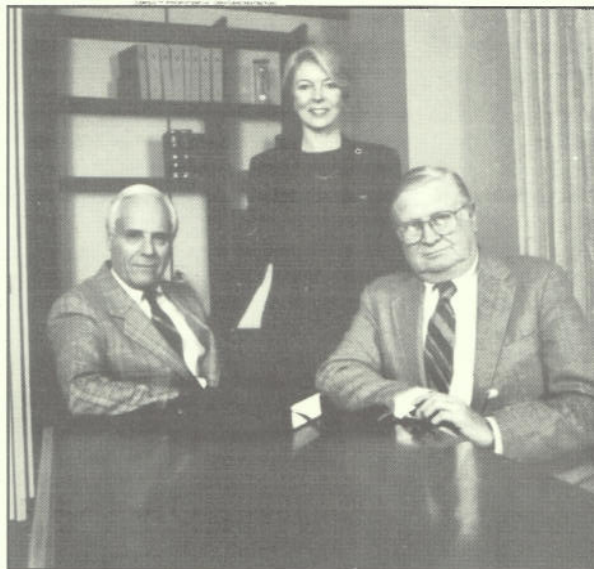


# The PERB – At 30 Years

1997 marks the thirtieth anniversary of the Taylor Law and the Public Employment Relations Board. The three-member Board was created to oversee the Act's implementation and charged specifically with a number of responsibilities. It hears appeals of the decisions by the staff in the Office of Public Employment Practices and Representation on improper practice charges and representation cases. Approximately thirty percent of the Office of Representation decisions are appealed to the Board. In its monthly sessions, the Board may hear oral argument concerning an appeal or reach a decision after a review of the record and all materials submitted. The Board issues approximately 90 decisions annually on these appeals. In addition, petitions for representation are acted on by the Board after election or the Director of Representation's recommendation for certification of uncontested petitions. The Board issued approximately 60 certifications in each of the last three years granting the right to represent specific units of employees in collective bargaining.

The Board, through its Office of Conciliation, maintains a panel of mediators, fact finders and arbitrators. During 1996, the Board reviewed and strengthened its criteria for membership on the grievance arbitration panel. Those members of the panel who do not reach certain specific levels of designation during a three year period are removed.

The Board consists of one full time Chair and two-per diem members, who are appointed by the Governor and confirmed by the Senate for staggered six year terms. No more than two Board members may be of the same political party. The current Board consists of Pauline R. Kinsella, who serves as Chairwoman, and the per diem member, Eric J. Schmertz. There is one vacancy. Over its 30 years, the constitution of the Board has only changed seven times and there have been a total of twelve Board members. They have all been individuals with distinguished records in labor relations. Listed on the following page is each member, a brief bio, and their terms of office.



(continued on page 2)

### PERB BOARD MEMBERS

NAME	DATES OF SERVICE
Chairman Robert D. Helsby	7/67 - 9/77 (Deceased-8/24/95)
<b>MEMBERS:</b>	
George H. Fowler	7/67 - 8/72
Joseph R. Crowley	8/67 - 1/78 (Deceased-12/3/85)
Fred Denson	12/73 - 5/76
Ida Klaus	6/76 - 6/84
Chairman Harold R. Newman	1/78 - 4/91
<b>MEMBERS:</b>	
David C. Randles	6/78 - 1/8 (Deceased-9/17/91)
Walter L. Eisenberg	6/85 - 4/95 (Deceased-4/22/95)
Jerome Lefkowitz	7/86 - 7/87
Eric J. Schmertz	1/90 - 3/90
Chairwoman Pauline R. Kinsella	7/91 - Present
<b>*MEMBERS:</b>	
Eric J. Schmertz	7/91 - Present
*Joseph Farneti	12/96

### NB

We have three notices concerning PERB Publications. First, we had a misprint in the order form appearing in our November issue. The cost of the *Supplement to the Taylor Law Remedies for 1996* is \$20.00 not \$50.00. Second, we are adding a new publication. We will now have available a large print version of the *Taylor Law* publication. A 1997 version is soon to be available at the same cost as regular print (\$8.00). Finally, we have made available a subscription to a monthly report of all charges filed with the Office of Representation. For \$150.00 per year you can receive a monthly list of cases received showing case number, petitioner, respondent and date filed.

Call (518) 457-2676 for further information.

## The PERB at 30 years *(continued from page 1)*

### **ROBERT D. HELSBY, CHAIRMAN 7/67-9/77 (DECEASED 8/24/95)**

First Chair; founder of the Society for Professionals in Dispute Resolution (SPIDR); President of the Association of Labor Relations Agencies (ALRA); founded Public Employment Relations Services (PERS); Executive Deputy Industrial Commissioner at NYS Department of Labor; Dean of Continuing Education at SUNY Albany; Professor at various higher education institutions including Oswego State University and the University of North Florida; and affiliated with several organizations especially the Carnegie Foundation.

### **HAROLD R. NEWMAN, CHAIRMAN 1/78-4/91**

Second Chairman; prior to Board service, was PERB's Director of Conciliation; lectured and wrote extensively across the country on labor relations; former board member of the National Institute for Dispute Resolution; former President of the Association of Labor Relations Agencies; member of the labor and community dispute panels of the American Arbitration Association.

### **PAULINE R. KINSELLA, CHAIRWOMAN 7/91-PRESENT**

Third and current Chair; prior to her appointment to the Board was PERB's Deputy Chair and Counsel; private law practice specializing in labor and employment law; staff attorney to Massachusetts Commission Against Discrimination; Chair of New York Human Rights Arbitration Advisory Committee; Member of the NYS Bar Association's Labor and Employment Law Section Executive Committee and member of AAA Upstate Labor Advisory Council.

### **GEORGE H. FOWLER, MEMBER 7/67-8/72**

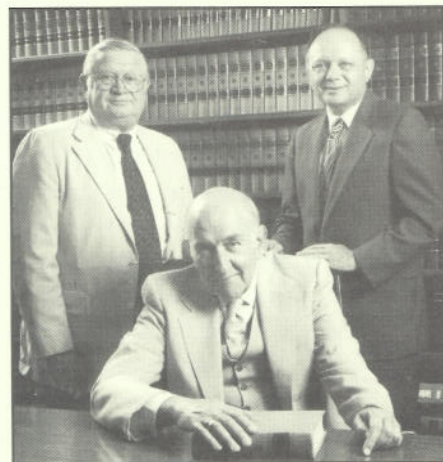
Member of first Board; served in many public posts including as Commissioner of FMCS; Deputy Industrial Commissioner at the NYS Department of Labor, and Chair of the NYS Commission for Human Rights; provided labor relation services for Manhattan Community College; a member of the American Arbitration Association; has maintained a general private law practice.

### **JOSEPH R. CROWLEY, MEMBER 8/67-1/78 (DECEASED 12/3/85)**

Member of first Board; Chairman of the Employee Relations Panel of the Port Authority, consultant to NYC Office of Collective Bargaining; Associate Dean and Cameron Professor of Law at Fordham University School of Law; widely published; long-time labor law practitioner.

### **FRED L. DENSON, MEMBER 12/73-5/76**

Adjunct professor Cornell ILR; formerly attorney for Eastman Kodak; active arbitrator and member of several permanent arbitration panels including the NY Power Authority and IBEW Local 2032 and 2104, NYC Board of Education and the Unified Federation of Teachers, Office of Court Administration and its unions; former Executive Director of the Urban League of Rochester.



### **IDA KLAUS, MEMBER 6/76-6/84**

Recognized as one of the nation's leading labor lawyers, served as Solicitor to the NLRB; served as advisor to President Kennedy on the design of the Executive Order on federal employee-management relations; former Counsel to NYC Department of Labor; wrote the first Labor Relations Act for New York City's Mayor Wagner; distinguished labor arbitrator.

### **DAVID C. RANGLES, MEMBER 6/78-1/86 (DECEASED 9/17/91)**

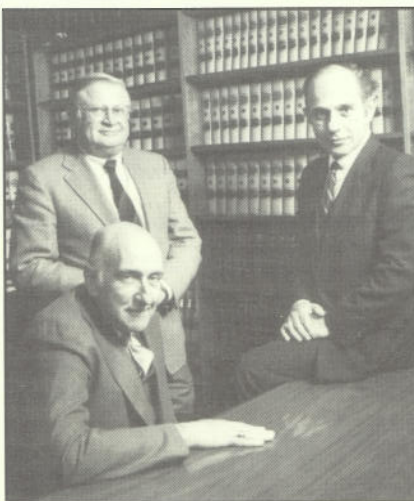
A member of the Episcopal Diocese of Albany; was rector of the Church of the Ascension of Troy at the time of his death; had served as a member of the New York/New Jersey Port Authority Employment Relations Panel; Chairman of the Labor Commissioner's Farm Minimum Wage Advisory Council and adjunct professor at Cornell University; highly regarded mediator, fact finder and arbitrator.

### **WALTER L. EISENBERG, MEMBER 6/85-4/95 (DECEASED 4/22/95)**

Chairman of the Economics Department and Dean of Graduate Studies at Hunter College; former member of the NYC Board of Collective Bargaining; served on the War Labor Board; former board chairman of Group Health Insurance, Inc., and member of the GHI Home Care Board of Governors; renowned labor arbitrator and mediator.

### **JEROME LEFKOWITZ, MEMBER 7/86-7/87**

Prior to Board service was PERB's Deputy Chairman; prior State service



included posts as Assistant Attorney General in the Department of Law, Deputy Industrial Commissioner for Legal Affairs of the Labor Department; has been a labor arbitrator as a member of the American Arbitration Association panel and the panels of New York, New Jersey and Pennsylvania; currently Deputy Counsel of the Civil Service Employees Association, Inc.

### **ERIC J. SCHMERTZ, MEMBER 1/90-3/90 AND 7/91-PRESENT**

Edward F. Carlough Distinguished Professor of Labor Law at Hofstra University and Dean of the Law School (1982-89); Commissioner of Labor Relations of the City of New York Hofstra University; private law practice; permanent chairmanships or umpireships include NYC Nursing Home Industry and SEIU, General Electric and IUE; Port of New York-New Jersey Authority and Transport Workers Union; City of New York and Unified Firefighters and Officers Unions; former member NYC Board of Collective Bargaining.

*\*Mr. Joseph Farneti was appointed to the Eisenberg vacancy by the Governor and confirmed by the Senate on December 3, 1996. Before he could serve Mr. Farneti was appointed as a judge in the Suffolk County District Court.*

### PERB NEWS

New York State  
Public Employment Relations Board  
80 Wolf Rd., Albany, NY 12205-2604

Pauline R. Kinsella, *Chair*  
Eric J. Schmertz, *Member*  
Rosemarie V. Rosen, *Executive Director*

Published monthly by PERB  
(518) 457-2676

# PERB DECISIONS

## Representation

*KENNETH SWART and TOWN OF SAUGERTIES and UNITED FEDERATION OF POLICE, INC.* The Board denied the Federation's request to appeal from a ruling made by an Administrative Law Judge during the processing of a petition seeking the Federation's decertification. Repeating its holdings in earlier cases, the Board held that no request for an interlocutory appeal would be considered if the ruling which is sought to be appealed can be adequately reviewed after the Director of Representation has completed the investigation of all questions concerning representation. (C-4535, 1/29/97)

*MIGUEL SANCHEZ and CONVENTION CENTER OPERATING CORPORATION and LOCAL 1180, COMMUNICATION WORKERS OF AMERICA, AFSCME, AFL-CIO.* Pursuant to an election showing that a majority of eligible employees no longer desired to be represented for purposes of collective negotiations, the Board ordered that CWA be decertified. (C-4499, 1/29/97)

## Implementation

*NASSAU COMMUNITY COLLEGE FEDERATION OF TEACHERS, NYSUT, AFT, AFL-CIO.* The Board annulled an order of a local mini-PERB upon a finding that the local board did not have jurisdiction over the employees in issue. The local mini-PERB was created by the County of Nassau for its employees. Finding that the employees in issue under the representation petition which had been filed with the local board were jointly employed by the Nassau County Community College and the County of Nassau, the Board concluded that the Nassau County mini-PERB could not subject the employees of that different employer to its jurisdiction. (I-0043, 1/29/97)

## Improper Practice

*CITY OF NEWBURGH and PATROLMEN'S BENEVOLENT ASSOCIATION OF NEWBURGH, NEW YORK, INC.* The Board affirmed the Director's determination dismissing the City's charge against the Association because the demands submitted by the Association to interest arbitration were mandatorily negotiable. The demands were for minimum call-in pay, notification of disciplinary actions, a prohibition against subcontracting the Association's unit work, union release time and one permitting the Association to meet with police officer trainees during working hours on City premises to discuss the employees' rights as unit members. (U-17743, 1/29/97)

*AMALGAMATED TRANSIT UNION, DIVISION 726, AFL-CIO and NEW YORK CITY TRANSIT AUTHORITY.* The Board held that the Authority violated the Act when it unilaterally transferred work exclusive to ATU's bargaining unit to nonunit employees of the Authority. The work in issue involved the regular maintenance and repair of buses assigned to Staten Island. The Board concluded that the work in issue was exclu-

sive to ATU's unit; that ATU had not by practice or agreement waived the right to negotiate the transfer of unit work to other of the Authority's own employees; and that the Authority did not have a compelling need to transfer the work from ATU's unit. (U-15254 and U-16037, 1/29/97)

*AMALGAMATED TRANSIT UNION, DIVISION 726, AFL-CIO and AMALGAMATED TRANSIT UNION, DIVISION 1056, AFL-CIO and NEW YORK CITY TRANSIT AUTHORITY and LOCAL 100, TRANSPORT WORKERS UNION, AFL-CIO and NEW YORK CITY TRANSIT AUTHORITY and MANHATTAN AND BRONX SURFACE TRANSIT OPERATING AUTHORITY.* ATU's and TWU's motion to strike parts of the Authorities' exceptions and supporting memorandum of law was denied. The Board concluded that such a motion was not authorized by the Rules and would be considered only upon a showing of some substantial need. As the issues could be reviewed under the exceptions and a response thereto, the Board denied the motion. (Case Nos. U-17434, U-17435 and U-17447, 1/29/97)

*SHARON HOKE and INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 182 and UNITED PUBLIC SERVICE EMPLOYEES UNION, LOCAL 424, A DIVISION OF UNITED INDUSTRY WORKERS DISTRICT COUNCIL 424.* Affirming the Assistant Director, the Board concluded that Teamsters Local 182 violated the Act when it caused Hoke's medical and disability benefits to be discontinued immediately after it lost a representation election to Local 424. The Board concluded that a bargaining agent may lawfully renounce its status only by both unequivocally and in good faith disclaiming further interest in representing a unit. The good faith component requires that the disclaimer be for a proper purpose and that it be communicated to all interested persons and parties reasonably in advance of a date certain by which the union will cease serving as the employee's bargaining agent. Teamsters Local 182 did not make an unequivocal disclaimer on notice to all interested persons until after the medical and disability benefits had been cancelled. Therefore, by causing the premature termination of Hoke's benefits, Teamsters Local 182 violated its duty of fair representation as a matter of law. (U-17243, 1/29/97)

*CIVIL SERVICE EMPLOYEES ASSOCIATION, INC., LOCAL 1000, AFSCME, AFL-CIO, TOWN OF CLARENCE UNIT OF LOCAL 815 and TOWN OF CLARENCE.* The Town was held to have violated the Act by unilaterally consolidating two fifteen-minute coffee breaks, one taken in the morning and one in the afternoon, into one thirty-minute coffee break to be taken in the morning. The Board concluded that the number of times employees are released from their job duties for rest and refreshment are mandatorily negotiable subjects even if the length of the work day and the employees' work load are not increased. (U-17333, 1/29/97)

# DECISIONS OF THE OFFICE OF PUBLIC EMPLOYMENT PRACTICES AND REPRESENTATION

**GREENBURGH NO. 11 FEDERATION OF TEACHERS, NYSUT and GREENBURGH NO. 11 UNION FREE SCHOOL DISTRICT.** The District was found to have violated the Act when it instituted Education Law §3020-a charges against several teachers and discharged several teacher associates. In these regards, the ALJ found that the charges and the terminations from employment were improperly motivated. All other allegations in the several charges which had been consolidated for hearing were dismissed. These allegations included the assignment of teachers to curriculum projects at separate sites throughout the District and the submission of a merit pay proposal accompanied by a page entitled "potential funds available for merit raises". Similarly, the distribution to unit employees of a memorandum reporting accurately on the status of negotiations and the distribution to them of a copy of a response from the District to a grievance did not violate the Act. (ALJ Milowe, U-16107, U-16481, U-17135 & U-17530, 12/19/96)

**PATROLMEN'S BENEVOLENT ASSOCIATION OF THE VILLAGE OF WALDEN, NEW YORK STATE UNION OF POLICE ASSOCIATIONS, INC., LOCAL 8 and VILLAGE OF WALDEN.** The Village was held to have violated the Act when it unilaterally discontinued certain fringe benefits which had been provided to police officers on leave under General Municipal Law (GML) §207-c. Rejecting jurisdiction and waiver defenses, the ALJ held that the noncontractual GML §207-c benefits embraced terms and conditions of employment and that the unilateral discontinuation of those practices violated the Village's duty to negotiate. (ALJ Barsamian, U-16443, 12/19/96)

**CIVIL SERVICE EMPLOYEES ASSOCIATION, INC., LOCAL 1000, AFSCME, AFL-CIO and STATE OF NEW YORK (DEPARTMENT OF TAXATION AND FINANCE).** CSEA's charge alleging that the State violated the Act by imposing a new policy on dress and work attire was dismissed as untimely filed. The ALJ concluded that the charge was filed more than four months after the policy memorandum in issue was adopted. Even if the charge were timely, the ALJ noted that as the memorandum in issue merely reaffirmed an existing dress code policy, there was no change in practice. (ALJ Mayo, U-17593, 12/19/96)

**UNITED UNIVERSITY PROFESSIONS AND STATE OF NEW YORK (GOVERNOR'S OFFICE OF EMPLOYEE RELATIONS).** A charge alleging that the State violated the Act when it failed to carry over unexpended funds for the parties' joint labor-management committees was deferred to a contractual grievance to be filed by UUP. (Ass't. Dir. Toomey, U-17949, 12/23/96)

**AVERILL PARK CENTRAL SCHOOL DISTRICT.** The Director designated the District's Senior Typist to the Assistant Superintendent of Schools as confidential upon the stipulation and consent of the parties. (Dir. Klein, E-2050, 12/24/96)

**WARSAW EDUCATORS ASSOCIATION, NEA/NY and WARSAW CENTRAL SCHOOL DISTRICT.** A charge alleging that the District violated the Act when it failed to appoint an employee in the Association's unit as the Director of Athletics was deferred to a pending contractual grievance. (ALJ Fitzgerald, U-18199, 12/26/96)

**CIVIL SERVICE EMPLOYEES ASSOCIATION, INC., LOCAL 1000, AFSCME, AFL-CIO, SUNMOUNT DEVELOPMENT CENTER, LOCAL 431 and STATE OF NEW YORK (OFFICE OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES - SUNMOUNT DDSO).** A charge alleging that the State violated the Act by making several unilateral changes in terms and conditions of employment was deferred to a pending contractual grievance. (ALJ Nathan, U-18079, 12/27/96)

**QUESTAR III BOARD OF COOPERATIVE EDUCATIONAL SERVICES.** The Assistant Director designated several District employees as managerial or confidential upon the stipulation and consent of the parties. (Asst. Dir. Toomey, E-2046, E-2047, E-2048, 12/30/96)

**MARIANNE SCHANZENBACH and MARLBORO FACULTY ASSOCIATION.** The ALJ held that certain aspects of Schanzenbach's charge were timely filed and that certain others were untimely. As the parties had agreed to the payment of a sum of money to Schanzenbach if the charge were held to be timely filed, the ALJ did not reach the merits or issue a remedy with respect to those portions of the charge which had been timely filed. (ALJ Nathan, U-17585, 12/31/96)

**WILLIAM B. DYE and NEW YORK CITY TRANSIT AUTHORITY and TRANSPORT WORKERS UNION, LOCAL 100.** The Director dismissed this charge as untimely filed. The charge was filed on October 25, 1996 but the acts of impropriety all occurred before June 25, 1996. Although an arbitrator's award was issued within the four-month filing period, the Director held that the issuance of an arbitration award did not trigger a new filing period. (Dir. Klein, U-18321, 1/2/97)

**CIVIL SERVICE EMPLOYEES ASSOCIATION, INC., LOCAL 1000, AFSCME, AFL-CIO, ERIE COUNTY LOCAL 815, BUFFALO MUNICIPAL HOUSING AUTHORITY UNIT and BUFFALO MUNICIPAL HOUSING AUTHORITY.** Charges alleging that the Authority violated the Act by eliminating a day and night shift were deferred to pending contractual grievances. (ALJ Doerr, U-18341 & U-18342, 1/3/97)

**COUNTY OF WESTCHESTER and WESTCHESTER COUNTY CORRECTION OFFICERS BENEVOLENT ASSOCIATION, INC.** The County alleged that the Association violated the Act by repudiating provisions of the collective bargaining agreement regarding the scheduling of disciplinary arbitration hearings. Finding that the charge raised only allegations of potential contract violation, not contract repudiation, the ALJ dismissed the charge for lack of jurisdiction. (ALJ Mayo, U-17247, 1/3/97)

**ODESSA-MONTOUR TEACHERS ASSOCIATION and ODESSA-MONTOUR CENTRAL SCHOOL DISTRICT.** The ALJ dismissed a charge alleging that the District had violated the Act by contracting through a BOCES for a part-time remedial math teacher. The ALJ held that the Court of Appeals' decision in *Webster Central School District v. PERB* was applicable to the case and exempted the District from any duty to bargain with the Association about the decision to contract with a BOCES for instructional services. (ALJ Barsamian, U-17098, 1/6/97)

**COMMAND OFFICERS ASSOCIATION OF TROY and CITY OF TROY.** A charge alleging that the City had improperly discontinued a term of the parties' expired collective bargaining agreement was deferred to a pending contractual grievance. (Asst. Dir. Toomey, U-18456, 1/6/97)

**TRANSPORT WORKERS UNION, LOCAL 100 and NEW YORK CITY TRANSIT AUTHORITY.** A charge alleging that the Authority violated the Act by refusing to grant release time to a union representative to permit him to represent employees when they were presented with disciplinary charges was deferred to a pending contractual grievance. (ALJ Maier, U-18325, 1/6/97)

**GLENS FALLS FIREFIGHTERS UNION, LOCAL 2230, IAFF, AFL-CIO and CITY OF GLENS FALLS.** The City was held to have violated its duty to bargain by submitting to compulsory interest arbitration two demands which were not mandatory subjects of negotiation. Found nonmandatory were demands to delete provisions regarding compulsory callback and minimum staffing. Found mandatory was a demand for health insurance benefits for current employees who retire in the future. (Ass't. Dir. Toomey, U-18006, 1/6/97)

(continued on page 5)

## DECISIONS OF THE OFFICE OF PUBLIC EMPLOYMENT PRACTICES AND REPRESENTATION

(continued)

*CIVIL SERVICE EMPLOYEES ASSOCIATION, INC., LOCAL 1000, AFSCME, AFL-CIO and STATE OF NEW YORK (STATE UNIVERSITY OF NEW YORK AT OSWEGO).* A charge alleging that the State violated the Act when it adopted a dress code was deferred to a pending contractual grievance. (Dir. Klein, U-18173, 1/6/97)

*CITY OF DUNKIRK (POLICE DEPARTMENT).* The Director designated the City's Secretary to the Chief of Police as confidential upon the stipulation and consent of the parties. (Dir. Klein, E-2060, 1/7/97)

*FAYETTEVILLE-MANLIUS CENTRAL SCHOOL DISTRICT.* The Director designated the District's Personnel Administrator as managerial and the Secretary to the Personnel Administrator as confidential upon the stipulation and consent of the parties. (Dir. Klein, E-2055, 1/8/97)

*BUFFALO MUNICIPAL HOUSING AUTHORITY.* The Director designated the Authority's Deputy Director for Family Support Services and the Deputy Executive Director for Personnel as confidential upon the stipulation and consent of the parties. (Dir. Klein, E-2056 and E-2057, 1/9/97)

*BUFFALO POLICE BENEVOLENT ASSOCIATION and CITY OF BUFFALO (POLICE DEPARTMENT).* A charge alleging that the City violated the Act when it unilaterally changed eligibility for hazardous duty pay and call-in pay was deferred to pending contractual grievances. (ALJ Kaufman, U-18392, 1/13/97)

*SOUTH MANOR TEACHERS' ASSOCIATION and SOUTH MANOR UNION FREE SCHOOL DISTRICT.* The Director placed the newly-created position of teaching assistant into a unit of professional teaching personnel. The Director determined that the teaching assistants shared a community of interest with unit employees growing out of similar job responsibilities and certification by the State Department of Education and that there was no compelling disparity of benefits which would be likely to create any conflict in negotiations. (Dir. Klein, CP-434, 1/14/97)

*ARTHUR PIETRASZEWSKI, JR., and CIVIL SERVICE EMPLOYEES ASSOCIATION, INC., LOCAL 1000, AFSCME, AFL-CIO and STATE OF NEW YORK (STATE UNIVERSITY COLLEGE AT BUFFALO).* The Director dismissed as untimely a charge alleging that CSEA had breached its duty of fair representation in the handling of a grievance. The Director concluded that any possible misconduct by CSEA in the handling of the grievance occurred more than four months before the charge was filed and that requests by the charging party to have CSEA's president review the matter did not extend the filing period. (Dir. Klein, U-18356, 1/14/97)

*AMALGAMATED TRANSIT UNION, LOCAL 1342 and NIAGARA FRONTIER METRO SYSTEM, INC.* A charge alleging that the Metro System violated the Act by contracting for radio repair and installation work was deferred to a pending contractual grievance. (ALJ Doerr, U-18443, 1/15/97)

*WINDSOR CENTRAL SCHOOL DISTRICT.* The Director designated the District's Director of School Facilities and Operations II and the Transportation Supervisor as managerial upon the stipulation and consent of the parties. (Dir. Klein, E-2042, 1/15/97)

*PUBLIC EMPLOYEES FEDERATION, AFL-CIO, CLAIRE POSPISIL and SANDRA WILLIAMS and STATE OF NEW YORK (DEPARTMENT OF STATE).* A charge alleging that the State violated the Act when it laid off two employees, allegedly in retaliation for their having engaged in activities protected by the Act, was dismissed upon a finding that the charging parties had not proven that the lay off was motivated by union animus. (Asst. Dir. Toomey, U-17201, 1/21/97)

*POLICE BENEVOLENT ASSOCIATION OF THE NEW YORK STATE TROOPERS, INC. and STATE OF NEW YORK (DIVISION OF STATE POLICE).* The State was found to have violated the Act

by failing to pay a \$100 clothing allowance required by the terms of the parties' expired collective bargaining agreement. The ALJ concluded that the parties had never agreed to sunset the clothing allowance upon expiration of the agreement. (ALJ Comenzo, U-17480, 1/22/97)

*VESTAL EMPLOYEES ASSOCIATION, NEANY, NEA and VESTAL CENTRAL SCHOOL DISTRICT.* The District was found to have violated the Act when it unilaterally transferred printing services that had been exclusively performed by an employee in the Association's unit to personnel employed by a BOCES. The ALJ concluded that notice of claim had been timely filed with the Board of Education's clerk, that the duties in issue were exclusive to the Association's unit and that the transfer of the unit work was not exempt from mandatory negotiation under the Court of Appeals' decision in *Webster Central School District v. PERB*. According to the ALJ, the Court's decision is only applicable to educational services, not to the type of non-instructional services in issue under the Association's charge. (ALJ Barsamian, U-17344, 1/22/97)

*DSBA OF ONONDAGA COUNTY, INC. and COUNTY OF ONONDAGA and SHERIFF.* A charge alleging that unit work was improperly transferred to nonunit employees was dismissed for lack of jurisdiction. The ALJ held that an agreement reached in settlement of an earlier improper practice charge constituted a source of right to the DSBA regarding the subject matter of this charge. (ALJ Comenzo, U-17065, 1/24/97)

*MARY ANNE SALLUSTRO and BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK and UNITED FEDERATION OF TEACHERS.* A charge alleging that the District and Federation violated all of the improper practice provisions of the Act was dismissed as deficient. The deficiencies included that the amendment was unsworn, that the necessary copies of the attachments and the amendment were not filed, that the charge was devoid of any facts in support of the conclusory allegations of unfairness and illegality and that several of the alleged instances of misconduct occurred more than four months before the charge was filed and were, therefore, untimely. (Dir. Klein, U-18528, 1/24/97)

*PUBLIC EMPLOYEES FEDERATION, AFL-CIO and STATE OF NEW YORK (DEPARTMENT OF LABOR).* A charge alleging that an employee was not appointed to a permanent position because of his exercise of protected rights under the Act was dismissed. The ALJ concluded that the employee in question was not promoted because of legitimate business reasons, not because of any exercise of statutorily protected rights. (ALJ Maier, U-17423, 1/24/97)

*GREENBURGH NO. 11 UNION FREE SCHOOL DISTRICT.* The Director designated the District's Administrative Assistants in the Business Office and its Senior Payroll Clerk as confidential upon the stipulation and consent of the parties. (Dir. Klein, E-2049, 1/24/97)

*CALADONIA-MUMFORD SUPPORT STAFF ASSOCIATION, NYSUT/AFT/AFL-CIO and CALADONIA-MUMFORD CENTRAL SCHOOL DISTRICT.* A charge alleging that the District violated the Act when it refused to pay bus drivers for extra runs was deferred to a pending contractual grievance. (ALJ Kaufman, U-18471, 1/27/97)

*PATCHOGUE-MEDFORD CONGRESS OF TEACHERS and PATCHOGUE-MEDFORD UNION FREE SCHOOL DISTRICT.* The District was found to have violated the Act by unilaterally adopting certain administrative regulations pertaining to sexual harassment of students and employees. Procedurally, the ALJ held that the charge was both timely filed and that notice of claim pursuant to Education Law §3813 had been given in accordance with that statute. The ALJ also held that the charge was not preempted by either federal law or regulation because the District was not required to take the

(continued on page 6)

## DECISIONS OF THE OFFICE OF PUBLIC EMPLOYMENT PRACTICES AND REPRESENTATION

(continued)

actions that it took. On the merits, the ALJ held that those parts of the sexual harassment policies which imposed disciplinary penalties and disciplinary procedures were mandatorily negotiable subjects. Those parts of the policies establishing a mechanism for the filing of harassment complaints and providing for an appeal mechanism were found not to be mandatorily negotiable. Moreover, those parts of the policies requiring immediate action and appropriate sanctions were found not to constitute any change in the disciplinary penalties available under the terms of the parties' collective bargaining agreement. (ALJ Blassman, U-15443, 1/27/97)

*COUNCIL 82, AFSCME, AFL-CIO AND STATE OF NEW YORK (DEPARTMENT OF CORRECTIONAL SERVICES)*. A charge alleging that the State violated the Act by unilaterally imposing new dress standards was dismissed by the ALJ upon a finding that the charge was not timely filed. Alternatively, the ALJ concluded that the charge would have been dismissed even if had been timely filed because there was no change in practice and because Council 82 may have waived its right to negotiate the issue by virtue of its conduct in conjunction with the imposition of the dress standards. (ALJ Mayo, U-15949, 1/28/97)

*FREDONIA POLICE BENEVOLENT ASSOCIATION, INC. AND VILLAGE OF FREDONIA*. The Association's charge that the Village violated the Act by assigning unit work to nonunit personnel was dismissed. The ALJ determined that the Association did not have exclusivity over the work in issue because part-time employees had performed the same duties as the full-time employees for a number of years. (ALJ Doerr, U-17830, 1/28/97)

*CIVIL SERVICE EMPLOYEES ASSOCIATION, INC., LOCAL 1000, AFSCME, AFL-CIO AND TOWN OF GRAND ISLAND*. The Director included in a unit of Town employees the Town Engineer, Water Superintendent, Waste Water Superintendent, Director of Recreation, Town Accountant and Building Inspector. In that regard, the Director determined that those employees were not managerial as the Town had alleged. However, the Town's Account Clerk/Mini-Computer Operator was excluded from the unit upon a determination that she was confidential within the meaning of the Act because she was necessarily exposed in the course of the performance of her duties to discussions regarding nonfinal proposals for negotiations. (Dir. Klein, C-4571, 1/28/97)

*DUNKIRK SUPERVISORS' ASSOCIATION AND DUNKIRK CITY SCHOOL DISTRICT*. Following a remand of the case pursuant to an earlier Board decision, the Director concluded that the Supervisor of Buildings, Grounds and Transportation was most appropriately added to a unit which included building administrators/principals, assistant principals, directors of special education, elementary education, early and continuing education and special projects. Although acknowledging that the position in issue did not fit neatly into any of the District's existing units, the Director concluded that the most appropriate unit for this employee, who was eligible for representation under the Act, was the unit of educational administrators. The Director concluded that it was those employees with whom the Supervisor shared the greatest community of interest and the least likelihood of a conflict of interest. (Dir. Klein, C-4458, 1/28/97)

*POLICE ASSOCIATION OF GREENBURGH AND TOWN OF GREENBURGH*. The ALJ dismissed a charge alleging that the Town violated the Act by submitting to interest arbitration a nonmandatory subject of negotiation. The ALJ held that a demand relating to the continuation of health insurance for employees after their retirement was mandatorily negotiable. The demand would cover only employees who were employed on and after the expiration of the parties' last collective bargaining agreement. (ALJ Comenzo, U-18024, 1/29/97)

*BUFFALO PROFESSIONAL FIREFIGHTERS ASSOCIATION, LOCAL 282 AND CITY OF BUFFALO (FIRE DEPARTMENT)*. The City was found to have violated the Act by submitting to compulsory interest arbitration certain demands which were either nonmandatory subjects of bargaining or which had not been submitted for negotiations earlier. Found nonmandatory were City demands requiring unit employees to have a working telephone in their place of residence, demands regarding medical and dental insurance, which the ALJ found to be vague and incomplete, a maintenance of benefits clause which was not limited to mandatory subjects of negotiation and a demand reiterating the provisions of General Municipal Law §207-a. The charge was dismissed as to demands for a zipper clause and for differential pay pursuant to the Workers Compensation Law because the ALJ held them to be mandatorily negotiable. The demand which had not been raised in negotiations prior to the declaration of impasse called for unit employees who were off work as a result of illness or injury to submit to random drug testing. (ALJ Doerr, U-18306, 1/29/97)

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