9-25-1981

State of New York Public Employment Relations Board Decisions from September 25, 1981

New York State Public Employment Relations Board

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State of New York Public Employment Relations Board Decisions from September 25, 1981

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

Comments
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This matter comes to us on the exceptions of the Council of Administrators and Supervisors (CSA) to a hearing officer's decision dismissing its charge that Smithtown Central School District (District) violated §§209-2a.1(a) and (d) of the Taylor Law in that it did not maintain the status quo with respect to the salaries of unit employees while negotiating an agreement to succeed one that had expired.

The District and CSA had been parties to a two-year agreement covering the 1975-76 and 1976-77 school years. During the first year of that agreement, it was amended and extended for three additional years. As amended, it included a scheduled salary rate for 1975-76, an increased scheduled salary rate for 1976-77 and another increased scheduled salary rate that remained the same for 1977-78, 1978-79 and 1979-80. After 1975-76, however, unit
employees were not to be paid at the scheduled rates. The amended agreement contained a reduced rate of implementation formula by which the scheduled salary rates would be reduced to yield a lower amount, which would actually be paid to the unit employees.\(^1\) This formula provided increases for each year of the contract period, which were paid, but the unit employees did not attain the scheduled rate by the end of the five-year contract period.

The five-year agreement expired on June 30, 1980, and no successor agreement was reached by the opening of school in September 1980. When school opened in September 1980, the District paid the unit employees the same salaries they had been paid during the previous school year. The charge alleges that this was improper. It asserts that the District was obligated not to change the rate of pay of unit employees while negotiating a successor agreement. According to CSA, that meant payment at the scheduled rate, not the reduced rate. It contends that payment at the reduced rate called for by the formula was improper because the formula was a temporary contractual measure which expired with the contract, leaving the scheduled rate undiminished and operative.

The hearing officer determined that the District was required to do no more, while it was negotiating a successor agreement, than to continue paying the salaries it had been paying immediately prior to the expiration of the five-year agreement. Finding that the District had done so, she dismissed the charge.

\(^1\)The implementation formula is appended to this decision together with the parties' explanation and an illustration they prepared to show its application.
DISCUSSION

In support of its exceptions, CSA asserts that the reduced rate of implementation schedule of the former agreement expired with the agreement. This should be clear on the face of the expired agreement, according to CSA, but in any event it could have been established by evidence as to the intent of the parties had the hearing officer not erred in refusing to permit the introduction of such evidence.

We find that the hearing officer committed no prejudicial error in the conduct of the hearing and we affirm her findings of fact and conclusions of law. CSA is correct in its position that the District could not alter the salaries of unit employees while negotiating a successor agreement. It is not correct, however, in its allegation that the District violated this obligation. The District paid unit employees the same salaries both before and after the expiration of the parties' last agreement. It thus maintained the status quo in existence at the time the agreement expired. CSA's argument that, by their agreement, the parties intended the scheduled rate to be paid at the expiration of the agreement is irrelevant to the District's Taylor Law obligation. This is because it merely raises a question as to the meaning of the parties' agreement, the enforcement of which is beyond the jurisdiction of this Board. CSL §205.5(d) and St. Lawrence, 10 PERB ¶3058 (1977).

2/ See Levittown UFSD, 14 PERB ¶3019 (1981).
NOW, THEREFORE, WE ORDER that the charge herein be, and it hereby is, dismissed.

DATED: Albany, New York
September 25, 1981

Harold R. Newman, Chairman

Ida Klaus, Member

David C. Randles, Member
### APPENDIX

**Reduced Rate of Implementation Formula**

<table>
<thead>
<tr>
<th>Year</th>
<th>Reduced Rate of Implementation</th>
<th>Reduction in Cost of Formula</th>
</tr>
</thead>
<tbody>
<tr>
<td>1975-76</td>
<td>0%</td>
<td>100%</td>
</tr>
<tr>
<td>1976-77</td>
<td>25%</td>
<td>75%</td>
</tr>
<tr>
<td>1977-78</td>
<td>50%</td>
<td>50%</td>
</tr>
<tr>
<td>1978-79</td>
<td>75%</td>
<td>25%</td>
</tr>
<tr>
<td>1979-80</td>
<td>80%</td>
<td>20%</td>
</tr>
</tbody>
</table>

**Explanation**

Reduced Rate of Implementation is defined as the percent of the salary schedule increase set forth in the Minutes of the Joint Committee Meeting of May 1, 1975 that is actually to be paid by reason of this agreement. The calculations needed to develop the basic salary schedule will remain as indicated in the attached documents except as indicated herein. (Emphasis in original.)

**Illustration**

**Elementary Principal**

To determine 76-77 Salary:

<table>
<thead>
<tr>
<th>Current Salary Step 5E</th>
<th>Scheduled Salary (76-77)</th>
</tr>
</thead>
<tbody>
<tr>
<td>33,109</td>
<td>35,094</td>
</tr>
</tbody>
</table>

1. Subtract current salary from scheduled Salary:

\[
35,094 - 33,109 = 1,985
\]

2. Increase 25% of Diff.

\[
\frac{1,985}{4} = 496
\]

3. Add to Current Salary

\[
33,109 + 496 = 33,605
\]

To determine 76-77 Salary:

33,605 - Salary for 76-77

To determine 77-78 Salary:

\[
37,552 \text{ Scheduled Salary}
\]

1. Subtract

\[
37,552 - 37,059 = 1,993
\]

2. Increase

\[
\frac{1,993}{4} = 498
\]

3. Add to Current Salary

\[
37,059 + 498 = 37,557
\]

To determine 77-78 Salary:

37,557 - Salary for 77-78

To determine 78-79 Salary:

\[
37,552 \text{ Scheduled Salary}
\]

1. Subtract

\[
37,552 - 37,059 = 1,993
\]

2. Increase

\[
\frac{1,993}{4} = 498
\]

3. Add to Current Salary

\[
37,059 + 498 = 37,557
\]

To determine 79-80 Salary:

\[
37,552 \text{ Scheduled Salary}
\]

1. Subtract

\[
37,552 - 37,059 = 1,993
\]

2. Increase

\[
\frac{1,993}{4} = 498
\]

3. Add to Current Salary

\[
37,059 + 498 = 37,557
\]
STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

STATE OF NEW YORK (GOVERNOR'S OFFICE OF EMPLOYEE RELATIONS),
Respondent,
-and-

NEW YORK STATE INSPECTION, SECURITY AND LAW ENFORCEMENT EMPLOYEES, DISTRICT COUNCIL 82, AFSCME, AFL-CIO,
Charging Party,

In the Matter of

NEW YORK STATE INSPECTION, SECURITY AND LAW ENFORCEMENT EMPLOYEES, DISTRICT COUNCIL 82, AFSCME, AFL-CIO,
Respondent,
-and-

STATE OF NEW YORK (GOVERNOR'S OFFICE OF EMPLOYEE RELATIONS),
Charging Party,

In the Matter of

NEW YORK STATE INSPECTION, SECURITY AND LAW ENFORCEMENT EMPLOYEES, DISTRICT COUNCIL 82, AFSCME, AFL-CIO,
Respondent,

Upon the charge of a violation of
Section 210.1 of the Civil Service Law.


JOSEPH M. BRESS, ESQ. (WALTER J. PELLEGRINI, ESQ., of Counsel) for Charging Party in Case No. U-3981 and Respondent in Case No. U-3980

MARTIN L. BARR, ESQ. (JEROME THIER, ESQ., of Counsel) for Charging Party in Case No. D-0178
We have before us three related cases that were consolidated for hearing and decision. In the first case (U-3980), the New York State Inspection, Security and Law Enforcement Employees, District Council 82, AFSCME, AFL-CIO (DC 82) charged the Governor's Office of Employee Relations of the State of New York (State) with refusing to negotiate in good faith with respect to an agreement to succeed one which expired on March 1, 1979. In the second case (U-3981), the State charged DC 82 with refusing to negotiate in good faith with respect to the same agreement. The third charge (D-0178) was filed by Counsel to this Board (Counsel) and alleged that DC 82 had engaged in, caused, instigated, encouraged and condoned a strike against the State from April 18 to May 4, 1979. The Hearing Officer found merit in the State's charge, but none in the charge of DC 82. With respect to the charge of Counsel, he found that DC 82

\[\text{did not engage in, directly cause, or instigate the strike, but that it encouraged and condoned it in violation of §210.1 of the Act, and that the primary causative factor for the strike was the Union's attempted evasion of its obligation to negotiate in good faith . . . .}\]

Finally, the Hearing Officer found that DC 82's responsibility for the strike was not diminished by any acts of extreme provocation on the part of the State.

The matter now comes to us on the exceptions of DC 82 which contests all four of the conclusions of the Hearing Officer. It also argues that the Hearing Officer erred in many of his subsidiary conclusions of law, in his findings of fact and in aspects of his conduct of the hearing.
Having reviewed the record, we affirm the material findings of fact and conclusions of law of the Hearing Officer, and we determine that he committed no prejudicial error in his conduct of the hearing.

THE ESSENTIAL FACTS AS FOUND BY THE HEARING OFFICER

The State and DC 82 commenced negotiations in December 1978 for an agreement to succeed one covering employees in the Security Services Unit which was due to expire on March 31, 1979. It was understood by the parties that any agreement reached by the negotiators would be subject to ratification by the members of DC 82. At a negotiating session which commenced on April 4, 1979, and continued into the early morning hours of the following day, the negotiators for the State and for DC 82 reached an agreement in principle which was to be reduced to written form by a representative of the State and by the chief negotiator for DC 82. This was done, but on April 13, 1979, the negotiating committee of DC 82, having sensed that several of its locals and many of its members were dissatisfied with it, disavowed the agreement without its having been submitted to the membership for ratification. DC 82 then demanded that the State resume negotiations, but the State refused to do so on the ground that the parties had reached an agreement which DC 82 was required to submit for ratification. A 17-day strike commenced on April 18. Later that day, DC 82 issued a news release announcing its support of the strike. On April 20th, the State consented to resume negotiations with DC 82 pursuant to the direction of Judge Conway.
of the State Supreme Court. The strike was settled when the State and DC 82 reached an agreement on the underlying issues.

The impact of the strike was severe. It disrupted services at State prisons and particularly at the maximum security facilities. The State appropriated $25 million to finance its responses to the strike, which included the mobilization of 12,000 members of the National Guard and the redeployment of the State Police in order to maintain essential services at the prisons. The entrances to prisons were blocked by pickets, which necessitated the use of helicopters to obtain access to the facilities. There were also numerous acts of vandalism, but there was no record evidence attributing these acts to striking employees.

THE REMEDIAL ORDER

The Improper Practice Cases

The Hearing Officer recommended that the charge of DC 82 in U-3980 be dismissed because it failed to prove the commission of an improper practice. We adopt his recommendation. We also adopt his finding in Case U-3981 that DC 82 refused to negotiate in good faith and his recommendation that it be ordered to cease and desist from refusing to negotiate in good faith with the State.

The Strike Case

In accordance with the policy of this Board in strike cases, the Hearing Officer made no proposal with respect to the period of forfeiture of the dues and agency shop fee deduction privileges of DC 82. He merely reported the facts disclosed by the record which are relevant to the statutory criteria specified in §210.3(f) of the Taylor Law for the fixing by this Board of a duration of the forfeiture.
The first of the statutory criteria for fixing the duration of the forfeiture is the extent of any willful defiance of the strike prohibition. Relevant to our consideration in this regard is the Hearing Officer's determination, which we affirm, that DC 82 encouraged and condoned the strike, but did not engage in it, cause it directly, or instigate it. The evidence shows that the strike was urged upon DC 82 by several of its locals and by unit employees who were dissatisfied with the agreement of April 4-5, 1979 between DC 82 and the State. Thus, DC 82 did not lead the strike. By its public statements, however, it acknowledged that it supported the strike.

The second statutory criterion is the impact of the strike on the health, safety and welfare of the community. As indicated by the Hearing Officer, the impact was substantial. We note that the instant strike had a greater impact on the community than any prior strike in the twelve-year history of the Taylor Law. Its financial cost was high and it caused a dislocation in the lives of the 12,000 members of the National Guard who had to be mobilized. The acts of vandalism against the property of non-striking employees are also attributable to the strike. Even though the record does not establish that the acts were perpetrated by striking employees, it is clear that they would not have occurred if the prison guards had been performing their duties. Finally, the inmates at the State psychiatric centers for the criminally insane and prisons were denied many of the services to which they were
entitled by State policy, including mental health, educational and recreational programs. This was not only a hardship for the inmates, but it also had the strong potential of creating a volatile situation that could have endangered the community at large, particularly where maximum security facilities were involved.

The third statutory criterion to be applied in determining the duration of the dues and agency shop fee forfeitures is the financial resources of the striking employee organization. Unlike the first two criteria, this is not related to any aspect of the strike. It concerns the question of how long the striking employee organization would be financially able to continue to function as the statutory representative of the public employees involved without the benefit of the dues checkoff or the agency shop fee deduction privilege. As noted by DC 82 in its brief, a recognized or certified employee organization has the basic statutory obligation to represent employees in the negotiation and administration of collective bargaining agreements, and the fulfillment of that responsibility is related to the organization's financial resources.

We recognize that the imposition of a penalty which would result in the organization's financial inability to perform its statutory responsibility would mean its de facto decertification.
Such decertification would, we agree, be contrary to the intent of the Legislature in enacting the Taylor Law.¹/

In support of its position that the third criterion requires this Board to impose, at most, a short period of forfeiture of dues and agency shop fee deduction privileges, DC 82 submitted evidence of its financial resources to show that it is now in such financial difficulty that it would be unable to service the unit employees if it lost those privileges. The evidence submitted was in the form of financial statements for the years 1977, 1978 and 1979. Going beyond the data submitted, it argues that it would be more severely hurt by the loss of dues and agency shop fee deduction privileges than most employee organizations because the geographic dispersion of its negotiating unit and the multiple

¹/ The 1966 Taylor Law bill which passed in the Senate but not the Assembly included as a penalty for striking,

revocation of the recognition or certification of such organization and forfeiture of the rights accompanying such certification or recognition, either indefinitely or for a specified period of time as the Board shall determine. (CSL §210.3(f) as proposed by S.1. 4784, S.P. 5689 of 1966)

Consistent with this revocation, it did not include consideration of the financial resources of the striking employee organization as a criterion for fixing the duration of the penalty. The provision for revocation of recognition or certification as a penalty for striking was deleted from the 1967 version of the bill which was enacted, and the requirement that the financial resources of the employee organization be considered as a factor in setting the penalty was added.
shifts on which unit employees work would make the direct collection of dues particularly difficult. Further, it offers the unsupported opinion of the officers of some of its locals that only ten to twenty percent of unit employees would pay dues if there were no checkoff. The impact of its loss of checkoff for one month would, therefore, it says, be as onerous for DC 82 as a six-month loss would be for the typical smaller employee organization or one with a more centralized structure.

We find that the record evidence does not establish that DC 82 would be unable to accord the employees in its unit the required statutory services if it lost its checkoff privileges for any period of time. Its argument concerning the impact of a loss of checkoff privileges is based upon mere conjecture which we find unpersuasive.

The appropriate procedure under the statute is for this Board to fix the duration of the checkoff penalty on the basis of the first two criteria and as much relevant and currently ascertainable information relating to the third criterion as is now before us. It is conceivable that the third criterion may, under appropriate circumstances, require a reconsideration of that penalty. If, after having made exhaustive good faith efforts to do so by all reasonable alternative methods to the checkoff, the employee organization is unable to collect sufficient dues necessary to perform its statutory duty of representing unit employees in the negotiation and administration of collective bargaining agreements, a motion to this Board to reconsider the duration of the penalty
might then be appropriate. At this time, on this record, the DC 82 argument directed at its financial resources, is plainly premature.

Applying the three statutory criteria, we determine that the impact of the strike upon the safety and welfare of the community was so severe that a dues and agency shop fee deduction forfeiture of 24 months would have been appropriate if DC 82 had led the strike. However, inasmuch as the extent of its willful defiance of the Taylor Law was diminished by the fact that it did not lead the strike, although it supported it, we determine that an 18-month forfeiture of DC 82's checkoff privileges is appropriate. The record evidence relating to the financial condition of DC 82 does not warrant imposing a lesser penalty.

NOW, THEREFORE, WE ORDER

1. That the charge in U-3980 be, and it hereby is, DISMISSED,

2. That, as a consequence of our sustaining the charge in U-3981, DC 82 is hereby ordered to cease and desist from refusing to negotiate in good faith with the State of New York, and

3. That the dues deduction and agency shop fee privileges, if any, of DC 82 be forfeited, commencing on the first practicable date and continuing thereafter for a period of
18 months. Thereafter no dues or agency shop fees shall be deducted on its behalf until it affirms that it no longer asserts the right to strike against any government, as required by the provisions of CSL §210.3(g).

If it becomes necessary to utilize the dues and agency shop fee deduction process for the purpose of paying the whole or any part of a fine imposed by order of a Court as a penalty in a contempt action arising out of the strike herein, the suspension of the dues and agency shop fee deduction privileges ordered hereby may be interrupted or postponed for such period as shall be sufficient to comply with such order of the Court, whereupon the suspension ordered hereby shall be resumed or initiated as the case may be.

DATED: Albany, New York
September 24, 1981

[Signatures]

Harold R. Newman, Chairman
Ida Klaus, Member
David C. Randles, Member
STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of
COUNTY OF NASSAU,
Respondent,
-and-
PATROLMEN'S BENEVOLENT ASSOCIATION
OF THE POLICE DEPARTMENT OF THE
COUNTY OF NASSAU, INC.,
Charging Party.

In the Matter of
COUNTY OF NASSAU,
Respondent,
-and-
NASSAU COUNTY CHAPTER OF THE CIVIL
SERVICE EMPLOYEES ASSOCIATION, INC.,
Charging Party.

In the Matter of
COUNTY OF NASSAU,
Respondent,
-and-
SUPERIOR OFFICERS ASSOCIATION OF THE
POLICE DEPARTMENT OF THE COUNTY OF
NASSAU, INC.,
Charging Party.

EDWARD G. McCABE, ESQ. (BEE & DeANGELIS, of
Counsel), for the County of Nassau

RICHARD HARTMAN, ESQ. (MICHAEL C. AXELROD., ESQ.,
of Counsel), for Patrolmen's Benevolent Assoc.

RICHARD M. GABA, ESQ. (BARRY J. PEEK, ESQ.,
of Counsel), for Nassau Chapter, CSEA

BURGER & LAVALLEE, ESQS. (RAYMOND G. LAVALLEE,
of Counsel), for Superior Officers Assoc.

#1C-9/25/81
BOARD DECISION AND ORDER
CASE NO. U-4132
CASE NO. U-4311
CASE NO. U-4360
The charges herein were filed by the Patrolmen's Benevolent Association of the Police Department of the County of Nassau, Inc. (PBA) (U-4132), Nassau County Chapter of the Civil Service Employees Association, Inc. (CSEA) (U-4311), and Superior Officers Association of the Police Department of the County of Nassau, Inc. (SOA) (U-4360) against the County of Nassau (County). Each of the charges alleges that the County acted impropriely in that it unilaterally altered a health insurance program which had been available to County employees in the negotiating units represented by the three employee organizations. Each of the parties has filed exceptions to the decision of the hearing officer, who concluded that the County violated its duty to negotiate in good faith with the three employee organizations and ordered it to cease doing so and to negotiate. The County asserts that this Board lacks jurisdiction over the subject matter of the charges, while the employee organizations complain that the hearing officer erred in some of her findings of fact and conclusions of law and in failing to order the County to make affected employees whole by compensating them for losses suffered.

FACTS

The County and the three employee organizations had collective bargaining agreements which expired on December 31, 1978, each of which provided for health insurance. The CSEA contract provided:

"The County shall fully pay the health insurance premiums of its employees under the existing plans for the coverage they elect....This is subject to all State Regulations and statutes...." (emphasis supplied)

This language was carried forth into a successor agreement on April 5, 1979. The County's agreements with SOA and PBA, which
had expired, had provided, "The County shall pay the full contribution for all health insurance plans authorized pursuant to Article XI of the Civil Service Law." There were no successor contracts when the charges were filed and the negotiation disputes had been brought to interest arbitration by SOA and PBA.

At the time the prior contracts were negotiated, three health insurance plans had been available pursuant to Article XI of the Civil Service Law -- Blue Cross/Blue Shield, Group Health Insurance (GHI) and Health Insurance Plan of Greater New York (HIP). On June 22, 1978, the County was notified by the State Civil Service Commission that the HIP program would be replaced by a Health Insurance Plan of Greater New York/Health Maintenance Organization (HIP/HMO) program, which would be more comprehensive and more expensive. This change took effect on January 1, 1979. Thereafter, owing to some confusion on the part of the County Comptroller, the County paid the HIP/HMO premiums to the State on behalf of those employees who had been enrolled in HIP. In May 1979, however, the County's chief executive was notified by the State Civil Service Commission that, commencing August 1, 1979, the State could no longer collect HIP/HMO premiums and the County would have to contract directly with HIP/HMO. The County notified County employees, on June 25, 1979, that, effective August 1, 1979, HIP/HMO was no longer a fully paid option available under Article XI of the Civil Service Law, and that employees in the old HIP program could transfer to one of the two remaining programs; alternatively, they could enroll in the HIP/HMO program on a contributory basis.
When the employee organizations found out what had occurred, they asked the County to negotiate with them and the County agreed. It met with the employee organizations on July 5, 1979, at which time they demanded that the County pay for HIP/HMO in full. The County did not agree and the employee organizations broke off negotiations and turned to litigation. CSEA and SOA commenced an action for a judgment seeking a declaration that the County's refusal to pay the full cost of the HIP/HMO program violated its contractual obligation to the two employee organizations as well as Article 44 of the Public Health Law. PBA supported the Court action amicus curiae. On September 25, 1979, the Supreme Court, Nassau County, ruled against the employee organizations. Interpreting the agreement of April 5, 1979, the Court ruled that the reference to "existing plans" was to the programs authorized by Article XI of the Civil Service Law which existed under the prior agreement. The Court determined that a fully paid HIP/HMO program was not such a program and that it was neither an extension nor a continuation of HIP. CSEA v. Purcell, 101 Misc. 2d 649, aff'd without opinion, AD2d (February 2, 1981), mot. for lv. to appeal den'd, AD2d (April 14, 1981).

The charges of PBA, CSEA and SOA were filed respectively on July 16, 1979, October 18, 1979 and November 11, 1979. After a consolidated hearing on the three charges, the hearing officer determined that the County violated §209-a.1(d) in that it unilaterally introduced a new contributory health insurance program. However, she rejected the allegation that it altered an existing program on the theory that the HIP program had ceased to exist by reason of the action of the State Civil Service Commission.
The hearing officer also found that the notification to the affected employees did not constitute direct negotiations with them. Finally, she found that the County had been willing to negotiate with the unions for an insurance program to substitute for the HIP program and that its failure to do so was occasioned by the refusal of the unions to participate in such negotiations. She issued a bargaining order and directed the County to post a notice.

**DISCUSSION**

In its exceptions, the County asserted that the hearing officer erred in concluding that its conduct constituted an improper practice. Having reviewed the record, we affirm the findings of fact of the hearing officer, but we reverse her conclusion of law that the County violated §209-a.1(d) of the Taylor Law, thus sustaining the County's exception. The hearing officer concluded that the County acted unilaterally on June 25, 1979, when it notified employees that effective August 1, 1979, they could enroll in the HIP/HMO program on a contributory basis. This presumes that the County's action on June 25 was final and dispositive of the rights of unit employees.

By our reading of the record, this is not what occurred. The notice sent out by the County on June 25, 1979, was merely

---

1/ The major thrust of the exceptions of the employee organizations is that the remedial order proposed by the hearing officer is inadequate. Given our determination on the merits, this position becomes irrelevant.

This leaves CSEA's argument that the hearing officer erred in finding that the County had been willing to negotiate with the employee organizations on July 5, 1979. We reject it because the hearing officer's finding is supported by the evidence.
an announcement of an anticipated change. When the three employee organizations then asked the County to negotiate the change, it agreed to do so and a negotiating session was held on July 5, 1979. Negotiations did not continue after that day only because they were broken off by the employee organizations. By breaking off negotiations in the face of the County's announcement of its anticipated change, the employee organizations waived their right to complain when, on August 1, 1979, the change took effect.

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

DATED: Albany, New York
September 24, 1981

Harold R. Newman, Chairman
Ida Klaus, Member

2/ See County of Rensselaer, 8 PERB ¶3039 (1975), in which this Board held that action taken by a public employer was not improper when it had informed the employee organization of the change that was contemplated and the employee organization never sought to negotiate the matter.
DISSENTING OPINION OF BOARD MEMBER RANDLES

In the opinion of the Majority of this Board, the County did not act unilaterally on June 25, 1979, when it notified employees that effective August 1, 1979, they could enroll in the HIP/HMO program on a contributory basis. Its reasoning is that the action of June 25 was a mere announcement which had no legal status.

I disagree with this conclusion of fact. By its action of June 25, the County established a new health insurance program to replace the one that had been eliminated by the State Civil Service Commission. By taking unilateral action, the County violated its duty to negotiate in good faith. City School District of Oswego v. PERB, 42AD2d 262 (3d Dept., 1973), 6 PERB ¶7008.

The fact that, when asked to do so, it was willing to negotiate the matter thereafter, and that it did negotiate the matter on July 5, 1979, does not cure its conduct of June 25.

Ordinarily, the County, having acted unilaterally, should have been ordered to negotiate with the employee organizations. However, it was willing to do so, but the employee organizations refused. Having refused to negotiate, their subsequent claim that the County acted improperly when the change took effect is without merit. Accordingly, although concluding that the County had violated §209-a.1(d) of the Taylor Law, by reason of the subsequent remedial order directing the County to rescind its unilateral action was properly rejected by the hearing officer because it was not sought by any of the charging parties and it would injure the unit employees.

1/
Board - U-4132; U-4311; U-4360

conduct of the parties, I would order no remedy.

DATED: Albany, New York
September 24, 1981

David C. Randles, Member
In the Matter of

MC GRAW CENTRAL SCHOOL UNIT NO. 1, CORTLAND
COUNTY CHAPTER, CIVIL SERVICE EMPLOYEES
ASSOCIATION, INC.,

Respondent,

upon the Charge of Violation of §210.1 of the
Civil Service Law.

On July 10, 1981, Martin L. Barr, Counsel to this Board,
filed a charge alleging that the McGraw Central School Unit No. 1,
Cortland County Chapter of the Civil Service Employees Associ­
ation, Inc. (Respondent) had violated Civil Service Law (CSL)
§210.1 in that it caused, instigated, encouraged, condoned and
engaged in a one-day strike against the McGraw Central School
District (District) on May 20, 1981. The charge further alleged
that approximately 14 non-instructional employees, out of a
negotiating unit of 34, participated in the strike.

The Respondent filed an answer but thereafter agreed to with­
draw it, thus admitting the factual allegations of the charge,
upon the understanding that the Charging Party would recommend,
and this board would accept, a penalty of loss of Respondent's
right to have dues and agency shop fees deducted to the extent of
twenty-five percent (25%) of the amount that would otherwise be
1/ deducted during a year. The Charging Party has so recommended.

1/ This is intended to be the equivalent of a three-month
suspension of such right. Since the deductions are not made
uniformly throughout the calendar year, it is expressed as a
fractional percentage of the annual deduction.
On the basis of the unanswered charge, we find that the Respondent violated CSL §210.1 in that it engaged in a strike as charged, and we determine that the recommended penalty is a reasonable one and will effectuate the policies of the Act.

WE ORDER that the deduction rights of the McGraw Central School Unit No. 1, Cortland County Chapter, Civil Service Employees Association, Inc., be suspended, commencing on the first practicable date, and continuing for such period of time during which twenty-five percent (25%) of its annual agency shop fees, if any, and dues would otherwise be deducted. Thereafter, no dues or agency shop fees shall be deducted on its behalf by the McGraw Central School District until the McGraw Central School Unit No. 1, Cortland County Chapter, Civil Service Employees Association, Inc. affirms that it no longer asserts the right to strike against any government, as required by the provisions of CSL §210.3(g).

DATED: Albany, New York
September 24, 1981

Harold R. Newman, Chairman

Ida Klaus, Member

David C. Randles, Member