THE ADVOCATE

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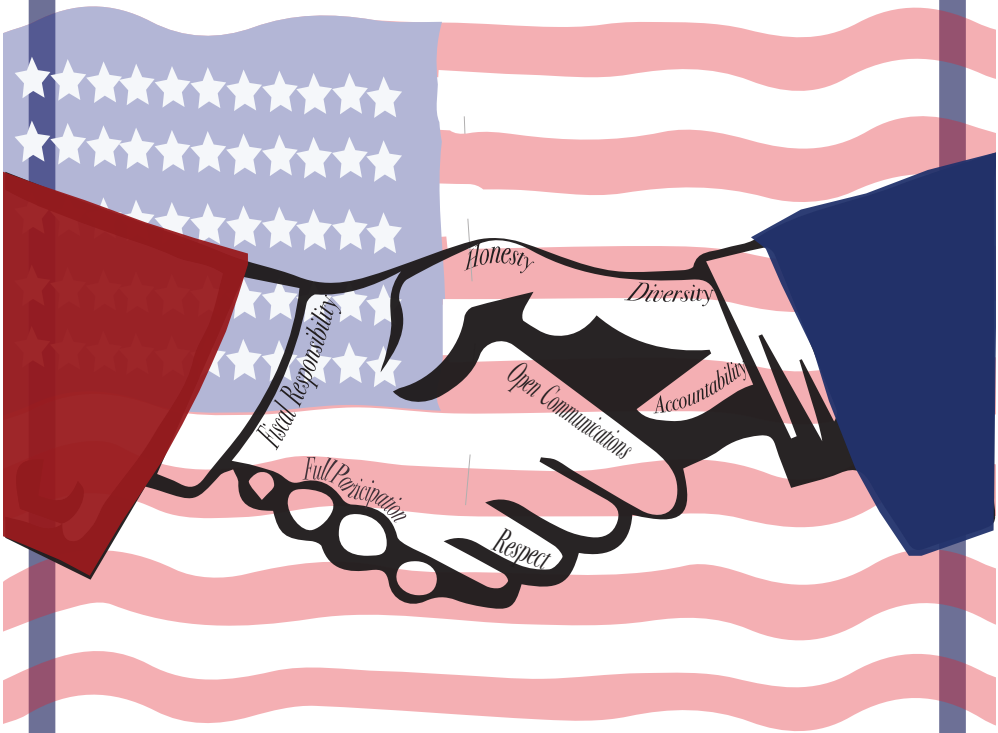

CSEA
NEW YORK

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U.S. Supreme Court Ruling Eases Burden of Proof for "Reverse Discrimination" Lawsuits under Title VII

In a recent decision by the U.S. Supreme Court, the court addressed Title VII employment discrimination claims. In a unanimous decision written by Justice Ketanji Brown Jackson, the U.S. Supreme Court ruled that plaintiffs bringing workplace discrimination claims under Title VII of the Civil Rights Act of 1964 cannot be subjected to higher legal hurdles simply because they are members of a majority group.

The case, *Ames v. Ohio Department of Youth Services*, 145 S. Ct. 1540 (June 5, 2025) clarified that Title VII's protections apply equally to all individuals—regardless of whether they belong to a minority or majority demographic. A Title VII claim is a legal claim alleging employment discrimination based on race, color, religion, sex (including pregnancy, sexual orientation, and gender identity), or national origin.

In *Ames*, Plaintiff was a heterosexual woman who worked for Ohio's Department of Youth Services for over 15 years. In 2019, she applied for a new deputy superintendent role, but the agency selected a lesbian woman instead. Months later, Plaintiff was demoted and replaced by a gay man. She filed a Title VII lawsuit, alleging that the decisions were motivated by anti-heterosexual bias and because of her sexual orientation.

The prior rulings by the lower courts in *Ames* dismissed Plaintiff's claim, holding that as a majority-group member, she was required to show "background circumstances" suggesting her employer was inclined to discriminate against people similar to her. As part of a reverse discrimination case (discrimination against a majority group), courts were requiring a plaintiff to demonstrate "background circumstances" that support the suspicion that the employer is one of the uncommon entities that discriminates against the majority. As part of the "background circumstances," a plaintiff was required to show that a member of the minority group made the employment decision or evidence of a pattern of discrimination against members of the majority group. This heightened standard was not being applied to minority-group plaintiffs.

In *Ames*, the Supreme Court rejected the principle that there is a higher standard of proof in such reverse discrimination cases. The Court found that Title VII's disparate treatment provision draws no distinctions between majority group plaintiffs and minority group plaintiffs. The Court emphasized that Title VII prohibits employment discrimination against "any individual"—not just members of historically disadvantaged groups. In doing so, the Court highlighted the term "individual" as opposed to protected class or group.

This ruling resolves a split among federal appeals courts about how to treat claims from majority-group plaintiffs. Now, all plaintiffs are judged by the same standard. The Court's opinion underscores that Title VII protects individuals—not groups—and that discrimination is unlawful regardless of whom it targets.

DISCIPLINARIES

State Disciplinaries:

Office for People with Developmental Disabilities
(Arbitrator Deinhardt)
Matter No. 24-0680

The Grievant, a Developmental Support Personnel, was suspended without pay and issued a NOD seeking her termination as a result of allegations that she failed to properly regulate the water temperature while bathing a service recipient, which then led to the service recipient sustaining second-degree burns. The Arbitrator determined that the State had failed to carry its burden because its own witnesses had testified that the house had been having problems with the stability of its water temperature, and there was nothing in the record to contradict the Grievant's explanation that the water temperature suddenly spiked without her knowledge. Consequently, the Arbitrator dismissed the NOD and ordered the Grievant to be reinstated and made whole for all losses.

Office for People with Developmental Disabilities
(Arbitrator Drucker)
Matter No. 24-0533

The Grievant, a Developmental Disabilities Secure Treatment Aide, was suspended without pay and issued a Notice of Discipline ("NOD") seeking termination as a result of allegations of misconduct stemming from a physical incident with a service recipient. The Arbitrator determined that the State failed to prove the alleged misconduct because its witnesses lacked credibility and because the interview of a non-testifying witness demonstrated that the service recipient actually punched the Grievant in the face. Consequently, the Arbitrator dismissed the NOD and ordered the Grievant to be reinstated and made whole for all losses.

Office for People with Developmental Disabilities
(Arbitrator Riegel)
Matter No. 24-0085

The Grievant, a Developmental Assistant 1, was suspended without pay and issued a NOD seeking her termination as a result of allegations that she placed a blanket over a service recipient's head, thereby covering her nose and mouth, and then stepped on her ankles while she was being held in a supine hold. While the Arbitrator determined that OPWDD had probable cause to suspend the Grievant as a result of the foregoing allegations, he ultimately dismissed the charges because the State's witnesses generally lacked credibility, and because the Grievant provided unrebutted testimony that there was no blanket in the area where the service recipient was placed into a supine hold and no evidence to suggest that the Grievant deliberately stepped on the service recipient's ankles. The Grievant was put back to work and awarded full backpay and benefits, although the Arbitrator noted that the State could choose to issue a counseling memo to the Grievant.

Office for People with Developmental Disabilities
(Arbitrator Stein)
Matter No. 24-1008

The Grievant, a Developmental Assistant 2 serving as a House Manager, was suspended and issued a NOD for allegedly striking an individual in her care, mishandling a behavioral incident that caused injury, attempting to cover it up, failing to report the injury or seek medical care, and delaying transportation for the individual. The Arbitrator found that the State presented no evidence supporting four of the charges and relied solely on unreliable hearsay for the fifth. As a result, the Arbitrator dismissed all charges in the NOD and the Grievant was reinstated with full back pay and benefits.

Office for People with Developmental Disabilities
(Arbitrator Drucker)
Matter No. 24-0721

The State suspended the Grievant, a Direct Support Assistant ("DSA"), and issued a NOD seeking her termination due to allegations of improper physical restraint/conduct towards a service recipient; failure to provide appropriate medical care or contact emergency services relating to the altercation with the service recipient; and taking the service recipient's cell phone. After the service recipient slapped and cursed at the Grievant; the Grievant and a fellow DSA implemented a two-person take down with the goal of safely bringing the service recipient to the ground. The service recipient suffered bruising from the incident but belatedly told staff that Grievant and the other DSA, who was never charged, beat her. Grievant was arrested in relation to the incident but the charges were adjourned in contemplation of dismissal. The Arbitrator found the Grievant innocent and dismissed all the charges because the State did not prove its case. The service recipient did not testify, and her prior statements were inconsistent and conflicted with testimony from eyewitnesses.

Office for People with Developmental Disabilities
(Arbitrator Siegel)
Matter No. 25-0016

The Grievant, a DSA, was charged with misconduct/incompetence for failure to follow a service recipient's safeguard and behavior support plans as well as failure to report the service recipient's self-injurious behavior. The Arbitrator dismissed two of the four charges and determined that the penalty of termination was inappropriate. The penalty was reduced to a 3-month suspension.

Office for People with Developmental Disabilities
(Arbitrator Deinhardt)
Matter No. 25-0017

The Grievant, a Developmental Support Personnel with approximately six years of service and no prior disciplinary record, was suspended and issued a NOD for failing to provide appropriate care to a developmentally disabled individual by not following his safeguard and behavior support plans, including improper seating during transport, failure to use protective equipment, and failure to attempt seated containment. She also used profane, threatening, and disrespectful language toward him, engaged in manipulative behavior, and neglected to report his self-injurious actions, which resulted in a delay in initiating the required head injury protocol. The Arbitrator found the Grievant guilty of all five charges, and further found that termination was the appropriate penalty.

Office for People with Developmental Disabilities
(Arbitrator Rinaldo)
Matter No. 24-0934

The Grievant, a DSA, was issued a NOD for making unauthorized physical contact with an individual with disabilities, striking the individual in the face and leaving a bruise, and failing to report, seek medical attention for, or document the incident. The Arbitrator found the Grievant guilty of all the charges in the NOD and determined that OPWDD was reasonable in terminating the Grievant, as his misconduct reflected no mitigating circumstances. The Arbitrator also found that the State had sufficient probable cause to suspend the Grievant under Article 33.

Office of Children and Family Services
(Arbitrator Ternullo)
Matter No. 24-0920

OFCS suspended the Grievant, a Youth Support Specialist at the Industry Residential and Security Center ("IRSC") and issued him a NOD seeking termination with four charges, for ripping phones

off the walls and disabling them at the IRSC, creating an unsafe environment, cursing at his supervisor, and violating a youth's right to speak to an attorney. The Arbitrator found the Grievant guilty of three of the charges and determined that termination was the appropriate penalty. The Arbitrator also found that the State had probable cause to suspend the Grievant.

SUNY Upstate Medical University
(Arbitrator Simmelkjaer)
Matter No. 24-0241

The Grievant, a Motor Vehicle Operator, was served with a NOD listing 35 charges of misconduct, including eleven incidents of sitting or sleeping in his work vehicle rather than performing his duties for extended periods, as well as inappropriate calls and texts to his supervisor. The Arbitrator found him guilty of 34 charges and determined that termination was warranted due to his repeated misconduct of "intentionally trying to avoid work" and a history of progressive discipline for deficient work performance that failed to correct his behavior. The Arbitrator also concluded that the State had probable cause to suspend the Grievant without pay.

Local Disciplinaries:

Nassau Health Care Corporation
(Arbitrator Nadelbach)
Matter No. 24-0731

The Grievant, a Nursing Supervisor who worked at NHCC for eighteen years with a "faultless record," was discharged and issued a Notice of Personnel Action for allegedly sleeping on the job during a fire and failing to manage the crisis. The Arbitrator found the Grievant not guilty of the misconduct and therefore concluded that NHCC did not have just cause to discharge her from employment, and reinstated her with full back pay and benefits.

Nassau Health Care Corporation
(Arbitrator Klein)
Matter No. 24-0409

The Grievant, an Activities Specialist III, was served with charges seeking her termination related to allegations that she failed to appropriately distribute patient care items as needed, including clothes and toys. According to the Arbitrator, although the Employer established that there was a lack of toys and supplies used by the patients in the unit while many new toys and supplies remained unopened in storage closets, which the Grievant knew needed to be distributed to patients in the unit, termination was not an appropriate penalty because the Employer did not prove all of the charges against the Grievant, and because the Grievant had never previously been counseled or disciplined during her 25-year career with the Employer. A 60-day suspension without pay was imposed instead.

Town of North Greenbush
(Arbitrator Cassidy)
Matter No. 24-1010

The Grievant, a Motor Equipment Operator, was issued a letter of reprimand for inappropriate workplace conduct, including "yelling and acting in an angry manner" with the Town Highway Superintendent. The Arbitrator found that the confrontation took place while he was acting in his capacity as a Union representative, that the conduct was not egregious or threatening enough to lose protected status, and that there was no just cause for discipline.

Erie County
(Arbitrator Reden)
Matter No. 24-0046

The Grievant, a Supervisor of Detention Facilities, was served with charges seeking to impose a 10-day suspension without pay as a result of allegations that he failed to follow the County's Room Confinement Policy ("Policy"). The Arbitrator determined that the

County had proved that the Grievant failed to follow the Policy by allowing the subject youth "to freely move about the pod and clean the pod and her room," instead of placing her in an assigned room on room confinement. Despite this, the Arbitrator determined that a 10-day suspension without pay was not appropriate because it failed to follow the concept of progressive discipline, so he imposed a 2-day suspension without pay instead.

Incorporated Village of Rockville Centre
(Arbitrator Gold)
Matter No. 24-1031

The Grievant, a Cleaner at the Village's Sandel Senior Center, was served with charges seeking his termination related to allegations that he accessed the Sandel Senior Center's computer by utilizing a coworker's login credentials and password without permission or authorization. In a Consent Award, Arbitrator Gold memorialized the parties' agreement that the Grievant would serve an unpaid suspension between December 20, 2024, and March 10, 2025, after which he would be returned to work until his retirement on April 26, 2026, and that this would be the Grievant's last chance "to perform his job properly" and retain employment with the Village.

Chenango County
(Arbitrator Reden)
Matter No. 25-0130

The Grievant was served a NOD with a proposed penalty of termination for violating the no-strike provision of the Taylor Law as the County alleged that he condoned a strike by telling employees they are not required to answer their phones to respond to a snow emergency. The Arbitrator found that the penalty of termination was not appropriate considering Grievant's exceptional 26-year record and the fact that the Grievant, at the time, did not appear to understand that his actions equated to condoning a strike. The appropriate penalty was determined to be a 22-day suspension without pay.

Chenango County
(Arbitrator Foster)
Matter No. 25-0128

The Grievant was served a NOD with a proposed penalty of termination for violating the no-strike provision of the Taylor Law as the County alleged that he condoned a strike by telling employees they are not required to answer their phones to respond to a snow emergency. The Arbitrator found that, although Grievant admitted that it might have been his idea to not answer phones, Grievant's long and unblemished 22-year work record rendered the penalty of termination too severe. The Arbitrator determined the appropriate penalty to be a 120-day suspension without pay.

Westchester County Department of Laboratories & Research
(Hearing Officer Korn)
Matter No. 25-0001

The Respondent, a microbiologist with fifteen years of service, was charged with 15 specifications of misconduct and/or incompetence regarding misattributing orders to the wrong patient, attempting to correct errors without using proper procedure, unauthorized modification of patient data, etc. Testimony at the hearing from experienced microbiologists confirmed that, while mistakes happen in the profession, the frequency of Respondent's mistakes and failure to follow protocol to correct the mistakes is not standard. 14 of the 15 specifications were sustained. The Hearing Officer recommended a penalty of suspension without pay for a period of 20 days.

Rockland County
(Hearing Officer Hoffman)
Matter No. 24-0806

Section 75 charges were filed against a Probation Assistant with twenty-seven years of County service, alleging incompetence for failing to meet job expectations; misconduct and insubordination for sending accusatory emails and making inappropriate case

notes; and gross insubordination for refusing to answer questions during an internal investigation. Prior to arbitration, the Grievant voluntarily retired. The Hearing Officer found the Grievant guilty of the misconduct but deemed termination disproportionate to the offenses, and substituted a 60-day suspension without pay.

Erie County Medical Center Corporation
(Arbitrator Siegel)
Matter No. 24-0178

The Grievant, a Community Mental Health Technician - Behavior Health, was issued a NOD and terminated for using a personal tablet and cell phone in the patient care area, as well as leaving the adolescent milieu unattended for 42 seconds, resulting in multiple patients being left unsupervised. The Arbitrator found Grievant guilty of the charges but determined that the penalty of termination lacked just cause, based on Grievant's immediate admission of misconduct, apology, and assurance that she would not engage in similar behavior in the future. Therefore, the Arbitrator concluded "that she should be given another chance to demonstrate her ability to conform her behavior" and deemed a "lengthy suspension without pay," from August 10, 2023, to March 9, 2025, the appropriate penalty.

Erie County Medical Center Corporation
(Arbitrator Reden)
Matter No. 24-0095

The Grievant, an Emergency Room Technician with seven months of service, was issued a NOD and terminated for violating an ECMCC policy by restraining a patient against their will without a physician's order and a registered nurse's supervision. The Arbitrator found the Grievant guilty of misconduct and determined that termination was the appropriate penalty, "considering his short tenure with ECMCC and his previous discipline over an issue of patient safety — and considering the seriousness of the instant violation of a policy meant to protect patient safety."

Nassau County
(Arbitrator McCray)
Matter No. 24-0840

The County issued a Notice of Personnel Action with a proposed penalty of termination relating to a leave of absence under FMLA. Grievant's leave expired on March 5, 2024, and the County sent a letter dated May 24, 2024, informing Grievant that she was on no-pay status and directing her to call in every three weeks for status updates. The Grievant contested receiving this letter and claimed she was not present at the time the letter was signed for. The Arbitrator found in favor of the County on this point and further pointed out inconsistencies in Grievant's testimony regarding fax and phone updates sent to her employer. The Arbitrator determined termination to be the appropriate penalty.

William Floyd Union Free School District
(Hearing Officer Kasarda)
Matter No. 24-1000

Respondent, a Security Guard, was charged, pursuant to Section 75, with four counts of misconduct and/or insubordination. At a high school football game that he was tasked with monitoring, witnesses claim that Respondent was found in her car with her husband and had a strong odor of alcohol. Despite being instructed not to, Respondent allegedly proceeded to drive off of the property without clocking out. Respondent claimed that she was not intoxicated and had a friend testify that she interacted with Respondent shortly after the incident and did not smell alcohol or believe that Respondent was intoxicated. The Hearing Officer found the employer's testimony credible and found Respondent guilty on all charges. The recommended penalty was termination.

Yonkers City School District
(Hearing Officer Bernstein)
Matter No. 24-1002

Section 75 charges were filed against a School Aide (Special Education) for failing to supervise her autistic one-to-one charge

during a crisis, leaving him in distress while using her cell phone, and for not cooperating with the principal's investigation the following day. The Hearing Officer found the respondent not guilty of failing to cooperate with the investigation and not guilty of intentional misconduct. However, the officer found her guilty of incompetence for neglecting her duty to properly supervise and ensure the student's safety. Although the Hearing Officer acknowledged the respondent's lack of training, he concluded that her conduct demonstrated "a shocking lack of initiative and common sense; traits which cannot be imbued through any amount of training," and as a result, he recommended termination as the only appropriate remedy.

Village of Spring Valley
(Hearing Officer Dahan)
Matter No. 23-0623

Section 75 charges were filed against a Code Enforcement Officer II, who has been employed by the Village for nine years, for misconduct, incompetency, and/or insubordination for failing to follow a directive to inspect and report back to the Mayor on a potential violation of the Village Code related to property maintenance, despite receiving multiple instructions from superiors. The Hearing Officer found the Respondent guilty of insubordination for intentionally failing to respond to the Mayor's inquiry and recommended termination, noting that although the Respondent "has been employed with the Village for over nine years, the seriousness of the charges outweighs this mitigating factor."

Westchester County
(Hearing Officer Korn)
Matter No. 24-0454

Section 75 charges were filed against an Environmental Chemist (Organic), consisting of 90 specifications alleging that, over a period of one year and three months, she engaged in misconduct and/or incompetence due to a pattern of arriving late to work, acting in a retaliatory, threatening, and/or intimidating manner,

insubordination, and interfering with data which resulted in incorrect reporting. The Hearing Officer found the Respondent guilty of all 90 specifications and recommended termination.

CONTRACT GRIEVANCES

State Grievances:

New York State Thruway Authority
(Arbitrator Donn)
Matter No. 24-0016

CSEA alleged that the New York State Thruway Authority violated the parties' CBA when it started deducting higher health insurance contributions for certain bargaining unit members in their December 6, 2023, paychecks, instead of the paychecks occurring during "the billing period immediately after January 1, 2024." Arbitrator Donn sustained the grievance and determined that the contract language was clear in stating that the increased health insurance contributions should not have been deducted prior to January 1, 2024.

New York State Thruway Authority
(Arbitrator Gavin)
Matter Nos. 23-0715, 23-0992, & 23-0711

CSEA alleged that the New York State Thruway Authority violated the parties' CBA when it failed to pay the Grievants a minimum of 4 hours pay at the overtime rate of pay on various dates in 2019 and 2023. The Arbitrator dismissed the grievances because 4 hours of overtime pay was only required if a bargaining unit employee was "scheduled to work on a day other than the employee's regularly scheduled work day," which meant "a day other than the 24-hour day the employee is normally scheduled to work their shift," not just any time worked outside of an employee's regularly scheduled work schedule

Local Grievances:

Town of Cornwall
(Arbitrator Selchick)
Matter No. 24-0490

CSEA filed a contract grievance alleging that the Town violated the CBA by denying the Grievant a promotion to the title of Assistant Leader in the Sanitation Department. The Arbitrator found that the Grievant met the minimum requirements for the position, had "sufficient ability" to perform the role, and was by far the most senior applicant considered. The Arbitrator therefore sustained the grievance and directed the Town to promote the Grievant to the Assistant Leader position and compensate him for all lost pay and benefits caused by the Town's initial failure to promote him.

Town of Hempstead
(Arbitrator McCray)
Matter No. 24-0835

CSEA filed a contract grievance alleging that the Town violated the CBA by promoting a Laborer II to Labor Crew Chief I, who had a seniority date of March 10, 2021, instead of Grievant, an Equipment Operator II with a seniority date of May 10, 2006. The Arbitrator found that while the Laborer II had no disciplinary record and Grievant did, the nature of the disciplinary record was not sufficient to outweigh evidence that Grievant had equal or superior qualifications and greater seniority. Therefore, the Arbitrator determined that the Town violated the CBA by promoting the Laborer instead of Grievant and ordered the Town to promote Grievant to the Labor Crew Chief I position.

Town of Hempstead
(Arbitrator McCray)
Matter No. 24-0746

CSEA filed a contract grievance alleging that the Town violated the CBA by promoting a Laborer I with a seniority date of July 19,

2020, to the position of Groundskeeper I instead of Grievant, who had been a Laborer I since November 19, 2002. The Arbitrator found that there was insufficient evidence to establish that the Laborer who received the promotion was more "able or adaptable than Grievant, nor that selecting Grievant would not be practicable or consistent with the needs or practices of the department." Therefore, the Arbitrator determined that the Town violated the CBA by promoting the less senior Laborer I instead of Grievant and ordered the Town to promote Grievant to the Groundskeeper I position.

Nassau County
(Arbitrator Siegel)
Matter Nos. 22-0498, 22-0348, & 23-0351

CSEA alleged that the County violated the parties' CBA and a January 2019 Award ("Award") when it failed to meet the staffing requirement of 190 Police Communication Operators ("PCOs") per squad. The Arbitrator sustained the grievances in part because, while the County had made some effort to meet this staffing requirement, there was no evidence that it undertook greater than normal efforts to recruit or retain PCOs, which was required by the Award. Therefore, as a result of the County's limited hiring efforts, and to compensate the PCOs for the additional work they had to endure in 2024 when staffing fell far below the 190-PCO standard, the Arbitrator awarded $1 million to the PCOs who were employed in 2024. The Arbitrator then denied the other two grievances, which alleged that the CBA was violated when 5 PCOs were moved from their administrative positions to the operations floor, leaving less senior PCOs in the administrative positions, and that the County violated the CBA by failing to provide a safe and healthy working environment for PCOs due to the declining numbers. The 5 PCOs had been promoted or placed back in their original assignments at the time of the hearing, and there was no evidence for the Arbitrator to conclude that conditions for PCOs were so dangerous that the County breached its obligation to provide a safe and healthy working environment.

Schenectady County
(Arbitrator Selchick)
Matter No. 24-0542

CSEA alleged that the County violated the subject CBA, the parties' November 2023 Settlement Agreement ("Agreement"), and the parties' October 2023 Daily Flex Hours Policy ("Policy") when it denied certain unit employees' flex time requests to work outside of the approved work hours of 7:30 a.m. and 6:00 p.m., because the County had previously agreed to fairly consider any flex time request that was submitted by a unit employee, including those requests to work from 7:00 a.m. until 3:00 p.m. The Arbitrator dismissed the grievance because the evidentiary record reflected that the County fairly considered each flex time request in good faith based on the needs of the Department. Additionally, even though previous flex time requests to work from 7:00 a.m. until 3:00 p.m. had been granted, evidence of past practice was not relevant to the Arbitrator's analysis because there was no ambiguity in the subject Agreement or Policy.

Yonkers City School District
(Arbitrator Williams)
Matter No. 24-0742

CSEA filed a grievance alleging the alleged that Yonkers City School District of violating Article IV of the CBA by failing to pay Grievant for out-of-title work performed. The relevant contract language states that "All Civil Service employees who are temporarily assigned the duties of a higher grade will be paid at the rate of pay of such higher grade only for the time such duties are performed…" Grievant alleged that she was made to transition and train the incoming Director of Transportation while also continuing to perform the duties and responsibilities of that higher title. The Arbitrator denied the grievance because there was inherent functional overlap in the organizational structure and the Grievant did not perform the primary and essential functions of the Director position.

Incorporated Village of Freeport
(Arbitrator McCray)
Matter No. 24-0883

The Grievant challenged the decision of the Village to not pay a $3,000 increase in base salary pursuant to a negotiated salary step plan. The Village argued that the Grievant was not part of the step system created by the salary step plan, which excluded employees hired prior to 1999. Grievant argued that he is on a salary plan with a step, therefore he is entitled to the pay increase. The Arbitrator did not find a clear meeting of the minds and found the contract language unclear. Ultimately, the Arbitrator determined that the concept of steps was introduced after Grievant was hired and he was therefore not on any step. The grievance was denied.

Village of Lybrook
(Arbitrator Cacavas)
Matter No. 24-0912

CSEA filed a contract grievance alleging that the Village violated the CBA by failing to promote a Laborer to the position of Sanitation Motor Equipment Operator in the Village's Department of Public Works, since the employee it promoted was less senior than the Grievant. The Arbitrator denied the grievance, finding that the Village did not violate the CBA because it did not act arbitrarily or capriciously in determining that the Grievant was unqualified and therefore was not required to promote him under the CBA's threshold requirement that only qualified candidates be considered for promotion based on seniority.

Hermon-Dekalb Central School District
(Arbitrator Gorman)
Matter No. 24-0927

CSEA filed a contract grievance alleging that the District violated the CBA by failing to pay the Grievant three hours per day for her B.O.C.E.S. bus run, instead paying her two hours. Although the Arbitrator found the grievance ripe for arbitration, he denied

it on the merits, finding that the run was a block bid run with no guaranteed minimum hours, and thus the District properly compensated the Grievant for the actual time worked under the CBA.

JUSTICE CENTER

Office of Children and Family Services
(ALJ Nasci)
Matter No. 25-0011

A Youth Support Specialist was charged with Category 2 Physical Abuse and Category 3 Neglect in relation to an incident where the Subject physically restrained a service recipient, injuring the service recipient's ribs and teeth. The ALJ determined that the Justice Center failed to prove that the Subject committed physical abuse based on unreliable testimony from the service recipient, witness testimony, video and documentary evidence. The neglect charge was similarly unsubstantiated based on the Subject's testimony detailing the de-escalation techniques used prior to the physical restraint.

Office for People with Developmental Disabilities
(ALJ Rocco)
Matter No. 24-0886

A Mental Health Therapy Aide was charged with Category 3 Neglect for failure to provide proper supervision to a service recipient. The Subject was with the service recipient at an urgent care facility before leaving to pick up her daughter. The service recipient was left unattended at the urgent care for approximately 30 minutes. The ALJ found that the Justice Center had proven the charge by a preponderance of the evidence.

Office for People with Developmental Disabilities
(ALJ Hughes)
Matter No. 24-0961

The Subject was accused of committing Category 2 Physical Abuse and Category 3 Neglect when the investigation revealed that she struck a service recipient and failed to follow the service recipient's plans. The ALJ determined that the Justice Center established that the Subject committed the alleged acts as a result of the service recipient's credible statements and witness testimony demonstrating that there was dried blood around the service recipient's mouth and a small bruise near her eye. Even though the Subject testified that the service recipient had actually been hitting herself, the ALJ noted that the service recipient did not have a history of self-injurious behavior, and that this appeared to be a self-serving attempt to explain why the service recipient was injured under her supervision. ALJ Hughes then determined that the Subject's actions were properly categorized as Category 2 and Category 3 acts.

OCFS

Office of Children and Family Services
(ALJ Arcarese)
Matter No. 24-0975

The Appellant was indicated for maltreatment. By declining to provide evidence in support of the indicated report, the Agency failed to prove by a fair preponderance of the evidence that the Appellant committed the maltreatment alleged. Therefore, the Agency was directed to amend the report to unfounded and sealed.

SECTION 71

Department of Corrections and Community Supervision
(Hearing Officer Patack)
Matter No. 24-0530

Hearing Officer Patack determined that the subject employee was unfit to perform the duties of her Nursing Assistant 2 position at the Fishkill Correctional Facility because, during her EHS examination, she was limping, was unable to walk on her toes, was unable to fully squat or flex her knee, and was using a cane.

Taken together, these factors demonstrated to the EHS doctor and ultimately Hearing Officer Patack that the subject employee would struggle being on her feet for most of the workday caring for patients, including helping bathe them, push them in wheelchairs, and get up from falls, and would also have difficulty moving quickly if an emergency situation arose at the correctional facility. Furthermore, the employee did not offer any expert evidence to contradict the EHS doctor who testified at the hearing.

SECTION 72

New York State Department of Transportation
(Hearing Officer Cole)
Matter No. 24-0068

Hearing Officer Cole determined that the New York State Department of Transportation ("DOT") did not have probable cause to find that the subject employee was unfit for his duties as a Highway Maintenance Supervisor 1 because the EHS doctors failed to perform a comprehensive examination of the employee, did not review his job description, and did not otherwise have sufficient knowledge of his job duties in order to conclude that he was unfit to perform them. As such, Hearing Officer Cole concluded that the employee should have been returned to work and ordered the DOT to provide the appropriate backpay.

PERB DECISIONS

Maldonado v. CSEA & New York State Office of Mental Health
(ALJ Leibowitz)
Matter No. 23-0939

After reviewing Charging Party Maldonado's improper practice charge alleging that CSEA violated the Public Employees' Fair Employment Act by giving him incorrect legal advice to settle a disciplinary charge against him that resulted in his termination from a subsequent job, the ALJ dismissed the charge. Specifically,

the ALJ determined that Charging Party Maldonado's mistaken belief that resigning and accepting a settlement did not jeopardize future employment with the New York State Office of Mental Health was not a basis for finding arbitrary or bad faith conduct on the part of CSEA. As such, the charge was dismissed in its entirety.

Village of Spring Valley
(ALJ Sergent)
Matter Nos. 23-0668 & 23-0489

CSEA filed a charge alleging that the Village violated § 209 (d) of the Taylor Law when the Mayor, a member of its negotiating team, failed to vote in favor of ratifying a tentative agreement he had signed. The Village then filed an improper practice charge against CSEA, claiming that CSEA violated § 209-a.2 (b) of the Act by refusing to meet and negotiate a successor agreement after the Village Board of Trustees rejected the tentative agreement. The ALJ found that the Village violated § 209-a.1 (d) when the Mayor voted against the tentative agreement, because he had a legal obligation to affirmatively support it after agreeing to it. As a result, the ALJ found that the Village forfeited its right to ratify the agreement and she ordered the Village to execute the agreement upon CSEA's demand, not to refuse to negotiate in good faith with CSEA, and to sign and post a notice. The ALJ also dismissed the Village's improper practice charge against CSEA, finding the delay in CSEA's response to the Village's proposal, much of which occurred during a previously communicated vacation period, did not demonstrate a lack of "sincere desire to reach an agreement."

Igiebor v. CSEA & New York State Office of Children and Family Services
(Board Decision)
Matter No. 21-0630

After reviewing the exceptions filed by Charging Party Igiebor to a decision of an Administrative Law Judge ("ALJ") which dismissed his improper practice charge, the Board affirmed the ALJ's decision. None of Charging Party Igiebor's exceptions related to CSEA's

representation of him, so there was no basis for the Board to overturn the ALJ's finding that Charging Party Igiebor failed to demonstrate that CSEA breached its duty of fair representation. Also, with respect to the allegations against the New York State Office of Children and Family Services ("OCFS"), the Board agreed with the ALJ that Charging Party Igiebor failed to meet his burden of demonstrating that "but for" his protected activity of filing a grievance, the final paychecks and lump sum payment issued to him by OCFS would have been on time and accurate. As such, the charge was dismissed in its entirety.

Brooks v. CSEA & New York State Unified Court System (Director Wlasuk)
Matter No. 24-0888

After reviewing Charging Party Brooks' improper practice charge alleging that CSEA breached its duty of fair representation in connection with various litigation it undertook to fight the mandatory COVID-19 vaccination policy imposed by the New York State Unified Court System ("UCS") because she was not included in the parties' eventual settlement as a former employee of UCS, Director Wlasuk determined that it was not filed on a timely basis. As such, the charge was dismissed in its entirety.

COURT CASES

Nassau County v. CSEA
(Supreme Court, Nassau County)
Matter No. 23-0675

After reviewing the County's petition requesting that an Arbitration Award ("Award") be vacated on the grounds that the Award was irrational, that the Arbitrator exceeded his authority, and that there was a conflict of interest between the Arbitrator and the County, the Court disagreed and denied the petition. The Arbitrator was within his authority to sustain Respondent CSEA's grievance alleging that the County violated the parties' CBA when it appointed a new Assistant County Assessor Trainee without

providing salary parity to existing employees in the same title, and to order the County to place the existing employees in the same title at Grade 9 Step 10 for the purpose of compensation.

Richards, et. al. v. Monroe Community College, et. al.
(Supreme Court, Monroe County)
Matter No. 19-0823

After reviewing the Plaintiffs' and the Defendants' motions for summary judgment in a class action suit arising from an alleged breach of contract relative to the Defendants' obligation to provide health insurance benefits to a certain group of retirees, the Court granted Defendants' motion in part because none of the at issue CBAs granted a lifetime benefit which extended past the expiration date of each individual CBA. The Court then granted Plaintiffs' motion in part because it was sufficiently established that Defendants breached the 2016-2021 CBA by requiring qualified Plaintiffs who enrolled in a "buy-up plan" to contribute more than the CBA's specified percentage towards health insurance premiums. As such, while Plaintiffs' first cause of action was dismissed, Plaintiffs' second cause of action was ordered to proceed to a hearing on the issue of damages.

Sullivan v. City of Long Beach, et. al.
(U.S. District Court, Eastern District of New York)
Matter No. 22-0253

After reviewing the Defendants' motions for summary judgment in a case alleging First Amendment retaliation and violation of the equal protection clause of the Fourteenth Amendment, the Court granted the motions and dismissed the case. Specifically, although Plaintiff was engaged in protected activity in the form of political association and expression, including expressing who he voted for in the November 2020 presidential election, and was terminated from his employment with the City, the record was devoid of any evidence demonstrating a causal connection between the protected activity and his termination. Rather, the evidence showed that Plaintiff was terminated because he was disrespectful towards his

supervisors, failed to show up for work, and repeatedly said he quit his City employment.

Beaudin et. al. v. Salmon River Central School District et. al.
(Hon. John T. Ellis)
Matter No. 25-0058

Petitioners commenced a special proceeding seeking relief to file a late notice of claim pursuant to General Municipal Law § 50-e(5). Petitioners argued that the employer violated the CBA by not providing retirement health insurance benefits to a member who was placed on FMLA leave. The Court noted that, while notice of claim requirements do not apply where a litigant seeks only equitable relief, Petitioners' proposed notice of claim sought for the member to be made whole in each and every way and stated that the exact dollar amount of the claim was not ascertainable at the time. Therefore, the Court moved to the notice of claim requirements and found that the statute of limitations had run out on the breach of contract claim. Therefore, the petition was denied.

DIVISION OF HUMAN RIGHTS

Oliver v. CSEA
(Regional Director Purrini)
Matter No. 24-0211

After investigating the member's complaint alleging that CSEA discriminated against her by not "fighting for her" in the same way it fought for its members that were employed on a fulltime basis because of her race, color, and/or disability, Regional Director Purrini determined that there was no evidence supporting a nexus between CSEA's handling of the member's case(s) and her protected characteristics. As such, he ordered that the complaint be dismissed.