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State of New York Public Employment Relations Board Decisions from June 20, 2014

New York State Public Employment Relations Board

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Comments

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

In the Matter of

UNITED PUBLIC SERVICE EMPLOYEES UNION,

Petitioner,

-and-

CASE NO. C-6243

VILLAGE OF CHATHAM,

Employer,

-and-

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

Intervenor.

MICHAEL P. KUTSKI, for Petitioner

GIRVIN & FERLAZZO, PC (JAMES E. GIRVIN, ESQ., of counsel), for Employer

**STEVEN A. CRAIN & DAREN J. RYLEWICZ, GENERAL COUNSEL
(MIGUEL G. ORTIZ of counsel), for Intervenor**

INTERIM BOARD DECISION AND ORDER

The Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO ("CSEA") has filed a motion for permission to file an interlocutory appeal from a June 4, 2014 letter ruling of an Administrative Law Judge ("ALJ") in a representation proceeding brought by the United Public Service Employees Union ("UPSEU"). At issue is whether UPSEU's petition seeking to represent a collective bargaining unit of blue collar

employees of the Village of Chatham ("Village") who are in a collective bargaining unit represented by CSEA may be processed under PERB's Rules of Procedure ("Rules").

The ALJ's letter ruling denied CSEA's motion to dismiss UPSEU's petition, rejecting CSEA's argument that the petition was barred under § 201.3 (g) of the Rules. Consequently, the ALJ scheduled an election to determine majority support among the blue collar unit for one of the employee organizations or "neither." The Village is to post notices of the election on June 25, 2014. Ballots are scheduled to be mailed to eligible voters on July 5, and the count is scheduled to take place on August 6.

CSEA argues that UPSEU's petition should not be processed because it was filed within 12 months of UPSEU's withdrawal of an earlier petition by which UPSEU sought to represent an existing combined unit of the at-issue blue collar employees and Village police officers represented by CSEA (Case No. C-6223). UPSEU withdrew that petition at a prehearing conference on January 28, 2014, upon the parties' agreement that the existing combined police/blue collar unit would be split into two appropriate units – one of police officers, the other of the blue collar titles – and that CSEA would represent the blue collar unit and that UPSEU would represent the unit of police officers. Because the instant petition was filed on January 29, 2014, the day following UPSEU's withdrawal of the earlier petition, CSEA argues that the instant petition, which seeks to represent the newly created blue collar unit, is barred under § 201.3 (g) of the Rules. CSEA further argues that the election should be stayed pending our determination on its appeal.

For the following reasons, we deny CSEA's motion for permission to appeal.

First, UPSEU's petition appears to be timely filed under § 201.3 (e) of the Rules; i.e., it was filed more than 120 days after the CSEA/Village contract expired (May 31, 2013). CSEA does not suggest otherwise.

Second, § 201.3 (g) of the Rules does not bar processing the petition. Under that Rule: "No petition may be filed for a unit which includes job titles that were within a unit for which, during the preceding 12-month period, a petition was processed to completion." The phrase, "processed to completion" as used in § 201.3 (g) has been consistently interpreted to mean processed to a decision on the merits of a prior representation petition, whether by granting certification or decertification, or dismissing the petition.¹ The notion that "processed to completion" includes withdrawal of an

¹ See, e.g., *Power Authority of the State of New York*, 19 PERB ¶ 3073, at 3149 (1986), where the Board held:

[T]he Rule intends to impose the twelve-month bar where there has been a determination on the merits, such as one that certifies a majority representative, denies certification because an election shows there is no majority representative, or finds that the unit sought is not the most appropriate one. These determinations, unlike a timeliness determination made at the commencement of a proceeding, take place after there have been extensive proceedings before PERB. As stated by the Director in *New York State Thruway Authority*, 10 PERB ¶ 4019 (1977), the purpose of the Rule is to spare the employer undue "expense and turmoil" (at 4018). It should be added that the purpose is also to avoid the dissipation of PERB's resources and, . . . to spare an incumbent employee organization from undue "expense and turmoil."

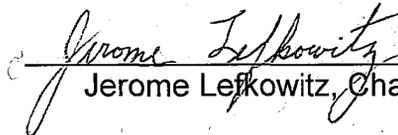
Compare, *Greater Amsterdam School District*, 28 PERB ¶ 3019 (1995) (prior petition that was dismissed on technical grounds was not "processed to completion" on its merits.

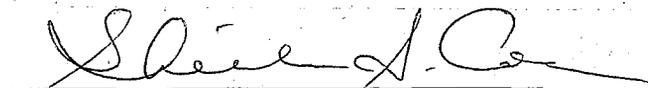
earlier petition has been regularly rejected,² as we do again here. Therefore, UPSEU's withdrawal of its earlier petition on January 28, 2014, does not bar the processing of its current petition.³

Third, notwithstanding the foregoing, we are mindful of the apparent unfairness of PERB's processing a petition concerning a unit (the newly established blue collar unit) that was created as a result of the settlement agreement and withdrawal of UPSEU's earlier petition. However, we will only entertain an agreement not to file a representation petition pursuant to our Rules where it is "manifestly clear from the terms of that agreement that it was the parties' intent to prevent the filing of a representation petition at the time such petition was filed."⁴ We are presented with no such evidence here.

NOW THEREFORE, CSEA's motion for permission to file an interlocutory appeal is denied.

DATED: June 20, 2014
Albany, New York


Jerome Lefkowitz, Chairperson


Sheila S. Cole, Member

² See, *Board of Educ of the City of Yonkers*, 10 PERB ¶ 3100 (1977); *City of Watertown*, 47 PERB ¶ 4002 (2014); *South Huntington Union Free Sch Dist*, 26 PERB ¶ 4019 (1993).

³ Compare, Rules, § 201.3 (c): "A petition for certification or decertification may be filed within 30 days after publication of notice as described in section 201.6 of this Part, or receipt of written notice, that another employee organization has been recognized".

⁴ *New York City Trans Auth*, 27 PERB ¶ 3060, at 3139 (1994), *confd sub nom. New York City Trans Auth v. New York State Pub Empl Relations Bd*, 232 AD2d 492, 29 PERB ¶ 7018 (2nd Dept 1996); *City of Watervliet*, 29 PERB ¶ 4034 (1996).