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State of New York Public Employment Relations
Board Decisions from June 4, 1981

New York State Public Employment Relations Board

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State of New York Public Employment Relations Board Decisions from June 4, 1981

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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

TOWN OF PERINTON,

Employer,

-and-

ICE, OIL, CONSTRUCTION & SUPPLY DRIVERS & ALLIED WORKERS, LOCAL UNION NO. 398,

Petitioner.

BOARD DECISION AND ORDER

CASE NO. C-2218

On February 17, 1981, the Ice, Oil, Construction & Supply Drivers & Allied Workers, Local Union No. 398 (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 Town of Perinton (employer). The parties executed a consent agreement which was approved by the Director of Public Employment Practices and Representation on April 20, 1981. The negotiating unit stipulated to therein was as follows:

Included: All full-time employees in the Highway and Sewer Departments of the Town of Perinton's Department of Public Works in the following titles: Motor equipment operators, laborers, laborers (utility inspectors), mechanics, and working foremen.

Excluded: Commissioner of Public Works, Highway Superintendent, Deputy Highway Superintendent, Sewer Department Superintendent, guards, office clerical employees and all other employees of the employer.
Pursuant to the consent agreement, an election was held on May 14, 1981. The results of the election indicate that the majority of eligible voters in the stipulated unit who cast valid ballots do not desire to be represented for purposes of collective negotiations by the petitioner.1

NOW, THEREFORE, IT IS ORDERED that the petition be, and it hereby is, dismissed.

Dated, New York, New York
June 4, 1981

Ida Klaus, Member

David C. Randles, Member

1 There were 23 ballots cast in favor of and 27 ballots against representation by the petitioner.
On May 19, 1981, the City of Albany filed a notice of appeal from the ruling of the hearing officer denying its motion for particularization of the improper practice charge in the proceeding now pending before him. The City asks, in effect, that the Board exercise its discretion under its Rules and authorize the appeal. It asserts, in support of its request, that it is unable to frame an answer or to prepare a defense to the charge in its present form, and that the charging party will not be prejudiced.

The charging party has filed an affidavit in opposition to the request on the ground that he has provided all the information needed by the City of Albany to frame an answer and to prepare a defense. He also objects to consideration of the appeal at this time on the ground that the interlocutory ruling of the hearing officer does not prejudice the City of Albany.

Having reviewed the papers submitted by both parties, we find no reason to depart from normal practice by authorizing in this instance an immediate appeal from the interlocutory ruling of the hearing officer. Accordingly,
WE ORDER that the motion herein be, and it hereby is, dismissed.

Dated, New York, New York
June 4, 1981

Ida Klaus, Member

David C. Randles, Member
PRESENT: HAROLD R. NEWMAN, Chairman
IDA KLAUS, Member
DAVID C. RANDLES, Member

Staff: Jerome Lefkowitz, Deputy Chairman
Ann Pociluk, Secretary to the Board

1. Board Decisions and Orders


2. Board Discussions

A. C-2136 - Board of Education of the City of Buffalo, Buffalo Board of Educ. Professional Clerical and Technical Employees' Assn. and Local 264, AFSCME - The Board discussed the proposed draft decision in this proceeding and requested some revisions be made. The Deputy Chairman will prepare a revised draft for the next meeting of the Board.

B. D-0189 - Local 252, Transport Workers Union of America, AFL-CIO - The Board discussed the matters involved in this proceeding and requested some research be done regarding some of the matters discussed. The Deputy Chairman will provide a research memorandum and further discussions will be held at the next meeting of the Board.
2. Board Discussions (continued)

C. C-2271/E-0752 - Long Island Rail Road Company - Board Members Klaus and Randles noted that the Long Island Railroad unions have moved the United States Supreme Court for certiorari to review the decision of the Second Circuit holding that the Long Island Railroad is under the jurisdiction of the Taylor Law for at least some purposes. They also noted that the decision of the Second Circuit is not clear as to the extent of Taylor Law jurisdiction and that the National Mediation Board has interpreted that decision as limiting Taylor Law jurisdiction to matters involving the resolution of negotiation disputes. Accordingly, they instructed the Director of Representation and Public Employment Practices not to process the two matters herein until the Supreme Court rules on the motion for certiorari.

Board Chairman Newman dissented from this position. He indicated that the Taylor Law is a comprehensive statute designed to foster harmonious labor relations, that this was recognized by the Second Circuit in its decision, and that consistent with that decision, this Board has jurisdiction over the petition and the application herein.

The next meeting of the Board will be held on June 18-19, 1981 at its Albany office.

Respectfully submitted,

Ann Pociluk
Secretary to the Board
STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of
AMALGAMATED TRANSIT UNION, DIVISION 580,
Respondent,

-and-

PERRY TARQUINIO,
Charging Party.

BLITMAN AND KING, for Respondent
PERRY TARQUINIO, Pro Se

BOARD DECISION
AND ORDER

CASE NO. U-4809

This matter comes to us on the exceptions of the Amalgamated Transit Union (ATU), Division 580, to the decision of a hearing officer that it violated its duty of fair representation toward Perry Tarquinio in that it refused to process a grievance against Tarquinio's employer, the Central New York Regional Transportation Authority (Centro). The grievance alleged that Tarquinio was not accorded proper seniority regarding his choice of vacation time.

FACTS

Tarquinio was originally hired by Centro in September 1963. He was released in May 1966 and then re-hired a year later through the efforts of Kulas, who was then ATU's business agent. The terms of his re-hiring did not specify its effect on seniority. In practice, however, Tarquinio's seniority was dated from 1963 for choice of vacation time, but from 1967 for bids for
bus runs. This was noted by us in an earlier decision (12 PERB 13013 [1979]).

Tarquinio continued to bid for vacation on the basis of 1963 seniority until 1979. In 1979, Centro let ATU manage the vacation sign-up procedure. Both Tarquinio and another employee signed up for the same vacation period. The other employee was an ATU member. His seniority dated to a later time than Tarquinio's claimed date, but ATU, acting on behalf of Centro, awarded the vacation period to the other employee. Tarquinio then filed a grievance with Centro, but ATU persuaded Centro to deny the grievance at the first step and it refused to process the grievance further. Indeed, ATU rejected Centro's offer to create an extra vacation slot which would have permitted both Tarquinio and the other employee to take simultaneous vacations.

1] The earlier decision was on a charge by Tarquinio that ATU did not represent him fairly when he sought seniority from 1963 for bus run bids. At the time of that charge, Tarquinio had quit ATU. This Board dismissed the earlier charge on the ground that it was not timely; ATU had decided not to support his claim for seniority in April 1975 and he brought his charge in March 1978. The decision states:

"Perry Tarquinio was first employed as a bus driver in 1963. His employment was terminated in 1966, but he was rehired in 1967. The conditions of his reemployment were that he be on probation for an unspecified time and that his seniority rights be determined at a later date. Shortly thereafter, his seniority for vacation purposes was restored to the date of his original employment, but his seniority for bidding on bus runs was determined to run from his reemployment in 1967."
Tarquinio complained that ATU's position on his grievance discriminated against him because he was not an ATU member. He also complained that the union behaved in an irresponsible manner in that it did not investigate the basis of his grievance. In support of this position, he introduced evidence showing that Kulas, ATU's former business agent, Fiermonte, the former recording secretary of ATU, and Calabrese, the Assistant Manager of Centro, all corroborated his understanding that his seniority for vacation purposes dated from 1963.

ATU introduced no evidence. Instead, it relied upon a motion to dismiss which it supported by the argument that the Board's decision in the earlier case disposed of the matter. This argument did not persuade the hearing officer, and she decided the case in favor of Tarquinio.

ATU now asks this Board to reopen the hearing because it had not been represented by an attorney. It also complains that the hearing officer determined Tarquinio's seniority for vacation purposes, a matter which involved the collective bargaining contract dispute and which, therefore, should have been resolved by grievance arbitration. The exceptions do not address the merits of the hearing officer's decision that ATU discriminated against Tarquinio.

**DISCUSSION**

We affirm the findings of fact and conclusions of law of the hearing officer.
The exceptions do not provide any basis for a reopening of the hearing. They do not allege that ATU was denied an opportunity to be represented by an attorney, but that it chose not to be so represented. Whether or not it could have presented a more effective defense of its conduct had it chosen to be represented by an attorney at the hearing is irrelevant to the merits of its request for a reopening of the hearing. The case should be decided on the actual record made by the parties.

ATU's second argument is a challenge to the hearing officer's proposed remedy that Tarquinio's seniority for vacation be dated from 1963. The hearing officer did not interpret ATU's contract with Centro in ascertaining the date of Tarquinio's seniority for vacation. That contract is silent on the matter. The hearing officer determined that Tarquinio had been bidding for vacation time on the basis of 1963 seniority ever since May 1967 and that this was a sufficient basis for his being permitted to continue to do so. In any event, even if there is some uncertainty as to whether Tarquinio's grievance would have been found meritorious had it gone to grievance arbitration, that uncertainty is a direct result of the unlawful discriminatory action of ATU in refusing to advance the grievance. If in the determination of an appropriate remedy there must be a resolution of an uncertainty concerning the merits of Tarquinio's grievance, it is proper to resolve the question in favor of the injured employee and not the wrongdoer. Laborers International Union, Local 324, 234 NLRB 367 (1978).

ATU was the wrongdoer in refusing to process Tarquinio's grievance. Its wrongful conduct is underscored by the fact that the decision denying Tarquinio his preferred vacation time was made by ATU. Indeed,
ATU persuaded Centro not to create an extra vacation slot which would have permitted Tarquinio to take his vacation when he wanted it. A union must be particularly sensitive about its conduct when, in the exercise of a responsibility it performs on behalf of the employer, it denies a claimed benefit to an employee; it must be particularly conscientious in its representation of a grievant who complains about its own action.

NOW, THEREFORE, WE ORDER the Amalgamated Transit Union, Division 580, to:

1. Promptly communicate to Centro that it no longer objects to Tarquinio's vacation bidding seniority date of September 10, 1963.

2. Adjust Tarquinio's vacation periods for 1981 to those to which he would otherwise be entitled based on a seniority date of September 10, 1963.

3. Cease and desist from interfering with, restraining or coercing public employees in the exercise of rights granted in Section 202 of the Act, or attempting to cause a public employer to do so.

4. Post the attached notice.

DATED: New York, New York
June 5, 1981

Harold R. Newman, Chairman

Ida Klaus, Member

David C. Randles, Member
APPENDIX

NOTICE TO ALL EMPLOYEES

PURSUANT TO
THE DECISION AND ORDER OF THE
NEW YORK STATE
PUBLIC EMPLOYMENT RELATIONS BOARD

and in order to effectuate the policies of the
NEW YORK STATE
PUBLIC EMPLOYEES' FAIR EMPLOYMENT ACT

we hereby notify all employees that:

1. ATU does not object to Perry Tarquinio's seniority date for vacation bidding purposes as being September 10, 1963.

2. Perry Tarquinio's vacation periods for 1981 will be adjusted to those to which he would be entitled based on a seniority date of September 10, 1963.

3. ATU will not interfere with, restrain or coerce public employees in the exercise of rights protected by §202 of the Act and will not attempt to cause a public employer to do so.

Employee Organization

Dated

By

(Representative) (Title)

This Notice must remain posted for 30 consecutive days from the date of posting, and must not be altered, delayed, or covered by any other material.
This matter comes to us on the exceptions of Gene Carr to a hearing officer's decision dismissing his charge that the Elmira Teachers Association (Association) violated its duty of fair representation toward him by providing him with merely perfunctory representation when it presented his grievance to an arbitrator. The grievance was that the school district had wrongly denied Carr an incremental salary step credit for his prior military service.

It is acknowledged that Carr had served in the Armed Forces of the United States before taking employment with the Elmira City School District (District). At one time, employees of the District with prior military service were given an incremental salary
step. This practice may, or may not, have been discontinued by the time Carr became an employee of the District, but, in any event, the incremental salary step was denied to him. The denial was communicated to Carr in a letter from the Assistant Superintendent of the District, dated March 16, 1978, which informed him that the incremental salary step credit was not being granted to new employees. The letter also stated that the matter had been discussed with Watnik, who was the grievance chairman of the Association at that time.

Carr discussed the matter with Watnik, but he did not initiate a grievance at that time. Subsequently, in November 1978 according to Carr, and in April 1979 according to McMordie (Watnik's successor as grievance chairman), Carr complained about the denial of the increment. In either case, the complaint was made more than 45 days after the March 16, 1978 letter.

The collective bargaining agreement between the District and the Association set a 45-day limit for the filing of grievances.

Notwithstanding the 45-day limitation, a grievance was filed by the Association on May 15, 1979 on Carr's behalf, and it was eventually brought to arbitration. The arbitrator denied the grievance on the ground, urged by the District, that it had not been timely filed. In his award, the arbitrator also noted the testimony of Watnik, a District witness, supporting the District's statement that the Association had previously agreed to the elimination of incremental step credit for newly hired employees who had prior military service.
Carr did not, in his charge, assert that his grievance was timely filed or that the Association was responsible for the late filing. His charge that the Association violated its duty of fair representation is based on his allegation that the Association had not been sufficiently diligent in its preparation of the grievance and was, therefore, unable to refute Watnik's incorrect testimony that it had agreed to the elimination of the military service increment. Without reaching the question whether Carr's allegation was factually correct, the hearing officer dismissed the charge on the ground that the Association's diligence was irrelevant because Carr's grievance would, in any event, have been lost by reason of not being timely filed.

In support of his exceptions, Carr contends that the timeliness or lack of timeliness of the initiation of the grievance is irrelevant to the Association's obligation to prepare its case diligently, and that it did not meet this obligation. In effect, he is arguing that an employee organization violates its duty of fair representation if it processes even a fundamentally defective grievance in a perfunctory fashion.

**DISCUSSION**

The exceptions herein must be dismissed for lack of merit. We find that the conduct of the Association was not improper. We cannot ignore the basic fact that Carr's grievance was fatally defective because it was not timely filed, and that this defect is
attributable to him and not to the Association. While the Association took Carr's grievance to arbitration in the hope of possibly prevailing on the merits as to the incremental salary step for his prior military service, it must have known that the District could defeat the grievance by pleading the fatal defect. It should not be penalized for taking the chance in the grievant's behalf that the defect barring consideration of the grievance might somehow be overlooked.

In all fairness, an employee organization should not be held to the same standard of care and effort in preparing for the presentation of a grievance that, through no fault on its part, is fundamentally defective when brought to it as it would otherwise be. Clearly a grievant suffers no prejudice if his employee organization processes a fundamentally defective grievance in a perfunctory manner, as the likelihood of success is not affected by the diligence of its preparation.¹ Thus, we do not find that the Association was grossly negligent or irresponsible when it prepared for the presentation of the case to the arbitrator. Accordingly, by the standard enunciated in Brighton Transportation Association, 10 PERB ¶3090 (1977), the Association cannot be found to have violated its duty of fair representation.

¹/ See Siskey v. Teamsters Local 261, 419 F.Supp. 48, (Western District, Pa. 1976); 93 LRRM 2200
The determination that the Association's conduct was not improper is consistent with the holding of the U.S. Supreme Court in *Vaca v. Sipes*, 386 US 171, 191 (1967), 64 LRRM 2369, 2377; and *Hines v. Anchor Motor Freight, Inc.*, 424 US 554 (1976), 91 LRRM 2481, that a union should not arbitrarily ignore a meritorious grievance or process it in a perfunctory fashion. The Court was concerned with meritorious grievances having a reasonable likelihood of success if conscientiously pursued and presented.

NOW, THEREFORE, WE ORDER that the charge herein be, and it hereby is, dismissed.

Dated, New York, New York
June 5, 1981

Harold R. Newman, Chairman

Ida Klaus, Member

David C. Randles, Member
STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of
ROCHESTER CITY SCHOOL DISTRICT,
Respondent,
-and-
ROCHESTER TEACHERS ASSOCIATION,
Charging Party.

ADAM D. KAUFMAN, ESQ., for Respondent
RUBEN CIRILLO, for Charging Party

This matter comes to us on the exceptions of the Rochester City School District (District) to a hearing officer's decision that it violated its duty to negotiate in good faith with the Rochester Teachers Association (Association) as to the terms and conditions of employment of certain per diem substitutes.

In settlement of representation case C-1679, the District and the Association reached an agreement on October 12, 1978, pursuant to which the Association withdrew its petition and the District recognized the Association as the representative of a negotiating unit of "all those per diem substitute teachers who, on or before the end of the first payroll period of May, have worked 36 full days during the current school year". The agreement further provided that they would commence negotiations for a collective bargaining contract that would take effect on September 1, 1979 "with the understanding that such contract will not be retroactive". Thereafter, the Association initiated a request for negotiations and received no response from the
District. On these facts, the hearing officer determined that the District violated its duty to negotiate in good faith with the Association.

In its exceptions, the District argues that, notwithstanding its recognition of the Association, it is not required to negotiate the terms and conditions of employment of per diem substitutes because they are not employees within the meaning of the Taylor Law. It asserts that the pool of per diem substitute teachers was increased, thereby diminishing the number of hours worked by each per diem substitute. The effect of this is that many per diem substitutes who had worked 36 days during the 1977-78 school year, now work less. These per diem substitutes, according to the District, are casual workers and it is ultra vires the authority of PERB to compel it to negotiate with them. Based upon this argument, the District complains that it would be unreasonably inconvenienced if it were required to negotiate an agreement covering per diem substitutes and then to wait until seven months before the expiration of that agreement before seeking to decertify the Association.

DISCUSSION

We affirm the determination of the hearing officer that the District violated its duty to negotiate in good faith with the Association and his order directing it to do so. Unlike employees of the organized state militia and assistant district attorneys, among others, per diem substitutes are not explicitly excluded.
from Taylor Law coverage. Per diem substitutes have been excluded by the Board from coverage on a case-by-case basis on the ground that they were shown to be casual workers and therefore did not have a sufficiently significant employment relationship to warrant their inclusion in a negotiating unit and the grant to them of statutory representation status. Others, however, have been found to be employed with sufficient regularity to be granted such status. Thus, resolution of per diem substitute representation status depends upon the particular nature of their employment relationship.1/

Rather than litigating the issue of the right of its per diem substitutes to representation status, the District recognized the Association as the representative of an identifiable group of such teachers. There has been no determination that these per diem substitutes are now ineligible for representation status and there is no reason for believing them to be ineligible. As we have noted, nothing in the language of the Taylor Law precludes the granting of representation status to per diem substitutes, as such. We therefore find that as of this time the per diem substitutes included in the negotiating unit covered by the District's recognition are employees within the meaning of the Taylor Law.

1/ In Buffalo Board of Education, 13 PERB ¶3073 (1980), we remanded the case to the Director of Public Employment Practices and Representation (Director) to ascertain whether an identifiable group of per diem substitutes had a sufficient employment relationship with the employer to be certified. In Board of Education of the City of New York, 10 PERB ¶4043 (1977), the Director included "other-than-occasional" per diem substitutes in pedagogical units. (The matter did not come before this Board because no exceptions were filed.)
In resolving the issue before us, we have looked to the conflicting policy considerations raised by the parties. The District asserts that it would be inconvenienced if it had to negotiate an agreement with the Association and then, after waiting until seven months prior to the expiration of that agreement, it successfully petitioned for decertification of the Association on the ground that the employees were ineligible for representation status. Against this speculative inconvenience, we must consider the fact that the employees would be deprived of a statutory right to be represented in negotiations by their duly recognized negotiating representative\(^2\) if the Association were now denied the opportunity to negotiate by having to litigate its representation status at this time. Clearly the statutory concern for the right of the employees to be represented in negotiations is paramount to the speculative concern for the inconvenience that such negotiations might cause the District. Neither second thoughts by the District as to the appropriateness of the negotiating unit for which it recognized the Association,

\(^2\) Section 204.3 of the Taylor Law provides that public employers shall negotiate with recognized employee organizations.
nor changes in the composition of that unit, should relieve the
District of its obligation to negotiate with the Association.\(^3\)

NOW, THEREFORE, WE ORDER the Rochester City School
District:

1. On demand, to negotiate in good faith with
   the Rochester Teachers Association concerning
   the terms and conditions of employment of
   per diem substitute teachers in the negotiating
   unit; and

2. To conspicuously post the attached notice at
   all work locations in places normally used

\(^3\) In New York City Board of Education, 7 PERB \#3022 (1977),
the employer had recognized a union as the representative
of a unit of community service attendants. Thereafter, it
asserted that it was free not to negotiate with the union
because there had been a high turnover among the employees
in the unit and, more importantly, because many of the new
employees were students and, therefore, not employees within
the meaning of the Taylor Law. This Board did not permit
the employer to repudiate its recognition of the union and
ordered it to negotiate in good faith with the union.
to communicate with its employees.

Dated, New York, New York
June 5, 1981

Harold R. Newman, Chairman
Ida Klaus, Member
David C. Randles, Member
APPENDIX

NOTICE TO ALL EMPLOYEES

PURSUANT TO
THE DECISION AND ORDER OF THE
NEW YORK STATE
PUBLIC EMPLOYMENT RELATIONS BOARD

and in order to effectuate the policies of the
NEW YORK STATE
PUBLIC EMPLOYEES' FAIR EMPLOYMENT ACT

we hereby notify our employees that:

We will, on demand, negotiate in good faith with the
Rochester Teachers Association concerning the terms
and conditions of employment of per diem substitute
teachers in the negotiating unit.

Rochester City School District

Employer

Dated

By

(Representative) (Title)

This Notice must remain posted for 30 consecutive days from the date of posting, and must not be altered,
defaced, or covered by any other material.
This matter comes to us on the exceptions of the Town of Niagara (Town) to the decision of a hearing officer dismissing several specifications of its charge that the Civil Service Employees Association, Inc., Niagara Chapter (CSEA) violated its duty to negotiate in good faith by insisting upon the negotiation of nonmandatory subjects of negotiation. \(^1\) The first of the Town's exceptions is directed to CSEA's demand that §1 of Article XV of the old contract be continued. That section deals with employee retirement and has provided:

"The employer shall take the necessary steps to adopt and make effective March 16, 1970, the 1/60th plan of the New York State Retirement System."

\(^1\) The charge alleged that nineteen of the demands presented by CSEA were not mandatory subjects of negotiation. The hearing officer determined that ten of the nineteen demands were not mandatory, that eight of them were mandatory, and that one of them was partially mandatory and partially nonmandatory. CSEA filed no exceptions to those of its demands found to be nonmandatory subjects of negotiation. The Town's exceptions are directed to four of the demands found to be mandatory subjects of negotiation. We do not consider any of the findings of the hearing officer to which no exceptions were directed.
Such plan shall be fully paid for by the employer and shall be available to all employees covered by this contract. Employees who wish to contribute a greater amount than that provided for, shall make a proposal in writing to the Supervisor's office."

(emphasis supplied)

The Town argues that the demand is not a mandatory subject of negotiation because the underscored language violates State law. This position is correct. Article 14 of the Retirement and Social Security Law provides a specific retirement plan for public employees, other than police and firefighters, who are hired after July 1, 1976. This plan calls for contributions of 3% by the public employer. We, therefore, reverse the decision of the hearing officer that §1 of old Article XV of the parties' collective bargaining contract is a mandatory subject of negotiation.

The Town's second exception is directed to CSEA's proposal for an amendment to §1 of Article XV, which would deal with retirement benefits for policemen. This demand provides:

"Change 60 plan for policemen to special (20) year plan (Section 384d)."

The Town does not assert that there is anything in this demand which would make it a nonmandatory subject of negotiation. It contends that the demand is nonmandatory because it is for an amendment of the existing Article XV, §1, and that the existing provision and the proposed change constitute a unitary demand. Thus, it is nonmandatory because the existing contract provision

2/ Section 201.4 of the Taylor Law as amended by L.1973, c.382, §6 prohibits the negotiation of retirement benefits. However, an exception to this is specified in L.1975, c.625, §6 which permits the negotiation of retirement benefits which do not require approval by the State Legislature. Employer paid retirement coverage is a benefit which does not require approval by the State Legislature. However, public employees who have become members of a public retirement system on or after July 1, 1976, are required by R. & S.S. Law Art. 14 to contribute three percent of their annual wages to the retirement system in which they have membership.
is nonmandatory.\footnote{In Town of Haverstraw, 11 PERB \textit{3109} (1978), we held that a contract demand which contains both mandatory and nonmandatory elements is not a mandatory subject of negotiation if the various elements were presented as a unit.} We find no unitary demand here. The proposed change in Article XV, §1 for policemen and the continuation of its existing language for other employees were presented to the Town as separate demands.

The Town's third exception is to the hearing officer's determination that the first sentence of the newly proposed Article XXIV, §2, is a mandatory subject of negotiation. Dealing with overtime, §2 provides:

"All policemen on an hourly basis will be entitled to the same overtime benefits as employees in other departments (time and a half for all hours over forty). Overtime shall first be offered to full-time employees and then to part-time employees if no full-time employees are available."

The hearing officer ruled that the first sentence is concerned with the rate of compensation and is, therefore, a mandatory subject of negotiation, while the second sentence is not a mandatory subject of negotiation because it establishes a procedure for employee bidding for overtime work that would be applicable to both unit employees and to non-unit employees. The Town argues that the first and second sentences constitute a unitary demand which must be declared nonmandatory because one part of it is non-mandatory. We agree.

The last determination of the hearing officer that is dealt with in the Town's exceptions is an unnumbered new proposal entitled "Safety and Health Maintenance". It provides:
"The Employer agrees to endeavor to provide safety standards for the protection of employees' well-being commensurate with those presently in effect in the private sector and to provide and maintain safe and healthful working conditions and to initiate and maintain operating practices that will safeguard employees."

The objection of the Town to this demand is that it is too vague. Citing our decision in White Plains Professional Firefighters Association, 11 PERB ¶3089 (1978), the hearing officer ruled that the vagueness of the demand does not render it a nonmandatory subject of negotiation. We affirm this ruling.

In addition to its objections to the determination by the hearing officer that specific demands were mandatory subjects of negotiation, the Town also argues that eleven of the nineteen demands of CSEA, all of which were for verbatim continuation of prior contract provisions, should be declared nonmandatory because as a group they constitute a unitary demand, some parts of which are nonmandatory. We reject this argument. There is no basis for concluding that the eleven provisions were presented as a unitary demand. While CSEA did assert that each of the eleven provisions of the old contract was a mandatory subject of negotiation, it did not insist that they be negotiated as a single, indivisible package. On the contrary, it proposed changes of its own in the existing contract.

NOW, THEREFORE, WE ORDER CSEA to negotiate in good faith by withdrawing its demand for the continuation of Article XV, §1 as it existed in the prior agreement and for new Article XXIV, §2, and WE FURTHER ORDER that in other respects the exceptions
herein be, and they hereby are, dismissed.

DATED: New York, New York
June 5, 1981

Harold R. Newman, Chairman

Ida Klaus, Member

David C. Randles, Member