



Cornell University  
ILR School

Cornell University ILR School  
**DigitalCommons@ILR**

---

Board Decisions - NYS PERB

New York State Public Employment Relations  
Board (PERB)

---

1-29-1990

## State of New York Public Employment Relations Board Decisions from January 29, 1990

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 29, 1990

### 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

CSEA, INC., LOCAL 1000, AFSCME, AFL-CIO,  
LOCAL 832, NIAGARA COUNTY WHITE COLLAR UNIT,

Charging Party,

-and-

CASE NO. U-10735

COUNTY OF NIAGARA,

Respondent.

---

NANCY E. HOFFMAN, ESQ. (MIGUEL G. ORTIZ, ESQ.,  
of Counsel), for Charging Party

GLENN S. HACKETT, ESQ., NIAGARA COUNTY ATTORNEY  
(VINCENT R. GINESTRE, ESQ., of Counsel), for  
Respondent

BOARD DECISION AND ORDER

This matter comes to us on the exceptions of CSEA, Inc., Local 1000, AFSCME, AFL-CIO, Local 832, Niagara County White Collar Unit (CSEA) to the dismissal of its improper practice charge against the County of Niagara (County). The charge alleges that the County violated §209-a.1(d) of the Public Employees' Fair Employment Act (Act) when, on February 17, 1989, it refused to negotiate further with CSEA unless CSEA agreed to a four percent package and withdrew its agreement to all items tentatively agreed upon, and when it designated

a chief negotiator without affording him sufficient authority to negotiate and enter into an agreement.

The assigned Administrative Law Judge (ALJ) dismissed the charge after hearing, finding that the parties had agreed to package bargaining, which vested the discretion in both parties to withdraw items previously agreed upon at any time prior to agreement on all issues. The ALJ further found that CSEA was aware of and acquiesced in the negotiating process in which the County negotiator engaged, of regularly consulting with the County Legislature's Personnel Committee and obtaining that Committee's approval prior to agreement on any issues of substance. Based upon these findings, the ALJ concluded that no violation of the Act had occurred and accordingly dismissed the charge.

It is indubitably true that if, as CSEA alleges, the County took a position at the parties' negotiating session on February 17, 1989 that it would not negotiate further unless CSEA first agreed to accept a four percent total economic package, a violation of §209-a.1(d) of the Act would be found.<sup>1/</sup> Although the ALJ decision does not specifically address this issue, we find that the charge alleges a

---

<sup>1/</sup>See Addison Teachers Ass'n, 19 PERB ¶3062 (1986); CSD of the City of New Rochelle, 4 PERB ¶3060 (1971).

violation in this regard,<sup>2/</sup> and that the parties litigated the issue at the hearing. Indeed, the ALJ decision specifically describes the testimony of Mary K. Saxon, a member of CSEA's negotiating team and its recording secretary, who testified that Ronald Kolpack, the Personnel Director for the County and its chief negotiator, told the CSEA negotiating committee, on February 17, 1989, that unless they were willing to accept a four percent total package, there were no other proposals which would be discussed. The ALJ further described Saxon's testimony as follows:

[w]hen asked if they could discuss noneconomic items, Kolpack responded that, when he presented the same question to the Personnel Committee [of the County Legislature], they asked him: "Are you deaf? We said four percent total. Nothing else is to be discussed unless there is agreement on the four percent total." County of Niagara, 22 PERB ¶4578, at 4708 (1989).

Saxon's testimony is corroborated to a significant degree by Kolpack, who testified as follows:

Q. The County was willing to talk about something if they [CSEA] agreed to the four percent?

A. I believe so, yes.

Q. So if the union would have agreed to four percent you would have been willing to talk about the other noneconomic items?

A. Yes.

---

<sup>2/</sup>The charge alleges, in pertinent part, that "the County negotiator withdrew all previous tentative agreements entered by the parties, told this union they are offering a four percent raise period and nothing else. The County negotiator then refused to negotiate any further."

In view of the essentially uncontroverted testimony that, on February 17, 1989, the County took the position that unless CSEA agreed to a four percent package, the County would not negotiate further on any other issues, the ALJ was in error in failing to make a finding of a violation of §209-a.1(d) of the Act in this regard. We accordingly reverse so much of the ALJ decision and recommended order as dismisses this aspect of the charge and find that the County violated the Act when it refused to engage in further negotiations until and unless CSEA agreed to a four percent economic package.

The second issue litigated by the parties before the ALJ relates to whether the withdrawal by the County of previously tentatively agreed upon items at the February 17, 1989 negotiating session violates the duty to negotiate in good faith. There is no dispute between the parties that, as part of their ground rules, they had agreed to engage in package bargaining, whereby no agreement reached as to any individual item becomes final until the parties reach agreement on all items. Consistent with our holding in Yonkers Federation of Teachers, Local 860, AFT, AFL-CIO, 8 PERB ¶3020 (1975), the ALJ found that a party does not engage in an improper practice when it refuses to treat as final its agreement on individual items until there is agreement as to the whole.

We accordingly affirm so much of the ALJ decision as dismisses this aspect of CSEA's improper practice charge.<sup>3/</sup>

The third element of the improper practice charge filed by CSEA is that the County failed to negotiate in good faith ~~when it failed to vest in Kolpack, its chief negotiator, the~~ authority to enter into agreements, as required by its good faith bargaining obligation.<sup>4/</sup>

The ALJ's dismissal of this aspect of the charge rests upon the ground that CSEA acquiesced in the negotiating procedure utilized by the County after it became aware of the procedure, by participating in it and failing to object to it. In our view, however, whether CSEA acquiesced in the negotiating procedure utilized by the County need only be reached if a finding has been made that CSEA has met its burden of proving that Kolpack lacked authority to engage in good faith negotiations and enter into tentative agreements. If this burden of proof has not been met, it is unnecessary for us to decide whether the County's defense of acquiescence is meritorious.

---

<sup>3/</sup>See also Draper Teachers Ass'n, 18 PERB ¶3027 (1985), wherein the Board found that withdrawal of a previous salary demand and substitution of an increased salary demand by an employee organization prior to impasse was not an improper practice in the absence of evidence that the new demand was part of a design to frustrate the negotiations process.

<sup>4/</sup>See Vestal Teachers Ass'n, 3 PERB ¶3057 (1970).

There is no doubt that the County's chief negotiator was under clear and explicit instructions from the Legislature's Personnel Committee to confer with it on a frequent and regular basis, and that the Personnel Committee provided to ~~the chief negotiator strict guidelines within which~~ negotiations could take place. The issue before us is whether this requirement to obtain advance approval of bargaining positions before reaching tentative agreements with CSEA and of affording extremely limited flexibility in negotiating issues at the bargaining table establishes a violation of §209-a.1(d) of the Act.

This Board recognizes that it is usual and customary for a chief negotiator to engage in frequent consultation with his or her principals, and that such consultation may be necessary in the negotiation of an agreement if it is to be favorably considered and ratified by the principals. A violation of the Act will be found only where the charging party establishes, by a preponderance of the evidence, that a respondent has failed to vest in its chief negotiator sufficient authority to negotiate meaningfully by utilizing the negotiator merely to communicate bargaining positions taken by the principal away from the bargaining table.<sup>5/</sup> The Act clearly contemplates that chief executive officers of public employers will appear themselves, or by designees

---

<sup>5/</sup>See Sachem CSD No. 5, 6 PERB ¶3014, at 3035 (1973).

vested with their authority, at the bargaining table for the purpose of engaging in meaningful give and take and reaching agreements concerning terms and conditions of employment.<sup>6/</sup>

Although Kolpack's authority to negotiate was, without doubt, extremely limited, we find that CSEA has failed to meet its burden of proving that he lacked the authority to enter into agreements. Indeed, CSEA concedes that tentative agreements were reached during the course of the 15 negotiation sessions conducted between the parties, and that, at least as to some issues, the County's chief negotiator entered into tentative agreements at the table, without delay for consultation with the Personnel Committee. Additional issues were agreed upon after consultation took place. In the absence of specific evidence of a negotiator's failure to engage in meaningful negotiation of bargaining issues, we will not find a violation where, as here, the evidence does establish that the parties entered into tentative agreements

---

<sup>6/</sup>§201.12 of the Act provides that

[t]he term "agreement" means the result of the exchange of mutual promises between the chief executive officer of a public employer and an employee organization which becomes a binding contract, for the period set forth therein, except as to any provisions therein which require approval by a legislative body, and as to those provisions, shall become binding when the appropriate legislative body gives its approval.

on specific items. Furthermore, as pointed out by the ALJ, this record presents us with no evidence that the County engaged in a deliberate design to purposely frustrate the negotiating process by precluding its chief negotiator from entering into agreements on items at the table.<sup>7/</sup> The record is void of evidence that those delays in reaching tentative agreements occasioned by Kolpack's frequent consultation with the Personnel Committee were so unreasonable as to give rise to an inference of a deliberate design to avoid meaningful negotiations, notwithstanding the fact that the County's procedure was at least awkward and time-consuming.

Based upon the foregoing, we find that the County failed to negotiate in good faith in violation of §209-a.1(d) of the Act when it refused to negotiate further unless and until CSEA accepted a four percent economic package, and the charge is dismissed in all other respects.

IT IS THEREFORE ORDERED that the County:

1. Negotiate in good faith with CSEA with respect to terms and conditions of employment of unit employees; and

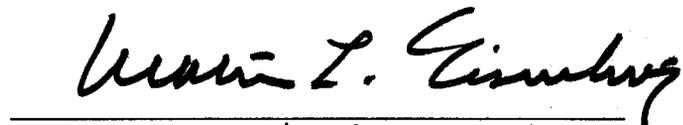
---

<sup>7/</sup>See CSEA, Inc. (County of Wayne), 14 PERB ¶13092 (1981).

2. Sign and post notice in the form attached at all locations used for written communications to members of the bargaining unit represented by CSEA.

DATED: January 29, 1990  
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 CSEA, Inc., Local 1000, AFSCME, AFL-CIO, Local 832, Niagara County White Collar Unit, that the County of Niagara:

1. Will negotiate in good faith with CSEA with respect to terms and conditions of employment of unit employees.

County of Niagara

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

THOMAS C. BARRY,

Charging Party,

-and-

CASE NO. U-10438

---

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

The United University Professions (UUP) has filed exceptions before this Board to an Administrative Law Judge (ALJ) decision which found it to have violated §209-a.2(a) of the Public Employees' Fair Employment Act (Act) by failing to conduct a reasonably prompt hearing upon the appeal of Thomas C. Barry, charging party, from UUP's determination of the advance reduction of Barry's agency shop fee deduction for the fiscal year 1988-89.

In particular, the charge alleges, and the ALJ found, that Barry was informed by letter dated July 22, 1988 of the amount of the advance reduction in his agency shop fees for fiscal year 1988-89, intended to reflect the proportion of

anticipated 1988-89 expenditures exempted from involuntary payment as part of agency fees by the Act.<sup>1/</sup>

Pursuant to Barry's objection to the use of any of his fees for political or ideological purposes, and to the amount determined by UUP to constitute the pro rata share of such expenditures, Barry notified UUP's president by letter dated August 1, 1988 of his objection and requested a hearing.

On May 3, 1989, Barry was notified by the American Arbitration Association, which had been selected by UUP to conduct hearings upon objections to advance reductions and/or refunds of pro rata shares of agency fees, that a consolidated hearing on "the UUP fiscal year 1987-88 Final Agency Fee Refund Determination and the 1988-89 Advanced Reduction of Agency Fee" would be held before a designated arbitrator on June 13, 1989. Barry's contention is that the June 13, 1989 hearing date, more than nine months following the filing of his objection to the amount of the advance

---

<sup>1/</sup>Section 208.3(a) of the Act entitles the employee organization representing members of the Professional Services Unit in the State University to "have deducted from the wage or salary of the employees in such negotiating unit who are not members of said employee organization the amount equivalent to the dues levied by such employee organization . . . . Provided, however, that the foregoing provisions of this subdivision shall only be applicable in the case of an employee organization which has established and maintained 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."

reduction established by UUP, is violative of the Act because it fails to afford him a "reasonably prompt" review of the amount of the advance reduction by a neutral decision maker.

At the outset, UUP excepts to the ALJ's determination that a hearing upon the advance reduction determination is required by the Act, in light of the payment of the advance reduction plus a ten percent cushion prior to the commencement of the fiscal year at issue. However, the Board's requirement of a hearing upon the advance reduction, even where a ten percent cushion is provided, was upheld in UUP v. Newman, 146 A.D.2d 273, 22 PERB ¶7012 (1989) (remanded upon other grounds), motion for leave to appeal denied, 74 N.Y.2d 614, 22 PERB ¶7033 (October 26, 1989). This Board's order directing UUP to include in its agency fee refund procedure a hearing upon advance reduction determinations has accordingly been affirmed, and is not subject to collateral attack; nor do we choose to review it further at this time.

UUP's exceptions also allege that Barry lacks standing to file the instant charge because he has not specifically alleged his membership in a unit represented by UUP and because he failed to state the specific areas of his objection to the computation of the advance reduction by UUP in his appeal of the amount. The first exception is denied because, as the ALJ found, Barry acknowledges a duty to pay agency fees to UUP, from which unit membership is appropriately inferred. The second exception is denied

because it is not an issue appropriate for our determination but is for the arbitrator to decide, particularly in light of UUP's failure to assert the alleged deficiency as a bar to arbitration.

UUP does not appear to claim in its defense that a June 13, 1989 review of its July 22, 1988 advance reduction determination is reasonably prompt. Rather, its defense rests upon the assertion that this Board approved of such a delay when it approved, in the context of another case (UUP (Barry, Eson, Gallup), 20 PERB ¶3052 (1987)), the agency fee refund procedure for the 1988-89 fiscal year. UUP concedes that it is obligated under the approved procedure to present appeals concerning the appropriateness of the advance reduction "for expeditious hearing and resolution", through the offices of the American Arbitration Association. Notwithstanding this language, UUP alleges that its action herein is authorized by the following statement in UUP (Barry, Eson, Gallup), at 3115, which is also contained in its refund procedure: "Nothing shall preclude the union from including appeals from the amount of the advance reductions in the same proceeding with appeals from the final determination of refund. The neutral, however, will be required to make independent findings on each issue."

UUP asserts that by giving sanction to the possibility of consolidated appeals of advance reductions and final

determinations of refund, this Board, in essence, sanctioned lengthy delays in the conduct of advance reduction determination hearings. This is simply not the case. In fact, consolidated review was approved by this Board only and exclusively to the extent that the other requirements of the agency fee refund procedure and this Board's decision in UUP (Barry, Gallup, Eson), 20 PERB ¶3039 (1987), could be met.

The ALJ correctly concluded that this Board's previous holdings require, first and foremost, that review of UUP's advance reduction determinations and final refund determinations must be prompt and impartial, and that the convenience of consolidating hearings could be accommodated only if the requirement of promptness can be met.<sup>2/</sup>

It is our determination that a ten-month delay in the conduct of a hearing to determine the appropriateness of an advance reduction determination is not reasonably prompt and is accordingly violative of §209-a.2(a) of the Act.

IT IS THEREFORE ORDERED that UUP:

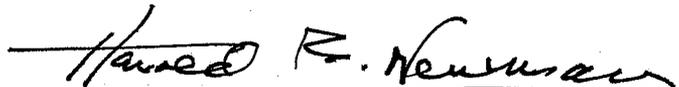
1. Refund to Barry the total amount of agency fees deducted from his salary for the 1988-89 fiscal year, with interest at the maximum legal rate;

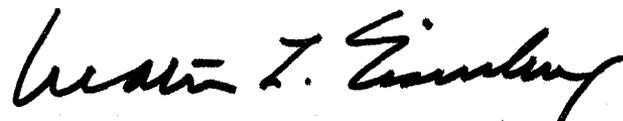
---

<sup>2/</sup>See UUP (Barry), 22 PERB ¶3003 (1989).

2. Conduct its hearings on appeals from the amount or appropriateness of its advance reduction in agency shop fees in a reasonably prompt and expeditious manner.<sup>3/</sup>

DATED: January 29, 1990  
Albany, New York

  
Harold R. Newman, Chairman

  
Walter L. Eisenberg, Member

---

<sup>3/</sup>In view of the individualized nature of the violation found, a posting is not appropriate.

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

---

In the Matter of

MORRIS E. ESON,

Charging Party,

-and-

CASE NO. U-10439

---

UNITED UNIVERSITY PROFESSIONS,

Respondent.

---

MORRIS E. ESON, pro se

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

BOARD DECISION AND ORDER

The United University Professions (UUP) excepts to an Administrative Law Judge (ALJ) decision which found it to have violated §209-a.2(a) of the Public Employees' Fair Employment Act (Act) by failing to conduct an expeditious hearing on the objection of Morris E. Eson, charging party, to its determination of the amount of the advance reduction in his agency fees for 1988-89.

The facts may be briefly stated as follows. Eson received, on July 22, 1988, an advance reduction of his 1988-89 agency fee. By letter dated July 29, 1988, Eson promptly filed objections, pursuant to UUP's agency fee rebate procedures for the 1988-89 fiscal year, to the amount of the advance reduction and the method of determining the amount. Thereafter, Eson received no communication

concerning his objection to the amount of the advance reduction until May 3, 1989, when he received a letter from the American Arbitration Association informing him of the identity of the arbitrator assigned to hear his appeal from the 1988-89 advance reduction determination, and scheduling the hearing for June 13, 1989.

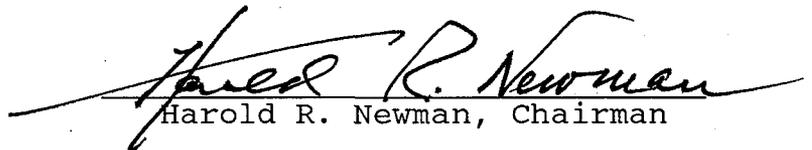
In a decision issued this date (UUP (Barry), 23 PERB ¶3001), this Board holds, on substantially identical facts, that UUP has violated §209-a.2(a) of the Act by failing to conduct a hearing on the objections to the amount of the advance reduction until ten months after the advance reduction determination was made and communicated and objections filed thereto. The delay in conducting such hearing, we find, is not excused by this Board's approval of UUP's agency fee refund procedure, which permits it to consolidate hearings on advance reductions and final determinations of refund. As we hold in UUP (Barry), decided today, such consolidation was permitted and authorized only to the extent that it could be accomplished consistent with the requirement that hearings be conducted in a reasonably expeditious manner.

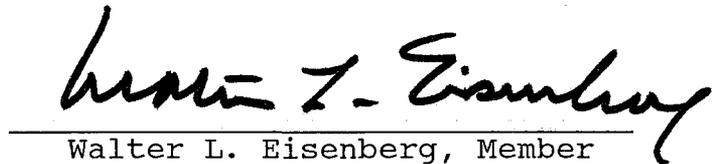
Based upon the reasoning set forth in our decision in UUP (Barry), decided herewith, the ALJ decision is affirmed.

IT IS THEREFORE ORDERED that UUP:

1. Refund to Eson the total amount of agency fees deducted from his salary for the 1988-89 fiscal year, with interest at the maximum legal rate;
2. Conduct its hearings on appeals from the amount or appropriateness of its advance reduction in agency shop fees in a reasonably prompt and expeditious manner.<sup>1/</sup>

DATED: January 29, 1990  
Albany, New York

  
Harold R. Newman, Chairman

  
Walter L. Eisenberg, Member

---

<sup>1/</sup>In view of the individualized nature of the violation found, a posting is not appropriate.

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

---

In the Matter of  
TOWN OF HENRIETTA,

Charging Party,

-and-

CASE NO. U-10286

LOCAL 1170 of the COMMUNICATION  
WORKERS OF AMERICA,

Respondent.

---

BUYCK, SPRINGER, FITZSIMMONS, FITZPATRICK, DESMARTEAU  
and STANDER, ESQS. (THOMAS J. FITZPATRICK, ESQ., of  
Counsel), for Charging Party

LIPSITZ, GREEN, FAHRINGER, ROLL, SCHULLER & JAMES, ESQS.  
(RICHARD D. FURLONG, ESQ. and RONALD L. JAROS, ESQ., of  
Counsel), for Respondent

BOARD DECISION AND ORDER

This matter comes to us on the exceptions of Local 1170 of the Communication Workers of America (CWA) to an Administrative Law Judge (ALJ) decision and recommended order finding it to have violated §209-a.2(b) of the Public Employees' Fair Employment Act (Act) by failing to execute an agreement upon request of the Town of Henrietta (Town). The agreement at issue relates to the settlement of disciplinary charges brought against a bargaining unit member by the Town following submission of the disciplinary grievance contesting the charges to arbitration, but prior to issuance of an arbitration award.

The facts in this case are set forth in detail in the ALJ decision (22 PERB ¶4559 (1989)), and will be briefly summarized here only as necessary to place our analysis in appropriate context.

~~Following the conclusion of testimony at the arbitration~~ hearing on the disciplinary charges of a bargaining unit member (grievant), the representatives of the CWA and the Town agreed to engage in settlement discussions, with the approval of the designated arbitrator, who apparently agreed to withhold issuance of any award pending the outcome of the settlement discussions. Counsel for the parties conferred on a number of occasions and ultimately reached oral agreement concerning the resolution of the disciplinary matter, the terms of which included resignation of the grievant with backpay. The parties also agreed that they would reduce their agreement to writing, and that it would be executed by the Town Supervisor, counsel for the CWA, and the grievant. A draft settlement agreement was prepared by counsel for the CWA and forwarded to the Town counsel, who made changes in it, including the addition of a provision for ratification of the agreement by the Town Board<sup>1/</sup> and detailed general release language applicable to the grievant, which he

---

<sup>1/</sup>The settlement agreement drafted by the Town counsel provides: "This agreement is subject to ratification by the Henrietta Town Board, and the Town Supervisor agrees to recommend ratification and make a good faith effort to secure ratification by the Town Board." Cf. §204-a of the Act.

reviewed by telephone with counsel for the CWA. The language was orally agreed upon and the Town counsel forwarded the final draft of the settlement agreement to the Town Supervisor for his signature immediately thereafter, on June 23, 1988. On June 27, the Town Supervisor executed the agreement and forwarded it by mail to the CWA attorney, who received it on June 29. In the interim, on June 28, the CWA attorney contacted the Town attorney by telephone and informed him that CWA and the grievant were no longer willing to sign the agreement previously orally reached, because it had not been signed and delivered by June 24 and because the grievant could not accept its terms.

Thereafter, the CWA requested that the arbitrator issue his award, based upon the failure of the parties to reach a settlement agreement, and an award was issued on August 29, 1988, which was subsequently confirmed by the Supreme Court, Monroe County by decision dated April 6, 1989.<sup>2/3/</sup>

The Town asserts in its charge that the CWA failed to

---

<sup>2/</sup>The Supreme Court decision was issued after the close of the hearing but before the ALJ decision issued. It was forwarded to the ALJ by counsel for the CWA with notice to the counsel for the Town. No objection to the consideration of the decision was received and, in any event, the decision of the Supreme Court is an appropriate matter for the taking of administrative notice.

<sup>3/</sup>The Town cross-moved to vacate the award based upon the unsigned written settlement agreement. Notwithstanding the Town's settlement claim, the cross-motion to vacate the award was denied and the award was confirmed.

negotiate in good faith when it entered into an agreement but refused to execute it, as assertedly required by §204.3 of the Act.<sup>4/</sup>

At the outset we find that, notwithstanding the CWA's argument that it conditioned its settlement offer upon acceptance by the Town on or before June 24, the ALJ evidentiary finding to the contrary should be and is affirmed. The ALJ properly found, on the record before her, that an oral agreement (including offer, acceptance, and consideration) was reached. The question remaining to be decided is whether a Taylor Law duty exists to execute the disciplinary settlement agreement reached.

The CWA also asserts that the Town seeks nothing more than enforcement of an agreement reached under the parties' collective bargaining agreement, which is not subject to our

---

<sup>4/</sup>Section 204.3 of the Act provides as follows:

For the purpose of this article, to negotiate collectively is the performance of the mutual obligation of the public employer and a recognized or certified employee organization 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, but such obligation does not compel either party to agree to a proposal or require the making of a concession.

jurisdiction pursuant to the limitations contained in §205.5(d) of the Act.<sup>5/</sup> In a narrow sense, the CWA's argument is correct in that an oral agreement was reached, and the oral agreement included among its terms that it would be reduced to writing and executed by the Town, the CWA, and the grievant. Thus, the instant charge seeks enforcement of that "execution" term of the oral agreement. This analysis is dispositive of the charge unless the failure to execute a written agreement confirming the terms of the oral agreement otherwise constitutes an improper employee organization practice.

The ALJ found that the failure to execute the agreement submitted to the CWA constitutes a separate violation of the Act, citing our decision in Deer Park Teachers Association, 13 PERB ¶3048 (1980). In that case, we held that §204.3 of the Act requires a party to a collective bargaining agreement to execute a single contract document, upon the request of the other party, even if it has already signed and ratified a memorandum of agreement.

---

<sup>5/</sup>Section 205.5(d) of the Act provides, in pertinent part:

[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 question before us, however, is whether an agreement to settle a disciplinary grievance is required by the Act to be treated in the same fashion as a collective bargaining agreement with respect to its execution. Central to a ~~determination of this question is a review and interpretation~~ of §204.3 of the Act, which is directed primarily toward the duty to negotiate collectively. If the full panoply of collective negotiations procedures contemplated by the Act were to apply to the settlement of grievances under contract interpretation or disciplinary grievance procedures, it would logically follow that impasse procedures, such as mediation and fact-finding, would arguably be applicable to the resolution of such a matter, and that the language of §204-a.1 as well as legislative approval<sup>6/</sup> would be required.<sup>7/</sup> We believe that these results were not intended by the Act. The duty to execute a written agreement, created

<sup>6/</sup>Section 201.12 of the Act provides:

The term "agreement" means the result of the exchange of mutual promises between the chief executive officer of a public employer and an employee organization which becomes a binding contract, for the period set forth therein, except as to any provisions therein which require approval by a legislative body, and as to those provisions, shall become binding when the appropriate legislatibve body gives its approval.

<sup>7/</sup>Indeed, it is noteworthy that the Town did not request inclusion of the language of §204-a.1 of the Act in the settlement agreement.

by §204.3, is most appropriately construed as applying to collectively negotiated agreements and not to settlement agreements reached pursuant to the grievance procedure contained in such a collectively negotiated agreement.

~~While we do not construe §204.3 to require that~~  
settlement agreements must be reduced to writing and executed upon the request of either party, execution is without doubt the universal practice in order to clearly delineate the terms of the settlement and to provide for its enforcement. The fact that this practice exists and is much to be encouraged, does not, however, flow from §204.3 of the Act.

Our finding in this regard is not intended to foreclose the possibility of a finding that a §209-a violation has otherwise occurred<sup>8/</sup>, even in the context of grievance settlement discussions. On this record, the intent required to support such a finding was not offered or established and no exception has been taken to the ALJ's dismissal of the §209-a.2(a) allegation.

It is not for us to decide whether the oral agreement reached by the representatives of the parties is itself enforceable or whether CWA's refusal to execute an agreement, orally reached, is actionable. These are matters for determination in another forum. The sole issue before us is

---

<sup>8/</sup>See Addison CSD, 17 PERB ¶3076 (1984). See also County of Niagara, 23 PERB ¶3003 (January 29, 1990), citing CSEA, Inc. (County of Wayne), 14 PERB ¶3092 (1981).

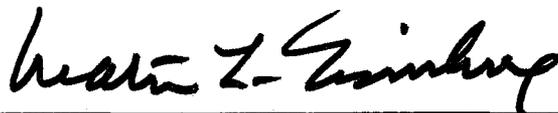
whether the Act requires a party which has entered into an oral settlement agreement of a disciplinary grievance to thereafter execute a written agreement and whether the failure to do so constitutes a violation of the duty to negotiate in good faith. We find that it does not. Whether such a refusal constitutes a breach of the oral agreement itself, which may have included an agreement to reduce the oral agreement to writing and execute it, is not properly within our jurisdiction pursuant to §205.5(d) of the Act.<sup>9/</sup>

Based upon the foregoing, IT IS HEREBY ORDERED that the charge be, and it hereby is, dismissed in its entirety.

DATED: January 29, 1989  
Albany, New York



Harold R. Newman, Chairman



Walter L. Eisenberg, Member

---

<sup>9/</sup>In view of our finding, it is not necessary for us to reach the CWA's remaining exceptions.

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

---

In the Matter of

TEAMSTERS LOCAL UNION NO. 693,  
INTERNATIONAL BROTHERHOOD OF TEAMSTERS,  
CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF  
AMERICA,

Petitioner,

-and-

CASE NO. C-3571

TOWN OF HAMDEN,

Employer.

---

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

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

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

IT IS HEREBY CERTIFIED that the Teamsters Local Union No. 693, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: Motor Equipment Operator, Heavy Equipment Operator, Laborer, and Mechanic.

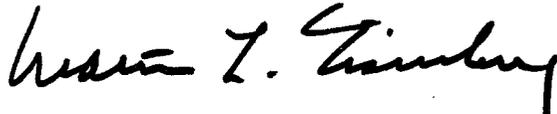
Excluded: Highway Superintendent and all other employees.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Teamsters Local Union No.

693, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. 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 29, 1990  
Albany, New York

  
Harold R. Newman, Chairman

  
Walter L. Eisenberg, Member

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

---

In the Matter of

CICERO POLICE BENEVOLENT ASSOCIATION, INC.,

Petitioner,

-and-

CASE NO. C-3573

TOWN OF CICERO,

Employer.

---

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

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

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

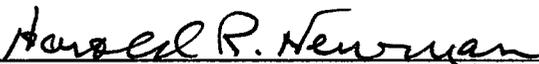
IT IS HEREBY CERTIFIED that the Cicero Police Benevolent Association, Inc. has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations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

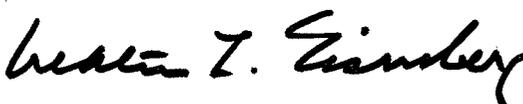
Unit: Included: All full- and part-time Patrolmen and Sergeants.

Excluded: Chief of Police and Civilian Dispatchers.

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

DATED: January 29, 1990  
Albany, New York

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

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

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

---

In the Matter of  
TEAMSTERS LOCAL 182,

Petitioner,

-and-

CASE NO. C-3590

TOWN OF MINDEN,

Employer.

---

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

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

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

IT IS HEREBY CERTIFIED that the Teamsters Local 182 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: Full-time heavy equipment operator and machine operator.

Excluded: All other employees.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Teamsters Local 182. 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 29, 1990  
Albany, New York

  
Harold R. Newman, Chairman

  
Walter L. Eisenberg, Member