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Board (PERB)

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3-7-1975

# State of New York Public Employment Relations Board Decisions from March 7, 1975

New York State Public Employment Relations Board

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# State of New York Public Employment Relations Board Decisions from March 7, 1975

**Keywords**

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

**Comments**

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NEW YORK STATE  
PUBLIC EMPLOYMENT RELATIONS BOARD

#2A-3/7/75

In the Matter of

MASSAPEQUA UNION FREE SCHOOL DISTRICT,

Respondent,

- and -

CIVIL SERVICE EMPLOYEES ASSOCIATION, INC.,  
NASSAU CHAPTER,

Charging Party.

BOARD DECISION & ORDER

CASE No. U-1221

This matter comes to us both on exceptions of the respondent, Massapequa Union Free School District, and cross-exceptions of the charging party, Civil Service Employees Association, Inc., Nassau Chapter, to a decision of the hearing officer issued on January 2, 1975. CSEA had charged respondent with engaging in improper practices in violation of CSL- §§209-a:1(a), (c) and (d) in that it refused to

1. pay the prorated amount of annual increments due for the period from May 10 to June 30, 1974;
2. place its blue collar employees, who are entitled to annual increments, on the next step of the graded salary plan for the 1973-74 school year; and
3. pay annual increments for the 1974-75 school year which were due and payable to said employees on or before July 1, 1974.

Respondent's answer admitted that it had not made the payments as alleged, but denied that such conduct was improper. The hearing officer determined that respondent's failure to pay increments from May 10 to June 30, 1974 was not violative of the Taylor Law, but that its withholding of annual increments after July 1, 1974 did constitute an improper unilateral change in terms and conditions of employment. Each party filed exceptions to so much of the hearing officer's determination as went against it.

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The timing of events is relevant to our determination. The parties have been in a negotiating relationship for a number of years but have not been able to agree upon terms and conditions of employment to cover either the 1973-74 or the 1974-75 school year. The unresolved issues in both negotiations were the economic benefits. Throughout negotiations, respondent's posture has been that any money package must be evaluated in terms of its total increased cost, including the cost of the annual increment which it estimated to be 1.2%. Thus, there should be no payment of any increment independent of a settlement on the total money package. (Upon reaching an agreement as to the total money package, respondent prefers that some of the additional monies should be provided in the form of increments.) Accordingly, the impasse as submitted to the local legislative body for resolution, included the question of whether incremental raises should be automatic.

CSEA, in reliance on our "Triborough doctrine" (Matter of Triborough Bridge and Tunnel Authority, 5 PERB 3047 [1972]) insisted that increments must be paid irrespective of whether there were an agreement upon the total economic package. When respondent refused to do so as of July 1, 1973, CSEA filed an improper practice charge (Case No. U-0935). That case was decided by us on April 15, 1974 when we applied our "Triborough doctrine" and determined that respondent had committed an improper practice by not paying increments as of July 1, 1973 (Matter of Massapequa United Free School District, 7 PERB 3024). Shortly before receiving our decision in that case, respondent's Board of Education held a legislative hearing pursuant to CSL §209.3(e) as it then applied to school districts. The legislative determination was not issued until May 10, 1974 which was after the parties had received our decision in the earlier case. The legislative determination in pertinent part reads as follows:

"...The sole issue presented at the hearing related to the total cost settlement...

Subsequent to the legislative hearing and on or about April 17, 1974, the Board of Education received a decision of the New York State Public Employment Relations Board in Case No. U-0935 which ordered that the school district cease and desist from refusing to grant increments in accordance with the contract that expired on July 1, 1973. The cost of such increments amounts to \$11,169.00.

After careful consideration of the presentation made at the hearing and reviewing the decision of the Public Employment Relations Board and in furtherance of Section 209-3(e)12 of the Taylor Law, we deem the following action to be in the public interest including the interest of the public employees involved. It is therefore

RESOLVED, that increments in the sum of \$11,169.00 (representing a percentage of 1.2%) be granted in accordance with decision of the Public Employment Relations Board prorated to the date of this decision, and be it further

RESOLVED, that the additional total cost settlement in the sum of \$60,641.00 (representing a percentage of 6.6%) be granted and that from said sum of \$60,641.00 the cost of agreed upon provisions as above indicated be deducted, and be it further

RESOLVED, that the balance of the settlement funds be distributed across the board on the salary schedule which was in effect for 1972/73, and be it further

RESOLVED, that the terms and conditions of employment for 1973/74 shall expressly provide that increments are not automatic and not part of any status quo continuation of any expired contract, and be it further

RESOLVED, that this determination be made retroactive to July 1, 1973, and cover the period to June 30, 1974."

Analyzing the effect of the legislative determination on increments the hearing officer concluded that "aside from the 6.6 percent increase, the practical effect of its action was to increase each employee's salary by the amount of the annual increment from July 1, 1973 to May 9, 1974, and then effective May 10, 1974, reduce each such employee's rate by the same amount." Determining that the

action of the Board of Education qua legislative body was authorized by CSL §209.3(e), he rejected so much of the charge as related to the period ending June 30, 1974. Having reviewed the record and considered the arguments of the parties, we reject this part of CSEA's exceptions and confirm this part of the hearing officer's determination for the reasons advanced in his opinion.

The hearing officer sustained the charge insofar as it found respondent's conduct violative of the law in that respondent did not pay increments after July 1, 1974. In doing so, he determined that the school board was acting in its executive capacity rather than in its legislative capacity when it included in its resolution of May 10, 1974 the provision "that the terms and conditions of employment for 1973/74 shall expressly provide that increments are not automatic and not part of any status quo continuation of any expired contract". We reverse the hearing officer's finding of a violation. In doing so we do not find it necessary to reach the question of whether the particular sentence in the resolution of May 10, 1974, deemed crucial by him, was proper legislative conduct and thus insulated from board review. Accepting the hearing officer's analysis that the effect of the entire resolution was to reduce the wages of employees back to where they were before receiving their increments we conclude that, in fact, increments were no longer part of the status quo on June 30, 1974, which is when the period covered by the legislative determination expired. As such, the language of the resolution questioned by the hearing officer was an accurate statement of the consequences of other parts of that resolution.

CSEA's dissatisfaction with this circumstance is a dissatisfaction with CSL §209.3(e) as it existed on May 10, 1974 and that dissatisfaction could only be dispelled by the Legislature. Indeed, while the school board was sitting as a legislative body, a Taylor Law Task Force, appointed by Governor Wilson, Temporary President of the Senate Anderson, and Speaker of the Assembly Duryea was considering this legislative issue, and on May 8, 1974 it issued a report proposing that CSL §209.3(e) be superceded. Effective May 23, 1974, CSL §209.3

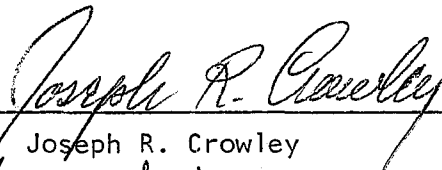
was amended to make paragraph (e) inapplicable to school districts and their employees. This legislative action precludes school boards qua legislative bodies from resolving impasses by imposing changes in terms and conditions of employment upon their employees unilaterally. However, at the time when the school board respondent acted in its legislative capacity, it was free to do so.

ACCORDINGLY, WE ORDER THAT the charge in this matter be, and hereby is, dismissed in its entirety.

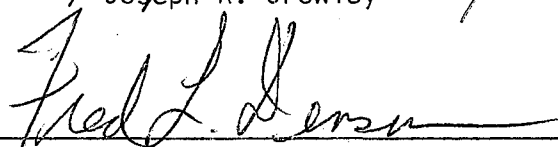
Dated: March 7, 1975  
Albany, New York



Robert D. Helsby, Chairman



Joseph R. Crowley



Fred L. Denson

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of  
ATTICA CENTRAL SCHOOL DISTRICT, : #2B-3/7/75  
Employer, :  
-and- :  
SERVICE EMPLOYEES INTERNATIONAL UNION, :  
LOCAL 227, AFL-CIO, : Case No. C-1153  
Petitioner, :  
-and- :  
ATTICA CENTRAL SCHOOL DISTRICT NON- :  
TEACHING 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 Attica Central School District Non-Teaching 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:


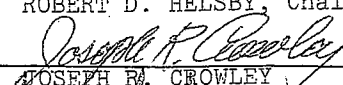

Included: All stenographers, account-clerks, typists, telephone operators, library aides, teacher aides, headbuilding custodians, pool maintenance custodians, custodian bus-drivers, custodians, groundsman, cleaners, laundresses, cook managers, cooks, food-service helpers and monitors, provided that all of the aforesaid employees work twenty (20) hours or more per week.

Excluded: All other employees, including confidential employees.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with Attica Central School District Non-Teaching 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 7th day of March, 19 75.

  
ROBERT D. HELSBY, Chairman  
  
JOSEPH R. CROWLEY  
  
FRED E. DENSON



STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

#2C-3/7/75

In the Matter of :  
LEROY CENTRAL SCHOOL DISTRICT, :  
Employer, :  
-and- :  
SERVICE EMPLOYEES INTERNATIONAL UNION, : Case No. C-1161  
LOCAL 227, 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 Service Employees International Union, Local 227, 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 bus drivers, cafeteria workers, clerical employees, custodians and cleaners.

Excluded: All teaching personnel and professional staff, substitute employees, cafeteria supervisor, bus garage supervisor, chief custodian, superintendent's secretary, district bookkeeper and all other employees of the employer.

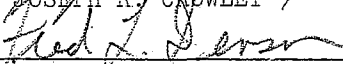
Further, IT IS ORDERED that the above named public employer shall negotiate collectively with Service Employees International Union, Local 227, AFL-CIO

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 7th day of March , 19 75.

  
ROBERT D. HELSBY, Chairman

  
JOSEPH R. CROWLEY

  
FRED L. DENSON

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF : #2D-3/7/75  
CAPITAL DISTRICT TRANSIT SYSTEM #1, :  
Employer, :  
-and- :  
AMALGAMATED TRANSIT UNION, LOCAL 1321, : Case No. C-1206  
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 Amalgamated Transit Union, Local 1321, 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: (Unit I Clerical)


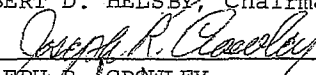
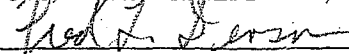
Included: All "Albany based" Clerical personnel of the employer including those in the position of Clerk, Senior Clerk, Stock Clerk, Customer Relations Representative, Clerk/Typist, Secretary, Telephone Operator, and Principal Account Clerk.

Excluded: All other employees of the employer including the Secretary to the Comptroller and the Satellite Receptionist because of their "Confidential" characteristics.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with Amalgamated Transit Union, Local 1321, 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 7th day of March , 1975 .

  
ROBERT D. HELSEY, Chairman  
  
JOSEPH R. CROWLEY  
  
FRED L. DENSON

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF : #2E-3/7/75  
CAPITAL DISTRICT TRANSIT SYSTEM #1, :  
Employer, :  
-and- :  
AMALGAMATED TRANSIT UNION, LOCAL 1321, : Case No. C-1206  
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 Amalgamated Transit Union, Local 1321, 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: (Unit II Supervisory)

Included: All "Albany based" Supervisory personnel of the employer including those in the position of Dispatcher, Assistant Day Foreman, Night Foreman, Shop Foreman, Token Supervisor, Director of Claims Personnel and Administrator.

Excluded: All other employees of the employer including the Treasury Supervisor, Garage Foreman, Satellite Manager, Superintendent of Training & Safety and Superintendent because of their "confidential" or "managerial" characteristics.

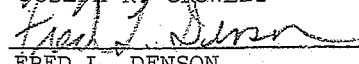
Further, IT IS ORDERED that the above named public employer shall negotiate collectively with Amalgamated Transit Union, Local 1321, AFL-CIO,

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 7th day of March, 1975.

  
ROBERT D. HELSBY, Chairman

  
JOSEPH R. CROWLEY

  
FRED L. DENSON

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF

BOARD OF EDUCATION OF THE CITY SCHOOL  
DISTRICT OF THE CITY OF NEW YORK,

#2F-3/7/75

-and- Employer,

Case No. C-1177

UNITED FEDERATION OF TEACHERS, NYSUT,  
NEA, AFT, 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 United Federation of Teachers, NYSUT, NEA, AFT, 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 those employed in the titles of School Psychologist and School Social Worker, including regular substitutes, and Psychologists in Training

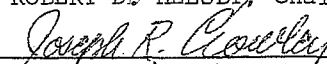
Excluded: Per diem substitutes and all other employees.


Further, IT IS ORDERED that the above named public employer shall negotiate collectively with United Federation of Teachers, NYSUT, NEA, AFT, 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 7th day of March, 1975.

  
ROBERT D. HELSEY, Chairman

  
JOSEPH R. CROWLEY

  
FRED L. DENISON

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of : #2G-3/7/75  
: :  
PEMBROKE CENTRAL SCHOOL DISTRICT, :  
: :  
Employer, :  
: :  
-and- : CASE NO. C-1156  
: :  
S.E.I.U., LOCAL 227, AFL-CIO, :  
: :  
Petitioner. :  
:

BOARD DECISION AND ORDER

On November 21, 1974, S.E.I.U., Local 227, AFL-CIO (petitioner) filed, in accordance with the Rules of Procedure of the New York State Public Employment Relations Board, a timely petition for decertification of the Pembroke-Corfu Non-Teaching Association<sup>1]</sup> and for certification as the exclusive negotiating representative of all full-time and part-time custodians and cleaners employed by the Pembroke Central School District. Thereafter, the parties entered into a consent agreement in which they stipulated to the following as the appropriate negotiating unit:

Included: All full-time and regular part-time custodians and cleaners.

Excluded: Head custodian and all other employees.

The consent agreement was approved by the Director of Public Employment Practices and Representation on January 31, 1975.

Pursuant to the consent agreement, a secret ballot election was held on February 19, 1975. The results of this election indicate that a majority of the eligible voters in the stipulated unit who cast ballots do not desire to be represented for purposes of collective negotiations by the petitioner.<sup>2]</sup>

1] The Association advised that it was not interested in participating in this proceeding.

2] Of the 10 employees participating in the election, 5 voted in favor of and 5 voted against representation by the petitioner.

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

Dated: Albany, New York  
March 7, 1975




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ROBERT D. HELSBY, Chairman



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JOSEPH R. CROWLEY



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FRED L. DENSON