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State of New York Public Employment Relations Board Decisions from August 9, 2006

New York State Public Employment Relations Board

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State of New York Public Employment Relations Board Decisions from August 9, 2006

Keywords

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Comments

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

In the Matter of

SARA-ANN P. FEARON,

Charging Party,

- and -

CASE NO. U-23556

UNITED FEDERATION OF TEACHERS,

Respondent,

- and -

**BOARD OF EDUCATION OF THE CITY
SCHOOL DISTRICT OF THE CITY OF NEW YORK,**

Employer.

SHELLMAN D. JOHNSON, for Charging Party

**JAMES R. SANDNER, GENERAL COUNSEL (MARIA ELENA GONZALEZ, of
counsel), for Respondent**

DALE C. KUTZBACH (MICHELE A. BAPTISTE, of counsel), for Employer

BOARD DECISION AND ORDER

This matter comes to us on a second motion by Sara-Ann P. Fearon for reconsideration of the Board's Decision and Order in *United Federation of Teachers (Fearon)*, 37 PERB ¶3029 (2004). Fearon also filed two interlocutory appeals in this

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

**TEAMSTERS LOCAL 264, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS,**

Petitioner,

-and-

CASE NO. C-5590

TOWN OF PENDLETON,

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 Teamsters Local 264, International Brotherhood of Teamsters has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Included: All full-time and regular part-time Highway Department and Water and Sewer Department employees.

Excluded: Water and Sewer Superintendent, Highway Superintendent and all others.

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

DATED: August 9, 2006
Albany, New York


Michael R. Cuevas, Chairman


John T. Mitchell, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

**TEAMSTERS LOCAL 264, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS,**

Petitioner,

-and-

CASE NO. C-5591

TOWN OF FRANKLINVILLE,

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 Teamsters Local 264, International Brotherhood of Teamsters has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Included: All full-time and regular part-time employees in the Highway Department.

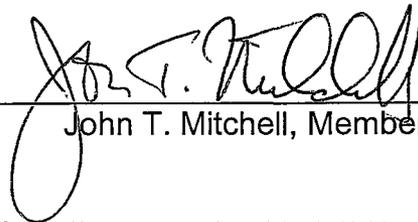
Excluded: Highway Superintendent and all others.

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

DATED: August 9, 2006
Albany, New York



Michael R. Cuevas, Chairman



John T. Mitchell, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

UNITED PUBLIC SERVICE EMPLOYEES UNION,

Petitioner,

-and-

CASE NO. C-5592

**VALLEY STREAM UNION FREE SCHOOL
DISTRICT #24,**

Employer.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

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

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

IT IS HEREBY CERTIFIED that the United Public Service Employees Union has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

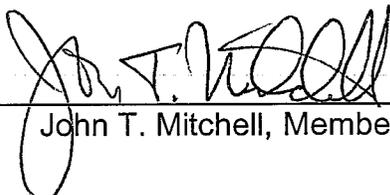
- Included: All full-time and part-time employees in the following titles: School Monitors, Teacher Aides, Library Aides and Aide Full-time who work on a daily schedule during the school year.
- Excluded: All temporary, seasonal, call-in or substitute employees in the above titles and/or those employees who serve in a confidential, managerial and/or supervisory capacity and all other employees.

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

DATED: August 9, 2006
Albany, New York



Michael R. Cuevas, Chairman



John T. Mitchell, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

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

Petitioner,

-and-

CASE NO. C-5607

COUNTY OF CATTARAUGUS,

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 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: All part-time employees of Cattaraugus County in the following titles: Account Clerk Typist, Aging Service Aide, Nurse Aide, Cleaner, Clerk Typist, Commercial A Driver, Community Health Nurse, Cook, Day Care Assistant, Driver/Courier, Food Service Helper, Groundskeeper, Keyboard Specialist, Laborer, Leisure Time Activities Aide, Licensed Practical Nurse, Maintenance Worker, Motor Vehicle Representative, Personnel Scheduler, Reception Clerk, Resident Services Clerk, Registered Nurse, Site Manager and Transfer Station Operator.

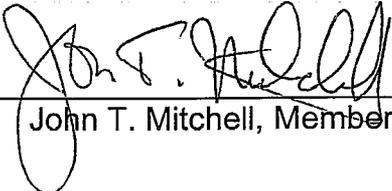
Excluded: Supervising Nurses, Head Nurses and all others.

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

DATED: August 9, 2006
Albany, New York



Michael R. Cuevas, Chairman



John T. Mitchell, Member

matter.¹ Fearon seeks reconsideration of our earlier decisions on the basis of new arguments being raised by her representative. As non-attorneys, Fearon and her representative seek broad leeway from the Board in considering the arguments raised in the motion. Neither the United Federation of Teachers nor the Board of Education of the City School District of the City of New York, joined as a statutory party pursuant to §209-a.3 of the Public Employees' Fair Employment Act (Act), have responded to the motion.

We deny Fearon's motion without consideration of the arguments raised therein. Fearon's numerous meritless interlocutory appeals and motions to reconsider a prior Board decision might be construed as an abuse of process or tactics resulting in an unnecessary expenditure of time and resources by PERB and might warrant harsher action than denial of a motion to reconsider.² Indeed, Fearon and her representative have been cautioned about such behavior before, albeit in a different proceeding.³

Repetitious motions requesting the same relief, whether filed because of a fundamental lack of understanding of the Rules or disregard of them, "waste[s] this agency's resources and delay[s] the adjudication and disposition of charges. Party

¹ *United Federation of Teachers (Fearon)*, 37 PERB ¶¶3007 (2004) and 36 PERB ¶¶3023 (2003).

² *See State of New York Unified Court System*, 36 PERB ¶¶3031 (2003).

³ *United Federation of Teachers (Fearon)*, 35 PERB ¶¶4606 (2002).

representatives are, therefore, again cautioned to refrain from making them,"⁴ as sanctions against Fearon and/or her representative may be sought by other parties or imposed by this Board upon its own motion.⁵

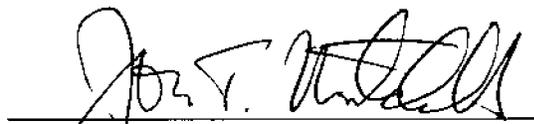
The motion is, therefore, denied.

SO ORDERED.

DATED: August 9, 2006
Albany, New York



Michael R. Cuevas, Chairman



John T. Mitchell, Member

⁴ *United Transportation Union, Local 1440 (LoBianco)*, 31 PERB ¶3028, at 3061 (1998).

⁵ See *Town of Saugerties*, 30 PERB ¶3002 (1997). See also *Town of Putnam Valley and Town of New Paltz*, 28 PERB ¶3049 (1995). See also *Charles J. Munafo*, 31 PERB ¶3012 (1998).

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

In the Matter of

DEVENDRA KUMAR JAIN,

Charging Party,

CASE NO. U-25267

- and -

TRANSPORT WORKERS' UNION, LOCAL 100,

Respondent,

-and-

NEW YORK CITY TRANSIT AUTHORITY,

Employer.

DEVENDRA KUMAR JAIN, *pro se*

**KENNEDY, SCHWARTZ & CURE, P.C. (ELIZABETH M. PILECKI of counsel),
for Respondent**

**MARTIN B. SCHNABEL, GENERAL COUNSEL (JOYCE RACHEL ELLMAN of
counsel), for Employer**

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by Devendra Kumar Jain (Jain) to a decision of the Administrative Law Judge (ALJ) dismissing his improper practice charge against Transport Workers' Union, Local 100 (TWU). The charge alleged that TWU breached its duty of fair representation in violation of §209-a.2(c) of the Public Employees' Fair Employment Act (Act) when it failed to adequately represent Jain in

connection with a disciplinary grievance. Jain's employer, the New York City Transit Authority (NYCTA), is joined as a statutory party pursuant to §209-a.3 of the Act.

Following a full hearing, the ALJ granted the motions of TWU and NYCTA to dismiss Jain's charge based on his failure to establish a *prima facie* case. The ALJ held, in the alternative, that even if a *prima facie* case had been established, TWU's actions were not arbitrary, discriminatory or in bad faith in light of the record as a whole.

EXCEPTIONS

Jain alleges that the ALJ erred in granting the motion to dismiss for failure to establish a *prima facie* case and in holding that based on the record as a whole TWU's actions were not arbitrary, discriminatory or in bad faith. Neither TWU nor NYCTA filed a response to Jain's exceptions.

After careful review of the record and consideration of the parties' arguments, we affirm the ALJ's decision.

FACTS

The facts as set forth in the ALJ's decision¹ are herein adopted by the Board and are repeated here only as necessary to address the exceptions.

From March 1999 until April 2004, NYCTA employed Jain as a subway station agent. He was discharged as a result of a customer complaint filed with the New York City Police Department on March 26, 2003. The customer alleged that Jain sold him a Metrocard supposedly worth \$1.50. The customer tried to use the card in a station turnstile, discovered it had no value and notified the police. In response, two

¹ 39 PERB ¶4523 (2006).

undercover detectives bought a Metrocard from Jain, again supposedly worth \$1.50. At the police station, they ran the card through their computer and verified that it had no value. The detectives arrested Jain and seized 54 used Metrocards with zero balances from his bag.

Jain was suspended from employment on April 18, 2003. He filed a grievance, pursuant to the contractual disciplinary grievance procedure. Jain met several times with Andreeva Pinder, his TWU representative, and other representatives at the TWU office. He also met with Kenneth Page, the TWU attorney assigned to his case, to discuss his representation. Jain's termination was sustained at a Step II hearing. Subsequently, TWU submitted the matter to arbitration on Jain's behalf. After a full arbitration hearing on March 30, 2004, the arbitrator upheld Jain's termination.

On July 27, 2004, Jain filed this improper practice charge against TWU, claiming it violated §209-a.2(c) of the Act. Both TWU and NYCTA filed responses in which they denied that any violation had occurred. A hearing was held on April 7, 2005. Jain, appearing *pro se*, offered only his own testimony in support of his charge. Before presenting its case, TWU moved to dismiss the charge based on Jain's failure to establish a *prima facie* case. The ALJ reserved judgment on the motion until the close of TWU's case. Page and Pinder testified as witnesses for TWU. Jain conducted cross-examination of both witnesses. The ALJ ultimately granted TWU's motion to dismiss and held that the evidence presented by Jain was not sufficient to prove a violation of the Act. Even considering the record as a whole, the ALJ further concluded that TWU's actions did not constitute a violation of its duty of fair representation.

In his exceptions to the ALJ decision, Jain alleges that the attorney, Page, was grossly inadequate in his representation of Jain before, during and after Jain's arbitration hearing. Jain further alleges that Pinder, his TWU representative, mismanaged the processing of his grievance and intended to negatively affect the outcome of Jain's arbitration hearing. Jain excepts to the ALJ's holdings that he failed to meet his burden of proof and that TWU's actions were not arbitrary, discriminatory or in bad faith.

Jain claims that Page was not prepared to represent him at the arbitration because he did not review Jain's file. He testified that during the arbitration Page ignored notes that Jain attempted to pass him regarding important issues, told Jain to "shut up" or signaled for him to stop talking on several occasions, physically pushed him, failed to present the arbitrator with 33 pages of documents favorable to Jain's defense, failed to sufficiently discredit the employer's case by objecting to certain evidence and impeaching its main witness, and refused to make a closing statement on Jain's behalf. Jain also alleges that Page ignored his requests for a copy of the arbitration transcript.

Jain claims that Pinder, on the day of the arbitration hearing, threw documents on the floor that he wanted her to use in his defense and generally behaved in a manner meant to discredit Jain and ruin his chances of a favorable arbitration award. He asserts that Pinder handled his case in a negligent manner, alluding to the multiple times he went to TWU's office as evidence of her mismanagement. Jain also claims

that Pinder failed to request that Jain receive certain benefits and a \$1,000 bonus to which he was entitled.

DISCUSSION

In considering the motion to dismiss, the ALJ assumed the truth of all of Jain's evidence and accorded it every favorable inference.² The ALJ found Jain's testimony to be conclusory and lacking in details.

In order to establish a union's breach of the duty of fair representation, the charging party must prove that the union acted arbitrarily, discriminatorily or in bad faith.³ Negligent or grossly negligent representation is not a violation of the union's obligation to represent its members.⁴ Reviewing the evidence submitted by Jain in his direct case and giving it every reasonable inference, the ALJ nonetheless concluded that Jain had failed to meet his burden of proof and dismissed the charge accordingly.

It is undisputed that Pinder and Page met with Jain to discuss his grievance multiple times and communicated with him regarding the status of his grievance. Each time Jain went to the TWU office, someone, whether it was Pinder or another TWU representative, discussed the status of his grievance with him. Likewise, Jain met with Page or another TWU attorney to discuss his grievance on more than one occasion.

² *County of Nassau (Police Dept)*, 17 PERB ¶3013 (1984).

³ *Civil Service Employees Assn, Inc v PERB and Diaz*, 132 AD2d 430, 20 PERB ¶7024 (3d Dept 1987), *aff'd on other grounds*, 73 NY2d 796, 21 PERB ¶7017 (1988).

⁴ *Amalgamated Transit Union, Division 580 and Central New York Regional Transportation Auth*, 32 PERB ¶3053 (1999).

It is also undisputed that Page acted in Jain's defense at the arbitration hearing. Page presented evidence on Jain's behalf and offered arguments to refute evidence presented by NYCTA.

Assuming, as the ALJ did, that Jain's description of Pinder's and Page's conduct was true, and giving Jain every reasonable inference, we do not find that he established a *prima facie* violation of TWU's duty of fair representation.

TWU's duty to fairly represent Jain was fulfilled when it provided him an attorney who acted competently in his defense at the arbitration hearing. If Page ignored Jain's handwritten notes or told him to be quiet during the arbitration, those actions, though they may have insulted and frustrated Jain, were taken in furtherance of Page's representation of Jain and do not rise to the level of a violation of the duty of fair representation. Jain has failed to prove that Page's conduct was arbitrary, discriminatory or taken in bad faith. On the contrary, as the ALJ noted, those actions reflect an effort to protect Jain's interests by avoiding disruptions during the arbitration hearing. Similarly, Page's refusal to show the arbitrator 33 pages of documents that Jain presented to Page on the day of the arbitration was not arbitrary, discriminatory or in bad faith. Jain's disagreement with some aspects of Page's defense strategy does not constitute a breach of TWU's duty to fairly represent him.⁵

TWU's duty to fairly represent Jain was fulfilled when its representative met with Jain regarding his grievance and communicated with him on several occasions. Jain's claims that Pinder mismanaged his case are not supported by the evidence introduced

⁵ *Local 1655, District Council 37, AFSCME, AFL-CIO, 25 PERB ¶3008 (1992).*

by Jain. Jain's own testimony established that Pinder met with him several times at TWU's office to discuss his case and referred him to other representatives or the attorneys when necessary.

Based on the foregoing, the ALJ correctly held that Jain failed to establish a *prima facie* breach of the duty of fair representation. Because TWU's motion to dismiss the charge was properly granted, we do not address the ALJ's alternative finding that, in consideration of the record as a whole, TWU's actions were not arbitrary, discriminatory or in bad faith.

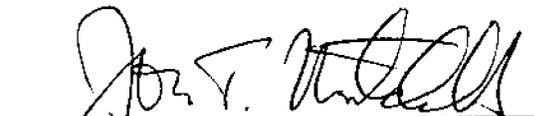
Based on the foregoing, we deny Jain's exceptions and affirm the ALJ's dismissal of the charge.

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

DATED: August 9, 2006
Albany, New York



Michael R. Cuevas, Chairman



John T. Mitchell, Member

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

In the Matter of

**MONROE COUNTY AIRPORT FIREFIGHTERS
ASSOCIATION, IAFF, LOCAL 1636,**

Petitioner,

- and -

**CASE NO. M2005-
114/IA2005-033**

COUNTY OF MONROE,

Respondent.

HARRIS BEACH, PLLC (PETER J. SPINELLI, of counsel), for Petitioner

**CHAMBERLAIN D'AMANDA LLP (MATTHEW J. FUSCO, of counsel), for
Respondent**

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by the Monroe County Airport Firefighters Association, IAFF, Local 1636 (Association) to a letter decision of the Director of Conciliation (Director) denying its petition for interest arbitration under §209.4 of the Public Employees' Fair Employment Act (Act).

EXCEPTIONS

The Association excepts to the Director's decision on the facts and the law. The County of Monroe (County) supports the Director's decision.

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

FACTS

The Association and the County are parties to a collective bargaining agreement with the term of January 1, 2000 to December 31, 2003. The Association and the County have been engaged in collective negotiations for a successor agreement for the unit of Firefighters and Fire Captains, which the Association represents, employed at the Greater Rochester International Airport Division of Fire Protection and Crash Control. When mediation proved unsuccessful (Case No. M-2005-114), the Association filed a petition for compulsory interest arbitration (Case No. IA2005-033). The County objected to the processing of the petition, arguing to the Director that the Firefighters and Fire Captains were not "officers or members of any organized fire department, or any other unit of the public employer which previously was part of an organized fire department whose primary mission includes the prevention and control of aircraft fires..." as provided in §209.4 of the Act.

The Director determined that the Airport Firefighters and Fire Captains were not members of an organized fire department of the County and, therefore, were not entitled to compulsory interest arbitration under the terms of §209.4 of the Act because the County did not maintain an organized fire department. He found that the at-issue employees were employed not by a fire department but within the County's Department of Aviation. He further found that the airport firefighters did not perform "general jurisdiction" type duties such as are contemplated by the term "organized fire department" in §209.4 of the Act.

He also found that the limiting language in §209.4 was modeled after identical language in §302.11.d of the NYS Retirement and Social Security Law. That section of law was modified in 2002 by the addition of a new paragraph (§302.11.g), which includes chief-fire airport, firefighter-airport and fire captain-airport with the County of Monroe in the definition of firemen and members of an organized fire department for all purposes under the Retirement and Social Security Law.

Legislation that would have amended the Act that would have specifically included the at-issue employees in the provisions of §209.4, was vetoed by the Governor in both 2003 and 2005. In 2003, S.4126 sought to include “officers or members of...any other unit of the public employer which performs firefighting duties” within the group of employees eligible for compulsory interest arbitration. The sponsor’s memorandum in support of the legislation specifically references the at-issue employees as being excluded from the binding arbitration provisions of the Act. The Governor’s veto message states that the purpose of the bill is to extend binding arbitration to firefighters of public authorities, who are currently excluded from the coverage of §209.4 of the Act. Likewise, in 2004, S.6388-A sought compulsory interest arbitration for “members...of any other unit of a public authority which performs firefighting duties” because, as the sponsor’s memorandum states, firefighters employed by Monroe County are excluded from §209.4 of the Act. The Governor also vetoed S.6388-A in January 2005, because of, among other things, technical flaws in the bill’s language.

DISCUSSION

In *Hancock Professional Firefighters Association, Local 1888, IAFF v Newman and City of Syracuse*,¹ the Appellate Division held that:

Section 209.4 was enacted to respond to the special need to lessen the likelihood of work stoppages in the sensitive areas of public safety in which municipal police and fire departments function. (citation omitted). PERB was not acting inconsistently with these considerations in restricting application of section 209.4 to fire and police departments organized as such and performing these general public safety functions in the subject municipality. (citations omitted)

Clearly, our finding that §209.4 did not cover the firefighters employed by any entity other than an organized fire department was upheld by the court. We further reiterated the rationale for that decision in *Niagara Frontier Transportation Authority*,² finding that the amendment to the Act³ which followed our decision in *Syracuse Hancock Professional Firefighters Association*,⁴ was directed to cover only a municipality that sought to avoid the arbitration provisions of the Act by substituting rescue workers or firefighters who were not members of an organized fire department to carry out duties previously performed by the municipality's own firefighters. We there stated that the legislature had evidenced no intent to cover any and all public employees who perform firefighting duties.

¹ 110 AD2d 256, at 258 (3d Dept 1985).

² 30 PERB ¶3039 (1997).

³ In 1989, §209.4 of the Act was amended to include after "organized fire department", the following: "or any other unit of the public employer which previously was part of an organized fire department whose primary mission includes the prevention and control of aircraft fires,..."

⁴ 17 PERB ¶3105 (1984).

In both 2003 and 2004, attempts were made to include the at-issue employees within the compulsory interest arbitration provisions of the Act. Both of those bills were vetoed by the Governor. Neither the courts nor the legislature interpret §209.4 of the Act as it currently exists as covering the employees of the County of Monroe assigned to the Greater Rochester International Airport Division of Fire Protection and Crash Control. Neither does this Board. Whether these employees or others who are similarly situated ought to be covered by §209.4 is a decision to be made by the legislature and the Governor, not by PERB.

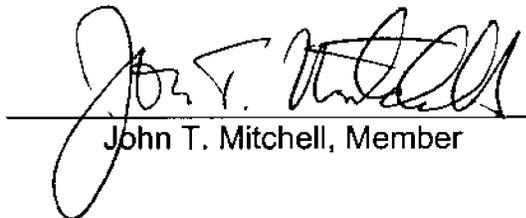
Based on the foregoing, we deny the Association's exceptions and affirm the decision of the Director.

IT IS, THEREFORE, ORDERED that the petition for compulsory interest arbitration filed by the Association is denied.

DATED: August 9, 2006
Albany, New York



Michael R. Cuevas, Chairman



John T. Mitchell, Member

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

In the Matter of

PUBLIC EMPLOYEES FEDERATION,

Petitioner,

- and -

CASE NO. C-5242

STATE OF NEW YORK,

Employer.

**WILLIAM P. SEAMON, GENERAL COUNSEL (STEVEN M. KLEIN of counsel),
for Petitioner**

**WALTER J. PELLEGRINI, GENERAL COUNSEL (JAMES WALSH of counsel),
for Employer**

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by Ralph R. Van Houten, Brian D. Devine and Joseph P. Trapp to a decision of the Director of Public Employment Practices and Representation (Director) granting a petition filed by the Public Employees Federation (PEF) seeking to represent, among other titles, Environmental Health Program Manager II, in the PS&T unit of employees of the State of New York (State).

EXCEPTIONS

Van Houten, Devine and Trapp, all of whom hold the title of Environmental Health Program Manager II, allege in their exceptions that the Director erred in removing the managerial designation from their titles; that they were not, as parties, properly notified of the pendency of the instant petition; were not afforded an opportunity

to respond to the petition; and that the Director's decision contains no facts or rationale to support the uniting decision made therein. Neither the State nor PEF has responded.

Based upon our review of the record and our consideration of the arguments presented, we deny the exceptions and we affirm the decision of the Director.

FACTS

As part of a long-standing agreement between PEF and the State, approved by PERB,¹ which allows the State to initially designate a newly-created or reclassified position as managerial/confidential, the State initially designated the title of Environmental Health Program Manager II as managerial. Under the agreement, PEF may file a certification/decertification petition with PERB challenging the designation. Based upon a stipulation entered into between the State and PEF,² the Director determined that Van Houten, Devine and Trapp were not managerial employees within the meaning of §201.7(a) of the Public Employees' Fair Employment Act (Act),³ found

¹ *State of New York*, 6 PERB ¶3019 (1973). PEF and the State agreed to continue the practice in their Board-approved agreement of July 31, 1984. The memorandum outlining the procedure to be used is dated October 17, 1986.

² February 6, 2006 Stipulation.

³ Section 201.7(a) defines the term "public employee" as "any person holding a position by appointment or employment in the service of a public employer, except that such term shall not include for the purposes of any provision of this article other than sections two hundred ten and two hundred eleven of this article, . . . persons . . . who may reasonably be designated from time to time as managerial or confidential upon application of the public employer to the appropriate board . . . Employees may be designated as managerial only if they are persons (i) who formulate policy or (ii) who may reasonably be required on behalf of the public employer to assist directly in the preparation for and conduct of collective negotiations or to have a major role in the administration of agreements or in personnel administration provided that such role is not of a routine or clerical nature and requires the exercise of independent judgment. Employees may be designated as confidential only if they are persons who assist and act in a confidential capacity to managerial employees described in clause (ii)."

that they shared a community of interest with employees in the PS&T unit and added them to that unit.⁴

The stipulation contains a list of the titles covered by the petition and related cases and sets forth the following statement: "The parties agree that the aforementioned individuals for whom they have requested PS&T unit designation are not assigned any duties which would bring them within the definitions of managerial or confidential under Civil Service Law §201.7(a)." Attached to the stipulation is a list of affected titles, including the Environmental Health Program Manager II. There are no job descriptions attached to the stipulation, PEF's petition or the State's response thereto. Van Houten, Devine and Trapp were not put on notice of the petition⁵ or the Stipulation. They allege in their exceptions that they learned about their unit placement shortly after the Director's decision was issued on March 14, 2006, but it is not clear how they came into possession of the Director's decision.

DISCUSSION

At the time PEF's petition was filed, Van Houten, Devine and Trapp had been initially designated as managerial employees by the State. There is no evidence in the record as to whether the title of Environmental Health Program Manager II is a newly created or reclassified title, but the three were unrepresented employees when the Director issued his decision placing the title in the PS&T unit.

⁴ 39 PERB ¶4007 (2006).

⁵ Rules of Procedure (Rules), §201.5(e).

Their appeal raises the question of their status as parties to a representation proceeding. In *Jefferson-Lewis-Hamilton-Herkimer-Oneida-BOCES*,⁶ an unrepresented employee filed an interlocutory appeal to an Administrative Law Judge's (ALJ) denial of his motion to intervene in a representation proceeding on a petition that sought to add his title to a bargaining unit. We there decided that the ALJ had correctly denied the employee party status because "there was nothing in [his] papers or supporting arguments to suggest that he is uniquely in possession of information relevant to the unit determination the Director must make." We went on to note that the Director had the opportunity to call witnesses which might include employees and that it was likely that the employer, who opposed the petition, would introduce the same evidence that the employee might possess. Our concern for the inclusion of individual employees as parties in a representation case and the potential for delay in the processing of representation matters led us to affirm the ALJ's ruling denying the employee's motion to intervene. We held that:

[The employee] is not differently situated from any other employee who is opposed to union representation or inclusion in a unit alleged to be appropriate by a petitioner. Substantially increasing the potential number of parties to a representation case encumbers the investigatory process and contributes to unreasonable delay in the disposition of the representation questions. Such disruption of our representation proceedings is not necessary or required to ensure that the Director obtains the information necessary to make the proper uniting decision.⁷

Here, PEF and the State entered into a stipulation of fact that stated that no managerial duties were performed by incumbents in the title of Environmental Health

⁶ 28 PERB ¶3028, at 3068 (1995).

⁷ *Id.*

Program Manager II that would preclude its inclusion in the PS&T unit. In reliance upon that stipulation, the Director issued his decision. As in *Jefferson-Lewis-Hamilton-Herkimer-Oneida BOCES, supra*, there is nothing in the record before us that would lead us to conclude that Van Houten, Devine and Trapp are “uniquely in possession of information relevant” to the Director’s uniting decision.⁸

We, therefore, find that the exceptions filed by Van Houten, Devine and Trapp must be denied as they lack party status in this proceeding.

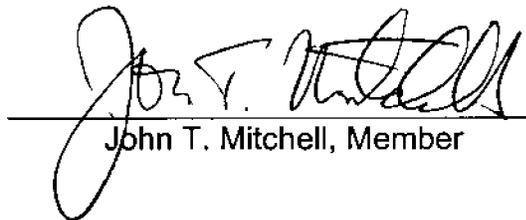
The decision of the Director is, therefore, affirmed.

SO ORDERED.

DATED: August 9, 2006
Albany, New York



Michael R. Cuevas, Chairman



John T. Mitchell, Member

⁸ *Dormitory Authority of the State of New York*, 38 PERB ¶3029 (2005), appeal pending.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

CIVIL SERVICE EMPLOYEES ASSOCIATION,
INC., LOCAL 1000, AFSCME, AFL-CIO, ERIE
UNIT OF LOCAL 815,

Charging Party,

- and -

CASE NOS. U-22665 & U-25456

COUNTY OF ERIE and SHERIFF OF ERIE
COUNTY,

Respondent,

- and -

TEAMSTERS LOCAL 264, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS,

Intervenor.

In the Matter of

TEAMSTERS LOCAL 264, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS,

Charging Party,

- and -

CASE NOS. U-23327 & U-25489

COUNTY OF ERIE and SHERIFF OF ERIE
COUNTY,

Respondent,

- and -

CIVIL SERVICE EMPLOYEES ASSOCIATION,
INC., LOCAL 1000, AFSCME, AFL-CIO, ERIE
UNIT OF LOCAL 815,

Intervenor.

NANCY E. HOFFMAN, GENERAL COUNSEL (ELLEN M. MITCHELL of counsel), for Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO, Erie Unit of Local 815

REDEN & O'DONNELL, LLP (ROBERT J. REDEN of counsel), for Teamsters Local 264, International Brotherhood of Teamsters

KATHLEEN E. O'HARA, ESQ. and BRIAN D. DOYLE, ESQ., for Respondent

BOARD DECISION AND ORDER

The County of Erie and the Sheriff of Erie County (hereafter, joint employer) has filed exceptions to a decision of an Administrative Law Judge (ALJ) who found a violation of §209-a.1(d) of the Public Employees' Fair Employment Act (Act) when the joint employer transferred exclusive bargaining unit work on May 7, 2001, March 11, 2002, September 3, and 13, 2004. The Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO, Erie Unit of Local 815 (CSEA) and Teamsters Local 264, International Brotherhood of Teamsters (Teamsters) filed responses to the joint employer's exceptions.

EXCEPTIONS

The joint employer contends that the ALJ erred on the law by determining its change in mission defense was inapplicable; misinterpreting the determination of the Commission on Corrections (COC) and substituting her own judgment; rejecting the joint employer's defense regarding lack of adverse impact and rejecting the joint employer's defense that the action taken enhanced the safety of the inmates and the public.

The Teamsters and CSEA both submitted responses to the joint employer's exceptions that support the ALJ's determination.

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

FACTS

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

On June 29, 2001, CSEA filed an improper practice charge, Case No. U-22665. The charge, as amended, alleged in substance that, for the past ten years, the duty of guarding sentenced inmates at the Erie County Correctional Facility has been the exclusive unit work of CSEA and that on May 7, 2001, the joint employer unilaterally assigned this unit work to nonunit employees represented by the Teamsters.

The joint employer submitted an answer admitting that on or about May 7, 2001, John Mochrle, Chief of Operations at the Correctional Facility, assigned the work of guarding sentenced inmates in the Correctional Facility to nonunit employees.

On April 15, 2002, the Teamsters filed an improper practice charge, Case No. U-23327, alleging in substance that the Teamsters unit members (deputy sheriffs) have historically supervised presentenced, pretrial detainees and certain parole violators and that on or about March 11, 2002, the joint employer unilaterally subcontracted this unit work to Sheriff Department employees represented by CSEA.

The joint employer submitted an Answer to the charge which admitted that certain assignments occurred on March 11, 2002. The Answer raised an affirmative defense, among others, that such assignments had no adverse impact upon unit employees.

¹ 38 PERB ¶4588 (2005).

On October 8, 2004, CSEA filed an improper practice charge, Case No. U-25456, alleging that, on or about September 2, 2004, Brian Doyle, Chief of Administrative Services, Erie County Sheriff's Office, sent a letter to CSEA that notified CSEA that the Sheriff's Office was implementing an inmate classification system. This system was subsequently implemented on September 15, 2004 without negotiation. CSEA further alleged that, as a result, the Sheriff had assigned CSEA unit work to nonunit unit employees.²

On October 25, 2004, the Teamsters filed an improper practice charge, Case No. U-25489, alleging that, although the Teamsters enjoyed exclusivity over supervising presentenced inmates and detainees and PERB's order in Case No. U-15210, deciding exclusivity in favor of the Teamsters, had been enforced by Supreme Court on July 23, 2001, the Sheriff continued to subcontract unit work on September 3, 2004, and from September 13, 2004 to about September 25, 2004.

The joint employer submitted an answer admitting the assignment of supervision of pretrial and presentenced inmates to Correction Officers represented by CSEA. CSEA's answer alleged that supervision over pretrial and presentenced inmates is exclusive work of the Teamsters and any assignment of such work is a violation of the Act.

The various charges were consolidated for hearing, the parties stipulated to certain facts, and introduced evidence as to other disputed facts.

² ALJ Exhibit 52. The Sheriff sent a similar letter to the Teamsters, Teamsters Counsel and Counsel for CSEA.

CSEA represents, for purposes of collective bargaining, employees in the title of Correction Officer who have exclusively performed the duties of supervising sentenced inmates and certain parole violators at the Erie County Correctional Facility since at least 1995. Teamsters represents, for purposes of collective bargaining, employees in the title of Deputy Sheriff Officer who have exclusively performed the duties of supervising presentenced, pretrial detainees and certain parole violators remanded to custody of the Sheriff since at least 1995.

By local law enacted August 31, 2000, the Erie County Legislature voted to change the custody and control of the Erie County Correctional Facility from the County Executive to the Erie County Sheriff. The voters of Erie County approved the Legislature's action in a referendum held on November 6, 2000.

On March 22, 2001, a special proceeding was brought by PERB before the Honorable Jerome C. Gorski, Supreme Court Justice, Erie County, to enforce its prior decision and order dated October 9, 1997. On or about May 7, 2001, the Sheriff assigned Deputy Sheriff Officers to supervise sentenced inmates at the Erie County Correctional Facility which resulted in improper practice charge U-22665 filed on June 29, 2001.

Judge Gorski rendered his judgment and order on July 23, 2001, enforcing PERB's prior decision and directing the Sheriff to cease and desist from assigning nonunit employees to supervise pretrial and presentenced detainees and parole violators remanded to the custody of the Sheriff.³

³ Joint Exhibit 6.

Deputy Superintendent Donald J. Livingston testified that, during the latter part of 2001 or early 2002, there was a population spike in the facilities. Livingston stated that, at about the same time, the COC made a periodic audit of the conditions of the facilities. The COC noted an overcrowded population at the Holding Center.⁴ The COC recommended that the Sheriff use one classification instrument for both facilities, which would help reduce overcrowding.⁵

Livingston stated that the COC staff observed overcrowding at the Holding Center and, at the same time, empty bed space in the Correctional Facility in areas designated only for sentenced inmates. COC staff advised Livingston that Erie's classification system was flawed because both facilities were under the control of the Sheriff and the inmates' status as sentenced or unsentenced was no longer a primary factor in assigning cell space.⁶

Livingston further testified that he developed a classification system in response to the earlier conversations about the overcrowded conditions at the Holding Center. He stated that Superintendent H. McCarthy Gipson directed him to "figure out a way" to come into compliance.⁷

On May 8, 2002, Thomas Dziedzic, former President and Principal Executive Officer of the Teamsters Local in 2002, on behalf of the Teamsters, wrote to the Sheriff and demanded to negotiate over the Sheriff's proposed Unified Classification Plan

⁴ Transcript, pp. 441-42.

⁵ Transcript, p. 665.

⁶ Transcript, p. 441.

⁷ Transcript, p. 446; Joint Exhibit 2.

and/or the impact of such plan.⁸ There is no evidence of the Sheriff's response to Dziejdzic's letter or of any negotiations that took place in furtherance of the Teamsters' demand.⁹

Livingston testified that a member of the COC staff contacted him to provide technical assistance. He stated that he was given a copy of the classification system in use in Albany County. Livingston worked with counsel for the facility, Chief Jeffrey Hartman, and Superintendent Gipson and others to develop a new classification system. The final product was put into effect on September 13, 2004.¹⁰

Livingston testified that the Unified Classification System was implemented on September 13, 2004 at the Correctional Facility but not the Holding Center.¹¹ Livingston stated that they wanted to test the system before it was implemented in both facilities. As a result, sentenced prisoners were guarded by Deputy Sheriffs and unsentenced prisoners were guarded by Correction Officers. Livingston stated that he made the determination to limit the test to the Correctional Facility.

Dziejdzic testified that he was responsible for collective bargaining on behalf of the Teamsters with the Sheriff's Department. He stated that he received a letter from the Sheriff, dated February 14, 2002, informing him that a change in the Sheriff's classification plan was being developed,¹² and that he responded to the Sheriff in writing

⁸ Teamsters' Exhibit 5.

⁹ Transcript, p. 538.

¹⁰ Transcript, pp. 465-66.

¹¹ Transcript, pp. 500-08; Respondent's Exhibit 12.

¹² Joint Exhibit 1.

on May 8, 2002, demanding to bargain over the implementation and/or the effects of such implementation.¹³ Dziejdzic testified that the Sheriff never responded to his demands.¹⁴ On cross-examination, Dziejdzic acknowledged that his letter to the Sheriff was sent after the Teamsters had filed its improper practice charge with PERB.

Robert Pyjas, President of CSEA Corrections Section, Erie Unit of Local 815, testified that, in late March 2002, he received a copy of the Sheriff's letter of February 14, 2002, informing him of the proposed change in classification.¹⁵ Pyjas stated that neither he nor Mike Bogulski, Local 815 President, were notified by the Sheriff of his interest in negotiating over the proposed classification plan.¹⁶ Once Pyjas received a copy of the plan, he made a copy and discussed it with Bogulski. Pyjas stated that he waited until the plan started resulting in presentenced females and minor males being assigned for supervision by his bargaining unit members, creating a mix of presentenced and sentenced inmates before seeking to have an improper practice charged filed. Pyjas stated that Correction Officers in the CSEA bargaining unit guard sentenced inmates.¹⁷ Pyjas testified that, following the improper practice charge in

¹³ Teamsters' Exhibit 5.

¹⁴ Transcript, p. 210.

¹⁵ Transcript, p. 46.

¹⁶ Transcript, pp. 47-8.

¹⁷ Transcript, p. 25.

1996 or 1997, he was not aware of any occasion when Correction Officers guarded pretrial or presentenced prisoners.¹⁸

Terrance Moran, a COC Field Supervisor, testified on behalf of the joint employer and explained why COC determined that the Classification System used by Erie County Jail Management was flawed. He stated that the Classification System was not objective and depended too much on whether an inmate was sentenced or unsentenced.¹⁹ The remedy proposed by COC was to implement a single classification system that could objectively determine an inmate's status for housing purposes.

Moran acknowledged on cross-examination that COC has been aware since 1994 that Erie County had its presentenced prisoners guarded by Deputies and sentenced prisoners guarded by Corrections Officers and that this was not a violation of any COC minimum standard.²⁰ He agreed that COC does not care who guards the prisoners.²¹

The Erie County Civil Service Job Specification for Correction Officer describes, as here relevant, distinguishing features of the class and typical work activity to include guarding inmates confined to the County Correctional Facility.²² The Job Specification for Deputy Sheriff Officer describes, as here relevant, its distinguishing feature and typical work activity as providing for the custody and well being of inmates while under

¹⁸ Transcript, p. 79.

¹⁹ Transcript, p. 109.

²⁰ Transcript, p. 117.

²¹ Transcript, p. 118.

²² Joint Exhibit 5.

detention in the County Holding Center, State and County Courts, in addition to guard duties at various locations in the Holding Center, Medical Center Lockup, County Courts and other County buildings.²³

The collective bargaining agreement between the joint employer and CSEA covers the years 2000 to 2003. Article 11 of the agreement defines the bargaining unit as including those employees whose titles appear in Appendix A of the agreement, which lists the title of Correction Officer.²⁴

The collective bargaining agreement between the joint employer and Teamsters, in effect at times relevant hereto, covers the years 2000 to 2003. Article I of the agreement recognizes the Teamsters as the representative of the titles that appear in Schedule A of the agreement, which lists the title of Deputy Sheriff.

DISCUSSION

The charges filed by both CSEA and the Teamsters were consolidated for hearing. The ALJ found a violation of §209-a.1(d) of the Act when the Sheriff unilaterally assigned exclusive bargaining unit work to nonunit employees and refused to negotiate in good faith such assignment or the impact thereof. In its exceptions, the joint employer's main contention is that a change in mission, which necessitated the assignment and resulted from the COC's periodic evaluations and recommendations to adopt a Unified Classification System, permitted its actions.

Our primary concerns in a unilateral transfer of unit work case are whether the work had been performed by unit employees exclusively and whether the reassigned

²³ Joint Exhibit 4.

²⁴ Joint Exhibit 7.

tasks are substantially similar to those previously performed by unit employees.²⁵ If we find that both questions are answered in the affirmative, there has been a violation of §209-a.1(d) of the Act unless the qualifications for the job have changed significantly. Absent such a change, the loss of unit work to others outside the unit is sufficient detriment for a finding of a violation.²⁶

The parties' stipulated that CSEA represents, for purposes of collective bargaining, employees in the title of Correction Officer who have exclusively performed the duties of supervising sentenced inmates and certain parole violators at the Erie County Correctional Facility since at least 1995. The parties' stipulation also acknowledges that Teamsters represent, for purposes of collective bargaining, employees in the title of Deputy Sheriff Officer, who have exclusively performed the duties of supervising presentenced, pretrial detainees and certain parole violators remanded to the custody of the Sheriff since at least 1995.

Further, the joint employer concedes that, on May 7, 2001, Mochrle assigned the work of guarding sentenced inmates in the Correctional Facility, previously performed exclusively by CSEA unit members, to nonunit employees. The joint employer also concedes that, on March 11, 2002 through September 3, 2004 to about September 25, 2004, the Sheriff unilaterally assigned Teamster unit work to employees represented by CSEA.

Here, the parties have conceded in the stipulation that CSEA and Teamsters enjoy exclusivity over guarding sentenced and unsentenced inmates, respectively.

²⁵ *Niagara Frontier Transportation Auth*, 18 PERB ¶¶3083 (1985).

²⁶ *County of Erie and Erie Community College*, 39 PERB ¶¶3005 (2006).

More than twenty years ago, in *Niagara Frontier Transportation Authority*²⁷ (hereafter, *Niagara Frontier*) the Board established a two-prong test for judging whether there has been an improper unilateral transfer of bargaining unit work. The stipulation between the parties here establishes that each classification of the work in question had been previously exclusively performed by each of the bargaining units, satisfying the first prong of the test.

As to the second prong of the test, which requires that the reassigned tasks be substantially similar to those previously performed by unit employees, there is no dispute that Correction Officers represented by CSEA were assigned to guard nonsentenced inmates (work which was previously exclusively performed by Deputy Sheriffs represented by the Teamsters) and Deputy Sheriff Officers were assigned to guard sentenced inmates, work which had previously been performed by Correction Officers. Under circumstances where the work assigned to others was previously performed by bargaining unit employees of the same employer, we have determined that negotiation over such assignment is required.²⁸

The fact that, prior to 2000, the Correctional Facility was under the custody and control of the County Executive is of no moment. The legislation that merged the Correctional Facility into the Jail Management Division of the Sheriff's Department did not expressly abolish its function, nor did it impair any collective bargaining rights enjoyed by employees represented by CSEA.

²⁷ *Supra*, note 24.

²⁸ *Northport Union Free Sch Dist*, 9 PERB ¶13003, *affd sub nom Northport-E Northport Union Free Sch Dist v Helsby*, 54 AD2d 935, 9 PERB ¶17021 (2d Dept 1976).

In its exceptions, the joint employer argues that there is no evidence of adverse impact as a consequence of the Sheriff's action and, therefore, the ALJ's dismissal of this defense was in error. Although the joint employer provides no authority for its argument, we have recognized situations where no adverse impact upon the bargaining unit has justified unilateral decisions to subcontract. However, in those limited situations, the employer civilianized part of its workforce without any corresponding detriment to the employment of the bargaining unit.²⁹ We clarified our position regarding adverse impact in *Niagara Frontier*³⁰ in order to:

eliminate any possible ambiguity suggesting that the Taylor Law permits a public employer to transfer unit work to nonunit employees unilaterally so long as its action does not impose a detriment upon the terms and conditions of employment of individual unit employees. Even if no individual employees suffer a direct, immediate and specifically identifiable detriment to their terms and conditions of employment, their rights of organization and representation may be diminished if the scope of the negotiating unit is reduced.

The joint employer raised this defense in their answers to improper practice charges in Case Nos. U-23327 and U-22665 and, as such, had the burden of proof on this issue.³¹ The record is devoid of any evidence introduced by the joint employer that demonstrates a lack of adverse impact upon the bargaining units. We, therefore, reject this argument.

²⁹ See *City of Albany*, 13 PERB ¶¶3011 (1980); *City of New Rochelle*, 13 PERB ¶¶3045 (1980).

³⁰ *Supra*, note 24, at 3182.

³¹ David D. Siegel, *New York Practice*, §223 (2d ed 1991).

The joint employer further argues that, notwithstanding the record evidence, it was privileged to act because implementation of the Unified Classification Plan was mission-related. We disagree. Moran testified that COC had been aware since 1994 that Deputy Sheriff Officers guarded presentenced inmates and Corrections Officers guarded sentenced inmates. He stated that this was not a violation of any COC rule or regulation. Furthermore, COC did not take a position on who guards the inmates, its main objective was only to alleviate the overcrowded conditions in the Erie County Holding Center.

While much of the joint employer's evidence relates to the need to change its classification system, we need not consider such evidence to reach our determination in this case. While the Sheriff may have been required by the COC to have an objective classification system, the joint employer makes no allegation that compliance with the COC's rulings could not have been achieved without reassigning exclusive bargaining unit work.

We, therefore, find that the joint employer violated §209-a.1(d) of the Act when it unilaterally transferred CSEA bargaining unit work to employees represented by the Teamsters and also when it unilaterally transferred Teamsters bargaining unit work to employees represented by CSEA.

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

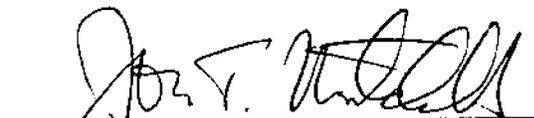
IT IS THEREFORE ORDERED that the County of Erie and Sheriff of Erie County:

1. Cease and desist from assigning nonunit employees to supervise sentenced inmates and certain parole violators remanded to the custody of the Sheriff, who have historically been supervised by CSEA unit employees;
2. Cease and desist from assigning nonunit employees to supervise pretrial and presentenced inmates and certain parole violators remanded to the custody of the Sheriff, who have historically been supervised by Teamster unit employees;
3. Make unit employees whole for wages and benefits lost, if any, by the assignment of Teamsters' unit work to Corrections Officers and the assignment of CSEA's unit work to Deputy Sheriff Officers, with interest at the maximum legal rate; and
4. Sign and post the attached notice at all locations normally used to communicate information to unit employees.

DATED: August 9 2006
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 County of Erie and Sheriff of Erie County represented by the Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO, Erie Unit of Local 815 (CSEA) and by Teamsters Local 264, International Brotherhood of Teamsters (Teamsters) that the County of Erie and Sheriff of Erie County will:

1. Not assign nonunit employees to supervise sentenced inmates and certain parole violators remanded to the custody of the Sheriff, who have historically been supervised by CSEA unit employees;
2. Not assign nonunit employees to supervise pretrial and presentenced inmates and certain parole violators remanded to the custody of the Sheriff, who have historically been supervised by Teamsters unit employees; and
3. Make unit employees whole for wages and benefits lost, if any, by the assignment of Teamsters' unit work to Corrections Officers and the assignment of CSEA's unit work to Deputy Sheriff Officers, with interest at the maximum legal rate.

Dated

By

(Representative)

(Title)

County of Erie and Sheriff of Erie County

.....

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.