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State of New York Public Employment Relations Board Decisions from April 22, 2010

New York State Public Employment Relations Board

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State of New York Public Employment Relations Board Decisions from April 22, 2010

Keywords

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Comments

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

In the Matter of

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

Charging Party,

CASE NO. U-28198

- and -

COUNTY OF ERIE,

Respondent.

**NANCY E. HOFFMAN, GENERAL COUNSEL (TIMOTHY CONNICK of
counsel), for Charging Party**

**JAECKLE, FLEISCHMAN & MUGEL, LLP (SEAN P. BEITER AND ELISHA J.
BURKART of counsel), for Respondent**

BOARD DECISION AND ORDER

This case comes to the Board on exceptions filed by the County of Erie (County) to a decision of an Administrative Law Judge (ALJ) on an improper practice charge, as amended, filed by the Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO, Erie County Local 815, Erie County Unit (CSEA) alleging that the County violated §209-a.1(d) of the Public Employees' Fair Employment Act (Act) when it unilaterally implemented a policy of hiring employees to fill regular part-time (RPT) positions to replace employees who vacate full-time positions in the same title, without any change in the nature and level of services provided by the County.

Following a one day hearing, the ALJ issued a decision concluding that the County violated §209-a.1(d) of the Act by implementing the new policy of replacing full-time positions with RPT positions without modifying the nature or level of service provided.¹

¹ 42 PERB ¶4517 (2009).

EXCEPTIONS

In its exceptions, the County challenges various factual and legal conclusions reached by the ALJ in finding that it violated §209-a.1(d) of the Act. The County's exceptions assert the following:

- a) CSEA failed to present sufficient evidence to establish a unilateral change in the terms and conditions of employment of unit members;
- b) The ALJ erred in crediting the terms of the County's RPT written policy over the description of the policy given during the testimony of Department of Personnel Commissioner John W. Greenan;
- c) The subject matter of the charge is nonmandatory;
- d) The ALJ erred in rejecting the County's duty satisfaction, waiver and mission-related defenses;
- e) The ALJ erred in ordering a make whole remedy as part of the remedial order.

CSEA supports the ALJ's decision.

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

FACTS

CSEA is the certified negotiating representative of the white collar unit of full-time and regular part-time County employees.² The current collectively negotiated agreement (agreement) between the parties defines the unit as including employees holding full-time positions, or "regular part-time positions (20 working hours or more per week)", in the titles that are listed in Appendix A of the agreement.³ The agreement

² *County of Erie*, 14 PERB ¶3000.15 (1981).

³ Joint Exhibit 2, Article II, §§3 and 4.

does not define the phrase "full-time position" by the number of hours worked but makes clear that the phrase covers permanent, temporary and/or provisional positions. The normal work week is defined in the agreement as not exceeding forty (40) hours.⁴ An employee who works less than 20 hours per week is considered a non-regular part-time employee and is not in the bargaining unit.

The agreement contains certain negotiated terms and conditions for RPT employees. Pursuant to the agreement, the period of employment in an RPT position is treated as 50% of the period of actual service for purposes of calculating continuous service.⁵ The agreement also contains negotiated benefits for RPT positions.⁶

The County's practice has been to treat employees in RPT positions, regardless of the number of hours worked in excess of 20 hours, as being entitled to 50% of the amount of negotiated vacation, sick, personal and bereavement leave under the agreement. In addition, as a matter of practice, employees in RPT positions receive one half-hour for a meal break, four hours of pay for holidays and fifteen minutes of

⁴ Joint Exhibit 2, Article XIII, §13.1.

⁵ Joint Exhibit 2, Article II, §16.

⁶ Article XXXVII, §37.1 states:

Regular part-time employees who work twenty (20) or more hours per week shall be entitled to receive all benefits provided to all full-time employees covered by this agreement, but on a pro-rated basis. It is understood that such regular part-time employees will be entitled to full coverage of hospitalization and medical expenses.

In reaching our decision, we do not consider whether providing 50% benefits to employees in RPT positions satisfies the County's pro-rata obligation set forth in §37.1 of the agreement because that is a contractual issue beyond our jurisdiction pursuant to §205.5(d) of the Act. Appropriately, CSEA has not raised the contract issue before us.

"summer hour time" per day in July and August.

Department of Personnel Commissioner John W. Greenan (Greenan) testified that each County position is specifically numbered. In order for an existing vacant full-time position to be replaced by an RPT position, the full-time position must be eliminated and a new RPT position created.

It is undisputed that the County has employed individuals in RPT positions for decades, but it has not had a practice of eliminating full-time positions and replacing them with RPT positions. Historically, the number of hours worked by RPT positions has fluctuated between 20 to 39 hours per week. The County has used RPT positions primarily in continuously operating facilities such as hospitals and youth detention facilities. It has also used RPT positions on a much more limited basis in the Department of Social Services (DSS) and in the Probation Department.

In late January 2008, a newspaper published a story describing a County initiative to begin hiring employees in RPT positions to replace employees who vacated full-time positions. The newspaper story stemmed from a directive issued by the new County Executive to County commissioners.⁷ In response to the published story, CSEA asked its members to send it any information they receive about the County hiring employees in RPT positions to replace employees who worked in full-time positions.

As a result of its request, CSEA obtained a copy of an internal County email from Department of Personnel employee Joseph Murphy (Murphy) to Greenan, dated February 5, 2008. The email responded to questions received from DSS about the

⁷ Unbeknownst to CSEA, the former County Executive had expressed a preference that the County hire employees in RPT positions, which was followed to a limited degree by County commissioners.

internal County procedures to be followed with respect to "the Conversion of Full Time positions to RPT", including procedures for the canvassing of candidates to fill positions.⁸ Murphy's email states that a position previously canvassed as a full-time position did not have to be reconvassed as an RPT position because civil service considers 39 hours to be full-time. In addition, the email states that a full-time position can be converted to an RPT position while an employee holding the position is on leave.

After receiving Murphy's email, Greenan forwarded it to DSS Commissioner Michael Weiner (Weiner) and DSS Personnel Assistant Joseph Dobies, who then distributed it within DSS.⁹ In February 2008, a document was distributed during a DSS supervisor meeting stating that all new entry level positions would be filled as RPT positions and they will "work 39 hours a week (no less per personnel)."¹⁰

In February 2008, CSEA also obtained two internal County documents entitled RPT Hiring Process and Benefits for Regular Part-time Employees of Erie County.¹¹ According to Greenan, the documents were drafts that had been prepared by Department of Personnel employees Murphy and Susan Agos. The draft RPT Hiring Process document refers to the new County Executive's January 2008 directive and states that all "new employees that are being hired from outside County Government for employment will be hired as an RPT."

On March 24, 2008, Greenan issued a memorandum to County department

⁸ Charging Party Exhibit 1.

⁹ Charging Party Exhibit 1, Transcript pp. 70-71.

¹⁰ Charging Party Exhibit 3.

¹¹ Charging Party Exhibit 2.

heads stating that, consistent with the new County Executive's directive, all new employees will henceforth be hired as RPT employees "working 39 hours a week."¹²

The memorandum states the new policy is inapplicable to current County employees and to employees who transfer to County employment from positions with the Erie County Medical Center Corporation, Erie County Home, Buffalo & Erie County Public Libraries and Erie Community College.¹³ The memorandum directs that all available County positions be canvassed as "full-time/RPT (39 hours per week)."

Attached to the memorandum are three additional documents including the finalized RPT Hiring Process and Benefits for Regular Part-time Employees of Erie County. Consistent with the County Executive's directive and Greenan's memorandum, the RPT Hiring Process states:

New employees being hired from outside County Government will be hired as Regular Part Time.

CSEA witnesses testified that following the County Executive's January directive, the County began to replace employees who vacated full-time positions with new employees in 39-hour RPT positions. Scott R. Smith (Smith) testified that in the Probation Department the County has hired four new RPT probation officers to work 39 hours to replace full-time probation officers without any change in the level of services. He identified James Robinson, Jacqueline Loga and Jill Monacilli as newly hired 39-hour RPT probation officers who replaced full-time probation officers. Each of those new hires was assigned a full

¹² Joint Exhibit 1.

¹³ Joint Exhibit 1. Under the policy, departments headed by other elected officials are not bound by the policy: County Clerk, Sheriff, County Comptroller, and the District Attorney.

probation officer case load.¹⁴ Joan Bender (Bender) testified that in DSS, the County has expanded the use of RPT positions by replacing full-time account clerk employees with new employees in RPT positions.

During his testimony, Greenan denied that the County Executive issued a directive to hire new employees in RPT positions, and denied that under the County's policy new employees in RPT positions must work 39 hours per week. According to Greenan, departments retain the discretion to hire RPT employees to work between 20 to 39 hours per week. However, he admitted that under the County's RPT policy, full-time positions are being abolished and replaced with RPT positions resulting in cost-savings for the County.¹⁵ During the hearing, the County did not present any evidence of a change in level of services provided or a change in its mission.

DISCUSSION

In its exceptions, the County asserts that CSEA failed to demonstrate a change in County policy and practice by replacing full-time positions with 39-hour RPT positions. The crux of the County's argument is that the ALJ was incorrect in finding that the testimony of CSEA witnesses, supported by the documentary evidence, is more credible than the testimony of Greenan.

Both Greenan's memorandum, and the emails that preceded it, demonstrate a clear and explicit County policy change to begin converting full-time positions into 39-hour RPT positions. The conversion is to take place only upon the hiring of new employees, and the Department of Personnel advised the other County departments to begin hiring

¹⁴ Smith also testified that the County has hired six employees from other County departments as full-time probation officers.

¹⁵ Transcript, pp. 100, 104-105.

"Regular Part Time (RPT) working 39 hours a week" and to "canvass all available positions as full-time/RPT (39 hours per week)." In addition, the email sent to the DSS Commissioner by Greenan expressly advised that County civil service treats employees who work 39 hours a week as full-time employees. The County's documents do not require departments to make determinations with respect to staffing and workload needs.

Despite the explicit directive given to County commissioners, Greenan testified that the policy did not mandate the replacement of full-time positions with RPT positions working 39 hours per week, and that each department is at liberty to determine whether to utilize an RPT position based upon operational need. In light of the clear and unambiguous nature of the County's internal documents, the ALJ was correct in concluding that Greenan's description of the RPT policy is not credible.

We find the County's challenge to the CSEA evidence about the changed practices in the Probation Department and DSS to be equally without merit. Without objection from the County, Smith specifically identified three 39-hour RPT probation officers who were hired to replace full-time probation officers, following the County Executive's directive, without any change in the assigned caseload and responsibilities. Similarly, CSEA presented testimonial and documentary evidence demonstrating an expansion in the hiring of 39-hour RPT positions in DSS to replace full-time positions without a modification in the services provided. While certain aspects of the testimony presented by CSEA witnesses constitute hearsay, hearsay is admissible in an administrative hearing and it can form the sole basis for an administrative determination.¹⁶ The specificity of Smith's testimony about

¹⁶ *Gray v Adduci*, 73 NY2d 741 (1988). In addition, the County's internal documents, in the record contain admissions against interest, which is an exception to the hearsay rule. *Village of New Paltz*, 25 PERB ¶3032 (1992).

the Probation Department, along with documentation about the DSS hiring of employees to fill RPT positions in April and May 2008, contradicts the County's assertion that the evidence is conclusory.

Furthermore, we note that during his testimony Greenan did not refute the description provided by CSEA witnesses of the hiring practices in the Probation Department and DSS since the County Executive's directive.¹⁷ In addition, as the ALJ found, the County did not present any evidence with respect to the number of hours worked by the newly hired employees in the RPT positions following the County Executive's directive.

We also reject the County's argument that, by "using one RPT employee to replace one full-time employee, there is logically a change in both the hours and level of services."¹⁸ While there certainly has been a change in the number of hours worked, the County has not presented any evidence demonstrating that it assigned less work to employees in RPT positions than it did to employees in full-time positions or that it has decreased the level of services. In fact, the record does not include any evidence that prior to replacing a full-time position the County determined that the work of the position could be performed in less than 40 hours. Instead, the evidence reveals that the County is substituting 39-hour RPT employees to handle the same case load as full-time employees for the sole purpose of cost savings.

The ALJ's decision held that the County's unilateral action of replacing full-time positions with RPT positions violated §209-a.1(d) of the Act because the County failed

¹⁷ *State of New York (Division of Parole)*, 41 PERB ¶3033, n.15 (2008).

¹⁸ Brief of Respondent County of Erie in Support of Exceptions, p. 25.

to demonstrate any change in the nature or level of services provided. Although we agree with the ALJ's legal conclusion, we find that she erred in her reliance on our precedent holding that an employer cannot unilaterally abolish a full-time position and substitute it with two half-time positions when there is no change in the level of services.¹⁹ The facts of those cases are inapposite to the present case because the County is not unilaterally splitting full-time positions into two part-time positions and maintaining the same total number of hours worked. Rather, it is replacing full-time positions with 39-hour RPT positions without a diminution in workload or the level of services provided. Nevertheless, the legal principle underlying those decisions is fully applicable to the present case: although staffing and the level of services provided by an employer are nonmandatory subjects under the Act, an employer's choice of the specific means of accomplishing those prerogatives directly affect terms and conditions of employment and, therefore, is a mandatory subject.²⁰

In *Lackawanna Central School District*,²¹ we held that it is a managerial prerogative for an employer to reduce the hours of a position so long as the employer has determined that the work can be performed in a shorter period of time. Similarly, in *Vestal Central School District*,²² we concluded that an employer can unilaterally decrease the number of

¹⁹ *State of New York-Unified Court System*, 28 PERB ¶3014 (1995) (the unilateral conversion of a full-time position into two part-time positions to work alternative full-time work weeks constitutes a violation of §209-a.1(d) of the Act); *County of Broome*, 22 PERB ¶3019 (1989) (the unilateral conversion of three full-time positions into six half-time positions at the same level or nature of services violated §209-a.1(d) of the Act).

²⁰ *Starpoint Cent Sch Dist*, 23 PERB ¶3012 (1990).

²¹ 12 PERB ¶3122 (1979). See also, *City of Lackawanna*, 13 PERB ¶3085 (1980).

²² 15 PERB ¶3006 (1982), confirmed sub nom. *Vestal Teachers Assn v Newman*, 95 AD2d 940, 16 PERB ¶7020 (1983).

work hours and pay of unit employees if there is a demonstrated diminution in the amount of work needed to be performed. When there is such a good faith reduction in services, it can "justify the public employer in [unilaterally] reducing its employees' workload with a commensurate reduction in salaries. Whether or not such a purpose is present is in the nature of an affirmative defense necessarily to be made by the employer."²³ When the record is "barren of any proof that the subject change was made to curtail or limit services to the public" we will find an employer to have violated §209-a.1(d) of the Act by unilaterally decreasing the work hours and pay of its employees.²⁴

In the present case, the County is reducing the number of hours and benefits of unit employees by converting full-time positions to 39-hour RPT positions without it presenting any evidence of a specific determination that the same level of services can be completed in fewer hours or evidence that the County made a good faith reduction in services. In light of the documentary and testimonial evidence in the record, we are not persuaded by the County's summary argument that any decrease in the number of hours constitutes a *per se* decrease in services.

Based upon the foregoing, we affirm the ALJ's conclusion that the subject matter of the charge is mandatory and turn our attention to the County's duty satisfaction, waiver and mission defenses.

To demonstrate a duty satisfaction defense, a party must present evidence demonstrating that the parties have negotiated an agreement with terms that are reasonably

²³ *Schuylerville Cent Sch Dist*, 14 PERB ¶3035 at 3058 (1981).

²⁴ *Oswego City Sch Dist*, 5 PERB ¶3011 at 3024 (1972), *confirmed*, 42 AD2d 262, 6 PERB ¶7008 (3d Dept 1973).

clear on the subject presented for decision.²⁵ In the present case, the County contends that the ALJ erred in rejecting its duty satisfaction defense. In support of its defense the County relies upon its past practice of employing individuals in RPT positions, the negotiated benefits for RPT employees in the agreement, and the management rights clause.

By definition, a duty satisfaction defense is based upon the terms of an agreement. The County's practice of hiring employees in RPT positions is irrelevant to such a defense because the contract is silent with respect to the subject of the charge: replacing employees in full-time positions with employees in RPT positions.²⁶ Contrary to the County's contention, Article XXXVII, §37.1 of the agreement does not set forth any terms relevant to the subject matter of the charge. Rather, that contractual provision sets forth the negotiated benefits for RPT positions, and is silent with respect to the County's right to eliminate full-time positions and replace them with newly created RPT positions.

Finally, the management rights reserved in Article III, §3.1 are insufficient to form the basis for the County's duty satisfaction or waiver defenses. The management rights clause states:

Except as expressly limited by other provisions of this Agreement, all of the authority, rights and responsibilities processed by the County are retained by it, including, but not limited to, the right to determine the mission, purpose, objectives and policies of the County; to determine facilities methods, means and number of personnel for the conduct of the County programs; to administer the merit system, including the examination, selection, recruitment, hiring, appraisal, training, retention, promotion, assignment or transfer of employees pursuant to law; to direct, deploy and

²⁵ *Niagara Frontier Transit Metro System, Inc*, 42 PERB ¶3023 (2009); *NYCTA*, 41 PERB ¶3014 (2008).

²⁶ Furthermore, there is no evidence of a past practice of the County substituting RPT positions for full-time positions or that CSEA acquiesced to such a practice.

utilize the work force; to establish specifications for each class of positions, and to classify or re-classify, and to allocate or re-allocate new or existing positions in accordance with law and the provisions of this Agreement.

In *State of New York-Unified Court System*,²⁷ we construed an almost identical management rights clause granting the employer the power to determine "methods, means and number of personnel required" to constitute only a reservation of existing rights that does not "include the right to unilaterally 'substitute part-time employees for full-time employees'."²⁸ Similarly, in the present case, Article III, §3.1 does not include a specific grant of additional authority to the County to replace full-time employees with RPT employees. Therefore, we affirm the ALJ's decision rejecting the County's duty satisfaction and waiver defenses and turn to the County's mission-related defense.

It is well-settled that an employer's policy decision may not be mandatorily negotiable if it is inherently or fundamentally related to the primary mission of the employer.²⁹ However, the mere fact that a work rule has some relationship to an employer's mission does not grant an employer the authority to act unilaterally if the change significantly or unnecessarily intrudes on the protected interests of bargaining unit members under the Act.³⁰

In its exceptions, the County asserts that the ALJ erred by rejecting its mission-related defense on the grounds that the County did not pursue the issue. In *New York City*

²⁷ *Supra* note 19.

²⁸ *Supra* note 19, 28 PERB at 3039.

²⁹ *County of Erie v New York State Pub Empl Rel Bd*, 12 NY3d 72, 42 PERB ¶7002 (2009).

³⁰ *City of Albany*, 42 PERB ¶3005 (2009).

Transit Authority,³¹ the Board held that the failure of a charging party to brief a pled claim does not constitute the abandonment of that claim. The same principle is applicable when a respondent fails to brief issues regarding a pled defense. Therefore, we modify the ALJ's decision to the extent that she concluded that the County did not pursue its defense because the issue was not briefed.

However, we affirm the ALJ's rejection of the County's mission-related defense because it is unsupported by the evidence. The County's defense rests on Greenan's memorandum and testimony, which it contends demonstrate that the new RPT policy requires a department-based operational determination as to whether a vacancy should be filled by a full-time or RPT employee. In fact, Greenan's March 24, 2008 memorandum reinforced the County Executive's directive that henceforth all employees hired from outside County government to replace full-time employees will be hired as 39-hour RPTs. The evidence presented by the County does not demonstrate a change in its mission or that such change outweighs the interest of the CSEA bargaining unit.

Finally, we reject the County's exception challenging the ALJ's proposed remedial order. Pursuant to §205.5(d) of the Act, the Board has the authority to direct a party to cease and desist from engaging in an improper practice, to take such affirmative action that will effectuate the policies of the Act, and to issue a make-whole remedy for the loss of wages and benefits, with interest at the maximum rate permitted by law, to any employees harmed as the result of the improper practice. Any factual disputes regarding the proper application of the remedial order to particular employees can be addressed during a compliance proceeding following judicial enforcement,

³¹ 41 PERB ¶3014 (2008).

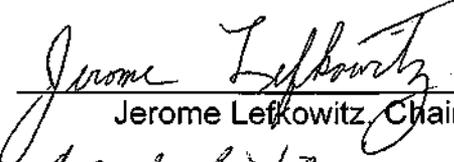
pursuant to §213(a) of the Act.³²

Based on the foregoing, we find that the County violated §209- a.1(d) of the Act when it unilaterally implemented the practice in 2008 of hiring employees in RPT positions to replace employees in full-time positions in the absence of any demonstrated change in the nature or level of service.

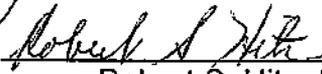
IT IS THEREFORE ORDERED that the County:

1. stop replacing full-time positions with regular part-time positions to perform the same level of services;
2. negotiate with CSEA regarding the replacement of full-time positions with regular part-time positions performing the same level of services;
3. make whole for loss of wages and benefits, if any, with interest at the maximum legal rate, any employee hired in a regular part-time position to replace an employee in a full-time position pursuant to the County's 2008 regular part-time policy; and
4. sign and post the attached Notice at all locations normally used to post communication to unit employees.

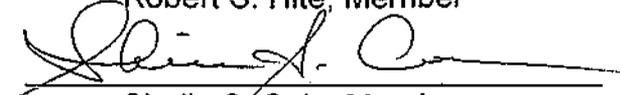
DATED: April 22, 2010
Albany, New York



Jerome Letkowitz, Chairman



Robert S. Hite, Member



Sheila S. Cole, Member

³² *Manhasset Union Free School District*, 42 PERB ¶3016 (2009).

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 represented by the Civil Service Employees Association, Inc., Local 1000 AFSCME, AFL-CIO, Erie County Local 815, Erie County Unit that the County of Erie will:

1. not replace full-time positions with regular part-time positions to perform the same level of services;
2. negotiate with CSEA regarding the replacement of full-time positions with regular part-time positions performing the same level of services; and
3. make whole for loss of wages and benefits, if any, with interest at the maximum legal rate, any employees hired as regular part-time pursuant to the County's 2008 regular part-time policy.

Dated

By
(Representative) (Title)

County of Erie
.....

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

CHRISTINE V. SERAFIN,

Charging Party,

CASE NO. U-28299

- and -

**AMERICAN FEDERATION OF STATE, COUNTY AND
MUNICIPAL EMPLOYEES, LOCAL 650, AFL-CIO,**

Respondent,

- and -

CITY OF BUFFALO,

Employer.

CHRISTINE V. SERAFIN, *pro se*

**REDEN & O'DONNELL, LLP (ROBERT J. REDEN of counsel),
for Respondent**

**DAVID RODRIGUEZ, ACTING CORPORATION COUNSEL
(LEONARDO D. SETTE-CAMARA of counsel), for Employer**

BOARD DECISION AND ORDER

This case comes to the Board on exceptions filed by Christine V. Serafin (Serafin) to a decision by an Administrative Law Judge (ALJ) dismissing an improper practice charge alleging that American Federation of State, County and Municipal Employees, AFL-CIO, Local 650 (Local 650) violated §209-a.2(c) of the Public Employees' Fair Employment Act (Act) when it did not process an overtime grievance

on her behalf against her employer, the City of Buffalo (City).¹

The ALJ issued a decision on October 20, 2009, dismissing the charge based on a stipulated record consisting of the pleadings, Serafin's offer of proof, Local 650's response, and a purported stipulation of facts. He concluded that Serafin failed to prove that Local 650 had breached its duty of fair representation, in violation of §209-a.2(c) of the Act, by engaging in arbitrary, discriminatory or bad faith conduct when it refused to process Serafin's grievance following a merits review of the grievance by Local 650 President Michael Drennen (Drennen).

EXCEPTIONS

In her exceptions, Serafin challenges the stipulation of facts. In addition, she contends that the ALJ erred in finding that Local 650's refusal to process her grievance was not arbitrary, discriminatory or founded in bad faith. Local 650 and the City support the ALJ's decision.

Based upon our review of the record, consideration of the parties' arguments and application of relevant precedent, we reverse the decision of the ALJ.

PROCEDURAL HISTORY

On April 17, 2008, Serafin filed a charge alleging that Local 650 violated §209-a.2(c) of the Act when Local 650 President Drennen refused to process her grievance against the City's Department of Public Works, Parks and Streets (DPW).

In her charge, as later clarified by her offer of proof, Serafin alleged that Local 650 was protecting DPW's discriminatory distribution of overtime to certain favored DPW employees by refusing to file a grievance challenging the alleged mismanagement

¹ 42 PERB ¶4575 (2009).

of the payroll overtime wheel. Additionally, Serafin alleged that Local 650 failed to provide an explanation of its reasons for the refusal, which demonstrates the arbitrary nature of its actions.

Specifically, Serafin alleged that on April 14, 2008, she approached Local 650 Vice President and Grievance Committee Chairman Michael Hoffert (Hoffert) to request the filing of an overtime grievance concerning the application of the overtime wheel in DPW. According to Serafin's charge, Hoffert told her that the proposed grievance was valid but stated that he could not process it, and referred her to Drennen. However, when she approached Drennen with her request, he refused to file the grievance.

According to Serafin, from 2006-2008, DPW offered overtime opportunities to certain employees to the detriment of other employees in violation of the collectively negotiated agreement (agreement) between the City and Local 650.² She asserted that when the overtime wheel was established in DPW, no specific jobs or duties were singled out as being specially assigned to certain employees on the wheel.

Serafin attached to her charge a letter she sent to Drennen dated April 14, 2008, in which she reiterated her request to file a grievance. In her letter, she stated that a

² Section 3.2(l) of the agreement states:

Overtime work shall be offered equally to all employees working within the same job classification or department. The opportunity to work overtime shall be offered to the employees within the job classifications of the department involved on a rotational basis.

prior similar grievance had been processed by Local 650 and was denied at step two.³ In addition, she requested an explanation as to why Local 650 refused to represent her and why payroll was treated as a "special item" for overtime purposes.

Two days later, Serafin sent another letter to Drennen demanding restitution from the City for overtime that she would have worked if the overtime wheel had been used. It is undisputed that Drennen did not reply to either letter.

The City did not file an answer, but submitted a position statement on May 9, 2008, in which it offered its interpretation of the agreement in support of its argument against Serafin's claim. According to the City, the overtime wheel utilized by DPW is comprised of all employees working in the same job classification in each district, precinct or station, and overtime opportunities are offered equally only to the employees within the same job classification. It is the City's position that payroll duties are not included in the job classification of Serafin's Senior Inventory Clerk position, and as a result, Serafin was not eligible to be included in the payroll overtime wheel.

On May 13, 2008, Local 650 filed its answer, raising as an affirmative defense that Local 650 filed a grievance on Serafin's behalf on December 15, 2006, which alleged that DPW was mismanaging the overtime wheel. According to Local 650, it processed and investigated the 2006 grievance, and determined that it lacked merit. Based upon this determination, it did not process the grievance to arbitration.

On June 17, 2008, a conference was held with respect to the charge. The following day, the ALJ sent a letter to the parties directing Serafin to submit an offer of

³ In her charge and offer, Serafin does not identify the date or year that she filed this grievance. According to Local 650, however, the grievance was filed on December 15, 2006. For purposes of this decision, and without rendering a factual determination as to when she filed the grievance, we will refer to it as the 2006 grievance.

proof in support of her charge, and for Local 650 to file a response to that offer.

In her offer, Serafin alleged that when she approached Drennen on April 14, 2008, Drennen acted in an annoyed manner, and he refused to process the grievance without discussing the basis of the grievance or investigating its merits. Serafin also stated in her offer that Local 650 processed a successful overtime grievance on her behalf several years ago concerning the denial of overtime.⁴

In addition, Serafin asserted that a class action grievance was filed by several DPW employees alleging mismanagement of the overtime wheel. According to Serafin, in response to the class action grievance, Local 650 explained that the employees who worked the overtime were payroll employees, that they were "special," and that overtime was not to be given to anyone else. However, the record is unclear regarding the disposition of that grievance.

In its response to Serafin's offer, Local 650 asserted that it did not process Serafin's 2008 grievance because the grievance lacked merit. While it admitted that Serafin spoke with Hoffert about filing the 2008 grievance, it denied Serafin's claim that Hoffert stated that it was valid. In addition, Local 650 claimed that Serafin's allegations, as clarified by her offer of proof, were insufficient because she did not identify a single overtime opportunity that she was denied under the agreement. Pursuant to §19.1 of the agreement, all grievances must be submitted at step one within "twenty (20) working days of the occurrence of the facts giving rise to the grievance or notice of such facts to the employee, whichever is later." Attached to its response, Local 650 appended a

⁴ Serafin does not identify the date or year that she filed this grievance. According to Local 650, however, it was filed in 2000. For purposes of this decision, and without rendering a factual determination as to when she filed the grievance, we will refer to it as the 2000 grievance.

copy of Serafin's payroll summary, for the period December 31, 2007-May 4, 2008. The summary shows that Serafin worked and was paid for overtime on three weekends prior to her request that Local 650 file the overtime grievance. Local 650 pointed out that Serafin did not set forth any facts in her offer of proof that would demonstrate that overtime was available on the one weekend she did not work in the twenty day period prior to requesting Local 650 to process her grievance.

According to Local 650, its decision not to process Serafin's grievance in 2008 was based upon its handling of her similar 2006 grievance, which alleged the discriminatory distribution of overtime to perform payroll duties. That grievance was withdrawn by Local 650 after it was processed to step two because Local 650 determined that payroll duties were not within her job classification. Consistent with the agreement, overtime opportunities to perform payroll duties had been offered to DPW employees whose job classifications included those duties.

In support of its contract analysis, Local 650 referred to §3.2(l) of the agreement and the parties' mutual interpretation of those terms in support of its conclusion that Serafin's 2006 and 2008 grievances lacked merit. Under that interpretation, overtime must be offered equally to employees in the same job classification within a department.

Local 650 also stated in its response that at the time that the 2006 grievance was withdrawn, Hoffert informed Serafin of the reason for the withdrawal. Thus, when Serafin sought to file her grievance in 2008, she was aware of Local 650's position that an overtime grievance with respect to payroll duties would not be processed for any employee whose job classification did not include such duties.

Finally, in response to Serafin's allegation that she filed and won an overtime

grievance, Local 650 submitted, with its response, a copy of Serafin's 2000 grievance, the City's denial, and the settlement agreement establishing that the City denied the grievance on the grounds that the duties were not within her job classification and that the overtime wheel was suspended on that particular date due to an emergency. Ultimately, Local 650 and the City settled the grievance. As a result of that settlement, Serafin was granted four hours of overtime. According to Local 650, the 2000 overtime grievance did not involve payroll duties.

DISCUSSION

We begin our discussion with Serafin's challenge to the stipulation of facts relied upon by the ALJ.

1. Stipulation of Facts

Following the submission of the offer of proof and response, the ALJ sent to the parties a proposed stipulation of facts aimed at assisting the parties in reaching agreement with respect to undisputed facts. The proposed stipulation contained eleven paragraphs, and was drafted by the ALJ based upon the allegations contained in the pleadings as clarified by the offer and responses.

In response to the proposed stipulation, Local 650 submitted a letter dated February 26, 2009, stating that it had no suggested changes but reserving the right to make revisions depending on any proposed revisions by Serafin. The following day, however, Local 650 submitted a proposed revision of the third paragraph. In its two letters, Local 650 did not affirmatively agree to any of the other ten proposed stipulated facts.

Serafin did not respond to Local 650's suggested changes to the third paragraph,

which included additional allegations with respect to Serafin's interaction with Drennen.

On March 6, 2009, Serafin submitted a letter to the ALJ proposing that the sixth paragraph be revised to state that as a Senior Inventory Clerk, she performed payroll duties in addition to her inventory duties. Local 650 objected to this proposed change in a letter dated March 9, 2009.

By letter dated March 11, 2009, the ALJ submitted to the parties a redraft of the third paragraph and requested that the City clarify Serafin's title.⁵ In response to the ALJ's request, the City confirmed that Serafin's title was a Senior Inventory Clerk.

Local 650 submitted another revised version of the third paragraph on March 18, 2009. Two days later, the ALJ asked Serafin to submit a response to the suggested changes to the third paragraph. Serafin never responded.

Before the close of the record, neither party expressly or implicitly agreed to the ALJ's proposed stipulation of facts, in whole or in part.

Under the facts and circumstances of this case, we find that the parties did not agree to the proposed stipulation of facts. Despite the ALJ's best efforts, the record does not evidence a meeting of the minds between Serafin and Local 650 over the proposed stipulation. There is no signed stipulation or confirming letters from the parties or the ALJ that demonstrate the necessary consent between the parties to the terms of the draft stipulation in whole or in part. In the absence of an agreement by the parties to the terms of the proposed stipulation, we find that the ALJ erred in dismissing the charge based, in part, on the proposed stipulation.

⁵ The City had been copied on most of the earlier correspondence with respect to the proposed stipulation.

2. Serafin's Allegations in the Charge, as Clarified by the Offer of Proof

Based upon our conclusion that the parties did not agree to the stipulation, we examine the ALJ's dismissal in light of the allegations contained in the charge, as clarified by Serafin's offer of proof, granting all reasonable inferences to those allegations.⁶

It is well-established that the Board will affirm the dismissal of a charge alleging a violation of §209-a.2(c) of the Act on the pleadings if those allegations are insufficient, if proven, to demonstrate that the employee organization engaged in conduct that is discriminatory, arbitrary or founded in bad faith.⁷ An employee organization is entitled to a wide range of discretion and reasonableness regarding the processing of grievances.⁸ It is not a *per se* violation of the duty of fair representation for an employee organization to take a position which benefits some unit members to the detriment of others, absent a showing of discrimination or improper motivation.⁹

In Board of Education of the City School District of the City of New York

⁶ See, *Niagara Frontier Transit Metro System, Inc.*, 42 PERB ¶13023 (2009); *Bd of Educ of the City Sch Dist of the City of New York (Grassel)*, 43 PERB ¶13010 (2010).

⁷ *CSEA v. PERB and Diaz*, 132 AD2d 430, 20 PERB ¶17024 (3d Dept 1987), *affd on other grounds*, 73 NY2d 796, 21 PERB ¶17017 (1988); *UFT (Ayazi)*, 32 PERB ¶13069 (1999).

⁸ *New York City Transit Auth (Nwasokwa)*, 22 PERB ¶13028 (1989); *District Council 37, AFSCME (Gonzalez)*, 28 PERB ¶13062 (1995); *PEF (Frisch)*, 29 PERB ¶13019 (1996); *Rochester Teachers Assn (Danna)*, 41 PERB ¶13003 (2008); *District Council 37, AFSCME (Maltev)*, 41 PERB ¶13022 (2008).

⁹ *South Huntington United Aides (Deerfield)*, 17 PERB ¶13012 (1984); *UFT (Kauder)*, 18 PERB ¶13048 (1985); *AFSCME (LaBarbara)*, 25 PERB ¶13070 (1992); *Westchester County Dept of Corr Superior Officers' Assn*, 26 PERB ¶13077 (1993).

(Grassel)¹⁰, we determined that if a unit member specifically requests an explanation from an employee organization for its refusal to process a grievance, the employee organization's failure to provide such information constitutes a breach of the duty of fair representation. However, we will affirm the dismissal of a duty of fair representation charge when, following a review of a grievance, an employee organization makes a merits determination to not process a grievance, and provides an explanation for its decision in response to a unit member's request.

In the present case, Serafin alleged that Local 650 protected DPW's distribution of overtime to certain favored employees to the detriment of other employees. She also alleged that Local 650 Vice President and Grievance Chairman Hoffert told her that the grievance had merit, yet when she approached Drennen with the grievance, Drennen acted annoyed and summarily rejected it without any apparent consideration of its merits. In addition, Serafin asserted that he refused to respond to her repeated requests for a written explanation of his reasons for not processing the grievance.

The alleged disparity between Hoffert and Drennen in their respective reactions to the grievance, combined with Drennen's annoyance, summary refusal to process the grievance, and his failure to respond to Serafin's request for an explanation for not processing the grievance is sufficient to warrant a hearing on Serafin's charge.¹¹ Granting all reasonable inferences to Serafin's allegations, as we must, we conclude that they are sufficient to create an inference that Local 650 engaged in arbitrary,

¹⁰ 23 PERB ¶3042, at 3084 (1990).

¹¹ *UFT (McLaughlin)*, 24 PERB ¶3002 (1991); *Bd of Educ of City Sch Dist of the City of New York (Grassel)*, *supra* note 10.

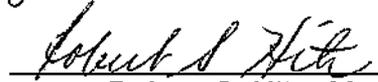
discriminatory, or bad faith conduct with respect to its treatment of Serafin's grievance.¹²

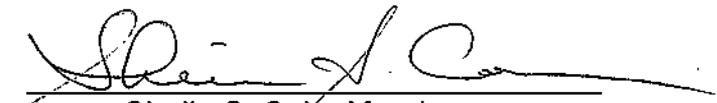
Based upon the foregoing, we reverse the decision of the ALJ and remand the case for further processing of the charge.

IT IS, THEREFORE, ORDERED that this case is hereby remanded to the ALJ.

DATED: April 22, 2010
Albany, New York


Jerome Lefkowitz, Chairman


Robert S. Hite, Member


Sheila S. Cole, Member

¹² *County of Nassau (Police Dept) (Unterweiser)*, 17 PERB ¶3013 (1984); *UFT (Saidin)*, 38 PERB ¶3025 (2005).

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

In the Matter of

**CHENANGO FORKS TEACHERS ASSOCIATION,
NYSUT/AFT/AFL-CIO, LOCAL 2561,**

Charging Party,

CASE NO. U-24520

- and -

CHENANGO FORKS CENTRAL SCHOOL DISTRICT,

Respondent.

CHRISTOPHER S. CORLETT, for Charging Party

**COUGHLIN & GERHART, L.L.P. (LARS P. MEAD of counsel), for
Respondent**

BOARD DECISION AND ORDER

This case comes to the Board on exceptions filed by the Chenango Forks Central School District (District) to a decision of the Assistant Director of Public Employment Practices and Representation (Assistant Director), on an improper practice charge filed by the Chenango Forks Teachers Association, NYSUT/AFT/AFL-CIO, Local 2561 (Association), concluding that the District violated §209-a.1(d) of the Public Employees' Fair Employment Act (Act) when it unilaterally announced to current unit employees that it was discontinuing the past practice of reimbursing for the cost of Medicare Part B health insurance premiums (premiums) for current and retired employees age 65 or older, and their spouses.¹

¹42 PERB ¶14527 (2009).

PROCEDURAL BACKGROUND

This is the second time this matter has come before the Board. In a prior decision we reversed, in part, an earlier decision by the Assistant Director² that was based upon a stipulated record, and we remanded the case for the purpose of supplementing the record with respect to the limited issue of whether the Association and/or current employees had actual or constructive knowledge of the District's practice of reimbursing the cost of the premiums.³ Our remand was necessitated by an ambiguity in the stipulated record as it related to the particular nature of the alleged past practice in the present case. Although the stipulated record clearly demonstrates that the District reimbursed retirees for the premiums, we found that the wording of the stipulation failed to set forth sufficient facts demonstrating that the Association or current unit employees had had knowledge of the at-issue benefit so as to establish a reasonable expectation that the practice would continue.

In our prior decision, we concluded that the record did establish that the District had knowledge of the practice of premium reimbursement. Our conclusion was based upon the District reimbursing the cost of the premiums without any restriction or qualification for a period of 15 years at a total cost of approximately \$500,000.⁴ We also denied the District's exception that relied upon a statement in an arbitral opinion and

² 39 PERB ¶4602 (2006).

³ *Chenango Forks Cent Sch Dist*, 40 PERB ¶3012 (2007).

⁴ The finding with respect to the District's knowledge was also supported by the content of the District's June 12, 2003 memorandum citing the cost of the practice as the rationale for ending it, as well as the annual budgetary process mandated by Education Law §2022 that includes a review of expenditures in budget preparation.

award regarding the lack of a past practice concerning the benefit.⁵ We found the arbitrator's statement to be mere *dicta*, and to the extent that the arbitrator had attempted to apply our past practice criteria, we deemed his conclusion to be repugnant to the Act.

Our decision also expressly rejected the District's arguments that the subject matter of the charge, a monetary benefit related to health insurance for current employees, is not a term and condition of employment or a mandatory subject of negotiations. We concluded that the subject of the Association's charge is mandatory because it is a health insurance benefit that accrues while employed and is paid after an employee retires.⁶ Finally, we rejected the District's remaining exceptions including its assertion that the Association did not have a contractual right to the continuation of the premium reimbursements, its claim that the charge is moot based upon the parties' 2004-2007 agreement, and its assertion that the continued reimbursement of premiums constitutes an unconstitutional gift of public funds.

On remand, the Assistant Director conducted a hearing during which the Association called 14 witnesses who testified about their knowledge of the District's premium reimbursement practice. Following the hearing, the Assistant Director issued

⁵ The arbitrator denied the Association's grievance on the grounds that the District did not have a contractual obligation to continue reimbursing the premiums because the agreement did not include an explicit provision requiring such payments or a maintenance of benefits provision. Joint Exhibit 1, Stipulation of Facts, Exhibit S, p. 10.

⁶ Under the Act, there is no duty to negotiate for retirees, who, by definition, are not bargaining unit members. However, retiree health benefits for current employees who retire during the life of an agreement is a mandatory subject. See, *Chenango Forks Cent Sch Dist*, *supra* note 3.

a decision concluding that the Association and unit employees had actual knowledge of the District's practice at the time of the District's 2003 announcement, and therefore, she reaffirmed her prior determination that the District violated §209-a.1(d) of the Act when it announced the discontinuance of its practice. In reaching her decision, the Assistant Director found the testimony of two of the Association's witnesses to be irrelevant.

EXCEPTIONS

The District excepts to the Assistant Director's decision on the grounds that the Assistant Director erred in crediting the testimony of the Association's witnesses, and in concluding that the Association and unit employees had knowledge of the practice prior to the District's announced discontinuance of the practice.

In addition, the District repeats exceptions that we denied in our prior decision including its contentions that: a) the arbitrator's statement about the lack of a past practice is binding; b) the subject matter of the charge is not a term and condition of employment and a mandatory subject of negotiations under the Act; c) the charge is now moot as the result of the parties' 2004-2007 agreement; and (d) the continued practice of making reimbursement payments is an unconstitutional gift of public funds.

The Association supports the Assistant Director's decision, and it asserts that certain District's exceptions are barred by the law of the case doctrine.

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

FACTS

Since at least 1980, the District reimbursed the premiums for unit members or retirees 65 years of age or older. While it is undisputed that retirees have actually received the benefit over the years, the parties state in their stipulation that they are unaware of whether current unit employees have ever received Medicare Part B benefits.⁷ During the hearing, no evidence was presented demonstrating that a premium reimbursement payment was made to a current unit employee.

Until 1988, premium reimbursements were mandated by the District's former insurance provider. Following a change in insurance providers, the new provider did not obligate the District to continue making the premium reimbursement payments to retirees. However, the District continued to make the premium reimbursement payments to retirees until 2003, a period of 15 years. On June 12, 2003, the District's Business Administrator, Kathy Blackman (Blackman), sent a memorandum to all current employees announcing that, effective July 1, 2003, the District was discontinuing the practice of reimbursing the premiums to retirees 65 years of age or older.

During the hearing, numerous Association witnesses testified that during their tenure as District employees they learned of the premium reimbursement practice prior to 2003 from current and former unit members. Theodora Bryant (Bryant), a former Association President from 1991-1995, testified she learned of the District's premium reimbursement practice in the 1980s from another unit member preparing to retire. In 2002, Bryant retired from the District, and in May 2002 she received her first

⁷ Joint Exhibit 1, Stipulation of Facts, ¶24.

reimbursement payment from the District.

Barbara Slocum, the Association President when the District issued its 2003 memorandum, testified that she first became aware of the District's practice in the late 1990s or in 2000 during conversations with Bryant.⁸ Victoria Kwartler, the Association President at the time of the hearing, testified that she learned of the practice in the late 1980s from Bryant and fellow unit member Roberta Furth (Furth). Similarly, Mary Madigan testified that she learned of the practice in the 1990s from Bryant, Furth and other unit members who were members of the Association's negotiation team. Jaime Fiore, who retired from the District in 2004, testified that she first learned of the practice in 1998, during a conversation with two unit members who were planning to retire. Betty Cheesemen also testified that she learned of the practice from a former unit member, Muriel Rossi, who retired in 1999.⁹

The District called two witnesses, Janice Darling (Darling) and Kathy Blackman (Blackman), who conduct informal pre-retirement interviews on behalf of the District with unit members who are considering retirement. According to their testimony, no unit member has ever indicated to them an awareness of the District's practice of reimbursing the cost of Medicare Part B premiums.

DISCUSSION

The District challenges the Assistant Director's conclusion that the Association

⁸ Transcript, pp. 31-32. During her testimony, Slocum stated she was unsure of the exact year she learned of the practice from Bryant.

⁹ Many other Association witnesses testified to having knowledge of the practice while unit members prior to 2003, and explained how they learned of the practice. These witnesses include John Connors, John Ferranti, Shelley Deuel, and Patricia Swartout.

and unit employees had knowledge of the practice at the time that the District announced the discontinuance of the practice. The District asserts that the ALJ erred in crediting the testimony of Association witnesses on grounds that the testimony is unreliable because it is premised upon hearsay, unsupported by documentation, and contains discrepancies. In addition, the District contends that the Association was obligated to call additional witnesses to corroborate the hearsay testimony of the Association witnesses.¹⁰

Contrary to the District's argument, most of the testimony by Association witnesses does not constitute hearsay because it relates to their awareness of the practice, rather than the truth of the matter asserted.¹¹ Furthermore, to the extent that the testimony might constitute hearsay, pursuant to §212.4(e) of our Rules of Procedure (Rules), compliance with the technical rules of evidence are not required except as those rules apply to evidentiary privileges. In any event, hearsay is admissible during our administrative hearings and, under appropriate circumstances, it can form the sole basis for our decision as long as it is sufficiently relevant and probative to constitute substantial evidence.¹²

¹⁰ The District also challenges the respective testimony of former Superintendent of Schools R. David Andrus and former unit employee Jeannine Andrus. The Assistant Director explicitly ruled that the testimony by those witnesses is irrelevant, and neither party has excepted to that ruling. *Supra*, note 1, 42 PERB ¶4527 at 4599, n. 12. Therefore, it is unnecessary for us to reach the merits of the District's claim with respect to the testimony of those witnesses.

¹¹ See, *Bergstein v Bd of Ed Union Free Sch Dist No. 1 of Town of Ossining*, 34 NY2d 318 (1974).

¹² *Wappingers Cent Sch Dist*, 18 PERB ¶3039 (1985). See also, *Gray v Adduci*, 73 NY2d 741 (1988); *People ex rel Vega v Smith*, 66 NY2d 130 (1985).

During the hearing before the Assistant Director, the Association presented a dozen former unit employees, including many former Association representatives, who testified that while employed by the District prior to 2003, they learned of the at-issue practice. Some witnesses testified that they learned of the practice from other current unit members, and others testified that they learned of the practice from former unit employees who were receiving reimbursement checks from the District.

Following our examination of the record, including the testimony of District witnesses Darling and Blackman, we conclude that the supplemental evidence presented by the Association's witnesses is sufficient to resolve the ambiguity we found in the wording of the parties' stipulation of facts. The evidence presented at the hearing demonstrates that both the Association and unit employees had sufficient knowledge of the District's practice at the time of the announced discontinuation of that practice to demonstrate a reasonable expectation that the practice would continue.

In reaching our conclusion, we reject the District's contention that the testimony is not reliable or probative because the Association failed to present corroborating documentation or testimony. In general, such corroboration is unnecessary and, in the present case, we find no basis for requiring it. The minor discrepancies in the testimony cited by the District, and the length of time that the witnesses have been aware of the practice, do not demonstrate that the testimony of Association witnesses is not reliable.

We now turn to the District's remaining exceptions, which repeat certain exceptions denied in our prior decision. Based upon the law of the case doctrine, it is unnecessary for us to reconsider or readdress our prior findings that the District had

knowledge of the past practice, the prior arbitration award is nonbinding, the subject matter of the charge is a term and condition of employment and is mandatorily negotiable, the continuation of the practice is not an unconstitutional gift of public funds¹³ and that the charge is moot based upon the 2004-2007 agreement between the parties.¹⁴

Finally, it unnecessary for us to readdress the District's exceptions asserting that the Association lacks a contractual right to continued premium reimbursements because the basis for the charge is not an alleged contract violation but rather a unilateral change to an enforceable past practice in violation of §209-a.1(d) of the Act.¹⁵

Based on the foregoing, the District's exceptions denied and the decision of the Assistant Director is affirmed.

IT IS THEREFORE ORDERED that the District:

1. rescind the June 12, 2003 announcement discontinuing reimbursement of Medicare Part B premiums to current employees aged 65 or more once they are retired;

¹³ We note that in *FIT*, 41 PERB ¶¶3010 (2008), *confirmed*, *FIT v New York State Pub Empl Rel Bd*, 68 AD3d 605, 42 PERB ¶¶7011 (1st Dept 2009), the Appellate Division, First Department affirmed our decision concluding that that a legal obligation for a public employer to make payments based upon the continuation of a past practice under the Act does not constitute an unconstitutional gift of public funds.

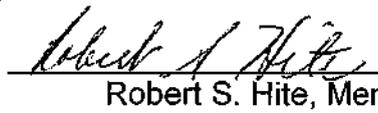
¹⁴ The present charge was originally filed on September 12, 2003, and the 2004-2007 agreement was signed on January 19, 2005. Joint Exhibit 1, Stipulation of Facts, ¶13 and Exhibit A, p. 36. The agreement does not contain a clear and unmistakable abandonment of the Association's claim under the Act. See, *CSEA v Newman*, 88 AD2d 685, 15 PERB ¶¶7011 (1982), *affd*, 61 NY2d 1001, 17 PERB ¶¶7008 (1984).

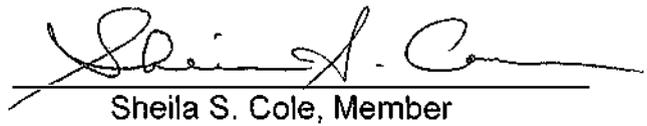
¹⁵ Indeed, §205.5(d) of the Act deprives the Board of the authority to enforce the terms of an unexpired agreement.

2. sign and post the attached Notice at all locations normally used to post communication to unit employees.

DATED: April 22, 2010
Albany, New York


Jerome Lefkowitz, Chairman


Robert S. Hite, Member


Sheila S. Cole, 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 in the bargaining unit represented by the
Chenango Forks Teachers Association, NYSUT/AFT/AFL-CIO, Local 2561 that the
Chenango Forks Central School District will:

rescind the June 12, 2003 announcement discontinuing
reimbursement of Medicare Part B premiums to current
employees aged 65 or more once they are retired.

Dated

By
(Representative) (Title)

Chenango Forks Central School District
.....

*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

**CIVIL SERVICE EMPLOYEES ASSOCIATION, INC.,
LOCAL 1000, AFSCME, AFL-CIO, LIVINGSTON
COUNTY LOCAL 826, LIVINGSTON COUNTY
EMPLOYEES UNIT 7300,**

Charging Party,

-and-

CASE NO. U-28627

COUNTY OF LIVINGSTON,

Respondent.

**NANCY E. HOFFMAN, GENERAL COUNSEL (CONSTANCE R. BROWN
of counsel), for Charging Party**

DAVID W. LIPPITT, ESQ., for Respondent

BOARD DECISION AND ORDER

This case comes to the Board on exceptions filed by the Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO, Livingston County Local 826, Livingston County Employees Unit 7300 (CSEA) to a decision of an Administrative Law Judge (ALJ) dismissing, as untimely, an improper practice charge alleging that the County of Livingston (County) violated §209-a.1(d) of the Public Employees' Fair Employment Act (Act) when the County unilaterally changed a past practice by requiring unit employees in the title of Social Work Assistant to work on certain holidays. The charge also alleges that the County violated the Act by failing to negotiate the impact of that change with CSEA.

CSEA filed its charge on September 22, 2008. The County's affirmative

defenses include allegations that the charge is untimely pursuant to §204.1(a) of the Rules of Procedure (Rules), and that CSEA never requested impact negotiations. In support of its affirmative defenses, the County attached five exhibits to its answer.

During the processing of the charge, the ALJ directed CSEA to file an offer of proof with respect to the County's timeliness defense. In its offer of proof, CSEA asserted that the charge is timely because the County implemented the change on May 26, 2008 when Social Work Assistant Erin Randall (Randall) was required to work the Memorial Day holiday. In its offer, CSEA did not contest the accuracy of the exhibits attached to the County's answer.

In its response to the offer, the County contended that it implemented the change on May 12, 2008 when a memorandum from the County's Director of Social Worker Services Kandie Parker (Parker) was sent to the Social Work Assistants assigning them by name to work particular holidays beginning with Memorial Day on May 26, 2008.

Following a review of the pleadings, the offer of proof and response, and the exhibits attached to the answer, the ALJ issued her decision dismissing the charge concluding that the County implemented the change on May 12, 2008.¹

EXCEPTIONS

In its exceptions, CSEA asserts that the ALJ erred in dismissing the charge because the County implemented the at-issue change on May 26, 2008, less than four months before the charge was filed. In addition, CSEA contends that in dismissing the

¹ 42 PERB ¶4548 (2009).

charge the ALJ failed to address CSEA's claim that the County violated §209-a.1(d) of the Act by failing to negotiate the impact of the change.

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

FACTS

In describing the relevant facts, we assume the truth of the allegations in the charge, as clarified by CSEA in its offer of proof, granting all reasonable inferences to the facts alleged in support of the charge.²

On May 7, 2008, the County's Director of Long Term Care Franklin Bassett (Bassett) sent a letter to CSEA Unit President Robert Ellis (Ellis) stating:

This letter serves as notice that the Center for Nursing and Rehabilitation intends to proceed with plans to schedule Social Work Assistants and Telephone Operators to work on holidays as deemed necessary to meet the operational needs of the nursing home. There is no provision of the CBA that prohibits scheduling employees in this fashion. If you still wish to meet to discuss impacts not already addressed through the CBA, I am willing to do so.³

On May 12, 2008, Director of Social Worker Services Parker issued her memorandum to all social work staff stating that Social Work Assistants, when necessary, will work five specific holidays each year on a rotating basis. The memorandum set forth the work schedule for the Social Work Assistants for the remaining holidays in 2008:

² See, *Niagara Frontier Transit Metro System, Inc.*, 42 PERB ¶3023 (2009); *Bd of Educ of the City Sch Dist of the City of New York (Grassel)*, 43 PERB ¶3010 (2010).

³ ALJ Exhibit 2, Verified Answer, Exhibit B.

SOCIAL WORK HOLIDAY SCHEDULE 2008

MEMORIAL DAY	MAY 26, 2008	ERIN RANDALL
COLUMBUS DAY	OCTOBER 13, 2008	ANNE CAMPFIELD
VETERAN'S DAY	NOVEMBER 11, 2008	BRIGID COTTON ⁴

After Director of Long Term Care Bassett received a voice message from CSEA Unit President Ellis objecting to the change on May 12, 2008, Bassett sent Ellis a letter stating that the parties' collectively negotiated agreement (agreement) did not prohibit holiday scheduling of unit employees. In addition, Bassett stated that if Ellis identified a negotiated provision that prohibits such scheduling or a source of law that renders the County's actions to be an improper practice, the County will "immediately review it to determine whether our plan to schedule these employees to work holidays should be modified."⁵

On May 21, 2008, Ellis responded with a letter to Bassett stating that the holiday schedule violates the agreement and that if a unit member is required to work on Memorial Day, CSEA would consider filing a grievance. At the conclusion of his letter, Ellis stated:

Previously we had a date set to negotiate this issue. However, when you declined to allow representatives of the affected employees (one telephone operator and one social worker) to attend the meeting we were forced to reschedule. CSEA remains willing to negotiate this matter through Labor Management meetings. I again request that one telephone operator and one social worker be scheduled to attend the

⁴ ALJ Exhibit 2, Verified Answer, Exhibit A.

⁵ ALJ Exhibit 2, Verified Answer, Exhibit C.

meeting.⁶

CSEA's charge alleges that on May 26, 2008, Social Work Assistant Randall was directed to work the Memorial Day holiday, and that the other Social Work Assistants were advised that they would be assigned by rotation to work the remaining 2008 holidays. In addition, the charge alleges that the County "implemented this change without negotiating the impact of the change in terms and conditions of employment with CSEA."⁷

DISCUSSION

An improper practice charge alleging a unilateral change in a policy or practice in violation of §209-a.1(d) of the Act can be filed either within four months of notification of the change or within four months of implementation of the change.⁸ However, this rule does not eliminate the possibility of a simultaneous notification and implementation of a unilateral change.

In the present case, CSEA contends that the change was not implemented until May 26, 2008 when Randall worked the Memorial Day holiday. In its brief, CSEA asserts that the County's May 12, 2008 written communications lacked sufficient "formality and definitiveness" to constitute an implementation of the unilateral change.

Contrary to CSEA's argument, nothing in the Act mandates a particular formalism in the manner that an employer announces and/or implements a unilateral change in a mandatory subject of negotiations. Furthermore, the County's May 12, 2008

⁶ ALJ Exhibit 2, Verified Answer, Exhibit D.

⁷ ALJ Exhibit 1, Details of Charge, ¶9.

⁸ See, *Middle Country Teachers Assoc*, 21 PERB ¶3012 (1988); *City of Oswego*, 23 PERB ¶3007 (1990).

memorandum and letter cannot reasonably be construed as indefinite. The memorandum announced and implemented the new holiday work schedule. It explicitly identified Randall as the unit employee who would be required to work on Memorial Day and the other unit employees who would be required to work on the two remaining holidays. The letter sent by Bassett to Ellis on the same day as the memorandum, offering to review CSEA's contractual or legal argument, did not state or reasonably suggest that the County's decision to implement the new holiday schedule was nonfinal, subject to revocation or that it was rescinded.⁹ The fact that the County expressed a willingness to exchange information or engage in discussions with CSEA did not toll the four month filing period under §204.1(a)(1) of the Rules.¹⁰

Therefore, we affirm the ALJ's decision dismissing the charge as untimely to the extent that it alleges that the County violated §209-a.1(d) of the Act when it implemented the change in the work schedule.

We next turn to CSEA's exception challenging the ALJ's dismissal of its allegation that the County failed to negotiate the impact of its decision in violation of §209-a.1(d) of the Act. In requesting CSEA to make an offer of proof, the ALJ did not direct it to respond to the County's affirmative defense that alleges CSEA did not make a request for impact negotiations. In addition, the ALJ's decision did not expressly address the impact negotiations allegation in the charge.

Granting all reasonable inferences to CSEA, as we must, Bassett's May 7, 2008

⁹ See, *City of Elmira*, 41 PERB ¶¶3018 (2008).

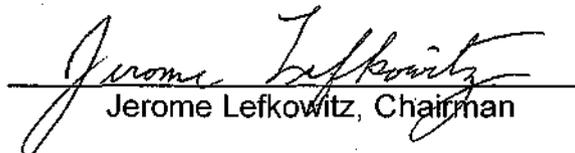
¹⁰ *New York State Thruway Auth*, 40 PERB ¶¶3014 (2007).

letter and Ellis's May 21, 2008 letter suggest that CSEA requested impact negotiations, and that at least one negotiation session was cancelled due to the refusal of the County to permit unit members to attend the session. In addition, the record is unclear with respect to the date of the County's last alleged refusal to negotiate the impact of its decision, which is necessary in order to determine whether that aspect of the charge is timely.¹¹

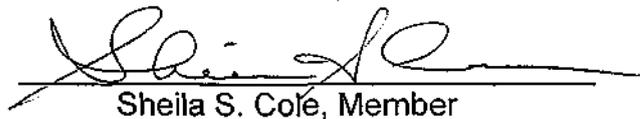
Based upon the foregoing, we reverse the ALJ, in part, and remand the case for further processing of that portion of the charge that alleges a failure to negotiate impact.

IT IS, THEREFORE, ORDERED, that this case is hereby remanded to the ALJ.

DATED: April 22, 2010
Albany, New York


Jerome Lefkowitz, Chairman


Robert S. Hite, Member


Sheila S. Cole, Member

¹¹ See, *Inc. Vil of Lake Success*, 28 PERB ¶3073 (1995); *Vil of Malone*, 8 PERB ¶3045 (1975).

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

MICHAEL A. DAVITT,

Charging Party,

CASE NO. U-28642

- and -

**CIVIL SERVICE EMPLOYEES ASSOCIATION, INC.,
LOCAL 1000, AFSCME, AFL-CIO and COUNTY
OF ROCKLAND,**

Respondents.

In the Matter of

MICHAEL A. DAVITT,

Charging Party,

CASE NO. U-29420

- and -

**CIVIL SERVICE EMPLOYEES ASSOCIATION, INC.,
LOCAL 1000, AFSCME, AFL-CIO and COUNTY
OF ROCKLAND,**

Respondents.

MICHAEL A. DAVITT, *pro se*

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

**PATRICIA ZUGIBE (JEFFREY J. FORTUNATO, of counsel), for Respondent
County of Rockland**

BOARD DECISION AND ORDER

This matter comes to the Board with respect to two improper practice charges filed by Michael A. Davitt (Davitt). In Case No. U-28642, Davitt seeks leave to file exceptions, pursuant to §212.4(h) of the Rules of Procedure (Rules), to rulings by an Administrative Law Judge (ALJ) denying his applications for the issuance of agency subpoenas and denying his motion for disqualification based upon the ALJ's purported lack of impartiality.

In his second charge, Case No. U-29420, Davitt has filed exceptions to a decision by the Director of Public Employment Practices and Representation (Director) dismissing the charge, as amended.¹

PROCEDURAL BACKGROUND

On October 2, 2008, Davitt filed Case No. U-28642 alleging, *inter alia*, that CSEA violated §§209-a.2(a) and (c) of the Public Employees Fair Employment Act (Act) when it failed to represent him in a Civ Serv Law §72 hearing. Prior to the scheduled improper practice hearing on June 10, 2009, Davitt filed pre-hearing applications with the ALJ seeking issuance of numerous subpoenas *ad testificandum* and subpoenas *duces tecum* for the production of telephone logs, e-mails, memoranda and other documents.² CSEA and the County of Rockland (County) objected to the issuance of the subpoenas requested by Davitt.³ Without seeking leave from the ALJ, Davitt submitted written responses to the objections filed by CSEA and the County.⁴

¹ 42 PERB ¶4584 (2009).

² ALJ Exhibits 8 and 16.

³ ALJ Exhibits 11 and 13.

⁴ ALJ Exhibits 12 and 14.

On April 24, 2009, the ALJ issued a letter decision denying Davitt's applications for the issuance of the subpoenas.⁵ The ALJ ruled that the documents and witnesses sought from the County were irrelevant to the issue of whether CSEA violated §§209-a.2(a) and (c) of the Act. The ALJ also found that Davitt's request for the issuance of a subpoena for the production of documents from CSEA was deficient because it failed to specifically identify the documents sought and the relevancy of those documents as required by §211.3(c) of the Rules. Finally, the ALJ concluded that issuance of the witness subpoenas were unnecessary because CSEA's counsel, in opposition to the application, had made a representation that the individuals sought would be in attendance at the hearing, and available to testify.

By letter dated May 9, 2009, Davitt sought to reargue the denial of his applications for the issuance of subpoenas, which the ALJ denied, by a letter decision on May 22, 2009.⁶ At the commencement of the hearing on June 10, 2009, Davitt moved to disqualify the ALJ based upon her denial of his subpoena requests.⁷ The ALJ denied the motion for disqualification and the hearing proceeded.⁸

On or about August 27, 2009, Davitt filed Case No. U-29420 alleging that CSEA violated §§209-a.1(a), (b), (c), (d), (e), (f) and (g), and §§209-a.2(a), (b) and (c) of the Act. Following his initial review, pursuant to §204.2(a) of the Rules, the Director notified Davitt of various deficiencies in the charge: the illegibility of portions of his handwritten details of charge; his failure to set forth a clear and concise statement of the facts as

⁵ ALJ Exhibit 17.

⁶ ALJ Exhibits 18 and 19.

⁷ Transcript, pp. 20, 22-23.

⁸ A second day of hearing was held on October 28, 2009.

required by §204.1(b)(3) of the Rules; his lack of standing to allege violations of §§209-a.1(d) and (e) and §209-a.2(b) of the Act; his failure to name the County as a respondent; his allegation that CSEA, as an employee organization, violated §209-a.1 of the Act; and his failure to allege sufficient facts to state a claim against CSEA for violating §209-a.2 of the Act.

On September 12, 2009, Davitt filed an amended charge with the same handwritten details of charge and attached exhibits. The amended charge names the County as a respondent and alleges that the County violated §§209-a.1(a), (b), (c), (f) and (g) of the Act. In addition, the amended charge alleges CSEA violated §§209-a.2(a) and (c) of the Act. Following his review of the amended pleading, the Director concluded that it failed to allege sufficient facts to state a claim against the County and/or CSEA under the Act, and therefore, he issued a decision dismissing the amended charge.

In his exceptions to the Director's decision, Davitt makes conclusory allegations that the dismissal of his amended charge is based on bias, that it constitutes a miscarriage of justice and is contrary to a probable cause finding made by the New York State Division of Human Rights that the County has engaged in or is engaging in an unlawful discriminatory practice in violation of the New York's Human Rights Law.⁹

CSEA and the County oppose Davitt's motion for leave to file exceptions in Case No. U-28642 and support the Director's decision dismissing Case No. U-29420.¹⁰

⁹ Executive Law §296.

¹⁰ After Davitt filed a supplemental pleading entitled "Plaintiff's Response to Respondents CSEA Brief in Response to Denial of Exceptions," he was advised that the Board would not consider it because such a pleading is not permitted under §213.3 of the Rules unless authorized by the Board.

DISCUSSION

We begin with Davitt's motion for leave to file exceptions in Case No. U-28642 to the ALJ's denials of his applications for the issuance of agency subpoenas pursuant to §211 of the Rules and to the denial of his motion for the disqualification of the ALJ.

Leave to file interlocutory exceptions to non-final rulings and decisions, pursuant to §212.4(h) of the Rules, will be granted only when a moving party demonstrates extraordinary circumstances.¹¹ This high standard is predicated on "our recognition that it is more efficient to await a final disposition of the merits of a charge before we examine interim determinations. The improvident grant of leave can result in unnecessary delays in the processing of improper practice charges."¹²

Pursuant to §211.1 of the Rules, an ALJ has the discretion to grant or deny a request for the issuance of subpoenas. The mere denial of such a request, without any additional relevant allegations, does not constitute extraordinary circumstances warranting the grant of leave to file exceptions.¹³ In support of his motion, Davitt has not articulated any facts or circumstances to demonstrate extraordinary circumstances that warrant interlocutory review of the ALJ's denial of his requests for subpoenas. Therefore, we deny his motion for leave to file exceptions to the ALJ's rulings denying his applications for subpoenas.

Similarly, we deny Davitt's motion for leave to file exceptions to the ALJ's denial of his motion for disqualification. We will grant a party leave to file exceptions from the

¹¹ *State of New York (Division of Parole)*, 40 PERB ¶3007 (2007); *UFT (Grassel)*, 32 PERB ¶3071 (1999).

¹² *Board of Educ of the City School District of the City of New York (Grassel)*, 41 PERB ¶3031 at 3135 (2008).

¹³ *Triborough Bridge and Tunnel Auth*, 41 PERB ¶3021 (2008).

denial of such a motion only when the alleged facts and circumstances demonstrate that the ALJ has a personal bias or is otherwise incapable of processing the charge in an impartial manner.¹⁴ Unless such extraordinary circumstances are demonstrated, allegations that an ALJ's conduct creates a reasonable appearance or perception of favoritism toward a particular party are best examined in the context of a full record following the ALJ's merits decision and proposed order.

As we emphasized in *Board of Education of the City School District of the City of New York (Grassel)*:

objections to procedural and evidentiary rulings will rarely, if ever, constitute legitimate grounds for recusal or constitute extraordinary circumstances warranting the grant of leave for interlocutory review of an ALJ's denial of a party's motion seeking such relief.¹⁵

In the present case, Davitt's motion is predicated upon the ALJ's denials of his requests for subpoenas, along with conclusory assertions that the ALJ is not impartial. Based upon our review of the record, we find no evidence demonstrating bias by the ALJ or any other facts and circumstances to establish extraordinary circumstances warranting the grant of Davitt's motion for leave to file exceptions to review the issue of disqualification at this time.

Next, we examine Davitt's exceptions in Case No. U-29420 to the Director's decision dismissing his second charge, as amended. Pursuant to §213.2(b)(2) of the Rules, a party filing exceptions from a decision is obligated to identify the parts of a decision he or she wishes to have reviewed. In his exceptions, Davitt does not identify any specific part of the

¹⁴ *State of New York (Bruns)*, 25 PERB ¶3007 (1992); *Town of Penfield*, 29 PERB ¶3028 (1996); *Bd of Educ of the City School District of the City of New York (Grassel)*, *supra* note 12.

¹⁵ *Supra* note 12.

Director's decision that he wishes to have reviewed nor does he set forth a clear statement of alleged material facts that support the merits of his amended charge.

Based upon our review of the record, and after granting all reasonable inferences to the facts that can be discerned from Davitt's handwritten details of charge, we affirm the Director's conclusion that Davitt has failed to allege sufficient material facts to support his claim that the County and/or CSEA violated the Act. Although the probable cause finding by the New York State Division of Human Rights has clear relevancy to Davitt's charge of employment discrimination under the Executive Law, under the facts and circumstances of the present case, it is insufficient to support his separate claims that the County and CSEA violated their respective obligations under the Act. Finally, we find no support in the record for Davitt's allegation that the dismissal of his amended charge was based upon bias or partiality by the Director.

For the reasons set forth above, we deny Davitt's motion for leave to file exceptions in Case No. U-28642, and we deny his exceptions and affirm the decision of the Director in Case No. U-29420.

IT IS, THEREFORE, ORDERED, that Case No. U-29420 must be, and hereby is, dismissed in its entirety.¹⁶

SO ORDERED.

DATED: April 22, 2010
Albany, New York


Jerome Lefkowitz, Chairman


Sheila S. Cole, Member

¹⁶ Board Member Robert S. Hite took no part.

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

In the Matter of

UNITED PUBLIC SERVICE EMPLOYEES UNION,

Petitioner,

- and -

CASE NO. C-5929

BERLIN CENTRAL SCHOOL DISTRICT,

Employer,

- and -

**CIVIL SERVICE EMPLOYEES ASSOCIATION, INC.,
LOCAL 1000, AFSCME, AFL-CIO (BERLIN
CENTRAL SCHOOL DISTRICT UNIT/RENSSELAER
COUNTY EDUCATIONAL LOCAL 871),**

Intervenor/Incumbent.

GARY M. FAVRO, for Petitioner

BETH A. BOURASSA, ESQ., for Employer

**NANCY E. HOFFMAN, GENERAL COUNSEL (MIGUEL G. ORTIZ of counsel),
for Intervenor**

BOARD DECISION AND ORDER

On November 23, 2009, the United Public Service Employees Union (petitioner) filed, in accordance with the Rules of Procedure of the Public Employment Relations Board, a timely petition seeking certification as the exclusive representative of certain employees of the Berlin Central School District (employer).

Thereafter, the parties executed a consent agreement in which they stipulated

that the following negotiating unit was appropriate:

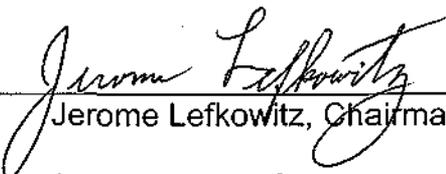
Included: All non-instructional personnel.

Excluded: District Clerk, Business Administrator, Superintendent of Buildings, Director of Transportation, Secretary to the Superintendent of Schools, Senior Account Clerk, Treasurer, Assistant Treasurer, Payroll Clerk, Tax Collector, Signing Interpreter, substitute employees, temporary employees and employees working less than four (4) hours per day.

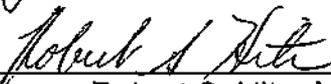
Pursuant to that agreement, a secret-ballot election was held on March 15, 2010, at which a majority of ballots were cast against representation by the petitioner.

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

DATED: April 22, 2010
Albany, New York



Jerome Lefkowitz, Chairman



Robert S. Hite, Member



Sheila S. Cole, Member

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

In the Matter of

FILLMORE ADMINISTRATORS ASSOCIATION,

Petitioner,

-and-

CASE NO. C-5901

FILLMORE CENTRAL SCHOOL DISTRICT,

Employer,

-and-

FILLMORE FACULTY ASSOCIATION,

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 Fillmore Administrators Association has been designated and selected by a majority of the employees of the above-named public employer, in the unit found to be appropriate and described below, as their exclusive

representative for the purpose of collective negotiations and the settlement of grievances.

Included: Principal, Curriculum Director and School Guidance Counselor.

Excluded: All other titles.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Fillmore Administrators 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 22, 2010
Albany, New York



Jerome Lefkowitz, Chairman



Robert S. Hite, Member



Sheila S. Cole, Member

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

In the Matter of

TEAMSTERS LOCAL 693,

Petitioner,

-and-

CASE NO. C-5920

VILLAGE OF SIDNEY,

Employer,

-and-

NYS FEDERATION OF POLICE,

Intervenor/Incumbent.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

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

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

IT IS HEREBY CERTIFIED that the Teamsters Local 693 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.

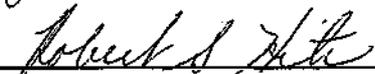
Included: All regular full-time Police Officers.

Excluded: All part-time Special Police, Dispatchers, Jailer, Dog Control Officer and Department Head and/or Chief of Police and/or Commissioner of Police.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Teamsters Local 693. 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 22, 2010
Albany, New York


Jerome Lefkowitz, Chairman


Robert S. Hite, Member


Sheila S. Cole, Member