's finding that Corwin did not deny SEIU's version of the meeting, and asserts that the record evidence does not support the ALJ's factual findings. At most, however, the District establishes in its exceptions that a conflict exists between the parties about what occurred at the meeting. In essence, the District asks us to reevaluate the credibility of Corwin's testimony relative to that of SEIU's witnesses. In particular, the District argues that Corwin's testimony reveals that he expressed at the meeting a "willingness to sit and listen" and that this aspect of his testimony should have been credited by the ALJ.<sup>8/</sup> This Board has generally accorded great weight to the discretion of the ALJ in evaluating credibility because the ALJ has the opportunity to observe the demeanor of witnesses.<sup>9/</sup> We find no justification, upon review of this record, to disturb the ALJ's findings, which are supported by evidence contained in the record, together with appropriate credibility determinations. Assuming, arguendo, that Corwin did in fact verbalize his "willingness to sit and listen" to the employees, we would still find a

---

<sup>8/</sup>Corwin's testimony regarding this statement is uncorroborated.

<sup>9/</sup>Hempstead Housing Authority, 12 PERB ¶3054 (1979); State of New York, 11 PERB ¶3112 (1978).

violation in that his conduct illustrated disdain and intolerance for the grievance process, and thereby prevented the employees from exercising their rights under the Act.

U-9370

~~The allegations contained in the third charge, U-9370,~~ relate to a bus garage incident of March 31, 1987,<sup>10/</sup> as to which SEIU filed an improper practice charge alleging a violation of §209-a.1(a) and (d) of the Act. The "(a)" portion of the charge alleges that Assistant Superintendent Corwin's statements and conduct which were directed toward SEIU representative Bennardo in the presence of other employees, interfered with, and were otherwise coercive of, the employees' §202 rights. The ALJ found Corwin's words and actions to be violative of §209-a.1(a) of the Act in that his statements and conduct undermined Bennardo's status as a union representative. In its exceptions, the District again argues that the record does not support the ALJ's findings, in essence asserting that the parties do not agree upon the facts related to the incident here in question. The District's exceptions merely raise the issue of credibility and, once again, upon review of the record, we concur with

---

<sup>10/</sup>The details of this incident, which are recited in the ALJ's decision at 21 PERB ¶4577, at 4694-96 (1988), relate to allegations of name-calling, physical contact and refusal to deal with SEIU's representative.

the ALJ's decision as to this issue. Accordingly, we affirm the ALJ's finding of a §209-a.1(a) violation.<sup>11/</sup>

In its cross-exceptions, SEIU again asserts that the aspect of its charge relating to an alleged improper denial of access to ~~employees and worksite~~ (which are assertedly violative of Article IV of the parties' agreement) in violation of §209-a.1(d) of the Act should not have been deferred to arbitration. Because the denial of access rests on the parties' existent agreement, and although parallel access rights may flow from the Act, for the following reasons conditional dismissal of the charge is appropriate.<sup>12/</sup> The basis for this type of deferral was first discussed in City of Buffalo, 17 PERB ¶3090 (1984). There we wrote (at 3138-39):

The situation presented herein is a novel one. Article XXVII, a maintenance of benefits clause, appears to be applicable to the changes made by the City. Such a clause may, with respect to a mandatory subject of negotiation, as is the case here, create a contractual right that complements the statutory right to the maintenance of past practices. The contractual right, however, does not extinguish the statutory right. PERB therefore has jurisdiction over this proceeding.

We note, however, that the statutory rights claimed by the charging party in this proceeding and the contractual right afforded by Article XXVII of the contract parallel each other. We further note that it is the public policy of this State to encourage public employers and employee

---

<sup>11/</sup>See supra note 7.

<sup>12/</sup>Although the ALJ indicated that the applicable contract had expired, the uncontroverted evidence shows that there were two contracts and that while one had expired, the one affecting the bus garage was still operative.

organizations to agree upon procedures for resolving disputes. (citation omitted) Finally, we note that the collective bargaining agreement between charging party and respondent contains such procedures, including arbitration. Accordingly, we defer to the parties' procedures for resolving disputes. We therefore dismiss the charge, subject to its reinstatement should the City interpose objections to arbitrability or should an arbitration award not satisfy the standards for deferral which we delineated in New York City Transit Authority (Bordansky), 4 PERB ¶3031 (1971).

Again, in City of Saratoga Springs, 18 PERB ¶3009 (1985), we wrote (at 3022):

In Buffalo, we held that a unilateral change of a past practice during the life of an agreement might violate §209-a.1(d) if the contract did not deal with the matter explicitly, even if the contract covered it indirectly in a general past practices clause. This would be so when the charge was not based upon any alleged breach of contract but merely relied upon the alleged unilateral action. Thus, our jurisdiction was not affected by the existence of a relevant past practices clause which was not relied upon in the charge but disclosed during the processing of the proceeding.

Such is the case here. The facts alleged in the charge assert the breach of an obligation flowing from the Taylor Law. Local 343 did not plead a breach of any contractual entitlement. Although, as noted by the ALJ, it did refer to the alleged breach in its post hearing brief, we do not read that reference as a reliance upon the contract as a basis for its charge herein.

As in Buffalo, we nevertheless decline to entertain this specification of the charge

U-9392

This charge relates to the health insurance provided to a new bargaining unit employee, Lance Newman. The charge

alleges, and the ALJ found as fact, that the District informed Mr. Newman, by letter dated April 9, 1987, that his health insurance would be provided by the District and not SEIU. The District took this step, notwithstanding Article XI of the parties' collective bargaining agreement, which provides for an SEIU-administered welfare plan intended to cover all eligible employees, including unit member Newman. SEIU alleged that the District's action in relation to Newman's health insurance plan amounted to a repudiation of the parties' collective bargaining agreement, and a failure to negotiate in good faith, in violation of §209-a.1(d) of the Act. Finding that the District offered no claim of contractual privilege to provide a different health insurance plan to a unit member, and that the District's explanation for its conduct did not give rise to a proper defense,<sup>13/</sup> the ALJ found a violation of §209-a.1(d) of the Act upon the ground that the District repudiated its obligation under the agreement regarding health insurance benefits.

In its exceptions, the District does not deny that it repudiated that portion of its agreement with SEIU relating to administration of a health insurance plan, but argues that

---

<sup>13/</sup>The District claimed that its actions in providing a different health insurance plan to Newman than the contractually negotiated plan was motivated by its concern that employees were not being properly covered under the SEIU-administered health insurance plan.

its actions were necessary in order to protect employees not being properly covered by SEIU. We agree with the ALJ's finding that, regardless of its motives, the District was bound by the terms of its collective bargaining agreement with SEIU, and was not entitled to repudiate it. The ALJ correctly found that the District's actions clearly constitute a repudiation of the collective bargaining agreement and that, through its unilateral provision of a health insurance plan to an employee whom it concedes is covered by the parties' contract violates its duty to negotiate in good faith under §209-a.1(d) of the Act.

Based upon the foregoing, the ALJ decision is affirmed.

IT IS THEREFORE ORDERED<sup>14/</sup> that the District:

1. Cease and desist from interfering with, restraining or coercing employees in the unit represented by SEIU in the exercise of their rights under the Act;
2. Cease and desist from dealing directly with unit employees regarding terms and conditions of employment;

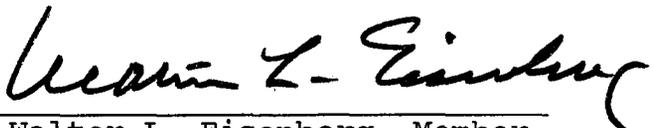
---

<sup>14/</sup>In its cross-exceptions, SEIU seeks modification of the language of the order set forth in the ALJ decision, to include directives to the District that it "not bypass" SEIU and that it not "physically assault" employees or engage in "intentionally meaningless grievance sessions with preconceived notions. . . ." We find the ALJ's proposed order to be sufficiently specific and in keeping with the policies of the Act. The requested modifications are accordingly denied.

3. Cease and desist from refusing to meet with SEIU representatives to discuss in good faith grievances and terms and conditions of employment;
4. Cease and desist from repudiating Article XI of the collective bargaining agreement regarding health insurance benefits and place Lance Newman in the SEIU welfare plan as provided by Article XI of the agreement;
5. Negotiate in good faith with SEIU regarding terms and conditions of employment; and
6. Sign and post the attached notice at all locations customarily used to communicate with unit employees.

DATED: January 24, 1989  
Albany, New York

  
Harold R. Newman, Chairman

  
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** employees in the units represented by Local 74, Service Employees International Union, AFL-CIO, that the District:

1. Will not interfere with, restrain or coerce employees in the unit represented by SEIU in the exercise of their rights under the Act;

2. Will not deal directly with unit employees regarding terms and conditions of employment;

3. Will not refuse to meet with SEIU representatives to discuss in good faith grievances and terms and conditions of employment;

4. Will not repudiate Article XI of the collective bargaining agreement regarding health insurance benefits and place Lance Newman in the SEIU welfare plan as provided by Article XI of the agreement;

5. Will negotiate in good faith with SEIU regarding terms and conditions of employment.

MONTICELLO 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.*

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

---

In the Matter of

LOCAL 1170, COMMUNICATION WORKERS  
OF AMERICA, AFL-CIO,

Petitioner,

-and-

CASE NO. C-3417

TOWN OF CONESUS,

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 Local 1170, Communication Workers of America, 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.

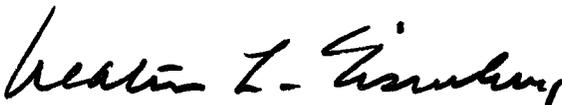
Unit: Included: All full-time, part-time and temporary employees of the Conesus Highway Department (laborers, truck drivers, and equipment operators).

Excluded: Elected officials.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with Local 1170, Communication Workers of America, 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: January 24, 1989  
Albany, New York

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

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

June 24, 1976

### 3. Board Conferences

- A. U-0659 and U-0667 - In the Matter of Board of Education, City of Buffalo Building Trades Council of Board of Education Employees; and Board of Education, City of Buffalo and District Council of Buffalo and Vicinity, United Brotherhood of Carpenters and Joiners of America, AFL-CIO. The Board deemed it advisable to meet with the parties in this matter, and set same down for July 22, 1976 at 3:00 p.m. at its Albany office.
- B. U-1697 - In the Matter of Board of Education of the City School District of the City of New York, Respondent, and Council of Supervisors and Administrators of the City of New York, Local 1, SASOC, AFL-CIO, Charging Party. The Board considered the request of the charging party for oral argument and granted same. Oral argument will be held on August 10, 1976 at 11:00 a.m. in its New York City office, 342 Madison Avenue.
- C. U-1961 - In the Matter of Board of Education of the City School District of the City of New York, Respondent, and Council of Supervisors and Administrators of the City of New York, Local 1, SASOC, AFL-CIO, Charging Party. The Board considered the request of respondent for oral argument and granted same. Oral argument will be held on August 10, 1976 at noon in its New York City office, 342 Madison Avenue.

### 4. Board Policy. The Board adopted the following Resolution regarding the outside practice of members of the Public Employment Relations Board:

Outside activities of the Chairman who, pursuant to Civil Service Law §205, is a fulltime State employee, are covered by Administration/Personnel Policy No. 13, promulgated on January 24, 1975, which is applicable to all full-time members of the PERB staff. (The Board of Public Disclosure has indicated, in a letter dated February 19, 1976, that PERB's Administration/Personnel Policy No. 13 is in compliance with Executive Order #10.)

Outside activities of the two part-time members of PERB may include the practice of law and arbitration. However, such members of PERB may not represent clients in public sector labor-related matters under the jurisdiction of the Taylor Law and they may not accept arbitration assignments involving parties subject to the Taylor Law (they may accept arbitration assignments involving unions that are affiliated with other unions that represent public employees; for example, it would not be a violation of this policy for one of such Board members to accept a labor arbitration assignment involving a Local of the Teamsters or the SEIU by reason of the fact that both organizations have Locals that represent, or are seeking to represent, employees subject to the Taylor Law so long as the Local involved in the arbitration does not.) (#4-6/24/76)

The next meeting of the Board will be held on July 22 and 23, 1976 at its Albany Office commencing at 2:30 p.m. on July 22, 1976.

*[Signature]*  
Secretary to the Board