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State of New York Public Employment Relations Board Decisions from June 27, 1994

New York State Public Employment Relations Board

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State of New York Public Employment Relations Board Decisions from June 27, 1994

Keywords

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

Comments

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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

LOCAL 342, LONG ISLAND PUBLIC SERVICE
EMPLOYEES, UNITED MARINE DIVISION,
INTERNATIONAL LONGSHOREMEN'S
ASSOCIATION, AFL-CIO,

Charging Party,

-and-

CASE NO. U-13293

TOWN OF HUNTINGTON,

Respondent.

THE LAW OFFICE OF EDWARD J. HENNESSEY (EDWARD J. HENNESSEY
and EILEEN M. MEEHAN of counsel), for Charging Party

JOHN J. LEO, for Respondent

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by the Town of Huntington (Town) to a decision of an Administrative Law Judge (ALJ) on a charge filed against the Town by Local 342, Long Island Public Service Employees, United Marine Division, International Longshoremen's Association, AFL-CIO (Local 342). Local 342 alleges in its amended charge that the Town violated §209-a.1(d) of the Public Employees' Fair Employment Act (Act) by improperly delaying the commencement of negotiations.^{1/} The ALJ found that Local 342, on January 7, 1993, had asked the Town to begin negotiations with it for a successor to an agreement which

^{1/}The ALJ dismissed an allegation that the Town had improperly conditioned negotiations on agreement to ground rules for the negotiations. No exceptions were filed with respect to this aspect of the ALJ's decision.

expired on December 30, 1992. The Town did not respond and Local 342, on February 19, 1993, again made a written request to begin negotiations. When it received no response to its second request, Local 342 filed this charge. The ALJ found that the Town's silence for two and one-half months in the face of two requests for negotiations was unreasonable and violated its duty to bargain in good faith.

The Town, in its exceptions, argues that the delay was de minimis, that it was occasioned by the election of a new Town Board, which took office in January, and that Local 342 was aware of the reasons for the delay and knew them not to be a deliberate attempt to stall negotiations. Local 342 in its response argues that the ALJ's decision is correct in all respects and should be affirmed.

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

Section 204.3 of the Act requires parties to a collective bargaining relationship to meet at reasonable times to negotiate successor agreements. As noted by the ALJ, we have previously held:

A failure to respond in an expeditious fashion to a demand to negotiate, to provide some reasonable explanation for a delay in response or commencement of negotiations, and to select a chief negotiator within a reasonable period of time so that negotiations may commence, whether intended to frustrate the negotiation process or not, has the effect of doing so and

constitutes a violation of the duty to negotiate in good faith.^{2/}

The Town argues that it was experiencing a change in administration at the time Local 342's requests for the commencement of negotiations were made and that it had not yet selected a labor counsel to conduct those negotiations. The existence of those concerns does not excuse the Town from an obligation to at least respond to Local 342's requests to begin negotiations.^{3/} Even if a delay in negotiations were warranted by the circumstances, the Town made no effort to explain those circumstances to Local 342. A two-month delay in responding to a demand to negotiate, even before the expiration of an existing collective bargaining agreement, was found to violate the Act in Harrison Central School District.^{4/} Here, as in Sheriff and County of Oneida, supra, the contract had already expired, establishing an even more compelling reason to find that the Town's actions, or lack of them, violated §209-a.1(d).

The Town also argues that the case is moot because it negotiated with Local 342 after the charge was filed. As we noted in Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO, Town of Riverhead Unit of Local 852,^{5/} the

^{2/}Sheriff and County of Oneida, 23 PERB ¶13037, at 3076 (1990).

^{3/}The Town eventually retained the same labor counsel it had used for several years.

^{4/}7 PERB ¶13041 (1971).

^{5/}25 PERB ¶13057, at 3122 (1992).

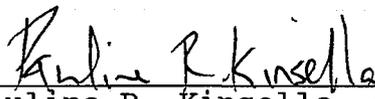
Town's commencement of "negotiations after the charge was filed does not moot the charge or establish its good faith prior to the filing of that charge [but] is a factor relevant to the need for any remedial action." Unlike City of Peekskill,^{6/} where we declined to consider a charge based on a unilateral imposition of employee contributions to health insurance coverage because the fee had never been implemented and the parties had subsequently negotiated health insurance contributions for the affected employees, here the Town's improper actions in actuality prevented the commencement of negotiations. It is perhaps helpful that we reiterate the basic bargaining obligations imposed by the Act which shape and guide the ongoing bargaining process. If the violation is continuing when the charge reaches us for decision, the appropriate remedy would include an order to negotiate in good faith. However, if, by then, negotiations have begun and are being conducted in good faith, no order in that respect is necessary to effectuate the purposes of the Act. Here, the Town eventually answered Local 342's demand to negotiate and has, in fact, been engaged in negotiations with Local 342. Therefore, beyond the finding of a violation of the Act, the only remedy required is the posting of the attached notice.

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

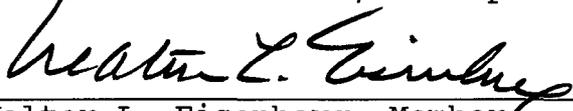
^{6/}26 PERB ¶3062 (1993).

IT IS, THEREFORE, ORDERED that the Town post a notice in the form attached in all locations within the Town ordinarily used to communicate with unit employees.

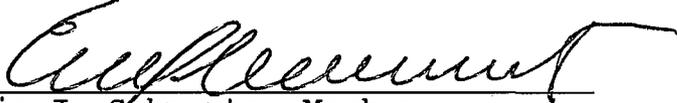
DATED: June 27, 1994
Albany, New York



Pauline R. Kinsella, Chairperson



Walter L. Eisenberg, Member



Eric J. Schmertz, Member

NOTICE TO ALL EMPLOYEES

PURSUANT TO
THE DECISION AND ORDER OF THE

NEW YORK STATE
PUBLIC EMPLOYMENT RELATIONS BOARD

and in order to effectuate the policies of the

NEW YORK STATE
PUBLIC EMPLOYEES' FAIR EMPLOYMENT ACT

we hereby notify all employees of the Town of Huntington (Town) in the blue-collar unit represented by Local 342, Long Island Public Service Employees, United Marine Division, International Longshoremen's Association, AFL-CIO (Local 342), that the Town has been found to have violated §209-a.1(d) of the Public Employees' Fair Employment Act by refusing to negotiate in good faith with Local 342 by delaying the start of negotiations in 1992.

Dated

By
(Representative) (Title)

TOWN OF HUNTINGTON
.

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

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

JASPER-TROUPSBURG EDUCATIONAL SUPPORT
PERSONNEL ASSOCIATION,

Charging Party,

-and-

CASE NO. U-14349

JASPER-TROUPSBURG CENTRAL SCHOOL DISTRICT,

Respondent.

JOHN B. SCHAMEL, for Charging Party

R. WHITNEY MITCHELL, for Respondent

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by the Jasper-Troupsburg Educational Support Personnel Association (Association) to a decision by an Administrative Law Judge (ALJ) dismissing its charge against the Jasper-Troupsburg Central School District (District). The Association alleges in its charge, as amended, that the District violated §209-a.1(a), (b), (c) and (d) of the Public Employees' Fair Employment Act (Act) by allegedly accepting an untimely grievance filed by a unit member, Ron Friends, by sustaining the grievance after it had previously agreed to a different resolution of an Association grievance on the same subject, by failing to assign the Association president, Ron Sutton, to an extra bus trip, and by discussing Friends' grievance in open session during a meeting of the District's

board of education,^{1/} all due to anti-union animus on the part of the District's superintendent of schools, John DiTondo.

The ALJ found that the District had properly accepted and decided Friends' grievance, that Sutton had received an extra trip almost immediately after being passed over for one initially and had suffered no loss of pay or diminution of benefits and that there was no evidence of District anti-union animus introduced by the Association.

The Association alleges in its exceptions that the ALJ erred by not allowing it to question DiTondo at the hearing as to a discussion of the Friends' grievance which allegedly took place during a meeting of the District's board of education in executive session,^{2/} by finding that the Association had failed to introduce evidence of anti-union animus and by finding that the District, by processing and remedying Friends' grievance, had not violated §209-a.1(a) of the Act.

For the reasons set forth below, we reverse the ALJ, in part, and remand the matter for further proceedings consistent with this decision.

In May 1992, a meeting was held to discuss Association grievances currently pending in the District. Present were

^{1/}The Association withdrew an allegation that the District had violated the Act by counseling the Association president and the Association chief negotiator, Carl Teribury, for using bus radios to carry on a casual conversation.

^{2/}The ALJ made no findings regarding the propriety of any discussion of Friends' grievance by the board of education.

DiTondo, Whitney Mitchell, the District's labor relations consultant, Jim Johnson, the head bus driver and a unit member,^{3/} Ron Sutton, who is also a laborer and bus driver, John Schamel, the Association's representative, and Patricia Young, a bus driver and Association secretary/treasurer. Three grievances were discussed; two were resolved and the third, involving a complaint that extra bus trips were not being properly rotated based on seniority, as provided in the contract,^{4/} generated some discussion about the placement of Friends, who had been identified as the District's only part-time bus driver.^{5/} Johnson indicated that Friends was only placed on the extra bus trip list on every other rotation because he was a part-time driver. DiTondo, who had only been with the District for a short time, questioned this practice in light of the contract language which makes no mention of part-time drivers. This practice was

^{3/}Johnson was present at the District's request. Schamel initially objected but, after being advised by DiTondo that Sutton had earlier agreed that Johnson could be present, and a brief caucus, the Association withdrew its objection as long as Johnson remained silent.

^{4/}Article 19, §19.4 of the Association-District 1991-93 contract provides:

A bid list for all extra trips shall be established at the beginning of each school year. Bus drivers' names will be listed on the extra trip bid list in order of seniority, as said seniority is defined in §19.1 of Article 19 of this agreement.

^{5/}DiTondo testified, however, that he had advised the District's transportation committee that Friends had been hired as a regular bus driver and Friends so alleged that in his grievance.

left as it was because, as Mitchell noted: "As long as there are no problems, then, you know, we'll leave it alone."^{6/}

On January 11, 1993, Friends filed a document, also signed by Sutton, purporting to be a grievance, complaining that he should be on the same rotation for extra bus trips as the other drivers, as he worked the same days as full-time drivers and paid the same Association dues as the others. By memorandum dated January 13, 1993, DiTondo requested an extension of time to respond, so he could go to the Board of Education on the grievance.^{7/} Schamel, learning of Friends' actions sometime later, contacted Mitchell and protested that Friends had not used the Association grievance form and had not cited the sections of the contract he alleged had been violated. Schamel also argued that the "grievance" was untimely, to which Mitchell responded that he saw it as a continuing grievance. Later, Mitchell asked Schamel where Friends could get Association grievance forms; Schamel responded that he was the only person who had them and

^{6/}The ALJ credited this recollection of DiTondo and Mitchell over the version of the discussion offered by Young and Schamel, that Mitchell had advised DiTondo that the "practice" could not be changed until the contract was renegotiated.

^{7/}DiTondo's memo to Friends stated that:

I would like to request an extension of time in responding to your grievance.

I have forwarded information to our labor consultant and need to discuss the issue with the board transportation committee and entire board at our January 20, 1993 Board of Education meeting.

I am requesting an extension until January 25, 1993.

Friends would have to get them from him or from an Association representative.

DiTondo informed Friends by memo dated January 23, 1993, that his grievance was deficient as it was not filed on the proper form. The Association's ad hoc grievance committee met on February 3, 1993, and decided not to process Friends' grievance as an Association grievance. Friends refiled his grievance on an Association grievance form on February 5, 1993. DiTondo sustained the grievance by a decision dated February 19, 1993, and directed that Friends' name be placed on every extra bus trip rotation, effective that date.

Also in February 1993, Sutton was scheduled to drive an extra bus trip which was cancelled due to inclement weather. He did not receive a make-up trip in the next rotation. Teribury brought it to Johnson's attention and Johnson, characterizing the failure to schedule the make-up trip as an oversight, assigned Sutton to the next trip. There is no evidence that Johnson lost any money or benefits as a result.

There was no evidence submitted at the hearing to support the Association's assertion that DiTondo told Sutton that he had sustained Friends' grievance because he was upset at Schamel for "a nasty letter" he had written to him. DiTondo was not questioned about this statement, Sutton did not testify at all

and the letter is not in evidence, although DiTondo's letter in response to it was submitted.^{8/}

The Association's first exception is that the ALJ erred in precluding it from questioning DiTondo about the discussion of the Friends grievance at a board of education meeting. The ALJ held, in response to the District's objection that discussions during an executive session are confidential, that "it is my ruling at this time that any testimony regarding what took place at the executive session of the board meeting as to this particular grievance, I will not allow any testimony as to that executive session."^{9/}

^{8/}DiTondo's February 17, 1993 letter transmitting extra trip rotation sheets to Schamel closed with the following:

Neither you nor the association wish to work with the Jasper-Troupsburg School District. This is evident by the numerous improper practice charges you have pursued which would have been unnecessary if the association would have communicated with the District.

^{9/}The record reflects the following discussion prior to the ruling excluding testimony about the executive session discussions:

MR. MITCHELL: I need to -- excuse me. I'm going to interrupt to get a clarification as to whether the matter was discussed in open session or in executive session?

MR. SCHAMEL: I don't think it makes any difference.

MR. MITCHELL: It does in my opinion.

LAW JUDGE: I think it does.

WITNESS: It was all -- this whole matter has never been discussed other than in executive session.

(Footnote 9 continued on page 7)

We have previously held in Board of Education of the City School District of the City of Buffalo^{10/} that:

The State Administrative Procedure Act permits the introduction of material and relevant evidence at an adjudicatory proceeding unless a recognized privilege attaches to the evidence sought to be introduced. [footnote omitted] Our Rules of Procedure are to the same effect. [footnote omitted] There is no recognized privilege which attaches to all statements made during an executive session conducted by a public body and the statutory authorization to hold such a session cannot create one. [footnote omitted]

DiTondo's testimony raised the issue of the board of education meeting which was then opened for inquiry on cross-examination. We, therefore, hold that the ALJ erred in refusing to allow the Association to question DiTondo about any and all discussions of the Friends grievance which took place during an executive session of the District's board of education. Since no questions were allowed, we cannot determine whether the

(Footnote 9 continued from page 6)

MR. MITCHELL: Then I'm going to object to his testifying to personnel negotiations matters that were discussed in executive session.

LAW JUDGE: Except I'm not certain he even in his direct case discussed the fact that this was at a board meeting.

MR. MITCHELL:I do have a problem with any testimony with respect to what went on in executive session at a meeting that wasn't even discussed on direct testimony.

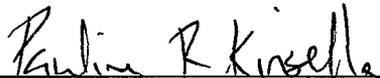
MR. SCHAMEL: I believe that I have a right to get into what was said in executive session, because that is not a bar for someone testifying.

LAW JUDGE: Off the record.

^{10/24} PERB ¶13033, at 3065 (1991).

information the questions would have elicited would have been relevant and material to the charge before us. Therefore, we can make no determination on the merits of the charge on this record. The matter is hereby remanded to the ALJ to take further evidence consistent with this decision and to issue such decision thereafter as is appropriate. SO ORDERED.

DATED: June 27, 1994
Albany, New York



Pauline R. Kinsella, Chairperson



Walter H. Eisenberg, Member



Eric J. Schmertz, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

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

Petitioner,

-and-

CASE NO. C-4236

COUNTY OF ALBANY,

Employer,

-and-

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

Intervenor.

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

ROEMER AND FEATHERSTONHAUGH, P.C. (WILLIAM M. WALLENS
of counsel), for Employer

NANCY E. HOFFMAN, GENERAL COUNSEL (JEROME LEFKOWITZ and
STEVEN A. CRAIN of counsel), for Intervenor

BOARD DECISION AND ORDER

This case comes to us on exceptions to a decision of the Director of Public Employment Practices and Representation (Director) filed by the Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO (CSEA). CSEA represents a unit of employees of the County of Albany (County), which the United Public Service Employees Union Local 424, A Division of United

Industry Workers District Council 424 (Local 424), seeks to represent. In its response to Local 424's petition, CSEA raised a question to the Director regarding Local 424's status as an employee organization within the meaning of §201.5 of the Public Employees' Fair Employment Act (Act). The Director determined that Local 424 is an employee organization and he refused to dismiss the petition on that ground. CSEA appeals from that determination and argues that provisions in Local 424's and the separate District Council's constitutions prevent Local 424 from fulfilling its obligations as a certified bargaining agent.

The issue in this case is the same as the one in several other cases involving Local 424, which were the subject of a recent decision by this Board.^{1/} We remanded those cases to the Director for further investigation because of the assertion to us by Local 424 that its and the District Council's constitutions were amended in relevant respect before the Director's decision was rendered.^{2/} Substantially similar circumstances are present here and they necessitate the same disposition of this petition. As in our earlier decision, the Director is hereby instructed that his investigation is to be completed within forty-five days from the date of our decision and order herein. All parties are

^{1/}Northport/E. Northport Union Free Sch. Dist., 27 PERB ¶13025 (May 31, 1994).

^{2/}The constitutions may have been amended again after the date of our decision in Northport/E. Northport Union Free Sch. Dist.

ordered to comply with all lawful directives of the Director to that end.

On remand, in addition to such other information as the Director may deem to be relevant, the Director is hereby instructed to make findings of fact and conclusions of law regarding the following:

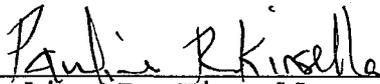
1. Whether the constitutions and bylaws, if any, of Local 424 and District Council 424 have been validly amended in any relevant respect and, if so, in what respect(s). Findings are to include the dates on which those amendments were made and the effective dates thereof.

2. The nature of the legal and operational relationship between Local 424 and District Council 424, including a specific identification of the separate rights and duties of each organization, including, without limitation, findings as to whether District Council 424 has or exercises any power or veto over any action or decision by Local 424 with respect to collective negotiations under the Act, the administration of any collective bargaining agreement covering any public employees subject to our jurisdiction, or the representation of public employees under the Act.

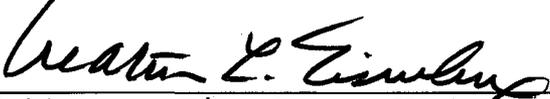
3. The consequence and applicability, if any, of any subsequent constitutional amendments to petitions previously filed.

For the reasons set forth above, this case is remanded to the Director for further investigation and decision consistent with our decision and order herein. SO ORDERED.

DATED: June 27, 1994
Albany, New York



Pauline R. Kinsella, Chairperson



Walter L. Eisenberg, Member



Eric J. Schmertz, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

PAUL P. WALDMILLER, JR.,

Charging Party,

-and-

CASE NO. U-13886

COUNCIL 82, AFSCME, AFL-CIO,

Respondent,

-and-

**STATE OF NEW YORK (DEPARTMENT OF
CORRECTIONAL SERVICES),**

Respondent/Employer.

PAUL P. WALDMILLER, JR., pro se

CHRISTOPHER H. GARDNER, ESQ., for Respondent

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

BOARD DECISION AND ORDER

This case comes to us on exceptions to an Administrative Law Judge's (ALJ) decision filed by Paul P. Waldmiller, Jr. After a hearing, the ALJ dismissed Waldmiller's charge against Council 82, AFSCME, AFL-CIO (Council 82) and the State of New York (Department of Correctional Services) (State). Waldmiller's charge against Council 82 alleges violations of §209-a.2(a), (b) and (c) of the Public Employees' Fair Employment Act (Act) based upon Council 82's refusal to process a disciplinary grievance to

arbitration. He alleges violations of the Act by the State of all subsections of §209-a.1.

The ALJ dismissed the charge against the State in all respects on the ground that the allegations did not state any cognizable cause of action. In relevant respect, the ALJ dismissed the charge against Council 82 on a finding that its refusal to arbitrate the State's discharge of Waldmiller did not breach its duty of fair representation because its decision could not be considered to be arbitrary, discriminatory or in bad faith in view of an earlier "last chance" disciplinary settlement.

Waldmiller's exceptions are directed to the ALJ's disposition of the charge against Council 82. It is unclear whether he excepts to the ALJ's dismissal of the charge as against the State. To whatever extent he may have intended to take any exception to the ALJ's dismissal of the charge against the State, we affirm the ALJ's decision. Waldmiller's only allegation against the State is that it was "wrong" for it to discharge him. There being no claim of improper motive, this does not set forth a cognizable violation of the Act in any respect.

As to Council 82, Waldmiller argues that Council 82's decision not to proceed to arbitration on his discharge was arbitrary and in bad faith.^{1/} The basis for his argument is

^{1/}Waldmiller's exceptions are not directed to the ALJ's dismissal of the §209-a.2(b) allegation. The ALJ dismissed this allegation because individuals do not have standing to raise the refusal to bargain claims covered by this subsection of the Act.

that the off-duty incident which led to his dismissal in May 1992 was not the same or similar to the misconduct which led to the "last chance" disciplinary settlement agreement he signed in July 1990. The misconduct in 1990 involved an off-duty domestic dispute for which Waldmiller was arrested and charged with harassment. Pursuant to the disciplinary settlement agreement, Waldmiller was to serve a disciplinary evaluation period from May 31, 1991 to May 30, 1992. Under that agreement, Waldmiller was to be dismissed from service without further appeal if he engaged in the same or similar type of misconduct as was involved in the July 1990 incident. Waldmiller contends that the May 1992 off-duty misconduct, also involving his then wife, for which he was arrested and charged criminally, was not the same or similar to the July 1990 domestic incident. Waldmiller argues that Council 82 was required by its duty of fair representation to take his grievance to arbitration so that a determination could be made as to whether he breached the terms of the "last chance" agreement. Neither the State nor Council 82 has filed a response to the exceptions.

Having reviewed the record, we affirm the ALJ's decision.

The State's disciplinary policy makes conduct of any type which brings discredit to the Department of Correctional Services grounds for discipline, whether or not the conduct results in a criminal prosecution or a conviction. Waldmiller was the subject of two notices of discipline before his May 1992 termination. Each involved off-duty misconduct and an arrest. There was a

criminal conviction on the first incident. Each notice of discipline was settled by a disciplinary settlement agreement requiring a service of a twelve-month probationary period and each permitted summary termination for a repeat of the misconduct of the same or similar type. Each agreement also provided that the State could terminate Waldmiller's service during his disciplinary probationary period if it deemed that service to be unsatisfactory.

The incident for which Waldmiller was terminated in May 1992 involved his failure to vacate marital premises pursuant to a court order which was issued in conjunction with divorce proceedings. Waldmiller was charged with criminal contempt, surrendered himself pursuant to a warrant for his arrest, and was ultimately granted an adjournment in contemplation of dismissal pursuant to the State Criminal Procedure Law.

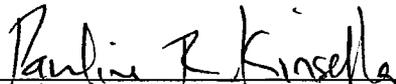
Waldmiller's charge is limited to Council 82's decision not to take the step 2 termination grievance to arbitration. No other allegation of impropriety, to the extent Waldmiller may make any, is properly before us. On that single issue, the record shows that the State and Council 82 have regularly used last chance agreements as a way to maintain an employee's employment without discipline. The consideration for those agreements has been Council 82's long-standing agreement under practice that a termination during a disciplinary evaluation period established by a last chance settlement agreement is not subject to the parties' contractual arbitration process. These

agreements are quite common in a labor-management relationship and a union's agreement to exempt this particular category of dispute from an arbitration procedure is not a breach of the union's duty of fair representation. Council 82's policy and practice of not taking grievances of this type to arbitration is entirely nondiscriminatory. Its decision not to take Waldmiller's grievance to arbitration involves no identifiable element of bad faith. Therefore, only if its decision could be considered arbitrary in some respect could it even be argued that it breached its duty of fair representation. Waldmiller would make Council 82's decision arbitrary because he claims the misconduct for which he was terminated was not, in fact, the same or similar to his earlier misconduct. However, it was of a type sufficiently similar to the earlier misconduct that we do not find Council 82's judgment in this regard to be arbitrary. Moreover, Waldmiller's argument ignores the State's right under the last chance agreement to terminate Waldmiller's service if the State considered that service during the probationary period to be unsatisfactory. In short, Council 82's decision that the State acted within its rights in discharging Waldmiller and its conclusion that it could not challenge that discharge at arbitration were not arbitrary, discriminatory or in bad faith.

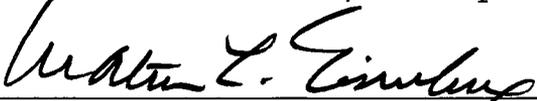
For the reasons set forth above, Waldmiller's exceptions are denied and the ALJ's decision is affirmed.

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

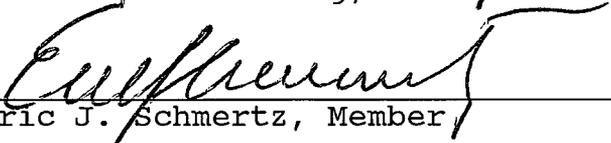
DATED: June 27, 1994
Albany, New York



Pauline R. Kinsella, Chairperson



Walter L. Eisenberg, Member



Eric J. Schmertz, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

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

Petitioner,

- and -

CASE NOS. C-4168, C-4169,
C-4170, C-4173,
C-4176 & C-4225

ISLIP UNION FREE SCHOOL DISTRICT, FRANKLIN
SQUARE UNION FREE SCHOOL DISTRICT, THREE
VILLAGE CENTRAL SCHOOL DISTRICT, BOCES
FIRST SUPERVISORY DISTRICT, SUFFOLK COUNTY,
and AMITYVILLE UNION FREE SCHOOL DISTRICT,

Employers,

- and -

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

Intervenor.

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

INGERMAN, SMITH, GREENBERG, GROSS, RICHMOND, HEIDELBERGER,
REICH & SCRICCA (JOHN GROSS of counsel), for Islip Union
Free School District; BEHRENS, LOWE & CULLEN (BRUCE KAPLAN
of counsel), for Franklin Square Union Free School District;
GUERCIO & GUERCIO (GREG GUERCIO of counsel), for Three
Village Central School District and Amityville Union Free
School District; and JEFFREY SMITH, for BOCES First
Supervisory District, Suffolk County

NANCY E. HOFFMAN, GENERAL COUNSEL (JEROME LEFKOWITZ and
STEVEN A. CRAIN of counsel), for Intervenor

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) to a decision by the Director of Public Employment

Practices and Representation (Director). CSEA represents units of employees of the following public employers: Islip Union Free School District; Franklin Square Union Free School District; Three Village Central School District; BOCES First Supervisory District, Suffolk County; and Amityville Union Free School District, all of which the United Public Service Employees Union, Local 424, A Division of United Industry Workers District Council 424, seeks to represent. In its response to Local 424's petitions, CSEA raised a question to the Director regarding Local 424's status as an employee organization within the meaning of §201.5 of the Public Employees' Fair Employment Act (Act). The Director determined that Local 424 is an employee organization and he refused to dismiss the petitions on that ground. CSEA appeals from that determination and argues that provisions in Local 424's and the separate District Council's constitutions prevent Local 424 from fulfilling its obligations as a certified bargaining agent.

The issue in these cases is the same as the one in several other cases involving Local 424, which were the subject of a recent decision by this Board.^{1/} We remanded those cases to the Director for further investigation because of the assertion to us by Local 424 that its and the District Council's constitutions were amended in relevant respect before the Director's decision

^{1/}Northport/E. Northport Union Free Sch. Dist., 27 PERB ¶13025 (May 31, 1994).

was rendered.^{2/} Substantially similar circumstances are present here and they necessitate the same disposition of these petitions. As in our earlier decision, the Director is hereby instructed that his investigation is to be completed within forty-five days from the date of our decision and order herein. All parties are ordered to comply with all lawful directives of the Director to that end.

On remand, in addition to such other information as the Director may deem to be relevant, the Director is hereby instructed to make findings of fact and conclusions of law regarding the following:

1. Whether the constitutions and bylaws, if any, of Local 424 and District Council 424 have been validly amended in any relevant respect and, if so, in what respect(s). Findings are to include the dates on which those amendments were made and the effective dates thereof.

2. The nature of the legal and operational relationship between Local 424 and District Council 424, including a specific identification of the separate rights and duties of each organization, including, without limitation, findings as to whether District Council 424 has or exercises any power or veto over any action or decision by Local 424 with respect to collective negotiations under the Act, the administration of any collective bargaining agreement covering any public employees

^{2/}The constitutions may have been amended again after the date of our decision in Northport/E. Northport Union Free Sch. Dist.

subject to our jurisdiction, or the representation of public employees under the Act.

3. The consequence and applicability, if any, of any subsequent constitutional amendments to petitions previously filed.

For the reasons set forth above, these cases are remanded to the Director for further investigation and decision consistent with our decision and order herein. SO ORDERED.

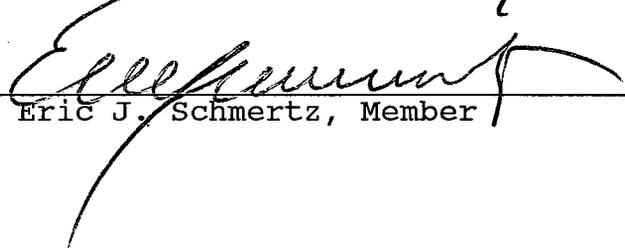
DATED: June 27, 1994
Albany, New York



Pauline R. Kinsella, Chairperson



Walter L. Eisenberg, Member



Eric J. Schmertz, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

QUEENSBURY SCHOOL SUPERVISORS OF
CUSTODIANS AND MAINTENANCE PERSONNEL,

Petitioner,

-and-

CASE NO. C-4083

QUEENSBURY UNION FREE SCHOOL DISTRICT,

Employer.

RICHARD W. HORWITZ, for Petitioner

BARTLETT, PONTIFF, STEWART & RHODES, P.C. (J. LAWRENCE
PALTROWITZ and PAULA M. NADEAU of counsel), for Employer

BOARD DECISION AND ORDER

The Queensbury Union Free School District (District) excepts to a decision by the Director of Public Employment Practices and Representation (Director), which included the District's Supervisor of Building Operations and Maintenance (BOM Supervisor), Donald Collette, in a unit consisting of building supervisors and chief maintenance mechanic as sought by the Queensbury School Supervisors of Custodians and Maintenance Personnel (Union).

After a hearing, the Director held that the BOM Supervisor is not a managerial employee within the meaning of §201.7(a) of the Public Employees' Fair Employment Act (Act) and that

Collette's inclusion in the unit was otherwise most appropriate.^{1/}

The District argues that Collette is managerial or that he is most appropriately excluded from the unit based upon his supervisory relationship with the other employees in that unit. The Union has not responded to the District's exceptions.

The District has a layered supervisory structure in its buildings and grounds operation. The building supervisors supervise nonunit custodians, while nonunit maintenance employees are supervised by the chief mechanic. Both building supervisors and the chief mechanic are supervised by the BOM Supervisor, who reports to the Superintendent of Buildings and Grounds.

We are in agreement with the Director that Collette's current duties do not make him a policy-making managerial employee. His involvement in discussions concerning custodial and maintenance uniforms, evaluation forms, at the buildings and grounds committee of the District's board of education or in weekly meetings with other supervisors are not of a type, level or frequency warranting an employee's designation as a policy maker.^{2/}

^{1/}The Director's decision issued inadvertently before either party submitted a post-hearing memorandum. This error does not serve to void the Director's decision. We do not consider the timing of the Director's decision to have prejudiced the District in any material respect because the Director's decision addresses all of the issues raised by the District.

^{2/}City of Binghamton, 12 PERB ¶3099 (1979).

The District argues, however, that the BOM Supervisor will have a role on behalf of the District in collective negotiations with the building supervisors and the chief mechanic. A managerial designation based on labor relations responsibilities, personnel or contract administration can be based on duties not yet performed, if those duties are reasonably required. The actual or anticipated role in these activities, however, must be reasonable, direct, major, not of a routine or clerical nature, and must involve the exercise of independent judgment.^{3/}

Accepting the District's characterization of Collette's potential role in collective negotiations, the Director found that he would be used in an advisory or a resource capacity to provide input to the District's negotiators and spokespersons. The Director concluded that this type of involvement does not support a managerial status under §201.7(a)(ii) of the Act and we agree with this conclusion for the reasons stated by the Director. Although not argued by the District, Collette cannot be considered confidential because he has not yet actually performed any of these duties. Should it be demonstrated that he is performing duties warranting a confidential designation, the District may pursue such an application at the appropriate time, with the rights of the parties on that question reserved.

The Director also held that Collette was properly included in the unit of supervisors for whom he serves as the first level

^{3/}Act, §201.7(a)(ii).

supervisor. The Director concluded that Collette's inclusion with others he supervised lacked a potential for a substantial conflict of interest because Collette did not possess a full range of supervisory authority over the building supervisors and the chief mechanic. In that respect, the Director found that it is the Superintendent of Buildings and Grounds who is responsible for making major decisions affecting the unit employees, such as hiring, firing and discipline. Moreover, the day-to-day activities in the department are under the direction of the building supervisors and the mechanic.

The District disagrees with the Director's inclusion of Collette in the unit and argues that his status and functions warrant his exclusion from the unit. There is no question as to Collette's supervisory status. Supervisors under the Act are eligible, however, for representation in the appropriate unit. Therefore, the issue is whether Collette's supervisory duties preclude his placement in the unit of the supervisors he supervises.

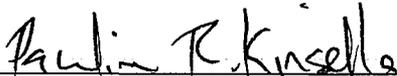
Where the effect of a decision to exclude a supervisory title from a supervisory unit in an initial uniting situation is to effectively deny the employee any right of representation, as is the case here, we must be persuaded that there is a strong likelihood of conflict which will substantially interfere with the collective bargaining relationship or the performance of the supervisor's duties. In agreement with the Director, our review of the record does not persuade us that Collette's inclusion in a

unit of other supervisory personnel poses any substantial risk to either the parties' collective bargaining relationship or the continued performance of the job duties which are reasonably required of any unit positions. The cases relied upon by the District involve supervisory exclusion from rank-and-file units or are otherwise not controlling. As the Director observed, the considerations prompting supervisory exclusion in that circumstance are not the same as in cases involving the uniting of supervisors of different ranks. In such a case, we must take cognizance of the policy of the Act to avoid overfragmentation or undue proliferation of units and of the right of all covered public employees, including supervisors, to be represented in the appropriate unit. Were we to exclude Collette from the unit of other supervisors, we would effectively deny him representation because units of one employee are per se inappropriate. Even if there were other supervisory employees with whom Collette might conceivably seek representation, the creation of a second, small supervisory unit in a school district which already has at least seven units, is the very type of overfragmentation the Act seeks to avoid. Either party may, of course, at any date later available for the purpose, question the continuing appropriateness of the unit if and as circumstances at that time may warrant.

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

is remanded to the Director for further processing consistent with this decision. SO ORDERED.

DATED: June 27, 1994
Albany, New York



Pauline R. Kinsella, Chairperson



Walter L. Eisenberg, Member



Eric J. Schmertz, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

LOCAL 1180, COMMUNICATIONS WORKERS OF
AMERICA, AFL-CIO,

Petitioner,

-and-

CASE NO. C-4073

NEW YORK CONVENTION CENTER OPERATING
CORPORATION,

Employer.

WEISSMAN & MINTZ (GABRIELLE SEMEL of counsel), for
Petitioner

JOSEPH D. MCCANN, GENERAL COUNSEL, for Employer

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by Local 1180, Communications Workers of America, AFL-CIO (CWA) to a decision of the Director of Public Employment Practices and Representation (Director) finding that control monitor technicians (technicians) employed by the New York Convention Center Operating Corporation (Corporation) were most appropriately placed in a unit of public safety officers represented by Local 237, International Brotherhood of Teamsters (IBT). CWA sought to represent the technicians, who are unrepresented, in a separate unit, or, in the alternative, as part of a unit of public safety officer supervisors, which it currently represents. The Corporation

proposed inclusion of the technicians in the unit represented by IBT. IBT did not intervene in the proceeding, did not participate in the hearing and expressed no interest in representing the at-issue employees until after the Director's decision was issued.^{1/}

CWA excepts to the Director's decision, arguing that the Director gave more weight to the Center's administrative convenience argument than he did to the CWA's community of interest argument, that the technicians are appropriately placed with the public safety officer supervisors and that it was error for the Director to place the technicians in IBT's unit because IBT did not seek to represent them. The Center supports the Director's decision.

Having reviewed the record and considered the parties' arguments, we affirm the Director's unit determination.

The Corporation operates the Jacob K. Javits Convention Center (Center). It provides the security for the Center through the round-the-clock operation of a command center, staffed by eight control monitor technicians and five public safety operator supervisors. The technicians scan the control monitors in the command center, dispatching the Corporation's forty-five security officers, who both patrol the Center and staff security posts, to any area of the Center where a problem has arisen. The

^{1/} By letter dated November 9, 1993, the IBT advised the Director that it would represent the unit as defined by the Director.

technicians also monitor the air conditioning, electrical and heating systems and notify the Center's electricians and engineers of any situations requiring their attention.

The technicians, public safety officers and public safety officer supervisors work virtually the same shifts and enjoy similar types of benefits, although, as found by the Director, their rates of pay and number of days of leave, for example, vary slightly.

The public safety officer supervisors generally supervise the public safety officers, determine staffing needs in the command center and may assign public safety officers to do the technicians' work as necessary. The public safety officer supervisors also sign the technicians' log at the end of the shift, but otherwise have no role in the hiring, firing or evaluation of the technicians, except to issue counselling memos and recommend further discipline, as required.

We long ago determined that the appropriate unit need not be the one proposed by the parties.^{2/} IBT's failure to intervene in the proceeding does not warrant a conclusion that the technicians should not be placed in the unit it represents. Indeed, as ordered by the Director in his decision, the IBT submitted a statement that it would represent a unit which

^{2/} Great Neck Bd. of Educ., 4 PERB ¶3017 (1971).

included both the public safety officers and the technicians. Therefore, CWA's exceptions in this respect must be denied.

As relevant, the criteria set forth in §207.1 of the Public Employees' Fair Employment Act (Act) require that we make our determination based on a community of interest among the employees in the proposed unit and the joint responsibilities of the public employer and public employees to serve the public. The Director's placement of the technicians in the unit which includes the public safety officers is consistent both with these criteria and our stated policy to avoid the proliferation of bargaining units by creating the largest possible unit which will permit for effective negotiations.^{3/} This record clearly establishes that a separate unit of technicians would not be the most appropriate and would result in an unnecessary additional unit. The technicians share a community of interest with the public safety officers due to their work location, common mission, and similar terms and conditions of employment. Indeed, the technicians and public safety officers share a greater community of interest because they have no supervisory responsibilities like those exercised by the public safety officer supervisors.^{4/}

The Director ordered that the IBT submit a statement indicating that it would represent the unit he found to be

^{3/} Onondaga-Cortland-Madison BOCES, 23 PERB ¶3014 (1990); State of New York, 1 PERB ¶399.85 (1968).

^{4/} See Bd. of Educ. of the City Sch. Dist. of the City of Buffalo, 14 PERB ¶3051 (1981).

appropriate. It has done so. The Director further ordered that the IBT submit evidence of majority support in the expanded unit or an election would be scheduled because he determined that the addition of nine employees to IBT's unit of forty-five public safety officers was more than a de minimis increase which could call IBT's majority status into question.

We have not had occasion before to determine what number or percentage of employees being added to an existing unit would require proof of majority status in an expanded unit. The Director has held that if the change in the existing unit is de minimis, he will not require the submission of evidence of majority support or schedule an election. His determination of what constitutes a de minimis change has been made on a case-by-case basis.

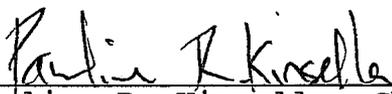
Clarification of what constitutes a sufficient change in an existing unit to warrant an election is necessary. Our Rules of Procedure (Rules) require a showing of interest of thirty percent of the unit alleged to be appropriate to support a petition for certification or decertification.^{5/} A similar requirement is appropriate in cases such as this, where unrepresented employees are being added to an existing unit. We find that an election or other proof of majority status is required only if the petitioner's showing of interest in support of its original petition represents thirty percent or more of the unit found to be appropriate.

^{5/} Rules, §201.3.

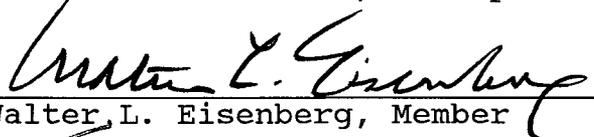
Even if CWA had submitted a showing of interest from each of the nine employees it sought to represent, that number would not constitute thirty percent of the unit found to be appropriate by the Director. Therefore, under our interpretation of our Rules and the Act, no question of IBT's majority status has been raised by CWA and the election ordered by the Director is unnecessary. The control monitor technicians are hereby added to the unit of public safety officers represented by IBT.

IT IS, THEREFORE, ORDERED that CWA's exceptions are dismissed and the Director's decision is affirmed, except as noted above regarding the evidence of majority status.

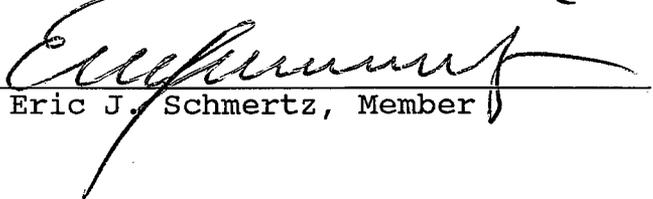
DATED: June 27, 1994
Albany, New York



Pauline R. Kinsella, Chairperson



Walter L. Eisenberg, Member



Eric J. Schmertz, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

**BUFFALO COUNCIL OF SUPERVISORS AND
ADMINISTRATORS,**

Charging Party,

-and-

CASE NO. U-15329

**CITY SCHOOL DISTRICT OF THE CITY OF
BUFFALO,**

Respondent.

**FURLONG, DEMARCO AND DELMONTE, P.C. (RICHARD D.
FURLONG of counsel), for Charging Party**

BOARD DECISION AND ORDER

The Buffalo Council of Supervisors and Administrators (Council) filed a charge against the City School District of the City of Buffalo (District) which alleges that the District failed to respond to its request that the District "meet for purposes of establishing procedures applicable to the evaluations of bargaining unit employees". The Council alleges in its charge that the District's failure to respond violated §209-a.1(a) and (d) of the Public Employees' Fair Employment Act (Act). The Director dismissed the charge as deficient after the Council declined to withdraw it. He dismissed the subdivision (a) aspect of the charge because there was no allegation of improper motive. The Director dismissed the subdivision (d) allegation because the charge did not plead a failure to "negotiate".

The Council excepts to the Director's dismissal in the latter respect only and, in that respect, we reverse.

The allegation of a failure to respond to a request by a certified or recognized bargaining agent for a meeting to establish the terms of a specifically identified mandatorily negotiable subject matter is sufficient to withstand a Director's dismissal as a matter of law. The duty to negotiate is specifically defined in §204.3 as embracing a duty to "meet" for designated purposes, including the fixing of terms and conditions of employment. Moreover, it is at least arguable, if not most reasonable, that the District understood the Council's "request" to "meet" to be a "demand" to "negotiate". If so, the District's unexplained failure to respond would arguably violate §209-a.1(d) of the Act. It was, therefore, error for the Director to dismiss the §209-a.1(d) allegation as a matter of law pursuant to his initial review under §204.2 of the Rules of Procedure.

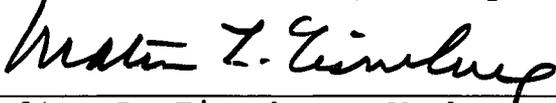
For the reasons set forth above, the Director's decision is reversed and the Council's exceptions are granted.

IT IS, THEREFORE, ORDERED that the case be remanded to the Director for further processing consistent with this decision.

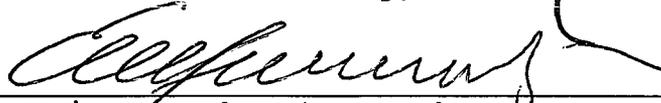
DATED: June 27, 1994
Albany, New York



Pauline R. Kinsella, Chairperson



Walter L. Eisenberg, Member



Eric J. Schmertz, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

LEVITTOWN UNITED TEACHERS,

Petitioner,

-and-

CASE NO. C-4206

LEVITTOWN UNION FREE SCHOOL DISTRICT,

Employer.

CLAUDIA SHACTER, for Petitioner

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by the Levittown United Teachers (Union) to a decision by the Director of Public Employment Practices and Representation (Director). The Union seeks to add certain unrepresented teachers employed by the Levittown Union Free School District (District) to a unit of the District's teaching and professional staff which it currently represents. Relying upon our recent decision in County of Schenectady^{1/} (hereafter Schenectady), the Director held that the parties' contract, which expires on June 30, 1997, barred the November 1993 petition. In Schenectady, we held that as between the parties to a collective bargaining agreement, the filing period for a representation petition is calculated by reference to the date of the contract's expiration, unless the agreement is of such duration that calculation of the filing period by this means would, for example, deprive unrepresented employees of

^{1/}26 PERB ¶3044 (1993).

their right of representation in the appropriate unit for an unreasonably lengthy period of time. Under Schenectady, the Union's filing period is November 1996, the eighth month preceding expiration of the current 1997 contract. The Director, therefore, dismissed the petition as untimely filed.

The Union argues in its exceptions that Schenectady is either inapplicable on the facts or should be reversed. The District has not filed a response to the exceptions.

Having considered the parties' arguments, we find Schenectady inapplicable on the facts and, accordingly, reverse the Director's decision.

In Schenectady, we held that a four-year contract term was not of such length that the contracting parties would be permitted to raise a representation question at a time other than the one calculated by reference to the contract's stated expiration date. The facts in this case, however, are materially different from those in Schenectady. In this case, the parties first had a seven-year contract covering July 1, 1988 through June 30, 1995. That agreement was extended by the parties on April 30, 1993 to June 30, 1997. We do not agree with the Director's determination that the extension on April 30, 1993 effected a successor six-year contract or, perhaps, a four and one-half year contract. The parties here never had an expired agreement during any relevant time period. For purposes of their filing period, therefore, they had, in practical effect, a nine-year agreement. Were we to apply Schenectady in this case,

neither party to the contract could raise any type of uniting question until November 1996, a period of more than eight years from the date the parties first entered the continuous contractual relationship which the Director interpreted to bar this petition.

We did not intend Schenectady to effect such a result. Schenectady is intended to effectuate a reasonable balance between honoring the terms of the parties' contract and the statutory rights of public employees to be represented, but only in the appropriate negotiating unit. The parties' long-term agreement in this case unreasonably delays consideration of the uniting question raised by this petition, and thereby interferes with these unrepresented employees' representation rights. Moreover, were we to deny the Union an opportunity to petition at some reasonable time during this period of uninterrupted contract duration, we would surely discourage it and all other parties to a bargaining relationship from entering into multi-year agreements and, thereby, sacrifice the stability in labor relationships those agreements otherwise promote.

Having found Schenectady to be inapplicable to the facts of this case, we hold that the petition filed in November 1993 was timely as calculated under either the contract as originally entered or as extended.^{2/}

^{2/}See Kenmore-Town of Tonawanda Union Free Sch. Dist., 12 PERB ¶3055 (1979).

For the reasons set forth above, the Director's decision dismissing the petition as untimely filed is reversed.

IT IS, THEREFORE, ORDERED that the petition is remanded to the Director for further processing as appropriate.

DATED: June 27, 1994
Albany, New York



Pauline R. Kinsella, Chairperson



Walter L. Eisenberg, Member



Eric J. Schmertz, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

UNITED FEDERATION OF POLICE OFFICERS, INC.,

Petitioner,

-and-

CASE NO. C-4238

VILLAGE OF HIGHLAND FALLS,

Employer.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

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

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

IT IS HEREBY CERTIFIED that the United Federation of Police Officers, Inc. 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.

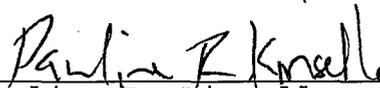
Unit: Included: All part-time police officers.

Excluded: All other employees.

FURTHER, IT IS ORDERED that the above named public employer

shall negotiate collectively with the United Federation of Police Officers, Inc. 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.

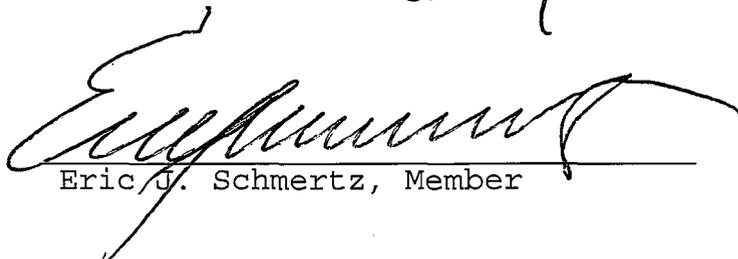
DATED: June 27, 1994
Albany, New York



Pauline R. Kinsella, Chairperson



Walter L. Eisenberg, Member



Eric J. Schmertz, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

Text of Proposed Rules:

1. Subdivision (d) of section 201.3 is hereby amended to read as follows:

201.3(d) A petition for certification or decertification may be filed during the month before the expiration, under section 208.2 of the act, of the period of unchallenged representation status accorded a recognized or certified employee organization, [.] provided, however, that a public employer may not file a petition challenging the majority status of a recognized or certified employee organization in an existing negotiating unit unless it has a demonstrable, good-faith belief that the employee organization is defunct. Unless filed by a public employer, [such] a petition for certification or decertification shall be supported by a showing of interest of at least 30 percent of the employees in the unit already in existence or alleged to be appropriate by the petitioner.

2. Subdivision (b) of section 205.5 is hereby amended to read as follows:

205.5(b) Contents. Such response shall contain respondent's position specifying the terms and conditions of employment that were resolved by agreement, and as to those that were not agreed upon, respondent shall set forth its position. Proposed contract language may be attached. If the respondent has filed an improper practice charge or a declaratory ruling petition related to compulsory interest arbitration under section 205.6 of this Part, the response shall contain a reference to such charge [.] or petition.

STATE OF NEW YORK

PUBLIC EMPLOYMENT RELATIONS BOARD

Text of Proposed Rules:

1. Subdivision (a) of section 207.15 is hereby amended to read as follows:

207.15(a) Expenses and fees. (a) An administrative fee of [forty] fifty dollars per party shall be charged by the board for its administrative services.