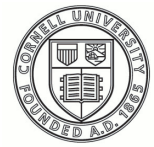

12-18-1990

State of New York Public Employment Relations Board Decisions from December 18, 1990

New York State Public Employment Relations Board

State of New York Public Employment Relations Board Decisions from December 18, 1990

Keywords

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

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

MUTUAL AID ASSOCIATION OF THE PAID FIRE DEPARTMENT OF THE CITY OF YONKERS, NEW YORK, INC., LOCAL 628 IAFF, AFL-CIO,

Charging Party,

-and-

CASE NO. U-11586

CITY OF YONKERS,

Respondent.

DeSOYE & REICH (FREDERICK K. REICH, ESQ., of Counsel), for Charging Party

HITSMAN, HOFFMAN & O'REILLY (JOHN F. O'REILLY, ESQ. and KATHRYN G. ROSADO, ESQ., of Counsel), for Respondent

BOARD DECISION AND ORDER

This case comes to us on the exceptions of the Mutual Aid Association of the Paid Fire Department of the City of Yonkers, New York, Inc., Local 628 IAFF, AFL-CIO (Local 628) to the Director's dismissal of its charge against the City of Yonkers (City) which alleges that the City violated §209-a.1(a), (b), (c) and (d) of the Public Employees' Fair Employment Act (Act) when its City Manager sent a letter to all unit employees with their retroactive paychecks. Local 628 alleges that the letter is coercive and interferes with both its own and the unit employees' statutory rights.

The Director determined that the letter was an expression of opinion which neither threatened reprisal nor

promised benefits and was, therefore, a privileged communication under our decision in City of Albany.[1/]

Local 628 argues that the language of the letter coupled with the circumstances surrounding its issuance are enough to avoid a Director's dismissal. Local 628 emphasizes that the letter accompanied the very paychecks in issue. It argues further that the salary payments, which covered a two-year period of time, were very important to the unit employees, as evidenced by its efforts to get the retroactivity paid promptly, efforts which included both discussions with the City's representatives and a public demonstration after the arbitration award was issued in October 1989. From this perspective, Local 628 concludes that the letter threatens employees by stating or implying that Local 628 was responsible for delaying the salary increases, that the City controls the employees' financial destiny and that too aggressive a union leadership will anger the City, which will have adverse consequences for the employees. The City argues in response that the Director was correct in his characterization of the letter and in his dismissal of the charge.

The letter in issue, dated December 14 and signed by the City Manager, is on City letterhead and reads as follows:

[1/] 17 PERB ¶3068 (1984).

Dear Firefighters:

Enclosed please find your retro-active [sic] pay for the period January 1987 through to November 23, 1989. I am genuinely gratified that my staff, and that of the Fire Department, were able through their combined efforts, to get this money to Oou [sic] in time for the holidays. I know how difficult the last few years must have been for you and your families.

But I would be remiss if I didn't clarify my position regarding the issuance of these checks in light of the recent demonstration by 628 and subsequent comments by President Pagano. The simple fact is that a short time ago, Mr. Pagano and I met at a local restaurant wherein, knowing that the arbitrators decision was imminent, he asked, on your behalf, if he could get a commitment from me to process your retro payments without the usual bureaucratic delays. I gave him my personal word with a handshake that night that I would do everything in my power to insure these payments could be processed as soon as possible. It has been only several weeks since we received the arbitration award and the proof that I have kept my word to 628 is in this envelope. Any information you received that may have led you to believe otherwise is, in fact, either a blatant lie or a purposeful distortion of the truth. Comments such as "let the games begin" are clearly not my style. I have never, and will never, "play games" with any City employees' paychecks because I know how important it is to make ends meet and to support a family adequately.

No one, not Union Leader, nor City Manager should ever use salary earned and owed as a bargaining chip. I am sincerely sorry that Mr. Pagano put you in the middle of the difficulties he is having with my administration.

Although I respect your right to engage in the orderly and appropriate expression of your feelings on City issues, I will simply not tolerate blatant lies or purposeful distortions on the part of any City employee. This is especially true for a union representative who has been given the trust of the membership to represent their concerns and interests in a professional manner.

> Finally, what's most important is that the checks are here. You deserve them and I am truly delighted that my staff was able to get them to you before my Christmas deadline.
>
> I wish you and your families a happy and healthy holiday season.

This appeal is from a Director's dismissal pursuant to §204.2(a) of the Rules of Procedure (Rules). In that posture, the issue before both the Director and this Board is whether the facts as alleged in the charge may constitute an improper practice. In making that determination, both parties agree, correctly, that a charging party is entitled to all reasonable inferences which can be drawn from the pleaded facts.[2/] Having reviewed Local 628's exceptions, we hold that the Director properly dismissed the charge because the letter, whether read in isolation or in the context of the circumstances alleged, does not constitute a violation of the Act.

As relevant to the disposition of this case, our decision in City of Albany privileges an employer's noncoercive communication to unit employees. We interpret the City Manager's letter as did the Director. It is by its terms, and in context, nonthreatening and represents the City

---

[2/] County of Nassau, 17 PERB ¶3013 (1984); Professional Firefighters Ass'n, Local 274, 23 PERB ¶3021 (1990). These cases involved dismissals by Administrative Law Judges at different stages of litigation, but the principles are equally applicable to the Director's initial processing of a charge under §204.2 of the Rules. See Jacob K. Javits Convention Center, 19 PERB ¶4626 (1986), aff'd, 20 PERB ¶3030 (1987).

Manager's opinionated response to what he considered to be a distortion by Local 628's president of the facts surrounding the salary payments and his effort to clarify his position on that issue. The Act does not prohibit such statements whether made by an employer or by a union.

IT IS HEREBY ORDERED that the charge be, and it hereby is, dismissed.

DATED: December 18, 1990
Albany, New York

Harold R. Newman
Harold R. Newman, Chairman

Walter L. Eisenberg
Walter L. Eisenberg, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

HARRY G. ZINK,

Charging Party,

-and-

CASE NO. U-11739

BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK and LOCAL 891, INTERNATIONAL UNION OF OPERATING ENGINEERS,

Respondents.

HARRY G. ZINK, pro se

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by Harry G. Zink to the Director's dismissal of his charge against the Board of Education of the City School District of the City of New York (District) and Local 891, International Union of Operating Engineers (IUOE) which alleges unspecified violations of the Public Employees' Fair Employment Act (Act).

Zink was employed for several years by the City of New York as a stationary engineer. In April 1989, he was appointed by the District from a civil service open-competitive list to the position of District custodian. Zink was considered to be a new employee on his appointment by the

District and was paid 30% less than the assigned salary for the custodian title.

Zink believes that he should be treated as a transferred employee for salary purposes, as he is for pension purposes, because of his prior service with the City of New York. On Zink's inquiry to the District and IUOE, however, he was informed that the District's and IUOE's mutual intent in the negotiations for their current contract was to start all new employees of the District, including appointees from civil service lists, at 70% of the assigned salary for a building custodian.

The Director dismissed the charge against the District because no facts were pleaded which would show that any of the District's actions or decisions were improperly motivated, and the charge was untimely because it was filed in June 1990 regarding an April 1989 action, which was then known to Zink. He dismissed the charge against IUOE because no facts were alleged which would evidence that IUOE's actions or decisions were arbitrary, discriminatory or in bad faith.

Zink excepts to the Director's finding that he was employed before April 1989 by an employer other than the District and to the Director's decision to dismiss the charge

as untimely. We find the Director's conclusions of fact and law correct in both respects and dismiss the exceptions. Whatever personnel relationships may exist between the City of New York and the District, they are different employers. The four-month period for filing charges is not extended by Zink's exploration of alternative means of redress.[1/]

IT IS HEREBY ORDERED that the charge be, and it hereby is, dismissed.

DATED: December 18, 1990
Albany, New York

Harold R. Newman, Chairman

Walter L. Eisenberg, Member

[1/] See, e.g., New York State Public Employees Federation (Farkas), 15 PERB ¶3005 (1982).

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

CITY OF BUFFALO,

Charging Party,

-and-

CASE NO. U-11015

LOCAL 2651, AFSCME, AFL-CIO,

Respondent.

SAMUEL F. HOUSTON, ESQ. (STANLEY J. SLIWA, ESQ., of Counsel), for Charging Party

RAYMOND C. NOWAKOWSKI, for Respondent

BOARD DECISION AND ORDER

The City of Buffalo (City) excepts to two holdings in an Administrative Law Judge (ALJ) decision made in connection with a charge filed by the City which alleges that Local 2651, AFSCME, AFL-CIO (AFSCME) violated §209-a.2(b) of the Public Employees' Fair Employment Act (Act). In particular, the charge alleges that AFSCME submitted seven nonmandatory subjects of negotiation to fact-finding over objection by the City.

The ALJ found demands numbered 1, 2, 4 and 6 to be mandatory subjects of negotiation and demands numbered 3, 5 and 7 to be nonmandatory matters which AFSCME improperly insisted upon pursuing to fact-finding.

The only ALJ holdings which are at issue before us are those which found that the demands numbered 2 and 4 are mandatory subjects of negotiation. The demands are separately addressed below.

Demand No. 2

Demand No. 2 provides in its entirety as follows:

2. Union Officers and Representatives

a) The City agrees that during working hours, on its premises, for reasonable periods of time, and without loss of pay, Union officers or properly designated Union representatives shall be allowed to:

1) Investigate and process grievances

2) Post Union notices

3) Distribute Union literature

4) Solicit Union membership during other employees' non-working time

5) Attend negotiation meetings

6) Transmit communications, authorized by the Local Union, or its officers, to the City or its representatives

7) Consult with the City, its representatives, Local Union officers, or other Union representatives concerning the enforcement of any provisions of the Agreement

b) The names of employees who are officers, and the names of other Union representatives who may represent employees shall be certified in writing to the City by the Union.

c) Accredited Union representatives shall notify their department head or his designee whenever they wish to attend to Union business on City time.

Grievance Committee

a) The Union Grievance Committee may, upon request, meet with the department head once a month at a mutually convenient time.

> b) The Union Grievance Committee shall consist of the Union President, Grievance Committee Chairman, and the Grievance Committee member from the particular department involved.
>
> c) All Grievance Committee meetings, where practical, shall be held during working hours, on the City's premises, and without loss of pay.

The ALJ determined that the foregoing demand is properly characterized as a demand for access to employees on the employer's premises for purposes which are reasonably related to AFSCME's duties as negotiating agent, finding the demand to be mandatorily negotiable under the reasoning of this Board in Charlotte Valley CSD, 18 PERB ¶3010 (1985).

The City argues in its exceptions before us that the demand seeks release time

> for activities which do not relate to 'terms and conditions' of employment as that term is defined by the Civil Service Law Section 201(4). Specifically, Union literature and/or notices could conceivably relate to nonmandatory items. Yet, the clause, as written, does not attempt to restrict activities to only mandatory terms and conditions of employment. (emphasis in original)

In Charlotte Valley, supra, this Board held (at 3024):

> Section 203 of the Act grants to public employees the right to be represented by their employee organization in collective negotiations over terms and conditions of employment and in the administration of grievances. This right of representation extends not only to the negotiation of terms and conditions of employment, but also to matters which aid the employee organization in the administration of grievances. We have, accordingly, acknowledged the right of employee

> organizations to negotiate provisions relating to access to the employer's property to aid in gathering information necessary for its preparation for collective negotiations, in the investigation of grievances and in the proper administration of the bargaining agreement. [footnote: CSD of the City of Albany, 6 PERB ¶3012 (1973); Orange County Community College, 9 PERB ¶3068 (1976)] We have emphasized that such access provisions must be reasonable in scope and limited to the furtherance of the employee organization's representation duties.

We do not accept the City's assertion that the posting of union notices and the distribution of union literature on the City's premises renders demand No. 2 nonmandatory. The infringement upon the employer's property rights insofar as posting of notices and distribution of literature are concerned is minimal at most,[1/] and is certainly incidental to the main thrust of AFSCME's demand, which is to provide release time without loss of pay, in order to perform those functions. Release time, as discussed infra, in connection with demand No. 4, is a mandatory subject of negotiations even if not narrowly and strictly related to negotiations and the administration of the agreement because it relates to hours of work, which is itself a term and condition of employment. To the extent that the City contends that the demand is nonmandatory because it may relate to representation duties in connection

---

[1/] See Charlotte Valley, supra, at 3024.

with nonmandatory matters, its argument is rejected. That such representation duties may involve the administration of grievances relating to a term of a collective bargaining agreement which may itself be a nonmandatory subject of negotiation, but was nevertheless agreed upon by the parties, does not in any way negate the right of representation and, therefore, access to the employer's premises for such purposes.

While we have held that demands for union office space or meeting room space are nonmandatory subjects of negotiation,[2/] we concur with the ALJ's finding that the at-issue demand is appropriately characterized as an access demand and, to the extent that the demand seeks to infringe upon the City's property rights, it does so in connection with negotiations and grievance administration. The ALJ's holding that demand No. 2 is a mandatory subject of negotiations is affirmed, and, accordingly, that aspect of the City's charge is dismissed.

Demand No. 4

Demand No. 4 provides as follows:

> 4. ATTENDANCE AT COMMON COUNCIL PROCEEDINGS
>
> Where matters pertaining to the Union activities are being considered by the Common Council, the Union President or his designee may attend the proceedings before the Council.

[2/] See, e.g., Amherst Police Club, Inc., 12 PERB ¶3071 (1979).

> Notice shall be given to the department head of such attendance.

The ALJ found the foregoing demand to be a mandatory subject of negotiations, based upon her interpretation of the demand as a release time demand geared toward authorizing time off from work for a union president or designee to attend Common Council meetings. In its exceptions, the City appears to argue that release time to attend Common Council meetings is a mandatory subject of negotiations only if the subjects to be discussed at such Common Council meetings involve mandatory subjects of negotiation. The City apparently contends that no bargaining duty exists in connection with attendance at meetings at which nonmandatory items may be discussed.

It is our determination that the ALJ properly characterized this demand as a release time demand, to enable a union representative to attend Common Council meetings which are otherwise open to him/her, and that it is a mandatory subject of negotiations. Release time for union representatives need not be limited to time required for collective negotiations and/or the administration of grievances. It has been held to extend to other representational activities as well, including union administration matters, attendance at union meetings,

conferences, and conventions, and to be a mandatory subject of negotiations. See City of Albany, 7 PERB ¶¶3078 and 3079, aff'd sub nom. City of Albany v. Helsby, 38 N.Y. 2d 778, 9 PERB ¶7005; UFFA, Local 2304, IAFF, 10 PERB ¶3015, at 3032 (1977).

The City's exception in this regard is accordingly denied. The ALJ holding which dismisses so much of the City's charge as alleges a violation of §209-a.2(b) of the Act in this regard is affirmed.

Based upon the foregoing, the City's exceptions are denied, and the ALJ decision is affirmed in its entirety.

DATED: December 18, 1990
Albany, New York

Harold R. Newman

Harold R. Newman, Chairman

Walter L. Eisenberg

Walter L. Eisenberg, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

AFSCME LOCAL 826, COUNCIL 66, AFL-CIO,

Charging Party,

-and-

CASE NO. U-10890

VILLAGE OF ENDICOTT,

Respondent.

FREDERICK J. PFEIFER, ESQ., for Charging Party

GARY B. SLATER, for Respondent

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by AFSCME Local 826, Council 66, AFL-CIO (AFSCME) to an Administrative Law Judge's (ALJ) dismissal of its charge against the Village of Endicott (Village) which alleges, as amended, that the Village violated §209-a.1(d) of the Public Employees' Fair Employment Act (Act).

AFSCME lists 17 exceptions which can be grouped into 2 categories. In the first are several exceptions which object to the phraseology the ALJ used in describing the record or the parties' arguments. In the second category are exceptions which allege that the ALJ materially mischaracterized the charge. AFSCME argues that the ALJ treated its charge as a unilateral change case when it alleges that the Village refused to negotiate in good faith regarding the hours of work for the Village's refuse workers as required by a January 1989 agreement, which

resolved an improper practice filed by the Village against AFSCME. That agreement was subsequently incorporated into the parties' current contract as Article XXII(3)(b), which provides as follows:

> Eight (8) consecutive hours of work shall constitute a work shift with the exception of all refuse removal employees where such employee's workday shall end upon the completion of his assigned route. However, refuse drivers will perform such maintenance and cleaning tasks that normally are required for that particular time of the year before leaving. Unless otherwise agreed, this provision shall cease to be effective May 1, 1989.

AFSCME alleges that this clause preserves for it a statutory right to bargain regarding the refuse workers' hours of work until May 1, 1989.

We dismiss the exceptions in the first identified category because in relevant respect the ALJ's statements are either materially accurate or nonprejudicial.

As to the second category of exceptions, we agree that the charge as filed alleges a refusal to negotiate in good faith during several meetings between the parties at which the topic for discussion was whether and under what circumstances refuse workers would work the 8-hour days required of other unit employees or their shorter task-completion schedule. The ALJ's characterization of the charge, however, does not mean that he did not decide the issue presented by AFSCME. As we read the ALJ's decision, he held that AFSCME's agreement with the Village did not specifically reserve for it a right to negotiate the

refuse workers' hours. The Village was not, therefore, under any statutory duty to negotiate because the parties' current contract otherwise fixed the workday for unit employees. As the Village was without a statutory duty to bargain, its conduct during the meetings became immaterial to the ALJ because its conduct could not have been subject to standards of statutory good faith.

The initial issue for our consideration is whether AFSCME has a statutory right to negotiate the refuse workers' hours. Our consideration of AFSCME's refusal to bargain allegations is complicated by some of our earlier decisions in which we dismissed similar charges because it was not indisputably clear from the parties' contract that they intended to preserve a statutory right to bargain.[1/] These dismissals were not jurisdictionally based; rather, they were discretionary declinations to make the contract interpretation necessary to the disposition of the claimed statutory violation so as to foster the parties' utilization of their contractual procedures and remedies.

We have reexamined the policy choice which prompted our earlier dismissals of similar charges and now determine that we should exercise our jurisdiction over charges alleging a

---

[1/] Hunter-Tannersville Teachers Ass'n, 16 PERB ¶3109 (1983); Incorporated Village of Lake Success, 17 PERB ¶3103 (1984).

statutory refusal to negotiate in good faith pursuant to a right allegedly reserved by agreement.

A party is generally under no obligation to bargain for any change in a contract term which is to become effective before the expiration of that contract. Parties, however, may preserve by mutual agreement a statutory right to bargain when that right would otherwise be extinguished. These agreements are often contained within the collective bargaining agreement itself, typically as reopener clauses, but a continuing right to negotiate a subject covered by a contract may be otherwise evidenced.[2/]

In this case, AFSCME's contract with the Village is the sole source of its claimed statutory right, and the Village's duty, to bargain about the refuse workers' hours. It is necessary to interpret the contract to reach the statutory question, but that contract interpretation is merely incidental to the disposition of the improper practice charge. At least since our adoption of former member Crowley's dissent in Town of Orangetown,[3/] we have made those contract interpretations which are necessary to the determination of statutory violations, most often in assessing the merit of an employer's contractually-based waiver defense.

[2/] Newfield CSD, 17 PERB ¶3009 (1984).

[3/] 8 PERB ¶3042 (1975). We adopted former member Crowley's Orangetown dissent in St. Lawrence County, 10 PERB ¶3058 (1977).

Under past policy, a party with a clear reopener would get a merits determination, but if there was any uncertainty at all in the expression of the parties' intent, the charge was dismissed without any merits determination, although the statutory violation in the two situations could be identical. At times, therefore, a charging party has been penalized for nothing more than poor drafting.

For these reasons, and notwithstanding any prior decisions, we believe that our decision here to interpret as necessary those agreements which allegedly preserve for a party a statutory right to negotiate during the life of a contract about subjects otherwise covered by that contract better serves the policies of the Act than has our prior declination to exercise jurisdiction.

Turning to the facts of this case, the "unless otherwise-agreed" language in Article XXII(3)(b) contemplates a process through which such an agreement might be obtained, although it is unclear from the language of the provision itself as to whether the parties intended there to be negotiations regarding the refuse workers' hours or some lesser form of meetings. There is, however, testimony in the record relevant to the interpretation of the clause which, given the basis for his disposition of the charge, was not considered by the ALJ. AFSCME's representative testified to statements he and another ALJ made in the presence of all parties at the end of the conference on the Village's charge against AFSCME. AFSCME's representative's statement is

directed exclusively to the meaning of a contract term, which was not actually drafted until after the conference was concluded. The ALJ's consideration of that statement is not barred by our policy which, in general, is intended to render settlement discussions at pre-hearing conferences inadmissible. The testimony of AFSCME's representative is, however, appropriately considered to constitute parol evidence of the meaning of an ambiguous contract term and is, therefore, admissible. Our policy is intended to preclude the admissibility of any statements allegedly made by an ALJ at a pre-hearing conference. Accordingly, the testimony concerning the ALJ's statement should not be considered on remand.

For the foregoing reasons, we reverse the ALJ's decision and remand the matter to him for a new determination as to whether AFSCME reserved a statutory right to negotiate the refuse workers' hours under Article XXII(3)(b) and, if so, whether the Village refused, as alleged, to negotiate that issue in good faith.

DATED: December 18, 1990
Albany, New York

Harold R. Newman, Chairman

Walter L. Eisenberg, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

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

Charging Party,

-and-

CASE NO. U-12057

STATE OF NEW YORK (UNIFIED COURT SYSTEM),

Respondent.

NANCY E. HOFFMAN, ESQ. (JEROME LEFKOWITZ, ESQ., of Counsel), for Charging Party

HOWARD A. RUBENSTEIN, ESQ. (LEONARD KERSHAW, ESQ., of Counsel), for Respondent

INTERIM BOARD DECISION

This matter comes to us on the joint motion of the Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO (CSEA) and the State of New York (Unified Court System) (State) to transfer an improper practice charge filed by CSEA to this Board pursuant to §204.4(a) of the Board's Rules of Procedure (Rules).[1/]

[1/]Section 204.4(a) Rules provides, in relevant part, as follows:

> Immediately subsequent to the conference referred to in §204.2(b) of this Part, and if one or more of the parties have made a request that a dispute involving primarily a disagreement as to the scope of negotiations under the act be processed expeditiously, or if the Director shall deem it appropriate to do so upon his own initiative, the Director shall so notify the Board and transmit the papers to the Board. The Board shall then inform the parties as to whether it will accord expedited treatment to the matter. . . .

On or about November 15, 1990, CSEA filed an improper practice charge against the State, alleging a violation of §209-a.1(d) of the Public Employees' Fair Employment Act (Act) in that the State either repudiated the parties' collective bargaining agreement during its third year, or improperly refused to negotiate concerning compensation during the third year of the agreement if no agreement was in effect. The improper practice charge was filed following the enactment of a lag payroll system for certain State employees pursuant to Chapter 190, Sections 375 of the Laws of 1990 and following issuance of a decision in the matter of Association of Surrogates and Supreme Court Reporters v. State of New York, (USDC SDNY), dated October 26, 1990.

Simultaneously with the filing of the parties' joint motion to transfer this charge to the Board, CSEA submitted a motion to amend its improper practice charge and the State submitted a motion to dismiss the charge. In addition, the parties jointly submitted a stipulation of fact and exhibits.

The Board has reviewed all of these submissions, and has considered the application of the parties to transfer this matter for expedited determination by this Board without resort to proceedings before the designated Administrative Law Judge (ALJ).

In view of the significance and legal complexity of the issues raised by this charge, and the pendency of motions which must be decided prior to the issuance of a determination on its merits, and notwithstanding the parties' argument that a decision on the merits in this charge will affect the fashion in which the parties engage in ongoing collective negotiations, we determine that the factual and legal issues raised by the charge should be fully addressed by the parties to the assigned ALJ before resort, if any, to proceedings before this Board take place.

IT IS THEREFORE ORDERED that the motion to transfer be, and it hereby is, denied. This matter is remanded to the assigned ALJ for further proceedings.

DATED: December 18, 1990
Albany, New York

Harold R. Newman

Harold R. Newman, Chairman

Walter L. Eisenberg

Walter L. Eisenberg, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

LOCAL 887, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL-CIO,

Petitioner,

-and-

CASE NO. C-3467

GREENBURGH CENTRAL SCHOOL DISTRICT NO. 7,

Employer,

-and-

GREENBURGH CIVIL SERVICE ORGANIZATION,

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 Greenburgh Civil Service Organization 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.

Unit: Included: Employees employed on a regular salary basis for the school calendar year or for a 10, 11, or 12 month period, and regularly assigned to a half-time or greater weekly work schedule in the classifications of Woodland H.S. school monitor, bus driver, switchboard operator/audit clerk, nurse, matron, custodian, maintenance person, typist, clerk, office assistant, secretary, senior typist, senior clerk, word processor, administrative secretary, console operator, account clerk, registrar, office assistant personnel, senior accounts clerk, senior bookkeeper, cleaner, mechanics helper, laborer, senior custodian, maintenance mechanic, head maintenance mechanic, bus dispatcher and auto maintenance man, and employees in the classifications of bus driver, school monitor and school bus monitor who are employed at an hourly rate and regularly work on a bi-weekly basis fifty hours or more.

Excluded: All other employees.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Greenburgh Civil Service Organization. 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: December 18, 1990
Albany, New York

Harold R. Newman
Harold R. Newman, Chairman

Walter L. Eisenberg
Walter L. Eisenberg, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

NIAGARA COUNTY COMMUNITY COLLEGE EDUCATIONAL SUPPORT PERSONNEL ASSOCIATION, NEA/NY,

Petitioner,

-and-

CASE NO. C-3581

NIAGARA COUNTY COMMUNITY COLLEGE and COUNTY OF NIAGARA,

Employer,

-and-

NIAGARA COUNTY WHITE COLLAR EMPLOYEES UNIT, LOCAL 832, CIVIL SERVICE EMPLOYEES ASSOCIATION, INC., LOCAL 1000, AFSCME, AFL-CIO,

Intervenor.

ROBERT KLINGENSMITH, ESQ., for Niagara County Community College Educational Support Personnel Association, NEA/NY

EDWIN SHOEMAKER, ESQ., (JOHN BATT, Esq., Assistant County Attorney, of Counsel), for Niagara County Community College and County of Niagara

NANCY HOFFMAN, ESQ., (STEVEN CRAIN, Esq., of Counsel), for Niagara County White Collar Employees Unit, Local 832, CSEA, Inc., Local 1000, AFSCME, AFL-CIO

JOEL POCH, ESQ., for Local 182, American Federation of State, County and Municipal Employees, affiliated with New York State Council 66, AFL-CIO

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 Niagara County Community College Educational Support Personnel Association, NEA/NY 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,[1/] as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: All employees of the County of Niagara and Niagara County Community College in the following positions: Typist, Senior Typist, Security Officer, Senior Programmer, Assistant Supervisor of Buildings and Grounds, Senior Clerk, Stenographer, Telephone Operator, Account Clerk Steno, Messenger, ETV Operations Supervisor, Clerk, Supervisor of Central Office Services, Senior Library Clerk, Data Entry Operator, Principal Account Clerk, Payroll Clerk, Accounting Supervisor, Inventory Clerk, Senior A/V Technician, Senior Security Officer, Principal Library Clerk, Computer Programmer, Computer Operator, Senior Stenographer, Senior Account Clerk, Cash Account Clerk, Senior Computer Operator, Data Processing Control Clerk, Administrative Assistant/Schools, Principal Audit Clerk, Registered Professional Nurse, Multilith Machine Operator, Principal Clerk, Senior Account Clerk, Assistant Multilith Machine Operator, Part Time Stenographer, Part Time Senior Clerk, Account Clerk Typist, Part Time Typist, Part Time Messenger, and Part Time Campus Security Officer.

Excluded: All managerial and confidential employees and faculty covered by Niagara County Community College Faculty Association.

1/ Subsequent to the uniting decision by the Director of Public Employment Practices and Representation [23 PERB ¶4052 (1990)], the parties agreed that additional titles should be included in the unit. The unit described reflects that agreement.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Niagara County Community College Educational Support Personnel Association, NEA/NY. 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: December 18, 1990
Albany, New York

Harold R. Newman

Harold R. Newman, Chairman

Walter L. Eisenberg

Walter L. Eisenberg, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

NIAGARA COUNTY COMMUNITY COLLEGE EDUCATIONAL SUPPORT PERSONNEL ASSOCIATION, NEA/NY,

Petitioner,

-and-

CASE NO. C-3588

NIAGARA COUNTY COMMUNITY COLLEGE and COUNTY OF NIAGARA,

Employer,

-and-

LOCAL 182, AMERICAN FEDERATION OF STATE, COUNTY and MUNICIPAL EMPLOYEES, Affiliated with NEW YORK STATE COUNCIL 66, AFL-CIO,

Intervenor.

ROBERT KLINGENSMITH, ESQ., for Niagara County Community College Educational Support Personnel Association, NEA/NY

EDWIN SHOEMAKER, ESQ., (JOHN BATT, Esq., Assistant County Attorney, of Counsel), for Niagara County Community College and County of Niagara

NANCY HOFFMAN, ESQ., (STEVEN CRAIN, Esq., of Counsel), for Niagara County White Collar Employees Unit, Local 832, CSEA, Inc., Local 1000, AFSCME, AFL-CIO

JOEL POCH, ESQ., for Local 182, American Federation of State, County and Municipal Employees, affiliated with New York State Council 66, AFL-CIO

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 Niagara County Community College Educational Support Personnel Association, NEA/NY 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,[1/] as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: All employees of the County of Niagara and Niagara County Community College in the following positions: Building Maintenance Person I, Building Maintenance Person II, Building Maintenance Person III, Stores Clerk, Campus Watchperson, Maintenance - Custodial, Head Cleaner, Groundskeeper, Groundskeeper III, and Custodian.

Excluded: All managerial and confidential employees and faculty represented by the Niagara County Community College Faculty Association.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Niagara County Community College Educational Support Personnel Association, NEA/NY. The duty to negotiate collectively includes the mutual

---

1/ Subsequent to the uniting decision by the Director of Public Employment Practices and Representation [23 PERB ¶4052 (1990)], the parties agreed that additional titles should be included in the unit. The unit described reflects that agreement.

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: December 18, 1990
Albany, New York

Harold R. Newman
Harold R. Newman, Chairman

Walter L. Eisenberg
Walter L. Eisenberg, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

FRATERNAL ORDER - NEW YORK STATE TROOPERS, INC.,

Petitioner,

-and-

CASE NO. C-3735

STATE OF NEW YORK (DIVISION OF STATE POLICE),

Employer,

-and-

POLICE BENEVOLENT ASSOCIATION OF THE NEW YORK STATE TROOPERS, INC.,

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 Police Benevolent Association of the New York State Troopers, Inc. 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.

Unit: Included: Troopers.

Excluded: All other employees.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Police Benevolent Association of the New York State Troopers, Inc. 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: December 18, 1990
Albany, New York

Harold R. Newman

Harold R. Newman, Chairman

Walter L. Eisenberg

Walter L. Eisenberg, Member

parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: Investigators, Senior Investigators, Investigative Specialists.

Excluded: All other employees.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Police Benevolent Association of the New York State Troopers, Inc. 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: December 18, 1990
Albany, New York

Harold R. Newman
Harold R. Newman, Chairman

Walter L. Eisenberg
Walter L. Eisenberg, Member