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State of New York Public Employment Relations Board Decisions from May 13, 1974

New York State Public Employment Relations Board

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State of New York Public Employment Relations Board Decisions from May 13, 1974

Keywords

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

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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2A-5/13/74

In the Matter of
CITY OF WHITE PLAINS,

Respondent,

-and-

BOARD DECISION

AND ORDER

PROFESSIONAL FIRE FIGHTERS ASSOCIATION,
INC., LOCAL #274, INTERNATIONAL
ASSOCIATION OF FIRE FIGHTERS,

Charging Party.

CASE NO. U-1004

This case comes to us on exceptions taken by the Professional Fire Fighters Association, Inc., Local #274, International Association of Fire Fighters (the Association) to a hearing officer's decision dismissing its charge. The charge, issued on October 24, 1973, alleged that the City of White Plains (the City) violated Civil Service Law §209-a.1(d) by unilaterally reducing its budgetary allocation of money available for tuition reimbursement to fire fighters who take higher education courses in fire service. In his decision dated March 21, 1974, the hearing officer concluded that the Association and the City had not agreed upon any specific amount to be allocated for such tuition reimbursement, but that the amount would be "...within the framework of the City's ability to pay."¹

In its exceptions the Association challenges the hearing officer's conclusions of fact. It argues that before the contract clause was agreed upon, the amount to be allocated had been ascertained;² it claims that such amount must be read into the

¹ The relevant contract clause states: "The City shall reimburse the Fire Fighters for approved courses within budgetary allocations provided the employee receives a 'C' grade or better."

² The allocation had been \$2,400, one-half of which was allocated for fire education. In its budget for the following fiscal year during April 1973, the City reduced this allocation by 50%.

language of the agreement. The hearing officer analyzed the evidence and reached a contrary conclusion, saying:

"Here, the clear language of the contractual provision and the uncontradicted testimony of the parties evidences: that the total amount of monies to be available for tuition reimbursement was to be determined by the City; that this sum would be equally divided between the fire and police and that the sum earmarked for fire would be distributed, per capita, amongst the eligible fire fighters. Thus, as the City's unilateral right to determine the budgeted sum was agreed to by the association,...."

We confirm the hearing officer's conclusion and, accordingly,

WE ORDER that the charge herein be, and it is hereby, dismissed in its entirety.

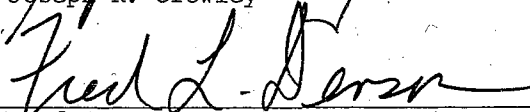
Dated: Albany, New York
May 13, 1974



Robert D. Helsby, Chairman



Joseph R. Crowley



Fred L. Denson

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2B-5/13/74

In the Matter of :
: BOARD DECISION
YORKTOWN FACULTY ASSOCIATION, :
: AND ORDER
Respondent, :
-and- :
YORKTOWN CENTRAL SCHOOL DISTRICT NO. 2, :
: CASE NO. U-0843
Charging Party. :

In the Matter of :
: CASE NO. U-0882
YORKTOWN CENTRAL SCHOOL DISTRICT NO. 2, :
: CASE NO. U-0882
Respondent, :
-and- :
YORKTOWN FACULTY ASSOCIATION, :
: CASE NO. U-0882
Charging Party. :

This case comes to us on exceptions taken by both the Yorktown Faculty Association (association) and the Yorktown Central School District No. 2 (school district) from a decision of a hearing officer dismissing charges filed by each of them.

Charge U-0843 had been filed by the school district against the association on April 30, 1973. It alleged that the association had violated Civil Service Law §§209-a.2(a) and (b) by insisting that the association negotiate on non-mandatory subjects of negotiation and reinstating after factfinding certain negotiating proposals that had been withheld from the factfinder. On June 7, 1973, charge U-0882 was filed by the association against the school district alleging a violation of CSL §209-a.1(d). The specifics of the charge were that the school district had refused to negotiate over demands concerning job security and the salary of substitutes and that it had unilaterally announced staff cuts, altered the guidance services structure in the high school, and established a senior teacher position. The charge further alleged that the school district refused to comply with a factfinder's request to supply financial data.

The essential elements of the hearing officer's decision are:

A. He determined that the following five items were not terms and conditions of employment and thus not mandatory subjects of negotiation.

1. The employer's decision to eliminate jobs.
2. The association's demand that there should be a maximum limit of 22,000 weighted student contact minutes per week (WSCM). The WSCM was to be calculated by a complex formula that included, among other factors, class size¹.
3. The association's demand for a greater role in the making of decisions relating to the development of curriculum, the evaluation of principals, the assignment of para-professionals and other educational matters.
4. The association's demand for a greater role in the formulation of policy relating to student guidance in high schools.
5. The association's demand that each student shall have a specific number of contact periods in various subject areas with teaching specialists.

B. He determined that the association's demands concerning the salary and job assignments of per-diem substitutes did not constitute a mandatory subject of negotiations because he found that per-diem substitutes were not in the negotiating unit.

¹ The WSCM was to be calculated by multiplying five factors: (i) contact periods per day per teacher; by (ii) length of contact period; by (iii) number of students per contact period - i.e., class size; by (iv) number of contact periods per week; by (v) weighting factor. The weighting factor itself was a formula for assigning different values to different classes. For example, mathematics, english and social studies in grades 6 - 12 has a weighting factor of 1; library science in grades 9 - 12 a factor of 1.04; industrial arts in grades 7 - 12 a factor of 1.67; home economics in grades 7 - 12 a factor of 2; learning disability in grades K - 5 a factor of 2.67; and instrumental music in grades 6 - 12 a factor of 5.

C. He found that the evidence did not support the allegation that the school district improperly withheld requested financial data from the factfinder.

D. He found that the association did not seek to negotiate over the impact of the school district's unilateral decisions on non-mandatory subjects of negotiations and, consequently, the school district did not refuse to do so.

E. He ruled that it would have been improper for the association to submit demands involving non-mandatory subjects of negotiations to the factfinder over the objections of the school district, but concluded that its actual submission of such demands to the factfinder in the instant case did not constitute a refusal to negotiate in good faith because the school district had not objected.

F. He reasoned that the association's reinstatement of demands withheld from the factfinder after its rejection of the factfinding report did not constitute a violation of its duty to negotiate in good faith. His analysis was that the demands had been withheld at the request of the factfinder and the association had indicated that it was not dropping the demands, but would raise them again subsequently.

Both the association and the school district took exception to all parts of the hearing officer's decision that were adverse to them. These exceptions extended to both the hearing officer's findings of fact and his conclusions of law. Having reviewed the record and the positions of the parties, we find the hearing officer's decision to be a well-reasoned one even though we reject some of his conclusions. We discuss the most significant issues in the case; as to matters not discussed in this decision, we confirm the findings of fact and conclusions of law of the hearing officer.

A. With one exception, we accept the analysis of the hearing officer and confirm his conclusions regarding matters that

are non-mandatory subjects of negotiation.² We determine that the demand for a limitation on the WSCM is negotiable. The hearing officer misread our decision in Matter of West Irondequoit Board of Education, 4 PERB 3725 (1972) on which he relied. In that decision we distinguished between matters of education policy that are not terms and conditions of employment, such as class size, and the impact of such decisions on terms and conditions of employment, such as teacher workload. Class size is but one factor in the calculation of WSCM; a demand for limitations on the WSCM is a workload demand and a mandatory subject of negotiations. The formula for the determination of WSCM includes not only class size, but also hours of work and the number of teaching periods which we ruled were mandatory subjects of negotiations in Matter of West Irondequoit Board of Education, *supra*.

B. The facts in the record support the conclusion that the school district did object to submission of non-mandatory subjects of negotiations to the factfinder. As found by the hearing officer,

"On February 28, in the third negotiating session, Eric Rosenfeld, Esq., the chief negotiator for the District, told the negotiating team for the Association that certain of the Association's proposals were not within the scope of mandatory negotiations under the Act, and that therefore the District refused to negotiate on those proposals...."

Although the association did not charge the school district with refusal to negotiate in good faith or seek to take advantage of our expedited procedure to resolve scope of negotiations questions, they were certainly aware that the school district objected to negotiations over the questionable demands. The record does not indicate that the school district restated

² See Matter of Board of Higher Education of the City of New York, 7 PERB ¶3028, issued subsequent to the hearing officer's determination regarding the negotiability of demands for faculty participation in the making of education policy.

its objection to consideration of those demands by the factfinder at the outset of factfinding. Contrariwise, it indicates that the school district responded to them on the merits. We do not, however, view the response on the merits as being a waiver of the district's previously stated objections; rather, we accept the school district's argument that the response constituted a fall-back position in the event that the factfinder should reject its jurisdictional objections. Its jurisdictional objections were forthcoming during the course of the factfinding. Between the second and third factfinding meeting, it filed the charge herein and notified the hearing officer and the association of its objection. We find that the school district's conduct regarding the non-mandatory character of the demands was consistent throughout and reflected an objection to negotiating over them or to their consideration by the factfinder.

Having rejected the hearing officer's conclusion of fact that the school district did not object to consideration of the questionable demands by the factfinder, we determine that the association's insistence on the demands constituted a refusal to negotiate in good faith.³ In this connection, we note the testimony of the chairman of the association's negotiating committee that it might have been willing to accept an agreement that did not cover the demands in the questionable areas, but that it would not have done so unless there had been prior negotiations.

C. Finally, we confirm the conclusion of the hearing officer that the association could maintain demands involving mandatory subjects of negotiations after factfinding, even though those demands had been withheld from the factfinder. The record indicates that the demands were withheld at the request of the

³ See Board of Higher Education of the City of New York, supra, for our analysis of the limits of a party's rights to insist upon a demand for a non-mandatory subject of negotiations during factfinding.

factfinder and for his convenience. This conduct did not constitute a waiver of the demands. Perhaps if the factfinding report had produced an agreement on the major issues, the remaining issues would have evaporated. This happens frequently. However, it does not follow that demands not submitted to a factfinder are automatically withdrawn.

NOW, THEREFORE, WE ORDER that the association cease and

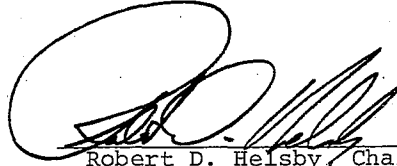
desist from insiting upon consideration by a factfinder of any proposal, the subject of which is not within the scope of mandatory negotiations within the Act, including, but not limited to,

1. the employer's decision to eliminate jobs;
2. demands for a greater role in the making of decisions relating to the development of curriculum, the evaluation of principals, the assignment of para-professionals and other educational matters;
3. demands for a greater role in the formulation of policy relating to student guidance in high school;
4. demands that each student shall have a specific number of contact periods in various subject areas with teaching specialists; and
5. demands concerning the salary and job assignments of per-diem substitutes who are not in the negotiating unit.


IT IS FURTHER ORDERED that the school district cease and desist from refusing to negotiate over demands that there should be a maximum

limit of weighted student contact minutes
per week.

Dated: Albany, New York
May 13, 1974



Robert D. Helsby, Chairman



Joseph R. Crowley



Fred L. Denson

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2C-5/13/74

In the Matter of	:	
	:	
HEMPSTEAD PUBLIC SCHOOLS, UNION FREE	:	
SCHOOL DISTRICT NO. 1,	:	BOARD DECISION
	:	<u>AND ORDER</u>
Respondent,	:	
	:	
-and-	:	
	:	CASE NO. U-1012
HEMPSTEAD SCHOOLS ASSOCIATION OF	:	
ADMINISTRATORS,	:	
	:	
Charging Party.	:	

This matter comes before us on exceptions of the Hempstead Public Schools, Union Free School District No. 1 (District), the employer-respondent herein, to the decision of the hearing officer rendered February 7, 1974. The decision sustained a charge of the Hempstead Schools Association of Administrators (Association) that the District had violated §§209-a.1(c) and (d) of the Public Employees' Fair Employment Act, ¹(Act) by unilaterally granting salary increases to two (2) building principals in the negotiating unit, for which the Association has been the recognized negotiating representative, for the purpose of rewarding said principals for not joining the Association.

BACKGROUND

Since there has been a stipulation of facts by the parties, we do not repeat them here, but instead adopt them as set forth in the decision of the hearing officer. The following synopsis of the more salient facts will suffice for purposes of this discussion.

During the month of November, 1971, the District filed an application to have all building principals designated as managerial pursuant to §201.7 of the Act. The Board's decision affirming the decision of the Director of Public Employment Practices and Representation

¹ These sections provide "It shall be an improper practice for a public employer or its agents... (c) to discriminate against any employee for the purpose of encouraging or discouraging membership in, or participation in the activities of, any employee organization; or (d) to refuse to negotiate in good faith with the duly recognized or certified representatives of its public employees."

denying the application on the basis that the building principals were not managerial² was confirmed by the Appellate Division of the Supreme Court.³

In May, 1973, the Association filed improper practice charges against the District based on its refusal to negotiate with the Association as the representative of building principals until there was final determination of the issues raised in the aforementioned Article 78 proceeding.⁴ The Board affirmed the hearing officer's determination that the improper practice charge had⁵ merit.

Joseph Crawford and James Watkins, both of whom were made building principals after the District submitted its application for managerial designations, were granted wage increases by the District without consulting or negotiating with the Association. In addition to Crawford and Watkins, the District has seven (7) other building principals, five (5) of whom were building principals at the time the District made its application for their managerial status. The remaining four (4), including Crawford and Watkins, were employed as building principals, pursuant to individual employment contracts, subsequent to this application. Both replaced building principals who were previously in the Association's negotiating unit. These proceedings were precipitated by the granting of raises to the two (2) aforementioned individuals.

The District has not moved the courts for a stay of the Board orders contained in either the E-0135 case or the U-0852 case.

EMPLOYER-RESPONDENT
EXCEPTIONS

The District excepts to the hearing officer's finding that it had a continuing obligation to the present, to negotiate with the Association as the exclusive representative of building

² 6 PERB 3002; Case No. E-0135.

³ 42 A.D. 2d 1056; 6 PERB 7017.

⁴ The matter is now pending before the Court of Appeals.

⁵ In the Matter of Hempstead Union Free School District, 7 PERB 3025 (1974).

principals. In support of this exception, the District points out that the Association has been neither the certified nor recognized representative of the building principals since the District's refusal to recognize it (the Association) as such since November, 1971.

The District also takes exception to the hearing officer's finding that the Association represents all building principals. The District contends that the four (4) building principals hired subsequent to its managerial application are not members of the Association and therefore are not represented by the Association. This argument is based on the assumption that the Association continues to be the recognized representative of only those building principals who were employed as such prior to the application.

Finally, the District excepts to the hearing officer's finding that the separate treatment given to newly hired building principals is a per se violation of §§209-a.1(c) and (d) of the Act. The District contends that its actions of hiring and setting salaries for replacement building principals were merely in pursuit of rights guaranteed to it by statute.

DISCUSSION

Having given careful consideration to the exceptions and arguments of the District, it is our considered opinion that the decision of the hearing officer should be affirmed. In reaching this conclusion, the effects of our orders in related cases U-0852 and E-0135 have been translated to and superimposed upon the issues presented in the instant matter.

In the U-0852 case, this Board reiterated a fundamental principle regarding withdrawal of recognition; to wit:

"A recognition properly granted by an employer may not be withdrawn at the whim of the employer, but may only be withdrawn if the employer at an appropriate time has objective evidence that the employee organization no longer represents an appropriate unit or enjoys majority status, or if the employer invokes the processes of this Board by way of petition for decertification or certification. Both of these alternatives are subject to the provisions of Section 208.2 of the Act and the Rules of this Board. The record herein does not indicate that representation status was properly withdrawn from the charging party." (at 7 PERB 3025)

Nor does the record here reflect proper withdrawal of representation status since, by stipulation, the parties have made the record of the U-0852 case a part of the instant record.

The fact that the Association's status has been challenged by the District in a prior proceeding (E-0135) is of no persuasive moment in relieving the District of its continuing obligation to negotiate with the Association regarding the salaries of building principals. Our order in that case denying the District's application has full force and effect until modified or stayed by a court of competent jurisdiction. Since there has been no court modification of that order to date and further since the District has not instituted judicial proceedings to stay the effect of the order, the status quo is maintained and the District is encumbered with the continuing obligation to negotiate with the Association. The obligation encompasses negotiations for salaries of all employees represented by the Association including building principals who were employed prior to the District's application for managerial status as well as those who were employed as building principals subsequent to the application. In accordance with §208.1(a) of the Act, an employer is required to extend to a recognized employee organization the right to represent in negotiations all employees in the unit. The District cannot abridge this right by making an application to PERB to designate as managerial certain employees within the unit and by seeking court review of an adverse decision by PERB on the application.

The District argues that it cannot be found guilty of an improper practice where it is pursuing statutory rights granted to it by the Act. The District misconstrues the breadth of its statutory rights regarding application to PERB for designation of managerial employees. The following was pointed out in our decision in the U-0852 case:

"It is not the application of the employer that terminates the coverage by the Taylor Law of employees or the status of the organization that represents such employees. Rather, it is the determination by this Board on that application and even then, such status may not be terminated immediately but only becomes effective upon the termination of the period of unchallenged representation (CSL §201.7(a))."
(at 7 PERB 3025)

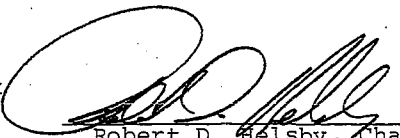
Moreover, in this regard, pursuit of statutory rights in the courts is limited to such matters as the judicial review of a Board order and/or an application for staying such an order of the Board. There is no aspect of such pursuit which would permit an employer to abridge the statutory right of a certified or recognized employee organization to fairly represent all employees in its unit. It would indeed be anomalous for this Board to give credence to the alleged statutory rights of the District in derogation of the already established statutory rights of the Association under §208.1(a) of the Act.

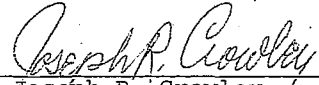
We agree with the hearing officer's conclusion that the District's action in unilaterally granting salary increases and individual contracts to building principals was motivated by anti-union animus and that such action is per se a violation of §§209-a.1(c) and (d) of the Act. Thus, no further proof of anti-employee organization animus is required. The gravity of the District's activities is of such a nature to require that immediate corrective action be ordered:

THEREFORE, WE ORDER that the District

1. cease and desist from granting individual contracts and salary increases to any of its building principals without fulfilling its obligation to negotiate in good faith with the Association;
2. conspicuously post the notice attached hereto at locations ordinarily used by it to communicate to members within the unit;
3. forthwith grant salary increases to all remaining building principals in the District comparable to the salary increases accorded to Crawford and Watkins.

Dated: May 13, 1974
Albany, New York


Robert D. Helsby, Chairman


Joseph R. Crowley


Fred L. Denson

APPENDIX

NOTICE TO ALL EMPLOYEES

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

and in order to effectuate the policies of the

NEW YORK STATE
PUBLIC EMPLOYEES' FAIR EMPLOYMENT ACT

we hereby notify our employees that:

- (1) WE WILL NOT grant individual contracts and salary increases to any building principals without fulfilling our obligation to negotiate in good faith with the Hempstead Schools Association of Administrators.
- (2) WE WILL forthwith grant salary increases to all remaining building principals in the school district comparable to the salary increases accorded to Joseph Crawford and James Watkins.

.....
Employer

Dated

By
(Representative) (Title)

This Notice must remain posted for 30 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2D-5/13/74

IN THE MATTER OF

BOARD OF TRUSTEES, HALF HOLLOW HILLS
COMMUNITY LIBRARY,

Respondent,

and

TEAMSTERS UNION LOCAL 237, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, VITO DE MARZO,
THEODORE CARRON, THOMAS GUGLIOTTA,
NICHOLAS FERRARO,

Charging Party.

BOARD

DECISION


AND ORDER.

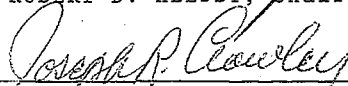
Case No.
U-0719

On August 7, 1973, we issued a decision in this matter ordering the Respondent to compensate VITO DE MARZO, THEODORE CARRON, THOMAS GUGLIOTTA and NICHOLAS FERRARO for wages lost for varying periods of time plus interest of three (3%) per cent. (6 PERB 3082). Our order provided that the amount of wages actually earned by them during the periods in question or that would have been earned by them during such period through the exercise of due diligence in seeking employment should be deducted from the amount that Respondent would be required to pay to them. A compliance issue is now raised as to whether the four former employees exercised due diligence in seeking employment, and the parties, by letter dated May 8, 1974, have jointly requested that we reassume jurisdiction to resolve this compliance issue.

We grant this request, and remand the matter to the Director of Public Employment Practices and Representation for appropriate action.

Dated: Albany, New York
May 13, 1974


ROBERT D. HELSBY, Chairman


JOSEPH R. CROWLEY


FRED L. DENSON

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2F-5/13/74

In the Matter of :
BOARD OF EDUCATION CENTRAL SCHOOL :
DISTRICT NO. 1, TOWNS OF OYSTER BAY :
AND NORTH HEMPSTEAD, :
Employer, :
- and - :
NORTH SHORE SCHOOLS EDUCATIONAL : Case No. C-1037
SECRETARIES ASSOCIATION, :
Petitioner, :
- and - :
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 NORTH SHORE SCHOOLS EDUCATIONAL SECRETARIES 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:

Included: All office clerical personnel whose function falls under the category of office staff (both 10- and 12-month status).

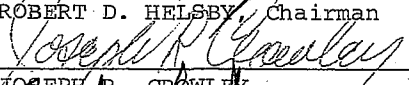
Excluded: Students and temporary employees.

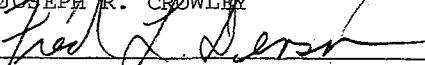
Further, IT IS ORDERED that the above named public employer shall negotiate collectively with North Shore Schools Educational Secretaries Association

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 13th day of May, 1974.


ROBERT D. HELSBY, Chairman


JOSEPH R. CROWLEY


FRED L. DENSON