



Cornell University
ILR School

Cornell University ILR School
DigitalCommons@ILR

Board Decisions - NYS PERB

New York State Public Employment Relations
Board (PERB)

10-31-2011

State of New York Public Employment Relations Board Decisions from October 31, 2011

New York State Public Employment Relations Board

Follow this and additional works at: <http://digitalcommons.ilr.cornell.edu/perbdecisions>

Thank you for downloading an article from DigitalCommons@ILR.

Support this valuable resource today!

This Article is brought to you for free and open access by the New York State Public Employment Relations Board (PERB) at DigitalCommons@ILR. It has been accepted for inclusion in Board Decisions - NYS PERB by an authorized administrator of DigitalCommons@ILR. For more information, please contact hlmdigital@cornell.edu.

State of New York Public Employment Relations Board Decisions from October 31, 2011

Keywords

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

Comments

This document is part of a digital collection provided by the Martin P. Catherwood Library, ILR School, Cornell University. The information provided is for noncommercial educational use only.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

**INTERNATIONAL ASSOCIATION OF FIREFIGHTERS
(IAFF),**

Petitioner,

-and-

CASE NO. C-6058

TERRYVILLE FIRE DISTRICT,

Employer,

-and-

**INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
LOCAL 282,**

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 International Association of Firefighters (IAFF) has been designated and selected by a majority of the employees of the above-

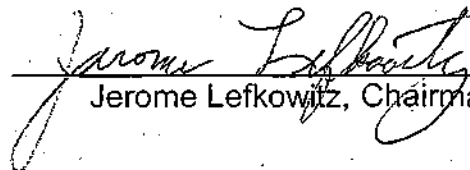
named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Included: All full-time Fire House Attendants and Automotive Mechanics, full-time and regularly scheduled part-time Custodians, EMT-CCs, and all new job titled employees.

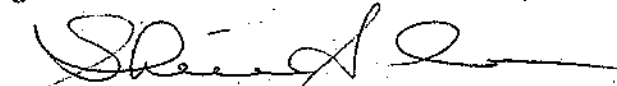
Excluded: All annual appointed District employees, temporary employees, emergency replacement employees, clerical, office personnel employees and all non-salaried employees.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the International Association of Firefighters (IAFF). 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: October 31, 2011
Albany, New York



Jerome Lefkowitz, Chairman



Sheila S. Cole, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

**RAVENA-COEYMANS-SELKIRK PROFESSIONAL
OPERATIONS ASSOCIATION,**

Petitioner,

-and-

CASE NO. C-6070

**RAVENA-COEYMANS-SELKIRK CENTRAL
SCHOOL DISTRICT,**

Employer.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

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

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


IT IS HEREBY CERTIFIED that the Ravena-Coeymans-Selkirk Professional Operations Association has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Included: Aquatics Director, Director of School Facilities and Operations 1, Transportation Director, School Bus Garage, Dispatcher, Food Service Director, Computer Technician, Network Administrator and Head Automotive Mechanic.

Excluded: All other titles.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Ravena-Coeymans-Selkirk Professional Operations 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: October 31, 2011
Albany, New York


Jerome Lefkowitz, Chairman


Sheila S. Cole, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

TEAMSTERS LOCAL 693,

Petitioner,

-and-

CASE NO. C-6074

VILLAGE OF COOPERSTOWN,

Employer.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

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

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

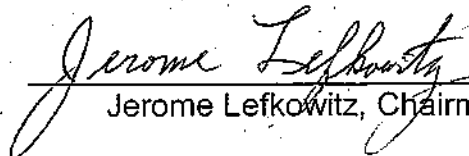
IT IS HEREBY CERTIFIED that the Teamsters Local 693 has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Included: All full-time employees in the following positions: Chief Waste Water Treatment Plant Operator, Cleaner, Heavy Equipment Operator, Heavy Equipment Operator 1, Heavy Equipment Operator/Mechanic, Laborer, Motor Equipment Operator, Parks Supervisor, Park Supervisor (Doubleday Field), Parking Enforcement Officer, Senior Water Treatment Plant Operator, Streets Superintendent, Waste Water Treatment Plant Operator, Water Treatment Plant Operator and Working Supervisor.

Excluded: All other employees.

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: October 31, 2011
Albany, New York


Jerome Lefkowitz, Chairman


Sheila S. Cole, Member

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

In the Matter of

COUNTY OF CLINTON and CLINTON COUNTY SHERIFF,

Charging Party,

-and-

CASE NO. U-30358

**CLINTON COUNTY DEPUTY SHERIFF'S POLICE
BENEVOLENT ASSOCIATION, INC.,**

Respondent.

In the Matter of

**CLINTON COUNTY DEPUTY SHERIFF'S POLICE
BENEVOLENT ASSOCIATION, INC.,**

Charging Party,

-and-

CASE NO. U-30396

COUNTY OF CLINTON and CLINTON COUNTY SHERIFF,
Respondent.

**BOND, SCHOENECK & KING, PLLP (COLIN M. LEONARD of counsel), for
County of Clinton and Clinton County Sheriff**

**JOHN M. CROTTY, ESQ., for Clinton County Deputy Sheriff's Police
Benevolent Association, Inc.**

BOARD DECISION AND ORDER

These cases come to the Board on exceptions filed by the Clinton County Deputy Sheriff's Police Benevolent Association, Inc. (PBA) to a decision of an Administrative Law Judge (ALJ) that, *inter alia*, found PBA violated §209-a.2(b) of the Act by submitting PBA proposals 6, 7, 8 and 9 to interest arbitration because the proposals are not directly related to compensation as required by §209.4(g) of the Public Employees' Fair

Employment Act (Act).¹ The texts of the at-issue PBA proposals are set forth in the ALJ's decision, and need not be repeated here.

EXCEPTIONS

PBA contends that the ALJ erred in finding that its four proposals are not arbitrable under §209.4(g) of the Act, and that it violated §209.4(g) of the Act by submitting them to interest arbitration. The County of Clinton and the Clinton County Sheriff (Joint Employer) supports the ALJ's decision.

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

DISCUSSION

In *Orange County Deputy Sheriff's Police Benevolent Association, Inc.*² (hereinafter *County of Orange*), we reaffirmed the holding in *New York State Police Investigators Association*³ (*State Police*) that a proposal limited to seeking an increase in the rate of leave accumulation is not directly related to compensation, and therefore, is not arbitrable under §209.4(g) of the Act. However, we partially reversed two subsequent decisions that misinterpreted and misapplied *State Police: Putnam County Sheriff's Department Police Benevolent Association*⁴ (hereinafter, *County of Putnam*).

¹ 44 PERB ¶14577 (2011).

² 44 PERB ¶13023 (2011).

³ 30 PERB ¶13013 (1997), *confirmed sub nom.*, *New York State Police Investigators Assn v New York State Pub Empl Rel Bd*, 30 PERB ¶17011 (Sup Ct Albany County 1997).

⁴ 38 PERB ¶13013 (2005).

and *Sullivan County Patrolmen's Benevolent Association*⁵ (hereinafter, *County of Sullivan*).

County of Putnam was reversed to the extent it held that a proposal limited to seeking a change in the aggregate amount or level of compensation received by unit members resulting from the nonuse of sick leave is not arbitrable under §209.4(g) of the Act. The decision in *County of Sullivan* was reversed to the extent it found that a proposal seeking to permit the conversion of overtime compensation into compensatory leave and to permit the subsequent remonetization of that leave or its application to health insurance is not arbitrable.

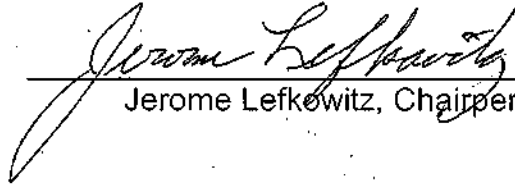
In the present case, we affirm the ALJ's conclusion that PBA violated §209-a.2(b) of the Act by submitting proposals 6 and 7 to interest arbitration. Both proposals are limited to the rate of leave accumulation and are, therefore, not arbitrable under *State Police* and *County of Orange*. However, we, reverse the ALJ with respect to the arbitrability of PBA proposals 8 and 9 under §209.4(g) of the Act. Each proposal seeks to increase the aggregate level of compensation for unit members. PBA proposal 8 seeks to convert unused sick leave into cash at the time of separation from service, which is a form of deferred compensation, and PBA proposal 9 would create a sick leave incentive program for employees that monetizes the value of unused sick leave. Both proposals are arbitrable under our analysis in *County of Orange*.

Based upon the foregoing, we grant the PBA's exceptions, in part, and affirm the ALJ's decision finding that PBA violated §209-a.2(b) of the Act when it submitted PBA proposals 6 and 7 to interest arbitration.

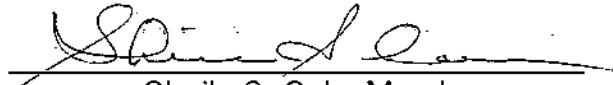
⁵ 39 PERB ¶3034 (2006).

IT IS HEREBY ORDERED that PBA withdraw PBA proposals 6 and 7 from interest arbitration.

DATED: October 31, 2011
Albany, New York



Jerome Lefkowitz, Chairperson



Sheila S. Cole, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

**SUFFOLK COUNTY CORRECTION OFFICERS
ASSOCIATION,**

Charging Party,

-and-

**COUNTY OF SUFFOLK and SUFFOLK
COUNTY SHERIFF,**

Respondent.

CASE NO. U-27738

In the Matter of

**SUFFOLK COUNTY DEPUTY SHERIFFS POLICE
BENEVOLENT ASSOCIATION,**

Charging Party,

- and -

**COUNTY OF SUFFOLK and SUFFOLK
COUNTY SHERIFF,**

Respondent.

CASE NO. U-27757

**MEYER, SUOZZI, ENGLISH & KLEIN, P.C. (STEVEN E. STAR, of counsel),
for SUFFOLK COUNTY CORRECTION OFFICERS ASSOCIATION**

**GREENBERG BURICHELLI GREENBERG P.C. (SETH H. GREENBERG, of
counsel), for SUFFOLK COUNTY DEPUTY SHERIFFS POLICE
BENEVOLENT ASSOCIATION**

**LAMB & BARNOSKY, LLP (MICHAEL KRAUTHAMER, of counsel), for
Respondent**

BOARD DECISION AND ORDER

These cases come to the Board on separate exceptions filed by the Suffolk County Correction Officers Association (Association) and the Suffolk County Deputy Sheriffs Police Benevolent Association (PBA) to a decision of an Administrative Law Judge (ALJ)

dismissing their related charges.¹ The Association alleges in Case No. U-27738 that the County of Suffolk and Suffolk County Sheriff (Joint Employer) violated §209-a.1(d) of the Act by unilaterally transferring its own exclusive unit work to the same private security guards on the grounds of the Riverhead Correctional Facility (correctional facility). In Case No. U-27757, PBA alleges that the Joint Employer violated §209-a.1(d) of the Public Employees' Fair Employment Act (Act) by unilaterally transferring exclusive PBA unit work of supervising and providing security at the correctional facility to private security guards, and by adversely affecting the safety of PBA unit members by placing an overnight homeless shelter trailer for registered sex offenders within the correctional facility grounds.

At the close of the direct cases by the Association and PBA, the ALJ granted the Joint Employer's motion to dismiss based upon the ground that the Association and PBA failed to demonstrate *prima facie* cases that the Joint Employer violated §209-a.1(d) of the Act.

EXCEPTIONS

The Association and PBA assert that the ALJ's dismissal of their unilateral transfer claims is in error because the ALJ mistakenly defined the at-issue work as being limited to providing supervision and security for an overnight homeless shelter at the correctional facility. In addition, PBA asserts that the ALJ erred in dismissing its claim that placing the shelter at the correctional facility violated §209-a.1(d) of the Act because it adversely impacted the safety of PBA unit members. Finally, the Association contends that the ALJ erred in failing to address its claim that the placement of the shelter at the facility negatively impacted the safety of Association unit members, and therefore violated §209-a.1(d) of the Act. The Joint Employer supports the ALJ's decision.

¹ *County of Suffolk and Suffolk County Sheriff*, 43 PERB ¶14538 (2010).

Following consideration of the exceptions of PBA and Association, and the Joint Employer's response, we reverse, in part, and affirm, in part, the decision of the ALJ.

FACTS

In reviewing the ALJ's decision to dismiss the improper practice charges at the close of the direct case by the Association and PBA, we grant all reasonable inferences to the evidence presented by them.²

The correctional facility is a maximum security prison with two security fences: a perimeter fence and an inner fence. The perimeter fence encircles the entire facility including the area enclosed by the inner fence. The inner fence extends from the facility's main correction building and surrounds the prison yard and prison tower. In the area situated between the perimeter fence and inner fence there are two parking lots, one designated for employees and the other for visitors.

Near the entrance gate in the perimeter fence, there is a security booth that is staffed by PBA-represented deputy sheriffs. The responsibilities of deputy sheriffs include: maintaining security, monitoring and responding to criminal activity in the area between the two fences where both parking lots are located; monitoring and documenting people as they enter and leave the facility including checking identification; and maintaining a log of all visitors and license plate numbers.

The inner fence has separate secured entry points for employees, visitors,

² *Board of Educ of the City Sch Dist of the City of New York (Ruiz)*, 43 PERB ¶3022 (2010); *Lake Mohegan Fire Dist*, 41 PERB ¶ 3001 (2008).

vendors and contractors. Association represented correction officers staff these entry points, as well as the security posts within the inner fence: a guard tower, a gate house and various constant supervision posts. The responsibilities of correction officers include: the care and custody of inmates; maintaining security in the correction building and the areas enclosed by the inner fence; monitoring and escorting inmates in the area between the two fences during inmate work details; maintaining the security along the perimeter of the inner fence; and maintaining an inmate activity log as well as a log of those entering the facility building.

In May 2007, a trailer was placed in the employee parking lot located between the perimeter and inner fences for use by the Suffolk County Department of Social Services (DSS) operating it as an overnight shelter for homeless registered sex offenders.³ In September 2008, the original eight-person trailer was replaced by one that can accommodate a greater number of homeless sex offenders.

The shelter's operation schedule is: Sunday-Thursday, 8 p.m.-8 a.m., and 8 p.m.-10 a.m. on weekends and holiday. The trailer is generally locked but residents are permitted to take short breaks on an outside platform.

Shelter residents are not in the custody of the Suffolk County Sheriff and they are required to arrive at and depart from the correctional facility in a DSS authorized taxicab. When a taxicab arrives with a homeless person, it must stop at the security booth at the perimeter fence, which is staffed by deputy sheriffs. The deputy sheriff checks the identifications of the driver and passenger against lists provided by DSS. After receiving clearance to enter the correctional facility, the taxicab drives the

³ The actual name of the shelter is the overnight placement facility, which was established by DSS for homeless sex offenders as a consequence of legislation limiting the locations where such individuals can be sheltered. Joint Exhibits 5 and 6.

homeless person to the shelter. Despite a prohibition against the homeless entering or leaving the correctional facility in their own vehicles or by foot, some arrive at the facility by foot. A shelter resident who leaves without DSS approval is subject to arrest.⁴

On May 8, 2007, a memorandum was issued to all staff on behalf the Suffolk County Sheriff concerning the homeless shelter, which states, in part:

There will be two security guards, assigned by Social Services, on duty until midnight. At that time if there are four or less sex offenders, there will be one security guard on duty. The Sheriff has directed that the sex offenders will not be permitted to walk around the facility grounds for any reason. The trailer will be padlocked during the daytime hours.

Deputy Sheriffs will provide security 24 hours a day, seven days a week, as they man the security booth at the facility. Details are being worked out between the Commissioner of Social Services and the Chief Deputy Sheriff with regard to any security issues.⁵

Since the homeless shelter was first placed at the correctional facility, private security guards have supervised and secured the shelter and its residents, including enforcing applicable rules. The guards are responsible for opening and locking the shelter and for maintaining attendance sheets and activity logs. If no security guard is present at the facility, a homeless person will wait on the grounds until a guard arrives. At times, the deputy sheriff assigned to the security booth must respond to disputes among the shelter residents.

DISCUSSION

In *Town of Riverhead*,⁶ we reiterated the two central questions that need to be

⁴ Joint Exhibit 7(a).

⁵ Joint Exhibit 8.

⁶ 42 PERB ¶3032 (2009).

resolved when deciding whether the transfer of unit work violates §209-a.1(d) of the Act: "a) was the at-issue work exclusively performed by unit employees for a sufficient period of time to have become binding; and b) was the work assigned to non-unit personnel substantially similar to that exclusive unit work."⁷

In their exceptions, PBA and the Association claim that the definition applied by the ALJ concerning the at-issue work is too narrow. They differ, however, concerning what is the appropriate definition. The Association asserts that the work is the custody and care of all persons and property within the correctional facility. In contrast, PBA claims that the at-issue work is the security, monitoring, and enforcement of rules for maintaining order at and within the outer security operations of the facility.

In defining unit work and determining the issue of exclusivity, we traditionally focus on the past practice of the parties. Among the criteria we will consider are the nature and frequency of the work performed, the geographic location where the work is performed, the employer's rationale for the practice and other facts demonstrating that the at-issue work is distinct from work performed by non-unit personnel.⁸

In the present case, we conclude that the at-issue work is the security, monitoring and maintenance of order for the area between the perimeter and inner fences, which includes the two parking lots. This conclusion is premised upon the past practice of the parties concerning the area in question, the nature and frequency of the work performed by each unit, the literal fence boundaries that divide the correctional

⁷ *Supra*, note 6, 42 PERB ¶3032 at 3119. See also, *Manhasset Union Free Sch Dist*, 41 PERB ¶3005 (2008)(subsequent history omitted); *Chenango Forks Cent Sch Dist*, 40 PERB ¶3012 at 3046 (2007)(subsequent history omitted); *Niagara Frontier Transp Auth*, 18 PERB ¶3083 (1985).

⁸ *Manhasset Union Free Sch Dist*, *supra*, note 7.

facility, and the fact that providing security and maintaining order for a homeless shelter and its residents is not substantially different from the duties of securing and protecting non-homeless persons and their property in the area between the fences.⁹

Therefore, we grant the exceptions by PBA and the Association and reverse the ALJ's definition concerning the definition of the at-issue work.

Next, we turn to the exceptions by the Association and PBA centered on their respective arguments that the Joint Employer violated §209-a.1(d) of the Act because the presence of the homeless shelter and its residents at the correctional facility adversely impact the safety of their respective unit members. After granting all reasonable inferences to the allegations in the Association's charge,¹⁰ we deny the Association's claim that the ALJ erred in failing to determine its safety-related claim because its charge is limited to alleging a unilateral transfer of bargaining unit work. Finally, we deny PBA's exception to the ALJ's dismissal of its safety-related claim because, after granting all reasonable inferences to the evidence presented, we conclude that PBA failed to demonstrate that the presence of the homeless shelter and

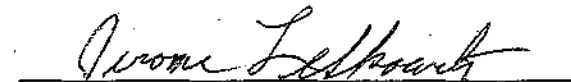
⁹ See, *Hudson City Sch Dist*, 24 PERB ¶3039 (1991); *City of Rochester*, 21 PERB ¶3040 (1988), *confirmed sub nom. City of Rochester v New York State Pub Emp Rel Bd*, 155 AD2d 1003, 22 PERB ¶7035 (4th Dept 1989); *Erie County Water Auth*, 35 PERB ¶3043 (2002). In granting all reasonable inferences to the charging parties, as we must, we infer from the record that the Association has retained exclusivity over the security functions for the building and areas inside of the inner fence and PBA has retained exclusivity over the security functions for the perimeter fence and the area outside of that perimeter fence. We do not reach, however, the issue of exclusivity concerning the at-issue work or other issues that may need to be determined under *Niagara Frontier Transp Auth. Supra*, note 7.

¹⁰ ALJ Exhibit 1.

its residents at the correctional facility increases the normal hazards inherent in a deputy sheriff's job.¹¹

Based upon the foregoing, we reverse the ALJ's decision dismissing the claims by PBA and the Association that the County violated §209-a.1(d) of the Act by unilaterally transferring the at-issue work to private security guards, and remand the cases to the ALJ for further processing consistent with this decision.

DATED: October 31, 2011
Albany, New York


Jerome Lefkowitz, Chairperson


Sheila S. Cole, Member

¹¹ *City of New York*, 40 PERB ¶3017 (2007), confirmed *City of New York v New York State Pub Empl Rel Bd*, 41 PERB ¶7001 (Sup Ct Albany County 2008), appeal dismissed, 54 AD3d 480, 41 PERB ¶7004 (3d Dept 2008), lv denied, 12 NY3d 701, 42 PERB ¶7001 (2009).

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

BLOSSOM RANNIE,

Charging Party,

CASE NO. U-31140

- and -

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

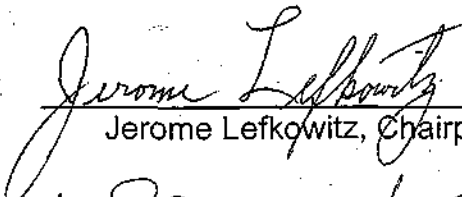
Respondent.

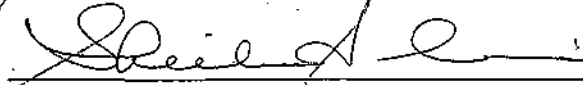
BLOSSOM RANNIE, *pro se*

BOARD DECISION AND ORDER

On September 26, 2011, we denied the exceptions of Blossom Rannie (Rannie) to a decision by the Director of Public Employment Practices and Representation (Director) dismissing her charge against the Board of Education of the City School District of the City of New York (District) because the exceptions were not accompanied by proof of service. Following our decision, Rannie submitted proof demonstrating she served her exceptions upon the District on August 26, 2011. Rannie's proof of service, however, demonstrates that she failed to comply with §213.2 of Rules of Procedure (Rules) by serving the exceptions within fifteen days after receipt of the Director's decision. Therefore, we have no reason to reexamine our decision denying Rannie's exceptions and dismissing her improper practice charge.

DATED: October 31, 2011
Albany, New York


Jerome Lefkowitz, Chairperson


Sheila S. Cole, Member

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

In the Matter of

JOHN N. SCOURAKIS,

Charging Party,

CASE NO. U-31251

- and -

**STATE OF NEW YORK (STATE UNIVERSITY
OF NEW YORK) and PUBLIC EMPLOYEES
FEDERATION,**

Respondents.

STEPHEN D. HANS, P.C., for Charging Party

BOARD DECISION AND ORDER

This case comes to the Board on a motion, dated October 17, 2011, by John N. Scourakis (Scourakis) requesting an extension of time to file exceptions, pursuant to §213.4 of our Rules of Procedure (Rules), to a decision of the Director of Public Employment Practices and Representation (Director), dated September 13, 2011, on an improper practice charge, as amended, filed by Scourakis alleging that the State of New York (State University of New York) (State) violated §209-a.1(c) of the Public Employees' Fair Employment Act (Act) and that the Public Employees Federation (PEF) violated §209-a.2(c) of the Act regarding notices of discipline issued against him in 2008 and 2009.¹

¹ 44 PERB ¶4582 (2011).

PROCEDURAL BACKGROUND

As part of his initial investigation of the charge filed on August 2, 2011, the Director advised Scourakis of certain deficiencies in the charge. On August 22, 2010, Scourakis filed an amendment to the charge. Following a review of the amendment, the Director issued a decision dismissing the charge pursuant to §204.1(a)(1) of the Rules of Procedure (Rules) because the alleged violations took place more than four months prior to the filing of the charge.

On September 15, 2011, copies of the Director's decision were mailed by certified mail, return receipt requested. Our records establish that the envelope containing a copy of the Director's decision was received by the office of Scourakis's attorney on September 19, 2011. Scourakis did not file exceptions to the Director's decision within 15 working days of receipt of the decision, and he did not make a request for an extension of time during that fifteen working day period.

In support of the motion for additional time leave to file exceptions, however, Scourakis's attorney states that timely exceptions were not filed due to exigencies caused by the hospitalization, over the past few weeks, of an immediate family member with a serious medical condition.

DISCUSSION

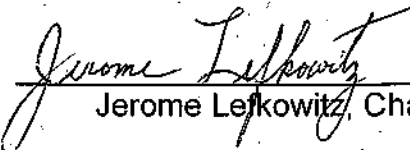
Under §§213.2(a) and 213.4 of the Rules, exceptions must be filed with the Board within 15 working days after the receipt of a decision, and requests for an extension must be filed within the same time period. However, the Board has discretionary authority under §213.4 of the Rules to extend the time to request an

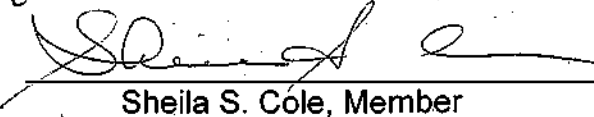
extension of time to file exceptions upon a showing of extraordinary circumstances.² Extraordinary circumstances can be established through facts demonstrating that the failure to make a timely request for an extension was not the result of a neglectful error or the burdens from other professional obligations.³

Under the unique facts and circumstances presented, we conclude that Scourakis has demonstrated extraordinary circumstances warranting the grant of additional time to file exceptions pursuant to §213.4 of the Rules. While mere law office failure does not constitute extraordinary circumstances, and the failure to seek a timely extension under the Rules cannot be countenanced, we conclude that the grant of the requested extension in the present case constitutes a proper application of our discretion in light of the factual explanation provided by counsel. No further extensions, however, concerning the filing of exceptions will be granted.

IT IS, THEREFORE, ORDERED that Scourakis' s exceptions will be timely if filed with the Board on or before November 21, 2011 with proof of service upon the State and PEF.

DATED: October 31, 2011
Albany, New York


Jerome Lefkowitz, Chairperson


Sheila S. Cole, Member

² *Onondaga Comm Coll*, 11 PERB ¶3008 (1978); *CSEA (Abrahams)*, 43 PERB ¶3007 (2010).

³ *Bd of Educ of the City Sch Dist of the City of New York*, 42 PERB ¶3037 (2009); *NYSCOPBA (Hunter)*, 42 PERB ¶3038 (2009).