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Board (PERB)

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5-31-1995

## State of New York Public Employment Relations Board Decisions from May 31, 1995

New York State Public Employment Relations Board

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## State of New York Public Employment Relations Board Decisions from May 31, 1995

### 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

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In the Matter of

CIVIL SERVICE EMPLOYEES ASSOCIATION, INC.,  
LOCAL 1000, AFSCME, AFL-CIO, RENSSELAER  
COUNTY LOCAL 842, CITY OF TROY UNIT 8251,

Charging Party,

-and-

CASE NO. U-16301

CITY OF TROY,

Respondent.

---

NANCY E. HOFFMAN, GENERAL COUNSEL (WILLIAM A. HERBERT of  
counsel), for Charging Party

PETER R. KEHOE, CORPORATION COUNSEL (ROBERT E. MOLLOY of  
counsel), for Respondent

BOARD SUPPLEMENTAL ORDER

By decision dated May 4, 1995, we held that the City of Troy (City) violated §209-a.1(a) and (d) of the Public Employees' Fair Employment Act (Act), as alleged by the Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO, Rensselaer County Local 842, City of Troy Unit 8251 (CSEA), when the City stopped deducting and transmitting membership dues and agency shop fees to CSEA. To remedy those violations, we ordered the City, inter alia, to deduct from unit employees the membership dues and agency shop fees which had not been deducted by the City or otherwise paid by the employees, such deductions to be made pursuant to the terms of a supplemental order which we would issue after the parties had an opportunity to submit position

statements regarding that supplemental order. Each party has submitted such a statement.

The City stopped the membership dues and agency shop fee deductions on or about November 12, 1994, and it did not resume those deductions until early to mid-April 1995.

In its position statement, CSEA offers to waive the ordered repayment of any dues and fees for the period running from the date the deductions first stopped until the pay period ending January 20, 1995, the date CSEA established a system to receive, and actually began to receive voluntary dues and fee payments from some unit employees. CSEA believes that the forced collection of the dues and fees for the period prior to January 20, 1995 will further "disrupt the unity within our bargaining unit."

The checkoff of membership dues and agency shop fees is CSEA's entitlement under the Act. Its partial waiver of that entitlement is one we accept in the absence of any countervailing considerations.

The dues and fees remaining uncollected, and subject to our May 4, 1995 order, are for the period beginning with the pay period ending January 20, 1995, through the date in April when the City resumed deductions of membership dues and agency shop fees in accordance with its obligations under the Act. Both parties are in agreement that the schedule of deductions for those back dues and fees should minimize the financial impact

upon the unit employees who continue to have the usual amount of membership dues and agency shop fees deducted bi-weekly.<sup>1/</sup>

Approximately three months of unpaid dues and fees remain in issue given our foregoing acceptance of CSEA's waiver of certain dues and fees otherwise owed. CSEA requests specifically that the amount of back dues and fees be structured in such a way as to permit the recapture of amounts owed by the end of December, 1995, approximately seven months from our order herein. We find that payment of back dues and fees over that period of time is reasonable and is fully consistent with the parties' positions and the policies of the Act.

The total amount of money owed by any given unit employee will vary because certain employees, after the pay period ending January 20, 1995, paid some but not all of their back dues and fees voluntarily and because the levy for dues and fees varies by salary.<sup>2/</sup> Not knowing the precise amount owed by any particular unit employee does not prevent the entry of our supplemental order because we condition it upon CSEA's submission of a listing of all employees owing dues or fees in any amount to CSEA for the period in issue with a corresponding listing of the total amount of dues or agency shop fees owed by each named individual for that period. That listing is to be submitted by CSEA to the City

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<sup>1/</sup>The bi-weekly payroll was effected by the City's lag payroll system which is the subject of a pending improper practice charge.

<sup>2/</sup>Unit employees with salaries over \$22,000 per year pay more bi-weekly than those with lower salaries.

officer(s) or agent(s) who are responsible for the deduction and transmittal of membership dues and agency shop fees at least one week prior to the date deductions of back dues and fees is to begin pursuant to this order. The City is ordered to deduct and transmit to CSEA, effective with the first payroll period following CSEA's submission to the City of the listing described above, and continuing for each full payroll period in calendar 1995, a sum of money, fixed for each individual in the amount which, when deducted in equal installments, will permit the total amount of each individual's retroactive membership dues or agency shop fees to be paid to CSEA by December 31, 1995. The amount so deducted from each paycheck through calendar 1995 shall be in addition to the amount otherwise deducted for current membership dues or agency shop fees.

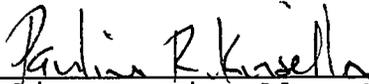
CSEA's request that the City be ordered to not retaliate against those unit employees who voluntarily paid their membership dues or agency shop fees is denied. Although retaliation for such an exercise of statutorily protected rights would be illegal, the requested order is inappropriate because it does not stem from the violations of the Act alleged and found or the remedial order which this order supplements. We do find merit, however, in CSEA's argument that unit employees need to be informed by notice separate from the posting that the usual deductions from their paychecks for membership dues or agency shop fees will be increased temporarily. This supplemental notice is necessary to ensure that employees are not surprised by

those additional monetary deductions and appropriate to prevent further compromise of the relationship between CSEA and its unit employees.

Therefore, the City is further ordered to include a written notice in the exact form which follows, and none other, with the first paycheck containing the additional deductions ordered herein, such notice to be issued to each employee from whom an additional deduction for membership dues or agency shop fees has been made pursuant to the order herein: "An additional deduction for membership dues or agency shop fees unpaid for the period running approximately from January 20, 1995 to April 1995 has been made from your check pursuant to order of the Public Employment Relations Board (PERB). Such additional deductions will continue over the remaining months in 1995. Terms of the PERB order have been posted at all places at which notices of information to CSEA unit employees are usually posted."

The City is further ordered to sign and post notice in the form attached at all places ordinarily used to post notices of information to CSEA unit employees.

DATED: May 31, 1995  
Albany, New York

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

  
\_\_\_\_\_  
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 in the bargaining unit represented by the Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO, Rensselaer County Local 842, City of Troy Unit 8251 (CSEA), that the City of Troy will:

1. Deduct and transmit to CSEA, effective with the first payroll period following submission by CSEA of a list containing the names of all unit employees owing membership dues or agency shop fees in any amount to CSEA for the period running approximately from the pay period ending January 20, 1995 through early to mid-April, 1995, and the total amount owed by each named individual, and continuing for each full payroll period in calendar 1995, a sum of money, fixed for each individual in the amount which, when deducted in equal installments, will permit the total amount of each individual's retroactive membership dues or agency shop fees to be paid to CSEA by December 31, 1995. The amount so deducted from each paycheck through calendar 1995 shall be in addition to the amount otherwise deducted for current membership dues or agency shop fees.
2. Include a written notice in the exact form below, and none other, with the first paycheck containing the additional deductions ordered herein, such notice to be issued to each employee from whom an additional deduction for membership dues or agency shop fees has been made pursuant to the order herein: "An additional deduction for membership dues or agency shop fees unpaid for the period running approximately from January 20, 1995 to April 1995 has been made from your check pursuant to order of the Public Employment Relations Board (PERB). Such additional deductions will continue over the remaining months in 1995. Terms of the PERB order have been posted at all places at which notices of information to CSEA unit employees are usually posted."

Dated . . . . .

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

CITY OF TROY  
. . . . .

*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.*

2A- 5/31/95

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of

**WATERTOWN EDUCATION ASSOCIATION, NYSUT,  
AFT, LOCAL 3091,**

Charging Party,

-and-

CASE NO. U-15364

**WATERTOWN CITY SCHOOL DISTRICT,**

Respondent.

---

**SHEILA E. YOUNG, for Charging Party**

**ALFRED T. RICCIO, for Respondent**

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by the Watertown Education Association, NYSUT, AFT, Local 3091 (Association) to a decision by an Administrative Law Judge (ALJ) dismissing its charge against the Watertown City School District (District). The Association alleges in its charge that the District violated §209-a.1(d) of the Public Employees' Fair Employment Act (Act) when it unilaterally increased the length of the work year by one day.

The ALJ dismissed the charge because the Association had not presented a notice of claim to the District pursuant to Education Law §3813(1), a notice the Appellate Division, Third Department held applicable to at least certain improper practice charges in

Union-Endicott Central School District v. PERB<sup>1/</sup> (hereafter Union-Endicott).

The Association argues in its exceptions that the ALJ erred by permitting the District to amend its answer to incorporate the Education Law §3813(1) claim. The Association further asserts that Education Law §3813(1) is either not applicable or has been satisfied by a parallel notice of claim effected by the Director of Public Employment Practices and Representation's service of a copy of the charge upon the District. The District argues in response that the ALJ's ruling and decision are correct and should be affirmed.

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

In Sidney Central School District<sup>2/</sup> (hereafter Sidney), decided this date, we considered and rejected the same arguments as are made by the Association here. For the reasons more fully set forth in Sidney, which we incorporate herein, we find no abuse of discretion in the ALJ's acceptance of an amended answer and hold that the Court's decision in Union-Endicott is indistinguishable from and, therefore, applies to this charge. We, accordingly, conclude that the Court's decision in Union-Endicott necessitates dismissal of this charge.

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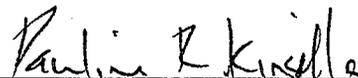
<sup>1/</sup>197 A.D.2d 276, 27 PERB ¶7005 (3d Dep't), motions for leave to appeal denied, 84 N.Y.2d 803, 27 PERB ¶¶7012 & 7013 (1994).

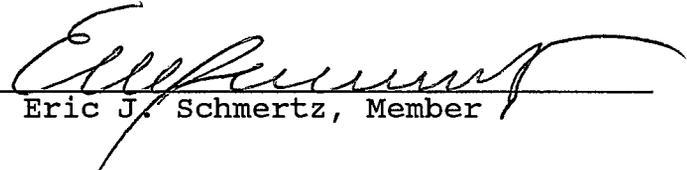
<sup>2/</sup>28 PERB ¶3032 (1995).

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

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

DATED: May 31, 1995  
Albany, New York

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

  
\_\_\_\_\_  
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.,  
LOCAL 1000, AFSCME, AFL-CIO,

Charging Party,

-and-

CASE NO. U-14013

GREAT NECK WATER POLLUTION CONTROL  
DISTRICT,

Respondent.

---

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

KREISBERG & MAITLAND, P.C. (JEFFREY KREISBERG of counsel),  
for Respondent

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by the Great Neck Water Pollution Control District (District) to a decision by an Administrative Law Judge (ALJ) on a charge filed by the Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO (CSEA). The ALJ held that the District had unilaterally changed a supplemental workers' compensation benefit<sup>1/</sup> in violation of §209-a.1(d) of the Public Employees' Fair Employment Act (Act).

The District argues in its exceptions that CSEA waived any right to bargain the change in benefit policy and that its after-

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<sup>1/</sup>Unit employees who suffered a work-related injury were afforded full pay during the first eight weeks of their absence under the policy which the District rescinded.

the-fact willingness to negotiate that change with CSEA precludes any finding of violation.

CSEA argues in response that the ALJ's decision, which addresses and rejects both of the District's points on appeal, should be affirmed.

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

The issues raised in the District's exceptions warrant little discussion beyond that in the ALJ's decision. The District's duty to negotiate required it to negotiate with CSEA before it changed its benefit policy. Its willingness to negotiate with CSEA after that change is immaterial to the violation, which is based on the unilateral elimination of a mandatorily negotiable economic benefit. The District's waiver argument is similarly without merit. CSEA immediately protested the change, it proposed alternatives to that change, and it was the District which did not thereafter respond. CSEA was not required to pursue the District for an opportunity to negotiate in the face of the District's unilateral action, which constituted a rejection of the bargaining process. Nothing in CSEA's actions support a conclusion that it approved the change in benefit policy or otherwise consented to it. The District's arguments to the contrary are actually nothing more than efforts to resurrect

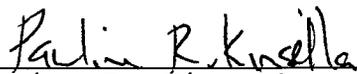
a timeliness defense, which we have rejected by earlier decision.<sup>2/</sup>

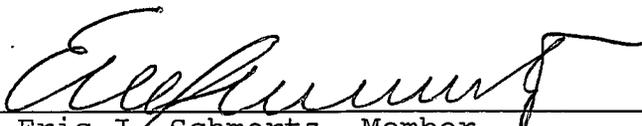
For the reasons set forth above, the District's exceptions are dismissed and the ALJ's decision is affirmed.

IT IS, THEREFORE, ORDERED that the District:

1. Immediately restore to unit employees the supplemental workers' compensation benefit as it existed prior to October 1990.
2. Make unit employees whole for any loss or diminution in wages or benefits caused by the elimination of the supplemental workers' compensation benefit, with interest at the currently prevailing maximum legal rate.
3. Sign and post notice in the form attached at all locations normally used to post notices of information to unit employees.

DATED: May 31, 1995  
Albany, New York

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

  
\_\_\_\_\_  
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 Great Neck Water Pollution Control District represented by the Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO, that the District:

1. Will immediately restore to unit employees the supplemental workers' compensation benefit as it existed prior to October 1990.
2. Will make unit employees whole for any loss or diminution in wages or benefits caused by the elimination of the supplemental workers' compensation benefit, with interest at the currently prevailing maximum legal rate.

Dated .....

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

GREAT NECK WATER POLLUTION CONTROL DISTRICT  
.....

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

2D- 5/31/95

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of

GREENBURGH NO. 11 FEDERATION OF  
TEACHERS, NYSUT,

Charging Party,

-and-

CASE NOS. U-16107  
& U-16481

GREENBURGH NO. 11 UNION FREE SCHOOL  
DISTRICT,

Respondent.

---

JEFFREY CASSIDY, for Charging Party

SHAW & SILVEIRA, ESQS. (DAVID S. SHAW of counsel), for  
Employer

BOARD DECISION AND ORDER

The Greenburgh No. 11 Union Free School District (District) moves for permission to appeal rulings made by the Director of Public Employment Practices and Representation (Director) during the processing of these charges filed against the District by Greenburgh No. 11 Federation of Teachers, NYSUT (Federation). The Federation's first charge (U-16107) alleges violations of §209-a.1(a), (c), (d) and (e) of the Public Employees' Fair Employment Act (Act). The second charge (U-16481) alleges violations of §209-a.1(a), (c) and (d) of the Act. The charges are each based upon an alleged improper course of conduct, including various acts of interference, discrimination, coercion, bad faith negotiation, direct dealing, unilateral changes in

mandatorily negotiable subjects and denials of access to District property and equipment.

The District asks us to review and reverse at this time the following Director rulings: (1) that none of the allegations in the charges filed would be physically stricken or redacted from the charge documents; (2) that evidentiary rulings would be made during the hearing, not prior thereto; and (3) that the charges would be consolidated for hearing.

In response to the District's motion, the Federation argues that we should not entertain an appeal at this time from any of the Director's rulings, but, if we do, we should affirm those rulings.

We do not usually review rulings of the Director or an Administrative Law Judge until such time as all proceedings have been concluded. This policy is designed to prevent the delay inherent in piecemeal review and the potential prejudice resulting to the parties therefrom. We have granted permission for an interlocutory appeal only in a few extraordinary circumstances.<sup>1/</sup>

Upon that standard, we will not review at this time the Director's first two enumerated rulings. The correctness of those rulings can be reviewed adequately upon completion of the proceedings without prejudice to the District.

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<sup>1/</sup>See, e.g., County of Nassau, 22 PERB ¶13027 (1989).

We have previously held, however, that an appeal from a ruling by which charges are consolidated may be appropriately heard on an interlocutory basis.<sup>2/</sup> The burden is upon the party opposing consolidation to establish that the ruling was an abuse of discretion. Having reviewed the record, we find no basis upon which to conclude that the Director abused his discretion in consolidating these charges.

The District opposes consolidation on two grounds. First, it argues that consolidation could affect the determination of what the District claims should be the controlling substantive law and evidentiary rules. Second, it argues that consolidation will require a substitution of counsel for the District because current counsel may be called to testify about certain allegations in the second charge, but not the first charge.

It is apparent from even a cursory review of the charges that they share a common factual background. Consolidation, therefore, will clearly facilitate an expeditious processing of these charges and the convenience of witnesses. The proper disposition of either evidentiary questions or issues of substantive law will remain the same, regardless of consolidation. Nor does the consolidation control, as the District argues, its choice of counsel. Allegations regarding the District's attorney of record are raised in the first charge as well as the second. It was the Federation's stated position

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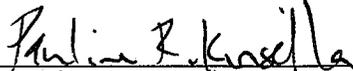
<sup>2/</sup>Id.

before the Director that it intended to present evidence concerning the actions or statements of the District's attorney during the prosecution of both charges. The consolidation affects the participation of the District's current attorney of record only if we conclude as a matter of law that nothing contained in the first charge, or which might be submitted at a hearing in support of it, would necessitate or warrant the testimony of the District's attorney. We are unable to make that determination at this stage of the proceeding.

For the reasons set forth above, the motion is denied as to rulings numbered "1" and "2", granted as to ruling numbered "3", which ruling is affirmed.

SO ORDERED.

DATED: May 31, 1995  
Albany, New York

  
\_\_\_\_\_  
Pauline R. Kinella, Chairperson

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

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of

CENTER MORICHES ADMINISTRATORS ASSOCIATION,

Charging Party,

-and-

CASE NO. U-14776

CENTER MORICHES UNION FREE SCHOOL DISTRICT,

Respondent.

---

BEVERLY R. HACKETT, ESQ., for Charging Party

VITO A. COMPETIELLO, for Respondent

BOARD DECISION AND ORDER

This case comes to us on exceptions to a decision by an Administrative Law Judge (ALJ) filed by the Center Moriches Union Free School District (District). After a hearing, the ALJ held that the District violated §209-a.1(d) of the Public Employees' Fair Employment Act (Act), as alleged by the Center Moriches Administrators Association (Association), when it abolished a practice under which unit employees were extended the option of taking pay in lieu of vacation time.<sup>1/</sup>

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<sup>1/</sup>The ALJ dismissed a charge (U-13746) filed with respect to the District's earlier rescission of this practice. That charge was settled, but it was reopened when the District abolished the practice again in 1993, the abolition which led to the filing of the captioned charge. The ALJ dismissed the first charge as moot. He also dismissed an allegation that the District's unilateral action violated §209-a.1(a) of the Act. No exceptions have been taken to the ALJ's decision in these respects.

The District argues in its exceptions that the ALJ's decision is incorrect and should be reversed because it may disrupt negotiations with the Association. The Association argues that the District's exceptions are without merit and urges that we affirm the ALJ's decision.

Having reviewed the record and considered the parties' arguments, we affirm the ALJ's decision for the reasons stated therein with but brief additional comment.

The economic benefit in issue has been extended to unit employees for several years. As found by the ALJ, the benefit itself was unconditional, even though certain discretionary acts may have affected the benefit indirectly, e.g., the approval of vacation days. The benefit was abolished by the District unilaterally and absolutely in 1993. That unilateral rescission of a practice encompassing a mandatorily negotiable economic benefit clearly violated the District's duty to negotiate prior to making changes in employees' terms and conditions of employment.

The District's argument that we should not restore the benefit because restoration may disrupt the parties' collective negotiations fundamentally misconstrues the nature of the statutory bargaining process and the District's obligations under the Act. The parties' bargaining relationship was disrupted when the District made the unilateral change in the unit employees' economic terms and conditions of employment. The Association is entitled under the Act to bargain from the status quo, not from a

unilaterally changed slate of economic benefits. To leave the change in place pending negotiations would only reward the District for its violation of law. Restoration of the benefit, however, cures the disruption in the relationship caused by the District's unilateral action and restores the status quo.

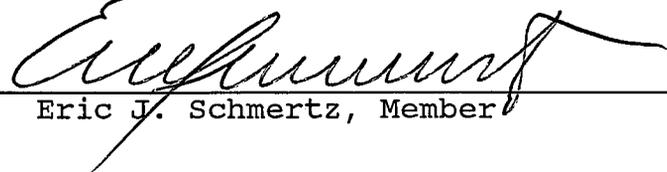
For the reasons set forth above, the District's exceptions are dismissed and the ALJ's decision is affirmed.

IT IS, THEREFORE, ORDERED that the District:

1. Immediately restore the past practice of extending unit employees the option of taking a cash payment in lieu of accrued vacation days.
2. Make whole any unit employee who was denied cash payment in lieu of accrued vacation days since July 6, 1993, with interest at the currently prevailing maximum legal rate.
3. Post the attached notice at all locations ordinarily used to post notices of information to unit employees.

DATED: May 31, 1995  
Albany, New York

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

  
\_\_\_\_\_  
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 in the Center Moriches Union Free School District represented by the Center Moriches Administrators Association that the District shall:

1. Immediately restore the past practice of extending unit employees the option of taking a cash payment in lieu of accrued vacation days.
2. Make whole any unit employee who was denied cash payment in lieu of accrued vacation days since July 6, 1993, with interest at the currently prevailing maximum legal rate.

Dated .....

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

CENTER MORICHES UNION FREE SCHOOL DISTRICT  
.....

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

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of

**SIDNEY TEACHERS ASSOCIATION, NYSUT,  
AFT, AFL-CIO,**

Charging Party,

-and-

CASE NO. U-15059

**SIDNEY CENTRAL SCHOOL DISTRICT,**

Respondent.

---

**PETER D. BLOOD, for Charging Party**

**MARK W. PETTITT, for Respondent**

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by the Sidney Teachers Association, NYSUT, AFT, AFL-CIO (Association) to a decision by an Administrative Law Judge (ALJ). The Association's charge against the Sidney Central School District (District) alleges that the District violated §209-a.1(d) and (e) of the Public Employees' Fair Employment Act (Act) when it unilaterally increased the length of the workday at several of its elementary schools at the beginning of the 1993-94 school year.

The ALJ dismissed the charge on the ground that Education Law §3813(1), as interpreted by the Appellate Division, Third

Department in Union-Endicott Central School District v. PERB,<sup>1/</sup> required the Association to file a notice of claim with the District as a condition precedent to the initiation of this charge. The ALJ dismissed the charge because the Association did not file a notice of claim with the District and he concluded that parallel notice was not afforded the District by the Director of Public Employment Practices and Representation's (Director) mailing of a copy of the charge to the District's superintendent of schools.

The Association argues preliminarily that the ALJ should not have allowed the District to amend its answer to raise the Education Law §3813 issue. On the merits, it argues that Education Law §3813 is not applicable to this charge because it was filed before September 8, 1994, the date the Court of Appeals denied our motion for permission to appeal in Union-Endicott, that the District received a parallel notice of claim from the Director's service of the charge upon the District, and that it need not file a notice of claim because its charge vindicates a public interest.

In response, the District argues that the Association's exceptions lack the specificity required by our Rules of Procedure (Rules) and raise arguments not presented to the ALJ. It argues further that the ALJ was correct in recognizing that

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<sup>1/</sup>197 A.D.2d 276, 27 PERB ¶7005 (3d Dep't), motions for leave to appeal denied, 84 N.Y.2d 803, 27 PERB ¶¶7012 & 7013 (1994).

Union-Endicott is indistinguishable and requires dismissal of this charge.

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

The Association's exceptions as filed are not, as argued by the District, procedurally defective in any respect and they are abundantly specific.<sup>2/</sup> Moreover, the Association is not prohibited from making new or refined arguments in its exceptions in support of its unchanged claim that Education Law §3813 is inapplicable.<sup>3/</sup> We turn, therefore, to a consideration of the Association's exceptions.

The District's Education Law §3813 claim was raised by amendment to its answer. Acceptance of that amendment was a matter reserved to the ALJ's discretion.<sup>4/</sup> We find no abuse of discretion in the ALJ's ruling permitting the District to amend its answer. As observed by the ALJ, this case was placed on hold pursuant to the parties' agreement after the conference in March 1994, and it was later scheduled for hearing on September 26, 1994. The motion to amend was made in due course in advance of the scheduled hearing date. The timing of that

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<sup>2/</sup>Uniondale Union Free Sch. Dist., 27 PERB ¶3077 (1994); Cohoes Police Benevolent and Protective Ass'n, 27 PERB ¶3058 (1994); City of New Rochelle, 18 PERB ¶3021 (1985).

<sup>3/</sup>Cohoes Police Benevolent and Protective Ass'n, supra.

<sup>4/</sup>Rules §204.3(e).

amendment was not disruptive to the proceedings.<sup>5/</sup> The ALJ's decision to permit the District to amend its answer was reasonable in context. The Education Law §3813 claim was, therefore, properly raised to the ALJ.

As to the Association's next argument, Education Law §3813 applies, to the extent it is applicable at all, to improper practice charges filed before the Court of Appeals denied us permission to appeal in Union-Endicott. Union-Endicott did not create or change the law and it is not prospective only. Union-Endicott was merely the first opportunity the courts had to declare what the law already was, and is, in relevant context. As noted by the District, to accept the Association's argument in this respect would mean that Union-Endicott itself could never have been issued because it involved an improper practice charge which was filed before the decision in that case was announced.

Nor can we accept the Association's argument that the Director's service of the charge upon the District's superintendent of schools was sufficient substitute notice to the District. First, the Court rejected this same argument in Union-Endicott. Moreover, it is illogical to have the very proceeding which is barred by Education Law §3813 for a period of thirty days after notice of claim is filed with the District's board of education serve as the notice of claim which

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<sup>5/</sup>Compare Deer Park Union Free Sch. Dist., 28 PERB ¶13005 (1995) (post-hearing request to amend answer properly denied by ALJ).

that statutory provision makes a condition precedent to the commencement of the action or proceeding.

We come then to the heart of the Association's exceptions in which it argues that Education Law §3813 is not applicable in this case.

Education Law §3813 provides that an "action or special proceeding" cannot be commenced against a school district for a period of thirty days after presentment to the District's "governing body" of a "written verified claim upon which such action or special proceeding is founded".

In Union-Endicott, the Appellate Division held that Education Law §3813 is applicable to at least some improper practice charges. Having held Education Law §3813 applicable in that case, the Court in Union-Endicott then noted the following two judicially recognized exceptions to compliance with that statutory provision: (1) the action or proceeding vindicates a public interest; (2) there exists parallel statutory notice provisions which provide notice to the school district's board of education "not unlike" that which is afforded the district under Education Law §3813.

The Court in Union-Endicott held neither exception applicable in that case. The first exception was not applicable because the Court held that the "gravamen of the relief sought . . . is fundamentally private". The second exception was held not applicable because the notice afforded the school district by the processing of the charge pursuant to

our Rules, wholly apart from the date the charge was filed in that case,<sup>6/</sup> was "significantly different" from that afforded under the Education Law.<sup>7/</sup>

Union-Endicott was a unilateral change case fundamentally no different in substantive respect than this case. We are in agreement with the Association that for many of the reasons it advances, and others, Education Law §3813 should not and was never intended to be applicable to any improper practice charges, which are merely the vehicle for the presentation to this agency of a claim that the law, created in the public interest to foster the State's declared public policies, has been violated. In this case, the claim is that the District unlawfully refused to negotiate a subject which the Act requires to be bargained before any changes in prevailing working conditions can be made. An improper practice charge can never, in our view, be private even though the remedy for any violation of law redounds directly to the benefit of the charging

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<sup>6/</sup>Education Law §3813 requires the notice of claim to be filed within three months after the accrual of the claim. The charge in Union-Endicott was filed with PERB after the period for filing the notice of claim with the school district had elapsed. The charge in this case was filed within that three-month period, but that is a factual difference without controlling significance under Union-Endicott.

<sup>7/</sup>The significant difference was found, in relevant respect, in the fact that an improper practice charge is filed under our Rules with the Director and not the district's board of education.

party.<sup>8/</sup> This case, however, is not in any way reasonably or persuasively distinguishable from Union-Endicott. Although we respectfully disagree with the Court's decision in Union-Endicott, we will apply it to our improper practice proceedings unless or until it is addressed legislatively or judicially. Therefore, for the reasons set forth above and in the ALJ's decision, we are constrained to dismiss this charge.

IT IS, THEREFORE, ORDERED that the Association's exceptions are denied, the ALJ's decision is affirmed, and the charge must be, and it hereby is, dismissed.

DATED: May 31, 1995  
Albany, New York

  
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Pauline R. Kinsella, Chairperson

  
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Eric J. Schmertz, Member

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<sup>8/</sup>See Union Free Sch. Dist. No. 6 of the Towns of Islip and Smithtown v. New York State Human Rights Appeals Bd., 35 N.Y.2d 371, 8 PERB ¶7502 (1974), motion for reargument denied, 36 N.Y.2d 807 (1975); New York State Labor Relations Bd. v. Holland Laundry, Inc., 295 N.Y. 480 (1945).

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of

**JEFFERSON-LEWIS-HAMILTON-HERKIMER-ONEIDA-  
BOCES PROFESSIONAL ASSOCIATION, NYSUT,  
AFT, AFL-CIO,**

Petitioner,

-and-

CASE NO. C-4364

**JEFFERSON-LEWIS-HAMILTON-HERKIMER-ONEIDA  
BOCES,**

Employer.

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**JAMES D. MATHEWS, for Petitioner**

**STEVEN J. JOHNSON, for Employer**

**JOHN WARNECK, pro se**

**BOARD DECISION AND ORDER ON MOTION**

John Warneck, a Health and Safety Coordinator for Jefferson-Lewis-Hamilton-Herkimer-Oneida BOCES (BOCES), asks that we review a ruling by an Administrative Law Judge (ALJ) denying him permission to intervene in this representation proceeding commenced by the Jefferson-Lewis-Hamilton-Herkimer-Oneida BOCES Professional Association, NYSUT, AFT, AFL-CIO (Association). The Association seeks to add a number of unrepresented employees in several different titles, including Warneck, to its existing unit.<sup>1/</sup> Warneck is opposed to his inclusion in the

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<sup>1/</sup>The Association by letter dated May 25, 1995 to the assigned Administrative Law Judge, has moved to delete from the unit it claims to be appropriate Warneck's title and others. Since the Director is required to determine the most appropriate unit, the Association's motion does not preclude Warneck's inclusion in the unit if otherwise appropriate. Therefore, Warneck's intervention is not a moot issue.

Association's unit, a result he believes will affect his employment relationship adversely. Therefore, he moves to intervene in this proceeding to persuade the Director of Public Employment Practices and Representation (Director) that inclusion of his and other titles in the Association's unit would not be appropriate. In support of his request to intervene, Warneck argues that his interests are clearly adverse to the Association's and are not necessarily the same as BOCES', even though BOCES opposes the petition on the merits.

As Warneck recognizes, an appeal from the ALJ's ruling at this time is with our permission only pursuant to §201.9(c)(4) of the Rules of Procedure (Rules). The preliminary issue, therefore, is not whether the ALJ's ruling is correct, but whether we should grant permission for this appeal.

On that first question, we have reserved such appeals for extraordinary circumstances. Most requests for permission to appeal from rulings made in conjunction with the processing of a case have been denied because the issues raised could be adequately addressed upon appeal from the Director's dispositive decision and order. Exceptions to a Director's decision, however, may be filed only by a party.<sup>2/</sup> The effect of the ALJ's denial of Warneck's intervention was to deny him party status,<sup>3/</sup> thereby precluding him from filing exceptions. Also, because that ruling did not affect the rights of either the

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<sup>2/</sup>Rules §201.12.

<sup>3/</sup>Rules §200.5.

District or the Association, it would not appear that they could raise the issue, even if either was inclined to do so. Unless we grant permission for this appeal at this time, the ALJ's ruling may be insulated from any review. Therefore, we will allow the appeal.

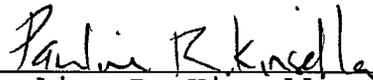
Having reviewed the arguments regarding the ALJ's ruling, we affirm.

There is nothing in Warneck's papers or supporting arguments to suggest that he is uniquely in possession of information relevant to the unit determination which the Director must make. As noted, BOCES opposes this petition on a number of grounds and it is, therefore, likely that it will present to the Director the facts and arguments relevant to the uniting question. Moreover, the Director has an independent right and obligation to investigate the representation questions in dispute. To the extent necessary and relevant, the Director's investigation may include inquiry to BOCES' employees. We are not persuaded, therefore, that the Director will be unable to issue a "comprehensive decision" without Warneck's participation in the proceeding as a party. In addition, to allow Warneck's intervention would require extension of intervenor status to any and all employees of a given employer in a representation case. Warneck is not differently situated from any other employee who is opposed to union representation or inclusion in a unit alleged to be appropriate by a petitioner. Substantially increasing the potential number of parties to a representation case encumbers the investigatory process and contributes to unreasonable delay

in the disposition of the representation questions. Such disruption of our representation proceedings is not necessary or required to ensure that the Director obtains the information necessary to make the proper uniting decision.

For the reasons set forth above, the ALJ's ruling denying Warneck permission to intervene is affirmed. SO ORDERED.

DATED: May 31, 1995  
Albany, New York

  
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Pauline R. Kinsella, Chairperson

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

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of

ENDICOTT TEACHERS ASSOCIATION, NYSUT,  
AFT/AFL-CIO, LOCAL #2641,

Petitioner,

-and-

CASE NO. CP-323

UNION-ENDICOTT CENTRAL SCHOOL DISTRICT,

Employer,

-and-

ORGANIZATION OF TEACHING ASSISTANTS AND  
SCHOOL NURSES,

Intervenor.

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In the Matter of

ENDICOTT TEACHERS ASSOCIATION, NYSUT,  
AFT/AFL-CIO, LOCAL #2641,

Petitioner,

-and-

CASE NO. C-4199

UNION-ENDICOTT CENTRAL SCHOOL DISTRICT,

Employer.

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BRIAN L. LAUD, for Petitioner

COUGHLIN & GERHART (FRANK W. MILLER of counsel), for  
Employer

BOARD DECISION AND ORDER

Case No. CP-323 comes to us on exceptions filed by the Endicott Teachers Association, NYSUT, AFT/AFL-CIO, Local #2641 (Association) to a decision of the Director of Public Employment Practices and Representation (Director) dismissing its petition to include the newly created title of physical therapist in a

bargaining unit of teachers employed by the Union-Endicott Central School District (District) for which the Association is the certified bargaining agent.<sup>1/</sup> Because the vacancy in the physical therapist position prevented him from assessing whether the duties of the position warranted placement of the position in the Association's unit, the Director determined that the unit placement petition must be dismissed. The District supports the Director's decision in Case No. CP-323.

The District has filed exceptions to the Director's decision in Case No. C-4199 in which he found that the titles of teaching assistant and school nurse are appropriately added to the Association's unit. These titles had been represented by the Organization of Teaching Assistants and School Nurses, NYSUT, AFT (Organization), but the Director found that it had abandoned its representation of the unit, leaving the school nurses and teaching assistants unrepresented. Having made that finding, the Director then determined that those employees were most appropriately placed in the teachers' unit represented by the Association. The Association supports the Director's decision in Case No. C-4199.

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<sup>1/</sup>The Association was certified by PERB as the representative of a unit of all teachers, including long-term substitute teachers "who teach for a contiguous semester or longer." See Union-Endicott Cent. Sch. Dist., 25 PERB ¶3000.07 (1992). Also included in the unit are guidance counselors, school psychologists, home/school coordinators, nurse/teachers, speech therapists and school media specialists (library).

The Association argues in its exceptions that the Director erred in dismissing its petition in Case No. CP-323 because he could have evaluated the duties performed by the previous incumbent in the physical therapist position to determine the appropriate unit placement.<sup>2/</sup>

In its exceptions to the Director's decision in Case No. C-4199, the District argues that it was deprived of due process because the Director issued the decision even though an Administrative Law Judge (ALJ) conducted the hearing, that the Association was allowed to proceed to hearing with its petition even though its representative is not an attorney, that the Organization is not defunct but, even if it is, its bad faith in dissolving itself in the midst of negotiations for a successor agreement with the District bars the Association's petition, that the Director erred in attributing certain statements to District representatives, and that the former unit of school nurses and teaching assistants must be continued because it is the most appropriate unit.

After a careful review of the record and consideration of the parties' arguments, we affirm the decision of the Director in both cases.

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<sup>2/</sup>Although the position was filled at the time the petition was filed, it was vacated four months later and remained vacant for at least one year.

Case No. CP-323

The District hired a physical therapist in September 1993, who resigned effective January 31, 1994. Although the position has not been abolished by the District and it has sought to fill the vacancy, the position was vacant at the time of the hearing and remains vacant.

If and when the District again employs a physical therapist, the Association may file a petition seeking its placement in the teachers' unit in accordance with our Rules of Procedure (Rules). There is, on this record, no reasonably current evidence of the duties of the position which can be evaluated to determine whether the position is appropriately placed in the unit represented by the Association.<sup>3/</sup>

Case No. C-4199

The District recognized the Organization as the exclusive bargaining agent for the school nurses and teaching assistants on January 21, 1986, pursuant to a request for recognition from the Organization. The school nurses had earlier asked to be included in the teachers' unit but were told by the District that school

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<sup>3/</sup>While the existence of a temporary vacancy in a position is not, per se, always a ground for dismissal of a petition, the Director here properly found that the job description of the previous incumbent and the testimony of the speech and language therapist who occasionally worked with the physical therapist do not provide a sufficient basis for making a unit placement determination in this case.

nurses could not be part of the teachers' unit.<sup>4/</sup> The Organization and the District were parties to collective bargaining agreements entered into in 1986 and 1989. In June 1992, they began bargaining for a successor agreement. By August 1993, despite mediation and fact-finding, they had not reached an agreement. Frustrated by this, eleven of the thirteen members resigned from the Organization by letters addressed to Kathleen Osiecki, President of the Organization, dated November 23, 1993. Each letter was copied to Alan Lichstein, the District's Director of Personnel. The same eleven employees sent letters dated November 24, 1993 to the District's payroll clerk, withdrawing their dues deduction authorizations. Each of these letters was also copied to Lichstein. Osiecki, also on November 24, sent a letter to Dennis Sweeney, the District's Superintendent of Schools, stating:

Whereas the [Organization] can no longer claim to represent a majority of teaching assistants and registered professional nurses, I am hereby notifying you that effective 12:01 a.m. Monday, November 29, 1993 the [Organization] will no longer act as bargaining representative for the teaching assistants and registered professional nurses employed by the Union-Endicott Central School District.

Lichstein acknowledged receipt of Osiecki's letter, but he reiterated the District's position that the bargaining unit still

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<sup>4/</sup>In 1973, the school nurses were unrepresented. Richard Thomas, the District's Director of Personnel, when questioned by Nancy Weymouth, a school nurse, about joining the teachers' unit, informed her that the school nurses could not join the teachers' unit, but could receive the same benefits as the then library assistants. The school nurses remained unrepresented until 1986, when the Organization was recognized.

existed and that he expected negotiations to continue once the District was notified of the identity of the new bargaining agent.

As relevant to the Director's unit determination, all members of the teachers' unit hold teaching certificates, as required by the New York State Education Law, as do the teaching assistants. School nurses are not licensed to teach and do not have teaching responsibilities, unlike the school nurse/teacher. School nurses do, however, participate on a child study team, comprised partially of teachers, which meets bimonthly to discuss the needs of handicapped students. Neither the teaching assistants nor the school nurses are required to have a college degree.

In its first exception to the Director's decision in Case No. C-4199, the District argues that it was deprived of due process because the Director issued the decision despite an ALJ having conducted the hearing. The District claims that it was not put on notice of nor did it consent to this procedure. This argument completely disregards the Rules under which this agency has always operated and which are, or should be, well known to the District and its representative. Section after section in Part 201 of our Rules reveals that all representation decisions are made and issued by the Director. The ALJs are the Director's agents for purposes of conducting the representation investigation, but decisions in representation matters are never issued in the ALJ's name. Only when a credibility determination

about material and relevant testimony is necessary to the disposition of a petition is an ALJ's report and recommendation made to the Director, usually as an appendix attached to the Director's decision.<sup>5/</sup> An ALJ may prepare a draft decision for the Director's consideration, but the final decision is made by and issued in the name of the Director. This procedure is, of course, intended to ensure maximum consistency of outcome in uniting determinations, managerial/confidential designations and other representation questions.

The District argues as part of this exception that the Director erred in relying on Weymouth's testimony that Thomas told her, on behalf of the District, that nurses would not be allowed to join the teachers' unit, when that testimony was later rebutted by Lichstein. Weymouth's testimony as to her conversation with Thomas, however, was not rebutted because Thomas was not called to testify. That Lichstein testified that he never made such a statement does not disturb Weymouth's testimony that Thomas did. No credibility resolution was required and none appears to have been made. Whatever credibility resolution there may be in the Director's acceptance of this witness's unrebutted statement, it was not, in any event, dispositive of the petition in this case. Any error, therefore, in not having the ALJ make a credibility resolution is, at most, harmless.

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<sup>5/</sup>See County of Erie and Sheriff of Erie County, 18 PERB ¶4071 (1985).

We turn next to the District's argument that the petition must be dismissed because the Association's representative is not an attorney and, therefore, he appeared improperly on the Association's behalf at the hearing.

The District argues that the Association's representative is not admitted to practice law in the State of New York and his appearance before us as a paid representative of the Association violates the Judiciary Law.<sup>6/</sup> The District also cites an opinion letter of an Assistant Attorney General in support of its contention that nonlawyers are barred from acting as the paid representatives of parties appearing before administrative agencies of the State of New York.<sup>7/</sup>

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<sup>6/</sup>Judiciary Law §478, in relevant part, provides as follows:

It shall be unlawful for any natural person to practice or appear as an attorney-at-law or as an attorney and counselor-at-law for a person other than himself in a court of record in this state or in any court in the City of New York....

Judiciary Law, §484, in relevant part, provides as follows:

No natural person shall ask or receive, directly or indirectly, compensation for appearing for a person other than himself as attorney in any court or before any magistrate, or for preparing...pleadings of any kind in any action brought before any court of record in this state, or make it a business to practice for another as an attorney in any court or before any magistrate unless he has been regularly admitted to practice, as an attorney or counselor, in the courts of record in the state....

<sup>7/</sup>By letter dated April 20, 1993, Assistant Attorney General Scher concluded that appearances before the Adirondack Park Agency were limited to attorneys. By letter dated March 3, 1994, PERB was advised by First Assistant Attorney General Rifkin that Scher's opinion was limited to the specific facts of the inquiry presented to him and "should not be deemed to be applicable to any situation other than the one he addressed."

Assuming, arguendo, that the Association representative's appearance at the hearing in this case could be considered to be the practice of law, we conclude, as did the Director, that that is not a reason to dismiss the Association's petition. This agency's jurisdiction is limited and encompasses only those matters specifically covered by the Act.<sup>8/</sup> Judiciary Law §485 provides that a violation of Judiciary Law §484 is a misdemeanor. PERB has no jurisdiction over and no expertise in alleged criminal conduct. There are forums in which the District may address this issue, but PERB is not one of them. To litigate potentially criminal conduct in the context of a civil administrative proceeding deprives the individuals accused of that crime of rights which cannot be afforded them in the administrative context, e.g., jury trial. Further, the cited opinion letter from the Attorney General's office is not binding upon PERB. Indeed, it has been specifically limited, by the issuing agency, to the facts which prompted the issuance of that opinion. We have previously held<sup>2/</sup> that it is not our right or responsibility to enforce an attorney's obligations under the Code of Professional Responsibility or the Disciplinary Rules promulgated thereunder. The concerns which prompted that result are present even more strongly in this context. Whatever ethical obligations we may have to prevent the unauthorized practice of

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<sup>8/</sup>Zuckerman v. Bd. of Educ. of the City Sch. Dist. of the City of New York, 44 N.Y.2d 336, 11 PERB ¶17527 (1978).

<sup>2/</sup>Bd. of Educ. of the City Sch. Dist. of the City of Buffalo, 24 PERB ¶13033 (1991).

law would arise only upon a final determination by a court of competent jurisdiction that appearances before this agency constitute the practice of law.

We would note incidentally, however, that Judiciary Law §§478 and 484 do not appear to be applicable in relevant context because an appearance before PERB is not before "any court or before any magistrate". Moreover, neither the Act nor our Rules of Procedure prohibit a nonattorney from appearing before PERB. It has always been the practice of this agency to allow nonattorneys to appear on behalf of others, whether individuals, organizations or employers, in keeping with the labor relations tradition of direct participation of those closest to the case. Despite the District's protestations that it is, or can be, prejudiced by the appearance of a nonattorney, these lay representatives are usually trained labor relations professionals who have appeared before PERB and/or other labor relations agencies for years and who have acquired a labor relations expertise at least the equal of certain attorneys who appear before us less regularly. These representatives are involved in all aspects of the labor-management relationship, including union organization, contract negotiations, contract administration, grievance processing, arbitration and disciplinary proceedings. They represent both management and labor, and sometimes individual employees. To accept the District's argument that only attorneys can legally be allowed to appear before PERB would

be to ignore our experience with nonattorney representatives over the twenty-eight years of our existence.

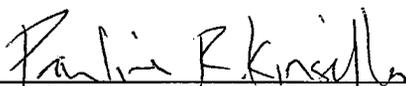
The exceptions related to the actions and the status of the Organization are equally unpersuasive. As of November 1993, the Organization had no members, all former members having rescinded their dues deduction authorizations. The President of the Organization notified the District that, effective November 29, 1993, the Organization would no longer represent the school nurses and teaching assistants. The Organization disclaimed any interest in participating in these proceedings, beyond noting that it supported the placement of the physical therapist position in the unit represented by the Association. The school nurses and teaching assistants, therefore, have effectively been left without representation. The motivation behind the Organization's dissolution is not relevant to our inquiry regarding the appropriate uniting of the school nurses and the teaching assistants. That is controlled exclusively by the statutory uniting criteria as applied.

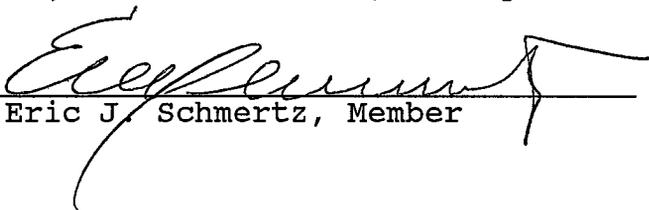
On that uniting question, the cases cited by the District are all inapposite because they involve the fragmentation of existing, represented, and functioning units. Our cases clearly establish the professional community of interest which exists among school nurses, teaching assistants and teachers, based upon their shared professional mission, interaction with students and similar terms and conditions of employment, even though they have different occupational functions, salary schedules and retirement

plans.<sup>10/</sup> The school nurses and teaching assistants are most appropriately added to the unit represented by the Association.

For the reasons set forth above, the District's and the Association's exceptions are dismissed and the Director's decision in Case Nos. CP-323 and C-4199 is affirmed.

DATED: May 31, 1995  
Albany, New York

  
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Pauline R. Kinsella, Chairperson

  
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Eric J. Schmertz, Member

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<sup>10/</sup>Dutchess County Bd. of Cooperative Educ. Services, 25 PERB ¶3048 (1992); Carthage Cent. Sch. Dist., 16 PERB ¶3085 (1983).

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of

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

Petitioner,

-and-

CASE NO. C-4397

VILLAGE OF RHINEBECK,

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

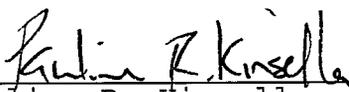
Unit: Included: All full and part-time janitors, MEO, Water Treatment Plant Operator Trainee, Water

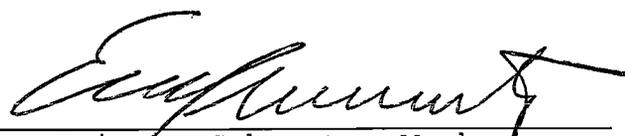
Treatment Plant Operator Grade II, Water/Sewage  
Treatment Plant Operator, Water/Sewage  
Treatment Plant Trainee, and Laborers.

Excluded: All other employees.

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

DATED: May 31, 1995  
Albany, New York

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

  
\_\_\_\_\_  
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.,  
LOCAL 1000, AFSCME, AFL-CIO,

Petitioner,

-and-

CASE NO. C-4387

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

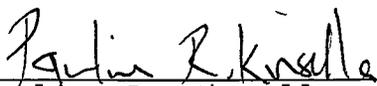
Unit: Latchkey coordinator, clerks, AV aide, monitors,  
cleaner, nurses, custodians, bus drivers, mechanics,

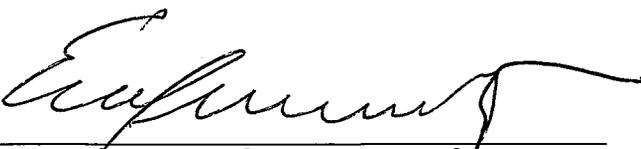
typists, food service worker/helper, cook, food truck driver, account-clerk typist, senior account clerk, teacher aide, building maintenance mechanic, family worker, groundskeeper, senior typist, parent center director, head bus mechanic and head custodian.

Excluded: All management/confidential employees and all others.

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

DATED: May 31, 1995  
Albany, New York

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

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

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of

JOSEPH J. RENTA,

Petitioner,

-and-

CASE NO. C-4382

GARDEN CITY PARK WATER/FIRE DISTRICT,

Employer,

-and-

INTERNATIONAL BROTHERHOOD OF TEAMSTERS,  
LOCAL 282,

Intervenor.

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JOSEPH J. RENTA, pro se

IRA DROGAN, ESQ., for Employer

BOARD ORDER

On March 27, 1995, the Director of Public Employment Practices and Representation issued a decision in the above matter finding that the petition filed by Joseph J. Renta, to decertify the International Brotherhood of Teamsters, Local 282 as negotiating representative for a unit of certain employees of the Garden City Park Water/Fire District (employer) should be granted for lack of opposition and because there is evidence that a majority of the employees in the unit no longer desire to be

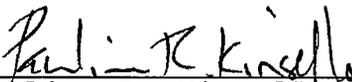
represented by it.<sup>1/</sup> No exceptions have been filed to the decision.

IT IS, THEREFORE, ORDERED that International Brotherhood of Teamsters, Local 282 be, and it hereby is, decertified as the negotiating representative of the following unit of employees of the employer:

Unit: Included: Full and part-time employees.

Excluded: All other employees.

DATED: May 31, 1995  
Albany, New York

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

  
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Eric J. Schmertz, Member

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<sup>1/</sup> 28 PERB ¶4017 (1995).

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of

NEW HARTFORD CENTRAL DISPATCHERS  
BENEVOLENT ASSOCIATION, INC.,

Petitioner,

-and-

CASE NO. C-4302

TOWN OF NEW HARTFORD,

Employer,

-and-

INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, LOCAL 182,

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 New Hartford Central Dispatchers Benevolent Association, 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

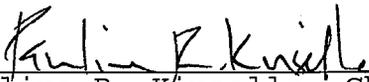
collective negotiations and the settlement of grievances.

Unit: Included: Police Dispatchers and Fire Dispatchers.

Excluded: All other employees.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the New Hartford Central Dispatchers Benevolent Association, 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: May 31, 1995  
Albany, New York

  
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Pauline R. Kinsella, Chairperson

  
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Eric J. Schmertz, Member