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Board (PERB)

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4-8-1976

# State of New York Public Employment Relations Board Decisions from April 8, 1976

New York State Public Employment Relations Board

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# State of New York Public Employment Relations Board Decisions from April 8, 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-4/8/76

In the Matter of  
HORNELL CITY SCHOOL DISTRICT,

Respondent,

-and-

HORNELL TEACHERS ASSOCIATION, LOCAL NO. 2738,

Charging Party.

BOARD DECISION & ORDER

CASE NO. U-1607

This matter comes to us on the exceptions of the Hornell Teachers Association, Local 2738 (Association) from the decision of a hearing officer dismissing its charge. The charge filed on May 12, 1975 had alleged that the Hornell City School District (District) had failed to negotiate in good faith in violation of CSL §209-a.1(d) by refusing the Association's request for information that was allegedly necessary for negotiations. The requested information was the name, age and accumulated sick leave of each teacher of the District. The record discloses that the District did indeed refuse to provide the information in the form requested. It offered, however, to provide the information without relating the age and accumulated sick leave of the employees to specific names. The reason given by the District was that the information sought by the Association was confidential and could only be released upon the written consent of the teachers.

In dismissing the charge, the hearing officer did not reach the District's argument that the information requested was confidential in nature. Rather, he determined that the Association had not established any need for the information in the form requested. The hearing officer found that the appropriate test was the one set forth by us in Matter of Board of Education,

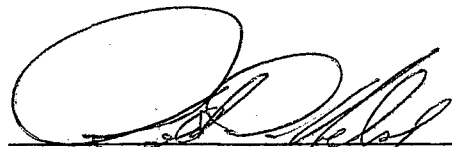
City School District of the City of Albany, 6 PERB 3029 (1973). In that case we stated (at p. 3030)

"[A]n employee organization may request, and is entitled to receive, information which is necessary for the preparation for collective negotiations... and information necessary for the administration of a contract. In both cases, the obligation of the employer would be circumscribed by the rules of reasonableness, including the burden upon the employer to provide the information, the availability of the information elsewhere, the necessity therefor, the relevancy thereof and, finally, that the information supplied need not be in the form requested as long as it satisfies a demonstrated need."

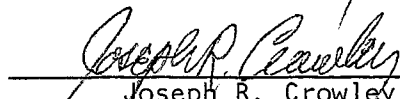
In its exceptions, the Association argues that under private sector precedent the District would be required to provide the information that it seeks in the form requested. It argues that our Albany School District decision serves the needs of union negotiators inadequately and that the hearing officer applied it too restrictively. We disagree. We confirm the findings of fact and conclusions of law of the hearing officer and

WE ORDER that the charge herein be dismissed in its entirety.

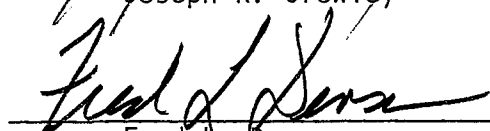
Dated: Albany, New York  
April 8, 1976



Robert D. Helsby, Chairman



Joseph R. Crowley



Fred L. Benson

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

#2B-4/8/76

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In the Matter of :  
 :  
SCHOOL AND LIBRARY EMPLOYEES UNION, LOCAL 74, :  
SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO, : BOARD DECISION AND ORDER  
 :  
-and- :  
 : CASE NO. D-0087  
INTERNATIONAL UNION OF OPERATING ENGINEERS, :  
LOCAL 94-94A, AFL-CIO, :  
 :  
upon the Charge of Violation of Section 210.1 :  
of the Civil Service Law. :

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On February 8, 1974, Martin Barr, Counsel to the Public Employment Relations Board (charging party) issued a charge against the School and Library Employees Union, Local 74, Service Employees International Union, AFL-CIO (Local 74) and against the International Union of Operating Engineers, Local 94-94A, AFL-CIO (Local 94-94A). It alleged that both Local 74 and Local 94-94A had violated CSL Section 210.1 "in that each caused, instigated, encouraged, condoned and engaged in a strike against the Board of Education on January 16, 17 and 18, 1974." Implicit in the charge was the assumption that the members of Local 74 and Local 94-94A who engaged in the alleged strike were public employees who perform various janitorial services in buildings of the Board of Education of the City School District of the City of New York (Board of Education). Locals 74 and 94-94A answered the charge on March 25, 1974 and March 22, 1974, respectively. Both answers conceded that members of the two Locals engaged in a strike on January 16, 17 and 18, 1974. It is the position of the two Locals, however, that their striking members were not public employees and were not subject to the provisions of CSL Section 210.1. Both Locals alleged that their members were employed by Custodians, who are not public employers within the meaning of the Taylor Law.

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On April 3, 1974, Local 891 of the International Union of Operating Engineers, AFL-CIO (Local 971) sought leave to intervene in the proceeding indicating that it was the representative of the Custodians who, it alleged, were the employers of the striking janitorial workers. That motion to intervene was granted on April 5, 1974. On April 25, 1975<sup>1</sup>, the Board of Education submitted motions to intervene and to dismiss the charge. Underlying the second motion was the conclusion of fact that the strikers were not employees of the Board of Education, but were employees of the Custodians, who were not employers within the meaning of the Taylor Law. The motion to intervene was granted on October 7, 1975. The motion to dismiss the charge was denied, subject to the right of the Board of Education to renew it after the development of relevant factual data upon which a judgment could be formed.<sup>2</sup>

#### FACTS

Local 74 and Local 94-94A are the exclusive bargaining representatives of different classifications of janitorial employees who work in school buildings that are under the jurisdiction of the Board of Education. Local 891 is the recognized bargaining representative of all Civil Service School Custodians employed by the Board of Education. It is also a multi-employer

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1 The delay between April 5, 1974 and September 25, 1975 was occasioned by two circumstances. An early scheduled hearing was postponed for three months because of an illness of one of the attorneys. Upon his recovery, the postponement was continued in order to await the decision of the New York State Court of Appeals in New York Public Library v. PERB, 37 NY 2d 752 (July 8, 1975). It was correctly anticipated that the decision in the Library case would bear upon characteristics of public employment.

2 After the Board of Education's intervention, all five parties (Local 74, Local 94-94A, Local 891, the Board of Education and the Charging Party) joined in an effort to formulate a stipulation of relevant facts in lieu of a hearing. Ultimately these efforts proved successful and a stipulation of facts was submitted to the Board on February 11, 1976.

association representing all the individual Custodians in their capacity as employers of the janitorial workers represented by Locals 74 and 94-94A. As a multi-employer association, Local 891 engages in negotiations with Locals 74 and 94-94A. The Custodians hire and discharge janitorial employees and supervise their work. The Board of Education, which employs the Custodians, exercises no control over the hiring or discharge of the janitorial employees, neither does it exercise any supervision or control or direction of their work. This indirect system of care and maintenance of Board of Education buildings has been in effect in the City of New York for over seventy years. Grievances relating to employment of janitorial employees are processed by Local 891 as employer and Locals 74 or 94-94A representing the employees. The cost of any arbitration proceeding is borne by the three Locals. The janitorial employees represented by Locals 74 and 94-94A are not appointed pursuant to Civil Service Law and do not receive any benefits received by Civil Service employees of the Board of Education; they do not participate in the Board of Education retirement system or any other public retirement system. The Board of Education participates in negotiations over economic benefits for janitorial employees between Local 891 and the other two Locals. The resultant agreements, however, are executed by the three organizations and not by the Board of Education. After execution of the agreement, a Board of Education resolution is passed amending the allotment to Custodians to reflect increased costs.

#### CONCLUSION

On the foregoing facts, we determine that the striking members of Local 74 and Local 94-94A were not public employees.<sup>3</sup>

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<sup>3</sup> This decision is dictated by the reasoning of New York Public Library v. PERB, supra, and Matter of Local 891, et al., <sup>4</sup> SLRB 1102 (1941), aff'd as SLRB v. Hudson, 293 NY 671 (1944).

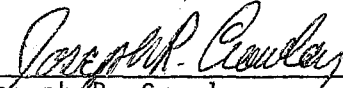
ACCORDINGLY, the charge herein is dismissed.

Dated at Albany, New York

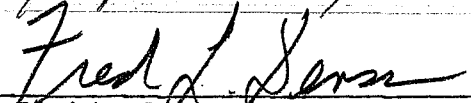
This 8th day of April, 1976



Robert D. Helsby, Chairman



Joseph R. Crowley



Fred L. Denson



STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

#2C-4/8/76

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In the Matter of	:	
	:	
CITY OF NEW YORK,	:	
	:	
Respondent,	:	<u>BOARD DECISION ON MOTION FOR</u>
	:	<u>RECONSIDERATION AND CLARIFI-</u>
-and-	:	
	:	<u>CATION</u>
PATROLMEN'S BENEVOLENT ASSOCIATION OF THE	:	
CITY OF NEW YORK, INC.,	:	
	:	
Charging Party.	:	<u>CASE NO. U-1723</u>
	:	

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On March 31, 1976 the Patrolmen's Benevolent Association of the City of New York (PBA) filed a motion with us for reconsideration and clarification of our Decision and Order dated March 25, 1976, 9 PERB ¶3031. The motion papers specify two bases for the relief requested --

1. "This Board Should Reconsider its Decision to Cede its Primary Jurisdiction to B.C.B. -- Contrary to Legislative Design -- in the Fact of a B.C.B. Scope Decision Which Is Grossly Repugnant to Fundamental Rights Under the Act and Prior Decisions of this Board."
- and 2. "This Board Should Clarify its Order by Specifying that Bargaining Must Include Meaningful Negotiations and Mediation Under Impasse Panel Auspices Prior to Continuation of the Formal Steps in the Impasse Proceedings."

They contain argument in support of both bases. The first basis of the motion goes to an aspect of our decision that was discussed by us exhaustively in our decision. It raises no factual or legal arguments not considered by us in reaching that decision.

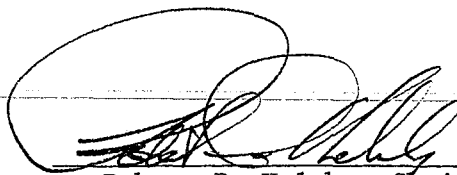
Underlying the second basis of the motion is an apparent conclusion that certain aspects of our decision must be clarified for them to be understood. The aspects in question were discussed in greater detail in the decision of the hearing officer than in our decision, but we adopted his findings of fact and conclusions of law with respect to them; thus, we find

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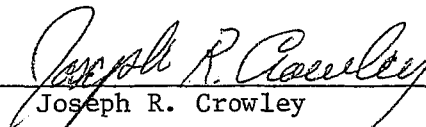
our decision as amplified by the hearing officer's decision sufficiently clear.

ACCORDINGLY, the motion herein is denied.

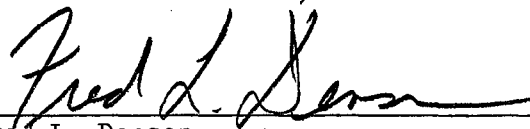
Dated: Albany, New York  
April 8, 1976



Robert D. Helsby, Chairman



Joseph R. Crowley



Fred L. Denson

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of :  
YORKTOWN CENTRAL SCHOOLS, : #2D-4/8/76  
Employer, :  
-and- :  
YORKTOWN CONGRESS OF TEACHERS, LOCAL :  
1724, NYSUT, AFT, NEA, AFL-CIO, : CASE NO. C-1340  
Petitioner, :  
-and- :  
YORKTOWN CUSTODIAL UNIT, WESTCHESTER :  
CHAPTER, CSEA, 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 Yorktown Custodial Unit, Westchester Chapter, CSEA, 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: Employees in the department of buildings and grounds in the job titles of cleaner, custodian, senior custodian, head custodian, matron, multitradesman and groundsman.

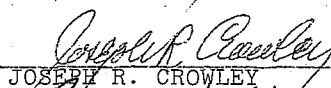
Excluded: All other employees.


Further, IT IS ORDERED that the above-named public employer shall negotiate collectively with Yorktown Custodial Unit, Westchester Chapter, CSEA, 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 8th day of April, 1976.

  
ROBERT D. HELSBY, Chairman

  
JOSEPH R. CROWLEY

  
FRED L. DENSON

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of :  
CITY OF NEW ROCHELLE, : #2E-4/8/76  
Employer, :  
-and- :  
DEPUTY FIRE CHIEFS TAYLOR LAW :  
COMMITTEE, : CASE NO. C-1255  
Petitioner, :  
-and- :  
UNIFORMED FIRE FIGHTERS ASSOCIATION, :  
INC., LOCAL 273, I.A.F.F., :  
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 Deputy Fire Chiefs Taylor Law Committee

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 deputy chiefs.


Excluded: All other employees.


Further, IT IS ORDERED that the above-named public employer shall negotiate collectively with Deputy Fire Chiefs Taylor Law Committee

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 8th day of April, 1976.

  
ROBERT D. HELSBY, Chairman

  
JOSEPH R. CROWLEY

  
FRED L. DENSON

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STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF : #2F-4/8/76  
COPIAGUE UNION FREE SCHOOL DISTRICT, :  
Employer, :  
-and- : Case No. C-1145  
COPIAGUE ASSOCIATION OF PRINCIPALS, :  
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 Copiague Association of Principals,

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: Elementary Principals, Elementary Assistant Principals, Junior High School Principals, Junior High School Assistant Principals, High School Principals and High School Assistant Principals.

Excluded: All other employees.

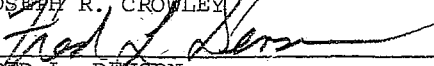
Further, IT IS ORDERED that the above named public employer shall negotiate collectively with Copiague Association of Principals,

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 8<sup>th</sup> day of April, 1976.

  
ROBERT D. HELSBY, Chairman

  
JOSEPH R. CROWLEY

  
FRED L. DENSON

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of : #2G-4/8/76  
WHITESBORO CENTRAL SCHOOL DISTRICT, :  
Employer, :  
-and- :  
WHITESBORO EMPLOYEES UNION, : Case No. C-1339  
Petitioner, :  
-and- :  
WHITESBORO CENTRAL SCHOOL CIVIL SERVICE :  
EMPLOYEES ASSOCIATION, :  
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 Whitesboro Employees Union-New York State United Teachers

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-certificated employees.

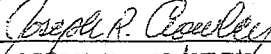
Excluded: Seasonal and casual employees, administrative personnel including the supervisor of transportation, superintendent of buildings and grounds, cafeteria director, secretary to supervising principal, secretary to assistant supervising principal, secretary to business administrator and secretary to the Board of Education.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with Whitesboro Employees Union-New York State United Teachers

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 8th day of April , 19 76 .

  
ROBERT D. HELSBY, Chairman

  
JOSEPH R. CROWLEY

  
FRED L. DENSON