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State of New York Public Employment Relations Board Decisions from March 1, 2011

New York State Public Employment Relations Board

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State of New York Public Employment Relations Board Decisions from March 1, 2011

Keywords

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

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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

**TRANSPORT WORKERS UNION LOCAL 252,
AFL-CIO,**

Petitioner,

-and-

CASE NO. TIA2010-035

**METROPOLITAN SUBURBAN BUS AUTHORITY,
(d/b/a MTA LONG ISLAND BUS)**

Respondent.

**COLLERAN, O'HARA & MILLS, LLP (EDWARD J. GROARKE, ESQ.,
of counsel), for Petitioner**

**PROSKAUER ROSE, LLP (NEIL H. ABRAMSON, ESQ., of
counsel), for Respondent**

BOARD DECISION AND ORDER

This matter comes to us from a report and recommendation of the Director of Conciliation (Director) dated February 23, 2011, regarding a petition for interest arbitration filed by the Transport Workers Union Local 252, AFL-CIO (TWU) under §209.5 of the Public Employees' Fair Employment Act (Act) and §205.15 of our Rules of Procedure (Rules) with respect to an impasse in contract negotiations between TWU and the Metropolitan Suburban Bus Authority (d/b/a MTA Local Island Bus) (MSBA).

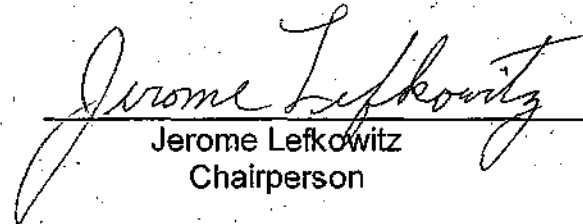
In his report and recommendation, the Director concludes that a voluntary resolution of the contract negotiations between TWU and MSBA cannot be effected and recommends that the impasse be referred to a public interest arbitration panel. MSRA

has not filed an objection to the Director's report and recommendation, pursuant to §205.15(b) of the Rules.


Following our review of the Director's report and recommendation, we hereby certify that a voluntary resolution of the contract negotiations between TWU and MSBA cannot be effected and we, therefore, refer the impasse involving these parties to a public interest arbitration panel.

SO ORDERED.

DATED: March 1, 2011
Albany, New York



Jerome Lefkowitz
Chairperson



Sheila S. Cole
Member

In the Matter of

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

Petitioner,

-and-

CASE NO. C-6021

EASTERN SUFFOLK BOCES,

Employer,

-and-

UNITED PUBLIC SERVICE EMPLOYEES UNION,

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,¹

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

¹ By letter dated January 3, 2010, the incumbent bargaining agent, United Public Service Employees Union, has disavowed any interest in representing the existing

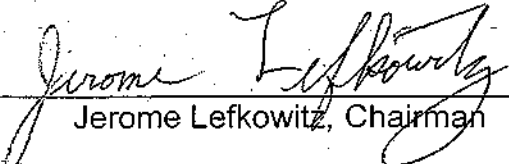
IT IS HEREBY CERTIFIED that the Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for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

Included: All Adult Nursing Instructors who receive contracts for more than 600 hours during the BOCES fiscal year.

Excluded: All other employees.

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

DATED: March 1, 2011
Albany, New York


Jerome Lefkowitz, Chairman


Shella C. Cole, Member

In the Matter of

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

Petitioner,

-and-

CASE NO. C-6025

PLAINEDGE UNION FREE SCHOOL DISTRICT,

Employer,

-and-

PLAINEDGE BUS DRIVERS ASSOCIATION,

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,¹

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

¹ By letter dated December 16, 2010, the incumbent bargaining agent, Plainedge Bus Drivers Association, has disclosed any interest in representing the existing bargaining

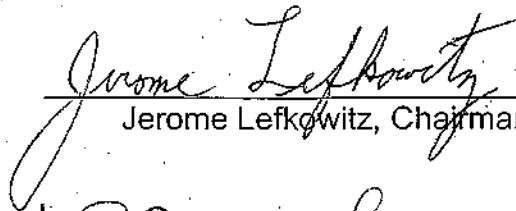
IT IS HEREBY CERTIFIED that the Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for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

Included: All part-time and full-time Bus Drivers, Attendants, Dispatchers, Assistant Dispatchers, Driver/Substitute Dispatchers and Couriers.

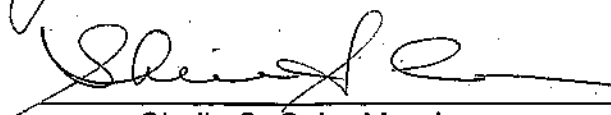
Excluded: All other employees.

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

DATED: March 1, 2011
Albany, New York



Jerome Lefkowitz, Chairman



Sheila S. Cole, Member

In the Matter of

**SUPERIOR OFFICERS' ASSOCIATION OF THE
POLICE DEPARTMENT OF THE COUNTY OF
SUFFOLK,**

CASE NO. U-28610

Charging Party,

-and-

COUNTY OF SUFFOLK,

Respondent,

-and-

**SUFFOLK COUNTY DEPUTY SHERIFFS
POLICE BENEVOLENT ASSOCIATION, PARK
POLICE UNIT and SUFFOLK COUNTY DEPUTY
SHERIFFS POLICE BENEVOLENT ASSOCIATION,**

Intervenors.

**CERTILMAN BALIN ADLER & HYMAN, LLP (PAUL S. LINZER and
JENNIFER A. BENTLEY of counsel) for SUPERIOR OFFICERS'
ASSOCIATION OF THE POLICE DEPARTMENT OF THE COUNTY OF
SUFFOLK**

**LAMB AND BARNOSKY, LLP (RICHARD K. ZUCKERMAN and ALLYSON
MATTHEWS of counsel) for COUNTY OF SUFFOLK**

**GREENBERG BURZICHELLI GREENBERG, P.C. (SETH H. GREENBERG and
LINDA N. KELLER of counsel) for SUFFOLK COUNTY DEPUTY SHERIFFS
POLICE BENEVOLENT ASSOCIATION, PARK POLICE UNIT and SUFFOLK
COUNTY DEPUTY SHERIFFS POLICE BENEVOLENT ASSOCIATION**

**THE TUTTLE LAW FIRM (JAMES B. TUTTLE of counsel) for POLICE
CONFERENCE OF NEW YORK, INC**

**DAVIS & HERSH, LLP (David A. Davis of counsel) for SUFFOLK COUNTY
POLICE CONFERENCE**

This case comes to the Board on exceptions filed by the Superior Officers' Association of the Police Department of the County of Suffolk (SOA) to a decision by an Administrative Law Judge (ALJ) dated August 12, 2010, dismissing a charge alleging that the County of Suffolk (County) violated §209-a.1(d) of the Public Employees' Fair Employment Act (Act) by unilaterally transferring duties previously performed exclusively by SOA unit employees on the Long Island Expressway and Sunrise Highway in Suffolk County.¹ Although the ALJ dismissed a related charge filed by the Suffolk County Police Benevolent Association (Association), Case No. U-28611, alleging that the County violated §209-a.1(d) of the Act by unilaterally transferring Association unit work on the same two highways, the Association did not file exceptions.

In its exceptions, SOA asserts that the ALJ erred in defining the at-issue unit work, in applying the criteria for determining whether a discernible boundary exists, and in concluding that SOA failed to demonstrate that it performed the at-issue work exclusively. The County, along with intervenors Suffolk County Deputy Sheriffs Police Benevolent Association, Park Police Unit (SCDSPBA/Park Police Unit) and Suffolk County Deputy Sheriffs Police Benevolent Association (SCDPBA), support the ALJ's decision.

The Police Conference of New York, Inc. (PCNY) and the Suffolk County Police Conference (SCPC) have separately moved for leave to file *amicus curiae* briefs with respect to the issues raised in SOA's exceptions. In support of its motion, PCNY contends that Board resolution of the issues raised by SOA may have statewide

Board with a unique countywide perspective regarding the issues raised in SOA's exceptions because SCPC is composed of employee organizations representing officers in police departments throughout Suffolk County.

The County opposes both motions. It contends that SOA's exceptions do not raise issues of statewide importance. In addition, it objects to granting *amicus* status to PCNY and SCPC because the Association is a member of both organizations, and the Association is a signatory to a memorandum of agreement dated October 28, 2009, in which it agreed that it would not file exceptions to the ALJ's decision.² In the alternative, the County urges that the scope of the *amicus* briefs be limited to the issues relevant to SOA's charge. Intervenors SCDSPBA/Park Police Unit and SCDSPBA do not support or oppose the motions by PCNY and SCPC.

DISCUSSION

Our Rules of Procedure (Rules) are silent with respect to the procedures for the filing of a motion for leave to file an *amicus curiae* brief. Historically, however, the Board has granted such motions³ and in some cases we have invited *amicus* briefs relating to particular pending legal issues.⁴

In our experience, participation by *amici* can enhance Board deliberations by highlighting particular issues and explaining the potential impact of our ultimate

² As part of its opposition to the motions by PCNC and SCPC, the County submitted a copy of the memorandum of agreement.

³ See, *Brooklyn Excelsior Charter Sch*, 43 PERB ¶¶3004 (2010); *City of New York*, 40 PERB ¶¶3005 (2007); *Greenburgh No 11 Union Free Sch Dist*, 32 PERB ¶¶3024 (1999).

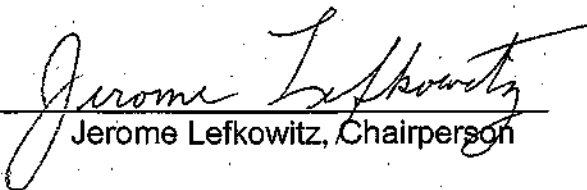
⁴ *Brooklyn Excelsior Charter Sch and Buffalo United Charter Sch*, 44 PERB ¶¶3001

work cases are frequently fact-specific, the issues raised in SOA's exceptions with respect to the particular work in the present case may have importance for employers and employee organizations representing law enforcement employees in other jurisdictions who perform similar duties on state and county highways. Finally, we conclude that the Association's agreement with the County not to file exceptions does not preclude its parent organizations, PCNY and SCPC, from filing *amicus* briefs regarding the issues raised in SOA's exceptions. Similarly, we find it unnecessary to direct PCNY and SCPC to limit their respective *amicus* briefs to the issues set forth in the exceptions regarding the exclusivity of SOA unit work in light of the representations made in their respective motions.

Based upon the foregoing, the respective motions by PCNY and SCPC for leave to file *amicus* briefs are hereby granted.

IT IS, THEREFORE, ORDERED that PCNY and SCPC may file an original and four copies of an *amicus* brief with the Board on or before April 4, 2011 with proof of service upon the County, SOA, SCDSPBA/Park Police Unit and SCDSPBA. The County, SOA, SCDSPBA/Park Police Unit and SCDSPBA may file supplemental briefs with the Board on or before May 5, 2011 responsive to the arguments raised by PCNY and SCPC.

DATED: March 1, 2011
Albany, New York


Jerome Lefkowitz, Chairperson