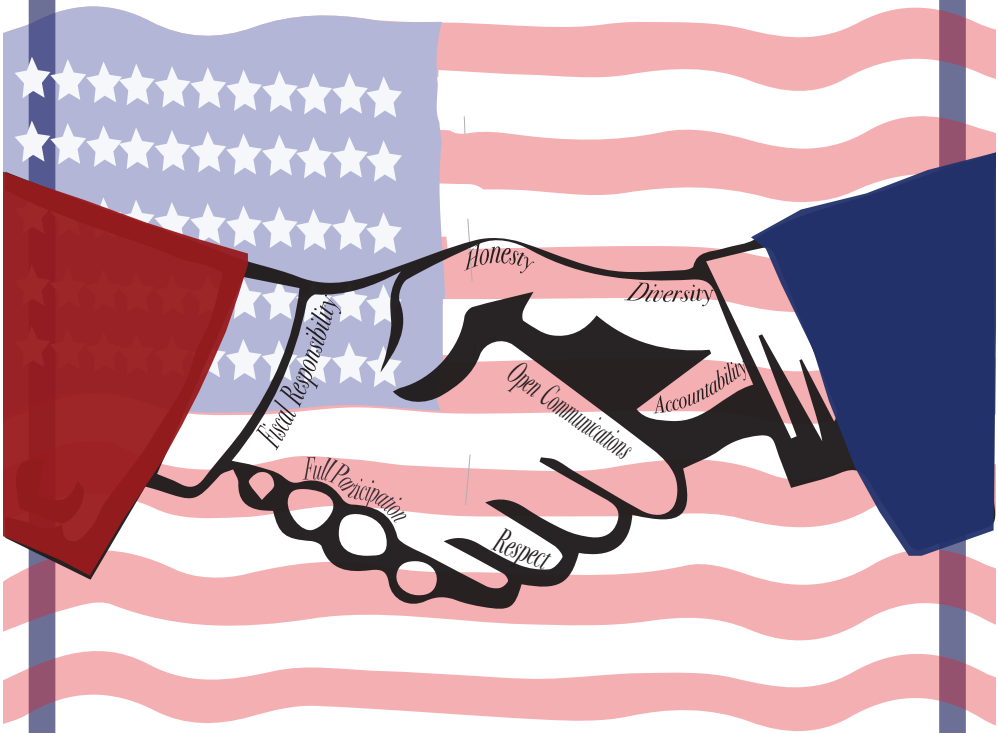
THE ADVOCATE

March 2024

A PUBLICATION OF CSEA LEGAL DEPARTMENT



CSEA
Local 1000 AFSCME, AFL-CIO

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Proposed Labor and Employment Legislation in the 2025 New York State Budget

Governor Hochul's 2025 Executive Budget includes certain legislative proposals involving labor and employment. If the budget is passed with these pieces of legislation, these policies will have a direct impact on the workforce. Such policies include maternal and infant care, while also addressing COVID-19 paid sick leave.

Paid Prenatal Appointments

As part of the Governor's initiative on addressing maternal and infant health care, she has introduced new policies and legislation to expand the New York State Paid Family Leave Act. This legislation includes 40 hours of paid leave, per calendar year, for pregnant employees to attend prenatal medical appointments. If passed, this law would make New York the first state in the nation to establish statewide coverage for prenatal care. The Governor has recognized the correlation between having access to regular prenatal medical visits and maternal and infant health, including mortality rates. Under New York's current paid family leave law, short-term disability benefits are not available until four weeks prior to the child's birth after a seven-day waiting period. In expanding the time-period and offering paid leave from work, new mothers will be able to attend medical appointments without sacrificing their ability to support their household. This new leave would be in

addition to the current 12 weeks of Paid Family Leave or 26 weeks of disability leave. If enacted, this law would take effect on January 1, 2025.

Paid Breaks for Break Milk Expression
In conjunction with the previously mentioned legislation on prenatal care, the 2025 budget also includes paid time off for New York employees to express breast milk in the workplace. Specially, this law aims to amend New York State Labor Law, which only requires unpaid break time for employees for this purpose. It would amend the law to require paid breaks for up to 20 minutes. In support of this bill, it was noted that "it will preserve equal wages for working mothers who are nursing while driving greater worker retention." If passed, this bill would take effect 60 days after enactment.

The End of COVID-19 Paid Sick Leave
It appears that the New York State's paid COVID-19 sick leave law will sunset on July 31, 2024. For approximately four years, New York State has provided paid leave for employees subject to a mandatory or precautionary order of quarantine or isolation due to Covid-19. The Governor has proposed ending this law, as it was noted that New York State already has "nation-leading paid sick leave laws" and the federal COVID-19 state of emergency has concluded.

DISCIPLINARIES

State Disciplines:

Office for People With Developmental Disabilities
(Arbitrator Riegel)
Matter No. 23-0168

The Grievant, who is employed by the NYS Office for People with Developmental Disabilities ("OPWDD"), was issued a Notice of Discipline proposing a penalty of termination based on allegations that he struck a service recipient in the jaw and neck with his fist. Arbitrator Riegel determined that OPWDD failed to meet its burden because there was no physical evidence to suggest that the Grievant had physically abused the service recipient, because the service recipient recanted his accusations against the Grievant on at least two occasions, and because this particular service recipient was known to have violent thoughts and take violent actions. Additionally, the Grievant had a "spotless" nineteen-year record with no prior evidence of physically abusing patients, which stood in stark contrast to the service recipient's propensity for violence. Despite his finding that OPWDD failed to meet its burden with respect to the alleged charges, Arbitrator Riegel noted that OPWDD had demonstrated sufficient probable cause to suspend the Grievant. As a result, Arbitrator Riegel dismissed all the charges, and ordered that the Grievant be made whole relative to lost wages and benefits between the date of his suspension and the date of his reinstatement.

Office of Information and Technology Services
(Arbitrator Simmelkjaer)
Matter No. 22-0386

The Grievant, is employed by the NYS Office of Information Technology Services (ITS) as an Administrative Assistant SG1. The Grievant was previously suspended without pay and served a Notice of Discipline containing three charges. A hearing was held,

the Arbitrator found the Grievant not guilty of Charge 1, dismissed Charges 2 and 3, found that the State did not have probable cause to suspend the Grievant without pay, and ordered the state to make the Grievant whole with full back pay and commensurate benefits. The parties were unable to agree on the particulars of the Grievant's back pay and make whole remedy, and as a result, a hearing on the remedy was held. At the hearing, CSEA argued that the Grievant should be provided all accruals she had at the time of her suspension without pay and that she should be provided the full time to utilize any accruals earned during her suspension. CSEA established that certain leave accruals that expired during Grievant's suspension were not restored upon her return to work. The Arbitrator held that the State's decision not to restore the accruals that expired was tantamount to a double penalty, the first being the suspension without pay, the second being the abbreviated timeframe accorded to her to utilize the accruals she earned during her suspension. The Arbitrator ordered that the Grievant be provided all the accruals she had at the time of her suspension, with whatever time remained for their use, as well as provided the full time to utilize any accruals that were earned during her suspension without pay.

Office of Mental Health
(Arbitrator Butto)
Matter No. 23-0438

The Grievant, who was employed by the Office of Mental Health ("OMH") as a Facility Operations Assistant I (Grounds) since 2016, with no prior disciplinary record, was suspended without pay and received a Notice of Discipline ("NOD") seeking termination. The NOD alleged that the Grievant sent an inappropriate sexual text message to a male coworker regarding a female coworker, thereby breaching the agency's policy. Additionally, the NOD alleged that the Grievant retaliated against the same female coworker by covering her tractor with slush, water, and rocks the day after being served with a cease-and-desist order. Although the Grievant admitted to sending the text message, he contended that it was not intended for the female coworker to see, and he

maintained innocence regarding the retaliation. He further argued that he should not be terminated, even if found guilty, based on his exemplary work record and that he should not have been suspended because he was not a potential danger to persons or property, nor would he severely interfere with operations. The Arbitrator found the Grievant not guilty of the sexual harassment charge, determining that the message wasn't directed at the female coworker, but found him guilty of retaliation and imposed a one-year probationary period during which any same or similar conduct would lead to termination. Furthermore, the Arbitrator found OMH satisfied the probable cause standard for suspension because the Grievant' s continued presence on the job was deemed to be a risk to the female coworker.

Unified Court System
(Hearing Officer Deitz)
Matter No. 23-0647

The Grievant, a Supervising Court Office Assistant employed by the Unified Court System ("UCS") was served a Charge of Misconduct seeking his termination. There were six specifications of failing to perform certain tasks timely, insubordinate comments and conduct towards his supervisor when she tried to talk with him, and an additional incident of insubordinate comments after being confronted by his supervisor that his work was being reassigned. The Grievant did not dispute the underlying facts. The Hearing Officer recommended that one of the two specifications regarding failing to perform a task timely be confirmed, along with the rest of the specifications regarding insubordinate comments and reassigning his work. Ultimately, the Hearing Officer recommended termination was not appropriate, and instead recommended Grievant be demoted in both salary and title.

Unified Court System
(Hearing Officer Smith)
Matter No. 23-0252

The Grievant, who was employed as a New York State Court

Officer with the Unified Court System ("UCS"), received a Notice of Discipline, seeking termination for violating §50.1 (II)(C) of the Rules of the Chief Judge by reposting on his Facebook page a meme containing racist and anti-muslim comments. Although the Grievant admitted to posting the meme and was remorseful, he argued that he thought the person in the post was a terrorist based on what President Trump said on television. The Hearing Officer found that the Grievant communicated a message of bias or prejudice when he posted the meme and, therefore, violated 50.1 (II)(C) of the Rules of the Chief Judge. However, the Hearing Officer did not feel that the violation warranted the severe penalty of termination and recommended probation and mandatory anti-bias training. The Hearing Officer made this recommendation based on the Grievant's remorse, unblemished employment record, absence of evidence of posting on duty, the Grievant's explanation citing external political policy influence at the time, and the Grievant's supervisor's acknowledgment of the need for more anti-bias training.

Department of Motor Vehicles
(Arbitrator Cassidy)
Matter No. 23-0526

The Grievant, who was employed by the NYS Department of Motor Vehicles ("DMV"), was issued a Notice of Discipline proposing a penalty of termination based on allegations that she purposely bumped into a coworker and subsequently threatened to "fight," "snatch," or "drag" the same coworker. Arbitrator Cassidy credited the testimony of the DMV witnesses in that the Grievant's threat was made as a result of her coworker telling her not to interfere in her attempt to quiet another coworker, and that the Grievant was seen face-to-face with this coworker in the locker room telling her that they could "take this outside." While the Grievant claimed this was an invitation to go outside and talk things over, Arbitrator Cassidy disagreed and determined that this was clearly a threat. In addition, there was video evidence which showed the Grievant making physical contact with her coworker. Arbitrator Cassidy then found that termination was the appropriate penalty because

of the seriousness of the actions, and because it was apparent from her testimony that she did not believe that she did anything wrong. Arbitrator Cassidy further noted that DMV demonstrated sufficient probable cause for the suspension of the Grievant, because retaining her pending the hearing would likely have caused a severe disruption of the DMV Office.

NYS Department of Transportation
(Arbitrator Simmelkjaer)
Matter No. 23-0458

The Grievant, who was employed as a Bridge Repair Assistant with the Department of Transportation ("DOT"), received a Notice of Discipline ("NOD") after testing positive for cocaine during a random drug test, thus violating the Omnibus Transportation Employee Testing Act and DOT's policy. DOT argued it had just cause for termination based on the Grievant's safety-sensitive position and a prior NOD for the same conduct. Despite the Grievant's admission to the positive test, he argued for leniency, citing his commitment to recovery and lack of on-duty impairment. The Arbitrator agreed with DOT and found that termination was appropriate due to Grievant' s repeated positive tests, safety-sensitive role, and potential risk to coworkers and the public. Furthermore, the Arbitrator held that DOT had probable cause to suspend the Grievant without pay since his positive test for cocaine represented a potential danger to persons and property, given that his duties included operating heavy equipment.

Local Disciplinaries:

Orange County Sheriff's Office
(Arbitrator Siegel)
Matter No. 23-0605

The Grievant, who is employed by the Orange County Sheriff's Office ("Employer"), was issued a Notice of Discipline proposing the loss of five days of leave accruals based on allegations that he acted outside the scope of his job duties when he made an off-

duty phone call in order to question a subordinate staff member regarding his spouse being mandated for overtime. The Grievant testified that his wife was upset because she had just been recently mandated for overtime and was being mandated again even though she had to pick up their children because the Grievant was out of town. He also testified that his phone call with the subordinate staff member was "cordial" and quick, and that he took no further action after the call ended. Additionally, it appears that the Grievant's spouse did not have to stay for the mandated overtime. Arbitrator Siegel determined that the charges should be dismissed because the Employer's case was an "overreach," and because none of the relevant facts supported its position. Arbitrator Siegel noted specifically that an abuse of the Grievant's position may have occurred if, after speaking with the subordinate staff member, the Grievant took additional action to thwart the Employer from assigning his spouse to mandatory overtime, but this did not happen. As such, the charges were dismissed.

Steuben County
(Arbitrator Gorman)
Matter No. 23-0541

The Grievant, who is employed by Steuben County ("County"), received a Notice of Discipline alleging violations of the County policies by leaving a document with offensive language in a designated work area. The County sought the Grievant's termination and suspended him without pay. The Grievant argued that the policies cited by the County were never formally adopted and, therefore, cannot serve as a basis for discipline. Furthermore, he asserted that the County failed to prove that he knowingly violated the policies. The Arbitrator upheld the grievance, agreeing with the Grievant that the County did not prove the charges, and ordered the restoration of the Grievant to his previous position with full back pay and accrued benefits, including any loss of seniority incurred, while deducting any outside earnings or unemployment compensation received during the suspension period.

Village of Fredonia
(Arbitrator Foster)
Matter No. 23-0577

The Grievant, who is employed as a Mechanic II for the Village of Fredonia ("Village") was terminated for failing to perform assigned work and swearing at his supervisor. The Village argued this was authorized by a prior Last Chance Agreement ("LCA") between the Village and the Grievant. The LCA at issue mandated the Grievant's termination without any opportunity for review of the underlying facts for any future accessing of Village property without permission or insubordination, or other similar conduct. The Village argued the LCA is enforceable, still in effect, and even if the Village's misconduct charge could be challenged, it was warranted due to the Grievant's conduct and the Village had just cause to discipline. CSEA argued the LCA was void and unenforceable because it did not have an expiration date and was over 10 years old, and the conduct at issue was not the same or similar to the conduct outlined in the LCA. CSEA argued the Village had not proven the facts of the charge and the termination was wrongful. The Arbitrator found that the just cause standard must be applied and that the LCA was now unenforceable because it was over 10 years old, lacked an expiration date, and granted unreasonably broad and unreviewable discretion to the Village. Additionally, the Arbitrator found that the Grievant did not fail to perform assigned work, but he did commit misconduct by swearing at his supervisor. As a result, the Arbitrator found that the Village lacked just cause to terminate the Grievant and ordered his reinstatement without backpay, including the restoration of any accruals and seniority.

City of Mount Vernon
(Hearing Officer Siegel)
Matter No. 23-0635

The Respondent, who is employed by the City of Mount Vernon ("City") as a Cook, was served with disciplinary notices alleging frequent absenteeism and tardiness, as well as theft or the inappropriate removal or possession of city-owned food,

which proposed a thirty-day suspension and termination as penalties pursuant to NYS Civil Service Law §75. Arbitrator Siegel determined that the Respondent was guilty of the charge of frequent absenteeism and tardiness because the evidence showed that he was late on too many occasions within an eight-month period for him to be considered a reliable employee. Arbitrator Siegel also determined that he was guilty of the inappropriate removal or possession of city-owned food because the evidence showed that, without permission from a supervisor, he cooked food for staff which was not on the menu, when the practice showed that staff were only permitted to eat city-owned food when there were leftovers from the menu that was served that day. Additionally, Respondent's testimony demonstrated that he understood if he wanted to cook city-owned food that was not on the menu that day, he needed supervisory permission to do so. This action by the Respondent, however, did not rise to the level of theft because there were no clear City policies with respect to cooking unused city-owned food. Arbitrator Siegel found that the penalty of termination was excessive, but that the thirty-day suspension, plus an additional one-week suspension, was an appropriate penalty.

City of Newburgh
(Hearing Officer Kasarda)
Matter No. 23-0397

The Respondent, who was employed as a Code Compliance Officer by the City of Newburgh ("City"), was served with disciplinary charges which accused him of multiple instances of insubordination and misconduct, including but not limited to; improperly initiating a complaint, unauthorized use of a City vehicle which resulted in a collision, multiple attendance issues, and dishonest behavior. Upon Respondent's admissions to a majority of the charges, Hearing Officer Kasarda found him guilty of all charges except one, which related to improper initiation of a complaint, as the City did not meet their burden of proof regarding the charge. Due to the numerous charges and the nature of the charges, the penalty of termination was deemed appropriate and warranted, and therefore upheld.

Orange County
(Arbitrator Siegel)
Matter No. 23-0450

The Grievant, who was employed by Orange County ("County") as a Social Caseworker, was issued a Notice of Discipline with a proposed penalty of termination based on allegations that she wrongly completed a professional reference form by falsely indicating her supervisor's name in the "completed" section of the form without her supervisor's awareness or permission, then submitted the form to an outside agency under the false pretense that her supervisor had completed the form. Although the Grievant claimed, among other things, that her supervisor had given her permission to write and send the reference on her behalf, Arbitrator Siegel determined that she was guilty of all charges as a result of the evidence and testimony submitted by the County. The testimony of the Grievant's supervisor was found to be especially credible, as she stated that she discovered a fax confirmation sheet indicating that she had sent a fax to an outside agency and then investigated how that came to be since she did not send the fax herself. Her actions were not those of an individual who had permitted the Grievant to write and send a reference on her behalf. Arbitrator Siegel determined the Grievant committed "an egregious breach of trust," and found that termination was the only appropriate remedy.

Pearl River Union Free School District
(Arbitrator Selchick)
Matter No. 23-0748

The Grievant, who was employed by the Pearl River Union Free School District ("District") as a Groundskeeper for the past 24 years, received a Notice of Discipline ("NOD") containing two charges alleging sleeping during work hours and then lying about it to management. The sole issue before the Arbitrator was whether the Grievant was guilty of the charges. The Grievant argued that although he was sleeping, he was permitted to do so because he was on his lunch break and provided a timeline that differed significantly from the District's account. Ultimately, the Arbitrator

agreed with the District's timeline and found the Grievant guilty of both charges.

Syracuse Housing Authority
(Arbitrator Crangle)
Matter No. 23-0455

The Grievant, who was employed by the Syracuse Housing Authority ("Authority") as a Maintenance Worker 2 since February 2009, received a Notice of Discipline ("NOD") with four charges, seeking termination. The NOD alleged that the Grievant became instantly irate at a crew meeting, verbally abusing a co-worker with obscenities and derogatory slurs, threatening bodily harm, and then lying about the incident to Human Resources. Although the Grievant admitted to the actions at the hearing and expressed remorse, he requested a penalty short of termination due to being a "changed person" since the incident and his lengthy employment with the Authority. The Arbitrator agreed with the Authority, finding that it proved the charges in the NOD and that termination was the only appropriate penalty based on the severity of the Grievant's conduct and his prior disciplinary record.

Tompkins County
(Arbitrator Donn)
Matter No. 22-0774

The Grievant, who was employed by Tompkins County ("County") as a cleaner, received a Notice of Discipline seeking termination, which included one charge and twenty-three specifications for violating the County's time and attendance policies. The County argued that termination was the only appropriate penalty given the Grievant's history of warnings, prior discipline for similar actions, and consistent problems arriving to work on time, calling in when coming in late, and not coming to work at all. The Grievant advocated for progressive discipline instead of termination for this type of offense and requested the flexibility to adjust his start time to address his attendance issues. The Arbitrator agreed with the County, concluding that termination was appropriate

due to the Grievant's repeated warnings and past discipline for similar behavior, as well as his inability to comply with rules about attendance and tardiness.

Troy Housing Authority
(Arbitrator Crangle)
Matter No. 23-0506

The Grievant, who was employed by the Troy Housing Authority as a Building Maintenance Supervisor, was served with a disciplinary action relating to an allegation that he removed items from an apartment without the permission of his employer. The Grievant, along with another employee, had been directed to change the locks on the apartment in question that was being vacated, however, he was not instructed to clean out the apartment or dispose of left items. The tenant of the apartment returned the following day and advised that she would not be vacating the apartment and that certain items were missing. During an investigation into the incident, the Grievant apologized and admitted that he spoke to the tenant and asked if it would be okay to return the items removed from the apartment. The Grievant also admitted that his co-worker returned those items to the tenant. At the hearing, surveillance video of the incident was produced, which showed the Grievant's co-workers exiting the building carrying a large bag and placing it in the car in which the Grievant was sitting. The Grievant denied that he took anything from the apartment or was aware that his co-worker took anything from the apartment. The Arbitrator found that his testimony lacked credibility and that the Grievant was aware of and, therefore, was complicit in the unlawful taking of the contents of the apartment. The Arbitrator upheld the penalty of termination because his misconduct was extremely serious and because he attempted to hide the conduct by initially claiming to his supervisor that he did not know anything.

Nassau Health Care Corporation
(Arbitrator Walko)
Matter No. 22-0927

The Grievant, who is employed by the Nassau Health Care Corporation ("NHCC") as an Admissions Officer I, Bilingual, was issued two Notice of Personnel Actions seeking termination. At arbitration, the parties resolved the matter and Arbitrator Walko issued a Consent Award. In exchange for the Grievant withdrawing the grievance with prejudice and resigning, NHCC withdrew the termination notice and accepted the resignation. Additionally, NHCC agreed not to challenge any claim by the Grievant for unemployment and to provide only a neutral reference to any prospective employers.

Nassau Health Care Corporation
(Arbitrator Peek)
Matter No. 23-0419

The Grievant, who is employed by the Nassau Health Care Corporation ("NHCC") as a Custodial Worker, was issued a Notice of Personnel Action seeking termination related to misconduct for showing inappropriate sexual images to his coworkers and referencing his supervisors' wives. At arbitration, the parties resolved the matter, and the Arbitrator issued a Consent Award. NHCC agreed to convert the penalty of termination to an unpaid suspension, to reinstate the Grievant on a Last Chance Agreement, to pay the Grievant two months backpay with accruals, and to relocate the Grievant to a different worksite. Additionally, the Grievant agreed to stay away from his prior worksite during his off hours. The parties agreed that any same or similar conduct over the next 18 months will result in disciplinary charges that may be grieved, but that if at arbitration the Grievant is found to have committed same or similar conduct, the Grievant shall be terminated and ineligible for future employment with NHCC.

CONTRACT GRIEVANCES:

State Grievances:

Unified Court System
(Arbitrator Bilik)
Matter No. 23-0272

CSEA filed a grievance alleging that the Unified Court System ("UCS") violated the parties' collective bargaining agreement ("CBA") by not providing the Grievant, a Court Officer – Captain, with an equitable distribution of scheduled overtime opportunities that other bargaining unit members were afforded. CSEA argued that the plain language of the CBA supported the grievance, and even if deemed ambiguous, should be upheld based on bargaining history, the history of the Grievant's title in the bargaining unit, and past practices. UCS argued that it had the right to determine staffing according to the management rights clause of the CBA. The Arbitrator agreed with CSEA that UCS violated the unambiguous language of the CBA, directed UCS to include the Grievant in an equitable distribution of the scheduled supervisor's weekend arraignment overtime opportunities, and to provide monetary compensation to make the Grievant whole for the loss of these opportunities.

Unified Court System
(Arbitrator Maier)
Matter No. 23-0377

CSEA filed a grievance alleging the Unified Court System ("UCS") violated the parties' collective bargaining agreement ("CBA") by not equitably distributing overtime since it treats overtime in Erie County Family Court as unscheduled overtime rather than scheduled overtime. CSEA argued that unscheduled overtime is defined by the CBA as shifts assigned in an emergency condition that cannot be anticipated in advance, and because the relevant

overtime at issue in this matter was not an emergency, it cannot be construed as unscheduled overtime. Therefore, the overtime should be construed as scheduled and must be rotated in accordance with a list and not mandated. UCS argued that it is management's right to assign employees and deploy the workforce and that the CBA does not contain a provision regarding the equitable distribution of overtime. The Arbitrator denied CSEA's grievance because there was a practice in Family Court to assign overtime after officers have worked their regular shift and that this has been construed as unscheduled overtime. While the Arbitrator found merit in CSEA's argument that the CBA requires there to be an emergency condition to require unscheduled overtime, he held that there is arguably an emergency condition when there is an insufficient number of volunteers to staff the courthouse to provide security.

Local Grievances:

Albany County
(Arbitrator Reden)
Matter No. 23-0586

The Grievant is employed by Albany County Department of Social Services as a Senior Support Investigator. He filed a grievance alleging he had been working out-of-title without proper compensation since being hired, doing the duties of his supervisor's title, Coordinator of Child Support Enforcement. CSEA argued that unlike all other employees in his title, the Grievant's primary responsibilities were those listed in the Coordinator's Civil Service job specification, and not those listed in his own. CSEA argued this violates the CBA, which mandates that 10 or more days of out-of-title work be paid at the higher rate, and it be temporary. CSEA also argued that Civil Service Law § 61(2) forbade extended out-of-title work. The County argued that the Grievant was not working out-of-title, because the duties he performed have historically been done by employees in his title, regardless of the Civil Service job specifications. The Arbitrator granted the grievance, finding that the duties assigned to the Grievant were out-of-title, as they were not in his title description, nor were they similar to them or

a reasonable outgrowth of them. The Arbitrator held that although the Coordinator performs managerial and supervisory duties which the Grievant does not, the rest of the Coordinator work activities are performed by the Grievant, who performs more than 50% of the Coordinator duties. The Arbitrator found that the Civil Service Commission's job description demonstrated that these duties belonged to the Coordinator, despite the past practice of assigning those duties to a Support Investigator. In addition, Arbitrator Reden found that the County violated the CBA by assigning the duties to the Grievant for so long and failing to pay him at a higher rate for that time. As a result, the Arbitrator ordered the County to cease assigning out-of-title work to the Grievant or to seek reclassification of the Grievant's title, and ordered the County to pay the Grievant at the higher rate for the 30 days prior to the grievance being filed, continuing until the Grievant ceases to work out-of-title.

City of Cohoes
(Arbitrator Reden)
Matter No. 23-0454

CSEA filed a grievance alleging that the City of Cohoes violated the collective bargaining agreement ("CBA") when it canceled the cable televising service at the City's Water Filtration Plant. CSEA successfully argued that the past-practice language in the CBA unambiguously provided that all existing practices, benefits, and general working conditions would remain in full force and effect unless excluded by the CBA. The cable service was not excluded by the CBA and was clearly a benefit enjoyed by the employees, therefore, its cancellation violated the CBA. The City argued that the television service was not a benefit and, therefore, the Article of the CBA was not applicable. The Arbitrator held that the cable service was a benefit to employees, that CSEA had proven that it was a longstanding past practice and ordered the cable service to be restored at the Filtration Plant.

Village of Lancaster
(Arbitrator Gelernter)
Matter No. 23-0069

CSEA filed a grievance alleging the Village of Lancaster violated the collective bargaining agreement ("CBA") when it allowed Erie County workers and contractors to perform pre-hauling snow removal work within the Village without obtaining the Union's oral or written agreement to allow for the assignment of exclusive bargaining unit work to outside workers. CSEA argued that the CBA unambiguously provided that all work being performed by unit employees is exclusively CSEA unit work and that its members have been performing the snow removal exclusively for 26 years. The Village argued that the CBA was ambiguous and that it was not clear that snow removal work was exclusive to the bargaining unit. The Arbitrator agreed with CSEA and granted the grievance because the language of the CBA was clear, and because there was evidence that when the Village contracted out for snow removal for three prior emergencies, management always sought out and received the CSEA's verbal agreement to use outside workers. The Arbitrator held that the Village must seek the agreement of CSEA before it allows any non-bargaining unit workers to perform snow removal work exclusive to the unit in the future.

Willsboro Central School District
(Arbitrator Gelernter)
Matter No. 22-0674

Grievant was a 12-year employee working full time as a Cleaner and a Bus Monitor. Per the CBA, she paid a small percentage of her health insurance premium, and the District paid the rest. Due to a medical condition, she exhausted her paid medical leave and began to take unpaid leave. She filed a class action grievance when the District charged her 100% of the health insurance premium on the unpaid leave days. The District later reimbursed her for the days when her unpaid leave was FMLA-related, but did not reimburse her for two leave days which were not FMLA-related. The District's argument of untimeliness because of incorrect

procedure was denied, because the Arbitrator agreed that the District impliedly waived any objections to timeliness by holding a hearing and issuing a decision on the merits of the grievance. Furthermore, the Arbitrator found there was no prejudice to the District due to timeliness and that this was a continuing violation. CSEA argued the CBA's plain language dictated the Grievant pay only the negotiated contribution rate and did not provide for a change in contribution rate if on a brief unpaid leave. CSEA also argued that charging the Grievant 100% of the health insurance was an indirect form of discipline. The District argued the CBA's benefits are conditioned upon attendance and providing subsidized health insurance to an employee on unpaid leave is a constitutional violation as a gifting of public funds. The Arbitrator disagreed, and granted the grievance, finding the District violated the CBA by charging the Grievant the full cost of her health insurance because the Grievant met the definition of a full-time employee and there was no contractual or statutory language to support the District devising a new method of calculating health insurance contribution rates when an employee takes unpaid leave. The Arbitrator found the Grievant's health insurance contribution rate staying the same when on unpaid leave is not an unconstitutional gift, because it is contractually mandated and a benefit the Grievant pays for with her labor. The Arbitrator ordered the District to reimburse the Grievant and ruled the District may not charge unit members, when on unpaid leave for a few days, more than their contractually mandated contribution to health insurance.

Nassau Health Care Corporation
(Arbitrator Walko)
Matter No. 23-0970

CSEA filed a class action grievance alleging that the Nassau Health Care Corporation ("NHCC") violated the contract by improperly promoting certain Registered Nurses II to Registered Nurses III ahead of others due to their seniority. After the hearing, the parties agreed by consent award that NHCC will promote the remaining members of the group pending mandatory approval by Civil Service. If any member of the class is not approved for promotion

by Civil Service, the case will revert to its status at the time of the agreement, and arbitration will resume.

City of Troy
(Arbitrator Crangle)
Matter No. 23-0015

CSEA grieved the decision of the City of Troy ("City") not to assign anyone, including the Grievant, to on-call status at the Bureau of Purification ("Bureau"). The relevant collective bargaining agreement ("CBA") stated that, for the purpose of determining the on-call rotation weekly schedule as needed by the City, the Department Heads would canvas all qualified employees in December and June for volunteers to be placed on the on-call list by the bureau, and that any employees who were on-call for an entire week, would be compensated with $150.00 in addition to any overtime earned while responding to on-call requests. Arbitrator Crangle determined that the CBA gave the City the right to determine whether an on-call rotation weekly schedule was needed. She also found that the City's determination that an on-call list was not needed at the Bureau was reasonable under the circumstances since the Bureau is staffed 24/7, and there is always someone available to address any problem that may arise. Furthermore, the fact that the Grievant worked overtime when asked to by the City was insufficient to prove that he was on-call at all times and therefore entitled to the weekly on-call compensation. Consequently, the grievance was denied.

Clarence Central School District
(Arbitrator Bantle)
Matter No. 22-0890

CSEA filed a grievance contending that the Clarence Central School District ("District") violated the collective bargaining agreement ("CBA") when it did not include the longevity increment in the base wage rate for those employees who received a flat dollar amount wage rate increase. The dispute arose when CSEA members received paychecks that they believed miscalculated their wages

based on a new collective bargaining agreement that took effect on July 1, 2020. CSEA argued that the District should remove any earned longevity increments from an employee's base salary before applying the flat raise, and then add back the longevity pay for the calculation of experience percentage raises. Furthermore, CSEA argued that although the CBA states longevity will be added to the base salary when calculating percentage raises, it does not state that earned longevity will become a permanent part of the base salary. This issue only arose because the wage rate increases for the 2022-23 school year differed from past wage rate increases based solely on a percentage increase, not a flat dollar amount increase. The Arbitrator denied the grievance because the CBA specifically provided that longevity would be added to base salary when calculating percentage increases, and here, the affected members were not provided percentage increases but rather a flat dollar amount increase.

Dobbs Ferry Union Free School District
(Arbitrator Townley)
Matter No. 23-0355

CSEA filed a grievance alleging that the Dobbs Ferry Union Free School District ("District") violated the out-of-title clause of the parties' collective bargaining agreement by assigning the Rehabilitation Act of 1973 §504 ("§504") duties to Office Assistants in an Elementary and Middle School. CSEA argued that assigning §504 duties to Office Assistants without proper administrative support, training, or a private work environment constitutes out-of-title work. The Arbitrator found in favor of CSEA in part, determining that the Office Assistants at the Elementary School were not adequately trained or supervised to perform their §504 duties and that this was a contract violation, and ordered the District to compensate these employees for their out-of-title work. However, the Arbitrator denied the grievance in relation to the Middle School Office Assistants due to a lack of evidence and rejected CSEA's request for private office space.

Herkimer County
(Arbitrator Sabin)
Matter No. 23-0547

CSEA grieved the decision of the County of Herkimer ("County") to promote an employee with less seniority than the Grievant to the position of Case Supervisor, Grade B. The relevant collective bargaining agreement ("CBA") stated generally that, if the ability, attendance, initiative, and qualifications of all job applicants are relatively equal, seniority will apply as the deciding factor. Arbitrator Sabin determined that the County did not evaluate the job applicants for the Case Supervisor, Grade B, promotion in an arbitrary, capricious, or discriminatory manner, and that the County appropriately conducted the application and interview process for the promotion. Furthermore, given that the Grievant was ranked last out of the four job applicants, Arbitrator Sabin determined that the relevant factors were not relatively equal, and that seniority therefore did not apply as the deciding factor for the promotion. As such, the grievance was denied.

Lewis County Health System
(Arbitrator Whelan)
Matter No. 21-0561

CSEA filed a grievance alleging that the Lewis County Health System ("Hospital") violated the parties' collective bargaining agreement ("CBA") when it did not provisionally appoint the Grievant to one of three vacant Coder positions. The Grievant has been employed by the Hospital as a Physician Office Assistant ("POA") for approximately thirteen years. The Grievant had started performing coding duties in addition to her POA duties after receiving training and certification in 2014. In September 2020, the Hospital created the position of Patient Account Coder, and CSEA and the Hospital agreed to add the title to the CSEA bargaining unit. The Hospital then posted a notice of vacancy for three full-time Coder positions, which were all provisional appointments as the Coder title is a competitive class position requiring an examination. The Grievant applied for and was denied

the Coder position. The Grievant then filed the grievance claiming her qualifications were at least equal to that of the three provisional candidates chosen and, therefore, in accordance with the CBA, should have been provisionally offered the position on the basis of her seniority. The Hospital first argued that the grievance was not arbitrable because CSEA had not scheduled the hearing in a timely manner. The Arbitrator denied this defense because the Hospital was not prejudiced, but then denied the grievance on the merits because although the Grievant was more senior than all three candidates selected, it was not a factor because her qualifications, ability, and competence were not equal to those chosen. The Arbitrator noted that the most relevant criteria for the Coder position was experience in hospital coding and billing, which all three of the successful candidates had and the Grievant did not.

Nassau County
(Arbitrator McCray)
Matter No. 23-0764

CSEA grieved the decision of the County of Nassau ("County") to promote certain Equipment Operator IIs to Equipment Operator IIIs, even though the promoted individuals were less senior than the rejected individuals. Prior to November 2022, the County typically awarded Equipment Operator III positions to the most senior applicant who had either a Class A or a Class B license, but in November 2022, the County obtained new equipment which required an individual to hold a Class A license in order to operate. Subsequently, the County posted for the position of Equipment Operator III, and the posting noted that any applicants must possess a Class A license, not a Class B license. The less senior individuals who then received the promotion had Class A licenses, whereas the more senior individuals only had Class B licenses. Arbitrator McCray determined that the collective bargaining agreement ("CBA") gave the County the right to determine the content of job classifications, to determine whether a Class A license was required for the Equipment Operator III position, and to only promote individuals with such a license. As such, the grievance was denied.

Syracuse City School District
(Arbitrator Gorman)
Matter No. 23-0436

CSEA grieved the decision of the Syracuse City School District ("District") to deny approval for the Grievant to participate in a welding course offered by OCM BOCES, because it was not related to his position as a Computer Repair Technician II. The relevant collective bargaining agreement ("CBA") stated generally that incurred tuition costs for courses satisfactorily completed at New York State Community Colleges and other similar continuing education courses would be reimbursed by the District, provided that certain requirements were met. One of those requirements was that the course "be within job related subject areas." Arbitrator Gorman determined that this language was clear as to its meaning and intent, which meant that the welding course sought to be taken by the Grievant was required to be related to his position as a Computer Repair Technician II. Arbitrator Gorman found that the Grievant's job had nothing to do whatsoever with welding, as welding is not part of his job and he does not need this expertise in order to perform his job. As a result, the grievance was denied.

Town of Hamburg
(Arbitrator Scott)
Matter No. 23-0553

CSEA grieved the decision of the Town of Hamburg's ("Town") refusal to pay the Grievant for vacation time which was accrued between January 1, 2023, and June 23, 2023, the date of his retirement. The relevant collective bargaining agreement ("CBA") stated that bargaining unit employees are entitled to be paid upon retirement only for unused vacation that was accrued in the calendar year prior to the year of their retirement. While the Grievant was able to point to one other bargaining unit employee who received a vacation payout based on the hours he worked during the year of his retirement, which was an administrative error according to the Town, Arbitrator Scott determined that a single instance of a mistaken overpayment did not entitle the Grievant to the relief sought. As a result, the grievance was denied.

JUSTICE CENTER

Office for People With Developmental Disabilities
(ALJ Nasci)
Matter No. 23-0125

The New York State Vulnerable Persons' Central Register ("VPCR") maintained a report substantiating a Category 2 Neglect charge and a Category 3 Neglect charge which alleged the Subject failed to properly secure the service recipient's wheelchair, restraints, and/or seatbelt, and that she failed to call emergency services when the service recipient fell. ALJ Nasci found that the allegations of neglect had not been established by a preponderance of the evidence because the witnesses examined by the Justice Center were unreliable and could not establish that the service recipient's wheelchair fell over while being transported by the Subject. Additionally, there was evidence that the service recipient's restraints "jerked" when the Subject came to a stop, but this was not evidence that the service recipient's wheelchair fell over or that the Subject failed to properly apply the restraints. Ultimately, it appeared that the Subject followed appropriate OPWDD protocol and never breached her duty to the service recipient. As such, the Subject's request to amend and seal the "substantiated" report was granted.

Office for People with Developmental Disabilities
(ALJ Devane)
Matter No. 23-0611

The New York State Vulnerable Persons' Central Register ("VPCR") maintained a report substantiating four allegations of Category Two Neglect each against two Subjects, for failing to buckle the seatbelts of two Service Recipients while transporting four Service Recipients in a OPWDD van from an outing back to their residence. Each Subject filed an appeal, and a hearing was held, at which the Justice Center unsubstantiated two allegations against

each Subject. The ALJ upheld the two remaining allegations against each Subject, finding that the Justice Center met its burden of proving that both Subjects committed neglect by breaching their duty when they failed to ensure that two unbuckled Service Recipients were properly secured before driving the vehicle. The ALJ recategorized the allegations as Category Three findings because she found that there was no evidence in this case that the Subjects' actions seriously endangered the Service Recipients. In particular, the ALJ cited the fact that the Subjects were unaware that one of the service recipients was unbuckled, the seatbelt of the other unbuckled service recipient was broken and there was no other seat to place the service recipient in.

Office for People With Developmental Disabilities
(ALJ Nasci)
Matter No. 23-0776

The New York State Vulnerable Persons' Central Register ("VPCR") maintained a report substantiating two Category 2 Neglect charges that alleged the Subject neglected a service recipient by using her cell phone while driving the service recipient to a medical appointment and for failing to properly secure her in the vehicle. ALJ Nasci found that the allegations of neglect had been established by a preponderance of the evidence because video evidence clearly showed the Subject using her cell phone while driving the service recipient, and because the Subject admitted to using her phone while driving in order to find the correct address using her phone's GPS feature. Additionally, the Subject also admitted that she failed to properly secure the service recipient in the vehicle and testified that she deliberately left the shoulder harness loose so that the service recipient would be more comfortable. These actions posed a risk of physical injury to the service recipient and, as a result, were properly categorized as Category 2 Neglect.

PERB DECISIONS

Staff Decisions:

Town of New Castle
(ALJ Sergent)
Matter No. 23-0849

The Town of New Castle filed an application seeking to designate the title of Building Inspector as managerial in accordance with the criteria set forth in the Public Employees' Fair Employment Act ("Act"). CSEA did not object, and ALJ Sergent granted the application to designate the title of Building Inspector as managerial.

United Public Service Employees Union vs. Town of Newburgh and CSEA
(ALJ Sergent)
Matter Nos. 21-0608, 21-0895

The United Public Service Employees Union ("UPSEU") filed a petition seeking certification as the exclusive collective bargaining agent for a unit of 10 unrepresented code compliance employees of the Town of Newburgh ("Town"). The titles at issue included two clerical titles and other non-clerical code compliance titles. CSEA declined to file a motion to intervene in UPSEU's petition. However, CSEA filed a separate petition for unit clarification and/or placement seeking a determination that the employees sought to be represented by UPSEU is either encompassed within the scope of the CSEA bargaining unit or that they are placed in its unit pursuant to uniting criteria specified in § 207.1 of the Public Employees' Fair Employment Act ("ACT"). PERB consolidated the matters, and the case proceeded to a hearing. The ALJ first found that the recognition clause found in CSEA's collective bargaining agreement ("CBA") provides that CSEA represents all full-time clerical positions of the Town. Therefore, the two full-time clerical titles at issue are already encompassed in the CSEA bargaining unit,

and the Unit must be clarified to include those titles at issue. The ALJ then found that a separate unit is appropriate for the non-clerical code compliance employees because placing them in the CSEA unit would not be consistent with PERB's uniting criteria. The ALJ cited significant differences in the terms and conditions of employment of the code compliance employees versus those set forth in CSEA's CBA, namely contributions towards health, vision, or dental insurance premiums. Ultimately, the ALJ granted CSEA's unit clarification petition in part, and granted UPSEU's certification petition, seeking to include code compliance department titles in a newly created unit.

Collins vs. CSEA et al.
(ALJ O'Donnell)
Matter No. 22-0915

The Charging Party filed an improper practice charge alleging CSEA violated § 209-a.2(c) of the Public Employees' Fair Employment Act when it failed to honor her request to have a grievance filed challenging the Joint Employer's decision to fill an open Psych Case Manager position at the Erie County Medical Center with an outside applicant instead of her, and failed to adequately explain or communicate its decision not to do so in a timely fashion. CSEA answered the charge by asserting both that it was untimely and that it failed to state a claim. The ALJ found that only a portion of the charge was untimely and addressed the remainder of the charge on its merits. First, the ALJ held that CSEA's decision not to file a grievance on behalf of the Charging party was, at the very least, rational and, therefore, not outside the bounds of its representation obligations. The ALJ cited CSEA's rational interpretation and understanding of the collective bargaining agreement in support of the ruling that it did not violate its representation obligations. Concerning the secondary allegation, which alleged that CSEA failed to communicate its decision not to file the grievance, the ALJ held that CSEA breached its duty of fair representation by failing to answer the Charging Party's inquiries about having a grievance filed or providing an explanation for not doing so. The ALJ ordered CSEA to provide the Charging Party

with written confirmation that it did not file the grievance on her behalf, along with an associated explanation for not doing so. Additionally, CSEA was ordered to post a notice provided by the Public Employees Relations Board at all physical and electronic locations customarily used to post notices to unit employees.

NLRB DECISIONS

Staff Decisions:

Westchester Medical Center
(Regional Director Doyle)
Matter No. 23-0581

A CSEA member filed a charge with the National Labor Relations Board ("NLRB") alleging that CSEA violated the National Labor Relations Act. Regional Director Doyle noted that even though the charge was filed against CSEA, under the National Labor Relations Act, jurisdiction is determined by the status of the employing entity. Ultimately, the charge was dismissed by Regional Director Doyle because the NLRB lacks jurisdiction over the member's employer, (Westchester Medical Center) as a result of its status as a public employer.

COURT ACTIONS

CSEA v. County of Rockland
(Supreme Court, Rockland County)
Matter No. 23-0294

CSEA brought an Article 75 petition to compel arbitration of a grievance under the CBA on behalf of a bargaining unit member seeking longevity increments. The County refused to arbitrate, asserting that the grievance was untimely, that the contractual Article discussing longevity increments had a clause stating the Article was exempt from arbitration, and arbitration would

compromise its discretionary authority. The County argued the contractual language was unambiguous when it exempted all benefits in that Article from arbitration, and that even though it had previously arbitrated some salary-related disputes, the County could revert back to the clear contractual language. CSEA argued that the language was unclear and that the language regarding the arbitration exemption applies only to requests for reallocation of their position title. CSEA also argues that the County's prior arbitration of other grievances alleging violations of this Article demonstrates the parties past interpretation of this contractual provision. CSEA also argues that the CBA contains no clear limitation on the remedial power of an arbitrator. The Court found that the arbitration exemption language was intentionally placed in a subsection, and not as a standalone section at the start or end of the Article. The Court declined to find that the clause's use of the word "Article" meant the entirety of that Article of the CBA. The Court found that the contract language was ambiguous and therefore a matter of contract interpretation for the arbitrator to resolve. The Court granted the petition, ordering the parties to propose a stipulation to submit to arbitration.

CSEA v. SUNY Upstate, et al.
(Supreme Court, Albany County)
Matter No. 23-0210

CSEA moved to confirm an arbitration award that held SUNY Upstate did not have probable cause to suspend or discipline the Petitioner, who had not received a COVID-19 vaccine, since it could have accommodated the Petitioner by permitting remote work. The Supreme Court granted CSEA's petition, confirmed the award, and dismissed SUNY Upstate's cross-motion to vacate. Despite acknowledging some errors in the arbitration decision, the Supreme Court noted that the Arbitrator did highlight key determinative evidence and deemed its findings to be, at the very least, rational.

Johnson v. Nassau Health Care Corporation, et al.
(Supreme Court, Nassau County)
Matter No. 23-0546

The Petitioner was formerly employed by the respondent, Nassau Health Care Corporation. In 2019 and 2021, Petitioner filed complaints which were ultimately dismissed as unfounded, against the hospital and CSEA with the New York State Division of Human Rights. In June 2023, Petitioner was placed on involuntary leave pending an evaluation of her fitness for duty pursuant to Civil Service Law §72. In July 2023, she acquired the index number associated with this case and served the respondents with her petition to commence a special proceeding. After serving the papers, Petitioner filed her petition with the Court along with a Request for Judicial Intervention ("RJI"). Petitioner then filed several petitions purporting to assert alternate claims against the respondents and others, including CSEA, attempting to use the same RJI. The Court dismissed the petition for failing to satisfy the pleading requirements pursuant to CPLR 3013. Even liberally construing its term to account for the petitioner's pro se status, the Court found that it failed to contain allegations sufficiently particular to give the Courts and the parties notice of the occurrences intended to be proved and the material elements of each cause of action or defense.

Village of Newark and CSEA
(Appellate Division, Fourth Department)
Matter No. 22-0998

CSEA appealed an order of the Supreme Court, which determined the Village of Newark was entitled to attorney's fees and costs for its proceeding pursuant to CPLR Article 75 seeking a permanent stay of arbitration with respect to a grievance CSEA had filed pertaining to retirement benefits. CSEA had withdrawn the demand for arbitration and moved to dismiss the petition as moot. The Village opposed CSEA's motion on the ground that, although the issue of arbitration was moot, the issue of costs, attorney's fees, and sanctions were not. The Supreme Court agreed with the Village

and awarded it attorney's fees and costs. The Appellate Division reversed the Supreme Court decision and agreed with CSEA that the lower court had abused its discretion in awarding fees. The Appellate Division relied on the fact that the parties' collective bargaining agreement provided at least facially colorable support for the underlying grievance and resulting demand for arbitration. Furthermore, the Appellate Division considered that there was no evidence that the demand for arbitration was taken primarily to delay or prolong litigation and considered the fact that CSEA withdrew the demand for arbitration when its lack of legal or factual basis was apparent.

County of Sullivan, et al. v. CSEA, et al.
(Supreme Court, Sullivan County)
Matter No. 23-0343

In this Article 75 proceeding, Petitioner moved for judgment which vacated an arbitration award between petitioner and respondent on the basis that the arbitrator illegally varied the terms of the contract. The specific matter before the Court was a request of the petitioner for an order deeming service to be effectuated as of May 8, 2023, allowing additional time to serve respondent, compelling acceptance of the verified petition and accompanying documents, disregarding the alleged irregularity or defect, and stating that respondent waived its claimed defenses. This request was made by Petitioner's counsel because he failed to provide respondent with the acknowledgement and receipt of service documents as required by CPLR 312-a. Since the interest of justice requires the Court to adjudicate the matter on its merits, the Petitioner was granted sixty additional days to effectuate service on respondent in accordance with the CPLR, but denied the requests to deem service effectuated, to compel acceptance of the verified petition, and to state that respondent has waived its claimed defenses.

Dopkin v. Nassau County, et al.
(Supreme Court, Nassau County)
Matter No. 23-0101

In this Article 78 proceeding, Petitioner moved for a judgment which reversed his disqualification from the Probation Officer Trainee Examination ("Examination"), reinstated him to the Probation Officer trainee list, and awarded him any other benefit or consideration that would have been received had he not be disqualified. Although Petitioner took and passed the Examination and was placed on the eligible list, he was later disqualified because of the "disrespect for the process of law and order as evidenced by [his] motor vehicle record," which contained evidence that he received various traffic tickets and DMV suspensions while in his twenties and thirties, approximately twenty or thirty years before he took and passed the Examination. The Court noted that the standard for the case was whether the determination made by the administrative agency was arbitrary or capricious, and whether the action in question was taken without sound basis in reason, and without regard for the facts. In applying that standard, the Court determined that the administrative agency's determination had a rational basis and was not arbitrary or capricious. As such, the petition was dismissed.

Herrera v. Unified Court System, et al.
(Supreme Court, Schenectady County)
Matter No. 23-0250

CSEA filed an Article 78 petition seeking review of a Unified Court System's ("UCS") determination to terminate Petitioner's probationary promotion to the title of Court Officer - Sergeant ("Sergeant") and return him to his prior permanent title of Court Officer. Petitioner alleged that UCS violated the Rules of the Chief Judge when it retained Petitioner's service as a Sergeant after completing the maximum probation term and provided no notice of the extension. The Supreme Court disagreed and confirmed UCS's determination, finding that his probation was properly and automatically extended with notice to him and that he was correctly credited for satisfactory service while absent due to military service.

Moore v. New York State Police et al.
(Supreme Court, Orange County)
Matter No. 23-0093

Petitioner commenced this special proceeding pursuant to CPLR Article 78 seeking to annul her dismissal from her previous position of Evidence Technician with the New York State Police and restore her to that position with full back pay. Prior to being appointed to the position of Evidence Technician I, the Petitioner held the title of Station Cleaner. When the Petitioner applied for and was appointed to the position of Evidence Technician I, she became subject to a 52-week probationary period. Unfortunately, the Petitioner was unable to pass the probationary period and requested a reassignment/reclassification to a cleaning position before her annual review and potential termination from the Technician tile. Petitioner's request to be reclassified to the position of Station Cleaner had been approved before the end of her probationary period in the Evidence Technician title. The Court denied the petition on the basis that there was no determination made by the Respondent that resulted in the Petitioner's termination because it was demonstrated that the Petitioner sought reassignment and was granted reassignment before the end of her probationary period and before any termination or adverse action took place.

Ventresca-Cohen, et al. v. DiFiore, et al.
(Appellate Division, Third Department)
Matter No. 24-0137

In this Article 78 proceeding, the Petitioners, twenty-nine nonjudicial employees of respondent the NYS Unified Court System ("UCS"), challenged the denial of their respective requests for a religious exemption from a mandatory COVID-19 vaccination program, as arbitrary and capricious. The Supreme Court had granted the petition to the extent of remitting the applications of nineteen petitioners for further review, but otherwise denied the petition. Respondents appealed and Petitioners cross-appealed to the Appellate Division. The Court

reasoned that the purpose of the vaccine mandate was to protect the public health, and that respondents were able to rationally conclude that an applicant's continued and/or contemplated use of other medications or vaccines tested on fetal cell lines, while refusing to take the COVID-19 vaccine on that very same basis, reflected an inconsistency which undermined the sincerity of that applicant's religious beliefs. Furthermore, the Court determined that respondents' denial of religious exemptions for the involved applicants was not arbitrary and capricious. As a result, the petition was dismissed in its entirety.

OTHER

SECTION 72

Office for People With Developmental Disabilities
(Hearing Officer Cassidy)
Matter No. 23-0036

Petitioner, was employed as a Direct Support Assistant with the NYS Office of People with Developmental Disabilities ("OPWDD"). After displaying erratic behavior while driving a transport van, OPWDD placed petitioner on sick leave pursuant to CSL Section 72, and requested Petitioner be evaluated to determine his physical and psychological fitness to perform his job duties. After being informed he was found unfit for duty and would remain on leave, Petitioner requested a hearing to contest the findings. At the evaluation, petitioner was found physically not fit for duty due to severe vision loss which would prevent him from accurately administering medications. No finding was made as to the petitioner's psychological fitness at this time because he had gotten clearance from his personal psychologist to return to work, which was not contested by OPWDD. Hearing Officer Cassidy determined that OPWDD could not rely on the petitioner being found psychologically not fit for duty for the purpose of putting the petitioner on an involuntary leave of absence because the evaluating doctor's opinion was not certain enough to warrant a

finding of mental unfitness. Additionally, Hearing Officer Cassidy determined that OPWDD had not shown that the petitioner was physically unfit when he was initially placed on a leave because it only had his psychological evaluation at this time, not his physical evaluation. However, he determined that OPWDD still satisfied its burden because it showed that the petitioner was physically unfit for duty due to his eyesight being outside the legal limit to drive a vehicle. Ultimately, Petitioner was found physically unfit to perform his job, but was awarded lost wages and benefits from the time that he was wrongly placed on a leave of absence to the time he was found to be physically unfit.

County of Nassau
(Arbitrator Riegel)
Matter No. 23-0185

CSEA filed a grievance alleging Nassau County ("County") erred when it placed the Grievant on an involuntary leave pursuant to CSL §72. The Grievant is a Youth Group Supervisor employed by the County's Probation Department. The Grievant was involved in an incident at work where she called 911, and the responding police noted that she was not coherent with her thoughts. The County first placed the Grievant on administrative leave but later determined that she should undergo a psychological/psychiatric examination pursuant to CSL § 72 for the purpose of determining the Grievant's fitness to perform her duties. The Grievant underwent an independent medical examination (IME) where it was determined that she was unable to resume her duties, an opinion supported by the Medical Director of the County's Civil Service Commission. CSEA called a clinical and forensic therapist who examined the Grievant to refute the County's determinations. The Arbitrator held that CSEA's witness testimony was irrelevant to whether the County had sufficient evidence to place the Grievant on involuntary leave six months prior to his examination. The Arbitrator found that the County properly placed the Grievant on an involuntary leave and that he lacked the authority to reinstate her. However, under CSL § 72 (2), the Grievant may apply to the Civil Service Commission for reinstatement after a subsequent medical examination.

LICENSING

Office of Children and Family Services
(ALJ Walsh)
Matter No. 23-0694

In this action, the New York State Office of Children and Family Services ("OCFS") advised the Appellant that it determined that he had violated certain daycare regulations, and that OCFS was seeking a fine in the amount of $500 for this violation. A hearing had been requested by OCFS to impose the recommended penalty, but the request was withdrawn after the Appellant paid the required fine. As a result of this, Administrative Law Judge Walsh issued a decision stating that "no issue remains to be decided."