

THE ADVOCATE

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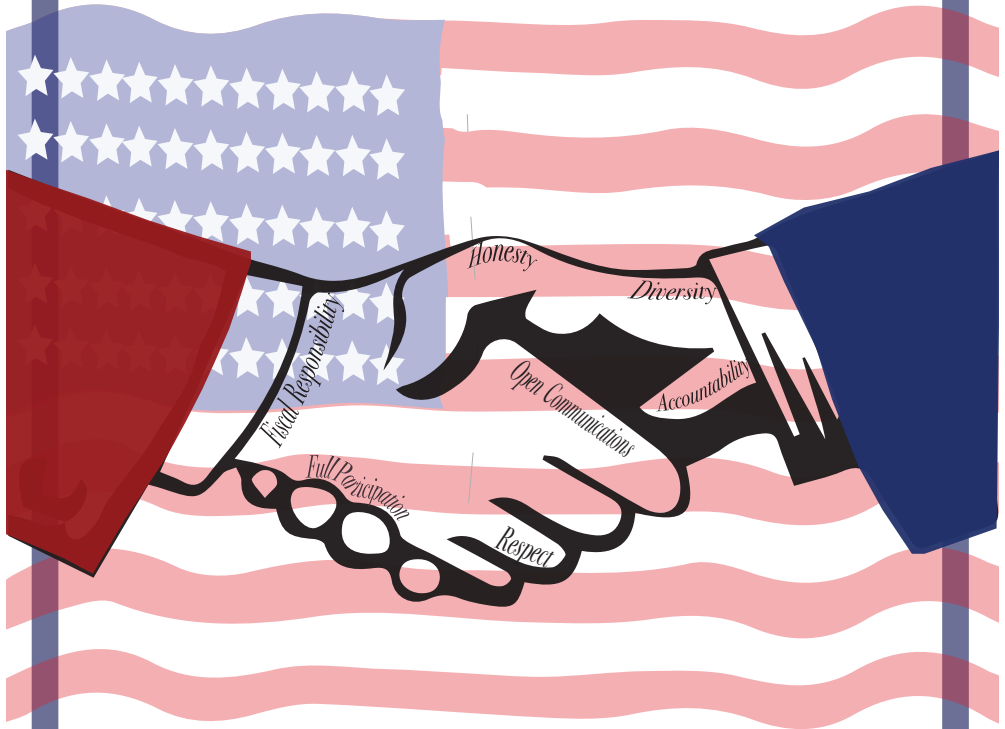


TABLE OF CONTENTS:

Counsel’s Corner 1
Disciplinaries 5
Contract Grievances 13
Court Actions 16
PERB 24
Justice Center 26
Division of Human Rights 28
OCFS 29
NLRB 30

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Counsel's Corner

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United States Supreme Court 2024-2025 Term's Notable Cases

The 2024-2025 term of the U.S. Supreme Court, which commenced on October 7, 2024, is expected to tackle several cases with potential implications for CSEA and its bargaining unit members. Some of the anticipated cases involve issues like the prohibition of gender-affirming care, the First Amendment rights of anti-abortion protesters outside women's health clinics, post-employment benefits and redistricting efforts to better represent minority populations. This term is expected to address these and other pressing matters, and the following is a summary of the cases scheduled for review.

1. LGBTQ+ Rights

a. *United States v. Skrmetti*

The case of *Skrmetti* centers around a contentious law in Tennessee that bans gender-affirming care for minors. Three transgender Tennesseans, along with their parents, have filed a lawsuit challenging the law on the grounds of equal protection. If enforced, the law would prohibit minors from accessing essential medical treatments such as hormone replacement therapy and puberty blockers, and would even require those already undergoing treatment to discontinue their medically advised healthcare plans.

In response to the lawsuit, the district court temporarily halted the ban, emphasizing that parents have a fundamental

right to direct their children’s medical care, including the right to seek specific medical treatments for their children. However, the Sixth Circuit subsequently reinstated the ban, prompting the Biden administration to take up the case on behalf of the families and present it before the Supreme Court.

Approximately 1.6 million Americans identify as transgender, and this case could have enormous repercussions for their ability to access medically necessary care. Furthermore, the Court’s review of *Skrametti* comes at an important time, as 24 states have passed laws banning gender-affirming care for minors. To date, 35 major national and international medical organizations have expressed support for gender affirming care, including the American Medical Association, the American Academy of Pediatrics, and the World Health Organization.

The U.S. Supreme Court held oral arguments in this landmark case on December 4, 2024. A decision is expected in the spring or early summer of 2025.

2. First Amendment Issues

a. Coalition Life v. City of Carbondale, Illinois

Coalition Life is a legal case challenging the constitutionality of “bubble zone” laws that restrict free speech. In January 2023, Carbondale, Illinois, passed a law creating 100-foot “bubble zones” around healthcare facilities, including hospitals and clinics, within which individuals are prohibited from speaking to others for the purpose of protest, education, or counseling. Intended to prevent pro-life advocacy near abortion clinics, the law’s broad application has led to the creation of over 150 such zones across the city, limiting people’s ability to exercise their First Amendment rights.

In May, 2023, *Coalition Life* and the Thomas More Society filed a lawsuit challenging the law, but lower courts dismissed the case, citing the 2000 Supreme Court decision in *Hill v. Colorado*. This case was appealed to the U.S. Supreme Court to reconsider the issue, as the plaintiffs believe the law violates the First Amendment

and should be struck down.

If the U.S. Supreme Court decides to hear this case, oral arguments may occur in late spring, 2025 or the following October.

3. Disability Rights in the Workplace

a. Stanley v. City of Sanford, Florida

In *Stanley*, the Supreme Court has agreed to review a case addressing the issue of whether a person with disabilities may sue their former employer for discrimination in post-employment benefits. Petitioner is a former firefighter who took disability retirement in 2018, due to Parkinson's Disease. At the time of her retirement, she was entitled to free health insurance until the age of 65. The City later changed its benefits plan, limiting disability retirees' health insurance benefits for only up to twenty-four months after retiring. The Petitioner sued the City, claiming that it unconstitutionally discriminated against her as a disabled retiree in violation of the Americans with Disabilities Act and the Equal Protection Clause of the Fourteenth Amendment. The lower courts sided with the City on the basis that she could not state a plausible disability discrimination claim when the alleged discrimination occurred after retirement. The lower courts also dismissed her claim on the basis that nothing prevented the City employer from amending its benefits plans, and that its decision to do so satisfied a rational basis review under the Fourteenth Amendment.

The *Stanley* case holds immense significance for the more than 70 million Americans with disabilities, as a ruling against *Stanley* could have far-reaching consequences on their employment rights and protections. A decision allowing employers to evade discrimination accountability when an employee is no longer with the company could result in a substantial gap in protections for disabled individuals. This could compel employees to remain in their current positions out of fear of losing their post-employment benefits, thereby hindering their ability to seek new job opportunities.

Oral argument in the *Stanley* case is scheduled for January 13, 2025.

4. Voting Rights

a. *Louisiana v. Callais*

In *Callais*, the plaintiffs are challenging Louisiana's congressional redistricting map, specifically focusing on District 6, alleging that the map is an impermissible racial gerrymander. The map was created in response to a previous lawsuit, *Robinson v. Ardoin*, where plaintiffs argued that the prior map violated Section 2 of the Voting Rights Act by diluting minority votes. To address these issues, the Louisiana Legislature adopted a new map that included a second majority-Black district. However, the plaintiffs in this case claimed that this new map violated the Equal Protection Clause of the Fourteenth Amendment by prioritizing race in its creation. A three-judge panel concluded that District 6 of the new map did indeed violate the Equal Protection Clause, leading the court to issue an injunction against using this map in future elections. With the stay in place, Louisiana voters are able to vote under the map with two majority-Black districts.

The U.S. Supreme Court has indicated that it will hear oral arguments next year in this case concerning Louisiana's congressional district maps.

DISCIPLINARIES



State Disciplinaries:

Office for People with Developmental Disabilities (Arbitrator Ternullo) Matter No. 23-0468

The State suspended the Grievant, a Direct Support Aide, and served him with a Notice of Discipline (“NOD”) containing three charges, seeking termination for remaining on the clock on 25 different occasions past the Grievant’s scheduled hours without supervisory approval and/or without a legitimate need. Charge 3 was dismissed prior to the decision. The Arbitrator agreed with CSEA, finding the Grievant not guilty of the other two charges, and reinstated the Grievant with full back pay and benefits to the date of his suspension.

Office for People with Developmental Disabilities (Arbitrator Siegel) Matter No. 23-0987

The State suspended the Grievant, a Direct Support Aide, and served her with a NOD containing four charges seeking termination for causing three scratch marks on a resident’s back while removing her clothing, inappropriately restraining the resident, forcing her to shower, and spraying her with water to modify her behavior. The Arbitrator found Grievant guilty of three charges, attributing them to poor decision-making rather than intentional misconduct, and not guilty on the fourth. Thus, the arbitrator found termination was deemed inappropriate, and suspended Grievant without pay from November 7, 2023, to June 6, 2024. The Arbitrator also found the State had probable cause for the suspension.

Office for People with Developmental Disabilities
(Arbitrator Crangle)
Matter No. 24-0223

The Grievant was a DSA, whose termination the State sought. He was charged with seven counts of misconduct/incompetence for refusing to perform his duties, creating a hostile environment against his coworker when he reminded him of his duty, and jeopardizing the wellbeing and safety of service recipients by making them feel unsafe around him due to his hostile treatment of his coworker in front of them. The Arbitrator found the Grievant guilty of all counts and found termination to be the only appropriate penalty. Furthermore, the Arbitrator found that the State had probable cause to suspend the Grievant without pay during the pendency of the grievance process.

NYS Department of Motor Vehicles
(Arbitrator Siegel)
Matter No. 22-0605

The Grievant was issued a NOD and filed two grievances contesting the charges. At expedited resolution, the parties reached an agreement. The Grievant agreed to withdraw the grievances and the parties agreed that the Grievant would serve a four-week suspension without pay.

NYS Department of Health
(Arbitrator Glanstein)
Matter No. 24-0298

The Grievant, a Nursing Assistant, was issued a NOD alleging that the Grievant violated the home's Abuse Prohibition policy, Rules of Conduct policy, and NYS DOH Regulation 10 NYCRR 81.1(c). The proposed penalty was termination. Grievant argued that the incident was a result of understaffing and the resident's emergent care situation and the proposed penalty was excessive. Grievant admitted that she did not follow proper procedure when transferring the resident from the wheelchair to his bed and that

the resident sustained abrasions to the top of his head and his right arm while in the Grievant's care. However, the arbitrator found that the proposed penalty of termination was not appropriate and ordered that the Grievant be suspended without back pay until the date of the award.

**NYS Department of Health
(Arbitrator Panepento)
Matter No. 23-0892**

The Grievant was a Plant Utility Engineer II with 5 years of State service. He was served with a NOD containing 6 charges and the State sought his termination. The Arbitrator held that there was just cause for 3 of the 6 charges. Based on the Grievant's prior 2 NODs, his unwillingness to take responsibility for his action, and his lack of remorse, the Arbitrator held that the employment relationship had eroded beyond repair. The Arbitrator found there was just cause for termination.

**Monroe County Community College
(Arbitrator Gelernter)
Matter No. 23-0938**

The Grievant, a Maintenance Mechanic, was terminated for issues with time and attendance, performance, and conduct despite receiving training, coaching, counseling, written warning, and suspension. Grievant had received prior counseling for his misconduct as well as a 3 day suspension without pay for continued inappropriate actions and violating the Workplace Violence Response and Prevention policy. Grievant also received a performance appraisal outlining numerous problems with breaks, time and attendance, work quality, and tardiness, stating that failure to correct performance may lead to further administrative action, including discipline. The arbitrator found that the College's repeated warnings and Grievant's failure to improve over a reasonable period of time on a number of issues were serious enough to justify termination.

Local Disciplinaries:

Cattaraugus County (Arbitrator Greenberg)

Matter No: 22-0102

The Grievant, a Licensed Practical Nurse, was issued a six-month suspension following the County's determination that the Grievant had verbally abused a resident. The Arbitrator agreed with CSEA, finding that the County failed to provide sufficient evidence of the Grievant's verbal abuse. The Arbitrator, therefore, sustained the grievance and determined that "cause was not shown for the Grievant's suspension," ordering the County to make the Grievant whole for all lost wages and benefits resulting from the improper suspension.

Rockland County (Arbitrator Siegel)

Matter No. 24-0255

The Grievant, a Security Aide at, received a Notice of Charges seeking termination for repeatedly using his cellphone despite being counseled not to do so. The Arbitrator found the Grievant guilty of both charges but determined that termination lacked just cause, deeming the appropriate penalty to be the 30-day suspension without pay the Grievant had already served, plus an additional one-week suspension without pay.

Niagara County (Arbitrator Foster)

Matter No: 23-0833

The Grievant, a Respiratory Therapist II, was issued a Notice of Personnel Action ("NOPA") for alleged workplace violence. The Arbitrator reinstated the Grievant to his former position at the A. Holly Patterson Extended Care Facility and granted him twelve months of backpay, along with full restoration of benefits, seniority, and emoluments of employment.

Nassau County
(Arbitrator Riegel)
Matter No. 23-0778

The Grievant, an Administrative Assistant, received a Notice of Personnel Action proposing a two-day loss of compensatory time for sending inappropriate emails to the Chief Medical Examiner regarding her shift times and overtime. The Arbitrator sustained the grievance but found that the appropriate penalty is a one-day loss of compensatory time and a reprimand.

Nassau Health Care Corporation
(Arbitrator Klein)
Matter No: 23-0493

The Grievant, a Supervising Social Worker, was issued a Notice of Discipline and terminated for improperly entering information into the medical records of at least seven patients for whom she was not the primary service provider and failing to supervise the rendering providers properly. The Arbitrator found that while the County proved the misconduct, termination was not the appropriate penalty. Instead, the Arbitrator ordered the Grievant reinstated within a week with restored seniority, demotion to Senior Licensed Clinician or equivalent, and denied compensation for lost wages or benefits during her discharge pending arbitration.

St. Lawrence County
(Arbitrator Gross)
Matter No. 23-0805

The Grievant, a Motor Vehicle Clerk, was convicted on two felony charges and sentenced to 180 days in jail. Grievant was subsequently served with a NOD proposing a penalty of termination for “incompetence” due to her inability to report to work and perform assigned duties as well as her inability to perform distinguishing features of her job. Grievant was placed on a 30-day suspension without pay pending determination. The Union’s appeal takes the position that the relevant regulation does

not prohibit Grievant from working in the Department of Motor Vehicles due to felony convictions and that the County failed to show that Grievant was in violation of the County's attendance policy. The arbitrator found there was insufficient evidence as to whether Grievant could continue processing applications for Enhanced Drivers Licenses and Real IDs and sufficient evidence that Grievant could still perform many other typical work activities of her position. The 30-day suspension without pay did not begin until Grievant's release from incarceration and the County was obligated to return the Grievant to the payroll at the end of the 30-day suspension.

City of Cohoes
(Arbitrator Simmelkjaer)
Matter No. 23-0909

The Grievant, a Senior Water Plant Operator for the City of Cohoes ("City"), received a NOD seeking termination for becoming verbally aggressive toward management, refusing to comply with directives, and for violating the workplace violence prevention policy. The Arbitrator found that the City had just cause to discipline the Grievant for being verbally aggressive and insubordinate, but it did not prove by a preponderance of the evidence that he violated the workplace violence prevention policy. Therefore, the Arbitrator found termination to be an inappropriate penalty and suspended the Grievant for twenty days without pay, considering his prior employment history.

Town of Hempstead
(Arbitrator Shriftman)
Matt No: 24-0583

The Grievant, an Assistant Buyer in the Purchasing Division of the Comptroller's Department, was issued a NOD and terminated for attempting to extort the town into revoking her failed probation by threatening to go to Newsday. The Arbitrator found the Grievant guilty of Charge 1 in the NOD and, based on the Grievant's short tenure with the Town, determined termination was the appropriate penalty.

Sodexo at SUNY New Paltz
(Arbitrator Selchick)
Matter No. 24-0112

The Grievant, a Cook II, received a NOD seeking termination for a physical altercation with a coworker. A witness to the altercation said that the Grievant approached the coworker from behind with an aggressive tone of voice but did not know who threw the first punch. Having considered the Grievant's previous employment record, including a performance note reminding him to avoid workplace sexual harassment and a counseling notice for engaging in a verbal altercation in the workplace, the arbitrator upheld the termination, finding that the Grievant violated the Company's workplace violence policy.

Rockland County
(Arbitrator Kelly)
Matter No. 24-0172

The Grievant, a Probation Assistant, was issued a reprimand for several instances of misconduct, including taking unauthorized breaks. Following the reprimand, the County found that the Grievant's behavior did not improve and issued a 10-day suspension without pay. The arbitrator found that a recent change to the Grievant's duties was the root cause of the charges. However, Grievant neglected to protest these new duties through the avenues available in the CBA. Moreover, the issue of unauthorized break times was an issue prior to the change in duties. Having found that the County met its burden of proving that the Grievant committed the violations alleged, the grievance was denied.

Rockland County
(Arbitrator Cacavas)
Matter No. 24-0061

Grievant was served with charges seeking her termination due to allegations that she falsified records and engaged in fraud and/or theft in connection with her Workers' Compensation claim

that she injured her ankle and was unable to work. The Arbitrator determined that video evidence presented during the hearing raised serious questions regarding the Grievant's compliance with her medical restrictions, which in turn challenged the credibility of her reporting to medical examiners and the veracity of her claims of injury/impairment. Furthermore, a Workers' Compensation judge had previously determined that the Grievant was disqualified from receiving benefits because she made a false statement or misrepresentation with respect to her injury in order to obtain wage replacement benefits. As such, the Arbitrator upheld the charges and determined that termination was an appropriate penalty.

**Binghamton-Johnson City Joint Sewage Treatment Plant
(Arbitrator Eischen)
Matter No. 24-0291**

Grievant was served with charges seeking that he serve a ten-day unpaid suspension due to allegations that he disregarded at least three directives to get tested for COVID-19 by a medical professional after reporting that he tested positive at home, and that he engaged in harassing, threatening, or assaulting conduct while at work. The Arbitrator found that the Employer had just cause to discipline the Grievant with respect to his failure to get tested for COVID-19 by a medical professional, but that a six-day unpaid suspension would be a more appropriate penalty since the Employer submitted no evidence to suggest that the Grievant engaged in harassing, threatening, or assaulting conduct while at work.

CONTRACT GRIEVANCES



Local Grievances:

Albany County (Arbitrator Trachtenberg) Matter 24-0034

CSEA filed a class action grievance for the County's failure to properly compensate bargaining unit members for working on a holiday. CSEA and the County disagreed as to what compensation was required under the CBA for class members who worked on holidays. The Arbitrator held that CSEA's interpretation of the contract language was correct and that the County had violated the CBA by improperly compensating class members when they worked on holidays. The Arbitrator ordered the County to provide the appropriate backpay and to compensate unit members properly going forward.

Nassau County (Arbitrator McCray) Matter No. 24-0695

The County disciplined the Grievant and suspended him for 60 days. While the Grievant was suspended, the County reissued the discipline, amending the disciplinary charge by adding an allegation and changing the penalty to termination. CSEA grieved the reissued discipline, and at the arbitration hearing, moved to dismiss the amended discipline charge. CSEA argued that more than one year had passed between the alleged conduct and the date of discipline, so any disciplinary action was barred by the CBA. The County argued that the late issuance of discipline was permissible under the contract because the alleged conduct constituted a crime. The Arbitrator issued this Interim Opinion and Award solely on CSEA's motion to dismiss. The Arbitrator granted the motion to dismiss the amended charge, finding that a violation of Public

Health Law did not constitute a crime as the term is used in the CBA, and that the County had not proven that Public Health Law was violated. The case proceeded on the original disciplinary charge alone.

Mount Vernon Public Library
(Arbitrator Berman)
Matter No. 24-0265

CSEA filed a contract grievance after the Grievant was appointed Head of the Circulation Department and began performing out-of-title work for more than 15 days. The Arbitrator sustained the grievance, agreeing with CSEA that the Grievant was working out of title as the Head of the Circulation Department, and ordered the parties to meet to confirm the higher rate the Grievant is entitled to.

Onondaga County
(Arbitrator Donn)
Matter No. 23-0551

The Grievant contends that he was denied a promotion to the title of Senior Welfare Fraud Investigator in violation of the CBA. The Arbitrator found that, although the County stopped the original promotion process and restarted it with a new procedure specifically designed to prevent the Grievant's promotion and that the new process ultimately made it difficult for the grievant to be promoted, these actions were not arbitrary or capricious and did not violate the CBA. Consequently, although the Arbitrator found the grievance arbitrable, he denied the grievance.

Orange County
(Arbitrator Siegel)
Matter No. 24-0375

CSEA filed a contract grievance after the County unilaterally changed the Grievant's work schedule to 1:30 p.m. to 9:30 p.m. on certain Thursdays to teach a foster parent class. The Arbitrator agreed with the District that the contract has no restrictions on the

start and end times for shifts, and that the Grievant was working eight hours per day. Consequently, although the Arbitrator found the grievance arbitrable, he denied it.

Town of Southold
(Arbitrator Cacavas)
Matter No. 24-0082

The Grievant, an Automotive Equipment Operator, filed a grievance alleging that his supervisor's denial of a leave request was in violation of Section 22.1 of the CBA. Grievant requested use of compensatory days due to a family emergency. His request was denied based on a policy requiring 24 hours' notice. The language of the CBA holds that there must be mutual agreement by the employee and department head as to when and for how long compensatory time off may be taken. The Union relied on the employee handbook which stated that a supervisor or department head must approve use of compensatory time off, except in cases of emergencies. The arbitrator found that the request to use compensatory time was not denied but was subject to the Grievant's confirmation of its need. When this did not occur, the supervisor's approval of it as compensatory time was withheld and other leave time was charged. Therefore, the grievance was denied.

Westchester County
(Arbitrator Burrell)
Matter No. 24-0078

CSEA filed a class action grievance against the County for inequitably distributing COVID bonuses to some, but not all, bargaining unit members. The Arbitrator held the grievance not arbitrable and dismissed the matter in its entirety. The Arbitrator found that the grievance failed to state which specific provision was violated, and instead generically referred to the definition of a grievance. Furthermore, the Arbitrator found that the CBA did not address COVID bonuses, and that the grievance was inadequate to put the County on notice of the basis of the grievance.

State Grievances:

New York State Thruway Authority (Arbitrator Lawson) Matter No. 23-0707

CSEA alleged that the Employer violated the parties' agreement when, between December 2019 and March 2020, it assigned employees from the New York Division working their regular straight-time shifts to cover vacant shifts in the Albany Division. CSEA contended that there was a past practice of Albany Division employees covering these vacant shifts on an overtime basis. The Arbitrator dismissed the grievance because, pursuant to the parties' agreement, the Employer has the discretion to refrain from using employees who would be paid overtime from performing work that could be performed by other employees at straight-time. Furthermore, the Arbitrator determined that the term "special schedule," as contained in the parties' agreement, only refers to hours of work or dates of work, but not the location of work.

COURT ACTIONS

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



Petitioner sought vacatur of an arbitration award under CPLR § 7511, arguing that the Arbitrator illegally varied the terms of the contract. The Court denied the request. CSEA filed a cross-petition, seeking an order confirming the Arbitrator's opinion. The Court denied that request as well, but only as to the procedure of a cross-petition. CSEA then sought confirmation of the arbitration award under CPLR § 7510, which the Court granted.

Royall v. City of Beacon
(Supreme Court, Sullivan County)
Matter No. 24-0010

Plaintiff brought claims under 42 U.S.C. § 1981 and NYS Human Rights Law of hostile work environment, discrimination, and retaliation claims based on his race, gender, and age. He also brought claims for breach of contract and defamation. These claims were brought against his employer the District, the City, and CSEA. The defendants filed motions to dismiss, which were all granted.

Okolie & CSEA Local 830 v. Nassau Health Care Corporation
(Supreme Court, Nassau County)
Matter No. 24-0443

Petitioner sought vacatur under CPLR § 7511 of an arbitration award upholding his termination as a result of the County's disciplinary action. The Court denied the petition in its entirety, finding that Petitioner Okolie lacked standing to seek vacatur because he was not a party to the CBA which governed the terms of the arbitration hearing. Furthermore, the Court held that Petitioner failed to meet his burden, and the arbitrator's award provided a colorable justification for its ruling.

CSEA, et al. v. Nassau County, et. al.
(Supreme Court, Nassau County)
Matter No. 24-0868

After reviewing the Petitioners' papers seeking a temporary restraining order and preliminary injunction which orders the Respondents to maintain a health insurance plan for CSEA bargaining unit members and their insured dependents which provides the same level of benefits as their current NYSHIP health insurance plan, the Judge agreed with the Petitioners that, without a preliminary injunction, an eventual arbitration award on the same issue would be rendered ineffectual because it would come after the County already moved the members into a high-deductible health insurance plan with lesser benefits. As such, the Judge signed the

order and enjoined the Respondents from putting the members in a new high-deductible health insurance plan with lesser benefits than the current NYSHIP plan.

**Maselli v. Yonkers Board of Education
(Appellate Division, Second Department)
Matter No. 20-0233**

Petitioner was terminated by the District for misconduct and incompetence after a CSL § 75 hearing. Petitioner then filed a petition pursuant to CPLR Article 78, which was then transferred to the Appellate Division pursuant to CPLR § 7804(g). The Court held that the determination of petitioner misconduct and incompetence was supported by substantial evidence, and the penalty of termination was not disproportionate to the offense. However, the Court also held that petitioner was entitled to back pay for the period of time he was suspended without pay in excess of 30 days, and therefore remitted the matter to the Board of Education for a hearing to evaluate who bears responsibility for any portion of the delay, and award the petitioner backpay to which he is entitled.

**CSEA v. New York State Police
(Supreme Court, Appellate Division, Third Judicial Department)
Matter No. 23-0528**

After the Respondent failed to reinstate the Petitioner employee pursuant to an arbitrator's award finding that he was guilty of misconduct, CSEA commenced a proceeding seeking to confirm the award, which the Respondent answered by seeking vacatur and termination of the Petitioner employee based on the sexual harassment charges the arbitrator found him not guilty of. The Supreme Court then vacated the arbitrator's award with respect to the Petitioner employee's sexual harassment charges, found the Petitioner employee guilty of those charges, and remitted the matter to a different arbitrator for the imposition of a new penalty. Upon Petitioner CSEA's appeal, the Appellate Division determined that the arbitrator's decision impermissibly exceeded

her authority pursuant to the parties' agreement because she effectively modified Respondent's sexual harassment policies in order to find the Petitioner employee not guilty of those charges, and that the Supreme Court both impermissibly substituted its opinion for the arbitrator's decision and ruled on the merits of the underlying allegations. Thus, the award was vacated to the extent it found the Petitioner employee not guilty of the sexual harassment charges, and the matter was remitted to a new arbitrator for a new determination and penalty.

**State of New York – Unified Court System v. CSEA
(Supreme Court, New York County)
Matter No. 24-0807**

After reviewing the Petitioner's papers seeking to permanently stay arbitration and the Respondent's cross-motion to compel arbitration, the Judge granted the petition to permanently stay arbitration. The Judge specifically determined that the underlying grievances sought for the Grievant to remain in the position of Principal Law Clerk after his title was changed to that of an Associate Court Attorney, that this requested relief would implicate the Petitioner's discretionary authority to administer its operations by establishing and supervising job title standards, and that arbitration was therefore precluded by public policy.

**CSEA (Teixeira) v. State of New York & SUNY Stonybrook
(Supreme Court, Suffolk County)
Matter No. 22-0506**

After reviewing the Petitioners' papers seeking to vacate an arbitration award which found the Grievant guilty of failing to receive the COVID-19 vaccination and terminated her employment, the Judge dismissed the proceeding because the arbitration award was consistent with both public policy and applicable law at the time it was issued. This was despite the fact that the COVID-19 Mandate was declared invalid, null, and void by the Onondaga County Supreme Court and eventually repealed after the date of the arbitration award.

**CSEA (Gross) v. State of New York & SUNY Stonybrook
(Supreme Court, Suffolk County)
Matter No. 22-0120**

After reviewing the Petitioners' papers seeking to vacate an arbitration award which found the Grievant guilty of failing to receive the COVID-19 vaccination and terminated her employment, the Judge dismissed the proceeding because the arbitration award was consistent with both public policy and applicable law at the time it was issued. This was despite the fact that the COVID-19 Mandate was declared invalid, null, and void by the Onondaga County Supreme Court and eventually repealed after the date of the arbitration award.

**CSEA (Engel) v. State of New York & SUNY Stonybrook
(Supreme Court, Suffolk County)
Matter No. 22-0269**

After reviewing the Petitioners' papers seeking to vacate an arbitration award which found the Grievant guilty of failing to receive the COVID-19 vaccination and terminated her employment, the Judge dismissed the proceeding because the arbitration award was consistent with both public policy and applicable law at the time it was issued. This was despite the fact that the COVID-19 Mandate was declared invalid, null, and void by the Onondaga County Supreme Court and eventually repealed after the date of the arbitration award.

**CSEA (Santos) v. State of New York & SUNY Stonybrook
(Supreme Court, Suffolk County)
Matter No. 22-0119**

After reviewing the Petitioners' papers seeking to vacate an arbitration award which found the Grievant guilty of failing to receive the COVID-19 vaccination and terminated his employment, the Judge dismissed the proceeding because the arbitration award was consistent with both public policy and applicable law at the time it was issued. This was despite the fact

that the COVID-19 Mandate was declared invalid, null, and void by the Onondaga County Supreme Court and eventually repealed after the date of the arbitration award.

**CSEA (Guarino) v. State of New York & SUNY Stonybrook
(Supreme Court, Suffolk County)
Matter No. 22-0121**

After reviewing the Petitioners' papers seeking to vacate an arbitration award which found the Grievant guilty of failing to receive the COVID-19 vaccination and terminated her employment, the Judge dismissed the proceeding because the arbitration award was consistent with both public policy and applicable law at the time it was issued. This was despite the fact that the COVID-19 Mandate was declared invalid, null, and void by the Onondaga County Supreme Court and eventually repealed after the date of the arbitration award.

**Arizmendi v. New York State Unified Court System
(Supreme Court, Ulster County)
Matter No. 24-0031**

After reviewing the Petitioner's papers which requested that the Respondent Employer's determination that she not be included on the eligibility list for an available promotion be set aside, the Court denied the petition and determined that it was rational for the Respondent Employer to conclude that the Petitioner lacked the minimum requirements for examination and promotion to a supervisory position while she was on probation pursuant to a settlement agreement for alleged workplace misconduct.

**Renslow & CSEA v. Unified Court System
(Supreme Court, Steuben County)
Matter No. 24-0187**

Petitioners filed a claim under CPLR Article 78, seeking review of Petitioner's termination by UCS. UCS filed a motion to dismiss pursuant to CPLR § 3211(a)(7) for failure to state a claim and for

failure to exhaust administrative remedies. The Court granted the motion with prejudice, finding that Petitioners failed to file a grievance of the termination, thereby failing to exhaust their administrative remedies.

Richards v. County of Onondaga
(Supreme Court, Onondaga County)
Matter No. 24-0124

Petitioner filed a claim under CPLR Article 78, seeking review of her termination from the Board of Elections for failing to process voter registration forms. Petitioner argued that she was terminated upon the decision of just one of the two Commissioners, but the law requires a majority of the Commissioners to concurrently approve all actions of the Board of Elections. The Court found that while Petitioner's termination was effectuated by a sole Commissioner, the other Commissioner acquiesced to the termination. The Court held that to be sufficient to prove concurrent action with respect to the removal of an employee. Therefore, the Court denied and dismissed the petition.

Bush v. County of Lewis
(Supreme Court, Lewis County)
Matter No. 23-0240

Petitioner filed a claim under Article 78, seeking review of her termination. The County filed a motion for dismissal/summary judgment. Petitioner was a probationary employee, and alleged she was terminated for grieving the denial of her application for a transfer to a different department. She also grieved her termination but later withdrew the grievance after the County asserted that as a probationary employee, she had no right to a grievance process. CSEA also filed an improper practice charge with PERB for the same event, which was later dismissed. The Court then held that Petitioner was not required to exhaust the grievance process. However, the Court also held that it lacked subject matter jurisdiction over the matter, as the underlying claim and improper motive for her termination was the topic of the PERB hearing.

Therefore, the County's motion for dismissal/summary judgment was granted.

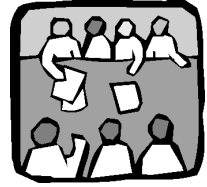
**Civil Service Employees Association, et al v. State Of New York, et al
(Supreme Court, Suffolk County)
Matter No. 22-0270**

The Petitioner, a Trades Specialist (Carpenter) at SUNY Stony Brook, brought a petition pursuant to Article 75 seeking to vacate an arbitration award which upheld his termination. The petition argued that the award of termination violated public policy and was irrational because it was premised upon a mandate which was later declared invalid. The Court found that the award was consistent with both public policy and applicable law at the time it was issued. Although Supreme Courts in Erie and Onondaga Counties have applied the decision invalidating the mandate as a basis for vacating terminations, those awards were issued after the decision was rendered. This was not the case here and the award of termination was upheld.

**CSEA (DeBenedictis) v. Town of Eastchester, et. al.
(Supreme Court, Westchester County)
Matter No. 21-0248**

After reviewing the Defendants' motion for summary judgment requesting dismissal of the Complaint, along with Plaintiffs' opposition to the motion, the Judge determined that the motion should be granted because the mandated notice of claim was never filed with the Town Clerk.

PERB DECISIONS



CSEA v. Nassau County
(General Counsel Delaney)
Matter Nos. 24-0847 & 24-0953

After reviewing CSEA’s application for injunctive relief under the Civil Service Law, which accompanied an improper practice charge, PERB’s General Counsel granted the application because she determined that CSEA made a sufficient showing of reasonable cause to believe that the County would unilaterally implement a new high-deductible health insurance plan with lesser benefits than the current NYSHIP plan for CSEA members and their insured dependents, that there was reasonable cause to believe that this conduct by the County constitutes an improper practice, and that immediate and irreparable injury would result if injunctive relief was not granted prior to a hearing on the improper practice, thereby rendering a resulting judgment on the merits ineffectual. As a result of the foregoing, PERB decided to petition Albany County Supreme Court for the appropriate injunctive relief pursuant to the Civil Service Law.

Staff Decisions:

Igiebor, Jr. v. CSEA & New York State (OCFS)
(ALJ Parker)
Matter No. 21-0630

The charging party alleged that CSEA failed to properly represent him when it refused to assist him with various grievances he filed. He also alleged that OCFS violated the Civil Service Law when it retaliated against him by reducing his hours following his request for union representation at an interrogation and terminating his employment following the submission of a contract grievance. The Judge determined that the charging party failed to present any credible evidence of retaliation by OCFS because the individuals responsible for reducing his hours and his termination were not

aware that he requested union representation for an interrogation or that he filed a contract grievance. With respect to the charging party's claims against CSEA, the Judge determined that he alleged no facts to support his claim that CSEA breached its duty of fair representation or acted in an arbitrary, capricious, or discriminatory manner in relation to its representation of him. As a result, the Judge dismissed the case in its entirety.

County of Lewis
(ALJ Sergent)
Matter No. 23-0427

CSEA filed an improper practice charge alleging the County violated §§ 209-a.1(a) and (c) of the Taylor Law by terminating a unit member in retaliation for filing a contractual grievance. The County denied the material allegation, argued that the charge was untimely, and argued that the termination was permissible because the unit member was probationary. The ALJ found that the charge was timely, and that CSEA had proven its prima facie case. The ALJ then found that the County had demonstrated legitimate business reasons for terminating the member, but CSEA did not prove that the County's reasons were pretextual. Therefore, the charge was dismissed.

NYS DOCCS
(ALJ Burritt)
Matter No. 22-0604

CSEA filed an improper practice charge alleging the County violated §§ 209-a.1(a) and (c) of the Taylor Law by terminating the Local President pursuant to a last chance agreement in retaliation for his activity as president, and by discouraging a unit member from participating in union activities. The State denied the charge, arguing that it lacked a motive to interfere or discriminate, and that its actions were consistent with the CBA. The ALJ held that CSEA had not proven its prima facie case with regards to the Local President, because she found that his activity as Local President was not known to the Labor Relations staff who made the decision to

terminate him. The ALJ also found that the State’s comments to the unit member did not rise to the level of interference. Therefore, the charge was dismissed.

JUSTICE CENTER

**Office of Children and Family Services
(ALJ Arcarese)
Matter No. 24-0273**



The Appellant was indicated for maltreatment when, while working at a daycare, two children were allegedly left unsupervised and departed the daycare without permission. ALJ Arcarese determined that the Agency failed to satisfy its burden that Appellant committed the alleged maltreatment because there was no proof as to what time the children left the daycare, only that a call to 911 was placed minutes before the Appellant arrived at the daycare for work that day, and so the Agency could not prove that Appellant was at the daycare when the children left. Thus, the Agency was directed to amend the report to reflect that the Appellant was not an indicated subject of the report.

**Office for People with Developmental Disabilities
(ALJ Golish Blum)
Matter No. 24-0492**

The subject, a Direct Support Assistant, was charged with one allegation of Category 3 physical abuse for punching a service recipient. The ALJ agreed with CSEA and found the service recipient’s allegation incredible. As a result, the ALJ determined that the Justice Center did not meet its burden of proof by a preponderance of the evidence to show that the subject committed physical abuse. Therefore, the report was amended to “unsubstantiated” and sealed.

Office for People with Developmental Disabilities
(ALJ Devane)
Matter No. 23-0705

The Subject, a Mental Health Therapy Aide (“MHTA), was charged with Category 3 neglect for failure to provide proper supervision to a service recipient. The service recipient at issue required 2 staff members to always be within arm’s reach of the service recipient. The charge resulted from an incident where the subject transferred supervision of the service recipient to another MHTA who then left the service recipient outside of arm’s length for just over one minute. The ALJ found that the subject had transferred supervision of the service recipient and was therefore not guilty of neglect.

Office for People with Developmental Disabilities
(ALJ Devane)
Matter No. 24-0467

The Subject, a Direct Support Assistant, was charged with Category 2 neglect for failure to properly secure a service recipient in a vehicle and Category 3 neglect for driving in an unsafe manner while transporting a service recipient. The investigation revealed that the Subject was distracted by a conversation with an acquaintance and did not notice that the service recipient had unbuckled herself in the van. The Subject proceeded to drive the van without checking if the service recipient was secure and reached speeds of 74 miles per hour while the speed limit was 65 miles per hour. The Justice Center was found to have met its burden on both charges and each allegation was properly categorized.

Office for People with Developmental Disabilities
(ALJ Devane)
Matter No. 23-0672

The Subject, a Direct Support Assistant, was charged with Category 2 neglect for failure to properly secure a service recipient in the vehicle. The investigation revealed that the subject sat in the passenger seat of the vehicle without ensuring that the service

recipient was properly secured. The driver slammed on the brakes to avoid a collision, and the service recipient abruptly slid a few feet forward and impacted the rear of the front seats. The Justice Center established that the subject breached her duty to the service recipient and the breach was likely to result in physical injury. Therefore, the ALJ found that the Justice Center had met its burden in showing that the subject committed the alleged neglect, and such neglect was properly categorized.

Office for People with Developmental Disabilities
(ALJ Devane)
Matter No. 24-0505

The Subject, a Direct Support Assistant, was charged with one allegation of Category 2 neglect for failing to provide proper supervision to the service recipient. The ALJ found neglect to have occurred because the subject breached his duty, resulting in physical injury or significant or prolonged impairment of the service recipient's physical, mental, or emotional condition. Therefore, the ALJ upheld the allegation of neglect as supported by a preponderance of the evidence and found it was properly categorized as a Category 2 act.

DIVISION OF HUMAN RIGHTS

Fayngersh v. Gurrieri (as President of CSEA Local 830)
(ALJ Vespoli)
Matter No. 20-0367

Upon review of the Complainant's allegations that the Respondent subjected him to unlawful discrimination based on his sex and sexual orientation by calling him names and retaliated against him by refusing to file a grievance on his behalf because he complained about workplace discrimination, the Judge determined that the case should be dismissed because there was no evidence that the Respondent acted toward the Complainant in bad faith,

harbored discriminatory animus toward him, or treated other union members more favorably. There was also no evidence that the Complainant was subjected to unlawful workplace harassment based on his sexuality because his coworkers were not aware of his sexuality.

OCFS

Office of Children and Family Services

(ALJ Michael)

Matter No. 23-0483

The New York State Central Register of Child Abuse and Maltreatment maintained a report indicating the Appellant for maltreatment for briefly leaving a one-year-old unattended, during which time the child wandered outside and into the street but was not physically harmed. The Appellant denied the charges and requested the report be amended, but this request was denied, and a hearing was held. ALJ Michael ultimately found that the OCFS failed to prove the maltreatment, amended the report to unfounded and sealed it. As a result, ALJ Michael ruled it unnecessary to address whether the maltreatment was relevant or related to childcare issues.

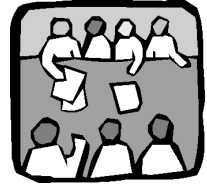
Office of Children and Family Services

(ALJ Serlin)

Matter No. 24-0699

Appellant was the subject of an indicated report of abuse and/or maltreatment by the New York State Central Register of Child Abuse and Maltreatment. The charging Agency did not present any evidence in support of the indicated report. Therefore, the report was amended to reflect that the Appellant is not an indicated subject of the report.

NLRB DECISIONS



Staff Decisions:

Pinnacle Community Services Matter No. 24-0271

CSEA filed an unfair labor practice charge against the Employer for contracting out exclusive bargaining unit work, which resulted in a unit member being laid off. The Board deferred further proceedings on the charge to the grievance process between CSEA and the Employer, as the Employer agreed to waive timeliness as a defense to the grievance.

