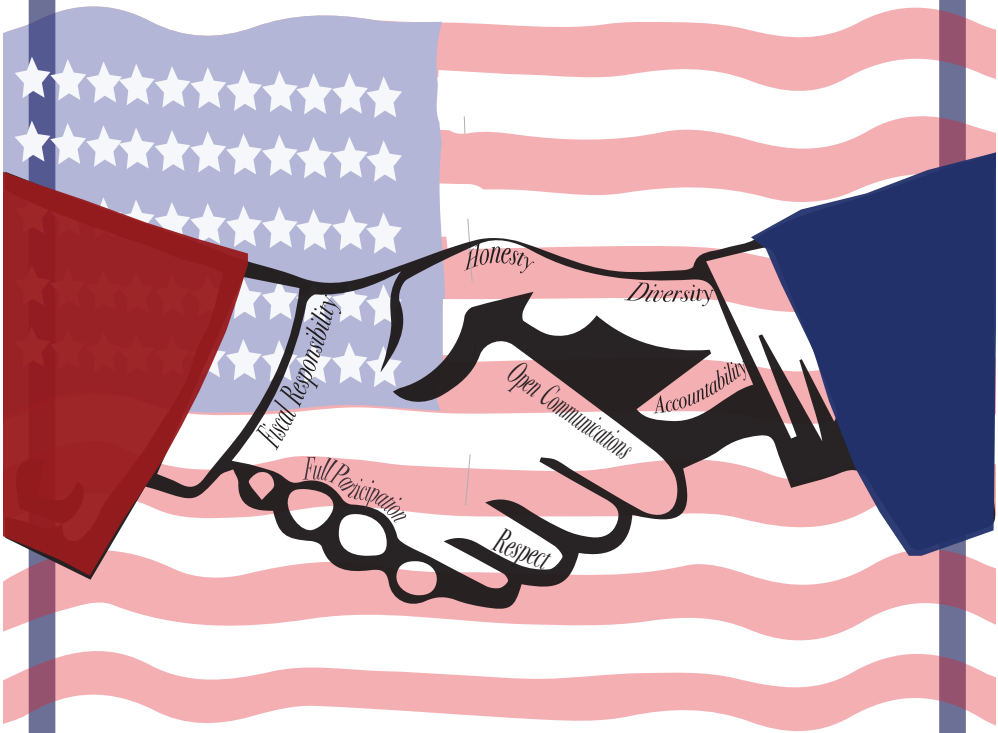
THE ADVOCATE

January 2024

A PUBLICATION OF CSEA LEGAL DEPARTMENT



CSEA
Local 1000 AFSCME, AFL-CIO

TABLE OF CONTENTS:

Cover designed by Cecelia Haarer, Niskayuna High School.

CSEA LEGAL DEPARTMENT STAFF

Daren J. Rylewicz, *General Counsel*
Leslie C. Perrin, *Deputy Counsel*
Steven M. Klein, *Deputy Counsel*
Eric E. Wilke, *Senior Counsel*
Aaron E. Kaplan, *Senior Counsel*
Jennifer C. Zegarelli, *Senior Counsel*
Scott Lieberman, *Senior Counsel*
Thomas Morelli, *Associate Counsel*
Mary Slattery, *Associate Counsel*
Alexandra Menge, *Associate Counsel*
Dara Hebert, *Associate Counsel*
Julie A. Collyer, *Legal Systems Administrator and Legal Office Manager*
Kathy Smail, *Senior Legal Assistant*
Amee Camp, *Senior Legal Assistant*
Marie Anderson, *Legal Assistant*
Alicia Brown, *Legal Assistant*
Kimberly Salamida, *Legal Assistance Program Administrator*
Michelle VanKampen, *Legal Assistance Program Administrator*
Kelly Frazer, *Legal Assistance Program Assistant*
Bonnie VanAlphen, *Internal Elections Assistant*

Counsel's Corner

By: Daren J. Rylewicz
General Counsel

Governor Hochul Signs New Legislation To Support Public Sector Workers

During the past few months, Governor Kathy Hochul has signed a series of legislation focused on protecting, benefiting, and advocating for New York workers. These new laws provide various opportunities to public sector employees to assist with their careers and strengthen their rights in the workplace. This article summarizes these new laws and explains the impact on public sector workers in New York State.

A. Provisional Service Time is Credited Towards Probationary Period in Permanent Title.

As part of her labor initiatives, Governor Hochul recently signed into law a new legislation that will allow any employee who is appointed to serve in a competitive civil service position on a provisional basis, and who subsequently receives a permanent appointment from an eligible list in the same title, to have such provisional time count toward the probationary period of the new permanent placement. Provisional appointments are made when an eligible competitive civil service list is either not in existence or not available for a certain title. In some cases, employees may serve provisionally in a title for years. By allowing provisional service time to be credited towards a permanent appointment, this legislation allows an employee to become permanent faster and, potentially,

eliminate the need to serve a probationary period in the permanent title. It is foreseeable that this legislation will force employers to carefully evaluate the performance of provisional civil service employees and to document assessments of such employees.

B. Labor Unions Have the Right to Receive Employees' Home Addresses From Employers.

Under the state's collective bargaining law, the Taylor Law, labor unions have a right to information which is necessary to represent their members under the duty of fair representation. Governor Hochul's recent changes to the Taylor Law include clarification that labor unions are entitled to the home address of an employee in its collective bargaining unit. This information is necessary in order to enable the union to contact that employee outside of the workplace. In the past there has been some confusion on this issue, and now the law is clear that employers are obligated to send labor unions this information to properly connect and communicate with its members.

C. Arbitration Decisions Must Be Vacated Within 90 Days.

Prior to the recent change in this law, arbitration decisions could be vacated after 90 days from the issuance of the award, when the other party sought to confirm such decision. This loophole allowed employers to avoid enforcing an arbitration decision that was in favor of the employee and forced the employee to then move to confirm the award by way of an application to a court. Once the employee was forced to confirm the award, the old law allowed the employer to make a motion to vacate the arbitration decision, even if it was beyond 90 days from issuance of the decision. This caused unnecessary delays, and expense to the employee. With the new change to the law, parties are now required to make an application to vacate or modify an arbitration award within 90 days after the delivery of the award. This change will not only assist in ensuring that arbitration awards are honored on a timely basis, but will also require unsuccessful parties to decide whether they will move to vacate a decision within 90 days from its issuance.

D. Health Insurance Benefits Extended to Spouses That Have Not Remarried and Dependents in Some Situations.

Governor Hochul amended the law to extend health insurance benefits of spouses that have not remarried and dependents after the death of a former state or former state or political subdivision employee who retired with an accidental disability or a performance of duty disability pension. Under the previous state of the law, the New York State Health Insurance Plan ("NYSHIP") only allowed for health insurance benefits to be extended to this group of individuals where the employee had at least ten years of service prior to their death. Now, those spouses and dependents of such retirees with less than ten years of service will qualify to receive health insurance benefits.

E. Civil Service Job Examinations to Be Announced and Notified to Certain Entities.

This new law will require the New York State Department of Civil Service to notify public school districts, colleges and universities, local Board of Cooperative Educational Services, and certain job training programs of upcoming Civil Service job examinations. These entities will also be able to register for electronic announcements of examination dates and to receive other information from the State. This initiative will hopefully assist in increasing the public sector workforce by recruiting a variety of new employees and increasing the number of candidates for Civil Service jobs.

DISCIPLINARIES

State Disciplines:

NYS Gaming Commission
(Arbitrator Glanstein)
Matter No. 22-0982

The Grievant, an Office Assistant 2, was issued a Notice of Discipline ("NOD") and charged with misconduct for failing to complete a mandatory Gender Identity Toolkit training and for failing to comply with a directive. Grievant was issued a counseling memo and suspended for multiple weeks as a result of two separate NODs for the same conduct regarding the same training within one year of the current NOD. CSEA moved for dismissal of the charges, arguing that industrial double jeopardy barred the State from disciplining Grievant through the current NOD. CSEA argued that since the training was no longer mandatory the State could not argue Grievant continued to refuse to perform an outstanding assignment. CSEA also argued termination was inappropriate as she had no NODs prior to the underlying events. The State argued prior progressive discipline was unsuccessful, and as the Grievant stated she would never complete the training, termination was the only appropriate penalty. The Arbitrator denied CSEA's Motion to Dismiss, finding the Grievant's refusals to do the training after each prior NOD to be a continuing act of insubordination. Although Grievant requested an accommodation to avoid the training based on her religious beliefs, the Arbitrator found questions of discrimination regarding a religious accommodation outside his authority. The Arbitrator found Grievant guilty of the charges, but found the State's proposed penalty of termination inappropriate. Instead, the Arbitrator ordered a 1-year suspension without pay and a Last Chance Agreement barring future insubordination.

Department of Corrections & Community Supervision
(Arbitrator Day)
Matter No. 22-0528

The Grievant was employed as a Trades Generalist at Groveland Correctional Facility for four years. He was suspended without pay and served a Notice of Discipline, ("NOD") which sought his termination for refusing/failing to follow a supervisor's direction by not uploading his COVID-19 vaccination status into the state portal or providing weekly COVID-19 testing results. The Arbitrator noted that the State gave the Grievant the option to be vaccinated or complete weekly tests, pursuant to mandated State regulations. The Grievant was aware of his obligations and the consequences of his refusal to comply with the mandate because the State applied the regulation to all employees who acted as the Grievant did. The Arbitrator found Grievant's actions to be knowing, willful, and deliberate, and therefore found the Grievant guilty and found termination appropriate. Additionally, he found probable cause for suspension because the Grievant's refusal to comply made him a potential danger to others.

SUNY Upstate Medical University
(Arbitrator Cassidy)
Matter No. 22-0651

The Grievant, a Supply Assistant, was served a Notice of Discipline ("NOD") and suspended without pay based on complaints from four female coworkers against him for sexually harassing behavior. CSEA moved to dismiss the charges for lack of specificity and as untimely pursuant to Article 33.3 of the collective bargaining agreement. At the hearing, CSEA's position was that the coworkers were lying and that the Grievant never touched any of them other than touching one on the shoulder. CSEA argued that even if the charges were proven, termination is inappropriate since the Grievant has no prior disciplinary record and there is no evidence that he is incorrigible. Based on CSEA's motion, Arbitrator Cassidy dismissed one of Grievant's charges as untimely. However, he found Grievant guilty of all the remaining charges

and deemed termination appropriate due to the serious nature of the misconduct. Additionally, he found that SUNY Upstate had probable cause for the suspension since it proved that the Grievant's continued presence on the job represented a potential danger to persons or property or would severely interfere with SUNY Upstate's operations.

SUNY Upstate Medical University
(Arbitrator Douglas)
Matter No. 22-0988

The Grievant, who was employed by SUNY Upstate Medical University ("SUNY") as a Nursing Assistant/Health Care Technician, was served with a Notice of Discipline alleging four charges of misconduct, all related to the allegation the Grievant was sleeping during work hours. More specifically, it was alleged that because the Grievant was asleep at work, she jeopardized the patients to whom she was assigned by failing to provide visual observation or perform her other assigned duties. At the hearing, the Grievant's Nurse Manager testified that she found the Grievant with her head down, eyes closed and that the Grievant did not acknowledge that she had entered the room and asked if she needed a break. In assessing the appropriateness of the penalty, the Arbitrator cited that the Grievant had been previously counseled on violating patient safety protocol. The Arbitrator found the Grievant guilty of the charges and upheld the termination penalty.

Unified Court System
(Hearing Officer Langan)
Matter No. 23-0133

The Grievant, who was employed by the Unified Court System ("UCS") as a Clerical Assistant, was issued a Notice of Discipline ("NOD") alleging three charges of misconduct for stating her supervisor only had her position due to her race, for violating email

policy by using UCS facilities to conduct personal business, and for conducting personal business with the assistance of UCS colleagues using UCS property. The Hearing Officer determined that Respondent made a racial remark about her supervisor, and it was contrary to UCS's zero-tolerance policy on bias and harassment. Although the Hearing Officer found charges 2 and 3 unsupported, she determined charge 1 was established with substantial credible evidence. The Hearing Officer did not find the Grievant's testimony or alleged hostile work environment defense credible, and therefore, recommended termination. On appeal, the Deputy Chief Administrative Judge concurred with the Hearing Officer's findings and ordered the Grievant's termination.

Local Disciplinaries:

City of Port Jervis
(Arbitrator Siegel)
Matter No. 23-0050

The Grievant, who was employed by the City's Department of Public Works ("DPW") for approximately 16 years as a Working Supervisor, received a Notice of Discipline ("NOD") imposing a 10-day suspension without pay. The NOD was issued due to several actions, including taking an abandoned trailer from city property without authorization, using a city-owned vehicle for personal purposes, using offensive language towards supervisors, and bragging about insulting his boss. The Grievant had no prior disciplinary record. While CSEA acknowledged the validity to taking the trailer and cursing at his supervisors, it argued that the Grievant's actions were driven by an honest mistake, thinking he could take an abandoned trailer, combined with a strong emotional reaction to the proposed penalty, which stemmed from feeling underappreciated for years of dedicated work. CSEA further argued that there was insufficient evidence to prove that he took the vehicle for personal gain, requested that the bragging charge be dismissed for lack of evidence, and proposed a letter of reprimand as the appropriate penalty, considering the Grievant's prior work history. Arbitrator Siegel found the Grievant guilty of all charges, except

for the one related to bragging, and determined that a one-week suspension without pay and a loss of 2.5 days of vacation accruals was the appropriate penalty.

Cortland County
(Arbitrator Hoffman)
Matter No. 23-0076

The Grievant, who was employed by the County of Cortland as a custodian, was served with a termination letter setting forth four separate charges and specifications relating to time and attendance issues. The charges stemmed from an incident where the Grievant called out sick, claiming she was exhausted from being assigned extra cleaning duties and had been hospitalized the prior week. The County alleged that the Grievant failed to follow call-out procedures and could not provide a doctor's note for her absences despite being aware that this was the policy. CSEA argued that these were minor policy violations that did not warrant the Grievant's termination. Ultimately, the Arbitrator found that the charges of time and attendance violations were supported by substantial evidence. However, the Arbitrator held that termination was an excessive penalty and reduced the penalty to a thirty-day suspension without pay.

Nassau County
(Arbitrator Peek)
Matter No. 23-0570

The Grievant, who is employed by Nassau County ("County"), was served with a disciplinary notice proposing a penalty of termination. Rather than proceeding to arbitration, the parties negotiated a Consent Award. Instead of termination, the parties agreed that the Grievant would serve a one-week suspension without pay. Additionally, the parties negotiated a last chance agreement ("LCA"), to be in place for one year, which stated that the Grievant would not engage in a physical altercation with any other individual and would enroll in a program for anger management. Lastly, if a determination was made that the Grievant

violated the LCA, he had the right to arbitrate the issue of whether he violated the LCA, but not the penalty proposed by the County for the alleged violation of the LCA.

Nassau Health Care Corporation
(Arbitrator Walko)
Matter No. 22-0592

The Nassau Health Care Corporation ("NHCC") employed the Grievant as a Materials Movement Specialist in one of its extended care facilities. NHCC issued a Notice of Personnel Action against the Grievant, seeking his termination. The allegations stemmed from NHCC discovering that the Grievant placed more orders for PPE than the extended care facility needed, resulting in a large financial loss. It was also alleged that the Grievant failed to account for expired supplies and stated he was going to cover up these issues by lying on a survey relating to PPE statistics. CSEA successfully argued that several of the allegations were over one year old and therefore untimely. However, the arbitrator did find some of the allegations to be timely, and that the Grievant was guilty of misconduct. Additionally, the Arbitrator held that termination was not the appropriate penalty but did suspend the Grievant to date. In reducing the penalty, the Arbitrator relied on the Grievant's length of service, lack of previous disciplinary record, and his candor to his supervisors concerning the underlying allegations.

Schenectady City School District
(Arbitrator Cole)
Matter No. 22-0703

The Grievant, who was employed by Schenectady City School District ("District") as a Cleaner, was served with a Notice of Discipline alleging seven charges of misconduct and insubordination relating to several incidents where he allegedly failed to follow District procedures, was disrespectful, neglected his duties, and abused leave time. The District sought the Grievant's termination and suspended him without pay. The Arbitrator found that the District had just cause to discipline the Grievant

for six of the seven charges. The Arbitrator found the Grievant untruthful because it was demonstrated that he had a severe disregard for his responsibilities and failed to comply with direct orders from supervisors. Although the Grievant was found guilty, the Arbitrator ordered the District to return the Grievant to work without back pay because the District failed to warn the Grievant of its expectations and to impose progressive discipline to help him improve his performance.

East Moriches Union Free School District
(Hearing Officer Daly)
Matter No. 23-0531

Section 75 charges were filed against a District Custodian, alleging that he shared an inappropriate and fabricated story involving a fifth-grade student and was insubordinate when he refused to answer questions from his supervisors about the story. Witnesses for the District testified that the member had shared a disturbing story, and security footage corroborated his presence in the Guidance Office when the incident occurred. The member denied the allegations. Hearing Officer Daly recommended, in light of the seriousness of the charges and the evidence presented, that the member be dismissed from his position.

Erie County
(Arbitrator Chapman)
Matter No. 22-0819

The County of Erie employed the Grievant as a 911 call-taker in the County's Law Enforcement Communications Department. On May 14, 2022, while the Grievant was on duty at the call center, a mass shooting occurred at a local grocery store. At the time of the incident, the Call Center received 46 emergency calls in the first five minutes. The following day, when the calls were reviewed, it was determined that the Grievant had mishandled six calls. The Grievant was placed on administrative leave and later terminated following a due process hearing. The Grievant filed a grievance challenging her termination, and the matter proceeded to

arbitration. The misconduct allegations against the Grievant were that she had seriously mishandled the calls she had received and had failed to follow departmental standard operating procedures. CSEA argued that the County failed to prove that the Grievant engaged in deliberate misconduct and that this was a case of unintentional or negligent conduct requiring progressive discipline, not termination. In reliance on the recordings and transcripts of the calls, the Arbitrator found that the Grievant had violated multiple departmental policies and treated one of the callers in a callous and unempathetic manner, all of which was misconduct. Moreover, the Arbitrator found termination the appropriate penalty because the Grievant's conduct in such a situation could prove fatal. Furthermore, because the Grievant's handling of the calls became a matter of public concern, it constituted conduct that can reasonably be inferred to have tended to damage the public's trust in the County's 911 Call Center operation.

Hyde Park Central School District
(Arbitrator Siegel)
Matter No. 23-0412

The Grievant, who is employed by the Hyde Park Central School District ("District"), was served with a disciplinary notice proposing a penalty of termination regarding various allegations of misconduct, including operating a school bus while using and/or texting on a cell phone, operating a school bus while not wearing a seat belt, and lying to the Superintendent of Schools. During the hearing, the District submitted video evidence which showed the Grievant using her cell phone while driving a school bus and not wearing her seatbelt on seven different days. Based on the video evidence provided, Arbitrator Siegel sustained all the charges and determined that termination was an appropriate remedy. If the case involved a single instance of reckless driving without children on the bus, Arbitrator Siegel noted that he would have suspended the Grievant and returned her to her position. However, the evidence showed that she used her cell phone for extended periods of time, and that she was "blatantly" violating the District's rules, as well as New York State Vehicle and Traffic Laws.

Monroe County
(Arbitrator Gelernter)
Matter No. 22-0755

The Grievant, a Certified Nursing Assistant for 10 years, received a Notice of Termination ("NOT") for violating a resident's standard of care and dignity at the Monroe County Community Hospital by placing an adult diaper on the resident against his wishes and contrary to the instructions on the resident's care card. At the hearing, the County presented evidence that the Grievant admitted to the misconduct. CSEA's position was that the Grievant never admitted to it, the County's witness was lying, and that at the interrogation, the Grievant was asked about a different date. Arbitrator Gelernter found that the County proved the NOT and, therefore, had not violated the collective bargaining agreement when it terminated Grievant due to the serious nature of her misconduct and her prior disciplinary record for similar issues.

Nassau Health Care Corporation
(Arbitrator McCray)
Matter No. 22-0610

The Grievant, a Registered Nurse with the Nassau Health Care Corporation, was issued a Notice of Personnel Action ("NOPA") and terminated for abandoning his job by not coming to work and not calling in for almost three months. CSEA contended that the Grievant's termination was unjust, asserting that he was never placed on the schedule despite multiple attempts to return to work after sick leave. Additionally, CSEA argued for the Grievant to be found not guilty of the NOPA and full reinstatement with back pay, or, if found guilty, advocated for a reduced penalty due to the inadequate investigation and the application of just cause and progressive discipline principles. Arbitrator McCray disagreed with CSEA, found the Grievant's testimony lacking credibility, and concluded that termination from the date of the NOPA was appropriate.

Ossining Union Free School District
(Arbitrator Longo)
Matter No. 23-0538

The Grievant, who is employed by the Ossining Union Free School District ("District"), was served with a disciplinary notice proposing a penalty of termination. Specifically, the Grievant was directed to process purchase orders on two occasions, she refused to do so, and there were additional allegations that she failed to provide proper notice for time off in accordance with the collective bargaining agreement. The Grievant testified that her reason for refusing to process the purchase orders was due to confusion over whether it was a requirement of her job title, and that it was impossible for her to give the required notice for time off as a result of how busy she was with her job duties. Arbitrator Longo determined that the Grievant's claimed defenses were not credible, that her actions constituted insubordination and misconduct, and that termination was the appropriate penalty.

CONTRACT GRIEVANCES

Local Grievances:

City of Saratoga Springs
(Arbitrator Mayo)
Matter No. 23-0391

CSEA filed a grievance alleging the City of Saratoga Springs ("City") violated the parties' collective bargaining agreement ("CBA") when it stated that the Grievant could not retire with his retiree health insurance benefits unless he filed for retirement with the New York State Retirement System. The Arbitrator sustained the grievance because the CBA requires only that, amongst other things, employees be eligible to retire with the State Retirement System. Since the Grievant satisfied all of the requirements to retire with retiree health insurance in accordance with the CBA, the Arbitrator directed the City to immediately commence retiree

health insurance benefits to the Grievant commencing upon his date of retirement from the City.

St. Lawrence County
(Arbitrator Maroney)
Matter No. 23-0054

CSEA grieved the decision of St. Lawrence County ("County") to give the Grievant a new hire date of December 17, 2019, after she was terminated from a probationary period, where she had an original hire date of May 31, 2011, and then subsequently offered a new position in December of 2019. If the Grievant's hire date was on May 31, 2011, she would be entitled to a Health Care Plan benefit that would require fewer years of consecutive service to receive health insurance at cost in retirement, but if her hire date was on December 17, 2019, receiving the same benefit would require a new fifteen-year service commitment before becoming eligible for the benefit. Arbitrator Maroney sustained the grievance by finding that the Grievant met the requirements for the Health Care Plan benefit, she was hired by the County prior to October 1, 2012, and she was reinstated or rehired by the County within thirteen weeks of separation from her prior job position.

Town of Newburgh
(Arbitrator Lobel)
Matter Nos. 23-0202, 23-0201, 23-0203

CSEA filed three grievances contending that the Town of Newburgh ("Town") violated the parties' collective bargaining agreement ("CBA") when it awarded one employee the position of Heavy Equipment Operator ("HEO") over three other, more senior employees. The cases were consolidated and submitted to arbitration. The Town argued that the CBA states seniority is only considered if the qualifications are similar among two or more employees and that in this case, the successful candidate's qualifications were not similar to those of the three unsuccessful candidates. CSEA argued that the entire hiring process indicated bad faith, citing an inadequate interview process and the fact that

the position should have been posted years earlier. Ultimately, the arbitrator sustained one of the grievances and held that one of the unsuccessful candidates should have been granted the position of HEO before the chosen candidate because he was more senior. The Arbitrator relied on the fact that both candidates had similar experience and therefore, seniority should have been the determining factor. The Arbitrator directed the Town to place the more senior candidate in the HEO position with back pay from the date the other candidate was placed in the position.

Byram Hills Central School District
(Arbitrator Hoffman)
Matter No. 22-0996

CSEA filed a grievance alleging that Byram Hills Central School District violated the collective bargaining agreement ("CBA") when it failed to pay non-teaching coverage stipends to teacher aides assigned to the cafeteria with at least one student and no other adult present. CSEA argued that the contract language unambiguously provided for the stipend payment. The District argued that the stipend only applies to non-teaching coverages assigned outside the regularly scheduled workday. The District relied on a 2015 side letter that added the phrase "outside of regularly scheduled hours." CSEA argued that language was abandoned because it was never included in subsequent contracts. The Arbitrator found the language in the contract ambiguous and therefore looked to past practice, which included the side letter. The Arbitrator held that the District did not violate the contract because the work was not outside of regularly scheduled hours.

Cairo-Durham Central School District
(Arbitrator Selchick)
Matter No. 23-0026

CSEA filed a grievance contending that the Cairo-Durham Central School District ("District") violated the parties' collective bargaining agreement ("CBA") when it hired a bus driver at a salary Step 16 rather than Step 1. CSEA argued that there was a history

of hiring new employees at Step 1, and that although there were some circumstances where others were hired at a higher Step, these were not considered new hires because they had previously worked for the District. Furthermore, CSEA relied on the fact that during contract negotiations, the District attempted to introduce language allowing it to hire employees at a higher Step, but CSEA rejected that proposal. The arbitrator held that the contract language was ambiguous and turned to past practice. In doing so, the arbitrator rejected CSEA's arguments and denied the grievance because there was evidence of a past practice of the District placing newly hired employees above Step 1.

North Rockland Central School District
(Arbitrator Klein)
Matter No. 23-0112

CSEA grieved the decision of the North Rockland Central School District ("District") to appoint an outside candidate to the position of Maintenance Mechanic 1, rather than the Grievant, a member of the CSEA bargaining unit. The issue had been previously litigated, and if a bargaining unit member's merit, fitness, skill, ability, prior work experience, and prior job performance was relatively equal to that of an outside candidate, then the District agreed to give a job preference to that bargaining unit member if he or she was not probationary. Arbitrator Klein denied the grievance because the District fairly considered the six foregoing factors during the interview process and found that the outside candidate's work performance was superior to the Grievant's, which meant that the Grievant was not entitled to receive a job preference to the position of Maintenance Mechanic 1.

Ossining Union Free School District
(Arbitrator Rosario)
Matter No. 22-0826

CSEA grieved the decision of the Ossining Union Free School District ("District") to calculate the School Nurse's per diem rate based on two hundred workdays, rather than one hundred and

eighty-six and a half workdays. The relevant collective bargaining agreement ("CBA") stated that the work year for school nurses and teachers would be the same, but the District alleged that the School Nurse's calendar included paid holidays, while the teachers' calendar did not, which meant that school nurses were actually paid for two hundred workdays while teachers were paid for one hundred and eighty-six and a half workdays. The CBA was silent as to how to calculate the School Nurse's per diem rate, and there was no dispute that, for at least twelve years, the District had calculated the School Nurse's per diem rate based on two hundred workdays. Ultimately, Arbitrator Rosario determined that the grievance was untimely because it was filed well after the thirty-school day period provided in the CBA for the filing of a grievance. As such, Arbitrator Rosario determined that the grievance should be denied.

JUSTICE CENTER

Office of Addiction Services and Supports
(ALJ Hughes)
Matter No. 21-0442

The New York State Vulnerable Persons' Central Register ("VPCR") maintained a report substantiating a Category 1 Sexual Abuse charge, a Category 1 Neglect charge, and a Category 2 Neglect charge against the Subject for alleged sexual contact and/or conduct with a service recipient. The Subject denied the charges and requested that the VPCR amend the report, this request was denied, and a hearing was held. During the hearing, the Justice Center provided evidence in the form of a statement from the service recipient, which demonstrated that the Subject and service recipient kissed on the lips while alone in the basement office of the facility and then they exchanged phone numbers. ALJ Hughes determined that the Justice Center satisfied its burden of proof. Additionally, he found that the service recipient was incapable of consent, and the fact that the Subject kissed her was considered forcible which constituted sexual abuse. As a result, ALJ Hughes upheld all charges against the Subject.

Office of Children and Family Services
(ALJ Spencer)
Matter No. 22-0896

The New York State Central Register of Child Abuse and Maltreatment ("Central Register") maintained a report indicating the Appellant for maltreatment. The Appellant denied the charges and requested that the Central Register amend the report, this request was denied, and a hearing was held. During the hearing, it was established that a child in the care of Appellant was attacked by her dog. Specifically, the child was bitten in the face/neck area and had to receive medical attention at a local hospital. Prior to this incident, there were two other incidents where children at Appellant's daycare were bitten by her dogs. As a result, a safety plan was implemented by the Office of Children and Family Services ("OCFS") that required Appellant's dogs to not have any contact with the daycare children during operating hours. Additionally, the Appellant reached a settlement during the hearing, whereby she agreed to voluntarily surrender her license for eighteen months. Ultimately, ALJ Spencer determined that OCFS proved that Appellant committed the alleged maltreatment, and therefore the existence of the indicated report could be disclosed to provider and licensing agencies making inquiries about the Appellant pursuant to Social Services Law § 424-a.

Office for People with Developmental Disabilities
(ALJ Hughes)
Matter No. 23-0222

The New York State Justice Center substantiated a category two charge against the subject, alleging that he drove well in excess of the speed limit while transporting service recipients. The subject appealed, and a hearing was held in which video evidence showed that the subject was driving at a high rate of speed. CSEA argued that the subject did not commit neglect since the subject's actions did not likely result in physical injury or serious or impairment of the physical, mental, or emotional condition of the service recipients. The ALJ disagreed and determined that the Justice

Center proved that the subject committed neglect since the evidence showed that speeding increases the risk of physical injury because it can lead to loss of vehicle control, reduced reaction times, and more severe crashes. Furthermore, the ALJ found that the report properly categorized the conduct as a category two act since the mere absence of a crash does not reduce the actual severity and egregiousness of the subject's conduct.

Office for People with Developmental Disabilities
(ALJ Requets)
Matter No. 23-0274

The Subject was a seven-year employee working as a Direct Support Assistant with the Office for People with Developmental Disabilities ("OPWDD"). The Justice Center alleged that while transporting a Service Recipient, the Subject drove in an unsafe manner by traveling at a high rate of speed. One Category 2 allegation of neglect was substantiated against the Subject, who filed an appeal. A hearing was held where the Justice Center argued its substantiation was proper because the Service Recipient was seriously endangered by the Subject's driving. CSEA did not dispute the facts of the Subject's conduct but argued that injury was not likely because an accident did not occur, nor did one almost occur. Additionally, CSEA argued even if the Subject committed neglect, it was not a Category 2 offense because speeding alone, without other concerning behaviors, does not seriously endanger the Service Recipient. The ALJ disagreed and determined that the Subject's behavior constituted Category 2 neglect because such excessive speeding was likely to result in physical injury to the Service Recipient.

PERB DECISIONS

Staff Decisions:

CSEA and Patchogue-Medford Union Free School District
(ALJ Sergent)
Matter No. 23-0249

CSEA filed an improper practice charge alleging the District violated the Taylor Law when it unilaterally changed its process of internally posting and filling vacant positions. CSEA also filed a materially identical grievance that alleged a violation of the parties' collective bargaining agreement. The ALJ conditionally dismissed this matter, holding that under such circumstances, it is PERB's policy to refrain from determining whether it has jurisdiction until the grievance is resolved. CSEA can move to reopen the case should the Arbitrator find that the collective bargaining agreement does not cover the grievance.

CSEA and SUNY Upstate Medical University
(ALJ Burritt)
Matter No. 15-0515

CSEA filed an improper practice charge alleging SUNY violated the Taylor Law when it changed unit members schedules by replacing their unpaid lunch period with a paid lunch and lengthening their workday by 30 minutes, in retaliation for protected union activity. SUNY denied the charge and at a hearing the ALJ held that CSEA did not make a prima facie case by failing to prove 'but for' causation. CSEA filed exceptions, and the Board reversed the ALJ's decision, finding the ALJ erred by not considering record facts supporting the allegations, which established that the protected activity resulted in the schedule changes. The Board remanded for the ALJ to make credibility findings on who decided to make the schedule changes and the alleged legitimate business reason for those changes. On remand, the ALJ found credible the testimony of the State's witness, that he ordered the changes as someone new to

his position who wanted to improve services, and that he chose this new schedule in order to avoid violating any labor law requirements regarding lunch breaks. The ALJ found the testimony of CSEA's four witnesses to be equivocal when they each testified that at the time of the schedule change, the State's witness said it was at the direction of Human Resources. Furthermore, the ALJ found that even if she did credit CSEA's witnesses' testimony, the State witness could have mistakenly said the change was at the behest of HR as a reference to HR's instruction to him to avoid labor law issues. Finally, the ALJ found that the State's witness was trying to improve operations overall, and that an unsuccessful management decision does not violate the Act.

CSEA and Town of Brookhaven
(ALJ Bediako)
Matter No. 22-0067

CSEA filed an improper practice charge alleging the Town violated the Taylor Law by refusing to provide information regarding the separation agreements and health insurance contribution rates of non-bargaining unit Town employees. CSEA requested this information in furtherance of contract negotiations that were in mediation. One of the issues at mediation was the retiree health insurance contribution rate, which CSEA wanted to compare with the rate given to non-bargaining unit employees. The Town refused to provide the information and argued the requested information was impermissibly vague, but did admit that there were separation agreements. The Town argued that the matter had become moot because the parties had reached a contract. CSEA argued that it was not yet moot because the contract had not yet been ratified by the parties. The ALJ dismissed the charge, finding that the information CSEA requested was not relevant because the Town never stated that the contribution rates it was proposing were connected to the rates it gave non-bargaining unit employees, nor that the information requested was necessary because CSEA did not prove it was hindered by the lack of information, nor why the information was critical to negotiations at impasse.

NLRB DECISIONS

Staff Decisions:

Tyree Learning Center, SCO
(Regional Director Reibstein)
Matter No. 23-0765

CSEA filed a petition to represent all full-time teachers, teacher assistants, and one-on-one aides employed by Tyree Learning Center, SCO, on or about September 27, 2023. On or about October 10, 2023, the Employer filed a petition based on a demand for recognition made by the Union on or about September 26, 2023. The collective bargaining agreement ("CBA") was effective from and had a duration from December 7, 2020, through December 6, 2023. This is relevant because, when an employer and union enter into a CBA, the contract bar doctrine prevents the processing of any representation petition for up to three years, with the exception of a thirty-day period beginning ninety days and ending sixty days prior to the CBA's expiration. The Employer's petition was therefore untimely filed and dismissed by Regional Director Reibstein.

COURT ACTIONS

City of Glens Falls v. CSEA et al.
(Supreme Court, Warren County)
Matter No. 22-0785

The City of Glens Falls commenced this proceeding, seeking to vacate an arbitration award that returned a terminated employee to work without back pay and benefits. This employee was terminated following a physical altercation with a co-worker. The City first argued that CSEA's opposition was unverified and failed to include an affidavit from someone with personal knowledge of the underlying facts. The Court rejected this argument because CSEA did file a verified answer to the underlying petition, and there was

no evidence that this was done without personal knowledge of the underlying facts. Secondly, the City alleged that the underlying grievance was untimely, which the Court rejected because there was nothing to suggest the arbitrator exceeded his power in finding that the grievance should be considered. In conclusion, the Court denied the City's petition to vacate the arbitration award as no evidence was proffered to suggest that the arbitrator exceeded his authority or that it is otherwise entitled to an Order vacating the arbitration award.

VanDusen et al. v. SUNY Upstate
(Supreme Court, Onondaga County)
Matter No. 23-0017

Petitioners commenced this special proceeding to confirm an arbitration award pursuant to CPLR 7510. Petitioner VanDusen ("Petitioner"), a member of CSEA, was employed by Respondent SUNY Upstate as a Nursing Assistant II. Petitioner was terminated for failing to be vaccinated against COVID-19. Before being terminated, Petitioner had sought and was denied a religious exemption to the vaccination. During the underlying arbitration, the Arbitrator held that termination was inappropriate, and that the Petitioner should be provided with an agreeable accommodation/ reassignment or be placed on leave without pay until future employment is possible. However, placing the Petitioner on leave without pay did not prevent SUNY Upstate from filling the position and therefore, did not violate public policy. The Court confirmed the arbitration award, finding that the record established that the arbitrator's findings were rational, had evidentiary support, and were consistent with the collective bargaining agreement.

Williams v. County of Onondaga, et al.
(Court of Appeals)
Matter No. 23-0592

In an earlier ruling, CSEA successfully argued that the County's refusal to grant GML § 207-c benefits to the Petitioner was arbitrary and capricious. After receiving this decision, the County

filed a motion to reargue. The Appellate Division denied the County's motion in its entirety. The County then sought leave to appeal to the Court of Appeals. However, the Court of Appeals similarly denied the County's motion, affirming the Appellate Division's decision.

CSEA v. County of Nassau
(Supreme Court, Nassau County)
Matter No. 23-0038

CSEA filed a grievance over the County's violation of a Memorandum of Agreement ("MOA") between the parties stating that the County would train unit members by a specific date, otherwise a weekly penalty fee would be assessed. The Arbitrator found that although the County violated the MOA, the penalty clause was unenforceable due to the NIFA statute. However, the Arbitrator still found damages to be appropriate and ordered the County to pay CSEA $50,000. CSEA petitioned for an order vacating an arbitration award, arguing the Arbitrator's failure to enforce the penalty clause was a manifest disregard of the law. The County opposed and filed its own petition seeking partial vacatur, arguing that the Arbitrator exceeded his authority in awarding punitive damages. The Court found the Arbitrator did not exceed his authority in determining the County violated the MOA, nor did he exceed his authority in trying to fashion a remedy. However, the court found the penalty inappropriate as it was not rationally related to the MOA. The Court both granted and denied CSEA's petition in part and granted the County's petition by vacating the $50,000 award. Additionally, the Court ordered a rehearing to take place solely to address what remedy should be assessed against the County for violating the MOA, and held that any money damages awarded must be related to the violation and not as punishment.

Ball v. Schoharie County
(Supreme Court, Schoharie County)
Matter No. 23-0221

CSEA filed an Article 78 petition seeking the Petitioner's reinstatement to the position of full-time Paramedic. CSEA also filed a contract grievance and an improper practice charge with PERB based on similar facts. The County argued that the petition should be dismissed due to the Petitioner's failure to exhaust his administrative and contractual remedies. The Supreme Court agreed and dismissed the Petition without prejudice, permitting refiling once administrative and contractual remedies had been fully exhausted.

Glantz, et. al., v. Board of Education of the Rye CSD
(Appellate Division, Second Department)
Matter No. 21-0316

CSEA filed an Article 78 petition challenging two decisions made by the Board of Education, which resulted in the abolition of two part-time teaching assistant positions, claiming that the Board's decision violated Education Law § 3013(2) and the collective bargaining agreement by retaining less senior, full-time teaching assistants. The Board argued that the protections of Education Law § 3013(2) applied only to full-time teaching assistants, not part-time ones. In a judgment dated April 27, 2021, Supreme Court denied the petition and dismissed the proceedings. CSEA appealed. The Appellate Division found that the Supreme Court properly denied the petition and dismissed the proceeding since CSEA failed to establish that the Petitioners were full-time teaching assistants entitled to the protections afforded under Education Law § 3013(2).

Town of Greenburgh v. CSEA
(Hon. Thomas Quiñones, J.S.C.)
Matter No. 23-0269

The Town of Greenburgh ("Town") filed a petition to permanently stay arbitration, CSEA then filed a cross petition to compel

arbitration in response. It appears that CSEA filed a contract grievance and later a demand for arbitration with respect to a probationary employee being removed from his promotional position and returned to his former position. However, the Town only found out about the demand for arbitration when it received correspondence from the American Arbitration Association advising that it had received the demand. It subsequently filed the petition to permanently stay arbitration. Judge Quiñones determined that the Town showed that the nature of the grievance was not arbitrable because the Grievant was a probationary employee when he was removed from his promotional position and returned to his former position. As such, he granted the Town's petition to permanently stay arbitration.

NYS DIVISION OF HUMAN RIGHTS

Garramone v. CSEA
(Regional Director Chungata)
Matter No. 23-0199

The Complainant, a CSEA member, filed a complaint with the New York State Division of Human Rights, charging CSEA with unlawful discriminatory practices relating to employment because of disability and race/color discrimination in violation of the New York Human Rights Law. The Complainant contended that CSEA perceived or regarded her as being disabled and colluded with her employer, SUNY Stony Brook, in defending its position that she was ill and should resign or go out from work on permanent disability. Ultimately, the complaint was dismissed because the investigation found no information to support the allegations against CSEA.

Arango v. CSEA
(Regional Director Chungata)
Matter No. 23-0363

A complaint was filed with NYS Division of Human Rights, charging CSEA with unlawful discriminatory practice based on national origin. Complainant alleged he was directed by CSEA not to speak Spanish during a disciplinary meeting. The Division investigated and found that CSEA did represent Complainant at a disciplinary meeting which was held when a Workplace Violence complaint was filed against Complainant by a coworker. At the meeting, Complainant was advised not to threaten his coworkers in Spanish. The Division found no corroboration of Complainant's allegation of discriminatory animus, and instead found it to be a conclusory supposition based on Complainant's national origin and the Unit President's national origin. The complaint was dismissed.