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1-24-1994

State of New York Public Employment Relations Board Decisions from January 24, 1994

New York State Public Employment Relations Board

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State of New York Public Employment Relations Board Decisions from January 24, 1994

Keywords

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

Comments

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2A- 1/24/94

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

CIVIL SERVICE EMPLOYEES ASSOCIATION, INC.,
LOCAL 1000, AFSCME, AFL-CIO, LOCAL 815,
BUFFALO SEWER AUTHORITY UNIT,

Charging Party,

-and-

CASE NO. U-13439

BUFFALO SEWER AUTHORITY,

Respondent.

NANCY E. HOFFMAN, GENERAL COUNSEL (JEROME LEFKOWITZ of
counsel), for Charging Party

FLORA MILLER SLIWA, ESQ., for Respondent

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by the Buffalo Sewer Authority (Authority) to a decision of an Administrative Law Judge (ALJ) finding that the Authority violated §209-a.1(d) of the Public Employees' Fair Employment Act (Act) when it unilaterally altered security checks for those of its employees who are represented by the Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO, Local 815, Buffalo Sewer Authority Unit (CSEA).

The ALJ found that, in May 1992, the Authority had unilaterally instituted a trunk check of all cars entering or leaving its Bird Island Treatment Plant (Plant). Finding that the security check required increased employee participation and

was intrusive of employee privacy interests, the ALJ ordered the Authority's policy rescinded.

In its exceptions, the Authority argues that the trunk inspection is unrelated to the employees' terms and conditions of employment and is, therefore, nonmandatory; that the degree of change in the new security procedure from the old system is de minimis; that the Authority's reasons for instituting the system should prevail over the employees' privacy interests; and that the scope of the recommended order is too broad because it requires rescission of the inspection policy as to everyone and not just the employees in the unit represented by CSEA. CSEA argues that the ALJ's decision is correct, but concurs in the limitation to the remedy sought by the Authority.

Having reviewed the record and considered the parties' arguments, we affirm the ALJ's decision, but clarify the remedy ordered by her.

The Plant is surrounded by a fence, permitting access through two gates, which are staffed around the clock by the Authority's security guards. The guards are stationed in elevated booths, allowing them visual access to the interior of all vehicles stopped at the booths. Authority employees carry identification cards which must be displayed for the security guards' inspection before entering the Plant. All others seeking access to the Plant must stop at the guard booth, identify themselves, declare the purpose for their visit and identify the person they will be meeting. This information is filled out on a

form while the guard checks with the Plant to ensure that the access is authorized.

On July 31, 1991, John Trigilio, Treatment Plant Supervisor, issued the following memorandum to all employees:

It has come to my attention that some employees are ~~dumping their own garbage in the trash containers at the treatment plant.~~ We have also found hot water tanks, stoves, refrigerators, etc. in the containers.

We are not in the garbage business and it will not be tolerated. Any employee found disposing of their refuse in these containers will be subjected to disciplinary action.

All large vehicles (dump trucks, vans, pick-up trucks, etc.) will be checked by the guards at the gates. Any vehicle found with garbage or any debris will not be allowed on the Buffalo Sewer Authority site.

Effective May 1, 1992, the Authority directed each security guard to conduct two random trunk searches of incoming and departing vehicles during each shift, without disturbing or touching the contents of the trunks. The record does not reveal whether the guard takes the keys from the operator of the vehicle and opens the trunk himself or whether the operator must open the trunk using either the keys or activating a trunk release mechanism. It is this directive which is the subject of this charge.

Richard Walczak, Special Assistant to the General Manager, testified that the Authority implemented the new trunk search policy because, despite the July 31, 1991 memo, there had been an increase in the amount of trash which was being brought into the Authority for disposal and an increase in the number of thefts of Authority and personal property. Walczak testified that the

Authority's trash container was being filled to overflowing with items which did not come from the Authority, resulting in an increase in the cost to the Authority for trash removal. He also testified that there had been a few instances of theft of Authority property in 1988 and 1990; but in 1991, there were four or five thefts, including expensive tools from the millwright's cage, a \$600 radio from one of the Authority's vehicles, numerous items from employee lockers, which had been broken into, and building materials from the construction of a new bathroom facility. Since the new security procedure was implemented, Walczak testified that the trash problem has been abated and thefts have been reduced.

With respect to the Authority's argument that the trunk search is unrelated to the employees' terms and conditions of employment, we have long held that work rules generally and security procedures which require employee participation specifically are mandatory subjects of negotiations.^{1/} The trunk inspection procedure is certainly a work rule, carrying an implicit disciplinary component for noncompliance, which affects all unit employees. The Authority argues, however, that the trunk inspection procedure applies to all who seek entrance to the Plant. It argues that, like the imposition of parking registration fees in State of New York (SUNY-Binghamton),^{2/} the trunk inspection procedure has no relationship to employment

^{1/}County of Rensselaer, 13 PERB ¶3080 (1980); City of Albany, 7 PERB ¶3078 (1974).

^{2/}19 PERB ¶3029 (1986).

status and is, therefore, nonmandatory. However, the number of employees affected by the Authority's work rule far surpasses the members of the public affected because only a few vendors, contractors or visitors are admitted to the Plant on any day. Indeed, the record is devoid of any evidence of visitors or vendors utilizing the trash container and the thefts identified all appear to have occurred in areas limited solely to employees. This reinforces our conclusion that the trunk search affects employees primarily. Our previous decisions make clear that when public employees are the primary individuals affected by an employer policy, the fact that the public-at-large is also incidentally affected will not render the employer's action nonmandatory.^{3/}

The Authority's second exception must also be dismissed. It argues that the increase in employee participation in the security procedures is de minimus and cannot serve to make the procedure negotiable. However, the requirement of employee participation in the trunk inspection, whether opening the trunks themselves or giving the keys to the security guards, is well beyond the degree of participation required under the old system, which only required an employee to show an identification badge.^{4/} Not only has the extent of required employee participation been increased, but the new policy represents a

^{3/}See Steuben-Allegany BOCES, 13 PERB ¶3096 (1980); County of Niagara (Mount View Health Facility), 21 PERB ¶3014 (1980); Rush-Henrietta Cent. Sch. Dist., 21 PERB ¶3023 (1988), modified on other grounds, 151 A.D.2d 1001, 22 PERB ¶7016 (4th Dep't 1989).

^{4/}Newburgh Enlarged City Sch. Dist., 20 PERB ¶3053 (1987).

more extensive invasion of the employees' privacy interests than the casual, visual inspections of the vehicles' interiors which occurred before the car inspection procedure was implemented in May 1992. While it appears that, pursuant to the 1991 memorandum, large vehicles entering the Authority's property were "checked", that policy as written did not apply to automobiles. Even if it did, the record is devoid of evidence of the method used for "checking" vehicles and the degree of employee participation, if any, which was required during those "checks". The Authority has, accordingly, failed to establish that the inclusion of car trunks in its inspection procedures is consistent with any pre-existing security policy. It, therefore, represents a significant change in the Authority's prior inspection practice.

In its third exception, the Authority argues that the ALJ did not properly balance its interests against those of the affected employees in deciding the negotiability of the trunk inspection policy. In this respect, the Authority argues that its interests in prohibiting the dumping of garbage on Authority property and the prevention of thefts of Authority and employee property far outweigh the minimal intrusion on employee privacy interests occasioned by its trunk inspection policy.

In County of Montgomery,^{5/} we stated:

In determining whether a work rule is a mandatory subject of negotiation, the Board must strike a balance between an employer's freedom to manage its affairs and the right of employees to negotiate their terms and conditions of employment. (footnote omitted)

In applying such a balancing test, it is unavoidable that ~~the nature of each work rule under consideration~~ must be fully examined to determine which interest predominates. Implicit in this test is the recognition that simply because a work rule relates to the employer's mission, it does not follow that the employer is necessarily free to act unilaterally in the manner in which it chooses to act. If it is faced with an objectively demonstrable need to act in furtherance of its mission, the employer may unilaterally impose work rules which are related to that need, but only to the extent that its action does not significantly or unnecessarily intrude on the protected interests of its employees. Thus, we must weigh the need for the particular action taken by the employer against the extent to which that action impacts on the employees' working conditions.

Even if the Authority has established a reasonable relationship between the trunk inspection policy and the accomplishment of its mission-related interests, it has failed to show that the policy, which requires employee participation and invades their privacy interests, is the least intrusive method of eliminating thefts and the unauthorized dumping of personal property.^{6/} As to the bringing of large items of personal property, such as refrigerators, washing machines and tires, onto Authority property for disposal, it is unlikely that the

^{5/}18 PERB ¶13077, at 3167 (1985).

^{6/}See County of Niagara (Mount View Health Facility), *supra* note 3, where we noted that the employer must show that restrictions which it implements do not exceed what is necessary to further its mission. See also State of New York (GOER), 18 PERB ¶13064 (1985).

inspection of car trunks, which could not conceal such items, will discourage such activity. Likewise, the inspection of the trunks of cars leaving Authority property would have no effect on employees who were improperly bringing personal property onto Authority property for disposal. Nor would the inspection of incoming vehicles deter thefts. While the random inspection of car trunks leaving Authority property might have the desired effect of discouraging thefts, the policy provides only for the visual inspection of the trunks by the security guards - they may not touch or move any employee possessions in the trunks, so that items enclosed in containers or otherwise not in plain view could not be inspected. Certainly some of the items which have already been stolen - such as a radio, tools, a toilet seat - could just as easily be concealed within a car's interior, which is not subject to inspection.

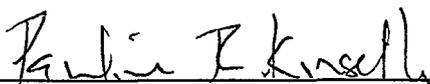
When this balancing test is applied to the Authority's car inspection procedure, we find that the Authority's procedure "unnecessarily intrudes on the protected interests of its employees"^{7/} because other, less intrusive measures are available to address the Authority's identified concerns and that the impact on the employees' working conditions outweighs the Authority's stated need for the imposition of these security measures.

^{7/}County of Montgomery, supra note 5.

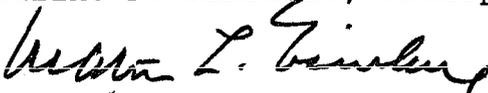
Turning to the ALJ's remedial order, the Authority and CSEA agree that it is too broad because it requires the rescission of the trunk inspection procedure in toto and not just with respect to the unit represented by CSEA. We find merit to this exception. Although it is implicit in every order issued by PERB that the remedial relief set forth therein is limited only to the persons or organization covered by the charge, it is here appropriate to make the clarification sought by the parties and to revise accordingly the notice to be posted by the Authority.^{8/}

IT IS, THEREFORE, ORDERED that the decision of the ALJ is hereby affirmed and the exceptions filed by the Authority, except as to remedy, are dismissed. IT IS FURTHER ORDERED that the Authority will rescind the May 1, 1992 directive that security guards search trunks of vehicles operated by members of the unit represented by CSEA and that the Authority will post a notice in the form attached at all locations customarily used to post written communications to unit employees.

DATED: January 24, 1994
Albany, New York



Pauline R. Kinsella, Chairperson



Walter L. Eisenberg, Member



Eric J. Schmertz, Member

^{8/}Waverly Cent. Sch. Dist., 23 PERB ¶13029 (1990).

NOTICE TO ALL EMPLOYEES

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

and in order to effectuate the policies of the

NEW YORK STATE
PUBLIC EMPLOYEES' FAIR EMPLOYMENT ACT

We hereby notify all employees of the Buffalo Sewer Authority represented by the Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO, Local 815, Buffalo Sewer Authority Unit (CSEA) that:

1. The Authority rescind the May 1, 1992 directive that security guards search trunks of vehicles operated by members of the unit represented by CSEA.

Dated

By
(Representative) (Title)

Buffalo Sewer Authority
.

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

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

JOYCE A. OWENS,

Charging Party,

-and-

CASE NO. U-14057

CIVIL SERVICE EMPLOYEES ASSOCIATION, INC.,
LOCAL 1000, AFSCME, AFL-CIO, STATE UNIVERSITY
COLLEGE AT BUFFALO LOCAL 640,

Respondent,

-and-

STATE OF NEW YORK (STATE UNIVERSITY COLLEGE
AT BUFFALO),

Employer.

JOYCE A. OWENS, pro se

NANCY E. HOFFMAN, GENERAL COUNSEL (PAUL BAMBERGER of
counsel), for Respondent

WALTER J. PELLEGRINI, GENERAL COUNSEL (JULIE SANTIAGO
of counsel), for Employer

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by Joyce A. Owens to a decision by an Administrative Law Judge (ALJ) who dismissed her charge against the Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO, State University College at Buffalo Local 640 (CSEA). Owens alleges that the CSEA breached its duty of fair representation in violation of §209-a.2(c) of the Public Employees' Fair Employment Act (Act) when it refused her request to file a contract grievance concerning a change in her work

location.^{1/} The ALJ dismissed the charge after a hearing, finding nothing to evidence the arbitrary, discriminatory or bad faith conduct necessary to establish a union's violation of its statutory duty of fair representation. To the contrary, the ALJ held that CSEA had listened to Owens' complaint, investigated the circumstances triggering it, informed her promptly that the change in work location did not violate the contract and explained to her and again to her husband why it had reached that opinion.

In her exceptions, Owens disputes the correctness of CSEA's interpretation of the contract, arguing that the change in her work location was not "in line with the law." Even were we to accept her contention that CSEA was incorrect in its interpretation of the contract, however, the charge would still have to be dismissed because there are no allegations suggesting that any error in judgment was made in bad faith. There being no evidence of discrimination or bad faith, and no proof that Owens' interpretation of the agreement is "the only possible" one,^{2/} there is no basis to conclude that there has been a violation of CSEA's duty of fair representation.

^{1/}The State of New York, Owens' employer, was made a party to this charge pursuant to §209-a.3 of the Act. That section of the Act requires an employer to be joined as a party whenever an improper practice charge against a union involves "the processing of or failure to process a claim that the public employer has breached its agreement . . ." with the union.

^{2/}See, e.g., Hauppauge Schs. Office Staff Ass'n, 18 PERB ¶13029 (1985).

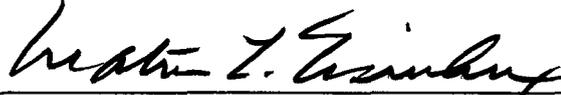
For the reasons set forth above, the ALJ's decision is affirmed and the exceptions are dismissed.

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

DATED: January 24, 1994
Albany, New York



Pauline R. Kinsella, Chairperson



Walter L. Eisenberg, Member



Eric J. Schmertz, Member

28- 1/24/94

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

BERNARD W. GOONEWARDENA,

Charging Party,

-and-

CASE NO. U-14484

**NEW YORK STATE PUBLIC EMPLOYEES
FEDERATION,**

Respondent.

BERNARD W. GOONEWARDENA, pro se

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by Bernard W. Goonewardena to a decision by the Director of Public Employment Practices and Representation (Director). Goonewardena alleges generally that the New York State Public Employees Federation (PEF) violated §209-a.2(a), (b) and (c) of the Public Employees' Fair Employment Act (Act) by "colluding" in several respects with his employer, the State of New York (State), during the processing of a grievance regarding his termination in 1991 from his position as a Health Program Administrator Trainee. More specifically, Goonewardena alleges that PEF denied him his request for an African-American or other minority representative of his choosing on his grievance and he further alleges that all of PEF's decisions which were adverse to his interests, including delays in grievance scheduling and its decision not to appeal to

the third step of the contractual grievance procedure, were racially motivated.

The Assistant Director of Public Employment Practices and Representation (Assistant Director) wrote to Goonewardena on May 3, 1993, informing him that the charge was deficient because certain allegations did not constitute a violation of the Act,^{1/} many were time-barred and others were merely conclusions offered without any factual support. In a subsequent filing, Goonewardena responded to the Assistant Director's deficiency notice. The Assistant Director, however, informed him that the charge was still deficient for the same reasons and the Director then dismissed the charge when Goonewardena declined to withdraw it.

Goonewardena argues in his exceptions that the Director's dismissal of the charge denied him his "right" to a hearing at which he would submit the facts in support of his allegations. He also argues that his charge is timely if measured from March 10, 1993, the date PEF's grievance appeals panel decided not to proceed with a step 3 grievance.

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

^{1/}Goonewardena claims in one of the allegations in his charge that PEF's grievance appeals panel did not give him the reasons for rejection of his appeal. The Assistant Director determined that documents submitted with the charge showed that he had been given the reasons for the decision not to appeal. The correctness of the Assistant Director's conclusion is not before us because Goonewardena did not make that determination part of his exceptions.

The charge was filed on April 19, 1993. Therefore, only actions on and after December 19, 1992 are within the four-month filing period permitted for improper practice charges under §204.1(a)(1) of our Rules of Procedure (Rules). Goonewardena's allegations concerning PEF's refusal to afford him a representative of his choice, the scheduling of an August 1992 grievance hearing, PEF's acquiescence or agreement permitting the State to issue a decision on the grievance after the contractual time limits for that decision had been exceeded and a PEF representative's refusal on December 8, 1992 to appeal that decision, are all untimely on Goonewardena's own allegations. These actions are independent of PEF's grievance appeals panel's decision not to proceed with the grievance. As each of these are separate allegations of impropriety, the timeliness of the allegation concerning the grievance appeals panel's composition and bias does not render timely any other allegations.

The allegations which are timely concern PEF's "collusion" with the State and the grievance appeals panel's racial bias. As the Director correctly concluded, the allegation of collusion is entirely conclusory and not supported by any allegation of fact. The second allegation is also deficient because it, too, is not supported by any facts. The mere fact that PEF's grievance appeals panel is composed of three white persons does not establish or evidence that the decision not to proceed with Goonewardena's grievance was made because he is a "South Asian Indian". Indeed, no allegations are set forth which, if proven,

would establish that the grievance appeals panel would have handled Goonewardena's case differently had he not been a member of a minority group. If Goonewardena had any additional facts to substantiate his conclusory allegations of collusion and racial bias, it was incumbent upon him to set them forth to permit the Director to determine whether his charge could be processed. Our Rules specifically require a pleading to be factually supported^{2/} and a charging party may not insist that facts allegedly in his possession will only be released at a certain time or in a certain way.^{3/} Goonewardena declined to provide information in response to the Assistant Director's two requests for the articulation of some factual support for his allegations of collusion and discrimination and he has now no persuasive basis for appeal of the dismissal occasioned by his declination.

For the reasons set forth above, the Director's decision is affirmed and the exceptions are dismissed.^{4/}

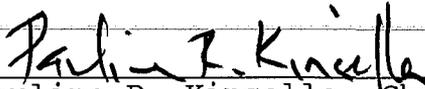
^{2/}Rules, §204.1(b)(3).

^{3/}We recently dismissed a charge under similar circumstances in which the charging party withheld facts from his pleading. County of Suffolk, 26 PERB ¶3076 (1993).

^{4/}Goonewardena claims incidentally in his exceptions that the deficiency of his charge was not clarified and that he was not provided by us with a copy of the Act and our Rules as he had requested. The Assistant Director's two letters explained sufficiently the perceived deficiency of the charge. The file does not disclose a request for a copy of either the Act or Rules. However, both are so widely available in print that Goonewardena's allegation in this respect does not afford him a basis to reverse the Director's decision.

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

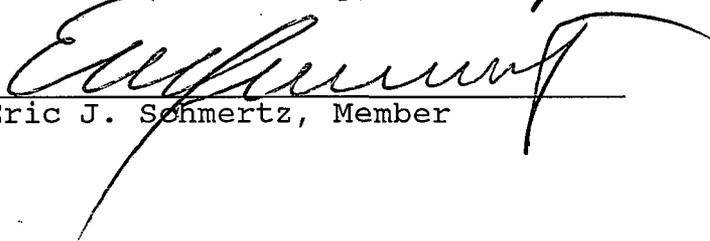
DATED: January 24, 1994
Albany, New York



Pauline R. Kinsella, Chairperson



Walter L. Eisenberg, Member



Eric J. Schmertz, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

ROBERT D. WILSON,

Charging Party,

-and-

CASE NO. U-14611

NEW YORK CITY TRANSIT AUTHORITY and
TRANSPORT WORKERS UNION,

Respondents.

ROBERT D. WILSON, pro se

BOARD DECISION AND ORDER

This case comes to us on exceptions to a decision by the Director of Public Employment Practices and Representation (Director) on a charge filed on June 8, 1993 by Robert D. Wilson. The Director dismissed Wilson's charge, which alleges that his employer, the New York City Transit Authority (Authority), and his union representative, the Transport Workers Union (TWU), violated, respectively, §209-a.1(a), (d) and (e) and §209-a.2(a) and (c) of the Public Employees' Fair Employment Act (Act). The charge arises out of arbitration hearings scheduled in 1992 and 1993 with regard to disciplinary charges brought against Wilson by the Authority concerning an alleged road violation committed by Wilson on March 3, 1992. Wilson claims that the Authority did not provide him with certain allegedly exculpatory audio tapes and documents, and did not make available a witness to the incident, and that the Authority

and the TWU had, by adjournments and otherwise, not adhered to contractual time limitations for the processing and disposition of the disciplinary charges.

To the extent Wilson's allegations were timely filed, the Director held that Wilson had no cause of action against the Authority under either §209-a.1(d) or (e) because only a union may proceed on such allegations.^{1/} The Director similarly held that there was no cognizable cause of action against the Authority under §209-a.1(a) of the Act because the Authority's failure to produce the requested evidence and the witness for him and any noncompliance with contractual time limits did not violate any of Wilson's statutorily protected rights.

The duty of fair representation complaint lodged against the TWU was dismissed by the Director because it did not contain allegations which would evidence arbitrary, discriminatory or bad faith conduct.

Having reviewed the record, we reverse the Director's decision dismissing the §209-a.1(a) allegation against the Authority and the §209-a.2(a) and (c) allegations against the TWU with respect to the adjournment of the May 25, 1993 arbitration hearing.

Wilson alleges that the contract between the Authority and the TWU affords him a grievance procedure under which he has the right to the information and witness he requested from the

^{1/}See, e.g., City Sch. Dist. of the City of New York, 22 PERB ¶3012 (1989).

Authority and which further entitles him to have his grievance processed within certain time frames, which were exceeded. Wilson's charge against the Authority, when read most favorably to him, alleges a pattern of repeated adjournments of scheduled grievance hearings, obtained by misrepresentation of facts, noncompliance with contract requirements, and otherwise in bad faith. Similar allegations are made concerning the nonproduction of exculpatory evidence and the witness. At this point, we do not know whether or to what extent any of these allegations can or may be proven. However, what is alleged is a systematic, intentional disregard of the contractual grievance procedure without a colorable claim of corresponding rights,^{2/} which may, if proven, set forth an arguable violation of §209-a.1(a).

We reverse the Director's dismissal of the allegations against the TWU in one respect only and otherwise affirm. Wilson alleges that the TWU adjourned a May 25, 1993 grievance hearing without any apparent or articulated reason, thereby permitting the Authority to avoid an automatic dismissal of the disciplinary charges against him pursuant to an alleged "one adjournment" policy. This allegation, if true, arguably evidences arbitrary conduct in violation of the TWU's duty of fair representation.

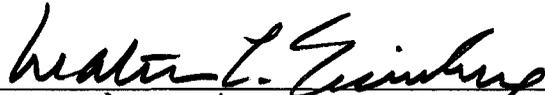
^{2/}See County of Albany, 25 PERB ¶3026 (1992); New York City Transit Auth., 23 PERB ¶3016 (1990).

For the reasons and to the extent set forth above, the Director's decision is reversed and remanded to the Director for further processing consistent with this decision. In all other respects, the Director's decision is affirmed and the charge in those respects is dismissed.

DATED: January 24, 1994
Albany, New York



Pauline R. Kinsella, Chairperson



Walter L. Eisenberg, Member



Eric J. Schmertz, Member

2E- 1/24/94

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

ALBERT EUGENE SEWELL,

Charging Party,

-and-

CASE NO. U-14727

**LOCAL 100, TRANSPORT WORKERS UNION
OF AMERICA,**

Respondent.

ALBERT EUGENE SEWELL, pro se

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by Albert Eugene Sewell to a decision by the Director of Public Employment Practices and Representation (Director) dismissing his improper practice charge, filed on July 20, 1993, which alleges that Local 100, Transport Workers Union of America (TWU) violated §209-a.2(b) of the Public Employees' Fair Employment Act (Act) by failing to present certain evidence at a contractual disciplinary hearing held on January 23, 1992. By decision issued February 18, 1992, an arbitration panel sustained the disciplinary charge against Sewell and imposed a three-day suspension.

Sewell was advised, pursuant to the Director's initial investigation,^{1/} that he had no standing to allege a violation

^{1/}Rules of Procedure (Rules), §204.2.

of the duty to bargain provisions of §209-a.2(b) and that he had failed to plead sufficient facts to evidence TWU's breach of its duty of fair representation. Sewell then filed an additional statement of facts, but he did not withdraw the §209-a.2(b) allegation. He was also advised that the charge, even as clarified, was untimely as it had been filed four months after the events complained of therein.^{2/} As Sewell declined to withdraw the charge, the Director dismissed it.^{3/}

Sewell excepts to the Director's decision, arguing that "it takes more than the four months to channel the papers through the system" and that his case represents "an extraordinary circumstance" which warrants an extension of the filing period. In the months following the decision on his disciplinary charge, Sewell alleges that he sought relief through the Congress of Racial Equality and also pursued some unspecified forms of administrative review to obtain further assistance from TWU in attempting to reverse his three-day suspension. We have previously held that the exhaustion of other administrative remedies, and, certainly, unspecified activities, cannot serve to extend the time to file an improper practice charge.^{4/} Therefore, the charge must be dismissed as untimely.

^{2/}Rules, §204.1(a)(1).

^{3/}The Director also noted in his decision that Sewell lacked standing to allege a violation of §209-a.2(b) of the Act.

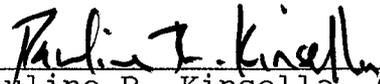
^{4/}See, e.g., New York City Transit Auth., 10 PERB ¶13077 (1977).

Additionally, Sewell, as an individual, has no standing to allege a violation of §209-a.2(b) of the Act.^{5/} While the Director apparently read Sewell's charge and clarification liberally to set forth alleged violations of §209-a.2(a) or (c), the only allegations he had standing to make, Sewell never withdrew the (b) allegation, or sought to amend his charge to allege the (a) and (c) violations.

For the reasons set forth above, we affirm the Director's decision and dismiss the exceptions.

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

DATED: January 24, 1994
Albany, New York



Pauline R. Kinsella, Chairperson



Walter L. Eisenberg, Member



Eric J. Schmertz, Member

^{5/}County of Suffolk and Suffolk County Ass'n of Mun. Employees (Glasheen), 26 PERB ¶3029 (1993).

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

JASPER-TROUPSBURG EDUCATIONAL SUPPORT
PERSONNEL ASSOCIATION,

Charging Party,

-and-

CASE NO. U-13837

JASPER-TROUPSBURG CENTRAL SCHOOL DISTRICT,

Respondent.

JOHN B. SCHAMEL, for Charging Party

R. WHITNEY MITCHELL, for Respondent

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by the Jasper-Troupsburg Educational Support Personnel Association (Association) to a decision of an Administrative Law Judge (ALJ) dismissing, as untimely, its charge that the Jasper-Troupsburg Central School District (District) violated §209-a.1(d) of the Public Employees' Fair Employment Act (Act) when it unilaterally increased the workload of a unit employee, Donald Reisman.

Reisman has been a head bus driver/mechanic for five years. His regular duties are to maintain District vehicles and perform inspection and preventive maintenance checks on the school buses. Until January 1, 1992, Reisman was assisted by Gus Aldrich, a cleaner, who was on that date reassigned from the bus garage. Aldrich's responsibilities included washing buses and cleaning

the interiors, running errands for parts and supplies, changing lights, cleaning and maintaining the bathroom, the boiler and the bus garage, and helping Reisman grease vehicles and perform bus inspections. Reisman testified that, after Aldrich's departure, he assumed all of Aldrich's responsibilities and performed them every day. As a result, Reisman began working longer hours. In April and May, the transportation subcommittee of the District's Board of Education began discussions on the possibility of alleviating some of Reisman's workload, possibly by combining a BOCES bus driver and a cleaner position in the bus garage. At the end of June 1992, a custodial helper was reassigned to the bus garage for two days a week. That assignment ended in early September 1992; this charge was filed on September 15, 1992.

In its exceptions, the Association argues that it did not realize that there had been an increase in Reisman's work until June 1992, when he was able to calculate the additional time he had spent on more frequent preventive maintenance checks occasioned by the increase in miles travelled by the District's buses in 1992.^{1/} It also argues that it believed the problem had been alleviated by the District's discussions at the transportation subcommittee meetings and the assignment of the custodial helper to the bus garage in June. As that employee

^{1/}The District's buses travelled 216,000 miles in 1992, as compared with 187,000 miles in the previous year. Since bus inspections are done every 800 to 900 miles, the Association argues that Reisman conducted an additional 34 inspections, at 3 hours per inspection, for an increase of 102 hours of work over the previous year.

assignment in the bus garage ended in September, the Association argues that its time to file the charge should run from September 1992, not when Aldrich left in January 1992.

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

A charge is timely if filed within four months^{2/} of either the announcement of a decision to take a unilateral action or the first implementation of that action.^{3/} The increase in Reisman's workload resulting in an increase in his work time occurred in January 1992 when he first assumed Aldrich's duties. It was not just the increase in preventive maintenance checks that increased Reisman's workload. He testified that from the first day of Aldrich's reassignment, he began performing Aldrich's duties, which took additional time each day. There is no claim that the Association was unaware of Aldrich's reassignment and its effect on Reisman or that the District attempted to camouflage its actions. Indeed, discussions took place in April and May at the Board of Education level to attempt to lessen Reisman's workload. The Association did not file the charge until September when the temporary summer help was

^{2/}Section §204.1(a)(1) of our Rules of Procedure requires that an improper practice charge be filed within four months of the time that "a public employer...engaged in an improper practice...."

^{3/}Middle Country Teachers Ass'n (Werner), 21 PERB ¶3012 (1988).

reassigned from the bus garage,^{4/} apparently assuming the matter would resolve itself. That the District and the Association informally discussed Reisman's workload or hours does not serve to extend the Association's time to file its charge.^{5/}

Accordingly, the Association's exceptions are dismissed and the ALJ's decision is affirmed.

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

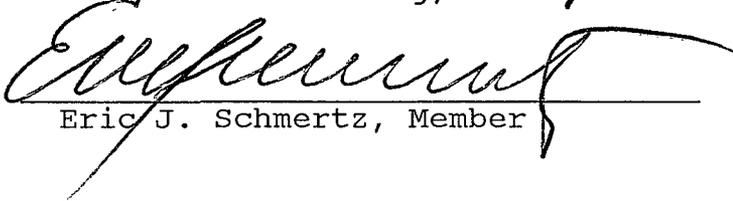
DATED: January 24, 1994
Albany, New York



Pauline R. Kinsella, Chairperson



Walter L. Eisenberg, Member



Eric J. Schmertz, Member

^{4/}The charge as filed and litigated is based upon an alleged increase in Reisman's workload occasioned by Aldrich's reassignment in January 1992. Even if it might be argued that a second cause of action arose in September 1992 with the reassignment of the custodial helper from the bus garage, that allegation has not been placed before us. We will not consider improper practices which are not set forth in the charge. East Moriches Teachers Ass'n, 14 PERB ¶3056 (1981).

^{5/}New York City Transit Auth., 10 PERB ¶3077 (1977).

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

NEW YORK STATE INSPECTION, SECURITY AND
LAW ENFORCEMENT EMPLOYEES, DISTRICT
COUNCIL 82, AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO,

Charging Party,

-and-

CASE NO. U-13210

STATE OF NEW YORK (OFFICE OF PARKS AND
RECREATION),

Respondent.

ROWLEY, FORREST, O'DONNELL & HITE P.C. (DAVID C.
ROWLEY of counsel), for Charging Party

WALTER J. PELLEGRINI, GENERAL COUNSEL (RICHARD W.
McDOWELL of counsel), for Respondent

NANCY E. HOFFMAN, GENERAL COUNSEL (MAUREEN SEIDEL of
counsel), for CIVIL SERVICE EMPLOYEES ASSOCIATION,
INC., LOCAL 1000, AFSCME, AFL-CIO, Amicus Curiae

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by the New York State Inspection, Security and Law Enforcement Employees, District Council 82, American Federation of State, County and Municipal Employees, AFL-CIO (Council 82) to a decision by the Assistant Director of Public Employment Practices and Representation (Assistant Director). After a three-day hearing, the Assistant Director dismissed Council 82's charge, which alleges that the State of New York (Office of Parks and

Recreation) (State) violated §209-a.1(e) of the Public Employees' Fair Employment Act (Act) when it failed to pay certain unit employees according to the salary schedule in the parties' April 1, 1988 - March 31, 1991 contract. The Assistant Director held that under the New York Court of Appeals decision in

Association of Surrogates and Supreme Court Reporters v. State of New York (hereafter Surrogates II),^{1/} the parties' contract had not "expired" within the meaning of §209-a.1(e) of the Act, which makes improper an employer's refusal to continue all of the terms of an "expired agreement". Although the State's alleged refusal to pay service increments at the required rate occurred after the expiration of the stated term of the 1988-91 contract, the Assistant Director held that Surrogates II served to continue that contract in effect as a matter of law, such that there was no "expired agreement" and, therefore, no cognizable §209-a.1(e) claim.

Council 82 argues that the Assistant Director's decision misinterprets Surrogates II, misapplies §209-a.1(e) and other provisions of the Act, and occasions a result which is inconsistent with the legislative history of §209-a.1(e) and the purposes and policies of the Act.

The State argues that the Assistant Director's decision must be affirmed because he correctly applied §209-a.1(e) as that

^{1/}79 N.Y.2d 39, 25 PERB ¶7502 (1992).

subsection of the Act was interpreted by the Court of Appeals in Surrogates II.

The Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO, has filed an amicus curiae brief urging reversal of the Assistant Director's decision.

Having considered the parties' arguments, including those at oral argument, we reverse the Assistant Director's decision and remand the case to him for decision on the allegations.

As noted, §209-a.1(e), added to the Act in 1982, makes it an improper practice for an employer "to refuse to continue all the terms of an expired agreement until a new agreement is negotiated" This legislation represented an extension of our "Triborough Doctrine," under which mandatory subjects of negotiation generally must be continued during any hiatus period between collective bargaining agreements.^{2/} Section 209-a.1(e) extended the employer's obligation by requiring the continuation of all contract terms, whether or not they are mandatorily negotiable, unless the union was responsible for an unlawful strike.

The history of §209-a.1(e) makes it clear that the Legislature intended by the enactment of this so-called "Triborough legislation" to stabilize the bargaining process by diminishing or removing the tensions which are conducive to a

^{2/}The "Triborough Doctrine" was named for our decision in Triborough Bridge and Tunnel Auth., 5 PERB ¶13037 (1972), the first case in which we recognized this status quo principle.

disruption of services. It is equally clear from this same history that the Legislature also considered §209-a.1(e) to be a fair quid pro quo for its prohibition of strikes in the public sector. The small number of public employee strikes which have occurred following the enactment of §209-a.1(e) suggests that the Legislature was correct in its assessment that this legislation would promote bargaining, hinder unilateral changes in employment conditions and diminish the likelihood of illegal strikes.

The issue before us has profound implications for the administration of the Act and the labor-management relationships subject thereto. Put simply, to affirm the Assistant Director's decision would effectively repeal §209-a.1(e). If, as he held, collective bargaining agreements never expire as a matter of law under Surrogates II, no cause of action could ever be stated under that subsection of the Act. An affirmance would divest PERB of jurisdiction over the investigation and prevention of this particular type of employer improper practice despite the Legislature's grant to the agency, in §205.5(d) of the Act, of a general and exclusive power over improper practices, contrary to the express public policy of the State as set forth in §200 of the Act. Repeal of §209-a.1(e) by interpretation of Surrogates II would also contribute to a destabilization of the bargaining process and a concomitant increase in destructive self-help remedies by employers and unions alike. We consider these results to be so completely inconsistent with the expressed policies of the Act that we would affirm the Assistant Director's

decision only if Surrogates II commands such a result.^{3/} Our task is to harmonize the provisions of the Act as a whole and to promote its articulated purposes and policies, while we simultaneously adhere to Surrogates II.

To dismiss Council 82's §209-a.1(e) allegations on a theory that Surrogates II holds that collective bargaining agreements never "expire" for any purpose would mean that there could not be an improper practice under §209-a.1(e) because no union could establish the element of an "expired agreement," which is necessary to the cause of action as the Legislature has defined that particular employer improper practice. We reject, however, the proposition that the Court of Appeals in Surrogates II intended to effectively repeal the very provision of the Act that it used to establish the unconstitutionality of the statute in issue in that case, particularly since it had before reviewed, on the merits, a PERB determination on §209-a.1(e) allegations.^{4/} To the contrary, we believe that the Court's several references in Surrogates II to the agreement having "expired" or to its stated term having been "completed" show that the Court did not

^{3/}Our approach is fully consistent with those general rules of statutory construction which caution against interpretations which effect "absurd" results (McKinney's Statutes §145) and implied repeals of statutory provisions. (McKinney's Statutes §§391-400).

^{4/}County of Nassau v. PERB, 76 N.Y.2d 579, 23 PERB ¶7019 (1990). As with implied repeals of statutory provisions, established judicial precedent is not to be considered overruled by implication without compelling reason. New Amsterdam Casualty Co. v. Nat'l Union Fire Ins. Co., 266 N.Y. 254 (1935).

intend that result. Closer examination of the Court's decision confirms our opinion.

In Surrogates II, the Court of Appeals held that State Finance Law §200(2-b), which effected a five-day "lag payroll" upon nonjudicial employees of the Unified Court System, was unconstitutional because it impaired their collective bargaining agreements in violation of the contract clause of the Federal Constitution (U.S. Const., Art. 1, §10, Cl. 1).

The Court began its analysis in Surrogates II by stating that "the threshold issue is whether a valid and subsisting contract existed between parties".^{5/} In answering that question in the affirmative, the Court held that the parties' contract, which, like the contract in this case, had a stated term through March 31, 1991, was continued pursuant to §209-a.1(e). The Court reasoned that §209-a.1(e), which was extant when the parties to that case negotiated their contract, was incorporated as a matter of law into their agreements so as to extend the "expired agreement".^{6/}

The Court in Surrogates II was presented only with a question concerning the constitutionality of the State's lag payroll legislation. Neither PERB's jurisdiction nor the nature or elements of a §209-a.1(e) improper practice charge was discussed or even mentioned. The Court held only that, in

^{5/}79 N.Y.2d 39, 44.

^{6/}79 N.Y.2d 39, 45.

enacting §209-a.1(e), the Legislature created private rights of a contractual nature enforceable as against the State on a constitutional theory.

There is a very real and perceptible difference between parties being in a relationship with concomitant private rights for a limited constitutional purpose, as Surrogates II holds, and their having an "expired" agreement for the specific purpose of a statutorily defined improper practice. Section 209-a.1(e) of the Act requires only the latter, irrespective of the former.

In deciding whether any statutory improper practice cause of action is stated, we look to the violation as defined in the Act. In relevant context, the "agreement" in §209-a.1(e) is a reference back to §201.12 of the Act which defines an "agreement" for all purposes of the Act. In that definition, it is stated that an agreement results from an exchange of mutual promises and is binding only for the period "set forth therein". It is clear to us, therefore, that for purposes of applying §209-a.1(e) in the improper practice context, the Legislature intended to fix a contract's expiration, for purposes of the Act, by reference to the term of the contract as defined in the contract itself. That interpretation of §209-a.1(e) is consistent with §208 of the Act, which fixes expiration of a contract for purposes of defining a union's period of unchallenged representation status by reference to the term of the contract as set forth in the agreement.

Our conclusion that Surrogates II does not have the meaning ascribed to it by the Assistant Director is buttressed by the

Court's own recognition of the purposes sought to be served by the enactment of §209-a.1(e). Having recognized that §209-a.1(e) is fundamentally important to labor relations harmony and stability, we do not believe that the Court could have intended by its limited holding in Surrogates II to have rendered that statutory provision a nullity.

The Court in Surrogates II also characterized §209-a.1(e) of the Act as a "continuation of benefits" clause. We do not, however, consider this characterization to be in any way determinative of our analysis. A continuation of contractual benefits effected as a matter of law by statute for constitutional purposes is not the same as a consensual continuation of contract which might affect the expiration date of the contract for improper practice purposes by changing the period set forth in the contract itself.¹⁷

The stated term of the agreement in this case is through March 31, 1991. Therefore, any actions taken after March 31, 1991, which allegedly changed any of the terms of the parties'

¹⁷We have held that contract continuation clauses which have been specifically agreed to by the parties preclude a cause of action under §209-a.1(e) because they continue the contract in effect beyond the stated expiration date, thereby changing "the period set forth therein" as referenced in §201.12 of the Act. City of Saratoga Springs, 18 PERB ¶3009 (1985); County of St. Lawrence, 18 PERB ¶3052 (1985). See also City of Utica, 18 PERB ¶3013 (1985).

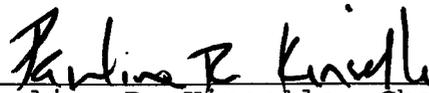
1988-91 contract before the parties' negotiation of a successor agreement,^{8/} are cognizable under §209-a.1(e) of the Act.

Given the ground for his dismissal of the charge, the Assistant Director did not make any findings of fact or conclusions of law on the merits of the parties' allegations or arguments. A merits disposition will necessitate review and evaluation of extensive testimonial and documentary evidence raising potential credibility issues. Under the circumstances, a remand to the Assistant Director is plainly necessary and appropriate.

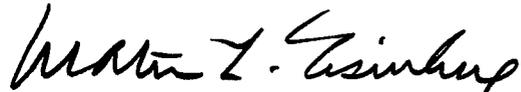
For the reasons set forth above, the Assistant Director's decision is reversed and such of Council 82's exceptions as are directed to the ground for the Assistant Director's dismissal of the charge are granted.

IT IS, THEREFORE, ORDERED that the case must be, and hereby is, remanded to the Assistant Director for further processing consistent with the terms of our decision and order herein.

DATED: January 24, 1994
Albany, New York



Pauline R. Kinsella, Chairperson



Walter L. Eisenberg, Member



Eric J. Schmertz, Member

^{8/}The parties did not reach a successor agreement until June 1992.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

JASPER-TROUPSBURG EDUCATIONAL SUPPORT
PERSONNEL ASSOCIATION,

Charging Party,

-and-

CASE NO. U-14079

JASPER-TROUPSBURG CENTRAL SCHOOL DISTRICT,

Respondent.

JOHN B. SCHAMEL, for Charging Party

R. WHITNEY MITCHELL, for Respondent

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by the Jasper-Troupsburg Central School District (District) to a decision of an Administrative Law Judge (ALJ) on a motion to reopen an improper practice charge filed by the Jasper-Troupsburg Educational Support Personnel Association (Association). The ALJ had deferred the matter pending the arbitration of a grievance which had been filed by the Association with respect to the subject matter of the improper practice charge.^{1/}

The charge alleges that the District violated §209-a.1(a) and (d) of the Public Employees' Fair Employment Act (Act) when it unilaterally reduced the amount of time and pay allotted for a particular bus run. The parties agreed that the charge was based

^{1/}26 PERB ¶4552 (1993).

primarily on the unilateral change and that the (a) violation was derivative of the (d) violation. The Association had filed a grievance alleging that the District's action had also violated the parties' collective bargaining agreement. The ALJ, therefore, conditionally dismissed the charge. After receipt of the arbitrator's award, the Association moved to reopen the charge. The ALJ granted the motion because the arbitrator had found that the contract was not the source of any right to the Association and was silent on any obligation on the part of the District to set any minimum times for the bus run in question. The District opposed the reopener on the ground that the issue had been fully litigated before the arbitrator and that the arbitrator's award was not repugnant to the Act.

The District's exceptions involve only the ALJ's grant of the motion to reopen. The ALJ's decision on the Association's motion to reopen is not a final decision. The District's exceptions are, therefore, properly characterized as an interlocutory appeal.^{2/}

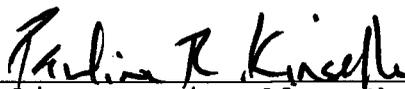
We have previously decided that an "interlocutory appeal from rulings by an ALJ is properly entertained only if our failure to consider the appeal would result in harm to a party which cannot be remedied by our review of the ALJ's final

^{2/}Pursuant to §204.7 of PERB's Rules of Procedure, 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 the Board.

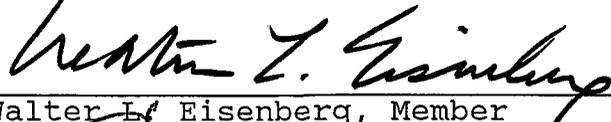
decision and order."^{3/} The District has offered no evidence of any irreparable harm it might suffer if the charge is allowed to go forward, such as would warrant our review of the ALJ's interim decision at this time. As we recently stated in Mt. Morris Central School District:^{4/} "We are persuaded that the ALJ's interim decision to reopen [this case] may properly be reviewed should we be asked to consider whatever exceptions may ultimately be filed to [the] final decision and order." The District's exceptions, which seek our review of the ALJ's decision to reopen this case are, therefore, 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 must be, and they are hereby are, dismissed.

DATED: January 24, 1994
Albany, New York



Pauline R. Kinsella, Chairperson



Walter L. Eisenberg, Member



Eric J. Schmertz, Member

^{3/}State of New York (Div. of Parole) and Council 82, AFSCME, 25 PERB ¶3007, at 3019-20 (1992).

^{4/}26 PERB ¶3085 (1993).

**STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD**

In the Matter of

**SAANYS/THE MASSENA ASSOCIATION OF
DIRECTORS AND CENTRAL ADMINISTRATIVE
PERSONNEL,**

Petitioner,

-and-

CASE NO. C-4052

MASSENA CENTRAL SCHOOL DISTRICT,

Employer,

-and-

**MASSENA CENTRAL SCHOOLS BUILDING
ADMINISTRATORS' ASSOCIATION,**

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,^{1/} and it appearing that a

^{1/} The Director of Public Employment Practices and Representation (Director) found that the unit sought by the petitioner was not most appropriate and added certain of the positions which were the subject of its petition to existing negotiating units of employees of the employer, including one represented by the intervenor. [26 PERB ¶4051(1993)]. Because the additions to the intervenor's unit were not de minimus, the Director ordered that an election be held unless the intervenor submitted evidence to satisfy the requirements of the Board's Rules of Procedure, §201.9(g)(1), for certification without an election. It did so, and a decision to that effect was issued by the Director [26 PERB ¶4061 (1993)]. The petitioner did not seek to represent that unit.

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 Massena Central Schools Building Administrators' Association has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

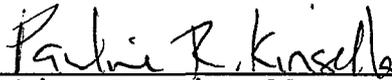
Unit: Included: Building principals, assistant to senior high school principal, assistant to junior high school principal, director of special programs, director of buildings and grounds, director of transportation, and school lunch director.

Excluded: All other employees

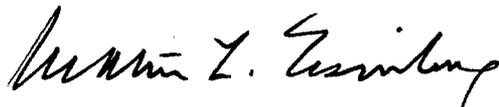
FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Massena Central Schools Building Administrators' Association. The duty to negotiate collectively includes the mutual obligation to meet at reasonable times and confer in good faith with respect to wages,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

of a concession.

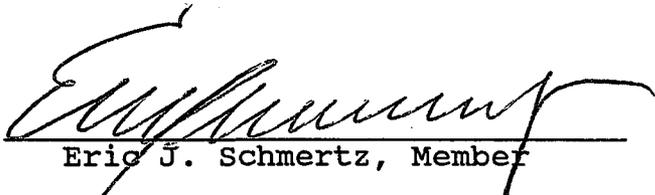
DATED: January 24, 1994
Albany, New York



Pauline R. Kinsella, Chairperson



Walter L. Eisenberg, Member



Eric J. Schmertz, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

3B- 1/24/94

In the Matter of

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

Petitioner,

-and-

CASE NO. C-4092

ROXBURY CENTRAL SCHOOL DISTRICT,

Employer,

-and-

**ROXBURY CENTRAL SCHOOL NON-TEACHING
ASSOCIATION,**

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,

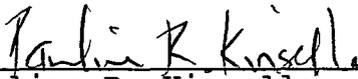
IT IS HEREBY CERTIFIED that the Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for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

Unit: Included: Cashier, food service helper, cook manager, teacher aide, monitor, director of transportation, bus driver, head custodian, cleaner, deputy treasurer, and typist.

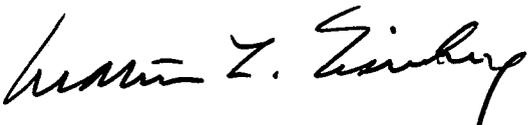
Excluded: District secretary (secretary to the superintendent), district treasurer, school nurse,^{1/} and all other employees.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO. The duty to ~~negotiate collectively includes the mutual obligation to meet at~~ reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written agreement incorporating any agreement reached if requested by either party. Such obligation does not compel either party to agree to a proposal or require the making of a concession.

DATED: January 24, 1994
Albany, New York



Pauline R. Kinsella, Chairperson



Walter L. Eisenberg, Member



Eric J. Schmertz, Member

^{1/} Pursuant to stipulation of the parties, the school nurse position, previously in a nonteaching unit, has been accreted to the unit represented by the Roxbury Teachers Association, NYSUT, AFT, AFL-CIO.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

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-4153

WYANDANCH UNION FREE SCHOOL DISTRICT,

Employer.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

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

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

IT IS HEREBY CERTIFIED that the 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 units agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit A: Included: All full-time and part-time bus monitors.

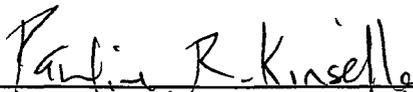
Excluded: All other employees.

Unit B: Included: All full-time and part-time security officers.

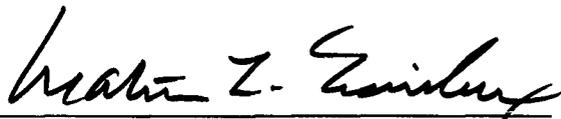
Excluded: All other employees.

~~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: January 24, 1994
Albany, New York



Pauline R. Kinsella, Chairperson



Walter L. Eisenberg, Member



Eric J. Schmertz, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

**VILLAGE OF MALONE POLICE BENEVOLENT
ASSOCIATION,**

Petitioner,

-and-

CASE NO. C-4159

VILLAGE OF MALONE,

Employer,

-and-

**THE UNITED FEDERATION OF POLICE
OFFICERS, INC.,**

Respondent/Incumbent.

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 Village of Malone Police Benevolent Association has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective

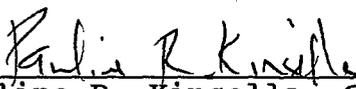
negotiations and the settlement of grievances.

Unit: Included: All police officers up to and including the Assistant Chief of Police.

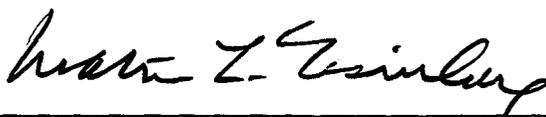
Excluded: Chief of Police

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

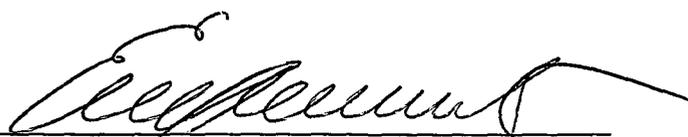
DATED: January 24, 1994
Albany, New York



Pauline R. Kinsella, Chairperson



Walter L. Eisenberg, Member



Eric J. Schmertz, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

TEAMSTERS LOCAL UNION NO. 182,

Petitioner,

-and-

CASE NO. C-4161

TOWN OF FRANKFORT,

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,

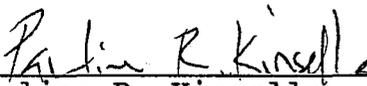
IT IS HEREBY CERTIFIED that the Teamster Local Union No. 182 has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: Light Equipment Operators, Heavy Equipment Operators and Laborers.

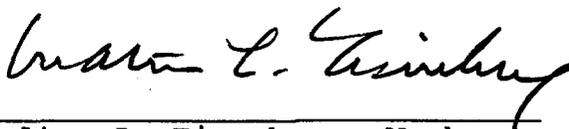
Excluded: All other.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Teamsters Local Union No. 182. 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.

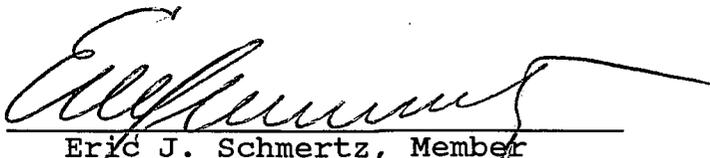
DATED: January 24, 1994
Albany, New York



Pauline R. Kinsella, Chairperson



Walter L. Eisenberg, Member



Eric J. Schmertz, Member

3F- 1/24/94

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

SECURITY AND LAW ENFORCEMENT EMPLOYEES
COUNCIL 82, AFSCME, AFL-CIO,

Petitioner,

-and-

CASE NO. C-4178

VILLAGE OF COXSACKIE,

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,

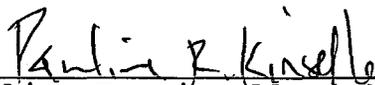
IT IS HEREBY CERTIFIED that the Security and Law Enforcement Employees Council 82, AFSCME, AFL-CIO has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: All Police Officers.

Excluded: Police Chief/Officer in Charge.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Security and Law Enforcement Employees Council 82, 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: January 24, 1994
Albany, New York



Pauline R. Kinsella, Chairperson



Walter L. Eisenberg, Member



Eric J. Schmertz, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

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

Petitioner,

-and-

CASE NO. C-4186

SOUTH COLONIE 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,

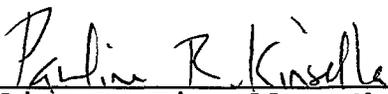
IT IS HEREBY CERTIFIED that the United Public Service Employees Union Local 424, A Division of United Industry Workers District Council 424 has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as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

Unit: Included: All non-teaching employees at the District office, the secretary to the school lunch supervisor and two (2) senior typist positions in the pupil services office.

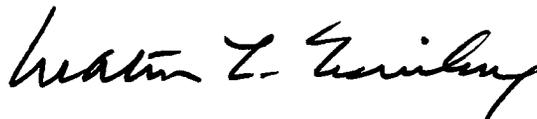
Excluded: Custodian, messenger, secretary to the superintendent, secretary to the assistant superintendent for management services, sr. typist in the superintendent's office, programmer analyst, programmer, programmer trainee and computer operator.

~~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: January 24, 1994
Albany, New York



Pauline R. Kinsella, Chairperson



Walter L. Eisenberg, Member



Eric J. Schmertz, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

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

Petitioner,

-and-

CASE NO. C-4196

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

Unit: Included: All Supervisors of Attendance (PT), Cooks, Assistant Cooks, Food Service Helpers, Bus Drivers/Mechanics (Head Mechanics), Bus Drivers, Typists/Confidential Secretaries to

Guidance Counselors, Cleaners, Teacher Aides, Typists/Central Office Receptionists/ Secretaries, Teacher Aides/Treasurer's Assistants, Library Clerks, Custodians, Library Clerks (Media Center).

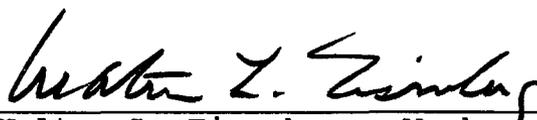
Excluded: All Registered Professional Nurses, Supervising Bus Drivers and all Others.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Civil Service Employees Association, Inc., AFSCME, Local 1000, 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.

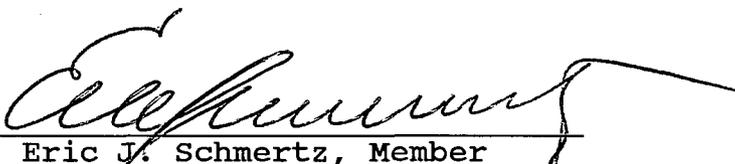
DATED: January 24, 1994
Albany, New York



Pauline R. Kinsella, Chairperson



Walter L. Eisenberg, Member



Eric J. Schmertz, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

TEAMSTERS LOCAL 264, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS,

Petitioner,

-and-

CASE NO. C-4222

NIAGARA FRONTIER TRANSIT METRO
SYSTEM, INC.,

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,

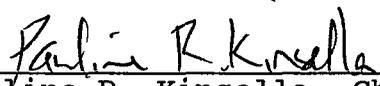
IT IS HEREBY CERTIFIED that the Teamsters Local 264, International Brotherhood of Teamsters has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose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

Unit: Included: All Bus Controllers, Rail Controllers, Rail Supervisors, and Bus Supervisors.

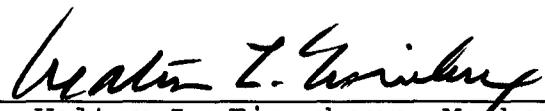
Excluded: All other employees.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Teamsters Local 264, International Brotherhood of Teamsters. 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: January 24, 1994
Albany, New York



Pauline R. Kinsella, Chairperson



Walter L. Eisenberg, Member



Eric J. Schmertz, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

**TEAMSTERS LOCAL 264, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS,**

Petitioner,

-and-

CASE NO. C-4223

**NIAGARA FRONTIER TRANSIT METRO
SYSTEM, INC.,**

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 264, International Brotherhood of Teamsters 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 Night Garage Supervisors, and Relief Garage Supervisors at the Frontier, Cold Spring and Babcock Garages.

Excluded: All other employees.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Teamsters Local 264, International Brotherhood of Teamsters. 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: January 24, 1994
Albany, New York



Pauline R. Kinsella, Chairperson



Walter L. Eisenberg, Member



Eric J. Schmertz, Member