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State of New York Public Employment Relations Board Decisions from April 19, 1990

New York State Public Employment Relations Board

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State of New York Public Employment Relations Board Decisions from April 19, 1990

Keywords

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

Comments

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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

ONONDAGA-CORTLAND-MADISON BOCES
FEDERATION OF TEACHERS, NYSUT, AFT,
LOCAL 2897,

Petitioner,

- and -

CASE NO. C-3464

ONONDAGA-CORTLAND-MADISON BOCES,

Employer.

HELEN W. BEALE, for Petitioner

GARRY LUKE, for Employer

BOARD DECISION AND ORDER

This matter comes to us on the exceptions of the Onondaga-Cortland-Madison BOCES (BOCES) to a decision of the Director of Public Employment Practices and Representation (Director) which grants a petition filed by the Onondaga-Cortland-Madison BOCES Federation of Teachers, NYSUT, AFT, Local 2897 (Federation) to add to its existing unit^{1/} full-time and part-time adult education teachers, teacher assistants and the related professional titles of vocational evaluator, vocational evaluator assistant, employment and

^{1/}The existing unit consists of full- and part-time teachers in the BOCES secondary, pre-K and primary school programs, adult education teachers employed for full academic terms, teacher assistants, and related professional titles including school nurse, physical therapist, psychologist, occupational therapist and others.

training counselor, employment services specialist, vocational rehabilitation counselor, program coordinator and counselor. Although the petition sought the addition to the existing unit represented by the Federation of all persons in the foregoing titles who work "more than twelve hours per week", the Federation concedes that a more appropriate definition of included employees would be "twelve or more hours per week", and the Director's decision is appropriately interpreted to apply to persons who work twelve or more hours per week.^{2/}

The BOCES' exceptions essentially raise two issues for our consideration. First, BOCES argues that the adult education teachers and related professional personnel are not public employees within the meaning of §201.7 of the Public Employees' Fair Employment Act (Act), because they are casual employees who do not meet the criteria for coverage which this Board has determined are applicable to seasonal employees.^{3/} Second, BOCES argues that if the persons in the petitioned-for titles are public employees, they are appropriately placed in a separate unit of adult education teachers and related personnel.

^{2/}Additionally, persons employed in the BOCES Enrichment Program were not included in the Federation's petition, and are not deemed to be included in the group of titles determined by the Director to be appropriate for inclusion in the unit presently represented by the Federation.

^{3/}See State of New York, 5 PERB ¶3022 (1972); BOCES I, Suffolk County, 20 PERB ¶3007 (1987).

With respect to the issue of coverage under the Act, we affirm the Director's determination that the criteria used to determine whether seasonal employees are employees covered by the Act do not apply here, where the employees described in the petition work a 10-, 11-, or 12-month workyear, for twelve or more hours per week, whether repeatedly appointed for short terms throughout the BOCES workyear or whether appointed to single terms covering the same length of time.^{4/} As the Director found, the employees in the petitioned-for titles have a regularity and continuity of employment sufficient to warrant representation under the Act.^{5/}

We therefore affirm the Director's finding that full-time and part-time adult education teachers, teacher assistants and related professionals who work 12 or more hours per week for at least 10 months of the year are public employees within the meaning of §201.7 of the Act.

^{4/}Compare BOCES III, Suffolk County, 15 PERB ¶3015 (1982), conf'd sub nom., BOCES III, Faculty Association v. PERB, 92 A.D. 2d 937, 16 PERB ¶7015 (2d Dep't 1983), wherein the Board determined that certain adult education instructors employed by BOCES III, Suffolk County for three and one-half hours per week during one-fifth of the days when school was in session, or for a period of approximately 26 days per year, were not employees covered by the Act.

^{5/}While certainly not controlling, it is interesting to note that the New York State Legislature recently added to the definition of covered employees those persons who serve as per diem substitutes in non-pedagogical positions as well as pedagogical positions, in BOCES as well as school districts, provided that they have received a reasonable assurance of continuing employment, without setting a lower threshold of hours of work. (Ch. 769, L. 1989)

BOCES also asserts in its exceptions that the Director's decision contains a number of erroneous findings of fact. For example, BOCES asserts that the Director erroneously stated that employees in the existing Federation unit work "with high school students in the BOCES secondary program", when in fact unit members work not only with secondary school students but with pre-K and primary school students also. BOCES further asserts that the Director's finding that "the current Federation unit consists of ten (10) and twelve (12) month employees" is incorrect, since the unit consists "primarily of ten (10) month employees with a few eleven (11) month employees and at the time only one twelve (12) month employee".

We have examined each of the points raised by BOCES with regard to the Director's findings of fact, and determine that they merely reflect a difference in emphasis on factual detail, or they are not supported by the record evidence, or are not material to the outcome of the case.^{6/}

Of more significance is the second primary issue raised by BOCES in connection with the Director's decision, that is, whether full- and part-time adult education teachers and related professionals are appropriately placed in the

^{6/}For example, BOCES' contention that persons working for 90 calendar days or more are entitled to receive health insurance benefits while the Director determined that persons working in programs running longer than 12 weeks receive health insurance benefits, is not germane to the disposition of the Federation's petition.

existing Federation unit which includes pre-K, primary and secondary program teachers and related professionals. In this regard, BOCES points out that adult education teachers work weekends, nights, holidays and/or vacation periods, when the other teachers are not scheduled to work; that the adult education teachers teach adults, as compared to young children and young adults; that adult education teachers may work as much as a 12-month year as compared to the other teachers, who typically work a 10-month year; and while BOCES teachers in the existing unit have bumping rights over adult education teachers in the event of a layoff, the converse is not true.

Notwithstanding these differences, we find that the most appropriate unit placement of the adult education teachers, adult education teacher assistants, and related professionals is in the existing Federation unit. This is so because the employees in all of the titles share in the mission of providing educational, vocational, and technical skills and services to students; the existing unit includes employees having a range of workyears, which encompasses the workyear of the employees in the petitioned-for titles; and at least some adult education teachers are already included in the existing unit. We therefore find that a community of interest exists between the petitioned-for employees and the existing unit employees. Similarly, we agree with the Director's determination that adult education teacher

assistants are appropriately included in the same unit with BOCES teacher assistants, who are now represented by the Federation.

Finally, we agree with the Director's determination that placement of the adult education counselor titles in the unit represented by the Federation is also appropriate. While, as noted by the Director, the titles sought to be represented are non-pedagogical, they are all involved in direct student contact in the same manner as currently represented guidance counselors, physical and occupational therapists, diversified work study coordinators, awareness placement counselors, and other counselors now in the Federation unit.^{7/}

Based upon the foregoing, the Director's finding that the petition should be granted is affirmed,^{8/} as clarified

^{7/}BOCES contends that the non-pedagogical titles described in the petition should, if not placed in a separate unit, be placed in a unit represented by the Cortland-Onondaga-Madison BOCES Organization (COMBO), which represents full-time employees working a minimum of ten months per year in titles such as custodial workers, clerk, telecommunications network technician, library worker, maintenance mechanic, and others. We agree with the Director's determination that the petitioned-for employees are more appropriately placed in the Federation unit than in the COMBO unit for the reasons set forth in the Director's decision.

^{8/}In its exceptions, BOCES argues that an order to negotiate on behalf of the petitioned-for employees should issue because it might otherwise be argued that the existing Federation agreement should, without negotiation, be made applicable to the petitioned-for employees. This argument has not, however, been made before us, nor, we presume, would it, since negotiations for the existing unit are very unlikely to have contemplated that new employees would in the future be covered.

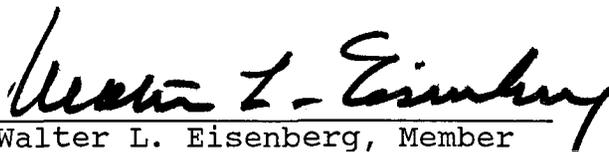
herein.^{9/}

IT IS THEREFORE ORDERED that an election by secret ballot shall be held under the supervision of the Director among the employees in the unit determined herein to be appropriate and who were employed on the payroll date immediately preceding the date of this Decision and Order, unless the Federation submits to the Director within fifteen (15) days from the date of receipt of this Decision and Order evidence to satisfy the requirements of §201.9(g)(1) of the Rules of Procedure for certification without an election.

IT IS FURTHER ORDERED that the BOCES shall submit to the Director and to the Federation within fifteen (15) days from receipt of this Decision and Order, an alphabetized list of all employees within the unit determined herein to be appropriate who were employed on the payroll date immediately preceding the date of this Decision and Order.

DATED: April 19, 1990
Albany, New York


Harold R. Newman, Chairman


Walter L. Eisenberg, Member

^{9/}As noted, supra, the petition, as clarified, seeks to represent persons who are employed 12 or more hours per week, and does not seek to include Enrichment Program employees.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

FRANKLIN COUNTY LOCAL 817, CSEA, AFSCME,
LOCAL 1000,

Charging Party,

-and-

CASE NO. U-11180

VILLAGE OF MALONE,

Respondent.

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

BRIAN S. STEWART, ESQ., for Respondent

BOARD DECISION AND ORDER

The Franklin County Local 817, CSEA, AFSCME, Local 1000 (CSEA) excepts to the dismissal, as deficient, of its improper practice charge against the Village of Malone (Village) by the Director of Public Employment Practices and Representation (Director).

The charge alleges that the Village violated §§209-a.1(a) and (b)^{1/} of the Public Employees' Fair Employment Act (Act) when its Mayor removed the individual selected by CSEA as its representative on a contractually established Grievance Board, and replaced that individual with a CSEA representative of the Mayor's choosing.

^{1/}The charge was amended to allege a violation of §209-a.1(d) of the Act. The Director dismissed that aspect of the charge, and its dismissal is not the subject of exceptions.

Pursuant to the parties' collective bargaining agreement, a Grievance Board is established to hear appeals of grievances filed by unit members represented by CSEA. The charge alleges that, on May 30, 1989, CSEA and the Village amended the portion of their collective bargaining agreement relating to the composition of the Grievance Board by adding the underlined sentence to the following contract provision:

Section 4. Grievance Board.

- A. A Grievance Board of four (4) members is hereby established to hear appeals from decisions of supervisors on grievances. One (1) member of said Board will be the representative of the CSEA.
- B. The members of this Board shall be appointed by the Mayor to serve at the pleasure of the Mayor.

One week following the agreement to add the second sentence to paragraph A, CSEA notified the Mayor that it had selected its Local president, Ellen Lennon, to be its representative on the Board. Approximately two and one half months later, the Mayor notified Lennon that he was removing her from the Board and replacing her with CSEA's unit president.

The Director dismissed the charge upon the ground that, pursuant to the parties' collective bargaining agreement, the selection and retention of members of the Grievance Board was exclusively within the discretion of the Mayor, and that in the absence of any claim that the exercise of his contractual

privilege was for reasons precluded by the Act, the charge failed to set forth allegations which, if proven, would establish a violation.

Among its exceptions, CSEA asserts that

~~The charge per se states an actionable violation of §§209-a.1(a) and (b) in that there is no dispute that the employer removed CSEA's designated representative from the Grievance Board.~~

While, under ordinary circumstances, an attempt by one party to control the selection of the other party's representative might constitute a violation of the Act, the charge here references contract language which may be interpreted to constitute a contractual waiver of what would otherwise be a statutory right. Indeed, the Director concluded that the language of Section 4 of the parties' agreement constituted a waiver by CSEA of the right to select the CSEA representative to serve on the Grievance Board.

Without doubt, this case turns upon the interpretation of the language of the parties' collective bargaining agreement. CSEA urges that, notwithstanding the language of the agreement, it should not be found to have waived its statutory right to make representation selections of its own choosing, thus seeking a determination by this Board that "the representative of the CSEA" means the representative selected by CSEA. The Village, in adopting the Director's decision, relies upon his determination that the language of

the collective bargaining agreement means, instead, that all the members of the Board, including the representative of the CSEA, are to be appointed by the Mayor and to serve at his pleasure.

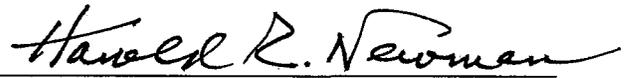
At issue before us, then, is a matter of contract interpretation which amounts to nothing more than an effort by CSEA to enforce the collective bargaining agreement as it is interpreted by it.

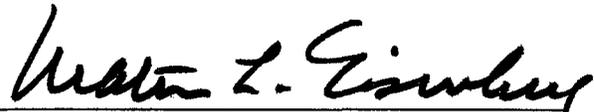
Contrary to the Director's decision, we deem it unnecessary to decide which of the interpretations presented by the parties is the correct one. However, there is no doubt that the contract covers the issue presented by the instant charge, and that CSEA here seeks enforcement of its interpretation of the collective bargaining agreement, which we are without jurisdiction to do. (See Act §205.5(d)).

While, as pointed out by the Director, the selection of a party's representative on a committee such as a negotiating committee or a grievance committee is a nonmandatory subject (see County of Nassau, 12 PERB ¶13090 (1979)), an agreement concerning such matters is not improper. Thus, the determination whether CSEA waived its right to select its own representative for the Grievance Board is, under the specific circumstances of this case, a matter of contract interpretation and enforcement.

Based upon the foregoing, the charge is hereby dismissed in its entirety.^{2/}

DATED: April 19, 1990
Albany, New York


Harold R. Newman, Chairman


Walter L. Eisenberg, Member

^{2/}Also in its exceptions, CSEA asserts that the determination whether PERB has jurisdiction over the issues raised in the charge should have been deferred in accordance with this Board's decision in Herkimer County BOCES, 20 PERB ¶3050 (1987). In that case, however, conditional dismissal was warranted because a question existed concerning whether the contract covered the issue raised by the improper practice charge. Here, the issue raised by both parties is solely contractual in nature and, therefore, deferral of the jurisdictional question is unnecessary and inappropriate.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

LOCAL 100, TRANSPORT WORKERS UNION,

Charging Party,

-and-

CASE NO. U-11319

NEW YORK CITY TRANSIT AUTHORITY,

Respondent.

O'DONNELL & SCHWARTZ, ESQS. (MANLIO DIPRETA, ESQ., of
Counsel), for Charging Party

BOARD DECISION AND ORDER

Local 100, Transport Workers Union (TWU) excepts to the dismissal, as deficient, of its improper practice charge alleging that the New York City Transit Authority (Authority) violated §§209-a.1(a), (c) and (d) of the Public Employees' Fair Employment Act (Act).

The charge alleges the following:

On or about August 17, 1989, Mr. Eric Josephson, a Shop Steward of Local 100, was refused by the Transit Authority the right to make a telephone call for an unsafe working condition at a work location. The Authority refused to allow him to make a phone call during the work time and this constitutes interference with Union activities in violation of the Taylor Law.

In addition, as a result of his attempt to carry out his union duties, the Authority subjected him to discipline.... [Authority representatives] refused to permit the Shop Steward the right to go to a phone to call his Union to report the unsafe working condition. Again, this resulted in disciplinary charges being lodged against Shop Steward E. Josephson.

The Director of Public Employment Practices and Representation (Director) initially determined that the charge, as framed, failed to set forth allegations which, if proven, might establish a violation of the Act. The Director interpreted the charge as alleging, first, that use of the employer's telephone during work time for union business is a right conferred by the Act (and denial of that right violates the Act per se); and, second, that the imposition of discipline for the unauthorized use of the employer's telephone during working time is also a per se violation of the Act.

By letter dated September 22, 1989, the Director's designee advised the TWU's representative that the charge appeared to be deficient, and described the deficiency in the following terms:

An employer's refusal to allow a Union Shop Steward to use a phone during work time to report unsafe working conditions, and the imposition of discipline for doing so, do not, per se, constitute violations of the Taylor Law.

Although offered an opportunity to clarify and/or amend the charge, the TWU declined to do so and the charge was dismissed by the Director. NYC Transit Authority, 23 PERB ¶4507 (1990).

It is our determination that, based upon the allegations before him, the Director properly dismissed the charge as

deficient because, as we have previously held^{1/}, the Act does not automatically confer upon an employee organization the right to utilize work time or the employer's facilities for the conduct of representation activity. While these matters are mandatorily negotiable, they are not automatically conferred by the right of representation. Similarly, the imposition of discipline following the attempted use of the Authority's telephone and time for employee organization business does not constitute a violation of the Act either, in the absence of a claim of discriminatory or improper motivation, the existence of an emergency health hazard, or discipline for the exercise of a negotiated right.

In its exceptions to the Board, the TWU now argues for the first time that the "right" referred to in the charge is not alleged to be a right conferred by the Act, but a contractual right derived from the parties' collective bargaining agreement, and that the imposition of discipline for the exercise of the asserted contractual right to use the Authority's telephone during working hours for TWU business, including reporting unsafe working conditions, constitutes discriminatory interference with its exercise.

While this allegation, if made at the outset, might well properly constitute a claim of violation of the Act, the Director did not have this allegation before him, nor is it

^{1/}Albany CSD, 6 PERB ¶3012 (1973).

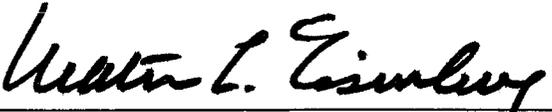
reasonably construed from the allegations in fact made in the charge. Furthermore, the TWU failed to proffer this information, after it was given an opportunity to do so by the Director's designee.

~~The failure to present any allegations which might~~
establish a violation of the Act in proceedings before the Director is not cured by the TWU's presentation of such allegations in exceptions to this Board. We are limited in our review of the Director's decision to the record as it existed before him, except in extraordinary circumstances such as the discovery of new evidence which could not reasonably have been discovered in proceedings before the Director. No such extraordinary circumstances are present here.

Basing our determination, therefore, upon the record before the Director, we find that he properly dismissed the charge as deficient, and IT IS THEREFORE ORDERED that the charge be, and it hereby is, dismissed.

DATED: April 19, 1990
Albany, New York


Harold R. Newman, Chairman


Walter L. Eisenberg, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matters of

ELISE DeBENEDICTIS and
DOLORES LAMONICA,

CASE NOS. DR-013
& DR-015

Upon Petitions for Declaratory
Ruling.

ELISE DeBENEDICTIS and DOLORES LAMONICA, pro se

BOARD DECISION AND ORDER

Elise DeBenedictis and Dolores Lamonica (petitioners) filed separate, identical petitions, on October 6 and October 17, 1989, respectively, pursuant to §210.1(a) of PERB's Rules of Procedure (Rules). The petitions seek a declaration that certain supervisory titles created in 1987 and placed in a bargaining unit (including petitioners, who are senior court officers employed by the State of New York - Office of Court Administration), are managerial or supervisory employees who should be removed from petitioners' bargaining unit. Although framed as petitions for declaratory rulings, the petitions, in essence, appear to seek either fragmentation of supervisory employees from the "rank-and-file" unit in which they are placed or, alternatively, the designation of such supervisory titles as managerial, as defined in §201.7(a) of the Public Employees' Fair Employment Act (Act). Because of the identical nature

of the petitions, they have been consolidated by this Board for the purpose of decision.

The Director of Public Employment Practices and Representation (Director) dismissed the petitions upon the ground that they seek managerial designations, as to which a procedure exists elsewhere in our Rules.^{1/} In so ruling, the Director relied upon this Board's decision in Thomas C. Barry, 21 PERB ¶6501 (1988), wherein the Board held:

[A] petition for declaratory ruling is not the appropriate procedure for determining whether persons in certain job titles in the employ of a public employer are or are not managerial and therefore excluded from the Act's coverage. The proper procedure for obtaining such a determination is in the context of Rules §201.10, which provides for the filing of [a] managerial/confidential application.

In their exceptions, the petitioners assert that §201.10 of the Rules, which outlines the procedure for the filing and processing of a managerial/confidential application, applies to public employers, and not to bargaining unit members who seek to have themselves or others excluded from a bargaining unit upon the basis of managerial or confidential status. While this observation is correct, and only public employers may file such applications, this limitation is required by §201.7(a) of the Act, which provides:

^{1/}See Rules, §201.10.

The term "public employee"... shall not include ... persons who may reasonably be designated from time to time as managerial or confidential upon application of the public employer to the appropriate board.... (emphasis added)

In view of the foregoing, the Director properly declined to permit the use of the declaratory ruling procedure contained in Part 210 of the Rules as a means to apply for managerial or confidential designations by persons other than public employers.

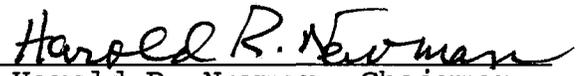
Similarly, the Director appropriately declined to issue a declaratory ruling as a means to seek fragmentation of supervisory employees from the existing unit in which such supervisory employees and petitioners are now placed. The procedure for seeking fragmentation is found at Part 201 of the Rules ("Determination of Representation Status under Section 207 of the Act"). The declaratory ruling procedure adopted by this Board is not intended to, nor may it, be used to avoid compliance with the procedures for filing and processing representation petitions under Part 201. Petitions for declaratory rulings may only be filed for the specific purposes set forth in our Rules.^{2/}

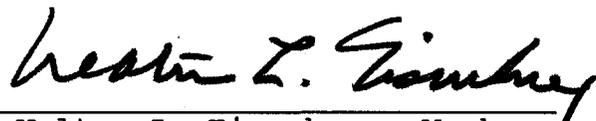
^{2/}"Any person, employee organization or employer may file with the director an original and four copies of a petition for a declaratory ruling with respect to the applicability of the act to it or any other person, employee organization or employer, or with respect to the scope of negotiations under the act." Rules, §210.1(a)

We therefore find that the Director properly declined to issue declaratory rulings.

IT IS THEREFORE ORDERED that the decisions of the Director are affirmed, and the petitions are dismissed.

DATED: April 19, 1990
Albany, New York


Harold R. Newman, Chairman


Walter L. Eisenberg, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

COUNTY OF NASSAU

Case No. S-0002

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

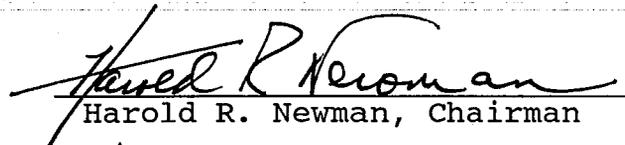
BOARD DECISION AND ORDER

Pursuant to §212 of the Civil Service Law, the County of Nassau has submitted an application by which it seeks a determination that its Ordinance No. 549-1981, as amended on February 5, 1990 by Ordinance No. 48-1990, is substantially equivalent to the provisions and procedures set forth in Article 14 of the Civil Service Law with respect to the State. Specifically, the amendment brings the County of Nassau's ordinance into conformity with Chapter 237 of the Laws of 1989, which extended the Taylor Law's interest arbitration provisions for an additional two years.

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

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

DATED: April 19, 1990
Albany, New York


Harold R. Newman, Chairman


Walter L. Eisenberg, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

GENEVIEVE E. MACLEAN,

Charging Party,

-and-

CASE NO. U-6930

LOCAL 342, LONG ISLAND PUBLIC SERVICE
EMPLOYEES,

Respondent.

GENEVIEVE E. MACLEAN, pro se

GOLDSTEIN & RUBINTON, P.C. (RONALD GOLDSTEIN, ESQ.,
of Counsel), for Respondent

SUPPLEMENTAL BOARD DECISION AND ORDER ON CONSENT

By Decision and Order dated August 18, 1987, this Board found that Local 342, Long Island Public Service Employees (Local 342) violated §209-a.2(a) of the Public Employees' Fair Employment Act (Act), and directed it to:

reimburse Genevieve MacLean for any reasonable and previously unreimbursed legal fees and related expenses which she has actually incurred in connection with her processing of her claim against the Incorporated Village of Valley Stream for unlawful discharge without Local 342's representation.^{1/}

^{1/}20 PERB ¶3045, at 3094(1987).

Upon judicial review of the Decision and Order, the Appellate Division, Second Judicial Department, confirmed the Board's determination and remitted this matter to PERB to compute the amount due to Mrs. MacLean pursuant to our order.^{2/3/}

Following remittitur from the Appellate Division, the parties entered into a stipulation, dated April 3, 1990, whereby they consented to a finding by PERB "that the total amount of expenses incurred by Mrs. MacLean and reimburseable [sic] to her by Local 342" is twenty thousand dollars (\$20,000.00) and to PERB's issuance of an "order for the payment of that amount to Mrs. MacLean by Local 342".

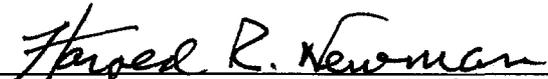
Pursuant to the parties' aforesaid stipulation, we hereby find that the amount due to Genevieve MacLean for previously unreimbursed legal fees and related expenses which she actually incurred in connection with her processing of her claim against the Incorporated Village of Valley Stream for unlawful discharge without Local 342's representation is twenty thousand dollars (\$20,000.00).

^{2/}146 AD2d 775 (2nd Dept.), 22 PERB ¶7005, at 7009(1989).

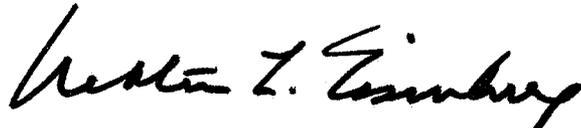
^{3/}A motion by Local 342, seeking leave to appeal to the Court of Appeals, was denied by the Appellate Division (22 PERB ¶7020, (Appellate Division, 2d Dept. 1989)) and, thereafter, by the Court of Appeals (75 NY2d 701, 22 PERB ¶7038 (1989)).

IT IS, THEREFORE, ORDERED, on consent, that Local 342,
Long Island Public Service Employees shall pay to Genevieve
MacLean the sum of twenty thousand dollars (\$20,000.00).

DATED: April 19, 1990
Albany, New York



Harold R. Newman, Chairman



Walter L. Eisenberg, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of
EVELYN ABRAMS, ET AL,

Petitioner,

- and -

CASE NO. C-3633

NEW PALTZ CENTRAL SCHOOL DISTRICT,

Employer,

COMMUNICATIONS WORKERS OF AMERICA,
LOCAL 1120, AFL-CIO,

Intervenor.

EVELYN ABRAMS, for Petitioners

DR. CAROLYN F. LEARY, for Employer

RICHARD M. MARTINI, for Intervenor

BOARD DECISION AND ORDER

On December 1, 1989, Evelyn Abrams, et al (petitioners) filed a timely petition for decertification of the Communications Workers of America, Local 1120, AFL-CIO (intervenor), the current negotiating representative for employees in the following unit:

Included: All regularly full time and part-time clerical personnel, including the Switchboard Operators and Attendance Clerks.

Excluded: The Typist to the Assistant Superintendent for Business, Secretary to the Superintendent, Typist to the Superintendent and Assistant Superintendent for Curriculum and Instruction, Payroll/Personnel Clerk, Account Clerks, Typist to the Personnel Clerk and all other employees.

Upon consent of the parties, a mail ballot election was held on February 26, 1990. The results of this election show that the

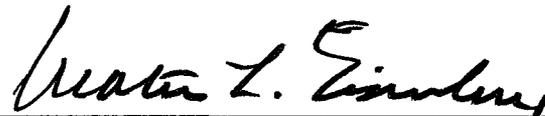
majority of eligible employees in the unit who cast valid ballots no longer desire to be represented for purposes of collective negotiations by the intervenor.^{1/}

THEREFORE, IT IS ORDERED that the intervenor be, and it hereby is, decertified as the negotiating agent for the unit.

DATED: April 19, 1990
Albany, New York



Harold R. Newman, Chairman



Walter L. Eisenberg, Member

^{1/} Of the 12 employees in the unit, 11 ballots were cast-- 3 were for representation and 8 against representation. There were no challenged ballots.

*Include as
Bd Dec.*

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

EVELYN ABRAMS, ET AL,

Petitioner,

- and -

CASE NO. C-3633

NEW PALTZ CENTRAL SCHOOL DISTRICT,

Employer,

COMMUNICATIONS WORKERS OF AMERICA,
LOCAL 1120, AFL-CIO,

Intervenor.

EVELYN ABRAMS, for Petitioners

DR. CAROLYN F. LEARY, for Employer

RICHARD M. MARTINI, for Intervenor

BOARD DECISION AND ORDER

On December 1, 1989, Evelyn Abrams, et al (petitioners) filed a timely petition for decertification of the Communications Workers of America, Local 1120, AFL-CIO (intervenor), the current negotiating representative for employees in the following unit:

Included: All regularly full time and part-time clerical personnel, including the Switchboard Operators and Attendance Clerks.

Excluded: The Typist to the Assistant Superintendent for Business, Secretary to the Superintendent, Typist to the Superintendent and Assistant Superintendent for Curriculum and Instruction, Payroll/Personnel Clerk, Account Clerks, Typist to the Personnel Clerk and all other employees.

Upon consent of the parties, a mail ballot election was held on February 26, 1990. The results of this election show that the

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

UNITED TRANSPORTATION UNION,
LONG ISLAND GENERAL COMMITTEE OF
ADJUSTMENT,

Petitioner,

-and-

CASE NO. C-3497

STATEN ISLAND RAPID TRANSIT OPERATING
AUTHORITY,

Employer,

-and-

TEAMSTERS LOCAL 808, BROTHERHOOD OF
LOCOMOTIVE ENGINEERS and BROTHERHOOD OF
RAILROAD SIGNALMEN,

Intervenors.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

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

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

IT IS HEREBY CERTIFIED that the United Transportation Union, Long Island General Committee of Adjustment 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 I: Included: All employees in the following titles:
 trackwalker, trackworker, general mechanic,
 apprentice general mechanic, speed-swing
 specialist, burner-welder specialist,
 trackworker-foreman, B and B foreman.

 Excluded: All other employees.

Unit II: Included: All employees in the following titles:
 line supervisor, signal; signal helper;
 signal maintainer.

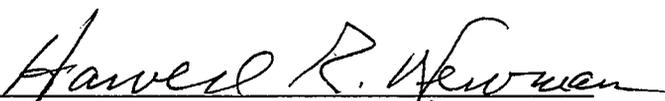
 Excluded: All other employees.

Unit III: Included: All employees in the title of engineer.

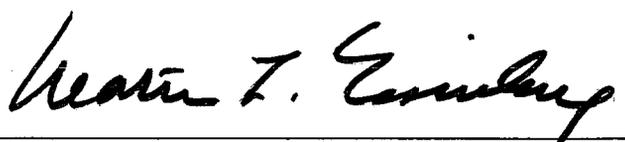
 Excluded: All other employees.

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

DATED: April 19, 1990
 Albany, New York



Harold R. Newman, Chairman



Walter L. Eisenberg, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

TOWN OF NORTH SALEM POLICE BENEVOLENT
ASSOCIATION,

Petitioner,

-and-

CASE NO. C-3576

TOWN OF NORTH SALEM,

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,

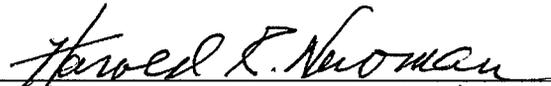
IT IS HEREBY CERTIFIED that the Town of North Salem Police Benevolent Association has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon and described below, as their exclusive representative for the purpose of collective negotiations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

Unit: Included: Part-time police officers, sergeants and lieutenants.

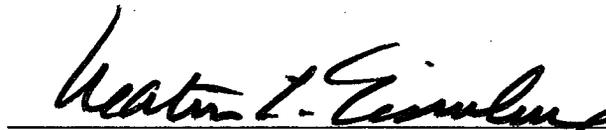
Excluded: Chief of police and all other employees.

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

DATED: April 19, 1990
Albany, New York



Harold R. Newman, Chairman



Walter L. Eisenberg, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

NEW YORK STATE PUBLIC EMPLOYEES
FEDERATION, AFL-CIO,

Petitioner,

-and-

CASE NO. C-3578

ALBANY HOUSING AUTHORITY,

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 New York State Public Employees Federation, 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: Accountant I, Administrative Aide, Albany Housing Authority Inspector of Construction, Assistant Chief of Central Maintenance, Assistant Housing Authority Development Manager, Assistant Modernization Program

Coordinator, Business Office Manager, Community Services Coordinator, Computer Systems Analyst-Programmer, Custodial Work Supervisor I, Data Processing Control Supervisor, Housing Authority Development Manager, Housing Safety Supervisor, Maintenance Foreman, Modernization Assistant, Modernization Program Coordinator, Rental Assistance Program Coordinator, Senior Superintendent of Construction, Work Incentive Coordinator, Work Incentive Technician.

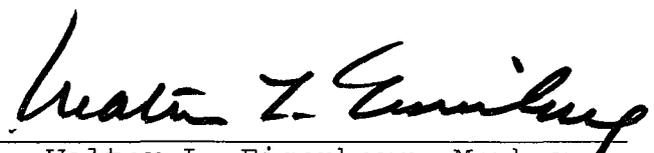
Excluded: All other employees.

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

DATED: April 19, 1990
Albany, New York



Harold R. Newman, Chairman



Walter L. Eisenberg, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

CIVIL SERVICE EMPLOYEES ASSOCIATION, INC.,
GENESEE COUNTY LOCAL 819, LOCAL 1000,
AFSCME, AFL-CIO,

Petitioner,

-and-

CASE NO. C-3628

CITY OF BATAVIA,

Employer.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

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

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

IT IS HEREBY CERTIFIED that the Civil Service Employees Association, Inc., Genesee County Local 819, Local 1000, AFSCME, AFL-CIO has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: All full-time clerical, technical, scientific,
and professional employees.

Excluded: City Administrator, Assistant to City Administrator, Fire Chief, Deputy Fire Chief, City Engineer/Director of Public works, Public Works Superintendent, Police Chief, Water and Sewer Superintendent, Recreation Director, City Clerk/Treasurer, Secretary to the City Administrator, Clerk/Typist to the Assistant City Administrator, Assistant Engineer, Finance Records Control Clerk, Youth Bureau Director and City Assessor.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Civil Service Employees Association, Inc., Genesee County Local 819, Local 1000, AFSCME, AFL-CIO. The duty to negotiate collectively includes the mutual obligation to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written agreement incorporating any agreement reached if requested by either party. Such obligation does not compel either party to agree to a proposal or require the making of a concession.

DATED: April 19, 1990
Albany, New York



Harold R. Newman, Chairman



Walter L. Eisenberg, Member

M E M O R A N D U M

April 6, 1990

TO: Harold R. Newman
Walter L. Eisenberg

FROM: Pauline R. Kinsella

RE: Guidelines for Board Members

Attached is a revised draft of PERB's Guidelines for Board Members for your review and discussion at the April 19 Board meeting.

**New York State Public Employment Relations Board
Guidelines for Board Members**

Section 205 of the Public Employees Fair Employment Act (Taylor Law) creates the Public Employment Relations Board and sets forth certain of the requirements for individual Board members. These guidelines will help you to fulfill your responsibilities on the Board and enhance your awareness of certain matters that could interfere with your performance as a Board member. It is a Board member's responsibility, however, to become familiar with all statutory and regulatory provisions which govern a member's activities.

Term of office: Members of the Board are appointed by the Governor and confirmed by the Senate to a term of office of six years unless the appointee is named to succeed a person who has not completed the term. In that event, the appointee completes the time remaining in the term.

Other employment: Section 205.2 of the Taylor Law explicitly states that members of the Board "shall hold no other public office or public employment in the state."

PERB, for wholly logical reasons, attracts to its Board positions persons who are labor relations professionals, and who may earn their livelihood as arbitrators. Nevertheless, because of the potential for conflict of interest problems, Board members may not arbitrate in New York's public sector. Disclosure of other outside employment or relationships and/or recusal are appropriate in specific cases in which such other employment or relationships may give rise to an appearance of partiality.

Per Diem Rate: Members of the Board are paid \$250 per day,

together with an allowance for actual and necessary expenses incurred on PERB business.

The state workday is 7 1/2 hours per day; travel to Board meetings is considered part of the workday. Board members are expected to be prepared for meetings, i.e., decide cases, by reviewing drafts of decisions and other documents prior to their consideration by the full Board. The time spent in such preparation is considered official work of the agency and is compensated at the same rate as Board meetings. For your guidance, the experience at the Board is that members ordinarily require about one day of preparation for each scheduled day of meeting time.

Official station: A Board member's official station is his/her home address. However, you are required to travel to Albany or New York City to attend all scheduled Board meetings. Of course, costs for such travel are reimbursed.

Attendance at Professional Meetings, Conferences, etc.: It is the Board's policy to encourage members to participate in those professional meetings, conferences, seminars, etc. which advance the agency's interests, promote its goals, contribute to the knowledge in the field or which otherwise create a positive image for PERB. The agency, however, does not ordinarily underwrite expenses, nor does it pay the per diem, for Board members' attendance at conferences held by organizations where individual (personal) membership in that organization is required. For example, a meeting of the National Academy of Arbitrators, while

important to arbitrators, is a conference where Board members would not be reimbursed by PERB for expenses, nor would they be paid the per diem.

Administration: The Chairman of the Board, designated as such by the Governor for his/her full term of office, is the administrative head of the Board. As such, he/she is solely responsible for the day-to-day operations of the agency, and chairs all meetings of the Board.

Board meetings: Board members are required to be present in order to participate in a case. No provision is available for any form of absentee or proxy voting.

Parts of Board meetings are public; however, persons ordinarily do not ask to attend.

Draft decisions prepared by the Deputy Chairman and Counsel are presented to the Board as far in advance of a meeting as possible.

An oral presentation may be made by the Deputy Chairman at the meeting.

Other staff do not ordinarily participate in Board meetings; however, specific agenda items may require their attendance. For example, the Director of Conciliation would be expected to make a presentation when the Board considers appointments to its panels of mediators and fact finders. The Associate Counsel might make a presentation to the Board if a court case were under consideration for appeal.

4/5/90

ADMINISTRATIVE ADJUDICATION PLAN
NEW YORK STATE
PUBLIC EMPLOYMENT RELATIONS BOARD

Recognizing that persons who appear before it are entitled to expert, expeditious and fair resolution of the matters they present for adjudication, the New York State Public Employment Relations Board has adopted an Administrative Adjudication Plan which reflects its commitment in this regard.

I, HAROLD R. NEWMAN, Chairman of the New York State Public Employment Relations Board, do hereby attest that the Administrative Adjudication Plan set forth below is in adherence to the general principles of administrative adjudication contained in Governor's Executive Order No. 131, dated December 4, 1989.

Dated: April 19, 1990


HAROLD R. NEWMAN
CHAIRMAN
PUBLIC EMPLOYMENT RELATIONS BOARD

Organization:

Where practical, only those employees of the Public Employment Relations Board (PERB) who, with the exception of support staff, function as Administrative Law Judges (ALJ) shall be assigned organizationally to PERB's Office of Public Employment Practices and Representation (OPEPR). They shall report to, and be evaluated by, only the Director, or, in the Director's absence, the Assistant Director, of OPEPR, subject to review by the Chairman or the Chairman's designee. Also where practical, the ALJs shall be located in an office which

physically separates them from non-OPEPR staff. No duties assigned to ALJs shall relate to the prosecution or presentation of adversarial PERB positions.

Outside Hearing Officers:

Most State hearing officers, as members of the Professional, Scientific and Technical Services Unit of State employees, are represented by an employee organization. PERB's ALJs (as all PERB staff) are excluded from bargaining unit membership both to avoid the conflict of interest which would arise if they had to decide questions pertaining to their own terms and conditions of employment and to avoid the appearance of bias which might be occasioned by union or unit membership. Borrowing represented hearing officers from other agencies would create the very conflict of interest which the exclusion of PERB's ALJs from Taylor Law coverage is aimed at preventing.

The potential for conflict of interest, and the organizational, structural and operational independence of the OPEPR, render a request by PERB for services of a represented hearing officer from another agency both unnecessary and unfeasible.

However, should a situation arise in which an impartial hearing could not be conducted by an ALJ employed by PERB in consistence with the principles of Executive Order No. 131, PERB will contract for the services of a neutral attorney for such

purpose. The contract attorney will be paid at the per diem rate paid to PERB-appointed mediators and fact finders.

Employment:

PERB's ALJs may serve in any of five noncompetitive, civil service titles.^{1/} Appointment to the trainee program or at the journeyman/journeywoman level may be made of any person who meets the minimum qualifications for the position, which do not mandate prior PERB employment.

Procedural Regulations:

PERB's Rules of Procedure (Rules) governing its adjudicatory hearings which are subject to Executive Order No. 131 are attached as Appendix A; the summary of such Rules required by §301.3 of the State Administrative Procedure Act is attached as Appendix B. PERB ALJs will disclose to the parties before them, and to the Director, any fact which could evidence, or give the appearance of, bias in matters before them, as soon as practical after becoming aware of such fact. The Board will, as soon as practicable, adopt a Rule which will establish procedures for the recusal of an ALJ.

Training:

Those in trainee positions must observe proceedings conducted by senior administrative law judges, and supervisors,

^{1/} The titles Jr. Trial Examiner Trainee I, Jr. Trial Examiner Trainee II, Jr. Trial Examiner, and Assistant Trial Examiner are training positions leading to the position of Trial Examiner. The Assistant Director and Director may serve as ALJs also.

to become familiar with the appropriate procedures for the conduct of such proceedings. All administrative law judges will be granted the opportunity, depending on fiscal resources, to attend conferences, seminars or courses on public sector labor law, administrative law and the conduct of impartial administrative proceedings, conducted by the New York State Bar Association, the National Association of Administrative Law Judges, the National Judicial College, the Association of Labor Relations Agencies and the New England Consortium of State Labor Relations Agencies. PERB will periodically present to the ALJs speakers on topics related to the Taylor Law and its impartial administration. PERB's ALJs will participate, insofar as such participation will not conflict with the general principles of administrative adjudication set forth in Executive Order No. 131 or with the State Administrative Procedure Act, in training programs for hearing officers conducted or provided under the auspices of the Governor's Office of Employee Relations.

Cooperation With Other Agencies:

To the extent practical, given PERB's neutral function in labor relations at other State agencies which may be the subject of proceedings before it, PERB and the OPEPR will consult with other agencies which utilize the services of hearing officers regarding the efficient use, jointly and/or severally, of resources for the expeditious providing of fair hearings. To this end, the Director and Assistant Director of OPEPR will

continue to communicate on a regular basis with supervisors of hearing officers in other agencies regarding the proper and expeditious conduct of administrative proceedings.

Processing of Cases:

Improper practice charges, strike charges and petitions for declaratory rulings (cases) will be as expeditiously processed as the OPEPR caseload and the parties will permit. A case will be "docketed" by recording the date of receipt and other pertinent information (e.g., case number, parties, nature of case, name of ALJ assigned) in a computerized case tracking system.

A pre-hearing conference will be scheduled at the earliest date on which the ALJ is available. Adjournments will be granted only upon good cause shown and if the request for same is made reasonably in advance of the scheduled conference date. If a hearing is needed, it will be scheduled at the earliest date on which the ALJ is available; adjournments will be subject to the same restrictions as for conferences.

From initial docketing to close of a case, information on its progress will be routinely entered into the docket and the ALJs will regularly report to the Director on the status of their caseload. This tracking system will insure the expeditious handling of each case and its timely disposition.

Description of PERB's System of Administrative Adjudication:

PERB's system of administrative adjudication is as set forth in Appendices A and B. The policy of the Taylor Law, which PERB

administers, is, as set forth in §200, "to promote harmonious and cooperative relationships" among those subject to its provisions, and PERB's role is "to assist in resolving disputes" between them. PERB ALJs actively utilize dispute resolution techniques in trying to achieve settlement before adjudicating the cases before them. These techniques include a pre-hearing conference designed to encourage settlement of the case as well as to address the process of adjudication. The conference will normally be conducted two or more weeks before the hearing. During the interim, if settlement hasn't been reached at the conference, the parties may consider and discuss between themselves, or with the ALJ, the possibilities for settlement. Such discussions will take place up to the date of the hearing itself.

Most parties who appear in PERB proceedings are familiar with PERB's settlement-first approach to administrative adjudication, and have accepted that ALJs hold both separate and joint communications with the parties concerning the facts and merits of a case as well as ministerial matters. Such separate discussions will no longer occur regarding other than ministerial matters unless and until the parties to the proceeding have specifically consented thereto.

Except for this change and the proposed rule regarding recusal of ALJs, no other changes are envisioned in PERB's existing administrative adjudication system as a result of Executive Order No. 131.

APPENDIX A

PART 200 DEFINITIONS

Sec.		Sec.	
200.1	Act; board	200.7	Certification
200.2	Director; administrative law judge	200.8	Recognition
200.3	Director of conciliation	200.9	Working days
200.4	Counsel	200.10	Filing; service
200.5	Party	200.11	Showing of interest
200.6	Impartial agency		

Section 200.1 Act; board. The term *act*, as used in this Chapter, shall mean the New York State Public Employees' Fair Employment Act, and the term *board* shall mean the New York State Public Employment Relations Board, or any two members thereof.

200.2 Director; administrative law judge. The term *director*, as used in this Chapter, shall mean the agent of the board designated as director of public employment practices and representation; the term *administrative law judge* as used in this Chapter shall mean an agent of the board so designated.

200.3 Director of conciliation. The term *director of conciliation*, as used in this Chapter, shall mean the agent of the board so designated.

200.4 Counsel. The term *counsel*, as used in this Chapter, shall mean the agent of the board so designated.

200.5 Party. The term *party*, as used in this Chapter, shall mean any person, organization or public employer filing a charge, petition or application under the act or this Chapter; any person, organization or public employer named as a party in a charge, petition or application filed under the act or this Chapter; or any other person, organization or public employer whose timely motion to intervene in a proceeding has been granted.

200.6 Impartial agency. The term *impartial agency*, as used in this Chapter, shall mean an agency or agent established or designated by a local government pursuant to procedures established by its legislative body under section 206.1 or section 212 of the act, which agency or agent shall be free from direction by the local government involved and without predisposition or appearance of predisposition to favor such local government or any employee organization in matters which come before it.

PART 204
IMPROPER PRACTICES

Sec.		Sec.	
204.1	Charge	204.10	Exceptions to administrative law judge's decision and recommended order
204.2	Initial processing by director	204.11	Cross-exceptions
204.3	Answer	204.12	Request for extension of time
204.4	Expedited determinations	204.13	Oral argument before the board
204.5	Intervention	204.14	Board action
204.6	Prehearing conference		
204.7	Formal hearing		
204.8	Briefs and proposed findings		
204.9	Decision and recommended order by administrative law judge		

Section 204.1 Charge. (a) Filing of charge.

(1) An original and four copies of a charge that any public employer or its agents, or any employee organization or its agents, has engaged in or is engaging in an improper practice may be filed with the director within four months thereof by one or more public employees or any employee organization acting in their behalf, or by a public employer.

(2) If the facts constituting the alleged improper practice also are alleged to support a claim by an employee organization that a public employer or its representatives engaged in such acts of extreme provocation as to detract from the responsibility of the employee organization for a strike, then the charge may not be filed after the date on which the employee organization is required to file its answer to the strike charge pursuant to section 206.5 of this Chapter.

(3) The charge shall be in writing on a form prescribed by the director and shall be signed and sworn to before any person authorized to administer oaths.

(b) *Contents of charge.* The charge shall include the following:

(1) the name, address and affiliation, if any, of the charging party, and the title of any representative filing the charge;

(2) the name and address of the respondent or respondents and any other party named therein;

(3) a clear and concise statement of the facts constituting the alleged improper practice, including the names of the individuals involved in the alleged improper practice, the time and place of occurrence of each particular act alleged, and the subsections of section 209-a of the act alleged to have been violated;

(4) if the charge alleges a violation of section 209-a.1(d) or section 209-a.2(b) of the act, whether the charging party has notified the board in writing of the existence of an impasse pursuant to section 205.2 of this Chapter; and

(5) a statement that the charging party is available to participate in the prehearing conference and the formal hearing immediately.

(c) *Scope of negotiations cases.* Where the primary basis of the dispute between the parties is alleged to be a disagreement as to the scope of negotiations under the act, either party may request of the director or an assigned administrative law judge that the matter be accorded expedited treatment.

(d) *Amendment and withdrawals.* The director or administrative law judge designated by the director may permit a charging party to amend the charge before, during or after the conclusion of the hearing upon such terms as may be deemed just and consistent with due process. The charge may be withdrawn by the charging party before the issuance of a final order based thereon upon approval by the director. Whenever the director approves the withdrawal of a charge, the case will be closed.

204.2 Initial processing by director. (a) *Notice of hearing.* After a charge is filed, the director shall review the charge to determine whether the facts as alleged may constitute an improper practice as set forth in section 209-a of the act. If it is determined that the facts as alleged do not, as a matter of law, constitute a violation, or that the alleged violation occurred more than four months prior to the filing of the charge, it shall be dismissed by the director subject to review by the board under section 204.10(c) of this Part; otherwise, except where subdivision (b) of this section is applicable, a notice of hearing shall be prepared by the director or a designated administrative law judge, and, together with a copy of the charge, shall be delivered to the charging party and each named respondent. The notice of hearing shall fix the place of hearing at a time not less than 15 working days from issuance thereof.

(2) There shall be no intermediate report from a board member or an administrative law judge who may be assigned to hold the hearing. Upon the completion of the hearing, such board member or administrative law judge shall transmit the record to the full board for a determination without making any recommendations.

204.5 Intervention. One or more public employees, an employee organization acting in their behalf, or a public employer may be permitted, in the discretion of the board, of the director, or of the designated administrative law judge, to intervene in a proceeding. The intervenor must make a motion on notice to all parties in the proceeding. Supporting affidavits establishing the basis for the motion may be required by the board, the director, or the designated administrative law judge. If the intervention is permitted, the person, employee organization, or public employer becomes a party for all purposes.

204.6 Prehearing conference. At least five working days prior to the scheduled date for the formal hearing, the administrative law judge designated by the director shall hold a prehearing conference for the purpose of clarification of issues. The failure of a party to appear at the prehearing conference may, in the discretion of the director or the designated administrative law judge, constitute ground for dismissal of the absent party's pleading.

204.7 Formal hearing. (a) A formal hearing for the purpose of taking evidence upon the charge shall be conducted by an administrative law judge designated by the director. At any time, an administrative law judge may be substituted by the director for the administrative law judge previously assigned.

(b) The hearing will not be adjourned unless good and sufficient grounds are established by the requesting party, who shall submit to the administrative law judge an original and four copies of the application, on notice to all other parties, setting forth the factual circumstances of the application and the previously ascertained position of the other parties to the application. The failure of a party to appear at the hearing may, in the discretion of the designated administrative law judge, constitute ground for dismissal of the absent party's pleading.

(c) The hearing shall be open to the public unless otherwise ordered by the administrative law judge.

(d) Any party shall have the right to appear at any hearing in person, by counsel, or by other representative, and any party and the administrative law judge shall have the power to call and examine witnesses, and to

both, within such time as fixed by the administrative law judge. The administrative law judge may direct the filing of briefs when the submission of briefs is warranted by the nature of the proceeding or the particular issue therein. Any such brief or proposed findings of fact and conclusions of law filed with the administrative law judge must be accompanied by proof of service of a copy thereof upon all other parties.

204.9 Decision and recommended order by administrative law judge. Upon completion of a proceeding before an administrative law judge designated by the director, the administrative law judge shall issue a decision and recommended order and submit the record of the case to the board.

204.10 Exceptions to administrative law judge's decision and recommended order. (a) Within 15 working days after receipt of the decision and recommended order, a party may file with the board an original and four copies of a statement in writing setting forth exceptions thereto or to any other part of the record or proceedings, including rulings upon motions or objections, and an original and four copies of a brief in support thereof shall be filed with the board simultaneously; at the same time, copies of such exceptions and briefs shall be served upon all other parties and proof of such service shall be filed with the board.

(b) The exceptions shall:

(1) set forth specifically the questions of procedure, fact, law, or policy to which exceptions are taken;

(2) identify that part of the administrative law judge's decision and recommended order to which objection is made;

(3) designate by page citation the portions of the record relied upon; and

(4) state the grounds for exceptions. An exception to a ruling, finding, conclusion or recommendation which is not specifically urged is waived.

(c) Within 15 working days after receipt of a decision of the director dismissing a charge because the facts alleged do not, as a matter of law, constitute a violation of the act, the charging party may file with the board an original and four copies of a statement in writing setting forth its appeal from the decision, together with proof of service of a copy thereof upon each respondent. The statement shall set forth the reasons for the appeal.

204.11 Cross-exceptions. Within seven working days after receipt of exceptions, any party may file an original and four copies of a response thereto, or cross-exceptions and a brief in support thereof, together with proof of service of copies of these documents upon each party to the

PART 206
STRIKES AGAINST PUBLIC EMPLOYERS

Sec.		Sec.	
206.1	Scope	206.5	Answer
206.2	Filing of charge	206.6	Hearing
206.3	Contents of the charge	206.7	Submission to the board
206.4	Notice of hearing		

Section 206.1 Scope. The following relates to all public employment except by a government that has adopted procedures by local law, ordinance or resolution pursuant to section 212 of the act and with respect to which there is in effect a determination that such provisions and procedures are substantially equivalent to the provisions and procedures set forth in the act and in pertinent rules with respect to the State.

206.2 Filing of charge. (a) A charge that any employee organization or agent thereof is engaging in, causing, instigating, encouraging or condoning a strike may be made by the chief legal officer of the government involved or the counsel upon his or her own motion. Such a charge shall be in writing and signed. Four copies of the charge, with proof of service upon the employee organization-respondent, shall be filed with the board, and, if the charging party is the counsel, at least one copy of the charge shall be filed simultaneously with the chief legal officer of the government involved. Charge forms will be supplied by the counsel upon request.

(b) The chief legal officer of a government involved or counsel may intervene as a party in any proceeding initiated by the other.

206.3 Contents of the charge. A charge shall contain the following:

- (a) the full name and address of the party making the charge;
- (b) the name of the employee organization against whom the charge is made; and
- (c) a clear and concise statement of the facts constituting the alleged violation.

206.4 Notice of hearing. After receipt of a charge filed by the chief legal officer of a government involved or the counsel, the board shall issue to the parties a notice setting forth the time and place of the hearing, which time shall be not less than eight working days after the receipt of the notice.

206.5 Answer. (a) The employee organization against whom the charge is issued shall have a right to file with the board an answer within

the improper practice charge and the strike charge shall be heard upon a single record.

(c) *Motions.*

(1) All motions made after the designation of an administrative law judge and prior to the submission of the administrative law judge's report and recommendations to the board, shall be made to the administrative law judge. All motions made prior to the designation of an administrative law judge or after the submission of the administrative law judge's report and recommendations to the board, shall be made to the board. All such motions, except those made during a hearing, shall be made in writing, shall briefly state the relief sought, and shall be accompanied by affidavits, when required, setting forth the facts in support of such motion. The moving party shall serve a copy of all motion papers on all other parties and shall, within three working days thereafter, file with the administrative law judge or the board the original and three copies thereof with proof of service. Answering affidavits, if any, must be served on all parties and the original thereof, together with three copies and proof of service shall be filed with the administrative law judge, if any, or the board within five working days after service of the moving papers, unless the administrative law judge or the board directs otherwise. The board may decide to hear oral argument or hear testimony on motions made to it, in which case it shall notify the parties of such fact and of the time and place of such argument, or for the taking of such testimony. All such motions and rulings and orders thereon shall be part of the record of the proceedings.

(2) *Review.* Unless expressly authorized by the board, rulings by the administrative law judge, if any, shall not be appealed directly to the board, but shall be considered by the board whenever the case is submitted to it for decision.

(d) *Waiver.* An objection not duly urged before an administrative law judge, if any, or before the board, shall be deemed waived unless the failure to urge such objection shall be excused by the board because of extraordinary circumstances.

(e) *Introduction of evidence; the rights of parties at hearings.*

(1) Any party shall have the right to appear at any hearing in person, by counsel, or by other representative, and any party and the board or administrative law judge, as the case may be, shall have the power to call and examine witnesses, and to introduce into the record documentary and other evidence. Witnesses shall be examined orally under oath. Compliance with the technical rules of evidence shall not be required. Stipulations of fact may be introduced in evidence with respect to any issue.

(2) The refusal of a witness at any hearing to answer any question which has been ruled to be proper shall, at the discretion of the board or

**PART 210
DECLARATORY RULINGS**

Sec.
210.1 Petition: filing
210.2 Processing by the director

Sec.
210.3 Appeal to the board

Section 210.1 Petition; filing. (a) *Filing of petition.* Any person, employee organization or employer may file with the director an original and four copies of a petition for a declaratory ruling with respect to the applicability of the act to it or any other person, employee organization or employer, or with respect to the scope of negotiations under the act.

(b) *Contents of petition.* The petition shall include the following:

(1) the name, address and affiliation, if any, of the petitioner, and the title of any representative filing the petition;

(2) a complete statement of the relevant facts and the grounds prompting the petition, including a full disclosure of the petitioner's interest;

(3) a statement whether, if the petition raises a question with respect to the scope of negotiations under the act, such question is the subject of a charge brought under Part 204 of this Chapter;

(4) the names and addresses of any other persons, employee

organizations or employers whose interests are reasonably likely to be affected by the ruling; and

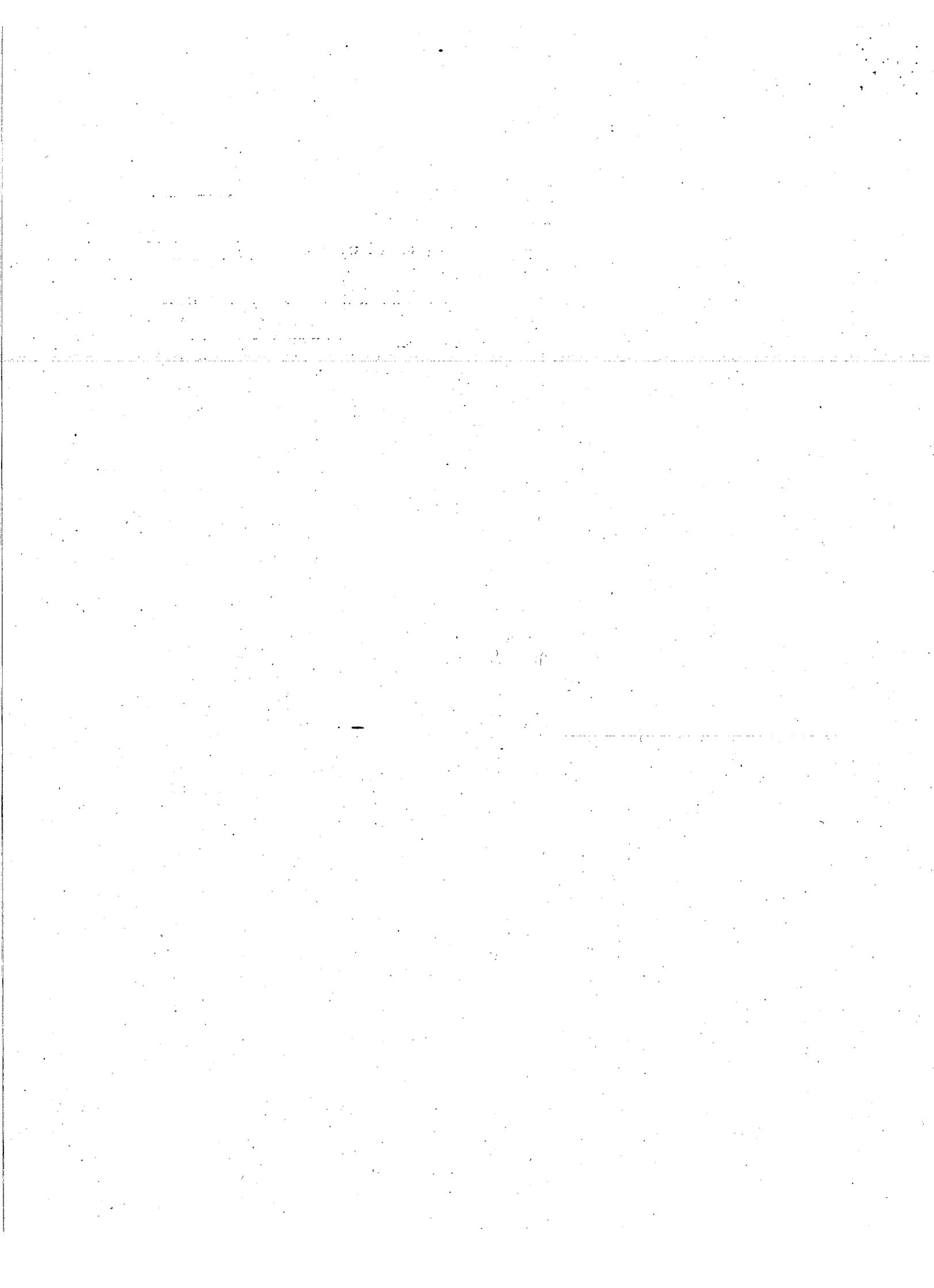
(5) at the option of the petitioner, a proposed ruling.

210.2 Processing by the director. (a) The director will determine whether the issuance of the declaratory ruling would be in the public interest as reflected by the policies underlying the act. If the determination is in the negative, the director shall dismiss the petition. Such a dismissal shall merely constitute a refusal to issue a declaratory ruling, and not the denial of any position proposed by the petitioner. A decision of the director to refuse to issue a declaratory ruling may be made at any stage of the proceeding.

(b) The director shall send a copy of the petition to any persons, employee organizations or employers, in addition to those listed in the petition, whom the director deems to have interests that are reasonably likely to be affected by the ruling, together with a notice that they may choose to become parties to the proceeding by filing a response to the petition within 10 working days from their receipt thereof. Such response may challenge any of the allegations in the petition and, whether or not petitioner has done so, it may propose a ruling.

(c) The matter shall be processed further by the director. Such processing shall be in accordance with the procedures set forth in sections 204.4 through 204.9 of this Chapter except that the director shall issue a recommended declaratory ruling instead of a decision and recommended order.

210.3 Exceptions to the board. The dismissal of a petition or a recommended declaratory ruling will become final unless within 15 working days from receipt thereof a party files exceptions with the board. The procedures for the filing and processing of such exceptions shall be those set forth in sections 204.10 through 204.14 of this Chapter.



APPENDIX B

SUMMARY OF PROCEDURES GOVERNING PROCEEDINGS BEFORE PERB

The Taylor Law (Article 14 of the Civil Service Law) requires PERB to conduct several types of proceedings. The procedures governing these proceedings are in PERB's Rules of Procedure. This is a summary of those Rules. The Rules themselves should be read and followed.

CONDUCT OF HEARINGS

The rules governing the conduct of hearings which may be held in connection with all PERB proceedings are basically the same.

All parties are given advance notice of the time and place of the hearing. Hearings are open to the public, unless the Board or the administrative law judge orders them closed.

Parties may represent themselves at the hearing or have others represent them. They have the right to testify, to present witnesses and to put into the record, in a proper manner, documents and other evidence. All parties have the right to question each other's witnesses. They may object to testimony and evidence and make motions, which are requests for rulings by the administrative law judge. The rules of evidence used by the courts need not be followed.

The hearing is conducted by an impartial administrative law judge. The administrative law judge has the responsibility to see that a full and complete record is made, and has the power to make rulings on motions and objections to testimony and evidence. The administrative law judge will require an oath or affirmation of all witnesses that they will tell the truth. The administrative law judge may exclude anyone from the hearing who engages in misconduct. The administrative law judge may, at the request of a party, issue subpoenas which direct a person to come to the hearing to testify or PERB's Chairman may direct a person to bring documents in his possession or control. The administrative law judge may continue a hearing at a later date. At the conclusion of the hearing, the administrative law judge fixes the time for the filing of written summaries of arguments, called briefs, if the parties wish to do so.

SUMMARY OF PROCEDURES

PART 201
REPRESENTATION PROCEEDINGS

The Taylor Law gives public employees the right to be represented by a union of their own choosing in negotiations with their public employer regarding their terms and conditions of employment. For this purpose, the employees must be placed in appropriate groupings called negotiating units. A public employer may voluntarily recognize a union as the negotiating agent for a negotiating unit. If there is a dispute as to which employees should make up a negotiating unit or whether a union is the choice of a majority of the employees in a negotiating unit, then the dispute can be brought to, and decided by, PERB under the procedures of Part 201 of the Rules. PERB will certify a union as the negotiating agent for a unit of employees when PERB is satisfied that the union is in fact the choice of those employees.

Starting a Representation Proceeding

A representation proceeding must be started by completing and filing a form - called a petition for certification and/or decertification - supplied by PERB. This form contains directions on how to fill it out and file it.

Time Limitations on Filing a Petition

The petition can only be filed during certain time periods specified in the Rules. If these time periods are not met, the petition will ordinarily be dismissed, although a petition filed earlier than permitted can be processed under some circumstances if there is no objection. If there is no recognized or certified union representing the employees in question, the time periods are determined by whether the employer rejects the request for recognition or does not respond to the request. If there is a recognized or certified union representing the employees in question, the time periods are related to the expiration date of that union's collective bargaining contract with the employer and the employer's fiscal year.

Showing of Interest

A showing of interest is evidence that an employee in an affected negotiating unit supports the petition of a union. Each petition must be accompanied by a showing of interest by at least 30% of the employees in the unit which the union seeks to represent. The petitioner must file a declaration of authenticity at the same time that the showing of interest is filed. A showing of interest can consist of currently effective dues deduction authorizations, evidence of current membership, or designation cards and/or petitions signed and dated within six months prior to the filing of the petition. A union which wishes to intervene in a representation proceeding must also file a 30% showing of interest, except that the challenged union does not have to do so. A petition filed by a public employer does not have to be supported by a showing of interest. Any submission of a showing of interest must be authenticated by the union in the form of a declaration of authenticity. Failure to do so will result in dismissal of the petition or denial of intervention.

Publication

A public employer must publish notice of an employee organization's recognition, and if the public employer fails to do so, the organization may publish notice.

Intervention

Any public employee affected by the petition or union representing such employee, or the public employer, may seek to intervene in the representation proceeding. A motion to intervene must be made on notice to all parties.

Investigation and Hearing

After determining the sufficiency of the showing of interest, PERB will investigate all representation questions raised by the petition. PERB will conduct a conference and may conduct a hearing. The rules governing the conduct of the hearing are summarized on a separate sheet. All questions in dispute will be investigated and efforts will be made to obtain the agreement of all parties.

After the investigation or hearing is completed, the Director will decide disputed issues in a written decision and may direct an election. An employee organization may be

certified without an election if it is the only one seeking certification and it can show majority support of the employees in the appropriate negotiating unit.

Appeals

Any party may appeal the Director's decision to the Board by filing exceptions within 15 working days after their receipt of the decision. The exceptions must identify the rulings and findings by the Director which the party believes are wrong. Copies must be served on the other parties. The other parties may respond within seven working days after they receive the exceptions or they may file their own cross-exceptions within the same time. All parties have the right to file briefs. Any request for an extension of time to file exceptions or cross-exceptions or a response must be made at least three working days before the time to file expires. The Board may grant oral argument.

Election Procedures

If an election is necessary, it will be held by secret ballot. Any party may have observers at the election. Any party may challenge the eligibility of any voter. Voter eligibility will be reviewed and decided by the Director only if the challenged ballots can affect the outcome of the election. A run-off election will be held if no choice on a ballot containing more than two choices receives a majority of the valid ballots cast.

Objections to the Election

If a party believes that the election was not conducted properly or that another party acted improperly, and that such conduct affected the outcome of the election, the party may file objections with the Director. The objections must be filed within five working days after the party has been given a tally of the ballots. The objections must contain a short statement of the reasons for each objection and must be served on all parties. Any other party may, within five working days thereafter, file an answer to the objections.

After investigating the challenged ballots or objections, the Director will issue a decision. Exceptions to this decision, cross-exceptions and responses may be filed. They must meet the same requirements, including time requirements, as apply to exceptions, cross-exceptions and

responses relating to the Director's decision that is issued before an election is held.

Board Action

After reviewing the case, the Board will issue a decision. When appropriate, the Board will certify a union.

Unit Clarification/Placement

Special procedures are available if an employer or recognized or certified union wants PERB to determine whether a new or substantially altered position is (clarification) or should be (placement) in an existing negotiating unit. A petition requesting unit clarification and/or placement may be filed by either the employer or union on a form supplied by PERB. A clarification petition may be filed at any time on consent or if the petitioner could not have filed a timely petition for certification. A placement petition may be filed only if the petitioner could not have filed a timely certification petition. No showing of interest is required for either a clarification or placement petition. These petitions are processed in basically the same way as a petition for certification or decertification, but the Director may decline to rule if to do so would be inconsistent with the policies of the Taylor Law.

Managerial/Confidential Proceedings

The Taylor Law permits PERB, at the request of an employer, to exclude certain employees from coverage under the Law, except for the strike penalties, because of their managerial or confidential duties. Section 201.7 of the Taylor Law contains the standards which PERB must follow in deciding whether an employee is managerial or confidential.

Application

A request by an employer to designate employees as managerial or confidential must be filed on a form supplied by PERB. Every employee affected and any union representing them, must be notified by mail of the application and the date it was sent to PERB.

Time for Filing Application

An application may be filed only during the period from the first day of the fourth month through the last day of the fifth month of the employer's fiscal year. Only one application affecting a represented employee will be decided by PERB during a period of unchallenged representation status of the union representing that unit.

Intervention

Any person affected by the application, or a union acting on his or her behalf, may be permitted to intervene, if a motion is made with notice to all parties.

Investigation

The Director will conduct an investigation of all questions raised by the application and may direct that a hearing be held. The rules governing the conduct of the hearing are summarized on a separate sheet.

Director's Decision

After completion of the investigation, the Director will issue a decision.

Appeals

Any party may appeal the Director's decision to the Board by the filing of exceptions. Cross-exceptions and a response may also be filed. All must meet the same requirements, including time limitations, that apply to exceptions, cross-exceptions and responses relating to the Director's decision in a representation proceeding.

Board Action

After reviewing the case, the Board will issue a decision.

PART 202
PROCEDURE FOR REVIEW OF QUESTIONS
REGARDING CERTIFICATION

Local governments are permitted under §206.1 of the Taylor Law to establish an impartial agency to resolve disputes regarding the representation status of the public employees who work for the local government. Such procedures must be consistent with the Taylor Law and PERB's Rules. Part 202 of the Rules sets forth the procedures to be followed in seeking the review of the local agency's decision.

Petitions/filing

The petition to review a certification or decertification of an employee organization may be filed by one or more public employees, or any employee organization, or by a public employer. The petitions will be supplied by the Board upon request. The filing and processing of the petition is much the same as that under Part 201 of the Rules.

Investigation and Hearing

The Director will conduct an investigation into the issues raised by the petition, and will evaluate whether or not the governmental agency's procedures and decision conform to the Act. If need be, the Director may hold a hearing.

Director's Decision

After the proceedings are completed, the Director will issue a decision and submit the record of the case to the Board. Exceptions to the Director's decision may be filed and the Board will act upon them pursuant to Part 201 of the Rules.

PART 203
PROCEEDINGS USED FOR THE APPROVAL AND REVIEW
OF LOCAL GOVERNMENT PROCEDURES

Local governments are permitted under §212 of the Taylor Law to establish procedures for resolving all representation disputes, impasses in collective negotiations and for

determining whether a union has violated the Taylor Law's strike prohibition. Part 203 sets forth the procedures for the approval or review of a local agency's procedures.

Filing

A local government may submit an application to the Board to determine whether its procedures conform to the Taylor Law and PERB's Rules. The Board will supply these forms upon request. Public notice must be given before such application can be filed. After the Board receives the application, any individual or employee organization may file objections to the granting of the application.

Investigation and Hearing

The Board will investigate the application and any objections and may require affidavits or a hearing on notice. Based upon its investigation and any hearing which may have been held, the Board will render a decision. If the Board finds the procedures inconsistent with the Act, the local government is given notice. If the Board approves the procedures, the local government must adopt rules consistent with the Board's other rules and regulations.

Procedures for the Approval and Review of Local Government Procedures

Once the Board determines that the local government's procedures are consistent with the Taylor Law, the procedures must be implemented within 45 days. Failure to do so will be evidence that procedures have not been implemented in conformity with the Taylor Law. If any person wishes to challenge the implementation of the procedures, a petition may be filed with the Board. The petitions will be supplied by the Board upon request. Such petitions must be filed within 60 days after the act or omission occurred. The Board will then conduct an investigation and may direct a hearing. The Board may, in its discretion, allow the intervention of any individual, employee organization or public employer to intervene in these proceedings. The hearings are subject to the same rules as govern hearings before PERB.

PART 204
IMPROPER PRACTICE PROCEEDINGS

Section 209-a of the Taylor Law sets forth what are employer and employee organization improper practices. Part 204 of PERB's Rules contains the procedures to be followed in filing and prosecuting an improper practice charge.

Filing a Charge

To bring a complaint to PERB that an improper practice has been committed, a charge must be filed on a form supplied by PERB. The form contains directions on how to fill it out and file it.

The charge must be filed within four months of the conduct complained of.

The party filing the charge (called the charging party) does not have to serve the charge on the employer or employee organization whose conduct is complained of (called the respondent).

Preliminary Decision by PERB's Director and Appeal From that Decision

The Director will first review the contents of the charge. If the Director decides that the charge was not filed within four months of the conduct complained of, or that such conduct does not violate the law, the Director will issue a decision dismissing the charge. The charging party may appeal that decision to the Board by filing a written statement of reasons for the appeal within 15 working days after receiving the Director's decision. A copy of the appeal papers must be mailed to the named respondent. The Board will review the matter and issue a decision.

Notice of Hearing

If the Director decides that the conduct complained of in the charge may violate the law, the Director will mail a copy of the charge to the respondent. At the same time, the Director will mail a notice of the time and place of the conference and/or hearing to the charging party and the respondent. The Director will also assign an administrative law judge to the case.

Answer and Request to Make the Charge More Clear

The respondent must answer the charge within 10 working days after it receives the charge from the Director. The contents of the answer must comply with PERB's Rules. If the respondent believes the charge is so vague that it cannot be answered, the respondent may make a motion (apply in writing) to the assigned administrative law judge for a direction to the charging party to supply more information. This motion must be made within 10 working days after receiving the charge, and, if made, will extend the respondent's time to answer until 10 working days after the administrative law judge's ruling on the motion or any later date fixed by the administrative law judge. A copy of the motion papers must be served on the charging party and proof of service filed with the Board. The charging party may file a similar motion for a direction that the respondent supply more information if the answer is vague.

Failure to File an Answer

If an answer is not filed on time, it may be considered as an admission by the respondent of the truth of the facts alleged in the charge and a waiver of the respondent's right to a hearing.

Pre-Hearing Conference

The administrative law judge will hold a conference to assist the parties to settle the dispute. If the parties cannot reach a settlement, the administrative law judge will seek to clarify the issues and obtain agreement on the facts to limit the length of the hearing or eliminate the need for a hearing.

Hearing

The rules governing the conduct of the hearing are summarized on a separate sheet.

Exceptions to Administrative Law Judge Decision

After the hearing, the administrative law judge will issue a decision. Any party may appeal the administrative law judge's decision and recommended remedy to the Board by

filing exceptions within 15 working days after receiving the decision. The exceptions must identify the rulings and findings by the administrative law judge which the party believes are wrong and must state the reasons why it believes they are wrong. Copies of the exceptions must be served on all parties to the proceeding. Any other party may file a response or cross-exceptions within seven working days after it receives the exceptions, with proof of service on the other parties. All parties have the right to file briefs. Any request for an extension of time to file exceptions or cross-exceptions or responses must be made at least three working days before the time to file expires. The Board may grant oral argument.

Board Action

If exceptions are filed, the Board will review the case and issue a decision. If exceptions are not filed, the administrative law judge's decision becomes final, except that the Board may, on its own motion, review any remedy recommended by the administrative law judge.

PART 205 CONCILIATION

This Part establishes procedures to deal with an impasse during collective negotiations when there is no local agency established pursuant to §212 of the Act and Part 203 of the Rules.

Filing of Notice

Either a public employer and/or the employee organization may notify the Board in writing of the impasse. All other parties to the negotiations must be served with the notice.

Voluntary Interest Arbitration

The parties may agree to submit any disputed issue to arbitration. Such submittal must be in writing, and must be addressed to the Director of Conciliation. The Director of Conciliation shall then choose an arbitrator, but the parties must have some opportunity to participate in the selection.

Compulsory Interest Arbitration

This type of arbitration applies to impasses which may occur during collective negotiations between an employee organization and a county, city, town, village or district's organized fire department, police force or police department. The provisions below do not apply to the City of New York. Different procedures apply to compulsory interest arbitration of impasses between the New York City Transit Authority (TA), the Metropolitan Transportation Authority (MTA) and their subsidiaries and the unions representing their employees.

Filing

The employee organization or the public employer may file a petition with the Board requesting that the impasse be submitted to a public arbitration panel. However, the petitioning party must wait until 15 days have passed since the Board-appointed mediator entered the process, and a copy of the petition must be served upon the other party. A response to the petition must be filed within 10 working days after receipt of the petition. A copy of the response must be served upon the petitioning party. For the TA and MTA, there must be a joint petition and the Board must certify that a voluntary resolution of the negotiations cannot be effected.

Improper Practice Charges Related to Compulsory Interest Arbitration

If either party objects to a particular issue being the subject of arbitration, then that party may file an improper practice charge on the grounds of a failure to bargain in good faith or a declaratory ruling petition.

The time for filing the charge or the declaratory ruling petition differs according to the party bringing the action. The petitioner's charge must be filed within 10 working days after receipt of the response. If the respondent files the charge, it must be filed along with the response. The public arbitration panel may not make any award on issues which are the subject of the improper practice charge or the declaratory ruling petition until either the Board's determination or the withdrawal of the charge or petition. The panel may award on other issues.

Selection of the Compulsory Interest Arbitration Panel

After the petition is filed, each party may appoint a member to the panel. The public member shall be a joint decision. If the parties cannot agree upon the public member, either party may petition the Board to provide a list of qualified persons. In either situation, the Board must be notified of the person selected to the panel. The panel's decision must be delivered to both parties and must be filed with the Director of Conciliation.

PART 206

STRIKE PENALTY PROCEEDINGS

If it appears that a union may have engaged in a strike, the Taylor Law requires PERB to conduct proceedings for the purpose of deciding whether the union did strike, and whether, and to what extent, the union's membership dues deduction and agency fee rights should be suspended. Part 206 of PERB's Rules contains the procedures which must be followed in these proceedings.

Filing a Charge

The strike penalty proceeding begins with the filing of a charge with PERB either by the Counsel to PERB or the chief legal officer of the government whose employees engaged in a strike. The charge must be served on the union involved. Proof of such service must be filed with PERB. The charge must contain a statement of facts which shows that a strike took place and that the union caused, instigated, encouraged, condoned or engaged in it. Charge forms are available upon request from the Counsel to PERB. Use of such forms is not required.

Intervention

The chief legal officer of the government involved or the Counsel to PERB may move to intervene as a party in a proceeding started by the other.

Answer

The union has eight days from receipt of the charge to file its answer with PERB. The union may ask PERB for

additional time to answer. The answer must be served on the charging party and the public employer. The Rules set forth what should be included in the answer.

Failure to File An Answer

Failure to file a timely answer will constitute an admission of the charge. A hearing will then be held only to decide the length of time of the suspension of the union's right to membership dues deduction and agency fees.

Hearing

The rules governing the conduct of the hearing are summarized on a separate sheet.

Submission to the Board

After the hearing, the administrative law judge will submit the case, including the report and recommendations, to the Board. The administrative law judge's report and recommendations will be served on all parties. Any party may file a brief with the Board within seven working days after receiving the administrative law judge's report and recommendations. The Board may extend the time for filing briefs. Oral argument before the Board may be granted. After reviewing the entire record, the Board will issue a decision.

PART 207 VOLUNTARY GRIEVANCE ARBITRATION

This Part aids public employers and unions in the development of their own grievance procedures. Either party to the written agreement, which contains an arbitration clause, may ask the Director of Conciliation to administer the following voluntary arbitration rules of procedure.

Demand for Arbitration; Submission to Arbitrate

The petitioner must serve notice of intent to arbitrate upon the respondent. The Director of Conciliation must also receive notice and must obtain a copy of proof of service upon the respondent. If both parties request arbitration,

they may forward a submission to arbitrate with the Director of Conciliation. The Board's power to decide these disputes is automatic in the situation where the procedures have been incorporated by reference into the agreement. In the absence of an incorporation by reference, the Board obtains power to adjudicate the matter if one of two conditions occur:

(1) the parties send a submission to arbitrate notice to the Director of Conciliation; (2) once the respondent is duly served, the time limitation for requesting a stay has passed, and the stay has not been executed.

Arbitrability

PERB encourages the parties to submit arbitrability questions to the arbitrator. If, however, a stay of arbitration has been timely filed, then the designation of an arbitrator will not be made until the arbitrability question is decided in court.

Panel of Arbitrators/Selection

The Board maintains a panel of arbitrators, who must conform to Board standards, to be forwarded to the parties who have either demanded or submitted to arbitration. Upon receipt of the Board's list, each party may select, rank and return their selection of arbitrators to the Director of Conciliation. Each party may request additional lists. Selection must be made in a timely manner, and the Director of Conciliation will then designate the arbitrator and notify the parties. Once designated, the arbitrator exercises exclusive jurisdiction over the proceedings.

Arbitration Proceedings

Either party or the arbitrator may request that a formal record be taken in the proceeding. Parties may settle their dispute at any time before or during the hearing. The decision of the arbitrator is in the form of an award which must be in writing, signed and verified by the arbitrator. If neither party objects, the award may be published.

PART 208
ACCESS TO RECORDS OF THE BOARD

This Part provides the procedures for the public inspection of Board records pursuant to the Freedom of Information Law.

Procedure

PERB's Executive Director, as records access officer, is responsible for making the necessary arrangements for review of records upon request. Copying fees may be imposed. If a request to review records is denied by the Executive Director, the requesting party may appeal the decision to the Chairman of the Board.

PART 209
PRIVACY PROTECTION AND ACCURACY OF PERSONAL DATA

The Part gives the procedures under which individuals can attain access to their personal records under the Personal Privacy Protection Law, article 6-A of the Public Officers Law.

Procedure Governing Individual Requests

PERB's Executive Director, as privacy compliance officer, is designated to receive requests to review individual records. Certain identification procedures are available to ensure that the information requested will be supplied only to proper parties. Copying fees will be determined according to the type of copy requested.

Any individual requests should be in writing and should describe the records requested. After the request is made, the Executive Director will either grant or deny the request. If the request is denied, a timely appeal may be taken to the Chairman of the Board, as privacy compliance appeals officer.

Procedures Governing Correction or Amendment of Records

A request to correct or amend a record must be in writing and must identify or describe the record. The Executive Director will either make the requested correction or amendment or will refuse to do so. In either case, notice

will be given to proper parties. If the Executive Director refuses to grant the request, a timely appeal may be taken to the Chairman of the Board.

PART 210
DECLARATORY RULINGS

A petition for a declaratory ruling may be filed by anyone on a form supplied by PERB requesting a decision whether an individual, union or employer is covered by the Taylor Law or whether an issue is a mandatory, nonmandatory or prohibited subject of negotiation. The form contains directions on how to complete it and how it is to be filed. The petition is processed similarly to an improper practice charge. If the Director decides not to issue a declaratory ruling, exceptions can be filed with the Board. If a ruling may be warranted, persons interested in the ruling are notified and they may elect to become parties by filing a response to the petition.

PART 214
REFERENCE MATERIAL

PERB's Rules require public employers to file copies of their collective bargaining contracts and other reports as the Board may require. Those local governments which have their own mini-PERB must also file with PERB copies of all their rules, regulations, orders and determinations.

PART 215
MISCELLANEOUS

PERB's Rules exempt its employees from coverage under the Act and prohibit former employees from practice before the agency under certain circumstances and for certain periods of time. Confidential communications during negotiations are privileged to the same extent as communications between an attorney and client and are not admissible in evidence.

