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New York State Public Employment Relations  
Board (PERB)

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4-27-1976

## State of New York Public Employment Relations Board Decisions from April 27, 1976

New York State Public Employment Relations Board

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## State of New York Public Employment Relations Board Decisions from April 27, 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-4/27/76

In the Matter of :

NIAGARA COUNTY COMMUNITY COLLEGE FACULTY :  
ASSOCIATION :

BOARD DECISION AND ORDER

upon the Charge of Violation of Section :  
210.1 of the Civil Service Law :

CASE NO. D-0120

On October 26, 1975, Counsel to this Board filed a charge alleging that the Niagara County Community College Faculty Association (Association) violated CSL Section 210.1 "in that it caused, instigated, encouraged, condoned and engaged in a strike against the employer [Niagara County Community College] on September 17, 1975." In its answer, the Association denied that there had been a strike and argued "That on September 17, 1975, there were no unauthorized absences by members of the...Association", but that each of the employees who was absent on that day had exercised his contractual right to a day of personal leave. The contract then in force between the Association and the employer authorized three days personal leave subject to several pre-conditions. Previously personal leave day requests had always received pro forma approval from the employer, but the requests for personal leave on September 17, 1975 were denied. Those requests had been made at the suggestion of the Association. The suggestion of the Association was a tactic in the course of negotiations for a successor agreement. It was designed to disrupt the operations of the employer. One hundred nine of the one hundred sixty-eight members of the employer's faculty did absent themselves from class on September 17, 1975. That led to the cancellation of 202 of 350 day session classes on that day.

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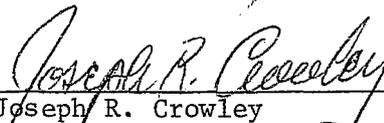
In his report and recommendations, the hearing officer concluded that the mass absence constituted a strike. He proposed that the Association be penalized for violating CSL Section 210.1 and that the penalty reflect the limited impact of the strike upon the public welfare as well as the absence of extreme provocation. Having reviewed the record, we confirm the hearing officer's findings of fact and conclusions of law.

NOW, THEREFORE, WE ORDER that the dues deduction privileges of the NIAGARA COUNTY COMMUNITY COLLEGE FACULTY ASSOCIATION be suspended for a period of three months and that, if the employer does not normally deduct dues in equal monthly installments, it shall not deduct more than 75% of the annual dues during the academic year 1976-77, provided, however, that until the Niagara County Community College Faculty Association affirms that it no longer asserts the right to strike against any government, no dues should be deducted on its behalf by the employer.

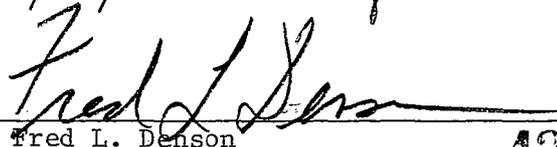
Dated: New York, New York  
April 27, 1976



Robert D. Helsby, Chairman



Joseph R. Crowley



Fred L. Denson

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STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

#2B-4/27/76

In the Matter of  
TROY CITY SCHOOL DISTRICT,  
Respondent,  
- and -  
TROY TEACHERS ASSOCIATION,  
Charging Party.

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BOARD DECISION AND ORDER  
CASE NO. U-1790

This matter comes to us on the exceptions of the Troy City School District (District) to a decision of a hearing officer finding it in violation of CSL Section 201-a.1(d). The violation, as found by the hearing officer, was that the District had failed to negotiate in good faith when it had refused to pay salary increments after June 30, 1975, as provided in the expired 1974-75 contract, during the course of negotiations for a successor agreement.

The Troy Teachers Association (TTA), the charging party herein, has been the representative of teachers and other certified personnel employed by the District going back to 1968. Since 1968 TTA and the District have negotiated a series of one-year agreements, each of which has provided a salary schedule reflecting annual increments and a salary increase. Until the 1974-75 school year, increments as set forth in the predecessor contract were paid at the start of the school year whether or not agreement on a successor contract had been reached. At the start of the 1974-75 school year, no increments under the expired 1973-74 contract were paid until a successor contract was agreed upon during October 1974<sup>1/</sup>. In past negotiations, the parties had negotiated a lump sum for salaries, part of which was then allocated by TTA to increments and the rest to a salary increase. This allocation process was subject to District approval. By reason of this procedure, the

1/ The parties' stipulation setting forth the facts specifies that the successor contract was agreed upon during October 1975. This is obviously a mistake. The charge herein which relates to the negotiation of the 1975-76 agreement was filed on September 14, 1975. Moreover, pursuant to Section 214.1 of our Rules, a copy of the 1974-75 contract was filed with this Board. The contract on file indicates that in final form it was executed on January 7, 1975.

amounts of increments have varied from year to year.

The question posed by the District's exceptions is whether, under the above-stated facts, there had been a past practice which had been disregarded by the District when it failed to pay increments at the beginning of the 1975-76 school year. Both TTA and the District have submitted oral and written arguments in support of their respective positions in this matter.

It was first articulated by us in Matter of Triborough Bridge and Tunnel Authority (5 PERB 3064 [1972]) that an employer may not unilaterally change terms and conditions of employment during negotiations for a new contract. Moreover, a salary schedule containing different salary steps that are related to the seniority and experience of an employee was, in the Triborough case, a past practice that could not be altered unilaterally by the employer during negotiations. This formulation of an employer's duty to negotiate in good faith has been restated by us in many cases, including Matter of Rockland County BOCES, 8 PERB 3025 (1975). In the latter case, this analysis was confirmed by the Appellate Division, Second Department (Rockland County BOCES v. PERB, 50 AD 2d 832 [1975]), which modified the PERB determination on other grounds related to PERB's lack of authority to issue the remedial order that it had issued in that case).

This Triborough doctrine, insofar as it applies to salary schedules providing for increments, has two bases. One is rooted in the nature of the salary schedule, which is a mathematical formula that is applicable to teachers in abstract and not in personal terms. For its purposes, teachers are anonymous but the salary of a teacher of specified seniority, experience and education is automatically ascertainable by checking the schedule. Any change in the teacher's seniority, experience or education may alter his salary

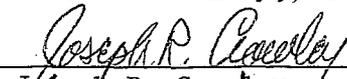
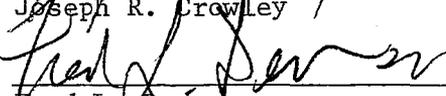
automatically without occasioning any change in the terms and conditions of employment provided by the contract. The other basis is personal. As stated in our Rockland County decision, it is rooted in the expectations of employees based upon "a long standing and continual practice of providing annual salary increments...."

The stipulated facts are not sufficiently complete to permit us to apply these tests in the instant case. We need to know more about the circumstances under which increments were paid at the opening of the 1974-75 school year. It may be that there was no longer a continual practice of providing annual increments. We also need to know more about the nature of the recurrent changes in the incremental aspect of the salary schedule. The absence of any rational relationship in the schedule of increments from year to year diminishes its reliability as a basis for employee expectations and reduces its significance for the purpose of the Triborough doctrine. It might also be useful to know if the 1974-75 incremental schedule was applied in determining the salaries of newly hired teachers while not applied to returning teachers, or if the District deemed the incremental schedule equally inapplicable to both groups.

This matter should be remanded to the Hearing Officer to obtain a complete record and to reconsider his decision in the light of that record.

Accordingly, it is ORDERED that this matter be remanded to the Hearing Officer.

Dated: New York, New York  
April 27, 1976

  
Robert D. Helsby, Chairman  
Joseph R. Crowley  
Fred L. Denson

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

#2C-4/27/76

In the Matter of

EDWARD J. MORRIS,

Petitioner,

- and -

PHILIP F. CORSO, Sheriff of Suffolk County,

Employer.

BOARD DECISION AND ORDER

Case No. U-1688

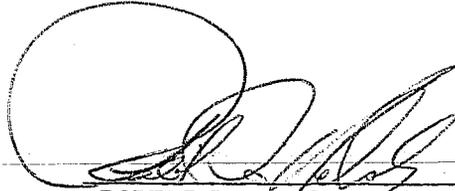
The charge herein was filed by Edward J. Morris on July 9, 1975 and alleges that Philip F. Corso, Sheriff of Suffolk County, violated CSL Sections 209-a.1(a), (b) and (c) by subjecting Morris to injurious treatment by reason of his activities on behalf of the Suffolk County Deputy Sheriffs Benevolent Association (Association), an organization of which he was president. A hearing was held at which testimony was taken and documentary evidence submitted. Thereafter, the hearing officer dismissed the charge upon his findings that the evidence did not establish any animus directed at the Association by Corso or his agents. The hearing officer properly reasoned that the existence of such animus as a cause for the allegedly injurious treatment of an employee is an essential element of a violation of Sections 209-a.1(a), (b) and (c).

Morris has filed exceptions to the hearing officer's decision. In support of his exceptions he submitted to us the brief that he had submitted to the hearing officer. Having read that brief and reviewed the record, we confirm the findings of fact and conclusions of law of the hearing officer.

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ACCORDINGLY, IT IS ORDERED that the charge herein be, and hereby is,  
dismissed.

DATED: New York, New York  
April 27, 1976



ROBERT D. HELSBY, Chairman



JOSEPH R. CROWLEY



FRED L. DENSON

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of

PATROLMEN'S BENEVOLENT ASSOCIATION OF : BOARD DECISION AND  
THE CITY OF LONG BEACH, NEW YORK, INC. ORDER

upon the Charge of Violation of Section : Case No. D-0104  
210.1 of the Civil Service Law.

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This matter comes to us on the exceptions of the City of Long Beach (City) to a decision of a hearing officer granting a motion to dismiss its charge against the Patrolmen's Benevolent Association of the City of Long Beach, New York, Inc. (PBA). On August 8, 1975 the Corporation Counsel of the City had issued a charge alleging that the PBA had violated CSL Section 210.1 on August 6, 7, and 8, 1975 in that "said organization did cause, instigate, encourage and condone the actions of the members of said organization in abstaining, in whole or in part, from the proper performance of their duties in the normal manner without permission, and did otherwise engage in a job action constituting a strike." The charge was amended on August 18, 1975 to specify more precisely the nature of the conduct that the City complained about and alleged to have constituted a strike. The essence of that conduct consisted of unusual and very strict enforcement of equipment requirements imposed by State law upon vehicles owned and/or operated by the City, the effect of which was to impair greatly the services rendered by the City's transportation and sanitation departments.

The reasoning of the hearing officer in dismissing the charge was that: "The policemen, however, did not withhold from the City any services that they were obligated to furnish as an expressed or implied term of their employment relationship with the City (footnote omitted)."

The ruling on the motion was made before the conclusion of the City's case and before any of the PBA's case was presented. It was based upon certain assumptions of fact that the hearing officer communicated to the parties before ruling on the motion. Among the assumptions of fact was that

"During the three days when summonses were being issued to City-owned and/or operated vehicles, members of Respondent continued to perform their other duties and did not otherwise withhold their services."

#### DISCUSSION

Having read the record and considered the written and oral arguments of the parties, we seek more information. The question raised by this case is an unusual one and one of great importance. Among other things, we seek more information that would enable us to ascertain the applicability of parts of §§200<sup>1/</sup> and 210.2(b)<sup>2/</sup>

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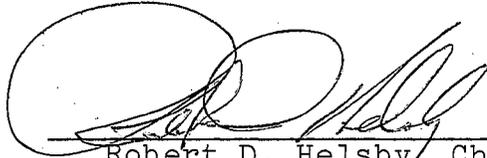
1/ "The legislature of the state of New York declares that it is the public policy of the state and the purpose of this act to promote harmonious and cooperative relationships between government and its employees and to protect the public by assuring, at all times, the orderly and uninterrupted operations and functions of government..." (emphasis added)

2/ "Presumption. For purposes of this subdivision an employee ...who abstains wholly or in part from the full performance of his duties in his normal manner without permission, on the date or dates when a strike occurs, shall be presumed to have engaged in such strike on such date or dates." (emphasis added)

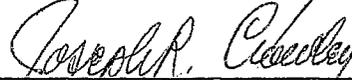
of the Taylor Law. These sections indicate the importance of establishing, among other things, whether the policemen abstained from the performance of any normal services or whether the issuance of tickets to city vehicles interfered with such performance. In order to establish such information, we

ORDER that the decision of the hearing officer be and hereby is reversed, and the matter be remanded to the hearing officer.

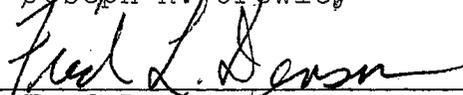
Dated: New York, New York  
April 27, 1976



Robert D. Helsby, Chairman



Joseph R. Crowley



Fred L. Denson

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of	:	#2E-4/27/76
VILLAGE OF JOHNSON CITY,	:	
Respondent,	:	<u>INTERIM BOARD DECISION AND</u>
- and -	:	<u>ORDER</u>
LOCAL 921, INTERNATIONAL ASSOCIATION	:	
OF FIREFIGHTERS, AFL-CIO,	:	<u>CASE NO. U-2001</u>
Charging Party.	:	

On February 9, 1976, the Village of Johnson City (Village) filed the charge herein alleging that Local 921, International Association of Firefighters, AFL-CIO (Local 921) refused to negotiate in good faith in violation of CSL Section 209-a.2(b) by improperly insisting upon the negotiation of a matter that is not a mandatory subject of negotiations. The demand of Local 921 alleged by the Village not to constitute a mandatory subject of negotiations is for a minimum manpower standard of twelve paid firemen on duty at all times. That demand was first made during negotiations on May 29, 1975 and on September 8, 1975 it was presented to a factfinder appointed by this Board.

On December 31, 1975, Local 921 filed a petition under Section 205.4 of our Rules for arbitration of its impasse with the Village, including arbitration of its demand for a minimum manpower standard. The Village, in its response to the petition filed pursuant to Section 205.5 of our Rules, objected to the arbitrability of the minimum manning demand, "maintaining that this is not a proper issue for arbitration." The instant charge followed three-and-a-half weeks later. Our Rules provide at Sections 205.5 and 205.6(a):

"§205.5 Compulsory Interest Arbitration; Response.

(a) Filing. A response shall be filed within five working days of receipt of the petition requesting arbitration. It shall be served upon the petitioning party simultaneously.

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(b) Contents.

(1) Such response shall contain respondent's position regarding terms and conditions of employment not agreed upon. Proposed contract language may be attached.

(2) The response may also raise objections to the arbitrability of any of the matters raised in the petition and to any statement in the petition alleging agreement as to terms and conditions of employment."

"205.6(a) A charge filed by either party alleging violation of section 209-a.1(d) or section 209-a.2(b) of the Act which raises questions of arbitrability will be accorded expedited treatment in the manner set forth in section 204.4 of these Rules. If filed by the respondent, such a charge may not be filed after the date of the filing of its response; if filed by the petitioner, such a charge may not be filed more than five working days after the receipt of the response."  
(emphasis supplied)

Local 921, in reaction to the response of the Village, makes three points --

1. A minimum manpower standard is a mandatory subject of negotiations.
2. The charge was time-barred as it was filed more than four months after the minimum manpower demand was first made.
3. The Village waived its right to object to the alleged non-mandatory nature of the minimum manpower standard.

The matter has been accorded expedited treatment under Section 204.4 of our Rules applicable to matters raising questions of scope of negotiations. However, it was agreed by the parties that the Board should first consider the question of whether the charge falls either by reason of being time-barred or because the Village has waived its right to object to the alleged non-mandatory nature of the demand. The parties agreed that if we should resolve these issues in favor of the Village, additional briefs would be submitted on the issue of the mandatory or non-mandatory nature of the demand.

We have received and reviewed the briefs of the parties and we conclude that the charge should not be dismissed. We reject Local 921's argu-

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ments that the Village has waived its right to object to the non-mandatory nature of the minimum manpower demand and that the charge was time-barred by virtue of being brought more than four months after the alleged violation. As for the latter, we find no relevance in either May 29, 1975 or September 8, 1975, the dates when, according to Local 921, the demands were made. Section 205.6 contemplates that a respondent may contest the negotiability of a demand as late as the date on which it files its response to a petition requesting arbitration. The reason for this is that the respondent may have consented to a non-mandatory subject being raised during negotiations and even during fact-finding in the hope that a voluntary agreement would be achieved, but in the knowledge that nothing could be imposed; thus, our Rules permit a respondent to challenge the mandatory negotiability of a demand for the first time when that demand is submitted to arbitration.

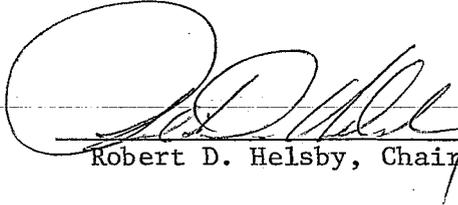
As to the waiver objection, our Rules are so confusing and establish time limits that are so short that we concede them to be unreasonable. Taken together, Sections 205.5 and 205.6 compel a respondent to challenge the negotiability of a demand simultaneously with, and not later than, its objection to the arbitrability of that demand. This must be done on our forms - presumably not in the possession of the challenging party - within five working days of receipt of the petition for arbitration. If filed by mail, it must be done two days earlier. Moreover, the challenging party might be misled by the language of Section 205.5 into thinking that a protest to the arbitration panel is an alternative to filing a charge with PERB.<sup>1</sup>

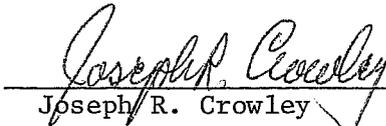
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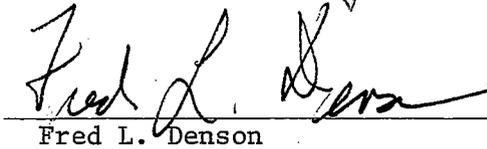
<sup>1</sup> We will promulgate amendments to Rules 205.5 and 205.6 to extend the time limits and to resolve the ambiguities.

ACCORDINGLY, we do not dismiss the charge and we direct the parties to submit their arguments on the merits within ten working days of receipt of this interim decision.

Dated: New York, New York  
April 27, 1976

  
Robert D. Helsby, Chairman

  
Joseph R. Crowley

  
Fred L. Denson

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of :  
BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT,  
OF THE CITY OF NEW YORK, :  
Employer, :  
-and- :  
UNITED FEDERATION OF TEACHERS, NYSUT, NEA, :  
AFT, AFL-CIO, :  
Petitioner, :  
-and- :  
DISTRICT COUNCIL 37, AMERICAN FEDERATION OF  
STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO; :  
Intervenor. :

#2F-4/27/76

CASE NO. C-1178

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 372, District Council 37, AFSCME, 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 instructors-addiction, instructors-narcotics education, coordinators and assistant coordinators.

Excluded: Licensed teachers, hourly employees, directors and assistant directors.

Further, IT IS ORDERED that the above-named public employer shall negotiate collectively with Local 372, District Council 37, AFSCME, 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 27th day of April, 1976.



ROBERT D. HELSBY, Chairman



JOSEPH R. CROWLEY



FRED L. DENSON

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