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Board Decisions - NYS PERB

New York State Public Employment Relations  
Board (PERB)

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11-13-1991

## State of New York Public Employment Relations Board Decisions from November 13, 1991

New York State Public Employment Relations Board

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## State of New York Public Employment Relations Board Decisions from November 13, 1991

### 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

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In the Matter of

LOCAL 342, LONG ISLAND PUBLIC SERVICE  
EMPLOYEES, UNITED MARINE DIVISION,  
INTERNATIONAL LONGSHOREMEN'S  
ASSOCIATION, AFL-CIO,

Petitioner,

CASE NO. C-3486

-and-

SUFFOLK COUNTY VANDERBILT MUSEUM,

Employer.

---

GOLDSTEIN & RUBINTON, P.C. (RONALD L. GOLDSTEIN of  
counsel), for Petitioner

RAINS & POGREBIN, P.C. (RICHARD G. KASS of counsel),  
for Employer

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by Local 342, Long Island Public Service Employees, United Marine Division, International Longshoremen's Association, AFL-CIO (Local 342) to a decision by the Director of Public Employment Practices and Representation (Director). The Director dismissed Local 342's petition, which seeks to represent the security guards working at the Suffolk County Vanderbilt Museum (Museum), on a finding, made after hearing, that the Museum is the guards' sole employer and that it is not a public employer within the meaning of §201.6 of the Public Employees' Fair Employment Act (Act).

The Director's decision was made within the following context. The Museum was established under the will of the late William K. Vanderbilt. His will provided for the conveyance of certain of his real and personal property to either the State, the County of Suffolk (County) or the Town of Huntington to be used solely and in perpetuity as a public park and museum and for an initial maintenance fund of \$2,000,000. The County accepted the bequest from the trustees of the Vanderbilt estate in 1948 and later resolved that its Park Commission accept the real and personal property under the trust provisions of the will. Pursuant to that same resolution, the Park Commission was directed to apply for a charter as an educational corporation from the Regents of the University of New York, which was granted in July 1949.

The legal relationship between the Museum and the County is described generally in a series of agreements, local laws and a December 1979 judgment of settlement arising under a lawsuit instituted by the Museum's Board of Trustees against the County. In relevant summary, the County is the owner of all Museum property, including the principal and interest of the trust funds, but the Museum's Board of Trustees has exclusive power and control over the development, maintenance and operation of the Museum, including all personnel transactions and the expenditure of the trust funds. All income from the trust fund or the Museum's activities must be appropriated by the County Legislature to the Museum's Board of Trustees.

In addition to the Museum's Board of Trustees, there is also a Suffolk County Vanderbilt Museum Commission (Museum Commission) which devolved from the former Park Commission. In June 1966, the County Board of Supervisors separated the administration of the Museum from the County's other parks and created the Museum Commission. The County Legislature is the successor to the Board of Supervisors and it appoints the members of the Museum Commission. In operation, the Museum Commission appears to serve as a liaison between the County Legislature and the Museum's Board of Trustees. The Museum Commission is also, however, the device through which members of the Museum's Board of Trustees are appointed. The members of the Museum Commission themselves constitute the Museum's Board of Trustees. The trustees serve staggered four-year terms, may not hold public office or appointment and are not subject to removal by the County.<sup>1/</sup>

Through its exceptions, Local 342 argues to us, as it did to the Director, that we have jurisdiction over this petition on any of the following alternative theories:

1. The Museum is the sole public employer;
2. The County is the sole public employer;
3. The Museum and the County are the joint public employer.

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<sup>1/</sup>The Board of Regents or the Board of Trustees may remove a trustee for specified cause pursuant to Education Law §§226.4 and 226.8.

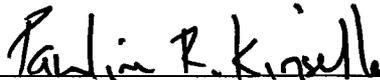
Having reviewed the record and the parties' arguments, we conclude that additional information is necessary before we can address Local 342's jurisdictional theories. On remand, the Administrative Law Judge assigned by the Director is instructed to obtain the following:

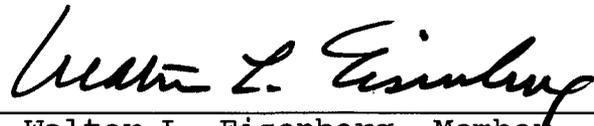
1. A copy of the will of the late William K. Vanderbilt and any trust instruments;
2. Information clarifying the precise nature of the County's ownership of the several types of Museum property;
3. Information clarifying the exact role and function of the Museum Commission and the Museum's Board of Trustees regarding the Museum's operations, including the legal and working relationship between the two;
4. A representative sample of minutes of meetings held by the Museum Commission and the Museum's Board of Trustees;
5. Information as to whether the Museum is a tax-exempt entity under §501(c)(3) of the Internal Revenue Code.

In addition to the above, the Director may consider any other information or documents which may be relevant to the disposition of the jurisdictional questions before us.

The case is, therefore, remanded to the Director for the acquisition of the additional documents and information and for such subsequent decision by the Director as is then appropriate.

DATED: November 13, 1991  
Albany, New York

  
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Pauline R. Kinsella, Chairperson

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

  
\_\_\_\_\_  
Eric J. Schmertz, Member

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of

BUFFALO POLICE BENEVOLENT ASSOCIATION,

Charging Party,

- and -

Case No. U-10944

CITY OF BUFFALO,

Respondent.

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WYSSLING, SCHWAN & MONTGOMERY (W. JAMES SCHWAN of  
counsel), for Charging Party

SAMUEL F. HOUSTON, CORPORATION COUNSEL (DAVID F. MIX,  
of counsel), for Respondent

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by the Buffalo Police Benevolent Association, Inc. (PBA) to a decision by an Administrative Law Judge (ALJ). The ALJ dismissed the PBA's charge against the City of Buffalo (City) which alleges that the City violated §209-a.1(d) of the Public Employees' Fair Employment Act (Act) when it unilaterally transferred work exclusive to PBA's unit to nonunit report technicians.

In cross-exceptions, the City objects only to the ALJ's ruling which denied it an opportunity to call any witnesses at the last day of hearing other than the one whose illness on the preceding hearing date necessitated an adjournment.

The ALJ held that precinct desk duty was not work exclusive to the PBA's unit because report technicians had been assigned

that duty at several of the City's precinct houses for years, at times working the desk alone.

In urging us to reverse the ALJ's decision, the PBA first argues that no nonunit personnel have ever done desk duty in eight of the City's fourteen precincts. The PBA submits that each precinct represents a discernible boundary<sup>1/</sup> to the unit work and, therefore, that it has maintained exclusivity over desk duty at these eight precinct houses.

Assuming that the record can be read to establish that no nonunit personnel have been assigned to desk duty in eight of the City's precincts until the May 1989 order in issue, we do not agree that there is a discernible boundary to unit work which can be drawn along precinct lines. Although geographic location can be a component part of the definition of unit work, in the cases in which we recognized this as a relevant factor,<sup>2/</sup> there was a relationship between the work location and the duties of the job as performed at those locations. There is no evidence in this record to even suggest that desk duty varies by precinct in any substantial and material respect.<sup>3/</sup> We hold, therefore, that in this case desk duty is the unit work to which the exclusivity inquiry attaches.

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<sup>1/</sup>See generally Town of West Seneca, 19 PERB ¶3028 (1986).

<sup>2/</sup>See, e.g., City of Rochester, 21 PERB ¶3040 (1988), conf'd, 155 A.D.2d 1003, 22 PERB ¶7035 (4th Dep't 1989); Hudson City School Dist., 24 PERB ¶3039 (October 8, 1991).

<sup>3/</sup>See County of Nassau, 21 PERB ¶3038 (1988).

This brings us to PBA's second contention, that the desk duty assignments on and after May 1989 are different from those given to the nonunit employees prior to that date because the report technicians had rarely worked the desk alone before.

In response to this contention, it must first be noted that the precinct report technicians do not always work desk duty alone pursuant to the May 1989 order. To the contrary, it appears that they are often paired at the desk with a sworn officer, particularly in the busier precinct houses. When working with a sworn officer, there is no breach of the PBA's exclusivity in the City's assignment of a report technician to precinct desk duty because that is a usage consistent with the City's practice before 1989.

We also find no violation in the assignment of a report technician to unsupervised precinct desk duty. The record is unclear regarding the exact frequency with which report technicians were assigned to unsupervised desk duty before and after the May 1989 order, although it appears the City thereafter increased the rate of utilization of report technicians for unsupervised desk duty. We find the rate of utilization immaterial<sup>4/</sup> to the exclusivity inquiry in this case because, as with the several precinct houses, we once again do not see any

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<sup>4/</sup>See also New York City Transit Auth., 20 PERB ¶3025 (1987). In that case, we held that a union does not reestablish exclusivity over unit work previously performed on a limited basis by nonunit employees even if the employer increases the rate of utilization of the nonunit personnel.

evidence that the job duties of the report technicians varied according to whether they worked the desk alone or with a sworn officer. Without a change in job duties, whether a report technician works the desk alone or with a sworn officer, implicates only managerial decisions involving an assessment of necessary job qualifications and a determination of particular supervisory needs, neither of which triggers a bargaining obligation.

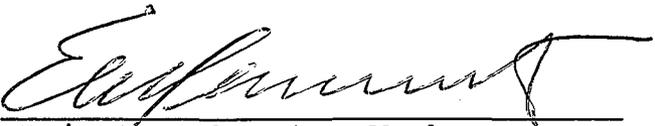
For the reasons set forth above, the PBA's exceptions are denied and the ALJ's decision is affirmed. Therefore, we do not reach the City's exception.

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

DATED: November 13, 1991  
Albany, New York

  
\_\_\_\_\_  
Pauline R. Kinsella, Chairperson

  
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Walter L. Eisenberg, Member

  
\_\_\_\_\_  
Eric J. Schmertz, Member

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of

UTICA PROFESSIONAL FIREFIGHTERS  
ASSOCIATION, LOCAL 32, IAFF, and  
ERNEST DURSE,

Charging Parties,

-and-

CASE NO. U-11701

CITY OF UTICA,

Respondent.

---

GLEASON, DUNN, WALSH & O'SHEA (RONALD G. DUNN of  
counsel), for Charging Parties

ALBERT A. ALTERI, CORPORATION COUNSEL (ARMOND J.  
FESTINE of counsel), for Respondent

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by the Utica Professional Firefighters Association, Local 32, IAFF (Association) and Ernest Durse to a decision by an Administrative Law Judge (ALJ). The ALJ dismissed the Association's charge, filed with and on behalf of Durse, which alleges that the City of Utica (City) violated §209-a.1(a) and (c) of the Public Employees' Fair Employment Act (Act) when it transferred Durse in February 1990 from platoon 4 to platoon 2 within the same engine company. The ALJ dismissed the charge because he found that the Association had not proved that Durse was transferred in retaliation for his successful pursuit during 1988 of a different

improper practice charge against the City, which also involved an involuntary change of Durse's work assignment.<sup>1/</sup>

The Association argues under its exceptions that the ALJ's decision was based upon an "inaccurate and omissive application of the facts" which, the Association contends, establish a prima facie violation of the Act, a violation unrebutted by the City's allegedly pretextual defense that Durse was transferred because he was the least senior employee on the platoon from which he was transferred.

The City argues in response that the ALJ's decision should be affirmed because it turned on the ALJ's assessment of the weight, sufficiency and credibility of the evidence. The City also emphasizes that Durse's transfer did not adversely affect his terms and conditions of employment.

As all parties concede, the central issue in this case is whether Durse was transferred because he pursued the earlier improper practice charge against the City. If so, that Durse's platoon transfer did not negatively affect his terms and conditions of employment is not dispositive of the issue in the City's favor. The relative harm to the employee can be relevant to the ordinarily necessary inquiry into the employer's

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<sup>1/</sup>City of Utica, 21 PERB ¶3066, aff'g 21 PERB ¶4580 (1988). In that case, we affirmed the Assistant Director's determination that the Association had satisfied its burden of proof in establishing a prima facie case of discrimination which was not rebutted by the City. We held there that Durse was transferred to a new job assignment because he had filed and pursued a contract grievance.

motivation for the decision in issue. However, employment related action, which would not have been taken "but for" the exercise of a protected right violates the Act. In this case, moreover, Chief Robert Manfredo, who made the decision to transfer Durse, knew that the transfer would affect Durse's vacation group and that he would no longer be working regularly with the same employees, at least one of whom Manfredo knew to be Durse's good friend. Although Durse's wages and benefits were otherwise unaffected by his transfer, Manfredo knew from these and other circumstances that Durse did not want to be transferred and this alone made the transfer adverse to Durse's interests.

As is often the case with interference and discrimination cases, the Association's proof of its allegations was largely circumstantial. Although its proof was sufficient to avoid a dismissal on motion by the City at the close of the Association's direct case, the ALJ concluded that the Association had not established a violation of the Act. Having carefully reviewed the record, we affirm the ALJ's decision. Although the record brings the City's motivation into question, we are not persuaded, as we were in the earlier charge involving Durse's assignment, that the Association satisfied its burden of proof.

Part of the Association's proof consisted of statements made to Durse by the City's Deputy Fire Chiefs, Andre Espisito and John Dooley, some of which were made while Durse's earlier charge was still pending and another which was made after his platoon

transfer. In these respects, the ALJ did not, as the Association suggests, conclude that these arguably threatening statements were not made or that Durse's recollection of them should not be credited.<sup>2/</sup> Rather, he found only that the statements could not be linked to Manfredo, who was solely responsible for the decision to transfer Durse.

The Association would have us attribute the statements to Manfredo because the Deputy Chiefs are part of the City's management team with whom Manfredo consults frequently. From this consultation, however, we cannot conclude that Manfredo told his deputies to make the specific statements they made, that he ratified them, or that he otherwise condoned those statements in whole or in part. We concur with the ALJ, therefore, that these statements cannot be attributed to Manfredo.

In two other respects, the Association sought to implicate Manfredo directly in an alleged ongoing pattern of harassment directed against Durse.

Durse was twice excluded from the distribution of monies collected by an organization independent of the City because his name was not on the distribution list, an omission allegedly caused by Manfredo. The ALJ, however, credited Manfredo's

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<sup>2/</sup>The statements are offered only as proof of the City's improper motivation for the transfer. The Association does not allege that the statements themselves violated the Act and, therefore, we have no occasion to consider that issue. Although the statements may have been actionable as improper threats, that does not mean that they necessarily establish or evidence an improper motive for the City's decision to transfer Durse.

testimony that he was not at all involved in the creation of the distribution list and the record affords us no basis on which to disturb this credibility finding.

The second incident involved Manfredo's statement in September 1990, several months after Durse had been transferred to platoon 2, that "AWOL" charges would be brought against Durse for his absence from work during the preceding summer. The ALJ found little probative value in this statement given its timing and that disciplinary charges were never brought against Durse. We can place no greater value upon it in assessing whether the earlier platoon transfer was improperly motivated.

The Association also relies upon the several other ways Manfredo could have staffed platoon 2 other than to have transferred Durse from his preferred platoon. The ALJ did not discredit Manfredo's testimony that he wanted to equalize the platoon strength within engine company 4 and we are unable to do so on this record. Therefore, that there were a number of different ways by which Manfredo could have brought in personnel from outside engine company 4 to equalize the platoon staffing within that company becomes immaterial.<sup>3/</sup> Moreover, we cannot accept as a general proposition that an employer's chosen means

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<sup>3/</sup>As the Association noted during the hearing and in its exceptions and brief, Manfredo, for example, could have taken fire fighters who had earlier volunteered for transfer to engine company 4, he could have solicited other volunteers from outside that company or he could have involuntarily transferred fire fighters with less departmental seniority than Durse.

for the implementation of a managerial decision is necessarily retaliatory against any affected individual simply because the decision could have been implemented in other ways.

This brings us to a consideration of the Association's main claim that Manfredo's application of platoon seniority was pretextual because, according to the Association, by contract and practice only departmental seniority is recognized for transfer purposes. On this basis, the Association argues that fire fighter Mancuso should have been transferred from platoon 4 to platoon 2 because he has less departmental seniority than Durse.

Interference and discrimination allegations can be supported or established in appropriate circumstances by an employer's articulation of a reason for taking an action if that reason is subsequently found to be pretextual. In this case, proper application of this general principle would necessitate proof which would permit us to conclude both that involuntary transfers are controlled only by departmental seniority and that Manfredo knew or should have known that departmental seniority controlled and deliberately disregarded it in transferring Durse. As the ALJ noted, it is not enough to establish a violation of the Act that a court or an arbitrator might find Durse's transfer to have breached the contract.

We have carefully examined the Association's allegations in this particular respect and, having reviewed the record, we find no basis on which to reverse the ALJ. The record reflects

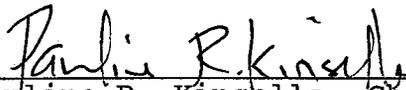
Manfredo's belief that he is not required to use only departmental seniority when making an involuntary transfer and nothing in the contract or the City's practice is inconsistent with that belief. Although the record may not prove that Manfredo had used in-house seniority on other involuntary transfers, neither does it prove that departmental seniority was used exclusively for that purpose. That the contract does not refer to in-house or platoon seniority and that there are no records tracking that type of seniority does not mean that in-house seniority either cannot or had not been applied to the involuntary transfers of personnel in the past.

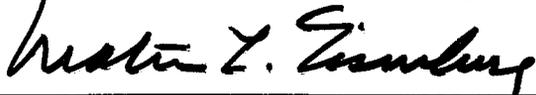
Our conclusion that the ALJ's decision must be affirmed is all the more compelled by recognition of the fact that Manfredo requested volunteers from platoon 4 for transfer to platoon 2 before he picked Durse for involuntary transfer. Nothing in this record suggests that Manfredo would not have transferred any volunteer from platoon 4. Nor does the record show that Manfredo knew when he asked for volunteers that nobody from platoon 4 would volunteer for transfer and made the offer with that knowledge to provide himself with a defense if Durse should later protest his transfer.

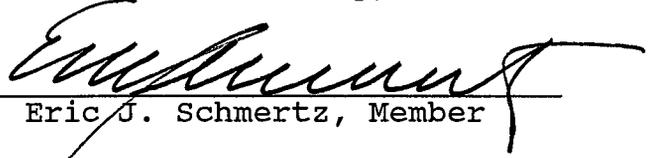
For the reasons set forth above, and those in the ALJ's decision which are consistent with our decision, we deny the Association's exceptions and affirm the ALJ's decision.

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

DATED: November 13, 1991  
Albany, New York

  
\_\_\_\_\_  
Pauline R. Kinsella, Chairperson

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

  
\_\_\_\_\_  
Eric J. Schmertz, Member

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of

BROOKFIELD TEACHERS' ASSOCIATION,  
NEA/NY,

Charging Party,

- and -

Case No. U-12003

BROOKFIELD CENTRAL SCHOOL DISTRICT,

Respondent.

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In the Matter of

MADISON CENTRAL SCHOOL TEACHERS'  
ASSOCIATION, NEA/NY,

Charging Party,

- and -

Case No. U-12004

MADISON CENTRAL SCHOOL DISTRICT,

Respondent.

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In the Matter of

MORRISVILLE-EATON FACULTY ASSOCIATION,  
NEA/NY,

Charging Party,

- and -

Case No. U-12005

MORRISVILLE-EATON CENTRAL SCHOOL DISTRICT,

Respondent.

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Board - U-12003, U-12004, U-12005, U-12006,  
U-12007, U-12221, U-12224, U-12260

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In the Matter of

MORRISVILLE-EATON SUPPORT PERSONNEL  
ASSOCIATION, NEA/NY,

Charging Party,

- and -

Case No. U-12006

MORRISVILLE-EATON CENTRAL SCHOOL DISTRICT,

Respondent.

---

In the Matter of

STOCKBRIDGE VALLEY TEACHERS'  
ASSOCIATION, NEA/NY

Charging Party,

- and -

Case No. U-12007

STOCKBRIDGE VALLEY CENTRAL SCHOOL DISTRICT,

Respondent.

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In the Matter of

MADISON CENTRAL SCHOOL DISTRICT  
TEACHERS' ASSOCIATION, NYSUT/AFT,

Charging Party,

- and -

Case No. U-12221

MADISON CENTRAL SCHOOL DISTRICT,

Respondent.

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Board - U-12003, U-12004, U-12005, U-12006,  
U-12007, U-12221, U-12224, U-12260

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In the Matter of

MADISON CENTRAL SCHOOL DISTRICT  
NON-INSTRUCTIONAL EMPLOYEES ASSOCIATION,  
NYSUT/AFT, #4512,

Charging Party,

- and -

Case No. U-12224

MADISON CENTRAL SCHOOL DISTRICT,

Respondent.

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In the Matter of

MADISON-ONEIDA BOCES TEACHERS' ASSOCIATION,  
NYSUT,

Charging Party,

- and -

Case No. U-12260

MADISON-ONEIDA BOCES,

Respondent.

---

ROBERT CLEARFIELD, ESQ. (JANET AXELROD of counsel), for Charging  
Parties in U-12003, U-12005, U-12006 & U-12007

HELEN W. BEALE, for Charging Parties in U-12004, U-12221 & U-12224

DANIEL J. MAHONEY, for Charging Party in U-12260

SCOLARO, SCHULMAN, COHEN, LAWLER & BURSTEIN, P.C. (BENJAMIN J.  
FERRARA of counsel), for Respondents in U-12003 and U-12260

HANCOCK & ESTABROOK (MARTHA L. BERRY of counsel), for Respondents  
in U-12004, U-12007, U-12221 & U-12224

NODELL & JONES (STEVEN R. JONES of counsel), for Respondent in  
U-12005 & U-12006

HARTER, SECREST & EMERY (JAMES P. BURNS, 3rd and SARAH LEWIS  
BELCHER of counsel), for the Madison-Oneida-Herkimer Consortium

BOARD DECISION ON MOTION

This case comes to us on exceptions<sup>1/</sup> to a ruling by the Assistant Director of Public Employment Practices and Representation (Assistant Director) on a motion to intervene in the above-captioned improper practice charges filed by the Madison-Oneida-Herkimer Consortium (Consortium). The Assistant Director denied the motion on the ground that the Consortium is not a public employer and, therefore, that it has no standing to intervene under §204.5 of our Rules which permits a motion to intervene only by "[o]ne or more public employees, an employee organization acting in their behalf, or a public employer . . . ."

The Consortium is a municipal joint venture formed under Article 5-G of the General Municipal Law to provide and administer a self-funded health program for its joint venture members. Some of the joint venture members of the Consortium are the public employers which are the named party respondents to the improper practice charges. These public employers have allegedly implemented certain changes in the health program which the Consortium alleges were mandated by the joint venture.

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<sup>1/</sup>These exceptions are before us pursuant to §204.7(h) of our Rules of Procedure which permits us to authorize exceptions to interlocutory rulings. We authorize these exceptions because the Consortium's status as a party to these proceedings should be decided before the improper practice charges are processed to completion.

In support of its motion, the Consortium argues that it is a public employer as defined in §201.7(vi)<sup>2/</sup> of the Public Employees' Fair Employment Act (Act), that it, therefore, has standing to seek intervention, that it has a significant interest in the improper practice proceedings which will be prejudiced if intervention is denied and that the rights of the other parties will not be prejudiced by its intervention. The motion is opposed by the representatives for most of the charging parties, although not opposed by representatives of several of the respondents.

Having reviewed the papers submitted in support of the Consortium's exceptions, and those in opposition to the motion, we hold that the Assistant Director properly denied the motion. In reaching our conclusion, we find it unnecessary to decide whether the Consortium is a public employer. Assuming that it is, we find that there is not sufficient reason to permit the Consortium to intervene.

The interests of the Consortium and the named public employers under the improper practice charges are substantially similar, if not identical. The Consortium itself alleges that it and the named public employers espouse the same legal position. The Consortium will not be liable for a violation of the Act should a violation be found. That the Consortium's ability to do business may be affected if a violation of the Act is found is not a ground

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<sup>2/</sup>That subsection of the Act defines a public employer as "any other public corporation, agency or instrumentality or unit of government which exercises governmental powers under the laws of the state."

sufficient to warrant its intervention. If that ground were sufficient, a large number of persons or organizations such as private corporations in subcontracting cases or insurance carriers in cases such as these now before us would be entitled to intervene in our proceedings. We find that the purposes and policies of the Act are not fostered by such an open-ended opportunity for intervention. If, as the Consortium suggests, any of the charging parties argue that the Consortium is only the alter ego of the school districts, there is nothing to prevent the named respondents from calling witnesses from the Consortium or the members of the Consortium's Board of Directors to establish the Consortium's status as a separate legal entity to the extent that issue is material and relevant to a disposition of the improper practice charges. Thus, the Consortium's limited purpose for intervention can be readily satisfied by the named respondents. To add yet another party to a multiparty proceeding would unnecessarily complicate an already complex litigation. As the granting of a motion to intervene rests in our discretion, and finding insufficient cause favoring intervention, we deny the Consortium's motion.

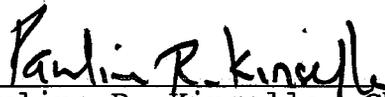
For the reasons set forth above, the Assistant Director's ruling denying the Consortium's motion to intervene is affirmed.

Board - U-12003, U-12004, U-12005, U-12006,  
U-12007, U-12221, U-12224, U-12260

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Therefore, IT IS HEREBY ORDERED that the Consortium's motion to intervene be, and it hereby is, denied.

DATED: November 13, 1991  
Albany, New York

  
\_\_\_\_\_  
Pauline R. Kinsella, Chairperson

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

  
\_\_\_\_\_  
Eric J. Schmertz, Member

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of

The Petition of PABLO LARA  
to Review Decision No. B-47-91 of the  
Board of Collective Bargaining of the City  
of New York

CASE NO. N-0004

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PABLO LARA, pro se

BOARD DECISION AND ORDER

By decision dated October 23, 1991, the Board of Collective Bargaining (BCB) of the City of New York's Office of Collective Bargaining (OCB) issued a decision dismissing an improper practice petition filed by Pablo Lara (petitioner) against the City of New York (City). The petitioner alleged that the City violated his rights under the New York City Collective Bargaining Law (NYCCBL) by permitting supervisory employees to hold positions as officers in Social Service Employees Union, Local 371, petitioner's bargaining agent. Affirming a decision by its Executive Secretary, the BCB held that nothing in the NYCCBL prohibited either mixed units of supervisory and nonsupervisory employees or supervisory employees in such units from being officers of the unions representing those units.

The petitioner has filed a petition with us to review BCB's decision.

Our jurisdiction to review an improper practice decision by BCB is granted by §205.5(d) of the Public Employees' Fair

Employment Act (Act).<sup>1/</sup> As we have interpreted that section of the Act,<sup>2/</sup> we may review BCB's decisions in improper practice cases only for substantive consistency with our own decisions. We do not assert jurisdiction over any alleged procedural improprieties by BCB as these matters are properly considered on judicial review of BCB's decision under Civil Practice Law and Rules Article 78.

It is unclear whether the petitioner alleges to us that BCB should have considered certain additional facts in reaching its decision. If so, we do not assert jurisdiction because that allegation involves only an arguable procedural error by BCB. Alternatively, the petitioner does not specifically allege any substantive inconsistency between BCB's decision and our own

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<sup>1/</sup>Section 205.5(d) of the Act provides in relevant part that:

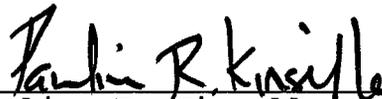
[A] party aggrieved by a final order issued by the board of collective bargaining in an improper practice proceeding may, within ten days after service of the final order, petition the board for review thereof. Within twenty days thereafter, the Board, in its discretion, may assert jurisdiction to review such final order .... If the board shall choose to review, it may affirm, or reverse in whole or in part, or modify the final order, or remand the matter for further proceedings, or make such other order as it may deem appropriate, provided, however, that findings by the board of collective bargaining regarding evidentiary matters and issues of credibility regarding testimony of witnesses shall be final and not subject to board review.

<sup>2/</sup>In re Petition of Organization of Staff Analysts, 17 PERB ¶3114 (1984) and 18 PERB ¶3067 (1985).

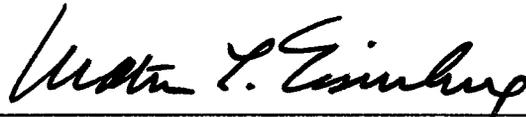
decisions and, having reviewed BCB's decision and the arguments set forth in petitioner's petition to us, we find no substantive inconsistency.

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

DATED: November 13, 1991  
Albany, New York



Pauline R. Kinsella, Chairperson



Walter L. Eisenberg, Member



Eric J. Schmertz, Member

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of

GENESEE COMMUNITY COLLEGE EDUCATIONAL  
SUPPORT PERSONNEL ASSOCIATION, NEA/NY,

Petitioner,

-and-

CASE NO. C-3542

GENESEE COMMUNITY COLLEGE and COUNTY OF  
GENESEE,

Joint Employer,

-and-

GENESEE COLLEGE EMPLOYEE'S UNIT, LOCAL 819,  
CIVIL SERVICE EMPLOYEES ASSOCIATION,  
LOCAL 1000, AFSCME, AFL-CIO,

Intervenor.

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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 Genesee Community College Educational Support Personnel Association, NEA/NY 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 regular employees of the County of Genesee and Genesee Community College in the following titles: Automotive Mechanic, Building Maintenance Mechanic, Campus Environmental Safety Officer, Campus Security Officer, Cleaner, Clerk-Typist, Computer Operator, Computer Repair Technician, Custodial Worker, Financial Records Control Clerk, Groundskeeper, Principal Clerk, EOC Courier, Receptionist, Reproduction Services Operator, Records Clerk, Secretary, Senior Account Clerk, Senior Campus Security officer, Senior Clerk, Senior Custodial Worker, Senior Groundskeeper, Senior Information Processing Specialist, Senior Reproduction Services Operator, Senior Stenographer, Stock Clerk, Audio Visual Aide, Senior Library Clerk, Building Maintenance Foreman, Library Clerk and Television Production Technician.

Excluded: All other employees of the Genesee Community College.<sup>1/</sup>

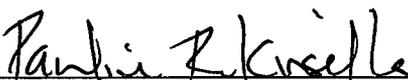
FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Genesee Community College Educational Support Personnel Association, NEA/NY. The duty to negotiate collectively includes the mutual obligation to meet at reasonable times and confer in good faith with respect 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

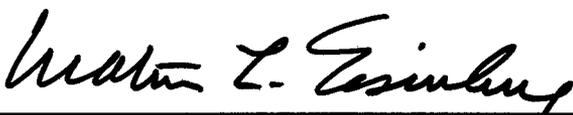
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<sup>1/</sup> The unit description reflects changes, made with the concurrence of the parties, in the unit defined by the Director of Public Employment Practices and Representation [23 PERB ¶4068, at 4113 (1990)].

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: November 13, 1991  
Albany, New York

  
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Pauline R. Kinsella, Chairperson

  
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Walter L. Eisenberg, Member

  
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Eric S. Schmertz, Member

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of

CLINTON-ESSEX-WARREN-WASHINGTON BOCES  
UNITED TEACHERS, NYSUT, AFT,

Petitioner,

-and-

CASE NO. C-3709

CLINTON-ESSEX-WARREN-WASHINGTON BOCES,

Employer,

-and-

CLINTON-ESSEX-WARREN-WASHINGTON BOCES  
EDUCATION ASSOCIATION, NEA/NY,

Intervenor.

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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,

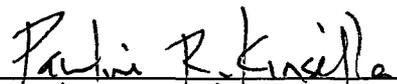
IT IS HEREBY CERTIFIED that the Clinton-Essex-Warren-Washington BOCES United Teachers, NYSUT, AFT has been designated and selected by a majority of the employees of the above-named public employer, in the unit found to be appropriate and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

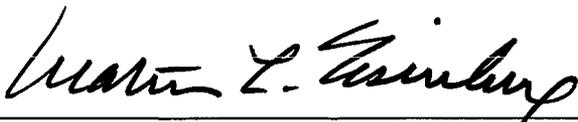
Unit: Included: All full-time and part-time teachers, teaching assistants, registered nurses, social workers, school psychologists, guidance counselors, work study counselors, training specialists, coordinator-gifted and talented, coordinator-school library system, occupational therapists, occupational therapist assistants, physical therapists, physical therapist assistants and interpreters for the deaf (sign language interpreters).

Excluded: All other employees.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Clinton-Essex-Warren-Washington BOCES United Teachers, NYSUT, AFT. 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: November 13, 1991  
Albany, New York

  
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Pauline R. Kinsella, Chairperson

  
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Walter L. Eisenberg, Member

  
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Eric J. Schmertz, Member

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of

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

Petitioner,

-and-

CASE NO. C-3858

LARCHMONT PUBLIC LIBRARY,

Employer.

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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,

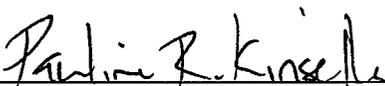
IT IS HEREBY CERTIFIED that the Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for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

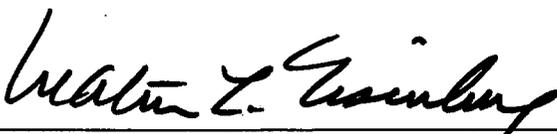
Unit: Included: All part-time and full-time employees regularly employed in librarian, clerical and custodial positions.

Excluded: The Director, summer and seasonal employees, and pages.

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: November 13, 1991  
Albany, New York

  
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Pauline R. Kinsella, Chairperson

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

  
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Eric J. Schmertz, Member

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of

WARREN COUNTY DEPUTY SHERIFF'S BENEVOLENT  
ASSOCIATION,

Petitioner,

-and-

CASE NO. C-3848

COUNTY OF WARREN,

Employer,

-and-

CIVIL SERVICE EMPLOYEES ASSOCIATION, AFSCME,  
AFL-CIO,

Intervenor.

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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,

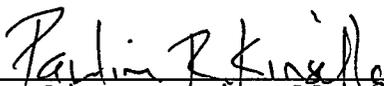
IT IS HEREBY CERTIFIED that the Warren County Deputy Sheriff's Benevolent Association has been designated and selected by a majority of the employees of the above-named public employer, in the unit found to be appropriate and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: All employees in the Sheriff's Department of the County of Warren.

Excluded: Sheriff, Undersheriff, Major, Patrol Officer - Part-time, Special Patrol Officer, Patrol Officer - Seasonal, Court Attendants, Correction Officer - Part-time.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Warren County Deputy Sheriff's 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: November 13, 1991  
Albany, New York

  
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Pauline R. Kinsella, Chairperson

  
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Walter L. Eisenberg, Member

  
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Eric S. Schmertz, Member