

THE ADVOCATE

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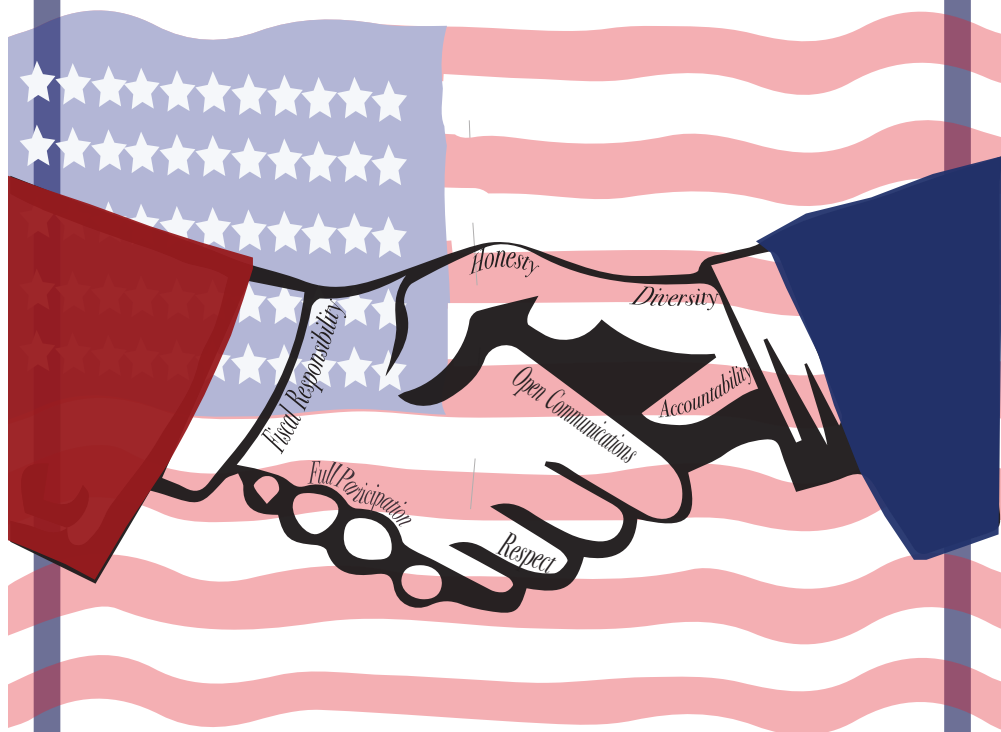


TABLE OF CONTENTS:

Counsel’s Corner 1

Disciplinaries 3

Contract Grievances 10

PERB 13

Justice Center 13

Court Actions 16

NYS Division of Human Rights 17

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Counsel's Corner

By: Daren J. Rylewicz
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The DOCCS Prison Strike: Revisiting the Taylor Law's Prohibition On Work Stoppages and Strikes



The illegal Department of Corrections and Community Supervision (“DOCCS”) prison strikes in New York State have reignited discussions about the legal restrictions on public employees engaging in work stoppages.

These strikes, which began in February 2025, were initiated by correctional officers allegedly in response to concerns over rising violence and mandatory overtime within state prisons. The New York State Correctional Officers and Police Benevolent Association (“NYSCOPBA”), which represents corrections officers working in DOCCS facilities, has maintained that the strike was unauthorized.

On February 17, 2025, corrections officers at Collins Correctional Facility refused to report to work, following a lockdown precipitated by contraband being discovered at the facility, causing inmates to take control of three dorms. Eventually, the strike spread across more than 40 facilities, prompting a strong response from state officials, including the activation of the National Guard to maintain order inside prisons.

Under New York’s Civil Service Law, Article 14, commonly known as the Taylor Law, public employees and labor unions

are explicitly prohibited from engaging in strikes or other forms of work stoppage. The law states, “[n]o public employee or employee organization shall engage in a strike, and no public employee or employee organization shall cause, instigate, encourage, or condone a strike.”

As a result of this prohibition, corrections officers participating in the strike could face severe consequences, including loss of pay, removal, or other disciplinary actions, and both civil and criminal contempt of court. Penalties may include a deduction of up to twice a worker’s daily pay rate for every day they are on strike, commonly known as the “2 for 1” strike penalty.

Governor Hochul has emphasized the unlawful nature of the correction officers’ actions and their potential impact on the safety of their colleagues, incarcerated individuals and surrounding communities. At the time of this article, negotiations between the State and NYSCOPBA are ongoing, focusing on guards returning to work, the conditions for their return, and potential penalties for those found in violation of the Taylor Law.

Regardless of the outcome, the recent DOCCS prison strikes have once again underscored the importance of understanding the legal framework governing public employees’ actions during labor disputes. Not only does the Taylor Law impose pay penalties for each day of a strike, but disciplinary actions can also have lasting consequences on workers’ wages, health insurance and other benefits. Further, strikes can erode public trust and damage labor relations, weakening future collective bargaining.

In conclusion, it is crucial for public sector employees to remain cognizant of the potential repercussions associated with strikes or work stoppages, as understanding the legal issues governing such actions can help prevent unintended consequences and ensure that the welfare of both workers and the public is safeguarded.

DISCIPLINARIES



State Disciplinaries:

**Office for People with Developmental
Disabilities
(Arbitrator Deinhardt)
Matter No. 24-0826**

The State suspended the Grievant, a Developmental Assistant 2, and issued an NOD seeking his termination due to allegations that he failed to provide proper supervision and failed to intervene during a situation where a resident grabbed another staff member's hair and forced the staff member to the ground. The Arbitrator found that Grievant was working in his office when the incident occurred and that there was no evidence that Grievant was responsible for personally supervising the other staff members. The Arbitrator also found that there was no evidence to support the State's argument that Grievant heard and ignored the staff's calls for help. Therefore, the Grievant was found not guilty of misconduct and reinstated with backpay.

**Office for People with Developmental Disabilities
(Arbitrator Riegel)
Matter No. 24-0292**

The State suspended the Grievant, a Developmental Assistant 1, and issued an NOD seeking termination for allegedly pulling a service recipient to the floor, sitting on the service recipient, yelling at the service recipient, engaging in a "power struggle" for him to leave the area resulting in injuries to the service recipient as well as falsifying her report of the incident. A Direct Support Assistant witnessed the incident and claimed to have seen the Grievant grab the service recipient by the ankles and pull him off a love seat after not complying with Grievant's directive. An additional staff member who witnessed the incident claimed that Grievant told them to "go away" when they attempted to help de-escalate the situation. CSEA argued that the witnesses to the

incident are not credible because of inconsistent statements made throughout the investigation and hearing. CSEA also argued that the service recipient's injuries could have been the result of the service recipient's well known self-injurious behaviors. The Arbitrator found that the witnesses were not credible, that the State did not have probable cause to suspend the Grievant and therefore reinstated Grievant with full backpay.

SUNY Farmingdale
(Arbitrator Butto)
Matter No. 24-0646

Grievant, a Facilities Operations Assistant I, was suspended without pay and issued an NOD seeking his termination related to allegations that he behaved in a threatening manner while in the workplace. The Arbitrator dismissed the charges, and determined that the suspension was improperly imposed, because of disparate treatment. Specifically, the evidence submitted at the hearing demonstrated that the Grievant's coworker started the subject altercation by shoving the Grievant, and that the coworker only received a verbal counseling while the Grievant was suspended without pay for more than a year and threatened with termination. Ultimately, the Grievant was put back to work and awarded full backpay and benefits.

Office for People with Developmental Disabilities
(Arbitrator Deinhardt)
Matter No. 23-0817

The State suspended the Grievant, a Developmental Disabilities Secure Treatment Aide, and issued an NOD seeking termination for allegedly putting her foot in the spokes of a service recipient's wheelchair, jerking the chair back and forth, repeatedly prompting the service recipient to call the Justice Center, and calling the service recipient a bitch. Grievant was arrested, but the charges were later dismissed. CSEA argued that the staff witness was not close enough to accurately perceive the incident and therefore her testimony was not credible. The Arbitrator found that Grievant

was guilty of misconduct for sticking her foot in the service recipient's wheelchair and urging the service recipient to file a complaint about her. However, the Arbitrator found the penalty of termination to be too severe and imposed a penalty of a one-month disciplinary suspension.

Office for People with Developmental Disabilities

(Arbitrator Rinaldo)

Matter No. 24-0366

The State suspended the Grievant, a Developmental Support Assistant, and issued an NOD with four charges, seeking termination for entering an IRA off duty and without authorization, acting aggressively while smelling of alcohol, and making inappropriate physical contact with a colleague and a resident, causing the resident to fall and sustain an injury. The Arbitrator dismissed charges 1 and 2 but found the Grievant guilty of making inappropriate contact with the resident and causing him to fall and be injured. However, the Arbitrator determined that termination was inappropriate and instead imposed an unpaid suspension until the Grievant was reinstated to her position. The Arbitrator also found that the State had probable cause to suspend the Grievant.

Office for People With Developmental Disabilities

(Arbitrator Siegel)

Matter No. 24-0648

The State suspended the Grievant, a Direct Support Assistant I, without pay and issued an NOD seeking his termination related to allegations that he engaged in an unauthorized physical intervention of a person with developmental disabilities, which included taking the service recipient down to the ground and sitting on his chest. The Arbitrator found the Grievant guilty of most of the charges and determined that the State had a reasonable basis to suspend the Grievant prior to the hearing, but found the proposed penalty of termination to be a substantial overreach since the Grievant's decisions under the circumstances were understandable. Specifically, the Grievant made a single comment

to the service recipient after which the service recipient attacked him and put him in a chokehold, which is what reasonably led to the takedown. Therefore, the Arbitrator determined that the appropriate penalty was a two-month suspension without pay.

Local Disciplinaries:

Town of Hempstead (Arbitrator Shriftman) Matter No. 24-0662

The Grievant, a Recycling Worker I with the Town of Hempstead Department of Sanitation, was issued an NOD and terminated for incurring two “no pay days,” defined as absences without sufficient leave accrual. The Arbitrator dismissed the first incident as it fell outside the statute of limitations (“SOL”) and ruled that under the Town’s progressive discipline policy, two valid incidents are required for the “next level of penalty.” With only one valid incident, the NOD was dismissed, and the Arbitrator directed the Town to reinstate the Grievant “to his former position with full back pay and to make him whole in all respects.”

Monroe County (Arbitrator Sabin) Matter No. 24-0522

The Grievant, a Certified Nursing Assistant at Monroe Community Hospital (“MCH”) since 2005 with no prior disciplinary record, was issued an NOD for theft of time on five occasions and terminated. The Arbitrator partially sustained and partially denied the grievance, finding the Grievant violated MCH’s time policy on all five occasions but deemed termination inappropriate. Instead, the Arbitrator required the Grievant to reimburse the County for wages received when she was not actually at her workstation and imposed a three-month suspension. The Grievant was reinstated to her former position, and the County was directed to make her whole for lost salary and benefits, with interest, from the conclusion of her suspension until reinstatement, contingent on her receiving counseling and guidance on MCH’s clock-in/clock-out policy.

**Erie County
(Arbitrator Siegel)
Matter No. 24-0260**

The Grievant, a Senior Social Welfare Examiner, was served with charges seeking termination related to allegations that he pushed a client into a wall during an argument. The Arbitrator determined that the evidence reflected the Grievant using poor judgment that resulted in a physical altercation with a client, but that the evidence was not clear as to whether the Grievant actually shoved the client. This, coupled with the fact that the Grievant had an unblemished record and eight years of service, persuaded the Arbitrator to impose a long-term unpaid suspension from February 2024 until March 2025 instead of termination.

**Erie County Medical Center Corporation
(Arbitrator Lewandowski)
Matter No. 24-0021**

The Grievant, a Community Mental Health Tech BH was terminated for an incident that alleged the Grievant grabbed a patient from behind and forcefully pulled the patient to the floor. The incident resulted in serious injury to the patient and loss of consciousness. Grievant was placed on administrative leave following the incident but was returned to work after a meeting where Grievant claimed that he did not mean to hurt the patient. The Arbitrator found that Grievant was guilty of incompetence/misconduct. However, the Arbitrator also found that the situation had already become a physical altercation before Grievant's involvement. Given Grievant's clean 5-year work record and his lack of intent to injure the patient, the Arbitrator found the penalty of termination to be unwarranted. The appropriate penalty was deemed to be a two-week suspension without pay.

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

The Grievant, a Forensic Pathologist Assistant 2 with the County Medical Examiner's Office, was served with charges seeking to impose a 60-day unpaid suspension related to allegations that he was insubordinate, that he failed to exercise careful judgment at work, that he engaged in disrespectful behavior, and that he created an intimidating work environment. The Arbitrator determined that the Grievant was not guilty of charges related to his work performance because there was no evidence that the charged actions constituted anything other than mistakes which were required to be assessed in the context of his overall performance, and that the record was devoid of any evidence showing how often he had previously made similar mistakes. Additionally, regarding the alleged insubordination or misconduct, the Arbitrator found that the Grievant was only guilty of engaging in unprofessional conduct, and that there was no evidence that he ever disobeyed a direct order. As a result, the Arbitrator determined that a 2-week suspension without pay was an appropriate penalty.

City of Tonawanda
(Arbitrator Foster)
Matter No. 24-0428

The Grievant, a Senior Recreation Leader working in a variety of recreation programs, including a children's summer camp and an After School Program ("ASP"), was terminated and issued an NOD for failing to properly address a child with sexual preoccupations who may have inappropriately touched another child in the ASP. The Arbitrator found that the City proved "significant misconduct" and that just cause for termination was appropriate "given the Grievant's extremely poor judgment, which may have put children at avoidable risk and exposed the City to legal jeopardy."

**Monroe County
(Arbitrator Gelernter)
Matter No. 24-0511**

The Grievant, a delivery driver and messenger for the Monroe County Department of Human Services, with several prior counseling memorandums for misconduct and reckless driving, was terminated and issued an NOD alleging multiple incidents of misconduct, including reckless driving, inappropriate comments, and threatening behavior toward security officers and a client, all in violation of the County's anti-discrimination, sexual harassment, and workplace violence policies. The Arbitrator found that the County proved the NOD and that just cause for termination was appropriate, given the serious nature of the proven misconduct and the high frequency of incidents occurring over a short period of time.

**Nassau Health Care Corporation
(Arbitrator Pfeffer)
Matter No. 23-0081**

The Grievant, an Assistant Nurse Manager was terminated and issued an NOPA for improperly accessing and disclosing confidential records to people both inside and outside of the Health Center, in violation of the Medical Center's Policy and Procedure governing Disciplinary Action. CSEA argued that Grievant's disclosure of records was protected by her status as a whistle blower under Sections 740 and 741 of New York Labor Law and that the County failed to prove beyond a reasonable doubt that Grievant had committed any willful and intentional acts as she believed she was reporting illegal activity. CSEA's whistle blower argument was rejected as Grievant was informed of an investigation into the matter four days before Grievant made a second transmission of records. The Arbitrator found that Grievant's disclosures were "knowing, intentional, recurrent, and undertaken in retaliation against a supervisor". Additionally, Grievant disclosed information that had no relationship to the purported wrongdoing to people who did not require the information to perform their duties. Therefore, the penalty of termination was upheld.

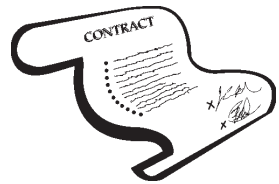
**Sullivan County
(Hearing Officer Lara)
Matter No. 24-0881**

Section 75 charges were filed against a Corrections Officer for failure to follow a direct order of a superior officer by failing to report to an Independent Medical Examination (“IME”) on August 28, 2024. Respondent claimed that the letter he received scheduling the IME stated that the examination was scheduled on August 29, 2024. However, no evidence was introduced to support this claim. Respondent had previously rescheduled the IME due to an illness, and put forward call logs from his phone on the date in question which showed that he had called Support Claim Services to confirm availability for the IME. However, the Hearing Officer noted that the log did not include the length of the call, nor did it explain why Respondent called SCS and not the doctor directly. Additionally, Respondent failed to attempt to reschedule the IME after charges were served. Based on these facts, the Hearing Officer found that Respondent was guilty, and recommended termination.

CONTRACT GRIEVANCES

Local Grievances:

**Nassau County DPW
(Arbitrator McCray)
Matter No. 24-0471**



CSEA filed a grievance after Nassau County failed to correctly apply the general wage increases and January 1, 2024, salary merger to the salaries of three members of the County’s Department of Public Works. Following the hearing, the parties authorized the Arbitrator to execute a Consent Award providing that the County shall adjust the Grievants’ salaries retroactively as set forth in the relevant MOU and that the County agrees to treat the Grievants in the same manner as other Nassau County CSEA represented employees per the applicable collective bargaining agreements.

**Pine Valley Central School District
(Arbitrator Drucker)
Matter No. 24-0629**

CSEA alleged that the District violated the parties' CBA when it failed to increase the Grievant's rate of pay based on a provision generally stating that, if a wage higher than the starting wage is paid to a new employee with no experience, then all wages of employees performing the same work will be increased by the difference between the starting wage and the actual wage paid to the new employee. The Arbitrator found that this language imposed a burden on the District to establish that the new employee had experience in the position at issue, and that this burden was ultimately not met. As such, the grievance was sustained, and the District was ordered to increase the Grievant's rate of pay pursuant to the parties' agreement, and to make this increase retroactive as appropriate.

**Nassau County
(Arbitrator Siegel)
Matter No. 24-0682**

CSEA filed a contract grievance alleging that the County improperly disciplined the Grievant, a Community Services Assistant ("CSA"), by requiring him to sign a resignation without consulting a union representative and unfairly denying his request for a one-year leave of absence, which it grants to other similarly situated employees. Grievant had requested the leave to accept a probationary Police Communications Operator ("PCO") appointment, but the County approved only a one-month leave, which he accepted, leading to his resignation of the CSA position after the leave expired. After six months, Grievant failed his probationary PCO appointment, leaving him without a position in the County. The Arbitrator denied the grievance, finding no violation of the CBA, as the issue was a "personnel transaction that had nothing to do with discipline." The Arbitrator also determined that the County was not obligated to hold Grievant's CSA position for a year and acted within its legal rights to grant only a 30-day leave.

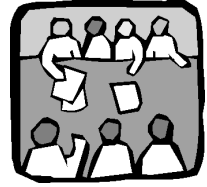
**Nassau County
(Arbitrator Riegel)
Matter No. 24-0985**

CSEA alleged that the County violated the parties' CBA when it failed to pay the Grievant the Educational Incentive Pay stipend referenced in Articles 9 and 25 of the CBA. The Arbitrator dismissed the grievance because the County submitted clear evidence demonstrating that the Grievant's salary was comprised of the salary contained in the CBA, an appropriate Living Wage adjustment, and the aforementioned Educational Incentive Pay stipend.

**Rockland County
(Arbitrator Riley)
Matter No. 24-0400**

CSEA filed a grievance after alleging that Rockland County improperly compensated Grievant, a part-time employee, for contractual holidays between January 1, 2024, and March 1, 2024. The CBA identifies thirteen legal holidays where all employees, including part-time employees, receive a day off with pay. The Grievant only received 4.2 hours' pay for the New Year's Day holiday. The County's Senior Payroll Clerk testified that payroll accruals had been prorated for part-time employees throughout her eighteen-year tenure. CSEA argued that the CBA's zipper clause prevented a past practice from being deemed an implied contract term. The Arbitrator denied the grievance, finding that the relevant language was ambiguous as to the rate at which part-time employees were to be compensated for holidays. Additionally, since the CBA prorated holiday accruals for part-time employees, the Arbitrator found that it follows for holiday compensation to be prorated as well.

PERB DECISIONS



Staff Decisions:

**Eastport-South Manor CSD
(ALJ Leibowitz)
Matter No. 24-0760**

Eastport-South Manor Central School District filed an application seeking to designate the title of Account Clerk as confidential in accordance with the criteria set forth in the Public Employee's Fair Employment Act. CSEA did not oppose the designation, and ALJ Leibowitz granted the application to designate the title of Account Clerk as confidential.

JUSTICE CENTER

**Office for People with Developmental
Disabilities
(ALJ Hughes)
Matter No. 24-0827**



The Subject, a Developmental Support Assistant, was charged with one allegation of Category 3 neglect for failing to provide timely and/or adequate medical care to the service recipient. Although the service recipient had a medical condition that required the subject to notify the supervising registered nurse, the ALJ agreed with CSEA that the subject did not breach her duty as set forth in the NYS DDSO Policy. 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 neglect. Therefore, the report was amended to “unsubstantiated” and sealed.

Office for People with Developmental Disabilities
(ALJ Rocco)
Matter No. 24-0755

The Subject, a Direct Support Assistant, was charged with one allegation of Category 3 neglect for driving in an unsafe manner while transporting the service recipient. The ALJ found that although the Justice Center failed to sufficiently establish by a preponderance of the evidence the portion of the allegation related to speed, it did prove that the Subject committed neglect by failing to check her blind spot when changing lanes, resulting in a minor traffic accident. However, the ALJ found that it was miscategorized as a Category 2 act, as the record lacked any evidence that the Subject's failure to fully turn her head when merging seriously endangered the service recipient's health, safety, and welfare. The ALJ therefore amended the neglect classification to Category 3.

Office of Mental Health
(ALJ Devane)
Matter No. 24-0289

The Subject, a Mental Health Therapy Aide, was charged with one allegation of Category 2 Neglect for failing to provide proper supervision to a service recipient. The service recipient was on 2:1 Type A supervision due to self-injurious behavior, was not allowed to have possession of the television remote control and was not allowed to enter and be inside the bathroom without supervision. The Subject was accused of giving the remote control to the service recipient and allowing the service recipient to use the bathroom unsupervised. While in the bathroom, the service recipient swallowed two AA batteries that she had removed from the remote control. The ALJ found that there was a high risk of harm in allowing the service recipient, who had a documented history of ingesting small objects, to possess items such as batteries and that the Subject breached her duty by giving the remote to the service recipient. Therefore, the ALJ upheld the allegation of neglect as supported by a preponderance of evidence and found it was properly categorized as a Category 2 act.

Office for People With Developmental Disabilities
(ALJ Rocco)
Matter No. 24-0839

The Subject was charged with one allegation of Category 2 Neglect for failing to properly secure a service recipient in a vehicle. ALJ Rocco determined that the Justice Center established that the Subject breached her duty to the service recipient, who was in a wheelchair at the time, when she failed to put his shoulder strap on before transporting him to a medical appointment, even though there were no incidents or injuries reported thereafter. Since the service recipient happened to be diagnosed with osteoporosis, and the Justice Center provided evidence showing that this diagnosis meant his bones were soft and brittle, which increased his risk of fractures and organ damage, it was established that the improper securement of wheelchairs in vehicles could result in severe injuries or death due to forces from acceleration, braking, and turning. As such, ALJ Rocco determined this to be properly categorized as a Category 2 act.

Office for People With Developmental Disabilities
(ALJ Requets)
Matter No. 24-0859

The Subject was charged with one allegation of Category 3 Neglect for failing to provide timely medical care to a service recipient. ALJ Requets determined that the Justice Center established that the Subject breached his duty to the service recipient because he failed to notify the nurse on duty of the service recipient's ear pain. Even though the Subject testified that he discussed the service recipient's ear pain with the nurse on the day he first learned of the complaint, ALJ Requets determined that this was not credible because the Subject failed to document this conversation, and because the nurse did not recall having any such conversation with the Subject. This was thus determined to be properly categorized as a Category 3 act.

COURT ACTIONS

Bueno v. Village of Haverstraw
(Supreme Court, Rockland County)
Matter No. 24-0536

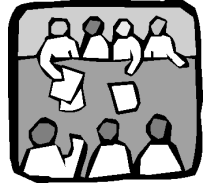


After reviewing the Petitioner's papers seeking to annul the Village's determination to reject the hearing officer's recommendation of suspension and move forward with his termination, the Court granted the petition. This was because the Petitioner had only been found guilty of contacting a Village resident, who was a defendant in an active Village building code violation case, by telephone and instructing him on how to get his case dismissed. The Court determined that the penalty of termination was disproportionate to the Petitioner's misconduct and, consequently, found it to be an abuse of discretion as a matter of law. Ultimately, the penalty portion of the Village's determination was annulled, and the matter was remanded back to the Village for reconsideration of a more appropriate penalty.

Nelson v. County of Dutchess, et. al.
(Supreme Court, Dutchess County)
Matter No. 24-0183

After reviewing the Petitioner's papers, which challenged the County's determination to terminate her probationary employment, as well as the County's motion to dismiss, the Court granted the motion to dismiss. The Court found that the Petitioner's allegations were insufficient to show that her probationary employment was terminated in bad faith, for a constitutionally impermissible or illegal purpose, or in violation of statutory or decisional law.

NYS DIVISION OF HUMAN RIGHTS



Dang v. CSEA
(Regional Director Kent)
Matter No. 24-0588

The Complainant, a CSEA member, filed a complaint with the New York State Division of Human Rights (“DHR”), charging CSEA with unlawful discriminatory practices related to employment based on race/color, and for discrimination/retaliation against her for filing an Equal Employment Opportunity Commission charge or DHR complaint against CSEA, in violation of the New York Human Rights Law. The Division found that CSEA had assisted the Complainant with her termination appeal, explained her status as a probationary employee, and helped her file a grievance. Additionally, there was no evidence of discriminatory or retaliatory actions by CSEA. Ultimately, the complaint was dismissed because the Division found no probable cause to support that CSEA engaged in or is engaging in the unlawful discriminatory practices alleged in the complaint.

