8-9-1993

State of New York Public Employment Relations Board Decisions from August 9, 1993

New York State Public Employment Relations Board

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

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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

ARNIE NORMAN and JONES BEACH LIFEGUARD
CORPS - LOCAL 2744, COUNCIL 82,

-Charging Parties-

STATE OF NEW YORK (LONG ISLAND STATE PARKS,
RECREATION AND HISTORICAL PRESERVATION
COMMISSION),

-Respondent-

KENNEDY, CASEY & McCOY (STANLEY Q. CASEY of counsel), for
Charging Parties

WALTER J. PELLEGRINI, ESQ. (LAUREN DESOLE of counsel), for
Respondent

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by Arnie Norman
and the Jones Beach Lifeguard Corps - Local 2744, Council 82
(Union) to a decision by an Administrative Law Judge (ALJ).
After a hearing, the ALJ dismissed the Union's charge against the
State of New York (Long Island State Parks, Recreation and
Historical Preservation Commission) (State) which alleges that
the State violated §§209-a.1(a) and (c) of the Public Employees'
Fair Employment Act (Act) by first transferring and later
demoting Norman in retaliation for the Union's refusal to agree
that there was a problem with the Union's interpretation of
certain employment practices regarding the scheduling and
deployment of lifeguards.
In his decision, the ALJ confirmed a pre-hearing ruling that the charge as it related to events occurring before August 25, 1990, including Norman's transfer in July 1990, was untimely.\footnote{Rules of Procedure, §204.1(a), requires charges to be filed within four months of the alleged impropriety.} He further found that although Norman, as vice-president of the Union, was engaged in protected activities and the State was aware of his role, his demotion, effective on August 29, 1990, was prompted by his supervisory deficiencies and was not improperly motivated.

The Union argues in its exceptions that the ALJ erred in his finding that Norman's demotion was not improperly motivated. It also excepts to his determination that the charge, as it related to Norman's transfer, was untimely. The State argues in its response that the ALJ's findings are supported by the facts and the law, as was his decision that allegations relating to events occurring prior to August 24, 1990 were untimely.

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

Norman was hired as a Captain, the highest supervisory title in a unit of seasonal lifeguards\footnote{The lifeguard title series, beginning with the highest rank, is Captain, Lieutenant, Boatswain, Lifeguard II and Lifeguard I.}, for the summer of 1990. He was assigned to "field", or beach, 2 in Jones Beach State Park on Long Island. As a Captain, Norman's responsibilities included overseeing the training and conditioning of the lifeguards.
assigned to his field, ensuring proper coverage of the lifeguard stands on his field and monitoring the scheduling and deployment of his lifeguards on a daily and weekly basis, including completing the requisite paperwork on such scheduling. Early in the season, on June 2, 1990, Norman was counselled by his supervisor, Joseph Scalise, Water Safety Director for the Long Island Region, concerning the timing of a swimming test of a lifeguard rehire candidate. On June 16, 1990, Norman was the subject of a memo drafted by Chuck Barr, Assistant Coordinator Jones Beach State Parks, at Scalise's direction, regarding an incident in which a swimming area was left unattended while the lifeguards assigned dealt with a submersion. Norman was criticized for having inadequate staff scheduled for the shift in question.

On June 28, 1990, there was a drowning at field 2 while Norman was on duty. Scalise arrived on the scene almost immediately after the incident was reported. Thereafter, he generated a written report on the incident, based in large part on his own observations and on the reports he received from the lifeguards involved, including Norman. On July 1, 1990, he transmitted a copy of the report to Michael Asheroff, Deputy Regional Director of Long Island State Parks, his supervisor. He also sent copies of the report to Ronald Foley, Regional Director of Long Island State Parks and Superintendent Lecinski of the Jones Beach State Park. Asheroff sent a copy of the report to the Department of Health on or about July 2, 1990.
Although Norman was not alleged to be responsible for the drowning that occurred while field 2 was under his supervision, Scalise's report levelled several criticisms at Norman for his handling of the response to the drowning and of beach operations thereafter. 

Asheroff gave a draft of Scalise's report to Roy Lester, President of the Union, on June 30, 1990. They briefly discussed Scalise's recommendation that some kind of administrative action be taken against Norman. Lester thereafter requested a second meeting with Asheroff, which was held on July 18, 1990, with Norman also in attendance.

Testimony offered by Asheroff regarding the July 18 meeting differed substantially from the testimony of Lester and Norman, who testified that Asheroff told them that if they conceded on certain points "the report would never see the light of day" and that Norman would not be transferred or demoted. Asheroff testified that, at the beginning of the meeting, Norman and

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3/These operational concerns involve some differences in the State's and the Union's interpretation of certain labor-management agreements that had been worked out during the winter of 1989-90 regarding lifeguards' worktime. Lifeguards are assigned to "hour up/hour down" as part of their shifts. Both parties agree that, as part of a two-person team, the lifeguards are to spend an "hour up" in the lifeguard stand, surveying the beach in front of them. The State's position is that the "hour down" is to be spent in proximity to the beach, to be available as back-up for the lifeguard who is "up". The Union regards the "down" time as duty-free time. Similarly, the Union has regarded the "half-hour wash-up" at the end of each shift as early release time, while the State views it as duty-free time during which the lifeguard can shower and change, at the beach, and be available in emergencies. On June 28, during the drowning incident, one lifeguard who was on "hour down" was not available. Another lifeguard had left the beach during his "half-hour wash-up" and was, therefore, likewise unavailable.
Lester expressed their concern that the matter should go away and should be "buried somewhere". Asheroff responded that they could view the situation in one of two ways: we could either view it as supervisory lapses on Mr. Norman's part, or we could take the view that there might be something wrong with our administrative procedures and our procedural things and that...in which case we needed to correct those.

He advised the two that Scalise's report had been issued on July 2 to the appropriate officials of both the Parks and Health Departments. He then noted that, with respect to further action, if we were going to take the view of the situation that there was something wrong with our administrative procedures that we would...there would have to be additional follow-up action in which the union would have to join as a partner with management in cleaning up some of the difficulties that would be as a result of our administrative actions.

Asheroff advised Lester that he had to have something real to take back and discuss with his people in terms of what agreements had been reached. Lester advised Asheroff the next day that management would have to "do what it had to do". Asheroff then notified Scalise to take further action to implement the recommendations set forth in his report. As a result, Norman and the two other lifeguards were transferred in mid-July, all without demotion at that time.

Norman was advised by Scalise at meetings the two had at Norman's new assignment that there were still problems that Scalise had observed in the way Norman handled scheduling and deployment of staff, as well as continuing problems with the way
in which Norman interpreted "hour up/hour down". In a letter dated August 11, 1990, Scalise confirmed these problems in writing to Norman and concluded the letter by directing Norman to attend a meeting on August 12 to "discuss his unwillingness or inability to perform the job of Captain in the Jones Beach Lifeguard Corps." Scalise hand delivered the letter to Norman on August 11, 1990, observing when he arrived at the beach that the lifeguard stand was vacant and that three lifeguards, including Norman, were standing at the base of the stand, engaged in casual conversation. The lifeguard who was scheduled to be "up" was clearing a prohibited swimming area and Norman advised Scalise when questioned that the lifeguard who was "down" was off. Scalise noted again that the lifeguard "down" was in fact still on duty and that the procedure was that the lifeguard "down" should clear the prohibited area while the lifeguard "up" remained in the stand. As he was leaving, Scalise noted that as the shift changed, the lifeguard who went "up" on the stand was not in uniform and that Norman did not say anything to him.

Norman had filed a "class action" grievance with Scalise on August 9 concerning an alleged change in the method of calculating personal leave eligibility. Scalise had denied the

4/On August 6, 1990, Scalise noted that the lifeguard scheduled to be "up" on August 3, 1990, had been allowed to take time to jog during that time; Scalise also noted to Norman that overtime had improperly been granted on that day to provide adequate coverage and requested Norman to give him a written explanation. On August 7, 1990, Norman turned in a schedule that listed him for a personal leave day on the following weekend. Norman was instructed to correct that schedule.
grievance on August 13, noting that the eligibility requirements were implemented at the Union's request. Apparently no appeal from Scalise's determination was filed with the State.

After the meeting between Scalise and Norman on August 15, Scalise wrote to Norman, advising him that, effective August 29, 1990, he was demoted to Lieutenant for the rest of the 1990 season because of "a chronic performance deficiency in supervision on [Norman's] part" and that unless there were vacancies in 1991 for a Lieutenant to report to a Captain, Norman would be demoted to Boatswain. Norman appealed Scalise's determination to Asheroff. On August 28, Asheroff confirmed Scalise's findings, with the modification that Norman would be assigned as a Lieutenant for the 1991 season and, after one year of satisfactory service, could again be considered for promotion to Captain.

This charge was filed on December 24, 1990. By letter dated January 28, 1991, the assigned ALJ advised the parties in a letter transmitting the charge to the State and the Notice of Conference to both parties, that the charge was not being processed with respect to those incidents which preceded August 25, 1990. The ALJ then directed the State to answer the charge as described in the transmittal letter.

DISCUSSION

Initially, the Union's exceptions to the ALJ's refusal to process the charge as to the events occurring before August 25, 1990, must be addressed. The Union argues that the State waived
any timeliness defense because it was not raised in its answer. Therefore, the Union argues, the ALJ could not dismiss as untimely the allegations relating to Norman’s transfer.

PERB’s Rules of Procedure, §204.2(a) provide that the Director of Public Employment Practices and Representation (Director)

[s]hall review the charge to determine whether the facts as alleged may constitute an improper practice as set forth in section 209-a of the act. If it is determined that the facts as alleged do not, as a matter of law, constitute a violation, or that the alleged violation occurred more than four months prior to the filing of the charge, it shall be dismissed by the director subject to review by the board under section 204.10(c) of this Part;....

An assigned ALJ, as the Director’s designee, may confirm the Director’s determinations to the parties with the initial transmittal of the charge and Notice of Conference. Once the determination is made by the Director that the charge, or certain allegations contained therein, are untimely, a respondent has no obligation to raise timeliness as an affirmative defense to them. Indeed, in this case, the ALJ specifically instructed the State to answer the charge as the ALJ had described it, which included only those events which occurred after August 24, 1990. Accordingly, we hereby affirm the ruling of the conference ALJ and the decision by the hearing ALJ that events which occurred prior to August 25, 1990, including Norman’s transfer, were not timely pled as violations.
The Union has established the first two elements of a violation of §§209-a.1(a) and (c). Norman, as vice-president of the Union, was engaged in protected activities and the State, represented by Scalise and Asheroff, knew of these activities. However, from our review of the record, the Union has failed to establish that Norman’s demotion would not have occurred but for his union activities. In support of its charge, the Union offered the testimony of Lester and Norman that Asheroff had attempted to trade Norman’s transfer/demotion for concessions from the Union on the scheduling and training issues. The ALJ credited Asheroff’s testimony that he made no such statement. There is nothing in the record which would warrant a disturbance of the ALJ’s credibility determination. Asheroff, as a courtesy, showed Lester a copy of Scalise’s report and recommendations. It was Lester who called the subsequent meeting to attempt to resolve the issues raised in the report. Asheroff merely outlined the two courses of action open to him: either there were supervisory lapses on Norman’s part which would have to be dealt with, possibly by transfer or demotion, or the administrative procedures were inadequate and the parties would have to work together to clarify the procedures and their implementation. Norman was then transferred by Scalise, who had no part in the


6/Asheroff was referring to the wash-up time, hour up/hour down and training issues which Scalise had addressed in his report.
July 18 meeting, and a little over a month later, after repeated incidents in which Norman did not follow procedures, Scalise demoted him. Asheroff then confirmed Scalise's action, modifying somewhat the severity of the demotion. It is clear that neither Scalise nor Asheroff harbored any anti-union sentiments and that their decisions were motivated by Norman’s repeated failure to exercise appropriate supervisory responsibility.

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

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

DATED: August 9, 1993
New York, 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-

COUNTY OF SCHENECTADY,

Employer.

NANCY HOFFMAN, GENERAL COUNSEL (JEROME LEFKOWITZ of counsel), for Petitioner

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by the Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO (CSEA) to a decision by the Director of Public Employment Practices and Representation (Director). CSEA filed a unit clarification/placement petition on December 2, 1992, seeking a determination that the County of Schenectady's (County) Director of Activities and Volunteer Services is in or should be placed in CSEA's unit of County employees.

The Director dismissed CSEA's petition as untimely because it could have filed a representation petition in May 1992, a date after the position was created and before the clarification/placement petition was filed.1 In reaching this determination,

1/Rules of Procedure (Rules) §201.2(b). Placement petitions may not be filed if a representation petition could have been filed earlier. Clarification petitions are similarly barred absent all parties' consent, and there is no claim that the County consented to the filing of the clarification aspect of the petition.
the Director had to consider the effect of the parties' four-year contract covering the period from January 1, 1990 through December 31, 1993. Relying upon our decision in Kenmore-Tonawanda Union Free School District2 (Kenmore), the Director held that the parties' contract should be treated for purposes of defining the filing periods for representation petitions as a three-year agreement followed by a one-year agreement. Thus construed, CSEA could have filed a petition seeking to represent the in-issue position in May of either 1992 or 1993.3

CSEA argues that the Director's decision should be reversed because it ignores or defeats the policies of the Act and our Rules. It urges us to adopt the rationale in decisions of the National Labor Relations Board (NLRB) under which a current contract is a bar to a representation petition filed by either of the parties to the contract until the filing period, as calculated by reference to the contract's expiration date, opens.4 The County has not filed a response to CSEA's exceptions.

For the reasons set forth below, we reverse the Director's decision.

The disposition of the timeliness issue presented here hinges on the purpose of the contract bar principles which have

2/12 PERB ¶3055 (1979).
3/Rules §201.3(d).
been fashioned by statute, rule and case law. The primary purpose of the contract bar is to provide the contracting parties a reasonable period of stability in their bargaining relationship while still affording the employees an opportunity to change or eliminate their bargaining agent, if that be their wish. That balance of competing interests is reflected in §208.2 of the Act, which provides that contracts in excess of three years are to be treated as contracts of three years' duration for purposes of fixing a union's period of unchallenged representation status. Section 208.2, however, does not render invalid contracts in excess of three years duration. Clearly then, the Legislature did not intend to restrict the parties to a bargaining relationship in their discretion to fix the duration of their contract. The limited disruption in the parties' freedom to contract represented in §208.2 is, therefore, plainly to give effect to the employees' right to a freedom of choice in the selection of a bargaining agent. Allowing petitions to be filed by employees or an outside union acting on their behalf at the prescribed times calculated by reference to the statutory maximum contract bar of three years fully protects the employees' rights. There is, however, no persuasive rationale which would extend a right to petition to either of the contracting parties in advance of the filing period defined by reference to the expiration of the parties' contract. To do so, as CSEA argues, necessarily
allows one of the parties to the relationship to disregard their agreement to the duration of the contract.\(^5\)

The implications of a contrary decision become readily apparent in the context of this case. The parties would be deprived of a nonadversarial determination regarding the unit status of an employee which could cause unnecessary litigation, possibly in multiple forums. The employee is simultaneously denied any realistic opportunity for representation for possibly several years. Neither result is consistent with the policies of the Act to promote harmonious and cooperative relationships and to secure representation for employees in the appropriate unit if they desire it.

A contrary result is not dictated by our decision in Kenmore. That decision arose in the context of an improper practice charge filed by a nonincumbent union seeking use of the employer’s property; it did not involve any consideration of the question as to whether either of the contracting parties may file a representation petition at any time before the eighth month of the contract’s expiration date. As the issue in this case was not presented in Kenmore, we have no occasion to reconsider that decision. Similarly, we do not consider the calculation of filing periods or the application of contract bar rules in the context of agreements in excess of three years duration in situations involving petitions filed by other than one of the

\(^5\)See Town of Kent Police Benevolent Ass’n v. Town of Kent, 42 A.D. 2d 747, 6 PERB ¶ 7519 (2d Dep’t 1973).
contracting parties. Moreover, even as to petitions filed by the contracting parties, there may be contracts of such unreasonably long duration that even those parties must be permitted an opportunity to raise representation questions at a time other than that calculated by reference to the contract's expiration. The four-year contract in this case, however, presents no such concerns. We hold, therefore, only that CSEA, as a party to the 1990-93 contract, could not have filed a representation petition with respect to this title in May 1992. As such, its clarification/placement petition was not barred.

By our decision, we honor the parties' agreement, promote collective bargaining, give effect to the public employees' freedom of choice and avoid results inconsistent with the policies of the Act. Such circumstances warrant the processing of this petition.

For the reasons set forth above, CSEA's exceptions are granted and the Director's decision is reversed. The case is, accordingly, remanded to the Director for further proceedings consistent with this decision. SO ORDERED.

DATED: August 9, 1993
New York, 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 POLICE BENEVOLENT ASSOCIATION,
Charging Party,

-and-

CITY OF SCHENECTADY,
Respondent.

CASE NO. U-12903

GRASSO AND GRASSO (KATHLEEN R. DECATALDO of counsel), for Charging Party

ROEMER AND FEATHERSTONHAUGH, P.C. (ELAYNE G. GOLD of counsel), for Respondent

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by the Schenectady Police Benevolent Association (PBA) to a decision by the Assistant Director of Public Employment Practices and Representation (Assistant Director). After a hearing, the Assistant Director dismissed three of four allegations of direct dealing in violation of §209-a.1(a) and (d) of the Public Employees' Fair Employment Act (Act) by the City of Schenectady (City) with PBA unit employees.

The Assistant Director dismissed the allegation involving unit employee R. C. O'Neill on a finding that any discussions involving his attendance at a computer program in Florida did not

1/ The Assistant Director found that the City had improperly dealt directly with one unit employee regarding training pay. No exceptions have been taken to this aspect of the Assistant Director's decision.
arise from or relate to his employment with the City. O'Neill was then a Turnkey in the police department. He had developed a computer expertise largely from a personal interest in computers, not from any job-related responsibilities. The Assistant Director determined that there was no violation of the Act because O'Neill had been approached in an individual consultant capacity, not as a represented unit employee. He dismissed direct dealing allegations regarding firearm training for police recruits and similar allegations regarding detectives’ scheduling on findings that there was no dealing with either group.

The PBA argues that the Assistant Director incorrectly construed its charge, misinterpreted the record in certain respects and reached erroneous conclusions of law in dismissing its allegations of direct dealing. The City in its response argues that the Assistant Director’s decision is correct in all relevant respects and should be affirmed.

Having reviewed the record and considered the parties’ arguments, we affirm the Assistant Director’s decision.

We begin with a brief overview of direct dealing to place our disposition of PBA’s procedural and substantive exceptions in proper perspective. Direct dealing basically involves an employer’s impermissible bypass of the exclusive bargaining agent. Essential to a successful case of direct dealing is proof that the employer "negotiated" with an employee or group of
employees with a purpose to reach an agreement on the subject matter under discussion. 2/

The PBA first argues that its charge alleges both an improper direct dealing with unit employees and a unilateral grant of extra-contractual benefits. The charge as filed, however, is not reasonably read to encompass the latter allegation, which is distinct from the former. 3/ Any references to a grant of benefits in the charge are entirely incidental to the direct dealing allegations and appear merely to evidence a consequence of that direct dealing. The charge was not litigated on the basis of a unilateral grant of benefit and the first reference to such an allegation appears in PBA's post-hearing brief to the Assistant Director. As the charge as filed did not allege a unilateral grant of benefit as a basis for a violation of the Act, and as that allegation was not added by amendment to the charge, the Assistant Director did not err by limiting the charge and his analysis to the direct dealing allegations.

We also find no material error of fact or law in the Assistant Director's decision dismissing the direct dealing allegations pertaining to the recruits and the detectives. At most, the record shows that the recruits were ordered to attend the firearm training. Thus viewed, the City's action might


3/An employer's unilateral grant of benefits to represented employees need not involve any exchange of promises or an intent to reach an agreement.
constitute a unilateral change in practice or a violation of contract, but it does not constitute individual dealing with unit employees in violation of the Act. The circumstances surrounding Captain Patrick Smith’s conversations with unit employees in the detective division regarding scheduling similarly do not establish a direct dealing violation. Smith merely invited the employees to make suggestions regarding scheduling, conveyed to them the City’s position as to the minimally acceptable elements of a scheduling plan and offered his opinion regarding the interpretation of flex hours in response to an inquiry from some of the detectives. Smith specifically told those assembled that any scheduling changes had to "go through" the PBA. There was no exchange of promises in these conversations, no intent to reach any agreement with the unit employees and no bypass of the PBA.

The allegation of direct dealing involving O’Neill involves somewhat closer questions than those involving the recruits or the detectives, but we nonetheless affirm the Assistant Director’s dismissal of this allegation. In dismissing this allegation, the Assistant Director assumed that an inquiry by Daniel Morrissey, the City’s Director of Communications,⁴ to O’Neill as to whether he would go to Florida to attend a program pertaining to a computer software package which the City was purchasing if "we could work it out", could constitute direct dealing.

⁴Morrissey is not employed in the police department and his position is not within that department’s organizational structure.
dealing. The Assistant Director found no other persuasive evidence of any direct dealing and from our review of the record we are in agreement with that conclusion. We hold that Morrissey's simple inquiry to O'Neill as to his willingness to attend the Florida program does not constitute individual negotiations in violation of the Act. There simply is no evidence that the City and O'Neill made any agreements or sought to make any agreements in contravention of the parties' collective bargaining agreement, prevailing practices, or PBA's status as the representative of the unit.

The PBA's remaining exceptions are to certain of the Assistant Director's findings of fact and certain statements which are inconsequential to his decision or our decision. The exceptions in those respects are, accordingly, denied.

For the reasons set forth above, the PBA's exceptions are denied and the Assistant Director's Decision and Order is affirmed. SO ORDERED.

DATED: August 9, 1993

Pauline R. Kinsella, Chairperson
Walter L. Eisenberg, Member
Eric J. Schmertz, Member

5 An arbitrator has dismissed PBA's contract grievance which alleged that the Florida program was "training" required to be posted and bid.
STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

CIVIL SERVICE EMPLOYEES ASSOCIATION, INC.
LOCAL 1000, AFSCME, AFL-CIO, NIAGARA
COUNTY LOCAL 832, CITY OF LOCKPORT UNIT,

Charging Party,

-and-

CITY OF LOCKPORT,

Respondent.

NANCY E. HOFFMAN, GENERAL COUNSEL (MAUREEN SEIDEL of
counsel), for Charging Party

A. ANGELO DiMILLO, ESQ., for Respondent

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by the Civil
Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO,
Niagara County Local 832, City of Lockport Unit (CSEA) to a
decision by an Administrative Law Judge (ALJ). After a hearing,
the ALJ dismissed CSEA's charge against the City of Lockport
(City) which alleges that the City violated §209-a.1(d) and (e)
of the Public Employees' Fair Employment Act (Act). The §209-
a.1(d) refusal to bargain charge is based upon surface bargaining
allegations and allegations that the City's negotiators were not
sufficiently empowered to enter agreements. The §209-a.1(e)
allegation is based upon the City legislature's mandate of a
health insurance contribution from retirees by an amendment to an
earlier legislative resolution.
The ALJ dismissed the §209-a.1(d) allegations on findings that the record did not evidence either surface bargaining or that the City's negotiators were not sufficiently empowered. The ALJ also dismissed any allegation that the City legislature's action violated §209-a.1(d) of the Act on the ground that a legislative body cannot commit a refusal to bargain. The ALJ dismissed the §209-a.1(e) allegations on the ground that the parties' contract was not expired on the date the charge was filed.

CSEA argues in its exceptions that the ALJ erred as a matter of fact and law in dismissing its charge. The City has not responded to CSEA's exceptions.

Having reviewed the record and considered CSEA's arguments, we affirm the ALJ's decision dismissing the §209-a.1(d) allegations, but reverse the dismissal of the §209-a.1(e) allegations.

The ALJ's decision sets forth the standards governing bargaining behavior which do not warrant our repetition for they are well-recognized and not contested by the parties. The record evidences the City's willingness to meet, its discussion of both economic and noneconomic issues and a narrowing of open issues by agreement or otherwise. The City's articulation of a firm position on monetary items, which included a wage, longevity and increment freeze consistent with the City's perception of its ability to pay, was not inconsistent with its duty to negotiate
in good faith as that term is defined\(^1\) and has been interpreted.\(^2\) In short, we find insufficient evidence that the City bargained without a sincere desire to reach a collective agreement and no basis on which to premise any per se breach of bargaining duty.

The ALJ also did not err by dismissing allegations, to whatever extent they may have been raised, that the City's legislature violated §209-a.1(d). Having no right or duty to bargain, a legislative body of government, acting in that capacity, cannot violate the bargaining provisions of the Act.\(^3\)

This brings us to the exceptions taken to the ALJ's dismissal of the §209-a.1(e) allegations. CSEA argues that an improper practice charge may be filed within four months of an announcement of a change with a definitive effective date. In this case, the legislative resolution was enacted in December 1991 and had a January 1, 1992 effective date, after expiration of the parties' contract. Therefore, CSEA argues that it could

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\(^1\)The Act at §204.3 defines the duty to negotiate to include meeting at reasonable times, conferral in good faith regarding terms and conditions of employment and the negotiation of a collective bargaining agreement or questions arising thereunder. The duty as defined, however, does not compel "either party to agree to a proposal or require the making of a concession."

\(^2\)E.g., Town of Southhampton, 2 PERB ¶3011 (1969).

\(^3\)City of Glens Falls, 24 PERB ¶3015 (1991); Niagara County Legislature and County of Niagara, 16 PERB ¶3071 (1983) (subsequent history omitted).
file its §209-a.1(e) charge within four months of enactment of the resolution.

The decisions relied upon by CSEA reflect the basic proposition that all improper practice charges must be filed within four months of the statutory impropriety. Therefore, in reviewing the ALJ's dismissal of the §209-a.1(e) allegation, we must recognize the precise nature of the improper practice as defined by the legislature. Section 209-a.1(e) makes it improper for a public employer "to refuse to continue all the terms of an expired agreement until a new agreement is negotiated ...." The ALJ dismissed the §209-a.1(e) allegation because on the date the charge was filed (on or about December 31, 1991) the parties' contract had not yet "expired", the expiration date of the contract also being December 31, 1991. We believe that the dismissal of this allegation reflects too narrow an interpretation of the defined statutory impropriety. Accordingly, we reverse this aspect of the ALJ's decision.

The reference to an "expired agreement" in §209-a.1(e) must not be taken out of the context in which that language appears. The term "expired agreement" does not necessarily have to be read to require, as a condition to the existence of a cognizable cause of action, that the parties be without a contract at the date the charge is filed. Although an alleged post-expiration change in contract terms under a charge itself filed after expiration of the contract obviously states a cause of action under §209-
a.1(e), we believe that a cause of action is similarly stated if
the charging party alleges an action which purports to change the
terms of an agreement which will become effective upon expiration
of the agreement. Nothing in §209-a.1(e) suggests that the
filing date of the charge is the exclusive date by which the
existence of an "expired agreement" must be tested, although it
is plainly an appropriate date. Equally appropriate, however,
and consistent with our cases permitting charges to be filed from
either an announcement or implementation of a change in
employment conditions,² is the date on which the announced
action is to take effect. If that date, as here, is after the
stated duration of the contract, there is an "expired agreement"
within the meaning of §209-a.1(e). The unqualified, announced
intention to discontinue a contract term at contract expiration
plainly constitutes a "refusal to continue" within the meaning of
§209-a.1(e). Therefore, all elements of a cause of action under
§209-a.1(e) were satisfied by CSEA's pleading.⁵

Our decision in this respect is consistent with what we
understand to be the Legislature's intent in enacting §209-
a.1(e). Section 209-a.1(e) is intended to create a rough balance
between the rights of public employers and unions. A union may

⁵See, e.g., Middle Country Teachers Ass'n, 21 PERB ¶3012 (1988).

⁶We would expect, however, and would encourage unions to delay
filing any §209-a.1(e) charge until the change in contract terms
is actually implemented after contract expiration because the
issues are usually more clearly identified at that time.
not strike, but neither may the employer change the terms of the parties' last agreement. The well-timed announcement during the life of the contract of an intention to discontinue contract terms immediately upon contract expiration can impair collective bargaining and can create the type of tensions which contribute to strikes and other forms of employee unrest as much as the discontinuation of those benefits post-expiration. We do not consider it reasonable to give an interpretation to §209-a.1(e) which would prohibit the latter but permit the former and we decline to do so.

For the reasons set forth above, the ALJ's decision is reversed as to the dismissal of the §209-a.1(e) allegation, CSEA's exceptions in that respect are granted and that aspect of the charge is remanded to the ALJ for further proceedings and decision consistent with our decision. In all other respects, the ALJ's decision is affirmed and CSEA's exceptions are denied.

SO ORDERED.

DATED: August 9, 1993
New York, New York

Pauline R. Kinsella, Chairperson
Walter L. Eisenberg, Member
Eric J. Schmertz, Member
In the Matter of

ROCHESTER POLICE LOCUST CLUB, INC.,

Charging Party,

-and-

CITY OF ROCHESTER,

Respondent.

HARRIS, BEACH & WILCOX (LAWRENCE J. ANDOLINA of counsel),
for Charging Party

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by the Rochester Police Locust Club, Inc. (Club) to a decision by the Director of Public Employment Practices and Representation (Director) dismissing, for lack of jurisdiction, its improper practice charge which alleges, as twice amended, that the City of Rochester (City) violated §209-a.1(d) of the Public Employees' Fair Employment Act (Act) when it established a Civilian Review Board (CRB), thereby changing existing disciplinary procedures.

The charge, as originally filed, alleged a violation of §209-a.1(e). The charge did not alleges, however, that the terms of an expired agreement had been discontinued by the City. The
Club was, therefore, notified by the Assistant Director of Public Employment Practices and Representation (Assistant Director) that the charge was deficient. The Club thereafter filed two amendments to its original charge, the first pleading a violation of §209-a.1(e) of the Act, but also pleading that the Club and the City were parties to a contract which was in effect until June 30, 1993. In response to the Assistant Director's notice that the charge remained deficient, the Club filed a second amendment, withdrawing the alleged §209-a.1(e) violation and substituting an allegation that the City had violated §209-a.1(d) of the Act by unilaterally changing the procedures for investigating and adjudicating disciplinary matters involving unit members. The amendment referred to Article 20 of the parties' contract as setting forth the unit members' terms and conditions of employment with respect to disciplinary procedures. The Director thereafter issued his decision dismissing the charge on the basis that PERB does not have jurisdiction to enforce contractual provisions or to entertain arguable contract violations.\(^1\)

In its exceptions, the Club asserts that it is not asking PERB to enforce the contract. Rather, it argues that the City, by unilaterally changing the procedures for investigating and adjudicating disciplinary matters involving unit members, has

\(^1\) Act, §205.5(d).
unilaterally changed terms and conditions of employment in violation of §209-a.1(d) of the Act.

The jurisdictional limitation set forth in §205.5(d) of the Act comes into play if the parties' contract is a reasonably arguable source of right to the charging party with respect to the subject matter of the charge.²/ It is clear from the Club's amendments to the charge and its exceptions that the contract is the source of its rights with respect to disciplinary charges and procedures for unit members. At several places in its amendment adding the §209-a.1(d) allegation, the Club specifically states that the creation of the CRB violated the parties' contract.³/ That the provisions of the contract, and the allegations in the charge, deal with a mandatory subject of negotiation does not confer upon PERB the jurisdiction denied us by the parties' agreement covering those negotiable subjects.⁴/

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


³/ For example, the Club alleges that "the resolutions creating the CRB . . . constitute a unilateral and improper imposition of disciplinary standards in violation of the labor agreement."

⁴/ Levittown Union Free Sch. Dist., 13 PERB ¶3014 (1980).
IT IS, THEREFORE, ORDERED that the charge be, and it hereby is, dismissed.

DATED: August 9, 1993
New York, New York

[Signatures]

Pauline R. Kinsella, Chairperson
Walter L. Eisenberg, Member
Eric J. Schmertz, Member
This case comes to us on exceptions filed by the Honeoye Central School District (District) to a decision by the Director of Public Employment Practices and Representation (Director). The District filed a petition in November 1992 seeking to remove the position of night custodian from an existing unit represented by the Honeoye Central School Civil Service Employees' Association (Association). The parties' most recent contract expired June 30, 1992. The Director dismissed the petition as untimely because our Rules of Procedure (Rules) do not permit the parties to a collective bargaining agreement to file petitions after expiration of their agreement until such time as a new window period is fixed by their entry into a successor contract.

The District argues in its exceptions that the Director erred by raising timeliness *sua sponte* and that the dismissal of
the petition effects irrational results which are inconsistent with the uniting criteria in §207 of the Public Employees' Fair Employment Act (Act).

Having considered the District's arguments, we affirm the Director's decision.

Under our existing Rules, the parties to a bargaining relationship may file a petition seeking to change the composition of an existing unit only in the eighth month preceding expiration of their contract.\(^1\) The window period in this case was November 1991. After contract expiration, only the employer's employees or a challenging labor union may file representation petitions.\(^2\) These filing periods are intended to avoid any possible interruption or interference by the parties in their negotiations for a successor collective bargaining agreement while still permitting an opportunity for representation questions to be raised by strangers to that bargaining relationship.\(^3\)

Although the Association could have raised the untimeliness of the petition in its response, the opportunity afforded a party to object to the processing of a petition as untimely does not

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\(^1\) Rules, §201.3(d).

\(^2\) Rules, §201.3(e).

\(^3\) See, e.g., Incorporated Village of Hempstead, 13 PERB ¶3040 (1980).
divest the Director of the power and duty to dismiss petitions which are untimely on their face.⁵/ As we said in Wappingers Central School District,⁶/ our Rules are "not intended to compel the Director to accept jurisdiction over untimely petitions by reasons of the parties' waiver of the timeliness Rules."⁶/

The statutory uniting criteria are not applicable unless a representation question is properly and timely raised. The District's petition is untimely and, therefore, the Director could not have proceeded to a determination on the merits of the petition.

The District's remaining arguments merely question whether the filing periods clearly established by our Rules are reasonable and best effectuate the policies of the Act. These arguments are worthy of consideration in the context of our continuing examination of our Rules, and we will take them under advisement. Changes in our Rules may be appropriate, and in affirming the dismissal of the petition as untimely under our existing Rules, we make no judgment as to the merit of the District's arguments. Until such time, however, as the Rules are changed to permit petitions of this type, our existing Rules, as consistently interpreted and applied, necessitate dismissal of the District's petition.

⁵/Rules, §201.5(d).
⁷/Id. at 3089 n. 1.
For the reasons set forth above, the District's exceptions are denied and the Director's decision is affirmed.

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

DATED: August 9, 1993
New York, 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

COURT OFFICERS BENEVOLENT ASSOCIATION
OF NASSAU COUNTY, INC.,

-Charging Party,

-case no. u-12192

STATE OF NEW YORK - UNIFIED COURT
SYSTEM,

Respondent.

JOSEPH FARALDO, ESQ., for Charging Party

NORMA MEACHAM, ESQ. (LEONARD KERSHAW of counsel), for
Respondent

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by the State of
New York - Unified Court System (UCS) to a decision by an
Administrative Law Judge (ALJ). After a multi-day hearing, the
ALJ held, in relevant part, that UCS violated §209-a.1(c) of
the Public Employees' Fair Employment Act (Act) when, on
September 6, 1990, it informed Jeffrey Pollock, president of the
Court Officers Benevolent Association of Nassau County, Inc.
(COBANC), that he would not be eligible for scheduled overtime
whenever he used a full day of employee organization leave
(EOL) or was on EOL full time for an extended period. The ALJ

The ALJ dismissed several other allegations. No exceptions
have been taken to the ALJ's decision in those respects.

EOL is uncharged, paid leave from assigned duties to permit an
employee to engage in authorized union activities which are
listed in the parties' contract.
found that UCS prohibits employees from eligibility for scheduled overtime when on EOL either full time for an extended period or for a full day. 3/ Although finding that this policy was not improperly motivated, the ALJ concluded that the policy nonetheless violated the Act because it interfered with the exercise of employees' contract rights without UCS having a colorable claim of corresponding right to restrict or condition EOL. As a second theory supporting his finding of violation, the ALJ held that EOL could be restricted by UCS only if there was a reasonable relationship between the restriction and the requirements of Pollock's position, and he found there to be none.

UCS excepts to several of the ALJ's findings of fact and his conclusions of law. COBANC has not filed a response to UCS' exceptions.

Full-time EOL is granted, by practice, only to COBANC's president. EOL extended to other unit employees may be used for part of a day or a full day as necessary up to contractually defined maximums. 4/ By contract, UCS is required only to use its best efforts to accommodate authorized requests for EOL.

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3/The ALJ did not find any violation regarding UCS' policy and practice when EOL is used for only part of a day because employees remain eligible for scheduled overtime in that circumstance.

4/EOL beyond the contractual maximums is repaid by COBANC, charged to the employee's annual leave credits or deducted from the employee's paycheck.
UCS alleges in its exceptions that the ALJ erred in finding that employees are ineligible for scheduled overtime when they use a full day of EOL. UCS argues that it does not have a policy or practice of precluding employees on full-day EOL from working scheduled overtime and that the ALJ's finding to the contrary is simply incorrect. It admits, however, that Pollock, like others who are on a full-time leave from their positions, is not eligible for scheduled overtime because UCS considers him and the others similarly situated not to be part of its active workforce.

The ALJ's finding regarding UCS's alleged restrictions on overtime eligibility for employees on full-day EOL rests substantially upon a conversation between William Brown, Chief Clerk of Nassau District Court, and Pollock. Pollock was promoted to the position of Court Office-Sergeant in Nassau County District Court in March 1990. In June 1990, he assumed the presidency of COBANC and was on full-time EOL from June 7 until early September 1990. Brown had questions about whether Pollock should serve a probationary period and about his eligibility for scheduled overtime and he addressed these questions to Howard Rubenstein, then UCS' Director of Employee Relations. With respect to scheduled overtime,\(^5\) Rubenstein

\(^5\)Effective September 1, 1990, Pollock was required to report to work three days each week to permit UCS to evaluate him in his promotional position. Pollock was on EOL two days per week until March 1, 1991, when he resumed full-time EOL status. The ALJ did not find any violation of the Act in UCS' requirement that Pollock serve a probationary period. See also Bertoldi v. Kinsella, 186 A.D. 2d 487, 25 PERB ¶7013 (1st Dep't 1992) (PERB's dismissal of similar allegations confirmed).
advised Brown that it was not appropriate to assign overtime to a person who was on full-time EOL. Brown communicated that information to Pollock, but he also told him that he would not be eligible for scheduled overtime on any day he used EOL for the full day. Pollock subsequently confirmed their conversation by letter.

UCS argues that Brown both misunderstood and misstated to Pollock the advice Rubenstein had given to him. It maintains that UCS' policy in this respect is that employees are ineligible for scheduled overtime only when on full-time EOL or other extended leaves of absence. Employees remain eligible for scheduled overtime, according to UCS, when on EOL for a full day or a part day.

Having reviewed the record, we find that UCS does not have a policy or practice of denying scheduled overtime to employees who use EOL on a full day. The record does not show that any employee was denied scheduled overtime when on EOL for a full day. To the contrary, Pollock himself worked scheduled overtime on days on which he used EOL for a full day after his conversation with Brown. This was consistent with the many times he worked scheduled overtime when on EOL before September 1990.

The ALJ's finding that UCS had an established policy to deny employees scheduled overtime when on full-day EOL rests on Brown's admitted statement to Pollock that he was not eligible for scheduled overtime on any day he used EOL for a full day and Pollock's subsequent letter to Brown confirming their
conversation. In agreement with UCS, however, we find that Brown's statement to Pollock did not represent UCS' policy, but a misinterpretation of information and advice given Brown by Rubenstein. The discussion between Brown and Rubenstein did not concern employees' eligibility for scheduled overtime when they used EOL for a full day, only Pollock's overtime eligibility because he was on full-time EOL. From our review of the record, it is clear that Brown was merely communicating to Pollock what he understood to be UCS' existing policy.

The ALJ also relied upon Rubenstein's testimony that he did not think it appropriate for employees who used EOL for a full day to be eligible for scheduled overtime. There is no evidence, however, that this opinion was communicated to Brown or Pollock or was ever adopted as UCS' policy. Given that Pollock worked overtime when on full-day EOL, we read Rubenstein's testimony as reflecting only his personal opinion, not UCS' policy or practice.

As an additional basis for his conclusion that UCS denied scheduled overtime to persons on full-day EOL, the ALJ relied upon a statement in UCS' answer admitting that Rubenstein informed Brown that Pollock was not eligible for overtime "on days when he was absent from work on the basis of employee organization leave." We find this admission, however, to be ambiguous. It could apply only to the days off during a period of full-time EOL, a policy and practice UCS has consistently admitted. Given the circumstances in which Brown posed the
question to Rubenstein, we consider this, if anything, to be the more reasonable interpretation of UCS' answer.

The ALJ also concluded that UCS could not have intended to deny overtime eligibility to only persons on full-time EOL because Pollock was not going to be on full-time EOL when he was told by Brown that he was ineligible for overtime on any day he used EOL. This shows, however, only Brown's understanding of UCS' policy. Given his understanding, Brown would not have said anything else to Pollock. His statement to Pollock, which we have concluded was mistaken, does not establish what UCS' policy is in fact.

Finding that Brown misunderstood and misstated UCS' existing policy does not, however, necessarily exonerate UCS. From an employee's perspective, there is generally no less potential interference with protected rights in being told incorrectly that he or she is ineligible for a benefit then in actually being denied the benefit.\(^5\) The inaccuracy of Brown's statement, however, does not by itself establish any statutory impropriety. The statement must also mislead the employee and, thereby, impermissibly encourage or discourage the exercise of protected rights.\(^7\)

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\(^5\)See, e.g., United Univ. Professions (Barry), 17 PERB ¶3061 (1984); United Fed'n of Teachers (Barnett), 15 PERB ¶3103 (1982); Auburn Administrators Ass'n, 11 PERB ¶3086 (1978).

\(^7\)United Univ. Professions, 20 PERB ¶3056 (1987).
In this case, we find that Pollock was not mislead by Brown's statement. Pollock, as noted, worked scheduled overtime when on EOL for a full day after Brown's statement to him. Therefore, neither he nor other employees could have concluded reasonably that scheduled overtime was denied them if they used a full day of EOL.

UCS admittedly, however, has a policy and practice of denying scheduled overtime to employees on full-time EOL which Pollock enjoys by virtue of UCS' practice given his office in COBANC. The ALJ found that UCS' policy in this respect violated the Act on two different theories.

Relying upon our decision in County of Albany, the ALJ first held that UCS' policy interfered with and discriminated against Pollock for his exercise of a clear contract right without any colorable claim of corresponding right in UCS to condition or restrict overtime on the relinquishment of full-time EOL. We find this first theory of liability inapplicable on the facts of this case because Pollock's full-time EOL status did not derive from the parties' collective agreement, but exclusively from UCS' practice.


\[^2\] The ALJ extended this same theory to his finding that UCS also denied employees on full-day EOL eligibility for scheduled overtime. Having found that UCS did not have a policy or practice of denying overtime to employees on full-day EOL, we have no occasion to consider the application of this theory of liability to the use of full-day EOL.
The ALJ also relied upon our decisions in City of Rochester\(^{10}\) and County of Suffolk.\(^{11}\) The ALJ interpreted those decisions to preclude an employer from interfering with an employee's authorized union leave time unless there is a significant conflict between the leave time and the reasonable requirements of the employee's position. To the extent the ALJ applied this theory to find UCS in violation of the Act regarding Pollock's use of full-time EOL,\(^{12}\) we reverse.

UCS denies overtime eligibility to all persons on extended leaves of various types regardless of purpose. That policy on this record has been consistently applied. The ALJ nonetheless held that UCS' nondiscriminatory overtime policy violated the Act insofar as it applied to union leave because UCS did not have a legitimate reason to condition overtime on relinquishment of full-time EOL. This analysis, however, elevates full time union leave to a special, statutorily protected class. That was neither the intent nor the effect of our decisions in City of Rochester or County of Suffolk. Indeed, we made it clear in City of Rochester that there is no statutory right to full union release time.

\(^{10}\)19 PERB ¶3081 (1986).

\(^{11}\)20 PERB ¶3009 (1987).

\(^{12}\)As with the first theory of liability, the ALJ applied this second theory to the facts as pertaining to the use of full-day EOL. Having found, as noted, that UCS did not prohibit employees on full-day EOL from working overtime, we again do not decide the application of this second theory of liability to the use of full-day EOL.
The core rationale of both City of Rochester and County of Suffolk is the preservation of choice to the employee. Those decisions involved promotional opportunities for employees who were active in union affairs, but the rationale is equally applicable here. A benefit or opportunity (overtime/promotion) may be denied an employee if, by the employee's free choice of a different benefit (contractual leave), the employee is unable to satisfy the conditions attached to the grant of the benefit or opportunity. UCS' policy preserved that choice to Pollock and he exercised it. By choosing to avail himself of the full release time made available to him by UCS' practice, Pollock removed himself totally from UCS' active work force in the sense that he was not required or relied upon to perform any job-related duties for UCS. All persons in similar circumstances are denied eligibility for scheduled overtime. Pollock's union leave affords him no special statutory privileges not enjoyed by other employees similarly situated. Alternatively, Pollock could have chosen not to take full-time EOL and, thereby, maintain his eligibility for scheduled overtime. The ALJ's decision removes from the employer any right to subject an employee to that choice and from the employee any obligation to make it. Nothing in either City of Rochester or County of Suffolk supports either of those results. To the contrary, those decisions compel our conclusion that Pollock was properly held to the consequence of his choice.
In summary, neither of the theories advanced by the ALJ supports a conclusion that UCS' overtime policy as applicable to an employee on full-time EOL violated the Act. As UCS' overtime policy is otherwise nondiscriminatory and not improperly motivated, there is no basis upon which to conclude that UCS violated §209-a.1(c) of the Act. For the reasons set forth above, the ALJ's decision is reversed.

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

DATED: August 9, 1993
New York, 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 264,
Petitioner,

-and-

TOWN OF RUSHFORD (HIGHWAY DEPARTMENT),
Employer.

CASE NO. C-4078

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

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

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

IT IS HEREBY CERTIFIED that the Teamsters Local 264 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: Maintenance Equipment Operators (Part-time and Full-time) and Highway Department Laborers.

Excluded: All other employees (seasonal, clerical and managerial).
FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Teamsters Local 264. 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: August 9, 1993
New York, 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
CSEA, INC., LOCAL 1000, AFSCME, AFL-CIO,

Petitioner,

-and-

FREEPORT 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 CSEA, 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: Full-time and Part-time: Clerk/Typist, Account Clerks, Senior Account Clerks, Maintenance Helpers, Maintenance Mechanics and Maintenance Supervisors.

Excluded: All other employees.
FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the CSEA, 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: August 9, 1993
New York, 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
CSEA, INC., LOCAL 1000, AFSCME, AFL-CIO,
Petitioner,

-and-

HEMPSTEAD 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 CSEA, 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: Maintenance helpers and maintainers.

Excluded: All other employees.

FURTHER, IT IS ORDERED that the above named public employer
shall negotiate collectively with the CSEA, 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: August 9, 1993
New York, New York

Pauline R. Kinsella, Chairperson

Walter L. Eisenberg, Member

Eric J. Schmertz, Member
In the Matter of

SCHOHARIE CENTRAL ADMINISTRATIVE ASSOCIATION/SAANYS,

Petitioner,

-and-

SCHOHARIE 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 Schoharie Central Administrative Association/SAANYS 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: High School Principal, Elementary School Principal, Director of Special Education.

Excluded: All other employees.
FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Schoharie Central Administrative Association/SAANYS. 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: August 9, 1993
New York, New York

Pauline R. Kinsella, Chairperson

Walter L. Eisenberg, Member

Eric J. Schmertz, Member
Amend §201.2(c)

(c) Petitions under this section shall be on a form provided by the board for this purpose, and signed. Four copies of the petition shall be filed with the director. Petition forms will be supplied by the director upon request. Prior to the issuance of a decision by the director pursuant to section 201.11 of this Part, a petition may be withdrawn only with the [consent] approval of the director. After the issuance of a decision by the director, [the petition may be withdrawn] a representation proceeding may be discontinued only with the [consent] approval of the board. Requests to the director to withdraw a petition or to the board to discontinue a representation proceeding will be approved unless to do so would be inconsistent with the purposes and policies of the Act or due process of law. Whenever the director [or the board, as the case may be,] approves withdrawal of any petition, or the board approves the discontinuation of a representation proceeding, the case shall be closed[.] without consideration or review of any of the issues raised by the petition.
Amend 204.1(d)

(d) Amendment and withdrawals. The director or administrative law judge designated by the director may permit a charging party to amend the charge before, during or after the conclusion of the hearing upon such terms as may be deemed just and consistent with due process. The charge may be withdrawn by the charging party before the issuance of [a final] the dispositive decision and recommended order based thereon upon approval by the director. Thereafter, the improper practice proceeding may be discontinued only with the approval of the board. Requests to the director to withdraw an improper practice charge or to the board to discontinue an improper practice proceeding will be approved unless to do so would be inconsistent with the purposes and policies of the Act or due process of law. Whenever the director approves the withdrawal of a charge, or the board approves the discontinuation of a proceeding, the case will be closed [.] without consideration or review of any of the issues raised by the charge.