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3-5-2001

## State of New York Public Employment Relations Board Decisions from March 5, 2001

New York State Public Employment Relations Board

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## State of New York Public Employment Relations Board Decisions from March 5, 2001

### 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,**

Charging Party,

- and -

**CASE NO. U-20015**

**STATE OF NEW YORK (DEPARTMENT OF  
CORRECTIONAL SERVICES - BUTLER  
CORRECTIONAL FACILITY),**

Respondent.

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

**WALTER J. PELLEGRINI, GENERAL COUNSEL (MICHAEL N. VOLFORTE  
of counsel), for Respondent**

**BOARD DECISION AND ORDER**

This case comes to us on exceptions filed by the Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO (CSEA), and cross-exceptions filed by the State of New York (Department of Correctional Services - Butler Correctional Facility) (State) to a decision of the Assistant Director of Public Employment Practices and Representation (Assistant Director) dismissing CSEA's improper practice charge which alleged that the State had violated §209-a.1(d) of the Public Employees' Fair Employment Act (Act) when it unilaterally changed its policy to allow inmates to plow

the snow on roadways, parking lots and perimeter areas at Butler Correctional Facility (Butler), duties previously performed exclusively by employees in the unit represented by CSEA.

The Assistant Director granted the State's motion to dismiss, finding that while snow-plowing at Butler had been exclusively performed by CSEA unit members, at other State correctional facilities, snow removal, including plowing, had also been performed by inmates and nonunit employees and that CSEA, therefore, had not established exclusivity over the work the State had assigned to inmates at Butler. The charge was, therefore, dismissed without consideration of any evidence presented by the State.<sup>1</sup>

CSEA excepts to the Assistant Director's decision, arguing that there is a discernible boundary which may be drawn around this unit work at Butler and that the Assistant Director erred in considering the practice at other State facilities in deciding exclusivity. The State, in its cross-exceptions, argues that the stipulations entered into by the parties at the hearing do not support the Assistant Director's decision that snow-plowing was exclusive unit work at Butler. In all other respects, the State supports the Assistant Director's decision.

Based upon our review of the record and our consideration of the parties' arguments, we reverse the decision of the Assistant Director.

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<sup>1</sup>In a footnote, the Assistant Director noted that had the motion not been granted, the evidence presented by the State would establish that inmates perform snow-plowing duties at other facilities pursuant to policy set by local management of those facilities.

### FACTS

From the time that Butler opened in 1989, employees in the unit represented by CSEA have exclusively performed snow-plowing at the facility, although inmates have had some responsibility for operating snow-blowers and shoveling.<sup>2</sup> The removal of snow at correctional facilities is not covered by the State-CSEA collective bargaining agreement and is not the subject of any statewide policies or mandates. The decision as to who will be responsible for snow removal is left to the discretion of the facility superintendent. At some correctional facilities, only unit employees are responsible for snow removal, including snow-plowing. At some facilities, the use of inmates or others to remove snow is the result of discussions between local CSEA officials and facility administrators and, at other facilities, the use of inmates or others has been unilaterally established by the facility superintendent or his or her designee.

### DISCUSSION

In deciding the motion to dismiss, the Assistant Director "must assume the truth of all of charging party's evidence and give the charging party the benefit of all reasonable inferences that could be drawn from those assumed facts."<sup>3</sup> CSEA established that there is no State-wide policy in effect with regard to snow removal at correctional facilities, save that the decisions with respect to snow removal are to be made at the facility level. The record further evidences that at Butler, unit employees

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<sup>2</sup>Transcript, p.18.

<sup>3</sup>*County of Nassau (Police Dep't) (Unterweiser)*, 17 PERB ¶3013, at 3030 (1984). See also *State of New York*, 33 PERB ¶3024 (2000).

have exclusively performed all the snow-plowing since the facility's opening.<sup>4</sup> CSEA also introduced evidence that at other correctional facilities, inmates have been assigned snow removal responsibilities, including snow-plowing. We must, therefore, decide whether the evidence introduced by CSEA was sufficient to establish a *prima facie* case or whether, as the Assistant Director found, the State's motion to dismiss must be granted.

"The seminal case on transfers of unit work, *Niagara Frontier Transportation Authority*,<sup>5</sup> requires in such cases that the charging party establish that the work in issue was performed exclusively by employees in its bargaining unit and that the transferred work is substantially similar to the unit's work."<sup>6</sup> As we recently pointed out in *City of Rome*,<sup>7</sup> "[o]ver the years, our analysis of exclusivity in cases where the unit work involves multiple tasks, multiple-function jobs, or multiple locations, has come to rely upon the concept of a 'discernible boundary'."

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<sup>4</sup>While the State, in its cross-exceptions, argues correctly that the parties' initial stipulation is that no inmates have been used at Butler to do any snow-plowing, not that CSEA has exclusively performed all snow-plowing at Butler, later in the record, the ALJ states that "you've stipulated that all the snowplowing that's ever been done at Butler has been done only by bargaining unit employees, is that correct?" The State's representative answered "That's correct." Transcript, p.18. The State's cross-exception is, therefore, denied.

<sup>5</sup>18 PERB ¶3083 (1985).

<sup>6</sup>*City of Rome*, 32 PERB ¶3058, at 3140 (1999). There is no dispute that the snow-plowing duties that have been shifted to inmates from CSEA unit members are substantially similar.

<sup>7</sup>*Id.*

The concept of discernible boundary has been the subject of much discussion in our decisions since it was first introduced in *Town of West Seneca*,<sup>8</sup> where we held that the exclusivity of unit work is not lost if the practice of utilizing nonunit employees is one which is clearly circumscribed. A "charging party must establish a discernible boundary to the claimed unit work which would set it apart from work done by nonunit personnel."<sup>9</sup> We clarified in *Union-Endicott Central School District*<sup>10</sup> that a discernible boundary is found to exist when there is a "reasonable relationship between the components of the discernible boundary and the duties of the unit employees."

While CSEA represents a state-wide unit with employees at each of the correctional facilities operated by DOCS, for which there is a state-wide collective bargaining agreement and state-wide policies and procedures, the record also establishes that with respect to some terms and conditions of employment, there is a variance from facility to facility. With respect to snow removal, CSEA argues that the discernible boundary should be defined by each facility because, as to snow removal, the State has recognized each facility as a separate entity. We agree. We have held that location may be used as a basis for determining a discernible boundary where there is a relationship between the work location and the duties of the job as performed at the work location.<sup>11</sup>

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<sup>8</sup>19 PERB ¶3028 (1986).

<sup>9</sup>*County of Nassau*, 21 PERB ¶3038, at 3085 (1988).

<sup>10</sup>26 PERB ¶3075, at 3145 (1993)

<sup>11</sup>*City of Buffalo*, 24 PERB ¶3043 (1991).

Here, the State has no State-wide practice or policy assigning the work of snow removal at the correctional facilities. Having recognized that each facility may establish a separate policy on snow removal, the State cannot now argue that the state-wide nature of the CSEA bargaining unit precludes it from establishing exclusivity over snow-plowing at Butler. "[J]ob location can form a discernible boundary to unit work within which a union may maintain its exclusivity even if there is no exclusivity over the job function beyond that boundary."<sup>12</sup>

In *City of Buffalo*,<sup>13</sup> relied upon by the Assistant Director, there was no relationship between the work location and the duties of the job as performed at those locations. Here, however, location has been used by the State, to set a boundary around this aspect of unit work at each correctional facility. We are cognizant of the fact that most of the work of the employees in the unit represented by CSEA is the same regardless of facility. However, with respect to snow removal, generally, and snow-plowing, specifically, the State has recognized that the differences in the State's many correctional facilities, as illustrated by the character of the inmate population, the nature and extent of the roadways to be plowed and the geographic location of the facility, require different practices at each facility with respect to who will be responsible for snow-plowing. The State has given the authority to make that decision to the individual correctional facilities.

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<sup>12</sup>*Hudson City Sch. Dist.*, 24 PERB ¶3039, at 3080 (1991).

<sup>13</sup>*Supra* note 11.

We acknowledged in *Hudson City School District* ( hereafter, *Hudson*)<sup>14</sup> that “[a]s the concepts of unit work, exclusivity and discernible boundaries so often identified in our transfer-of-work cases are necessarily fact-specific, any analogy to precedent will rarely, if ever, be perfect.” That being said, this case is more analogous to our decisions in *Hudson, City of Rochester*<sup>15</sup> and *Clinton Community College*<sup>16</sup>, in which we held that where an employer has created or recognized a discernible boundary by practice, it could not thereafter negate the boundary, than it is to *City of Buffalo*.<sup>17</sup> We find that here the State has created a discernible boundary around snow removal at Butler. The Assistant Director, therefore, erred in granting the State’s motion to dismiss.

The motion to dismiss having been denied, the entire record is considered in determining whether a violation of the Act has been established.<sup>18</sup> A review of the evidence presented by the State establishes only that the identity of those persons responsible for snow removal, including snow-plowing, varies at individual correctional facilities, based upon the decisions made at each facility, either unilaterally by the

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<sup>14</sup>*Supra* note 12, at 3080.

<sup>15</sup>21 PERB ¶¶3040 (1988), *confirmed*, 155 AD2d 1003, 22 PERB ¶¶7035 (4th Dep’t 1989).

<sup>16</sup>29 PERB ¶¶3066 (1996).

<sup>17</sup>*See also New York City Transit Auth.*, 30 PERB ¶¶3004 (1997), *aff’d sub nom. New York City Transit Auth. v. PERB*, 251 AD2d 583, 31 PERB ¶¶7012 (2d Dept 1998), *motion for leave to appeal denied*, 31 PERB ¶¶7015 (2d Dep’t 1998), *leave to appeal denied*, 92 NY2d 819, 32 PERB ¶¶7003 (1999).

<sup>18</sup>*See Board of Educ. of the City Sch. Dist. of the City of Buffalo*, 24 PERB ¶¶3033 (1991), *confirmed*, 191 AD2d 985, 26 PERB ¶¶7002 (4th Dep’t 1993) (subsequent history omitted).

facility superintendent or by agreement with local CSEA officials. The procedures used to determine who will operate snow plows at facilities other than Butler would be relevant to the instant decision only if such procedures evidenced a State-wide practice or a State-mandated procedure. The evidence introduced by the State which shows that decisions about snow-plowing are made at the local facility level does not compel a contrary finding, even where such evidence demonstrates that the decision as to the assignment of snow-plowing was, in some instances, made unilaterally by the facility administration. The discernible boundary having been defined by facility, the practice at other facilities as to the use of unit personnel to perform the duties here in-issue is not relevant.

Based on the foregoing, CSEA's exceptions are granted, the State's cross-exception is denied, and the decision of the Assistant Director is reversed.

We, therefore, find that the State violated §209-a.1(d) of the Act when it unilaterally changed its policy to allow inmates to engage in the snow-plowing of roadways, parking lots and perimeter areas at the Butler Correctional Facility.<sup>19</sup>

IT IS, THEREFORE, ORDERED that the State of New York:

1. Immediately rescind its policy of allowing inmates to engage in snow-plowing of roadways, parking lots and perimeter areas at Butler Correctional Facility and

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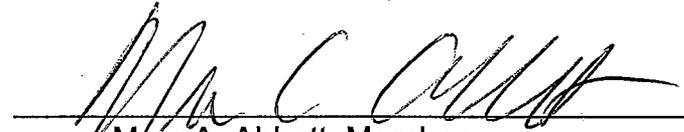
<sup>19</sup>The record indicates that despite the State's announcement of the in-issue policy at Butler, at the time of the hearing, no inmates had yet been utilized to perform any snow-plowing duties.

2. Sign and post the attached notice at all locations ordinarily used to post notices of information to employees in the unit represented by CSEA.

DATED: March 5, 2001  
Albany, New York



Michael R. Cuevas, Chairman



Marc A. Abbott, Member



John T. Mitchell, 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 State of New York (Department of Correctional Services - Butler Correctional Facility) in the unit represented by Civil Service Employees Association Inc., Local 1000, AFSCME, AFL-CIO that the Butler Correctional Facility will forthwith:

1. Rescind its policy of allowing inmates to engage in snow-plowing of roadways, parking lots and perimeter areas at Butler Correctional Facility.

Dated .....

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

**BUTLER CORRECTIONAL FACILITY**  
.....

*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

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

Charging Party,

- and -

**CASE NO. U-20478**

**CITY OF NEWBURGH,**

Respondent.

---

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

**HITSMAN, HOFFMAN & O'REILLY LLC (JOHN F. O'REILLY of counsel),  
for Respondent**

**BOARD DECISION AND ORDER**

This case comes to us on exceptions filed by the City of Newburgh (City) to a determination made by the Director of Public Employment Practices and Representation (Director) to accept the withdrawal of the instant charge by the Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO (CSEA), the charging party. The charge was withdrawn on November 15, 2000. The parties were scheduled to commence the hearing in the matter on the next day, November 16, 2000. Upon receipt by the Director of the withdrawal request, the parties were notified that the November 16 hearing was adjourned.

Counsel for the City objected to the Director's stated intention to accept the withdrawal of the charge because the Director had not consulted with the City prior to accepting the withdrawal to ascertain the City's position. After the case was closed, the City sought the Director's reconsideration of his decision to accept the withdrawal. The Director declined to reconsider his decision to approve the withdrawal of the charge. The City then filed the instant exceptions.

The City's exceptions basically repeat the arguments made to the Director in support of its position that the Director's approval of the withdrawal of the improper practice charge is contrary to §204.1(d) of our Rules of Procedure (Rules).<sup>1</sup> The City argues that CSEA has abused PERB's processes by withdrawing the instant charge to pursue a grievance with the same subject-matter through the parties' contractual grievance procedure and that CSEA has done this in the past. The City further argues that the acceptance of the withdrawal by the Director precludes the City from raising on exceptions to a final decision in the matter its arguments against the Director's earlier decision to reopen the instant charge after it had been administratively closed.<sup>2</sup> Finally, the City argues that it has expended significant time and money in preparation of its defense to the charge and is entitled to a ruling on its defense.

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<sup>1</sup>"Requests to the director to withdraw an improper practice charge or to the board to discontinue an improper practice proceeding will be approved unless to do so would be inconsistent with the purposes and policies of the act or due process of law."

<sup>2</sup>The City filed an interlocutory appeal to the Director's determination that he would allow the case to be reopened after it had been administratively closed. We denied the appeal. See *City of Newburgh*, 33 PERB ¶13031 (2000).

CSEA responds that there has been no abuse of process and that the Director's approval of the withdrawal is consistent with the purposes and policies of the Act. We agree.

We affirm the action of the Director. The Director has the authority to approve the withdrawal of a charge by the charging party without the approval of the other party or parties to the proceeding until a final order is issued in a case.<sup>3</sup> No such final order was issued here.

Further, the City's argument that it has been prejudiced because it will now have to defend the matter in a different forum is specious. The City itself, in its answer to the charge, argued that the matter is governed by the terms of the parties' collective bargaining agreement. Likewise, the City's argument that it has expended time and money in preparation of its defense is insufficient to persuade us that the City has been prejudiced.<sup>4</sup>

We also reject the City's argument that the Director's decision deprives it of the right to appeal the Director's earlier decision to reopen the matter. There is no right to such an appeal. Indeed, in our decision on the City's interlocutory appeal we noted: "If this charge proceeds to disposition by an ALJ with or without a hearing, *and if that disposition is adverse to the City*, the question as to whether the charge should have

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<sup>3</sup>New York State Public Employees Fed'n and James J. Sheedy, 17 PERB ¶3037 (1984).

<sup>4</sup>*Id.*

been reopened can be raised to us by the City on appeal from that the decision.”

(Emphasis added)<sup>5</sup>

Finally, to the extent that the City argues that CSEA has abused our processes because it has repeatedly made the same claim against the City, without pursuing it to a final decision either before PERB or at grievance arbitration, it appears from this record that the contrary is true. CSEA has withdrawn the charge and apparently has filed a grievance pursuant to the parties' negotiated contractual grievance procedure. The purposes of the Act are served when an improper practice charge is withdrawn because the parties have resolved the underlying dispute, the charging party has decided to pursue the matter through the negotiated contractual grievance procedure or the charging party has assessed the potential merits of the charge and has determined not to expend time and money in pursuing a charge that has limited prospects for success. We make no finding here as to CSEA's motivation in withdrawing the instant charge.

We do note, however, that it is the City that has prolonged the processing of this case by filing its earlier interlocutory appeal, twice demanding that the Director reconsider his determination to accept the withdrawal of the charge and filing these exceptions. These exceptions seek a ruling from this Board that would compel CSEA to litigate a charge which CSEA has withdrawn and which the City already sought to have closed when it was reopened by the Director. We can envision circumstances in

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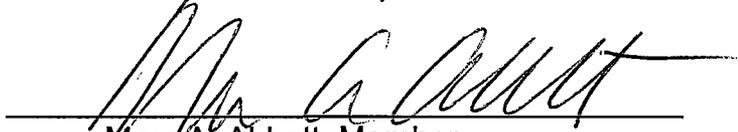
<sup>5</sup>*Supra* note 2, at 3084.

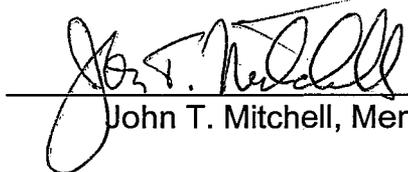
which we would compel a charging party to litigate an improper practice charge that the charging party has withdrawn without condition, but such exigent circumstances are not here present.

For the reasons set forth above, the City's exceptions are denied. We hereby confirm the Director's determination to accept CSEA's withdrawal of this improper practice charge. SO ORDERED.

DATED: March 5, 2001  
Albany, New York

  
\_\_\_\_\_  
Michael R. Cuevas, Chairman

  
\_\_\_\_\_  
Marc A. Abbott, Member

  
\_\_\_\_\_  
John T. Mitchell, 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,  
WESTCHESTER COUNTY LOCAL 860,  
UNIT 9200,**

Charging Party,

- and -

**CASE NO. U-19287**

**COUNTY OF WESTCHESTER**

Respondent.

---

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

**ALAN D. SCHEINKMAN, COUNTY ATTORNEY (KYLE C. MCGOVERN of  
counsel), for Respondent**

**BOARD DECISION AND ORDER**

This case has been remanded to us by order of Supreme Court, Albany County as affirmed by the Appellate Division, Third Department,<sup>1</sup> for the purpose of modifying our remedial order in this matter<sup>2</sup> to require compensation to Michael Holcomb for

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<sup>1</sup>*CSEA Inc. v. PERB*, 32 PERB 7011 (1999), *aff'd* 276 AD2d 967 (3d Dep't 2000), 33 PERB ¶7018 (2000), *leave to appeal denied* \_\_\_ NY2d \_\_\_ (2001), \_\_\_ PERB ¶ \_\_\_ (2001).

<sup>2</sup>32 PERB ¶3018 (1999).

losses in pay and benefits he may have suffered by reason of his termination from employment by the County of Westchester (County).

The Administrative Law Judge (ALJ) found that Westchester County had terminated Holcomb's employment on May 16, 1997, while a probationary employee with the County Department of Environmental Facilities (hereinafter DEF), in violation of the Public Employees' Fair Employment Act (Act) §§209-a.1(a) and (c). Holcomb had been previously employed by the County for approximately nine years in another department. It was during this previous employment that Holcomb served as a grievance representative and shop steward for the Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO, Westchester County Local 860, Unit 9200 (CSEA). He had also unsuccessfully run for the presidency of his local CSEA bargaining unit.

On January 21, 1997, shortly after Holcomb began working in DEF, he was counseled and given a verbal warning because he failed to properly notify the department concerning his absence from work. During this counseling meeting, Holcomb was also advised by his supervisor that he should limit the assistance given to other employees, whether it was union business or personal problems, unless requested by the employee. On January 28, 1997, Holcomb received another warning notice for being late to work and failing to notify the department that he would be late for work.

On March 17, 1997, Holcomb injured his back at work and received medical treatment in the hospital emergency room. Although he was not ordered to stay home,

Holcomb did not return to work for approximately two weeks. On March 27, 1997, Holcomb received a note from the County directing him to contact DEF immediately. Holcomb submitted a note from his doctor excusing him for the absence.

During his absence, DEF issued warning notices to Holcomb for his absences even though none of the notices were served upon him. A dispute ensued over his ability to return to work, with the County contesting his worker's compensation claim. Upon Holcomb's return to work on May 9, 1997, for light duty, he was given a letter terminating his employment. The job performance evaluation prepared by Holcomb's supervisor, also dated May 9, 1997, rated his work as "unsatisfactory" in nine categories, "sometimes below average" in nine categories and "satisfactory" or average in the remaining three categories. In the comment section, his supervisor noted that Holcomb "tries to get involved with every bodies [sic] union business even if they don't want him involved."

The ALJ found that, but for the supervisor's animus, Holcomb would not have been negatively evaluated and/or his employment would not have been terminated. The ALJ concluded that the County had violated §§209-a.1(a) and (c) of the Act. The ALJ ordered that the County rescind the termination and evaluation of Holcomb; reinstate Holcomb to his former position and compensate him for any loss of pay and benefits he may have suffered less any earnings or other compensation he may have received during the period May 16, 1997 to his reinstatement; conduct a *de novo* evaluation without regard to his union activities; and refrain from interfering with, restraining or discriminating against Holcomb in its evaluation of him.

Although agreeing with the ALJ that Holcomb's termination violated the Act and that his reinstatement was necessary to permit him to be reevaluated, we modified the ALJ's order to add a condition to the back pay award.<sup>3</sup> Pursuant to Article 78 of the CPLR, CSEA sought review of our determination. Supreme Court, Albany County reversed and remanded the matter to us so that we could modify our prior order and provide an unconditional back pay award to Holcomb. This judgment has been affirmed by the Appellate Division, Third Department.

Based on the foregoing, we therefore modify our prior order to award back pay and benefits without condition.

IT IS, THEREFORE, ORDERED that the prior order of this Board be, and it hereby is, modified, and we order the County to:

1. Rescind the evaluation of Michael Holcomb and the recommendation regarding his continued employment.
2. Offer Michael Holcomb immediate reinstatement to his former job title with a placement outside the Department of Environment Facilities and outside the direct or indirect supervision of Kenneth Grauer for a second

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<sup>3</sup>*Supra* note 2. We ordered a second probationary period be served by Holcomb, in his former job title but in a job outside the DEF and that Holcomb be evaluated by a different supervisor. We conditioned the award of back pay and benefits upon Holcomb's successful completion of the second probationary period.

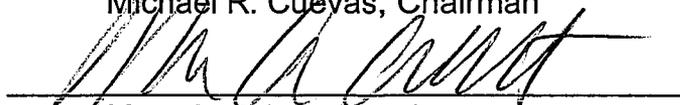
probationary period of at least, but not limited to, the minimum time specified by law for the purpose of evaluating probationary employees.

3. Conduct a *de novo* evaluation of Michael Holcomb at the end of the time period specified in paragraph 2 above, without consideration of his union activities for the purpose of obtaining a recommendation regarding whether he should be continued in employment.
4. Compensate Michael Holcomb for any loss of pay and benefits he may have suffered by reason of his termination, from May 16, 1997 to the effective date of the offer of reinstatement, less any earnings or other compensation received by him during that time, with interest at the currently prevailing maximum legal rate.
5. Not interfere with, restrain, coerce or discriminate against Michael Holcomb in its evaluation of him or in its recommendation and determination regarding his continued employment.
6. Post notice in the form attached in all locations ordinarily used to post notices of information to unit employees.

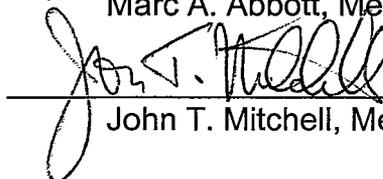
DATED: March 5, 2001  
Albany, New York



Michael R. Cuevas, Chairman



Marc A. Abbott, Member



John T. Mitchell, 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 County of Westchester in the unit represented by Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO, Westchester County Local 860, Unit 9200, that the County of Westchester will forthwith:

1. Rescind the evaluation of Michael Holcomb and the recommendation regarding his continued employment.
2. Offer Michael Holcomb immediate reinstatement to his former job title with a placement outside the Department of Environment Facilities and outside the direct or indirect supervision of Kenneth Grauer for a second probationary period of at least, but not limited to, the minimum time specified by law for the purpose of evaluating probationary employees.
3. Conduct a *de novo* evaluation of Michael Holcomb at the end of the time period specified in paragraph 2 above, without consideration of his union activities for the purpose of obtaining a recommendation regarding whether he should be continued in employment.
4. Compensate Michael Holcomb for any loss of pay and benefits he may have suffered by reason of his termination, from May 16, 1997 to the effective date of the offer of reinstatement, less any earnings or other compensation received by him during that time, with interest at the currently prevailing maximum legal rate.
5. Not interfere with, restrain, coerce or discriminate against Michael Holcomb in its evaluation of him or in its recommendation and determination regarding his continued employment.

Dated .....

By .....

(Representative)

(Title)

County of Westchester  
.....

*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

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

Charging Party,

- and -

**CASE NO. D-0269**

**BUFFALO FEDERATION OF TEACHERS,**

Respondent.

---

**DAMON & MOREY LLP (JAMES N. SCHMIT AND MELINDA G. DISARE of  
counsel), for Charging Party**

**ZDARSKY, SAWICKI & AGOSTINELLI (K. MICHAEL SAWICKI of counsel),  
for Respondent**

**JANET AXELROD, GENERAL COUNSEL (ROBERT W. KLINGENSMITH, JR.  
ESQ. of counsel), for Respondent**

**BOARD DECISION AND ORDER**

On September 27, 2000, the Board of Education of the City School District of the City of Buffalo (District) filed a charge which, as amended, alleged that the Buffalo Federation of Teachers (Federation) had violated §210.1 of the Public Employees' Fair Employment Act (Act) in that it engaged in a strike against the District on September 7 and September 14, 2000. The charge further alleged that on September 7, 2000, approximately 4,021 teachers out of 4,060 teachers represented by the Federation did not call in and did not appear for work. On September 14, 2000, approximately 4,040 teachers did not call in or appear for work.

The parties' thereafter entered into a stipulation of settlement that withdrew related improper practice charges filed by both the District and the Federation, agreed that the parties will engage a jointly chosen third party neutral to assist the parties in promoting and maintaining a cooperative and harmonious labor management relationship, and, with respect to the strike charge, the parties stipulated and agreed, *inter alia*, that:

- A. The Federation engaged in an unlawful strike on September 7 and September 14, 2000.
- B. Although the District believes that the events between 1990 and 2000, when presented in context, do not constitute a violation of the Taylor Law, when viewed in the totality of events, especially including a history of litigation relative to labor agreements and back wages extending over a decade, the parties agree that, based upon the foregoing circumstances, the Federation could conclude that a work stoppage on September 7 and September 14, 2000, was justified.
- C. The strike charge makes no allegations and provides no documentary evidence of the strike's impact on public health, safety and welfare.
- D. PERB will impose a penalty of a one-year suspension of the Federation's dues and agency shop fee deduction privileges, based only on the facts, terms and conclusions contained in the stipulation, which PERB will immediately suspend, subject to

reinstatement should the Federation strike prior to reaching agreement on a successor contract to the collective bargaining agreement between the parties which will expire on June 30, 2004.

Based upon the annexed stipulation of settlement, we find that the Buffalo Federation of Teachers violated §210.1 of the Act in that it engaged in a strike as charged, and we determine that the recommended penalty is a reasonable one and will effectuate the purposes of the Act.<sup>1</sup>

This is the first time that this Board has found that a strike has occurred, that the employee organization so charged was responsible for the strike, that dues and agency shop fee deduction privileges should be suspended and that our penalty has been suspended before implementation. A brief recitation of the parties' labor relations history, although set forth in the appended agreement and stipulation of the parties, provides part of the rationale for our decision.

The District and the Federation have been in unique labor relations situation for ten years because of litigation arising from negotiations for a collective bargaining agreement in 1990, back pay litigation related to those negotiations, tentative settlements, financial difficulties suffered by the District for the last decade, securing funding for the settlement of litigation, and delays in payment of the back pay amount. This is where the parties found themselves when they began negotiations for the current collective bargaining agreement. Several improper practice charges were filed by the parties as a result of these events. The parties' stipulation of settlement resolves

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<sup>1</sup>See *New York State Inspection, Security and Law Enforcement Employees. Dist. Council 82*, 14 PERB ¶3069 (1981).

not only the instant strike charge, but several improper practice charges, relieving the parties of the burden of litigating the improper practice charges as well as the allegations of extreme provocation raised by the Federation in defense of the strike charge. We note that extreme provocation is not a defense to a strike charge but may be used to mitigate damages should a strike be found to have occurred.<sup>2</sup>

By reaching a stipulation of settlement, the parties' have evidenced a desire to establish a stable labor-management relationship. They have settled the current collective bargaining agreement, their back pay dispute has been settled and the settlement implemented, they have agreed to use a neutral facilitator to avoid or resolve future labor disputes, they have settled the instant improper practice charges and they have proposed a settlement of the strike charge. Nonetheless, we must view the parties' assertions of a new era of labor peace with some skepticism, given their bargaining history, litigation history, failure to avail themselves of PERB's conciliation procedures before the strike occurred, the disruption caused to the students and parents within the District and the Federation's strike on September 14, 2000, after both PERB and the courts had become involved. However, we note that the Federation has acknowledged that it does not assert the right to strike, there has been a \$250,000 fine levied against the Federation that has been paid, the Federation president and officials have been fined, the Federation president has served a jail sentence as a result of his actions during the strike and the "2 for 1" penalties have been imposed by the District.

Under normal circumstances, a two-day strike, with no strike having occurred in twenty-three years, would likely result in a six- to twelve-month suspension of dues and

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<sup>2</sup>Act, §§210.3 (e) and (f).

agency shop fee deductions privileges. We determine that a twelve-month suspension of dues and agency shop fee deductions privileges is warranted here. The implementation of the loss of dues and agency shop fee deduction privileges is also hereby suspended, unless the Federation causes, encourages, instigates, directs, condones or engages in a strike against the District prior to the successful negotiation of a successor to the collective bargaining agreement which expires on June 30, 2004. In such case, the suspension of dues and agency shop fee deduction privileges will be implemented immediately. We view the effect of this order to extend the threat of the loss of dues and agency shop fee deduction privileges through a critical period in the parties' relationship. Absent extreme provocation by the District, another strike by the Federation within the next four years will likely result in additional penalties of a suspension of dues and agency shop fee deduction privileges for eighteen to twenty-four months. At that time, we would also have to consider the full panoply of options available to us to address another strike in so short a time period, up to and including decertification of the Federation as the exclusive bargaining agent for the District's teachers. This is not to say that we will not also consider whether and to what extent actions taken by the District constitute an improper practice or extreme provocation if there is another strike because the District does not come to this settlement with clean hands.

Our monitoring of the parties' labor relationship, coupled with the threat of the loss of dues and agency shop fees, will enable the parties to prove their commitment to their new relationship. Once a successor collective bargaining agreement has been negotiated and implemented and the Federation has affirmed at that time that it does

not assert the right to strike, the Federation's dues and agency shop fee deduction privileges will be fully restored, with no threat of immediate loss.

It is our belief that the damage to the parties' labor relationship can be repaired by this order. Unfortunately, the damage to the public's confidence that the educational services provided by the District will continue uninterrupted will, doubtless, take longer to repair. We hope this unique resolution to the instant charge, and the underlying disputes, will ensure that there will be time for the healing process to occur.

IT IS, THEREFORE, ORDERED that:

1. The Federation's right to have dues and agency shop fee deduction privileges be suspended for a period of one year;
2. The suspension of dues and agency shop fee deduction privileges is immediately suspended; subject to reinstatement should the Federation cause, encourage, instigate, direct, condone or engage in a strike against the District at any time prior to the Federation and the District entering into a successor contract to the collective bargaining agreement between the Federation and the District , which will expire on June 30, 2004.

DATED: March 5, 2001  
Albany, New York



Michael R. Cuevas, Chairman



Marc A. Abbott, Member



John T. Mitchell, Member

## AGREEMENT AND STIPULATION

The parties enter into this Agreement and these Stipulations for the purpose of resolving Case Nos. D-0269, U-22161, U-22023, U-21102, U-21939 and U-21256, and to facilitate the parties' [interest] in promoting and maintaining a new era of cooperative and harmonious labor relations. This Agreement and the Stipulations set forth herein are conditioned upon PERB imposing a penalty of a one-year suspension of the BTF's [Buffalo Teachers Federation's] dues [and agency fee] deduction privileges, based only upon the facts, terms and conclusions herein, which penalty PERB will immediately suspend, subject to reinstatement should BTF strike prior to reaching agreement on a successor contract to the collective bargaining agreement between the parties, which will expire [on] June 30, 2004.

The parties recognize and acknowledge that entering into this Agreement and these Stipulations is subject to approval of the Board of Education for the District and the BTF.

WHEREAS the City School District of the City of Buffalo (District) has filed a strike charge against the BTF alleging that the BTF engaged in an unlawful strike on September 7 and September 14, 2000; and

WHEREAS the charge makes no allegations nor provides documentary evidence of the alleged unlawful strike's impact on public health, safety and welfare; and

WHEREAS the BTF answered said charge denying that it engaged in such activity, and affirmatively pleading that any such activity was the result of extreme provocation cognizable under Section 210; and

WHEREAS the BTF filed four improper practice charges (Case Nos. U-21102, U-21256, U-21939, and U-22023), alleging violations of Section 209-a.1(d) by the District, which were consolidated with the District's strike charge; and

WHEREAS the District filed an improper practice charge against the BTF (Case No. U-22161) alleging a violation of Section 209-a.2(b) by the BTF which was consolidated with the District's strike charge; and

WHEREAS the parties filed answers to each other's improper practice charges; and

WHEREAS the BTF has been fined \$250,000 for engaging in an illegal strike on September 14th after having also engaged in such a strike on September 7th, and the BTF President has also been assessed the maximum possible fine and sentenced to 15 days in jail, and the BTF Vice President and Secretary have also been assessed the maximum possible fine for same; and the teachers having paid the two-for-one penalty provided for in the Taylor Law; and

WHEREAS the District and the BTF have successfully negotiated a settlement of back pay disputes [related] to the collective bargaining agreements of 1990 and 1994 and have successfully negotiated a contract to succeed the contract which expired on June 30, 1999, which successor contract expires on June 30, 2004; and

WHEREAS such negotiations have led to divisiveness, rancor and hostility; and

WHEREAS the BTF and the District are desirous of putting their hostilities behind them, and have resolved to enter a new era of cooperative and harmonious labor relationships; and

WHEREAS the District has agreed that it will not commence or support any civil action or proceeding against the BTF related to the strike.

The parties hereby stipulate and agree:

1. The District hereby withdraws Case No. U-22161.
2. The BTF withdraws Improper Practice Charges U-21102; U-21256, U-22023 and amends its affirmative defense to the strike charge by incorporating therein those allegations contained in Case Nos. U-21102, U-21256 and U-22023.
3. The BTF hereby withdraws Case No. U-21939.
4. The parties will engage a jointly chosen third party neutral to assist the parties in promoting and maintaining a cooperative and harmonious labor management relationship and to continue the healing process.
5. With respect to the strike charge, the parties stipulate and agree to the following:
  - A. The BTF engaged in an unlawful strike on September 7 and September 14, 2000.
  - B. The parties stipulate to the following facts with respect to BTF's affirmative defense:
    - i) In 1990, the District and the BTF negotiators reached a "tentative agreement" on a collective bargaining contract covering 1990 through 1994. The parties extensively litigated events relating to the then Board's rejection of that tentative agreement after it had been ratified by the teachers.

The District was found to have negotiated in bad faith and was required to execute the agreement and fund it. The amount of back pay due has also been part of that extensive litigation. This was settled by the current Superintendent, Board of Education and the BTF President, Executive Board, Council of Delegates, and the BTF membership in January 2001, a decade after the 1990 tentative agreement. The teachers are scheduled to be paid later this year. (The underlying PERB and court decisions are a public record.)

- ii) Representatives of the parties conferred regarding negotiations for a successor to the 1996-99 collective bargaining agreement in February 1999 and held an initial meeting to exchange proposals on June 2, 1999.
- iii) The parties' negotiators met on at least 14 occasions prior to November of 1999.
- iv) The BTF's initial package of proposals contained, among other things, a proposal regarding salaries.
- v) The District's negotiators did not accept the BTF's salary proposal on June 2, 1999 and first presented a package which included a salary increase on November 22, 1999.
- vi) The proposal provided that negotiations relative to wages for the years July 1, 2001 to June 30, 2004 could be reopened at the District's option in the event Supreme Court

litigation relating to wages under the 1990-1994 negotiated agreement remained unresolved.

vii) There were many negotiation sessions held between November 1999 and September 6, 2000. However, the teachers returned to school for a second school year under an expired contract.

viii) On September 12, 2000, the District's chief negotiator and Superintendent , Schmit and Canedo [respectively], the BTF President and Vice President, Rumore and LeWin [respectively], met.

ix) At that meeting the participants discussed possible bases on which settlement might be reached.

x) Following that discussion, the BTF and Schmit prepared separate memoranda concerning the discussion.

xi) On September 13, 2000, Rumore and LeWin shared and discussed the memorandum they prepared with Schmit and Canedo and some areas of agreement, disagreement and those needing clarification were specifically noted. The Schmit memorandum was not shared with the BTF at that time.

xii) Schmit and Canedo subsequently met with the Board of Education.

xiii) Following that meeting with the Board, the District's negotiating team met and modified the District's last written proposal. That modified proposal increased the District's last written proposal of September 9, 2000 with respect to salary and early retirement incentive, but was less than what was in the BTF's memorandum. The modified proposal was communicated to the BTF, which subsequently publicly characterized it as "reneging."

xiv) Although the District believes that the foregoing events, when presented in context, do not constitute a violation of the Taylor Law, when viewed in the totality of events, especially including a history of litigation relative to labor agreements and back wages extending over a decade, the parties agree that, based upon the foregoing circumstances, the BTF could conclude that a work stoppage on September 7th and 14th was justified.

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

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In the Matter of

**NEW YORK STATE LAW ENFORCEMENT OFFICERS  
UNION, DISTRICT COUNCIL 82, AFSCME, AFL-CIO,**

Petitioner,

-and-

**CASE NO. C-5036**

**CITY OF RENSSELAER,**

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 New York State Law Enforcement Officers Union, District Council 82, AFSCME, AFL-CIO, has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Included: Dispatchers.

Excluded: All others.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the New York State Law Enforcement Officers Union, District Council 82, AFSCME, AFL-CIO. The duty to negotiate collectively includes the mutual obligation to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written agreement incorporating any agreement reached if requested by either party. Such obligation does not compel either party to agree to a proposal or require the making of a concession.

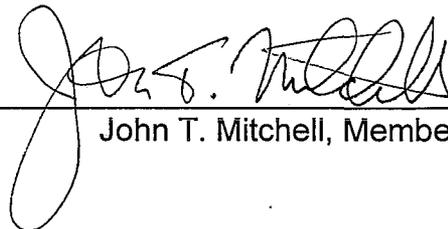
DATED: March 5, 2001  
Albany, New York



Michael R. Cuevas, Chairman



Marc A. Abbott, Member



John T. Mitchell, Member

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of

**AMERICAN FEDERATION OF STATE, COUNTY  
AND MUNICIPAL EMPLOYEES, COUNCIL 66,  
LOCAL 1044, AFL-CIO,**

Petitioner,

-and-

**CASE NO. C-5058**

**MONTICELLO CENTRAL SCHOOL DISTRICT,**

Employer,

-and-

**MONTICELLO TEACHER AIDES ASSOCIATION,**

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,<sup>1</sup>

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

IT IS HEREBY CERTIFIED that the American Federation of State, County and Municipal Employees, Council 66, Local 1044, AFL-CIO has been designated and selected by

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<sup>1</sup> This unit has been represented by the Monticello Teacher Aides Association, which notified PERB that it disclaims any interest in further representing the unit.

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.

Included: Teacher aides, library aides/clerks, special education aides and aides for students with special physical needs in all schools within the Monticello Central School District.

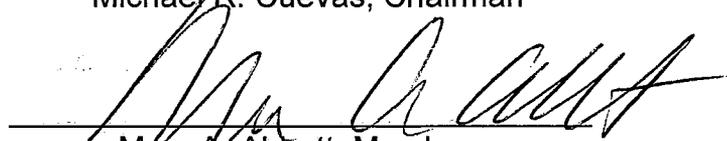
Excluded: All other employees.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the American Federation of State, County and Municipal Employees, Council 66, Local 1044, AFL-CIO. The duty to negotiate collectively includes the mutual obligation to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written agreement incorporating any agreement reached if requested by either party. Such obligation does not compel either party to agree to a proposal or require the making of a concession.

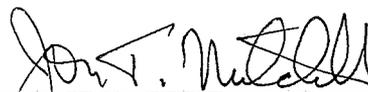
DATED: March 5, 2001  
Albany, New York



Michael R. Cuevas, Chairman



Marc A. Abbott, Member



John T. Mitchell, Member

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of

**LONG BEACH PUBLIC SCHOOL EMPLOYEES  
GROUP C ASSOCIATION,**

Petitioner,

-and-

**CASE NO. C-5049**

**LONG BEACH CITY SCHOOL DISTRICT,**

Employer,

-and-

**LOCAL 1671, AMERICAN FEDERATION OF  
STATE, COUNTY AND MUNICIPAL  
EMPLOYEES, AFL-CIO,**

Intervenor.

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**CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE**

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

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

IT IS HEREBY CERTIFIED that the Long Beach Public School Employees Group C Association has been designated and selected by a majority of the employees

of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Included: All secretarial, clerical, maintenance, custodial service, transportation, cafeteria, teacher aides, teaching assistants, and all other Employees in the Services Negotiation Unit, as defined in the Employer's By-Laws.

Excluded: Temporary and casual employees.

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

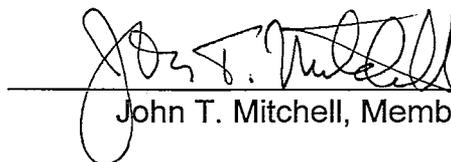
DATED: March 5, 2001  
Albany, New York



Michael R. Cuevas, Chairman



Marc A. Abbott, Member



John T. Mitchell, Member

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of

**MANLIUS PROFESSIONAL FIREFIGHTERS,**

Petitioner,

-and-

CASE NO. C-5022

**VILLAGE OF FAYETTEVILLE,**

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 Manlius Professional Firefighters 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.

Included: All full-time Firefighters/EMTs.

Excluded: All others.

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

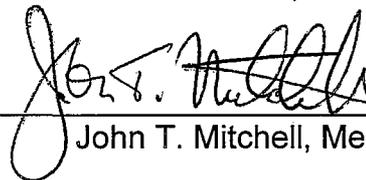
DATED: March 5, 2001  
Albany, New York



Michael R. Cuevas, Chairman



Marc A. Abbott, Member



John T. Mitchell, Member

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

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In the Matter of

**UNITED PUBLIC SERVICE EMPLOYEES UNION,**

Petitioner,

-and-

**CASE NO. C-5041**

**EAST QUOGUE 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 United Public Service Employees Union 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.

Included: All clerical, Aides (Library, Classroom), and Registered Nurses.

Excluded: Secretary to the Superintendent of Schools, Secretary to the Superintendent of Schools/Principal and Secretary to the Business Manager and all other employees.

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

DATED: March 5, 2001  
Albany, New York



Michael R. Cuevas, Chairman



Marc A. Abbott, Member



John T. Mitchell, Member

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of

**TEAMSTERS LOCAL 317, INTERNATIONAL  
BROTHERHOOD OF TEAMSTERS,**

Petitioner,

-and-

**CASE NO. C-5044**

**VILLAGE OF CAYUGA HEIGHTS,**

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 Teamsters Local 317, International Brotherhood of Teamsters has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Included: Full-time employees in the following titles who have successfully completed their eight week probationary period: senior motor equipment operator, motor equipment operator, mechanic and laborer.

Excluded: Superintendent of Public Works, supervisor, elected officials, clerical, police, fire fighters, temporary employees, the seasonal technical assistant to the superintendent, and summer seasonal employees to a maximum of two such employees for a maximum of twelve weeks each per season.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with Teamsters Local 317, International Brotherhood of Teamsters. The duty to negotiate collectively includes the mutual obligation to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written agreement incorporating any agreement reached if requested by either party. Such obligation does not compel either party to agree to a proposal or require the making of a concession.

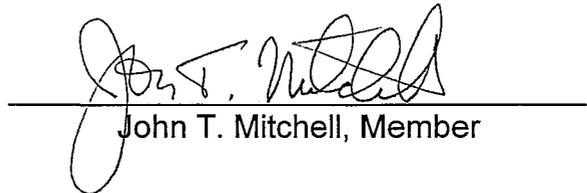
DATED: March 5, 2001  
Albany, New York



Michael R. Cuevas, Chairman



Marc A. Abbott, Member



John T. Mitchell, Member