THE ADVOCATE

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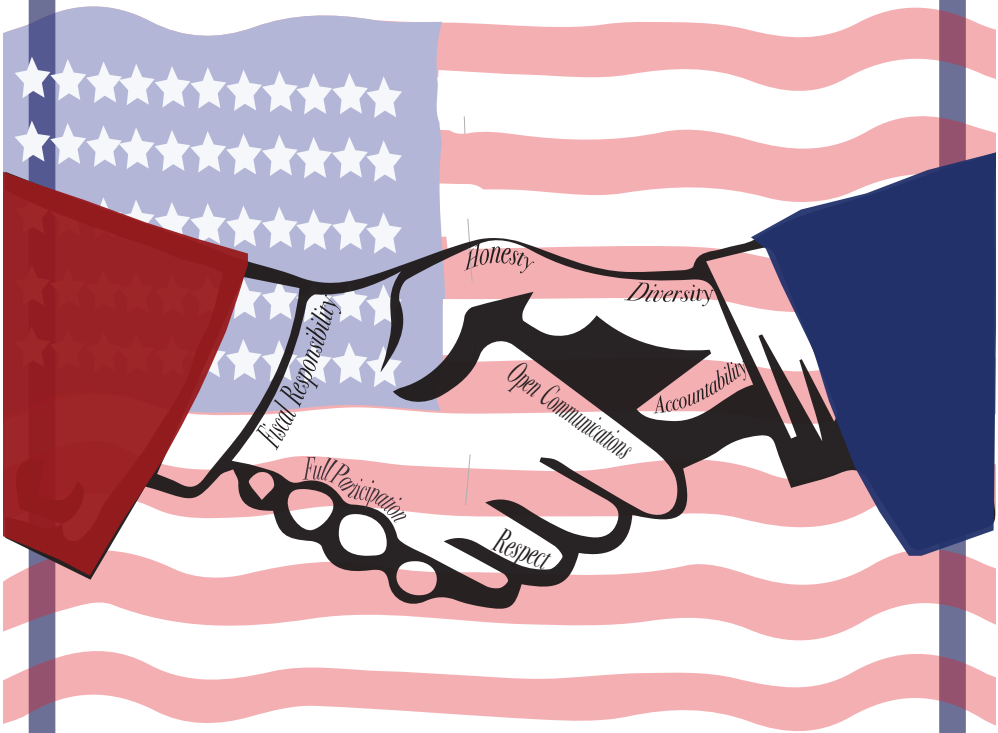

CSEA
Local 1000 AFSCME, AFL-CIO

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Counsel's Corner

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EEOC Releases New Workplace Guidance to Assist in Preventing Harassment

On April 29, 2024, the U.S. Equal Employment Opportunity Commission ("EEOC") published final guidance on harassment in the workplace. The EEOC has released this updated enforcement guidance on workplace harassment, marking the agency's first significant revision in nearly 25 years. The new guidance, which replaces five previous documents issued between 1987 and 1999, addresses recent and developing areas relating to sexual orientation and gender identity, remote and virtual work environments, and harassment related to pregnancy and other medical conditions.

Title VII of the Civil Rights Act of 1991 prohibits employment discrimination based on race, color, religion, sex and national origin. Under Title VII, "sex" includes pregnancy, childbirth and other related medical conditions, along with sexual orientation and gender identity.

Sexual Orientation and Gender Identity
Sex based harassment includes harassment related to sexual orientation or gender identity, including how that identity is expressed. The EEOC has now outlined that harassment based on sexual orientation or gender identity includes epithets regarding an individual's sexual orientation or gender identity, outing (disclosure of an individual's sexual

orientation or gender identity without permission), harassing conduct because an individual does not present in a manner that would stereotypically be associated with that person's sex, repeated and intentional use of a name or pronoun inconsistent with the individual's known gender identity (misgendering), or the denial of access to a bathroom or other sex-segregated facility consistent with the individual's gender identity.

Remote and Virtual Work Environments

In light of the growing prevalence of remote and virtual work since the beginning of the COVID-19 pandemic, the EEOC acknowledges that these digital spaces are not impervious to instances of harassment. Harassment in the virtual workplace can be exhibited through an employer's email, instant messaging system, videoconferencing, social media accounts and other equivalent resources. The EEOC's updated guidance acknowledges that inappropriate comments may be considered harassment in a remote or virtual work environment if such statements were made during a virtual meeting, conference, group chat or even on an employee's social media account. This demonstrates that the EEOC recognizes the potential for harassment to occur through various digital platforms and communication channels.

Pregnancy, Childbirth or Other Related Medical Conditions Under Title VII

In its new guidance, the EEOC reiterates that sex-based discrimination in the workplace extends to pregnancy, childbirth or other related medical conditions. Accordingly, the EEOC confirms that harassment relating to pregnancy and childbirth can be seen rooted in various matters, such as: changes in physical appearance due to pregnancy, lactation, morning sickness, using or not using contraception or deciding to have or not have an abortion.

In issuing this publication, the EEOC noted that, "[b]etween fiscal years 2016 and 2023, more than a third of all discrimination charges received by the EEOC included an allegation of harassment based on race, sex, disability, or another characteristic covered by the laws enforced by the agency. Also, since fiscal year 2018,

harassment has been alleged in over half of federal sector equal employment opportunity complaints. In addition, among the 143 merits lawsuits that the Commission filed in fiscal year 2023, approximately 35% of those cases included an allegation of harassment."

This new guidance provides various practical examples and serves as a resource for employers and employees for workplace harassment issues. Although this guidance examines these matters in light of federal law, it's important to note that New York State employs a less stringent standard of scrutiny, which increases the likelihood of finding an incident or issue to be in violation of the law.

The recent guidance issued by the EEOC on April 29, 2024, can be found at: https://www.eeoc.gov/laws/guidance/enforcement-guidance-harassment-workplace

DISCIPLINARIES

State Disciplines:

Department of Education
(Arbitrator Doyle)
Matter No. 23-0582

Grievant was served charges seeking termination related to various charges of misconduct, such as parking violations, personal use of State vehicles, misuse of State credit cards, and improper filing of mileage log reports. The Arbitrator determined that the State failed to investigate and establish conclusive factual data, that various necessary documents were not presented at the hearing, and that a critical witness was missing. Ultimately, the Arbitrator found the Grievant not guilty and dismissed all charges.

Office of Mental Health
(Arbitrator Stein)
Matter No. 23-0638

The Grievant, a Secure Treatment Aide with the Office of Mental Health ("OMH"), was suspended and served a termination Notice of Discipline for using excessive force to restrain two patients on the same day, violating the facility's written policies and procedures. The Arbitrator found the Grievant guilty of some of the charges but not all and determined that a three-month suspension without pay was appropriate. Additionally, the Arbitrator found that OMH did not have probable cause to suspend the Grievant and, therefore, reinstated the Grievant with full backpay and benefits minus the three-month suspension.

SUNY Upstate Medical University
(Arbitrator Simmelkjaer)
Matter No. 22-0790

Grievant was served charges seeking termination related to various charges of misrepresenting the truth, failing to adequately

perform her job duties, making inappropriate or rude comments to coworkers, acting inappropriately, and jeopardizing patient safety. The Arbitrator sustained some, but not all the charges, because some charges originated from a single witness, but were not corroborated by other witnesses, whereas other charges were corroborated by other witnesses. Additionally, no just cause was found for the proposed penalty of termination, and no probable cause was found to suspend the Grievant pending the hearing. As for penalty, the Arbitrator determined that the Grievant was a "salvageable" long-term employee with a "valuable skill set," therefore, a thirty-day unpaid suspension in lieu of termination was deemed appropriate.

NYS Gaming Commission
(Arbitrator Rinaldo)
Matter No. 23-0977

The State sought termination and charged Grievant, an 18-year employee, with three counts of misconduct for violating the workplace violence policy on a single day, and one count of misconduct for violating NYS Public Officers Law regarding the aforementioned behavior. The Arbitrator found there to be probable cause to suspend the Grievant without pay and found the Grievant guilty of charges 1, 2, and 4. The Arbitrator found Grievant's misconduct so substantial that it was reasonable for the State to skip progressive discipline because it believed the Grievant could not be rehabilitated and trusted to resume his public-facing role. Therefore, the Arbitrator found just cause for termination and denied the grievance.

SUNY Stony Brook Hospital
(Arbitrator Panepento)
Matter No. 21-1001

Grievant was served charges and found guilty for failing to comply with the Department of Health's rule requiring all staff employed in its hospitals and nursing homes to become vaccinated against COVID-19, even though the rule was later rescinded

and unvaccinated employees were able to return to work. The Arbitrator determined that there was no dispute that the Grievant had failed to receive the vaccine at the time the rule was in effect. Furthermore, the Employer had probable cause to suspend the Grievant pending the hearing because her continued presence on the job represented a potential danger to persons or property or would severely interfere with operations, at the time the rule was in effect. The Arbitrator did not need to decide whether termination was an appropriate penalty because the Grievant found another job and did not intend to return to work for the Employer.

SUNY Stony Brook Long Island Veterans' Home
(Arbitrator Panepento)
Matter No. 22-0695

Grievant was served charges seeking termination and found guilty for failing to comply with the Department of Health's rule requiring all staff employed in its hospitals and nursing homes to become vaccinated against COVID-19, even though the rule was later rescinded and unvaccinated employees were able to return to work. The Arbitrator determined that there was no dispute that the Grievant had failed to receive the vaccine at the time the rule was in effect. Additionally, the Arbitrator found that the State had probable cause to suspend Grievant pending the hearing because her continued presence on the job represented a potential danger to persons or property or would severely interfere with operations, at the time the rule was in effect. The Arbitrator did not need to decide whether termination was an appropriate penalty because the Grievant found another job and did not intend to return to work for the State, which meant that she was not entitled to reinstatement or owed any backpay.

Unified Court System
(Hearing Officer Mocerine)
Matter No. 23-0826

Grievant was served charges and found guilty for failing to report to his supervisors that he was arrested and charged with Criminal

Trespass in the Second Degree, which resulted in a Temporary Order of Protection being issued against him, as well as his guilty plea and the payment of a fine. The Arbitrator determined that termination was an appropriate penalty because the Grievant was obligated to report his arrest as a peace officer, which he failed to do, and because he failed to take responsibility for his actions when testifying at the hearing.

Local Disciplinaries:

Corning Community College
(Arbitrator Kash)
Matter No. 21-0839

Grievant was served with disciplinary charges seeking termination related to various charges of theft of College property, which culminated in criminal charges of petit larceny against the Grievant that were eventually dismissed, falsification of the Grievant's time card, and improper use of a College vehicle. Additionally, no just cause was found for the proposed penalty of termination. The Arbitrator determined that the College impermissibly used the Grievant's prior last chance agreement as a basis for his termination, that the College failed to establish any specific items that were allegedly taken by the Grievant from the College, and that it was possible that the College was targeting the Grievant in retaliation for some complaints he filed with Division of Human Rights. As such, the Arbitrator ordered that the Grievant be returned to work with full backpay and benefits.

Nassau Health Care Corporation
(Arbitrator Pfeffer)
Matter No. 23-0637

The Grievant, a Custodian who had an admitted alcohol violation less than two years prior, was terminated for refusing to submit to a drug test. The Grievant argued that the employer didn't have reasonable suspicion for a drug test, and even if it did, it failed to follow the CBA's drug testing procedure. The Arbitrator determined

that while the employer did have reasonable suspicion to conduct a drug test, it failed to follow the proper CBA drug testing protocol by failing to provide notice and consultation with CSEA before directing the Grievant to undergo the drug test. Therefore, the Arbitrator held that "time served" was the appropriate penalty, considering the Grievant's responsibility for the situation, "while also sending a strong message" to the employer that "the negotiated procedures for reasonable suspicion testing must be followed."

Nassau Health Care Corporation
(Arbitrator Pfeffer)
Matter No. 23-0267

Grievant was served charges and found guilty for leaving her personal cell phone with a patient who was also an inmate, a known gang member, and a high flight risk, and then resisting the assigned Corrections Officer's removal of her cell phone from the inmate in a disrespectful manner. In determining that termination was not an appropriate penalty, the Arbitrator noted that the actual events of the incident were less egregious than the charges themselves, but that the Grievant still interfered with the Corrections Officer's performance of his job duties. As a result of this, a proper penalty was a thirty-day unpaid suspension, and the Arbitrator ordered that the Grievant be made whole for any lost benefits, including backpay, less any interim earnings.

Nassau Health Care Corporation
(Arbitrator Pfeffer)
Matter No. 23-0267

Upon CSEA's application for modification of Arbitrator Pfeffer's Award, he agreed that the issue of offsets against backpay, whether based on interim earnings or upon a failure to look for replacement work, was not presented to him for determination. As such, he modified his original Award based on the parties' established and longstanding practice to forego deductions of interim earnings from back pay awards.

Schenectady County Community College
(Arbitrator Lawson)
Matter No. 23-0813

Grievant was served charges seeking a 30-day unpaid suspension related to various charges of misconduct relating to the Grievant's use of foul language, belligerent and threatening conduct towards a coworker and supervisor, and leaving work early without approval. Additionally, no just cause was found for the imposition of a thirty-day suspension. The Arbitrator determined that the Grievant's personnel file contained several notices regarding his work performance, but that these notices were non-disciplinary in nature. As a result, the notices could not be used as a basis for increasing the severity of discipline in the instant case without violating progressive discipline. The Arbitrator determined that there was just cause only for the issuance of a written warning to be placed in the Grievant's personnel file and ordered that the Employer provide the Grievant with backpay for the suspension he already served.

Town of Clifton Park
(Arbitrator Mayo)
Matter No. 23-0166

The Grievant, a Motor Equipment Operator with the Town of Clifton Park, was served a Notice of Discipline ("NOD") which sought a four-day suspension for remaining in his truck instead of assisting others in clearing debris from the Town's parks. CSEA argued that the Grievant stayed in the truck longer than others because he was sick. The Arbitrator found that the Town failed to prove the allegation in the NOD since the Grievant was sick, not incompetent, or willful. Therefore, the Arbitrator found no just cause for the four-day suspension and ordered the Town to make the Grievant whole.

Whitsons Food Service Corporation
(Arbitrator Cure)
Matter No. 23-0135

The Grievant, a Food Service worker with Whitsons Food Service Corporation who had no prior discipline history for job abandonment, was terminated after she was denied leave for failing to come into work for an extended period of time because she went to Mexico to help her sick father. The Arbitrator agreed with CSEA that the employer did not have just cause to terminate her, granted the grievance, and reinstated her with full back pay and benefits less any interim earnings.

Nassau Health Care Corporation
(Arbitrator Pfeffer)
Matter Nos. 23-0422, 23-0160

The Corporation disciplined the member for misconduct and issued a 15-day suspension. At a hearing before the Arbitrator, the parties reached a settlement, and the Arbitrator issued a Consent Award. The Corporation agreed to credit the member with 10 days accrual time and the member accepted the remaining 5 days as a penalty without admission of wrongdoing. CSEA withdrew the grievance with prejudice.

Nassau Health Care Corporation
(Arbitrator Pfeffer)
Matter No. 22-0523

The Corporation disciplined the member for insubordination and garnished 5-days' vacation leave. At a hearing before the Arbitrator, the parties reached a settlement, and the Arbitrator issued a Consent Award. The Corporation agreed to credit the member with 3 days accrual time and the member accepted the loss of 2 vacation days as a penalty without admission of wrongdoing. CSEA withdrew the grievance with prejudice.

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

The Grievant, a Groundskeeper with the Pearl River Union Free School District, was previously found guilty by the Arbitrator for sleeping during work hours and then lying about it to management. The sole issue before the Arbitrator was the penalty determination. The Arbitrator found termination excessive under the facts and circumstances of this case, reinstated the Grievant without any back pay or benefits, and held the period between the removal and reinstatement as the suspension.

Steuben County
(Arbitrator Kash)
Matter No. 23-0542

The Grievant, a Motor Equipment Operator, was served disciplinary charges which suspended the Grievant for 30 days and sought termination for alleged sexual discrimination and harassment. The Arbitrator sustained the grievance in part and denied it in part, stating that, at a minimum, the Grievant contributed to an offensive work environment. Therefore, the Arbitrator suspended the Grievant for two weeks without pay, with restoration to his position with full back pay and benefits other than the suspension period.

Troy Housing Authority
(Arbitrator Siegel)
Matter No. 23-0505

Grievant was suspended without pay and found guilty for taking personal items from a tenant's apartment without her permission after he was sent to the apartment to change the locks. The Arbitrator determined that the Grievant credibly believed he was taking abandoned property that would otherwise have been discarded, and that he tried to return the personal items once he learned that they had not been abandoned. Under

the circumstances, especially the fact that the Grievant had an unblemished disciplinary record, the Arbitrator ruled that he should be returned to work after serving an unpaid suspension from the date of his removal from work through April 21, 2024.

Village of Haverstraw
(Hearing Officer Berliner)
Matter No. 24-0150

Section 75 charges were filed against an Assistant Building Inspector, an employee for over twenty years with no prior disciplinary history, for contacting an owner of a pending building code violation on his cell phone and advising him on how to get the violation dismissed. The Hearing Officer recommended that the employee be suspended for two weeks because although he exercised poor judgment in inappropriately contacting the homeowner, he was contrite and admitted that the phone call was inappropriate.

City of Syracuse
(Arbitrator Gelernter)
Matter No. 22-0777

The Grievant, a Recreation Aide with the City of Syracuse, was terminated after he stole over 575 gallons of gasoline from a City gas pump. Based on the Grievant's admission and the "large and lengthy course of theft," the Arbitrator found just cause to terminate the Grievant.

City of White Plains
(Hearing Officer Hansbury)
Matter No. 23-0480

Grievant was served charges and found guilty for using an excessive amount of leave because the number of her absences far exceeded those allowed under the parties' contract. This was despite the Grievant's testimony that she had cancer and had undergone back surgery, and that she only took leave when she was sick or had

doctor's appointments. Under the circumstances, a thirty-day suspension was deemed to be an appropriate penalty.

Mount Vernon School District
(Hearing Officer Bernstein)
Matter No. 23-0921

The Grievant, a Payroll Specialist with Mount Vernon School District, was served with multiple charges of misconduct. The Hearing Officer recommended that the Grievant be dismissed from service since the District established by substantial credible evidence that, on two occasions, she intentionally and knowingly deleted FICA and Medicare deductions from her payroll profile to avoid having taxes withheld from her pay.

Orange County
(Arbitrator Siegel)
Matter No. 23-0816

The Grievant, a Certified Nursing Assistant, was served a Notice of Discipline seeking termination for creating a hostile work environment, getting into a physical altercation with a coworker, and failing to stop when directed to do so. The Arbitrator found termination appropriate based on Grievant's role in the altercation, her failure to stop, and her complete lack of remorse.

Tompkins-Cortland Community College
(Arbitrator Donn)
Matter No. 23-0236

The Grievant, a Campus Peace Officer with Tompkins-Cortland Community College, was arrested for a domestic incident involving another Campus Peace Officer and was issued an Order of Protection, which prohibited him from possessing a firearm and being around the other officer. Although the Grievant received an Adjournment in Contemplation of Dismissal on the criminal case, the Arbitrator found just cause to terminate based on his recent disciplinary history, his inability to come to work or carry a

gun due to the order of protection, and the severity of threatening text messages he sent after his arrest, in violation of the College's standards for peace officers.

Town of Niskayuna
(Arbitrator Gelernter)
Matter No. 23-0504

Grievant was served charges and found guilty for various charges of misconduct involving failure to perform assigned job duties on multiple occasions, making false statements about another employee, and misleading his supervisor. In determining that termination was an appropriate penalty, the Arbitrator noted that the Employer had used progressive discipline with the Grievant on many occasions in the past, but that it had not prevented him from engaging in "repeated misconduct." Ultimately, the grievance was denied.

CONTRACT GRIEVANCES

Local Grievances:

City of Lackawanna
(Arbitrator Gelernter)
Matter No. 23-0587

CSEA filed a contract grievance after the City violated the CBA by forcing a Complaint Writer/Dispatcher to work overtime, even when there was sufficient police complement to cover the duties. The Arbitrator sustained the grievance, finding that CSEA presented clear evidence that the City violated the CBA by the Police Chief's own admission.

Garden City Union Free School District
(Arbitrator Brent)
Matter No. 23-0610

CSEA filed a grievance alleging that the District violated the recognition clause of the CBA when it declined to include four new employees "categorized" as Supervisory Aides in the bargaining unit, despite the fact that their security-related assignments fell substantially within the Security Guard job description, a CSEA title. The Arbitrator found that the District improperly excluded the four employees from CSEA's bargaining unit upon hiring them. Therefore, the Arbitrator ordered the District to reclassify the four employees as Security Guards, include them in the bargaining unit, and cover them under the CBA.

City of Newburgh
(Arbitrator Stein)
Matter No. 23-0926

CSEA alleged that the Employer violated the parties' agreement when it involuntarily transferred the Grievant from the day shift to the midnight shift. The Arbitrator determined that the grievance was moot, and therefore not arbitrable, because the Grievant had already been ordered to return to the day shift by the date of the hearing, and, therefore, there was no outstanding dispute.

City of Olean
(Arbitrator Foster)
Matter No. 23-0775

CSEA filed a grievance alleging the City violated the CBA when it did not pay the Grievant overtime for the Labor Day holiday. CSEA argued that since the Grievant had worked 40 hours that week, plus the additional eight hours for the holiday not worked, which contractually counted as a day worked, the extra eight hours should have been paid at a premium rate. The Arbitrator disagreed with

CSEA's interpretation of the CBA found that an "overtime-premium entitlement based on a holiday that coincides with a regular day off is not part of the parties' current bargain." Ultimately, the grievance was dismissed.

Middletown Central School District
(Arbitrator Siegel)
Matter No. 23-0304

CSEA filed a contract grievance after the District unilaterally changed the shifts of several custodians and head custodians from days to evenings. The Arbitrator agreed with the District that the contract permits the District to unilaterally change the shifts of employees and dismissed the grievance.

Village of Newark
(Arbitrator Lewandowski)
Matter No. 23-0678

Pursuant to the parties' agreement with respect to General Municipal Law § 207-c benefits, the Grievant appealed the Employer's order to return to work on restricted duty. It was undisputed that while on duty, the Grievant suffered permanent damage to his vestibular system as a result of inhaling carbon monoxide, which caused him to suffer permanent balance issues thereafter. However, the Arbitrator determined that the Grievant was capable of returning to work on restricted duty because the Employer's independent medical examiner credibly testified that he would be safe at work based on a July 2023 examination, whereas the Grievant's physician made his determination after seeing the Grievant in April 2023 without the benefit of fully assessing the Grievant's testimony that he already performs tasks at home which are more strenuous than restricted duty work. Ultimately, the Employer's order for the Grievant to return to work on restricted duty was supported by substantial evidence.

Yonkers City School District
(Arbitrator Lilly)
Matter No. 23-0193

CSEA alleged that the Employer violated the parties' agreement when it denied the Grievant's request for payment of additional salary of fifty percent of net premium savings after she waived health insurance coverage provided by the Employer. The Arbitrator found that the Grievant's husband was also employed by the Employer, that he had elected to receive health insurance coverage through the Employer, and that the Grievant was covered by her husband's health insurance plan. Therefore, while it could be said that the Grievant had waived her right to receive individual coverage, she did not waive her right to receive health insurance coverage through the Employer. Consequently, the grievance was denied.

Yonkers City School District
(Arbitrator Tener)
Matter No. 22-0907

CSEA alleged that the Employer violated the parties' agreement when, in August 2022, it sent out a letter directing that hourly employees report to work on September 6, instead of September 1, which CSEA alleged was the original date agreed to by the parties. The Arbitrator determined that the agreement was clear in granting the Employer discretion to determine the return-to-work date for hourly employees, although there was nothing which mandated how far in advance notice was required. The evidence also demonstrated that, in August of each year since 2017, the Employer consistently sent out a letter notifying its hourly employees when they were due to report for the first day of school. Since the August 2022 letter followed this same practice, there was no violation of the agreement, and the grievance was denied.

JUSTICE CENTER

Office for People with Developmental Disabilities
(ALJ Nasci)
Matter No. 24-0043

The Subject was a Developmental Assistant 2 charged with one allegation of Category 2 neglect for failing to properly secure a Service Recipient in a vehicle, causing the Service Recipient to fall from her seat and suffer an injury while the Subject transported her. The ALJ credited the Subject's testimony that the practice was for the staff member who placed a Service Recipient into a wheelchair to fasten the wheelchair seatbelt, and a vehicle driver is only responsible for ensuring that the wheelchair is securely fastened in the vehicle. Furthermore, the ALJ credited the Subject's testimony that agency training regarding wheelchair securement does not direct a vehicle driver to check a Service Recipient's seatbelt if they are in a wheelchair. Therefore, the ALJ found that the Justice Center had not established by a preponderance of the evidence that the Subject had a duty to ensure that the Service Recipient was securely fastened in her wheelchair with the wheelchair seatbelt. Ultimately, the ALJ ordered the report of neglect to be amended and sealed.

Office of Mental Health
(ALJ Nasci)
Matter No. 24-0025

The Subject, a Mental Health Therapy Aide was charged with one allegation of Category 2 neglect for failing to provide proper supervision. ALJ Nasci determined that the Subject, while assigned to one-on-one supervision for a particular Service Recipient who happened to be in the bathroom at the time of the incident, remained across the hallway, a few feet down from the bathroom and looked at her cell phone for a majority of the time the Service Recipient was in the bathroom. During that time, the Service Recipient ingested a foreign object which later required her to go to the hospital to receive treatment to remove the object. As

such, the Subject breached her duty to maintain visual contact with the Service Recipient, which caused physical injury to the Service Recipient. By a preponderance of the evidence, the Subject was shown to have committed neglect, and this was properly categorized as a Category 2 act.

Office for People with Developmental Disabilities
(ALJ Hughes)
Matter No. 23-0787

The Subject was a Direct Support Assistant charged with one allegation of Category 2 neglect for driving 25 mph over the speed limit with a Service Recipient in the vehicle. The ALJ found neglect to have occurred because driving at high speeds increased the likelihood of physical injury. Additionally, the ALJ found the category 2 finding proper as risk of injury is higher with greater speeds. The ALJ upheld the allegation of neglect and found it was properly categorized and supported by a preponderance of the evidence.

Office for People with Developmental Disabilities
(ALJ Requets)
Matter No. 23-0753

The Subject was a Direct Support Assistant charged with one allegation of Category 2 neglect for failing to provide proper supervision to a Service Recipient, by vaping in a vehicle while transporting a Service Recipient with a compromised respiratory system. The ALJ found the subject's testimony not credible, and credited the testimony of a RN regarding the risks aerosolized vapor in a concentrated space could have on the Service Recipient's upper respiratory system. As a result, the ALJ upheld the allegation of neglect and found it was properly categorized and supported by a preponderance of the evidence.

Office for People With Developmental Disabilities
(ALJ Rocco)
Matter No. 23-0915

The Subject, a Direct Support Assistant Trainee was charged with one allegation of Category 3 neglect. ALJ Rocco determined that the Subject breached her duty to the Service Recipient when she failed to close the door after exiting the office, which resulted in the Service Recipient obtaining a package of cigarettes and ingesting approximately nine of them, and that this breach was likely to result in physical injury to the Service Recipient. This was despite the fact that the cigarettes did not belong to the Subject. By a preponderance of the evidence, the Subject was shown to have committed neglect, and this was properly categorized as a Category 3 act.

PERB DECISIONS

Staff Decisions:

CSEA v. City of Cohoes
(ALJ Sergent)
Matter No. 22-0173

CSEA filed an improper practice charge against the City for its unilateral action of purchasing new garbage and recycling containers from a vendor that then also distributed those containers to City residents. CSEA filed a charge under CSL § 209-a.1(d), alleging that based on past practice, the distribution of the containers was exclusive bargaining unit work. The ALJ found there to be no binding past practice, as there were only two prior mass distributions over the previous 20 years. Furthermore, the ALJ reasoned that the length of time between the distribution was prolonged and random, therefore, CSEA members did not have a reasonable expectation that they would exclusively perform the work of distributing the new containers en masse to all City residents. Ultimately, the charge was dismissed in its entirety.

COURT ACTIONS

Brock and CSEA v. Office of Mental Health, et al.
(Supreme Court, Bronx County)
Matter No. 22-0093

Petitioners sought an order confirming an arbitration award and ordering Respondents to pay its costs and attorneys' fees. The Court denied the petition because at oral argument, the parties agreed that Respondents had fully complied with the arbitration award, because Petitioners failed to submit any cases in which costs and attorneys' fees were awarded in similar circumstances, and because there was no evidence that Respondents' actions were completely without merit or taken primarily to delay litigation.

Rizo-Brewington v. CSEA, et al.
(Supreme Court, Westchester County)
Matter No. 23-0175

Defendant CSEA moved to dismiss the Summons and Complaint on the grounds of jurisdiction, statute of limitations, failure to state a claim, documentary evidence, and failure to name a necessary party. The Court granted the motion and dismissed the Complaint against Defendant CSEA because the Complaint was time barred.

Unified Court System v. PERB, et al.
(Supreme Court, New York County)
Matter No. 23-0943

Petitioner sought to consolidate the subject proceeding with two other proceedings, which were all filed in different counties. The Court denied the motion because Petitioner failed to adequately explain why consolidation in New York County, as opposed to the other counties, was appropriate, and because there were separate and distinct issues in all of the proceedings which, if consolidated, would likely cause confusion.

Unified Court System v. PERB, et al.
(Supreme Court, New York County)
Matter No. 23-0943

In 2021, the Unified Court System ("UCS") unilaterally implemented a policy requiring all non-judicial staff, including unit members, to be vaccinated against COVID-19 or face termination. UCS also unilaterally created a procedure for all affected personnel to request medical or religious exemptions. CSEA and the other court unions filed Improper Practice Charges. After a hearing, a PERB ALJ found that although UCS could unilaterally decide that vaccinations were required, it had to negotiate the various procedures employees must follow. Upon review, the Board affirmed and ordered UCS to cease and desist from unilaterally imposing these procedures and to compensate unit employees for any economic loss resulting from its failure to bargain. UCS filed an Article 78 petition to annul PERB's determination. However, the Supreme Court granted PERB's motion to dismiss the Petition, finding that PERB was neither irrational nor arbitrary in determining that UCS had a duty to negotiate with its unions over the COVID-19 vaccination and exemption procedures. Additionally, the Court upheld PERB's make whole remedy.

Weal, et al. v. Jefferson County
(Supreme Court, Jefferson County)
Matter No. 20-0842

In this action alleging violation of the parties' collective bargaining agreements ("CBA's") when the Employer generally required the Plaintiffs to submit additional paperwork for Medicare Part B reimbursement, the Defendants moved for summary judgment. However, the Court denied the motion because questions of fact remained, such as the definitions of "health insurance" and "health coverage" for the Plaintiffs, which were not defined in the CBA's, and which precluded the granting of summary judgment to Defendants.

Bray v. Office of Mental Health, et al.
(Supreme Court, Albany County)
Matter No. 23-0403

CSEA filed an Article 78 petition seeking an order declaring Respondent's determination that Petitioner's workplace injury was not the result of an assault was arbitrary, capricious, and lacking a rational basis. The Petitioner alleged that her workplace injury was an assault, which would have extended her cumulative injury leave of absence from one to at least two years pursuant to Civil Service Law §71. The Supreme Court found that Respondent's determination reasonably concluded that Petitioner's injuries were not sustained as a result of an assault, making Petitioner only entitled to a leave of absence for at least one year under CSL §71.

George v. Westchester County
(Supreme Court, Westchester County)
Matter No. 21-0521

In this Article 78 brought by CSEA, the Petitioner sought to be reinstated to his probationary position as Supervisor of Fiscal Operations in the Department of Environmental Facilities. The Respondent filed a motion to dismiss, which was denied. The Court found that the Respondent had a rational basis to terminate Petitioner and the termination was not in bad faith, as the Petitioner was supported by his supervisor, but was also advised repeatedly that his performance was unsatisfactory. The petition was denied.

Guarnieri v. Rockland County
(Appellate Division, Second Department)
Matter No. 19-0101

The Employer, terminated Petitioner's employment after she was found guilty of various charges of gross misconduct at a hearing, resulting in an Article 78 proceeding to review such determination. The lower court transferred the case to the Appellate Division, which confirmed the Employer's determination, and denied the

petition because the reasons for Petitioner's termination were supported by substantial evidence, and because Petitioner failed to establish that her termination was an abuse of discretion.

Nassau Health Care Corporation v. CSEA
(Supreme Court, Nassau County)
Matter No. 23-0730

The Corporation brought an Article 75 Order to Show Cause seeking vacatur or modification of an arbitration award, which had ordered the Corporation to return Respondent to his position. The Respondent had been accused of ordering excess medical supplies and medication, and subsequently putting expired medical products in circulation at the Corporation. The arbitration award found that although Respondent committed misconduct, it did not warrant termination. The Court granted a stay of the arbitration award pending the hearing. The Court found that the arbitrator's award was irrational and violated public policy considerations of patient safety and health, because it had disallowed any evidence of Respondent's prior misconduct regarding similar conduct based on a contractual provision which barred discipline from being imposed for events which occurred more than one year prior. Therefore, the Court vacated the award, finding the Respondent's termination warranted.

OTHER
SECTION 71

Office for Children and Family Services
(Hearing Officer Selchick)
Matter No. 23-0899

Respondent was employed as a Youth Support Specialist ("YSS") when he sustained a meniscus tear in his right knee while on duty which rendered him unable to perform his job duties for a period of time, although he was eventually found fit and returned to full

duty. This proceeding dealt with Respondent's claim for backpay for the period of time between when he was found unfit for duty and when he was returned to full duty. The Hearing Officer determined that the Employer failed to prove that the Respondent was unfit for duty during this period of time, and that Respondent was entitled to receive backpay.

EEOC

J.K. v. CSEA
(Office Director Kielt)
Matter No. 23-0815

The Charging Party was a retired member who filed a complaint against CSEA, alleging age discrimination. The Charging Party enrolled in the NYS Employment and Retirement System two years after being hired as a part-time employee. In 2017, the Charging Party sought CSEA's assistance in getting credit for her initial two years of employment, which would have moved her to a higher retirement tier. CSEA advocated on her behalf with her employer, and the employer sought guidance from the Retirement System. The Retirement System denied the request. In 2023, the Charging Party filed a complaint with the EEOC against CSEA, alleging the union discriminated against her on the basis of sex and age by not assisting her, unlike its treatment of similarly situated men. CSEA filed a response. The EEOC dismissed the complainant's charge because it was not timely filed.