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Board (PERB)

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12-28-1993

## State of New York Public Employment Relations Board Decisions from December 28, 1993

New York State Public Employment Relations Board

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## State of New York Public Employment Relations Board Decisions from December 28, 1993

### Keywords

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

### Comments

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2A-12/28/93

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of

DUTCHESS COUNTY SHERIFF'S EMPLOYEES  
ASSOCIATION,

Petitioner,

-and-

CASE NO. C-4106

COUNTY OF DUTCHESS and DUTCHESS COUNTY  
SHERIFF,

Joint Employer,

-and-

NEW YORK STATE FEDERATION OF POLICE, INC.,

Intervenor.

---

LESLIE A. SOUKUP, ESQ., for Petitioner

ANTHONY DE ROSA, ESQ., for Joint Employer

THOMAS P. HALLEY, ESQ., for Intervenor

BOARD DECISION AND ORDER

On May 14, 1993, the Dutchess County Sheriff's Employees Association (Association) filed a petition to represent the unit of employees of the County of Dutchess and Dutchess County Sheriff (Joint Employer) currently represented by the New York State Federation of Police, Inc. (Federation). The petition was dismissed as untimely by the Assistant Director, on behalf of the Director. The Assistant Director noted that, under §201.3(e) of PERB's Rules of Procedure (Rules), a petition for representation may be filed 120 days after the expiration of a contract for which no successor has been reached and that that open period

would ordinarily be available to the Association, rendering this petition timely. However, on the particular facts of this case, the Assistant Director dismissed the petition as untimely on the ground that the pendency of an earlier representation petition, Case No. C-3961,<sup>1/</sup> had deprived the Federation of the opportunity to negotiate a successor contract during the processing of the earlier petition. The Assistant Director concluded, therefore, that the acceptance of this new petition before there was an opportunity for negotiations between the Federation and the Joint Employer was not in keeping with the spirit and intent of the Rules. Utilizing the rationale articulated by the Director in Village of Sloatsburg,<sup>2/</sup> he informed the Association that the petition was untimely and should be withdrawn or it would be dismissed. The Association declined to withdraw the petition and, accordingly, the Assistant Director dismissed it.

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<sup>1/</sup>On May 15, 1992, the Dutchess County Deputy Sheriffs Police Benevolent Association (PBA) filed a petition seeking to represent certain employees in the unit represented by the Federation. That petition was dismissed by the Director before the Assistant Director issued his decision in this case. By decision dated November 30, 1993, we reversed the Director's decision and remanded the matter for further processing. County of Dutchess and Dutchess County Sheriff, 26 PERB ¶13069 (1993).

<sup>2/</sup>20 PERB ¶4003, aff'd on other grounds, 20 PERB ¶13014 (1987). The Director there determined that based upon the employer's improper refusal to bargain with the incumbent for a successor contract, the incumbent's period of unchallenged representation status should be extended. The challenging organization's representation petition was dismissed. The Board affirmed the dismissal of the petition, but on other grounds.

The Association's exceptions assert that §201.3(e) of the Rules is clear and that the Assistant Director's decision has in effect created a new rule. For the reasons set forth below, the Assistant Director's decision must be reversed.

The statutory period of unchallenged representation status is afforded to the parties in a negotiating relationship to enable them to have a reasonable opportunity to negotiate a collective bargaining agreement and establish a working relationship.<sup>3/</sup> Under our decisions, the filing of a petition to alter the composition of an existing unit halts the negotiation of a collective bargaining agreement as to the titles subject to the petition during the pendency of the representation question.<sup>4/</sup> The Rules also provide an open period for the filing of a representation petition if a new contract has not been reached within 120 days after the expiration of the prior contract.<sup>5/</sup> Relying on the rationale in Village of Sloatsburg, supra, the Assistant Director found that the period during which a petition may not be filed should be extended since the Federation and the Joint Employer had been precluded, not by actions found to constitute an improper practice, but by the

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<sup>3/</sup>See State of New York, 10 PERB ¶13108 (1977); Nassau Chapter, CSEA, 6 PERB ¶13057 (1973).

<sup>4/</sup>County of Rockland, 10 PERB ¶13098 (1977).

<sup>5/</sup>Rules, §201.3(e).

filing of the earlier representation petition by a different petitioner, from negotiating a successor agreement. However disruptive of the negotiating process this halt in negotiations may be, it is, nonetheless, not an appropriate basis for dismissing an otherwise timely petition.<sup>6/</sup> We have previously held that "the requirements relating to the filing and processing of a certification or decertification petition...must be strictly applied, and that it is only within the context of an improper practice charge..."<sup>7/</sup> that outside circumstances can be properly considered.<sup>8/</sup> The applicable Rule clearly provides that a representation petition may be timely filed 120 days after the expiration of a contract if a successor contract has not been negotiated during the insulated period. There is no ambiguity in the language of §201.3(e) and there is no room for an interpretation effecting its waiver.

For the reasons set forth above, the Association's exceptions are granted, the Assistant Director's decision is

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<sup>6/</sup>This circumstance may be an appropriate basis for our consideration of a Rule change. However, such a change should not be effectuated by a decision.

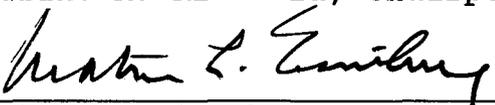
<sup>7/</sup>City Univ. of New York, 20 PERB ¶3069, at 3148 (1987).

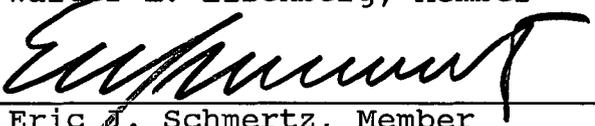
<sup>8/</sup>See County of Erie, 13 PERB ¶3105 (1980), conf'd sub nom. Eiss v. PERB, 14 PERB ¶7004 (Sup. Ct. Alb. Co. 1981).

reversed and the matter is remanded for further proceedings consistent with our decision herein and our decision in Case No. C-3961.<sup>2/</sup>

DATED: December 28, 1993  
Albany, New York

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

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

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

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<sup>2/</sup>See supra note 1.

2B-12/28/93

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of

UNITED PUBLIC SERVICE EMPLOYEES UNION  
LOCAL 424, A DIVISION OF UNITED INDUSTRY  
WORKERS DISTRICT COUNCIL 424,

Petitioner,

-and-

CASE NO. C-4025

HEWLETT-WOODMERE UNION FREE SCHOOL  
DISTRICT,

Employer.

---

RICHARD M. GREENSPAN, P.C. (STUART WEINBERGER of counsel),  
for Petitioner

EHRlich, FRAZER & FELDMAN (JEROME H. EHRlich of counsel),  
for Employer

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by the United Public Service Employees Union Local 424, A Division of United Industry Workers District Council 424 (Local 424) to a decision by the Director of Public Employment Practices and Representation (Director).

Local 424 had petitioned to represent currently unrepresented employees of the Hewlett-Woodmere Union Free School District (District) employed in the following titles: Ten-month teacher aides, clerks, hourly teacher aides, security aides, school monitors and bus aides. In an earlier representation proceeding, the Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO (CSEA) had sought to represent these

same employees. The Director dismissed CSEA's petition on a finding that a separate unit for these employees was not most appropriate.<sup>1/</sup> Relying upon that earlier decision, and the absence of an offer of any new or changed facts from any party, the Director dismissed Local 424's petition on the ground, again, that the separate unit sought for these employees was not "most appropriate".

Local 424 argues in its exceptions that it is not bound by the record in the prior proceeding and that there must be a hearing to determine whether there are any relevant facts not of record in that proceeding. It also argues that the Director misstated its willingness to represent all or any portion of the unrepresented employees in a separate unit.

The District in its response supports the Director's decision in its entirety and argues for its affirmance.

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

Contrary to Local 424's main argument, the Director did not bind it to the record developed in the earlier proceeding initiated by CSEA. That record consisted of a series of stipulations which were set forth in the Director's published decision dismissing CSEA's petition. Local 424 was provided a full opportunity to review that record and it does not dispute the accuracy of the stipulated facts as stated. The Director

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<sup>1/</sup>Hewlett-Woodmere Union Free Sch. Dist., 24 PERB ¶4043 (1991). The Director's decision in that case was not appealed.

merely adopted the record of that proceeding, which involved the same employees, as the record in this proceeding after ascertaining during the course of his investigation that the parties had no new facts to present. Significantly in this respect, the Director inquired specifically by letter to the parties as to whether they had any additional information to offer. Local 424 and the District informed the Director that they would not be offering any additional evidence. The Director then proceeded, as he had informed the parties he would, to a determination on the basis of a record consisting, in relevant respect, of the record developed in the context of the proceeding initiated by CSEA. We consider this procedure to have been well within the scope of the Director's broad discretion in the investigation of a representation question.

Local 424 argues, however, that there must always be a hearing on a representation petition on the mere possibility that a hearing might produce some relevant information which was not produced during the litigation of the same representation question in an earlier proceeding. Such a rigid approach to the investigation of a representation question is, however, fundamentally inconsistent with the Director's discretion in the investigation of a representation question and, moreover, would not serve any useful purpose. Quite the contrary, to hold a hearing without some indication of a need to do so would only serve to delay resolution of the representation questions to the certain detriment of all concerned. In this case, for example,

Local 424 was specifically extended an opportunity by the Director to present new information. Despite that invitation, Local 424 simply declined to submit any other information. There was no representation to the Director that it had tried but failed to ascertain whether there were any new facts, and no explanation as to why it reasonably could not, in the absence of a hearing, determine whether there were any new relevant factual developments not already in the record. In the circumstances of this case, therefore, we hold that the Director did not err in deciding this matter without a hearing.

Local 424 also argues that the Director's statement that it "does not seek to represent any other configuration of employees" misstates its uniting position. Local 424 states in its exceptions that it is willing to represent any or all of the petitioned-for employees in a separate unit. This clarification of Local 424's uniting position, however, is immaterial. It is the separate uniting of these employees which the Director held to be inappropriate. The inappropriateness of a separate unit is unchanged whether the composition of that unit is all or only some of the unrepresented employees.

Local 424 also argues on the basis of the facts as found by the Director that a separate unit for these unrepresented employees is "appropriate". We agree, however, with the Director's decision that it is not most appropriate as required under our interpretation of the uniting criteria in §207 of the Public Employees' Fair Employment Act (Act). As the Director

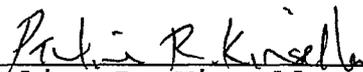
held, and the District argues, one or more of the several units already existing in the District can appropriately accommodate the unrepresented personnel. There are currently five separate units of District employees: administrative, two units of instructional employees, operational/clerical and service. As the Director determined, the unrepresented employees do not have any special interests which would warrant a separate unit for them or preclude their placement into one or more of the existing units, pursuant to a petition for that purpose which is timely filed. We would cause an undue proliferation of units were we to afford these employees a separate unit.

Our affirmance of the Director's decision does not, as Local 424 argues, deny the employees their right of representation. That right is not absolute. As the Director correctly observed, we must configure a unit in accordance with the Legislature's directive in §207 of the Act that it be the appropriate unit and the employees' right of representation is exercised within the confines of that unit. As the unit petitioned for, or any variation thereon limited to the titles in issue, is not most appropriate, the Director properly dismissed the petition.

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

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

DATED: December 28, 1993  
Albany, New York

  
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Pauline R. Kinsella, Chairperson

  
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Walter L. Eisenberg, Member

  
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Eric J. Schmertz, Member

20-12/28/93

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of

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

Charging Party,

-and-

CASE NO. U-13166

COUNTY OF NASSAU,

Respondent.

---

NANCY E. HOFFMAN, GENERAL COUNSEL (MIGUEL ORTIZ and JANNA  
PFLUGER of counsel), for Charging Party

BEE & EISMAN (PETER A. BEE and DANIEL E. WALL of counsel), for  
Respondent

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by the County of Nassau (County) to a decision by an Administrative Law Judge (ALJ). After a hearing, the ALJ held that the County had violated §209-a.1(d) of the Public Employees' Fair Employment Act (Act), as alleged by the Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO (CSEA), when it unilaterally increased the work hours of certain nurses stationed at the Nassau County Medical Center (hospital).

From late 1987 until January 1992, certain unit nurses were permitted to work three-fifths (twenty-one hours) of the full-time, thirty-five-hour standard workweek. The reduced workweek was offered by the County, at least initially, because of a nursing shortage in the area which made it difficult for the County to fill full-time nursing positions. New hires and existing staff were

eligible for the three-fifths schedule. Requests for the reduced workweek schedule were considered case-by-case and not every request was granted. The number of three-fifths employees varied over time, but was steadily diminishing, such that by the beginning of 1990, the County had essentially stopped offering a reduced schedule to new hires. Those employees who were then on a three-fifths schedule, however, were permitted to remain on it. The County sought volunteers to return to the thirty-five-hour week during the summer and fall of 1991. That solicitation produced about ten volunteers, leaving approximately thirty nurses on the three-fifths schedule. By October 1991, the County had decided that the remaining three-fifths nurses would be required to revert to a full-time schedule. In January 1992, that decision was implemented when all but three of the three-fifths nurses were involuntarily assigned to a thirty-five-hour per week schedule. This charge ensued.

The ALJ held that the County had unilaterally increased the employees' established hours of work in violation of its duty to negotiate. The County's exceptions are directed to the ALJ's conclusion that there was a cognizable change in past practice when the nurses were ordered to revert to a full-time workweek. It argues also that the ALJ's reliance on our decision in County of Broome,<sup>1/</sup> in which we held that an employer had violated the Act

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<sup>1/</sup>22 PERB ¶3019 (1989).

by unilaterally replacing full-time employees with part-time employees, was incorrect.

CSEA argues in its response that the ALJ did not commit any errors of fact or law and that his decision, with or without reliance upon County of Broome, should be affirmed.

Having reviewed the record and considered the parties' arguments, we affirm the ALJ's decision.

The County asserts that the ALJ did not properly frame or decide the past practice question. Asserting that the charge must be read literally, the County argues that CSEA did not prove, as it alleged, that the three-fifths schedules were "eliminated" or that there was a practice of extending a three-fifths schedule to those who either "cannot, or find it difficult to work" a thirty-five-hour workweek. We hold, however, that the ALJ gave a fair and reasonable reading to the allegations in the charge.

The reduced workweek was eliminated as an option for all of the unit employees who were involuntarily ordered to return to a thirty-five-hour workweek. That two recovery room nurses were permitted to remain on a three-fifths schedule or that there may be or had then been one or more opportunities for a three-fifths nurse in the recovery room is immaterial. To accept the County's past practice argument would mean that an exemption from a work rule or order extended by an employer to a single employee would deny the affected employees' union any possible rights or remedies under the bargaining provisions of the Act regarding a change in the employment status quo. As CSEA correctly argues, however, a union

represents all unit employees both collectively and individually. Therefore, under the appropriate circumstances, changes in practice affecting one, some, or all unit employees are equally cognizable as refusals to negotiate under §209-a.1(d) of the Act.<sup>2/</sup>

In that same respect, CSEA's allegations that the reduced workweek was sought by those who could not work or had difficulty working the regular schedule concern only the motives for some employees seeking a three-fifths schedule. Whether true or proven, however, the employees' reasons for seeking the reduced schedule are immaterial to the processing or disposition of the charge. CSEA plainly alleges that the subject matter of the charge is a unilateral "increase in hours of employment" of the "three-fifths employees" caused by the County's order to resume a thirty-five-hour workweek. The ALJ fairly and properly read the charge in accordance with these allegations and correctly framed and decided the past practice issue.

The ALJ's references to County of Broome were in the context of arguments regarding the possibility that the increase in work hours might be justified as a change in the nature or level of the County's services. The ALJ concluded, however, that the elimination of the three-fifths positions did not effect a change

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<sup>2/</sup>The County does not argue that the reduced workweek was conditional in nature nor that the discretionary nature of the grant rendered its revocation also discretionary. The record in any event would not support either conclusion. See Onondaga-Madison BOCES, 13 PERB ¶3015 (1980), conf'd, 82 A.D.2d 691, 14 PERB ¶7025 (3d Dep't 1981) (revocation of benefit) and Gananda Cent. Sch. Dist., 17 PERB ¶3095 (1984) (conditional benefit).

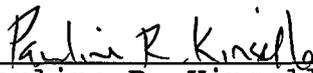
in the nature or level of the hospital's services. No exceptions have been taken in this regard. Without a demonstrated change in the nature or level of the hospital's services, the replacement of part-time employees with full-time employees, although the same persons, was properly analogized by the ALJ to the converse fact pattern in County of Broome.

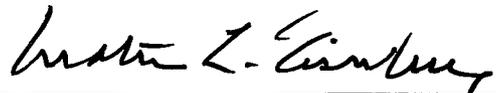
For the reasons set forth above, the ALJ's decision is affirmed and the County's exceptions are dismissed.

IT IS, THEREFORE, ORDERED that the County:

1. Immediately offer and, upon acceptance, immediately reinstate to a three-fifths workweek, any unit nurse who had worked a three-fifths schedule but who was required to work thirty-five hours per week on or after January 1992.
2. Sign and post the attached notice at all locations normally used to post notices of information to the affected unit employees.

DATED: December 28, 1993  
Albany, New York

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

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

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

APPENDIX

# NOTICE TO ALL EMPLOYEES

PURSUANT TO  
THE DECISION AND ORDER OF THE

NEW YORK STATE  
PUBLIC EMPLOYMENT RELATIONS BOARD

and in order to effectuate the policies of the

NEW YORK STATE  
PUBLIC EMPLOYEES' FAIR EMPLOYMENT ACT

We hereby notify the employees represented by the Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO, that the County of Nassau will immediately offer and, upon acceptance, immediately reinstate to a three-fifths workweek, any unit nurse who had worked a three-fifths schedule but who was required to work 35 hours per week on or after January 1992.

Dated .....

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

County of Nassau  
.....

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

2D-12/28/93

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of

SUBWAY-SURFACE SUPERVISORS ASSOCIATION,

Charging Party,

-and-

CASE NO. U-8570

NEW YORK CITY TRANSIT AUTHORITY,

Respondent.

---

STUART SALLES, ESQ., for Charging Party

---

ALBERT C. COSENZA, GENERAL COUNSEL (GEORGE S. GRUPSMITH  
of counsel), for Respondent

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by the Subway-Surface Supervisors Association (Association) to a decision by an Administrative Law Judge (ALJ) dismissing its charge against the New York City Transit Authority (Authority). The Association alleges in its charge that the Authority violated §209-a.1(a), (b), (c) and (d) of the Public Employees' Fair Employment Act (Act) when it gave certain of its unrepresented employees a paid holiday for Martin Luther King, Jr. Day without extending that same benefit to the employees in the Association's unit. The second, and major, aspect of the charge, alleges that the Authority unilaterally transferred unit work to nonunit employees in conjunction with a restructuring of its management with the intent of decimating and discouraging membership in the

Association. This aspect of the charge centers on a reassignment of supervision over the Authority's hourly employees from Level I supervisors, who are in the Association's unit, to nonunit Level II supervisors. The Association agreed in early 1985 to exclude Level II supervisors from the unit as replacements were hired to fill vacancies in those positions caused by attrition.

After six days of hearing and substantial delays in processing at the parties' request, the ALJ dismissed both aspects of the charge, the first as legally deficient, and the second as untimely. The ALJ held that an employer's grant of an economic benefit to unrepresented employees, which is not simultaneously extended to represented employees, does not violate the Act. The ALJ dismissed the second aspect of the charge as untimely because the Association knew or should have known that nonunit Level II employees were performing unit duties in conjunction with their "managerial" positions by at least early 1985. As such, the charge, filed in early 1986, was instituted well beyond the four-month filing period and, therefore, it required dismissal pursuant to the Authority's affirmative defense.

Although the Association has taken exception to both parts of the ALJ's decision, the arguments in its brief are limited to her dismissal as untimely of the unilateral transfer of unit work allegations. The Association argues either that the transfer represents a continuing violation of the Act or that the Authority's asserted "deceptive and gradual" transfer of the unit

work from the Level I employees did not afford it "clear and unequivocal" notice of the transfer until some date within the four-month filing period.

The Authority's arguments in response to the exceptions are similarly limited to the allegations regarding the transfer of unit work. The Authority submits that the Association's arguments in support of the timeliness of the charge have no merit either as a matter of fact or law. Accordingly, it urges that the ALJ's decision be affirmed.

Having reviewed the record and considered the parties' arguments, we affirm the ALJ's decision.

Preliminarily, we affirm the ALJ's dismissal of the allegation concerning the Martin Luther King, Jr. holiday for the reasons stated by the ALJ in her decision and as summarized herein. Indeed, the Authority's statutory duty to bargain with the Association would have precluded the unilateral extension of the holiday to the unit employees.

The ALJ also correctly dismissed the second aspect of the charge as untimely on the law and the facts. Although the Association argues that the transfer of unit work is a "continuing" violation, we have consistently declined to apply this concept in the context of our improper practice proceedings.<sup>1/</sup> The Association cites several Board and ALJ

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<sup>1/</sup>State of New York (Governor's Office of Employee Relations), 26 PERB ¶3058 (1993); Triborough Bridge and Tunnel Auth., 17 PERB ¶3017 (1984).

cases, but none support the proposition that we have applied a continuing violation concept in assessing the timeliness of charges grounded upon a unilateral change in a mandatorily negotiable subject of negotiation. Without discussing each of the cases cited by the Association, our decision in Middle Country Teachers Association<sup>2/</sup> (hereafter Middle Country), cited most often by the Association, illustrates our point. In Middle Country, we merely defined the dates at which an improper practice cause of action accrues. In rejecting an exclusive first definitive notice theory of accrual, which had been applied in certain earlier decisions,<sup>3/</sup> we held in Middle Country only that a statutory cause of action accrues either on the first announcement of the allegedly improper change in policy or practice or the first date of actual harm or application to the charging party. Middle Country, in fact, adopts the Board's earlier decision in City of Yonkers<sup>4/</sup> in which a continuing violation theory was specifically rejected. Having adopted City of Yonkers in Middle Country, it is clear that we did not intend Middle Country to reflect a continuing violation theory.

In making an assessment of the timeliness of a charge after the accrual points have been determined, we have consistently looked to the date the charging party knew or should have known

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<sup>2/</sup>21 PERB ¶3012 (1988).

<sup>3/</sup>See, e.g., County of Monroe, 10 PERB ¶3104 (1978).

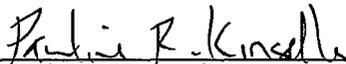
<sup>4/</sup>7 PERB ¶3007 (1974).

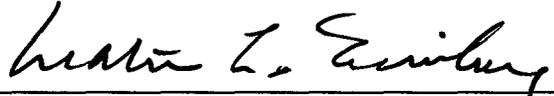
of the circumstances which might have constituted the violation of the Act alleged. The Association's secondary arguments are directed to this branch of our case law regarding the timeliness of a charge. It argues that the Authority transferred the supervisory duties of unit employees in a manner to deceive or conceal its actions such that the Association could not and did not have clear and unequivocal notice of the transfer until some unidentified date within the four-month filing period. The ALJ found, however, that the Association knew or should have known by at least early 1985 that the Level II employees were regularly performing many of the duties of the Level I employees who are in the Association's unit. The Association does not contest the ALJ's underlying findings of fact in this regard. Having reviewed the record, we find no basis to disturb the ALJ's findings. The record shows that the Authority's utilization of Level II employees to supervise hourly employees was open and notorious in each of the Authority's three departments for an extended period of time. Notwithstanding the Association's claims, the record is not reasonably susceptible to a conclusion that the reassignment of supervisory duties from the Level I employees was concealed, deceptive or otherwise done in a manner which would warrant a reversal of the ALJ's decision to dismiss this aspect of the charge as untimely.

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

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

DATED: December 28, 1993  
Albany, New York

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

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

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

2E-12/28/93

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of

CIVIL SERVICE EMPLOYEES ASSOCIATION, INC.,  
LOCAL 1000, AFSCME, AFL-CIO, CAYUGA COUNTY  
LOCAL 806, CAYUGA COUNTY UNIT,

Charging Party,

-and-

CASE NO. U-13663

COUNTY OF CAYUGA,

Respondent.

---

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

BRENT D. COOLEY, 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, Cayuga County Local 806, Cayuga County Unit (CSEA) to a decision of an Administrative Law Judge (ALJ) dismissing its charge that the County of Cayuga (County) violated §209-a.1(d) of the Public Employees' Fair Employment Act (Act) when it unilaterally adopted a smoking ban within the Cayuga County Office Building.

The ALJ found that Article 13-E of the New York Public Health Law (PHL), also known as the Clean Indoor Air Act of 1990 (Air Act), effectively preempted any right CSEA had to negotiate the County's smoking ban.

PHL §1399-t states:

**§1399-t. Enforcement**

1. For the purpose of this article the term "enforcement officer" shall mean the board of health of a county or part county health district established pursuant to title three of article three of this chapter, or in the absence thereof, an officer of a county designated for such purpose by resolution of the elected county legislature or board of supervisors adopted within sixty days after the effective date of this act. Any such designation shall be filed with the commissioner within thirty days after adoption. If no such designation is made, the county will be deemed to have designated the department as its enforcement officer. Any county that does not designate an enforcement officer during the time period specified above may do so at any time, thereafter, such designation will be effective thirty days after it is filed with the commissioner. The enforcement officer shall have sole jurisdiction to enforce the provisions of this article on a county-wide basis pursuant to rules and regulations promulgated by the commissioner. In a city with a population of more than one million the enforcement officer shall be the board of health of such city which shall have sole jurisdiction to enforce the provisions of this article in such city.

2. If the enforcement officer determines after a hearing that a violation of this article has occurred, a civil penalty may be imposed by the enforcement officer pursuant to section thirteen hundred ninety-nine-v of this article. When the enforcement officer is the commissioner, the hearing shall be conducted pursuant to the provisions of section twelve-a of this chapter. When the enforcement officer is a board of health or an officer designated to enforce the provisions of this article, the hearing shall be conducted pursuant to procedures set forth in the county sanitary code, or in the absence thereof, pursuant to procedures established by the elected county legislature or board of supervisors. No other penalty, fine or sanction may be imposed, provided that nothing herein shall be construed to prohibit an enforcement officer from commencing a proceeding for injunctive relief to compel compliance with this article.

3. Any person who desires to register a complaint under this article may do so with the appropriate enforcement officer.

4. The owner, manager, operator or other person having control of an indoor area open to the public, food service establishment or place of employment under this article, shall inform, or shall designate an agent who shall be responsible for informing individuals smoking in an area in which smoking is not permitted that they are in violation of this article.

5. Any person aggrieved by the decision of an enforcement officer other than the commissioner may appeal to the commissioner to review such decision within thirty days of such decision. The decision of any enforcement officer shall be reviewable pursuant to article seventy-eight of the civil practice law and rules.

6. The enforcement officer, subsequent to any appeal having been finally determined, may bring an action to recover the civil penalty provided in section thirteen hundred ninety-nine-v of this article in any court of competent jurisdiction.

CSEA excepts to the ALJ's preemption conclusion, arguing that it has the right, both pursuant to the Act and PHL §1399-o, to negotiate smoking restrictions which are in excess of the minimum requirements of PHL §1399-o. The County filed cross-exceptions, arguing that the ALJ's decision should be affirmed on the merits, and, alternatively, the charge should be dismissed as untimely.

On April 10, 1990, the County Legislature enacted Resolution 129 of 1990, in accordance with the provisions of PHL §1399-o, prohibiting smoking in nonpublic areas of the County

Office Building.<sup>1/</sup> Smoking was allowed in unshared offices without mutually shared air, in certain meeting rooms if no one present objected, in designated areas in the cafeteria, outside the building and in other designated areas. CSEA made no objection to the enactment and implementation of Resolution 129.

On March 19, 1992, a group of County employees in the unit represented by CSEA filed a class action complaint with the County Board of Health, stating that smoking was being allowed in certain areas of the building which were known to contain asbestos; that smoke from individual offices where smoking was permitted was filtering out during the workday whenever the office doors were opened; and that offices shared common air because of the ventilation system within the County Office Building.

In accordance with PHL §1399-t, the County Board of Health directed the County Health Department to investigate the complaint, hold a hearing and transmit its findings of fact. William Catto, the County's Public Health Director, was designated as the hearing officer and conducted a hearing on

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<sup>1/</sup>Smoking was prohibited in the duplicating and copying rooms, rooms containing vending machines used by smokers and non-smokers, any area where chemicals or hazardous materials are stored, areas in view of the general public, patient care areas, areas containing asbestos, and areas where one or more employees object to smoking in their presence or where the air becomes contaminated, i.e., where smoke odor can be detected.

June 2, 1992. CSEA stipulated that the investigative hearing was properly conducted under PHL §1399-t. Based upon his findings, Catto recommended that all smoking cease in the County Office Building.<sup>2/</sup> On June 8, 1992, the County Board of Health, pursuant to Catto's recommendation, adopted a resolution designating the County Office Building as smoke-free effective June 22, 1992. The County itself took no specific action to implement the Board of Health ban. The Board of Health advised the employees in the County Office Building that smoking would be prohibited after June 22, 1992. CSEA filed this improper practice charge on July 13, 1992. Additionally, on October 7, 1992, CSEA brought a proceeding in Supreme Court, Cayuga County, pursuant to PHL §1399-t.5, seeking review of the County Board of Health's resolution. By decision dated January 29, 1993, CSEA's petition was dismissed and no appeal was taken by CSEA.

Initially, in response to the County's cross-exceptions, we find that the charge was timely filed. The County did adopt its smoking policy in 1990, but the charge does not complain about the adoption or implementation of the County's policy. It is the later unilateral alteration of the unit employees' terms and conditions of employment that forms the basis of the charge.

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<sup>2/</sup>Catto determined that because asbestos was present throughout the building, albeit at acceptable levels, and because of the building's ventilation system, all air was mutually shared and that a total ban on smoking was necessary to provide employees with a smoke-free work place. But see PHL §1399-n.9 and .10 which define a "smoke-free work area" and "smoking", and State of New York (Dep't of Law), 25 PERB ¶13024 (1992).

Under Resolution 129, smoking was permitted in certain areas in the County Office Building. After June 22, 1992, no smoking was permitted in any area in the County Office Building. The charge was filed within four months of that date and is, therefore, timely.<sup>3/</sup>

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

CSEA excepts to the ALJ's dismissal of its charge on the theory that its right to negotiate the subject matter of the charge was preempted by PHL §1399-t. The ALJ found that the March 19, 1992 class action complaint precipitated an enforcement hearing pursuant to the provisions of PHL §1399-t. Catto's findings at that hearing formed the basis for his recommendations to the County Board of Health that smoking be banned at the County Office Building to comply with the requirements of County Resolution 129 and the Air Act. It was the County Board of Health which imposed and is enforcing the ban on smoking in the County Office Building. PHL §1399-t clearly specifies that "the decision of any enforcement officer shall be reviewable pursuant to article seventy-eight of the civil practice law and rules." The enforcement officer here is the County Board of Health. The County itself, as employer, has taken no action with respect to the ban, apart from not interfering with the Board of Health's enforcement of the ban. Indeed, CSEA, pursuant to PHL §1399-t,

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<sup>3/</sup>Rules of Procedure, §204.1(a).

commenced an Article 78 proceeding in Supreme Court, Cayuga County, to review the determination by the County Board of Health to ban smoking in the County Office Building. The court upheld the Board of Health decision and no appeal was taken. In commencing that judicial proceeding, CSEA exercised the only method of review of a decision by an enforcement officer available to it under PHL §1399-t.

What is at issue here is not a unilateral determination by a public employer as to what is necessary or permissible under the Air Act, as occurred in State of New York (Department of Law).<sup>4/</sup> In that case, we held that the State's decision to ban smoking in certain of its offices was a violation of §209-a.1(d) of the Act because it was a unilateral adoption by an employer of a smoking policy which was more restrictive than the minimum required by the Air Act. PHL §1399-o.6(i) subjects an employer's smoking policies which are more restrictive than the minimum requirements of that statute to the "applicable law governing collective bargaining." Here, unlike in State of New York, the authorized designee of the County Board of Health made the finding that the County Office Building was not in compliance with the smoking legislation and ordered the ban. PHL §1399-t provides the exclusive method of review of a determination by such a body. PHL §1399-o.6(i), the portion of the Air Act which mandates collective bargaining, refers specifically to an action of an

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<sup>4/</sup>Supra note 2.

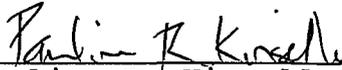
employer, not of a board of health acting in its capacity as the enforcement officer for the purposes of the Air Act. It is only when the employer, not the enforcement officer, acts unilaterally to impose smoking regulations which exceed the minimum requirements of PHL §1399-o that our interpretation of the Air Act is mandated and permitted. In our view, it is not for us but for the courts to review the decision of the County Board of Health that the minimum requirements of PHL §1399-o mandated a total ban on smoking in the County Office Building and, indeed, CSEA sought judicial review of the decision pursuant to PHL §1399-t.

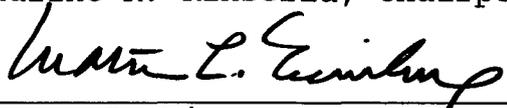
For us to hold otherwise would permit duplicative administrative review of the same questions, with the possibility of inconsistent results which could place an employer in the position of having to ignore the order of an enforcement officer in order to comply with a PERB order or vice-versa. We believe that the Legislature plainly intended to avoid those consequences when it vested "sole" enforcement jurisdiction in the appropriate enforcement officer and provided for judicial review of the enforcement officer's determination.

We, therefore, deny CSEA's exceptions and affirm the decision of the ALJ.

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

DATED: December 28, 1993  
Albany, New York

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

  
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Walter L. Eisenberg, Member

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

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of

MT. MORRIS TEACHERS ASSOCIATION, NEA/NY,

-and-

Charging Party,

CASE NOS. U-13890  
and U-13891

MT. MORRIS CENTRAL SCHOOL DISTRICT,

Respondent.

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CHRISTOPHER J. KELLY, for Charging Party

HARRIS, BEACH & WILCOX (DAVID W. LIPPIT of counsel), for  
Respondent

BOARD DECISION AND ORDER

These cases have been consolidated for decision and come to us on exceptions filed by the Mt. Morris Central School District (District) to two decisions by an Administrative Law Judge (ALJ) on a motion to reopen these improper practice charges filed by the Mt. Morris Teachers Association, NEA/NY (Association). The ALJ had conditionally dismissed the charges pursuant to the criteria set forth in Herkimer County BOCES.<sup>1/</sup>

The charges allege that the District violated §209-a.1(d) of the Public Employees' Fair Employment Act (Act) by unilaterally assigning supervisory duties to unit members (Case No. U-13890) and by reassigning unit members to a mentoring program

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<sup>1/</sup>20 PERB ¶13050 (1987).

(Case No. U-13891). The Association had also filed a grievance alleging that the same actions violated the parties' collective bargaining agreement. The ALJ conditionally dismissed the charges, but thereafter received a motion to reopen from the Association. The ALJ determined that she would reopen the cases because the arbitrator had found that the acts complained of in the grievance were not covered by the parties' contract. These cases involve only exceptions to the grant of the motion to reopen. The ALJ's decisions were not, therefore, final decisions, but merely interim decisions on the Association's motion, and the District's exceptions are properly characterized as an interlocutory appeal.<sup>2/</sup>

We have previously decided that an "interlocutory appeal from rulings by an ALJ is properly entertained only if our failure to consider the appeal would result in harm to a party which cannot be remedied by our review of the ALJ's final decision and order."<sup>3/</sup> The District has offered no evidence of any such irreparable harm which it might suffer if these cases are allowed to go forward and be heard by the ALJ. We are persuaded that the ALJ's interim decision to reopen these cases may properly be reviewed should we be asked to consider whatever

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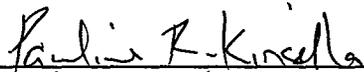
<sup>2/</sup>Appeals from rulings of an ALJ on motions or objections made as part of the pre-hearing processing of a charge or at the hearing, may not be made directly to the Board unless expressly authorized by us, pursuant to §204.7(h) of the Rules of Procedure.

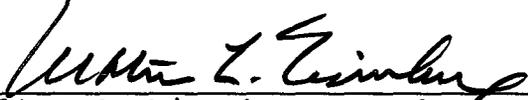
<sup>3/</sup>State of New York (Div. of Parole) and Council 82, AFSCME, 25 PERB ¶13007, at 3021-22 (1992).

exceptions may ultimately be filed to her final decision and order. The District's exceptions which seek review of the ALJ's decisions to reopen these cases are, accordingly, denied at this time. Our denial of these exceptions is without prejudice to the District's right to file exceptions to the ALJ's final decision pursuant to §204.10 of the Rules.

IT IS, THEREFORE, ORDERED that the District's exceptions are hereby dismissed.

DATED: December 28, 1993  
Albany, New York

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

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

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

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of

**ALBERT J. O'ROURKE,**

Charging Party,

-and-

CASE NO. U-12121

**BOARD OF EDUCATION OF THE CITY SCHOOL  
DISTRICT OF THE CITY OF NEW YORK,**

Respondent.

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**JAMES R. SANDNER, GENERAL COUNSEL, NYSUT, NEW YORK CITY  
(MELINDA G. GORDON and PAUL H. JANIS of counsel), for  
Charging Party**

**JERRY ROTHMAN, ESQ., for Respondent**

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by the Board of Education of the City School District of the City of New York (District) to a decision by an Administrative Law Judge (ALJ) on a charge filed against the District by Albert J. O'Rourke. After a seven-day hearing, the ALJ held that the District violated §209-a.1(a), (b) and (c) of the Public Employees' Fair Employment Act (Act) when it transferred O'Rourke on November 9, 1990, the day after he had sponsored a chapter meeting of the United Federation of Teachers (UFT). The subject of this charge is O'Rourke's transfer from the District's Hearing Handicapped/Visually Impaired (HHVI) unit to Citywide programs, another of the District's divisions of special education.

In its exceptions,<sup>1/</sup> the District argues that the ALJ erred in concluding that O'Rourke was transferred in retaliation for his chairing a union meeting. The District argues that the record, most reasonably read, shows that O'Rourke was transferred because of work place overcrowding and because he had threatened two other employees in the context of the union meeting, making his continued presence at the work place potentially disruptive.

UFT, in a response filed on O'Rourke's behalf, argues that the ALJ's conclusions are correct and properly rest upon his assessment of witnesses' credibility, which must be accorded substantial deference.

Having reviewed the record and considered the parties' arguments, we affirm the ALJ's decision.

The ALJ's decision contains a detailed summarization of a voluminous record. There are no exceptions taken to the ALJ's material findings of fact or his summary of the several witnesses' testimony. The District instead challenges the conclusions and inferences the ALJ drew from the record as well as his credibility resolutions. In that latter respect, we have held consistently and the courts have affirmed, that an ALJ's credibility determinations, although not always conclusive, are

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<sup>1/</sup>The UFT filed a response and a brief on behalf of O'Rourke in which it argues that the exceptions were not timely filed. The exceptions, although received on June 9, 1993, were filed by mail on June 7, the last day of the fifteen working days permitted under §204.10 of our Rules of Procedure for the filing of exceptions to an ALJ's decision. The exceptions were, therefore, timely filed.

entitled to great weight and substantial deference and should not be set aside unless the record otherwise shows those determinations to be manifestly incorrect.<sup>2/</sup> Having carefully examined the record, we find no persuasive basis to question the ALJ's credibility resolutions.

Two factors, among several others, proved significant in the ALJ's decision. First is a statement by Kevin McCormack, the acting chair of HHVI, to Dr. Maria Lambrou, a colleague of O'Rourke, on November 13, shortly after O'Rourke's transfer from HHVI. McCormack told Lambrou that O'Rourke "is not the kind of person you want to have as your union representative." Much of the District's brief to us is devoted to arguments about Lambrou's credibility. The ALJ credited her testimony regarding McCormack's statement and, having reviewed the record, we do not find there to be any reason to reject that credibility assessment.

The second important factor is the circumstances surrounding an attempted "permanent" reassignment of O'Rourke in mid-November 1990 to an office in Queens following O'Rourke's temporary reassignment to Citywide programs on November 9, 1990, which is the subject of this charge. The ALJ concluded that this "permanent" reassignment to Queens was so irregular as to place

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<sup>2/</sup>Simpson v. Wolansky, 38 N.Y.2d 391 (1975); Board of Educ. of the City Sch. Dist. of the City of Buffalo v. PERB, 191 A.D.2d 985, 26 PERB ¶7002 (4th Dep't 1993), motion for leave to appeal denied, \_\_\_ N.Y.2d \_\_\_, 26 PERB ¶7013 (1993); City of Rochester, 23 PERB ¶3049 (1990).

in serious doubt the credibility of the District's claim that O'Rourke's temporary reassignment to Citywide programs was part of a personnel transaction already in progress before his participation in the union meeting.

The District argues that the transfer to Queens and any other actions taken after O'Rourke's November 9 transfer to Citywide programs cannot be properly considered. However, actions taken after the acts which are the subject of an improper practice charge are admissible, if otherwise relevant, to establish the motivation for the acts which are pleaded as a violation.

In summary, we agree that the record establishes that McCormack reassigned O'Rourke in an attempt to prevent or hinder him from assuming any leadership position in the local chapter of the UFT because he did not consider him to be suitable for the position. The District's contention that it reassigned O'Rourke only for legitimate business reasons grounded upon space limitations, employee safety, or workplace disruption were properly rejected by the ALJ as pretextual, as set forth in detail in his decision.

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

IT IS, THEREFORE, ORDERED that the District:

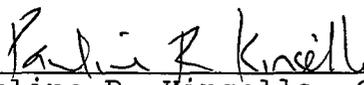
1. Cease and desist from interfering with, restraining, or coercing Albert J. O'Rourke in the exercise of his right under the Act to conduct a chapter meeting of the UFT on November 8, 1990, by reassigning or transferring him for the purpose of depriving him of that right.

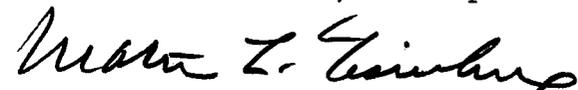
2. Cease and desist from interfering with the administration of the UFT by reassigning or transferring Albert J. O'Rourke because he conducted a chapter meeting of the UFT on November 8, 1990.

3. Cease and desist from discriminating in the assignment or transfer of Albert J. O'Rourke on the basis of his conduct of a chapter meeting of the UFT on November 8, 1990 for the purpose of encouraging or discouraging his participation in the activities of the UFT.

4. Sign and post the attached notice at all work locations ordinarily used by the District to communicate information to the employees employed in the Hearing Handicapped/Visually Impaired unit of the District's Division of Special Education.

DATED: December 28, 1993  
Albany, New York

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

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

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

# NOTICE TO ALL EMPLOYEES

PURSUANT TO  
THE DECISION AND ORDER OF THE

NEW YORK STATE  
PUBLIC EMPLOYMENT RELATIONS BOARD

and in order to effectuate the policies of the

NEW YORK STATE  
PUBLIC EMPLOYEES' FAIR EMPLOYMENT ACT

We hereby notify the employees of the Board of Education of the City School District of the City of New York in the Hearing Handicapped/Visually Impaired unit of the Division of Special Education that the District:

1. Will not interfere with, restrain, or coerce Albert J. O'Rourke in the exercise of his right under the Act to conduct a chapter meeting of the United Federation of Teachers (UFT) on November 8, 1990, by reassigning or transferring him for the purpose of depriving him of that right.
2. Will not interfere with the administration of the UFT by reassigning or transferring Albert J. O'Rourke because he conducted a chapter meeting of the UFT on November 8, 1990.
3. Will not discriminate in the reassignment or transfer of Albert J. O'Rourke on the basis of his conduct of a chapter meeting of the UFT on November 8, 1990 for the purpose of encouraging or discouraging participation in the activities of the UFT.

Dated . . . . .

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

Board of Education of the City School  
District of the City of New York

.....

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

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of

UNITED PUBLIC SERVICE EMPLOYEES UNION,  
LOCAL 424, A DIVISION OF UNITED INDUSTRY  
WORKERS DISTRICT COUNCIL 424,

Petitioner,

-and-

CASE NO. C-4115

COUNTY OF COLUMBIA,

Employer,

-and-

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

Intervenor.

---

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

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

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

IT IS HEREBY CERTIFIED that the United Public Service Employees Union, Local 424, A Division of United Industry Workers District Council 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

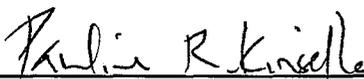
negotiations and the settlement of grievances.

Unit: Included: Addendum I.

Excluded: Addendum II, part-time employees and seasonal employees.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the United Public Service Employees Union, Local 424, A Division of United Industry Workers District Council 424. The duty to negotiate collectively includes the mutual obligation to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written agreement incorporating any agreement reached if requested by either party. Such obligation does not compel either party to agree to a proposal or require the making of a concession.

DATED: December 28, 1993  
Albany, New York

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

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

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

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of

UNITED PUBLIC SERVICE EMPLOYEES UNION,  
LOCAL 424, A DIVISION OF UNITED INDUSTRY  
WORKERS DISTRICT COUNCIL 424,

Petitioner,

-and-

CASE NO. C-4116

COUNTY OF RENSSELAER,

Employer,

-and-

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

Intervenor.

---

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

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

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

IT IS HEREBY CERTIFIED that the United Public Service Employees Union, Local 424, A Division of United Industry Workers District Council 424 has been designated and selected by a majority of the employees of the above-named public employer, in

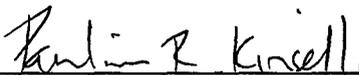
the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

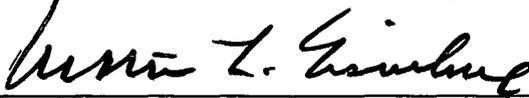
Unit: Included: See Addendum II.

Excluded: See Addendum I.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the United Public Service Employees Union, Local 424, a Division of United Industry Workers District Council 424. The duty to negotiate collectively includes the mutual obligation to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written agreement incorporating any agreement reached if requested by either party. Such obligation does not compel either party to agree to a proposal or require the making of a concession.

DATED: December 28, 1993  
Albany, New York

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

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

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

30-12/28/93

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of

TEAMSTERS LOCAL 687, IBT,

Petitioner,

-and-

CASE NO. C-4139

TOWN OF PLATTSBURGH,

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,

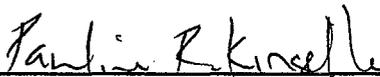
IT IS HEREBY CERTIFIED that the Teamsters Local 687, IBT has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

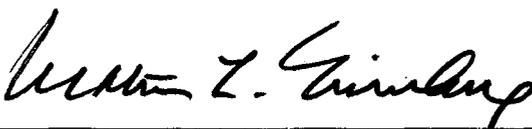
Unit: Included: All full-time, blue-collar employees.

Excluded: Department heads, assistant water and sewer superintendent, crew supervisors and dog control officer.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Teamsters Local 687, IBT. 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: December 28, 1993  
Albany, New York

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

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

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

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of

INTERNATIONAL BROTHERHOOD OF TEAMSTERS,  
LOCAL 264,

Petitioner,

-and-

CASE NO. C-4154

VILLAGE OF CORFU,

Employer.

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CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

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

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

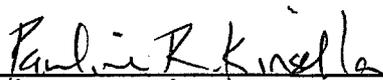
IT IS HEREBY CERTIFIED that the International Brotherhood of Teamsters, Local 264 has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

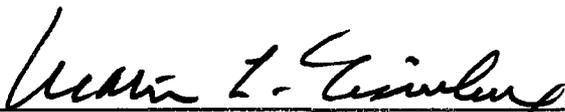
Unit: Included: All full time and regular part-time Water Treatment Plant Operators, Sewer Treatment Plant Operators, and Maintenance and Custodial Employees.

Excluded: All others employed (seasonal, clerical and managerial).

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the International Brotherhood of 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: December 28, 1993  
Albany, New York

  
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Pauline R. Kinsella, Chairperson

  
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Walter L. Eisenberg, Member

  
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Eric J. Schmertz, Member