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State of New York Public Employment Relations Board Decisions from April 27, 1982

New York State Public Employment Relations Board

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Keywords

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NEW YORK STATE
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of CITY UNIT OF THE CHEMUNG COUNTY CHAPTER OF THE CIVIL SERVICE EMPLOYEES ASSOCIATION, INC. Upon the Charge of Violation of Section 210.1 of the Civil Service Law.	#2A-4/27/82 BOARD DECISION AND ORDER CASE NO. D-0221

ROEMER & FEATHERSTONHAUGH, ESQS. (MICHAEL J. SMITH, ESQ., of Counsel), for Respondent

MARTIN L. BARR, ESQ. (ANTHONY CAGLIOSTRO, ESQ., of Counsel), for Charging Party

The charge herein was filed by Counsel to this Board (Counsel). It alleges that the City Unit of the Chemung County Chapter of the Civil Service Employees Association, Inc. (CSEA) caused, instigated, condoned and engaged in a two and a half hour strike by approximately sixty employees of the Public Works Department of the City of Elmira on April 20, 1981. The hearing officer found that there was a strike of a shorter, unspecified duration but that CSEA bore no responsibility for it. Counsel argues that the hearing officer erred in not finding CSEA responsible for the strike. CSEA argues that the hearing officer erred in finding that there was a strike.

FACTS

On Thursday, April 16, 1981, Glover, a unit employee, returned to work from bereavement leave occasioned by the death of his grandfather. O'Connell, the City's timekeeper, asked him to provide proof of his grandfather's death. Glover took offense and complained to Cerio, the CSEA vice-president. Cerio then complained to O'Connell's supervisor, Kuttenkuler, who made a

sarcastic response. This made Glover even more angry and it appears to have made many of Glover's fellow employees angry too.

Cerio, Glover and CSEA president Wood met with Sartori, the City Manager, on the following day and Glover asked that O'Connell and Kuttenkuler be directed to apologize to him and to the other unit employees. Sartori declined to so direct O'Connell and Kuttenkuler, but he extended his own personal apology to Glover. When Glover's fellow employees were told what took place at the meeting, some advocated striking on Monday. Cerio explained that this would violate the Taylor Law.

On Monday morning, at about 7:15, before the foremen handed the men their work orders, Wood received permission to hold a meeting of an unspecified length. At the meeting some of the employees insisted on taking a strike vote. Menechella, a CSEA steward who conducted the meeting, refused to conduct the vote and Wood explained once again the Taylor Law implications and told the unit employees that CSEA would not support any job action. Rejecting his advice, the employees voted to refuse to work unless the City Manager spoke to them. Wood then left the meeting and reported what had happened to Hawley, his supervisor, and to Roe, the Director of the Public Works Department, who immediately called Sartori. Sartori came to the Public Works Department building where Wood once again tried to persuade him to direct O'Connell and Kuttenkuler to apologize. In return Sartori asked Wood to get the employees back to work and Wood asked Sartori to address the meeting. Sartori agreed to the latter request and went to the meeting at about 9:45 a.m. After Sartori answered questions and told the employees that what they were doing was

illegal, Cerio asked if the men would be paid for the rest of the day if they went back to work. Sartori answered in the affirmative and left the meeting. Cerio then said, "Let's go back to work" and about 10:00 a.m. the unit employees did.

The hearing officer determined that the meeting was held during work time with the permission of the supervisory staff and, therefore, did not constitute a strike until the strike vote was taken. Thus, there was a strike during the latter part of the meeting. According to the hearing officer, however, CSEA neither called nor condoned the strike because all the CSEA leaders present at the meeting spoke against it.

Counsel argues that CSEA bears responsibility for the strike because the CSEA officers had an obligation to lead the men back to work or, at the very least, to report to work themselves once the strike vote was taken. CSEA argues that there was no strike because none of the employees ever refused a direction to perform any work. The meeting was called with the permission of the employees' supervisors before the daily work orders were distributed and no work orders were distributed until 10:00 a.m. Thus, according to CSEA, the hearing officer's conclusion that there was a strike was based on mere speculation that the employees would have refused to perform the work had the work orders been distributed earlier.

DISCUSSION

Having reviewed the record and considered the arguments of the parties, we affirm the conclusion of the hearing officer that CSEA did not cause, instigate, condone or engage in a strike of employees of the Public Works Department of the City of Elmira on April 20, 1981. The CSEA officers expressed their opposition

to any strike and appear to have made sincere efforts to resolve the spontaneous dispute on Monday morning. Their failure to report for work during the short period of the alleged strike while attempting to resolve the dispute was not, itself, a strike. This determination makes it unnecessary for us to consider whether the record supports the hearing officer's other conclusion, that there was a strike by employees other than the CSEA officers on that day. The conclusion that CSEA played no part in the alleged strike disposes of all the issues before us[1/] and the charge herein must be dismissed.

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

DATED: April 27, 1982
Albany, New York

Harold R. Newman, Chairman

Ida Klaus, Member

David C. Randles, Member

1/ The answer to the question whether or not there was a strike by the other employees is significant for the imposition of penalties under Section 210.2 of the Taylor Law. This Board, however, exercises no function under that part of the law.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2B-4/27/82

In the Matter of STONY POINT POLICE BENEVOLENT ASSOCIATION, Respondent, -and- TOWN OF STONY POINT, Charging Party.	BOARD DECISION AND ORDER CASE NO. U-5222

DRANOFF, DAVIS, KRUSE, RESNIK & FIELDS, ESQS. (RAYMOND G. KRUSE, ESQ., of Counsel), for Respondent

JAMES A. FITZGERALD, ESQ., for Charging Party

This matter comes to us on the exceptions of the Town of Stony Point (Town) to a hearing officer's decision dismissing its charge that Stony Point Police Benevolent Association (PBA) violated its duty to negotiate in good faith by petitioning for interest arbitration after reaching a complete agreement. The hearing officer determined that PBA did not act improperly because the parties had not reached an agreement.

The parties, which had been bargaining pursuant to a package bargaining arrangement, executed a memorandum of agreement some time in December 1980. The memorandum of agreement was ratified by the members of PBA and approved by the Town. Thereafter, the parties disagreed as to the meaning of a provision of the memorandum of agreement dealing with reimbursement of tuition expenses. The memorandum of agreement provided:

"Reduce College Tuition to
B.A. & A.A.S. Degrees.
Include Incentive
B.A. - $500 To include Police
A.A.S. - $250 Science related fields
Lump Sum Am't (June 1st)"

The Town interpreted this language as providing "a one-time-only" tuition reimbursement payment which would be made on June 1, 1981. PBA interpreted it as providing annual tuition reimbursement payments on June 1 of each year.

The hearing officer determined that neither the language of the memorandum of agreement nor the record testimony regarding discussions during negotiations indicated which of the interpretations was correct. Concluding that the disputed language of the memorandum of agreement was consistent with either interpretation, he determined that each party had its own meaning in mind when it executed the memorandum of agreement. Thus, according to the hearing officer, there was no meeting of the minds on this issue. As the parties had agreed upon a so-called package bargaining arrangement, their failure to reach an agreement on the reimbursement for tuition issue left all the other issues open and subject to interest arbitration.

We disagree with the hearing officer's conclusions. We determine that the parties reached a complete agreement in December 1980 which became binding upon them when it was ratified by PBA and approved by the Town. Where the parties finally negotiate a particular provision and include it in their total memorandum of agreement, they must incorporate the provision as set forth in their memorandum of agreement, into their

contract, even though they may not be in agreement on its meaning.

We first held in City of New York, 8 PERB ¶3051 (1975) that it was improper for a party to refuse to execute a negotiated agreement containing provisions expressed in language of disputed meaning. In doing so, we distinguished between the existence of an agreement and its meaning. Having concluded that an agreement existed, we found that the City's refusal to execute it was improper, noting that it was for grievance arbitration to ascertain the disputed meaning of the provisions. In Deer Park Teachers Association, 13 PERB ¶3048 (1980), we found the existence of an agreement where a memorandum of agreement was ratified by the members of the employee organization and approved by the public employer, even though the meaning of the language of one of its provisions was disputed. We further determined that the employee organization violated its duty to negotiate in good faith in that it refused to execute a contract containing the language, the meaning of which was in dispute.

NOW, THEREFORE, WE ORDER PBA:

1. to withdraw its petition for interest arbitration, and
2. upon the request of the Town, to execute a contract containing the following language as to reimbursement for tuition expenses:

"Reduce College Tuition to
B.A. & A.A.S. Degrees.
Include Incentive
B.A. - $500 To include Police
A.A.S. - $250 Science related fields
Lump Sum Am't (June 1st)"

DATED: April 26, 1982
Albany, New York

Harold R. Newman, Chairman

Ida Klaus, Member

David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of	#2C-4/27/82
STATE OF NEW YORK, UNIFIED COURT SYSTEM, Employer,	BOARD DECISION AND ORDER
-and-	CASE NO. C-2423
ROBERT A. MULHALL, Petitioner.	

This matter comes to us on the exceptions of Robert A. Mulhall to a decision of the Director of Public Employment Practices and Representation (Director) dismissing his petition. The petition seeks to decertify the New York State Court Clerks Association (NYSCCA) as the negotiating representative of a unit of court clerks employed by the Unified Court System of the State of New York, which includes his position, on the ground that the unit is inappropriate. The petitioning papers assert that Mulhall's position would more properly be included in a unit of court clerks which is represented by the Civil Service Employees Association (CSEA).

The Director dismissed the petition because, among other things, it was not timely and it was not supported by a sufficient showing of interest. We affirm this decision.

Section 201.3(d) of our Rules of Procedure permits a petition for certification or decertification "within thirty days before the expiration, under section 208.2 of the Act, of the period of unchallenged representation status accorded a recognized or certifed employee organization." Section 208.2 of the statute sets the expiration of the period of unchallenged representation status at "seven months prior to the expiration of a written agreement between the public employer and said employee organization determining terms and conditions of employment." The petition was filed on February 9, 1982. At that time NYSCCA and the Unified Court System were parties to a collective bargaining agreement which was to expire on March 31, 1982. Thus, the appropriate time during which to file a petition would have been the month of August 1981, and the petition herein was late.

The appropriate showing of interest requirement is also set forth in §201.3(d) of our Rules of Procedure. If viewed as a peition for decertification only, the requisite showing of interest would be 30% of the employees in the unit already in existence. If viewed as a petition both for certification and decertification, the requisite showing of interest would be "30% of the employees in the unit already in existence or alleged to be appropriate by the petitioner." The petition herein, however, is supported by no showing of interest other than the signature of the petitioner, individually. The absence of a sufficient showing of interest to support a petition to move employees from one negotiating unit to another is a fatal defect. See Village of Hempstead (Graham and Marino), 12 PERB ¶3051 (1979).

NOW, THEREFORE, WE ORDER that the petition herein be, and it hereby is, DISMISSED.[1/]

DATED: April 26, 1982
Albany, New York

Harold R. Newman, Chairman

Ida Klaus, Member

David C. Randles, Member

[1/] As the petition is procedurally defective, we have not considered Mulhall's arguments that a third basis of the Director's dismissal of the petition was in error. The Director ruled that the petition was defective because Judiciary Law §39.7 precludes this Board from altering existing negotiating units of employees of the courts or court related agencies without the consent of the Unified Court System and the negotiating agents involved. We do not consider Mulhall's constitutional and statutory arguments that the Judiciary Law does not bar his petition.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of	:	#3A-4/27/82
TOWN OF GENESEO,	:	
Employer,	:	Case No. C-2410
-and-	:	
SERVICE EMPLOYEES' INTERNATIONAL UNION, LOCAL 200,	:	
Petitioner.	:	

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

Service Employees' International Union, Local 200

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

Unit: Included: Highway Department employees

Excluded: Highway Superintendent and all other employees

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with

Service Employees' International Union, 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 26th day of April , 1982
Albany, New York

Harold R. Newman, Chairman

Ida Klaus, Member

David C. Randles, Member

ERB 58.3

7480

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of	:	#3B-4/27/82
VILLAGE OF TUCKAHOE, Employer,	:	
- and -	:	Case No. C-2425
LOCAL 456, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, Petitioner.	:	

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 Local 456, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America

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

Unit: Included: All blue collar positions, including drivers, laborers, sanitation workers, and working foremen.

Excluded: All other employees, including white collar and management positions.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with Local 456, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America

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 26th day of April, 1982.
Albany, New York

Harold R. Newman, Chairman

Ida Klaus, Member

David C. Randles, Member

PERB 58.3