THE ADVOCATE

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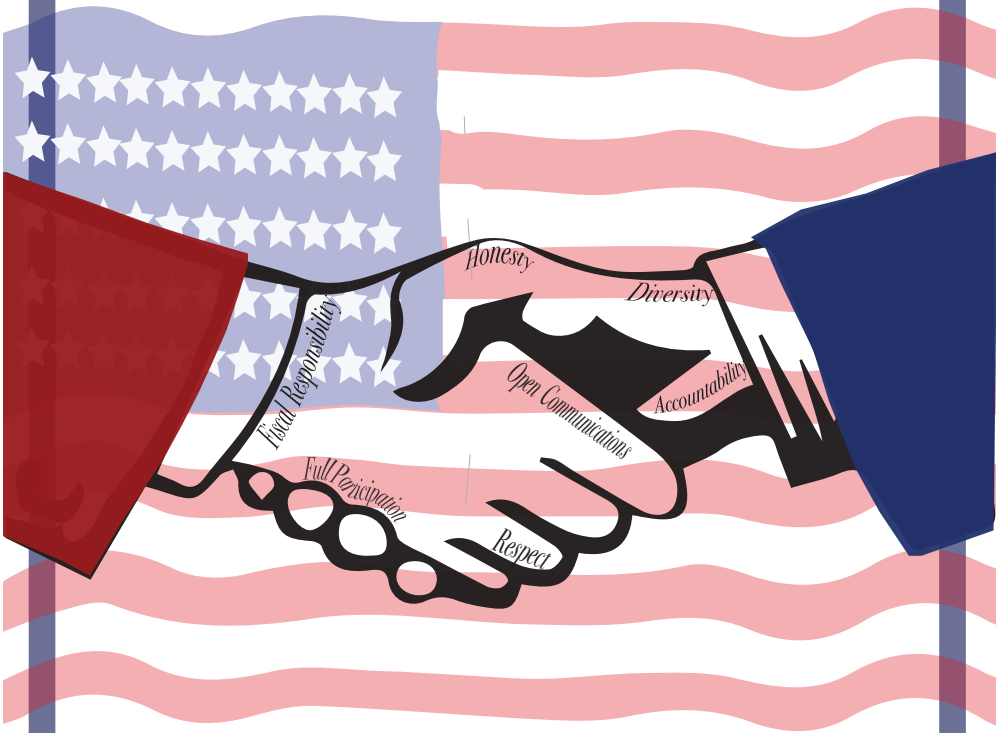

CSEA
Local 1000 AFSCME, AFL-CIO

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New York State Court determines Buffalo teachers engaged in an unlawful strike

After more than four years of litigation, a New York State Appeals Court has upheld the Public Employment Relations Board's ruling that found 16 Buffalo teachers, part of the Buffalo Teachers Federation, had engaged in an unlawful strike. The Buffalo Teachers Federation is a labor union representing a collective bargaining unit of teachers and other employees in the Buffalo City School District (hereinafter "District").

The case originated in 2018 when the District filed a charge against the Buffalo Teachers Federation with the Public Employment Relation Board (hereinafter "PERB"). The charge alleged that various teachers improperly called out of work the day after an extremely violent physical altercation broke out between students and two older individuals in one of the schools' parking lots. This incident took place while staff and teachers assisted with dismissal and bus duties. Subsequent to the melee and while fleeing law enforcement, one of the older individuals, stated, "I'm coming tomorrow with a gun to shoot up this . . . . f****** school, and if you show up to work tomorrow, you're going to all die." The assailants also threatened to stab one of the teachers while holding a knife. Multiple students were injured. Due to the level of violence that had occurred, many of the teachers

were upset, hugging and crying after the incident, visibly shaken and terrified. Shortly after the incident, the building's union representative held a meeting with its union teachers, wherein safety concerns were raised. It was alleged that the union delegate told others, who planned to be absent the next day because of the emotional impact from the incident, to take a sick day and not a personal day. In addition to the meeting, the union officer also communicated via text message with teachers and other union officers about not reporting to work the following day.

In April, 2018, the District filed an improper practice charge against the Buffalo Teachers Federation, stating that it illegally organized a strike or stoppage of work for the day after the violent incident. The Buffalo Teachers Federation defended the charge by stating that the facts do not support a strike under the Taylor Law, as teachers were out sick because of extreme upset, anxiety and fear over the melee that had occurred the day before. Moreover, due to the violence in the months leading up to the incident and nationwide, the union argued that it was an understandable emotional response for the teachers to meet and to attempt to process what happened. The teachers' union stated that the Taylor Law was not violated when an employee is absent from work because of a reasonable basis for concern about safety.

Finding in favor of the District, PERB determined that the Buffalo Teachers Federation did engage in an unlawful strike and should have filed a grievance to address their safety concerns. The Taylor Law provides that "[n]o public employee or employee organization shall engage in a strike, and no public employee or employee organization shall cause, instigate, encourage, or condone a strike." The word "strike" is defined as "any concerted stoppage of work or slowdown by public employees." While there are no definitive requirements for determining whether a strike has occurred, the Taylor Law states that it can be where "an employee is absent from work without permission, or who abstains wholly or in part from the full performance of his [or her] duties in his [or her] normal manner without permission, on the date or dates when a strike occurs, shall be presumed to have engaged in such strike on such date or dates."

Thereafter, the Buffalo Teachers Federation appealed the

decision to the Appellate Division, Third Department. Upon review of the record, the Appellate Division upheld PERB's decision and found that the "evidence amply supports the conclusion that . . . . [16] teachers engaged in a concerted slowdown or stoppage of work as part of a coordinated effort to obtain a safer work environment." *Buffalo Teachers Fed'n, Inc. v. NYS PERB, et al.*, --- NYS3d ---- (July 21, 2022). While stating that "there is evidence that could support an alternate conclusion," the court noted that the union and its officers could have taken affirmative steps to make it clear that it was not causing, instigating, encouraging or condoning a strike. Therefore, the Appellate Division confirmed PERB's decision.

This case is a very good example of the importance of being clear in our communications with our members and, especially, to keep in mind that large-scale absences can be construed as a strike or work stoppage, even if there is a good faith intent behind such absences.

DISCIPLINARIES

State Disciplines:

NYS Office of Children & Family Services
(Arbitrator Arno)
Matter No. 21-0055

The Grievant, a Youth Development Aide 4 with OCFS, was disciplined as the result of (1) an alleged altercation with a coworker; (2) an incident where the Grievant allegedly brought in and used marijuana in the OCFS facility and then refused a request to be drug tested; and (3) an incident where the Grievant allegedly granted special favors and had unauthorized conduct with a youth. In addition, the Grievant was charged with not wearing a face mask and using inappropriate language and acting inappropriately while on the job. CSEA's position was that (1) the dispute with the coworker was verbal, not physical, and both employees were counseled; (2) with respect to the marijuana charges, there was not enough evidence to support the claim, since no marijuana was ever found; (3) with respect to the Grievant having unauthorized conduct with a youth, the Grievant's intent was to build rapport with him since he had lost his mother; and (4) with respect to the Grievant not wearing a mask, this was not intentional as the strings had broken and the mask could not be worn. With respect to the foregoing charges, Arbitrator Arno determined that the Grievant was guilty of all of them, except for the charge that he possessed and used marijuana while at work, and specifically noted that most of the Grievant's excuses for the charges were self-serving and not credible. Further, since the Grievant was an experienced employee in an important position with an adequate work record who should have known better, Arbitrator Arno determined that termination was an appropriate penalty.

New York State Canal Corporation
(Arbitrator Rinaldo)
Matter No. 22-0118

The Grievant, a Carpenter employed by the Canal Corporation, was served with a notice of discipline alleging four separate charges of misconduct all relating to his alleged submission of fraudulent or misleading information on Canal Corp.'s COVID-19 daily health screening. Canal Corp. sought the penalty of termination. The Grievant argued that the daily health screening was unclear and that he had not suffered from the symptoms which would have prevented him from reporting to work. He also argued that the symptoms he suffered were related to allergies and that he had previously been directed to report to work despite having the same allergy symptoms. Canal Corp. argued that the Grievant should have called his supervisor to discuss his confusion rather than report to work as he did. Furthermore, Canal Corp. argued that because the Grievant failed to leave work after being told to do so immediately, he committed an additional act of misconduct while also putting his co-worker's health at risk. Ultimately the Arbitrator found the Grievant guilty of Charges 1, 3, and 4 and recommended the Grievant be suspended for one year without pay. The Arbitrator agreed with CSEA that Charge 2 must be dismissed because it was essentially duplicative of Charge 1. In making his decision, the Arbitrator relied on the credible testimony of the Canal Corp. witnesses, which led him to conclude that the Grievant's testimony was wholly untruthful.

SUNY Downstate Health Sciences University
(Arbitrator Panepento)
Matter No. 21-0719

The Grievant, a Cleaner employed by the SUNY Downstate Health Sciences University in the Facilities Management & Development Department, was issued a notice of discipline seeking her termination. The NOD contained 60 specifications of misconduct relating to four incidents. SUNY alleged in each specification that the Grievant engaged in misconduct, insubordination, or gross

insubordination, and unprofessional behavior, was derelict in her duties, and interfered with the operation of her department. The Grievant denied the allegations and claimed that the testimony of two students, two supervisors, and a co-worker concerning her actions was inaccurate. Firstly, the Arbitrator found SUNY met its burden to suspend the Grievant pending the outcome of this matter by showing that the Grievant's continued presence at work would severely interfere with operations. Secondly, the Arbitrator found the Grievant guilty of the alleged misconduct and found the proposed termination penalty appropriate. Although the Grievant had not been subject to progressive discipline before the issuance of the NOD, the Arbitrator found that the Grievant's conduct warranted termination because it was highly offensive and far outside the bounds of acceptable behavior in the workplace. Furthermore, because the Grievant did not acknowledge any wrongdoing or express remorse, the Arbitrator concluded that if the Grievant were to return to work, SUNY could not be assured that she would behave differently, and therefore termination was appropriate.

SUNY Stony Brook
(Arbitrator Campagna)
Matter No. 21-0985

The Grievant was employed by SUNY Stony Brook as a Nursing Assistant in the Labor and Delivery section. The Grievant was suspended and served a Notice of Discipline seeking termination for failure to be vaccinated against COVID-19. The Notice of Discipline was subsequently amended to include a reference to the relevant Department of Health regulation. The Arbitrator found that the Grievant was aware of the vaccine mandate; that she made a conscious decision not to receive a COVID-19 vaccine; that she works with vulnerable patients and other essential workers; that Stony Brook has the right to give directives enforcing laws and regulations; and that the Grievant did not seek a medical or religious exemption or accommodation from vaccination. The Arbitrator found the Grievant guilty, found the suspension to be proper, and determined that termination was the appropriate

penalty, as there was no reason to believe that the Grievant would become vaccinated if reinstated. The Arbitrator also rejected the Union's argument that the Grievant's suspension should be continued until the vaccine mandate is lifted, noting that there is no evidence to suggest the mandate will be lifted.

Roswell Park Cancer Center
(Arbitrator Panepento)
Matter No. 21-0994

The Grievant was employed by Roswell Park as a Medical Records Associate II. Roswell Park determined that all of its employees were covered by the COVID-19 vaccine mandate. The Grievant sought a medical exemption from the vaccine mandate but did not provide documentation demonstrating that she could not receive the COVID-19 vaccine. Her exemption request was denied. She was suspended and issued a Notice of Discipline seeking termination. Subsequently, she was granted a religious exemption. That exemption was rescinded when a court determined that hospitals and healthcare facilities were not required to offer religious exemptions. The Grievant then received a new Notice of Discipline seeking termination. The Arbitrator found that the Grievant's refusal to be vaccinated constituted violation of regulations, insubordination and misconduct, but not dereliction of duty or incompetence, and therefore dismissed certain charges in the NODs but upheld others. The Arbitrator found that termination was the appropriate penalty, and that the suspension was proper.

Roswell Park Cancer Center
(Arbitrator Panepento)
Matter No. 21-0947

The Grievant was employed by Roswell Park as a High Voltage Electrician Supervisor. Roswell Park determined that all of its employees were covered by the COVID-19 vaccine mandate. The Grievant was suspended and issued a Notice of Discipline seeking his termination for failure to be vaccinated against COVID-19.

Although the Grievant discussed with HR some health-related concerns he had about being vaccinated, he did not request a medical exemption. Although the Grievant received the first dose of the vaccine subsequent to the NOD being issued (and prior to the arbitration), no evidence was submitted that he received a second dose. The Arbitrator found that the Grievant's refusal to be vaccinated constituted violation of regulations, insubordination, and misconduct, but not dereliction of duty or incompetence, that therefore dismissed certain charges in the NOD but upheld others. The Arbitrator found that termination was the appropriate penalty, and that the suspension was proper.

Local Disciplines:

Seneca County
(Arbitrator Gelernter)
Matter No. 21-0688

The Grievant, a Public Health Sanitarian for the County for 11 years, was suspended for 20 days and charged with misconduct/ incompetence, neglect of job duties, failure to follow instructions, using abusive/profane/threatening language, failure to follow instructions, falsification of County forms, conviction of a crime, and an inability to get along with co-workers. The County argued that she was rude and argumentative with her supervisor, that she failed to properly complete and document inspections and her time on multiple dates, and that her improper inspections were a potential violation of criminal law. CSEA argued that the County had not proven the Grievant's guilt and presented no evidence at all in support of some of the charges, in particular whether her time reporting inaccuracies constitutes a criminal offense. The Arbitrator found that on one occasion the Grievant's time reports were negligently inaccurate, that on another occasion she performed an inadequate inspection due to inexperience and insufficient attention to detail, and that at times she acted unprofessionally by being overly argumentative with her supervisor. Although the Arbitrator found the Grievant guilty of three counts of misconduct, he noted that she did not repeat the same type of offense after

previous discipline and her misconduct was much less serious than alleged in the NOD. Therefore, the arbitrator imposed a three-day suspension without pay, and ordered the County to provide the Grievant with 17 days of backpay, benefits, and credits.

Erie County/Office of the Sheriff
(Arbitrator O'Connell)
Matter No. 22-0149

Grievant was a Correctional Officer for the County for four years. He was previously issued a NOD seeking termination, which was settled for a one year and 10-month suspension without pay. In this matter, the County sought his termination for allegedly leaving his post without authorization, refusing to follow directives to provide a written explanation for his absences, and being absent without leave numerous times. The County argued that the Grievant was insubordinate when he failed to provide a written statement accounting for his absence. The County argued that when it requested that statement, discipline was not imminent, therefore union representation rights were not triggered, and that County policy dictates that the Grievant should have obeyed the order and grieved later. With regards to attendance issues, the County argued both that the Grievant called in late on six occasions and was absent without leave at least 30 times, and that the County had offered to place the Grievant on leave but the Grievant refused. CSEA argued that (1) the Grievant's Weingarten rights were violated when he was denied the opportunity to speak with his union representative prior to providing a written explanation for his absence, despite repeatedly requesting to do so, (2) the Grievant's right to a pre-termination meeting were violated, (3) after the Grievant's prior suspension, the progressive discipline clock was re-set and therefore the County's actions here violated progressive discipline, and (4) the County violated the Grievant's rights under the Americans with Disabilities Act because the County was aware of the Grievant's anxiety and depression, and was therefore obligated to explore whether a reasonable accommodation or protected leave was warranted. The Arbitrator found that the Grievant was absent without leave and that the procedural errors

in this matter did not violate due process so much as to merit overturning the discipline imposed. However, the Arbitrator did find that the Grievant's Weingarten rights were violated and he was not being insubordinate in refusing to provide a written statement to the County regarding his absence. The Arbitrator found that the progressive discipline clock was not re-set after the Grievant's prior suspension, and therefore there was progressive discipline here. The Arbitrator also found there was insufficient proof to demonstrate a violation of the ADA. The Arbitrator upheld that the County's termination of the Grievant.

Baldwinsville Central School District
(Arbitrator Whelan)
Matter No. 21-0892

The Grievant, a School Bus Driver for the District, normally performed two shifts of work per a day. However, for a period of time he was required to perform three shifts of work per day. The Grievant requested to not be assigned one of those shifts and stated that he suffered from daytime drowsiness. Grievant then called in sick for multiple shifts. In support of his sick leave, he provided a doctor's note stating he had severe insomnia. When he underwent licensing medical examinations one month later, the Grievant did not affirmatively disclose a medical history of daytime drowsiness or insomnia. The District sought the Grievant's termination for two charges of conduct unbecoming, insubordination, misconduct and/or other just causes for disciplinary action. Specifically, the District alleged that the Grievant (1) refused to work multiple shifts and (2) failed to disclose his insomnia during two recent physical examinations or on any previous medical report. The District argued that the Grievant was merely trying to get out of certain shifts and he was not actually sick. With regard to the first charge, CSEA argued that the Grievant never refused to perform his job duties and furthermore, the District accepted the Grievant's medical note and allowed him to use his sick leave. Regarding the second charge, CSEA argued that the Grievant believed the doctor performing the physical examination was already aware of his recent sleep issues and that he did not consider himself to have

a history of insomnia that necessitated reporting. The Arbitrator found that the District failed to prove the first charge but did prove part of the second charge. The Arbitrator held that the District failed to prove the Grievant suffered from insomnia for several years which should have been disclosed on prior medical reports. However, the Arbitrator did find that the Grievant failed to disclose his recent history of insomnia or sleep disorder during two recent physical examinations. The Arbitrator found that the Grievant's dishonesty constituted severe misconduct and discharge was appropriate.

Greene County
(Arbitrator Trela)
Matter No. 21-1034

The Grievant, a Principal Account Clerk Typist for Greene County's Health Department, was disciplined for failing to adhere to the New York State Department of Health's ("DOH") vaccination mandate. The County argued that this matter was not arbitrable because the Grievant no longer met the qualifications necessary to work in the County Health Department. The Grievant argued that the mandate does not apply to an Account Clerk Typist because her duties are not included in the definition of covered personnel found within the DOH Mandate. Ultimately the Arbitrator denied the grievance on the basis that he is barred from arbitrating an award seeking a remedy that is contrary to law. The Arbitrator did note, however, that even if the Grievance was arbitrable, he believed the County had cause to terminate the Grievant because she failed to become vaccinated in accordance with the DOH mandate which he held applied to the Grievant.

CONTRACT GRIEVANCES

Local Grievances:

Nassau County
(Arbitrator Riegel)
Matter No. 22-0271

In this contract grievance, the Grievant, a Nassau County Medic, claimed that the County violated the CBA when it determined that he was not qualified for a position in the Fire Police EMS Academy and assigned someone junior to him to the position. He claimed that the County, based on the CBA and past arbitration awards, must have compelling reasons to select a junior person for a position, and that the County failed to meet that burden in this case. The County claimed that the Grievant did not articulate a preference for this particular position, and, in any event, did not have the ability to perform the duties associated with this position. Arbitrator Riegel sustained the grievance because the Grievant never received a notice indicating the reason(s) for being bypassed for this position, and because the committee did not produce any records created at the time of the interview, which meant that there was no evidence to support the premise that the selection of the person to fill this position was fair and equitable. Further, he agreed with the Grievant that the County did not articulate compelling reasons for selecting a junior person to fill this position. As such, Arbitrator Riegel concluded that the County violated the CBA when it failed to assign the Grievant to this particular position and ordered that it appoint Grievant to this position.

Westchester County
(Arbitrator Klein)
Matter No. 21-0649

In this contract grievance, CSEA successfully argued that the County violated the parties' collective bargaining agreement ("CBA") when it charged the Grievant 20% rather than 10% of her

health insurance premium cost commencing upon her return to the CSEA bargaining unit. The County has continuously employed the Grievant for over 19 years. The County attempted to argue that because the Grievant was promoted from a CSEA-represented title to a new title represented by the Teamsters, then promoted again to her current position, in the CSEA bargaining unit, she should be treated as a new employee to calculate insurance premium contribution. The Arbitrator disagreed with the County because the CBA clearly provides that anyone hired before January 1, 2019, only contributes 10% of their health insurance premium cost, and the Grievant was hired in 2003. The Arbitrator clarified that the language in the CBA does not address the date employees are placed in the CSEA bargaining unit, only the date of hire. The County was directed to set the Grievant's health insurance contribution rate at 10% and to refund the difference between 20% of the monthly premium costs that the Grievant paid and the 10% premium cost that she should have paid during the relevant period.

Newburgh Enlarged City School District
(Arbitrator Patack)
Matter No. 21-0228

A grievance was filed alleging that the District violated the CBA when it paid custodians and maintenance employees who were required to work on December 23, 2020, their regular rate of pay rather than time-and-one-half. December 23, 2020 was treated as a day off when the five scheduled "emergency days" were reduced to four. Although most employees had the day off, the custodians and maintenance employees were required to work. The Union argued that since the day off had been taken from the pool of "emergency days," the contractual language providing for time-and-one-half on emergency days applied. The District argued, based on a prior arbitration award interpreting the same contract language, that the section of the contract in question only requires time-and-one-half pay when the District declares an emergency. Since December 23, 2020 was essentially a day added to winter break, and the District did not declare an emergency on that date, the Arbitrator found that the emergency pay provision did not apply and was not violated.

Cayuga County
(Arbitrator La Manna)
Matter No. 19-1120

In this contract grievance, CSEA argued that the County violated the parties' collective bargaining agreement ("CBA") when it failed to provide the Emergency Service Dispatchers a 10% night shift differential payment. CSEA argued that the plain language of the Night Differential Article of the CBA provided for all employees whose shifts regularly begin between 3:00 p.m. and 3:00 a.m. to receive the night differential payment. The County argued that the Dispatchers were excluded from the night differential payment because they already received a 12% differential payment instead of holiday pay. The Arbitrator agreed with the County and denied CSEA's grievance. The Arbitrator found that the contract language was ambiguous, so it is appropriate to consider the parties' past practice. The Arbitrator then relied on the fact that the Dispatchers had not received the night differential for the ten years before the instant grievance despite maintaining the exact same contract language.

Monroe-Woodbury Central School District
(Arbitrator Siegel)
Matter No. 20-0909

Two grievances were filed regarding bus driver furloughs and other issues, and those grievances were consolidated for hearing. At the beginning of the 2020-2021 school year, the District held the first two weeks of classes remotely. Bus drivers received full pay for those two weeks, and many were assigned to complete dry runs and refresher courses during that time. The Union filed a grievance alleging that the dry runs and refresher courses were supplemental work that should have occurred prior to the beginning of the year, and that the drivers should receive extra pay for the assignments. As the district transitioned to a hybrid in-person model, the bus drivers only had runs on certain days, but were assigned other duties on the days they did not have runs. The District then furloughed drivers on Mondays, as there was no work for them

to perform on Mondays. Through a State program, some of the drivers' pay for those days was covered by the State. The furloughs lasted approximately two months. The Union grieved the furloughs. The Union argued that the bus drivers should not have been furloughed because they agreed to perform custodial work, and the District was able to find work for drivers to do on days other than Mondays. The Union's position is that the furloughs were only implemented to save money. The Union also argued that the CBA calls for dry runs and refresher courses to take place before the school year starts. The District insisted that the furloughs were due to the pandemic, and that the CBA does not require the dry runs and refresher courses to apply before the school year starts. The Arbitrator dismissed both grievances. He found that the furloughs were based on circumstances beyond the District's control, which comports with the CBA. He also found that the contract permits the dry runs and refresher courses to take place before the school year starts, but also allows the District to include those activities in the school year.

COURT ACTIONS

County of Rockland, et al. v. NYS Public Employment Relations Board, et al.
(Supreme Court, Albany County)
Matter No. 20-0917

In this Article 78 proceeding, the County Petitioners sought a Judgment and Order setting aside a Decision and Order of the PERB Respondents, which ordered that the prescription drug practice of permitting employees represented by the non-PERB Respondents to obtain prescription drugs at one specific Village pharmacy without making any copayments, be reinstated, and that the impacted employees be made whole. The Petitioners contended that they were entitled to unilaterally end the foregoing practice because the relevant CBAs expressly limited their obligations in this area to the payment of health insurance premiums, and because the practice was inconsistent with the terms of the CBAs.

In opposition, Respondent PERB argued that the prescription drug policy was an enforceable past practice based on the fact that it continued on an unequivocal, uninterrupted basis for well over a decade, and because there was no language in the CBAs which would have given the impacted employees reason to doubt the continuing nature of the policy. In applying the standard of review—whether Respondent PERB's determination was affected by an error of law or was arbitrary or capricious or an abuse of discretion—the Court determined that Respondent PERB properly concluded that the prescription drug policy was a mandatorily negotiable subject, and that it continued uninterrupted for a sufficient period of time to create a reasonable expectation that it would continue. The Court also found that the Petitioners had failed to show that this specific subject was ever negotiated by the parties and/or that the terms of the CBAs with respect to this subject were reasonably clear. Accordingly, the County's petition was dismissed.

Paul Orlando, Respondent v. County of Putnam, Appellant (Appellate Division, Second Department)
Matter No. 20-0066

In an action to recover damages for breach of contract, the Defendant County appealed from an Order of the Supreme Court, Putnam County, which denied its motion for summary judgment dismissing the complaint and granted the Plaintiff's cross motion for summary judgment. The retired Plaintiff, before his retirement, had the option to obtain health insurance through the New York State Health Insurance Plan ("NYSHIP"). He, however, chose to opt out of this due to having other coverage. Thereafter, the relevant CBA provision articulated that he would receive a cash payout equivalent to 50% of the value of the Individual Coverage for the plan with the most active employee enrollees. Plaintiff requested this payout, but the Defendant County denied his request, contending that he was not eligible for retiree health insurance benefits pursuant to a provision in the NYSHIP Manual for Participating Agencies, which provided that only an employee enrolled in the NYSHIP program or another employer-sponsored

health plan at the time of retirement was eligible to continue coverage in retirement. The Second Department concluded that the Supreme Court properly determined that the relevant provisions of the CBA were clear and unambiguous and established that Plaintiff was eligible for retiree health benefits and the cash payout under the terms of the CBA. As such, its grant of summary judgment in favor of Plaintiff was proper.

NYS Unified Court System v. CSEA
(Supreme Court, New York County)
Matter No. 22-0029

The Unified Court System sought an order vacating an arbitration award issued to CSEA. The Arbitrator awarded back pay and commensurate benefits, including retirement credits, for one year to a terminated employee. In this matter, UCS argued that the Arbitrator impermissibly exceeded his authority by including permanently incapacitated employees in a specific subsection of the CBA, thereby requiring the employer to provide them with certain due process rights mandating their maintenance on the payroll after termination pending a determination on appeal. UCS further argued that the award was irrational because it effectively constituted a new contract between the parties. CSEA argued that the Arbitrator's opinion and award merely applied and interpreted the CBA, and therefore he did not exceed his authority nor was it irrational. The Court found in CSEA's favor and confirmed the Arbitrator's award.

CSEA v. NYS Thruway Authority and NYS Canal Corporation / NYS Thruway Employees Local 72, et al. v. NYS Thruway Authority et al.
(Second Circuit Court of Appeals)
Matter No. 22-0191

These cases were consolidated by theFederal Circuit Court of Appeals for the purpose of its final order. Below in the District Court, CSEA and Thruway Employees Local 72 sought class certification on behalf of members employed by the NYS Thruway

Authority and NYS Canal Corporation. These members were all terminated or adversely impacted due to a reduction in force which CSEA argued targeted members because the unions refused to give in to employer demands for concessions at the bargaining table. The District Court denied the motion for class certification. In these matters, CSEA sought permission from the Circuit Court to appeal the District Court's decision, arguing that the District Court's denial of class certification was questionable, that it effectively terminated the litigation, and that the District Court's order left open a legal question about which there was a compelling need for immediate resolution. The Agencies argued the contrary to each of those arguments. The Circuit Court denied the petition and found that an immediate appeal was not warranted.

PERB MATTERS

In October 2020, Mr. Lignos filed an improper practice charge alleging that Erie County and the Erie County Sheriff's Office ("Joint Employer") failed to provide union representation at an investigatory meeting which led to discipline, and that CSEA failed to adequately represent him at an investigatory meeting in December 2019, as well as in connection with an arbitration hearing, and by failing to communicate with him as to the status of a grievance. With respect to the timeliness of Mr. Lignos' charge against the Joint Employer, it was determined that it was filed well beyond the applicable four-month deadline and was thus dismissed. Although the remaining allegations against CSEA were deemed to be timely, CSEA then filed a motion to dismiss the improper practice charge based on Mr. Lignos only submitting his personnel file in response to a request for an offer of proof in support of his claim against CSEA. In applying the standard of review—whether a preponderance of the evidence demonstrates that CSEA's conduct toward Mr. Lignos was arbitrary, discriminatory, or motivated in bad faith—the judge dismissed the claim that CSEA's representation of both Mr. Lignos and another employee at an investigatory meeting in December 2019 constituted a conflict of interest because

no evidence was provided showing that the representation of Mr. Lignos at the December meeting was deficient or motivated in bad faith. All of Mr. Lignos' other claims were also dismissed because he failed to illuminate any arbitrary, discriminatory, or bad faith behavior on the part of CSEA. As such, the charge was dismissed in its entirety.