State of New York Public Employment Relations Board Decisions from June 27, 2001

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On April 17, 2001, the Director of Public Employment Practices and Representation issued a decision in the above matter finding that the petition filed by Christopher Anderson, Richard Crowe and Christine Merrill (petitioners), employees of the City of Glens Falls (employer) to decertify the Public Employees Federation (intervenor) as negotiating representative for certain of its employees should be granted for lack of opposition.\(^1\) No exceptions have been filed to the decision.

\(^1\)The intervenor advised the Director by letter dated March 15, 2001, that it was “disclaiming interest in continued representation of the employees.”
IT IS, THEREFORE, ORDERED that the Public Employees Federation be, and it hereby is, decertified as the negotiating representative of the following unit of employees of the employer:

Included: Electrical Director, Cemetery Superintendent, WWTP Laboratory Chemist, Principal WWTP Operator, Chief WWTP Operator, Building Inspector, Plumbing Inspector, City Forester, Recreation Superintendent.

Excluded: Assessor, Assistant City Attorney, Director of Transportation, Superintendent of Water/Sewer, Code Enforcement Officer and all other employees.

DATED: June 27, 2001
New York, New York

Michael R. Cuevas, Chairman
Marc A. Abbott, Member
John T. Mitchell, Member
STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

MIDDLE COUNTRY LIBRARY EMPLOYEES'
ASSOCIATION, NYSUT, AFT, AFL-CIO,

Petitioner,

- and -

MIDDLE COUNTRY PUBLIC LIBRARY,

Employer.

DR. JOHN F. DE GREGORIO, for Petitioner

FRANK & BRESLOW, P.C. (ALLEN B. BRESLOW of counsel), for Employer

BOARD DECISION AND ORDER

On January 26, 2001, the Middle Country Library Employee's Association, NYSUT, AFT, AFL-CIO (petitioner) filed, in accordance with the Rules of Procedure of the Public Employment Relations Board, a timely petition seeking certification as the exclusive representative of certain employees of the Middle Country Public Library (employer).

Thereafter, the parties executed a consent agreement in which they stipulated that the following negotiating unit was appropriate:

Included: All full-time and part-time Librarians.

Excluded: Library Director, Assistant Director, Administrative Assistant, any individual who functions as Business Office Manager (presently a
Principal Library Clerk), and all other full-time and part-time employees.

Pursuant to that agreement, a secret-ballot election was held on May 10, 2001, at which a majority of ballots were cast against representation by the petitioner₁.

Inasmuch as the results of the election indicate that a majority of the eligible voters in the unit who cast ballots do not desire to be represented for the purpose of collective bargaining by the petitioner, IT IS ORDERED that the petition should be, and it hereby is, dismissed.

DATED: June 27, 2001
New York, New York

Michael R. Cuevas, Chairman

Marc A. Abbott, Member

John T. Mitchell, Member

₁Of the 54 ballots cast, 25 were for representation and 29 against representation. There were no challenged ballots.
In the Matter of

MIDDLE COUNTRY LIBRARY EMPLOYEES' ASSOCIATION, NYSUT, AFT, AFL-CIO,

Petitioner,

- and -

MIDDLE COUNTRY PUBLIC LIBRARY,

Employer.

DR. JOHN F. DE GREGORIO, for Petitioner

FRANK & BRESLOW, P.C. (ALLEN B. BRESLOW of counsel), for Employer

BOARD DECISION AND ORDER

On January 26, 2001, the Middle Country Library Employees' Association, NYSUT, AFT, AFL-CIO (petitioner) filed, in accordance with the Rules of Procedure of the Public Employment Relations Board, a timely petition seeking certification as the exclusive representative of certain employees of the Middle Country Public Library (employer).

Thereafter, the parties executed a consent agreement in which they stipulated that the following negotiating unit was appropriate:

Included: All full-time and part-time Clerks, Clerk Typists, Library Clerks, Principal Library Clerks, Senior Clerks, Career Counselors, Community Relations Assistants, Librarian Trainees, Library
Assistants, Community Service Aides, Pages, Computer Technicians, Custodial Aides, Custodial Workers, Custodians, Head Custodians, Guards, Security Guards, and all other full-time and part-time employees not excluded below.

Excluded: Library Director, Assistant Director, Administrative Assistant, any individual who functions as Business Office Manager (presently a Principal Library Clerk), and all full-time and part-time Librarians.

Pursuant to that agreement, a secret-ballot election was held on May 10, 2001, at which a majority of ballots were cast against representation by the petitioner.

Inasmuch as the results of the election indicate that a majority of the eligible voters in the unit who cast ballots do not desire to be represented for the purpose of collective bargaining by the petitioner, IT IS ORDERED that the petition should be, and it hereby is, dismissed.

DATED: June 27, 2001
New York, New York

Michael R. Cuevas, Chairman
Marc A. Abbott, Member
John T. Mitchell, Member

1 Of the 145 ballots cast, 61 were for representation and 84 against representation. There were no challenged ballots.
This case comes to us on exceptions filed by the County of Steuben (County) to a decision of an Administrative Law Judge (ALJ) dismissing its representation petition which sought to fragment certain supervisory titles from a unit of County employees represented by the Civil Service Employees' Association, Inc., Local 1000, AFSCME, AFL-CIO, Steuben County Unit of Steuben County Local #851 (CSEA). The ALJ found that the at-issue titles were only mid-level supervisors of other unit titles and that there was no evidence that there was or had been a subversion of their supervisory responsibilities such as to create a conflict of interest warranting the removal of the supervisors from the unit. As to certain nursing supervisors in the bargaining unit, the
ALJ found, contrary to the County’s argument, that there was no evidence that CSEA had attempted to intimidate, undermine or retaliate against them that would compel a finding of inadequate representation.

The County excepts to the ALJ’s decision, arguing that the ALJ committed errors of fact and law. CSEA supports the ALJ’s decision.

Based upon our review of the record and our consideration of the parties’ arguments, we affirm the decision of the ALJ.

FACTS

The County filed the petition which, as amended, sought the removal of fifty-three supervisors from an overall unit of approximately 762 County employees. The County argued that the supervisors perform high level supervisory functions which cause a conflict of interest with the rank-and-file employees they supervise. The County further points to two incidents involving a supervising public health nurse, Kathyron Maine, and the CSEA Labor Relations Specialist, Teri Menkiena, as evidencing a subversion of supervisory responsibility by CSEA and inadequate representation warranting the fragmentation of all of the at-issue titles from the CSEA bargaining unit.

The ALJ provides a thorough recitation and analysis of all relevant facts in her decision. Only the facts necessary for our decision are repeated here.

1CSEA was recognized as the exclusive bargaining representative of the unit in 1969 or 1970. Employees of the Sheriff’s Department were fragmented from the unit in 1986, upon a finding that the Sheriff and the County were joint employers of those employees.

2County of Steuben, 34 PERB ¶4008 (2001).
The County is a non-charter County; as such, the legislature and legislative committees have the ultimate authority over employment issues. The legislature ultimately hires and fires County employees. The county administrator coordinates the day-to-day operations of the County. Under the county administrator are the various commissioners or department heads of the County departments. The directors of the divisions within the departments report to the commissioner or department head. The directors are unrepresented. The titles at issue here are the next level of supervision over the rank-and-file and report to the directors. They provide the first level of supervision over subordinate titles and over clerical and support titles. For example, Mark Alger is the commissioner of the County's Department of Social Services. The various directors within that department report to him. Supervisory personnel, such as case supervisors, report to the directors. Caseworkers and senior caseworkers report to the case supervisor, who would also exercise supervisory responsibility over any support personnel assigned to the unit.

Supervisors make daily assignments based upon workload and geographic location, where relevant. Supervisors keep track of attendance, sign leave requests and provide the first level of review of their subordinates' work. They may not approve overtime requests, which are sent to the directors. The supervisor is responsible for completing the County employee evaluation form for each employee under his or her supervision. Supervisors may also interview candidates for vacancies within their unit.

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3One employee, Martha Ober, Child Support Enforcement Unit (CSEU) Coordinator in the Department of Social Services, is a director level and is in the bargaining unit.
They make recommendations to the director who makes recommendations to the commissioner or department head on hiring. Supervisors may also complete an Employer Incident Report. The Incident Report is not a form of discipline, but may be used in subsequent disciplinary proceedings. It is signed by the supervisor and the director and covers any one of several potential infractions, such as tardiness, insubordination, safety violations, drug or alcohol abuse, personal appearance, and lack of cooperation, among others. Supervisors are normally in attendance when an Incident Report is given to an employee by a director.

The ALJ, in her decision, describes in great detail the Administrative Code of the County of Steuben (Code) and the County-CSEA collective bargaining agreement (CBA). The Code is a detailed document setting forth the County's procedures governing most employment rules and regulations. As a result of the Code and the CBA, there is very little room for the exercise of discretion by supervisory personnel in the areas of attendance, leave, compensation, evaluations, and discipline.

As a result of the facts and circumstances surrounding an improper practice charge filed by CSEA against the County in 1998, the County further alleged that CSEA had intimidated and harassed a nursing supervisor to a degree that warranted the fragmentation of all supervisors from the CSEA unit. That charge, which was decided by us in 2000⁴, involved an allegation that the County had changed the geographic location of the work assignment of two County Public Health Nurses in retaliation for their filing of grievances challenging work schedules of public health nurses. Maine was

⁴County of Steuben, 33 PERB ¶3030 (2000).
one of the nursing supervisors who testified on behalf of the County that the work assignments were made by her and another nursing supervisor as a result of redistribution of territory assignments among three offices. The improper practice charge was dismissed.

In June 1999, shortly after that charge was filed, Maine told a nurse in her office who was returning from extended leave to report to her first when she came back to work. The nurse contacted Menkiena to be with her for the meeting with Maine. When Maine entered her office and saw Menkiena there, she asked Menkiena to leave. Menkiena refused. The two exchanged words and, thereafter, Maine filed a complaint against Menkiena with CSEA. Menkiena's actions were upheld by CSEA. There is also testimony that a female calling from Menkiena's telephone in June 2000 to Maine's home made derogatory remarks about Maine to her husband.\(^5\)

**DISCUSSION**

It is our long-standing policy that we will not fragment existing bargaining units absent compelling evidence of the need to do so.\(^6\) In reviewing a fragmentation petition to remove supervisors from a mixed unit of supervisors and rank-and-file employees, our primary focus is on the nature and level of supervisory functions performed by the supervisory employees sought to be fragmented.\(^7\)

\(^5\)The ALJ's decision discusses these events in reverse order. We have placed them in the proper chronological order and have considered them in that context.


\(^7\)See County of Genesee, 29 PERB ¶3068 (1996).
Utilizing the standard articulated in *County of Genesee, supra, (hereafter, Genesee)* the ALJ determined that the supervisors here are mid-level supervisors. As in *Genesee*, the supervisors who are the subject of this petition do not have a supervisory role in hiring, discharge, promotion or grievance administration. The County argues in its exceptions that the supervisors do have a role in hiring, discharge and promotion which is higher than the role of the supervisors in *Genesee*. While the record reflects that the supervisors in this case have input into hiring, discharge of probationary employees and promotion, it is in the form of recommendations to their superiors who are the final decision-makers in these areas. That their recommendations are routinely followed does not invest them with higher authority.⁸

In *Uniondale Union Free School District* ⁹ (hereafter, *Uniondale*), we found that department chairpersons with the same and greater supervisory responsibilities as the supervisors here were not appropriately fragmented from a long-standing unit of teachers and department chairpersons. The County, however, urges us to follow *County of Ulster*,¹⁰ where the County's petition to remove thirty-three supervisors from an overall County unit was granted. There, the supervisors were found to perform a full-range of supervisory functions, such as assigning work and overtime, interviewing prospective employees, making effective recommendations for hiring, promotion and

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⁸See *City of Schenectady*, 19 PERB ¶3027 (1986).


¹⁰16 PERB ¶3069 (1983).
discipline and approving requests for sick and vacation time. However, the details of their responsibilities were not spelled out in any detail in either the Board's decision or the decision of the Director of Public Employment Practices and Representation.11

We find the discussion of the supervisory responsibilities in Uniondale provides better guidance in reaching a decision as to whether to fragment supervisory titles from a long-standing unit of supervisory and rank-and-file employees. There we noted that while the issues may appear to be the same in cases of this type, such cases required an analysis of the facts of each case. Here, the supervisors sought to be fragmented are the first level of supervision in the unit. There are several levels of supervision above them. Their roles in signing time sheets, granting leave requests, filling out evaluations and Incident Reports and assigning work are severely circumscribed by the CBA and the Code. While these supervisors play a role in evaluations and counseling of employees and have, at times, found themselves at odds with unit members whom they supervise, as we found in Genesee:

We are not unmindful ... that the direction and evaluation functions can and have caused tensions between supervisors and subordinates, the latter at least perceiving the direction and evaluation as criticism or as actions which can lead to discipline or other adverse personnel actions. There are, however, multiple sources of tension within a workplace cutting across all levels of employees. Unless we were to establish a per se supervisory exclusion rule, which we never have been willing to do, tensions, real or imagined, stemming from supervisor-subordinate relationships are not entitled to more weight in making a unit determination than

any other of the myriad sources of workplace pressures and strains which can affect employees.\textsuperscript{12}

We find that none of the supervisory responsibilities of the at-issue employees warrants their fragmentation from this long-standing unit. Neither does the fact that there have been conflicts within the unit between supervisors and the employees they supervise. We refer specifically to the prior improper practice charge.\textsuperscript{13} A union at times may be required to represent the interests of one group of unit employees over another group of unit employees.\textsuperscript{14} Such an action provides insufficient grounds for fragmenting a group of employees from a unit in effect for over thirty years.

The final ground for the County's petition is the treatment by Menkiena of Maine during their clash in Maine's office in 1999 and the phone call made from Menkiena's telephone to Maine's home in 2000.\textsuperscript{15} The dispute in Maine's office does not rise to the level of inadequate representation of Maine, individually, or the supervisors, as a group. There was a misunderstanding over the purpose of the meeting and a disagreement.

\textsuperscript{12}Supra, note 7 at 3160.

\textsuperscript{13}Supra, note 4.


\textsuperscript{15}At the hearing, the County introduced into evidence three documents which it asserted established CSEA's attempts to intimidate or undermine the at-issue supervisors. The ALJ declined to accept the exhibits into evidence as the petition filed by the County did not specifically allege the events memorialized by the documents. The County has taken exception to the ALJ's ruling. We hereby affirm the ALJ's ruling.
about Menkiena’s role. Such incidents do not evidence the level of inadequate representation that is necessary to fragment supervisors from an overall unit.\(^{16}\)

As to the telephone call to Maine’s residence, such harassment certainly is not to be countenanced and we find such a personal attack on a unit member by a paid representative of the collective bargaining agent to be antithetical to the duty of representation owed by the bargaining agent to each unit member. But that one phone call, never linked to Menkiena directly,\(^{17}\) does not compel the fragmentation of the nursing supervisors or all unit supervisors, as argued by the County. The County points to our decision in *East Greenbush Central School District* (hereafter, *East Greenbush*)\(^{18}\) as support for its contention that all supervisors should be fragmented from the overall unit. In that case, we fragmented all supervisors from an overall unit because the union president had attempted to pressure one supervisor during a conversation to change his supervisory style and practices. We considered this conversation to have been intended by the union to serve as a warning to all supervisors that they must accommodate the union’s wishes in the exercise of their supervisory responsibilities.

We do not find the clash in Maine’s office or the telephone call to rise to the level of the unit president’s tactics in *East Greenbush*. The two incidents do not evidence such a level of subversion of supervisory function to warrant the fragmentation of all

\(^{16}\) See *County of Erie and Erie Co. Sheriff*, 17 PERB ¶4006, aff’d, 17 PERB ¶3036 (1984).

\(^{17}\) Maine’s husband testified that the call was traced to Menkiena’s personal telephone number. Menkiena did not testify at the hearing and there was no other evidence directly linking Menkiena to the call.

\(^{18}\) 17 PERB ¶3083 (1984).
supervisors from the existing unit. As to the remaining arguments of the County not specifically discussed herein, we have found them to be without merit.

Based on the foregoing, the County's exceptions are denied and the decision of the ALJ is affirmed.

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

DATED: June 27, 2001
New York, New York

Michael R. Cuevas, Chairman

Marc A. Abbott, Member

John T. Mitchell, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

COUNTY OF OTSEGO CASE NO. E-2221

Upon the Application for Designation of Persons as Managerial or Confidential.

HANCOCK & ESTABROOK, LLP (JOHN M. MONAHAN of counsel), for Employer

NANCY E. HOFFMAN, GENERAL COUNSEL (ROBERT REILLY of counsel), for Intervenor

BOARD DECISION AND ORDER

This matter comes to us on exceptions filed by the County of Otsego (County) to the Administrative Law Judge's (ALJ) decision, after a hearing, which dismissed its application to designate Catherine Crist, Assistant Director of Nursing Services at the Meadows,¹ as a confidential employee pursuant to §201.7(a) of the Public Employees' Fair Employment Act (Act).

EXCEPTIONS

The County objects to the ALJ's findings of fact. The Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO (CSEA), the bargaining representative for the unit which includes the at-issue title, supports the ALJ's decision.

¹The Meadows is a 774-bed skilled nursing facility operated by the County.
Based upon our review of the record and our consideration of the parties' arguments, we affirm the ALJ's decision.

FACTS

CSEA represents the entire nursing staff at the Meadows with the exception of the Director of Nursing, Judith Pierce. CSEA previously stipulated to the exclusion of the Director of Nursing title from the bargaining unit during the 1985-86 collective bargaining negotiations. Since 1986, the County has never filed an application to designate the title of Director of Nursing as managerial.

At the hearing, the Meadows' Administrator, Kurt Apthorpe, testified that he does not participate in collective bargaining negotiations.² His role in collective bargaining was limited to submitting a "wish list" of proposals to the negotiating team.³ Personnel functions are shared with the County Personnel Officer.⁴ Labor relations functions are carried out by the Personnel Officer.⁵

Pierce testified that she, too, plays no role in collective bargaining and negotiations.⁶ Her policy role is limited to developing policies for the nursing department.⁷ Her role with regard to hiring is limited to making a recommendation to

²Tr. p. 52.
³Tr. p. 54.
⁴Tr. p. 90.
⁵Tr. p. 87.
⁶Tr. p. 109.
⁷Tr. p. 120.
the Administrator.\(^8\) She has no authority to terminate an employee's employment.\(^9\)

She is the first step of the unit's grievance procedure.

The Assistant Director of Nursing, Catherine Crist, testified that she functions as the resident care coordinator.\(^10\) In that capacity, at least half of her time is involved with resident care issues.\(^11\) Her access to personnel files is limited to about once or twice a month. She accesses the files based on need.\(^12\) The nursing supervisors, as well as the secretary of the nursing department, also have access to the personnel files.\(^13\) Her personnel duties, as they relate to discipline of subordinate employees have not changed from her previous title as a supervising nurse.\(^14\)

**DISCUSSION**

In situations such as this where the managerial employee (Director of Nursing) has not been formally designated managerial by us, we look to the duties that employee performs. We are guided by §201.7(a) of the Act, which states in pertinent part:

...[E]mployees may be designated as managerial only if they are persons (i) who formulate policy or (ii) who may reasonably be required on behalf of the public employer to assist directly in the preparation for and conduct

\(^8\)Tr. p. 121.

\(^9\)Tr. p. 122.

\(^10\)Tr. p. 127.

\(^11\)Tr. p. 153.

\(^12\)Tr. p. 133.

\(^13\)Tr. p. 133.

\(^14\)Tr. p. 152.
of collective negotiations or have a major role in the administration of agreements or in personnel administration provided that such role is not of a routine or clerical nature and requires the exercise of independent judgment. Employees may be designated as confidential only if they are persons who assist and act in a confidential capacity to managerial employees described in clause (ii).

We have previously stated the policy underlying the 1971 Amendment to the Act, to wit: "[I]t was not the intention of the Legislature to increase substantially the number of employees designated as managerial or confidential... It [the Amendment] expressed a legislative caution to this Board that the statutory criteria should be applied conservatively in order to preserve existing negotiating units." 15

This policy has been embodied in our decisions. 16 Thus, an employee is confidential only when, in the course of assisting a managerial employee who exercises labor relations responsibilities, that employee has access to personnel/labor relations information on a regular basis which is not appropriate for the eyes and ears of rank and file personnel or their negotiating representative. 17

The ALJ found that the County had not formally designated Pierce’s title (Director of Nursing) managerial. Consequently, he had to examine Pierce’s duties in order to satisfy the requirements of the Act that the superior of the allegedly confidential person clearly performs managerial duties. 18 Based upon our review of Pierce’s testimony, we conclude, as did the ALJ, that Pierce is a “highly skilled, highly

15 State of New York, 5 PERB ¶3001 (1972), at 3004.

16 See North Rose-Wolcott Cent. Sch. Dist., 33 PERB ¶3002 (2000); Town of Dewitt, 32 PERB ¶3001 (1999); State of New York (Unified Court System), 30 PERB 3067 (1997), conf’d sub nom. Lippman v. PERB, 263 AD2d 891, 32 PERB ¶7017 (3d Dep’t 1999).

17 See North Rose-Wolcott Cent. Sch. Dist., supra, note 16.

18 See Wappingers Cent. Sch. Dist., 19 PERB ¶3059 (1986).
experienced [Director] who oversees the nursing division of the Meadows, however, since she has no independent role in collective negotiations or personnel administration, she does not meet the criteria established by the Act for managerial status. Furthermore, we find no support for concluding that the Director of Nursing is a managerial employee or the confidential designation of the Assistant Director of Nursing Services from the County representative, Apthorpe, who testified that it was not his decision to petition for the confidential designation of Crist.

Having found that Pierce is not a managerial employee within the meaning of the Act, Crist cannot be designated confidential based upon the duties she performs as Pierce's assistant. We concur with the ALJ that the application must be dismissed.

Based on the foregoing, we deny the County's exceptions and affirm the ALJ's decision.

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

DATED: June 27, 2001
New York, New York

Michael R. Cuevas, Chairman
Marc A. Abbott, Member
John T. Mitchell, Member

19 See State of New York (Unified Court System), supra, note 16.
20 Tr. p. 83.
STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

JOEL FREDERICSON,

Charging Party,

- and -

NEW YORK CITY TRANSIT AUTHORITY,

Respondent.

JOEL FREDERICSON, Pro se

MARTIN B. SCHNABEL, VICE-PRESIDENT AND GENERAL COUNSEL
(DANIEL TOPPER of counsel), for Respondent

BOARD DECISION AND ORDER

Joel Fredericson has filed exceptions to a decision of an Administrative Law Judge (ALJ) on an improper practice charge that he filed against the New York City Transit Authority (Authority) alleging that the Authority violated §§209-a.1(a) and (c) of the Public Employees' Fair Employment Act (Act) when it suspended and disciplined him in retaliation for events resulting from Fredericson's inspection of a work site on April 11, 1997 while a member of the Transport Workers Union (TWU) Safety Committee.

By decision dated June 4, 1999,¹ the ALJ dismissed the charge in its entirety, on the ground that Fredericson had not been disciplined for engaging in a protected

¹32 PERB ¶4581 (1999).
activity. The ALJ found, instead, that Fredericson’s actions as a TWU safety officer lost their protected status when he directed a work crew to stop working. The ALJ found this conduct to be in the nature of a work stoppage and, therefore, prohibited by §210.1 of the Act. In addition, the ALJ found that Fredericson was collaterally estopped by the disciplinary arbitration award from relitigating the issue of whether his actions were motivated by a good faith belief that the work being performed was unsafe.

By decision dated October 21, 1999, we reversed the ALJ. We held that it was error for the ALJ to apply the doctrine of collateral estoppel to the issue of Fredericson’s good faith. Consequently, we remanded the case to the ALJ to consider evidence of whether Fredericson acted in good faith and whether any witness was improperly precluded from testifying. Also, we held that the ALJ should consider whether the amended charge sufficiently pled that taking pictures of the alleged unsafe conditions at the job site on April 11, 1997 was a protected activity under the Act for which the Authority unlawfully disciplined Fredericson.²

Pursuant to our remand, the ALJ elected to reopen the record and held hearings on February 17, June 20 and 21, 2000, at which time the parties were given an opportunity to present evidence on the remanded issues.

By decision dated March 16, 2001, the ALJ found Fredericson did not have a good faith belief that the work was being performed under unsafe conditions, but that the Authority violated the Act when it disciplined Fredericson for returning to the tracks to take photographs.³

²32 PERB ¶3057 (1999).
³34 PERB ¶4528 (2001).
EXCEPTIONS

Fredericson has excepted to the ALJ's decision of March 16, 2001, based upon her findings of fact and conclusions of law as they relate to establishing a good faith standard.

The Authority has filed cross-exceptions based upon the ALJ's findings of fact and conclusions of law which resulted in a finding of a violation.

Fredericson filed a reply to the Authority's cross-exceptions setting forth various legal and factual arguments in rebuttal.

FACTS

A full discussion of the salient facts appears in the ALJ's first decision.\(^4\) The testimony and documentary evidence adduced at the later hearings is discussed in the ALJ's decision of March 16, 2001.\(^5\)

The facts which can be distilled from the evidence reveal that, since 1991, Joel Fredericson has been a TWU member of the track division safety committee and, as such, he is granted release time to work as a TWU representative. He, therefore, responds to safety complaints and initiates contractual safety complaints.

While on duty on April 11, 1997, Fredericson received a telephone call from Roger Toussaint, the chair of the track safety committee, who instructed him to investigate a safety complaint. Fredericson went to the site of the complaint and spoke with Douglas Endall, a supervisor in charge of the work. Fredericson was allowed to

\(^4\) 32 PERB ¶4581 (1999).

\(^5\) Supra, note 3.
inspect the job site. Fredericson asked Endall to increase the “flagging” protection at the work site. In an effort to appease Fredericson, Endall agreed to assign one of the track workers to serve as a flagger.

The problem arose when Fredericson requested a second flagman. This request was based upon Fredericson’s reliance upon Federal law (Federal Railway Act) even though he knew that Federal law did not apply to the Transit Authority, and not upon any expressed concern of the workers for their safety.

While Fredericson disputed the Authority’s version of what happened next, especially that Endall refused his second request, the ALJ credited the Authority’s witness, Endall. He testified that Fredericson got angry and threatened to “close down” the job. At that point, Fredericson told the track workers to put their tools down and “go to the platform”. Endall then ordered Fredericson “out of service”, thereby suspending him. It was Endall’s position that only a supervisor can decide whether to stop work and, therefore, Fredericson was ordered out of service because he declared a job action unrelated to his safety functions.

Fredericson was later served with a Notice of Discipline (DAN). The various steps of the disciplinary grievance process were followed and culminated in a hearing before a Tripartite Arbitration Board (TAB). The TAB sustained the charges. The arbitration award credits Endall’s testimony that Fredericson told him: “If you do not put

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6 Transcript, pp. 145-146.

7 Id. at 149.

8 A member from TWU and a member from the Authority, as well as an independent arbitrator, sit on the TAB. The independent arbitrator is responsible for writing and issuing the award.
another flagman there, I will shut the job down", and that Fredericson told a work crew to "stop working" because he was "shutting down the job" and they should "go to the platform".9

DISCUSSION

Since we found in our earlier decision that the ALJ erroneously concluded that the issue of whether Fredericson acted in good faith had been resolved against him by the TAB, the ALJ was to consider, on remand, this issue as well as whether Fredericson's conduct in taking pictures of the work site was a protected activity for which he was unlawfully disciplined.

After resuming testimony on the remanded issues, the ALJ reached the conclusion that Fredericson was not acting in good faith when he directed the track workers to stop working. We agree and adopt the ALJ's factual findings that under no circumstances could Fredericson have concluded, using any objective standard, that the track workers were in imminent danger to their safety. We, therefore, find that the Authority did not violate the Act when it filed disciplinary charges against Fredericson for his attempt to stop the workers.

Turning to the remaining issue, we disagree with the ALJ's conclusion that Fredericson was engaged in a protected activity when he returned to the work site to take photographs for which he was unlawfully disciplined.

While testimony at the hearing before the ALJ is controverted, the finding of the impartial TAB regarding specification No. 3, refusing multiple directives to leave transit

9Supra, note 1 at 4784.
property, remains, to wit: "[a] majority of the board finds this charge sustained. While other questions on this specification are contested, [Fredericson] concedes that after Mr. Endall took him out of service and told him to leave, he returned to the tracks to take photographs. He should not have done that."\(^{10}\) This finding by the TAB is supported by Fredericson's testimony:

Q. I think you have testified that you took photos after you were asked to leave the property by Mr. Endall, you went back on the tracks and took photos?

A. That's right.\(^{11}\)

We have held that in order to establish improper motivation under §§209-a.1(a) and (c) of the Act, a charging party must prove that (a) he/she had been engaged in protected activities, (b) the respondent had knowledge of, and (c) acted because of those activities.\(^{12}\) If the charging party proves a \textit{prima facie} case of improper motivation, the burden of persuasion shifts to the respondent to establish that its actions were motivated by legitimate business reasons.\(^{13}\)

We have held that the charging party can establish "[t]he existence of anti-union animus . . . by statements or by circumstantial evidence, which may be rebutted by presentation of legitimate business reasons for the actions taken, unless found to be

\(^{10}\)Tripartite Arbitration Award, Joint Ex. #1.

\(^{11}\)Transcript, p. 199.


\(^{13}\)\textit{City of Salamanca}, 18 PERB ¶3012 (1985). \textit{See also City of Albany}, 3 PERB ¶4507, aff'd, 3 PERB ¶3096 (1970), \textit{confirmed in pertinent part}, 36 AD2d 348, 4 PERB ¶7008 (3d Dep't 1971), aff'd, 29 NY2d 433, 5 PERB ¶7000 (1972).
proof that the employer’s stated reasons for its conduct are pretextual may constitute such circumstantial evidence.

Fredericson meets the first two prongs of the test because he was acting in his capacity as a TWU representative at the time he inspected the work site on April 11, 1997 and the Authority was aware of Fredericson’s membership and his position with the safety committee. However, we disagree with the ALJ’s decision that the Authority would not have brought the third specification of the disciplinary charges but for his protected activity.

We have held that the fundamental right of an employee to participate in the activities of the employee organization of his choosing and the employer’s right to maintain order and respect must be balanced one against the other:

"On occasion, the [union] representative may engage in impulsive behavior that an employer would not have to tolerate from an employee who is engaged in his normal tasks. Although an employer may not ordinarily discipline the employee representative for such behavior, there are circumstances in which overzealous behavior on his part may constitute misconduct."
Consequently, inappropriate conduct, even if part of a union activity which is protected, will not shield an employee from its consequences.\textsuperscript{18}

It is uncontroverted that Endall directed Fredericson to cease and leave the work site. Fredericson finally left the work site, but he later returned, not to further seek a work stoppage, but to take photographs. It is Fredericson's return to the work site, in direct disregard of Endall's directive that he vacate the area, that prompted the action taken against him. The question is thus presented: does Fredericson's return to a work site that he was ordered to leave violate that directive? We find that it does. Implicit in Endall's directive to Fredericson was an order that Fredericson not return to the work site.\textsuperscript{19}

Fredericson offers no meritorious explanation for his refusal to comply with Endall's order. We have held that the appropriate response to an objectionable directive is to comply and seek redress through available legal channels.\textsuperscript{20} We find, therefore, that Fredericson's return to the work site was a refusal to comply with

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{18}Kings Park Cent. Sch. Dist., 27 PERB ¶3022 (1994); State of New York (OMRDD), 24 PERB ¶3036 (1991); Island Trees Public Schs., 14 PERB ¶3020 (1981). See also Earle Industries v. NLRB, 75 F3d 400 (8th Cir. 1996).
\item \textsuperscript{19}It is not the taking of the photographs that we find is unprotected activity. It is Fredericson's return to the work site after attempting a work stoppage and in direct contravention of Endall's order absent facts that would demonstrate any compelling need to return to the work site that day. But see NYCTA (Sorrentino), 19 PERB ¶3021 (1986), where we found a violation when an employee representative was disciplined for taking photographs of allegedly unsafe conditions.
\item \textsuperscript{20}See Farmingdale Union Free Sch. Dist., 11 PERB ¶3055 (1978).
\end{itemize}
\end{footnotesize}
Board - U-19228

Endall's directive and was tantamount to misconduct, even though clothed in protected activity.\(^{21}\)

Based upon our review of the record and consideration of the parties' arguments, we deny Fredericson's exceptions as to the ALJ's finding that he did not act in good faith when he attempted to stop the work on the track and we affirm the ALJ in that regard. We find no evidence of anti-union animus and we grant, therefore, the Authority's exceptions. We reverse the ALJ's decision on this issue.

NOW, THEREFORE, WE ORDER that the charge herein be, and it hereby is, dismissed.

DATED: June 27, 2001
New York, New York

Michael R. Cuevas, Chairman

Marc A. Abbott, Member

John T. Mitchell, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

HELEN KRESZ,

Charging Party,

- and -

BOARD OF EDUCATION OF THE CITY SCHOOL
DISTRICT OF THE CITY OF NEW YORK AND
UNITED FEDERATION OF TEACHERS,

Respondents.

HELEN KRESZ, pro se

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by Helen Kresz to a decision of the Director of Public Employment Practices and Representation (Director) dismissing her improper practice charge which alleged that the Board of Education of the City School District of the City of New York (District) had violated §209-a.1(a) of the Public Employees' Fair Employment Act (Act) when it required her to record her time in and out of the school to which she was assigned as a teacher of English as a Second Language (ESL). The details of the charge also allege that Kresz was denied representation by the United Federation of Teachers (UFT) at the Education Law §3020-a hearing held on the charges brought by the District against Kresz to have her employment terminated for failing to comply with its attendance requirements.¹

¹Although UFT was not named specifically as a respondent on the face of the charge, Kresz had checked the box on the improper practice charge form indicating a
Kresz was notified by the Assistant Director of Public Employment Practices and Representation (Assistant Director) that the charge was deficient as it was untimely, failed to set forth a clear and concise statement of the facts in support of the charge, failed to name UFT as a respondent, and no facts were alleged which would support a finding of improper motivation on the part of the District or that the UFT had been arbitrary, discriminatory or acting in bad faith. To the extent that Kresz alleged that the conduct of the arbitrator at the §3020-a hearing violated her rights, the Assistant Director informed her that PERB did not have jurisdiction over the conduct of an arbitrator at a §3020-a hearing.

Kresz responded with numerous documents, including the transcript of her §3020-a hearing, comprising several hundred pages. Some of the documents are duplicates and many of them contain notations in what appears to be Kresz's handwriting. Kresz was informed that her submissions had failed to correct the deficiencies with the charge. The Director thereafter dismissed the charge against both the District and UFT as untimely and as failing to plead facts which would support a finding of the alleged violations.2

In her exceptions, Kresz argues that the Director erred in finding the charge to be untimely and in finding that no facts had been properly pled that would support a finding of a violation of the Act.3

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2 The allegation against the arbitrator was summarily dismissed as an improper practice charge can only be filed against a public employer or an employee organization. ATU, Local 1056 (Rodriguez), 24 PERB ¶3008 (1991).

3 The District requested an extension of time to file a response to the exceptions. As the request was untimely, it was denied.
Based upon our review of the record and our consideration of arguments made, we affirm the decision of the Director.

Kresz confuses the extension of time granted to her by the Assistant Director to file the clarification of her charge with the time limits for filing an improper practice charge set forth in §204.1(a) of our Rules of Procedure (Rules). While Kresz’s clarification was filed within the time frame set by the Assistant Director, the original improper practice charge was not timely filed. From the documents submitted in support of the charge, it appears that the requirement that Kresz sign in and out was implemented sometime in 1999. The charge as against the District was filed on December 26, 2000, more than four months after the action upon which the charge against the District is based. The charge against the District was, therefore, properly dismissed as untimely.

As against UFT, the crux of Kresz’s charge is that UFT withdrew as her representative before the scheduled disciplinary arbitration hearing and failed to advise her that she would be liable for the arbitrator’s fee if UFT did not represent her at the hearing. By letter dated May 31, 2000, UFT informed Kresz that it would no longer represent her due to her failure to cooperate in the preparation of her case. As Kresz’s improper practice charge against UFT was filed more than four months after the receipt of the letter, it also was properly dismissed as untimely.

4"With respect to the timeliness issue, it is clear that a charging party must file an improper practice charge within four months of its knowledge of the alleged improper practice." New York State Thruway Auth. v. Cuevas, 34 PERB ¶7003, at 7004 (3d Dep’t 2001).

5To the extent that there was any obligation to specifically inform Kresz when UFT withdrew as counsel that she would be liable for all of the arbitrator’s fees if she sought an adjournment of the §3020-a hearing, the charge is also untimely.
The Director also properly dismissed the charge for failure to plead facts which, if proven, would support the finding of a violation of §209-a.1(a) or §209-a.2(c) of the Act. Kresz does not plead any facts which link an exercise of protected rights on her part to the District's decision to have her sign in and sign out of school. Nor does the charge plead any facts which would establish that UFT's actions were arbitrary, discriminatory or taken in bad faith.

Based on the foregoing, the exceptions are denied and the decision of the Director is affirmed.

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

DATED: June 27, 2001
New York, New York

Michael R. Cuevas, Chairman

Marc A. Abbott, Member

John T. Mitchell, Member

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6 See NYCTA (Andre), 32 PERB ¶3061 (1999).

7 See Board of Educ. of the City Sch. Dist. of the City of New York (Freedman), 33 PERB ¶3062 (2000).
STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

LOCAL 342, UNITED MARINE DIVISION INTERNATIONAL
LONGSHOREMEN'S ASSOCIATION, AFL-CIO,

Petitioner,

-and-

TOWN OF SOUTHAMPTON,

Employer.

CASE NO. C-5032

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

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

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

IT IS HEREBY CERTIFIED that the Local 342, United Marine Division, International Longshoremen's Association, 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: Lifeguard, senior lifeguard, and assistant chief lifeguard.

Excluded: Chief lifeguard and all others.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Local 342, United Marine Division International Longshoremen’s Association, 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: June 27, 2001
New York, New York

Michael R. Cuevas, Chairman

Marc A. Abbott, Member

John T. Mitchell, Member
CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

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

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

IT IS HEREBY CERTIFIED that the Teamsters Local 693, 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.
Certification - C-5074

Included: M.E.O.H.
Excluded: Highway Superintendent and all other employees.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Teamsters Local 693, 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: June 27, 2001
New York, New York

Michael R. Cuevas, Chairman

Marc A. Abbott, Member

John T. Mitchell, Member
STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

TEAMSTERS LOCAL 182, INTERNATIONAL BROTHERHOOD OF TEAMSTERS,

Petitioner,

-and-

TOWN OF HERKIMER,

Employer.

CASE NO. C-5087

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

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

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

IT IS HEREBY CERTIFIED that the Teamsters Local 182, 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.

Excluded: Seasonal Employees and all other employees.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Teamsters Local 182, 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: June 27, 2001
New York, New York

Michael R. Cuevas, Chairman

Marc A. Abbott, Member

John T. Mitchell, Member
STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 264,

Petitioner,

-and-

CITY OF NIAGARA FALLS,

Employer.

CASE NO. C-5083

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 International Brotherhood of Teamsters, Local 264 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 and regular part-time detention aides.

Excluded: All other employees.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the International Brotherhood of Teamsters, Local 264. The duty to negotiate collectively includes the mutual obligation to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written agreement incorporating any agreement reached if requested by either party. Such obligation does not compel either party to agree to a proposal or require the making of a concession.

DATED: June 27, 2001
New York, 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-5070

SEWANHAKA CENTRAL HIGH SCHOOL DISTRICT,

Employer,

__________________________________________

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

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

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

IT IS HEREBY CERTIFIED that the United Public Service Employees Union 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 Security Aides.

Excluded: 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: June 27, 2001
New York, New York

Michael R. Cuevas, Chairman

Marc A. Abbott, Member

John T. Mitchell, Member
STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

BETHLEHEM POLICE BENEVOLENT
ASSOCIATION,

Petitioner,

-and-

TOWN OF BETHLEHEM,

Employer,

-and-

TOWN OF BETHLEHEM POLICE UNION,
LOCAL 3364, COUNCIL 82, AFSCME,
AFL-CIO,

Intervenor.

CASE NO. C-5097

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,

1/This unit has been represented by the Town of Bethlehem Police Union, Local 3364, Council 82, AFSCME, AFL-CIO, who notified PERB that it disclaims any interest in further representing the unit.
IT IS HEREBY CERTIFIED that the Bethlehem Police Benevolent Association has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Included: All employees in the following titles: Police Officer, Police Sergeant, Police Detective and Detective Supervisor.

Excluded: Chief of Police, Deputy Chief of Police, Captains, Lieutenants and all other employees.

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

DATED: June 27, 2001
New York, New York

Michael R. Cuevas, Chairman

Marc A. Abbott, Member

John T. Mitchell, Member
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 in 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.
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: June 27, 2001
New York, New York

Michael R. Cuevas, Chairman

Marc A. Abbott, Member

John T. Mitchell, Member