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Board (PERB)

10-18-1974

State of New York Public Employment Relations Board Decisions from October 18, 1974

New York State Public Employment Relations Board

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State of New York Public Employment Relations Board Decisions from October 18, 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-10/18/74

In the Matter of

NIAGARA FALLS HOUSING AUTHORITY,

Employer,

- and -

NEW YORK COUNCIL 66, AMERICAN
FEDERATION OF STATE, COUNTY AND
MUNICIPAL EMPLOYEES, AFL-CIO,

Petitioner.

Case No. C-1123

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 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 full-time and regular part-time employees.


Excluded: Executive Director, Housing Project Managers, Secretary to the Executive Director, seasonals and temporary employees.

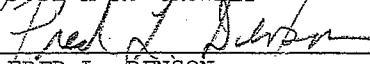
Further, IT IS ORDERED that the above named public employer shall negotiate collectively with NEW YORK COUNCIL 66, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO

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 18th day of October, 1974.


ROBERT D. HELSBY, Chairman


JOSEPH R. CROWLEY


FRED L. DENSON

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2B-10/18/74

In the Matter of
THE COUNTY OF ORLEANS, Employer,
- and -
ORLEANS COUNTY CHAPTER, CSEA, Petitioner,
- and -
LOCAL UNION NO. 1436, COUNCIL NO. 66
AMERICAN FEDERATION OF STATE, COUNTY
AND MUNICIPAL EMPLOYEES, AFL-CIO,
Intervenor.

Case No. C-1080

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 ORLEANS COUNTY CHAPTER, CSEA

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 ATTACHED SCHEDULE

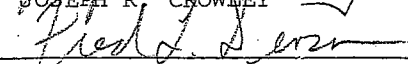
Further, IT IS ORDERED that the above named public employer shall negotiate collectively with ORLEANS COUNTY CHAPTER, CSEA

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 18th day of October, 1974.


ROBERT D. HELSBY, Chairman


JOSEPH R. CROWLEY


FRED L. DENSON

SCHEDULE

Included: All permanent employees of the Orleans County Department of Social Services consisting of the following job titles:

In the County Home and Infirmary - baker, building maintenance man, case worker, cleaner (light and heavy), cook, food service helper, head cook, institutional aide (light and heavy), laborer, laundry worker-in charge, laundry worker, medical secretary and stenographer,

In Administration - account clerk-typist, case worker, chauffeur-cleaner, clerk, homemaker, principal account clerk, receptionist, senior social welfare examiner, senior stenographer, senior steno-resource clerk, social welfare examiner, stenographer and typist, senior account clerk-typist and senior account clerk-typist-medical.

Excluded: Those employed in classifications and titles of Commissioner, Deputy Commissioner, case Supervisors, Director of Social Services, Accounting Supervisors, Director of Nursing Services, Assistant Director of Nursing Services, Nursing Supervisor, Charge Nurses, Registered Nurses, Licensed Practical Nurses, dieticians, physicians, pharmacists, physiotherapists, chaplains, and Nursing Home Administrator and all other employees.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#20-10/18/74

In the Matter of :
WARREN COUNTY AND WASHINGTON COUNTY :
(ADIRONDACK COMMUNITY COLLEGE), :
Employers, :
- and - :
ADIRONDACK COMMUNITY COLLEGE FACULTY : Case No. C-1046
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 ADIRONDACK COMMUNITY COLLEGE 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 representative for the purpose of collective negotiations and the settlement of grievances.

Unit:


Included: All full-time professors, associate professors, assistant professors, instructors, counselors, assistant librarians and assistant instructors in the day, evening and summer sessions.

Excluded: The President, the Deans, and administrative personnel.


Further, IT IS ORDERED that the above named public employer shall negotiate collectively with ADIRONDACK COMMUNITY COLLEGE 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 18th day of October , 1974 .


ROBERT D. HELSBY, Chairman


JOSEPH R. CROWLEY


FRED L. DENSON

PERB 58.1(2-68)

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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of : #2D-10/18/74
PEARL RIVER PUBLIC LIBRARY, :
Employer, :
-and- :
PEARL RIVER PUBLIC LIBRARY PAGES : Case No. C-1043
ASSOCIATION, :
Petitioner, :
-and- :
CIVIL SERVICE EMPLOYEES ASSOCIATION, :
INC., :
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 PEARL RIVER PUBLIC LIBRARY PAGES 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 pages.

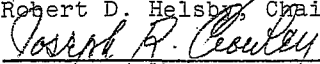
Excluded: All other employees of the employer.


Further, IT IS ORDERED that the above named public employer shall negotiate collectively with PEARL RIVER PUBLIC LIBRARY PAGES 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 18th day of October, 1974.


Robert D. Helsby, Chairman


Joseph R. Crowley


Fred L. Denson

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2E-10/18/74

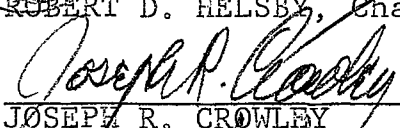
In the Matter of the Application of the :
TOWN OF NORTH CASTLE : Docket No. S-0060
for a Determination pursuant to Section :
212 of the Civil Service Law. :
:


At a meeting of the Public Employment Relations Board held on the 18th day of October, 1974, and after consideration of the application of the Town of North Castle made pursuant to Section 212 of the Civil Service Law for a determination that the Resolution adopted on September 27, 1968 establishing the North Castle Public Employment Relations Board as last amended by the Resolution adopted on September 19, 1974, 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
October 18, 1974


ROBERT D. HELSBY, Chairman


JOSEPH R. CROWLEY


FRED L. DENSON

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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#3-10/18/74

In the Matter of
COUNTY OF ORANGE,

Employer,

-and-

SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO,

Petitioner,

-and-

THE COUNTY EMPLOYEES' UNIT, ORANGE COUNTY CHAPTER,
CIVIL SERVICE EMPLOYEES ASSOCIATION, INC.,

Intervenor.

CASE NO. C-1097

HEARING OFFICER'S RESOLUTION OF FACTUAL ISSUES

I. Posting of Notice of Election at

A. DPW Garage at Newburgh

1. Summary of Testimony

Smith, an SEIU employee, testified that on June 4 he was at the DPW Garage at Newburgh and saw a bulletin board which did not contain a notice of election. He returned on June 5 and & and did not see notices of election on either of those days.

Bruyn, Supervisor of Maintenance for the DPW at Newburgh, testified that he was advised that the election notice had arrived at Goshen on the afternoon of June 5. He picked it up at 10:00 a.m. on June 6 and posted it at about 10:30 a.m. on one of two bulletin boards at the DPW Garage at Newburgh. He further testified that all the men took time off to go to vote.

2. Hearing Officer's Resolution of Factual Issues

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Smith testified that no notice of election was posted at the DPW Garage at Newburgh. Bruyn testified that it was. I credit the testimony of Bruyn. I conclude that a notice of election was posted on one of two bulletin boards

although it was not seen there by Smith, who only noticed the other bulletin board.

B. Motor Vehicle Department at Goshen

1. Summary of Testimony

Hogan, a court assistant employed by Orange County and an SEIU supporter, testified that she looked at two bulletin boards in the area of the Motor Vehicle Department on June 7 and did not see a notice of election posted on either.

Mendres, Director of the Orange County Motor Vehicle Department, testified that the Motor Vehicle Department employees work within an enclosed area and that notices for employees of the Department are posted within the enclosed area. He further testified that the notice of election was posted in timely fashion and that a second copy of it was displayed on the table at which employees have coffee.

2. Hearing Officer's Resolution of Factual Issues

Hogan testified that no notice of election was posted at the Motor Vehicle Department. Mendres testified that it was. I credit the testimony of Mendres. I conclude that a notice of election was properly posted within the enclosed Motor Vehicle Department area, although it was not posted on two bulletin boards just outside the Motor Vehicle Department area, neither of which was the appropriate place for such notices to have been posted.

II. Evidence of Nondiscriminatory Access to County Premises for Campaign Purposes by Both CSEA and SEIU

A. County Policy and Communication Thereof to County Department Heads and Employee Organizations

1. Summary of Testimony

On February 26, 1974, county policy was that:

"CSEA as the recognized bargaining agent has the right to meet with its employees concerning union matters and

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matters of contract interpretation. Meetings or other activities of employees concerning union matters other than those involving the CSEA cannot be permitted on county premises or county time. Solicitation for support of any union by anyone is not permitted on county premises or county time."

This policy was communicated to all Department heads in a memorandum dated February 26, 1974.

By mid-May, the county had adopted the policy of permitting access to both CSEA and SEIU (1) if requests to solicit employees for support were first addressed to the appropriate Department head; (2) solicitations on county premises did not disrupt performance of work; and (3) solicitations were conducted on the employees' time. According to Gilchrist, Commissioner of Personnel, this policy was not communicated to Department heads until the monthly meeting of the Department heads following its adoption. That meeting occurred on June 4, three days before the election. Although the county was prepared to disclose its policy at a meeting held at the PERB offices on May 15, it did not do so because neither party raised the issue. According to Sobo, the county attorney, county policy was to refrain from volunteering information regarding its policy, but to grant access when asked for it. He testified that CSEA asked for access within a week of the May 15 meeting at PERB and was advised of the rules. Sobo further testified that he received no request for access from SEIU until he received a telephone call by Pritchard -- the date of which he was uncertain about, but which, according to Ducharme of SEIU, was May 29. During the telephone conversation, Pritchard asked for access prospectively and did not complain about denial of access in the past. The immediate response, according to both Ducharme and Sobo, was that Sobo would call a conference to be attended by both CSEA and SEIU at which conference he would explain the county policy regarding access. (This notwithstanding the fact that CSEA had already been advised of the county policy) Sobo testified that Pritchard was not satisfied with this procedure

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as he wished to commence campaigning on county premises as soon as he would be notified of the sufficiency of the SEIU showing of interest. He testified that he, Sobo, then explained to Pritchard during the telephone conversation what the county policy was. He further testified that he invited SEIU to complain to him or to Gilchrist in the event that it was denied access in accordance with the policy as outlined. (Both he and Gilchrist testified that they never received any complaints) Ducharme, who testified that he listened to the telephone conversation while at the SEIU office, recalled no discussion regarding access after Sobo said that he would hold a conference to explain the ground rules for access. In any event, a letter was sent to SEIU on June 4 setting forth rules regarding access and was received at the Westchester County office of SEIU on June 6, the day preceding the election.

2. Hearing Officer's Resolution of Factual Issues

Sobo testified that SEIU was informed of county policy regarding access during a telephone conversation that transpired about May 29. Ducharme testified that SEIU was not so informed until June 6. I credit the testimony of Ducharme.

The county makes much of the fact that when it advised Pritchard of county policy regarding access it invited him to complain to Sobo or Gilchrist in the event this access was denied. It then emphasized the absence of any complaints as support for its argument that access was not denied at the Community College, the DPW Garage at Newburgh, the Infirmary, or the Social Services Building. In the light of all the evidence in the case, I, too, am taken by the absense of complaints but, consistent with my resolution of the discrepancy in the testimony, I would reach a different conclusion; to wit, that SEIU did not get the message regarding access on May 29. (See Insert)

B. Orange County Community College

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Insert: In doing so, I do not find that Sobo or other county officials deliberately misled or discriminated against SEIU. A more likely explanation of the facts is that, in a confusion of communications, Sobo did not transmit information that he intended to.

1. Summary of Testimony

According to Ducharme, an SEIU organizer, shortly after listening in to the conversation between Pritchard and Sobo, he went to the garage at the Community College where four or five men were beginning to eat. He had been told by one of the men there to come after twelve and he arrived at about ten after the hour. Within a few minutes, Sinko, a CSEA employee, arrived on the scene and instructed Ducharme to leave. When Ducharme declined to do so, Sinko sent for Brown, Facilities Coordinator for the Community College. Ducharme testified that Brown told him to leave because only CSEA was allowed on the property, it being the only recognized bargaining agent. Ducharme left.

Sinko described the event differently. According to him he was leaving Brown's office at 11:30 a.m., where he had been discussing an employee grievance, when he was informed that SEIU was on the campus. He first sought SEIU at the cafeteria, expecting them to be soliciting employees who were on their lunch break. His purpose in going was to listen to the SEIU campaign presentation. Not finding the SEIU people in the cafeteria, he sought them in the garage and, it being fifteen minutes before noon, he attempted to get SEIU to leave. He testified that when he arrived some of the men had already started eating and others had taken out their lunch bags. Not being successful in persuading Ducharme to leave, he sent one of his associates for Brown, who came by on his way to lunch. According to Sinko, Brown told SEIU that they couldn't campaign until lunchtime; it was then ten minutes before lunchtime. Both Brown and the SEIU people left. He, however, waited to see if SEIU would return at twelve. They didn't and he, Sinko, then did some campaigning among the men in the garage.

Brown's description of the event agrees with Sinko's regarding the time at which it took place. He differs from Sinko in that he does not recall telling SEIU that they could not campaign because the employees were not yet

on their lunch break. On the contrary, he seems to have been of the opinion that they would not have been permitted to campaign even during their lunch break because that lunch break was on paid time.

2. Hearing Officer's Resolution of Factual Issues

I credit Brown's recollection of the time at which the event took place, to wit, that it occurred over a twenty-five minute period commencing 11:30 a.m. Based upon the demeanor of the witnesses as well as the circumstances, I credit Ducharme's version over Sinko's when he testified that Brown told him that SEIU was not entitled to access to the employees on county premises because CSEA was the bargaining representative. Sinko's testimony that Brown told Ducharme that he could not campaign during the lunch break is inconsistent with that of both Brown and Ducharme. It is also not creditable that if Ducharme had been informed that he could campaign at twelve o'clock, they would have left at 11:55 and not returned.

C. Infirmary

1. Summary of Testimony

Cusick, a senior clerk employed by the county and a worker on behalf of SEIU, testified that during the two weeks preceding the election Sinko of CSEA was often in the building campaigning, doing so in the lobby, the cafeteria and the lounges. She further testified that he had come into her office as well.

Sinko testified that he had campaigned in the lobby, the cafeteria and lounges, as testified to by Cusick. He explained his visits to her office were not normal campaigning, but of a special character growing out of the fact that he thought of her as a competitor campaigner. He testified that on June 3, 4, 5 and 6 Mr. Pritchard was in the lobby of the Infirmary and that he had seen Pritchard handing out SEIU campaign literature in the doorway of the building. He also testified that on numerous occasions when he went

into the cafeteria he found SEIU campaign literature neatly placed on the tables at which employees eat.

Sobo, in his cross-examination of Cusick, drew testimony that Pritchard had access to county property prior to June 5, to wit, the parking lot of the Infirmary, but he made no effort to establish Pritchard's presence in the lobby or elsewhere in the building.

2. Hearing Officer's Resolution of Factual Issues

Sinko testified that prior to June 5, Pritchard of SEIU had access to county employees in the Infirmary, while Cusick testified that Pritchard had campaigned in the parking area. The implication of her testimony was that he did not have access to the building. I do not credit the testimony of Sinko. I find that until June 5, SEIU had access to employees on county property only in the parking lot at the entrance to the Infirmary, while Sinko had access to employees in the lobby, the cafeteria and lounge areas. I conclude that SEIU campaign literature was placed in the cafeteria by county employees who supported SEIU.

D. Social Services Building

1. Summary of Testimony

Tomaszewski, a senior case worker employed by the county and a supporter of SEIU, testified that Sinko, Monachino and other CSEA workers were present in the Social Services Building several times during the two weeks before the election and that they campaigned in the lounge and by the coffee machines. She further testified that CSEA had started its campaign by April. She had sought permission for SEIU to campaign during February. Her request was denied and occasioned the memo of February 26 previously referred to that restricted access to CSEA.

Horchak, an SEIU employee, testified that at about 11:30 a.m. on June 4, he and other SEIU workers had sought access to speak to the employees during their lunch break. The clerk at the sign-in desk called an administrator for instructions and refused them access. They returned later that afternoon and were again denied access by the clerk at the sign-in desk. Ducharme testified that on June 5, he was allowed to campaign in the Social Services Building.

Sinko of CSEA testified that he was standing in the lobby when Horchak arrived on either June 4 or 5 or 6; that he saw him sign in at the sign-in desk; that the receptionist sent Horchak to Miss Parker, the Assistant Commissioner, for instruction. He further testified:

"So, when they went into Miss Parker, I just so happened to stroll down the hallway right next to Miss Parker's office and listened to the conversation.

Q. What did you hear?

A. They asked...Mr. Horchak, I believe, is the one that started off first, that, 'We want equal access to the County Employees in this building.' And Miss Parker, in a very disturbing voice, sounded back, 'You've had more than equal access in this building'."

He further testified that they were given proper instructions regarding access and then went to the coffee lounge to campaign. He followed them and there debated.

Kaluczky, Personnel and Labor Relations Technician of the county, testified that in late May or on June 1, Mr. Parry, Commissioner of Social Services called him for instructions because two SEIU men were seeking admission to the Social Services Building. He then checked with Sobo before calling Parry back and advising him of the county policy pursuant to which SEIU could have access. He could not identify the SEIU representatives. He further testified that he checked the Social Services Department records of June 4 and found no record of anyone representing SEIU seeking access. This conclusion is based on the absence of anybody having signed the sign-in sheet.

2. Hearing Officer's Resolution of Factual Issues

Horchak testified that he sought and was denied access on June 4. Kaluczky testified that no one from SEIU sought access on June 4. Sinko testified that Horchak sought and obtained access on a day that may have been June 4. I credit the testimony of Horchak that SEIU was denied access on June 4. Kaluczky's failure to find any SEIU name on the sign-in sheet may be due to the fact that, once having been refused admission, the SEIU people did not bother to sign. I do not credit the testimony of Sinko insofar as it might indicate the presence of an SEIU representative on June 4. I do not doubt that on June 5 or 6 there may have been a debate between Sinko and Horchak or Ducharme in the coffee lounge of the Social Services Building. I also reject the testimony of Kaluczky regarding access of SEIU during late May or early June. It is unsupported hearsay testimony. The county did not even submit a copy of the sign-in sheet to support the testimony.

E. 1887 Building of the Health Department

No evidence was submitted by SEIU regarding this aspect of their objections.

F. Denial of Access to SEIU at the DPW Maintenance Garage in Newburgh on June 4, 1974

1. Summary of Testimony

Smith of SEIU testified that he sought access to the DPW garage on June 4 between 2:30 and 3:00 p.m. and that he was refused by Bruyn, the foreman. He further testified that he came again on June 5, but did not seek to speak to employees and that he returned again on June 6, between 2:30 and 3:00 p.m. and was permitted access. Bruyn testified that SEIU representatives came on June 4 at 2:00 p.m. and that he didn't tell them to leave, but that they did so by themselves, there being only two employees present, Bruyn and one other.

2. Hearing Officer's Resolution of Factual Issues

I conclude that SEIU was not denied access on June 4. Bruyn appeared to

be somewhat impatient with SEIU and may have shown that impatience on June 4. If so, that impatience may have been interpreted by Smith as, "Why don't you leave?", but may have been intended to communicate, "Why don't you stop bothering me?"

October 11, 1974

A handwritten signature in cursive script that reads "Jerome Lefkowitz". The signature is written in dark ink and is positioned to the right of the typed date.