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Board (PERB)

8-22-1974

State of New York Public Employment Relations Board Decisions from August 22, 1974

New York State Public Employment Relations Board

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State of New York Public Employment Relations Board Decisions from August 22, 1974

Keywords

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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2A-8/22/74

In the Matter of	:	
	:	
NEWBURGH TEACHERS ASSOCIATION	:	<u>BOARD DECISION</u>
	:	
Upon the Charge of Violation of Section 210.1	:	
of the Civil Service Law	:	<u>CASE NO. D-0083</u>
	:	

On October 15, 1973 Counsel for the Public Employment Relations Board (Board) charged the Newburgh Teachers Association (association) with violation of CSL §210.1 in that it caused, instigated, encouraged, condoned and engaged in a strike against the Newburgh City School District (employer), such strike lasting ten school days from September 17 through October 2, 1973. The association's answer included a denial of the allegations in the charge and, as an affirmative defense it asserted that the employer engaged in such acts of extreme provocation as to detract from the responsibility of the association for the strike.

A hearing was held on November 28 and 29, 1973 and January 3, 1974, following which the hearing officer, in a report dated May 1, 1974, found that the association had caused, instigated, encouraged, condoned and engaged in a strike as charged. The report also contained findings regarding the extent of the association's wilful defiance of statutory provisions prohibiting the strike, the impact of the strike on the public health, safety and welfare of the community, and the financial resources of the employee organization. These findings are all supported by the evidence and accepted by us.

More problematic, however, is the hearing officer's conclusion of law that the penalty to be imposed upon the association should reflect acts of extreme provocation by the employer. This conclusion is at odds with her

findings of fact on the point. She found that the employer had conducted itself in an unreasonable and inappropriate manner prior to September 6, 1973, the date on which the association resolved to strike unless an agreement were reached by September 16. This conduct was denominated extreme provocation by the hearing officer. Nevertheless, the hearing officer found that the employer's conduct prior to September 6 did not provoke the strike. She found that after September 6, the employer's attitude softened and that it then strove to achieve a settlement and that the strike began on September 17, 1973 "because a bilateral agreement had not been reached by the Association imposed deadline and the Association wished to preserve its credibility."

The hearing officer's findings of fact are supported by the evidence and we accept them. These facts, however, do not support her conclusion that the penalty should reflect the employer's extremely provoking conduct. It is the statutory scheme that inappropriate and unreasonable conduct by an employer during negotiations constitutes a violation of CSL §209-a.1(d), which declares it to be an improper practice for a public employer to refuse to negotiate in good faith.¹ Such conduct may also constitute extreme provocation within the meaning of CSL §210.3(f), but only if that conduct has, in fact, provoked the strike. The hearing officer has found in the instant case that it did not. Her reliance on our decision in Matter of Board of Education UFSD No. 4, Town of Rye, 6 PERB 3044 (1973) is misplaced. The circumstances in that case were similar to those in the instant case. That employer had engaged in unreasonable and inappropriate conduct during the negotiations until the Port Chester Teachers Association had threatened to strike, and only then did it abandon its posture of appearing to negotiate while awaiting an opportunity to impose its

¹ No such charge is before us.

predetermined fiscal plan. A strike occurred, however, when no agreement was reached. The difference between the cases is that in the Port Chester case we found that the earlier conduct of the employer engendered a sense of frustration that led directly to the strike, whereas in the instant case the hearing officer did not find so direct a relationship between the employer's inappropriate conduct and the strike. Accordingly, we reject the defense of extreme provocation.

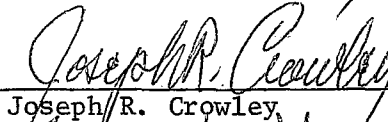
NOW, THEREFORE, WE ORDER that the right of the Newburgh Teachers

Association to membership dues deduction on behalf of its members shall be forfeited for a period of twelve (12) months commencing on the first practicable date and that the membership dues deduction shall not be restored until the expiration of the forfeiture period and the Newburgh Teachers Association pledges that it will not strike as required by the provisions of CSL §210.3(g).

Dated: Albany, New York
August 22, 1974



Robert D. Helsby, Chairman



Joseph R. Crowley



Fred L. Denson

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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of
KINGSTON WATER DEPARTMENT, : #2B-8/22/74
Employer, :
-and- :
N.Y.COUNCIL 66, AMERICAN FEDERATION OF STATE, :
COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO, : Case No. C-1092
Petitioner, :
-and- :
LOCAL UNION NO. 445, INTERNATIONAL BROTHERHOOD :
OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND :
HELPERS OF AMERICA, :
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 N.Y.COUNCIL 66, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, 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 employees of the employer including stenographer, clerk, labor foreman, water service man, motor equipment operator, laborer, water maintenance man, meter reader, reservoir operator, water plant operator, assistant water plant operator, water plant trainee, billing machine operator, stock clerk.

Excluded: Board of water commissioners, superintendent of water department, administrative assistant, water works foreman, maintenance foreman, chief water plant operator and all other employees.

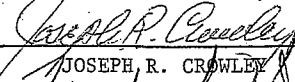
Further, IT IS ORDERED that the above named public employer shall negotiate collectively with N.Y.COUNCIL 66, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO

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.

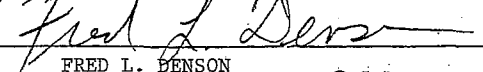
Signed on the 22nd day of August, 1974.



ROBERT D. HELSBY, Chairman



JOSEPH R. CROWLEY



FRED L. BENSON

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF
CITY OF NIAGARA FALLS, : #2C-8/22/74
Employer, :
-and- :
CIVIL SERVICE INDEPENDENT UNION OF :
NIAGARA FALLS, : Case No. C-1067
Petitioner, :
-and- :
UNITED STEEL WORKERS OF AMERICA LOCAL :
15071, 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 United Steel Workers of America Local 15071, 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 employees of the employer who are in a position in the competitive class of the Classified Civil Service (paid on annual basis) including provisional & probationary employees in the above class.

Excluded: Department Heads, all Deputy Department Heads, the Director of Civil Defense, all Uniformed Fire Fighters, all Fire Alarm Operators, all Uniformed Policemen, all Police Dispatchers, all persons employed as Filter & Pumping Plant Operators & Control Mechanics & Assistant Filter & Pumping Plant Operators and temporary & seasonal employees in the above competitive class.

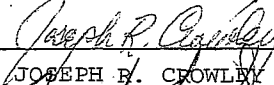
Further, IT IS ORDERED that the above named public employer shall negotiate collectively with United Steel Workers of America Local 15071, AFL-CIO,

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 22nd day of August, 1974.



ROBERT D. HELSBY, Chairman



JOSEPH B. CROWLEY



FRED L. DENSON

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2D-8/22/74

In the Matter of :
CITY OF BUFFALO, :
Employer, :
- and - :
LOCAL 650, NEW YORK COUNCIL 66, : Case No. C-1089
AMERICAN FEDERATION OF STATE, COUNTY :
AND MUNICIPAL EMPLOYEES, AFL-CIO, :
Petitioner. :
:

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected;

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

IT IS HEREBY CERTIFIED that LOCAL 650, NEW YORK COUNCIL 66, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, 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 security guards employed by the employer, including sergeants.

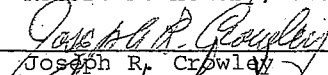
Excluded: All other employees.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with LOCAL 650, NEW YORK COUNCIL 66, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, 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.

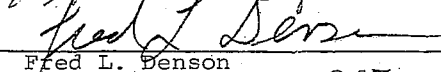
Signed on the 22nd day of August , 19 74 .



Robert D. Helsby, Chairman



Joseph R. Crowley



Fred L. Denson