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2-20-1976

State of New York Public Employment Relations Board Decisions from February 20, 1976

New York State Public Employment Relations Board

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State of New York Public Employment Relations Board Decisions from February 20, 1976

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

#2A-2/20/76

In the Matter of

UNITED FEDERATION OF TEACHERS,

Respondent, : BOARD DECISION AND ORDER

- and -

ALLAN R. DEMBICER,

: Case No. U-1411

Charging Party. :

This matter comes to us on exceptions taken by Allan R. Dembicer from the hearing officer's decision dated October 3, 1975. The hearing officer had dismissed Dembicer's charge which had alleged that the United Federation of Teachers (UFT) violated CSL §209-a.2(a)¹ by causing him to be expelled from the "Unity Caucus". The Unity Caucus is an internal, political committee that has great influence within UFT. Dembicer was expelled from the Unity Caucus at a November 20 meeting. The reasons given were that he had publicly attacked the UFT and its leadership and he had disrupted a UFT meeting. It was also alleged that he had attempted to lead the Association of Per-Session Teachers, an organization that he has founded and of which he was president, out of the UFT. The gravamen of the charge was that the action of the Unity Caucus deprived Dembicer of his constitutional rights of free speech.

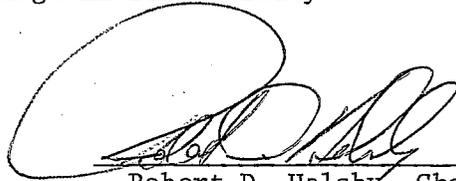
The hearing officer determined that the charge alleged violations of political and not Taylor Law rights and he ruled that it was beyond the

1. This section of the Act makes it an improper employee organization practice to "interfere with, restrain or coerce public employees in the exercise of their rights granted in section two hundred two...."

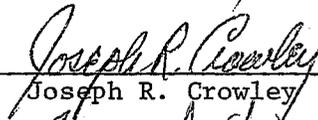
jurisdiction of this Board.² In his exceptions, Dembicer argues that in the instant situation his constitutional rights and his labor law rights were so intertwined as to make the alleged violation of his right of free speech a denial of his right to participate in union activities. We do not agree, on the reasoning articulated in the hearing officer's decision.

We dismiss the charge in its entirety.

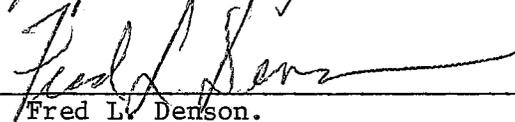
DATED: February 20, 1976
Albany, New York



Robert D. Helsby, Chairman



Joseph R. Crowley



Fred L. Denson.

2. He said, "In the instant case there is no claim that UFT ever failed to properly represent Dembicer in any matter involving his terms and conditions of employment."

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2B-2/20/76

In the Matter of

HEMPSTEAD UNION FREE SCHOOL DISTRICT,

Respondent,

- and -

HEMPSTEAD SCHOOLS ASSOCIATION OF
ADMINISTRATORS,

Charging Party.

:
: BOARD DECISION & ORDER

:
: CASE NO. U-1630

On December 1, 1975 the assigned hearing officer issued a decision and order in the above entitled matter finding that the respondent violated CSL §209-a.1(d) by negotiating in bad faith with the charging party. The hearing officer specifically noted that the charging party "had been unable for four straight years to negotiate a contract and it is the stated intent of this decision that substantive negotiations commence forthwith for the unit as a whole including the directors." The hearing officer rejected the charging party's claim that the respondent's improper actions also violated CSL §209-a.1(c).

Subsequently, the respondent filed timely exceptions and the charging party filed timely cross-exceptions. The charging party did not specifically except to the hearing officer's dismissal of its charge insofar as it related to CSL §209-a.1(c).

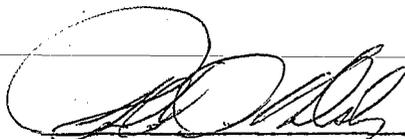
The respondent's exceptions consist of eleven separate points, each of which have been carefully considered by us along with the rest of the record in this proceeding. We confirm the decision of the hearing officer for the reasons set forth therein. We also agree with the hearing officer

that substantive negotiations for a unit including the at-issue directors are long overdue and should commence forthwith.

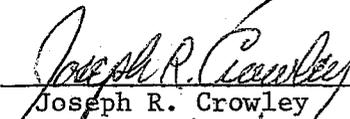
Accordingly, in accordance with the findings of fact and conclusions of law in the hearing officer's decision, which we hereby adopt, and in view of the specific violation of the Act which we have found to have occurred, it is

ORDERED that the respondent negotiate in good faith with the charging party for the at-issue unit of employees, including the two directors.

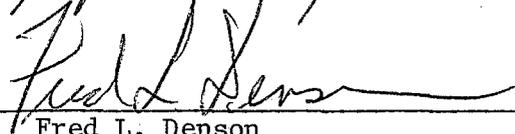
Dated: February 20, 1976
Albany, New York



Robert D. Helsby, Chairman



Joseph R. Crowley



Fred L. Denson

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2C-2/20/76

In the Matter of

CITY OF BINGHAMTON,

Employer,

:

BOARD DECISION & ORDER

- and -

:

TRI-CITY AREA FOREMAN AND SUPERVISORY EMPLOYEES,
LOCAL 675, AFSCME, COUNCIL 66,

:

CASE No. C-1275

Petitioner,

:

- and -

AMERICAN FEDERATION OF STATE, COUNTY AND
MUNICIPAL EMPLOYEES, LOCAL 826,

:

Intervenor.

:

This matter comes to us on exceptions taken by the City of Binghamton from a decision of the Director of Public Employment Practices and Representation granting a petition of Tri-City Area Foreman and Supervisory Employees, Local 675, AFSCME, Council 66 (Local 675) for the decertification of AFSCME Local 826 (Local 826) as the negotiating representative of a comprehensive blue collar unit containing about 350 positions and for its certification as the exclusive negotiating representative of 11 foremen who has been in that blue collar unit. The justification for the petition was that there was a conflict of interest between the foremen and the other blue collar employees which precluded their being adequately represented within the existing unit structure. The Director found that the duties of the foremen did not compel separate units. Those duties include supervision of other blue collar employees subject to the labor policies of the employer, which supervision includes the exercise of some discretion concerning the granting of personal leaves, overtime and the scheduling of vacations. Foremen are the

first or "informal step" of the existing grievance procedure and do, in fact, process grievances at this stage. They do not evaluate the performance of their crews but may initiate disciplinary action. In practice, however, their administration of discipline consists of the issuance of verbal reprimands.

In determining that foremen should be given a separate unit the Director relied not upon their job duties but upon negotiating relationships. He found that Local 826 had "traded off or dropped the four or five negotiating demands sought by the foremen and told them not to appear at the ratification meeting because of the effect their presence would have on the rank and file." He further found that foremen had been subjected to verbal abuse from the rank and file when they attended union meetings and that they "were threatened with expulsion if they had reprimanded an employee or denied a grievance." On the other hand, he found that "Foremen had been repeatedly admonished by the employer that they were responsible to see that the men 'obey the contract.' Thus the rank and file see the foremen as the focal point of their daily contact with management, the person who 'chews them out', the person who decides their grievances, and the person with whom their steward deals."

In its exceptions, the City notes that both Local 826 and Local 675 are affiliates of AFSCME. It argues that whatever negotiating conflicts there are between the foremen and the other blue collar employees can be resolved within Local 826. It further argues that the Director's decision enables a union to manipulate the City's employee relations so as to impose upon it the unwanted and unnecessary second unit of blue collar employees.

Having reviewed the record, we are not persuaded by the City's arguments. Rather, we confirm the Director's finding that there is a sharp conflict of interest between the foremen and the blue collar employees whom

they supervise. Accordingly,

IT IS ORDERED that there shall be a unit of employees, as follows:

Included: Park maintenance foremen, signal foremen, street maintenance foremen, sanitation foremen, water maintenance foremen, sewer maintenance foremen, and general equipment foremen.

Excluded: All other employees;

further

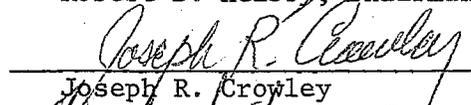
IT IS ORDERED that an election by secret ballot shall be held under the supervisor of the Director of Public Employment Practices and Representation among the employees in the negotiating unit set forth above, unless Local 675 submits to the Director within seven days from the date of receipt of this decision evidences sufficient to satisfy the requirements of §201.9(g)(1) of the Rules of Procedure for certification without an election; it is further

ORDERED that the City of Binghamton shall submit to the Director as well as to Tri-City Area Forman and Supervisory Employees, Local 675, AFSCME, Council 66, within seven (7) days from the date of receipt of this decision, an alphabetized list of the employees in the unit set forth above who were employed on the payroll date immediately preceding the date of this decision.

Dated: Albany, New York
February 20, 1976



Robert D. Helsby, Chairman



Joseph R. Crowley



Fred L. Denson

In the Matter of the : Case No. D-0111
HALF HOLLOW HILLS TEACHERS ASSOCIATION, LOCAL : BOARD DECISION
2701, AFT, NYSUT : & 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 Half Hollow Hills Teachers Association, Local 2701, AFT, NYSUT, had violated Civil Service Law §210.1 in that it caused, instigated, encouraged, condoned and engaged in a 12 day strike against the Half Hollow Hills Central School District of Huntington and Babylon on September 3, 4, 5, 8, 9, 10, 11, 12, 16, 17, 18 and 19, 1975.

The Half Hollow Hills Teachers Association, Local 2701, AFT, NYSUT, filed an answer but thereafter agreed to withdraw it, thus admitting all of the allegations of the charge. The Half Hollow Hills Teachers Association, Local 2701, AFT, NYSUT, joined the Charging Party in recommending a penalty of loss of dues check-off privileges for 90% of its annual dues. The annual dues of the Half Hollow Hills Teachers Association, Local 2701, 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 Half Hollow Hills Teachers Association, Local 2701, AFL, NYSUT, violated CSL §210.1 in that it engaged in a strike as charged.

WE ORDER that the dues deduction privileges of the Half Hollow Hills Teachers Association, Local 2701, AFT, NYSUT, be suspended, commencing with the first pay check in March, 1976, and continuing through January, 1977, 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 Half Hollow Hills Central School District of Huntington and Babylon until the Half Hollow Hills Teachers Association, Local 2701, 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).

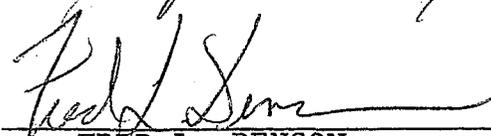
Dated, Albany, New York
February 20, 1976



ROBERT D. HELSBY, Chairman



JOSEPH R. CROWLEY



FRED L. DENSON

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2E-2/20/76

IN THE MATTER OF :
STATE OF NEW YORK, :
Employer, :
-and- :
PUBLIC EMPLOYEES FEDERATION, : Case No. C-1281
Petitioner, :
-and- :
CIVIL SERVICE EMPLOYEES ASSOCIATION, :
INC., :
Intervenor.

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: The "Professional, Scientific, and Technical Services Unit", as presently constituted.

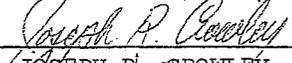
Excluded: All other employees.

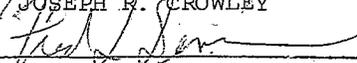
Further, IT IS ORDERED that the above named public employer shall negotiate collectively with Civil Service Employees Association, Inc.,

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 20th day of February , 19 76.


ROBERT D. HELSEY, Chairman


JOSEPH P. CROWLEY


FRED L. DENSON

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2F-2/20/76

In the Matter of :
ELMIRA CITY SCHOOL DISTRICT, :
Employer, :
-and- :
COMMUNICATIONS WORKERS OF AMERICA, : Case No. C-1303
AFL-CIO, :
Petitioner, :
-and- :
CIVIL SERVICE EMPLOYEES ASSOCIATION, :
INC., :
Intervenor.

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 Communication Workers of America, 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: School bus drivers, head bus driver, mechanics and head mechanic.

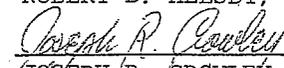
Excluded: Field supervisor of transportation, sub drivers, transportation aides and all other employees.

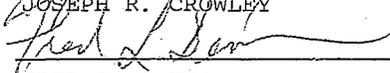
Further, IT IS ORDERED that the above named public employer shall negotiate collectively with Communications Workers of America, AFL-CIO

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 20th day of February , 1976 .


ROBERT D. HELSBY, Chairman


JOSEPH R. CROWLEY


FRED L. DENSON

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF :
SAYVILLE UNION FREE SCHOOL DISTRICT, :
Employer, :
-and- :
SUFFOLK EDUCATIONAL CHAPTER, CIVIL :
SERVICE EMPLOYEES ASSOCIATION, INC., :
Petitioner, :
-and- :
LOCAL 100, SERVICE EMPLOYEES :
INTERNATIONAL UNION, AFL-CIO, :
Intervenor. :

#2G-2/20/76

CASE NO. C-1311

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 Suffolk Educational Chapter, 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 permanent full and part-time clerical employees.

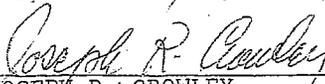
Excluded: Managerial and confidential employees.

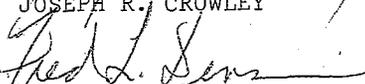
Further, IT IS ORDERED that the above-named public employer shall negotiate collectively with Suffolk Educational Chapter, Civil Service Employees Association, Inc.,

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 20th day of February, 1976.


ROBERT D. HELSBY, Chairman


JOSEPH R. CROWLEY


FRED L. DENSON

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF :
SAYVILLE UNION FREE SCHOOL DISTRICT :
Employer, :
-and- :
SUFFOLK EDUCATIONAL CHAPTER, CIVIL :
SERVICE EMPLOYEES ASSOCIATION, INC., :
Petitioner, :
-and- :
LOCAL 100, SERVICE EMPLOYEES :
INTERNATIONAL UNION, AFL-CIO, :
Intervenor. :

#2H-2/20/76

CASE NO. C-1312

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 Local 100, Service Employees International Union, 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: All permanent full and part-time custodial, maintenance and food service employees.

Excluded: Managerial and confidential employees.

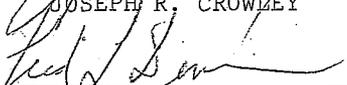
Further, IT IS ORDERED that the above-named public employer shall negotiate collectively with Local 100, Service Employees International Union, AFL-CIO,

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 20th day of February, 1976.


ROBERT D. HELSBY, Chairman


JOSEPH R. CROWLEY


FRED L. DENSON

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#21-2/20/76

In the Matter of :
VILLAGE OF BATH, :
Employer, :
-and- :
CIVIL SERVICE EMPLOYEES ASSOCIATION, : Case No. C-1324
INC., :
Petitioner, :
-and- :
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & :
HELPERS, LOCAL #65, :
Intervenor.

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 Teamsters, Chauffeurs, Warehousemen & Helpers, Local #65

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: Laborers, truck drivers, heavy equipment operators, mechanics and welders.

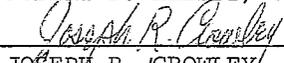
Excluded: Street foreman and all other employees of the employer.

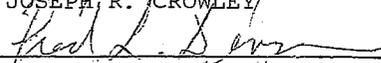
Further, IT IS ORDERED that the above named public employer shall negotiate collectively with Teamsters, Chauffeurs, Warehousemen & Helpers, Local #65

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 20th day of February , 1976 .


ROBERT D. HELSBY, Chairman


JOSEPH R. CROWLEY


FRED L. DENSON

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2J-2/20/76

In the Matter of :

GENESEE-WYOMING COUNTIES B.O.C.E.S., :

Employer, :

-and- :

CASE NO. C-1317

SERVICE EMPLOYEES INTERNATIONAL UNION, :
LOCAL 227, AFL-CIO, :

Petitioner. :

BOARD DECISION AND ORDER

On November 25, 1975, Service Employees International Union, Local 227, AFL-CIO (petitioner) filed, in accordance with the Rules of Procedure of the New York State Public Employment Relations Board, a timely petition for certification as the exclusive negotiating representative of certain non-instructional employees employed by the Genesee-Wyoming Counties B.O.C.E.S.. Thereafter, the parties entered into a consent agreement in which they stipulated to the following as the appropriate negotiating unit:

Included: All full-time and part-time audio visual technicians, computer operators, cleaners, custodians, secretaries, clerks, typists, bus drivers, aides and all other non-teaching personnel.

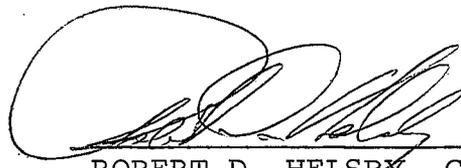
Excluded: Teachers, BOCES clerk, BOCES treasurer, secretary to district superintendent and all certificated personnel.

The consent agreement was approved by the Director of Public Employment Practices and Representation on January 19, 1976.

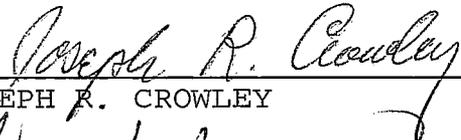
Pursuant to the consent agreement, a secret ballot election was held on February 9, 1976. The results of this election indicate that a majority of the eligible voters in the stipulated unit who cast ballots do not desire to be represented for purposes of collective negotiations by the petitioner.^{1]}

THEREFORE, IT IS ORDERED that the petition should be, and hereby is, dismissed.

Dated: Albany, New York
February 20, 1976



ROBERT D. HELSBY, Chairman

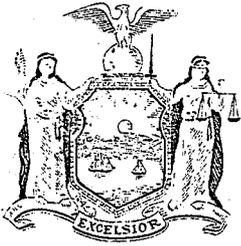


JOSEPH R. CROWLEY



FRED L. DENSON

^{1]} Of the 29 employees participating in the election, 10 voted in favor of and 19 voted against representation by the petitioner.



STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD
50 WOLF ROAD
ALBANY, N.Y. 12205

#3A-2/20/76

JEROME LEFKOWITZ
DEPUTY CHAIRMAN

February 20, 1976

Frankle & Greenwald, Esqs.
Attn: Max H. Frankle, Esq.
80 Eighth Avenue
New York, New York 10011

Re: E-0273 - In the Matter of the City School District of
the City of Binghamton

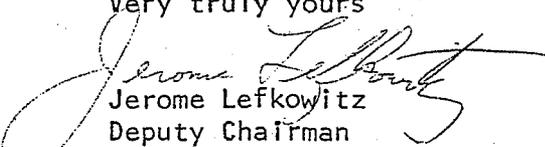
Gentlemen:

The Board has asked me to write you regarding your "Application to Reopen and Reconsider" its decision in the above matter. That decision had been issued on December 5, 1975.

On January 27, 1976 you wrote to the Board requesting that it reopen and reconsider that decision. Your request does not specify any authority in the statute or in our Rules for the granting of such a request; neither does it specify any unusual circumstances that might justify special consideration. The papers submitted in support of your application merely reiterate arguments previously presented to the Board. We are also in receipt of a letter from the attorney for the City School District of the City of Binghamton objecting to the granting of your application.

In view of all of these circumstances, the Board rejects your application.

Very truly yours


Jerome Lefkowitz
Deputy Chairman

cc - Shaw, Esworthy, O'Brien
& Crowley, Esqs.
Attn.: Eugene F. Crowley, Esq.
123 Front Street
Binghamton, New York 13905