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5-23-1974

# State of New York Public Employment Relations Board Decisions from May 23, 1974

New York State Public Employment Relations Board

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# State of New York Public Employment Relations Board Decisions from May 23, 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-5/23/74

In the Matter of

SUSQUEHANNA VALLEY CENTRAL SCHOOL DISTRICT,

Respondent,

BOARD DECISION

- and -

AND ORDER

SUSQUEHANNA VALLEY TEACHERS' ASSOCIATION,

CASE No. U-0975

Charging Party.

On March 11, 1974, a hearing officer issued his decision dismissing the charge in this matter because it was not timely. It now comes to us on exceptions filed by the Susquehanna Valley Teachers' Association (association) to this decision.

The association filed the charge on September 17, 1973, alleging that the Susquehanna Valley Central School District (school district) had violated CSL §§209-a.1(a), (c) and (d) when, on August 2, 1973, it issued a "legislative determination" in resolution of a negotiations impasse that, according to the association, was not appropriate for such a legislative determination.

In a contract executed on April 4, 1973, which covered the period from July 1, 1972 through June 30, 1974, the parties agreed upon a gross dollar amount for 1973-74 salaries but established a procedure by which an alternative salary plan for 1973-74 might be achieved. This procedure called for the appointment of a joint committee to make recommendations and further provided that, in the event that the recommendations were rejected, the matter of the alternative salary plan -- but not the gross dollar amount -- would "...become subject to negotiations under the Taylor Law." Because of a dispute regarding the composition of the committee, it never became functional and the parties proceeded to negotiate. These negotiations did not yield an agreement and on April 30, 1973, the school district invoked the impasse resolution procedures set forth in CSL §209.3. Notwithstanding its objections that it was not obliged to do so, the

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association participated in these procedures. From its point of view, however, its objections reached a further dimension when the school district referred the impasse to its school board for a legislative determination. It was the issuance of the legislative determination a few days later that precipitated the charge.

The gravamen of the charge is that the contract did not provide for the invocation of impasse procedures when it provided for negotiations under the Taylor Law. The hearing officer noted that impasse procedures had been invoked on April 30, 1973, which was more than four months prior to the filing of the charge. Accordingly, he dismissed the charge as not being timely.<sup>1</sup>

In its objections, the association argues that although it was not contractually obligated to submit to mediation or factfinding, its distress at the invocation of these procedures was only minimal because they are designed to assist the parties to reach a mutually satisfactory agreement. Its argument stresses the distinction between a legislative determination and the other impasse procedures set forth in CSL §209; only the legislative determination permits terms and conditions of employment to be imposed upon it and it was the attempt to impose terms and conditions of employment through a legislative determination that was improper. It represents that its participation in the other procedures did not constitute a waiver of its right not to be subjected to a legislative determination and that it had no reason to file a charge until August 2, 1973.

We agree with this analysis of the charging party; thus we find the filing of the charge to have been timely. What is not clear, however, is whether the contract providing that the dispute shall "become subject to negotiations under the Taylor Law" contemplated the invocation of all the Taylor Law procedures including a legislative determination. The resolution of this

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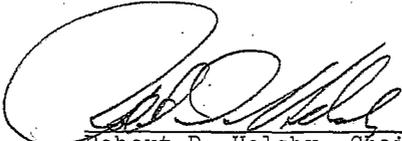
<sup>1</sup> See §204.1 of our Rules of Procedure.

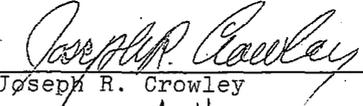
question involves an interpretation of the contract between the parties. Such a question of contract interpretation should be resolved by the procedure that the parties have set up for such purpose -- the grievance procedure. Accordingly, we defer to it.

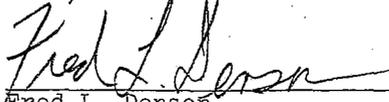
We determine that the hearing officer erred in dismissing the charge as not having been timely filed and in not granting the association's motion for deferral to arbitration. However, we retain jurisdiction of the matter and will entertain a motion to reopen the matter upon a showing that either (1) the dispute has not been resolved by the grievance procedure or submitted to arbitration with reasonable promptness, or (2) if submitted to arbitration, the arbitrator's decision does not comply with the criteria set forth In the Matter of New York City Transit Authority, 4 PERB 3669 (1971);

NOW, THEREFORE, WE ORDER that the improper practice charge herein should be and it hereby is conditionally dismissed in its entirety subject to a motion to reopen in the event that the dispute is not resolved by the contract grievance procedure or that the arbitrator's decision (if any) does not comply with the criteria set forth In the Matter of New York City Transit Authority, 4 PERB 3669 (1971).

Dated: New York, New York  
May 23, 1974.

  
Robert D. Helsby, Chairman

  
Joseph R. Crowley

  
Fred L. Denson



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

BOARD MEMBERS

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

April 23, 1974

#3A-5/23/74

MEMORANDUM TO THE BOARD

FROM: Paul E. Klein *PK*

SUBJECT: Subpoenas

In November, 1973, the Board set forth the following general policy with regard to the issuance of subpoenas:

"Subpoenas. Whenever a party is represented by a layman rather than by an attorney, the hearing officer shall be authorized to issue subpoenas and subpoenas duces tecum where the representative of the party could have done so had he been an attorney. The hearing officers will rely upon their own judgment in issuance of subpoenas and should not grant the request of the lay representative automatically. It is, however, intended that the hearing officer cooperate with the lay representative and issue a subpoena if he determines that the evidence sought is likely to be material."

Several questions now arise with regard to the proper interpretation of this policy:

1. As you know, NYSUT is presently not using its attorneys in improper practice cases before us. Therefore, it is claiming the right to have us issue subpoenas ad testificandum on their behalf. Their reason, in many instances, for wanting such subpoenas is not to assure the presence of a potential witness (the witness quite often is an officer of NYSUT); rather, their reason is to assure that the witness will get a full day's pay pursuant to a clause in the collective bargaining agreement.

I have taken the position that, although their house counsel is not formally litigating the case before us, their counsel is, nevertheless, available to issue subpoenas and should do so rather than us. I would like Board confirmation of this.

2. The policy quoted above seems to indicate that, where PERB should legitimately issue a subpoena on behalf of a party that does not have the services of an attorney available to it, clearance is not necessary. I think this is appropriate; the hearing officer and I can exercise appropriate discretion. However, I would also like your thinking in this regard.

cc - J. Lefkowitz

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