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State of New York Public Employment Relations Board Decisions from September 26, 2003

New York State Public Employment Relations Board

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State of New York Public Employment Relations Board Decisions from September 26, 2003

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This case comes to us on exceptions filed by Diana L. Siegel to a decision of an Administrative Law Judge (ALJ) dismissing an improper practice charge against the United Federation of Teachers, Local 2, AFT, AFL-CIO (UFT). Siegel alleged, inter alia, that UFT violated §209-a.2(c) of the Public Employees' Fair Employment Act (Act) by not responding to her inquiries and by failing to file a grievance at the Step 3 level when the
Board of Education of the City School District of the City of New York (District) failed to appoint her to a summer position. UFT filed an answer denying the material allegations of the charge and alleging certain defenses.

EXCEPTIONS

Siegel excepts to the ALJ’s decision on the facts and the law. UFT filed a response to the exceptions, supporting the ALJ’s decision.

Based upon our review of the record, we affirm the ALJ’s decision.

FACTS

The facts are set forth in detail in the ALJ’s decision. We will repeat here only the facts relevant to the exceptions.

Siegel has been employed by the District since 1997 as a hospital school teacher at Columbia-Presbyterian Hospital in the District 75 Chapter 683 program. In that capacity, Siegel provides instruction to disabled students restricted to the hospital for medical reasons.

Siegel’s charge alleges, in substance, that during the summers of 1997, 1998 and 1999, she was not assigned to her summer teaching position of choice, St. Mary’s Rehabilitation Center, Ossining, New York. She was assigned to the position in the summer of 2000. She was not assigned to the position in the summer of 2001. She was not assigned to St. Mary’s in 2002, which prompted her to file the grievance which is the

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1 The District is made a statutory party to this proceeding pursuant to §209-a.3 of the Act.

2 36 PERB ¶4554 (2003).

3 Siegel filed an improper practice charge November 16, 2001, alleging that UFT failed and refused to prosecute her grievance about the failure of the District to give her the assignment in 2001 to Step 3 level. The charge was dismissed by the Board on April 4, 2003. UFT and Board of Education of the City Sch. Dist. of New York (Siegel), 36 PERB ¶3017 (2003).
subject of the instant charge. Siegel contends that the position was assigned to Virginia Hill, a teacher with less seniority. She alleged that the District was in error because Ms. Hill did not teach the students at St. Mary's who were involved in the Chapter 683 summer program during the regular school year.

As a consequence of the District's action, Siegel filed a contract grievance. It was denied at Steps 1 and 2. She appealed to UFT to proceed to Step 3 but UFT denied her request. Siegel thereafter appealed this decision to the grievance department of UFT, known as Ad Com. Her appeal to the Ad Com committee was heard on October 15, 2002. Her appeal was rejected. She filed the instant improper practice charge on October 25, 2002. A hearing was held on March 3, 2003 and, at the conclusion of Siegel's direct case, UFT moved to dismiss the charge for failure to state a prima facie case. The ALJ thereafter issued a decision dismissing the charge for lack of proof.

DISCUSSION

As the ALJ correctly recognized, in deciding a motion to dismiss at the close of a charging party's case, we must assume the truth of all the charging party's evidence and give the charging party the benefit of all reasonable inferences that could be drawn from those assumed facts. Even giving Siegel every reasonable inference that can be drawn from the evidence she introduced at the hearing, she has failed to sustain a prima facie case of breach of a union's duty of fair representation, as defined in Civil Service

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4 County of Nassau (Police Dep't), 17 PERB ¶3013 (1984).
Employees Association v. PERB. Siegel has, therefore, failed to demonstrate that UFT’s conduct, or lack thereof, was deliberately arbitrary, discriminatory or done in bad faith.

The record is clear that UFT was thoroughly familiar with Siegel’s complaint having gone through this same issue with her in previous summer assignments. UFT came to the same conclusion it had reached in Siegel’s previous grievance of the same summer assignment at St. Mary’s.

Siegel takes exception to the manner in which UFT handled her grievance. She disagreed with UFT’s interpretation of the contract and its decision not to proceed to Step 3 of the grievance process. Siegel contends that the only correct interpretation is the one she put forth. However, UFT is under no statutory obligation to agree with Siegel’s interpretation of the collective bargaining agreement.

We have consistently held that we would not substitute our judgment for that of a union regarding the filing and prosecution of grievances, since a union has a wide range of reasonableness in this regard. Siegel complained that UFT failed to respond to the questions that she posed to the Ad Com committee. However, the purpose of that meeting was to afford Siegel an opportunity to present her appeal in an effort to persuade UFT to prosecute her grievance at Step 3. Notwithstanding, that at the conclusion

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5 132 AD2d 430, 20 PERB ¶7024 (3d Dep’t 1987), aff’d on other grounds, 73 NY2d 796, 21 PERB ¶7017 (1988).

6 Supra note 1.


8 See District Council 37, AFSCME (Gonzalez), 28 PERB ¶3062 (1995).
of the Ad Com meeting, Siegel received a letter from Elizabeth Langiulli, the Director of Staff, setting forth UFT's reasons for its denial of her appeal.\footnote{Charging Party's Exhibit 3.}

We find, as did the ALJ, that UFT did not act in an arbitrary, discriminatory or bad faith manner considering the merits of Siegel's grievance, in the manner in which the grievance was processed or in its decision not to proceed any further with the grievance.

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

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

DATED: September 26, 2003
Albany, 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

CITY OF HORNEll and NEW YORK STATE
CONFERENCE OF MAYORS AND MUNICIPAL
OFFICIALS

Upon a Petition For Declaratory Ruling

JOHN GALLIGAN, for Petitioner

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by the City of Hornell and the New York State Conference of Mayors and Municipal Officials (petitioners) to a decision of the Director of Public Employment Practices and Representation (Director) dismissing the petitioners' declaratory ruling petition seeking a ruling by the Director as to whether General Municipal Law (GML) §207-a and §207-c benefit determination and review procedures are mandatory subjects of negotiations.

The Director dismissed the petition, deciding that it would not be in the public interest to issue a declaratory ruling because there was no justiciable controversy concerning a particular demand made by a party to a bargaining relationship, that the subject matter of the petition was the subject of numerous PERB decisions finding aspects of such procedures to be mandatory and, finally, that the petitioner Conference
of Mayors was not an entity permitted by §210 of PERB’s Rules of Procedure (Rules) to file a declaratory ruling petition.

EXCEPTIONS

The petitioners except to the Director’s decision, arguing that the Rules do not require the existence of a justiciable controversy for the Director to issue a declaratory ruling, that the Conference of Mayors is properly a petitioner in this matter as it is a “person” within the meaning of the Rules, and that the public interest would be served by the issuance of such a ruling because it would affect hundreds of public employers.

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

DISCUSSION

In Town of Henrietta\(^1\), we affirmed the Director’s decision that:

Section 210.2(a) of PERB’s Rules of Procedure leaves it to [the Director’s] discretion to “determine whether the issuance of [a] declaratory ruling would be in the public interest as reflected by the policies underlying the [Act].” The purpose of the declaratory ruling proceeding is to provide a less adversarial means than an improper practice proceeding for resolving an existing justiciable issue between parties in two areas: whether an employee, an employer or an employee organization is covered by the Act, or whether, as here, a matter is a subject of mandatory negotiations under the Act.

Here, there is no justiciable controversy asserted by the petitioners. It is not in the public interest for the Director or this Board to expend administrative time and resources to decide an issue that is not presently a matter that is the subject of a dispute in negotiations between a public employer and an employee organization, one of the

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\(^1\) 25 PERB ¶6501(1992), aff’g 24 PERB ¶6604, at 6606 (1991).
purposes for which our declaratory rulings procedures were intended.

The petitioner argues that the Director erred in interpreting the Rules to require that there exist a justiciable controversy for him to issue a ruling and that the petitioners in a declaratory ruling be an individual, employee organization or public employer. The basis of the argument is that the Rules are silent about the existence of a justiciable controversy and about who or what constitutes a "person" within the meaning of the Rules. The Conference of Mayors argues that the Director, by interpreting the Rules to mean that "person" is an individual, has engaged in rule-making in contravention of the State Administrative Procedures Act, or that the Board, in its decisions regarding declaratory rulings, has done so. This argument totally belies the very function of this Board. It is the essence of our role to interpret the Act and our Rules.\(^2\) It is incumbent upon the Director to interpret the Act or the Rules when there are no Board decisions on a particular issue and to follow Board decisions that cover an issue before him.

As to the Director's holding that the Conference of Mayors may not bring a declaratory ruling petition before the agency, the Act limits who may bring any matter before us. Our jurisdiction is limited to matters involving public employees, public employers and employee organizations representing public employees.\(^3\) The Conference of Mayors is none of these. We do not accept the argument that the Conference of Mayors is an appropriate party to a declaratory ruling petition, even


\(^3\) Act, §205.5. See also Rules, §200.5.
under a broad definition of "person". Our jurisdiction is limited by the Act and any interpretation of the Rules must be in conjunction with the specific language of the Act.

We find, therefore, that the exceptions should be denied and the decision of the Director affirmed.

The declaratory ruling petition filed by the petitioners is, and must be, therefore, dismissed in its entirety.

SO ORDERED.

DATED: September 26, 2003
Albany, New York

Michael R. Cuevas, Chairman

Marc A. Abbott, Member

John T. Mitchell, Member
In the Matter of

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

Charging Party,

- and -

INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL 409,

Respondent.

DAMON & MOREY LLP (JAMES N. SCHMIT and JUDY S. HERNANDEZ
of counsel), for Charging Party

BARTLO, HETTLER & WEISS (PAUL D. WEISS of counsel), for Respondent

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by the International Union of Operating
Engineers, Local 409 (Local 409) to a decision of an Administrative Law Judge (ALJ)
finding that Local 409 violated §209-a.2(b) of the Public Employees' Fair Employment
Act (Act) when it refused to provide the Board of Education of the City School District of
the City of Buffalo (District) with certain salary information pertaining to bargaining unit
employees and salary information of certain private employees in the possession of
bargaining unit employees.
EXCEPTIONS

Local 409 excepts to the ALJ’s decision on the law and the facts alleging, inter alia, that Local 409 satisfied its duty to provide the requested information in their prior collective bargaining agreement, and that the District failed to demonstrate that the information requested was necessary and relevant to the negotiations for a successor agreement.

The District filed cross-exceptions to the ALJ decision, and alleged in its principal cross-exceptions that Local 409 was in possession of the requested documents and the ALJ erred in finding that the individual members of Local 409 had an obligation to disclose the records.

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

FACTS

The stipulated facts and a recitation of the testimony of the one witness are set forth in the ALJ’s decision.¹ We will confine our analysis to the facts relevant to the exceptions.

On June 28, 2001, the District filed an improper practice charge against Local 409 alleging a violation of §209-a.2(b) of the Act. The District contends that Local 409 has proposed increases in both salary and amounts paid to bargaining unit members.² Under the collective bargaining agreement between the District and Local 409, and a custodial engineer contract (CEC), the bargaining unit employees in the title of engineer

¹ 36 PERB ¶4543 (2003).
² ALJ’s Exhibit 1.
custodian receive an annual salary and pursuant to the CEC, in addition to their salary, a sum of money for the purpose of providing custodial and maintenance services in their respective school buildings. As a consequence of the CEC, the engineer custodians can retain as additional compensation the difference between the amount received pursuant to the CEC and the amount spent for personnel, equipment and supplies necessary to provide custodial services. The District alleges that it does not receive an accounting from Local 409 of the sum of money retained by the engineer custodians under the CEC. Since Local 409 has proposed increases, in both salary and additional funds for custodial services, the District sought to understand the total compensation received by the members of the bargaining unit in salary and retention in order to formulate a response to the bargaining demand. The District requested certain documents, records and information it deemed necessary and relevant to analyze Local 409's proposal.

By letter dated April 23, 2001, the District requested from Local 409:

1. The current collective bargaining agreement between the Engineer Custodians and IUOE Local 17 covering employees in the Buffalo City School District schools;

2. The names, addresses, job titles, normal weekly work hours and pay rates for all individuals employed in the school buildings of the Buffalo City School District; and

3. A statement of all receipts, expenditures and fund balances, including retention for payments received pursuant to the Unit Service Agreement
(CEC) in place for each school building during the preceding and present fiscal years, i.e. 1999-2000 and 2000-2001.

Local 409 responded by letter dated May 4, 2001, that it “will not provide any information or documents requested . . . as it is not relevant or necessary for contract administration . . . Should you indicate how the items in your request are relevant or necessary, the undersigned will review your request at that time.”

In its answer to the District's improper practice charge, Local 409, in addition to denying the material allegations, set forth certain affirmative defenses which included lack of subject matter jurisdiction and an allegation that Local 409 does not possess or maintain certain of the records requested.

Prior to the commencement of the hearing, Local 409 made a motion to amend its answer to clarify its affirmative defense of lack of jurisdiction to include the defense of duty satisfaction. It argued that the parties had negotiated and reached agreement on the scope of information to be provided by Local 409 to the District. The ALJ granted the motion and adjourned the hearing in order to permit counsel for Local 409 to file a brief on the impact of the duty satisfaction defense on the particular contract provision at issue. Instead, Local 409 filed a motion to dismiss on the grounds that the information requested by the District had been negotiated. In its motion papers, Local 409 included a settlement memorandum dated June 7, 1995, that referenced certain information Local 409 was to provide the District under the terms of the parties' collective bargaining

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3 ALJ's Exhibit 1.

4 ALJ's Exhibit 2.
agreement. The ALJ denied the motion. The parties, thereafter, entered into a stipulation of facts. The record before the ALJ consisted of the stipulation and testimony from Jeffrey C. Lathrop, president of Local 409. Lathrop testified that, on March 28, 2002, he made a verbal request at a special meeting of the membership for "information relating to their unexpended funds, [to] produce . . . ledgers, records, receipts, et cetera." A vote was taken and Lathrop received a unanimous "no" vote.

On cross-examination, Lathrop testified that he realizes a net income each year under the CEC agreement. This was equally true of the other officers on the executive board. He acknowledged that this net amount of income is not reported to Local 409 nor to the District. Other than the verbal request at the membership meeting, Lathrop did not make any other effort to obtain the information requested by the District.

**DISCUSSION**

Local 409 contends that the ALJ misapplied the definition of duty satisfaction set forth in our decision in *County of Nassau*. In support of this argument, Local 409

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5 ALJ's Exhibit 13.

6 *Board of Educ. of the City Sch. Dist. of the City of Buffalo*, 35 PERB ¶4518 (2002).

7 Transcript p. 92.

8 *Id.* p. 93.

9 *Id.* pp. 84-85.

10 *Id.* p. 85.

11 *Id.* pp. 85-86.

12 *Id.* p. 93.

relied upon a settlement memorandum dated June 7, 1995, and a draft copy of the
parties’ collective bargaining agreement for the years 1991-1996.\textsuperscript{14} We disagree. A fair
reading of the settlement stipulation does not provide the information that the District
requested. It does not include the names of the individuals employed by the engineer
custodians, their job titles, normal weekly work hours and pay rates. It does not include
a statement of all receipts, expenditures and fund balances, including retention, for
payments received pursuant to the CEC.

By the terms of the 1995 settlement stipulation, the District was not permanently
deprived of the right to negotiate over information needed to examine Local 409’s salary
proposal, which is a mandatory subject of negotiation.\textsuperscript{15} Here, in response to Local
409’s proposed increase in salary and expenses to be paid under the CEC, the District
seeks information about employees of the engineer custodians and the amount retained
by the engineers from the District’s payments under the CEC. The District’s information
request is, therefore, different from the information Local 409 agreed to provide the
District pursuant to the terms of their 1991-1996 collective bargaining agreement.

In \textit{County of Nassau},\textsuperscript{16} we merely held that, in circumstances where the defense
of duty satisfaction has been raised, the parties recognized their statutory duty to
bargain in good faith over a particular subject or subjects and satisfied that duty during
negotiations culminating in an agreement. Here, the District’s information request was
made to obtain information about the expenses paid to third parties by the engineer

\textsuperscript{14} \textit{Supra} note 5.

\textsuperscript{15} Act, §201.4; \textit{County of Westchester}, 33 PERB ¶¶3025 (2000).

\textsuperscript{16} \textit{Supra} note 5.
custodians under the CEC. This information was outside the scope of the information Local 409 was obligated to provide the District under the terms of their collective bargaining agreement and, thus, Local 409 was not exempt from its duty to provide the District with the requested information.

Local 409 also argues that it need not provide the requested information because it was not necessary or relevant in order to evaluate the salary proposal. We disagree. Public employers and employee organizations have an obligation to provide information which is reasonably necessary for negotiations and the administration of the collective bargaining agreement. The primary considerations in determining the reasonableness of a request for information include the burden on the party to provide the information, the availability of the information elsewhere, the necessity of the information to the party, and the relevancy of the information.

Upon this record, there is no evidence that the District possessed the information requested. The stipulation of facts merely provides, in response to the District's information request, that:

7. The Engineers employ workers to perform the custodial, janitorial, maintenance and groundskeeping and to operate the equipment for


18 County of Yates, 27 PERB ¶3080 (1994); Board of Educ. City Sch. Dist. of the City of Albany, supra.

19 State of New York (Div. of State Police), 30 PERB ¶3037 (1997).

20 County of Yates, Supra, note 18; Salmon River Cent. Sch. Dist., 21 PERB ¶3006 (1988); Schuyler-Chemung-Tioga BOCES, 15 PERB ¶3036 (1982).

21 County of Ulster, 26 PERB ¶3008 (1993).
heating, ventilating and air conditioning (HVAC) services for the buildings in which they are employed. 22

10. On an annual basis, the Engineers provide the names of two of their employees. . . Said information is not provided to the District for other individuals employed by the Engineers to perform work in the school buildings. 23

14. . . Various other expenses incurred in connection with cleaning and maintaining the buildings are paid by the individual Engineers from their untaxed income payments, but their expenses are not reported by the individual Engineers to the District and the District does not know the net amount retained by the individual Engineers. 24

It is apparent from the record that, by the terms of the parties' collective bargaining agreement, the District did not possess the information requested. Local 409 did not demonstrate that any burden existed in providing this information other than that the membership in attendance at the special meeting voted no. Local 409 made no further attempt to obtain the information nor did Lathrop provide his own records or the records of the other officers. This was not a valid excuse. Local 409 offered no alternative source of obtaining this information. The necessity and relevancy of the information are self-evident. A demand for a salary increase is a mandatory subject of negotiations which requires a response. 25 The District could not respond without evaluating the demand in the context of the parties’ CEC.

22 Joint Exhibit 2.

23 Id. ¶10.

24 Id. ¶14.

Local 409 excepts to the ALJ’s conclusion that Local 850, AFSCME, AFL-CIO (Local 850) does not apply to their situation. Local 409 argues that since it does not possess the information, as did Local 850, it need not produce it. This argument is simplistic and ignores the obligation imposed by the statute and our case law to negotiate in good faith. While it is interesting academic discourse to argue that Local 409 members are autonomous and Lathrop, as president, is powerless to force the members to comply with the District’s request for information, it ignores the law.

The Act defines an “employee organization” as an “organization of any kind having as its primary purpose the improvement of terms and conditions of employment of public employees.” When interpreting this section of the Act to determine whether a particular local employee organization possesses the autonomy to act as the employees’ negotiating agent, “our interpretations of the controlling statutory definition are not intended to effect any one type of employee organization structure, any single pattern of employee organization affiliation, or any single model of collective negotiations, lest the right of employees to ‘organize and bargain collectively through organizations of their own choosing be unnecessarily circumscribed.’” Consequently, a union’s structure, operations and policies are simply points to be considered by

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26 18 PERB ¶4645 (1985).

27 Act, §201.5.

employees in making decisions regarding their choice of a negotiating agent or their membership in that organization.\footnote{29}{Id. at 3051.}

It is uncontroverted on this record that Local 409 is the recognized bargaining agent for the Engineer-Custodians.\footnote{30}{Supra note 5.} The structure of Local 409 is, therefore, irrelevant to its duty to bargain in good faith. On this point, the ALJ found that Lathrop's efforts to obtain the information requested by the District did not meet the minimum standards of good faith. We agree.

We have determined that good faith is a matter of intention which can be measured by words and deeds.\footnote{31}{Town of Southampton, 2 PERB ¶3011 (1969).} We have also held that parties to the negotiations process must explain their demands and listen to the justification for counterproposals.\footnote{32}{Uniformed Firefighters Ass'n, Mount Vernon, 11 PERB ¶3095 (1978).} It is axiomatic that good faith negotiations cannot be conducted when one party to the negotiations is operating in a vacuum, without any information with which it could analyze and understand the proposal presented to it and, thereafter, craft a reasonable response or counter-proposal. Clearly, we believe, in such a case, that the party who has made a request for information that meets our criteria for reasonableness\footnote{33}{Supra note 17.}, in response to a demand to bargain on a particular subject and who has been denied that information by the party making the demand, should not be expected to negotiate over such demand.

\begin{thebibliography}{9}
\bibitem{29} Id. at 3051.
\bibitem{30} Supra note 5.
\bibitem{31} Town of Southampton, 2 PERB ¶3011 (1969).
\bibitem{32} Uniformed Firefighters Ass'n, Mount Vernon, 11 PERB ¶3095 (1978).
\bibitem{33} Supra note 17.
\end{thebibliography}
On this record, Local 409 has evidenced no intention to participate in collective negotiations on its salary proposal in a meaningful way. It has made a demand for an increase in salary and in the amount paid by the District under the CEC. Local 409 refused to explain the rationale for this demand by using the structure of the local and the members’ “no vote” as an excuse to avoid providing necessary and relevant information to the District. Lathrop failed to provide the requested information that he possessed. It cannot be reasonably concluded on this record that Local 409 approached the bargaining table with the sincere desire and necessary intent to reach agreement. Local 409 must, therefore, make a good faith effort to produce the requested information. Local 409 must investigate alternate sources of the information if it cannot obtain the information from its members and communicate promptly to the District the results of its efforts.

Based upon the foregoing, we deny Local 409’s exceptions and the District’s cross-exceptions and affirm the ALJ’s finding that Local 409 violated §209-a.2(b) of the Act and direct the disclosure of the at-issue information.

IT IS, THEREFORE, ORDERED that the International Union of Operating Engineers, Local 409 forthwith provide to the District the information requested on April 23, 2001 and, if Local 409 makes a claim that it is not in possession of the requested information, it explain to the District the basis for the claim of non-possession, make a good faith effort to obtain the information sought, investigate alternate sources and communicate to the District the results of those efforts; and

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34 Based upon the nature of Local 409’s exceptions, we need not reach the issue of whether the ALJ relied exclusively upon the NLRB for authority.
IT IS FURTHER ORDERED THAT Local 409 sign and post the attached notice at all locations ordinarily used to communicate with unit members.

DATED: September 26, 2003
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 Board of Education of the City School District of the City of Buffalo in the unit represented by the International Union of Operating Engineers Local 409, that the International Union of Operating Engineers Local 409 will:

Forthwith provide to the District the information requested on April 23, 2001, and if Local 409 makes a claim that it is not in possession of the records, it explain the basis for the claim of nonpossession, make an effort to obtain the information sought, investigate alternate sources and communicate to the District the results of those efforts.

Dated ............

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

INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 409

Notice must remain posted for 30 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.
STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

AMALGAMATED TRANSIT UNION, LOCAL 1342,

Charging Party,

- and -

CASE NO. U-23492

NIAGARA FRONTIER TRANSIT METRO SYSTEM,
INC.

Respondent.

REDEN & O'DONNELL, LLP (JOSEPH E. O'DONNELL of counsel), for
Charging Party

JAECKLE FLEISCHMANN & MUGEL, LLP (SEAN P. BEITER of counsel),
for Respondent

BOARD DECISION AND ORDER

This matter comes to us on exceptions filed by the Amalgamated Transit Union,
Local 1342 (ATU) to a decision of an Administrative Law Judge (ALJ) that found a
violation of §209-a.1(d) of the Public Employees' Fair Employment Act (Act) by the
Niagara Frontier Transit Metro System, Inc. (Metro) when it refused ATU's demand to
bargain the impact of the installation of video cameras on buses and the use of the
video tape obtained from the cameras in disciplinary proceedings.
EXCEPTIONS

ATU excepted to the ALJ’s decision on the ground that the ALJ erred by narrowing the impact demand to the use of the video tape in disciplinary proceedings and in finding that Metro was free to use the video tape in the disciplinary proceedings pending negotiations over the impact of such use.

Metro filed a response and cross-exceptions arguing that the ALJ erred in finding a violation of the Act.¹

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

FACTS

The facts are fully set forth in the ALJ’s decision.² We will confine our review to the salient facts relevant to the exceptions.

ATU alleged in its improper practice charge that it “demanded impact bargaining regarding the installation of the new video camera system and specifically the use of said video footage in disciplinary proceedings.” ATU requested that Metro respond to its demand by the end of the business day on June 21, 2002. Metro failed to respond.

The parties agreed to submit the issue to the ALJ on a stipulation of facts. The ALJ found that the parties had narrowed the charge to an allegation that Metro had failed to respond to the demand to bargain the impact of “the use of said video footage

¹ Metro, in its answer, denied the material allegations of the charge and asserted the defenses of timeliness and waiver. The issues are not before us on appeal.

² 36 PERB ¶4538 (2003).
in disciplinary proceedings.” Metro having failed to respond, ATU filed the improper practice charge alleging a refusal to negotiate in good faith.

**DISCUSSION**

ATU contends that the ALJ erred by limiting the impact demand to the use of video tape footage in disciplinary proceedings. We disagree.

Section 212.3(d) of PERB's Rules of Procedure provides that stipulations of fact may be introduced into evidence with respect to any issue. This dispenses with the production of evidence on that issue based upon the concession by a party that the stipulated fact alleged by the adverse party is true. The parties' stipulation clearly and unequivocally limits the scope of the impact bargaining demand to the use of video footage in disciplinary proceedings.

ATU argues that Metro should not have been allowed to use the video footage prior to negotiating the impact. This argument, however, misapprehends the principle of impact bargaining. An employer's duty to bargain over its managerial decisions that have an impact on mandatory subjects, i.e., terms and conditions of employment, such as discipline, differs from its duty to bargain over decisions that are directly about mandatory subjects in two ways: the first difference relates to when the employer must bargain, the second difference relates to consequences to the employer if it fails to bargain.

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4 See *Village of Belmont*, 34 PERB ¶3008, at 3014 (2001); *Town of Ramapo*, 33 PERB ¶3021, at 3058 (2000) (limiting the record to the parties' stipulated facts).
We have held that, if an employer makes a decision about a nonmandatory subject of bargaining that has an impact on a mandatory subject, such as discipline, the employer is free to implement the decision before it negotiates with the employee organization over the impact.\(^5\) It is axiomatic that the duty to bargain impact arises only upon a valid demand.\(^6\) Once a valid demand was made, Metro's failure or refusal to bargain over the impact of its decision is a violation of the duty to bargain in good faith.\(^7\) The remedy is usually not to order the employer to undo the underlying managerial decision, but simply to order the employer to bargain over the impact of its decision.

Metro, in its cross-exceptions, argues that the ALJ erred in finding a violation because it had no duty to negotiate the impact of an investigatory procedure. In the alternative, Metro argues that, subsequent to the filing of the charge, the parties agreed upon a procedure that allows ATU to review the video footage. Consequently, Metro argues that the ALJ should not have found a violation.

The first of Metro's arguments fails because there is nothing in the record to indicate the purpose for which the digital cameras were installed in the buses. Metro's

\(^5\) *State of New York (SUNY Binghamton)*, 27 PERB ¶3018 (1994); see also *Town of Oyster Bay*, 12 PERB ¶3086 (1979) (because a contrary holding would preclude the employer from exercising rights which it possessed).

\(^6\) *Niagara Frontier Transp. Auth.*, 18 PERB ¶4607, remanded on other grounds, 18 PERB ¶3083 (1985); *City of Rochester*, 17 PERB ¶3082 (1984); *Suffolk County BOCES*, 16 PERB ¶3097 (1983).

\(^7\) *Wappingers Cent. Sch. Dist.*, 26 PERB ¶3014, vacated on other grounds, 26 PERB ¶7014 (Sup. Ct. Albany County 1993).

\(^8\) *Id.* at 3027.
arguments regarding its reason for installing the cameras were first raised in its brief on appeal and, therefore, cannot be considered part of the record on any theory.\textsuperscript{9}

While investigatory procedures in disciplinary matters have been held to be nonnegotiable,\textsuperscript{10} ATU’s impact demand was limited solely to the use of the tapes in disciplinary proceedings, a demand limited to disciplinary procedures, which are mandatorily negotiable.\textsuperscript{11} Metro’s alternative argument also fails. The mere fact that Metro participated in bargaining subsequent to the filing of the charges does not satisfy its duty to bargain impact on demand.\textsuperscript{12}

Based upon the foregoing, we deny ATU’s exceptions and Metro’s cross-exceptions and affirm the decision of the ALJ.

IT IS, THEREFORE, ORDERED that the Niagara Frontier Transit Metro System, Inc.:

1. Cease and desist from refusing to negotiate, with the Amalgamated Transit Union, Local 1342, the impact of its decision to use video footage obtained from surveillance cameras on buses in disciplinary proceedings; and


\textsuperscript{10} Scarsdale Police Benevolent Ass’n, Inc., 8 PERB ¶3075 (1975).

\textsuperscript{11} See City of Schenectady, 21 PERB ¶4605 (1988), aff’d, 22 PERB ¶3018 (1989) (holding that procedures followed during employee disciplinary investigations are subject to bargaining).

\textsuperscript{12} Supra note 6.
2. Forthwith sign and post the attached notice at all locations customarily used to communicate with ATU bargaining unit members.

DATED: September 26, 2003
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 Niagara Frontier Transit Metro Systems, Inc. (Metro) in the unit represented by the Amalgamated Transit Union, Local 1342 (Local 1342), that Metro will:

Not refuse to negotiate the impact of its decision to use video footage obtained from surveillance cameras on buses in disciplinary proceedings, with the Amalgamated Transit Union, Local 1342.

Dated ............

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

NIAGARA FRONTIER TRANSIT METRO SYSTEM, INC.

This Notice must remain posted for 30 consecutive days from the date of posting, and must not be altered, covered, or covered by any other material.
STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

CIVIL SERVICE EMPLOYEES ASSOCIATION, INC.,
LOCAL 1000, AFSCME, AFL-CIO, ERIE COUNTY
LOCAL 185, ERIE COUNTY UNIT,

Charging Party,

-and-

COUNTY OF ERIE and ERIE COUNTY
COMMUNITY COLLEGE,

Respondents.

CASE NO. U-23119

In the Matter of

CIVIL SERVICE EMPLOYEES ASSOCIATION, INC.,
LOCAL 1000, AFSCME, AFL-CIO, ERIE COUNTY
LOCAL 185, ERIE COUNTY UNIT,

Charging Party,

-and-

COUNTY OF ERIE and ERIE COUNTY
COMMUNITY COLLEGE,

Respondents.

CASE NO. U-23197

In the Matter of

CIVIL SERVICE EMPLOYEES ASSOCIATION, INC.,
LOCAL 1000, AFSCME, AFL-CIO, ERIE COUNTY
LOCAL 185, ERIE COUNTY UNIT,

Charging Party,

-and-

COUNTY OF ERIE and ERIE COUNTY
COMMUNITY COLLEGE,

Respondents.

CASE NO. U-23279
In the Matter of

CIVIL SERVICE EMPLOYEES ASSOCIATION, INC.,
LOCAL 1000, AFSCME, AFL-CIO, ERIE COUNTY
LOCAL 185, ERIE COUNTY UNIT,

Charging Party,

-and-

COUNTY OF ERIE and ERIE COUNTY
COMMUNITY COLLEGE,

Respondents.

In the Matter of

CIVIL SERVICE EMPLOYEES ASSOCIATION, INC.,
LOCAL 1000, AFSCME, AFL-CIO, ERIE COUNTY
LOCAL 185, ERIE COUNTY UNIT,

Charging Party,

-and-

COUNTY OF ERIE and ERIE COUNTY
COMMUNITY COLLEGE,

Respondents.

NANCY E. HOFFMAN, GENERAL COUNSEL (PAUL S. BAMBERGER of counsel), for Charging Party

KATHLEEN E. O'HARA, ESQ., for Respondents

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by the County of Erie (County) and Erie County Community College (College), (collectively, the County) to a decision of an

Administrative Law Judge
(ALJ) on five improper practice charges filed by the Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO, Erie County Local 185, Erie County Unit (CSEA). CSEA has filed cross-exceptions to certain aspects of the ALJ's decision.

The charges before us involve allegations of unilateral reassignments of CSEA unit work to nonunit supervisory staff and allegations of retaliation against unit members stemming from the charges and complaints CSEA filed regarding the assignment of unit work. The improper practice charge in U-23119 alleges that the County violated §209-a.1(d) of the Public Employees' Fair Employment Act (Act) when Lynda Kochanoff, the College's Coordinator of College Safety, and Anthony Nesci, the College's Director of Building and Grounds, supervised employees who CSEA alleges should have been under the supervision of CSEA unit members during football games at the College. The charge in U-23197 involves allegations that the County violated §§209-a.1(a), (c) and (d) of the Act when Nesci supervised AFSCME unit members, failed to assign Dale Bacchetti, a supervising maintenance mechanic, to cover for an absent unit member, and when Nesci changed Bacchetti's schedule in retaliation for Bacchetti seeking CSEA's assistance in claims arising under the Act and the parties' collective bargaining agreement. CSEA filed the charge in U-23279, alleging a violation of §209-a.1(d) of the Act, when Nesci allegedly threatened Bacchetti for filing the charge in U-23197. The charge in U-23313 alleges that the County violated §209-a.1(d) of the Act when

1 These College employees are in a blue-collar unit represented by AFSCME.
Kochanoff reassigned certain CSEA unit members to different shifts and assumed some of their supervisory duties over employees in the blue-collar unit. The final charge, U-23337, alleges that the County violated §§209-a.1(a) and (c) of the Act when, at the conclusion of a PERB pre-hearing conference concerning U-23197 and U-23279, Brian Doyle, then the County's Director of Labor Relations, told CSEA representatives that "we do not make accommodations for people who bring us to PERB."

The ALJ found that the County violated §209-a.1(d) when Kochanoff performed unit work (U-23313) and when Nesci performed supervisory duties while a unit member was absent from work (U-23197). The ALJ dismissed the charge in U-23119, finding no exclusivity on the part of CSEA in supervising AFSCME unit members at College football games.

The ALJ dismissed a portion of the charge in U-23197 as to the alleged §§209-a.1(a) and (c) violations, finding no causal connection between Nesci's issuance of a schedule change memorandum to Bacchetti and his exercise of protected rights. The ALJ found, however, that with respect to certain statements made by Nesci to Bacchetti regarding his involvement in filing an improper practice charge and the threat to Bacchetti's job if the improper practice charge were successful, that the College had violated §§209-a.1(a) and (c) of the Act. Finally, the ALJ found a violation of §§209-a.1(a) and (c) of the Act when Doyle made chilling statements to CSEA at the conclusion of a PERB pre-hearing conference (U-23337).
EXCEPTIONS

The College excepts to the ALJ’s finding of a violation in U-23197, U-23313 and U-23337. CSEA has filed cross-exceptions to the ALJ’s dismissal of the charges in U-23119 and U-23279, but otherwise supports the ALJ’s decision.

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

FACTS

The facts are set forth in detail in the ALJ’s decision and will be repeated here only as necessary for our discussion of the exceptions and the cross-exceptions.

Case No. U-23119

The College’s first season of football began in September 2001. Bacchetti, a supervising maintenance mechanic, was assigned to supervise AFSCME unit employees at the games at the College on September 1 and September 8, 2001, an overtime assignment. At the home games on October 6 and 13 and November 3 and 10, 2001, while AFSCME unit employees were working, Nesci and Kochanoff provided the supervision; no CSEA unit members were assigned overtime for supervising the blue-collar employees.

The job descriptions for the Supervising Maintenance Mechanic, the Custodian of Buildings and Grounds and the Senior Building Guard, provide that incumbents in those

2 George Wagner, a custodian of buildings and grounds and a member of the CSEA unit, was also assigned to work on September 1, 2001. Lisa Napierala, a senior building guard and CSEA unit member, supervised college security personnel in the AFSCME unit at the games on September 1 and 8, 2001.
titles exercise extensive and direct supervision over lower level technical, security and maintenance staff. The Director of Buildings and Grounds is responsible for the supervision of the custodians of buildings and grounds and the Coordinator of College Safety exercises college-wide supervision over employees in the security department.

Case No. U-23197

In January 2002, George Andrisani, one of the custodians of buildings and grounds, went out on sick leave for approximately six weeks. Bacchetti asked Nesci if he would be assigned to cover for the absent employee on the day shift and Nesci declined to make the assignment. Both Bacchetti and Gary Ghosen, CSEA section president, complained to Nesci that Andrisani's work was unit work and should be assigned to a unit member. Nesci performed the work himself. In February 2002, Nesci issued a memorandum to Bacchetti, changing his schedule from days on Mondays and Fridays to the evening shift daily. When Bacchetti complained to Nesci that he had family concerns, Nesci refused to change his shift back. Bacchetti thereafter spoke to a County legislator and a member of the College's Board of Trustees about the shift change. The shift change was never implemented and Bacchetti continued working days on Mondays and Fridays.

Case No. U-23279

In March 2002, after the charge in U-23197 had been filed, Nesci called Bacchetti to a meeting with Andrisani. Nesci told Bacchetti that if CSEA prevailed in U-23197, Bacchetti would lose his present schedule and that he was upset by Bacchetti filing the improper practice charge.
Case No. U-23313

Kochanoff changed the schedules of three senior building guards in February and March 2002, from day shifts to evening shifts. Kochanoff had been a principal security officer, a CSEA unit title, until that title was eliminated and her current position of coordinator of college safety was created. While the three senior building guards were assigned to evening shifts, Kochanoff supervised the AFSCME unit employees who had been supervised by the senior building guards on the day shift.

Case No. U-23337

At a pre-hearing conference in U-23119, U-23197 and U-23279, after the ALJ had left the conference room at the conclusion of the conference, Doyle told Ghosen and Penny Gleason, a CSEA Labor Relations Specialist, that Bachetti's schedule had been an accommodation and he would be going back to a schedule of straight afternoons because “we do not accommodate people who bring us to PERB.”

DISCUSSION

The County excepts to the ALJ’s decision in U-23197, arguing that the ALJ erred by finding that the Act was violated by the College’s failure to assign Bacchetti or another CSEA unit member to cover Andrisani’s position while he was utilizing sick leave and by having Nesci perform Andrisani’s work in his absence, because the work in question is not exclusive unit work. The County also excepts to the ALJ’s finding in U-23313 that the Act was violated when Kochanoff assumed supervisory responsibilities
of unit employees after they were transferred to evening shifts. CSEA cross-exceptions to that portion of the ALJ's decision in U-23119 that dismissed the allegations that it was improper for Nesici and Kochanoff to supervise AFSCME unit employees at College football games.

The resolution of these exceptions and cross-exceptions rests upon an analysis of the definition of exclusive unit work. Direct supervision of AFSCME unit employees, whether in buildings and grounds, maintenance or security titles, is the exclusive unit work of CSEA employees in the titles of supervising maintenance mechanic, custodian of buildings and grounds and senior building guard. The job descriptions of those titles and the testimony of employees in those titles make clear that, when direct supervision is exercised over AFSCME unit employees, it is performed by CSEA unit members. That Nesici and Kochanoff have general supervisory roles over both CSEA unit employees and AFSCME unit employees and have, at times, provided direct supervision, does not destroy CSEA's claim of exclusivity in these cases.

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3 The County argues that the charge in U-23313 is untimely because Kochanoff assumed the position of Coordinator of College Safety in July 2001 and the charge was not filed until April 12, 2002. The ALJ found that the charge was filed within four months often the alleged assumption by Kochanoff of the duties performed exclusively by CSEA unit employees. The County excepts to the ALJ's decision because it alleges that Napierala knew that Kochanoff was performing direct supervision of AFSCME unit employees from the time of her appointment. To the extent that Kochanoff supervised AFSCME unit employees at the College's football games in September and October 2001, those actions are covered by CSEA's charge in U-23119. Napierala's knowledge of any other instances where Kochanoff might have supervised AFSCME unit employees is not attributable to CSEA. See County of Cattaraugus, 8 PERB ¶3062 (1975).

4 County of Erie, 30 PERB ¶3017 (1997).
We reverse the ALJ's finding in U-23119 that CSEA did not establish exclusivity over the supervision of AFSCME unit employees at the College football games in the fall of 2001. The ALJ never actually defined unit work in deciding this charge, but based upon our definition of CSEA bargaining unit work and the undisputed testimony that Nesci and Kochanoff supervised AFSCME unit employees at the games, after CSEA unit employees had been originally assigned to do so, we find that the County violated §209-a.1(d) of the Act by transferring unit work to non-unit supervisory employees. We affirm the ALJ's decision regarding the transfer of unit work allegations in U-23197 and U-23313 and find the County violated §209-a.1(d) of the Act.

The County excepts to the ALJ's finding in U-23337 that the County violated §§209-a.1(a) and (c) of the Act when Doyle made anti-union comments to Ghosen and Gleason at the conclusion of a PERB pre-hearing conference. The County argues that the comments were made during the pre-hearing conference and that, therefore, evidence as to the comments was inadmissible. The County further argues that the comments, while lamentable, did not rise to the level of a violation.

Our policy of excluding statements made at a pre-hearing conference is, as found by the ALJ, inapplicable in this matter. That policy, in general, is intended to render settlement discussions at pre-hearing conferences inadmissible at a subsequent hearing.\(^5\) The statements made by Doyle were not in the nature of settlement

discussions. Rather, they were made at the conclusion of the conference and out of the presence of the conferencing ALJ, and are, therefore, admissible. We affirm the ALJ's determination that Doyle's statements violate §§209-a.1(a) and (c) of the Act. Statements by an employer representative to unit employees and bargaining agent representatives that promise or threaten negative action by the employer in response to the exercise of protected rights are inimical to the policies and purposes of the Act.\(^6\)

Finally, CSEA cross-excepts to the ALJ’s dismissal of that portion of the charge in U-23197 that alleged that Nesci issued the February 2002 schedule change memorandum to Bacchetti in retaliation for Bacchetti’s and Ghosen’s questioning of Nesci’s decision not to appoint a replacement for Andrisani while he was on sick leave. The ALJ found that, beyond a close proximity in time, there was no causal connection between Bacchetti’s complaint in January 2002 and the February 2002 schedule change, as the record contained no evidence of improper motivation on the part of Nesci and no evidence that the purported business reason proferred by the College was pretextual.

CSEA argues that the schedule change came less than one month after Ghosen’s and Bacchetti’s complaint and that, at that time, there had been only one complaint about the condition of the College’s facilities, in December 2001. Nesci took no action to address that complaint until February 2002, two months later, and after

\(^6\) *Town of Hempstead*, 19 PERB ¶3022 (1986).
Bacchetti questioned his filling of the vacancy caused by Andriani's absence. The other complaints about the cleaning of the facilities relied upon by Nesci and accepted by the ALJ as the business motivation for the schedule change memorandum did not occur until March 2002. Finally, the ALJ found that there was sufficient anti-union animus on the part of Nesci to find that his meeting with Bacchetti and the remarks that he made at that meeting in March 2002 violated §§209-a.1(a) and (c) of the Act.

We find that, based upon the proximity in time between the protected activity and the adverse action, the length of time between the one complaint which allegedly formed the basis of Nesci's action and his memorandum to Bacchetti allegedly addressing the complaint, and the ALJ's finding that Nesci's next action toward Bacchetti was the result of anti-union animus, that the issuance of the scheduling change memorandum to Bacchetti was in retaliation for his exercise of protected rights in January 2002, and was a violation of §§209-a.1(a) and (c) of the Act. The ALJ's decision in this regard is, therefore, reversed.

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7 County's Exhibit 14.

8 That the schedule change was never implemented due to the intervention of a member of the College's Board of Trustees does not moot the charge, as argued by the County. Had the charge alleged a (d) violation based upon a unilateral change theory, that the schedule change was never put into effect might warrant the result sought by the County. See City of Peekskill, 26 PERB ¶3062 (1993). However, the charge alleges retaliation for the exercise of protected rights. The chilling effect of the memorandum is not negated by the mere fact that it was never implemented.
Based upon the foregoing, we deny the County's exceptions, grant the cross-exceptions of CSEA, reverse the ALJ's decision in U-23119 and U-23279 as discussed herein, and affirm the ALJ's decision in U-23197, U-23313 and U-23337.

IT IS, THEREFORE, ORDERED that the County will:

1. Cease and desist from unilaterally transferring the work of Supervising Maintenance Mechanic, Custodians of Buildings and Grounds and Senior Building Guards from the CSEA unit and forthwith return that work to the unit;

2. Make unit members whole for loss of wages and benefits, if any, with interest at the maximum legal rate, suffered as a result of the County's transfer of unit work during the 2001-2002 college football season, the extended illness leave of a Custodian of Buildings and Grounds and the transfer of Senior Building Guards to the second and third shifts;

3. Cease and desist from interfering with, restraining or coercing unit members in the exercise of their protected rights guaranteed in the Act, or discriminating against unit members for the exercise of protected activity; and
4. Sign and post the attached notice at all work locations ordinarily used by the County to communicate information to bargaining unit employees.

DATED: September 26, 2003
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 Erie and Erie County Community College (County) in the unit represented by the Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO, Erie County Local 185, Erie County Unit (CSEA), that the County:

1. Will not unilaterally transfer the work of Supervising Maintenance Mechanic, Custodians of Buildings and Grounds and Senior Building Guards from the CSEA bargaining unit;

2. Will make unit members whole for the loss of wages and benefits, if any, with interest at the maximum legal rate, suffered as a result of the County's transfer of unit work during the extended illness leave of a Custodian of Buildings and Grounds and the transfer of Senior Building Guards to the second and third shifts;

3. Will not interfere with, restrain or coerce unit members in the exercise of their protected rights guaranteed in the Act, or discriminate against unit members for the exercise of protected activity.

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

County of Erie and Erie County Community College

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

In the Matter of

WARREN COUNTY EMPLOYEES ASSOCIATION,

Petitioner,

-and-

COUNTY OF WARREN,

Employer,

-and-

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

Intervenor.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding\(^1\) having been conducted in the above matter by the
Public Employment Relations Board in accordance with the Public Employees' Fair
Employment Act and the Rules of Procedure of the Board, and it appearing that a
negotiating representative has been selected,

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

IT IS HEREBY CERTIFIED that the Civil Service Employees Association, Inc.,

\(^1\)The petitioner sought to decertify the intervenor and be certified as the
negotiating representative.
Local 1000, AFSCME, AFL-CIO has been designated and selected by a majority of the employees of the above named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances:

Included: See attached.

Excluded: See attached.

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

DATED: September 26, 2003
Albany, New York

Michael R. Cuevas, Chairman

Marc A. Abbott, Member

John T. Mitchell, Member
Included Titles

GRADE 2

Cleaner
Clerk
Food Service Helper
Hospital Aide
Institutional Aide
Laborer
Laundry Worker
Supervisor of Volunteers
Van Driver
Meal Site Cook
Meal Site Manager
Aging Services Aide

GRADE 3

Leisure Time Activities Aide
Typist
Ward Clerk
WIC Clerks
Hatchery Aide
Physical Therapy Aide
WIC Program Aide

GRADE 4

Account Clerk
Cook
D.E. Machine Op
Index Clerk
Janitor
Senior Clerk
Senior Stenographer – Secretary
Senior Typist – Secretary
Stenographer – Secretary
Storeroom/Printshop Assistant
Tourism Specialist
WIC Assistant
Assistant Manager
Food Service Manager
Aging Services Assistant
GRADE 5

Account Clerk-Typist
Charge Aide
Motor Equipment Operator (Light)
Motor Vehicle License/Registration Clerk
Records Clerk
Youth Services Specialist
Legal Clerk
Recreational Aide
Motor Vehicle Registration/Enforcement Clerk

GRADE 6

Bldg Maint Man
HEAP Examiner
Messenger
Senior Data Entry Operator
Social Welfare Examiner
Support Collector
Support Investigator
Working Supervisor
WIC Nutrition Aide
Personnel Clerk
Building Maintenance Worker
Motor Coach Promoter

GRADE 7

Auto Mechanic Helper
Licensed Practical Nurse
Motor Equipment Operator (Medium)
Principal Stenographer
Senior Account Clerk
Probation Asst.

GRADE 8

Administrative Assistant
Airport Maintenance Worker
Employment & Training Coordinator
Graphics Desktop Publisher
Heavy Equipment Operator
Nurse Technician
Senior Account Clerk/Typist
GRADE 9

Auto Mechanic
Employment & Training Counselor
Leisure Time Activities Director
Personnel Technician
Sign Maintenance Worker
Welder

GRADE 10

Draftsman
Engineering Technician
Highway Construction Supervisor
Principal Account Clerk
Senior Records Clerk
Sign Maintenance Supervisor
Social Work Assistant
Specialist, Services for the Aging
Records Management Technician

GRADE 11

Senior Social Welfare Examiner
Senior Support Collector
Social Services Investigator
Principal Account Clerk/Typist

GRADE 12

WIC Nutritionist
Resource Assistant
Prin Acct Clerk/Comp Sys Op
Senior Engineering Technician

GRADE 13

Building Maintenance Mechanic
Caseworker
Mechanical Storekeeper
Tax Map Technician
Data Coordinator
JTPA Coordinator
GRADE 14

CASA Coordinator
Health Educator
Senior Caseworker

GRADE 15

Accounting Supervisor
Principal Social Welfare Examiner
Rehabilitation Specialist
Staff Development Coordinator
Senior Employment & Training Counselor
Supervising Support Investigator
WIC Coordinator

GRADE 16

Case Supervisor B
Sr. Tax Map Technician
Sr. Blding Maint Mechanic
WIC Dietitian
WIC Nutrition Counselor

GRADE 17

Fire & Building Code Enforcement Officer

GRADE 18

RPN
Senior Planner

GRADE 19

Coordinator, Services for the Aging
Probation Officer
Public Health Nurse
RPN Supervisor
**Excluded Titles**

All Elected Officials  
Department Heads  
Clerk of the Legislative Board  
Secretary to Clerk of Legislative Board  
Deputy Clerk of Legislative Board  
County Court Judge  
Confidential Law Assistant to County Court Judge  
Family Court Judge  
Surrogate Court Judge  
Commissioner of Jurors  
District Attorney  
Assistant District Attorney  
Administrator of Assigned Counsel  
Coroner  
County Auditor  
County Treasurer  
Deputy County Treasurer  
County Budget Officer  
Purchasing Agent  
Director of Real Property Tax Service Agency  
Deputy Director of Real Property Tax Service Agency  
County Clerk  
Deputy County Clerk  
County Attorney  
Assistant County Attorney  
Personnel Officer  
Commissioners of Board of Elections  
Deputy Commissioners of Board of Elections  
Building Superintendent  
Systems Analyst Programmer  
Court Officers and Court Attendants  
Sheriff  
Under Sheriff  
Patrol Officers – Part-time  
Special Patrol Officers  
Patrol Officers – Seasonal  
Correctional Officers – Part-time  
Fire Coordinator  
Deputy Fire Coordinator  
Relief Dispatcher, Fire Control  
Civil Defense Director  
Supervising Nurse, Public Health Services
Medical Director, Physically Handicapped Children
Director, TB Clinic
Commissioner of Social Services
Deputy Commissioner of Social Service
Director, Mental Health
Director, Social Services
Director, Administrative Services
Social Services Attorney
Administrator, Westmount Infirmary
Director of Nursing
Physicians, Westmount Infirmary
Consulting Pharmacist, Westmount Infirmary
Director, Veterans Service Agency
Sealer of Weights and Measures
Historian
Administrator, County Planning Board
Secretary, County Planning Board
All Employees, Regional Planning Board
Country Veterinarian
Superintendent of Public Works
Deputy Superintendent of Public Works
Senior Engineer, Department of Public Works

General Highway Foreman
Auto Mechanic Foreman
Deputy Department Heads
Executive Housekeeper
Assistant Directors
County Planning Board
County Planner
Planning Assistant
Planning Administrator
Associate Planner
Mental Health Programs Analyst
Mental Health Fiscal Officer
Manpower Account Manager
Dietetic Service Supervisor
Nondeputized Communication Officers
First Patrol Officers
Civil Law Enforcement Officers
Patrol Sergeants
Patrol Officers
Communications Operators
Correction Officers
All Managerial and Confidential Employees
In the Matter of

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

Petitioner,

-CASE NO. C-5298-

COUNTY OF COLUMBIA,

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 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: Full-time emergency dispatchers and emergency dispatchers I.

Excluded: All other employees.

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: September 26, 2003
Albany, New York

Michael R. Cuevas, Chairman

Marc A. Abbott, Member

John T. Mitchell, Member
In the Matter of

TIOGA COUNTY CORRECTIONS ASSOCIATION,

Petitioner,

-and-

COUNTY OF TIOGA,

Employer.

-and-

TIOGA COUNTY SHERIFF'S CORRECTIONS UNION,
COUNCIL 82, AFSCME, AFL-CIO, LOCAL 3385,

Intervenor.

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 Tioga County Corrections 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: Corrections officers and cook employees including all corrections sergeants.

Excluded: All ranks above corrections sergeant and all other employees.¹

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Tioga County Corrections 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: September 26, 2003
Albany, New York

Michael R. Cuevas, Chairman

Marc A. Abbott, Member

John T. Mitchell, Member

¹The current representative of the petitioned-for union, Tioga County Sheriff's Corrections Union, Council 82, AFSCME, AFL-CIO, Local 3385, disclaimed interest in representing the unit.