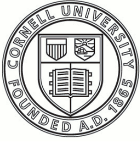
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New York State Public Employment Relations Board (PERB)

6-4-1976

State of New York Public Employment Relations Board Decisions from June 4, 1976

New York State Public Employment Relations Board

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State of New York Public Employment Relations Board Decisions from June 4, 1976

Keywords
NY, NYS, New York State, PERB, Public Employee Relations Board, board decisions, labor disputes, labor relations

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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of ELLENVILLE CENTRAL SCHOOL DISTRICT, Respondent, and ELLENVILLE TEACHERS ASSOCIATION, Charging Party.	:	#2A-6/4/76 BOARD DECISION AND ORDER CASE NO. U-1632

This matter comes to us on exceptions of the Ellenville Teachers Association (ETA), charging party herein, to the decision of a hearing officer dismissing its charge. That charge had alleged that the Ellenville Central School District (School District) violated CSL Sections 209-a.1(a), (b), and (c) in that it denied tenure to Sheryl Wolff, a probationary teacher, because she had engaged in protected activities on behalf of ETA. The hearing officer found that Ms. Wolff was denied tenure for reasons not related to any protected activities on behalf of ETA. He did find that Mr. Evergetis, the school superintendent, had an animus toward ETA and toward Ms. Wolff because of her activities on its behalf. However, he determined that this animus was not the cause of his refusal to recommend tenure. The real reason for this action, as determined by the hearing officer, was Ms. Wolff's chronic absenteeism, her tardiness, her personal unkemptness, the sloppiness of her classroom and a general lack of order among the students in her class. The hearing officer stated: "I cannot conclude that the reasons given for not recommending Ms. Wolff for tenure were pretextual or tainted by the animus that existed."

In its exceptions, ETA argues that the evidence establishes that the alleged reasons for the discharge of Ms. Wolff were a pretext and that the discharge was occasioned by Mr. Evergetis's animus toward ETA and Ms. Wolff. It further argues that, as a matter of law, the hearing officer's determination

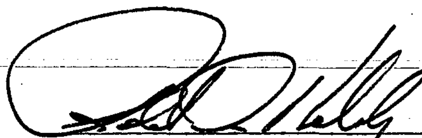
that animus was present is conclusive of a violation. The School District responded to the exceptions and endorsed the hearing officer's findings of fact and conclusions of law. Both parties have submitted briefs in support of their respective positions.

Having reviewed the record and considered the arguments of the parties, we confirm the hearing officer's findings of fact and conclusions of law. The record establishes that Evergetis relied upon the unanimous recommendation of the school's four administrators that Ms. Wolff should not be granted tenure. The four administrators made this recommendation after meeting and considering her absenteeism and tardiness, her personal unkemptness and the sloppiness of her classroom and her failure to maintain order among her students. The record does not indicate animus on the part of the four administrators.

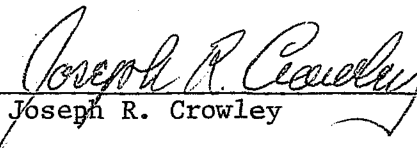
In support of its position that the reasons given for the discharge were pretextual, ETA argues that other employees who received tenure at the time Ms. Wolff was denied it had been absent even more often than she was, and that the school's dress code violates rulings of the Commissioner of Education. As to the first, we find not only that Ms. Wolff's absenteeism was different from that of the other employees in that it was chronic and included numerous one and two-day absences, but also that it was weighed along with other factors by the administrators. The allegation that the School District's insistence upon neatness violated rulings of the Education Commissioner raises no question under the Taylor Law. If Ms. Wolff was denied tenure in disregard of rulings of the Education Commissioner, ETA must turn to him for redress. It is sufficient for us to have ascertained that she was denied tenure for reasons not related to her protected activities on behalf of ETA.

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

Dated: Albany, New York
June 4, 1976



Robert D. Helsby, Chairman



Joseph R. Crowley

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONSBOARD

In the Matter of TOWN OF GUILDERLAND, Employer, - and - GEORGE TRYON, et al., Petitioners, - and - COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO, Intervenor.	:	#2B-6/4/76 BOARD DECISION CASE NO. C-1355

On March 8, 1976, George Tryon and fourteen other employees (petitioners) of the Town of Guilderland filed, in accordance with the Rules of Procedure of the New York State Public Employment Relations Board, a timely petition for decertification of the Communications Workers of America, AFL-CIO (CWA) as the exclusive negotiating representative of the following unit:[1/]

Included: All hourly paid employees in the Highway Department.

Excluded: All other employees of the employer, including seasonal employees.

Thereafter the parties entered into a consent agreement which was approved by the Director of Public Employment Practices and Representation on April 29, 1976. Pursuant to the consent agreement, a secret ballot election was held in the above unit under the supervision of the Director on May 14, 1976. The results of the election indicate that a majority of the eligible voters in the unit for which the CWA was previously certified do not wish to be represented by CWA for purposes of collective negotiations.[2/]

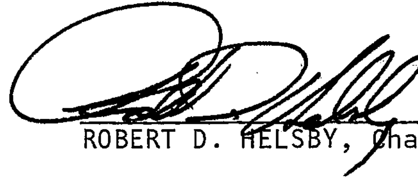
1/ CWA was certified by us as the unit representative on October 5, 1973, 6 PERB 3108 (1973). However, the parties never entered into a collective negotiating agreement.

2/ There were 22 ballots cast at the election, of which 15 were against representation.

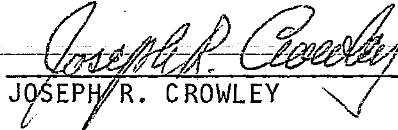
THEREFORE, IT IS ORDERED that the instant petitions are hereby granted and that CWA be and hereby is decertified as the negotiating representative of the employees in the unit noted above.

Dated at Albany, New York

This 4th day of June, 1976



ROBERT D. HELSBY, Chairman



JOSEPH R. CROWLEY

STATE OF NEW YORK

PUBLIC EMPLOYMENT RELATIONS BOARD

#2C-6/4/76

In the Matter of

CITY OF NEWBURGH,

Charging Party,

- and -

LOCAL 589 INTERNATIONAL ASSOCIATION OF FIREFIGHTERS,

Respondent.

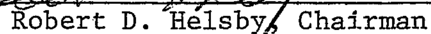
BOARD DECISION ON MOTION

Case No. U-2100

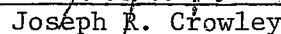
On May 19, 1976 we received notice of motion of the New York State Professional Firefighters Association, Inc., to intervene in this proceeding. The Director of Public Employment Practices and Representation ruled on May 13, 1976 that the New York State Professional Firefighters Association, Inc. may participate in this proceeding amicus curiae, but he denied its request to intervene. We see no reason to reverse that position. The stipulation of facts upon which the matter is submitted to us makes it particularly inappropriate for us to grant the motion to intervene.

Accordingly, that motion is denied but the New York State Professional Firefighters Association, Inc. may submit briefs and participate in oral argument.

Dated: Albany, New York
June 4, 1976



Robert D. Helsby, Chairman



Joseph R. Crowley

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