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New York State Public Employment Relations  
Board (PERB)

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3-12-1974

## State of New York Public Employment Relations Board Decisions from March 12, 1974

New York State Public Employment Relations Board

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# State of New York Public Employment Relations Board Decisions from March 12, 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-3/12/74

In the Matter of :  
HALF HOLLOW HILLS SCHOOLS, CENTRAL :  
SCHOOL DISTRICT NO. 5, :  
Respondent, : BOARD DECISION  
- and - : AND ORDER  
LOCAL 237, INTERNATIONAL BROTHERHOOD OF :  
TEAMSTERS, AND HALF HOLLOW HILLS : CASE NOS. U-0789  
NON-TEACHING ASSOCIATION, : and D-0080  
Charging Parties, :  
- and - :  
HALF HOLLOW HILLS NON-TEACHING :  
ASSOCIATION AND LOCAL NO. 237, :  
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, :  
Upon the Charge of Violation of :  
Section 210.1 of the Civil Service :  
Law. :

BOARD DECISION

On February 17, 1973, the Half Hollow Hills Non-Teaching Association (the Association) and Local 237 International Brotherhood of Teamsters (Local 237) filed an improper practice charge alleging that the Half Hollow Hills Schools, Central School District No. 5 (the employer) violated CSL § 209-a.1(d) which provides that

"It shall be an improper practice for a public employer or its agents deliberately... (d) to refuse to negotiate in good faith with the duly recognized or certified representative of its public employees."

The charge asserts that the employer failed to negotiate in good faith by rejecting the report of the fact finder and unilaterally changing the terms of a tentative agreement.

In its answer of March 5, 1973, the employer denied the material allegations of the charge and interposed an affirmative defense alleging that the charge was not timely filed in that it was not brought within four (4) months of the date when the alleged acts comprising the basis of the charge occurred as required by § 204.1 of our Rules.

Thereafter, Counsel to the Public Employment Relations Board charged the Association and Local 237 with violating CSL § 210.1 by engaging in a strike on December 4 and 5, 1972. The answer of the Association and Local 237 admitted that a strike occurred and asserted by way of affirmative defense that the employer had committed acts of "extreme provocation" so as to detract from the responsibility of the Association and Local 237 for the alleged strike.

A consolidated hearing was held as to both matters at which all parties were present and represented by counsel, and on October 23, 1973, the hearing officer submitted his decision and recommended order. In it he concluded that the improper practice charge was not timely filed and therefore should be dismissed. He further found, and the parties so stipulated, that the Association and Local 237 had engaged in a two (2) day strike on December 4 and 5, 1972 which strike was authorized by a vote of the membership on August 24, 1972 and another vote on December 2, 1972. With respect to matters relevant to the extent of the penalty, if any, to be imposed upon the Association and Local 237 for the strike, the hearing officer found that the Association and Local 237 had violated § 210 of the Act, but that "the penalty to be imposed reflect the employer's extreme provocation, and the absence of any impact upon the public health, safety and welfare."

On December 14, 1974, the employer filed exceptions to that part of the hearing officer's decision and recommended order that concluded that the employer had engaged in acts of extreme provocation which detracted from the responsibility of the Association and Local 237 for the strike. No exceptions were filed by the Association or Local 237 to that part of the hearing officer's decision and recommended order that dismissed its improper practice charge. Thus, the sole question before us is whether the employer or its agents engaged in acts of extreme provocation so as to detract from the responsibility of the Association and Local 237 for the strike.

FACTS

Negotiations between the parties commenced in July 1972. At the outset of negotiations, the chief negotiator for the District, Maurice Behrens, Esq., informed Mr. Jack Farneti, chief negotiator for the Association and Local 237, that any agreement reached was subject to ratification by the employer's Board of Education. In August, an impasse developed on several items, with the major disagreement being over salary and fringe benefits. A strike was authorized by a strike vote taken on August 24, 1972 and a mediator-fact finder was appointed to aid in resolution of the dispute.

On September 13, 1972, a tentative agreement was reached by the negotiators for each of the parties. At this time, Mr. Behrens restated that the "agreement" was subject to approval by the employer's Board of Education and further expressed anticipated difficulty in obtaining such approval for the health and welfare fund provision. Mr. Farneti, nonetheless, requested the fact finder to incorporate the terms of the tentative agreement into a fact finder's report.

The fact finder's report was issued on September 26, 1972 and contained the provisions of the tentative agreement. The report was rejected by the employer's Board of Education on October 2, 1972 largely because of the provision calling for increased contributions to the health and welfare fund. This fact was communicated to the Association and Local 237 on October 3, 1972. During the following two (2) week period, various members of the employer's Board of Education met with the Association and Local 237 representatives in an attempt to resolve the matter but the meeting(s) proved fruitless.

On October 18, 1972, a legislative hearing was held during which Mr. Barry Feinstein, President of Local 237, made a statement on behalf of the Association and Local 237 relating to "recommendations for settling the dispute". Mr. Behrens made a presentation on behalf of the employer's chief executive officer.

The recommendations contained in his presentation differed from the tentative agreement of September 13, 1972 particularly with respect to the fact that no reference whatever was made to contributions to the health and welfare fund whereas provision was made for such contributions in the tentative agreement.

The Board's legislative action rendered on October 26, 1972 contained eight "recommendations" for resolving the dispute but made no provision for contributions to the health and welfare fund. However, these recommendations of the Board were never implemented. Thereafter, communications between the parties were virtually discontinued despite the request of the Association and Local 237 that the employer resume negotiations and a second strike vote authorizing a strike was taken by the Association and Local 237 on December 2, 1972. A two (2) day strike ensued on December 4 and 5, 1972.

DISCUSSION

In previous cases, this Board has held that an employer has a duty to continue negotiations until an agreement is reached.<sup>1]</sup> Legislative action does not relieve the employer of this duty when, as in this case, the legislative action which was in the form of recommendations was never implemented. Under these circumstances, we find that the conduct of the public employer constituted extreme provocation that detracts from the responsibility of the Association and Local 237 for the strike.<sup>2]</sup> Accordingly, the dues forfeiture that we impose is diminished by two months from what it would otherwise have been.

NOW, THEREFORE, IT IS ORDERED that the rights of the Half Hollow Hills Non-Teaching Association and Local 237, International Brotherhood of Teamsters to membership dues deductions pursuant to § 208.1(b) of the Civil Service Law on

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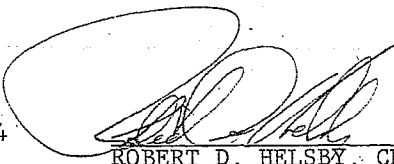
1] *Matter of Vestal Teachers Association*, 3 PERB 3553 (1970).

2] Although the conduct of the employer's negotiator was inappropriate when he submitted recommendations at the legislative hearing that differed from the tentative agreement to which he had previously assented, there is no indication that it was actually provocative of the strike. Inasmuch as the issue was not raised before us, we also do not reach the question of whether or not this conduct constituted a violation of CSL § 209-a.1(d).

behalf of its members shall be forfeited for a period of four (4) months and that the employer shall not deduct more than two-thirds of the annual dues during the twelve (12) month period commencing this 12th day of March, 1974 and said rights shall not be restored to the Half Hollow Hills Non-Teaching Association or Local 237, International Brotherhood of Teamsters until each pledges that it will not strike, as required by the provisions of the Civil Service Law, § 210.3(g).


Dated at Buffalo, New York

This 12th day of March, 1974



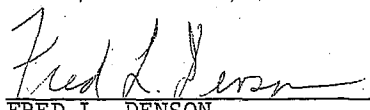
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ROBERT D. HELSBY, CHAIRMAN



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JOSEPH R. CROWLEY



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FRED L. DENSON

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

#2B-3/12/74

In the Matter of :

AMHERST CENTRAL HIGH SCHOOL DISTRICT, :  
EGGERTSVILLE COMMON SCHOOL DISTRICT, :  
and AMHERST-SNYDER COMMON SCHOOL :  
DISTRICT, :

Employers, :

-and- :

AMHERST UNIT, ERIE EDUCATIONAL :  
CHAPTER, CSEA, :

Petitioner. :

CASE NO. C-1012

DECISION AND ORDER

On November 19, 1973, Amherst Unit, Erie Educational Chapter, CSEA (the petitioner) filed, in accordance with the Rules of Procedure of the New York State Public Employment Relations Board, a petition for certification as the exclusive negotiating representative of certain employees of the three school districts. During the processing of the petition, the incumbent employee organization, Amherst School Lunch Employees Association, filed a written disclaimer of interest in representing any of the employees.

At the informal conference, the parties executed three separate consent agreements, providing that elections be held among the cafeteria employees of each employer. The consent agreements were approved by the Director of Public Employment Practices and Representation on January 31, 1974.


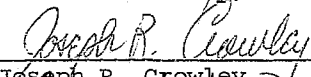
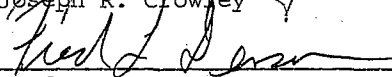
Pursuant to the consent agreements, secret ballot elections were held on February 20, 1974. The results of these elections indicate that a majority of the eligible voters in each of the stipulated units who cast valid ballots do not



desire to be represented for purposes of collective negotiations  
1]  
by the petitioner.

THEREFORE, IT IS ORDERED that the instant petition  
should be, and hereby is, dismissed.

Signed on the 12th day of March, 1974

  
\_\_\_\_\_  
Robert D. Helsby, Chairman  
  
\_\_\_\_\_  
Joseph R. Crowley  
  
\_\_\_\_\_  
Fred L. Denson

1] In the Amherst Central High School District unit, there were 6 ballots cast in favor of, and 7 ballots cast against, representation by the petitioner.  
In the Eggertsville Common School District unit, there were 3 ballots cast in favor of, and 4 ballots cast against, representation by the petitioner.  
In the Amherst-Snyder Common School District unit, there were 0 ballots cast in favor of, and 11 ballots cast against, representation by the petitioner.

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of :  
MIDDLE COUNTRY CENTRAL SCHOOL DISTRICT : #2C-3/12/74  
NO. 11, :  
Employer, :  
-and- :  
SUFFOLK EDUCATIONAL CHAPTER, CIVIL : Case No. C-1005  
SERVICE EMPLOYEES ASSOCIATION, INC., :  
Petitioner, :  
-and- :  
LOCAL 1938, COUNCIL 66, AFSCME, 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 Suffolk Educational Chapter, Civil Service Employees Association, Inc.

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

Unit A

Included: All non-professional employees, including matrons, custodians, groundsmen, senior custodians, painters and glazers, maintenance mechanics (plumbers, electricians, maintenance men, carpenter, cement finishers, control men) storekeepers, store clerks, automotive operators, bus drivers, bus driver-mechanics, bus mechanics, head bus drivers and cafeteria employees.

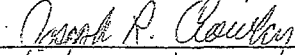
Excluded: All chief custodians, head custodians and all other employees.

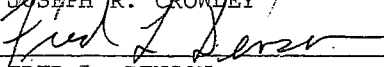
Further, IT IS ORDERED that the above named public employer shall negotiate collectively with Suffolk Educational Chapter, Civil Service Employees Association, Inc.

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

Signed on the 12th day of March , 1974 .

  
ROBERT D. HELSBY, Chairman

  
JOSEPH R. CROWLEY

  
FRED L. DENSON

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of : #2D-3/12/74  
MIDDLE COUNTRY CENTRAL SCHOOL DISTRICT :  
NO.11, :  
Employer, :  
-and- :  
SUFFOLK EDUCATIONAL CHAPTER, CIVIL : Case No. C-1005  
SERVICE EMPLOYEES ASSOCIATION, INC., :  
Petitioner, :  
-and- :  
LOCAL 1938, COUNCIL 66, AFSCME, AFL-CIO, :  
Intervenor. :

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

IT IS HEREBY CERTIFIED that Suffolk Educational Chapter, Civil Service Employees Association, Inc.

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

Unit B


Included: All chief custodians and head custodians.

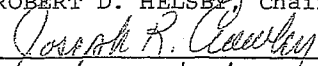
Excluded: All other employees.

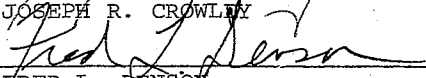
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and enter into a written agreement with such employee organization with regard to terms and conditions of employment, and shall negotiate collectively with such employee organization in the determination of, and administration of, grievances.

Signed on the 12th day of March, 1974.

  
ROBERT D. HELSEY, Chairman

  
JOSEPH R. CROWLEY

  
FRED L. DENSON