4-27-2005

State of New York Public Employment Relations Board Decisions from April 27, 2005

New York State Public Employment Relations Board

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State of New York Public Employment Relations Board Decisions from April 27, 2005

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

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This case comes to us on exceptions filed by the City of Jamestown (City) to a decision by an Administrative Law Judge (ALJ) granting the petition filed by the Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO (CSEA) for unit placement and/or clarification of the titles of Typist/On-Call Receptionist and Maintenance Mechanic II (part-time).

EXCEPTIONS

The City excepts to the ALJ’s decision only on the grounds that the ALJ failed to consider the language of the management rights clause of the parties’ collective bargaining agreement and that the title of Maintenance Mechanic II is not encompassed...
within the CSEA unit and, therefore, the ALJ should not have granted the unit clarification petition as to that title. CSEA supports the ALJ’s decision.

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

FACTS

The facts are set forth in the ALJ’s decision and are repeated here only as necessary to decide the exceptions.

On April 2, 2004, CSEA filed a petition, as amended, for unit clarification and unit placement for part-time employees in the titles of Typist/On-Call Receptionist and Maintenance Mechanic II. At the hearing held October 7, 2004, the parties stipulated to the record and to the facts to be considered by the ALJ in making her determination. The parties agreed that the ALJ would consider the City’s payroll data on the issue of regular and continuous employment and that the individuals employed in the at-issue titles only receive statutory benefits. The parties stipulated that the community of interest shared by the at-issue titles and those in the bargaining unit was not in dispute.

The ALJ evaluated the payroll data provided by the City for the at-issue titles. The ALJ concluded that the Maintenance Mechanic II worked, on average, 24 hours per week and worked every week for the 34 weeks of payroll data analyzed. The

\[1\] To the extent that the City raises community of interest as an issue in its exceptions, we note that the parties stipulated at the hearing to a community of interest between the at-issue titles and those in CSEA’s bargaining unit and that issue was, therefore, not part of the ALJ’s decision. We, therefore, do not reach it here as it is not properly before us.

\[2\] 38 PERB ¶4003 (2005).
Typists/On-Call Receptionists worked, on average, 9 hours per week per position and 31 weeks during 2003.

The ALJ elicited from CSEA that it represents full-time clerical employees and employees in the full-time title of Maintenance Mechanic I. CSEA has, in the past, represented employees in the title of Maintenance Mechanic II and the title remains in Schedule A of the current collective bargaining agreement.\(^3\) Part-time employees are also included in CSEA’s bargaining unit.

The ALJ also noted for the record that the City’s response\(^4\) to CSEA’s petition raised certain ancillary issues that were not relevant to the proceeding. In its response, the City pointed out that the inclusion of the Typist title and Matron title\(^5\) into the CSEA unit was discussed during contract negotiations for a successor agreement and that CSEA subsequently withdrew the demand from negotiations. The City’s response also asserted that the management rights clause of the parties’ collective bargaining agreement gives it the right to determine whether, and to what extent, the work required in operating its business will be performed by bargaining unit members.

**DISCUSSION**

The City argues that the management rights clause in the current collective bargaining agreement gives it the right to manage its business affairs and services and to direct the work force, including the right to determine whether, and to what extent,

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\(^3\) Transcript, pp. 8-9.

\(^4\) ALJ Exhibit #2.

\(^5\) At the hearing, CSEA withdrew the title of Matron from the petition.
services will be performed by employees in CSEA’s bargaining unit. From the management rights contract language, the City argues that CSEA has waived its right to complain in this proceeding about the assignment of unit work to non-unit employees. This argument misapprehends the nature of a unit clarification/unit placement petition.

A unit clarification petition raises only a fact question as to whether the at-issue personnel are already included in the existing unit. Where the language in the recognition clause is general and is not title specific, the inquiry goes beyond the language of the recognition clause to determine whether any other contractual language either covers, or specifically excludes, the at-issue title. Where there is no relevant contractual language, the parties’ practice with respect to the at-issue title, or similar titles, is reviewed to ascertain the parties’ intent.

A unit placement petition is, in substance, a mini-representation proceeding calling only for a non-adversarial investigation and the application of the statutory uniting criteria in §207.1 of the Act to the facts found. While community of interest and employer convenience are factors considered in making such a determination, here the parties have stipulated that there is no issue regarding community of interest and the City has not raised administrative convenience.

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6. County of Orange and Sheriff of Orange County, 25 PERB ¶3049 (1992), conf’d sub nom. Orange County Deputy Sheriff’s Ass’n v. PERB, 26 PERB ¶7004 (Sup. Ct. Rockland County 1993).


That the City retains a contractual managerial right, which we do not here analyze, to assign unit work to non-unit employees is not relevant to a unit clarification/unit placement petition. Here, the petition seeks a determination as to whether the non-unit employees to whom the City has assigned unit work are entitled to representation and whether that representation is to be afforded by CSEA. A representation petition does not interfere with the manner in which the City directs its workforce.

The City also argues that the negotiated collective bargaining agreement defines the unit and that CSEA should have bargained the inclusion of the at-issue titles before filing the instant petition. As we held in *County of Rockland*:9

> Although public employers and employee organizations are encouraged to agree upon the composition of bargaining units, as well as the terms and conditions of employment of unit employees, when a representation dispute arises, PERB has the statutory duty, pursuant to §207 of the Act, to determine the most appropriate bargaining unit consistent with the criteria contained therein. Agreements between the employer and the employee organization regarding unit inclusions and exclusions are, accordingly, not controlling. (footnote omitted)\(^\text{(10)}\)

Therefore, the only issues before the ALJ were whether either of the at-issue titles were already encompassed by the recognition clause, or other language, in the parties’ collective bargaining agreement and whether the employees working in the titles of Maintenance Mechanic II and Typist/On-Call Receptionist work with sufficient

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\(^{10}\) See also *Bath Municipal Utility Comm.*, 37 PERB ¶3010 (2004).
regularity and continuity to be considered for representation for collective bargaining purposes.

Notwithstanding the City's exception to the contrary, the title of Maintenance Mechanic II exists in the salary schedule of the collective bargaining agreement between CSEA and the City. Where, as here, the title is included in contractual language, we have held, in a unit clarification case, that the contract is the end of our inquiry. 11 The title is, therefore, included in the bargaining unit. We also conclude that, based upon the ALJ's calculation of the hours worked, the part-time Maintenance Mechanic II is eligible for representation under the Act. We, therefore, grant CSEA's unit clarification petition as to the Maintenance Mechanic II (part time).

Likewise, the ALJ concluded, and we agree, that the Typist/On-Call Receptionists have a sufficient regularity and continuity in the employment relationship with the City so as to create a "substantial interest in terms and conditions of employment warranting coverage under the [Act]." 12 We, therefore, grant the unit placement petition as to this title. 13

The City's exceptions are denied and the ALJ's decision is affirmed.


13 Placement of four employees in CSEA's unit of 22 employees does not affect its majority status. See New York Convention Ctr. Operating Corp., 27 PERB ¶3034 (1994).
IT IS, THEREFORE, ORDERED that the title of Maintenance Mechanic II is included in CSEA’s bargaining unit and the title of Typist/On-Call Receptionist is placed into CSEA’s bargaining unit.

DATED: April 27, 2005
Albany, New York

Michael R. Cuevas, Chairman

John T. Mitchell, Member
This case comes to us on exceptions filed by the City University of New York (CUNY) to a decision of an Administrative Law Judge (ALJ) finding that CUNY violated §209-a.1(a) of the Public Employees' Fair Employment Act (Act) by dealing directly with an employee in the unit represented by the Professional Staff Congress-City University of New York (PSC). The ALJ found that CUNY violated the Act by negotiating an individual employment contract with Kishore Mehta, an employee whose title, Continuing Education Teacher, is covered by the collective bargaining agreement between CUNY and PSC.
EXCEPTIONS

CUNY alleges in its exceptions that the ALJ’s remedy cannot be read as requiring the reinstatement of Mehta. PSC, in its response to the exceptions, argues that the ALJ ordered Mehta’s reinstatement and that, once reinstated, Mehta is entitled to be evaluated and reappointed pursuant to the terms of the individual letter agreement between Mehta and CUNY.

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

FACTS

The facts are fully set forth in the ALJ’s decision and will be repeated here only as necessary to address the exceptions.¹

Mehta was hired in September 2001 as the Financial Manager of Baruch College’s Division of Continuing and Professional Studies. Mehta was hired as a Finance Manager but his personnel action form lists his title as Instructor. The parties stipulated at the hearing that the official personnel records list Mehta’s title as Continuing Education Teacher. Although the title of Continuing Education Teacher is included in the bargaining unit represented by PSC, CUNY thereafter requested that Mehta sign a letter of agreement setting forth his terms and conditions of employment, which states:

Baruch College agrees to employ Kishore Mehta as its financial manager, on a probationary basis, beginning September 17, 2001 at an annual salary of $45,000. The

¹ 37 PERB ¶4599 (2004).
probationary status will be executed as follows: an evaluation review after three months, and end of probation review on March 18, 2002.

Kishore Mehta will be entitled to one (1) week of sick leave (5 days) and two (2) weeks of vacation time (10 days) calculated annually. Additionally, he will receive holidays as noted in column #1 of the attached CUNY Employee Holiday Schedule 2001-2002.

CUNY advised Mehta in September 2002, that his employment would not be renewed. His last date of employment was September 28, 2002. PSC filed a grievance on his behalf, which CUNY denied at step one and step two.\(^2\) PSC thereafter decided not to pursue the grievance to arbitration, the next step of the contractual grievance procedure.

The ALJ determined that CUNY had violated §209-a.1(a) of the Act, finding that it was undisputed that CUNY asked Mehta to sign the letter of agreement and that PSC was neither involved in, nor advised, of the negotiations that led to its execution. As the agreement clearly contained terms and conditions of employment, including salary, probationary terms, evaluation procedures and vacation entitlements, some terms of which exceed those granted by the collective bargaining agreement to Continuing Education Teachers, the ALJ found that CUNY engaged in direct dealing with Mehta that was violative of the Act.

\(^2\) The grievance alleged that Mehta had been improperly denied reappointment, inappropriately appointed to an Adjunct Instructor (Continuing Education Teacher) title, paid an inappropriate rate of pay and had received other terms and conditions of employment inconsistent with the collective bargaining agreement. PSC argued that Mehta should have been hired as a Higher Education Officer and, because of that, filed the grievance pursuant to the contractual grievance procedure applicable to that title and not the more limited procedure available to Continuing Education Teachers.
In determining the remedy, the ALJ held that Mehta should be returned to the circumstances that he would have enjoyed had the terms of the letter agreement never been in effect. The ALJ did not order recoupment of any benefits in excess of the collective bargaining agreement, only that Mehta should receive any benefits under the collective bargaining agreement that were in excess of the letter agreement, with interest at the maximum legal rate, until he was “restored to the position he would have been in had CUNY not engaged in direct dealing.” The ALJ also ordered that Mehta retain any benefits he received pursuant to the letter agreement that were in excess of those set forth for his title in the collective bargaining agreement.

DISCUSSION

CUNY does not except to the ALJ’s finding that the Act was violated when it directed Mehta to sign an individual letter agreement setting forth his terms and conditions of employment, only to the remedy ordered by the ALJ. CUNY argues in its exceptions that PSC is now erroneously of the opinion that the ALJ’s decision requires CUNY to reinstate Mehta to his job at Baruch College. PSC argues that the ALJ’s order mandates that Mehta be reinstated to his former job and be made whole for any loss of wages and benefits. PSC further argues that, if the terms of the letter agreement that are in excess of the collective bargaining agreement are enforced, Mehta would be entitled to the evaluation procedure set forth in the letter agreement, which would require his reinstatement so that he could be evaluated in accordance with the provisions of the letter agreement.

The purpose of our remedial orders is to make parties whole for the wrong sustained by placing them, as nearly as possible, in the position that they would have
been in had the improper practice not been committed. The gravamen of PSC’s improper practice charge is that CUNY’s direct dealing with Mehta is so inherently destructive of PSC’s rights as guaranteed by §204.2 of the Act as to constitute a violation of §209-a.1(a) of the Act.

“Direct dealing basically involves an employer’s impermissible bypass of the exclusive bargaining agent. Essential to a successful case of direct dealing is proof that the employer ‘negotiated’ with an employee or group of employees with a purpose to reach an agreement on the subject matter under discussion.” (footnote omitted) To deal directly with individual employees on a matter affecting a mandatory subject of negotiations, as here, deprives employees of the right to be represented by their chosen negotiating agent. In *County of Cattaraugus*, the Board held that “an employer should deal with its employees through their representative and not deal with the representative through the employees.” (footnote omitted) Direct dealing involves an employer’s actual or attempted establishment of a negotiating relationship with one or more unit employees to the exclusion of the employees’ exclusive bargaining agent. Thus, CUNY’s individual agreement with Mehta as to his terms and conditions of employment violates §209-a.1(a) of the Act because such direct dealing is inherently destructive of

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5 *City of Schenectady*, 26 PERB ¶3047, at 3082 (1993).


7 8 PERB ¶3062, at 3112 (1975).
PSC’s representation rights and the rights of the employees PSC represents. It may be construed as a message that unit employees would do better if they abandoned their bargaining representative.8

It is, therefore, the violation of representation rights under the Act that is to be remedied here. To do so, the status quo must be restored; that is the parties must be placed in the positions they would have been in had CUNY not violated the Act. To that extent, the ALJ erred by not ordering the letter agreement be rescinded. As it was CUNY’s direct dealing with Mehta in entering into the letter agreement that violated the Act, the letter agreement must be rescinded.9

To remedy the violation found, requires only that Mehta be considered to have been hired, as a Continuing Education Teacher, pursuant to the terms of the collective bargaining agreement. Any wages or benefits that he would have enjoyed under the collective bargaining agreement during his term of employment, that he was deprived of by the letter agreement, must be provided to him by CUNY, with interest, at the maximum legal rate. Mehta should also be reimbursed for any expenses that he incurred while employed by CUNY that he would not have incurred under the terms of the collective bargaining agreement, with interest at the maximum legal rate. Such a remedy restores the status quo ante between the parties to this case.

As to Mehta’s reinstatement to his former position, PSC has already addressed in its grievance whether Mehta was properly classified in the Continuing Education

8 Connetquot Cent. Sch. Dist., 19 PERB ¶3045, at 3097 (1986).

9 See Wappingers Cent. Sch. Dist., 16 PERB ¶3029 (1983), where an increase in an individual employee’s salary, granted without negotiating with the bargaining representative, was ordered rescinded.
Teacher title and whether his evaluation, if any, and termination were conducted pursuant to the terms of the PSC-CUNY collective bargaining agreement. PSC there argued that Mehta should have been hired in a different title which would have entitled him to certain termination provisions of the collective bargaining agreement. CUNY denied the grievance at both steps on the basis of timeliness and that Mehta’s rights with respect to termination were covered by the Continuing Education provisions of the collective bargaining agreement. The issues of Mehta’s title and termination have been litigated in the contractual grievance forum and that grievance was withdrawn by PSC. Those issues are, therefore, not appropriately before us.

We have ordered that the letter agreement be rescinded. Therefore, contrary to PSC’s arguments, Mehta has no entitlement to any procedures or provisions other than those set forth in the PSC-CUNY collective bargaining agreement regarding evaluation or termination. The appropriate remedy is not to afford Mehta consideration under the evaluation or termination provisions of the letter agreement, nor is it to reinstate Mehta to his former position or any other position in the PSC bargaining unit.

However, to the extent that Mehta enjoyed benefits greater than those he would have received under the collective bargaining agreement, such as his rate of pay, we do not order recoupment, given the circumstance of this case.\textsuperscript{10}

Based on the foregoing, we grant CUNY’s exception and modify the ALJ’s remedy.

\textbf{IT IS, THEREFORE, ORDERED} that CUNY will forthwith:

1. Cease and desist from dealing directly with Kishore Mehta;

\textsuperscript{10} Brookhaven-Comsewogue UFSD, 22 PERB ¶3037 (1989), enforced, 23 PERB ¶7009 (Sup. Ct. Albany County 1990).
2. Cease and desist from dealing directly with employees in the unit represented by PSC;
3. Rescind the September 2001 letter agreement entered into with Mehta;
4. Make Mehta whole for any loss of wages and benefits and any additional expense incurred by reason of the letter agreement of September 2001, with interest at the maximum legal rate, for the term of his employment with CUNY;
5. Sign and post the attached notice at all locations customarily used to post notices to unit employees.

DATED: April 27, 2005
Albany, New York

Michael R. Cuevas, Chairman

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 City University of New York (CUNY) in the unit represented by the Professional Staff Congress - City University of New York (PSC) that CUNY will forthwith:

1. Not deal directly with Kishore Mehta;
2. Not deal directly with employees in the unit represented by PSC;
3. Rescind the letter of agreement entered into with Mehta;
4. Make Mehta whole for any loss of wages and benefits and any additional expense incurred by reason of the letter agreement of September 2001, with interest at the maximum legal rate, for the term of his employment with CUNY.

Dated . . . . . . . .

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

CITY UNIVERSITY OF NEW YORK

. . . . . . . . . . . . . . . . . . . . . . .

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

ANTONIO JENKINS,

Charging Party,

- and –

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

Respondents.

__________________________________________________________

ANTONIO JENKINS, pro se

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by Antonio Jenkins (Jenkins) to
a decision of the Director of Public Employment Practices and Representation
(Director) dismissing his improper practice charge. The charge alleged that the
Board of Education of the City School District of the City of New York (District)
violated §§209-a.1(a), (b), (c), (d) and (e) of the Public Employees’ Fair
Employment Act (Act) and that the United Federation of Teachers (UFT) violated
§§209-a.2(a), (b) and (c) of the Act. Jenkins alleges that the District violated the
Act by removing him from his assignment as a music teacher and placing
another teacher with more seniority in that assignment and that UFT violated the
Act by failing to resolve his grievance and because it “agrees that employees
with more seniority [can] move teachers from their positions.”
The Director dismissed the alleged violations of §§209-a.1(d) and (e) and §209-a.2(b) of the Act for lack of standing. The remaining allegations against the District were dismissed for lack of factual support to arguably establish any violation. The claim that UFT failed to resolve Jenkins’ grievance was also dismissed for lack of facts to arguably establish conduct that was arbitrary, discriminatory or in bad faith.

EXCEPTIONS

Jenkins excepts to the Director’s decision arguing that: (1) he should be permitted to interrogate the respondents; (2) that he hasn’t had adequate discovery; (3) that evidence of a contractual violation may arguably establish coercion; and (4) that by failing to respond, the respondents have not established that they did not violate the Act.

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

FACTS

In October 1993, Jenkins was hired as a music teacher at Public School 194. He taught elementary school music there until June 2004 when he was notified that he would not be the music teacher in the 2004-05 school year.

On June 28, 2004, Jenkins was informed by Principal Michael Brown that he would have to get a license to teach music for the upcoming school year or he would be replaced. Jenkins and his UFT representative argued to Brown that provisions in the collective bargaining agreement supported their contention that he should be allowed to continue in the music teacher position the following year.
On or about September 9, 2004, Jenkins was assigned to teach first grade and a more senior teacher filled the music teacher position. Jenkins had filed a contract grievance in June 2004, which was apparently taken to the second step of the grievance process in October 2004 and resolved in the District's favor. Jenkins disputes UFT's interpretation of the collective bargaining agreement on this issue.

**DISCUSSION**

Section 209-a.1(d) makes it an improper practice for a public employer to refuse to negotiate in good faith with the duly recognized or certified representatives of its public employees. Section 204.2 of the Act provides, in substance, that once an employee organization has been certified or recognized "the appropriate public employer shall be . . . required to negotiate collectively with such employee organization." Here, Jenkins acknowledges in his charge that UFT is the certified representative of teachers in the City School District of the City of New York. Under the Act, the District owes its duty to bargain to UFT and it is UFT, not Jenkins, who has standing to bring such a charge against the District.¹

Section 209-a.1(e) similarly deals with a right afforded an employee organization. It is the right of the employee organization to insist that the public

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¹ New York City Transit Auth., 32 PERB ¶3061 (1999); Hauppauge Union Free Sch. Dist., 32 PERB ¶3027 (1999); Board of Educ. of the City Sch. Dist. of the City of New York (McLaughlin), 22 PERB ¶3012 (1989); Board of Educ. of the City Sch. Dist. of the City of New York (Haas), 21 PERB ¶3018 (1988).
employer continue all the terms and conditions of an expired agreement until a 
new agreement is negotiated. Here, too, Jenkins does not have standing.  

Section 209-a.2(b) is the corollary to §209-a.1(d), making it an improper 
practice for a public employee organization to refuse to negotiate collectively in 
good faith with a public employer. Here, too, the standing to charge a violation 
clearly belongs to the public employer and not to an individual employee.  

As none of Jenkins' exceptions can arguably be deemed to address the 
issue of standing, and for the reasons stated above, we affirm the Director's 
decision to dismiss those portions of the charge that allege violations of §§209-
a.1(d) and (e) and §209-a.2(b).  

While Jenkins has standing to allege violations of §§209-a.1(a), (b) and (c) 
of the Act, his charge fails to allege facts arguably sufficient to support findings of 
violations of any of these sections. Jenkins alleges that the District interfered 
with, restrained him in the exercise of, and used coercion with regard to, his 
rights under §202 of the Act. Essentially, he claims that the District did so by 
hiring a more senior music teacher. Without more, this fact does not arguably 
support a conclusion that the District violated §209-a.1(a) of the Act. 

Jenkins' allegations with respect to the alleged violation of §209-a.1(c) of 
the Act add only that the District's action “discriminates against teachers with less 
seniority”, “pits one UFT member against another”, and “causes me to attack the 
union I am paying”. In fact, Jenkins cites to several sections of UFT's collective 

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2 City University of New York (Queens College and Professional Staff 
Congress/CUNY), 20 PERB ¶3051 (1987).
bargaining agreement with the District which he alleges the District violated, pointedly making the case that his dispute is in the nature of a contract grievance. Indeed, he accuses the District and his UFT Regional Representative of using the hiring of the more senior music teacher “to justify not upholding the UFT contract”. PERB is statutorily prohibited from hearing alleged violations of the parties’ collective bargaining agreement that do not otherwise constitute an improper practice.³

The facts alleged by Jenkins cannot be deemed to arguably support a claim that the District sought to “dominate or interfere with the formation or administration of an employee organization for the purpose of depriving them of such [§202] rights”. Jenkins states no facts from which we can conclude that the District interfered with the contractual grievance procedure or otherwise sought to influence how UFT handled Jenkins’ matters. Therefore, the Director correctly dismissed the claimed violation of §209-a.1(b).

Jenkins’ only allegations made in support of his claim that UFT violated §§209-a.2(a) and (c) appear to be that UFT failed to resolve his first grievance and that he disagrees with UFT’s interpretation of the relevant provisions of the parties’ collective bargaining agreement. These allegations fail to meet the required showing that UFT arguably acted in an arbitrary, discriminatory or bad faith manner in dealing with Jenkins on these issues.⁴ Therefore, the claim that

³ Act, §205.5 (d).

the District violated §209-a.2(c) was properly dismissed. Similarly, Jenkins’ allegations as to the violation of §209-a.2(a) do not arguably support the proposition that UFT sought to restrain, interfere or coerce employees in their exercise of their §202 rights or to cause the employer to do so. That allegation was also properly dismissed.

In his exceptions, Jenkins argues that the Director’s decision does not allow him to interrogate the parties to demonstrate that coercion occurred and that the Director does not demonstrate that Jenkins had adequate discovery in order to establish any violations. Our Rules of Procedure (Rules) do not provide for such pre-pleading discovery. Instead, the Rules require that the Director review a charge to determine whether the facts, as alleged, may constitute an improper practice as set forth in §209-a of the Act. As stated above, we find that the Director properly made the determinations required of him by the Rules. Jenkins’ third exception is just a statement that he disagrees with the Director’s determinations and, as such, is addressed by our discussion above.

Finally, Jenkins argues in his exceptions that the Director does not demonstrate that the respondents have not violated the Act “because the respondents have filed no response to rebut my allegations”. Since Jenkins’ charge was dismissed in its entirety by the Director’s decision, based on the findings that Jenkins lacked standing and allege facts sufficient to support the violations claimed, there was no requirement that the named respondents

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5 4 NYCRR Part 200, et seq.
6 Rules, §204.2(a).
answer the charge. The obligation to answer arises only after the Director has decided that the charge arguably states a violation and further processes the charge.

Based on the foregoing, we deny Jenkins' exceptions and affirm the decision of the Director.

IT IS, THEREFORE, ORDERED that the charge must be, and hereby is, dismissed in its entirety.

DATED: April 27, 2005
Albany, New York

Michael R. Cuevas, Chairman

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

In the Matter of

HARTSDALE FIRE OFFICERS ASSOCIATION, INC.,

Petitioner,

-and-

HARTSDALE FIRE DISTRICT,

Employer,

-and-

GREENBURGH UNIFORMED FIREFIGHTERS ASSOCIATION, INC., LOCAL 1586, IAFF, AFL-CIO,

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 Hartsdale Fire Officers Association, Inc. has been designated and selected by a majority of the employees of the above-named
public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Included: Deputy Chief and Captain.

Excluded: All other employees.

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

DATED: April 27, 2005
Albany, New York

Michael R. Cuevas, Chairman

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

In the Matter of

HICKSVILLE SCHOOLS NURSES ASSOCIATION,

Petitioner,

-and-

HICKSVILLE UNION FREE SCHOOL DISTRICT,

Employer.

CASE NO. C-5466

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 Hicksville Schools Nurses 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 Registered Nurses.

Excluded: Nurse Teachers and all other employees.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Hicksville Schools Nurses 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: April 27, 2005
Albany, New York

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

In the Matter of

GRAHAM SCHOOL CUSTODIAL ASSOCIATION,

Petitioner,

-and-

GREENBURGH-GRAHAM UFSD,

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 Graham School Custodial 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: Custodian, Cleaner and all other custodial workers.

Excluded: Head Custodian

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Graham School Custodial 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: April 27, 2005
Albany, New York

[Signature]
Michael R. Cuevas, Chairman

[Signature]
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 Service Employees International Union, Local 200 United 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 bus drivers (regular, assistant, extra), school bus dispatchers, laborers, mechanics, mechanic helpers and driver-laborers.

Excluded: All other employees.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Service Employees International Union, Local 200 United. 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: April 27, 2005
Albany, New York

Michael R. Cuevas, Chairman

John T. Mitchell, Member
In the Matter of

UNITED PUBLIC SERVICE EMPLOYEES UNION,

Petitioner,

-and-

WARRENSBURG CENTRAL SCHOOL DISTRICT,

Employer,

-and-

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

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

Included: Instructional Support Staff including Teaching Assistants and Interpreters and non-teaching employees including Teacher Aides, Greeters, Print Room Attendant, District Learning Attendant, Food Service, Maintenance, Transportation, Personnel, Clerical Personnel, Cleaners, Driver/Mechanics, Bus Aides, and Deputy Records Management Officer/Clerk.

Excluded: All other employees.

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

DATED: April 27, 2005
Albany, New York

Michael R. Cuevas, Chairman

John T. Mitchell, Member