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State of New York Public Employment Relations Board Decisions from April 7, 1977

New York State Public Employment Relations Board

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Comments
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The gravamen of the charge herein, which was filed by Edwin Robisch on August 27, 1976, is that the Wappingers Central School Board of Education (respondent) committed an improper practice in violation of Section 209.a-l(a) and (c) by denying Robisch's request for an extension of a leave of absence in that the request was denied because of Robisch's activities in behalf of an employee organization. The hearing officer dismissed the charge, concluding that the respondent 
"...rather than being motivated by animus, rejected the leave request because of its past practice in such matters, its concern about setting a new precedent and for other reasons, all normally and legitimately associated with performance of its mission."

Robisch filed exceptions to the decision of the hearing officer. The substance of the exceptions filed was that a) the denial of the leave was inherently destructive of Robisch's rights under Section 202 of the Act; b) in the alternative, if the denial were not inherently destructive of Robisch's rights as an employee, there was an unmet burden on the respondent to establish that its discriminatory conduct was motivated by business justifications; c) moreover, the record supports a finding of animus on the part of the respondent. Before considering these contentions of Robisch, we set forth the facts underlying the issues.
The charging party, Robisch, is a guidance counsellor who has been employed by respondent since 1964. In March, 1976, he became a state-wide co-chairperson of the New York Educators Association (NYEA) which was organized for the purpose of achieving collective bargaining for employees in the teaching profession throughout the State. This was a newly formed organization, coming into being in March, 1976. Respondent's employees were at that time represented for collective bargaining by another organization. In March, 1976, Robisch applied for a leave of absence from his employment to serve as state-wide co-chairperson. The request was for a leave until August, 1976, and it was granted by respondent. In July, 1976, Robisch requested an extension of the leave for the school year 1976-77. This request was denied on July 26, 1976 by a 7 to 1 vote of respondent Board of Education. The minutes of that meeting note that one member, Zucker, stated that he voted against the leave of absence because he did not want the District to support a second career for Robisch. According to Robisch, the President of the Board of Education, Ross, stated to him:

"...that as best he could determine, it was the Board's feeling that they didn't want to promote a second career...another career, and that they did not want to get involved with inter-union warfare...by prejudicing one side against the other."

Also, according to Robisch, member Zucker in discussing with him the denial of the request for an extension of the leave said to Robisch:

"...there's no way that I'm going to promote the destruction of public education in this State by having union leaders like you moving about the State."

Two other members of the Board of Education testified at the hearing. They are Gribble and Carney, both of whom participated in the July 20 meeting and voted for the denial of extension of the leave. According to Gribble, the discussion of the board members regarding the request for an extension...
indicated concerns on their part that, as this was an extension of a leave previously granted, it would establish an undesirable precedent of successive leaves. Further, at the time of the vote denying the request, the school district was experiencing a budget crisis and some people in the community were questioning the need for the retention of the guidance program. As Robisch was recognized as an outstanding guidance counselor, it was thought by board members that extension of the leave might indicate that the board shared this opinion of the guidance program. Carney testified that Robisch's activities in NYEA had no bearing on the decision of the board; the only question was whether it would be contrary to board policy and practice. This, he testified, was the consensus of the board.

With respect to the respondent's policy as to leaves, the majority of leaves granted were for maternity. Instances of leaves other than for maternity were a three-month leave to serve a professional internship and a 10-month leave for a teacher to accompany her husband on a job assignment. Leaves were denied to two employees who sought them to go into an unrelated type of work. The board did grant leave to Phillips to work as a staff person with NYEA.

We now consider the exceptions seriatim.

a) Robisch argues that the denial of the leave was inherently destructive of his rights under Section 202 of the Act.

In support of this exception, Robisch would have this Board adopt the principle enunciated by the United States Supreme Court in construing the National Labor Relations Act in NLRB v. Great Dane, 388 U.S. 26 (1967). There, the Court held that if the nature of the employer's discriminatory conduct were inherently destructive of important employee rights, no proof of anti-union motivation would be needed to support a finding of unfair labor
practice even if the employer introduced evidence to show that his conduct was motivated by legitimate and substantial business concerns. If we do not have to reach the question whether this Board should or should not adopt the reasoning of the Supreme Court in *Great Dane*, for the application of the *Great Dane* doctrine would require, first, a finding that the conduct of the respondent complained of was discriminatory and, secondly, that it was inherently destructive of important employee rights. We are not persuaded on the evidence in the record herein that the respondent's conduct was discriminatory within the meaning of CSL §209-a.1(c).

The denial of the request for an extension of a leave previously granted does not represent a departure from respondent's policy or practice. Respondent did not deny the original requests of Robisch and Phillips for leave to work with NYEA. In fact, the request for an extension if granted would be a departure from policy and practice. The fact that respondent has on occasion granted successive maternity leaves does not permit or warrant a conclusion that the denial here was discriminatory. Maternity leaves are obviously different, involving employer-employee considerations not relevant here. The thrust of charging party's contention here is that a denial of an employee's request for a leave to serve with an "employee organization" is a per se violation. This Board is not aware of any authority either in the private or public sector which would support this contention.

Secondly, even if the denial of the request for an extension were found to be discriminatory, there is no evidence in the record to support a finding that such denial was "inherently destructive of important employee rights" as defined by the Supreme Court in *NLRB v. Erie Resistor Corp.*, 373

1/ Decisions of the Supreme Court construing the National Labor Relations Act are not binding or controlling precedent for this Board under the law (CSL §209-a.3), although we do adopt their reasoning where appropriate.
U.S. 221 (1963). In *Erie Resistor* the Supreme Court found that the grant of superseniority to the replacements of striking employees effectively destroyed the right of employees to engage in concerted activities for the purpose of collective bargaining. Thus, the grant by the employer of superseniority stifled the exercise of obviously fundamental employee rights. In the instant case, charging party has failed to establish that denial of extension of leave to a single employee to serve an employee organization in its state-wide organizing efforts, particularly one not the representative of employees in the negotiating unit, was "inherently destructive of important employee rights."

b) Robisch argues, in the alternative, if the respondent's conduct were not inherently destructive of his rights as an employee, there was an unmet burden on the respondent to establish that its discriminatory conduct was motivated by business justifications.

Assuming even that the conduct here was deemed for some reason to be discriminatory, the effect of such discriminatory conduct would be comparatively slight; in such circumstances, as the Supreme Court pointed out in *Great Dane, supra*, anti-union motivation would have to be proven to sustain the charge if the employer has produced evidence of a legitimate and substantial business justification for its conduct. As found by the hearing officer and supported by the record, respondent acted because of its concern about setting a new precedent and for other reasons normally and legitimately associated with the performance of its mission.

c) Robisch contends that the record supports a finding of animus on the part of the respondent.

On this record, we find no animus on the part of respondent. The respondent did grant Robisch a leave to serve with NYEA. It also granted
leave to another employee to serve with NYEA. The statements of board member Zucker appear, from the record, to be solely his own opinions. No evidence is shown that those opinions were shared by other board members.

We overrule the exceptions filed by the charging party and adopt the findings and conclusions of law of the hearing officer.

ACCORDINGLY, WE ORDER that the charge herein be dismissed in its entirety.

Dated: New York, New York
April 7, 1977

[Signatures]

ROBERT D. HELSBY Chairman

JOSEPH R. CROWLEY

IDA KLAUS
STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

THE MONROE WOODBURY TEACHERS ASSOCIATION,

Respondent,

-and-

THE MONROE WOODBURY CENTRAL SCHOOL DISTRICT,

Charging Party.

On November 8, 1976, the Monroe Woodbury Central School District (employer) filed a charge alleging that the Monroe Woodbury Teachers Association (Association) violated CSL Section 209-a.2(b) by refusing to negotiate in good faith in that it improperly insisted that a demand constituting a nonmandatory subject of negotiation be submitted to factfinding. The demand at issue is:

"This Agreement shall be binding upon the Board and any school district into which this district may be merged or consolidated, unless otherwise agreed to by the Association. As a condition of any merger or consolidation, all teachers presently employed by the district shall retain their position in any merged or consolidated district if they so desire."

In its answer, the Association admits that it insisted that the demand in question be submitted to factfinding, but it alleges that the demand is a mandatory subject of negotiation.

On December 13, 1976, a stipulation of facts was submitted by the parties who requested that the matter be processed under §204.4 of our Rules. Under that procedure, there is no intermediate determination by a hearing officer; rather, the record and briefs are submitted directly to this Board. The request was granted and briefs were received from both parties on February 4, 1977.
There are two distinct aspects of the demand, both of which would apply in the event that the employer were merged or consolidated into another district. One part of the demand would guarantee that no unit employees would be laid off in the event of any such merger or consolidation; the other would extend the proposed agreement to the surviving school district in the event of such a merger or consolidation. Having reviewed the record and considered the parties' briefs, we determine that both parts are nonmandatory subjects of negotiation.

On several occasions, this Board has held that a public employer need not negotiate over its decision to lay off employees (Matter of New Rochelle, 4 PERB ¶3060 [1971]; Matter of City of White Plains, 5 PERB ¶3008 [1972]). The Court of Appeals has agreed with our conclusion that job security is a permissive, but not a mandatory, subject of negotiation (Yonkers City School District v. Teachers, 40 NY 2d 268 [1976]). As the Association could not require the employer to negotiate with it over its guarantee of job security, a fortiori, it cannot require the employer to negotiate with it over a guarantee of job security by a successor employer.

The other part of the demand focuses directly upon the application of a contract to a possible successor employer. Article 31 of the Education Law deals with the consolidation of school districts. Section 15 of that Article makes it clear that if the employer were consolidated into another district, it would be dissolved. The successor employer would be a separate entity and would not have been represented during present negotiations. The Association cannot compel the employer to negotiate over a demand that would bind an entity that is not a party to these negotiations.


"...although successor employers may be bound to recognize and bargain with the union, they are not bound by the substantive provisions of a collective bargaining contract negotiated by their predecessors but not agreed to or assumed by them."
In Matter of Board of Higher Education of the City of New York, 7 PERB 3028 (1974) and Matter of Yorktown Faculty Association, 7 PERB 3030 (1974) this Board determined that it is a violation of its duty to negotiate in good faith for one party, over the objections of the other, to carry a demand for a nonmandatory subject of negotiation into and beyond factfinding.

In her dissenting opinion, Member Ida Klaus concludes that it is not a violation of the Association's duty to negotiate in good faith for it to have carried its demand for a nonmandatory subject of negotiation into factfinding over the objection of the employer. She reasons that the Association's conduct did not interfere with negotiations.

The nature of improper insistence was considered by us in the Board of Higher Education case, supra. In that case, the respondent had argued inter alia that "it never conditioned its participation in further negotiations upon BHE's acceptance of the demand that its insistence upon it did not delay or interfere with the progress of negotiations."

We considered this argument in the context of the point that "a party may propose for agreement matters that are not mandatory subjects of negotiations, but it may not press such a proposal to the point of insistence." Our conclusion was that: "It is, of course, difficult to draw a precise line between appropriate conduct in proposing nonmandatory contract terms and inappropriate insistence upon such a demand. We determine that the insistence on the demand in the instant case went too far when, over the objections of BHE, it was carried into fact-finding and even beyond fact-finding."

We reaffirm our commitment to that test. Applying it to the facts in the instant case, we determine that the Association improperly insisted upon the negotiation of a nonmandatory subject of negotiation.
We join with our dissenting member in supporting the concept that, save for prohibited subjects, all areas of concern of employees should be aired in the collective bargaining process. This is predicated on the belief that a concern phrased in the form of a collective bargaining demand is an excellent channel of communication between an employer and its employees for it would seem important for an employer — either in the private or public sector — to know the concerns of employees. Whether or not it be a matter as to which the employer may deem it appropriate to take remedial action, at least the concern is aired and this is desirable.

We differ from our dissenting member, however, that a party to the negotiations may continue to insist upon negotiating with respect to a nonmandatory subject in the last step of the negotiating process, namely, factfinding. In such circumstances, the parties have been at impasse and submit the open issues to a neutral for his non-binding determination. At this stage of the impasse procedures, the objective of the parties and the neutral is an agreement. Therefore there must be removed from the negotiating process at that point subjects which are obviously of peripheral concern, namely, permissive subjects. Therefore we are persuaded that for a party to insist upon submission of permissive subjects to the factfinding process is an act that tends to frustrate the goal of the factfinder and the parties, to wit, an agreement. It is a diversion and accords to such nonmandatory subjects a status that the Law denies. The concern of the factfinder should be directed solely to issues involving mandatory subjects. This alone in most instances is a substantial burden and it should not be intensified by the inclusion of

2 Admittedly, such subjects may be, to a party, more than a peripheral concern but they are not mandatory subjects of negotiation. In factfinding, which results in public recommendations, the focus of the parties and factfinder should be on mandatory subjects, and to that extent permissive subjects are peripheral.
of nonmandatory items.

Our dissenting member relies upon NLRB v. Borg-Warner Corp., 356 U.S. 342 (1958) to support her position. We read Borg-Warner and decisions subsequent thereto to establish a principle that it is unlawful for a party in collective bargaining to insist upon bargaining with respect to a permissive subject beyond the point of impasse. The dissent argues that such impropriety arises only if there is articulated a concomitant statement to the effect that such nonmandatory demands must be included in the agreement and that absent such statement or shibboleth there is no unlawful conduct. We reject this argument as one elevating form over substance, for according to the dissent, unless the magic words are uttered a violation does not exist. We find such an approach unrealistic. The realities are that the inclusion of such nonmandatory subjects in the factfinding process is, for the reasons above stated, disruptive of the attainment of the goal of the impasse procedures and should not therefore be condoned.

Finally, we also disagree that the administrative policy of this Board has eliminated mediation. This Board does not direct parties to factfinding until the mediatory process has been exhausted.

NOW, THEREFORE, we determine that The Monroe Woodbury Teachers Association has failed to negotiate in good faith by insisting upon the negotiation of a nonmandatory subject of negotiation, and

WE ORDER the Association to negotiate in good faith.

DATED: New York, New York
April 7th, 1977

ROBERT D. HELSBY, Chairman

JOSEPH R. CROWLEY
The Board has found that it is per se an unlawful refusal to bargain in good faith for a party to insist upon submitting to factfinding a nonmandatory subject of negotiation. Thus, a bare stipulation that such conduct occurred, as was the case here, is, without more, sufficient basis for a finding of improper practice. I cannot agree.

The doctrine properly applicable here is that enunciated in NLRB v. Borg-Warner, 356 U.S. 342 (1958), in which the United States Supreme Court held it to be unlawful under the National Labor Relations Act for a party to refuse to enter into any collective bargaining agreement unless the agreement includes a clause covering a non-mandatory subject proposed by that party. The Court's reasoning was that the refusal to enter into any agreement without the nonmandatory provision is "in substance, a refusal to bargain about the subjects that are within the scope of mandatory negotiations". In other words, the Court emphasized that insistence on inclusion of the clause "as a condition to any agreement" obstructs the fulfillment of the fundamental purpose of the collective bargaining process, which is to reach agreement as to terms and conditions of employment governing the employer-employee relationship.

In Board of Higher Education, 7 PERB 3042, this Board cited with approval the Borg-Warner doctrine, which it apparently interpreted to mean, however, that a party may not press a proposal as to a nonmandatory subject "to the point of insistence." Apart from implying a degree of firmness in presenting and urging the proposal, the "point of insistence" test would appear to turn on the length of time in the course of the negotiations and subsequent procedures the demand is kept alive. Under Borg-Warner, the insistence is substantive, lying in the imposition of the precondition to the making of any agreement. The Board did not explicate
the theory of its holding. It did nevertheless apply its test in the
Board of Higher Education case to the facts as fully developed there in a
record made at a Board hearing, and it found, on those facts, that "insistence
on the demand...went too far when, over the objections of the Board of
Higher Education [the employer], it was carried into factfinding and even
beyond."

The Board has now, in this case, moved further away from the
basic Borg-Warner reasoning, dispensing even with evidentiary support save
only the bare facts of a stipulation that the clause was brought to factfinding.

It is well recognized that factfinding is a continuation of the
bargaining process. A form of conciliation, its objective is to enable the
parties to reach their own agreement through the give-and-take of that
process as guided by a third party. The mechanistic procedural basis for
decision-making adopted in this case would limit the allowable scope of
that process. It would cut off the course of bargaining all the more now
that the Board has virtually eliminated mediation as a first recourse and
is directing disputes immediately into factfinding.

In my view, the parties have utilized the processes of the Board
to obtain a declaratory judgment, and the Board, in effect, has complied.
This is contrary to its earlier holdings in Northport, 9 PERB 3089, and
Ellenville, 9 PERB 3090.

The sparse facts presented to us do not permit the conclusion
that the Association, in proposing the clause in question and in pursuing it
to factfinding, took the firm position that it would not enter into any
agreement unless it contained the clause. There is consequently no basis
for condemning the Association's conduct as unlawful.
The charge should be dismissed. In the alternative, the record should be reopened and the case sent to hearing for a full and complete evidentiary record.

DATED: New York, New York
April 7, 1977

IDA KLAUS
In the Matter of

LAWRENCE M. QUINLAN, SHERIFF, DUTCHESS COUNTY,

Respondent,

-and-

DUTCHESS COUNTY DEPUTY SHERIFF'S UNIT, DUTCHESS COUNTY CHAPTER, CIVIL SERVICE EMPLOYEES ASSOCIATION, INC.,

Charging Party.

This matter comes to us on the exceptions of the Dutchess County Deputy Sheriff's Unit, Dutchess County Chapter, Civil Service Employees Association, Inc. (charging party) from a hearing officer's decision dismissing its charge against Lawrence M. Quinlan, Sheriff, Dutchess County (respondent). The charge had alleged that the respondent had violated CSL §§209-a.1 (a), (b) and (c) in that he interfered with mail and telephone communications of the charging party and with a fundraising activity engaged in by it. The hearing officer dismissed the charge insofar as it alleged a violation of CSL §209-a.1(b) on the ground that the conduct complained of, even if proven, did not establish that respondent had attempted "to dominate or interfere with the formation or administration of [charging party]...."

These sections of the Act provide that "It shall be an improper practice for a public employer or its agents deliberately (a) to interfere with, restrain or coerce public employees in the exercise of their rights guaranteed in section two hundred two for the purpose of depriving them of such rights; (b) to dominate or interfere with the formation or administration of any employee organization for the purpose of depriving them of such rights; (c) to discriminate against any employee for the purpose of encouraging or discouraging membership in, or participation in the activities of, any employee organization;..."
He dismissed the charge insofar as it alleged a violation of CSL §§209-a.1(a) and (c) on the basis of his finding that the evidence did not establish that respondent acted on the basis of animus directed at the charging party. There is no question but that respondent told his employees that they could not participate in charging party's fundraising program, presumably while on duty or in uniform. Those employees did participate in the fundraising drive while off duty and without being punished. The record does not establish that respondent interfered with charging party's mail and telephone messages.

Charging party's exceptions argue:

1. That the evidence is sufficient to compel a conclusion that respondent's conduct was motivated by animus against it.
2. That the denial by respondent of certain space to charging party was a violation of an agreement between them.
3. That record evidence establishes that respondent's conduct had a "chilling" effect on charging party's fundraising campaign.

Having reviewed the record, we determine that the hearing officer's finding that respondent was not motivated by animus is consistent with the evidence in the record. We also find that the record supports his conclusion that respondent's conduct did not have a "chilling" effect on the charging party's fundraising campaign. Finally, we agree with the reasoning of the hearing officer that the issue of whether respondent's conduct violated an existing agreement between the parties was not before him. Ordinarily contract rights must be enforced through the grievance procedure contained in the contract or by court action. A unilateral change in an agreement may constitute a violation of the duty to negotiate in good faith. However, no such violation was alleged in this case.
Accordingly, for the reasons set forth here and in the hearing officer's decision,

WE ORDER that the charge herein be, and it hereby is, dismissed in its entirety.

Dated: New York, New York
April 7, 1977

Robert D. Helsby, Chairman

Joseph R. Crowley

Ida Klaus
The charge herein was filed by the Triborough Bridge and Tunnel Authority Sergeants and Lieutenants Benevolent Association, Inc. (charging party) on June 9, 1976. It alleges that the Triborough Bridge and Tunnel Authority (respondent) refused to negotiate in good faith in violation of CSL §209-a.1(d) in that it refused to negotiate over charging party's demands for a contract to be effective on July 1, 1976. The last agreement between the charging party and respondent covered the period from July 1, 1972 to June 30, 1975. Negotiations for a successor agreement commenced on April 4, 1975, but they were unproductive. Notwithstanding the assistance of mediation and factfinding, the parties failed to reach an agreement and, on April 23, 1975, respondent's legislative body, acting in accordance with CSL §209.3(e), prescribed the terms and conditions of employment of the persons in the negotiating unit represented by charging party. This legislative determination was retroactive to the end of the prior agreement but was silent as to the time when it would expire.

On May 26, 1976, the charging party served demands for a new contract which was to take effect retroactively to January 1, 1976. Respondent's fiscal year is the calendar year. Respondent refused to negotiate with respect
to those demands, contending that the legislative resolution of the dispute would continue through December 31, 1976. This refusal occasioned the charge herein.

In his decision, the hearing officer determined that the legislative resolution of the dispute did not expire on either December 31, 1975 or December 31, 1976. Rather, he concluded that it expired on June 30, 1976. Both the charging party and the respondent have filed exceptions to this determination. Having considered the record and the arguments of the parties, we confirm the hearing officer's conclusions of law. In Matter of City of Mount Vernon, 5 PERB 43057, we rejected the proposition that a legislative determination could apply for two years unless both parties had agreed in advance to be bound by it for such a period of time. In that decision we said:

"The core of the Taylor Law is the policy that governments should negotiate with and enter into written agreements with employee organizations representing public employees which have been certified or recognized [CSL §200]. Coercive action by an employee organization to impose its will is inappropriate. So is coercive action by a public employer. Nevertheless, there are occasions when contesting parties cannot reach an agreement and yet the business of government must proceed. The exigencies of government are particularly related to its budgetmaking process and, if the parties fail to reach an agreement, the budget of the employer must be confronted without an agreement having been made. To cover this eventuality, the law provides that the legislative body of the government involved 'shall take such action as it deems to be in the public interest, including the interest of the public employees involved' [CSL §209.3(e)]. This legislative responsibility is to be used in emergencies only and is designed to provide a temporary modus operandi. Once the emergency is past, the parties are once again expected to fulfill their statutory obligation, which is to negotiate and enter into written agreements.

"...The waiver by an employee organization of its statutorily protected right to negotiate an agreement must be an explicit one. Participation in a mandated proceeding before the local legislature and presentation to that local legislature of a prior negotiations posture does not constitute submission to arbitration or a waiver of its right to subsequent negotiations."
Absent an explicit waiver, the power of the local legislature is limited to taking such action as is necessary to bridge a single budget period."

The thrust of the Mount Vernon decision was that the legislative body could not impose terms and conditions of employment beyond a one year period, in that case, the fiscal year. In the instant case, as opposed to Mount Vernon, the fiscal year and the contract year were not synchronized. We feel that the principle of the Mount Vernon decision should be applied but adjusted to recognize the difference between the fiscal and contract year but nevertheless limiting the imposition of terms and conditions of employment by the legislature to one year. Moreover, the concern that we expressed in the Mount Vernon case about the relationship of the contract period to the budgetmaking process of a public employer is not compelling here, inasmuch as the parties have previously agreed to a contract that was not coterminous with the employer's fiscal year.

Respondent's arguments are even less persuasive. It proposes that its legislative determination be applied so as to excuse it from negotiating for a period of eighteen months. The hearing officer correctly reasons that this is "a longer period of time than any emergency is claimed to exist (see Mount Vernon, supra)."

Accordingly, we affirm the hearing officer's determination that, although respondent was not obligated to negotiate with the charging party for a new agreement to take effect on January 1, 1976, it was obligated to negotiate with the charging party over a new agreement to take effect on July 1, 1976 and that it refused to do so. This refusal was a violation of Civil Service Law §209-a.1(d).
NOW, THEREFORE, WE ORDER respondent to negotiate in good faith with the charging party.

Dated: New York, New York
April 7, 1977.

ROBERT D. HELSBY, Chairman

JOSEPH R. CROWLEY

IDA KLAUS
On December 3, 1976, Martin L. Barr, Counsel to this Board, filed a charge alleging that the Education Association of the North Syracuse Central School District, had violated Civil Service Law §210.1 in that it caused, instigated, encouraged, condoned and engaged in an 8 day strike against the North Syracuse Central School District on November 1, 2, 3, 4, 5, 8, 9 and 10, 1976.

The Education Association of the North Syracuse Central School District filed an answer but thereafter agreed to withdraw it, thus admitting all of the allegations of the charge. The Charging Party recommends a penalty of loss of dues check-off privileges for 60% of its annual dues, 1/ which the Association accepts.

On the basis of the unanswered charge, we determine that the recommended penalty is a reasonable one.

We find that the Education Association of the North Syracuse Central School District violated CSL §210.1 in that it engaged in a strike as charged.

WE ORDER that the dues deduction privileges of the Education Association of the North Syracuse

1/ This is intended to be the equivalent of seven months suspension if dues were deducted in equal monthly installments throughout the year. In fact, the annual dues of the Education Association of the North Syracuse Central School District are not deducted in this manner.
Central School District be suspended, commencing on the first practicable date, so that no further dues be deducted by the North Syracuse Central School District on its behalf for a period of time during which 60% of its annual dues would otherwise be deducted. Thereafter, no dues shall be deducted on its behalf by the North Syracuse Central School District until the Education Association of the North Syracuse Central School District affirms that it no longer asserts the right to strike against any government as required by the provisions of CSL §201.3(g).

Dated: New York, N.Y.
April 7, 1977

ROBERT D. HELSBY, Chairman

JOSEPH R. CROWLEY

IDA KLAUS