THE ADVOCATE

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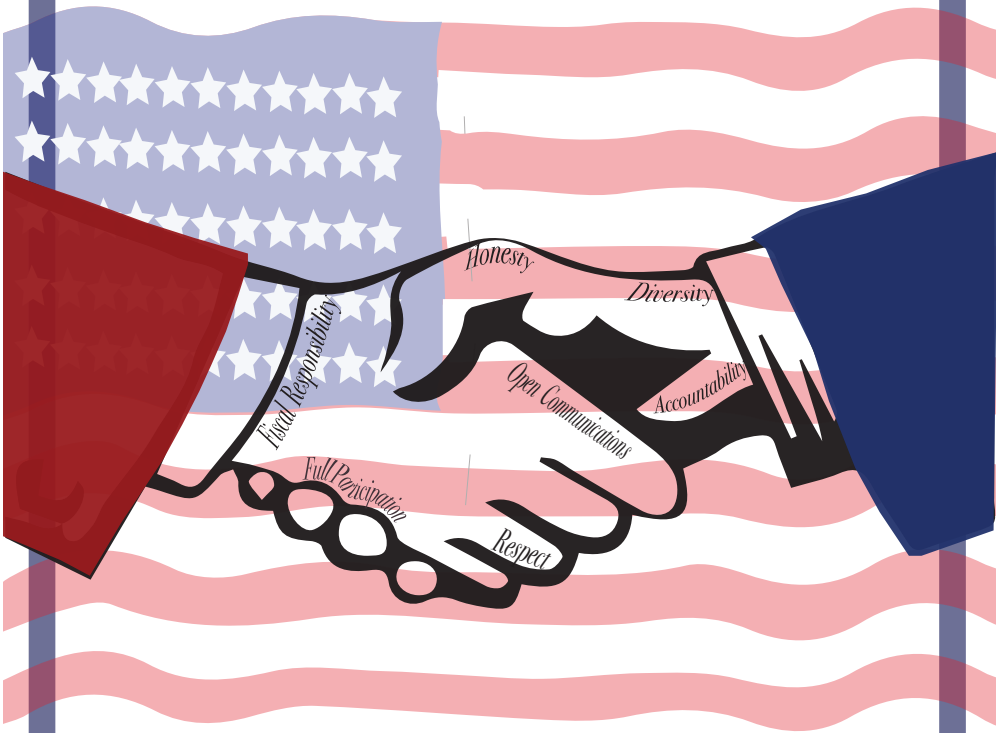

CSEA
Local 1000 AFSCME, AFL-CIO

TABLE OF CONTENTS:

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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

Significant U.S. Supreme Court Decisions to End the 2022-2023 Term

With the United States Supreme Court approaching the start of its summer break, the Justices have issued many important decisions at the end of June to round out the Court's final days of the term. These cases centered around religious accommodations, affirmative action in college admissions and first amendment free speech issues. I am providing summaries of these decisions as they may have a significant impact in the workplace and in representing our members.

Religious Accommodation for US Postal Service Worker
Groff v. DeJoy, 143 S. Ct. 2279 (June 29, 2023)

Before the Court's recent decision in *Groff*, employers were permitted to deny an employee's religious accommodation request based upon an "undue hardship," so long as the burden of granting the accommodation would result in "more than a de minimis cost." For over 45 years, the "*de minimis cost*" analysis created a low standard for employers to meet to deny a religious accommodation. In *Groff*, the Court issued a unanimous decision "clarifying" the undue hardship standard and dismantling the "*de minimis cost*" framework. This ruling now makes it harder for employers to deny a religious accommodation request.

This case involved Gerald Groff, a former United States Postal Service ("USPS") employee and Evangelical Christian, who believed for religious reasons that Sunday should be devoted to worship and rest. Mr. Groff challenged the Postmaster General's denial of his request for a reasonable accommodation for his Sunday Sabbath practice. In his claim, Mr. Groff also alleged that the USPS disciplined him for failing to work as a letter carrier on Sundays. The USPS argued that it tried to find other carriers to cover Mr. Groff's Sunday shifts, but due to a shortage of rural carriers, efforts often failed, and it could not operate effectively.

In a 21-page opinion, Justice Alito explained that although lower courts have interpreted the phrase "undue hardship" to mean "any effort or cost that is 'more than … *de minimis*,'" that interpretation is "a mistake." In "clarifying" the undue hardship standard, the Court found that employers now must meet a higher standard when denying an employee's request for a religious accommodation. Now, employers assessing religious accommodation requests must grant such applications if there is no evidence that providing the accommodation would result in "substantial increased costs in relation to the conduct of its particular business." The Court also declined to determine what facts would meet this new test and remanded the case back to the lower court to decide the issue under this new standard. This decision, and its finding to remand this case for the lower court to analyze the facts under a different test, could essentially set up what likely will be years of legal battles with courts attempting to apply this new standard.

Affirmative Action in College Admissions
***Students for Fair Admissions, Inc. v. President and Fellows of Harvard College and Students for Fair Admissions, Inc. v. University of North Carolina, et al.*, 143 S. Ct. 2141 (June 29, 2023)**

The Court's decision in *Students for Fair Admissions, Inc.* largely gutted affirmative action, finding that colleges and universities can no longer take race into consideration as a specific basis for

granting student admission. In this case, the Court considered the admissions practices at Harvard College and the University of North Carolina when deciding whether race-based admission policies were lawful. By a vote of 6-3, the Justices ruled that the admissions programs used by Harvard College and the University of North Carolina violated the Constitution's equal protection clause because they failed to offer "measurable" objectives to justify the use of race.

At both Harvard College and the University of North Carolina, admissions policies considered the race of the applicant. With respect to Harvard College, an applicant's race was among a few factors that was weighed, and the admissions committee tried to ensure that minorities were accepted in order to prevent a "dramatic drop-off" in its minority acceptance rate. At the University of North Carolina, an applicant's minority race could place the applicant with a "plus" rating, which could render a "significant" impact in its acceptance of the student.

In a 40-page opinion that addressed both the Harvard College and the University of North Carolina cases, Chief Justice John Roberts began with a review of the Supreme Court's past decisions interpreting the equal protection clause. Those decisions, he concluded, reflect the clause's "core purpose": "doing away with all governmentally imposed discrimination based on race." He emphasized that the Supreme Court had only allowed universities to use race-based admissions programs "within the confines of narrow restrictions." But the Harvard College and University of North Carolina programs, "however well intentioned and implemented in good faith," Chief Justice Roberts explained, do not comply with those restrictions.
The majority's decision left the door open for service academies like the U.S. Naval Academy and West Point to continue to use, at least for now, race-conscious admissions programs. The Biden administration, which filed a brief as a "friend of the court" in support of Harvard College and the University of North Carolina, had emphasized that senior military leaders believe that it is important to have a diverse officer corps, which in turn requires

the consideration of race for admission to the service academies. However, the service academies did not participate in the Harvard College and the University of North Carolina cases, and the lower courts did not consider that argument. Therefore, Chief Justice Roberts indicated in a footnote, the Court did not weigh in on the issue, "in light of the potentially distinct interests that military academies may present."

The impact of this decision is monumental. For decades, the Court has held that it is permissible to consider race in college and university admissions decision-making processes, which was seen as a way to create and maintain a diverse student body and benefited Black and Latino students. While the Court did not find that race could never be a factor in admissions, its decision has essentially eliminated what was previously accepted and dismissed the idea that racial diversity equates to academic diversity. With the Court's ruling, higher educational institutions are, however, not precluded from eliminating any sort of reference or correlation to an applicant's race. The Court's decision expressly stated that an applicant could speak about their race in relation to possible challenges overcome by the applicant and qualities they may bring to campus, including how race affected their life.

In light of this decision, colleges and universities will be revamping their admissions process and it is expected that additional litigation will be pursued in the wake of this ruling.

First Amendment- Free Speech Clause
***303 Creative LLC, et al. v. Elenis, et al., 143 S. Ct. 2298* (June 30, 2023)**

The plaintiff, an Evangelical Christian, is an artist who specializes in graphic and website design. She wanted to expand her services to include wedding websites but was deterred from doing so under Colorado's anti-discrimination law which would require her to work with same-sex couples. Colorado's law prohibited refusing to provide goods and services to an individual because of their sexual orientation. The plaintiff stated that she did not agree with gay

marriages due to her Christian beliefs and argued that the Colorado law infringed on her free speech rights.

By a 6-3 decision, the conservative majority of the Court found in favor of the plaintiff. The Court held that because the plaintiff's websites may include text that could be customized to portray her potential clients' love story, it was categorized as "pure speech." In the Court's ruling, it held that Colorado could not force the plaintiff to create websites promoting certain messages that contradict her beliefs and opinions about marriage.

Justice Neil Gorsuch wrote the majority opinion and stated, "[i] n this case, Colorado seeks to force an individual to speak in ways that align with its views but defy her conscience about a matter of major significance. The First Amendment envisions the United States as a rich and complex place where all persons are free to think and speak as they wish, not as the government demands." Justice Sonia Sotomayor authored the dissent, joined by fellow liberal Justices Elena Kagan and Ketanji Brown Jackson, and wrote: "[t]oday the Court, for the first time in its history, grants a business open to the public a constitutional right to refuse to serve members of a protected class . . . Today is a sad day in American constitutional law and in the lives of LGBT people."
Although the application of this decision may be limited to what is considered to be "expressive activity," certainly the *303 Creative LLC* decision may have greater implications for LGBTQ+ anti-discrimination protections and other civil rights laws, as such policies may now be vulnerable and open to reinterpretation by the courts.

DISCIPLINARIES

State Disciplines:

Office for People with Developmental Disabilities
(Arbitrator Riegel)
Matter No. 19-0528

The Grievant, a Direct Support Assistant with the New York State Office of People with Developmental Disabilities ("OPWDD"), was issued a Notice of Discipline ("NOD") proposing termination for sleeping on duty, failing to supervise service recipients, falsifying records, and violating protocols regarding medication administration. The Grievant has no prior disciplinary issues. OPWDD initially reassigned the Grievant to a work location with a more experienced supervisor, but she refused to be reassigned and OPWDD then suspended her without pay. Arbitrator Riegel found probable cause for the suspension, found the Grievant guilty of the charges, and deemed termination appropriate, despite her clean record, due to the severity of her misconduct, lack of remorse, and refusal to consider reinstatement to a new position.

Office for People with Developmental Disabilities
(Arbitrator Rinaldo)
Matter No. 22-0966

The Grievant, a Direct Support Assistant with the New York State Office of People with Developmental Disabilities ("OPWDD"), was suspended and issued a Notice of Discipline proposing termination, for sending anonymous emails and a letter containing false and baseless claims of mistreatment, making baseless allegations against coworkers leading to their administrative leave, and reporting false allegations against OPWDD employees to the New York State Justice Center. The Grievant had no prior disciplinary history. Arbitrator Rinaldo found the Grievant guilty of most of the charges while dismissing others for insufficient evidence. He further found termination was the only appropriate penalty because "Grievant's

transmission of an anonymous email to the parent of an individual in residence, which contained false claims of mistreatment, is beyond the pale of acceptable behavior." Additionally, the Arbitrator upheld the Grievant's suspension without pay.

Office of Mental Health
(Arbitrator Nadelbach)
Matter No. 22-0300

The Grievant, who was employed by the New York State Office of Mental Health ("OMH") as a Dental Hygienist, was disciplined with suspension without pay and possible termination as a result of failing to receive the COVID-19 vaccine in accordance with the New York State Department of Health's regulations. Although the Grievant submitted requests for both religious and medical exemptions from the vaccine requirement, Arbitrator Nadelbach upheld her suspension without pay and termination. Specifically, Arbitrator Nadelbach determined that the Grievant was afforded due process before her termination from employment was sought through notice of the vaccine mandate and the time frames for compliance, despite the fact that she was never interrogated with respect to her refusal to become vaccinated. Ultimately, the Grievant's refusal to become vaccinated resulted in Arbitrator Nadelbach upholding the proposed penalty because there was no other appropriate penalty.

Office of Mental Health
(Arbitrator Ternullo)
Matter No. 22-0841

The Grievant, who was employed by the New York State Office of Mental Health ("OMH") as a Mental Health Therapy Aide, was disciplined with suspension without pay and possible termination as a result of failing to receive the COVID-19 vaccine in accordance with the New York State Department of Health's regulations. Although the Grievant submitted a request for a religious exemption from the vaccine requirement, Arbitrator Ternullo upheld her suspension without pay and termination. Specifically,

Arbitrator Ternullo determined that the Grievant was afforded due process before her termination from employment was sought through notice of the vaccine mandate and the time frames for compliance. Ultimately, the Grievant's refusal to become vaccinated resulted in Arbitrator Ternullo upholding the proposed penalty because there was no other appropriate penalty.

Office of Mental Health
(Arbitrator Stiefel)
Matter No. 22-0518

The Grievant, employed as an electrician by the Office of Mental Health ("OMH"), failed to get vaccinated, despite being directed 3 times to do so. Upon the Grievant testing positive for COVID-19, without conducting an interrogation, OMH issued a NOD, suspended him immediately, and sought his termination. CSEA argued that termination is disproportionate to the conduct; considering the Grievant had no patient contact; the penalty was arbitrary and capricious because patients are not required to be vaccinated to enter the facility; and that there was no probable cause for suspension because he did not present a danger to person or property. OMH argued that there was probable cause to suspend the Grievant immediately because he worked around other staff who worked around patients, and that termination is the only appropriate penalty because vaccination is mandated, and the corrective purposes of progressive discipline are inapplicable because the Grievant stated he continued to refuse vaccination. The Arbitrator found the vaccination refusal to be insubordination, that interrogation was not required when the Grievant does not deny the underlying facts, and that the risks of COVID in a congregate living facility makes it impossible to conclude that the Agency's determination to apply its mandate to all its employees was arbitrary or capricious. Finally, he found that termination was appropriate because at the time, the vaccination mandate was imposed, it was reasonable.

SUNY Upstate Medical University
(Arbitrator Campagna)
Matter No. 22-0889

The Grievant, who was employed by SUNY Upstate Medical University ("SUNY") as an Emergency Admission Insurance Verification Specialist, was served with a Notice of Discipline alleging fifteen charges of misconduct, all related to the Grievant's inappropriate use of email communications and being criminally charged with Aggravated Harassment in the Second Degree. At the hearing, the Grievant did not deny his conduct or communications, and the Arbitrator ultimately found the Grievant guilty of all fifteen charges and upheld SUNY's decision to terminate the Grievant's employment. The Arbitrator relied heavily on the fact that despite the Grievant being previously suspended for thirty days for similar behavior, he still chose to engage in similar misconduct. Additionally, the Arbitrator held that due to the Grievant's threatening conduct, SUNY was well within its rights and in the interest of protecting its workforce to suspend the Grievant pursuant to Article 33 of the collective bargaining agreement.

Local Disciplinaries:

Nassau University Medical Center
(Arbitrator Pfeffer)
Matter No. 22-0615

The Nassau University Medical Center ("Medical Center") employs the Grievant as a Stores Clerk. The Medical Center accused the Grievant of theft for allegedly putting COVID-19 test kits in her pocket during a public distribution and suspended her for ten days. Before the distribution event, the Grievant was told that she could receive test kits, but only if, depending on supply, a decision to include her in the public distribution was made at the end of the day. The Arbitrator found that the Grievant did take the tests before the end of the day but was only guilty of misconduct, not theft, because there was no evidence that the Grievant would have kept the kits had she been told that there would be no distribution

to Medical Center employees. Although the Arbitrator found the Grievant guilty of misconduct, he reduced the penalty to a one-day suspension without pay and ordered the Medical Center to make the Grievant whole for the other nine days of suspension she already served. In reducing the penalty, the Arbitrator relied on the Grievant's truthfulness and long unblemished work record.

Nassau County
(Arbitrator McCray)
Matter No. 22-0801

The Grievant, a Sewage Treatment Operator at the County's Department of Public Works, received two Notices of Personnel Action for excessive absences, first issuing a suspension without pay for 45 days and then terminating him. At the hearing, evidence was presented regarding Grievant's documented mental illness of depression and anxiety, which significantly impacted his ability to follow the County's call-in policy when absent. CSEA argued that he was treated inequitably since his mental health should have been considered differently from physical ailments. Arbitrator McCray found that the County had just cause to suspend and ultimately terminate Grievant based on his extensive record of absences, regardless of his mental health conditions.

Syracuse Housing Authority
(Arbitrator Deinhardt)
Matter No. 22-0917

The Grievant, who was employed by the Syracuse Housing Authority ("SHA") as a Housing Services Specialist, was served with a Notice of Discipline alleging four charges of misconduct which alleged the Grievant used or possessed alcohol on SHA premises, used or possessed drugs on SHA premises, left the workplace during work hours without permission and was dishonest. SHA sought the Grievant's termination. The Arbitrator found that SHA proved that Grievant possessed alcohol, however, did not prove that she used illegal drugs. Furthermore, the Arbitrator held that there was insufficient evidence to support that the Grievant

should have asked for permission prior to leaving her work site. Additionally, the Arbitrator found that the Grievant was dishonest when questioned about the allegations. The Arbitrator upheld the termination penalty in part because the collective bargaining agreement between CSEA and SHA provides that SHA has the right to immediately dismiss any employee who is found in possession of alcoholic beverages during work hours.

Chemung County
(Arbitrator Kowalski)
Matter No. 22-0901

The Grievant, a Nurses Aide for the County of Chemung ("County"), was issued a Notice of Discipline ("NOD") on September 21, 2022. Two months prior, he had served a 10-day suspension for patient abuse. The current NOD sought his termination for allegedly mistreating a resident by insulting her and trying to force her to eat while aiding her in eating. The Grievant did not appear at the arbitration despite being advised of the hearing, so the County sought dismissal. The Union sought to proceed on a limited basis, but the Arbitrator instructed the Union to attempt to contact the Grievant. The Union was unsuccessful, so the Arbitrator tentatively granted the County's motion, on the condition that the Union have the remainder of the day to contact the Grievant to determine why he was unable to attend. The Union was unable to contact the grievant that day, so the Arbitrator dismissed the grievance and sustained the termination.

Onondaga County
(Arbitrator Mayo)
Matter No. 23-0346

The Grievant, who is employed by Onondaga County ("County"), was served with a Notice of Discipline ("NOD") proposing a penalty of termination as a result of several alleged instances of unauthorized absences from work, namely, clocking in, leaving the job site, and then returning to clock out. During the hearing, the Grievant acknowledged that he had committed the acts as defined

in the NOD, which resulted in him being paid for approximately eighty-eight and a half (88.5) hours that he did not work. As such, Arbitrator Mayo found him guilty of the charges in the NOD and upheld the penalty of termination as appropriate.

City of Albany
(Judge Teresi)
Matter Nos. 23-0132 & 23-0091

The Grievant, who has been employed by the City of Albany ("City") for the last fourteen (14) years, was served with a Notice of Discipline proposing a penalty of termination as a result of alleged instances of misconduct and incompetence such as unauthorized use of a City vehicle, theft of services, engaging in workplace violence, and using abusive and threatening language, among other allegations. Judge Teresi determined that there was just cause for the imposition of discipline, and specifically credited the City's evidence and witnesses as credible. As for the Grievant's testimony, Judge Teresi found him to be disingenuous, and that he "concocted" his testimony to "fit the occasion." He also determined that the City established all of the alleged charges by clear and convincing evidence, and that termination was an appropriate penalty as a result.

Hyde Park Central School District
(Arbitrator Lobel)
Matter No. 23-0116

The Grievant, a Cook at Hyde Park Central School District's elementary school, was suspected of being under the influence, leading to her being taken to the emergency room, where her Blood Alcohol Content measured .248%. Subsequently, she was placed on paid administrative leave and instructed not to return to school property or drive her car. However, she was later observed driving from the school's parking lot. A charge of Misconduct seeking termination was issued, citing four specifications, including arriving, and driving on school property while under the influence of alcohol. CSEA acknowledged the facts but disagreed with the

termination penalty, highlighting Grievant's positive qualities, clean record, and desire to continue working. CSEA further emphasized the District's policy to provide intervention, assessment, referrals, support, and follow-up services to District employees with alcohol abuse issues. Arbitrator Lobel found that there was no choice but to uphold termination based on Grievant's role as a cook preparing food for children, driving under the influence on school grounds, and her extremely high blood alcohol level.

Arlington Central School District
(Arbitrator Lobel)
Matter No. 22-0837

The Grievant, a Custodian at Arlington Central School District ("District"), suffered a work-related injury. He was issued a Notice of Discipline alleging that he fraudulently remained out of work despite being physically able to perform his duties, as evidenced by surveillance conducted by a private investigator. The charges also included allegations that Grievant, while on leave, worked at his family-owned restaurant, drove at high speeds without medical assistance, and lied under oath during a Workers' Compensation hearing. A hearing was held to decide whether the Grievant was guilty or innocent of the charges. The parties agreed to a second hearing regarding the appropriate penalty if found guilty. Arbitrator Lobel found Grievant guilty of all charges and ordered another hearing to determine the proper penalty.

CONTRACT GRIEVANCES

Local Grievances:

Nassau County
(Arbitrator McLaughlin)
Matter No. 22-0571

CSEA filed a class action grievance contending that the County violated the collective bargaining agreement ("CBA") when they appointed an employee to the position of Assistant County Assessor Trainee ("Trainee") without providing salary parity to the existing employees in the Trainee title. CSEA argued that although the CBA allowed the County to hire at any step of the salary schedule, it also required that incumbent employees in the same job classification or title be changed to the salary step at least as high as the newly hired employee's salary. The County argued that the employee was not a new hire because he previously held a different title, and therefore the relevant portion of the CBA does not apply. The Arbitrator agreed with CSEA, sustained the grievance, and ordered that all members of the class shall be placed in the same grade and step as the employee newly hired. The Arbitrator relied in part on the fact that although the employee resigned from his previously held provisional title, he would have been terminated because he was unreachable on the Civil Service List. Therefore, when he was appointed to the Trainee title, he was a new employee, and any other employee holding that title should have received pay parity in accordance with the CBA.

Town of Hancock
(Arbitrator Gelernter)
Matter No. 22-0948

CSEA grieved the decision of the Town of Hancock ("Town") to deny the Grievant's request to use family or medical leave pursuant to the Family Medical Leave Act ("FMLA") on the basis that the Grievant "did not work at and/or report to a site with fifty (50) or more employees within seventy-five (75) miles as of the date of

his request." Arbitrator Gelernter acknowledged that the FMLA does not cover workers whose employers have fewer than fifty (50) employees, but that the Town had legally agreed with CSEA to include a Family Medical Leave Policy in the requisite collective bargaining agreement ("CBA"). Thus, while the Town may not have had a statutory obligation to provide family or medical leave, it had a contractual obligation to do so pursuant to the CBA. As such, Arbitrator Gelernter sustained the grievance, finding that the Town violated the clear terms of the CBA when it denied the Grievant's request, and that the Grievant should be restored any pay, benefits, or accruals lost as a result of the Town's denial.

Lewis County
(Arbitrator Hoffman)
Matter No. 22-0911

CSEA filed a grievance, alleging the County violated the CBA when it awarded a vacant Principal Account Clerk position to an outside applicant instead of the Grievant, who was an internal County applicant. CSEA argued that the County acted arbitrarily, without discretion, and violated language in the CBA by failing to consider the seniority of its internal applicants when they apply for promotions or transfers. The County argued that since this position was newly created and filled by an outside candidate, there was no promotion, so the contractual language was not relevant. They argued that language was only applicable when comparing internal CSEA candidates to one another. The Arbitrator found that the contractual language did not establish a "strict seniority" provision and therefore seniority was not required to be the controlling factor in filling vacant position. Furthermore, the Arbitrator found that this was not a promotional position, but rather an open position, so outside candidates were properly considered in the applicant pool. CSEA also argued that the Grievant was at least equally qualified as the chosen outside candidate with regards to the enunciated criteria and therefore should have been offered the position based upon her seniority. The Arbitrator disagreed, and held that the criteria listed in the CBA are not the sole factors the County could consider when evaluating applicants. As a result, the Arbitrator denied the grievance.

Schenectady County
(Arbitrator Brown)
Matter No. 22-0973

CSEA grieved the decision of Schenectady County ("County") to deny the Grievant's request to change her work schedule on one (1) day per week. Arbitrator Brown determined that it was the County's right to set work hours, and that it had exclusive discretion to decide the Grievant's request to change her work schedule. Furthermore, even though the relevant collective bargaining agreement ("CBA") prohibited the recission or reduction of any "rights, privileges, or benefits" afforded to County employees, the fact that the County retained discretion to decide the Grievant's request to change her work schedule meant that an employee's start time was not one of the aforementioned "rights, privileges, or benefits" afforded to County employees. In the absence of any such "right, privilege, or benefit," Arbitrator Brown determined that there was no basis for CSEA's claim that the CBA had been violated, and he concluded that the grievance should be denied.

Private Sector Grievances:

Lifespire, Inc.
(Arbitrator Nadelbach)
Matter No. 22-0923

CSEA filed a grievance contending that Lifespire, Inc. violated the collective bargaining agreement ("CBA") when it failed to allow a Residential Habilitation Specialist the opportunity to make up time he had missed due to a series of personal issues. On the day of the arbitration hearing, the Grievant chose to represent himself and dismissed his Union representation. Lifespire, Inc., argued, and the Arbitrator agreed, that the CBA between CSEA and Lifespire Inc. creates no obligation to mandate and assign make-up time to allow employees to work additional hours beyond their regular schedule. Since the CBA does not require Lifespire, Inc. to create additional work opportunities, the Arbitrator held that Lifespire, Inc. did not violate the agreement as alleged and denied the grievance.

JUSTICE CENTER

Office of People with Developmental Disabilities
(ALJ Blum)
Matter No. 23-0233

The New York State Vulnerable Persons' Central Register ("VPCR") maintained a report substantiating a category two charge against the Subject alleging neglect for driving in an unsafe manner while transporting a service recipient. The Subject requested that the VPCR amend the report to reflect that the Subject is not a subject of the substantiated report. The VPCR refused the request, and a hearing was held at the Justice Center. At the hearing, video evidence showed that the Subject was using her cellular phone while driving and failed to stop at several stop signs completely. After the hearing, it was determined that the Justice Center met its burden of proving that the Subject committed neglect and that the report properly categorized the conduct as a category two act.

COURT ACTIONS

County of Onondaga v. CSEA
(Supreme Court, Appellate Division, Fourth Department)
Matter No. 22-0494

This appeal brought by CSEA sought to overturn the Supreme Court decision and judgment which granted the partial vacatur of an arbitration award, in which the Arbitrator found that the County violated the CBA between the parties when it improperly required the use of accruals for COVID-19-related illness/leave. The Supreme Court granted the petition in part, but vacated the portion of the award regarding said two dates on the ground the Arbitrator erroneously found the matter arbitrable and exceeded his authority by interpreting the application of statutory entitlements. The Appellate Division found that the Arbitrator did not exceed his

authority when he found the matter arbitrable, because there is a reasonable relationship between the subject matter of the grievance and the general subject matter of the CBA, and concluded the Arbitrator's review of relevant state law did not exceed his authority, especially as the CBA states that it is subordinate to present or future federal and New York state laws. The Appellate Division reversed the Supreme Court's order insofar as appealed from and denied the County's petition in its entirety.

Williams v. County of Onondaga, et al.
(Supreme Court, Appellate Division Fourth Department)
Matter No. 22-0335

The Petitioner brought this proceeding pursuant to CPLR Article 78 to review a determination of the Respondent County of Onondaga, which denied her application for General Municipal Law § 207-c benefits. In an earlier decision, the Appellate Division found that the County's decision to deny the Petitioner § 207-c benefits was arbitrary and capricious. After receiving the previous decision, the County moved to reargue the petition, or, in the alternative, sought permission for leave to appeal to the Court of Appeals. The County argued that the Court overlooked or misapprehended the standard's application, in that it inadvertently expanded its reviewing powers. After reviewing the relevant motion papers, as well as CSEA's opposition, the Appellate Division denied the entirety of the County's motion.

Village of Canastota v. CSEA and Kenneth Taylor-Roher
(Supreme Court, Madison County)
Matter No. 21-1049

The Village filed a petition seeking an Order vacating an arbitrator's opinion and award. CSEA filed a counterclaim, seeking dismissal of the petition. The award arose from a grievance filed by CSEA, alleging the Village violated the CBA by failing to pay the Grievant the cash value of his sick and personal leave when he resigned from Village employment. The grievance went to arbitration, and after a hearing the Arbitrator held that the Village violated the CBA and

ordered the Village to pay the Grievant the value of his accrued sick leave. The Village argued to the Court that the Arbitrator's award violated the strong public policy that payments to public employees for unused vacation or sick time are public gifts and as such may not occur unless expressly authorized by statute, local law, resolution, or a contractual term. The Court held that such policy did not apply here, because the CBA authorized the accrual of leave time and the payment of terminal benefits to separating employees. Furthermore, although the CBA was reasonably susceptible to different interpretations, the CBA gave the Arbitrator authority to resolve such differences and his/her interpretation was rational. Therefore, the Court denied the Village's petition, granted CSEA's counterclaim, and confirmed the Arbitrator's opinion and award.

CSEA, et al. v. New York State Police
(Supreme Court, Albany County)
Matter No. 23-0245

CSEA moved to confirm a disciplinary arbitration award pursuant to Article 75 of the Civil Practice Law and Rules. The underlying arbitration award found the member guilty of a single count of misconduct and returned him back to work after a six-month suspension without pay. The Court confirmed the portion of the award which found the member guilty of misconduct; however, the Court vacated the portion of the award that found the member not guilty of several other charges, vacated the penalty, and remitted the matter to a different arbitrator for the imposition of a new penalty. In its decision, the Court found the arbitrator's award to be irrational and in violation of public policy. CSEA has since filed an appeal.

Dalli v. Westchester County, et al.
(Supreme Court, Westchester County)
Matter No. 21-0368

Through the filing of an Article 78 proceeding, Petitioner sought to compel Respondent Westchester County ("County") to immediately promote him to a new position because that

promotion had been unlawfully denied him by the County and given to someone else (Wilson Mathai). Petitioner alleged that he was denied the promotion in retaliation for political activity he undertook in support of the ultimately unsuccessful reelection campaign conducted on behalf of the incumbent County executive, who was replaced following the general election. The County then made a motion to dismiss on the basis that Petitioner failed to name a necessary party to the action—Mr. Mathai—and because the relevant statute of limitations had expired. Judge Cacace agreed and granted the County's motion because Petitioner was aware of the identity of the individual who was promoted instead of him and still failed to name him in this action, even though a potential consequence of a judgment rendered in Petitioner's favor would result in Mr. Mathai's discharge in order to enable Petitioner to occupy the position. Furthermore, the joinder of Mr. Mathai was greatly disfavored because the relevant statute of limitations had already expired. As such, the proceeding was dismissed.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

K.D. v. CSEA
(Equal Employment Opportunity Commission)
Matter No. 22-0955

Charging Party filed a charge of discrimination in the New York State Division of Human Rights, alleging CSEA discriminated against her on the basis of her sex. The Charging Party alleged that her employer, which is not CSEA, was paying female employees a lesser wage than newly hired male employees and that CSEA failed to take effective action to correct the alleged pay issues. The charge was cross-filed with the United States Equal Employment Opportunity Commission ("EEOC"), where CSEA successfully refuted all the allegations in the charge. In its determination, the EEOC decided not to proceed further with its investigation.

J.R. v. Troy City School District and CSEA
(Field Office Director Schweiberger)
Matter No. 22-0467

The member filed a charge of employment discrimination with the U.S. Equal Employment Opportunity Commission ("EEOC") against the Troy City School District ("District") and CSEA which alleged discrimination and harassment based on color, sex, and race. The EEOC decided not to proceed further with its investigation and dismissed the charge, but explicitly stated that it was making "no determination about whether future investigation would establish violations of the statute." This determination also informed the member of her right to file a lawsuit against the respondents within ninety (90) days of her receipt of the determination.