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1-21-1974

## State of New York Public Employment Relations Board Decisions from January 21, 1974

New York State Public Employment Relations Board

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## State of New York Public Employment Relations Board Decisions from January 21, 1974

### Keywords

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

### Comments

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STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

#2A-1/21/74

In the Matter of	:	<u>RECONSIDERATION OF</u>
YONKERS FEDERATION OF TEACHERS, LOCAL	:	<u>BOARD DECISION</u>
860, AMERICAN FEDERATION OF TEACHERS,	:	
AFL-CIO	:	AND
Upon the Charge of Violation of Section	:	<u>AMENDMENT OF ORDER</u>
210.1 of the Civil Service Law.	:	<u>CASE NO. D-0065</u>

On August 17, 1972 this Board rendered its decision upholding both the findings of fact and conclusions of law of the hearing officer and accepting his recommendations:<sup>1</sup>

"...that the Federation be penalized for violating Section 210 of the Act and that the penalty reflect the strike's impact upon the public safety and welfare, the absence of any impact upon the public health as well as the absence of extreme provocation."

In implementing the recommendations of the hearing officer, we ordered that the rights accorded the Federation pursuant to the provisions of CSL §208.1(b) be forfeited for a twelve (12) month period and not restored until the Federation pledged that it would not strike, as required by the provisions of §210.3(g).

Thereafter, it was brought to our attention that we had erroneously factually determined that immediately before the strike, the School Board had offered additional money during the first six (6) months of the new contract based on the "roll-over" technique, when in fact it had offered no new money during the first six (6) months of the contract. Specifically in our decision<sup>2</sup> we stated the following:

<sup>1</sup> 5 PERB 8026, 8029 (1972).

<sup>2</sup> 5 PERB 3071, 3072 (1972).

"The recommendations of the factfinder would have given to the Federation substantially what it sought financially and the Federation accepted the report; these recommendations were rejected by the employer. Thereafter, both parties continued to adhere to their positions quite rigidly until the strike became imminent. At that time, the City offered additional money during the first six months of the new contract period, with the contract to extend for eighteen months. This was to be accomplished by a 'roll-over' technique proposed by the Federation. Vacation pay for the months of July and August would be allocated to the following fiscal year, thereby freeing an equivalent amount of money for increases during the current fiscal year. At an earlier stage, the budget director of the City had rejected this technique. Eventually the strike was settled when the parties reached an agreement covering a period of thirty months which included increased benefits during the first six months with the use of the 'roll-over' technique." (emphasis added)

This proceeding was initiated by us to formally correct this error in fact and to reconsider the appropriateness of the penalty imposed in our decision.

We have reviewed the entire record to determine the impact of the error and have found it to be relatively inconsequential and of little persuasive moment with regard to the appropriateness of the Order rendered in our original Decision of August 17, 1972. Nevertheless, we cannot now say, after eighteen months, that the erroneous factual conclusion was given no consideration in fixing the duration of the penalty. Accordingly, we now reduce the period of dues deduction forfeiture from twelve (12) months to ten (10) months.

WE NOW ORDER that the rights of the Federation granted pursuant to the provisions of CSL §208.1(b) to membership dues deduction on behalf of its members shall be forfeited for a period of ten (10) months, and that if the employer does not normally deduct dues in equal amounts, it shall not deduct more than one-fifth

of the annual dues during the twelve months following the issuance of this order, and that said rights shall not be restored until the Yonkers Federation of Teachers, Local 860, American Federation of Teachers, AFL-CIO pledges that it will not strike, as required by the provisions of CSL §210.3(g).

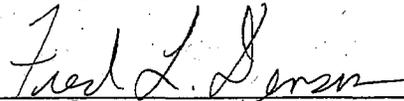
Dated: Albany, New York  
January 21, 1974



Robert D. Helsby, Chairman

Board Member Joseph R. Crowley did not participate in the decision.

Joseph R. Crowley



Fred L. Denson

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

#2B-1/21/74

In the Matter of	:	
	:	
AMSTERDAM TEACHERS ASSOCIATION	:	<u>SUPPLEMENTAL BOARD DECISION</u>
	:	
upon the Charge of Violation of Section	:	<u>CASE NO. D-0079</u>
210.1 of the Civil Service Law.	:	
	:	

This matter comes before us upon the request of the Enlarged City School District of the City of Amsterdam for clarification of our decision of May 14, 1973<sup>1</sup> and for direction as to the course of action that they must now take. In our earlier decision, we ordered that the dues deduction privileges of the Amsterdam Teachers Association be suspended for a period of six months. Thereafter, a grievance was filed by the Amsterdam Teachers Association complaining that the school district was in violation of its contract with the Association in that it refused to deduct and transmit to the Amsterdam Teachers Association the dues of affiliated teacher organizations. Turning to the merits of the grievance, the arbitrator relied upon the terms of Article XXVI of the current contract, which provides, in part:

"The school district agrees to deduct from the salaries of teachers dues for the Amsterdam Teachers Association and its affiliates...and to transmit the monies promptly to the Association."<sup>2</sup>

<sup>1</sup> 6 PERB 3054.

<sup>2</sup> The arbitrator makes much of the wording of a prior version of this clause that was included in Article XXV of the 1970-72 contract which read, in part,

"The school district agrees to deduct from the salaries of teachers dues for the Amsterdam Teachers Association, the New York State Teachers Association and the National Education Association...and to transmit the monies promptly to such association or associations."

He explains that the change in the language derives from the fact that the affiliated organizations were in the process of being reconstituted and the new names were not known when the current agreement was reached.

In his award, the arbitrator rejected the school district's posture that PERB's order was dispositive of the issue, saying, "It is beyond PERB's authority to interpret the contract. That is the responsibility of the arbitrator." He determined that the school district should "deduct from the salary of the teachers who authorize such deductions dues for the Association's affiliates and transmit the monies promptly to the Association for forwarding to the affiliates."

We do not second-guess the arbitrator's interpretation of the contract, nor do we disagree with his statement regarding the nature of our responsibility in the matter. Our responsibility is not to interpret a contract, but to issue an Order under §210.3(f) of the Taylor Law that may or may not frustrate the fulfillment of a contractual obligation. In deciding, as he did, however, the arbitrator not only interpreted the contract, but also interpreted the Order of PERB. He said:

"It is the opinion of the arbitrator that the PERB Order directing that the dues deduction privileges of the Amsterdam Teachers Association be suspended for a period of six (6) months does not prohibit the District from deducting membership dues for each of the Association's affiliates."

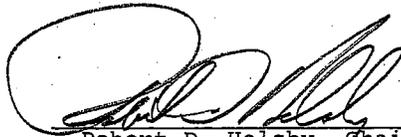
The arbitrator misreads our Order. We directed that the dues deduction privileges of the Amsterdam Teachers Association be suspended. For the purposes of our Order, no greater rights to dues checkoff are enjoyed if the statutory rights of the Association specified in CSL §208.1(b) are also accorded by contract. Neither does our Order distinguish between dues that may be kept by the Association and dues that the Association is obliged to forward to other parties. It precluded the use of the school district's services to assist the Teachers Association in obtaining dues from the teachers employed by the school district, regardless of the use to which the Teachers Association would then put the money.

In clarifying the prior Order, we do not express any opinion as to whether the school district may be contractually obliged to deduct dues on behalf of the affiliates of the Amsterdam Teachers Association

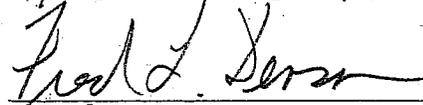
and to transmit such monies directly to such affiliates.<sup>3</sup> The resolution of this question is between the parties and, if necessary, for an arbitrator. If there is such a contractual obligation, its performance would not be violative of our Order.

WE ORDER that, for the period of the forfeiture of dues deduction privileges specified in our Order of May 14, 1973, no dues of teachers employed by the Enlarged City School District of the City of Amsterdam be deducted by the School District on behalf of the Amsterdam Teachers Association or transmitted to the Amsterdam Teachers Association whether or not such dues are intended to be forwarded to persons or organizations other than the Amsterdam Teachers Association.

Dated: Albany, New York  
January 21, 1974

  
Robert D. Helsby, Chairman

  
Joseph R. Crowley

  
Fred L. Denson

<sup>3</sup> The arbitrator devotes much attention to whether Article XXVI of the current contract as read in the light of Article XXV of the previous contract obliges the school district to deduct dues on behalf of the affiliates. Because of his conclusion on the school district's duty to transmit the monies to the Association, he did not deal with the question of whether the employer is under any contractual duty to transmit dues to the affiliates.

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of : #2C-1/21/74  
NIAGARA FALLS BRIDGE COMMISSION, :  
Employer, :  
- and - : Case No. C-1013  
FREIGHT DRIVERS, HELPERS AND DOCKMEN :  
LOCAL UNION #375, INTERNATIONAL :  
BROTHERHOOD OF TEAMSTERS, :  
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 FREIGHT DRIVERS, HELPERS AND DOCKMEN LOCAL UNION # 375, INTERNATIONAL BROTHERHOOD OF TEAMSTERS

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:

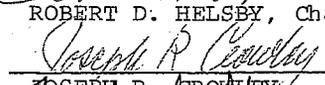
- Included: Toll collectors, maintenance men and janitors  
Excluded: Seasonal or summer employees, maintenance foremen, toll captain and all other employees of the employer.

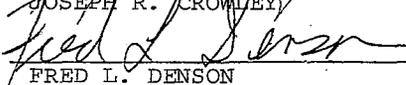
Further, IT IS ORDERED that the above named public employer shall negotiate collectively with FREIGHT DRIVERS, HELPERS AND DOCKMEN LOCAL UNION #375, INTERNATIONAL BROTHERHOOD OF TEAMSTERS

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 21st day of January , 1974 .

  
ROBERT D. HELSBY, Chairman

  
JOSEPH R. CROWLEY

  
FRED L. DENSON

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of : #2D-1/21/74  
BOARD OF EDUCATION OF THE CITY SCHOOL :  
DISTRICT OF THE CITY OF NEW YORK, :  
Employer, :  
- and - : Case No. C-0845  
UNITED FEDERATION OF TEACHERS, :  
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 UNITED FEDERATION OF TEACHERS

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:

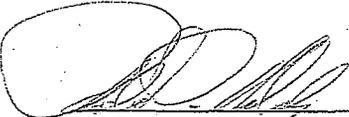
Included: All mental health workers.

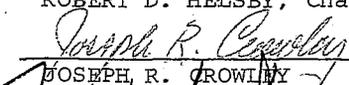
Excluded: All other employees.

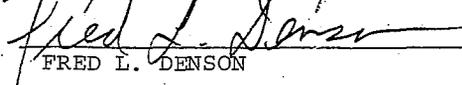
Further, IT IS ORDERED that the above named public employer shall negotiate collectively with UNITED FEDERATION OF TEACHERS

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 21st day of January , 1974 .

  
ROBERT D. HELSEY, Chairman

  
JOSEPH R. CROWLEY

  
FRED L. DENSON

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

#2E-1/21/74

HARBORFIELDS SCHOOL DISTRICT NO. 6,  
Employer,

- and -

CIVIL SERVICE EMPLOYEES ASSOCIATION, INC.

Case No. C-1011

Petitioner,

- and -

LOCAL 100, SERVICE EMPLOYEES INTER-  
NATIONAL UNION, AFL-CIO,

Intervenor.

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 100, SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO

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 Permanent-Full and Part Time  
Custodians, Grounds-Maintenance, Assistant  
to Chief Custodian-Night Foreman, Matrons, Head  
Custodian and Chief Custodian

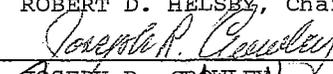
Excluded: Summer Casual Employees and Superintendent  
of Buildings and Grounds

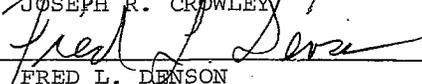
Further, IT IS ORDERED that the above named public employer shall negotiate collectively with LOCAL 100, SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO

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 21st day of January, 1974.

  
ROBERT D. HELSBY, Chairman

  
JOSEPH R. CROWLEY

  
FRED L. DENSON

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of : #2F-1/21/74  
BROCKPORT CENTRAL SCHOOL DISTRICT NO. 1:  
Employer, :  
- and - :  
SERVICE EMPLOYEES INTERNATIONAL UNION,  
LOCAL 227, AFL-CIO : Case No. C-1008  
Petitioner, :  
- and - :  
BROCKPORT CIVIL SERVICE EMPLOYEES :  
ASSOCIATION :  
Intervenor. :

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 227, AFL-CIO

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:

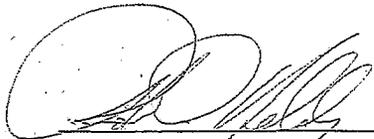
Included: All non-teaching employees.

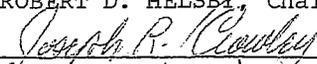
Excluded: Supervisor of cafeteria, supervisor of buildings and grounds, supervisor of transportation, district principal's secretary, sr. acct. clerk, acct. clerk, acct. clerk typist, switchboard operator, manager of school plant, head mechanic, bus driver-trainer, district office secretary, all substitutes, and all cafeteria personnel.

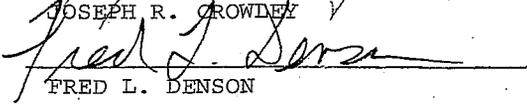
Further, IT IS ORDERED that the above named public employer shall negotiate collectively with SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 227, AFL-CIO

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 21st day of January , 1974 .

  
ROBERT D. HELSBY, Chairman

  
JOSEPH R. CROWLEY

  
FRED L. DENSON

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of  
UNION FREE SCHOOL DISTRICT #3, TOWN OF : #2G-1/21/74  
HEMPSTEAD, NASSAU COUNTY, NEW YORK :  
(EAST MEADOW PUBLIC SCHOOLS), :  
Employer-Petitioner, :  
- and - :  
EAST MEADOW TEACHERS ASSOCIATION, : Case No. C-0901  
Intervenor, :  
- and - :  
EAST MEADOW SUPERVISORS AND :  
ADMINISTRATORS ASSOCIATION, :  
Intervenor. :

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 East Meadow Supervisors and 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 representative for the purpose of collective negotiations and the settlement of grievances.

Unit:

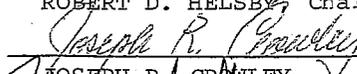
Included: Principals, assistant principals, curriculum coordinators, dean of student activities and department heads.

Excluded: All other employees of the employer.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with East Meadow Supervisors and 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 21st day of January , 1974 .

  
ROBERT D. HELSEY, Chairman  
  
JOSEPH R. CROWLEY  
  
FRED L. DENSON

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of : #2H-1/21/74  
ALBANY-SCHOHARIE-SCHENECTADY BOARD OF :  
COOPERATIVE EDUCATIONAL SERVICES, :  
Employer, :  
- and - : Case No. C-1009  
SCHENECTADY-ALBANY-SCHOHARIE BOCES :  
FACULTY ASSOCIATION, :  
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 SCHENECTADY-ALBANY-SCHOHARIE BOCES FACULTY 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:

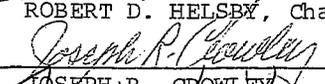
See Schedule A, attached.

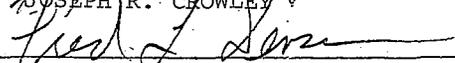
Further, IT IS ORDERED that the above named public employer shall negotiate collectively with SCHENECTADY-ALBANY-SCHOHARIE BOCES FACULTY ASSOCIATION

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 21st day of January , 1974 .

  
ROBERT D. HELSBY, Chairman

  
JOSEPH R. CROWLEY

  
FRED L. DENSON

SCHEDULE A

"Included: all full and part-time employees in the following job titles: coordinator for pupil accounting services, coordinator for financial services, analyst programmer, computer programmer, senior programmer, programmer trainee, systems programmer, EDP operator, tabulation equipment operator, computer operator, key punch operator, senior stenographer, stenographer secretary, clerk-typist, account clerk, control clerk, equipment repair technician, film library technician, receptionist, courier, maintenance man, building custodian and custodian.

Excluded: all temporary employees in the above job titles who do not constitute part of the regular work force, coordinator of instructional support services, a secretary who regularly performs duties for the following positions - a chief executive officer, director of special education, director of data processing, director of occupational education and the principal of the occupational education center (colonie) and all other employees."

\_\_\_\_\_ :  
In the Matter of the Application of the :  
 :  
                  COUNTY OF DELAWARE :  
 : Docket No. S-0057  
for a Determination pursuant to Section :  
212 of the Civil Service Law. :  
\_\_\_\_\_ :

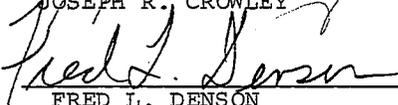
At a meeting of the Public Employment Relations Board held on the 21st day of January, 1974, and after consideration of the application of the County of Delaware made pursuant to Section 212 of the Civil Service Law for a determination that Resolution No. 42 of the Board of Supervisors of Delaware County, dated June 12, 1968, as last amended by Resolution No. 193 adopted on December 12, 1973, is substantially equivalent to the provisions and procedures set forth in Article 14 of the Civil Service Law with respect to the State and to the Rules of Procedure of the Public Employment Relations Board, it is

ORDERED, that said application be and the same hereby is approved upon the determination of the Board that the Resolution aforementioned, as amended, is substantially equivalent to the provisions and procedures set forth in Article 14 of the Civil Service Law with respect to the State and to the Rules of Procedure of the Public Employment Relations Board.

Dated, Albany, New York  
January 21, 1974

  
\_\_\_\_\_  
ROBERT D. HELSBY, Chairman

  
\_\_\_\_\_  
JOSEPH R. CROWLEY

  
\_\_\_\_\_  
FRED L. DENSON

N. Y. S. PUBLIC EMPLOYMENT  
RELATIONS BOARD  
**RECEIVED**

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**CHAIRMAN'S OFFICE**

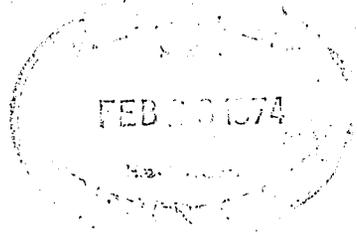
BOARD MEMBERS  
ROBERT D. HELSBY  
CHAIRMAN  
JOSEPH R. CROWLEY  
FRED L. DENSON

NEW YORK STATE  
PUBLIC EMPLOYMENT RELATIONS BOARD  
50 WOLF ROAD  
ALBANY, NEW YORK 12205



February 26, 1974

Hon. John Ghezzi  
Secretary of State  
162 Washington Avenue  
Albany, New York



Dear Mr. Ghezzi:

I am transmitting herewith, for filing in your office, the original and three copies of amendments to the Rules of Procedure of the Public Employment Relations Board which were adopted by the Board on January 21, 1974, to become effective March 1, 1974 and promulgated by the Public Employment Relations Board on that date.

Very truly yours,

*Robert D. Helsby*  
Robert D. Helsby

Attachments 10 WORK  
DATE

FEB 26 1974

*John Ghezzi*  
Acting Secretary of State

COPY  
FORWARDED  
TO  
STATE  
REPOSITORY  
2/27, 1974

*Copy of this letter and filing returned to Robert D. Helsby as filing receipt E. Lindsey*

3214

Pursuant to and by virtue of the authority vested in the Public Employment Relations Board under Article 14 of the Civil Service Law, I, Robert D. Helsby, Chairman of the Public Employment Relations Board, acting on behalf of such Board, hereby amend NYCRR Title 4, Chapter VII, as follows, bracketing material to be deleted and underscoring the material to be added, except for the old §201.4, which is REPEALED and an entirely new §201.4 which is provided in its place. Any parts of the Rules of the Board not explicitly mentioned herein remain in effect as previously promulgated. These amendments shall take effect on March 1, 1974.

§201.3 (c) A petition for certification or decertification may be filed within thirty days after publication of notice as described in section 201.6 of these Rules, or receipt of written notice, that another employee organization has been recognized. Such a petition shall be supported by a showing of interest of at least [10%] 30% of the employees in the unit deemed appropriate by the employer or alleged to be appropriate by the petitioner.

§201.3 (e) A petition for certification or decertification which seeks to review a determination of representation status of public employees made under provisions and procedures established by a local government pursuant to section 212 of the Act may be filed together with a petition for review under section 203.8 of these Rules. Such a petition will not be processed unless the Board determines that the continuing implementation of the provisions and procedures of the local government has not been substantially equivalent to the provisions and procedures set forth in the Act and these Rules. Unless filed by a public employer, such a petition shall be supported by a showing of interest of at least [10%] 30% of the employees in the unit deemed appropriate by the local government or an impartial agency or alleged to be appropriate by the petitioner.

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

§201.4 REPEALED

NEW

§201.4 Showing of Interest.

MATERIAL

(a) Proof of showing of interest shall be filed simultaneously with a petition or motion to intervene.

(b) In determining whether the evidence submitted to establish a showing of interest is timely, the Director will accept evidence of dues deduction authorizations which have not been revoked, evidence of current membership, original designation cards or petitions which were signed and dated within six months of the submission, or a combination of the three. Designation cards shall be submitted in alphabetical order.

(c) 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.

(d) The showing of interest, as well as any evidence of majority status for the purpose of certification without an election pursuant to section 201.9(g)(1) of these Rules, shall be submitted by a responsible officer or agent of the employee organization who shall simultaneously file with the Director a declaration of authenticity of such showing of interest, signed and sworn to by any person authorized to administer oaths, containing the following:

(1) the name of the officer or agent executing the declaration, his position with the employee organization, and a statement of his authority to execute the declaration on its behalf.

(2) A declaration that upon his personal knowledge, or inquiries that he has made, the persons whose names appear upon the evidence submitted have themselves signed such evidences on the dates specified thereon, and the persons specified as current members are in fact current members.

(e) The Director may direct an investigation and, if necessary, a hearing whenever he deems it appropriate to ascertain whether the evidence submitted is accurate. If he determines that evidence is fraudulent or that the declaration is false, he shall take such reasonable action that he deems appropriate to protect the integrity of the procedures of the Board in connection with the pending matter. Such a determination and such action taken by the Director shall be reviewable by the Board pursuant to section 201.12 of these Rules.

§201.7 (b) Unless filed by a public employer or by an employee organization that is the recognized or certified representative of employees in a unit claimed to be appropriate by one of the parties to the proceeding, a motion to intervene shall be supported by a showing of interest of at least [10%] 30% of the employees in such a unit [claimed to be appropriate by one of the parties to the proceeding] or in a unit alleged to be appropriate by the intervenor.

§201.9 (h) Election Procedure.

(1) Unless otherwise directed by the Board, all elections shall be conducted under the supervision of the Director. All elections shall be by secret ballot. Absentee ballots will not be permitted. An employee organization other than the petitioner shall be [entitled to be] permitted to intervene and be placed on the ballot upon submission to the Director of a showing of interest of at least [10%] 30% of the employees in the unit found to be appropriate, which is accompanied by the affirmation required by section 207.3 (b) of the Act, as long as notification of such desire is given to the Director within what he deems to be a reasonable time prior to the scheduled date of the election; except that no showing of interest shall be required of an employee organization that is the recognized or certified representative of employees in the unit found to be appropriate. Whenever two or more employee organizations are included as choices in an election, any participant may, upon prompt request to and approval thereof by the Director, have its name removed from the ballot; provided, however, that with respect to a petition for decertification, the employee

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organization certified or currently recognized may not have its name removed from the ballot without giving due notice in writing to all parties and the Director, disclaiming any representation interest among the public employees in the unit. Any party may be represented by observers of its own selection, subject to such limitations as the Director may prescribe. Any party or the Board's agent may challenge, for good cause, the eligibility of any person to participate in the election. The ballots of such challenged persons shall be impounded. Upon the conclusion of the election, the Director shall cause to be furnished to the parties a tally of ballots.

~~§201.12 (a) Within ten working days after [service] receipt of the decision of the Director, a party may file with the Board an original and four copies of a statement in writing setting forth exceptions thereto, and an original and four copies of a brief in support thereof shall be filed with the Board simultaneously, at which time copies of such exceptions and brief shall be served upon each party to the proceeding.~~

§201.12 (g) Unless a party files exceptions to the decision of the Director within ten working days after [service] receipt thereof, that decision will be final.

§204.1 (c) REPEALED.

§204.1 (d) redesignated §204.1 (c).

§204.1 (e) redesignated §204.1 (d).

§204.2 (a) Notice of Hearing. After a charge is filed, the Director shall review the charge to determine whether the facts as alleged may constitute an improper practice as set forth in section 209-a of the Act. If it is determined that the facts as alleged do not, as a matter of law, constitute a violation, the charge shall be dismissed by the Director subject to review by the Board under section 204.10 (c) of these Rules; otherwise, except where section 204.2 (b) is applicable, a notice of hearing shall be prepared by the Director or a designated hearing officer, and, together with a copy of the charge, shall be [served upon] delivered to the charging party and each named respondent. The notice of hearing shall fix the place of hearing at a time not less than fifteen working days from issuance thereof.

§204.3 (a) Filing. The respondent shall file with the Director within [seven] ten working days after receipt of the notice of hearing an original and four copies of an answer, with proof of service of a copy thereof upon all other parties. The original shall be signed and sworn to before any person authorized to administer oaths.

§204.3 (b) Motion for Particularization of the Charge. If the charge is believed by a respondent to be so vague and indefinite that it cannot reasonably be required to frame an answer, the respondent may, within [seven] working days after receipt of the notice of hearing, file an original and four copies of a motion with the hearing officer for an order directing the charging party to file a verified statement supplying specified information. The filing of such motion will extend the time during which the respondent must file and serve his answer until [seven] ten working days from the ruling of the hearing officer

on the motion, or until such later date as the hearing officer may set. Such a motion must be served upon the charging party simultaneously with its filing with the hearing officer; proof of service must accompany the filing of the motion with the hearing officer.

§204.10 (a) Within fifteen working days after [service] receipt of the decision and recommended order, a party may file with the Board an original and four copies of a statement in writing setting forth exceptions thereto or to any other part of the record or proceedings, including rulings upon motions or objections, and an original and four copies of a brief in support thereof shall be filed with the Board simultaneously; at the same time, copies of such exceptions and briefs shall be served upon all other parties and proof of such service shall be filed with the Board.

§204.10 (c) Within five working days after [service] receipt of a decision of the Director dismissing a charge because the facts alleged do not, as a matter of law, constitute a violation of the Act, the charging party may file with the Board an original and four copies of a statement in writing setting forth his appeal from the decision, together with proof of service of a copy thereof upon each respondent. The statement shall set forth the reasons for the appeal.

§204.14 (b) Unless a party files exceptions to the decision and recommended order of the hearing officer within fifteen working days after [service] receipt thereof, the decision and recommended order, or any part thereof which concludes that a charge should be dismissed, in whole or in part, will be final.

§204.14 (c) Unless a party files exceptions to the decision and recommended order of the hearing officer within fifteen working days after [service] receipt thereof, the decision and recommended order, or any part thereof which concludes that a charge has merit and that remedial action should be required, [will be adopted by the Board, but the remedial action recommended may be rejected by the Board] will be final except that the Board may, on its own motion, decide to review the remedial action recommended within twenty working days after receipt by the parties of the decision and recommended order.

§206.4 Notice of Hearing. After receipt of a charge filed by the chief legal officer of a government involved or the Counsel, the Board shall issue to the parties a notice setting forth the time and place of the hearing, which time shall be not less than eight days after the [service] receipt of the notice.

§206.5 (a) The employee organization against whom the charge is issued shall have a right to file with the Board an answer within eight days after [service] receipt of the charge. In extraordinary circumstances, the Board may extend the time within which the answer shall be filed. One copy of the answer shall be served on the charging party and the public employer involved, and the original, with proof of service and two copies shall be filed with the Board.

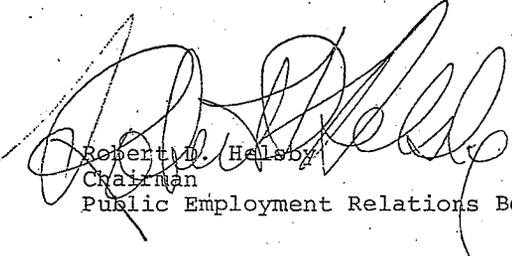
§206.7 (a) After completion of the hearing, or upon the consent of the parties, the hearing officer, if any, shall submit the case, including his report and recommendations, to the Board. The record shall include the charge, notice of hearing, motions, rulings, orders, stenographic report of the hearing, stipulations, exceptions, documentary evidence and any briefs or other documents submitted by the parties. The Board shall cause the report and recommendations of the hearing officer, if any, to be [promptly served on] delivered to all parties to the proceeding. Briefs may be filed by any party within seven working days after [service upon him] receipt of the report and recommendations of the hearing officer, if any; provided, however, that the Board may extend the time during which briefs may be filed because of extraordinary circumstances.

§208.2 Former Board Employees.

(a) No person who has been an employee of the Board shall engage in practice before the Board or its agents in any respect in connection with any case or proceeding which was pending during the time of his employment with the Board.

(b) No person who has been an employee of the Board shall engage in practice before the Board or its agents in any respect in connection with any case or proceeding not pending during his employment, for a period of six months after his employment with the Board has terminated.

I hereby certify that these amendments were adopted by the Public Employment Relations Board on January 21, 1974.

  
Robert D. Helsby  
Chairman  
Public Employment Relations Board

1/21/74