

PERB NEWS

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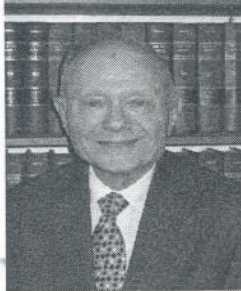
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Message from Jerome Lefkowitz, Chairman



Confounding novelist Thomas Wolfe, I have come home again, and I relish the work that is before me, as well as my relationship with the fine PERB staff members. As I reflect upon the words of Chairman Cuevas in last year's Annual Report: "I do not suggest that the law is perfect: I don't know one that is," I recall Chairman Helsby's much more optimistic quotation from Sir William Gilbert's *Iolanthe* almost 40 years ago: "The law's the true embodiment of every thing that's excellent; it has no fault, it has no flaw, and I, my lords, embody the law." Of course, I am brought back to reality by a reflection upon the hubris of Percy Blysshe Shelley's *Ozymandius* and the fate of his achievements.

I do, however, have some modest goals for achievement during my administration of this agency, chief among which will be to strive for a more modest approach to the issuance of decisions. I hope my colleagues will agree with me that we should not decide cases on the basis of a resolution of issues not addressed by the parties without having solicited oral argument or supplemental briefs on these issues. We are not wise enough to dispense with the help that these oral or written arguments may afford us. Similarly, we should follow §213.2 (b)(4) of our current Rules of Procedure, and not correct even palpably wrong ALJ decisions where the mistakes were not addressed in exceptions unless, and until, we amend

our Rules. The only exception to this deals with remedial orders (Rules §213.6 [b]).

We have already embarked upon this modest journey. At our second meeting since I became Chairman, the Board issued a decision granting motions to file *Amicus* briefs, expressly encouraging such motions in the future and setting forth the appropriate procedure for doing so. The participation of *amici* will help insure the continued vitality of the Taylor Law.

Finally, I am pleased to announce the prospect of an important undertaking. In cooperation with Albany Law School's Government Law Center, Cornell's School of Industrial and Labor Relations, New York City's Office of Collective Bargaining and the New York State Bar Association's section on Labor and Employment Law, and with the advice of representative practitioners from labor and management, PERB is planning to hold a conference this coming Spring to celebrate the Taylor Law's 40th Anniversary. The conference will evaluate and discuss major issues under the Taylor Law. It is anticipated that this will not be a "how to do it" program. Rather, it will be an interchange between academics, and other experts, with experienced practitioners on topics dealing with the mission of the Taylor Law, and a critique of PERB's accomplishment of that mission. I look forward to seeing many of you at that conference.

Mr. Lefkowitz returns to PERB after serving as Deputy Counsel for CSEA for the past 20 years. From 1967 to 1986, Mr. Lefkowitz was PERB's Deputy Chairman.



PERB NEWS

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Report from Monte Klein, Director, Office of Public Employment Practices



The 807 improper practice charges filed during the 2006-07 fiscal year represents a slight decrease from the 861 charges filed in the 2005-06 fiscal year. However, the number of improper practice charges pending at the close of the 2006-07 fiscal year, 614, represents an increase from the 561 charges pending at the end of fiscal year 2005-06. It constitutes the largest number of pending charges at the end of any fiscal year since the 1997-98 fiscal year.

The Administrative Law Judges and Director issued 109 improper practice decisions in fiscal year 2006-07, a decrease from the 130 issued during the prior fiscal year.

The number of representation petitions filed during the fiscal year, 117, constitutes a significant increase from the 74 petitions filed during the 2005-06 fiscal year.

We continue to settle the substantial majority of the matters filed with us. Accordingly, we value greatly the parties' efforts at voluntary resolution, particularly at the pre-hearing conference level of case processing. The parties should be prepared at that time to fully discuss the case, enter into stipulations where appropriate, and resolve the matter as necessary.

Continuing our efforts to reduce litigation costs to the parties, we have expanded the use of telephonic, rather than onsite, conferences, particularly in geographic areas distant from our offices in Albany, Buffalo and New York City. We are also continuing to adjust the assignment of cases between our Albany, Buffalo and New York City offices to further contain case processing time.

We have recently filled professional staff positions that have been vacant for some time and we will continue to simplify our practices and procedures. We remain appreciative of the parties' cooperation and good faith.

Mr. Klein has served as PERB's Director of Public Employment Practices and Representation since 1996. He had been an administrative law judge with the agency since 1978.

Report from David P. Quinn, Associate Counsel and Director of Litigation



The Litigation Office experienced a drop in the number of new litigation cases involving PERB from ten in FY 2005-2006 to four new cases in FY 2006-2007. The number of litigation cases pending at the end of the fiscal year also dropped from 16 at the end of FY 2005-2006 to 13 at the end of 2006-2007. This development is largely attributable to the decline in the number of decisions that the Board issued during FY 2006-2007 and the unusually high number of cases closed in the prior fiscal year, 11 as opposed to 8 cases that the office closed in FY 2006-2007.

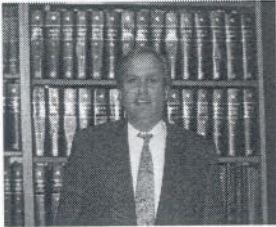
The cases that the office counts in the litigation category are Article 78 petitions for review of the Board's decisions and orders and any other miscellaneous court work that the office engages in, including petitions for injunctive relief and petitions for enforcement of the Board's remedial orders that are brought by PERB. The pending number of enforcement proceedings remained steady at four. PERB received 13 applications for injunctive relief during FY 2006-2007. All were deficient, denied or settled without litigation.

During FY 2005-2006, the Litigation Office initiated four strike charges as a result of the New York City Transit strike in December 2005. None was prosecuted by PERB because jurisdiction was found to lie in Supreme Court, Kings County, where the charges were prosecuted by the employer. No strike charges were received or initiated by PERB during FY 2006-2007.

The combined result of all of these developments was that overall litigation caseload decreased slightly by year's end to 20 pending cases from the 23 cases that were pending at the close of FY 2005-2006.

Mr. Quinn was appointed to the position of Associate Counsel and Director of Litigation on May 17, 2007. While new to the position, he is not new to PERB, having served as an administrative law judge for fifteen years and as assistant counsel for litigation for eight.

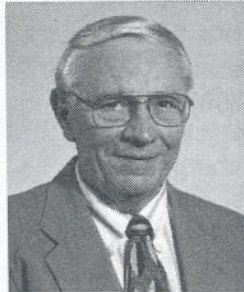
Report from Deputy Chair and Counsel William Herbert



The Board's responsibilities include issuing final decisions and orders determining exceptions filed by parties in approximately one third of the cases initially determined by the Office of Public Employment Practices and Representation and the Office of Conciliation. The Board's final decisions are based on exceptions filed by parties seeking review of decisions and rulings rendered by the agency's Directors, Assistant Directors and Administrative Law Judges. Board final decisions and orders resolve various matters including improper practice charges, representation petitions and declaratory rulings. The Board also issues certifications of employee organizations to represent public employees. For fiscal year 2006-07, the Board issued 30 decisions and 24 certifications. In comparison there were 33 decisions and 23 certifications issued in fiscal year 2005-06.

As of May 29, 2007, William A. Herbert is Deputy Chair and Counsel. Further information may be found on page 11.

Report from Executive Director James R. Edgar



We continue to collaborate with educational institutions, professional organizations and with the NYS Bar Association to provide educational outreach and training to labor law practitioners. Over 600 individuals participated in programs with PERB staff as presenters during 2006-07.

In keeping with our more traditional roles of client outreach, we have updated our printed publications, including the *Mandatory/Nonmandatory Subjects of Negotiation*, *The Taylor Law*, and *The Taylor Law and the Duty of Fair Representation*. Also, a new publication, *Impasse Resolution under the Taylor Law*, will be available to the public in the near future. Please check our website for further information. We are in the process of reviewing the *Rules of Procedure* for possible changes to the Rules and publication and, thereafter, an updated edition of the *Annotated Rules of Procedure* will be available.

We continue to make PERB forms available on diskette and on-line and offer the monthly *PERB News* and subscription service to *PERB Advance Decisions* to our constituency electronically.

PERB decisions are available by subscription on Lexis/Nexis and www.lrp.com. Decision summaries are also available on PERB's website, www.perb.state.ny.us.

The annual publication of *The Official Opinions and Decisions of the Public Employment Relations Board* is marketed in an electronic version, in addition to the traditional printed volume.

In our on-going effort to educate our clients and publicize our services, our Internet website continues to be a two-way vehicle for communication with our constituency. The website features answers to questions frequently asked about the Taylor Law, provides access to PERB's departments and individual staff members, offers synopses of current decisions, including archived decision summaries going back to January 2000, updates the status of mediations, posts fact-finding reports beginning with the 2003-04 fiscal year, offers petitions and other official forms which can be downloaded, and order forms for our publications and educational outreach programs.

**Public Employment Relations Board Activities
New York State - Fiscal Years 2002-03 - 2006-07**

Activity	2002-03	2003-04(a)	2004-05	2005-06	2006-07
Conciliation					
Negotiating Units	4452	4460	4597	4697	4730
Contracts Negotiable	2145	2320	2382	2322	2327
Settled or Negotiations Continue Without Third-Party Assistance	1828r	1982	1997	1979	1994
Brought to PERB for Assistance	317	338	385	343	333
Impasses Resolved					
Settled by Mediation	209	178	295	269	229
Settled by Mediation by Fact Finder	11	10	17	15	13
Settled by Negotiations Based on Fact-finding Report	14	15	19	23	26
Settled by Acceptance of Fact-finding Report	20b	3	11	6	1
Settled by Post Fact-finding Conciliation	0	1	2	4	6
Settled by Arbitration	8	11	13	16	17
Closed for Other Reasons	21	12	29	25	37
Representation					
Petitions Received	91	104	125	74	117
Director's Decisions	24	18	24	30	28
Board Decisions	2	7	5	4	5
Board Certifications	19	19	26	24	24
Petitions Withdrawn	62	66	87	56	55
Elections	6d	10e	12f	9g	11h
Clarification/Unit Placement Cases					
Cases Pending at Beginning of Year	49	36	60	52	34
Applications Received	64	60	58	47	50
Director's Decisions	9	16	13	25	12
Board Decisions	4	4	5	3	4
Withdrawn after Conference	59	33	51	42	31
Cases Pending at End of Year	36	60	52	34	46
Improper Practices					
Cases Pending at Beginning of Year	405	486	542	569	561
Charges Filed During Year	908	786	850	861	807
Administrative Law Judge Decisions	120	128	84	130	109
Board Decisions	38	37	23	24	25
Charges Settled by Agreement, Withdrawn or Closed	703	660	713	758	628
Cases Pending at End of Year	486	542	569	561	614
Management/Confidential Cases					
Cases Pending at Beginning of Year	14	13	19	15	11
Applications Received	42	28	30	30	33
Director's Decisions	29	19	15	26	10
Board Decisions	1	0	2	1	1
Withdrawn after Conference	11	10	15	9	13
Cases Pending at End of Year	13	19	15	11	23
Work Stoppages					
Strikes	2	0	0	4	0

r Revised

a One declaratory ruling (DR) case was decided by the Representation Office and then appealed to the Board. The Board also decided one appeal from a mini-PERB decision.

b Includes 13 impasses for which 1 fact-finding report was issued.

c 1,901 employees involved

d 2,519 employees involved.

e 1,182 employees involved.

f 791 employees involved.

g 608 employees involved.

h 1,228 employees involved.

SOURCE: New York State Public Employment Relations Board.

BOARD CERTIFICATIONS

VILLAGE OF MONTGOMERY POLICE BENEVOLENT ASSOCIATION has been certified to represent all police officers of the Village of Montgomery. Excluded are Officer in Charge, Captains and Lieutenants.(C-5627, 5/2/07)

UNITED PUBLIC SERVICE EMPLOYEES UNION has been certified to represent all full-time and part-time Paramedics and Emergency Medical Technicians employed by the Town of Colonie. All other Town employees are excluded from the unit. (C-5631, 5/2/07)

UNITED PUBLIC SERVICE EMPLOYEES UNION has been certified to represent all full-time and half-time employees of the Village of Mineola in the following titles: Labor Supervisor, Typist Clerk, Laborer, Multi-Keyboard Operator, Secretary to the Board of Zoning and Appeals, Highway Supervisor, Senior Typist Clerk, Parking Meter Attendant, Messenger, Account Clerk, Automotive Mechanic, Secretary to the Water Commission, Cashier, Cleaner, Court Clerk, Recreation Attendant, Water & Sewer Servicer. Excluded from the unit are: All other employees including temporary, seasonal and part-time employees and employees in the following titles which are defined as managerial and/or confidential in the collective bargaining agreement: Village Clerk, Village Deputy Clerk, Village Treasurer, Deputy Village Treasurer, Village Accountant, Secretary to Board of Trustees, Code Enforcement Inspectors, Fire and Zoning Investigators, Superintendent of Public Works, Assistant Superintendent of Public Works, Village Court Clerk, Research Assistant to the Board of Trustees, Highway Department Supervisor, Water Department Supervisor, Parks Department Supervisor, Sanitation Department Supervisor, Village Auditor, Deputy Auditor, Supervisor of Sewer Department, Labor Supervisors, Activities Coordinator, Assistant Activities Coordinator, Superintendent of Buildings, Deputy Court Clerk. (C-5645, 5/2/07)

ULSTER COUNTY STAFF ASSOCIATION, NYSUT, AFL-CIO has been certified to represent all employees of the County of Ulster in the titles of Payroll Manager, Motor Vehicle Bureau Supervisor, Personnel Analyst, Recruitment and Outreach Specialist, Senior Personnel Analyst, Senior Projects Manager, Probation Supervisor, Assistant Director of Patient Services, Supervising Public Health Nurse, Chemical Dependency Specialist/Program

Supervisor, Mental Health Specialist/Program Supervisor, Local Government Unit Program Supervisor, Secretary to the Director of Community Mental Health, Assistant Director of Social Services, Secretary to Commissioner of Social Services, Staff Development Director, Assistant Deputy Director for Clinical Services, Employee Benefits Administrator, Environmental Health Manager, Food Service Manager, Director of Maintenance, Director of Housekeeping, Section Supervisor for Highways and Bridges, Garage Supervisor, Bridge Supervisor, Sr. Staff Attorney DSS, Department of Social Services Attorney. All other County employees are excluded. (C-5654, 5/2/07)

TOWN OF WEBB ADMINISTRATORS' ASSOCIATION has been certified to represent all employees of the Town of Webb Union Free School District in the titles of K-12 Building Principal, Chairperson for Committee on Special Education, Head Custodian, Transportation Supervisor and Cafeteria Manager. All other employees of the District are excluded. (C-5648, 6/6/07)

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 17 has been certified to represent a unit of all full-time motor equipment operators employed in the Town of Concord Highway Department. Excluded from the unit are the Highway Superintendent, Deputy Highway Superintendent, Crew Chief and confidential employees as defined by law. (C-5655, 5/2/07)

TEAMSTERS LOCAL 264, INTERNATIONAL BROTHERHOOD OF TEAMSTERS has been certified to represent a unit of all full-time employees in the Town of Cambria's Highway, Sewer and Water Department. All other employees are excluded. (C-5666, 5/2/07)

UNITED PUBLIC SERVICE EMPLOYEES UNION has been certified to represent all non-instructional personnel of the Averill Park Central School District including, but not limited to, the following titles: Account Clerk, Child Care Worker, Auto Mechanic, Head Auto Mechanic, Auto Mechanic Assistant, Bus Driver, Bus Attendant, Head Groundskeeper, Groundskeeper, Messenger, Maintenance Mechanic, Custodian, Custodial Worker, Cleaner, Senior Typist, Typist, Typist Assigned to Principal, Typist Assigned to Administrator/Supervisor, Teacher Aide, Teacher Aide Assigned to the Classroom, Cook, Food Service Helper and School Monitor. Excluded are all Supervisors and Management/Confidential

employees, as well as substitute employees and employees working two (2) hours per day or less. (C-5667, 5/2/07)

TEAMSTERS LOCAL 264, INTERNATIONAL BROTHERHOOD OF TEAMSTERS has been certified to represent all full-time and regular part-time employees of the Village of Youngstown's Department of Public Works. All other employees of the Village are excluded. (C-5670, 5/2/07)

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 17 has been certified to represent all full-time motor equipment operators employed in the Town of Concord Highway Department. Excluded are the Highway Superintendent, Deputy Highway Superintendent, Crew Chief and confidential employees as defined by law. (C-5655, 6/6/07)

SUMMARIES OF BOARD DECISIONS

IMPROPER PRACTICES

YONKERS POLICE ASSOCIATION AND CITY OF YONKERS. The Board found that the City violated §209-a.1(d) of the Public Employees' Fair Employment Act (Act) when it unilaterally implemented an annual employee performance evaluation procedure for employees in the unit represented by the Association. The Board rejected the City's argument that the Association had waived its right to negotiate employee performance evaluations, finding that the management rights clause in the parties' collective bargaining agreement did not evidence a waiver of the Association's right to negotiate any mandatory subjects because the language was too broad. The management rights clause gave the City the right to make rules, regulations and policies concerning personnel practices and procedures, subject to the Association's right to consult and confer. The Board held that while a reference to personnel practices and procedures might generally be said to cover evaluation procedures, it is not such specific language as could be found to be a clear, unmistakable and unambiguous waiver of the right to negotiate any topic that might generally fall within that broad phrase. The Board further found that the evidence of other employee evaluations that occurred in the past was insufficient to establish a

past practice of evaluating employees that would allow the City to unilaterally implement an annual employee performance evaluation procedure by which all unit employees would be subject to evaluation. (U-25381, 5/2/07)

LOCAL UNION 1969, CIVIL SERVICE EMPLOYEES, IUPAT, AFL-CIO AND BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK AND LOCAL 891, INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO. The Board affirmed, in part, and reversed, in part, the decision of the Administrative Law Judge (ALJ) which found that the Union had not exclusively performed painting work and dismissed that allegation, but found that the District had violated §209-a.1(d) of the Act by refusing the Union's demands to negotiate the transfer of unit work and provide information. The Board reiterated that in determining whether the work in-issue in a transfer of unit work case is exclusive unit work, the charging party must establish a discernible boundary around the claimed unit work which would appropriately set it apart from work done by nonunit personnel. The Union sought to establish a discernible boundary by arguing that the painting of newly renovated spaces as part of a Capital Task Force (CTF) project is different from repainting or maintaining existing facilities. The Board rejected the Union's definition of unit work based upon the funding for the CTF projects, the type of paint used or the reasons the surface needs to be painted, finding that those factors do not have any reasonable relationship to the painting duties performed by unit members as part of a CTF project so as to establish a discernible boundary. The Board further found that the District did not violate §209-a.1(d) of the Act when it refused the Union's demand to bargain the transfer of unit work because the work the Union was claiming a right to negotiate was not exclusive bargaining unit work, and so, reversed that part of the ALJ's decision. Finally, the Board found that the District violated the Act when it refused the Union's demand for information to be used to bargain the issue of unit work, rejecting the District's argument that because it did not have an obligation to bargain the transfer of the work claimed by the Union, it had no obligation to provide information to the Union to bargain the issue. (U-25506, 5/2/06)

MOHAMMAD SAIDIN AND UNITED FEDERATION OF TEACHERS, LOCAL 2, AFT, AFL-CIO AND BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK. The Board dismissed Saidin's improper practice charge filed against the Federation, alleging that the Federation violated §209-a.2(c) of the Act when it refused to process his grievance to Step 3 of the contractual grievance procedure between the Federation and District. The Board found that at best Saidin established that he disagreed with the Federation's refusal to process his grievance to a Step 3 hearing, but that disagreement with the bargaining agent's decision is insufficient to establish a breach of the duty of fair representation. While the Board denied the Federation's request to sanction Saidin for filing numerous, meritless improper practice charges, it did caution him about his disregard of the Rules in that he continues to file additional pleadings where he has not been directed to do so by the Board and has not sought the Board's permission. (U-26672, 5/2/07)

PROFESSIONAL STAFF CONGRESS/CUNY AND CITY UNIVERSITY OF NEW YORK. The Board affirmed the decision of the Director of Public Employment Practices and Representation (Director) dismissing PSC's improper practice charge which alleged that CUNY violated §209-a.1(a) of the Act when it "adopted and implemented" a written Employment Discrimination Complaint Procedure. The Board found that the charge, filed four years after the adoption of the Procedure, was untimely, rejecting PSC's argument that CUNY's maintenance of the procedure, even if never utilized, was a "continuing violation". The Board reiterated that it has declined to apply a theory of "continuing violation" in its improper practice proceedings and that the private sector cases cited by PSC did not support PSC's argument. (U-26954, 5/2/07)

DECLARATORY RULING

THE CITY OF NEW YORK. The Board considered the motions of four employee organizations to appear as *amici curiae* in a declaratory ruling case before the Board on exceptions filed by the Police Benevolent Association of the City of New York, Inc. and the City of New York to a decision of an ALJ finding that two of the PBA's demands were properly submitted to interest arbitration and five were not properly submitted. The Board then granted the separate motions by the Lieutenants Benevolent Association,

the New York State Union of Police Associations, the Captains Endowment Association, Inc., and the Suffolk County Police Conference for leave to file *amicus* briefs on the condition that such briefs identify applicable law or arguments that might otherwise escape the Board's consideration and state how those arguments are relevant to the Board's disposition of the exceptions. (DR-119, 6/6/07)

REPRESENTATION DECISIONS

MANAGERIAL/CONFIDENTIAL

INCORPORATED VILLAGE OF FLORAL PARK. Where duties include the exercise of independent judgment in connection with the formulation of policy and/or direct involvement in the collective negotiation process and/or the administration of agreements and/or personnel administration, managerial designations are warranted. In addition, where secretaries and a research assistant have a confidential relationship to managerial employees in the performance of their managerial responsibilities, confidential designations are warranted. (ALJ Cacavas, E-2413, 4/4/07)

SOUTH COUNTRY CENTRAL SCHOOL DISTRICT. Where Debra Ford, the Network and Systems Specialist, had a confidential relationship to a managerial employee in his performance of managerial responsibilities, a confidential designation was warranted. (ALJ Cacavas, E-2428, 4/13/07)

COMMACK UNION FREE SCHOOL DISTRICT. Where Louise Sansone, the Secretary to the Assistant Superintendent for Pupil Personnel Services, had a confidential relationship to a managerial employee in his performance of managerial responsibilities, a confidential designation was warranted. (ALJ Cacavas, E-2427, 4/13/07)

SKANEATELES CENTRAL SCHOOL DISTRICT. The ALJ designated Philip Serrano, Network Administrator, as confidential, noting that the employee organization that represents the title consented to the designation and that the factual averments in the application may support it. (ALJ Quinn, E-2432, 4/24/07)

SHENENDEHOWA SCHOOL DISTRICT. Where Jessica McCarthy, a School Secretary, had a confidential relationship to a managerial employee in her performance of managerial responsibilities, a confidential designation was warranted. (ALJ Burritt, E-2431, 5/29/07)

DECLARATORY RULING

CITY OF NEW YORK. The ALJ issued a declaratory ruling recommending whether certain provisions could be submitted to interest arbitration. The ALJ found that proposals relating to staffing, work charts, the provision of vests, sick leave abuse and work rule notification could not be submitted because they were either nonmandatory or prohibited subjects. He also found that they did not convert to mandatory subjects pursuant to *City of Cohoes*, 31 PERB ¶¶3020 (1998), *confirmed sub nom. Uniform Firefighters of Cohoes, Local 2562, IAFF, AFL-CIO v Cuevas*, 32 PERB ¶¶7026 (Sup Ct Albany County 1998), *affd* 276 AD2d 184, 33 PERB ¶¶7019 (3d Dept 2000), *lv denied*, 96 NY2d 711, 34 PERB ¶¶7018 (2001) (hereafter, *Cohoes*). The ALJ further found that proposals relating to compensation, because the unit was not eligible for certain disciplinary protections, and safety standards were permissibly submitted to interest arbitration. (ALJ Maier, DR-119, 5/3/07)

IMPROPER PRACTICE

TOWN OF NEW CASTLE AND POLICE ASSOCIATION OF NEW CASTLE. The ALJ found that the union violated the Act when it sought to submit to interest arbitration a maintenance of benefits clause which may also have the effect of including nonmandatory subjects of bargaining. The ALJ permitted the amendment of a demand which the Association had challenged to clearly reflect that the Town's health insurance contribution proposal was not related to any other unit. Since health insurance is a mandatory subject of bargaining the Association's charge was dismissed. (ALJ Maier, U-26222 & U-26250, 4/5/07)

SULLIVAN COUNTY PATROLMAN'S BENEVOLENT ASSOCIATION, INC. AND COUNTY OF SULLIVAN AND SHERIFF OF SULLIVAN COUNTY. The ALJ found that the employer violated the Act by unilaterally implementing a system of recovering wages and benefits that it had allegedly overpaid to a unit employee. According to the ALJ, just as the method by which an employer pays earned wages and benefits

to unit employees is mandatorily negotiable, so too is the method by which employees must repay money and benefits they owe to their employer. Moreover, the ALJ held that the payments made to the employee were not in excess of those she was due under the terms of the parties' expired collective bargaining agreement. Therefore, the ALJ found that the employer's deductions of said payments violated §§ 209-a.1(d) and (e). Finally, the ALJ found that the employer's actions were not so arbitrary as to support the allegation that the conduct was in retaliation for the employee's exercise of protected rights. (ALJ Quinn, U-26725, 4/5/07)

UNITED PUBLIC SERVICE EMPLOYEES UNION AND COUNTY OF COLUMBIA. The ALJ held that the employer did not violate the Act when it created and filled three part-time unit positions that, allegedly, perform the work of a recently vacated full-time position. According to the ALJ, the three part-time positions were materially different from the work of the full-time position. (ALJ Quinn, U-26022, 4/5/07)

KINGSTON POLICE BENEVOLENT ASSOCIATION, INC. AND CITY OF KINGSTON. The ALJ found that the City violated the Act by unilaterally terminating its practice of paying for the routine veterinary care and food for police dogs that had been taken out of service and given to their handlers. (ALJ Quinn, U-26553, 4/9/07)

VALLEY STREAM TEACHERS ASSOCIATION, LOCAL 1633 AND VALLEY STREAM CENTRAL HIGH SCHOOL DISTRICT. The ALJ deferred a charge to the parties' grievance and arbitration procedure which alleged a violation of the Act due to the failure of the District to engage in coalition bargaining. Since the parties' collective bargaining agreement provided an arguable source of right to the union, and the agreement was still in effect, the charge was deferred. (ALJ Maier, U-27272, 4/10/07)

KELVIN HADEN AND UTICA CITY SCHOOL DISTRICT AND SEIU LOCAL 200. The Director dismissed a charge because it lacked supporting facts and the individual lacked standing. (Director Klein, U-27442, 4/10/07)

BUFFALO CITY SCHOOL DISTRICT AND PROFESSIONAL, CLERICAL, TECHNICAL EMPLOYEES ASSOCIATION. The Director dismissed the charge inasmuch as an employer lacks standing to allege an interference with

employees' rights by a union. (Director Klein, U-27446, 4/10/07)

SHEILA A. SIMARD AND CHAMPLAIN VALLEY EDUCATIONAL SERVICES BOCES AND CLINTON/ESSEX/WARREN/WASHINGTON BOCES, UNITED TEACHERS LOCAL 4807. The Director dismissed a charge because it was devoid of facts. (Director Klein, U-27418, 4/10/07)

VILLAGE OF HIGHLAND FALLS AND HIGHLAND FALLS PATROLMEN'S BENEVOLENT ASSOCIATION, INC. The ALJ held that arbitration concerning employees' entitlement to benefits under General Municipal Law §207-c is not mandatorily negotiable, relying on *Poughkeepsie Professional Firefighters Association v PERB*, 6 NY3d 514, 39 PERB ¶7005 (2006). (ALJ Quinn, U-26843 & U-26844, 4/18/07)

CIVIL SERVICE EMPLOYEES ASSOCIATION, INC., LOCAL 1000, AFSCME, AFL-CIO, WASHINGTONVILLE CENTRAL SCHOOL DISTRICT UNIT #7914, ORANGE COUNTY LOCAL 836 AND WASHINGTONVILLE CENTRAL SCHOOL DISTRICT. The ALJ issued a merits-deferral concerning a dispute over an alleged change in the method by which unit bus drivers select their runs, noting that the charging party had filed a grievance under the parties' expired collective bargaining agreement which provides binding arbitration. (ALJ Quinn, U-27264, 4/23/07)

DERUYTER FACULTY ASSOCIATION, NYSUT, AFT, NEA AND DERUYTER CENTRAL SCHOOL DISTRICT. The ALJ issued a jurisdictional deferral concerning a dispute over the employer's assignment of mentors to new unit teachers, noting that the charging party argued that the employer's action breached the parties' current collective bargaining agreement. (ALJ Quinn, U-27159, 4/23/07)

SIDNEY TEACHERS ASSOCIATION, NYSUT, AFT, AFL-CIO, LOCAL 2469 AND SIDNEY CENTRAL SCHOOL DISTRICT. The ALJ issued a jurisdictional deferral concerning a dispute over whether the employer unilaterally changed the source from which prescription drugs may be purchased and, concomitantly, increased the co-pay for said prescription drugs, noting that the charging party argued that it has a source of right under the parties' current collective bargaining agreement. (ALJ Quinn, U-26929, 4/24/07)

POLICE BENEVOLENT ASSOCIATION OF WAPPINGERS FALLS AND VILLAGE OF WAPPINGERS FALLS. The ALJ dismissed an improper practice charge, finding that the employer did not violate the Act by submitting a proposal for consideration at compulsory interest arbitration that it first submitted as a counter-proposal at mediation in response to the charging party's bargaining table proposal. Although the employer summarily rejected the charging party's proposal at the bargaining table, it was not improper for the employer to produce a counter-proposal for the first time at mediation and thereafter at interest arbitration. While the ALJ rejected any notion that a party should be permitted to offer no compromises at the bargaining table and then submit numerous counter-proposals for the first time at mediation, he found that the employer's conduct here did not constitute bad faith negotiations. (ALJ Quinn, U-26450, 4/25/07)

GLENVILLE POLICE BENEVOLENT ASSOCIATION AND TOWN OF GLENVILLE. The ALJ deferred to the parties' grievance and arbitration procedure a charge which alleged a violation of the Act when the Town of Glenville changed the co-payment amount for medical office visits and instituted a new procedure for reimbursement of part of that co-payment. A grievance had been filed under the applicable grievance procedure. (ALJ Burritt, U-27299, 5/4/07)

LORRINE HARVIN AND STATE OF NEW YORK AND CIVIL SERVICE EMPLOYEES ASSOCIATION, INC., LOCAL 1000, AFSCME, AFL-CIO. The Director dismissed the charge, as amended, as legally and factually insufficient inasmuch as it did not contain a clear and concise statement of the facts constituting the violation, individual employees lack standing to allege a failure to bargain, and there were no facts to arguably establish a breach of any of the enumerated subdivisions of the Act. (Director Klein, U-27455, 5/14/07)

NEW YORK STATE THRUWAY EMPLOYEES, TEAMSTERS LOCAL 72 AND NEW YORK STATE THRUWAY AUTHORITY. The Director dismissed the charge as untimely inasmuch as the act complained of occurred more than four months prior to the filing of the charge and the parties cannot waive the period of limitations set forth in the Rules for the commencement of a charge. (Director Klein, U-27510, 5/14/07)

CITY OF SYRACUSE AND SYRACUSE FIREFIGHTERS ASSOCIATION, LOCAL 280, IAFF, AFL-CIO. The City alleged that Local 280 violated §209-a.2(b) of the Act by submitting nonmandatory items to interest arbitration. The City's charge was granted in part where Local 280 was ordered to withdraw a severable portion of a proposal that was nonmandatory in nature and sufficiently unrelated to the contract provision allegedly being altered so that it did not convert under *Cohoes*. Local 280 was also ordered to withdraw a proposal that was found to be unitary in nature. (ALJ Doerr, U-27053, 5/14/07)

TRANSPORT WORKERS UNION, LOCAL 106, TRANSIT SUPERVISORS ORGANIZATION AND MANHATTAN & BRONX SURFACE TRANSIT OPERATING AUTHORITY. Where the Director issued a decision dismissing a charge as untimely, that constitutes a "final and binding" decision so as to bar a subsequent charge based on the same claims. On the merits, if the case were not barred, the employer did not violate the Act by assigning an employee to work at a location within the purview of a separate, but organizationally linked, employer where the duties assigned were within the inherent nature of the employee's position. Finally, a broad management's rights clause will constitute a waiver where the action challenged is specifically addressed therein. (ALJ Cacavas, U-26595, 5/23/07)

POLICE BENEVOLENT ASSOCIATION OF ELMIRA, NEW YORK, INC. AND CITY OF ELMIRA. The ALJ deferred to the parties' grievance and arbitration procedure a charge alleging a violation of the Act when the City's Chief of Police issued an order requiring all personnel operating a department vehicle to pull off the road and stop before using a cell phone. A grievance had been filed under the applicable grievance procedure. (ALJ Burritt, U-27515, 5/24/07)

NANCY MAGUIRE AND CORNWALL CENTRAL TEACHERS ASSOCIATION, VIC ESPOSITO AND CORNWALL CENTRAL TEACHERS ASSOCIATION, AND THOMAS PINDER AND CORNWALL CENTRAL TEACHERS ASSOCIATION. The Director dismissed the charges because they were devoid of facts. (Director Klein, U-27386, U-27387 & U-27388, 5/25/07)

DEPUTY CHAIR AND COUNSEL APPOINTED

William A. Herbert is Deputy Chair and Counsel and functions as the chief legal advisor to the Chairman and to the Board. Prior to joining PERB, Mr. Herbert practiced labor and employment law for over two decades throughout New York State including representation of clients at PERB as well as in federal and state court. Mr. Herbert is a member of the ABA Labor and Employment Section's Technology in the Practice and Workplace Committee and the New York State Bar Association's Labor and Employment Section's Executive Committee. He has been a contributing editor and contributor for the New York State Bar Association's book *Public Sector Labor and Employment Law*, Second Edition, and its supplements. In addition, he has published articles in various law journals and lectured at programs on issues including: New York public sector labor law; new technologies in employment; the application of the First Amendment to public employment; employment discrimination; and whistleblower and retaliation issues. Mr. Herbert is a graduate of the Benjamin N. Cardozo School of Law, Yeshiva University and the University at Buffalo.

ADMINISTRATIVE LAW JUDGE JOINS REPRESENTATION OFFICE

Nancy L. Burritt joined PERB on May 2, 2007 as an Administrative Law Judge in the Office of Public Employment Practices and Representation. She has practiced public sector labor and employment law for more than 20 years, including litigation in state and federal courts, as well as appearances before PERB. Ms. Burritt was an adjunct faculty member of the Cornell University School of Industrial Relations, teaching a certificate course in public sector labor law. She received her bachelor's degree from Eisenhower College and is a graduate of Albany Law School.

ADMINISTRATIVE OFFICER NAMED

Mary Beth Purcell has been named PERB's Administrative Officer. Prior to her arrival at PERB, Ms. Purcell was a Classification and Pay Analyst within the Department of Civil Service since 2004. Additionally, she served as the Executive Assistant to the Personnel Council.

From 1998 through 2003, Ms. Purcell was a Budget Examiner within the Division of Budget's Transportation, Public Authorities, and Economic Development Unit; Health and Environmental Affairs Unit; and the Budget Services Unit. From 1980 through 1997, Ms. Purcell was employed by the Office of Mental Health as a Budgeting Analyst. Additionally, Ms. Purcell has local government experience and was employed by Albany County Department of Social Services.

Ms. Purcell has served as a member and officer of many community boards including the North Colonie Board of Education, the Capital Region Board of Cooperative Educational Services (BOCES), the Colonie Youth Center, the Capital Area School Boards Association, and the Albany County Industrial

Development Authority. She is currently the Chair of the Albany County Human Services Advisory Board.

She is a graduate of Siena College and has pursued graduate studies at the Rockefeller College and Rensselaer Polytechnic Institute.

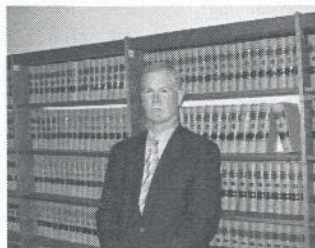
NEW PERB PUBLICATIONS

The 2007 second edition of the *Taylor Law and the Duty of Fair Representation* by Philip L. Maier, Chief Regional Mediator in PERB's Brooklyn Office, is now available by ordering from the PERB website or by calling the PERB office in Albany, 518-457-2678.

Another PERB publication, *Impasse Resolution Under The Taylor Law: Impasse, Mediation, Fact-Finding, Legislative Imposition and Interest Arbitration*, also by Philip L. Maier will be available shortly. Of interest to all public employers and public employees, this book discusses the statutes, case law and rules applicable to all areas of impasse resolution, and helps guide the parties to an understanding of this process. It is useful as both a research tool and as an introduction to those individuals interested in gaining a greater insight to the process.

PERB Newsletter

NYS Public Employment Relations Board
80 Wolf Road, 5th Floor, Albany, NY 12205-2670



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