

**STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD**

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In the Matter of

**JONES BEACH LIFEGUARD CORPS,**

Petitioner,

-and-

**CASE NO. C-5339**

**STATE OF NEW YORK,**

Employer,

-and-

**NEW YORK STATE CORRECTIONAL OFFICERS  
AND POLICE BENEVOLENT ASSOCIATION, INC.,**

Intervenor,

-and-

**NEW YORK STATE LAW ENFORCEMENT OFFICERS  
UNION, DISTRICT COUNCIL 82, AFSCME, AFL-CIO,**

Intervenor.

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In the Matter of

**CIVIL SERVICE EMPLOYEES ASSOCIATION, INC.,  
LOCAL 1000, AFSCME, AFL-CIO,**

Petitioner,

-and-

**CASE NO. C-5443**

**STATE OF NEW YORK,**

Employer,

-and-

**NEW YORK STATE CORRECTIONAL OFFICERS  
AND POLICE BENEVOLENT ASSOCIATION, INC.,**

Intervenor.

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**ROSENTHAL CURRY & KRANZ, LLP (ALLEN M. KRANZ of counsel) for  
Petitioner Jones Beach Lifeguards Corps**

**WALTER J. PELLEGRINI, GENERAL COUNSEL (MICHAEL N. VOLFORTE  
and JAMES WALSH, of counsel) for Employer**

**SHEEHAN GREENE CARRAWAY GOLDBERMAN & JACQUES, LLP (NANCY  
J. BURRITT of counsel) for Intervenor New York State Correctional Officers  
and Police Benevolent Association, Inc.**

**NANCY E. HOFFMAN, GENERAL COUNSEL (JEROME LEFKOWITZ of  
counsel), for Petitioner Civil Service Employees Association, Inc., Local  
1000, AFSCME, AFL-CIO**

**ENNIO J. CORSI, ESQ., for Intervenor New York State Law Enforcement  
Officers Union, District Council 82, AFSCME, AFL-CIO**

**INTERIM DECISION OF ADMINISTRATIVE LAW JUDGE**

On September 23, 2003, the Jones Beach Lifeguard Corps (Lifeguard Corps) filed with PERB a petition for certification and decertification in Case C-5339, seeking to remove all lifeguard job titles from the Security Services Unit (SSU) of the State of New York (State) and to be certified as the exclusive bargaining agent for a unit consisting of the following titles:

Assistant Chief Lifeguard, Chief Lifeguard, Lifeguard, Lifeguard 2,  
Supervising Lifeguard (LISPRC), Field Lieutenant of LISPRC Lifeguards,  
Field Captain of LISPRC Lifeguards, and Area Captain of LISPRC  
Lifeguards

and excluding all other job titles in the Security Services Unit.<sup>1</sup>

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<sup>1</sup>On February 23, 2004 the New York State Law Enforcement Officers Union, District Council 82, AFSCME, AFL-CIO (Council 82), the exclusive bargaining representative for employees of the State in the Agency Law Enforcement Services Unit (ALES), filed a motion to intervene to represent the titles petitioned for. The motion was granted. On April 1, 2004 the Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO (CSEA) filed a motion to intervene seeking to represent the titles petitioned for. While the motion was granted by letter dated August 12, 2004, CSEA later withdrew from the proceeding.

On August 20, 2004, CSEA filed with PERB a petition for certification and decertification in Case C-5443, seeking to remove job titles from the SSU and add them to the Operational Services Unit (OSU) of State employees which it represents. The titles sought are:

Campus Public Safety Officer 1, Capital Police Communications Specialist, Capital Police Communications Specialist Trainee, Park Ranger, Parks and Recreation Forest Ranger, Safety and Security Officer 1, Safety and Security Officer 1 Spanish Language, Safety and Security Officer 2, Safety and Security Officer Trainee, Safety and Security Officer Trainee Spanish Language, Security Hospital Senior Treatment Assistant, Security Hospital Senior Treatment Assistant Spanish Language, Security Hospital Treatment Assistant, Security Hospital Treatment Assistant Spanish Language, Security Officer, Security Officer Spanish Language, Security Services Assistant 1, Security Services Assistant 2, Senior Security Officer, Ski Patrolman 1, Ski Patrolman 2, Ski Patrolman 3, Special Game Protector, Warrant and Transfer Officer.<sup>2</sup>

The incumbent bargaining agent for the SSU is the New York State Correctional Officers and Police Benevolent Association, Inc. (NYSCOPBA). It opposes the fragmentation sought in the petitions.

The State takes no position on fragmentation. Following a conference, the cases were consolidated for further processing. Both cases raise as a basis for the fragmentations sought the fact that the titles petitioned for are not interest arbitration eligible<sup>3</sup> while all others in the SSU are, and an issue in each is whether the titles sought in the other should be considered. In each case, if fragmentation is found to be necessary, the subsequent appropriate placement of those titles must be determined.

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<sup>2</sup>By letter dated September 22, 2004 CSEA sought to amend its petition by deleting the titles of Water Safety and Instruction Assistant; Water Safety and Instruction Supervisor 1; and Water Safety and Instruction Supervisor 2 on the basis that they are included in the bargaining unit petitioned for in Case No. C-5339. No party objected.

<sup>3</sup>The only titles in the SSU unit that are not eligible for interest arbitration are those petition for in the cases consolidated herein.

It was determined that the fragmentation issue<sup>4</sup> would be dealt with first and following a decision on that issue herein, the further processing of the petitions, as necessary, would then be addressed.

For purposes of this interim decision, the record consists of the pleadings in both cases, my February 23, 2004 letter to the parties in Case C-5339, my December 17, 2004 letter to the parties, and the SSU 1999-2003 collective bargaining agreement. The parties have filed briefs.

### DISCUSSION

The Board, in *County of Rockland*,<sup>5</sup> held that "the most appropriate unit' cannot include titles that are subject to different dispute resolution procedures."<sup>6</sup>

The State and NYSCOPBA argue that the Board's holding in *County of Rockland*,<sup>7</sup> is limited to unit placement and initial uniting petitions, and does not apply to fragmentation cases. Both cite to *Village of Skaneateles*,<sup>8</sup> where the Board held that "[w]hile not alone mandating the fragmentation sought by the petitioner, the difference in applicable impasse resolution procedures is a significant and important reason for defining a separate unit for police officers."<sup>9</sup> For further support of this position, the

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<sup>4</sup>As clarified, and as in Case No. C-5443, the petition in Case C-5339 is seeking fragmentation on the basis of a conflict of interest arising only from the fact that the petitioned-for titles are ineligible for interest arbitration.

<sup>5</sup>35 PERB ¶3004 (2002), *aff'g* 34 PERB ¶14021 (2001).

<sup>6</sup>*Id.* at p. 3009. See also *City of Lockport*, 30 PERB ¶3049 (1997).

<sup>7</sup>*Supra.*

<sup>8</sup>16 PERB ¶3070.

<sup>9</sup>*Id.* at p. 3113.

parties cite to the Board's decision in *State of New York*,<sup>10</sup> specifically footnote 22<sup>11</sup> where the Board stated "[w]e do not consider the placement of these titles in the State Police Unit because of the difference in dispute resolution procedures available to these employees and those in the State Police Unit. See Act, §209.2; *City of Lockport*, 30 PERB ¶3049 (1997)". The State characterizes this footnote as a refusal of the Board to consider the different impasse procedures as dispositive, and therefore squarely on point with its finding in *Village of Skaneateles*,<sup>12</sup> where the different impasse procedures were found to be only one factor, albeit a substantial one, to be considered in fragmentation cases. The language and context of footnote 22, however, do not support the State's characterization. Having determined appropriate unit placement, the Board, in this footnote, explained that another uniting configuration, with the State Police Unit, was not considered precisely because the employees at issue were eligible for a different dispute resolution procedure than those in the State Police Unit. In other words, as here and in *County of Rockland*, the at-issue employees would not have been appropriately placed in such a unit.

In *County of Rockland*,<sup>13</sup> the Board affirmed a decision<sup>14</sup> in which it was found that a difference in applicable impasse procedures was a fundamental dissimilarity

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<sup>10</sup>34 PERB ¶3038 (2002).

<sup>11</sup>*Id.*, at p. 3039.

<sup>12</sup>*Supra.*

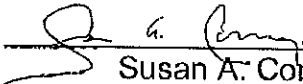
<sup>13</sup>*Supra.*

<sup>14</sup>*County of Rockland*, 34 PERB ¶4021 (2001) citing to *Village of Potsdam*, 16 PERB ¶3032 (1983); *Village of Skaneateles*, *supra*; *County of Erie and Sheriff*, 22 PERB ¶3055, (1989) (subsequent history omitted); *County of Rockland*, 32 PERB ¶4017, *aff'd*, 32 PERB ¶3074 (1999), *conf'd*, 34 PERB ¶7019 (Sup. Ct. Albany Co. 2001), *aff'd* *County of Rockland v. PERB*, 295 AD2d 790 (3d Dept 2002); and *City of Auburn*, 30 PERB ¶4036 (1997).

warranting unit fragmentation, defeating unit inclusion and affecting initial uniting determinations. Issued subsequent to and in the face of *Village of Skaneateles*,<sup>15</sup> it is a clear indication that the combination in a single unit of those eligible for interest arbitration with those for whom interest arbitration is not available is definitively inappropriate, whatever the type of case in which the issue arises.

Inasmuch as a unit cannot include both titles that are not entitled to compulsory interest arbitration in the resolution of an impasse in collective negotiations with titles that are eligible for interest arbitration, the fragmentation of the titles from SSU, sought in Cases C-5339 and C-5443, is granted.<sup>16</sup>

Dated at Albany, New York  
this 24<sup>th</sup> day of July, 2006.

  
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Susan A. Comenzo  
Administrative Law Judge

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<sup>15</sup>*Supra.*

<sup>16</sup>As set forth *supra*, this interim decision addresses only the fragmentation portions of the cases. The unit placement requests will be developed in further proceedings.