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3-21-1994

## State of New York Public Employment Relations Board Decisions from March 21, 1994

New York State Public Employment Relations Board

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## State of New York Public Employment Relations Board Decisions from March 21, 1994

### Keywords

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

### Comments

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2A- 3/21/94

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of

AFSCME NEW YORK COUNCIL 66 - LOCAL 2574,  
ALLEGANY COUNTY EMPLOYEES UNION,

Charging Party,

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-and-

CASE NO. U-14155

COUNTY OF ALLEGANY,

Respondent.

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JOEL M. POCH, ESQ., for Charging Party

JAMES T. SIKARAS, ALLEGANY COUNTY ATTORNEY (THOMAS A. MINER  
of counsel), for Respondent

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by AFSCME New York Council 66 - Local 2574, Allegany County Employees Union (AFSCME) to a decision of an Administrative Law Judge (ALJ) dismissing its charge that the County of Allegany (County) had violated §209-a.1(a), (c) and (d) of the Public Employees' Fair Employment Act (Act) by unilaterally subcontracting unit work, dealing directly with employees represented by AFSCME and retaliating against unit employees for the exercise of rights protected by the Act.

The ALJ dismissed the charge, finding that AFSCME did not have exclusivity over the work which was subcontracted and that there was no evidence of direct dealing with unit employees or of any retaliation against them in violation of the Act. In making

her determination, the ALJ credited the testimony of Richard Young, Superintendent of Public Works since 1988. AFSCME asserts in its exceptions that the record does not support the ALJ's credibility determination. It also excepts to her conclusions of law. The County supports the ALJ's findings and decision.

For the reasons set forth below, we affirm the decision of the ALJ and dismiss AFSCME's exceptions.

AFSCME's charge involves three general allegations of impropriety: unilaterally subcontracting tree removal, salt and sand hauling, paving of County roads and operation of loaned County equipment; denying unit employees union representation during questioning or dealing directly with unit employees regarding their terms and conditions of employment; and retaliating against certain unit employees for the exercise of protected rights.

At the outset, we confirm the ALJ's credibility resolutions. The ALJ found Young to be clear, direct and forthcoming in his testimony. In contrast, AFSCME's witnesses were found to be less clear and their testimony was not always based on their direct knowledge. The ALJ based her decision on the facts as outlined by Young and we find no basis to disturb those findings.

Young's testimony establishes that the County had previously used outside contractors to remove trees that were near power lines or were otherwise considered too dangerous to be removed with County equipment. The use of a private contractor to remove

two trees in 1992 was, he testified, consistent with past practice, at least during his tenure as Superintendent.

Likewise, Young testified that the County had for many years utilized private contractors to pave County roads and to provide various materials or equipment used by the County in its road maintenance, in order to get the work done during the relatively short warm weather season. The one paving job done by a private contractor in 1992 was consistent with this practice and, Young believed, was mandated by State law.<sup>1/</sup>

Young also explained that, despite AFSCME's allegations to the contrary, the County determined on a case-by-case basis whether any equipment it loaned to a governmental or private entity would be accompanied by a County employee as operator and that its practice in this regard had not changed. He examined several loan agreements for the relevant time period and distinguished those cases in which the County had loaned equipment with an operator - usually because of the complexity involved in the operation of the equipment - from those in which the County had loaned the equipment unaccompanied by a County employee.

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<sup>1/</sup> This work was funded by the Consolidated Local Highway Assistance Program (CHIPS) which provides State funds for municipal highway projects. Where the project is in excess of one hundred thousand dollars, Young noted, Highway Law, §10-c(4)(e) and the accompanying guidelines, require that such "work must be performed by contract let by competitive bid in accordance with the provisions of section one hundred three of the general municipal law".

Young also explained the County's operation of its salt and sand hauling to municipalities within the County. The municipalities within the County plow County roads in the winter. The County purchases the sand and salt to be used and it is delivered to the municipalities either by private truckers hired by the County, by County employees, or by the municipalities themselves. The transporting of the County's sand and salt had never been exclusive unit work. In 1992, the County, because of a system established by the Association of Towns, was able to purchase sand and salt at a savings, both for use on County roads and for the municipalities' use on town roads. The material was stockpiled at one location within the County and the municipalities picked up the sand and salt there. A County employee was assigned to load both County trucks and those of the participating municipalities. Although under this arrangement County employees no longer hauled sand and salt, the unit had never performed the hauling exclusively and could not claim entitlement to its retention, subject to bargaining.

The direct dealing allegations involve a meeting of the County Legislature's Public Works Committee (Committee) in September 1992. A memo sent by the Committee on August 24, 1992 stated: "Any Public Works employee who wishes to discuss any issue with the Committee is invited to attend the Committee meeting...on the employees own time and on an individual basis." Several unit employees went to the meeting and requested the

opportunity to meet with the Committee as a group. When this request was denied, some employees left and the remaining employees, who were assured of confidentiality, met individually with the Committee.<sup>2/</sup> Sylor, Chairperson of the Committee, testified that no one asked for union representation, but if anyone had, the request would have been granted.<sup>3/</sup> There was no testimony about the substance of the discussions between the Committee members and the employees who attended the meeting.

The retaliation allegations involve the County's bridge construction crew. In October 1992, Sylor proposed the layoff of fifteen employees of the DPW because of budget constraints. Young had, as part of his 1992 budget, proposed the construction of four town bridges<sup>4/</sup> and two County bridges by the DPW's bridge construction crew.<sup>5/</sup> This work was dependent on the

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<sup>2/</sup> The ALJ erred in finding that none of the DPW employees who testified at the hearing on the instant charge had actually met with the Committee. In fact, two employees - Crane and Buzzard - both testified at the hearing that they had attended the Committee meeting. This error has no effect on the ALJ's findings, however, because the employees, while testifying that they had attended the meeting, offered no evidence about what was discussed with the Committee.

<sup>3/</sup> The ALJ did not credit the testimony of AFSCME's witnesses on this point. Champlin, a DPW employee, said that he believed he had asked for union representation. Crane also testified that he believed that union representation had been requested.

<sup>4/</sup> The County builds the bridges for towns within its boundaries, using its own crew and receiving reimbursement from the towns for the cost of the bridges.

<sup>5/</sup> The crew had constructed several bridges each year during Young's tenure.

passage of a bond issue by the County Legislature to fund the materials needed. The bond issue failed, in large part due to the County's existing debts. The Committee then decided to refocus the work of the DPW away from bridge construction to bridge maintenance. The Committee, at its meeting in October 1992, questioned Young about the need to continue the bridge construction crew since no new bridges were being built. Young identified positions that could be cut, not individual employees who could be laid off. He noted that the cuts would not cause members of the bridge construction crew to lose jobs<sup>6/</sup> because they had seniority which would allow them to "bump" into other positions in the DPW.<sup>7/</sup> AFSCME characterized the disbanding of the bridge construction crew<sup>8/</sup> as being motivated by anti-union

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<sup>6/</sup> At the time the instant charge was filed, no DPW employees had been laid off.

<sup>7/</sup> One employee, Crane, who had operated the crane on the bridge construction crew, bid to become the operator of the "Bridgemaster", a piece of equipment purchased by the County in 1990 and used in bridge maintenance work by the DPW's bridge maintenance crew. The operator of the "Bridgemaster" was defined as an HMEO by the County's Personnel Department; therefore, Crane, an HMEO II, was not the only employee eligible for the position. AFSCME has filed a grievance on this classification. Crane was offered the supervision of the bridge maintenance crew before he bid on the "Bridgemaster" operator position.

<sup>8/</sup> Despite the assignment of these employees to other jobs, when the County built or rehabilitated two bridges later in 1992, the bridge construction crew was utilized.

animus on Young's part and in retaliation for the employees' conduct at their September 1992 meeting with the Committee.<sup>9/</sup>

Young's testimony clearly establishes, and the ALJ so found, that unit employees had never performed any of the at-issue work exclusively.<sup>10/</sup> Therefore, the County's actions in utilizing nonunit employees to perform tree removal, paving, sand and salt hauling and operation of loaned County equipment without negotiations do not violate §209-a.1(d) of the Act.

The record also establishes that the conduct of the Committee meeting in September 1992 does not violate the Act. The ALJ found that there had been no request for union representation at the meeting. She further found that the meeting was not disciplinary in nature and that the employees had not been compelled to attend. Therefore, the right to union representation when an employee being questioned reasonably believes that the investigation will lead to disciplinary action and so requests union representation, as guaranteed in the private sector by the U.S. Supreme Court in NLRB v. Weingarten,<sup>11/</sup> would not apply. We have not had the occasion to

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<sup>9/</sup> Young did not stay for the Committee meeting, although he was present at the outset, before the employees met with the Committee. There was, in any event, no testimony concerning what occurred during the meeting or even what topics were discussed. No connection was established, therefore, between the meeting and the disbanding of the bridge construction crew.

<sup>10/</sup> Niagara Frontier Transp. Auth., 18 PERB ¶3083 (1985).

<sup>11/</sup> 420 U.S. 251 (1975).

determine whether such rights extend to public sector employees<sup>12/</sup> and this case does not require us to decide that issue.

In addition, we find that the County's conduct here does not constitute the type of direct dealing which has been found to violate the Act.<sup>13/</sup> The County's invitation to attend the meeting to "discuss any issue" was not, by itself, an offer to negotiate terms and conditions of employment with the individual employees which would violate the Act. Further, there is no evidence whatsoever in the record about the type or content of the discussions that took place during the Committee meeting. We cannot find that the employees were asked to outline any specific problems they were having with the Superintendent of the DPW or that the County attempted to establish a reciprocal relationship with the employees to the exclusion of their bargaining representative, AFSCME, in violation of the Act.

Finally, there is no evidence of retaliatory actions or harassment taken by the County against unit employees for the exercise of protected rights. The only protected activity which took place during the time covered by the charge was the alleged request for union representation at the Committee meeting. The

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<sup>12/</sup> Section 75 of the Civil Service Law was recently amended to provide for the right of union representation at a disciplinary interview. 1993 N.Y. Laws ch. 279.

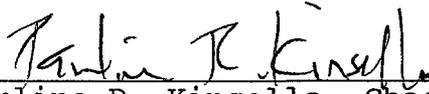
<sup>13/</sup> Monticello Cent. Sch. Dist., 20 PERB ¶3067 (1987); Albany Cent. Sch. Dist., 16 PERB ¶3101 (1983).

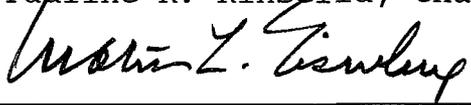
ALJ did not credit the testimony of AFSCME's witnesses that such a request was made. Further, AFSCME did not establish that retaliatory actions were taken against any employees in the time following the Committee meeting.<sup>14/</sup> The reassignment of bridge construction crew members, Young credibly explained, was a result of a loss of funding for the work that had been scheduled for the remainder of the year, not in retaliation for the activities of any of them at the Committee meeting.

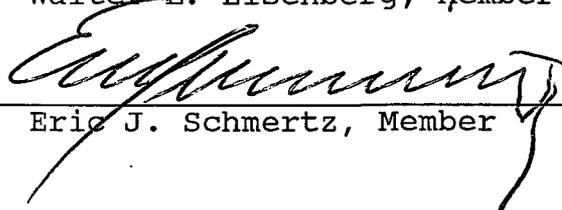
Accordingly, AFSCME's exceptions are dismissed and the ALJ's decision is affirmed.

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

DATED: March 21, 1994  
 Mineola, 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

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<sup>14/</sup> AFSCME alleged at the hearing that Champlin had been questioned by Young regarding the weighing of his truck in retaliation for his request for union representation. This incident occurred after the instant charge was filed and was not the subject of any timely amendment. Therefore, it is not considered.

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of

AFSCME COUNCIL 66, LOCAL 930, ERIE COUNTY  
WATER AUTHORITY BLUE COLLAR EMPLOYEES UNION,

Charging Party,

-and-

CASE NO. U-12365

ERIE COUNTY WATER AUTHORITY,

Respondent.

---

JOEL M. POCH, ESQ., for Charging Party

ROBERT J. LANE, SR., ESQ., for Respondent

BOARD DECISION AND ORDER

AFSCME Council 66, Local 930, Erie County Water Authority Blue Collar Employees Union (AFSCME) excepts to an Administrative Law Judge's (ALJ) decision dismissing, after a hearing, its charge against the Erie County Water Authority (Authority). AFSCME alleges in its charge that the Authority violated §209-a.1(a), (c), (d) and (e) of the Public Employees' Fair Employment Act (Act) when it established a career ladder for newly-created positions which it assigned to a white-collar unit of Authority employees represented by the Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO (CEA). The ALJ

dismissed the charge pursuant to the Authority's motion made on the second day of hearing at the end of AFSCME's direct case.

AFSCME's (a) and (c) violations are premised separately upon the Authority's alleged improper motivation in establishing the career ladder and assigning the positions to CSEA, and upon a direct dealing allegation. With respect to the first allegation, we have found in an earlier proceeding that the placement of the new positions in CSEA's unit is most appropriate.<sup>1/</sup> Moreover, the ALJ held that, despite a difficult labor relationship between the Authority and AFSCME, there was no demonstrated linkage between the decisions to create a career ladder and to assign the newly-created titles to CSEA's unit and any animosity toward AFSCME or its leadership. With respect to the second allegation, the ALJ held that a letter from William Holcomb, the Authority's Director of Human Resources, to Richard Slisz, the Erie County Commissioner of Personnel, concerning the career ladder and civil service examinations for certain of the positions did not constitute direct dealing in violation of the Act.

The (d) violation was dismissed by the ALJ on a finding that the creation of the positions and the career ladder and the placement of the positions in CSEA's unit were not unilateral actions involving mandatorily negotiable terms and conditions of employment. The subsection (e) violation was dismissed for

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<sup>1/</sup>Erie County Water Auth., 26 PERB ¶3030, aff'g 26 PERB ¶4001 (1993). Much of the record in that proceeding was incorporated as part of this record by agreement of the parties.

failure of proof, although the ALJ noted simultaneously that that allegation had been eliminated from an amended version of the charge.

AFSCME argues in its exceptions that the ALJ erred by granting the Authority's motion to dismiss because the record, read most reasonably and favorably to it, has evidence of each allegation sufficient to withstand the Authority's motion to dismiss. In response, the Authority argues that, in creating the positions, establishing a career ladder for them, and assigning the positions to CSEA's unit, it was doing only what the Act and its contract with AFSCME permitted it to do. The Authority submits that the ALJ's findings of fact and conclusions of law are correct and that her decision should be affirmed.

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

In the prior unit placement proceeding involving these parties, we determined that the Authority was correct in its belief that the newly-created positions were most appropriately assigned to CSEA's unit. Although AFSCME has appealed our decision and order in that case, our findings there are relevant to the disposition of AFSCME's interference and discrimination allegations here. As this record only confirms, AFSCME's primary concern is that certain promotional opportunities for AFSCME's unit employees under the Authority's career ladder and approved unit placement will be to positions in CSEA's unit. To prevent

that outcome, AFSCME contested the appropriateness of the unit placement and now the motives for it. As the ALJ held, however, there is insufficient evidence that the Authority acted for any reasons other than what it considered to be its best managerial interests and its firmly held and forcefully stated belief that the positions it created belonged most appropriately in the white-collar unit, represented by CSEA, not the blue-collar unit represented by AFSCME.

AFSCME argues, however, that the ALJ's dismissal after the close of its direct case pursuant to the Authority's motion deprived it of a "right" to develop or supplement a record through cross-examination of the Authority's witnesses. This same argument was made to the ALJ, who properly rejected it. In effect, AFSCME's argument is based on the theory that a respondent's only option after a charging party rests is to proceed with a defense. A respondent is plainly entitled, however, to act in what it considers to be its lawful interests and is free to move for dismissal of a charge, which motion an ALJ may grant or deny in the sound exercise of discretion and judgment. AFSCME's claimed right of cross-examination exists only if and to the extent the Authority had elected to call a witness on its behalf, which it did not. AFSCME, therefore, assumed a risk that it had satisfied its burden of proof when it rested.

We are in agreement with the ALJ that proof of a prevailing contentious labor relationship is insufficient by itself to prove that any particular act taken within the context of that relationship is necessarily and always improperly motivated.<sup>2/</sup> We further find and agree that the testimony of AFSCME's three witnesses is insufficient to establish any of the violations of the Act alleged.

AFSCME also excepts to the ALJ's dismissal of its direct dealing allegation. Holcomb wrote to Slisz in the latter's capacity as the County Civil Service Commission representative. Holcomb's letter explains that a promotional examination could not be held for certain of the at-issue titles and he requests Slisz to schedule an open competitive examination. AFSCME objects only to Holcomb's statement in the letter that AFSCME declined to discuss the arrangements which would be necessary to permit the scheduling of a promotional examination. Even if we were to assume, however, that this part of Holcomb's letter inaccurately represents AFSCME's actions or position, the letter does not constitute direct dealing, for the reasons given by the ALJ. The letter was informational, it was not sent to any unit employees, and it did not concern any offers regarding terms and conditions of employment.

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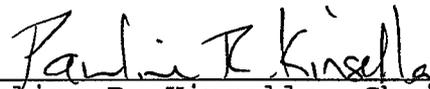
<sup>2/</sup>See Catskill Regional Off-Track Betting Corp., 26 PERB ¶13024 (1993).

In summary, we find that the ALJ properly dismissed the charge in all respects for failure of proof and that her decision to grant the Authority's motion is consistent with existing precedent.

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: March 21, 1994  
Mineola, New York

  
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Pauline R. Kinsella, Chairperson

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

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

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of

**CITY OF TONAWANDA POLICE  
OFFICERS' ASSOCIATION,**

Charging Party,

-and-

CASE NO. U-14668

**CITY OF TONAWANDA,**

Respondent.

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

**NORMAN J. STOCKER, for Respondent**

**BOARD DECISION AND ORDER**

This case comes to us on exceptions filed by the City of Tonawanda (City) to a decision by an Administrative Law Judge (ALJ) finding that the City violated §209-a.1(d) of the Public Employees' Fair Employment Act (Act) when it unilaterally transferred the work of police officers who are represented by the City of Tonawanda Police Officers' Association (Association). The ALJ made that determination after deeming the allegations in the charge admitted pursuant to §204.3(f) of our Rules of Procedure (Rules). Section 204.3(f) of the Rules provides that an ALJ may deem the material facts alleged in a charge admitted if the respondent fails to file a timely answer. The ALJ invoked

this section of the Rules because the City's representative, Norman J. Stocker, failed to appear at a rescheduled conference and failed to submit an answer to the charge by the date of that conference.

~~The City argues in its exceptions that the ALJ abused her discretion in invoking §204.3(f) of the Rules because its cited failures were unintentional and nonprejudicial. The Association has not filed a response to the exceptions.~~

Having reviewed the ALJ's decision and the City's arguments, we reverse and remand because the facts which have been established do not persuade us that invocation of §204.3(f) of the Rules was justified in this case.

The City did not appear for the conference originally scheduled for August 23, 1993. The ALJ contacted Stocker who informed her that he had not received "the papers", i.e. the charge and notice of conference,<sup>1/</sup> which also informs a respondent of the necessity to answer the charge, the time frame within which the answer must be filed, and the possible consequences of a failure to file a timely answer.

The ALJ rescheduled the conference for September 9, 1993, and confirmed that conference by letter dated August 25, 1993 to Stocker and the Association's representative. On that date, she

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<sup>1/</sup>The notice of conference was mailed by first-class mail to the City's Labor Relations Department on July 13, 1993, together with a copy of the charge. Neither the charge nor the notice of conference names a specific representative for the City.

also sent Stocker a copy of the charge (but not the notice of conference form), which Stocker received on August 30, 1993. When the City did not appear for the September 9 conference, the ALJ called Stocker's office and was told he was not there. ~~Stocker's secretary apparently reached him immediately and he~~ returned the ALJ's call. Stocker told the ALJ in that conversation that he had forgotten to attend the conference because he had neglected to calendar the rescheduled conference date.<sup>2/</sup>

The ALJ then invoked §204.3(f) of the Rules and found, as alleged, that the City violated §209-a.1(d) of the Act when it used auxiliary police to perform policing functions during the City's annual Memorial Day Parade.

Our review of a ruling by an ALJ involving an exercise of discretion is narrow under an abuse of discretion standard. The precise meaning is clearly dependent upon the specific facts of each case. An abuse of discretion has been taken to mean "no more than that [the reviewing body] will not intervene, so long

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<sup>2/</sup>In support of its exceptions, the City filed two affidavits. One is from Stocker detailing his version of the facts concerning the circumstances described in the ALJ's decision and the other is from the City's Chief of Police regarding the City's prior use of auxiliary police. In view of our decision, it is not necessary for us to consider any aspect of either affidavit.

as [the reviewing body] thinks that the (discretion exercised) is within permissible limits."<sup>3/</sup>

The City's failure to attend the first conference was excused by the ALJ, who accepted Stocker's representation that he had not received any "papers" concerning the charge or a conference. There is, moreover, nothing in the ALJ's description of the facts to evidence that Stocker was notified of the necessity for an answer or of the possible consequences of a failure to file a timely answer, as is our practice. Having accepted Stocker's representation that he had not received the charge or the notice of conference, and having sent him a copy of the charge on August 25, 1993, it was not unreasonable for Stocker to conclude that the City's time to answer the charge would run from his receipt of it from the ALJ. This being so, ten working days had not elapsed between August 30, 1993, when Stocker first received a copy of the charge from the ALJ, and the September 9, 1993 conference.<sup>4/</sup> The City's answer could be considered late as of September 9, 1993 only if it is presumed that the City had received a copy of the charge pursuant to the

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<sup>3/</sup>Barnett v. Equitable Trust Co. of New York, 34 F.2d 916, 920 (2d Cir. 1929), modified and aff'd sub nom. United States v. Equitable Trust Co. of New York, 283 U.S. 738 (1930), cited with approval in Coca-Cola Co. v. Tropicana Products, Inc., 690 F.2d 312 (2d Cir. 1982).

<sup>4/</sup>Respondents are afforded ten working days from their receipt of the charge from the Director of Public Employment Practices and Representation to answer. Rules §204.3(a).

initial notice of conference. We do not know from the facts relied upon by the ALJ whether the City ever got a copy of the charge or the initial notice of conference. It appears from the ALJ's decision that she presumed that the City had received the charge pursuant to the July 13 mailing and neglected to forward it to Stocker. No facts stated in the ALJ's decision, however, support actual receipt by the City. Even if there is a rebuttable presumption of receipt on mailing for other purposes, we do not consider that presumption to be necessarily controlling in a determination to invoke §204.3(f) of our Rules. In any event, the ALJ's actions in rescheduling the conference and sending Stocker a copy of the charge, well after the time for answering had expired, certainly suggested that the ALJ had excused any failure to file an answer until after Stocker received the charge. To thereafter penalize the City for its failure to answer the charge first mailed to the City is inconsistent with the ALJ's earlier acceptance of the City's explanation and is not warranted. In this case, therefore, the City is reasonably faulted only for a negligent failure to attend one conference. Without minimizing the inconvenience caused to the Association and the ALJ by Stocker's nonappearance at the conferences, whether excusable or not, we do not consider the ALJ's invocation of §204.3(f) of our Rules to have been within permissible limits in the particular circumstances of this case. We have reviewed the decisions in which §204.3(f) has been

invoked and are persuaded that it is most often applied when the record shows some intentional or contumacious refusal by a respondent to file an answer or to attend a conference despite notice and actual knowledge of the consequences.<sup>5/</sup> Without suggesting that these are the only circumstances in which §204.3(f) of the Rules may be properly invoked, the circumstances here did not warrant its invocation.

For the reasons set forth above, the ALJ's decision is reversed and the case is remanded to the ALJ for further processing consistent with our decision herein. SO ORDERED.

DATED: March 21, 1994  
Mineola, New York

  
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Pauline R. Kinsella, Chairperson

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

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

<sup>5/</sup>See, e.g., Town of Henrietta, 19 PERB ¶3067 (1986).

2D- 3/21/94

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of

LOCAL 1170, COMMUNICATIONS WORKERS OF  
AMERICA, AFL-CIO,

Petitioner,

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-and-

CASE NO. C-3449

TOWN OF GREECE,

Employer.

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LIPSITZ, GREEN, FAHRINGER, ROLL, SALISBURY & CAMBRIA  
(ROBERT J. REDEN of counsel), for Petitioner

HARTER, SECREST & EMERY (PETER SMITH of counsel), for  
Employer

BOARD DECISION AND ORDER

This case come to us on exceptions filed by the Town of Greece (Town) to a decision of the Director of Public Employment Practices and Representation (Director). Local 1170, Communications Workers of America, AFL-CIO (CWA) filed a petition seeking, as amended, to represent a unit consisting of the following titles: Town Clerk, Receiver of Taxes, Fire Marshal, Director of Youth Services, Building Inspector, Assessor, Library Director, and Director of Parks and Recreation. The Director issued a decision<sup>1/</sup> holding that the Receiver of Taxes, an elected official, was not a public employee within the meaning of the Public Employees' Fair Employment Act (Act), but otherwise

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<sup>1/</sup>25 PERB ¶4002 (1992).

finding that the unit sought was most appropriate. He rejected the Town's argument that the incumbents of the other titles were managerial or confidential within the meaning of §201.7(a) of the Act.

CWA excepted to the Director's determination regarding the Receiver of Taxes. The Town, in its exceptions, argued that the positions of Director of Youth Services and Director of Parks and Recreation had been abolished and should, therefore, be excluded from the unit. It further argued that a new position, Director of Human Services, which had been created after the close of the record, should be excluded from the unit because the incumbent had the responsibilities of the two abolished titles and this new title was not covered by the petition. We remanded the case<sup>2/</sup> to the Director to take further evidence as to the status of the positions of Director of Youth Services and the Director of Parks and Recreation and, deeming CWA's petition to have been amended to include the position of Director of Human Services, to take evidence as to the coverage and appropriate uniting for that position.

The Director found on remand that the position of Director of Youth Services had been abolished at the time the position of Director of Human Services was created. He, therefore, excluded the abolished title from the bargaining unit. He determined, however, that the position of Director of Parks and Recreation had not been abolished; the Town had simply not funded it for the 1992 fiscal year. He included that position, although currently

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<sup>2/</sup>25 PERB ¶13047 (1992).

vacant, in the bargaining unit. Finally, the Director decided that the Director of Human Services was a managerial employee based on the duties he performed. He found, however, that those managerial duties were peculiar to the current incumbent of the position and that those duties exceeded the scope of the position's job description. He, therefore, included the title in the unit, excluding it from coverage for only so long as the present incumbent holds the position.

The Town now excepts to the Director's decision that the position of Director of Parks and Recreation has not been abolished. It argues that the title should be excluded from the unit because the position no longer exists. The Town further argues that the position of Director of Human Services should be excluded from the unit because it is a managerial position, regardless of the identity of the incumbent. CWA supports the Director's decision on the facts and the law.

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

Two witnesses testified at the hearing on remand: Joanne Calvaruso, the Town's Director of Personnel, and Frank Ardino, former Director of Youth Services and current Director of Human Services. Calvaruso testified that during the Town's 1992 budget preparation, the Town became aware that Basil Marella, the Director of Parks and Recreation, was retiring. The Town decided to consolidate the Department of Parks and Recreation and the Department of Youth Services to better meet the needs of its constituency and to realize economic savings. Under the auspices

of the new Department of Human Services, the Town sought to combine adult and senior citizen recreation programs with youth programs and to bring other programs, such as the food bank and a community "clothes closet", under one department. Only Ardino was considered by the Town to head the new department. He had worked closely with the Town Supervisor to design the new department and to develop the job description for the new Director of Human Services. Ardino, aware that the Town wanted him to take the position, sought to give it a greater degree of autonomy than the previous position of Director of Youth Services had enjoyed. The position was, through Calvaruso's efforts, classified as a noncompetitive position by the Monroe County Civil Service Commission. Upon Ardino's appointment as Director of Human Services, his former position, Director of Youth Services, was abolished. Calvaruso testified that the Town Board also abolished the position of Director of Parks and Recreation, and did not fund it in the 1992 budget.<sup>3/</sup> There is no evidence in the record to contradict Calvaruso's testimony that the position of Director of Parks and Recreation was abolished, even though it was not done in the same document that abolished the Director of Youth Services position. The duties of the Director of Parks and Recreation are now being performed by the Director of Human Services.

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<sup>3/</sup>There are no incumbents listed on the budget line for Director of Parks and Recreation and no funds are allocated for salary for the position.

The Director found that Ardino is managerial based upon his exercise of independent judgment and control over the Town's recreational programs. Neither party disputes that his role in developing his department's program, applying for grant approval, hiring private contractors, supervising staff, developing the departmental budget, attending Town Board executive sessions, chairing the Human Services subcommittee of the Town Board and participating in the Town's new Total Quality Management Program<sup>4/</sup> warrants this conclusion. The issue before us is whether these duties are inherent in the position of Director of Human Services or whether they are unique to Ardino.

A comparison of the job descriptions for the Director of Youth Services and the Director of Human Services illustrates the differences between the positions. The Director of Youth Services performed "under the general direction of the Town Supervisor and in accordance with policies and program objectives established by the Youth Advisory Board or Agency." The Director of Human Services "establishes program goals and objectives in cooperation with youth advisory board, recreation commission and

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<sup>4/</sup>After CWA's petition was filed, and after the hearings held prior to the Director's first decision in this case, the Town implemented a Total Quality Management Program. As part of the program, Ardino and the other department heads meet twice monthly to develop Town policy and mission statements. At these meetings, the department heads discuss their proposed budgets and prioritize their departmental needs to fit within an overall Town budget. This group also meets regularly with the Town Supervisor to strategize about the Town's mission and the best methods for delivering services.

town legislative body",<sup>5/</sup> with no direct supervision by the Town Supervisor.

The Director found that the job description of the Director of Human Services was not distinguishable from the job descriptions of other department heads that he had earlier found to comprise an appropriate unit for bargaining. In his initial decision creating the at-issue bargaining unit, the Director noted that much evidence was heard about the role of these employees in policy formulation. He found that "[w]ithout exception, however, all the employees in the proposed unit are either charged with carrying out the mandates of state law, regulation or local ordinance, without the ability to deviate from such dictates, or are in positions where their decisions are subject to the approval of advisory or governing boards."<sup>6/</sup>

Here, however, there is evidence that the role of many department heads has changed since the Town implemented its Total Quality Management Control Program. Other directors, who were excluded from the unit pursuant to an agreement between CWA and

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<sup>5/</sup>The job description for the Director of Human Services also requires him/her to "coordinate and maintain contacts with internal and external youth and senior service groups and agencies to develop resource alternatives and exchange support services; coordinate with private, non-profit groups to provide food and clothing to residents in need in the community; prepare and present preliminary budget, monitor budget expenditures; meet with parents, schools, neighborhood and community groups to solicit cooperation; promote various programs through speeches and publicity materials; prepare or supervise the preparation of grant applications for federal, state or local funding; interview, train and supervise staff, define staff roles, schedule staff assignments; and attend Town Board, Recreation Commission and Youth Board meetings."

<sup>6/</sup>25 PERB ¶14002, at 4013 (1992).

the Town, apparently have many of the same rights and responsibilities as the Director of Human Services.<sup>7/</sup>

The job description for the Director of Human Services is broadly drawn and is less restrictive than the job description for the Director of Youth Services. Against the job description for the Director of Human Services, Ardino's testimony and evidence regarding the changes in the roles of the other, excluded, department heads, we cannot conclude that the managerial functions of the Director of Human Services are unique to Ardino and not inherent in the position itself. As we have previously held:

[O]rdinarily the position held by a person designated as managerial will not be included in a negotiating unit. That is so because in the usual situation the regular assignments and responsibilities of a person warrant the designation of the incumbent as managerial.<sup>8/</sup>

However, where managerial duties are personal to a particular incumbent of a position and are not part of the job description for the position and it cannot reasonably be determined from the record that any successors to the position will perform the same responsibilities, the position is appropriately placed in the bargaining unit even though the incumbent is designated managerial.<sup>9/</sup> Here, the managerial duties performed by Ardino as the Director of Human Services are generally included in his

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<sup>7/</sup>Ardino testified that he no longer had to obtain line item approval from the Town's finance director to make internal budget adjustments, but he also testified that other directors had the same authority.

<sup>8/</sup>Ellenville Cent. Sch. Dist., 16 PERB ¶3066, at 3104 (1983).

<sup>9/</sup>Id.

job description and the uncontroverted testimony establishes that other directors perform similar job duties. There is no basis to conclude, on this record, that Ardino's successor in the position of Director of Human Services will not perform the same duties as Ardino, with the same degree of autonomy. If, upon Ardino's departure, the duties assigned to the next Director of Human Services are changed, CWA may file the appropriate petition with us to consider the inclusion of the position in its unit at that time.

Based on the foregoing, we find that the position of Director of Parks and Recreation has been abolished and is, therefore, not properly included in the at-issue bargaining unit.<sup>10/</sup> We further find that the Director of Human Services is managerial and should, therefore, also be excluded from the unit.

We find the most appropriate bargaining unit to be as follows:

Included: Town Clerk, Fire Marshal, Building Inspector, Assessor and Library Director.

Excluded: Town Supervisor, Town Board members and all other employees of the Town.

IT IS, THEREFORE, ORDERED that an election by secret ballot be held under the supervision of the Director among the eligible public employees in the unit here determined to be appropriate,

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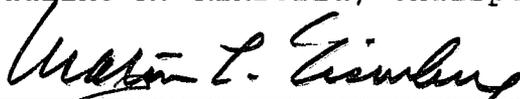
<sup>10/</sup>Even if we were to find, as urged by CWA, that the position was merely vacant and not abolished, it would not be appropriately placed in the unit at this time. There is no evidence in the record that the Town ever intends to fill the position and, as the duties previously assigned to it are now within the jurisdiction of the Director of Human Services, we have no basis to conclude that the duties to be performed by the position, if filled, would warrant its placement in CWA's unit.

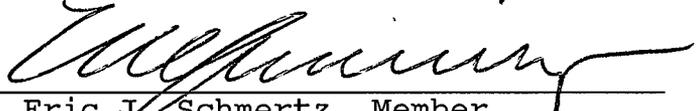
unless CWA submits to the Director, within fifteen days from the date of its receipt of this decision, evidence to satisfy the requirements of §201.9(g)(1) of PERB's Rules of Procedure.

IT IS FURTHER ORDERED that the Town shall submit to the Director and to CWA, within fifteen days from the date of its receipt of this decision, an alphabetized list of all eligible employees within the unit here determined to be appropriate.

DATED: March 21, 1994  
Mineola, New York

  
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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

WAYNE-FINGER LAKES ASSOCIATION OF  
SUPPORT PERSONNEL, NYSUT, AFT, AFL-CIO,

Charging Party,

-and-

CASE NO. U-14237

WAYNE-FINGER LAKES BOARD OF COOPERATIVE  
EDUCATIONAL SERVICES,

Respondent.

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JOHN J. MOODY, for Charging Party

MAHONEY, BERG & SARGENT (NICHOLAS J. SARGENT of counsel),  
for Respondent

BOARD DECISION AND ORDER

This case comes to us on exceptions and cross-exceptions to a decision of an Administrative Law Judge (ALJ), which have been filed, respectively, by the Wayne-Finger Lakes Association of School Support Personnel, NYSUT, AFT, AFL-CIO (Association) and the Wayne-Finger Lakes Board of Cooperative Educational Services (BOCES). The charge as amended alleges that the BOCES violated its bargaining obligations under §209-a.1(d) of the Public Employees' Fair Employment Act (Act) when it assigned teacher aides the duties of a teaching assistant and failed to pay the aides at the teaching assistants' higher rate of pay.

The ALJ held that the charge was timely filed, but she dismissed it on a finding that Article XI(J) of the parties'

current contract,<sup>1/</sup> which entitles employees who are assigned to a higher rated position for more than four hours to the pay of the higher rated position, waived any right of further bargaining regarding out-of-title work assignments. Assuming that the aides were instructing students as alleged by the Association, the ALJ held that Article XI(J) gave the District the right to make those assignments subject only to a duty to pay the employees at the higher contractual rate.

The Association argues that the ALJ erred in accepting a waiver defense and erred in her interpretation of Article XI(J).

The District argues in its cross-exceptions that the ALJ erred in finding that the charge was timely filed and in making an implicit finding or assumption that the teacher aides were instructing the students under their supervisor. It agrees, however, with the ALJ in her disposition of the charge on the merits.

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

The charge stems from the teacher aides' assignments within the BOCES' Social Skills Development Program (SSD). In

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<sup>1/</sup>Article XI(J) provides as follows:

Except as noted in Article XI, I, [substitute work] when an employee is assigned to a higher rated position for more than 4 hours during any work day, that employee will be compensated for the full day at the entry level rate for that higher rated position or be given a 5% differential above the unit member's regular hourly rate, whichever is higher.

January 1992, the BOCES introduced a community-based component to the existing SSD program. Students with behavior problems are transported to various community sites in the company of a teacher aide to perform different jobs under the supervision of the aides for approximately two hours per day. The program's goals are to have students learn appropriate behaviors in a community setting, to have the students practice what they have been taught and to have them realize the consequences of their behavior.

Christy Stacey Bassage was the first aide assigned under this aspect of the SSD program in or around January 1992. She was assigned to monitor students working at a local Burger King. The Association filed a contract grievance regarding Bassage's assignment, which it claimed to be out-of-title, necessitating a higher rate of pay. The Association later withdrew the grievance for reasons which are not apparent on this record. No other relevant teacher aide assignments were made until the start of the 1992-93 school year.

In finding the charge to have been timely filed, the ALJ held that Bassage's assignment in January 1992 was "an isolated incident unconnected to the full implementation . . . [of the] regular operation of the SSD community-based program." The ALJ ran the time to file the charge from October 1992, making the charge filed on January 10, 1993, timely under §204.1(a)(1) of our Rules of Procedure (Rules).

In urging our reversal of the ALJ's timeliness determination, the BOCES argues that the time to file must be run from January 1992, when the first community-based assignment was given to Bassage. According to BOCES, the program was simply expanded at the start of the 1992-93 school year, an expansion which does not constitute a new time from which to run the four-month filing period.

As the District itself argues, the time to file an improper practice charge begins to run from the date the charging party knew or should have known of the acts constituting the improper practice.<sup>2/</sup> The Association's charge is grounded upon the BOCES' alleged utilization of teacher aides in an instructional capacity. The Association was not reasonably positioned to know that the aides were arguably being used in that capacity until after the assignments began regularly during the 1992-93 school year. Therefore, we affirm the ALJ's determination that the charge was timely filed.

We also affirm the ALJ's decision to consider a waiver defense. Although, as noted by the ALJ, BOCES did not denominate any of its affirmative defenses as "waiver", it is clear from its answers to the charge as filed and amended that it claimed that the contract was the source of both parties' rights with respect to the assignments in issue and that the dispute was contractual in nature. The relevant contract section was specifically quoted

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<sup>2/</sup>See, e.g., City of Yonkers, 7 PERB ¶3007 (1974).

in the BOCES' answers. In agreement with the ALJ, we hold that the BOCES' answers satisfied the pleading requirements of §204.3(c)(2) of the Rules and gave the Association sufficiently clear notice that the contract was being raised in defense to the Association's allegations in other than a strictly jurisdictional sense.<sup>3/</sup> Therefore, we dismiss the Association's exceptions which are directed to the ALJ's consideration of a waiver defense.

The Association also argues that the ALJ erred in the interpretation of Article XI(J). That section of the contract is captioned "Temporary Transfers". The Association argues that, given its title, Article XI(J) cannot have any application to teacher aide assignments within the SSD program because those assignments are permanent, ongoing and regular, albeit usually of two hours or less per day. There was no evidence regarding the history or application of Article XI(J), but its language is unqualified. It affords both the BOCES and unit employees clear rights. The BOCES is given the right to make out-of-title assignments to unit employees, but the employees must be paid a higher rate of pay when the assignment lasts for more than four hours on any given day. The caption to Article XI(J) is not necessarily inconsistent with the ALJ's interpretation. The reference to "temporary" may, for example, mean only those assignments of less than four hours' duration in any given day,

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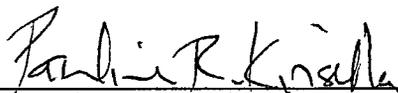
<sup>3/</sup>Compare Clarkstown Cent. Sch. Dist., 24 PERB ¶3047 (1991).

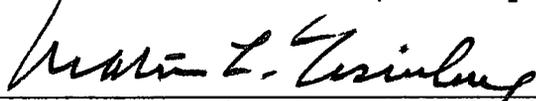
not, as the Association contends, the number of days during which the assignments are made. In any event, absent other evidence, the Article's caption cannot control the plain language of the parties' agreement itself. In making this conclusion, we do not, any more so than the ALJ, find that the teacher aides were given instructional duties, that they were otherwise used out of title or, if so, whether they are entitled under Article XI(J) to a higher rate of pay. We hold only that, assuming the aides were used in an instructional capacity, the District's assignment of those duties to them was not subject to any further bargaining obligations. Similarly, whether the assignments were consistent with other laws or regulations<sup>4/</sup> is an issue which is not before us.

For the reasons set forth above, the exceptions and cross-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: March 21, 1994  
Mineola, New York

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

  
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Walter L. Eisenberg, Member

  
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Eric J. Schmertz, Member

<sup>4/</sup>See, e.g., N.Y. Comp. Codes R. & Regs. tit. 8, §80.33 (1987). These regulations of the Commissioner of Education define and restrict the duties which may be assigned to a teacher aide.

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 NOS. U-13621 &  
U-14032

STATE OF NEW YORK - UNIFIED COURT SYSTEM,

Respondent.

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In the Matter of

NINTH JUDICIAL DISTRICT COURT EMPLOYEES  
ASSOCIATION,

Petitioner,

-and-

CASE NO. C-3944

STATE OF NEW YORK - UNIFIED COURT SYSTEM,

Employer,

-and-

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

Intervenor.

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

MARTIN SHARP, for Petitioner

NORMA MEACHAM, ESQ., DIRECTOR OF HUMAN RESOURCES (ANDREA R.  
LURIE of counsel), for Respondent/Employer

BOARD DECISION AND ORDER

These cases come to us on exceptions filed by the Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO (CSEA). CSEA excepts to a decision by an Administrative Law Judge (ALJ) dismissing two improper practice charges it had filed against the State of New York - Unified Court System (UCS) and to a decision by the Director of Public Employment Practices and Representation (Director) dismissing its objections to a September 9, 1992 representation election it lost to the Ninth Judicial District Court Employees Association (Association).<sup>1/</sup>

CSEA alleges in its first improper practice charge that Marie Kuchta, the chief clerk of the White Plains City Court, cancelled a meeting scheduled for March 31, 1992, at which CSEA was to speak with unit employees about problems it was having with its Employee Benefits Fund, and permitted, instead, Martin Sharp, president of the Association, to make a presentation to the employees about the benefits afforded by the Association.<sup>2/</sup>

CSEA alleges in its second improper practice charge that Kuchta permitted unit employee Betty Stewart, an Association

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<sup>1/</sup>Of 18 eligible employees in the City of White Plains negotiating unit, 8 voted for the Association and 4 voted for CSEA, the incumbent bargaining agent for the unit. There was one challenged ballot cast by a nonunit employee. Six eligible unit employees did not vote.

<sup>2/</sup>There are approximately 800 UCS employees within the Ninth Judicial District represented in 17 negotiating units by 4 different employee organizations, including CSEA and the Association.

supporter, repeated access to unit employees during work time, while denying CSEA similar access. It also alleges that Kuchta gave vacation time and a promotion to unit employee Antoinette Frezza. Each improper practice charge theorizes that the acts described were taken with the purpose and effect of influencing the election, in violation of §209-a.1(a) and (b) of the Public Employees' Fair Employment Act (Act).

CSEA also filed objections to the conduct of the election itself and conduct affecting the results of the election. The Director dismissed without a hearing the objections to the conduct of the election itself<sup>3/</sup> and certain of CSEA's objections to conduct affecting the results of the election.<sup>4/</sup> CSEA's only exception to these aspects of the Director's decision is to his finding that Stewart's statement to Kuchta, while embracing her, that "we won, we won", could not have affected the results of the election because the comment was made after the ballots had been counted. CSEA argues that this statement and

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<sup>3/</sup>The objections to the conduct of the election itself concern the absence of five unit employees from work on the day of the election and the status of the individual who cast the challenged ballot. CSEA withdrew the latter allegation during the proceedings before the Director.

<sup>4/</sup>The objections in this respect concern Kuchta's alleged "harassment" and "pressuring" of CSEA officers and unit members. The Director dismissed these objections because the incidents occurred either years before the representation petition was filed or after the election was held. The Director dismissed an objection based upon an alleged "unusual" grant of vacation leave to three unit employees, including Frezza, on a finding that the grant was not aberrational.

action evidence Kuchta's preference for the Association and her pervasive influence over the election results.

The remaining election objections incorporate the allegations in the improper practice charges and add an allegation that Kuchta invited Stewart to a meeting in late May 1992 involving the employment of unit employee Helen Fox.<sup>5/</sup> These objections were consolidated for hearing before the ALJ assigned to the improper practice charges.

After hearing, the ALJ dismissed both improper practice charges. She dismissed the first charge because there was no evidence that Kuchta invited Sharp to speak to unit employees on March 31, 1992, or that she cancelled the meeting with CSEA to enable Sharp to speak with unit employees that same day and time.

The ALJ also dismissed the second improper practice charge. The allegations regarding unequal access to unit employees were dismissed because only CSEA unit president Rose Impallomeni's testimony supported those allegations and the ALJ did not credit her testimony based upon her behavior, demeanor and the nature of her responses to questions during the hearing. The ALJ held, alternatively, that the access allegations would have been dismissed even if Impallomeni's testimony had been credited. The ALJ held that the record, at most, established only that Impallomeni was denied access to City Court where she did not

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<sup>5/</sup>Fox was seeking a transfer because she felt that Kuchta had unfairly criticized her personally or her work.

work.<sup>6/</sup> She found no evidence that CSEA had any less access to unit employees than did the Association.

The allegations concerning Frezza's alleged promotion<sup>7/</sup> were dismissed because there was no evidence that Kuchta ever suggested to Frezza that she not vote, that Kuchta extracted a promise from Frezza in that regard, or that Kuchta was involved in the personnel transaction involving Frezza. In reaching this conclusion, the ALJ declined to draw a negative inference against UCS from Kuchta's not testifying, noting, moreover, that CSEA had failed to produce any facts in support of its charge which a negative inference could corroborate.

The Director adopted the ALJ's relevant findings of fact, credibility resolutions and conclusions of law in dismissing most of the remaining election objections.

With the submission of its memorandum of law to the Director, CSEA changed<sup>8/</sup> the election objection concerning Kuchta's alleged invitation to Stewart to attend the May 1992 meeting involving Fox because it became apparent during the hearing that Kuchta had not invited Stewart to the meeting nor

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<sup>6/</sup>Impallomeni is a senior court reporter assigned to Supreme Court in White Plains, located in the Westchester County Courthouse, which is near the White Plains City Court.

<sup>7/</sup>As discussed *infra*, Frezza was not promoted but had her part-time status changed to full-time to fill a temporary vacancy.

<sup>8/</sup>CSEA had alleged initially that Kuchta invited Stewart to the meeting or was responsible for her presence.

had she otherwise been responsible for Stewart's appearance.<sup>2/</sup> CSEA now argues that the meeting with Fox reinforced a sense among employees that UCS favored the Association and contributed to the "insidious atmosphere" created by Kuchta. The Director did not decide whether CSEA could change the basis for this particular election objection because he dismissed it on a different ground. The Director found that Stewart appeared at the meeting by directive of the UCS judge who was conducting the meeting, because the judge wanted an "objective observer", picking Stewart by random circumstance. Stewart sat silently throughout the meeting, she was not held out to be an Association representative or treated by UCS as such, and the Director found no evidence that any unit employees other than Fox and Stewart ever learned of the meeting or Stewart's presence.

CSEA also alleges in its election objections that Frezza refrained from voting because Kuchta had given her a promotion. As did the ALJ in conjunction with the similar improper practice allegation, the Director dismissed this election objection essentially for lack of proof. He determined that Frezza's temporary move from part-time to full-time status in August 1992 was not a promotion, but that even if it could be characterized as such, other unit employees were unaware of it or of Frezza's alleged intent not to vote because of it. Moreover, the Director found no evidence that Kuchta in any way pressured or influenced

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<sup>2/</sup>This objection was not the subject of either of CSEA's improper practice charges.

Frezza's decision not to vote or that Kuchta was involved in the change in Frezza's position from part-time to full-time status.

The subject of CSEA's remaining election objection is the same as its first improper practice charge involving Kuchta's cancellation of CSEA's March 1992 meeting. The Director dismissed this objection because CSEA's allegation concerned conduct which occurred before the petition was filed on April 18, 1992. The Director held that this pre-petition conduct could not be considered because it was not part of any objectionable conduct continuing post-petition. The Director also determined that even on CSEA's own allegations, which were not proven, this was "an isolated and remote event", insufficient to warrant setting aside the election because, as found by the ALJ, CSEA otherwise had access to unit employees similar to that enjoyed by the Association.

CSEA excepts to the ALJ's decision dismissing its first improper practice charge for lack of proof. CSEA argues that there is sufficient evidence that Kuchta cancelled CSEA's meeting and substituted a meeting with the Association for the purpose of assisting the Association in the election. CSEA also argues that the ALJ should have drawn a negative inference against UCS because Kuchta did not testify. CSEA does not specifically except to the ALJ's dismissal of the second improper practice charge, although the allegations regarding Frezza's alleged promotion are incorporated into its exceptions to the Director's decision dismissing the election objections. CSEA excepts to the

Director's decision dismissing the election objections for the reasons set forth in its exceptions to the ALJ's decision. In seeking a new election, CSEA argues that there is sufficient proof that Kuchta intended to influence the election in her dealings with Frezza, in her cancellation of the CSEA meeting in March 1992 and substitution of a meeting with the Association, and in her exchange with Stewart after the ballots had been counted.

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

With respect to the first improper practice charge, as the ALJ and Director determined, there simply is no proof that Kuchta invited Sharp to speak to unit employees on March 31, 1992, or that she had cancelled CSEA's meeting to accommodate the Association. We affirm this aspect of the decisions for the reasons stated by the ALJ and the Director.

The access allegations in CSEA's second improper practice charge hinge on Impallomeni's testimony. The ALJ discredited Impallomeni's testimony, a credibility assessment we have no reason to disturb inasmuch as it rests upon Impallomeni's demeanor as a witness. The allegations regarding Frezza's promotion were also properly dismissed. In addition to the bases for dismissal cited by the ALJ and the Director, there is no evidence that Frezza was a CSEA supporter, or, if so, that Kuchta knew it and acted to prevent her from voting.

As to the election objections, we are not persuaded that there are any actions attributable to the UCS which would have influenced a reasonable voter's choice of bargaining agent or discouraged participation in the election process. CSEA theorizes that Kuchta favored the Association over CSEA and took various actions to influence the employees' vote and to better position the Association to win the September 1992 election. But if one or more employees believed that Kuchta preferred their representation by the Association than by CSEA, nothing in this record establishes that Kuchta induced that belief. Kuchta had a supervisory style which may have strained her relationships with certain unit employees, including Fox, but this has nothing to do with the improper practice charges or the election objections because it does not establish that Kuchta had a preference as to a bargaining agent for unit employees. Although the record shows that CSEA had complained about Kuchta's management style, there is no evidence of her animus toward or discrimination against CSEA nor is there evidence of prior complaints regarding Kuchta's alleged support for the Association. The evidence CSEA relies upon in its exceptions is not persuasive of any result contrary to the ones reached by the ALJ and the Director. The first improper practice charge lacks support in the record. There is insufficient evidence in the record to establish that Stewart's reaction to the Association's election victory was anything other than her satisfaction with the Association's victory and the demonstration of a personal relationship with Kuchta which

permitted an embrace. This statement and action do not evidence, as CSEA claims, that Stewart had unintentionally revealed a conspiracy in which Kuchta worked against CSEA and in favor of the Association. Frezza's statement to Impallomeni regarding her decision not to vote, even assuming Impallomeni accurately described it,<sup>10/</sup> again reflects only Frezza's feelings. Nothing in the record evidences Kuchta's responsibility for that feeling, that Frezza acted on it as opposed to her first stated reason for not voting, i.e., her being on vacation on the day of the election, or that Kuchta expected such a reaction from Frezza because she temporarily had been made full-time.

CSEA would also support its charges and election objections generally on the fact that Kuchta did not testify at the hearing. The record shows that Kuchta was ill on the day of the hearing. Her testimony had not been requested and a continuation of the hearing to permit her to attend was not sought by any party. The record may raise questions and suspicions about Kuchta's attitudes and conduct, but it does not prove by a preponderance of the evidence either the violations of the Act alleged or establish sufficient ground to set aside the election.

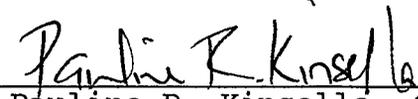
For the reasons set forth above, the ALJ's and Director's decisions are affirmed and the exceptions are dismissed.

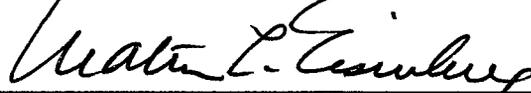
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<sup>10/</sup>Impallomeni testified that she had telephoned Frezza about voting and that Frezza told her that she "can't come in to vote" because she was "on vacation and besides ... [Kuchta] just gave me the promotion and she granted my vacation and I just can't do this to her."

IT IS, THEREFORE, ORDERED that the improper practice charges and election objections must be, and hereby are, dismissed. Accordingly, we have this date certified the Ninth Judicial District Court Employees Association as the exclusive bargaining agent for the unit stipulated to be appropriate.

DATED: March 21, 1994  
Mineola, New York

  
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Pauline R. Kinsella, Chairperson

  
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Walter L. Eisenberg, Member

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

2G- 3/21/94

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, NASSAU COUNTY  
LOCAL 830,**

Charging Party,

-and-

CASE NO. U-13358

COUNTY OF NASSAU,

Respondent.

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**NANCY E. HOFFMAN, GENERAL COUNSEL (JEROME LEFKOWITZ 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 and cross-exceptions filed, respectively, by the County of Nassau (County) and the Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO, Nassau County Local 830 (CSEA), to a decision by an Administrative Law Judge (ALJ). After a hearing, the ALJ held that the County violated §209-a.1(a) of the Public Employees' Fair Employment Act (Act) when a CSEA unit employee, James Mattei, was forced to retreat to his former job title under a County layoff plan. Mattei is an administrative assistant to the president of CSEA's local who was on full-time employee organization leave (EOL) at the relevant time from his probation department position of assistant to the deputy director for

federal and state aid (aid assistant). The ALJ held, in finding a per se violation of §209-a.1(a), that the County decided to eliminate Mattei's position because he had used the EOL benefit. The ALJ dismissed, however, the §209-a.1(c) allegation because the County had not "singled out" Mattei's position for elimination because approximately 100 other employees in the probation department were also laid off.

The County argues in its exceptions that the ALJ erred in finding a violation of §209-a.1(a) of the Act. It argues that the record shows that Mattei's position was eliminated, like many others in many departments, in response to a large budget deficit and only because he was not responsible for the delivery of statutorily mandated services.<sup>1/</sup>

CSEA argues in its cross-exceptions that the ALJ also should have found a violation of §209-a.1(c) of the Act, but it otherwise argues that the ALJ's findings of fact and conclusions of law are correct.

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

The ALJ's several references to a per se violation have unintentionally detracted from the findings he actually made. As

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<sup>1/</sup>The probation department is specifically mandated to investigate, supervise and perform intake work. The aid assistant position is responsible for filing claims for federal and state aid, collecting restitution payments for crime victims and budgeting.

we understand the ALJ's rationale, he used a per se reference only in the sense that Joseph Sciarrotta, director of the County's probation department, was not overtly hostile to CSEA or toward Mattei's union activities. The ALJ specifically found, however, that Mattei's position was eliminated because he used full-time EOL and, therefore, he was expendable. The County is correct that, even under the ALJ's decision, the County's motives for the elimination of the position are relevant and, in this case, dispositive. We do not agree, therefore, with the ALJ's statement that "it is irrelevant whether Sciarrotta would have submitted the same layoff plan even if Mattei had not been on full-time EOL."

The issue before us is easily stated: Did the County eliminate Mattei's position because he used EOL or did it do so, as it claims, only because budgetary constraints forced that decision? If the former, the County's action violated both §209-a.1(a) and (c) because the elimination of a position for that reason discriminates against Mattei individually for the exercise of clear contract rights<sup>2/</sup> and interferes with his and all other employees' participation in protected union activities. As the ALJ observed, a position eliminated for this reason necessarily suggests to employees that there may be adverse employment-related consequences for either membership or active participation in a union or for securing to oneself the benefits

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<sup>2/</sup>County of Albany, 25 PERB ¶13026 (1992).

of the collective bargaining agreement.<sup>3/</sup> Alternatively, a position abolition for economic reasons does not violate either §209-a.1(a) or (c) of the Act even though the occupant of that position is a union officer, activist, or agent. The Act does not insulate union officers of any type or at any level from the adverse effects of an employer's properly motivated managerial decisions.<sup>4/</sup> The Act ensures that employees are not interfered with, discriminated against or improperly advantaged in their employment relationship because of their decisions with respect to union membership, office or participation.

There is evidence in the record in support of both the County's and CSEA's arguments. The ALJ noted the evidence which each party emphasizes in its arguments to us, and he weighed it in favor of CSEA, primarily because of the credibility resolutions he made, which we have no basis to question. As viewed by the ALJ, the record shows that Sciarrotta had long been unhappy with Mattei's use of EOL because he was not of service to the department in that capacity. His displeasure in this respect was noted in his departmental layoff plan. The function, personal services, cost and value of all but Mattei's position were noted in that plan by Sciarrotta. Of Mattei, Sciarrotta noted only his salary and that he was not available to the department because he was on EOL, an action which necessitated

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<sup>3/</sup>See Hudson Valley Community College, 18 PERB ¶3057 (1985).

<sup>4/</sup>See State of New York - Unified Court System, 26 PERB ¶3046 (1993).

that others do his work. Mattei's version of a conversation he had with Sciarrotta, which the ALJ credited, shows that Sciarrotta did not have to eliminate every position which was responsible for only nonmandated services. Quite the contrary, Sciarrotta told Mattei that he would not have targeted his position, despite the many layoffs he had to make, if he had known the true extent of the salary reduction Mattei faced as a result of the retreat and bumping provisions of the Civil Service Law.<sup>5/</sup> Sciarrotta also left open the possibility that Mattei's position might be maintained if he relinquished his EOL. These statements are inconsistent with the County's claim that Mattei's aid assistant position had to be eliminated for budget reasons only.

In summary, we cannot conclude on this record, given the ALJ's credibility resolutions, that the County would have eliminated Mattei's position, even if Mattei had not used the contractual EOL. We are not, therefore, presented with any basis on which to reverse or modify the ALJ's decision, except insofar as we hold that the County's action also violated §209-a.1(c) of the Act. For the reasons set forth above, the County's exceptions are dismissed, CSEA's cross-exceptions are granted, and the ALJ's decision is affirmed, except as regards the ALJ's disposition of the §209-a.1(c) allegation.

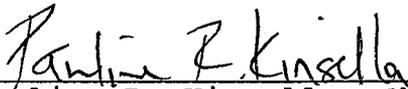
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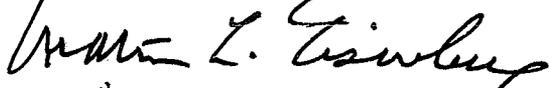
<sup>5/</sup>Sciarrotta thought Mattei would suffer a \$5,000 salary reduction by retreating to his former position of a probation officer I, but it was actually about \$20,000.

IT IS, THEREFORE, ORDERED that the County:

1. Forthwith offer James Mattei reinstatement to the aid assistant position under the conditions that existed immediately before it was eliminated.
2. Make James Mattei whole for the loss, if any, of pay and benefits suffered by reason of the elimination of the aid assistant position and his retreat to the probation officer I position, from the date of that retreat to the date of the offer of reinstatement, with interest at the maximum legal rate.
3. Cease and desist from improperly eliminating the positions of employees who elect to use contractual employee organization leave.
4. Sign and conspicuously post a notice in the form attached at all locations ordinarily used to communicate information to unit employees.

DATED: March 21, 1994  
Mineola, New York

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

  
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Walter L. Eisenberg, Member

  
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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

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## NEW YORK STATE PUBLIC EMPLOYEES' FAIR EMPLOYMENT ACT

we hereby notify all employees represented by the Civil Service Employees Association, Local 1000, AFSCME, AFL-CIO, Nassau Local 830, that the County of Nassau will:

1. Forthwith offer James Mattei reinstatement to the position of assistant to the deputy director for federal and state aid under the conditions that existed immediately before it was eliminated.
2. Make James Mattei whole for the loss, if any, of pay and benefits suffered by reason of the elimination of that position and his retreat to the probation officer I position, from the date of that retreat to the date of the offer of reinstatement, with interest at the maximum legal rate.
3. Not improperly eliminate the positions of employees who elect to use contractual employee organization leave.

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.*

3A- 3/21/94

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of

**NINTH JUDICIAL DISTRICT COURT  
EMPLOYEES ASSOCIATION,**

Petitioner,

-and-

CASE NO. C-3944

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**STATE OF NEW YORK - UNIFIED COURT  
SYSTEM,**

Employer,

-and-

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

Intervenor.

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**CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE**

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

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

IT IS HEREBY CERTIFIED that the Ninth Judicial District Court Employees 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: City Marshal NCOM, court assistant, court clerk, court reporter, office typist, office typist PT, principal office assistant, senior office assistant, and senior office typist.

Excluded: Chief clerks, employees designated by PERB as managerial or confidential, and all other employees.

~~FURTHER, IT IS ORDERED~~ that the above named public employer shall negotiate collectively with the Ninth Judicial District Court Employees 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: March 21, 1994  
Mineola, New York

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

  
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Walter L. Eisenberg, Member

  
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Eric J. Schmertz, Member

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of

**CHAUTAUQUA COUNTY SHERIFFS  
SUPERVISORS' ASSOCIATION,**

Petitioner,

-and-

CASE NO. C-4008

**CHAUTAUQUA COUNTY and the  
CHAUTAUQUA COUNTY SHERIFF,**

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 Chautauqua County Sheriffs Supervisors' 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.

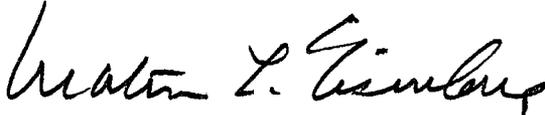
Unit: Included: Lieutenant and Jail Supervisor/Administrator.

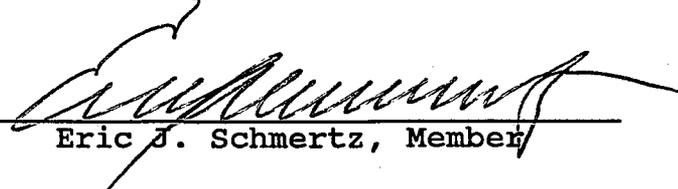
Excluded: All other employees.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Chautauqua County Sheriffs Supervisors' 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: March 21, 1994  
Mineola, New York

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

  
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Walter L. Eisenberg, Member

  
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Eric J. Schmertz, Member

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of

**WAYNE-FINGER LAKES BOCES TEACHERS'  
ASSOCIATION,**

Petitioner,

-and-

CASE NO. C-4031

**WAYNE-FINGER LAKES BOARD OF COOPERATIVE  
EDUCATIONAL SERVICES,**

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 Wayne-Finger Lakes BOCES Teachers' 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.

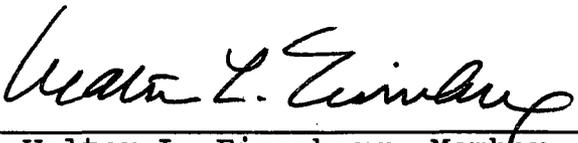
Unit: Included: All professional personnel employed to spend a significant amount of time instructing, assessing, or counseling students and/or adults.

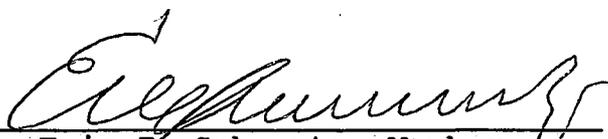
Excluded: Administrators, the coordinator of the ST-TEP program, other non-teaching coordinators, instructors in the adult education LPN program who do not provide classroom instruction for the duration of the program, dental hygienists, registered nurses, teacher assistants and substitutes.

~~FURTHER, IT IS ORDERED~~ that the above named public employer shall negotiate collectively with the Wayne-Finger Lakes BOCES Teachers' 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: March 21, 1994  
Mineola, New York

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

  
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Walter L. Eisenberg, Member

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

30- 3/21/94

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of

LOCAL 200B, SERVICE EMPLOYEES  
INTERNATIONAL UNION, AFL-CIO, CLC,

Petitioner,

-and-

CASE NO. C-4192

PORT BYRON CENTRAL SCHOOL DISTRICT,

Employer,

-and-

PORT BYRON CENTRAL SCHOOL CLERICAL UNIT,

Intervenor.

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CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

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

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

IT IS HEREBY CERTIFIED that the Local 200B, Service Employees International Union, AFL-CIO, CLC 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 regularly employed persons in the following titles: Senior Account clerk/Typist, Account Clerk/Typist, Senior Typist Clerk, Clerk, Typist, A.V. Aide and Teacher Aide

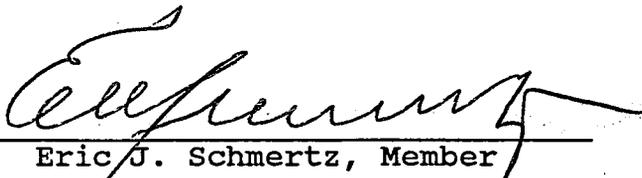
Excluded: All temporary, substitute and casual employees and all other employees.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Local 200B, Service Employees International Union, AFL-CIO, CLC. The duty to negotiate collectively includes the mutual obligation to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written agreement incorporating any agreement reached if requested by either party. Such obligation does not compel either party to agree to a proposal or require the making of a concession.

DATED: March 21, 1994  
Mineola, 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

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

Petitioner,

-and-

CASE NO. C-4215

NORTH COLONIE CENTRAL SCHOOL DISTRICT,

Employer.

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CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

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

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

IT IS HEREBY CERTIFIED that the Civil Service Employees Association, Inc., 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 full-time and part-time employees in the position of Special Education Teacher Aide and Computer Room Teacher Aide.

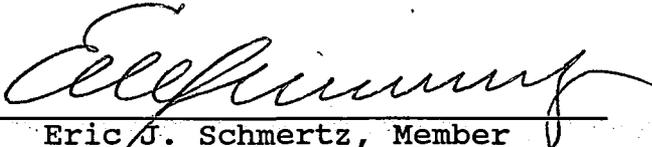
Excluded: Graduate Student Intern and all other employees.

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: March 21, 1994  
Mineola, New York

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

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

  
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Eric J. Schmertz, Member

RESOLUTION

Be it resolved that at a meeting of the Public Employment Relations Board held on March 21, 1994, the Board delegated to Chairwoman Pauline R. Kinsella the following powers and authority:

1. To appoint staff to carry out the duties of the Board;
2. To administer the Board office and its staff;
3. To approve the expenditure of Board funds and to approve payroll and other vouchers for expenditure;
4. To issue subpoenas pursuant to Civil Service Law §205.5(k) and delegate such power in whole or in part to any person appointed by the Board for that purpose.
5. To certify an employee organization pursuant to Civil Service Law §207.3 and to issue the certification required by Civil Service Law §209.5(a) and §209.6 if such action is required between meetings of the Board to best serve the purposes and policies of the Public Employees' Fair Employment Act.

DATED: March 21, 1994  
Mineola, New York

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

  
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Eric J. Schmertz, Member