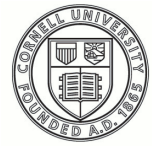
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Board Decisions - NYS PERB

New York State Public Employment Relations Board (PERB)

3-17-1992

State of New York Public Employment Relations Board Decisions from March 17, 1992

New York State Public Employment Relations Board

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State of New York Public Employment Relations Board Decisions from March 17, 1992

Keywords
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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

JAMESTOWN PROFESSIONAL FIREFIGHTERS ASSOCIATION, LOCAL #1772, AFL-CIO,

Petitioner,

-and- **CASE NO. CP-204**

CITY OF JAMESTOWN,

Employer.

LOMBARDI, REINHARD, WALSH & HARRISON, P.C. (THOMAS J. JORDAN of counsel), for Petitioner

DONALD E. LYNN, ESQ., for Respondent

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by the Jamestown Professional Firefighters Association, Local #1772, AFL-CIO (Local 1772) to a decision by the Director of Public Employment Practices and Representation (Director) rendered on a unit placement petition involving four assistant chiefs employed by the City of Jamestown (City). The assistant chiefs had been removed from Local 1772's unit on their designation as managerial in 1986.[1/] Local 1772 seeks by this petition to return the assistant chiefs to its unit because they allegedly have not performed managerial duties since the positions were designated managerial.

[1/] City of Jamestown, 19 PERB ¶3019 (1986).

After an investigation, which included a hearing, the Director dismissed the petition. He concluded that the continued managerial designation of all the assistant chiefs was warranted because of their involvement in cabinet meetings at which departmental policies are discussed and decided. The Director also held that Assistant Chief Charles Hajduk's responsibilities for labor contract administration and negotiation were separate grounds for his continued designation.

In its exceptions, Local 1772 argues that the Director should not have given any weight to the assistant chiefs' duties and responsibilities as assigned or performed after July 1989, when it filed the petition. Local 1772 alleges that the assistant chiefs did not and were not required to perform managerial functions until the City knew that it was seeking to return them to its unit. At that time, according to Local 1772, the City "window-dressed" the positions to make them look managerial.

The issue raised by Local 1772's unit placement petition is whether the assistant chiefs are most appropriately placed into Local 1772's unit. Therefore, we deny Local 1772's exceptions to the extent they argue that the managerial designations we made in 1986 were incorrect or that managerial designations in general should not be based upon duties reasonably required but not yet performed. Managerial status, of course, would make the assistant chiefs' placement into Local 1772's unit inappropriate,

but because it is the appropriateness of a unit including the assistant chiefs which is in issue under this petition, any proper basis for their continued exclusion from that unit would similarly necessitate dismissal of Local 1772's petition. However, as the Director premised his dismissal of the petition upon a managerial determination, as the assistant chiefs' managerial status appears to be the issue framed and litigated by the parties before the Director, and as the parties and the employees themselves have an interest in the managerial determination, we will review the Director's decision as rendered.

Local 1772 claims that between 1986 and 1989, the assistant chiefs did not have any significant managerial duties and that the post-petition assignment and assumption of such managerial duties should be disregarded. In this respect, the Director appears to have considered post-petition conduct by the assistant chiefs only when he was persuaded that the conduct was a continuation of practices predating the petition. Without suggesting that the Director was limited in the consideration of post-petition conduct to the stated circumstances, we affirm the Director's determination. Our affirmance is based only upon the assistant chiefs' participation in the cabinet meetings because this aspect of the Director's decision applies equally to all of them.

The record shows that cabinet meetings have been held regularly over the past few years, not just recently in response to Local

1772's petition. The topics of discussion at these meetings, as summarized in the Director's decision, show that the assistant chiefs, as seconds to the chief in line-of-command, regularly participate in the decision-making process by which departmental objectives and policies are formulated and implemented. Their duties in this respect make their placement into Local 1772's unit inappropriate and, therefore, the Director was correct in dismissing the petition.

For the reasons set forth above, Local 1772's exceptions are denied and the Director's decision is affirmed.

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

DATED: March 17, 1992
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

MARVIN NORMAN CASID,

Charging Party,

-and-

CASE NO. U-11508

UNITED FEDERATION OF TEACHERS, LOCAL NO. 2, AFT, AFL-CIO,

Respondent.

MARVIN NORMAN CASID, pro se

JAMES R. SANDNER, ESQ. (JAMES D. BILIK of counsel), for Respondent

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by Marvin Norman Casid to a decision by an Administrative Law Judge (ALJ). After hearing, the ALJ dismissed the charge filed against the United Federation of Teachers, Local No. 2, AFT, AFL-CIO (UFT) which alleges that the UFT violated §209-a.2(a) of the Public Employees' Fair Employment Act (Act) when it failed to keep Casid informed about the status of a medical arbitration held in response to his discharge from employment because he was determined by his employer to be mentally unfit to perform his job duties.

The ALJ found that UFT was not responsible for the medical arbitration process, but had, nonetheless, voluntarily assisted Casid in good faith throughout the process which he had invoked. The ALJ also held on a credibility resolution that Casid had not asked a UFT representative about the status of his arbitration in a

telephone conversation. The ALJ concluded that UFT cooperated with Casid throughout the medical arbitration process, shared information with him, and kept him up to date on the status of the arbitration.[1/]

As the UFT correctly observes in its response, most of Casid's exceptions are not directed to either his charge or the ALJ's decision. Instead, his statement of exceptions consists simply of personal, ethnic, religious and racial invectives directed against officers of the UFT, agents of Casid's former employer and the ALJ. To the limited extent the exceptions are relevant to the ALJ's decision, they present no basis upon which the ALJ's decision could be reversed.

The exceptions are denied, and the ALJ's decision is affirmed for the reasons stated in his decision.

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

DATED: March 17, 1992
Albany, New York

Pauline R. Kinsella, Chairperson

Walter L. Eisenberg, Member

Eric J. Schmertz, Member

[1/]The arbitration was held and the medical arbitrator upheld the employer's medical determination.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

PUBLIC EMPLOYEES FEDERATION, AFL-CIO,

Charging Party,

-and-

CASE NO. U-9495

STATE OF NEW YORK (DEPARTMENT OF SOCIAL SERVICES),

Respondent.

JAMES P. KEMENASH, for Charging Party

WALTER J. PELLEGRINI, GENERAL COUNSEL (RICHARD W. MC DOWELL of Counsel), for Respondent

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by the Public Employees Federation, AFL-CIO (PEF) to a decision by an Administrative Law Judge (ALJ) issued after a hearing. The ALJ dismissed PEF's charge against the State of New York (Department of Social Services) (State) which alleges that the State violated §209-a.1(a), (b) and (c) of the Public Employees' Fair Employment Act (Act) by restricting a PEF steward's access to unit employees at the worksite and by pressuring or advising a unit employee to circulate among other unit employees a petition seeking that steward's removal from union office.

The State in 1987 denied Marilyn Trudell, a PEF steward and State employee, access to the fifth floor in the building in which she worked and in which she served as a PEF steward.

Trudell had earlier sued three employees with whom she worked alleging sexual and religious harassment and discrimination. Based upon concerns that the lawsuit could be disruptive at the workplace, the State instructed Trudell and the named individual defendants to restrict their presence on each other's floors to State business activities only. Trudell's steward duties involving employees on the fifth floor were to be "conducted on a floor other than 5."

The ALJ held that Trudell's restricted access to the fifth floor was neither per se improper nor improperly motivated. On the per se theory, the ALJ held that Trudell did not have a statutory right of access to the fifth floor of her building because there was no showing that access to that particular floor was necessary to properly serve the needs of any unit employees. On the second theory of liability, the ALJ credited the State's witnesses who testified that their sole motivation for restricting Trudell's access to the fifth floor was to avoid a possible confrontation between Trudell and any of the employees named in her lawsuit.

As to the aspect of the charge which alleges that the State instigated a petition drive to remove Trudell from her PEF stewardship, the ALJ held that there was inadequate credible evidence to establish that the State was responsible for the circulation of the petition.

PEF in its exceptions objects generally to each of the ALJ's conclusions, advancing to us essentially the same facts and arguments as were presented to the ALJ. Having read the record and the exceptions, we find no basis to reverse or modify the ALJ's findings of fact or law. We, therefore, affirm the ALJ's decision for the reasons stated by her.

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

DATED: March 17, 1992
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

THOMAS CONDE,

Charging Party,

-and- **CASE NO. U-12497**

SUFFOLK COUNTY BOCES III,

Respondent.

THOMAS CONDE, pro se

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by Thomas Conde to a decision by the Director of Public Employment Practices and Representation (Director) dismissing his charge against the Suffolk County BOCES III (BOCES) as legally and factually deficient. The charge alleges that BOCES violated the Public Employees' Fair Employment Act (Act) when it discharged him from employment.

The Director dismissed the charge because it failed to plead any facts which would establish that BOCES discharged him for reasons which would violate the Act and as untimely because the discharge of which he complained occurred more than four months before the charge was filed.

Conde's exceptions do not address the first basis for the Director's decision. Instead, Conde argues only that the BOCES did not have valid reasons to discharge him and he asks us to

find out why the BOCES took the actions it did, beginning with the elimination of his teaching program in 1988.

PERB's jurisdiction, in relevant part, is limited to deciding whether an employment action was taken for a reason which the Act makes an improper basis for decision, usually some form of union-related activity. Without allegations of fact sufficient to bring a charge within our jurisdiction, we may not decide whether an employment action was well reasoned or violative of an individual's other contractual, statutory, administrative or constitutional rights. For example, Conde claims that one of the reasons BOCES terminated him was because health care for his family was too expensive. However, even if shown, that would not establish a basis for a finding of violation under the Act. Moreover, we do not investigate a party's allegations, even those over which we have jurisdiction. It is the charging party's obligation to plead and prove a case and to do whatever investigation is considered to be necessary.

Conde has filed exceptions to the Director's determination that his charge was untimely because it concerned a discharge from employment which took place in June 1990. Conde argues that his charge should be considered timely because he first began his contacts with PERB in June 1990 and because he was unaware that charges must be filed within four months of the conduct alleged to be improper.[1/]

[1/]Rules of Procedure (Rules), §204.1(a)(1).

As to Conde's first argument, the timeliness of a charge is measured from the date on which it is filed with us. The charge in this case, which is the only matter before us, was filed on May 8, 1991. Therefore, the charge cannot be made timely based upon other types of contacts with the agency prior to the filing date of the charge.

As to Conde's second argument, the Director correctly observed that a party's ignorance of the four-month limitation period does not suspend its applicability. A party who is ignorant of a requirement under the Rules is no differently situated than a person who is mistaken in his or her understanding of the meaning or application of the Rules. We have consistently refused to suspend application of the four-month rule in the latter circumstance[2/] and the same timeliness disposition should be made in the former circumstance.

Conde's timeliness arguments are not aided by the allegation in his exceptions that no one in his union or on PERB's staff with whom he had contact told him about the four-month period for filing charges. Conde's allegation against the BOCES cannot be made timely by the alleged failure by either his union or a PERB staff member to volunteer information to him. To do so would prejudice the BOCES for the conduct of others.

[2/]See, e.g., New York City Transit Auth., 10 PERB ¶3077 (1977) (mistaken belief that contract grievance extends filing period for charge); Board of Educ. of the City School Dist. of the City of New York, 15 PERB ¶3050 (1982) (mistaken belief that filing period runs from first discovery of improper motivation).

For the reasons set forth above, the exceptions are denied and the Director's decision is affirmed.

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

DATED: March 17, 1992
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

RICHARD W. GLASHEEN,

Charging Party,

-and-

CASE NO. U-12230

COUNTY OF SUFFOLK and SUFFOLK COMMUNITY COLLEGE,

Respondents.

RICHARD W. GLASHEEN, pro se

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by Richard W. Glasheen to the dismissal, without hearing, of his improper practice charge against the County of Suffolk (County) and Suffolk Community College (College), which alleges a violation of §209-a.1(a) and (b) of the Public Employees' Fair Employment Act (Act).

Glasheen is the College Director of Facilities and an Associate Professor of Administrative Services. The charge as filed alleges that the then-president of the College, Robert T. Kreiling, negotiated Glasheen's disciplinary transfer from one campus to another with Charles Novo, then the president of the Suffolk County Association of Municipal Employees (AME), an employee organization other than Glasheen's bargaining agent.

Glasheen was notified that his charge was deficient because no facts were pleaded to establish that his transfer was negotiated as he claimed or that his transfer otherwise violated

his rights under the Act. After receipt of three amendments constituting Glasheen's response to the noted deficiencies,[1/] the Director of Public Employment Practices and Representation (Director) dismissed the charge for the reasons previously given to Glasheen in the letter notifying him of the deficiencies in his charge.

Glasheen's exceptions consist of an "expanded explanation" of the charge, a document captioned "deposition", which he had filed with the Director as an amendment, and a motion for a declaratory judgment that the College's board of trustees is the sole employer, under the Act, of individuals working in professional and nonprofessional capacities at the College.

We affirm the Director's decision to dismiss Glasheen's charge for the reasons stated below.

Glasheen's allegations make it clear that whatever discussions about Glasheen which may have occurred between AME and the College arose only in the context of AME's representation of the employees in its unit. AME represents a unit which includes individuals working under Glasheen's supervision, several of whom felt aggrieved by certain actions Glasheen had taken in his position with the College. The College and AME have a mutual right under the Act to negotiate unit employees' terms

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[1/]Glasheen also attempted on April 24, 1991 to add AME as a respondent, but he subsequently withdrew that request to amend.

and conditions of employment and to resolve their grievances.[2/] There is no claim that the communications between the College and AME related to any purposes other than the representation of AME unit employees' interests. Thus, even if, as Glasheen alleges, the communications between the County and AME may have affected Glasheen's employment relationship, that circumstance alone does not constitute improper interference with Glasheen's rights under §209-a.1(a) of the Act or improper support of AME under §209-a.1(b) of the Act.[3/] That Glasheen considers AME's complaints to be inaccurate, its threatened grievance against the College meritless, and the College's response unjustified are immaterial to the disposition of this charge.[4/]

Having determined to dismiss this charge for the reasons stated, the precise identity of Glasheen's employer, whether it be the County, the College, or both as a joint employer is

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[2/]Act, §204

[3/]A claim that an employer has unilaterally changed an employee's terms and conditions of employment without negotiations with the employee's bargaining agent can be raised in a charge filed by that employee's bargaining agent under §209-a.1(d) of the Act. Individual employees have no standing to file such a charge. See, e.g., City School Dist. of the City of New York, 22 PERB ¶3012 (1989).

[4/]We express no opinion, of course, as to Glasheen's rights in other forums under contract or other statutes.

immaterial. Therefore, we deny Glasheen's motion for a declaratory judgment.[5/]

Based on the above, the Director's dismissal of the charge is affirmed and Glasheen's exceptions are denied.

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

DATED: March 17, 1992
Albany, New York

Pauline R. Kinsella, Chairperson

Walter L. Eisenberg, Member

Eric J. Schmertz, Member

[5/]On the issue of employer status in county community college situations, see Genesee Community College and County of Genesee, 24 PERB ¶3017 (1991), and Niagara County Community College and County of Niagara, 23 PERB ¶4052 (1990).

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

AFSCME COUNCIL 66, o/b/o,
AFSCME LOCAL 930,

Charging Party,

-and-

CASE NO. U-11326

ERIE COUNTY WATER AUTHORITY,

Respondent.

JOEL POCH, ESQ., for Charging Party

ROBERT J. LANE, SR., ESQ., and RICHARD D. KREIGER, ESQ., for Respondent

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by both AFSCME Council 66, o/b/o, AFSCME Local 930 (AFSCME) and the Erie County Water Authority (Authority) to an Administrative Law Judge's (ALJ) dismissal of AFSCME's charge against the Authority.

AFSCME alleges that the Authority violated §209-a.1(a) and (d) of the Public Employees' Fair Employment Act (Act) when it created a 4:00 p.m. to midnight shift for line maintenance crews. After a hearing, the ALJ dismissed the unilateral change aspect of the §209-a.1(d) allegation on a finding that PERB had no jurisdiction over it under §205.5(d)[1/] of the Act because the

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[1/]Section 205.5(d) of the Act provides:

> [T]he board shall not have authority to enforce an agreement between an employer and an employee organization and shall not exercise jurisdiction over an alleged violation of such an agreement that would not otherwise constitute an improper employer or employee organization practice.

schedule change arguably was covered by the parties' contract. The ALJ dismissed both a residual allegation that the Authority bargained the schedule change in bad faith, and the §209-a.1(a) allegation, which is similarly based upon the Authority's lack of good faith during negotiations on the schedule change, because no facts were offered to support a charge of surface bargaining or bad faith negotiations.

AFSCME argues in its exceptions that the ALJ erred in holding that PERB was without jurisdiction over its unilateral change allegation. AFSCME further argues that if its unilateral change allegation does raise a jurisdictional issue, it should be conditionally dismissed with an express opportunity afforded it to reopen pursuant to our decision in Herkimer County BOCES.[2/] AFSCME also excepts on the ground that the ALJ incorrectly overlooked the Authority's overall course of conduct.

The Authority agrees that the charge was properly dismissed for lack of jurisdiction, but it excepts to the ALJ's dismissal of the affirmative defenses it raised to the merits of AFSCME's charge.

For the reasons below, we affirm the ALJ's decision.

Before we can consider the merits of a particular improper practice charge, we must first determine that it is within our jurisdiction for we have no power to consider improper practice

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[2/]20 PERB ¶3050 (1987).

allegations except as the Legislature has empowered us to do so. The record shows that, pursuant to the parties' collective bargaining agreement, all line maintenance employees were historically scheduled to work from 8:00 a.m. to 4:30 p.m. The record further shows that AFSCME argued before the ALJ that the line maintenance employees are not shift workers for whom the contract specifies three shifts, including the 4:00 p.m. to midnight shift which the Authority established for a seasonal line maintenance crew. As the ALJ correctly observed from the contract language and AFSCME's arguments thereunder, the unilateral change aspect of the charge raised only an arguable violation of contract. In effect, AFSCME in this respect alleges that the Authority's new 4:00 p.m. to midnight shift violated the contract by expanding the starting and quitting times of line maintenance employees from their fixed hours of 8:00 a.m. to 4:30 p.m. This is clearly a contractual dispute which is specifically beyond our jurisdiction under §205.5(d) of the Act. As AFSCME did not file a grievance, the ALJ was correct in not issuing a conditional dismissal under Herkimer County BOCES.[3/]

As to the exceptions which are directed to the ALJ's disposition of the §209-a.1(a) allegation, the Authority's unilateral imposition of a new shift is not per se an interference with the unit employees' statutory rights, and there

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[3/]See Erie County Water Auth., 22 PERB ¶3006 (1989); Elmira Heights Cent. School Dist., 21 PERB ¶3031, at 3068 n. 5 (1988). See also City of Albany, 25 PERB ¶3006 (1992).

is nothing in the record which would evidence either that the imposition of the shift was improperly motivated or that the Authority was engaged in what AFSCME characterizes in its exceptions as "a repugnant course of conduct intended to undermine the viability of the recognized labor organization."

Having found that we are without jurisdiction over the unilateral change aspect of this charge, we need not reach the other exceptions raised by the parties which are directed to that allegation.

For the reasons set forth above, the ALJ's decision is affirmed and the parties' exceptions are denied.

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

DATED: March 17, 1992
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

ENDICOTT TEACHERS ASSOCIATION, NYSUT, AFT LOCAL #2641,

Petitioner,

-and-

CASE NO. C-3776

UNION-ENDICOTT CENTRAL 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 Endicott Teachers Association, NYSUT, AFT, Local #2641, 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 teachers, including long-term substitute teachers who teach for a contiguous semester or longer;

Excluded: All other employees.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Endicott Teachers Association, NYSUT, AFT, Local #2641. 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: March 17, 1992
Albany, New York

Pauline R. Kinsella, Chairperson

Walter L. Eisenberg, Member

Eric J. Schmertz, Member

STATE OF NEW YORK #3B - 3/17/92
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

DANSVILLE NON-INSTRUCTIONAL EMPLOYEES ASSOCIATION, NYSUT,AFT, AFL-CIO,

Petitioner,

-and- CASE NO. C-3869

DANSVILLE CENTRAL 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 Dansville Non-Instructional Employees Association, NYSUT, AFT, AFL-CIO 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 noninstructional employees, including aides, monitors, bus drivers, mechanics, maintenance/custodial, secretarial and cafeteria employees, nurses and supervisor bus mechanic/shop foreman.

Excluded: Supervisor buildings and grounds, supervisor transportation, supervisor cafeteria, secretary to the superintendent of schools, A/P clerk, secretary to the business manager, tax collector, treasurer budgeting account clerk in the business office, business manager/district clerk and building custodial supervisor.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Dansville Non-Instructional Employees Association, NYSUT, AFT, 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: March 17, 1992
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-3883

WEST HEMPSTEAD 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 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 full-time and part-time Cleaners, Custodians, Cleaner Attendants, Groundskeepers, Motor Equipment Operators, Head Custodians, Supervising Groundskeepers, and Maintainers.

Excluded: All other employees.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with 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 other 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: March 17, 1992
Albany, New York

Pauline Kinsella, Chairperson

Walter L. Eisenberg, Member

Eric J. Schmertz, Member