12-8-1977

State of New York Public Employment Relations Board Decisions from December 8, 1977

New York State Public Employment Relations Board

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State of New York Public Employment Relations Board Decisions from December 8, 1977

**Keywords**
NY, NYS, New York State, PERB, Public Employment Relations Board, board decisions, labor disputes, labor relations

**Comments**
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In the Matter of

THE TROY UNIFORMED FIREFIGHTERS ASSOCIATION,
LOCAL 2304, I.A.F.F.

Respondent,

-and-

CITY OF TROY,

Charging Party.

The charge herein was filed by the City of Troy (City) on September 14, 1977. It alleges that the Troy Uniformed Firefighters Association, Local 2304, I.A.F.F. (Local 2304) violated Section 209-a.2(b) of the Taylor Law by refusing to negotiate in good faith, in that it improperly insisted upon the negotiation of two demands that are not mandatory subjects of negotiation and that it submitted the demands to interest arbitration on September 1, 1977. As submitted to the arbitrator, the demands that the City protests read:

"The City will provide sufficient personnel to adequately cover all positions for the purpose of day to day assignments. Such personnel shall include, but not be limited to, a Captain on duty in each firehouse on each shift and not less than forty-two officers and firefighters (members of the bargaining unit) on active duty in each platoon."

"Every piece of equipment which leaves a house in response to an alarm shall carry a company whose minimum strength shall consist of a sufficient number of officers and firefighters to assure the ability of such company to safely carry out its duties and responsibilities. In the event that the City and the Union cannot agree what such complement of personnel shall be, resort shall be had to arbitration as provided for in Article IX, Section E."

In its answer, Local 2304 argues that the demands are appropriate for negotiation and arbitration because they are "based upon language in the present contract...." It states that the first demand must be negotiated
because it "is a clarification of language in the present contract between the parties which, if adopted, would provide job security which the Legislature stated is a matter for consideration by the arbitrators." This is a reference to Chapter 216 of the Laws of 1977 which requires an interest arbitrator in a police or firefighter dispute to consider, inter alia, the terms of a previously negotiated agreement that deal with job security. Local 2304 contends that the second demand is also a mandatory subject of negotiation.

Neither demand is a mandatory subject of negotiation and it is improper for Local 2304 to submit either to interest arbitration over the objections of the City. In deciding a prior case involving the two parties herein, we held that an agreement on a nonmandatory subject of negotiation does not obligate either party to negotiate over a demand to extend the agreement into a successor contract (City of Troy, 10 PERB ¶3015 [1977]). This is not altered by the enactment of L.77, c.216. That amendment does not expand the scope of negotiations. Rather, it would require an arbitrator to consider a job security clause in a prior contract if the clause were a mandatory subject of negotiation. An agreement to maintain manning levels is not.

Local 2304's answer and supporting brief make it clear that the first demand is to afford job security to the employees whom it represents by maintaining manning levels. We have often held that a demand, the predominant characteristic of which related to manpower and deployment, is not a mandatory

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1 See also Matter of Board of Education of the City of New York, 5 PERB ¶3054 (1972) and Allied Chemical and Alkali Workers Local 1 v. Pittsburgh Plate Glass Co., Chemical Workers, 505 U.S. 157 (1971).
subject of negotiation (City of Newburgh, 10 PERB ¶3001 [1977], aff'd.
IAFF of the City of Newburgh v. Helsby, ___App.Div. 2d___ [3rd Dept. 1977]). Moreover, this demand would require the City to assign officers of specified rank to each firehouse and shift, and a minimum crew of 42 officers and firefighters to each platoon. Similar demands were considered in City of White Plains, 5 PERB ¶3008 (1972), and were determined by us not to constitute mandatory subjects of negotiation.

The language of the second demand is addressed not only to manpower and deployment, but also to employees' safety. Thus, as we said in the Newburgh decision (at p. 3003):

"We are faced with the problem of determining whether the predominant characteristic...is safety or whether it is manpower and deployment. If the former, then we must find it to be a mandatory subject of negotiation; if it is the latter, we must conclude that it is not."

Although this implies a balancing test, in White Plains PBA, 9 PERB ¶3007 (1976) we concluded that this procedure would place an unwarranted burden upon the collective negotiations process because it would require, as a prior condition, that the negotiability of each manning/safety demand be determined by us after an extended factual hearing as to the balance between the two conflicting concerns. In place of that procedure, we suggested that the parties

"...could create a joint safety policy committee that operates under general guidelines that are recited in the contract to consider issues of safety that relate to manning standards. This process could be made subject to the grievance arbitration procedure."

2 At p. 3003 we wrote:

"As we have found here and in other cases, the general subject of safety as a means of protecting employees beyond the normal hazards inherent in their work is a mandatory item of negotiation. Hence, the presence of a general safety clause in the collective bargaining agreement should provide a basis for testing the safety guarantee in individual fact situations which may arise during the life of the agreement by presentation of disputes in such specific situations for resolution through the grievance procedure."
We expanded on this in City of Newburgh by indicating that a safety standard that is designed to protect employees from dangers that are beyond the normal hazards inherent in their work is a mandatory item of negotiations. That standard could then be applied to specific situations by a joint safety policy committee. Problems involving the application of that standard or the control of such hazards could go to grievance arbitration on an ad hoc basis.

In City of New Rochelle, 10 PERB ¶3078 (1977), we found that a union demand relating to the safety aspects of rig manning met the test that we prescribed in Newburgh and White Plains PBA. The employee organization was seeking to create a general health and safety committee which would have general jurisdiction over all matters of safety to members of a fire department, "including, but not limited to the total number of employees reporting to a fire and the minimum number of employees to be assigned to each piece of firefighting apparatus." Disagreements within the safety committee as to the safety aspects of any particular assignment could go to grievance arbitration. At issue was a broad general safety clause which, inter alia, dealt with the impact upon safety of rig manning in particular situations. Although we found that the demand was a mandatory subject of negotiation, it must be acknowledged that the general safety guidelines under which the safety committee would operate were not clearly drawn. We determined that, in the context of our decisions in White Plains PBA and Newburgh, the parties in negotiations or an arbitrator appointed pursuant to §209.4 of the Taylor Law could prescribe more precise standards. It was not the intent of our New Rochelle decision to authorize the safety committee to set general minimum manning requirements for a rig under the guise of a purported safety claim. Rather, that decision was
concerned with the authority of a safety committee to consider questions of safety in specific situations. Here, we have a demand that is narrowly directed toward the extent of rig manning itself even though it purportedly concerns itself with "the ability of such [fire] company to safely carry out its duties and responsibilities." A reading of this demand in the context of Local 2304's answer and brief reinforces the conclusion that its predominant thrust is to provide job security by requiring minimum manning.

ACCORDINGLY, we determine that Local 2304's submission of the two demands to arbitration is a violation of its duty to negotiate in good faith, and

WE ORDER Local 2304 to withdraw such demands from interest arbitration.

DATED: New York, New York
December 8, 1977

Joseph R. Crowley
Ida Klaus
The three charges herein all grow out of the same circumstances. On December 8, 1976, twenty-three days before the expiration, on December 31, 1976, of separate agreements between the County of Monroe (County) and Local 381, International Union of Electrical, Radio and Machine Workers, Monroe County Federation of Social Workers, AFL-CIO (Local 381); Local 71-71A, International Union of Operating Engineers, AFL-CIO (Local 71); and the Monroe Chapter of the Civil Service Employees Association, Inc. (CSEA), the County legislature...
adopted a resolution providing "that [effective January 1, 1977] all employees of the County of Monroe at a salary above $20,000 per annum shall receive a 10% reduction from their current salary rate and employees earning between $12,000 and $19,999 per annum shall receive a 5% reduction from their current salary rate." Local 381, Local 71 and CSEA each charged that this resolution constituted an interference with the right of public employees to organize under the Taylor Law and a refusal to negotiate in good faith, violations of paragraphs (a) and (d) of §209-a.1, respectively, of the Taylor Law. In each case, the hearing officer dismissed the charge insofar as it alleged improper interference with employee organizational rights and found merit in the allegation that the County refused to negotiate in good faith. Local 381 also charged the County with unilaterally substituting, after January 1, 1977, an ad hoc grievance procedure for that contained in the expired agreement. The hearing officer determined that the County did change grievance procedures while still under a duty to negotiate and that this, too, constituted a refusal to negotiate in good faith. The County has filed exceptions in all three cases to the determination that it violated §209-a.1(d) of the Taylor Law and Local 71 has filed exceptions which argue that the remedy prescribed by the hearing officer was inadequate.

Facts

With ten months to go on the County's agreements with the three employee organizations, on February 24, 1976, its Manager of Labor Relations wrote to each of them that because "a severe financial deficit was being projected for the year 1976", he wished to meet with them "to explore the possibility of alternatives to employee layoffs." Such meetings were held in March 1976, during the course of which he proposed ten-day furloughs without pay for all employees during the balance of the year. This proposal was rejected by the three employee organizations. On June 30, 1976, the County legislature adopted a resolution directing the County Manager to implement the furloughs.
This was never done because the CSEA challenged the furloughs in court, and it obtained a restraining order against such action that was not vacated until February 1977.

On June 12, 1976, the County's Manager of Labor Relations proposed to the three employee organizations that negotiations for agreements to succeed those due to expire at the end of the year commence in July. All three declined to begin negotiations at that time. Negotiations with Local 381 commenced on September 9, 1976. Negotiations with CSEA began in early October 1976. Local 71 did not begin negotiations until December 17, 1976, which was after the adoption of the legislative resolution complained about.

The salary cuts required by the resolution of the County legislature were implemented on January 1, 1977. The County's Manager of Labor Relations advised Local 381 that after January 1, 1977, grievances would be processed on an ad hoc basis and not in accordance with past procedures.

Local 381 filed its charge on January 3, 1977; the charge of Local 71 was filed four days later. CSEA did not file its charge until April 14, 1977.

Discussion

The County's exceptions contest the hearing officer's conclusion that its action constituted a refusal to negotiate in good faith. First, it argues that it was privileged to cut salaries because the nature of the past relationships between it and the employee organizations did not provide any basis for an expectation that existing terms and conditions of employment would automatically continue after the expiration of any of the contracts, absent an

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1 The record does not indicate that the County had made any proposals at all to alter the preexisting grievance procedure, nor had it proposed a salary cut. It does not attempt to justify its action on the theory that it had been entitled to impose its last position.
agreement to extend them, and that no such agreement had been made. Second, it argues that the employee organizations are estopped from claiming a violation of §209-a.1(d) because they improperly refused to commence negotiations with the County in July 1976 even though they were aware that the County's fiscal problems necessitated an early resolution of negotiations disputes. With respect to the hearing officer's determination that the alteration of the grievance procedure was improper, it argues that it was sufficient under the Act for it to continue to meet with the employee organizations to resolve grievances even on an ad hoc basis, and that it did so. Finally, it argues that the conduct that could, in any event, be complained about occurred on December 8, 1976, when the legislative resolution was adopted, and not on January 1, 1977, when it took effect. Thus, the charge of CSEA was filed more than four months after the occurrence of the alleged violation and is, therefore, time barred by §204.1(a)(1) of our Rules.

In support of the first of its exceptions, the County alleges that, in the past, "there has never been an actual hiatus between agreements, since the parties mutually extended expired agreements in order to continue wages and increments pending the execution of a successor agreement." The County argues that there was, thus, no past practice of maintaining salary levels after the expiration of an agreement absent such an extension; therefore, it was free to cut salaries, as it did. This misapprehends prior decisions of the Board which looked to the parties' past practices only to ascertain whether a disputed matter had been a term and condition of employment. Here, there is no such past practice.

2 Those decisions involved the payment of increments, a benefit the Court of Appeals has determined that an employer need not continue to provide automatically after the expiration of an agreement (Board of Cooperative Educational Services of Rockland County v. New York State PERB, BOCES Staff Council and the New York State United Teachers, Inc., 41 N.Y. 2d 753 [1977]). Even before that decision, it was often difficult to determine on the facts of a particular case whether there was a reasonable expectation of the continuation of increments as a term and condition of employment, and that is why we look to the parties' past practices (e.g., County of Suffolk, 9 PERB ¶3080 [1976]).
question but that salary levels and the grievance procedure had been terms and conditions of employment. The hearing officer stated, "The obligation to negotiate in good faith requires the parties to collective negotiations to refrain from making unilateral changes in established terms and conditions of employment during negotiations for a new agreement." We affirm this conclusion of law. We do not regard the failure of the parties to execute an extension agreement as material to the duty to negotiate as to the subjects here involved. As the parties were still in the midst of negotiations, the County had not yet fulfilled its duty to negotiate on December 8, 1976, when the resolution was adopted. The timing of its action placed undue pressures upon the negotiators for the employee organizations.

It is argued by the County that it did not have to await the exhaustion of statutory conciliation procedures before acting unilaterally because those procedures were unduly delayed to its detriment by the employee organizations' refusal to commence negotiations in July. Although it may be that the County's financial situation justified it in urging the commencement of negotiations at an early time and that any failure of the employee organizations to agree within a reasonable period of time to do so might have been the basis of an improper practice charge by the County, it is not a justification for the County's unilateral action in the case of Local 381 and of CSEA, both of which commenced negotiations well in advance of the expiration of the existing agreements. However, on the facts in this case, we cannot find merit in Local 71's charge that the County refused to negotiate with it in good faith on December 8, 1976. On that date, which was unreasonably long after it should have commenced negotiations and only three weeks before the expiration of the existing agreement, Local 71 was still refusing even to commence negotiations with the County, thereby foreclosing any reasonable
opportunity by the County to resolve its fiscal difficulties through joint dealings with Local 71.

Inasmuch as we dismiss Local 71's charge, we do not reach its exceptions which are directed to the remedy proposed by the hearing officer.

We also determine that the charge of CSEA was untimely. CSEA sees the law correctly when it states in its brief that the time in which to file an improper practice charge runs from the implementation of an improper act of policy and not from its announcement. However, it is less persuasive when it argues that the legislative resolution adopted on December 8, 1976 merely announced a new wage policy which was not implemented until January 1, 1977. This analysis, which would make the charge timely, is wrong. The legislative resolution was a definitive act and not the mere announcement of an intention to act. On December 8, the salary cut went into effect as an accomplished fact to be reflected in the ministerial act of the payment of reduced salaries after January 1, 1977. The resolution of December 8, 1976 compelled the salary cut. It is that resolution—and not the actual issuance of reduced payroll checks which followed automatically—that constitutes the violation. Therefore, the charge was not timely.

ACCORDINGLY, WE ORDER that the charges herein of Local 71-71A, I.U.O.E, AFL-CIO, and of the Monroe Chapter of C.S.E.A., Inc. be dismissed, and WE FURTHER ORDER Monroe County not to institute unilateral changes in the terms and conditions of employees represented by Local 381, I.U.E., Monroe County Federation of Social Workers,
No additional relief need be ordered in this case because the parties, in the course of agreeing upon a contract, resolved the issues herein to their mutual satisfaction.
In the Matter of

BOARD OF EDUCATION OF THE CITY OF YONKERS,

Employer,

-and-

SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO

Petitioner,

-and-

YONKERS NON-TEACHING UNIT, CIVIL SERVICE
EMPLOYEES ASSOCIATION, INC.,

Intervenor.

This matter comes to us on the exceptions of the Yonkers Non-Teaching Unit of the Civil Service Employees Association, Inc., the intervenor herein, from a decision of the Director of Public Employment Practices and Representation (Director) which, inter alia, denied the intervenor's motion to dismiss the petition of the Service Employees International Union, AFL-CIO (petitioner). The Director had permitted the petitioner to withdraw a prior petition on June 29, 1977, when it had been ascertained that its showing of interest was insufficient. On that same day, the petitioner filed a new petition which the Director found was supported by a sufficient showing of interest. The intervenor moved to dismiss the second petition in that it was barred by the first

1 The showing of interest had been submitted upon an assumption that the unit consisted of 700 employees. When a list of employees was submitted by the employer, it was ascertained that there were over 800 employees in the unit. Based upon the correct number of employees, the showing of interest was not sufficient.
because,

"No petition may be filed for a unit which includes job titles that were within a unit for which a petition was filed, processed to completion and no employee organization was certified, during the twelve-month period following disposition of that representation proceeding." (emphasis supplied) (Rules of Procedure, §201.3(g))

The Director denied the motion. He also refused a request of the intervenor that he reject the additional signatures submitted in support of the second petition because those signatures had been solicited in violation of an agreement between the Board of Education of the City of Yonkers, the employer herein, and the petitioner which established access rules during the representation contest.

The exceptions argue that the Director erred in three particulars:

1. His determination that the first petition was not supported by a sufficient showing of interest was a processing of the petition "to completion"; therefore he should have rejected the second petition because it was not timely.

2. He should not have notified the petitioner ex parte that the showing of interest in support of its first petition was insufficient and he should have given the intervenor prior notice that he would permit the petitioner to withdraw that petition.

3. He should have accepted the intervenor's evidence supporting its claim that the additional signatures on the second petition were solicited in violation of the access rules and should have disqualified those signatures on the basis of such evidence.

2 The agreement was in settlement of two improper practice charges filed by the petitioner against the employer. The intervenor was not a named party in either case. It made - but withdrew - a motion to intervene in one of them. It did not participate in the settlement discussions.
DISCUSSION

Having reviewed the record and considered the arguments of the parties, we affirm the Director's findings of fact and conclusions of law. The intervenor misapprehends the nature of and the reason for the requirement of a showing of interest. The requirement of a showing of interest is to permit this Board to screen out those cases in which there is no showing of a substantial support of the petitioner by the employees, so that public funds will not be needlessly expended in the investigation and processing of those cases. It is not designed to protect an incumbent employee organization and, in any event, is not a requirement of the Taylor Law. Thus, in one instance, we found a local law establishing a mini-PERB to be substantially equivalent to the Taylor Law even though it required a 10% showing of interest to support a petition rather than the 30% that we require (Matter of AFSCME Council 66, 4 PERB ¶3063 [1971]). In another instance we found that a mini-PERB could accept designation cards that were filed after the petition was submitted (Matter of Westchester CSEA, 7 PERB ¶3067 [1974]). Because the requirement of a showing of interest is essentially an internal administrative means of avoiding unnecessary work for this agency, we have stated in our Rules (at §201.4(c)) that, "The determination by the Director as to the timeliness of a showing of interest and of its numerical sufficiency is a ministerial act and will not be reviewed by the Board." This policy of deferring to the Director when he determines that a showing of interest is sufficient has been sustained by the courts (Matter of CSEA v. Helsby, 63 Misc. 2d 403 [Suffolk County, 1970], aff'd 35 App.Div. 2d 755 [2nd Dept., 1970]). In its opinion, the lower court cited Federal court decisions under the National Labor Relations Act (at p. 405) in support of the proposition that disputes regarding the sufficiency of a showing of interest can be resolved by the election "which better decides the substantive issues whether or not the [union] or another labor organization, if any, actually represents a majority of the employees.
involved in a representation case."

On this reasoning, we reject so much of the intervenor's exceptions as relate to the sufficiency of the showing of interest. We also reject the argument that the second petition was barred by §201.3(g) of our Rules because the prior petition had been processed to completion. It was not. The prior petition was withdrawn before completion of agency action upon it. Furthermore, we conclude that the Director did not err in permitting petitioner to withdraw its petition. We find no substantial prejudice to the intervenor because of this withdrawal. 3

Accordingly, the exceptions herein are dismissed and the decision of the Director is affirmed, and

WE ORDER that the employer shall submit to the Director, the petitioner and the intervenor, within seven days from the date of receipt of this decision, an alphabetized list of employees in the negotiating unit set forth in the decision of the Director who were employed on the payroll date immediately preceding the date of this decision.

DATED: New York, New York
December 8, 1977.

Joseph R. Crowley
Ida Klaus

3 To the same effect, under the National Labor Relations Act see General Dynamics Corp., 175 NLRB #155, 71 LRRM 1166 (1969).
On January 30, 1976, we determined that the Nyack Teachers Association violated §210.1 of the Taylor Law in that it engaged in a strike during October and November 1975 (see 9 PERB ¶3016). We ordered that "the dues deduction privileges of the Nyack Teachers Association be suspended indefinitely, commencing on the first practicable date, provided that the Nyack Teachers Association may apply to this Board at any time after August 15, 1977 for the restoration of such dues deduction privileges, such application to be on notice to all interested parties and supported by proof of good faith compliance with subdivision one of Section 210 of the Civil Service Law since the violation herein found, such proof to include, for example, the successful negotiation, without a violation of said subdivision, of a contract covering the employees in the unit affected by the violation, and accompanied by an affirmation that it no longer asserts the right to strike against any government as required by the provisions of Civil Service Law §201.3(g)."

On October 5, 1977 the Nyack Teachers Association applied for restoration of its dues checkoff privileges. The application was on notice to the employer and contained an affirmation that the Nyack Teachers Association "no longer asserts the right to strike against any government." The employer does not contest the restoration of dues checkoff privileges of the Nyack Teachers Association.

The Nyack Teachers Association has not yet demonstrated its good faith compliance with subdivision one of Section 210 of the Civil Service Law by the successful negotiation of an agreement. It is presently in negotiation for an agreement to succeed one that expired on June 30, 1977. The contract being
negotiated will be the first new contract between the parties since our decision imposing the dues check-off forfeiture. The Nyack Teachers Association has not threatened to strike during the course of these negotiations. Consequently, there is reason to believe at this time that it does not intend to strike or to threaten to strike before the completion of negotiations.

NOW, THEREFORE, We suspend the forfeiture of the dues deduction privileges of the Nyack Teachers Association as ordered on January 30, 1976, which suspension shall be subject, however, to revocation in the event of a strike or a strike threat. The Nyack Teachers Association may apply for full restoration of its dues deduction privileges upon the successful negotiation of a contract in the unit affected by the violation.

Dated: New York, New York
December 8, 1977

[Signatures]

Joseph R. Crowley
Ida Klaus
In the Matter of
WAVERLY CENTRAL SCHOOL DISTRICT,
Respondent,
-and-
WAVERLY TEACHERS ASSOCIATION,
Charging Party.

This matter comes to us on the exceptions of the Waverly Teachers Association (WTA) from so much of the decision of a hearing officer as dismisses its charge that the Waverly Central School District (District) violated §209-a.1(a), (c) and (d) of the Taylor Law by unilaterally establishing job descriptions for four positions and by refusing to execute the 1975-76 agreement because WTA had not withdrawn a grievance that was scheduled for arbitration. WTA also excepts to the hearing officer's dismissal of its charge that the District's refusal to pay annual increments or to continue other contractual benefits after the expiration of the 1975-76 agreement was a violation of the Taylor Law. Finally, the exceptions argue that the hearing officer erred in determining that the District violated only §209-a.1(d) when it refused to take part in factfinding on the basis of the 1975-76 agreement, and when it refused to process grievances during negotiations for a successor for the 1975-76 agreement. It argues that the record supports a finding that this conduct also violated §209-a.1(a) and (c).

The exception directed at the District's refusal to pay increments or to continue other contractual benefits after the expiration of the 1975-76 agreement must be dismissed as a matter of law. Since the filing of the exceptions, the New York State Court of Appeals has determined that the Taylor Law...
does not require a public employer to pay increments after the expiration of an agreement (BOCES, Rockland County v. NYS PERB, et al., 41 NY 2d 753 [1977]).

WTA also asserts that the predecessor agreement contained a continuation clause, which has the effect of continuing the schedule of increments, and that this violation of the agreement constitutes a unilateral change in terms and conditions of employment. This, too, fails to set forth a violation of the Taylor Law; in St. Lawrence County, 10 PERB ¶3058 (1977), we ruled that a question about what the terms of agreement mean must be resolved through the grievance procedures that the parties have set up to interpret collective agreements.

The disposition of the other exceptions depends upon the interpretation of the evidence in the record. We have, therefore, reviewed the existing record with particular diligence, and we determine that it supports the hearing officer's findings of fact. The District promulgated job descriptions for four positions on August 12, 1976. The four positions are: Majorette Supervisor, Director of Junior High Band Activities, Director of Vocal Music Activities and Director of Instrumental Music Activities. Five days later, the WTA made a demand to negotiate over the job descriptions, and the District refused. WTA argues that the job description alters the job content of the four positions and that the District is required to negotiate over its demand.

For the proposition that an employer must negotiate before it changes the job content of current employees, WTA relies upon Scarsdale PBA, 8 PERB ¶3075 (1975). In that case, we decided that an employer must negotiate over a demand made by the PBA that policemen not be required to repair patrol vehicles. We said (at p. 3033), "that job content of current employees is a mandatory

1 Unfortunately, the original record was lost in transit from Albany to the New York City Office of the Board. The parties have replaced the stenographic minutes of the hearing and those exhibits upon which they relied. They have both indicated their willingness to have the case decided upon the materials that are in the possession of the Board.
subject of negotiations so long as the negotiations demand would not narrow
the inherent nature of the employment involved." (emphasis supplied) That
language must be read in the context of the issue there presented and decided;
namely, that it is mandatory for an employer to negotiate as to a demand by a
labor organization that employees be relieved of an assignment which is not an
essential aspect of their basic employment function or of its related inci-
dental tasks. We did not find that the content of job descriptions character-
izing the essential duties and functions, and the related incidental tasks,
of particular employment categories or positions is a mandatory subject of
negotiations. We do not believe that it is. Here, the evidence shows that each
of the job descriptions established by the District covered the essential
duties and functions of the particular position, i.e., instruction. We note,
moreover, that three of the job descriptions did not change the essential
duties and functions of the jobs covered. The fourth was a newly created
position established pursuant to a stipulation in settlement of an improper
practice charge and the job description was promulgated simultaneously with
its creation.

In any event, the right of a public employer to modify its operation
by changing the assignments of its employees in ways that do not add duties
beyond the essential character, and its related incidental tasks, of those
jobs, whether it be instruction or police protection or other basic functions,
does not relieve it of an obligation to negotiate should the employee organiza-
tion make a demand relating to the impact of such a change upon terms and
conditions of employment. Moreover, that right is not properly exercised
if the employer's real reason for making what would have otherwise have been
a permissible change in job assignments is to undermine statutory rights of
employees. WTA argues that this was the case here. Three of the four posi-
tions had been the subject of grievances, and the fourth had been involved
in an improper practice charge. WTA contends that they were singled out for
job descriptions in order to discourage the filing of grievances and improper practice charges. However, the District's promulgation of the job descriptions for the four positions involved in grievances and in the improper practice charge may be explained as having been occasioned by a desire to clarify the confusion that precipitated those grievances and the improper practice charge. On the record, as a whole, we do not find that the District's intention was to deprive employees of their rights of organization or representation.

The record indicates that the Superintendent of Schools declined to execute the 1975-76 agreement before August 13, 1976 for three reasons. One was that he had not yet read the draft of the agreement submitted to him. Another was that the parties had also agreed, as part of the total settlement, that an improper practice charge would be withdrawn and that he was awaiting notification of its withdrawal. He received that notification on August 11. Two days later he signed the agreement, after correcting "clerical errors" in the document submitted to him. A third reason—which is the basis of the exceptions—is that on August 2, 1976, he was awaiting proof of withdrawal of a claim in arbitration which the parties, as part of the settlement, agreed would be withdrawn. In fact, when on August 13 he executed the agreement, the arbitration had not yet been withdrawn. This conduct of the Superintendent of Schools of the District was not an improper practice. It appears that the settlement of the entire dispute included agreement upon a contract and withdrawal of the improper practice charge and the grievance. If so, they were all related and conditioned upon one another. Even if they were not, the Superintendent's refusal to execute an agreement before he had a reasonable opportunity to read it was not improper. We do not agree that "but for" the outstanding grievance, he would have executed the agreement before August 13, 1976.
WTA asks us to infer, from conduct that it alleged to be improper but we have here found not to be improper, that the District intended to interfere with the organizational and representational rights of employees when it refused to take part in factfinding on the basis of the 1975-76 agreement or to process grievances during negotiations for a successor to that agreement, the two particulars in which the hearing officer found that the District violated §209-a.1(d) of the Act and to which the District filed no exceptions. The conduct itself, not being improper, carries no implication that the District was improperly motivated in those actions that violated §209-a.1(d) and there is no other evidence to support the allegation of improper motivation.

NOW, THEREFORE, WE ORDER that the exceptions herein be, and they hereby are, dismissed.

DATED: New York, New York
December 8, 1977

Joseph R. Crowley
Ida Klaus
In the Matter of:

STATE OF NEW YORK (DEPARTMENT OF MENTAL HYGIENE, WILLOWBROOK DEVELOPMENTAL CENTER,

Respondent,

-and-

THE CIVIL SERVICE EMPLOYEES ASSOCIATION,
INC. (RONN A. BEN AAMAN),

Charging Party.

Denial of Motion to Disqualify

The charging party herein has moved this Board for the disqualification of the hearing officer from further participation in this case. The accompanying Affidavit does not state grounds adequate to support the request made.

ACCORDINGLY, the request is denied.

DATED: New York, New York
December 8, 1977

Joseph R. Crowley

Ida Klaus

5005
STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of
VILLAGE OF ARDSLEY,
Employer,

- and -

LOCAL 456, IBT,
Petitioner.

CASE NO. C-1524

BOARD DECISION

On July 29, 1977, Local 456, IBT (petitioner) filed, in accordance with the Rules of Procedure of the Public Employment Relations Board, a timely petition for certification as the exclusive negotiating representative of certain employees employed by the Village of Ardsley.

Thereafter, the parties entered into an agreement whereby a negotiating unit was stipulated to as follows:

Included: Skilled laborers, laborers, mechanical equipment operators, mechanics and custodians.

Excluded: CETA employees and all other employees.

Pursuant to the agreement, a secret ballot election was held on November 16, 1977. The results of this election indicate that a majority of eligible voters in the stipulated unit who cast valid ballots do not
desire to be represented for purposes of collective negotiations by

[1/]

the petitioner.

Joseph R. Crowley

Ida Klaus

Dated: New York, New York
December 8, 1977

[1/ There were 5 ballots cast in favor of representation by the petitioner and 5 ballots against representation by the petitioner.]
In the Matter of
TOWN OF ONTARIO,
Employer,

- and -

CIVIL SERVICE EMPLOYEES ASSOCIATION, INC.,
Petitioner.

CASE NO. C-1522

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the
above matter by the Public Employment Relations Board in accor­
dance with the Public Employees' Fair Employment Act and the
Rules of Procedure of the Board, and it appearing that a
negotiating representative has been selected;

Pursuant to the authority vested in the Board by the
Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that the Civil Service Employees
Association, Inc.

has been designated and selected by a majority of the employees
of the above-named public employer, in the unit described below,
as their exclusive representative for the purpose of collective
negotiations and the settlement of grievances.

Unit: Included: Road Foreman, Motor Equipment Operators, Laborers,
        Water Plant Operators, Clerical and Secretaries

       Excluded: Assessor, Recreation Director, Confidential Clerk,
                  Deputy Town Clerk and Patrolman

Further, IT IS ORDERED that the above-named public employer
shall negotiate collectively with Civil Service Employees Association, Inc.

and enter into a written agreement with such employee organization
with regard to terms and conditions of employment, and shall
negotiate collectively with such employee organization in the
determination of, and administration of, grievances.

Signed on the 8th day of December 1977

New York, New York

[Signatures]

Joseph Crowley

Ida Klaus
In the Matter of

ROTTERDAM DRAPER UNION FREE SCHOOL DISTRICT,

Employer,

and

GENERAL SERVICE EMPLOYEES' UNION, S.E.I.U.,
AFL-CIO, LOCAL 200,

Petitioner.

CASE NO. C-1525

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected;

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that General Service Employees' Union S.E.I.U., AFL-CIO, Local 200 has been designated and selected by a majority of the employees of the above-named public employer, in the unit described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: Full-time clerk, typist, senior custodian, custodian, cleaner and school matron, full and regular part-time food service helper and cook.

Excluded: All other employees.

Further, IT IS ORDERED that the above-named public employer shall negotiate collectively with General Service Employees' Union S.E.I.U., AFL-CIO, Local 200 and enter into a written agreement with such employee organization with regard to terms and conditions of employment, and shall negotiate collectively with such employee organization in the determination of, and administration of, grievances.

Signed on the 8th day of December, 1977.

New York, New York

Joseph R. Crowley
Ida Klaus
STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of:

TOWN OF TRENTON,
Employer,
and
TEAMSTERS LOCAL UNION 182, IBT,
Petitioner.

CASE NO. C-1551

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected:

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that Teamsters Local 182, IBT has been designated and selected by a majority of the employees of the above-named public employer, in the unit described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: All employees of Highway Department.

Excluded: Highway superintendent, clerical, seasonal and temporary employees.

Further, IT IS ORDERED that the above-named public employer shall negotiate collectively with Teamster Local 182, IBT and enter into a written agreement with such employee organization with regard to terms and conditions of employment, and shall negotiate collectively with such employee organization in the determination of, and administration of, grievances.

Signed on the 8th day of December 1977.

New York, New York

Joseph R. Crowley

Ida Klaus
In the Matter of

ARLINGTON CENTRAL SCHOOL DISTRICT,

Employer,

- and -

ARLINGTON ADMINISTRATORS ASSOCIATION,

Petitioner,

- and -

ARLINGTON TEACHERS ASSOCIATION,

Intervenor.

CASE NO. C-1442

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected;

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that Arlington Administrators Association has been designated and selected by a majority of the employees of the above-named public employer, in the unit described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: Principal, Assistant Principal, Elementary Teacher Assistant to the Principal.

Excluded: All other employees.

Further, IT IS ORDERED that the above-named public employer shall negotiate collectively with Arlington Administrators Association and enter into a written agreement with such employee organization with regard to terms and conditions of employment, and shall negotiate collectively with such employee organization in the determination of, and administration of, grievances.

Signed on the 8th day of December, 1977.

New York, New York

[Signature]

[Name]

[Signature]

[Name]
In the Matter of
CITY OF KINGSTON,

Employer,

and

ULSTER COUNTY LOCAL, CIVIL SERVICE
EMPLOYEES ASSOCIATION, INC.,

Petitioner.

CASE NO. C-1535

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected:

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that Ulster County Local, Civil Service Employees Association, Inc.

has been designated and selected by a majority of the employees of the above-named public employer, in the unit described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit I: Included: All employees of the City of Kingston Laboratory who regularly work at least 18 hours weekly.

Excluded: Director; Assistant Director, Associate Director, Chief Technician, Laboratory Manager, Biochemist, Administrative Secretary, employees included within the Supervisory Unit, and all other employees.

Unit II: Included: The following employees of the City of Kingston Laboratory: Junior Chemist, Hematology Supervisor, Immunohematologist, Microbiology Supervisor, Cytology Supervisor, Clinical Chemistry Supervisor, Office Manager, Medical Accounts Supervisor, Head Janitor, Laboratory Aid Coordinator.

Excluded: All other employees.

Further, IT IS ORDERED that the above-named public employer shall negotiate collectively with Ulster County Local, Civil Service Employees Association, Inc.

and enter into a written agreement with such employee organization with regard to terms and conditions of employment, and shall negotiate collectively with such employee organization in the determination of, and administration of, grievances.

Signed on the 8th day of December, 1977.

New York, New York

Joseph R. Crowley

Ida Klaus