11-21-1975

State of New York Public Employment Relations Board Decisions from November 21, 1975

New York State Public Employment Relations Board

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

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2A-11/21/75

In the Matter of

WESTBURY UNION FREE SCHOOL DISTRICT,

Respondent,

-and-

WESTBURY TEACHERS ASSOCIATION,

Charging Party.

BOARD DECISION AND ORDER

Case No. U-1433

A PERB hearing officer issued a decision on September 9, 1975 determining that the Westbury Union Free School District (District) had violated CSL Section 209-a.1(d) by refusing to negotiate in good faith with the Westbury Teachers Association (WTA). The nature of the violation as found by the hearing officer was that the District had reneged on an agreement that it had made and that it refused to execute a contract containing that agreement.

The issue in question involved sabbatical leaves. A prior agreement between the parties, which expired on June 30, 1974, contained a provision relating to sabbatical leaves in the following language:

> "Teachers of the Westbury Public Schools may, subject to the approval of the Board of Education, be granted sabbatical leave of absence for one year of study, research, or travel, subject to the following conditions:
>
> A. No more than 2% of the teachers may be on sabbatical leave at any one time."

There is no factual question regarding the language agreed upon by the parties for the new contract. That language begins:

"Article VI - SABBATICAL LEAVE

A. Sabbatical Leaves shall be granted in accordance with the following provisions:

The number of such leaves annually shall not exceed 2% of the number of teachers covered by this contract, rounded to the nearest whole number.

B. Applications for sabbatical leave shall be submitted to a Sabbatical Leave Committee composed of five teachers appointed by the Association, representing the High School, Junior High School and Elementary School levels. The Committee shall evaluate the applications to determine whether the criteria as hereinafter set forth for the granting of the leaves have been met. The Committee shall submit the approved applications to the Superintendent of Schools who shall determine which of said applications shall be granted, consistent with Sections C & D hereinafter. If the number of applications approved by the Committee exceeds the limits of such leaves, the Superintendent of Schools shall give consideration to the Committee's ranking of the application."

The agreed upon sabbatical leave article goes on to specify details relating to the qualifications and standards for sabbatical leave. The issue before the hearing officer was whether the language of the new article covering sabbatical leaves replaced the old agreement in toto as is alleged by WTA, or whether it was understood that the first paragraph of the old language would be retained as is alleged by the District, thus leaving the granting of sabbaticals subject to the approval of the Board of Education. The hearing officer determined that the new language was intended to replace the old in toto and that the granting of sabbaticals would no longer be subject to approval by the Board of Education.

The District has specified five exceptions to this determination. The first two allege, in substance, that there was no agreement to eliminate the role of the Board of Education in approving sabbaticals; the second two assert, in substance, that there was no agreement on sabbaticals because the

Board itself, which is the appropriate legislative body, did not give its approval within the comprehension of CSL Section 201.12 and Section 204-a. The last exception is that the proposed order of the hearing officer exceeded the power of this Board under CSL Section 205.5(d) as interpreted by the Court of Appeals in Jefferson County v. PERB, 36 NY 2d 534.

Having reviewed the record in the light of the exceptions and having considered the briefs of the parties on those exceptions, we affirm the hearing officer's findings of fact that the newly agreed upon sabbatical leave provision was designed to replace the predecessor provision in toto, and that the parties had agreed to delete the role of the Board of Education in approving the granting of such leaves. The hearing officer's report contains his analysis of the testimony in support of his conclusion, and we subscribe to that analysis.

Regarding the third and fourth exceptions, to wit, that the agreement required and did not have the approval of the Board of Education, the hearing officer properly found that the issue had not been before him. He did find, and the record supports his finding, that the parties agreed to include in the contract a representation made by the District Superintendent on September 11 which provides:

> "The Superintendent represents that the Board of Education has approved this memorandum and has provided legislative action to permit its implementation by amendment of law or by providing the additional funds therefore."

The hearing officer declined to determine the binding effect of that representation as the matter was not placed before him nor fully litigated by the parties.

Finally, we conclude that the hearing officer's proposed order was appropriate under the Law and the Jefferson County case.

NOW, THEREFORE, in accordance with the above findings of fact, conclusions of law, and in view of the specific violation of the Act that we have found to have occurred, the Westbury Union Free School District is

ORDERED to negotiate in good faith with the Westbury Teachers Association.

Dated: Albany, New York
November 21, 1975

ROBERT D. HELSBY, Chairman

JOSEPH R. CROWLEY

FRED L. DENSON

STATE OF NEW YORK

PUBLIC EMPLOYMENT RELATIONS BOARD

#2B-11/21/75

In the Matter of

SAG HARBOR UNION FREE SCHOOL DISTRICT,

Respondent,

BOARD DECISION & ORDER

- and -

GERALD P. GOEHRINGER, FRANK LIZEWSKI and THE PIERSON TEACHERS ASSOCIATION,

Charging Parties.

Case No. U-1298

This matter comes to us on the exceptions of the Sag Harbor Union Free School District (respondent or employer) and the cross-exceptions of Goehringer and Lizewski and the Pierson Teachers Association (charging parties or Association) from a decision of the hearing officer finding that respondent violated CSL Sections 209-a.1(a) and (c). In sustaining the charge, the hearing officer found that respondent had terminated the services of Goehringer and Lizewski, both probationary employees, effective June 30, 1974 because of their participation in the prosecution of certain grievances. The hearing officer recommended that respondent be ordered to restore the status quo as it existed prior to the improper termination of Goehringer and Lizewski by (a) offering reinstatement to their former positions and (b) making them whole for any loss of pay suffered by reason of the improper discharge from the date of that discharge to the date of the offer of reinstatement, less any earnings derived from employment during that time. The hearing officer indicated that the order should not confer automatic tenure or in any way reduce the employer's opportunity to evaluate the two teachers on the basis of their actual performance on the job "uninfluenced by any role they have played or may play in the protected activities of the Association's

grievance committee." Finally, the hearing officer recommended that respondent be ordered to cease and desist from discriminatory acts towards members of the Association because of the exercise of their protected right to participate in the grievance procedure as individuals and as members of the Association's grievance committee.

Respondent specifies eleven exceptions. In summary, these exceptions argue that the hearing officer should have had separate hearings and separate findings of fact regarding Goehringer and Lizewski; that the charge was not timely; that the findings of fact were contrary to the evidence; that the conclusions of law were contrary to the law; and that the hearing officer was prejudiced against respondent. Among the alleged facts that respondent calls to our attention is that the job performances of Goehringer and Lizewski justified their being terminated. Charging Parties' cross exceptions allege that the hearing officer erred in qualifying his recommended order to deny to Lizewski the tenure that would normally follow his re-appointment as a teacher for another year.

Having considered the arguments of the parties in support of their exceptions and reviewed the record, we confirm the findings of fact and conclusions of law of the hearing officer for the reasons set forth in his opinion. In reaching this conclusion we reject the allegation that the hearing officer was prejudiced against respondent. The allegation has no basis in the record.

We find it appropriate to add to the analysis of the hearing officer our own observations about the allegation that the past performance of Goehringer and Lizewski is sufficient to justify their termination. Whether or not their performance was sufficient to justify their termination is not controlling herein; an employer may terminate probationary teachers for good reasons or bad reasons so long as it does not do so for an illegal

reason, such as the exercise of rights that are protected by the Taylor Law. Thus the question before the hearing officer and us is not whether Goehringer and Lizewski could have been dismissed on the basis of their performance, but rather whether they were dismissed because of their active participation as members of the Association's grievance committee. The hearing officer determined that their termination was motivated by the animus of their supervisor, Bangs, toward the Association by reason of grievances filed by the Association that related to his control or lack of control of discipline at the high school and to his assignment or misassignment of lunch duty to Goehringer, among others. Goehringer and Lizewski were the only members of the Association's grievance committee who were not on tenure and the hearing officer found that Bangs' animus toward the Association motivated his recommendation that they not be reappointed. In large measure the hearing officer's findings of fact were based upon his resolution of credibility issues raised by the testimony. Nothing in the record persuades us to reject those credibility resolutions. Indeed, the balance of the evidence is consistent with or supports the hearing officer's findings of fact.

The termination of Goehringer and Lizewski for illegal reasons leaves open the question of whether they should be retained or terminated for legal reasons. That question should be resolved by the employer and not by us. Thus, we reject charging parties' cross-exceptions and confirm the qualification upon the order that was proposed by the hearing officer.

NOW, THEREFORE, IT IS ORDERED

(1) That the respondent, Sag Harbor Union Free School District, restore the status quo as it existed prior to its discriminatory action by (a) offering Goehringer and Lizewski reinstatement to their former positions and (b) making

Goehringer and Lizewski whole for any loss of pay suffered by reason of the discrimination against them, from the date of termination to the date of offer of reinstatement, less any earnings derived from other employment during that period of time,[1] and (2) that respondent, Sag Harbor Union Free School District, cease and desist from discriminatory acts towards members of the Association because of the exercise of their protected right to participate in the grievance procedure as individuals and as members of the Association's grievance committee.

Dated: Albany, New York
November 21, 1975

Robert D. Helsby, Chairman

Joseph R. Crowley

Fred L. Denson

1. This order is not intended to confer automatic tenure, or in any way to reduce the employer's opportunity to evaluate these two teachers on the basis of their actual performance on the job. Rather, it contemplates an offer of reemployment for the 1975-76 school year with the understanding that, at the appropriate time, Lizewski will be considered for the granting of tenure and Goehringer for reappointment as a non-tenured teacher, on the basis of the number of school years actually worked and the recommendations of their high school principal, uninfluenced by any role they have played or may play in the protected activities of the Association's grievance committee. See Legislative Conference of the City University of New York, 31 NY 2d 1926 (1972) (6 PERB 7509).

#2C-11/21/75

NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the	Case No. D-0106
SHENENDEHOWA TEACHERS ASSOCIATION, LOCAL 3003, AFT, NYSUT	BOARD DECISION & ORDER
Upon the Charge of Violation of Section 210.1 of the Civil Service Law.	

On September 22, 1975, Martin L. Barr, Counsel to this Board, filed a charge alleging that the Shenendehowa Teachers Association, Local 3003, AFT, NYSUT, had violated Civil Service Law §210.1 in that it caused, instigated, encouraged, condoned and engaged in a strike against the Shenendehowa Central School District on September 2, 3, 4 and 5, 1975.

The Shenendehowa Teachers Association, Local 3003, AFT, NYSUT, agreed not to contest the charge. It therefore did not file an answer and thus admitted the allegations of the charge. The Shenendehowa Teachers Association, Local 3003, AFT, NYSUT, joined the Charging Party in recommending a penalty of loss of dues checkoff privileges for 40% of its annual dues. The annual dues of the Shenendehowa Teachers Association, Local 3003, AFT, NYSUT, are deducted in equal installments during the ten month period from September through June.

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

We find that the Shenendehowa Teachers Association, Local 3003, AFT, NYSUT, violated CSL §210.1 in that it engaged in a strike as charged.

WE ORDER that the dues deduction privileges of the Shenendehowa Teachers Association, Local 3003, AFT, NYSUT, be suspended, commencing with the first pay check in January, 1976, and continuing through May 1976, or for such period of time during which 40% of its annual dues would otherwise be deducted. Thereafter, no dues shall be deducted on its behalf by the Shenendehowa Central School District until the Shenendehowa Teachers Association, Local 3003, AFT, NYSUT, affirms that it no longer asserts the right to strike against any government as required by the provisions of CSL §210.3(g).

Dated, November 21, 1975

ROBERT D. HELSBY, Chairman

JOSEPH R. CROWLEY

FRED L. DENSON

#2D-11/21/75

NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the	Case No. D-0112
SCHENECTADY FEDERATION OF TEACHERS, LOCAL 803, AFT, NYSUT	BOARD DECISION & ORDER
upon the Charge of Violation of Section 210.1 of the Civil Service Law.	

On October 3, 1975, Martin L. Barr, Counsel to this Board, filed a charge alleging that the Schenectady Federation of Teachers, Local 803, AFT, NYSUT, had violated Civil Service Law §210.1 in that it caused, instigated, encouraged, condoned and engaged in a strike againt the City School District of the City of Schenectady on September 2, 3, 4, 5, 8, 9, 10, 11, 12, 15, 16, 17, 18 and 19, 1975.

The Schenectady Federation of Teachers, Local 803, AFT, NYSUT, agreed not to contest the charge. It therefore did not file an answer and thus admitted the allegations of the charge. The Schenectady Federation of Teachers, Local 803, AFT, NYSUT, joined the Charging Party in recommending a penalty of loss of dues checkoff privileges for 90% of its annual dues. The annual dues of the Schenectady Federation of Teachers, Local 803, AFT, NYSUT, are deducted in equal installments during the ten month period from September through June.

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

We find that the Schenectady Federation of Teachers, Local 803, AFT, NYSUT, violated CSL §210.1 in that it engaged in a strike as charged.

WE ORDER that the dues deduction privileges of the Schenectady Federation of Teachers, Local 803, AFT, NYSUT, be suspended, commencing with the first pay check in January, 1976, and continuing through November, 1976, or for such period of time during which 90% of its annual dues would otherwise be deducted. Thereafter, no dues shall be deducted on its behalf by the City School District of the City of Schenectady until the Schenectady Federation of Teachers, Local 803, AFT, NYSUT, affirms that it no longer asserts the right to strike against any government as required by the provisions of CSL §210.3(g).

Dated, November 21, 1975

ROBERT D. HELSBY, Chairman

JOSEPH R. CROWLEY

FRED L. DENSON

#2E-11/21/75

NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the	Case No. D-0113
PLATTSBURGH TEACHERS ASSOCIATION, LOCAL 2930, AFT, AFL-CIO	BOARD DECISION & ORDER
upon the Charge of Violation of Section 210.1 of the Civil Service Law.	

On October 6, 1975, Martin L. Barr, Counsel to this Board, filed a charge alleging that the Plattsburgh Teachers Association, Local 2930, AFT, AFL-CIO, had violated Civil Service Law §210.1 in that it caused, instigated, encouraged, condoned and engaged in a strike against the Plattsburgh City School District on September 22, 23 and 24, 1975.

The Plattsburgh Teachers Association, Local 2930, AFT, AFL-CIO agreed not to contest the charge. It therefore did not file an answer and thus admitted the allegations of the charge. The Plattsburgh Teachers Association, Local 2930, AFT, AFL-CIO, joined the Charging Party in recommending a penalty of loss of dues check-off privileges for 40% of its annual dues. The annual dues of the Plattsburgh Teachers Association, Local 2930, AFT, AFL-CIO, are deducted in equal installments during the period from October through June.

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

We find that the Plattsburgh Teachers Association, Local 2930, AFT, AFL-CIO, violated CSL §210.1 in that it engaged in a strike as charged.

WE ORDER that the dues deduction privileges of the Plattsburgh Teachers Association, Local 2930, AFT, AFL-CIO, be suspended, commencing with the first pay check in January, 1976, and continuing through May, 1976, or for such period of time during which 40% of its annual dues would otherwise be deducted. Thereafter no dues shall be deducted on its behalf by the Plattsburgh City School District until the Plattsburgh Teachers Association, Local 2930, AFT, AFL-CIO, affirms that it no longer asserts the right to strike against any government as required by the provisions of CSL §210.3(g).

Dated, November 21, 1975

ROBERT D. HELSBY, Chairman

JOSEPH R. CROWLEY

FRED L. DENSON

#2F-11/21/75

NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the	:	Case No. D-0110
WILLIAMSVILLE TEACHERS ASSOCIATION	:	BOARD DECISION & ORDER
upon the Charge of Violation of Section 210.1 of the Civil Service Law.	:	
	:	

On October 2, 1975, Martin L. Barr, Counsel to this Board, filed a charge alleging that the Williamsville Teachers Association had violated Civil Service Law §210.1 in that it caused, instigated, encouraged, condoned and engaged in a strike against the Williamsville Central School District on September 22, 23, 24, 25 and 26, 1975.

The Williamsville Teachers Association agreed not to contest the charge. It therefore did not file an answer and thus admitted the allegations of the charge. The Williamsville Teachers Association joined the Charging Party in recommending a penalty of loss of dues checkoff privileges for 50% of its annual dues. The annual dues of the Williamsville Teachers Association are deducted in equal installments during the period from November through April.

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

We find that the Williamsville Teachers Association violated CSL §210.1 in that it engaged in a strike as charged.

WE ORDER that the dues deduction privileges of the Williamsville Teachers Association be suspended, commencing with the first pay check in January, 1976 and continuing through May 1, 1976, or for such period of time during which 50% of its annual dues would otherwise be deducted. Thereafter, no dues shall be deducted on its behalf by the Williamsville Central School District until the Williamsville Teachers 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, November 21, 1975

ROBERT D. HELSBY, Chairman

JOSEPH R. CROWLEY

FRED L. DENSON

#2G-11/21/75

NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the	:	Case No. D-0109
NEWFANE TEACHERS ASSOCIATION	:	
upon the Charge of Violation of Section 210.1 of the Civil Service Law.	:	BOARD DECISION & ORDER

On October 2, 1975, Martin L. Barr, Counsel to this Board, filed a charge alleging that the Newfane Teachers Association had violated Civil Service Law §210.1 in that it caused, instigated, encouraged, condoned and engaged in a strike against the Newfane Central School District on September 8, 9, 10, 11, 12, 15, 16, 17 and 19, 1975.

The Newfane Teachers Association agreed not to contest the charge. It therefore did not file an answer and thus admitted the allegations of the charge. The Newfane Teachers Association joined the Charging Party in recommending a penalty of loss of dues checkoff privileges for 75% of its annual dues. The annual dues of the Newfane Teachers Association are deducted in equal installments during the ten month period from September through June.

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

We find that the Newfane Teachers Association violated CSL §210.1 in that it engaged in a strike as charged.

WE ORDER that the dues deduction privileges of the Newfane Teachers Association be suspended, commencing with the

first pay check in January, 1976, and continuing through November 1, 1976, or for such period of time during which 75% of its annual dues would otherwise be deducted. Thereafter, no dues shall be deducted on its behalf by the Newfane Central School District until the Newfane Teachers 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, November 21, 1975

ROBERT D. HELSBY, Chairman

JOSEPH R. CROWLEY

FRED L. DENSON

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2H-11/21/75

IN THE MATTER OF

STATE OF NEW YORK,
Employer,

-and-

LOCAL 1908-FRATERNAL ORDER OF NEW YORK STATE TROOPERS, AMERICAN FEDERATION OF STATE COUNTY MUNICIPAL EMPLOYEES, AFL-CIO,
Petitioner,

-and-

POLICE BENEVOLENT ASSOCIATION OF NEW YORK STATE POLICE, INC.,
Intervenor.

Case No. C-1282

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 Police Benevolent Association of New York State Police, 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: Troopers, Corporals, Sergeants, Technical Sergeants, Zone Sergeants, First Sergeants, Chief Technical Sergeants, Staff Sergeants, Senior Investigators, Investigators, and Investigative Specialists, and similar titles or classifications as may hereafter be from time to time created.

Excluded: All other employees of the employer.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with Police Benevolent Association of New York State Police, 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 21st day of November , 1975 .

ROBERT D. HELSBY, CHAIRMAN

JOSEPH R. CROWLEY

FRED L. DENSON

PERB 58(2-68)

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