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State of New York Public Employment Relations Board Decisions from January 9, 1975

New York State Public Employment Relations Board

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State of New York Public Employment Relations Board Decisions from January 9, 1975

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In the Matter of

LOCAL DIVISION 282 OF THE AMALGAMATED TRANSIT UNION, AFL-CIO,

Upon the Charge of Violation of Section 210.1 of the Civil Service Law.

This case comes to us on a charge filed by Counsel to this Board on May 16, 1974 alleging that Local Division 282 of the Amalgamated Transit Union, AFL-CIO (ATU) violated Civil Service Law 210.1 in that it caused, instigated, encouraged, condoned and engaged in a five-day strike on April 18, 19, 20, 21 and 22, 1974 against the Regional Transit Service, Inc., Rochester Genesee Regional Transportation Authority (the employer). In its answer, ATU denied the material allegations of the charge and asserted that the employer was guilty of acts constituting extreme provocation.

In a decision dated November 8, 1974, the hearing officer found that ATU had caused and engaged in a strike as charged, and that its responsibility for the strike was not mitigated by any acts of extreme provocation by the employer or its agents. We have reviewed the record and have determined that the hearing officer's findings of fact and conclusions of law are sound. The strike occurred during the life of a contract between ATU and the employer that terminated on April 31, 1974. That contract provided inter alia for the purchase of annuities from pension funds on behalf of retired employees "who shall retire on July 1, 1970 or thereafter." During the latter half of 1970, Gubiotti, President of ATU, discovered that no
annuities had been purchased for any of the fifteen employees eligible for disability retirement since commencement of the plan, nor for some thirty-five employees who had taken normal or early retirement since 1972. The reason for this was that there were insufficient pension funds available for the purchase of the annuities. However, the employer was paying directly to each eligible employee a retirement benefit each month in the amount approved by the Pension Committee. Members of ATU were dissatisfied with this alternative procedure and exerted pressure upon Gubiotti to obtain guaranteed annuities from the employer. Both the contract and the retirement agreements provided for arbitration of disputes involving the interpretation or application of the agreements. Thus, arbitration was available for resolution of a dispute concerning whether the employer has a contractual obligation to make an additional contribution to the pension fund if the pension fund is insufficient to purchase the annuities for which retired employees become eligible. ATU did not attempt to use this procedure to resolve the question. Instead, it relied, in the first instance, upon discussions and negotiations with the employer. These negotiations bore fruit in that the employer authorized the purchase of seven annuities on April 5, 1974, but this fact was not communicated to ATU until April, after the strike had been called. During April, 1974, communications between ATU and the employer were also hampered to some extent because James Reading, the employer's top executive, was on vacation between April 5 through April 16 and he had other meetings on April 18. Nevertheless, the employer's Superintendent of Transportation offered to meet with Gubiotti on the morning of April 18, 1974, the time when Gubiotti sought a meeting with Reading. This offer was declined. Under
pressure from his membership, Gubiotti led ATU out on strike.

It is clear that the purpose of the strike was to force the employer to change its position with respect to its contractual obligation to provide sufficient funds for the immediate purchase of guaranteed annuities for the thirty-five retired ATU members. A contractual grievance procedure was available to resolve any dispute as to what the current contractual obligations of the employer were. All retired employees were receiving the annual pension benefits to which they were entitled. Alternative solutions to the absence of sufficient monies in the pension fund to pay for the annuities were under discussion and had not been broken off by either party.

Accordingly, we find that ATU violated CSL §210.1 and that its responsibility was not diminished by any acts of extreme provocation committed by the employer or its agents, and

WE ORDER that the rights of LOCAL DIVISION 282 OF THE AMALGAMATED TRANSIT UNION, AFL-CIO to membership dues deductions shall be forfeited for six months commencing on the first practical date, or if dues are not deducted in regular installments throughout the year, no more than one-half the membership dues shall be deducted on behalf of Local Division 282 of the Amalgamated Transit Union, AFL-CIO during the twelve-month period commencing this date. Upon the conclusion of the forfeiture period, dues deductions privileges shall be restored if Local Division 282 of the Amalgamated Transit Union, AFL-CIO has affirmed
it no longer asserts the right to strike against any government.

Dated: Albany, New York
January 9, 1975

ROBERT D. HELSBY, Chairman

JOSEPH R. CROWLEY

FRED L. DENSON
On November 8, 1974, Martin L. Barr, Counsel to this Board, filed a charge alleging that the Westbury Teacher Aide Association had violated Civil Service Law §210.1 in that it caused, instigated, encouraged, condoned and engaged in a strike against the Westbury Union Free School District No. 1, Towns of Hempstead and North Hempstead on September 6, 9, and 10, 1974.

The Westbury Teacher Aide Association agreed not to contest the charge. It therefore did not file an answer and thus admitted the allegations of the charge. The Westbury Teacher Aide Association joined with the Charging Party in recommending a penalty of loss of dues check off privileges for five months, to be the equivalent of 40% of the annual dues that would otherwise be deducted during the twelve month period commencing on the date of this order.

On the basis of the charge unanswered, we determine that the recommended penalty is a reasonable one.

We find that the Westbury Teacher Aide Association violated CSL §210.1 in that it engaged in a strike as charged.
WE ORDER that the dues deduction privileges of the Westbury Teacher Aide Association be suspended for a period of five months, and that the employer shall not deduct more than 60% of the annual dues during the twelve month period commencing this 9th day of January, 1975. Thereafter no dues shall be deducted on behalf of the Westbury Teacher Aide Association by the Westbury Union Free School District until the Westbury Teacher Aide Association affirms that it no longer asserts the right to strike against any government as required by the provisions of CSL §210.3(g).

Dated, Albany, New York
January 9, 1975

[Signature]
ROBERT D. HELSBY, Chairman

[Signature]
JOSEPH R. CROWLEY

[Signature]
FRED L. DENSON
STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF
COUNTY OF GENESEE AND GENESEE COMMUNITY COLLEGE, Employer,
-and-
SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 227, AFL-CIO, Petitioner-Intervenor

-AND-
GENESEE FACULTY ASSOCIATION, affiliated with the ASSOCIATED COMMUNITY COLLEGE FACULTIES ASSOCIATION, Intervenor-Petitioner

Case No. C-1014 & C-1048

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 Genesee Faculty Association, affiliated with the Associated Community College Faculties 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 full-time teaching faculty, division chairmen, librarians, counselors, and administrative staff.

Excluded: The President, deans, associate deans, administrative assistants, Director of Purchasing/Personnel, Director of Development and Community Relations, Director of Data Processing, Director of Security/Campus Safety, and all part-time employees.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with Genesee Faculty Association, affiliated with the Associated Community College Faculties 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 9th day of January, 1975.

ROBERT D. HELSEY, Chairman

PERB 58 (2-68)

FRED L. DENSON

3659
IN THE MATTER OF

VILLAGE OF SARANAC LAKE,
Employer,

and-

LOCAL 200, SERVICE EMPLOYEES' INTERNATIONAL UNION, AFL-CIO,
Petitioner,

and-

CIVIL SERVICE EMPLOYEES ASSOCIATION,
Intervenor.

Case No. C-1143

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 200, Service Employees' International Union, 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.

Excluded: Department heads, seasonal employees and temporary employees (including those employed under federally funded programs).

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with Local 200, Service Employees' International Union, 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 9th day of January, 1975.

ROBERT D. HELSBY, Chairman

JOSEPH R. CROWLEY

FRED. L. DENSON
STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

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, AFSCME, 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 in the Department of Water and the Department of Public Works.

Excluded: Commissioners, Deputy Commissioners, Superintendents, Field Investigators, Laboratory Technicians, foremen, office clericals, employees employed less than 20 hours a week and seasonals.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with New York Council 66, AFSCME, 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 9th day of January 1975.

ROBERT D. HELSLEY, Chairman

FRED L. DENTON

PERB 58(2-68)
IN THE MATTER OF

TOWN OF HURLEY,

Employer,

-and-

NEW YORK COUNCIL 66, AFSCME, AFL-CIO,

Petitioner.

Case No. C-1144

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, AFSCME, 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 regular, full-time laborers, motor equipment operators, heavy equipment operators, mechanics, and working foremen.

Excluded: All other employees.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with New York Council 66, AFSCME, 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 9th day of January, 1975.

[Signature]

Fred L. Denson

PERB 58 (2-68)
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 222, Western Regional Off-Track Betting Employees Union, SEIU, 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: track unit manager, branch manager, assistant branch manager and supervisor-telephone betting.

Excluded: all other employees.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with Local 222, Western Regional Off-Track Betting Employees Union, SEIU, 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 9th day of January, 1975.

ROBERT D. HELSBY, Chairman

FRED L. DUNSON

PERB 58(2-68)
IN THE MATTER OF

NEWFIELD CENTRAL SCHOOL DISTRICT,

Employer,

-and-

NEWFIELD CENTRAL SCHOOL UNIT, TOMPKINS
COUNTY CHAPTER OF C.S.E.A., INC.

Petitioner,

Case No. C-1150

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 Newfield Central School Unit, Tompkins County Chapter of C.S.E.A., 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: Included: All non-instructional employees.

Excluded: School district treasurer, cafeteria manager, supervising custodian, secretary to the supervising principal, per diem substitutes, seasonal employees and employees who are students at the employer school district.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with Newfield Central School Unit, Tompkins County Chapter of C.S.E.A., 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 9th day of January , 1975.

ROBERT D. HELSM, Chairman

JOSEPH R. CROWE

FRED L. DENSON
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 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:

Included: Typist, account clerk typist, stenographer, payroll audit clerk, senior stenographer, senior account clerk, office machine operator, and stenographic secretary.

Excluded: All other employees

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with 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 9th day of January, 1975.

Robert D. Hensley, Chairman

Joseph R. Crowley

Fred L. Denson
On October 21, 1974, the Village of Suffern Unit, Rockland County Chapter, Civil Service Employees Association, Inc. (the petitioner) filed, in accordance with the Rules of Procedure of the New York State Public Employment Relations Board, a timely petition for certification as the exclusive negotiating representative of all blue collar employees of the Village of Suffern.

On November 22, 1974, an informal conference was held in this matter at which time the parties entered into a consent agreement which was approved by the Director of Public Employment Practices and Representation on December 13, 1974. The consent agreement provides, inter alia, that the appropriate unit is as follows:

Included: Blue collar employees including the following:

- Assistant automotive mechanic
- Sanitation worker
- Groundskeeper
- Sewer plant operator
- Laborer
- Sewer plant operator, ass't
- Motor equipment operator
- Sewer & water system mechanic
- Plant maintenance helper

Excluded: All other employees.
Pursuant to the consent agreement, a secret ballot election was held under the supervision of the Director on December 18, 1974. The results of the election indicate that a majority of the eligible voters in the unit set forth in the consent agreement do not desire to be represented for purposes of collective negotiations by the petitioner.

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

Dated: January 9, 1975
Albany, New York

ROBERT D. HEILSBY, Chairman

JOSEPH R. CROWELEY

FRED L. DENS0N

1] There were 21 ballots cast at the election, 13 of which were against representation.
At a meeting of the Public Employment Relations Board held on the 9th day of January, 1975 and after consideration of the application of the County of Suffolk made pursuant to Section 212 of the Civil Service Law for a determination that Local Law No. 7 of the year 1967 as last amended by Local Law No. 26-1974 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 local law 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
January 9, 1975

ROBERT D. HELSBY, Chairman

FRED L. DENSON
December 26, 1974

Robert D. Helsby, Esq.
Public Employment Relations Board
50 Wolf Road
Albany, N.Y. 12205

Dear Mr. Helsby:

I received a copy of the determination made by the members of the Public Relations Board, dated December 19, 1974 and relating to the Review Physicians employed in the Department of Social Services, Bureau of Disability Determinations.

While your present decision is intended to clarify the ambiguity of prior determinations as to whether only physicians whose normal conditions of employment meet the attendance standards of 4 NYC RR, paragraph 26.1(b) are in the unit, and those who do not meet those standards are not included, nevertheless your opinion fails to make any determination with respect to a vital issue presented at the argument as to whether Section 26.3 of the Attendance Rules makes the decisions in C-0002 inapplicable to the instant case.

This letter is not intended to reargue the decision affirming the rationale of the decisions in C-0002 as to the applicability of the attendance rules as a general proposition. However, it is of utmost significance that a decision be made by the Board as to whether the attendance rules as fixed in the contract between CSEA of the State of New York (and not Section 26.1(b) represent the guidelines for determining whether the Review Physicians are in the PS&TS unit or not.

It cannot be denied that Section 26.3 specifically provides that where the provisions of an agreement embodying attendance rules are different from the provisions of the Civil Service attendance rules, the provisions of the agreement shall be controlling. There can be no doubt that the contract entered into between the State and the CSEA sets forth its own separate attendance rules, none of which require the performance of the minimum number of hours and days of services as provided in Section 26.1(b).

The failure to rule on this important issue again leaves a great area of ambiguity and doubt which must be resolved in order to avoid any future unnecessary and multiple proceedings.
Accordingly, the Review Physicians strongly urge that by reason of the applicability of Section 26.3 to the facts of the instant case, Section 26.1(b) has no application to their situation. Thus, while case No. 0002 as a general rule may appropriately hold that only those Review Physicians whose conditions of employment meet the standards of Section 26.1(b), the rationale of those cases cannot overcome the express provision of Section 26.3.

I would be grateful to you for an early response.

Respectfully yours,

JONAS ELLIS
December 31, 1974

Dear Dr. Helsby:

Re: Review Physicians
Case # C-0002

I am in receipt of a copy of a letter dated December 26, 1974 addressed to you from Jonas Ellis. Mr. Ellis writes to you with regard to the Supplemental Board Decision and Order in Case # C-0002 issued by your Board on December 19, 1974.

On December 13, 1974, both Mr. Ellis and myself appeared before the Board for the purpose of presenting oral argument with regard to the sole issue of whether the Board should reconsider its resolution of October 31, 1974. The Board in its December 19, 1974 Decision and Order ordered "that the motion for reconsideration of our resolution of October 31, 1974 be, and hereby is, dismissed on the merits." Mr. Ellis' letter apparently objects to your decision because:

"your opinion fails to make any determination with respect to a vital issue presented at the argument as to whether §26.3 of the attendance rules makes the decision in C-0002 inapplicable to the instant case."

I would submit that this question was neither raised in my motion for clarification nor is it relevant to Mr. Ellis' motion for reconsideration of the Board's resolution dated October 31, 1974. His attempt to raise this issue at this time is totally inappropriate.

I would accordingly, urge that the Board reject his claim that the Board failed to make a relevant determination in its Supplemental Board Decision and Order on the motion for clarification.

Sincerely yours,

Howard A. Rubenstein

Dr. Robert Helsby
Chairman
Public Employment Relations Board
50 Wolf Road
Albany, New York

cc: Jonas Ellis
January 9, 1975

Jonas Ellis, Esq.
Ellis & Ellis
230 Park Avenue
New York, New York 10017

cc: Howard A. Rubenstein, Esq.
Counsel, Office of Employee Relations
State Capitol
Albany, New York 12224

Re: Review Physicians

Dear Mr. Ellis:

I have discussed your letter of December 26, 1974 at a meeting of the Public Employment Relations Board held earlier today. We also considered Mr. Rubenstein's response to me December 31, 1974. Both letters refer to our decision of December 19, 1974 in which we attempted to clarify our earlier decision (April 30, 1969) establishing a unit for Professional, Scientific and Technical Services employees. In doing so, we indicated that our 1969 decision excluded part-time employees whose normal conditions of employment did not meet the attendance standards of 4 NYCRR §26.1(b).

Your letter of December 26, 1974 now alleges that the provisions of 4 NYCRR §26.1(b) have been superseded by alternative provisions established by agreement and it argues that the Professional, Scientific and Technical Services Employees Unit was, or should be, changed to reflect the change in the State's attendance rules. The question that you now raise is not properly before us. As indicated to you in our decision of December 19, 1974 and at oral argument, the question of whether the parties have, by mutual consent, changed the unit that we established in 1969 can not be presented to us on a motion to clarify our 1969 decision; neither is such a motion appropriate for raising the question of whether the unit ought to be changed. We, therefore, reject your request for further consideration of the matter.

Very truly yours,

Robert D. Helsby