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New York State Public Employment Relations  
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11-3-1975

# State of New York Public Employment Relations Board Decisions from November 3, 1975

New York State Public Employment Relations Board

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# State of New York Public Employment Relations Board Decisions from November 3, 1975

**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

In the Matter of the Petition for Certification and/or  
Decertification filed by  
PEF: A FEDERATION OF AFFILIATED UNIONS,  
Petitioner, : BOARD DECISION ON MOTION  
-and- :  
THE STATE OF NEW YORK, OFFICE OF EMPLOYEE RELATIONS,  
Employer, : CASE NO. C-1281  
-and- :  
THE CIVIL SERVICE EMPLOYEES ASSOCIATION, INC.,  
Intervenor. :

On October 21, 1975, the Civil Service Employees Association, Inc. (CSEA) moved this Board to reverse a determination of our "Director of Public Employment Practices and Representation, directing that an election be held between the parties hereto in the Professional, Scientific and Technical Services Unit...." and "For an order directing the Director to comply with the rules of the Public Employment Relations Board in that he make a finding that the within petition is supported or not supported by a showing of interest of at least thirty (30%) percent of the employees in the Unit,...." The determination of the Director complained of was contained in a letter written by him on October 17, 1975.

The Office of Employee Relations of the State of New York responded by letter dated October 23, 1975. In that letter it stated that it takes no position with regard to the merits of the CSEA motion. That same day, PEF also responded and urged us to deny the CSEA motion.

After considering the motion and the positions of the parties, at our meeting of October 24, 1975 we determined that the motion should be denied. Because time was of the essence, the parties were immediately notified of this decision and were advised that an opinion would follow.

OPINION

Section 201.4(c) of our Rules states: "The determination by the Director as to the timeliness of a showing of interest and of its numerical sufficiency is a ministerial act and will not be reviewed by the Board." This practice has been affirmed in a court action (Matter of Civil Service Employees Association v. Helsby, 63 Misc. 2d 403 [Supreme Court, Suffolk County, 1970]) by a State court. The State court quoted, with approval, the language of a Federal court decision refusing to countenance litigation of a question involving a sufficiency of a showing of interest because "it is the election... which decides the substantive issue whether or not the [union] or another labor organization, if any, actually represents a majority of the employees involved in a representation case."

CSEA's motion papers argue that the Director violated the Rules of this Board in directing an election because "he has not determined that PEF has a thirty (30%) percent showing of interest...."<sup>1</sup>

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<sup>1</sup> The Director's letter to the parties indicates that he was not able to determine with precision the percentage of the showing of interest because the number of eligible employees in the negotiating unit, which is the denominator of the equation, is uncertain. He wrote:

"In support of its petition, PEF submitted a substantial showing of interest comprised of timely authorization cards and petitions executed by employees clearly within the PS&T Unit. The purpose of PERB's showing of interest requirement is to determine whether its resources should be devoted to the processing of a petition; in other words, a petition should be processed only if there is substantial support for its filing. In the instant case, my prolonged investigation has revealed the existence of such support.

"It is fair to prognosticate that a continuation of the investigation of the showing of interest would require much additional time and effort. In that event, the question of which, if any, of the competing employee organizations is the choice of a majority of the employees in the PS&T unit would not be resolved by a date sufficiently in advance of the expiration of the existing contract so as to allow a reasonable period of time for negotiations."

We decline to deal with that question at this time. The policy of this State as articulated by the Legislature is that representation cases should be quickly processed to their conclusion without interruption for litigation of intermediate determinations. In 1971 the Legislature amended the statutory provisions providing for judicial review [CSL Section 213(b)] to specify that "[o]rders of the board or its agents made pursuant to subdivisions one and two of section two hundred seven of this chapter [i.e., intermediate orders in representation proceedings] shall be reviewable only in a proceeding brought under article seventy-eight of the civil practice law and rules to review an order of the board made pursuant to subdivision three of section two hundred seven of this chapter [i.e., final orders in representation proceedings]."


Two years earlier, when the Legislature amended the Taylor Law to prevent improper employer and employee practices, it specified [CSL Section 205.5(d)]: "The pendency of proceedings under this paragraph shall not be used as the basis to delay or interfere with determination of representation status pursuant to section two hundred seven of this article or with collective negotiations." Our own Rules have also been amended to expedite representation cases in a manner that is directly relevant to the matter before us. When first adopted in 1967, our Rules provided, at Section 201.6(h): "After receipt of the report and recommendations of the investigator or the hearing officer, or upon consent of the parties, the Director of Representation may direct an election, recommend dismissal of the petition, or otherwise dispose of the matter. The direction of an election may be appealed to the Board within seven days thereafter."

(Emphasis supplied). The underscored language of the above quote was eliminated when our Rules were amended in 1969. Since then, the Rule [now Section 201.9(c)(3)] reads: "Unless expressly authorized by the Board, rulings by the Director or by a trial examiner shall not be appealed directly to the

Board, but shall be considered by the Board when it considers such exceptions to the decision of the Director as may be filed."

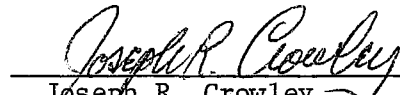
Consistent with our own policies and with the policies inherent in the legislation, we decline to authorize consideration of the intermediate determination of the Director. The motion of CSEA is denied.

Dated: Albany, New York  
November 3, 1975



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Robert D. Helsby, Chairman



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Joseph R. Crowley



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Fred L. Denson