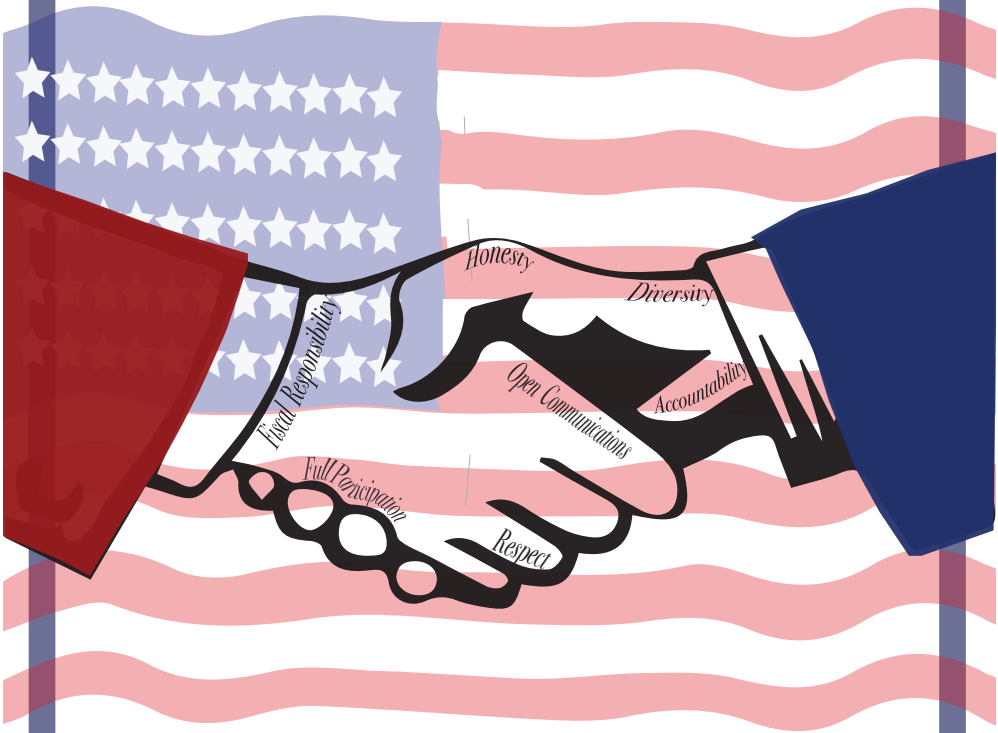
THE ADVOCATE

June 2023

A PUBLICATION OF CSEA LEGAL DEPARTMENT



CSEA
Local 1000 AFSCME, AFL-CIO

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New York State's Paid Parental Leave for CSEA Bargaining Unit Employees

New York State and CSEA have agreed to expand a fully paid parental leave program for CSEA-represented State Executive Branch employees, effective April 2, 2023. This agreement provides 12 weeks of fully paid parental leave to more than 52,000 employees in the Administrative Services Unit, Institutional Services Unit, Operational Services Unit and the Division of Military and Naval Affair Unit. The fully paid parental leave option is available for eligible State employees to bond with a newborn, fostered or adopted child.

In order to be eligible for this benefit, CSEA bargaining unit employees must work full-time or work at least 50% part-time. An employee will also become eligible for this benefit once they have completed six months of State service.

Furthermore, Paid Parental Leave can be used once every 12-month period, with the qualifying event commencing the time to start such leave. For instance, the 12-month period commences and is determined by the date of birth, the day of adoption or foster care placement. Once the qualifying event commences, an employee has seven months to use the leave time. Paid Parental Leave

cannot be used intermittently and must be taken in a block of time. Employees do not have to take the full 12 weeks, but once they return from Paid Parental Leave, they can no longer use this leave. If both parents or guardians are employed by a State agency in a unit that has agreed to or is covered by this leave, both parents or guardians may use Paid Parental Leave even if they work for the same appointing authority.

Paid Parental Leave may be used in combination with all other paid and unpaid childcare leave benefits. The use of accruals cannot run concurrently with Paid Parental Leave and may be taken at appropriate times in addition to this leave benefit. While using Paid Parental Leave, employees will continue to be covered by their existing insurance benefits, with the same contribution rates by the employer. During this period of paid leave, employees will continue to have health insurance premiums, retirement contributions and other payroll deductions withheld from their paycheck.

With respect to attendance and leave, employees that are utilizing Paid Parental Leave will be considered to be in a leave without pay status. During this period of leave, employees will not earn biweekly leave accruals or observe holidays and they will not receive personal leave or vacation bonus days if their work anniversary date falls while they are using Paid Parental Leave. In such cases, the personal leave anniversary date changes to the date of return to work and the employee receives personal leave on the adjusted anniversary date.

Such employee's vacation anniversary date is adjusted if the period of continuous absence on Paid Parental Leave and any other kind of childcare leave, except where the employee charges accruals on such leave, exceeds six months. If such period is less than six months, the employee retains the same vacation anniversary date and is credited with vacation bonus days upon return to work.

This benefit is similar to the statewide Paid Family Leave Law that was signed by New York State in 2016. In comparison, the Paid

Family Leave Law does not provide fully paid leave. It is available to most private sector employees for paid leave time for bonding with a newborn, adopted or fostered child. Paid Family Leave also provides paid time for the care of a family member with a serious health condition. This paid leave time caps at a maximum rate of pay. Further, employees have money deducted from their paychecks to fund Paid Family Leave. With Paid Parental Leave, there are no such deductions from wages.

In announcing this agreement, CSEA President Mary E. Sullivan said, "[t]his agreement recognizes that anyone who has the opportunity to become a parent either through childbirth, adoption, or fostering should be allowed to spend the time to strengthen parental-child bonds without worrying about the economic impact of being on unpaid leave. Paid parental leave will be another great benefit for our union members across New York State and we are thankful that Governor Hochul is staying true to her commitment to make this happen. While much of the United States is far behind other countries regarding paid family and parental leave policies, New York has definitely taken a step in the right direction."

If you have any questions regarding the Paid Parental Leave for State employees, please consult with your CSEA union officers or Labor Relations Specialist, or the State Operations Department.

DISCIPLINARIES

State Disciplines:

Department of Corrections and Community Supervision (DOCCS)
(Arbitrator Douglas)
Matter No. 22-0888

The Grievant, a Nursing Assistant 2, was suspended without pay and served a Notice of Discipline ("NOD") which sought his termination for refusing to work a mandated overtime shift, telling his manager to write him up, and then leaving the facility. The Grievant had one prior NOD, which resulted in a five-day suspension with five additional abeyance days reserved should the same or similar conduct occur. After a review of the record, the Arbitrator dismissed the grievance and found the Grievant guilty of the charges in the NOD. In addressing the penalty issue, the Arbitrator found termination inappropriate and suspended the Grievant for one month without pay. Furthermore, the Arbitrator found the State did not prove it had probable cause to believe that the Grievant was a potential danger or that he severely interfered with the facility's operations and therefore, directed the State to reinstate the Grievant to his position with back pay and benefits minus the one-month suspension.

Office for People with Developmental Disabilities
(Arbitrator Stein)
Matter No. 19-0545

The Grievant was a Direct Support Assistant charged with misconduct and incompetence for having physical confrontations with a service recipient on two separate dates. The State suspended her without pay and sought her termination. The State alleged that she committed misconduct by hitting a service recipient, falsifying notes regarding the events, denying the service recipient appropriate health care, causing emotional distress, and being arrested and charged with 1st Degree Endangering the Welfare of

Incompetent/Physically Disabled Person and 1st Degree Falsifying Business Records. The State offered no evidence in support of the events regarding the second alleged physical confrontation. CSEA made a Motion to Dismiss for failure to present evidence on each allegation, and moved for the Grievant to be reinstated because the State lacked probable cause to suspend the Grievant without pay. The Arbitrator found that the State failed to meet its burden, granted CSEA's Motion to Dismiss, found the Grievant not guilty on every charge, and ordered the State to reinstate the Grievant with full back pay and benefits to the date of her suspension.

Office for People with Developmental Disabilities
(Arbitrator Rinaldo)
Matter No. 22-0887

The Grievant, who was employed by the New York State Office for People with Developmental Disabilities ("OPWDD") as a Direct Support Assistant, was served with a Notice of Discipline ("NOD") proposing a penalty of termination as a result of allegedly using profanity and derogatory language towards his supervisor in the presence of a service recipient, failing to provide proper supervision to service recipients, and engaging in other insubordinate behavior. The Grievant testified and argued that his supervisor had "an ulterior motive" to report him because "she wanted to get him terminated," and that she was actually the person who did the yelling and the cursing during the incident. However, Arbitrator Rinaldo determined that the witnesses called by OPWDD were credible, and that the Grievant's testimony was merely an attempt to avoid taking responsibility for his conduct. Furthermore, given the Grievant's past disciplinary record, Arbitrator Rinaldo determined that termination was the appropriate penalty, and that OPWDD had just cause for suspension.

Office for People with Developmental Disabilities
(Arbitrator Deinhardt)
Matter No. 22-0992

The Grievant, who was employed by the New York State Office for People with Developmental Disabilities ("OPWDD") as a Direct Support Assistant, was served with a Notice of Discipline ("NOD") proposing a penalty of termination as a result of an alleged inappropriate physical interaction with a service recipient, as well as an alleged failure to document the physical interaction properly. The Grievant testified that, during the interaction, the service recipient pulled her hair, and she had to grab her wrists in order to release her grasp. During the altercation, the service recipient fell backwards onto the bed. The Grievant's supervisor testified that the Grievant told her that she actually slammed the service recipient to the bed and floor, so she reported the incident to the appropriate authorities. Arbitrator Deinhardt determined that OPWDD had met its burden of proof because the Grievant's testimony and reports contained conflicting information, the service recipient could not provide an account of what happened, and the evidence showed that the Grievant restrained the service recipient while not using the proper techniques. Furthermore, given the Grievant's past disciplinary record, Arbitrator Deinhardt determined that termination was the appropriate penalty, and that OPWDD had just cause for suspension.

Unified Court System
(Court Attorney Referee Splain)
Matter No. 22-0662

The Grievant worked as a Court Officer for the Unified Court System ("UCS"). UCS sought his termination for 5 specifications of misconduct relating to his handling of his firearm. The Hearing Officer found that the State had not proven that the weapon the Grievant held during the incident was his court issued firearm, as the Grievant had a concealed carry pistol permit. The Hearing

Officer found the Grievant guilty of all other counts. The Court found the Grievant to be uncontrite as his actions created a potentially dangerous situation, and therefore upheld the penalty of termination.

Unified Court System
(Hon. Norman St. George, J.S.C.)
Matter No. 22-0802

The Grievant, a Court Officer who was employed by the Unified Court System ("UCS") was served a Charge of Misconduct containing eleven Specifications relating to three separate incidents involving a traffic stop, a weapons qualification day, and improper use of sick leave. The UCS Hearing Officer found that the Charge, including all Specifications were proven beyond a preponderance of credible evidence and recommended termination. After reviewing the hearing transcript, the Deputy Chief Administrative Judge ruled that the finding of Misconduct was not against the weight of the evidence and concurred that the punishment should be termination.

Local Disciplinaries:

City of Cohoes
(Arbitrator Whelan)
Matter No. 22-0549

The Grievant, who is employed by the City of Cohoes as a Senior Water Treatment Operator, was served with a Notice of Discipline ("NOD") proposing a penalty of thirty days' suspension without pay for allegations of both misconduct and insubordination as a result of failing to adhere to the sick leave policy contained in the collective bargaining agreement ("CBA"). The Grievant credibly testified that the parties had not strictly followed the call-in procedure for the last twenty years he had worked there, and therefore, he was not aware that he could be disciplined for calling in the way he had. CSEA successfully argued that the City failed to meet its burden to prove the Grievant was insubordinate, because

there was no evidence to support the allegation that the Grievant was given or refused a direct order to call in under the procedures found in the CBA. The Arbitrator found that the Grievant committed misconduct by not following the call-in procedure. However, he still sustained the grievance and held that because the City failed to provide the Grievant with adequate notice that the failure to adhere to the contractual call-in procedures could lead to discipline, it did not have a reasonable basis to implement discipline. Therefore, the Grievant was found not guilty of the charges in the Notice of Discipline.

City of Cohoes
(Arbitrator Hoffman)
Matter No. 22-0547

The Grievant, who is employed by the City of Cohoes ("City") as a Laborer, was served with a Notice of Discipline ("NOD") proposing a penalty of ten days' suspension without pay because, when he was presented with a separate and earlier NOD, he allegedly threw the document back at his supervisor, yelled "this is bullshit," and aggressively stated that he would not be signing it. During the hearing, the Grievant admitted to his use of inappropriate language, explaining that he was frustrated at having been presented with the NOD in front of his coworkers, and that he later apologized to his supervisor for using this kind of language. Arbitrator Hoffman determined that the Grievant only used "foul" language, as opposed to "abusive" language, and that the Grievant's reaction was due in part to being presented with the NOD in front of his coworkers. Furthermore, his use of "foul" language was tantamount to misconduct, but not insubordination. Lastly, Arbitrator Hoffman determined that the Grievant's unsolicited apology to his supervisor was a reason to reduce the disciplinary penalty to a fine equivalent to five days' pay at the Grievant's rate of pay as of the date he stated "this is bullshit" to his supervisor.

County of Westchester
(Hearing Officer Korn)
Matter No. 23-0102

The Grievant, who is employed by the County of Westchester ("County") as a Supervisor of Maintenance, was served with a Notice of Discipline ("NOD") proposing a penalty of termination or demotion because he allegedly failed to execute his supervisory job responsibilities. The allegations related to three incidents that violated safety protocols and created an unsafe work environment, including boring through concrete while knowing that it contained a high voltage electrical conduit. The Grievant testified that he was absent from work when the two incidents occurred, however, admitted that he bored through concrete while knowing that it contained a high voltage electrical conduit, and that doing so was a "calculated risk." Hearing Officer Korn determined that there was insufficient evidence to sustain the charges relating to the incidents that occurred while the Grievant was absent from work, but he sustained the charges relating to the Grievant boring through concrete and determined that the appropriate penalty for these "serious" charges was a thirty day suspension without pay.

County of Monroe
(Arbitrator Sabin)
Matter No. 22-0600

The County of Monroe ("County") employed the Grievant as an Office Clerk II in the County's Conflict Defender's Office. The County terminated the Grievant because she had breached the confidentiality of client records on multiple occasions despite being warned not to. CSEA argued that the County failed to utilize progressive discipline as required pursuant to the collective bargaining agreement ("CBA"). The Arbitrator denied the claim that the County failed to utilize progressive discipline because the language in the CBA specifically allows the County to skip steps in certain instances involving egregious behavior. Furthermore, the Arbitrator found that the Grievant had egregiously breached the County's Code of Ethics and therefore held termination to be appropriate.

<u>Non-State Disciplinaries</u>:

Nassau Health Care Corporation
(Arbitrator Walko)
Matter No. 22-0473

The Grievant, worked as a Patient Care Aide at Nassau Health Care Corporation ("NHCC") and was charged with time abuse for excessive use of sick days, taking sick days in combination with other leave, and being tardy. She was issued a Notice of Personnel Action (NOPA) which warned her to improve her time and attendance, and was then terminated the same day. NHCC argued that termination was proper here because the Grievant had been issued 6 prior disciplines since 2016 for the exact same conduct, and that after each of her prior suspensions or probationary periods, she immediately resumed her misconduct. CSEA argued that NHCC only proved the Grievant was absent or tardy, but not that she was abusing her time. CSEA argued that all the Grievant's absences were with authorization, were validated whenever requested by NHCC, and that all her lateness was *di minimus* of 1 to 15 minutes. The Arbitrator found that the Grievant was guilty of time abuse, but not for all the instances asserted by NHCC, and that since the NOPA stated that the continuation of the Grievant's conduct could result in termination, termination at that time was inappropriate. The Arbitrator reduced the termination to a suspension without pay for the 13 months that had passed since the NOPA was issued and ordered the Grievant reinstated.

CONTRACT GRIEVANCES:

Local Grievances:

City of Cohoes
(Arbitrator Mayo)
Matter No. 22-0475

CSEA filed a grievance contending that the City of Cohoes ("City") violated the collective bargaining agreement ("CBA") when it failed to call the most senior employee at its Water Filtration Plant ("Plant") for an overtime opportunity that concerned an emergency repair. The City offered no defense to the grievance, however, there was clear evidence that on January 16, 2022, the Department of Public Works Commissioner went to the Plant with employees from the separate Water Department to effectuate a repair. The Arbitrator granted the grievance and held that it was obvious the City violated the CBA because the most senior Water Filtration Plant employee was required to respond to two automatic alarms at the Plant the same day after the repair was made. Therefore, it was clear that the same employee should have been the one that was called to effectuate the repair earlier that day. The Arbitrator awarded that employee eight hours of overtime for the date in question, less any overtime he received for responding to the two alarms that evening.

Monroe-Woodbury Central School District
(Arbitrator Siegel)
Matter No. 22-0243

In this Grievance, CSEA argued that Monroe-Woodbury Central School District ("District") violated the party's CBA when it failed to provide out-of-title pay to the Grievant, a Building Maintenance Mechanic ("BMM") who specialized in HVAC, dating back to when a higher titled employee, an HVAC Technician, resigned and the Grievant took over his duties. The CBA provides that employees assigned to work in a higher title position for more than ten consecutive full-time working days shall be paid at the rate of

pay for the higher title. The District argued that the grievance was untimely, that CSEA argued beyond the scope of the grievance, and that CSEA did not establish a *prima facie* case that the Grievant ever performed the out-of-title work. The District had another BMM with a specialty in HVAC testify that he was hired soon after the HVAC Technician resigned, had the same responsibilities as the Grievant, and that most of the projects the Grievant claimed as out-of-title work were performed by them both equally. The Arbitrator found the grievance arbitrable and timely since the Grievant relied on the District's representations that it was working on a solution, and held that the District violated the CBA by assigning the Grievant work duties of a higher title after the HVAC Technician resigned, until the BMM with a specialty in HVAC was hired and "shared in the responsibility of HVAC duties." The Arbitrator awarded the Grievant payments from the District equal to the difference between the two positions from when the higher title position resigned to when the new BMM was hired.

Orange County
(Arbitrator Siegel)
Matter Nos. 22-0584, 22-0585

CSEA grieved the decision of the County to deny some of the Grievants' vacation requests for the year 2022 based on the rule that no more than 50% of Probation Supervisors could be approved for vacation on a given day. Arbitrator Siegel determined that the evidence showed that the 50% rule had been in place and applicable to all bargaining unit members in the Probation Department since 2013, and that this rule was agreed to by CSEA and the County because it would assure the County that all job functions would be covered, while also assuring CSEA that 50% of the workforce could be granted vacation on a given day. The evidence also showed, that while Senior Probation Officers and Probation Officers were in the same "micro-division" and could substitute for one another under the 50% rule while still covering basic job functions, Probation Supervisors were the only employees eligible to supervise Senior Probation Officers and Probation Officers, which meant that the 50% rule applied to Probation Supervisors in a separate "micro-

division" from other Probation Department staff. Furthermore, as there was no evidence that the County violated the collective bargaining agreement when it denied the Grievants' vacation requests, Arbitrator Siegel dismissed the grievances.

PERB DECISIONS:

Hyatt v. CSEA and Town of Hempstead
(ALJ Bediako)
Matter No. 22-0333

On March 23, 2022, a Town of Hempstead ("Town") employee ("Charging Party") filed an Improper Practice Charge against CSEA alleging violations of Sections 209-a.2(a), and (c) of the Taylor Law by breaching the duty of fair representation owed to her. More specifically, the charge alleged that CSEA failed to provide the Charging Party with a copy of the Town's decision concerning her October 29, 2020, grievance, refused to appeal the outcome of the grievance, and acted rudely toward her during a meeting. CSEA denied the material allegations of the charge and asserted defenses of timeliness and failure to state a claim. To prove a violation of the duty of fair representation, the Charging Party needed to establish that CSEA's conduct was arbitrary, discriminatory, or undertaken in bad faith. Although the ALJ held the charge to be timely, they agreed with CSEA and dismissed it because there were no facts supporting the Charging Party's suspicions. More specifically, the ALJ held that the Charging Party could not prove that CSEA's actions were arbitrary, discriminatory, or undertaken in bad faith and therefore dismissed the charge in its entirety.

COURT ACTIONS:

Anthony Della Mura v. Board of Water Supply of the City of Mount Vernon
(Supreme Court, Appellate Division, Second Department)
Matter No. 20-0215

The Petitioner was a Senior Bookkeeper with the Mt. Vernon Board of Water Supply ("Board"). In 2018, the Board brought disciplinary charges alleging that the Petitioner caused himself to receive unauthorized overtime compensation and an unauthorized increase in salary for a pay period. After a Civil Service Law ("CSL") § 75 hearing, the Hearing Officer failed to issue a report of findings or a recommendation. Nonetheless, the Board terminated Petitioner's employment. CSEA commenced an Article 78 proceeding to review the Board's determination. The Court concluded that the Board's determination was not arbitrary and transferred the proceeding to the Second Department to rule on a substantial evidence question. The Appellate Division found that because the Hearing Officer did not issue a report with findings or recommendations pursuant to CSL § 75 before the Board terminated the Petitioner's employment, the Board's actions were "unavoidably . . . arbitrary." Accordingly, the Appellate Division granted the Petition, annulled the determination of the Board, reinstated Petitioner to his position with full back pay and benefits, and remitted the matter to the Board for a new hearing and a new determination with respect to the charges.

CSEA v. Monroe Community College
(Supreme Court, Monroe County)
Matter No. 22-0280

CSEA submitted a FOIL request to the College, requesting a copy of an investigative report previously prepared by the College's outside counsel regarding complaints from CSEA that its members were being unlawfully surveilled. The College refused to provide the investigative report, so CSEA filed an Article 78 proceeding. The

College moved for dismissal, arguing that the report was exempt from disclosure because it fell within a disclosure exception as it contained private information. Furthermore, the College argued the report was attorney work product and therefore protected under attorney-client privilege. The Court denied the Motion to Dismiss and granted CSEA's petition. The Court found that the report was an agency record, and not an investigation of one employee's misconduct in response to disciplinary charges, but rather, was an investigation of broader policy concerns related to the CBA between the parties. While the Court recognized the report was an invasion of personal privacy, it held that the equities favored disclosure. The Court also held that the report was not protected by attorney-client privilege, as the outside firm which prepared it did not provide legal advice to the College, but rather compiled facts. The Court did not award attorneys' fees because, although CSEA substantially prevailed, the College's reasons for withholding the report were reasonable and made in reliance upon advisory opinions from the Committee on Open Government. The Court ordered the report to be disclosed to CSEA, subject to the redaction of identifying details of witnesses.

Village of Spring Valley v. CSEA
(Supreme Court, Appellate Division, Second Department)
Matter No. 20-0493

CSEA filed a grievance on behalf of the Grievant, a Court Attendant whose hours were reduced without reason. At arbitration, the Arbitrator ruled that when the Village changed the way work was assigned by disregarding seniority, the Village violated the "Maintenance of Standards" provision of the CBA, which stated that member benefits were not to change unless expressly changed in the CBA. The Arbitrator ordered the Village to meet with CSEA to calculate the appropriate make whole remedy. The Village filed an Article 75 petition with the Supreme Court to vacate the award. The Supreme Court dismissed the petition and upheld the arbitrator's award. The Village appealed to the Appellate Division, which upheld the lower court's decision. The Appellate

Division found that the Supreme Court properly determined that the arbitrator's award was rational, did not violate a strong public policy, and that the arbitrator acted within his authority.

Whelan v. New York State Canal Corp. et al.
(Supreme Court, Albany County)
Matter No. 22-0778

The Petitioner was a Carpenter employed by the New York State Canal Corporation ("Canal Corp."). Canal Corp. served Petitioner with a Notice Of Discipline alleging he knowingly submitted false information on the mandatory COVID-19 daily health screening. After an arbitration hearing, the Arbitrator found Petitioner guilty, but recommended that he be suspended for six months without pay. Canal Corp. ignored the Arbitrator's recommendation and terminated the Petitioner. CSEA filed an Article 78 petition on the basis that the penalty was an abuse of discretion as a matter of law because it was disproportionate to the offense and shocking to one's sense of fairness. The Court disagreed, dismissed the petition, and held that Canal Corp. did not abuse its discretion in terminating the Petitioner's employment because the serious misconduct at issue endangered the health and safety of his co-workers. Furthermore, the Petitioner compounded his misconduct by refusing his supervisor's directive to leave the work site immediately.