



Cornell University
ILR School

Cornell University ILR School
DigitalCommons@ILR

Board Decisions - NYS PERB

New York State Public Employment Relations
Board (PERB)

7-10-1991

State of New York Public Employment Relations Board Decisions from July 10, 1991

New York State Public Employment Relations Board

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

Thank you for downloading an article from DigitalCommons@ILR.

Support this valuable resource today!

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

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

State of New York Public Employment Relations Board Decisions from July 10, 1991

Keywords

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

Comments

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

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

UNITED FOOD AND COMMERCIAL WORKERS,
DISTRICT UNION LOCAL 1, AFL-CIO,

Petitioner,

CASE NO. C-3695

-and-

MOHAWK VALLEY NURSING HOME,

Employer.

BELSON & SZUFLITA (GENE M. SZUFLITA, ESQ., of Counsel),
for Petitioner

TOBIN & DEMPFF (JOHN W. CLARK, ESQ., of Counsel), for
Employer

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by the Mohawk Valley Nursing Home (Employer) to two decisions issued by the Director of Public Employment Practices and Representation (Director) which involve a representation election held pursuant to a petition filed by the United Food and Commercial Workers, District Union Local 1, AFL-CIO (Petitioner).

The Director conducted a mail-ballot election in a stipulated unit which included "all full time and regular part time (more than 20 hours per week)" employees. The consent agreement executed by the parties further provides that the employees eligible to vote were those employed both as of June 29, 1990 and "on the date of the election". Ballots were mailed to unit employees on July 20. Employees were permitted to

telephone PERB's office on July 27 if they had not received a ballot or needed a replacement. Voters were instructed that their ballots had to be received in the Latham post office by 9:00 a.m. on August 9 for a ballot count which began at 11:00 a.m. that date.

The Director made the following determinations concerning challenges to certain of the ballots. He voided the following four ballots:

1. Nancy Rotundi because she left employment before June 29;
2. Janis Becker and Bridget S. Hunter because they left employment between June 29 and August 9;
3. Mark Sommer because the Director considered him not employed by the Employer as of the August 9 count. Sommer last worked August 6, although he was given a benefit day for his last shift which ended at 7:00 a.m. on August 9. The Director determined that these circumstances did not evidence an "ongoing employment relationship".

By decision dated September 4, 1990, the Director confirmed his decision to void the ballots of Rotundi, Becker, Hunter and Sommer. The Director also sustained the Employer's challenge to the ballot cast by Judith Foti. The Director voided her ballot because she had not worked "more than 20 hours" in any week covered by the 1990 payroll and attendance records submitted by the Employer. Finally, the Director did not consider or decide

the Employer's challenge to Kristin Markwardt's ballot because her vote could not affect the election results and the confidentiality of her vote might be violated if she were ruled eligible.

The Director determined that the Petitioner had received a majority of the valid votes cast and confirmed a final tally of ballots^{1/} as follows:

Void Ballots	5
Votes Cast for Petitioner	42
Votes Cast Against Petitioner	40
Valid Votes Counted	82
Challenged Ballots	1

The Employer takes the following exceptions to the Director's September 4, 1990 decision:

1. Becker's, Hunter's and Sommer's ballots were erroneously voided;
2. The Director erred by failing to address the Employer's allegation that certain employees were disenfranchised under the call-in procedure;
3. Markwardt's ballot should have been voided because she did not work the necessary hours per week;
4. The Director erred by failing to address the Employer's demand for an on-site election.

By letter dated September 12, 1990, the Employer filed objections to the election which are identical to the exceptions

^{1/}The Director specified in his decision that this tally fixed the period for filing election objections pursuant to §201.9(h)(2) of the Rules of Procedure.

taken by the Employer to the Director's September 4, 1990 decision. By letter dated September 19, 1990, the parties were informed that only the allegations regarding the call-in procedure and the decision to conduct the election by mail were properly considered as objections to the election. Allegations regarding the eligibility of Becker, Hunter, Sommer and Markwardt were to be decided in the context of the pending exceptions to the Director's September 4, 1990 decision.

By decision dated October 19, 1990, the Director dismissed those objections outlined in the September 19 letter. The Director determined that the decision to conduct the election by mail was reserved to his discretion by the parties' consent agreement and the Rules of Procedure, and was one which was reasonable, given the Employer's continuous three-shift operation. The objection directed to the call-in procedure was dismissed on the facts because the Employer showed only that one collect call was not accepted because it was not placed on the designated day.

The employer filed exceptions to the Director's October 19, 1990 decision which argue that the Director incorrectly dismissed the two objections to the election and that he should not have voided Becker's, Hunter's and Sommer's ballots.

The two sets of exceptions filed by the Employer, although incorrectly commingling voter eligibility issues with unrelated objections to the mechanics of the election, together preserve all of the issues the Employer seeks to appeal. We will,

therefore, consider the exceptions by category without specification or limitation to the particular decision to which the exceptions were filed.

The Director's decision to hold an election by mail ballot is one reserved to his discretion under the totality of internal and external circumstances and conditions. His decision to conduct a mail ballot election in this case was not an abuse of discretion and we will not disturb his decision on the speculative claim that more employees might have voted if the election were held on-site, even assuming the Employer earlier reserved a right to object to the Director's decision.^{2/}

We also dismiss the objection directed to an alleged abuse in the call-in procedure for the reasons stated in the Director's October 19, 1990 decision. In that respect, we agree that the Director properly limited his investigation to the facts provided to him by the Employer.

As to the voter eligibility issues, we affirm the Director's decision to void the ballots cast by Becker and Hunter because they were not employed on both June 29, 1990 and on the date of the ballot count. The parties agree that unit employees cast a valid ballot only if employed on both the specified eligibility date and on "the date of the election". The former is a date certain, but the parties contest the meaning of the latter

^{2/}See the Director's discussion and dismissal of a similar objection in County of Erie and Sheriff of Erie County, 18 PERB ¶4071, at 4123 (1985).

phrase. Although we have not had a prior opportunity to decide the issue, the Director has held previously that the "date of election" in a mail ballot election for purposes of determining voter eligibility is the date the ballots are counted.^{3/} The Employer argues, however, that a mail ballot election is a process and it should be sufficient to establish eligibility for an employee to be employed anytime during that process.^{4/} We are unwilling, however, to hold that the Director's decision, which conditions voter eligibility in a mail ballot election on an employee's employment for the duration of that election process, is unreasonable or that it fails to promote the policies of the Act to have an informed and interested electorate.

We reverse, however, the Director's decision to void Sommer's ballot because he was employed on the date the ballots were counted. Simple employment status as of that date satisfies both the Director's own decisions regarding the date of the election and the terms of the consent agreement executed by the parties in this case. The particular nature of that employment relationship is immaterial to a voter's eligibility.

Having found Sommer eligible to vote, it would not be necessary to decide Markwardt's eligibility unless Sommer voted

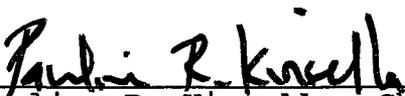
^{3/}Nassau County Regional Off-Track Betting Corp., 17 PERB ¶4066 (1984); County of Erie and Sheriff of Erie County, supra note 2.

^{4/}The National Labor Relations Board will accept a mail ballot if the voter was employed on the date the ballot was mailed. E.g., Plymouth Towing Co., 72 LRRM 1189 (1969); E.C.K. Miller Transportation Corp., 87 LRRM 1409 (1974).

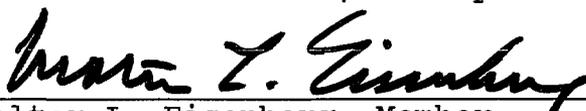
against representation by the Petitioner for only then would her vote affect the results of the election. Moreover, Markwardt, unlike Sommer, is still employed by the Employer and her vote, if she is ruled eligible, would be disclosed unless she and Sommer made different ballot choices. Therefore, to minimize the opportunity for a breach of a current employee's secret ballot and to avoid making an eligibility determination which might not be necessary, we hereby remand the case file to the Director with instructions that Sommer's ballot be opened and counted. If Sommer's vote is in favor of representation, we will certify the Petitioner because the remaining challenge could not affect the Petitioner's majority status. If Sommer votes against representation by the Petitioner, the file is to be returned to us for the necessary decision on Markwardt's eligibility.

For the reasons set forth above, we affirm the Director's decisions, except his determination regarding Sommer's eligibility, dismiss the Employer's exceptions except as to Sommer's eligibility, and remand the case to the Director for processing consistent with this decision.

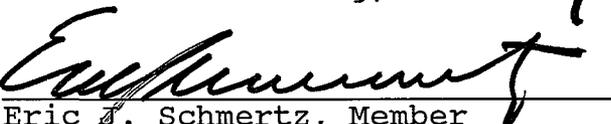
DATED: July 10, 1991
Albany, New York



Pauline R. Kinsella, Chairperson



Walter L. Eisenberg, Member



Eric J. Schmertz, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

COUNTY OF DELAWARE

Case No. S-0057

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 Delaware has submitted an application by which it seeks a determination that its Resolution No. 42, as amended on February 27, 1991 by Resolution No. 55, 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 Delaware's resolution into conformity with Chapter 485 of the Laws of 1990, which provides for arbitration of impasses between counties and detective-investigators employed in the office of a district attorney of a county not contained within a city with a population of one million or more.

Having reviewed the application and having determined that the subject resolution, 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 Delaware
be, and it hereby is, approved.

DATED: July 10, 1991
Albany, New York



Pauline R. Kinsella, Chairperson



Walter L. Eisenberg, Member



Eric J. Schmertz, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

SCHENECTADY FIRE FIGHTERS UNION, LOCAL 28,
IAFF, AFL-CIO,

Charging Party,

-and-

CASE NOS. U-11480,
U-11491 & U-11504

CITY OF SCHENECTADY,

Respondent.

GRASSO & GRASSO, ESQS. (JANE K. FININ of counsel),
for Charging Party

ROEMER & FEATHERSTONHAUGH, P.C. (WILLIAM M. WALLENS
of counsel), for Respondent

BOARD DECISION AND ORDER

This matter comes to us on the exceptions of the City of Schenectady (City) and the cross-exceptions of the Schenectady Fire Fighters Union, Local 28, IAFF, AFL-CIO (Union) to an Administrative Law Judge (ALJ) decision which upheld in part and dismissed in part three improper practice charges filed by the Union alleging that the City violated §§209-a.1(a), (c) and (d) of the Public Employees' Fair Employment Act (Act). In particular, the ALJ found that the City violated §§209-a.1(a) and (d) (but not (c)) of the Act when it unilaterally imposed upon fire fighter Robert Schottenham a requirement, under threat of disciplinary sanctions, to execute a release as a condition precedent to his return to work from a nonoccupational injury (Case No. U-11480); that the City violated §209-a.1(d) (but not

(a) and (c)) of the Act when it unilaterally imposed Directive No. 3, Code 1990, establishing new procedures to be utilized in dealing with the reoccurrence of a previous job related injury (Case No. U-11491); and that the City did not violate the Act in any respect when it requested a physician's note permitting fire fighter Norman Feldman to return to work "without restriction" following an occupational injury (Case No. U-11504).

The City excepts to the findings of violations of §§209-a.1(a) and (d) of the Act in Case Nos. U-11480 and U-11491. The Union cross-excepts to the ALJ's dismissal of the portion of its charge in Case No. U-11480, which alleges that the City improperly discriminated against fire fighter Schottenham in violation of §209-a.1(c) of the Act; to the dismissal of so much of Case No. U-11491 as alleges violations of §§209-a.1(a) and (c) of the Act (including exceptions to evidentiary rulings related to those allegations); and to the ALJ's failure to find that all of Directive No. 3, Code 1990, was promulgated in violation of §209-a.1(d) of the Act. Because the Union has filed no exception to the dismissal of Case No. U-11504, the ALJ decision in that respect is not before us and will not be reviewed.^{1/}

^{1/}The Union's brief, submitted in response to the City's exceptions and in support of its own cross-exceptions, is identical to the brief submitted to the ALJ. References in that brief to Case No. U-11504 are insufficient to establish exceptions in conformity with §204.10 of PERB's Rules of Procedure (Rules).

CASE NO. U-11480 (SCHOTTENHAM)

In its exceptions, the City asserts that no violation of the Act occurred because the fire chief merely requested, but did not direct, Schottenham to appear at his office on February 23, 1990, to sign a release concerning his medical condition, prior to his return to work from sick leave. In support of this exception, the City points to the phrasing of the letter issued by the fire chief, which states: "Please report to Engine No. 6 at 0800 hours on February 24, 1990." It is our determination that notwithstanding the courteous manner in which the directive was phrased, a reasonable employee would perceive, as did Schottenham, that it was in fact a directive. There is no reason to believe that reporting by Schottenham at the date, time, and location indicated in the fire chief's letter was discretionary. The exception in this respect is accordingly denied.

The City also excepts to the ALJ finding that an employee must be afforded union representation during discussions with the employer. While we agree with the City's assertion that the presence of a union representative at all discussions with City employees is not required by the Act, we do not interpret the ALJ decision to so hold. Indeed, the ALJ decision, as interpreted and affirmed here, requires in these circumstances only that union representation be permitted when the discussion between employer and employee involves a grievance processed pursuant to the negotiated grievance procedure in which the union has

appeared and is representing the employee. In the instant case, the discussion between Schottenham and the fire chief on February 23, 1990 related specifically to implementation of an arbitration award which was enforced pursuant to enforcement proceedings brought in State Supreme Court. On these facts, we affirm the ALJ's determination that Schottenham was entitled to union representation with respect to the establishment of a new condition to implementation of the arbitration award directing Schottenham's return to work.

The City's third exception asserts that the ALJ erred when he failed to credit the testimony of the fire chief that Schottenham would not be considered absent without authorization if he did not sign the release letter presented to him at the meeting of February 23, 1990. Relying upon testimony of Schottenham and King, the Union representative present during the discussion, the ALJ determined that Schottenham was told, in words or effect, that he would not be permitted to return to work if he failed to sign the proper letter, and that he would be considered absent without authorization if he failed to report to work on February 24 in accordance with the letter. The ALJ's credibility determination is supported by testimony in the record and will not be disturbed by us. The exception is accordingly denied.

In its cross-exceptions, the Union contends that the ALJ erred in dismissing the allegation of violation of §209-a.1(c) of

the Act, asserting that the imposition of a requirement that Schottenham execute a release of liability for injuries sustained following his return to work constituted discrimination for his participation in protected union activity (i.e. the contract grievance procedure). Notwithstanding this exception, we concur with the ALJ's finding that the record does not support such a determination. Rather, the record establishes nothing more than that the City had a reasonable concern about its liability for future injuries to Schottenham based upon his medical condition. While the procedures used by the City to put its concern to rest were found by the ALJ, and here affirmed by this Board, to be subject to bargaining and union representation, it has not been established that the City's determination to seek to avoid liability constitutes unlawful discrimination, coercion, or retaliation. The cross-exception is accordingly denied.

Based upon the foregoing, the ALJ decision with respect to Case No. U-11480 is affirmed in its entirety.

U-11491 (DIRECTIVE NO. 3, CODE 1990)

The ALJ found that by issuing Directive No. 3, Code 1990, the City made unilateral changes in terms and conditions of employment of fire fighters represented by the Union. Directive No. 3, Code 1990, was found by the ALJ to effectuate a different procedure for handling absences occasioned by recurrence of previous job-related injuries than had occurred prior to its issuance. The particular respect in which the ALJ found a change

to have occurred is that at the onset of the recurrence of disability and absence resulting therefrom, employees are initially placed upon sick leave, which is made available pursuant to the terms of the parties' collective bargaining agreement, rather than upon "injured leave", which is provided pursuant to §207-a General Municipal Law (GML) and which constituted the previous practice. Under the new procedure, fire fighters presenting medical documentation from their physician or the City's physician that the absence is the result of recurrence of a previous job-related injury, will have their leave status converted from contractual sick leave to statutory injured leave. This procedure represents a departure from past practice both because of the initial placement of the employees on sick leave rather than injured leave, and because the employees are now required to obtain documentation from their physician that the "absence is due to recurrence of a specific job-related injury".

The City argues that because sick leave is provided pursuant to the parties' agreement on an unlimited basis, as is injured leave pursuant to §207-a GML, no change in terms and conditions of employment has occurred. However, there is at least one substantive difference between sick leave and injured leave, i.e., that employees are entitled to payment for medical treatment while on injured leave pursuant to §207-a(1) GML, while employees on contractual sick leave are not. Additionally, §207-a(3) GML makes certain provisions for light duty not applicable

to persons on sick leave.

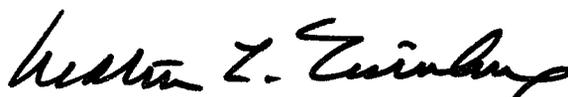
Based upon the foregoing, and notwithstanding the exceptions of the City to the ALJ determination in this regard, we find that Directive No. 3, Code 1990, constitutes a unilateral change in terms and conditions of employment in this respect.

The Union's exceptions assert that Directive No. 3, Code 1990, reflects unilateral changes in terms and conditions of employment in other respects also. However, our search of the record establishes no other respects in which the parties' previous procedures have been altered by its implementation. Accordingly, we decline to adopt the Union's position that rescission of each and every aspect of the Directive is required by the Act. To the extent that the Union argues that requirement of a physician's note indicating ability to return to full duty with no restrictions constitutes a unilateral change, the ALJ found, in connection with Case No. U-11504 (Feldman), that a practice of requiring notes permitting return to full duty existed previously, and that no unilateral change accordingly took place. Although that matter is not now before us, our holding here is consistent with the ALJ decision, which is final and binding upon the parties in that regard.

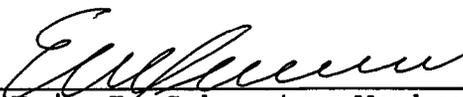
Based upon the foregoing, IT IS HEREBY ORDERED that the
City:

1. Rescind the letter of February 22, 1990 addressed to Fire Fighter Robert Schottenham and expunge same from his personnel file;
2. Rescind those portions of Directive No. 3, Code 1990, found here to be violative of the Act and expunge those portions of the Directive from the records regularly kept by the Schenectady Fire Department;
3. Place any fire fighter put on sick leave by reason of application of Directive No. 3, Code 1990, on injured leave status;
4. Post the attached notice at places normally used to communicate information to unit employees.

DATED: July 10, 1991
Albany, New York



Walter L. Eisenberg, Member



Eric J. Schmertz, Member

Chairperson Kinsella recused herself.

APPENDIX

NOTICE TO ALL EMPLOYEES

PURSUANT TO

THE DECISION AND ORDER OF THE

NEW YORK STATE

PUBLIC EMPLOYMENT RELATIONS BOARD

and in order to effectuate the policies of the

NEW YORK STATE

PUBLIC EMPLOYEES' FAIR EMPLOYMENT ACT

we hereby notify all employees in the unit represented by the Schenectady Fire Fighters Union, Local 28, IAFF, AFL-CIO that the City of Schenectady will:

1. Rescind the letter of February 22, 1990 addressed to Fire Fighter Robert Schottenham and expunge same from his personnel file;
2. Rescind those portions of Directive No. 3, Code 1990, found here to be violative of the Act and expunge those portions of the Directive from the records regularly kept by the Schenectady Fire Department;
3. Place any fire fighter put on sick leave by reason of application of Directive No. 3, Code 1990, on injured leave status.

.....
City of Schenectady

Dated.....

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

This Notice must remain posted for 30 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

GLENS FALLS FIREFIGHTERS UNION,
LOCAL 2230, IAFF, AFL-CIO,

Charging Party,

CASE NOS. U-11111

-and-

& U-11364

CITY OF GLENS FALLS,

Respondent.

GRASSO & GRASSO, ESQS. (JANE FININ and KATHLEEN R.
DE CATALDO of counsel), for Charging Party

MC PHILLIPS, FITZGERALD & MEYER, ESQS. (STERLING
GOODSPEED and RICHARD V. MEATH of counsel), for
Respondent

BOARD DECISION AND ORDER

These cases come to us on exceptions filed by the Glens Falls Firefighters Union, Local 2230, IAFF, AFL-CIO (Local 2230) to a decision of an Administrative Law Judge (ALJ) which dismissed two improper practice charges filed by Local 2230 against the City of Glens Falls (City). Local 2230's first charge alleges that the City violated §209-a.1(d) of the Public Employees' Fair Employment Act (Act) when, in mid-July 1989, it unilaterally adopted a work rule prohibiting political activity by unit employees. The second charge, as characterized by the ALJ, alleges that the City violated §209-a.1(d) when it implemented its July work rule in early January 1990.

Local 2230's first charge stems from a July 14, 1989 notice of discipline issued to Daniel Girard, a firefighter in Local 2230's unit at all relevant times, which cites him for a violation of §6.16 of the City Charter (Charter),^{1/} which provides as follows:

Political Activity Prohibited. No officer or member of either department^{2/} shall be a member of or a delegate to any political convention. He shall not solicit any person to vote at any political caucus, primary or election, nor challenge nor in any manner attempt to influence any voter thereat. He shall not be a member of any political committee, nor shall he make any contribution to any political fund. Any officer or member violating any provisions of this section shall be subject to such disciplinary action as the Board may deem proper.

Local 2230 alleges in its first charge that the City has never restricted the referenced political activities of unit employees. Local 2230 argues, therefore, that Girard's discipline pursuant to §6.16 of the Charter constituted a unilateral imposition of a new set of restrictions on outside political activity which had to be negotiated prior to promulgation.

Local 2230's second charge stems from a notice of discipline issued to Girard on January 2, 1990. That notice charged Girard with a violation of §6.16 of the Charter on allegations that

^{1/}Girard's campaign for a seat on the City Common Council apparently prompted this first notice of discipline which resulted in a 60-day suspension.

^{2/}This reference is to the police and fire departments.

between July 1989 and November 1989, he solicited votes and attempted to influence voters at a political caucus, primary or election. The notice also charges Girard with a violation of General City Law §3, General Municipal Law §801 and of the common law rules of the State of New York because he was by that date an elected member of the City Common Council and simultaneously an employee of the City. Girard was suspended for 30 days pursuant to this second notice and was terminated from his firefighter position on January 30, 1990 by the Board of Public Safety after a hearing on that date.^{3/}

Included among Local 2230's fourteen numbered exceptions are allegations that the ALJ mischaracterized its second charge, erred in stating the dates of Girard's suspension and failed to consider or properly apply certain allegedly material parts of the record. Most of Local 2230's exceptions, however, relate to the ALJ's conclusion that the City had not acted unilaterally in issuing either notice of discipline because §6.16 of the City Charter (Charter) had been incorporated into the parties' 1983-1988 contract.

The City agrees with those parts of Local 2230's exceptions pertaining to the nature of the second charge and the dates of Girard's suspension, but it disagrees with all other parts of the exceptions. In addition to supporting the ALJ's basic conclusion

^{3/}The ALJ's statement of facts in this respect was not material to her decision, but we accept the parties' representation of the facts as set forth in the exceptions for background purposes.

that it did not act unilaterally, the City argues that it did not change its practice regarding political activity, but merely applied existing requirements of local and state law and that its restrictions on political activity are not mandatorily negotiable. Alternatively, the City argues that the same external sources of state law render PERB powerless to order Girard's reinstatement for a violation of the restrictions on political activity.

We begin our discussion by establishing a framework for analysis and by clarifying the second charge filed by Local 2230.

The work rules in issue take the form of Girard's two notices of discipline. The cases are properly analyzed, as presented, as ones involving work rules because the City effectively informed all unit employees through Girard's notices of discipline that outside political activities of various types were prohibited and that the City would discipline employees for a violation of those prohibitions.

The subject of the second charge is the City's prohibition against an employee holding elective office on the City Common Council. We disregard the ALJ's characterization of this charge to whatever extent it is or was intended to be different from that stated.

The remaining exceptions are directed, in net effect, to the two-pronged inquiry whether the City's promulgation of these work rules was effected unilaterally and whether the rules embrace mandatorily negotiable subject matter.

With respect to the first inquiry, the ALJ concluded that §6.16 of the Charter was incorporated into the parties' 1983-88 labor contract by Article III of that contract which provides that the contract shall not "supersede any provisions of the Glens Falls City Charter". The language of the contract does not, as a matter of law, incorporate the Charter as one of its parts and there is no record evidence regarding the parties' intent in making this agreement. To the contrary, the contract language itself reflects only a mutual recognition of the separate existence of the Charter and a statement of its effect in the event of an inconsistency between the Charter and the contract. There is nothing to suggest, however, that Local 2230 agreed to bind itself and its members to adherence to the Charter. Therefore, we grant those of Local 2230's exceptions directed to this aspect of the ALJ's decision and reverse the ALJ's decision in this regard.

Continuing with the analysis of the first-stated inquiry, we find that the record establishes conclusively that the City has never in any way restricted the outside political activities of unit employees or disciplined them for engaging in same, despite knowledge and opportunity, notwithstanding §6.16 of the Charter or provisions of state statutory or common law. A cognizable change in practice is clearly established when an employer, in its executive capacity, first restricts the off-duty activities of its employees after years of a conscious and unbroken declination to enforce in any way restrictions earlier authorized

by legislative action.^{4/} As the actionable change in practice is defined by reference to the employer's practice in fact, the City's claim that it made no change when it prohibited employees from holding positions on the Common Council because it was enforcing existing statutory and common law prohibitions on political activity by municipal employees is without merit. Those latter provisions of law are, however, directly relevant to the negotiability of the work rules, the second of the two necessary inquiries to which we now turn.

The City's work rules restrict the employees' off-duty conduct and establish new grounds for the imposition of discipline, both subjects which we have held to be mandatorily negotiable.^{5/} The cases cited by the City for the proposition that restrictions on outside political activity do not embrace "terms and conditions of employment" are inapposite because they either do not involve such restrictions or do not raise any issue regarding their negotiability. There is, however, a recognized, albeit limited, public policy exception to the negotiations which would otherwise be required by the Act. That public policy exception is grounded upon those few statutory or common law provisions which clearly prohibit, in an absolute sense, parties

^{4/}The unilateral change analysis is necessarily tied to the date of the executive's first action because a legislative body's action is not reviewable under the refusal to negotiate provisions of the Act since it has neither right nor duty to bargain.

^{5/}City of Newburgh, 16 PERB ¶3030 (1983); City of Buffalo, 23 PERB ¶3050 (1990).

from entering into any agreement conflicting with the legal mandate.^{6/} It remains to be determined whether, as the City argues, the public policy exception to the duty to negotiate applies here.

It is our finding that the statutory sources of prohibition cited by the City do not support such a public policy exception. General City Law §3 prohibits a member of a common council from holding other offices "under the appointment or election of the common council". There is no evidence that Girard holds his firefighter position by appointment or election of the Common Council and what evidence there is suggests plainly that it is the Board of Public Safety which has the power to appoint persons to firefighter positions. General Municipal Law §801 prohibits an employee from having an interest in a contract with a municipality if the employee has the power to negotiate or approve the contract or payments thereunder, to audit claims, or to appoint another with those duties. The only contract in which Girard is claimed to have an interest by virtue of his employment with the City is the collective bargaining agreement covering Local 2230's unit. Labor contracts, however, have been held by the New York State Court of Appeals not to be subject to General Municipal Law §801.^{7/}

^{6/}Port Jefferson Station Teachers Ass'n, Inc. v. Brookhaven-Comsewogue Union Free School Dist., 45 N.Y.2d 898, 12 PERB ¶7502 (1978); Board of Education of the City School Dist. of the City of New York v. PERB, 75 N.Y.2d 660, 23 PERB ¶7012 (1990).

^{7/}Stettine v. County of Suffolk, 66 N.Y.2d 354, 18 PERB ¶7512 (1985).

Finally, the City alleges that its restriction on City employees holding elective office on the City Common Council is required by a common law prohibition against the holding of incompatible offices, a doctrine recognized by the Court of Appeals in People ex rel. Ryan v. Green.^{8/} The State Attorney General issued an informal opinion^{9/} at the City's request which concludes that the Common Council's budgetary functions and its statutorily required approval^{10/} of the City's labor contracts render City employment and City elective office incompatible based upon an actual or apparent conflict of interest which recusal could not effectively address. We concur with the opinion expressed by the Attorney General. A City employee has employment interests which may be affected, beneficially or adversely, by actions necessarily taken by the City Common Council regarding any City department. We also consider there to be actual or apparent conflicts of interest so numerous and varied in a municipal employee serving on the Common Council that recusal is not a viable option. We do not, however, decide whether this incompatibility doctrine is appropriately applied to employees holding other elective offices.

Based upon the foregoing, we conclude that the City's work rule restriction on an employee holding City employment and

^{8/}58 N.Y. 295 (1874).

^{9/}Op. Atty. Gen. 90-15 (March 15, 1990).

^{10/}Act §§201.12 & 204-a.1.

Common Council office simultaneously is not mandatorily negotiable. As the City's unilateral promulgation of this rule was privileged, Local 2230's second charge (U-11364) objecting only to the prohibition against employees holding Common Council office is dismissed and, therefore, Girard's suspension and subsequent termination pursuant to the January 2, 1990 notice of discipline will not be disturbed. The restrictions on other types of outside political activity referenced in §6.16 of the Charter^{11/} are not required by other statutory provisions or common law. As these other work rule restrictions are mandatorily negotiable, the City's unilateral adoption of those restrictions violated §209-a.1(d) of the Act. The imposition of a 60-day suspension against Girard pursuant to the July 14, 1989 notice of discipline must, therefore, be set aside.

IT IS, THEREFORE, ORDERED that the charge in U-11364 be, and it hereby is, dismissed.

Having found the City to have violated §209-a.1(d) of the Act pursuant to Local 2230's first charge (U-11111), it is hereby ordered to:

1. Cease and desist from disciplining any unit employee for engaging in those political activities specified in §6.16 of the Charter until it satisfies its duty to negotiate under the Act;

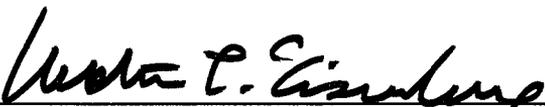
^{11/}The Charter does not cover an employee holding any elective office.

2. Rescind the July 14, 1989 Notice of Discipline issued to Daniel Girard and expunge any record of that Notice of Discipline from any personnel files kept by or on behalf of the City;
3. Make Daniel Girard whole for any wages or benefits lost as a result of the July 14, 1989 Notice of Discipline, with interest at the currently prevailing maximum legal rate; and
4. Sign and post notice in the form attached at all locations ordinarily used to post informational notices to unit employees.

DATED: July 10, 1991
Albany, New York



Pauline R. Kinsella, Chairperson



Walter L. Eisenberg, Member



Eric J. Schmertz, Member

APPENDIX

NOTICE TO ALL EMPLOYEES

PURSUANT TO
THE DECISION AND ORDER OF THE
NEW YORK STATE
PUBLIC EMPLOYMENT RELATIONS BOARD

and in order to effectuate the policies of the

NEW YORK STATE PUBLIC EMPLOYEES' FAIR EMPLOYMENT ACT

we hereby notify

all employees in the unit represented by the Glens Falls Firefighters Union, Local 2230, IAFF, AFL-CIO that the City of Glens Falls:

1. Will not discipline any unit employee for engaging in those political activities specified in §6.16 of the City Charter until it satisfies its duty to negotiate under the Act;
2. Will rescind the July 14, 1989 Notice of Discipline issued to Daniel Girard and will expunge any record of that Notice of Discipline from any personnel files kept by or on behalf of the City;
3. Will make Daniel Girard whole for any wages or benefits lost as a result of the July 14, 1989 Notice of Discipline, with interest at the currently prevailing maximum legal rate.

..... CITY OF GLENS FALLS

Dated

By
(Representative) (Title)

This Notice must remain posted for 30 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

AMALGAMATED TRANSIT UNION, LOCAL 1056,
AFL-CIO,

Charging Party,

- and -

Case No. U-10810

NEW YORK CITY TRANSIT AUTHORITY,

Respondent.

HANS & CERNIGLIA, P.C. (STEPHEN HANS of counsel),
for Charging Party

ALBERT C. COSENZA, ESQ. (JOYCE R. ELLMAN of
counsel), for Respondent

BOARD DECISION AND ORDER

This matter comes to us on the exceptions of the Amalgamated Transit Union, Local 1056, AFL-CIO (ATU) to the dismissal of its improper practice charge against the New York City Transit Authority (Authority). The charge alleges that the Authority violated §209-a.1(d) of the Public Employees' Fair Employment Act (Act) when it announced on December 14, 1988 that employees would no longer be provided with free parking at the Authority's Flushing depot following, and as the result of, construction at that facility.

The assigned Administrative Law Judge (ALJ) dismissed the charge, after hearing, upon the ground that the ATU failed to establish that the change in the availability of free parking to employees constitutes a change in terms and conditions of

employment, because, since 1976, the provision of parking by the Authority has been subject to the following condition:

The granting of permission to eligible employees to park their private vehicles on Authority property is at the absolute discretion of the Authority and is subject to being withdrawn at any time.

While, prior to 1976, no such condition applied to the grant of free parking space, the ALJ found that the condition has been consistently applied to all bargaining unit members who made application for and received parking permits since 1976, and that the ATU had knowledge of the Authority's inclusion of the condition in the parking application packet provided to employees.

Having found that the grant of parking has been a conditional one since 1976, the ALJ concluded that the Authority's elimination of free parking facilities as a result of its construction program, constitutes nothing more than an exercise of the discretion to do so, which it had reserved to itself since 1976. The elimination of parking facilities accordingly was found by the ALJ to constitute a continuation, rather than a change, in the practice in effect since 1976.

Notwithstanding the exceptions of the ATU, we affirm the ALJ's factual holdings that while the grant of parking access was unlimited prior to 1976, it became limited and conditional thereafter, that the condition is clear, explicit, and unambiguous, and that the ATU had notice of its existence.

We therefore conclude that, to the extent the grant of parking benefits was conditional, the ALJ properly dismissed the charge.^{1/}

In its response to the exceptions, the Authority argues, inter alia, that its elimination of free parking at the Flushing depot is a management prerogative because the Authority's interest in constructing new depot buildings outweighs the employees' interest in free parking access, such that free parking does not constitute a term or condition of employment in these circumstances. We disagree. The need to construct additional facilities does not extinguish the right to negotiate the benefit of free parking access to the employer's workplace, nor does the duty to negotiate concerning parking facilities control or interfere with the management prerogative to construct new facilities. The essence of the parking benefit does not lie in the specific geographic area designated for that purpose, but in the availability of a place for employees to park, without cost, at or within reasonable proximity to the workplace. In our view, the unconditional grant of such parking benefits establishes a term and condition of employment which cannot be eliminated without negotiation.^{2/} In the instant case, the unconditional grant of parking benefits appears to have existed only prior to 1976 and not thereafter. Thus, the ALJ properly

^{1/}Accord Gananda CSD, 17 PERB ¶3095 (1984).

^{2/}State of New York, 6 PERB ¶3005 (1973).

dismissed the charge insofar as it applied to persons who obtained parking permits subject to the condition identified by the Authority since 1976. However, as to those persons who may have acquired parking permits prior to 1976, when no such condition applied, a unilateral change in terms and conditions of employment as to those employees is here shown. This is so because the condition imposed by the Authority is specifically and exclusively directed to applicants for permits and not to all persons who park, regardless of when that benefit was conferred. The Board, therefore, grants the exceptions of the ATU to the extent of the ALJ finding a violation of §209-a.1(d) of the Act in the unilateral elimination of free parking access to the Authority's Flushing depot for any bargaining unit members who applied for and received parking permits prior to 1976, when the grant of parking permits became conditional. Those bargaining unit members, if any, who have incurred parking expenses since elimination of free parking on or about December 14, 1988, must be made whole for such economic loss by the Authority, and the Authority shall negotiate in good faith with the ATU concerning the provision of free parking benefits to bargaining unit members who received parking permits prior to 1976.

IT IS, THEREFORE, ORDERED THAT:

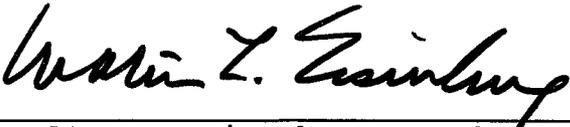
1. The charge is dismissed as to those bargaining unit members who have received parking permits since 1976;
2. The Authority shall promptly identify, in writing, and submit to the ATU the names of any and all bargaining unit members who received parking permits prior to 1976 and who remained in employment at the Flushing depot after December 14, 1988;
3. The Authority shall provide free parking benefits on or within reasonable proximity to the Authority's Flushing depot premises to any and all bargaining unit members who received parking permits prior to 1976 and who remained in employment at the Flushing depot after December 14, 1988;
4. The Authority shall make whole any such bargaining unit members who, upon a showing of reasonable documentary evidence, and/or affidavits, that they incurred parking expenses which they would not otherwise have incurred since December 14, 1988, but for the elimination of free parking on the Authority's Flushing depot premises until the free parking benefits provided by paragraph 3 are restored; and

5. The Authority shall post the attached notice at all work locations customarily used to communicate information to ATU bargaining unit members.

DATED: July 10, 1991
Albany, New York



Pauline R. Kinsella, Chairperson



Walter L. Eisenberg, Member



Eric J. Schmertz, Member

APPENDIX

NOTICE TO ALL EMPLOYEES

PURSUANT TO

THE DECISION AND ORDER OF THE

NEW YORK STATE

PUBLIC EMPLOYMENT RELATIONS BOARD

and in order to effectuate the policies of the

NEW YORK STATE

PUBLIC EMPLOYEES' FAIR EMPLOYMENT ACT

we hereby notify employees of the New York City Transit Authority in the unit represented by the Amalgamated Transit Union, Local 1056, AFL-CIO that:

1. The Authority shall promptly identify, in writing, and submit to the ATU the names of any and all bargaining unit members who received parking permits prior to 1976 and who remained in employment at the Flushing depot after December 14, 1988;
2. The Authority shall provide free parking benefits on or within reasonable proximity to the Authority's Flushing depot premises to any and all bargaining unit members who received parking permits prior to 1976 and who remained in employment at the Flushing depot after December 14, 1988; and
3. The Authority shall make whole any such bargaining unit members who, upon a showing of reasonable documentary evidence, and/or affidavits, that they incurred parking expenses which they would not otherwise have incurred since December 14, 1988, but for the elimination of free parking on the Authority's Flushing depot premises until the free parking benefits provided by paragraph 2 are restored.

.....
New York City Transit Authority

Dated.....

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

This Notice must remain posted for 30 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

DEPUTY SHERIFF'S BENEVOLENT ASSOCIATION
OF ONONDAGA COUNTY,

Charging Party,

CASE NO. U-10891

-and-

COUNTY OF ONONDAGA,

Respondent,

-and-

ONONDAGA LOCAL 834, CIVIL SERVICE
EMPLOYEES ASSOCIATION, INC.,

Intervenor.

COSTELLO, COONEY & FEARON (MICHAEL A. TREMONT of
counsel), for Charging Party

JON A. GERBER, ESQ. (LAWRENCE R. WILLIAMS of counsel),
for Respondent

NANCY E. HOFFMAN, ESQ. (STEVEN A. CRAIN of counsel),
for Intervenor

BOARD DECISION AND ORDER

This matter comes to us on the exceptions of the County of Onondaga (County) and the Deputy Sheriff's Benevolent Association of Onondaga County (DSBA) to a decision of an Administrative Law Judge (ALJ) which found that the County had violated §209-a.1(d) of the Public Employees' Fair Employment Act (Act) by unilaterally transferring DSBA bargaining unit work to employees

of another unit.^{1/} In particular, the ALJ found that the County improperly ceased using deputy sheriff-jailers represented by DSBA to guard certain pre-trial and pre-sentence inmates and caused this work to be performed by correction officers in a bargaining unit represented by Onondaga Local 834, Civil Service Employees Association, Inc. (CSEA).^{2/}

The County excepts to certain findings of fact and a failure to find that DSBA waived its right to negotiate. It also argues that the ALJ's order interferes with County rights and responsibilities under the Correction Law and local law.

For the reasons which follow, the County's exceptions are dismissed and the ALJ's decision is affirmed except as to remedy, which we modify in accordance with an exception filed by the DSBA.

FACTS

The County houses its prisoners in two facilities. One is the Public Safety Building (jail), which is staffed by deputy sheriff-jailers; the other is the Onondaga County Correctional Facility at Jamesville (correctional facility), which is staffed by correction officers.

^{1/}Charges alleging County violations of §§209-a.1(a), (b) and (c) of the Act were also disposed of by the ALJ. However, no exceptions were taken to the ALJ's dismissal of those charges, and they are not before us.

^{2/}CSEA did not file any exceptions to the ALJ's decision.

Individuals incarcerated at the jail are primarily pre-trial and pre-sentence inmates who may be charged with an offense ranging anywhere from a misdemeanor to a class A felony. On the other hand, inmates of the correctional facility are, for the most part, individuals whose sentences are limited to less than one year. The job duties of both correction officers and deputy sheriff-jailers in guarding inmates are substantially similar.

Historically, only deputy sheriff-jailers have been responsible for guarding pre-trial and pre-sentence prisoners, regardless of the location of such prisoners. For example, the deputy sheriff-jailers guarded pre-trial and pre-sentence inmates who were confined to the Hutching Psychiatric Center until it was closed. And, in the early 1970s, as a result of overcrowding at the jail, they guarded approximately 80 pre-trial and pre-sentence prisoners who were transferred to the correctional facility where they were housed in a separate wing for approximately a year. They have also been responsible for transporting such inmates to and from court and medical or psychiatric facilities.

In April 1989, as a result of a federal court order to alleviate jail overcrowding, about 25 pre-trial and pre-sentence prisoners were transferred to a newly-constructed modular unit at the correctional facility referred to as the Annex. The Annex is separate from the rest of the correctional facility. There is no interchange between the prisoners who were transferred to the

Annex and those prisoners who were sentenced to the correctional facility. Except for one deputy sheriff-jailer who was assigned to the Annex very briefly to act as a liaison between it and the jail, no other members of the DSBA bargaining unit were assigned to the transferred prisoners at the Annex. Instead, the County assigned correction officers to guard them. The improper practice charge which is the subject of this decision then ensued.

DISCUSSION

A transfer of unit work is mandatorily negotiable if the work has been performed by unit employees exclusively and the tasks as reassigned are substantially similar to those previously performed by unit employees.^{3/} As the County does not dispute that the correction officers' guarding of pre-trial and pre-sentence prisoners housed at the Annex is substantially similar to the work performed by the deputy sheriff-jailers when they guarded those prisoners, one prong of PERB's test is met. As there has been no significant change in qualifications, a violation depends upon proof of exclusivity which, in this case, rests entirely on the definition of the DSBA's bargaining unit work.

We have previously held that there can be a discernible boundary to unit work which can preserve a defined portion of

^{3/}Niagara Frontier Transportation Authority, 18 PERB ¶3083, at 3182 (1985).

work exclusively to a particular bargaining unit.^{4/} Although the work of deputy sheriff-jailers may be described, in general, as guarding prisoners, their primary function has been to guard pre-trial and pre-sentence inmates. For the reasons which follow, we find, in agreement with the ALJ, that a discernible boundary has been established as to this function, which has been the exclusive responsibility of deputy sheriff-jailers.

The County itself has long recognized a boundary between pre-trial and pre-sentence prisoners and sentenced prisoners as evidenced by the County's housing them in separate facilities and its prior assignments of deputy sheriff-jailers and correction officers by the identity of inmate.

The record also evidences that deputy sheriff-jailers face a particularly difficult inmate population, undergo a lengthier training and have a higher pay scale than correction officers. This provides further support for our conclusion that their work is distinguishable from the general category of work involving the guarding of prisoners.

EXCEPTIONS

The County excepts to the ALJ's finding that pre-trial and pre-sentence inmates are more difficult to handle than the sentenced inmates at the correctional facility. Such finding,

^{4/}City of Rochester, 21 PERB ¶3040 (1988), conf'd, 155 A.D.2d 1003, 22 PERB ¶7035 (4th Dep't 1989); Town of West Seneca, 19 PERB ¶3028 (1986).

however, is fully supported by the record. Indian River Central School District^{5/}, which the County cites in support of its exception, is inapposite because of our finding that DSBA's unit work is exclusive to it. The County's remaining exceptions as to factual findings are rejected because the findings excepted to were not made by the ALJ and, even if they had been, they would not alter the disposition of this matter.

The County also argues that the ALJ's decision interferes with the exclusive responsibility of the State Commission of Corrections in matters relating to the custody of inmates in local correctional facilities and, in particular, the Commission's authority under Correction Law §504 to designate the Jamesville Correctional Facility as a substitute jail for pre-trial and pre-sentence inmates. The issue of custody, in the sense used by the County in its exceptions, was not litigated in this case and the substitute jail orders, upon which the County relies, do not even refer to custody. In any case, there is no evidence that the assignment of deputy sheriff-jailers to guard the pre-trial and pre-sentence prisoners at the Annex would interfere with custody matters. Further, the ALJ's decision does not impede the County's right to transfer inmates from the jail to the Annex. Rather, her consideration is limited to deciding who shall guard the transferred inmates. This presents a

^{5/}20 PERB ¶3047 (1987).

collective bargaining issue which PERB has jurisdiction to decide under §205.5(d) of the Act.

The County next argues that the ALJ's decision precludes it from mixing sentenced and unsentenced inmates which Correction Law §500-b does allow. The facts of this case do not present an issue as to the County's right to mix sentenced and unsentenced prisoners.

There is no evidence to support the County's claim that the ALJ's decision will interfere with the requirement of the Onondaga County Charter and the Administrative Code that the Sheriff and County Commissioner of Corrections care for all inmates housed in their respective facilities. In any event, if a conflict exists between the Charter and Code, both local laws, and the Civil Service Law, the local law cannot supersede the Civil Service Law or limit its intended effect.

Finally, the County's argument that the DSBA waived its right to bargain about the transfer of unit work by agreeing to include in its contract with the County a provision giving the County the right "to maintain the efficiency of government operations" must be rejected. A claim of waiver must be pleaded in an answer and proved.^{6/} The County has failed to interpose

^{6/}New York City Transit Authority v. PERB, 20 PERB ¶3037 (1987), conf'd, 147 A.D.2d 574, 22 PERB ¶7001 (2d Dep't 1989), enforced, 156 A.D.2d 689, 23 PERB ¶7002 (2d Dep't 1989).

waiver as an affirmative defense in its answer and there is no evidence that such a waiver occurred.

In its exceptions, the DSBA argues that the ALJ's order is insufficient as it does not provide for a make whole remedy and thereby allows the County to retain the fruits of its violation.

We agree and, therefore, grant this exception. However, we dismiss the DSBA's exception to the ALJ's refusal to allow evidence on damages. In the event the parties are unable to agree on what, if any, lost wages, overtime or benefits were suffered as a result of the transfer of unit work, either party may make an application to the Board to reopen this case on the issue of damages as necessary.^{1/}

Based on the foregoing, we find that the County violated §209-a.1(d) of the Act when it unilaterally transferred DSBA's bargaining unit work of guarding pre-trial and pre-sentence inmates to correction officers in the CSEA bargaining unit. Accordingly, we modify the ALJ's order by granting back pay, overtime and lost benefits, if any, and sustain her decision and order in all other respects.

IT IS, THEREFORE, ORDERED that the County:

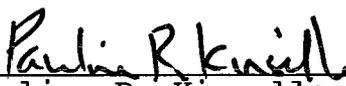
1. Rescind its order assigning correction officers represented by CSEA to guard pre-sentence and pre-trial

^{1/}County of Broome, 22 PERB ¶3019 (1989); City of Rochester, supra note 4.

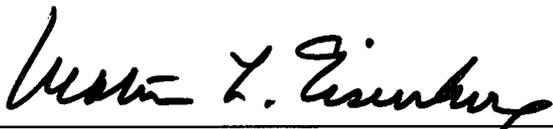
prisoners housed at the Jamesville Correctional Facility Annex;

2. Assign to DSBA unit members the responsibility for securing pre-sentence and pre-trial prisoners housed at the Jamesville Correctional Facility Annex;
3. Pay DSBA unit members lost wages, overtime and benefits, if any, suffered as a result of the transfer of their unit work, plus interest at the maximum legal rate; and
4. Sign and post the attached notice at all locations customarily used to communicate with unit employees.

DATED: July 10, 1991
Albany, New York



Pauline R. Kinsella, Chairperson



Walter L. Eisenberg, Member



Eric J. Schmertz, Member

NOTICE TO ALL EMPLOYEES

PURSUANT TO
THE DECISION AND ORDER OF THE
NEW YORK STATE
PUBLIC EMPLOYMENT RELATIONS BOARD

and in order to effectuate the policies of the

NEW YORK STATE
PUBLIC EMPLOYEES' FAIR EMPLOYMENT ACT

we hereby notify the employees of the County of Onondaga in the units represented by the Deputy Sheriff's Benevolent Association of Onondaga County (DSBA) and the Onondaga Local 834, Civil Service Employees Association, Inc. (CSEA) that the County:

1. Will rescind its order assigning correction officers represented by CSEA to guard pre-sentence and pre-trial prisoners housed at the Jamesville Correctional Facility Annex;
2. Will assign to DSBA unit members the responsibility for securing pre-sentence and pre-trial prisoners housed at the Jamesville Correctional Facility Annex; and
3. Will pay DSBA unit members lost wages, overtime and benefits, if any, suffered as a result of the transfer of their unit work, plus interest at the maximum legal rate.

..... COUNTY OF ONONDAGA

Dated

By
(Representative) (Title)

This Notice must remain posted for 30 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the

YONKERS FEDERATION OF TEACHERS,
LOCAL 860, AFT, AFL-CIO,

CASE NO. D-0246

Respondent,

upon the Charge of Violation of
§210.1 of the Civil Service Law

BOARD DECISION AND ORDER

On August 29, 1990, John M. Crotty, this agency's Counsel, filed a charge alleging that the Yonkers Federation of Teachers, Local 860, AFT, AFL-CIO, had violated Civil Service Law (CSL) §210.1 in that it caused, instigated, encouraged or condoned a strike against the Yonkers City School District on June 1 and June 4, 1990.

The charge further alleged that of the 1,698 employees in the negotiating unit, 1,688 employees participated in the strike.

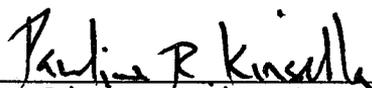
The Respondent requested Counsel to indicate the penalty he would be willing to recommend to this Board as appropriate for the violation charged. Counsel proposed a penalty of the loss of Respondent's right to have dues and agency shop fee deduction privileges to the extent of twenty-five percent (25%) of the amount which would otherwise be deducted during a year.^{1/}

^{1/}This is intended to be the equivalent of a three-month suspension of privileges of dues and agency shop fee deductions, if any, if such were withheld in twelve monthly installments.

Upon the understanding that Counsel would recommend and this Board would accept that penalty, the Respondent withdrew its answer to the charge. Counsel has so recommended. We determine that the recommended penalty is a reasonable one and will effectuate the policies of the Act.

WE ORDER that the dues and agency shop fee deduction rights of the Yonkers Federation of Teachers, Local 860, AFT, AFL-CIO, be suspended, commencing on the first practicable date, and continuing for such period of time during which twenty-five percent (25%) of its annual agency shop fees, if any, and dues would otherwise be deducted. Thereafter, no dues or agency shop fees shall be deducted on its behalf by the Yonkers City School District until the Respondent affirms that it no longer asserts the right to strike against any government as required by the provisions of CSL §210.3(g).

DATED: July 10, 1991
Albany, New York



Pauline R. Kinsella, Chairperson



Walter L. Eisenberg, Member



Eric S. Schmertz, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

SERVICE EMPLOYEES INTERNATIONAL UNION,
LOCAL 200-C,

Petitioner,

- and -

CASE NO. C-3756

CANANDAIGUA CITY SCHOOL DISTRICT,

Employer.

THOMAS M. BEATTY, for Petitioner

JAMES SPITZ, JR., ESQ., for Employer

BOARD DECISION AND ORDER

On October 18, 1990, the Service Employees International Union, Local 200-C (petitioner) filed, in accordance with the Rules of Procedure of the Public Employment Relations Board, a timely petition seeking certification as the exclusive representative of certain employees of the Canandaigua City School District (employer).

Thereafter, the parties executed a consent agreement in which they stipulated that the following negotiating unit was appropriate:

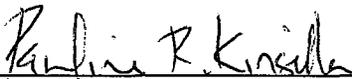
Included: All regular and regular part-time bus drivers.

Excluded: All substitute bus drivers, all bus mechanics, all bus aides, and all other employees of the District.

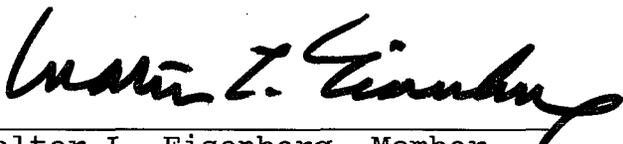
Pursuant to that agreement, a secret-ballot election was held on June 14, 1991.^{1/}

Inasmuch as the results of the election indicate that a majority of the eligible voters in the unit who cast ballots do not desire to be represented for the purpose of collective bargaining by the petitioner, IT IS ORDERED that the petition should be, and it hereby is, dismissed.

DATED: July 10, 1991
Albany, New York



Pauline R. Kinsella, Chairperson



Walter L. Eisenberg, Member



Eric J. Schmertz, Member

^{1/} Of the 46 employees in the unit, 46 ballots were cast -- 15 were for representation and 28 against representation. There were three challenged ballots.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF
AMERICA, LOCAL 649,

Petitioner,

-and-

CASE NO. C-3813

TOWN OF BOLIVAR,

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 International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 649 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 Motor Equipment Operators, Laborers and Mechanics.

Excluded: Supervisors, Clerical, Guards and others defined by the Act.

FURTHER, IT IS ORDERED that the above named public employer shall ~~negotiate collectively with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 649.~~ 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: July 10, 1991
Albany, New York



Pauline R. Kinsella, Chairperson



Walter L. Eisenberg, Member



Eric J. Schmertz, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

TEAMSTERS LOCAL 294, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA,

Petitioner,

-and-

CASE NO. C-3835

TOWN OF CARLISLE,

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 Teamsters Local 294, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: All full and part-time highway employees.

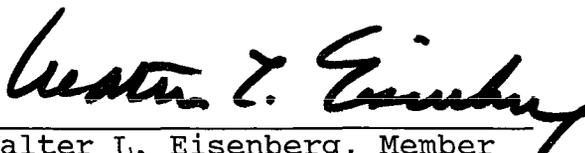
Excluded: All others.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with Teamsters Local 294, ~~International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.~~ The duty to negotiate collectively includes the mutual obligation to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written agreement incorporating any agreement reached if requested by either party. Such obligation does not compel either party to agree to a proposal or require the making of a concession.

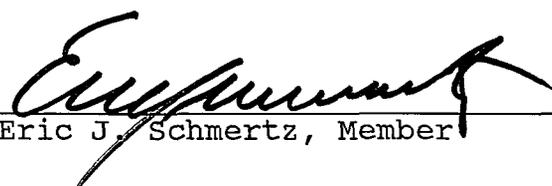
DATED: July 10, 1991
Albany, New York



Pauline R. Kinsella, Chairperson



Walter L. Eisenberg, Member



Eric J. Schmertz, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

TEAMSTERS LOCAL 317, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMAN AND HELPERS OF AMERICA, AFL-CIO,

Petitioner,

-and-

CASE NO. C-3801

TOWN OF PALERMO,

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,

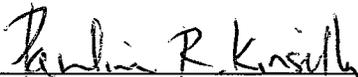
IT IS HEREBY CERTIFIED that Teamsters Local 317, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: M.E.O.

Excluded: All others, including clerical, office, professional guards and supervisors.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with Teamsters Local 317, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO. The duty to negotiate ~~collectively includes the mutual obligation to meet at reasonable~~ times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written agreement incorporating any agreement reached if requested by either party. Such obligation does not compel either party to agree to a proposal or require the making of a concession.

DATED: July 10, 1991
Albany, New York



Pauline R. Kinsella, Chairperson



Walter L. Eisenberg, Member



Eric J. Schmertz, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

SCHOOL ADMINISTRATORS ASSOCIATION OF
NEW YORK STATE/QUEENSBURY ADMINISTRATORS
& SUPERVISORS ASSOCIATION,

Petitioner,

-and-

CASE NO. C-3798

QUEENSBURY UNION FREE SCHOOL DISTRICT,

Employer.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

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

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

IT IS HEREBY CERTIFIED that the School Administrators Association of New York State/Queensbury Administrators & Supervisors Association has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: Principals, Assistant Principals, and Director of Health, Physical Education and Athletics,

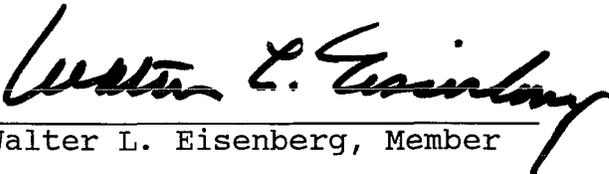
Excluded: Superintendent, Business Manager, Director of Pupil Personnel Services, and all other employees of the School District.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the School Administrators Association of New York State/Queensbury Administrators & Supervisors 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: July 10, 1991
Albany, New York



Pauline R. Kinsella, Chairperson



Walter L. Eisenberg, Member



Eric J. Schmertz, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

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

-and-

CASE NO. C-3752

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

Unit: Included: All police officers (full-time, part-time and hourly),

Excluded: Chief of Police.

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

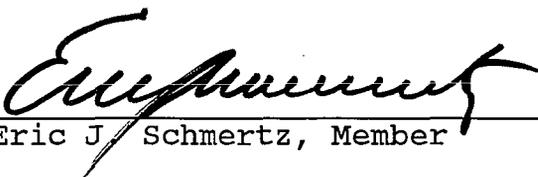
DATED: July 10, 1991
Albany, New York



Pauline R. Kinsella, Chairperson



Walter L. Eisenberg, Member



Eric J. Schmertz, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

COUNCIL OF SUPERVISORS AND ADMINISTRATORS
OF THE CITY OF NEW YORK,

Petitioner,

-and-

CASE NO. C-3662

CITY SCHOOL DISTRICT OF THE CITY OF
NEW YORK,

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 Council of Supervisors and Administrators of the City of New York 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: Chairpersons of the Subcommittee on Special Education.

Excluded: All other employees.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Council of Supervisors and Administrators of the City of New York. 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.

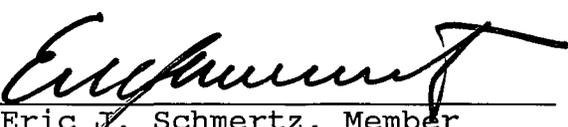
DATED: July 10, 1991
Albany, New York



Pauline R. Kinsella, Chairperson



Walter L. Eisenberg, Member



Eric J. Schmertz, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

LOCAL 200B, SERVICE EMPLOYEES INTERNATIONAL
UNION, AFL-CIO,

Petitioner,

-and-

CASE NO. C-3788

AUBURN ENLARGED CITY SCHOOL DISTRICT,

Employer.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

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

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

IT IS HEREBY CERTIFIED that Local 200B, Service Employees International Union, 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: Attendance Officer Aide, District Treasurer, Registered Professional Nurse, Senior Nurse (School District), Tax Collector, Senior Building Maintenance Mechanic (Supervisor), Head Bus Driver, Motor Vehicle Operator (Head), Watchperson.

Excluded: All others in the Auburn Enlarged School District.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with Local 200B, Service Employees International Union, 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: July 10, 1991
Albany, New York



Pauline R. Kinsella, Chairperson



Walter L. Eisenberg, Member



Eric J. Schmertz, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

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

Petitioner,

-and-

CASE NO. C-3796

WATERTOWN 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,

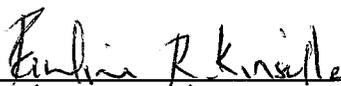
IT IS HEREBY CERTIFIED that the Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for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

Unit: Included: All Maintenance Men, Inventory Clerk/Maintenance Men, Clerks and Modernization Aides;

Excluded: Executive Director, Maintenance Supervisor, Tenant Relations Assistant, Modernization Coordinator, Principal Account Clerk and Account Clerk.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Civil Service Employees Association, Inc., 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: July 10, 1991
Albany, New York



Pauline R. Kinsella, Chairperson



Walter L. Eisenberg, Member



Eric J. Schmertz, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

UNITED INDUSTRY WORKERS, LOCAL 424,

Petitioner,

-and-

CASE NO. C-3787

EAST ISLIP UNION FREE SCHOOL DISTRICT,

Employer,

-and-

LOCAL 144, DIVISION 100, SEIU, AFL-CIO,

Intervenor.

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,

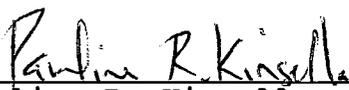
IT IS HEREBY CERTIFIED that the United Industry Workers, Local 424 has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: All permanent full-time, part-time Chief Custodians, Head Custodians, Custodial, Maintenance and Ground employees.

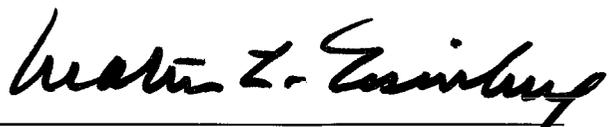
Excluded: Superintendent of Buildings and Grounds, Maintenance Foreman, Night Foreman, substitutes and casual and seasonal personnel, and all other employees.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the United Industry Workers, Local 424. 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: July 10, 1991
Albany, New York



Pauline R. Kinsella, Chairperson



Walter L. Eisenberg, Member



Eric J. Schmertz, Member



STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD
50 WOLF ROAD
ALBANY, NEW YORK 12205-2670

RESOLUTION

BE IT RESOLVED, that at a meeting of the New York State Public Employment Relations Board, held in Albany, New York on July 10, 1991, that the Board hereby delegates to its Chairperson the following powers, duties and functions:

1. to enter into agreements for the provision of goods and services;
2. to hire, lay off, discharge and deploy staff;
3. to assign staff or members of the mediation, fact finding and arbitration panels to specific disputes;
4. to issue subpoenas in connection with pending cases;
5. to otherwise conduct the day-to-day operation of the agency in all respects.

The following shall remain the responsibility of the Board:

1. to promulgate rules of procedure;
2. to issue Board decisions and orders and to authorize appeals from judicial orders or the initiation of enforcement proceedings;

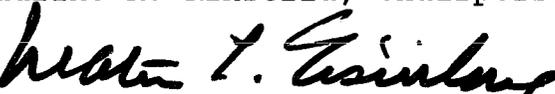
3. to appoint persons to per diem panels of mediators, fact finders, and arbitrators;
4. to authorize the operation of local government public employment relations boards and to approve procedures for the determination of representation status of local employees;
5. to certify entitlement to interest arbitration to the extent required by §209 of the Public Employees' Fair Employment Act;
6. to determine the penalty to be imposed upon employee organizations found responsible for strike activity, in violation of §210 of the Public Employees' Fair Employment Act;
7. to certify employee organizations as representatives of units of employees following elections or other proof of majority status.
8. to perform such other functions as are required of the Board by law.

SO RESOLVED.

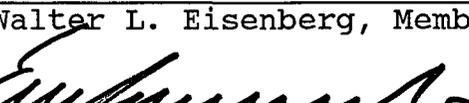
DATED: July 10, 1991



Pauline R. Kinsella, Chairperson



Walter L. Eisenberg, Member



Eric J. Schmertz, Member