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State of New York Public Employment Relations Board Decisions from August 1, 1975

New York State Public Employment Relations Board

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State of New York Public Employment Relations Board Decisions from August 1, 1975

Keywords

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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of	:	#1A-8/1/75
PORT WASHINGTON UNION FREE SCHOOL DISTRICT,	:	
Respondent,	:	<u>BOARD DECISION AND ORDER</u>
-and-	:	
PORT WASHINGTON TEACHERS ASSOCIATION,	:	<u>CASE NO. U-1288</u>
Charging Party.	:	

On September 18, 1974, the Port Washington Teachers Association (Association) filed a charge alleging that the Port Washington Union Free School District (District) had violated Civil Service Law Section 209-a.1(a) and (d)¹ in that it had abolished a number of positions for the 1974-75 school year and had refused to negotiate with the Association as to the impact of the abolition of those positions. In its answer the District admitted that it had abolished the positions but, nevertheless, denied the charge. The bases of its denial were: (1) the charge was untimely, (2) the Association had waived its right to negotiate over impact, and (3) this Board should defer to the contract grievance and arbitration procedure to resolve the substantive issue.

The hearing officer found that the District had violated CSL §209-a.1 (a) and (d) and he ordered it to "cease and desist from refusing to negotiate upon request with the association with regard to the impact of its staff cuts for the 1974-75 school year." Both the District and the Association have filed exceptions to this decision. The District specifies eight exceptions. These

¹ These sections make it an improper employer practice "... (a) to interfere with, restrain or coerce public employees in the exercise of their rights guaranteed in section two hundred two for the purpose of depriving them of such rights;... or (d) to refuse to negotiate in good faith with the duly recognized or certified representatives of its public employees."

eight exceptions allege five bases for reversal of the hearing officer's decision:

1. The hearing officer erred in finding that the charge was timely.
2. The hearing officer erred in not finding that the Association had waived its right to negotiate over the impact of the abolition of positions.
3. The hearing officer erred in not deferring to the contract grievance and arbitration procedure.
4. The hearing officer erred in finding that the conduct complained of constituted a violation of CSL §209-a.1(a).
5. The hearing officer erred in ordering a remedy for a violation of CSL §209-a.1(d) that is not sanctioned by CSL §205.5(d).

The Association specified two exceptions:

1. The hearing officer erred in not finding that the unilateral action of the employer in abolishing positions was an improper practice independent of the violation of failing to negotiate impact; and
2. The hearing officer erred in ordering an inadequate remedy when he should have ordered the District to restore the status quo ante.

In addition to their exceptions, the Association filed cross-exceptions and both parties filed briefs in support of their exceptions and cross-exceptions. They also presented oral argument.

Having reviewed the positions of the parties and the record, we now dismiss the Association's exceptions and most of the District's exceptions. However, we find merit in the District's exception alleging that the evidence does not indicate a violation of CSL §209-a.1 (a). An element in such a violation is that the District's otherwise improper conduct was designed to deprive employees of rights guaranteed in CSL §202. We find no evidence in the record of any such purpose underlying the District's improper refusal to negotiate in good faith over the impact of its decision to abolish positions. Accordingly, we conform

the language of the order to specifications of CSL §205.5(d).

The Timeliness of the Charge

On February 21, 1974 the Superintendent of the District met with the President and Vice President of the Association and announced that, because of declining enrollment and for economic considerations, certain teaching positions would be eliminated. The Association questioned the necessity of the proposed staff cuts at several Board of Education meetings in March, April and May 1974 and urged their rescission. On June 10, 1974 the teaching schedule for academic year 1974-75 was issued by the District indicating that some English teachers in Junior High Schools would be assigned five classes daily. In prior years, dating back to 1961, the workload was four classes a day. Following the issuance of the assignment schedule, the Association, on June 24, 1974, wrote to the employer requesting negotiations generally on the impact of the decision to reduce staff and, in particular, the impact of the additional class assignments. The District did not negotiate in accordance with the Association's request. The charge of the Association alleging a refusal to negotiate impact was filed on September 18, 1974.

The District contends that, since the decision to reduce staff was announced to the Association on February 21, 1974, the four-month period within which an improper practice charge may be filed commenced to run on February 21st.² The hearing officer rejected this contention of the District on the ground that the impact of the staff reduction decision was unknown to the teachers until the teaching assignments for the ensuing year were disclosed on June 10th and, thus, the time to file the charge began to run on that date. This conclusion of the

² Rules of Procedure §204.1

hearing officer is buttressed by the fact, as testified to by the District's Assistant Superintendent, that not all the staff cuts proposed in February were actually put into effect.

We agree with the hearing officer that the charge was timely filed, but on different grounds. We find the charge to have been timely filed because it was filed within four months of the District's refusal to negotiate impact; until the District refused to negotiate or failed to reply to the demand within a reasonable period of time, there was no basis for the charge filed herein. Further, we find no basis for a finding of laches on the part of the Association in not making its demand for negotiations until June 24th. The cases relied upon by the District in support of its contention are inapposite here.³ In both those cases, the basis of the charge alleging a refusal to negotiate was a unilateral change in the terms and conditions of employment, and in those cases this Board held that the time to file a charge commences with the event of such unilateral action. There is no allegation in the charge herein of any unilateral action by the District as to terms and conditions of employment on February 21st.

The Claim of Waiver

The letter sent by the Association on June 24, 1974 to the District stated, in essence, that it requested negotiations on the impact of the decision to reduce staff positions on terms and conditions of employment in general, and on the additional class assignments in particular. The Assistant Superintendent of Schools replied on July 1st that he would be unable to respond affirmatively or negatively to the request to negotiate until the Association defined the term "impact" and the "exact nature of the proposals for negotiations." The Association apparently wrote a letter to the District on July 17th specifying

³ Central Islip Public Schools, 6 PERB 3109 (1973); Ramapo Central School District No. 2, 6 PERB 3057 (1973).

what it deemed to be issues of impact (such letter was not placed in evidence), as the attorney for the District wrote a letter to the Association dated July 24th which bore the reference "Elimination of English teaching positions" and was in reply to such a letter of July 17th.

At a prehearing conference, the representative for the Association specified class size and workload as the areas of impact about which they wished to negotiate. The District claims that the Association had waived its right to bargain on class size and workload during the negotiations for the contract which was entered into in 1973 and is to terminate on June 30, 1978. We note that there is no obligation on the part of the District to negotiate on class size;⁴ workload, however, is a mandatory subject of negotiations and we limit our discussion to this subject. During the course of the negotiations, the Association was not unaware that there might be a staff reduction during the life of this contract, for the Association attempted in negotiations to preclude any staff reduction. The District refused to accede to this demand. It gave assurance that there would be no layoffs during the academic year 1973-74, but stated it would not give any commitment beyond that time. Further, the Association was aware that in prior years there had been staff reductions. The District did agree to a provision in the contract relating to retention and reemployment rights in the event of staff reduction. During the course of negotiations, the Association submitted a proposal relating to class size. It proposed a specific limitation on the number of students in elementary classes and, in the case of English and Science teachers in secondary schools, it proposed that such teachers meet with no more than 100 students per week. The District rejected this demand and sought to exclude any provision relating to class size from the new contract.

4 Matter of West Irondequoit Board of Education, 4 PERB 3725 (1971) confirmed West Irondequoit Teachers Association v. Helsby, 42 A.D. 2d 808 (1973), aff'd 35 NY 2d 46 (1974).

During the impasse procedures in the negotiation of the contract, the Association presented to the factfinder its proposal relating to class size. The factfinder pointed out that class size was not a mandatory subject of negotiations and suggested to the Association that it reframe its demand in terms of impact. The Association did not act on this suggestion. Thereafter, in the final stage of negotiations, the District agreed to retain the provision relating to class size which had been included in the expired agreement and, since the Association accepted such provision, it obviously withdrew its proposal which would have imposed a maximum number of students that English teachers would have to meet in the course of a week.

It is on these facts that the District contends the Association waived its right to negotiate on workload during the term of the agreement.

The hearing officer found that there was no waiver in that he required nothing less than an explicit waiver by the Association of its right to bargain on workload. We agree that there was no explicit waiver, but we do not find this dispositive. The District contends that the Association's withdrawal of its class size proposal, albeit sub silentio, and acceptance of the District's proposal as to class size constitutes a waiver of the right to bargain on workload during the term of the current agreement. Such a waiver might be found if the Association's proposal dealt with workload and it knowingly withdrew its proposal and accepted the District's position. However, the record does not support such a finding. Firstly, the proposal of the Association concerning class size was directed to a limitation on the number of pupils per class or per week, and does not touch on the resultant or concomitant issue of workload. Further, the testimony in the record indicates that the Association sought to limit the number of classes daily for English teachers to four classes, as in the past, and were

assured by the District's Assistant Superintendent Landon that there were no plans to increase such number of classes.⁵ Clearly, it could not be said that the Association and the District negotiated on the impact of staff reduction on workload insofar as increased assignments of daily classes.

We conclude that there is no basis for a finding of waiver. It follows that the District failed to discharge its duty to negotiate in good faith with the Association when it refused to negotiate with respect to the impact of increased class assignments.⁶

Deferral to Grievance Arbitration

Since the District relies on waiver and not upon any specific provision of the contract to support its increase of class assignments, it does not appear that this would be a proper case to defer to the arbitral process.

The Association's Exceptions

In finding that the District had committed an improper practice in that it had refused to negotiate with the Association regarding the impact of its staff cuts for the 1974-75 school year, the hearing officer declined to find that the unilateral action of the District was, itself, violative of the Taylor Law. He wrote in his opinion, "Inasmuch as the Association has not alleged in

⁵ Transcript p. 152 "...we tried to get written into the contract that there were four classes for, you know, English teachers as had been the case in the past,.... At that time Dr. Landon had said there were no plans to increase the number of classes that English teachers had, and in addition, he could not understand why we wanted this in the contract. There had been no problem with it in the past. It was going on a long time."

⁶ Neither party argued the application of the provision in the contract, VI-E-2 relating to Secondary teachers, that "Direct teaching responsibilities shall not exceed twenty hours per week." Therefore, we assume it has no application here.

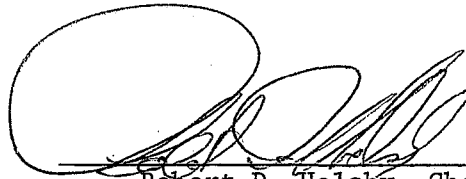
its charge that the unilateral action itself was violative of the Act, I make no finding in this regard." The Association takes exception "to the conclusion of the Hearing Officer that the Charge did not include an allegation that the Respondent's unilateral change in terms and conditions of employment was a violation of the Act." In its brief in support of its exceptions, the Association makes clear that the unilateral action to which it refers was not the increase of class assignments for some English teachers from four to five, but the abolition of positions "in the English, Social Studies, Language and Guidance departments in the secondary schools and other positions in the elementary schools for the 1974-75 school year." The above-quoted language is from the Association's charge and it argues that this language alleged a violation of the Taylor Law independent of the District's failure to negotiate the impact of that decision. Our reading of the charge in its entirety indicates that the above-quoted language was not designed to be an independent charge, but was part of a statement of facts leading to the conclusion that "the School District has refused to enter into such negotiations". Moreover, if the above-quoted sentence were to constitute an independent charge, it would have to be dismissed. It would allege a violation of the Taylor Law in that the District eliminated jobs with no allegation that this was done for other than economic reasons. Indeed, the evidence establishes that the reason for the elimination of the jobs was economic. The decision of a public employer to provide or curtail services to its constituency, including the unilateral decision to add or lay off employees, is not a term and condition of employment and is, thus, not a mandatory subject of negotiations, Matter of New Rochelle City School District, 4 PERB 3704 (1971). It is only the impact of such a decision on terms and conditions of employment that a public employer must negotiate and we do find in this case that this duty has been violated. Finding no violation by the District of any duty not to abolish positions, we reject the Association's exception that the hearing officer should have ordered the affirma-

tive remedy that the District should restore the terms and conditions of employment status quo ante.

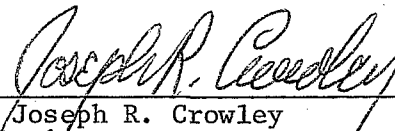
NOW, THEREFORE, WE DETERMINE that the District has violated CSL
§209-a.1(d), and

WE ORDER that, upon request, it negotiate in good
faith with the Association regarding the impact
of its staff cuts for the 1974-75 school year.

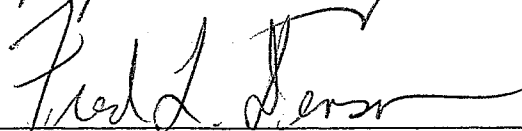
Dated: Albany, New York
August 1, 1975



Robert D. Helsby, Chairman



Joseph R. Crowley



Fred L. Denson

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of : #1B- 8/1/75
ALBANY COUNTY SHERIFF'S DEPARTMENT AND :
THE COUNTY OF ALBANY, :
 :
Joint Employers, : Case No. C-1229
-and- :
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 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: Deputy sheriff, correction officer, matron, investigator, training director, identification technician, and identification assistant.


Excluded: Attendant, grounds maintenance man, sergeant, and all other employees.


Further, IT IS ORDERED that the above named public employer shall negotiate collectively with 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 1st day of August , 1975 .


ROBERT D. HELSBY, Chairman


JOSEPH R. CROWLEY


FRED L. DENSON