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State of New York Public Employment Relations Board Decisions from January 2, 1976

New York State Public Employment Relations Board

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State of New York Public Employment Relations Board Decisions from January 2, 1976

Keywords

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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2A-1/2/76

In the Matter of

NORTHPORT UNION FREE SCHOOL DISTRICT,

Respondent,

- and -

UNITED TEACHERS OF NORTHPORT,

Charging Party.

BOARD DECISION & ORDER

Case No. U-1383

This matter comes to us on exceptions filed by the United Teachers of Northport (UTN), the charging party herein, to a decision of a hearing officer dismissing its charge. The gravamen of the charge is that the Northport Union Free School District (District), respondent herein, violated CSL §209-a.1(a) and (d) on September 15, 1974 when it used "administrators to perform the functions of Director of Student Activities... a position to be filled by a teacher pursuant to the collective bargaining agreement."

BACKGROUND

The position of Director of Student Activities was one of a number of extra-compensation provisions referred to in both the 1972-73 and the 1974-76 contracts between UTN and the District. The Director had received \$1,069 in extra compensation. He had also been relieved of one-half of his teaching responsibilities. This imposed upon the District an added cost of \$7,000 to replace him. On April 23, 1974, while negotiations for the 1974-76 agreement were in progress, the Board of Education of the District voted to reduce the District's budget by \$76,000. A casualty in this budget cut was the position of Student Activities Director, with the indicated resultant

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savings of \$8,069. On May 31, UTN submitted a grievance protesting this action of the District's Board of Education and the parties engaged in negotiations to resolve the grievance. The District offered to appoint a Director of Student Activities at a salary of \$1,069 and even to increase the compensation for the position. It also proposed to diminish the functions of the Director of Student Activities by eliminating from the job description for the position the following paragraph:

"The Director of Student Activities will be responsible for the organization, administration and supervision of all student co-curricular activities at Northport High School. He shall be the liaison person between the activity sponsors and the administration and shall assist the sponsors in carrying out their responsibilities."

In return, the District insisted that the Director of Student Activities perform his functions on his own time, thus saving it the cost of a half-time replacement for him. Although this proposed compromise did not settle the grievance, the District offered the position on that basis to the teacher who had served as Director of Student Activities for several years. It is clear from the record that he would not accept the designation on this basis. Thereafter the remaining responsibilities of the position were assigned to two administrators. That assignment was not made until sometime after the commencement of school.

In dismissing the charge, the hearing officer concluded that

"[T]he decision of the respondent to eliminate the position of director of student activities and to assign some but not all of the functions to two administrators are clearly matters with respect to the manner and means by which such services are to be rendered and particularly the extent thereof."

POSITION OF UTN

UTN specifies many exceptions to the hearing officer's findings of fact and conclusions of law. In substance, the posture of UTN is that both by past practice and contract, one teacher or another has, over a period of years, functioned as Director of Student Activities and received compensation for that assignment. This position, and the extra-compensation for it, including the released time, constituted a term and condition of employment of teachers. Without prior negotiations, the District's Board of Education eliminated not the function or position of Director of Student Activities, but only teacher involvement in that function and responsibility. UTN argues that the hearing officer erred in not finding a violation in that unilateral action of the District.

DISCUSSION

We agree with UTN. The hearing officer relies upon our decision in Matter of the City School District of the City of New Rochelle, 4 PERB 3704, 3706 (1971). The reasoning of that decision would have permitted the District to eliminate the position and function of the Director of Student Activities. The reestablishment of the position, with significant alterations, in settlement of a grievance would also have been permissible. So would assignment of the reestablished position to administrators, given the unwillingness of a teacher to accept it in its altered form. That, however, was not what took place. As was testified to by the District's assistant superintendent for personnel services, from the beginning it was contemplated that the functions of the position of Director of Student Activities would be continued but that they would be assigned to employees who are not in the negotiating unit, to wit, to administrators.

A public employer may unilaterally determine to curtail the

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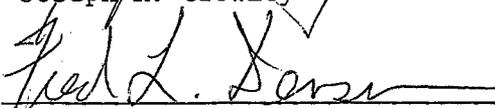
services that it offers its constituency, even if such a decision impacts upon terms and conditions of its employees. All that is required of the public employer is that it negotiate with respect to that impact (New Rochelle, supra). Where, however, there is no real intention to curtail or limit services to the public, a decision of the employer that impacts upon terms and conditions of employment is itself subject to mandatory negotiations. (see Matter of City School District of the City of Oswego, 5 PERB 3023[1972]). Such is the situation here. The District should have negotiated with UTN before deciding to reassign the responsibilities of the Director of Student Activities to administrators. Its failure to do so constitutes a violation of CSL §209-a.1(d). However, we do not find any violation of CSL §209-a.1(a).

NOW, THEREFORE, in accordance with the above findings of fact and conclusions of law, and in view of the specific violation of the Act, the Northport Union Free School District is ordered to negotiate with the United Teachers of Northport in good faith.

Dated: Albany, New York
January 2, 1976



Joseph R. Crowley



Fred L. Denson

Dissent of Chairman Robert D. Helsby

I dissent from the decision of my colleagues. In the first instance, I am not persuaded that the function of the Director of Student Activities is necessarily work for teachers. A number of the tasks specified in the job description of the Director of Student Activities are administrative in nature.¹ Moreover, the record discloses that some of the functions of the Director of Student Activities had always been exercised by administrative personnel in the District's elementary school and junior high school. To the extent that

1 The full job description provides:

"1. The Director of Student Activities will be responsible for the organization, administration and supervision of all student co-curricular activities at Northport High School. He shall be the liaison person between the activity sponsors and the administration and shall assist the sponsors in carrying out their responsibilities.

The Director of Student Activities shall be accountable to the principal in all matters related to co-curricular activities.

2. Take part in the selection of advisors for all clubs and activities by:
 - (a) screening applications
 - (b) participating in interviews
3. Assist in the evaluation of club activities and performance of advisors.
4. Prepare annual budget for all co-curricular activities.
5. Prepare, together with the Business Manager, the annual calendar of events.
6. Work with club members and advisors in setting up guidelines for clubs and advisors to follow.
7. Coordinate and supervise school assemblies.
8. Supervise all dances, make arrangements for chaperones, police guards, etc.
9. Oversee all aspects of financial activities of clubs and advise students on fund raising activities---dances, bake sales, etc.
10. Meet with visitors and salesmen concerned with co-curricular activities.
11. Act as a liaison person between the Student Association and the faculty.
12. Prepare an end of the year report for the principal.

the function of the Director of Student Activities is not necessarily work for teachers, the creation of the position of Director of Student Activities and its assignment to a teacher is not a term and condition of employment of teachers. Accordingly, a unilateral decision of the District to reassign such functions to administrators violates no duty to negotiate with UTN (Board of Education, City of New York and Local 891, Operating Engineers, 5 PERB 3094, 3095 [1972]).

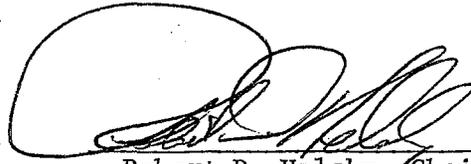
Some of the functions of the position of Director of Student Activities such as liaison between the Student Association and the faculty, were eliminated. The elimination of such functions comes under the New Rochelle doctrine. Assuming arguendo that all the remaining functions were work that was reserved to teachers, the compensation for the altered position would be subject to negotiations rather than carried over from the prior position. The District did seek to negotiate a new compensation schedule for the altered position, but was unable to reach agreement with UTN. Under these circumstances, I would find no violation in its establishing a new compensation level unilaterally and in filling the position with an administrator when no teacher accepted the position.

One other aspect of the situation that troubles me. The majority decision implicitly holds the District to a part of a contract that has been barred by the legislative action of the District's Board of Education. I again assume arguendo that the function of the position is necessarily teachers' work. The 1974-76 agreement between the District and UTN provides for a Director of Student Activities and compensation for that position, but

the compensation for that position is subject to approval by the District's Board of Education. The Taylor Law (CSL §201.12 and §204-a) provides that no provision of an agreement that requires legislative action to permit its implementation by the appropriation of funds shall become effective until the appropriate legislative body has given its approval. The District's Board of Education is its legislative body; that Board specifically denied funds to compensate the Director of Student Activities. As a legal proposition, this did not eliminate the position, but it did eliminate all compensation for it except that which was established in subsequent negotiations, subject to subsequent legislative approval. In view of the alteration in the compensation of the position, the teachers were free to refuse to fill it, but the Board was equally free to then assign the function to employees other than teachers.

I would affirm the decision of the hearing officer and dismiss the charge.

Dated: Albany, New York
January 2, 1976



Robert D. Helsby, Chairman

NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD

#2B-1/2/76

In the Matter of : Case No. D-0118
TOWN OF BABYLON LIFEGUARD UNION :
Upon the Charge of Violation of Section 210.1 : BOARD DECISION
of the Civil Service Law. : & ORDER
:

On October 27, 1975, Martin L. Barr, Counsel to this Board, filed a charge alleging that the Town of Babylon Lifeguard Union had violated Civil Service Law §210.1 in that it caused, instigated, encouraged, condoned and engaged in a strike against the Town of Babylon on July 25, 26, 27, 28 and 29, 1975 and August 2, 3, 4, and 5, 1975.

The Town of Babylon Lifeguard Union has agreed not to contest the charge. It therefore has agreed to withdraw its answer and thus admit the allegations of the charge. The Town of Babylon Lifeguard Union has joined the charging party in recommending a penalty of loss of dues checkoff privileges for the year 1976. The annual dues of the Town of Babylon Lifeguard Union are deducted during the summer season. The attorneys for the Town of Babylon have also consented to the proposed disposition of this proceeding.

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

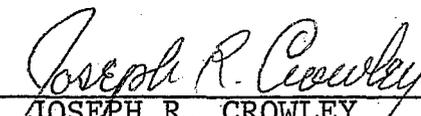
We find that the Town of Babylon Lifeguard Union violated CSL §210.1 in that it engaged in a strike as charged.

WE ORDER that the dues deduction privileges of the Town of Babylon Lifeguard Union be suspended for the year 1976. Thereafter, no dues shall be deducted on its behalf by the Town of Babylon until the Town of Babylon Lifeguard Union affirms that it no longer asserts the right to strike against any government as required by the provisions of CSL §210.3(g).

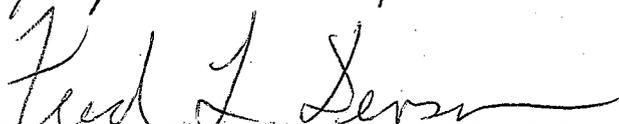
Dated, Albany, New York
January 2, 1976



ROBERT D. HELSBY, Chairman



JOSEPH R. CROWLEY



FRED L. DENSON

NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD

#2C-1/2/76

In the Matter of the : Case No. D-0123
PIERSON TEACHERS ASSOCIATION :
Upon the Charge of Violation of Section 210.1 : BOARD DECISION
of the Civil Service Law. : & ORDER

On November 17, 1975, Francis J. Yakaboski, Esq., Chief Legal Officer of the Sag Harbor Union Free School District, filed a charge alleging that the Pierson Teachers' Association had violated Section 210.1 of the Civil Service Law in that it caused, instigated, encouraged, condoned and engaged in a strike against the Sag Harbor Union Free School District on September 3 and 4, 1975.

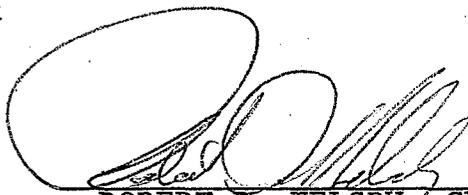
The Pierson Teachers' Association has agreed to withdraw its answer to the charge and has thus admitted the allegations of the charge. The Pierson Teachers' Association joined the Charging Party in recommending a penalty of loss of dues checkoff privileges for 4 months. Counsel to this Board has reviewed the circumstances and has recommended that the proposed penalty is reasonable and should be adopted by this Board.

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

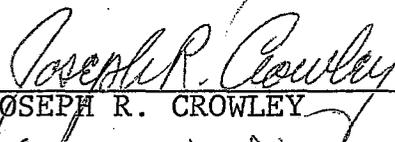
We find that the Pierson Teachers' Association violated CSL §210.1 in that it engaged in a strike as charged.

WE ORDER that the dues deduction privileges of the Pierson Teachers' Association be suspended for a period of four months commencing on the first practicable date. Thereafter no dues shall be deducted on its behalf by the Sag Harbor Union Free School District until the Pierson 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).

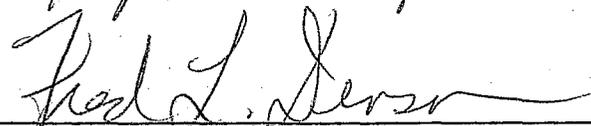
Dated, Albany, New York
January 2, 1976



ROBERT D. HELSBY, Chairman



JOSEPH R. CROWLEY



FRED L. DENSON