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State of New York Public Employment Relations Board Decisions from January 16, 1976

New York State Public Employment Relations Board

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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2A-1/16/76

In the Matter of TOWN OF OYSTER BAY, Respondent, -and- NASSAU CHAPTER, CIVIL SERVICE EMPLOYEES ASSOCIATION, Charging Party.	BOARD DECISION AND ORDER CASE NO. U-1426

This matter comes to us on exceptions of the Town of Oyster Bay (respondent) from a decision of a hearing officer determining that it had violated CSL §209-a.1(d) when, on or about November 15, 1975, it unilaterally changed the hours of work of certain employees who were represented by the Town of Oyster Bay Unit, Nassau Chapter, CSEA (charging party). The charging party had alleged that respondent had violated CSL §209-a.1(a) and (d) in that it "unilaterally changed terms and conditions of employment of Sanitation Foremen, members of the unit represented by CSEA, by increasing their working hours without providing any additional compensation."[1] The hearing officer determined that respondent did unilaterally alter the hours of work of sanitation foremen who are members of the unit represented by the charging party. He concluded that this unilateral change constituted a violation of CSL §209-a.1(d), but not of §209-a.1(a). He found that there had been a longstanding past practice under which Sanitation Foremen I had been permitted to "sign out" on a "completion of task" basis. In this, they were like the sanitary collection men whose work they supervised.

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1 The charge also alleged other improper conduct by respondent, but these aspects of the charge were resolved by the parties prior to the hearing. They were not dealt with in the hearing officer's decision and are not before us now.

The respondent submitted a five-page exception in narrative form. Although the exceptions were not enumerated, they can be summarized as follows:

1. There was no past practice upon which the Foremen I could rely. To the extent that Foremen I were permitted to go home upon completion of their tasks, it was a privilege granted by the employer which did not vest.

2. There was no uniform practice of Foremen I leaving upon the completion of their tasks, as indicated by their practice of seeking permission to leave. Moreover, the Foremen I had responsibilities after the groups whom they supervised had completed their daily assignments.

3. Various provisions of respondent's contract with charging party reserved to it prerogatives sufficient to cover the allegedly improper conduct.[2] The contract authorized sanitary collection men to work until the completion of their regular tasks. The absence of any similar contractual reference to Foremen I indicates that Foremen I enjoyed no similar right. A reference in the 1975-76 contract to "sanitary collection men and their foremen" is an indication that the term "sanitary collection men" does not cover foremen.

Discussion

Having reviewed the record, we confirm the determination of the hearing officer.[3]

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2 Contract Sections 4-1.0 and 4-1.4 specify a management right to determine schedules of work, including overtime, and §9-6.0 limits the agreement to matters explicitly agreed to by the parties.

3 Obviously this decision does not involve any judgment as to whether sanitation foremen ought to be employed for set hours or on an incentive basis involving a completion of work schedule subject to maximum hours.

Foremen I have been employed on a "completion of task" basis for at least twenty years. In our judgment this is a term and condition of their employment. The practice of Foremen I had been to return to the yard when all their crews had completed their daily assignments in order to fill out their daily report sheets. This involved stating the total mileage and gas consumption per day, quitting time and the disposition of homeowner complaints. Usually the Foreman I was free to leave after completing these reports. On occasion, the Foremen I had to remain for a meeting or had to deal with a homeowner complaint. However, they had not been required to wait for complaints. Occasionally such complaints were handled by the Foreman I on his way home. If the Foreman I had gone before a complaint was received, it was handled by someone else or held for the following day. When his work was completed, the Foreman I was free to sign out and leave. That the Foremen I signed out before leaving did not imply that they were obtaining permission on an ad hoc basis to leave before their normal quitting time. Their normal quitting time was related to the completion of their daily responsibilities, and not to the clock.

The contract does not justify or authorize respondent's conduct. On its face, the reference to "sanitary collection men" in the earlier contract might be read to either include or exclude the sanitary collection foremen. The hearing officer correctly disregarded the reference to "sanitary collection men and their foremen" in the 1975-76 contract because that language was negotiated in the context of the instant dispute when the charging party was aware of respondent's contention that Foremen I were not covered by the "sanitary collection men." It does not reflect upon the parties' understanding of that term at an earlier time. More persuasive of what the parties understood that term to mean is the longstanding past practice of treating sanitary collection men and Foremen I in the same manner - both were permitted to leave upon the

completion of their daily tasks.

NOW, THEREFORE, we confirm the findings of fact and conclusions of law of the hearing officer and, in accordance with those findings of fact and conclusions of law, and in view of the specific violation of the Act that we have found,

WE ORDER the Town of Oyster Bay to negotiate in good faith.

Dated: Albany, New York
January 16, 1976

Robert D. Helsby, Chairman

Joseph R. Crowley

Fred L. Denson

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2B-1/16/76

In the Matter of GENESEE COMMUNITY COLLEGE, Respondent, -and- GENESEE COMMUNITY COLLEGE FACULTY ASSOCIATION, Charging Party.	BOARD DECISION AND ORDER CASE NO. U-1563

This matter comes to us on exceptions of the Genesee Community College Faculty Association (charging party) to a decision of the hearing officer granting a motion of the Genesee Community College (respondent) that he dismiss the charge herein. The charge had been filed on April 7, 1975. It alleged that respondent had violated CSL §209-a.1(a), (b), (c) and (d).[1] There are two aspects of the charge. The first aspect is the allegation that on or about December 12, 1974 respondent, bypassing the charging party, requested individual negotiations with James Kelly and Judith Sikora regarding

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1 The charge states:

> "On or about December 12, 1974, Dean Dorsey Brause of Genesee Community College approached individually two probationary faculty members, James Kelly and Judit[h] Sikora and told them individually that he wished to negotiate changes in their job functions. In addition, he told each employee individually that if he/she did not agree with the requested job function change, the employee(s) would not be recommended for tenure.
>
> "Mr. Kelly did not agree to the changes and was subsequently denied tenure by the Board of Trustees. Ms. Sikora did agree to changes and was awarded tenure by the Board of Trustees. In neither instance was the Genesee Community College Faculty Association (G.F.A.) notified of the necessity of negotiations. The G.F.A. is the recognized collective bargaining agent for the faculty and has a collective bargaining agreement in effect with the employer until August 31, 1977."

changes in their job functions, such negotiations occurring under the threat that Kelly and Sikora would not be recommended for tenure. The second aspect of the charge is the allegation that Kelly was denied tenure because he did not agree to the proposed changes in his job function.

After two days of hearing, by which time the charging party had completed the presentation of its case, except for two witnesses whose testimony did not pertain either to Kelly or to events after December 5, 1974, respondent moved to dismiss the charge. The basis for its motion was that the charge was not timely and that, insofar as the charge related to the denial of tenure to Kelly, there was a failure of proof. The hearing officer granted the motion and dismissed the charge in its entirety. In concluding that certain aspects of the charge were untimely, the hearing officer had to determine that the circumstances giving rise to those aspects of the charge occurred before December 7, 1974.[2] The hearing officer found that the operative date for negotiations between respondent and Sikora and Kelly was December 3, 1974. The charging party excepts to this conclusion, as well as the conclusion that it failed to prove that Kelly was denied tenure because of his refusal to negotiate on an individual basis and agree to the changes in job functions proposed by the respondent.

Having reviewed the record, we confirm the determinations of the hearing officer. Respondent first sought individual negotiations with Sikora and Kelly before December 3, 1974 and not on December 12, 1974 as is alleged in the charge. As a general matter, it is improper for a public employer to

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2 Section 204.1(a) of our Rules restricts the filing of a charge to within four months of the date of the improper conduct.

bypass a recognized or certified employee organization and to seek to negotiate directly with employees who are within the negotiating unit. An employee organization may, however, consent to such a practice. The action of respondent prior to December 3, 1974 in seeking to negotiate directly with Sikora and Kelly may have been inappropriate but, to the extent that it might relate to that period, the charge is not timely. On December 3, 1974 the charging party consented to the negotations between respondent and Sikora and Kelly. This consent constituted a waiver of the right of the charging party to object to its being bypassed in negotiations thereafter, which would include the entire period that is not time barred.

The dismissal of so much of the charge as involves direct negotiations with Sikora and Kelly on the basis of timeliness still leaves open the possibility that Kelly was denied tenure as a reprisal for refusing to agree to respondent's proposals during negotiations. It is not clear whether the operative facts in the denial of tenure to Kelly occurred on December 6, 1974 or December 9, 1974. Thus, this aspect of the charge might be timely. However, the correctness of the hearing officer's decision to dismiss this aspect of the charge for failure of proof makes it unnecessary to reach the question. The evidence establishes that Kelly was not threatened that he would be denied tenure by reason of a refusal to negotiate on an individual basis or agree to changes in the functions of his job as proposed by respondent.

Respondent decided to lay off employees for economic reasons. This was not an improper practice (Matter of the City School District of the City of New Rochelle, 4 PERB 3704, 3706 [1971]). Neither was respondent's offer to negotiate over its proposal that was designed to avoid the layoffs. That these negotiations were unsuccessful and a layoff resulted also does not constitute any violation of the Taylor Law. Kelly was aware that unless the job functions of some members of the physical education staff were restructured, some members

of that staff might be laid off for economic reasons. As the member of that staff with the lowest seniority, he knew that he would be the first to go. To the extent that the charge complains about this circumstance, it does not allege a violation. To the extent that it alleges an improper threat against Kelly, it is not supported by the evidence.

NOW, THEREFORE, the charge herein should be, and hereby is, dismissed in its entirety.

Dated: Albany, New York
January 16, 1976

Robert D. Helsby, Chairman

Joseph R. Crowley

Fred L. Denson

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF	
CITY SCHOOL DISTRICT OF THE CITY OF RENSSELAER,	#2C-1/16/76
Employer,	Case No. C-1305
-and-	
CIVIL SERVICE EMPLOYEES ASSOCIATION, INC.,	
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 Civil Service Employees Association, 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: All non-instructional employees.

Excluded: Business manager, secretary to the superintendent of schools, maintenance foreman, supervisor of buildings and grounds, and food service manager.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with Civil Service Employees Association, 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 16th day of January , 1976 .

ROBERT D. HELSBY, Chairman

JOSEPH R. CROWLEY

FRED L. DENSON

PERB 58(2-68)