THE ADVOCATE

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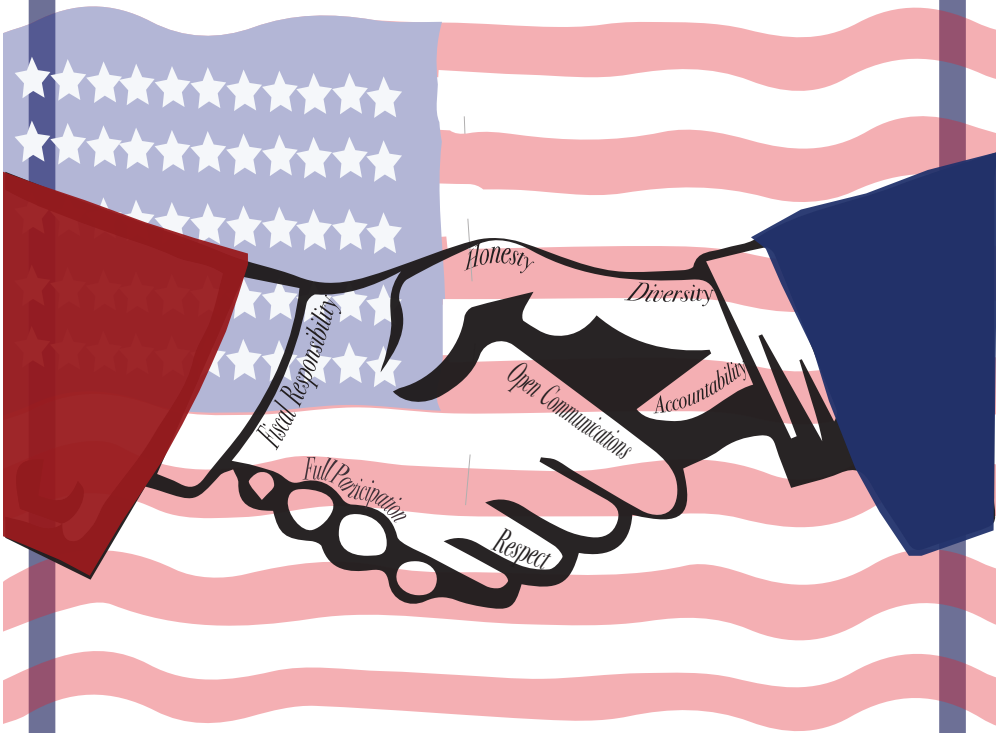

CSEA
Local 1000 AFSCME, AFL-CIO

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New Laws Impacting Returning Mothers to the Workplace and Workplace Equality

New York State Now Requires Paid Lactation Breaks for Breastfeeding Mothers

As of June 19, 2024, New York employers are now required to provide up to 30 minutes of **paid** break time each time an employee has a reasonable need to express breast milk. Prior to the amendment of the New York Labor Law, the Nursing Mothers in the Workplace Act had been in effect since 2007. The law only allowed nursing mothers reasonable unpaid break times to express breast milk and required employees to use any existing paid break time or meal time to express breast milk. The new amendment to the Labor Law expanded upon these rights, providing paid break time for nursing mothers and ensuring that employers provide a private space for expressing breast milk.

This change to New York Labor Law Section 206-c was signed into law by Governor Kathy Hochul and now provides:

> An employer shall provide paid break time for thirty minutes, and permit an employee to use existing paid break time or meal time for time in excess of thirty minutes, to allow an employee to express breast milk for such employee's nursing child each time such employee has reasonable need to express breast milk for up to three years following child birth. No employer shall discriminate in any way against an employee who chooses to express breast milk in the work place.

The new amendment to the New York Labor Law accompanies a previous 2023 change to this law that required New York

Employers, among other things, to supply a private room or space for employees to express breast milk, and the room must contain a chair, working surface, nearby access to clean running water and electricity, with an electrical outlet.

Since this update to the law, the New York State Department of Labor ("NYSDOL") has changed its "Policy on the Rights of Employees to Express Breast Milk in the Workplace." These amendments should now be reflected in this policy which employers are required to supply to employees upon hire and annually thereafter, and to employees upon returning to work following the birth of a child.

United States Supreme Court Delivers Decision Favoring Workplace Equality

On April 17, 2024, the United States Supreme Court issued a landmark decision that provided a significant victory for workers and workplace equality. The Court ruled in *Muldrow v. City of St. Louis* that Title VII of the Civil Rights Act does not require employees to demonstrate "significant" harm when challenging an involuntary employment transfer.

In *Muldrow v. City of St. Louis*, the plaintiff, a St. Louis police officer, was unilaterally transferred from a temporary post with the FBI to a district post within the city's police department and, subsequently, was denied a transfer request. She claimed that such actions were made because the city wanted to hire a male for her job. The Plaintiff argued that while her rank and salary remained unchanged after the transfer, changes in the terms and conditions of her employment nevertheless resulted from the transfer because her responsibilities, benefits and schedule changed. She argued that these changes to the terms and conditions of her employment were sufficient to demonstrate a violation of Title VII.
In a unanimous decision, the Supreme Court vacated and remanded the case, rejecting the heightened legal standard some appellate courts have imposed on Title VII claims to challenge discriminatory job transfers. The Court found that the Plaintiff

was required to only show that the transfer brought about some "disadvantageous" change in an employment term or condition based on sex.

Prior to the *Muldrow v. City of St. Louis* decision, courts frequently dismissed employees' claims of discriminatory workplace transfers. Such decisions found that the workplace transfers did not result in material or significant harm. This decision expands the scope of protection for workers against discrimination based on sex, race, religion or national origin in matters involving job transfers. This ruling is expected to make it easier for workers to demonstrate employment discrimination claims and protects workers from discriminatory job transfers, even if the resulting harm is not significant.

DISCIPLINARIES

State Disciplines:

SUNY Upstate Medical University
(Arbitrator Doyle)
Matter No. 22-0210

Grievant was served with charges seeking her termination because she failed to receive the COVID-19 vaccine in accordance with the Department of Health's regulation, which was later rescinded. The Arbitrator determined that termination of the Grievant was not proper because the Employer's interest in preventing the spread of COVID-19 was successfully achieved by suspending the Grievant without pay, which the Employer had probable cause to do since the Grievant had contact with immunocompromised patients.

Office for People with Developmental Disabilities
(Arbitrator Stein)
Matter No. 23-0867

Grievant was served with charges seeking his termination due to allegations that he violated the service plans of various service recipients by striking the back of their heads and grabbing one individual by the back of the neck, which resulted in him being arrested and charged with two counts of Endangering the Welfare of an Incompetent Person in the First Degree, a felony. The Arbitrator found that the Grievant was guilty of misconduct and incompetence as charged because, after he pled guilty to the foregoing criminal charges, he consented to the entry of an order of protection which precluded him from contact with the involved service recipients for a year, which was tantamount to a confession by the Grievant that he had acted in a highly improper manner. As such, termination was an appropriate remedy, and the Employer had probable cause to suspend the Grievant without pay pending the outcome of the proceeding.

Local Disciplinaries:

Nassau Health Care Corporation
(Arbitrator McCray)
Matter Nos. 22-0137, 22-0156, 22-0145, 22-0136, 22-0138, 22-0144, 22-0135, 23-0161

CSEA filed a grievance challenging NHCC's decision to suspend and terminate several unit members ("Grievants") for refusing COVID-19 vaccinations, as mandated by New York State law. After the grievance was filed, the State rescinded the vaccine mandate, and NHCC stated it would reinstate all Grievants terminated due to the failure to vaccinate. However, NHCC failed to reinstate many Grievants and refused to grant back pay. The Arbitrator found NHCC had just cause to terminate Grievants who refused the vaccinations. However, the Arbitrator ordered reinstatement for the Grievants who wanted to be reinstated, along with back pay from the date of the hearing. Additionally, the Arbitrator held that NHCC should make any part-time Grievants eligible for assignments under the same procedures that existed prior to their termination.

Patchogue-Medford Library
(Hearing Officer Sklar)
Matter No. 23-0738

Section 75 charges were filed against a Librarian, an employee since 1987 with no prior disciplinary history, for discriminating against another employee based on his sexual orientation, and/or perceived sexual orientation. The Hearing Officer found that the charges were not supported by substantial evidence, recommended that the disciplinary charges be dismissed, and that the initial 30-day suspension without pay be vacated with back pay.

Erie County
(Arbitrator Rinaldo)
Matter No. 23-0322

The Grievant, a Probation Supervisor, was suspended for two weeks and received a Notice of Discipline for failing to adequately supervise a Probation Officer, failing to communicate crucial information to colleagues covering for him during his vacation, and failing to document the case details in the internal system within the required timeframe. The Arbitrator found the County failed to prove that the Grievant inadequately supervised the Probation Officer. However, he determined that the County proved misconduct in that the Grievant unreasonably failed to inform a colleague of vital information and did not adequately maintain records. Therefore, the Arbitrator upheld the discipline but reduced the suspension from two weeks to one week.

Genesee County
(Arbitrator Rinaldo)
Matter No. 23-0657

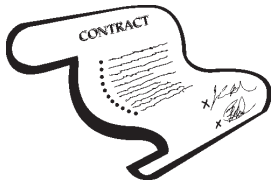
The Grievant, a Genesee County caseworker, was served a Notice of Discipline seeking termination because she was arrested and convicted of two separate DWI offenses that resulted in the suspension of her driver's license, a requirement for her job duties. Additionally, she used the County's phone and email for her personal use. Ultimately, the Arbitrator found it reasonable for the County to conclude that the Grievant's loss of a driver's license and her inability to perform her job duties constituted a sufficient basis for termination.

Horseheads Central School District
(Hearing Officer Sherwood)
Matter No. 24-0168

The Grievant, was an employee working as a bus driver with Horseheads Central School District. The District disciplined the member for misconduct and insubordination, sought her

termination for failing to follow the District's pre and post bus run protocol, and for disrupting another bus run. The Hearing Officer found that the District met its burden of proof in proving the charges, found the Grievant's testimony not credible and recommended the Grievant's termination. Additionally, based on the Hearing Officer's recommendation, the School Board found the Grievant guilty of the charges, adopted the recommendation, and terminated the Grievant.

CONTRACT GRIEVANCES



Local Grievances:

Eastchester Union Free School District
(Arbitrator Drucker)
Matter No. 23-0059

CSEA filed a grievance seeking declaratory relief to determine if the Collective Bargaining Agreement ("CBA") requires the Eastchester Union Free School District ("District") to pay additional compensation to ten-month school nurses for working five days before the teachers' start date. The District agreed not to require nurses to work on these days until the issue was resolved. The previous CBA aligned the nurses' schedule with the teachers', while the new CBA added five workdays before the teachers' start date. CSEA argued that this change was made only after the District agreed at the bargaining table to compensate the nurses for the additional days. The Arbitrator agreed with CSEA, sustained the grievance, and found that the CBA required nurses in ten-month positions to receive additional compensation if they worked five days before the first day of work for teachers.

Nassau Health Care Corporation
(Arbitrator McCray)
Matter No. 21-0214

CSEA filed a class action grievance for the Corporation's conduct in failing to stop a third party operator from hiring non-CSEA employees to do bargaining unit work, in violation of the CBA and various agreements between the parties. The Arbitrator held that the Corporation was the employer of the employees working at the third party operator sites, and that third party operators hired non-CSEA employees to perform unit work. Therefore, the Arbitrator found that the Corporation violated the CBA when it assigned unit work to non-unit members without giving the union notice and an opportunity to present alternatives, per the process set forth in the CBA. The Arbitrator ordered the Corporation to hire 40 CSEA-represented employees.

Town of Rotterdam
(Arbitrator Mayo)
Matter No. 23-0408

CSEA alleged that the Employer violated the parties' agreement when it demoted the Grievant from a Crew Leader title to a Senior MEO Heavy title. The Arbitrator sustained the grievance because there was no evidence that the Grievant was ever informed of a probationary period when he was promoted to Crew Leader, before which he served as Crew Leader on an acting basis for more than a year, and because there was no mention of a failed probationary period at the time of the Grievant's demotion. As such, the Arbitrator ordered that the Grievant be reinstated to the Crew Leader title and that he serve a six month probationary term.

Village of Perry
(Arbitrator Lewandowski)
Matter No. 24-0229

CSEA alleged that the Employer violated the parties' agreement when it refused to pay certain members for the one hour they collectively spent preparing for contract negotiations before the

session occurred, and then discussing what happened during the session after it concluded. The Arbitrator sustained the grievance because the short time spent by a party meeting immediately before and after negotiations sessions clearly constitutes a caucus, and because the evidence demonstrated that CSEA had previously met before and after prior negotiation sessions, just like in the subject grievance, and been paid for that time.

NLRB DECISIONS

Staff Decisions:

Clarkson University
(Regional Director Leslie)
Matter No. 24-0188

After reviewing CSEA's charge alleging that the Employer violated the National Labor Relations Act, the Regional Director investigated the matter and concluded that further proceedings were not warranted. As such, the charge was dismissed, and CSEA was provided with instructions regarding its right to appeal the decision.

COURT ACTIONS

Roselle v. Patchogue-Medford Union Free School District
(Appellate Division, Second Department)
Matter No. 23-0738

Petitioner appealed a decision of the Suffolk County Supreme Court, which denied Petitioner's Order to Show Cause. The Order to Show Cause sought the student records of the sole witness against the Petitioner in a pending Section 75 disciplinary hearing. The District filed a motion to stay enforcement, pending the Section 75 hearing and determination of any appeal. Since

the Supreme Court's denial, the disciplinary charges at issue in the Section 75 hearing were dismissed. Therefore, the Appellate Division dismissed the appeal of the Supreme Court's decision as academic.

Sainpaulin v. PERB, et al.
(Supreme Court, Monroe County)
Matter No. 24-0080

After reviewing all Respondents' motions to dismiss for lack of personal jurisdiction, the Court determined that Petitioner failed to effectuate proper service on all three respondents, despite the extended 120 day period to serve. As such, the petition was dismissed in its entirety.

Bush v. Lewis County
(Supreme Court, Lewis County)
Matter No. 23-0204

The Court issued an Interim Decision and Order in this Article 78 brought by CSEA on behalf of Petitioner. CSEA sought the reinstatement of the Petitioner to her title with full back pay and benefits. The County moved to dismiss the petition pre-answer pursuant to CPLR § 3211, and submitted additional evidentiary materials outside the content of CSEA's petition. The Court converted the County's motion to dismiss to a motion for summary judgement, because a pre-answer motion to dismiss must assume the truth of the allegations of the petition without considering additional facts. The Court ordered Petitioner and the County to file any further papers, so the Court could then rule on the converted motion for summary judgement.

Carmona v. Village of Spring Valley
(Appellate Division, Second Department)
Matter No. 21-0267

The Petitioner commenced this Article 78 proceeding to challenge a determination by the Village, which imposed disciplinary

penalties pursuant to Civil Service Law § 75. The Village moved to dismiss the petition for failure to exhaust administrative remedies, and the Petitioner opposed the motion solely on the ground that it was untimely. The Supreme Court granted the Village's motion, which the Petitioner appealed but did not preserve the untimeliness argument for appeal. The Appellate Division held that the Petitioner's arguments in opposition to the exhaustion defense were improperly raised for the first time on appeal, and as a result, affirmed the Supreme Court's order and judgment as appealed.

OTHER SECTION 72

NYS Department of Transportation
(Arbitrator Arno)
Matter No. 23-0631

The State suspended the Grievant under CSL § 72 shortly after he suffered a heart attack, and although he testified to submitted documentation showing his fitness for duty just days later, the State did not order an Independent Medical Examination for him for another six months, nor did they return him to work until seven months later. The Arbitrator held that the State had probable cause to place the Grievant on emergency involuntary leave in order protect the Grievant's coworkers and the public. Additionally, the Arbitrator held that the Grievant bore the burden of proof regarding whether he was fit to return to work, and he failed to provide credible evidence or testimony proving that he informed and demonstrated to his employer that he was fit to return to duty prior to 6 months after he was removed from work. Therefore, the Arbitrator found that the Grievant was not entitled to lost wages and/or accruals for the seven months he was out of work.