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6-24-1976

State of New York Public Employment Relations Board Decisions from June 24, 1976

New York State Public Employment Relations Board

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State of New York Public Employment Relations Board Decisions from June 24, 1976

Keywords

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Comments

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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2A-6/24/76

In the Matter of

WILLIAMSVILLE CENTRAL SCHOOL DISTRICT,

Respondent,

- and -

WILLIAMSVILLE TEACHERS ASSOCIATION,

Charging Party.

:

:

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:

BOARD DECISION
AND ORDER

Case No. U-1255

This matter comes to us on the exceptions of the Williamsville Teachers Association (charging party) from a decision of the Director of Public Employment Practices and Representation, who was the hearing officer, dismissing its charge. That charge, as amended, had alleged that the Williamsville Central School District (respondent) had refused to negotiate in good faith in violation of CSL §209-a.1(d) when its superintendent refused to grant eight sabbatical leaves.

The charge herein had been dismissed at the hearing officer level once before on May 28, 1975 (8 PERB 4553). The dispute had been submitted to grievance arbitration, and the hearing officer ruled that this submission of the dispute to arbitration constituted a waiver of the charging party's statutory rights to further negotiations. We reversed the hearing officer on September 26, 1975 (8 PERB 3110) and remanded the matter to him. In doing so, we determined that submission of the matter to arbitration did not constitute a waiver of procedures under CSL §209-a. We did indicate, however, that

4327-A

"...the arbitration of the matter based on the second grievance may have been dispositive of the issue that is the basis of the improper practice charge. Thus, we are hereby remanding the matter for the hearing officer to determine whether the award in the second arbitration proceeding satisfies the criteria set forth in our New York City Transit Authority decision (4 PERB 3669, 3670) and, if not, whether there is any merit to the charge."

At the subsequent hearing, it was stipulated by both parties that they fully litigated before the arbitrator the issue raised by the instant improper practice charge and that the arbitral proceeding was not tainted by unfairness or serious procedural irregularities. Thus, the only issue remaining under the criteria provided in the New York City Transit Authority case was whether the determination of the arbitrator was clearly repugnant to the purposes and policies of the Taylor Law. The hearing officer in the case determined that it was not and we agree.

At issue is whether respondent was obligated by its agreement to award eight sabbatical leaves to applicants who were selected by a joint sabbatical committee composed of four teachers and three administrators. It is undisputed that such an agreement was reached, but according to respondent, that agreement never became legally binding. CSL §204-a which was incorporated into the contract between charging party and respondent as §1.31 provides:

"Any provision of this agreement requiring legislative action to permit its implementation by amendment of law or by providing the additional funds therefor, shall not become effective until the appropriate legislative body has given approval."

Respondent alleges that its legislative body, the school board, did not provide the funds for the eight sabbatical leaves. The charging party makes two alternative arguments in answer to this. First, it argues that on September 30, 1973, which was one day before the agreement was reached, respondent's school board agreed to provide the monies necessary to fund the economic portions of the agreement by a vote of 5 to 4. Alternatively, it argues that

there were sufficient monies available in the school district budget to finance the sabbatical leave provision without the requirement of any additional allocations.

It is clear that the board of education eventually adopted the resolution approving and funding all portions of the contract except for the eight sabbatical leaves. The charging party argues that the board's refusal to do this was not related to the cost of the sabbatical leaves, as indicated by the fact that the October 1 agreement called for fewer sabbatical leaves than had been granted under the prior agreement. Rather, according to charging party, this refusal was dictated by the board's objections to the new procedure for ascertaining recipients of sabbatical leaves, a procedure which eliminated board of education action. The charging party argues that inasmuch as there was no real issue whether to allocate funds, the board could not veto the sabbatical leave procedure.

The hearing officer relied upon the decision of the arbitrator dismissing the grievance. Although the parties stipulated that they had fully litigated the issues before him, the arbitrator did not discuss all the issues in his opinion. Dealing with the question of whether the provision of sabbatical leaves required board approval of the allocation of funds, the arbitrator wrote: "...it would appear that probably \$100,000 would be needed to provide such leaves and allow for substitute services." The arbitrator further concluded: "...the Board never approved of the sabbatical leave clause" (emphasis supplied in original). The arbitrator also dealt with the argument that the school board refused to approve the sabbatical leave clause not because of financial considerations, but rather because it wished to preserve its "'veto' power over sabbatical leave applications" saying:

"It may very well be that this was the Board's purpose. Nonetheless, an arbitrator cannot search into the legislative intent of the Board in its use of a legally conferred power. Once the Board has exercised its right under law and contract to refuse its approval of Section 5.24, that section cannot remain effective. Whether or not the exercise of its power was arbitrary, capricious or lacking in good faith is not a matter that can be determined in these proceedings."

Although the arbitrator did not discuss the argument that on September 30, 1973 the board had given its approval to the sabbatical leave provision, the fact that the matter was fully litigated before him and he rejected the validity of that provision is dispositive of it.

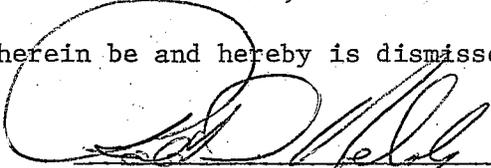
The hearing officer determined that the arbitrator's decision was not repugnant to the purposes and policies of the Act. Moreover, going beyond the arbitrator's award, he found that the financial package approved by the school board on September 30, 1973 did not include the sabbatical leave provision as neither side then perceived it as being an economic item.

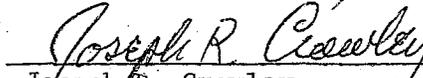
The arbitrator's determination that additional money would have been required to finance the sabbatical leave clause and that the provision of such additional money was subject to school board approval under §1.31 of the agreement -- and hence under CSL §204-a -- requires no further consideration. The arbitrator, however, specifically declined to rule on whether CSL §204-a authorizes a local legislative body to refuse to provide additional funds for the implementation of a clause in an agreement where it objects not to the cost of the benefit but to the procedures by which that benefit would be provided. We find nothing in the statute that would render such legislative action illegal by reason of such motivation.

Accordingly, the decision below is affirmed; and

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

DATED: New York, New York
June 24, 1976


Robert D. Helsby, Chairman


Joseph R. Crowley

(Did not participate in this decision)

Ida Klaus

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2B-6/24/76

In the Matter of
CITY OF NEW YORK, DEPARTMENT OF INVESTIGATION,
Respondent,
-and-
SOCIAL SERVICE EMPLOYEES UNION, LOCAL 371,
AFSCME, AFL-CIO,
Charging Party.

BOARD DECISION AND ORDER

CASE NO. U-1675

This matter comes to us on the exceptions of both the charging party, Social Service Employees Union, Local 371, AFSCME, AFL-CIO; and the respondent, City of New York, Department of Investigation, from a decision of the hearing officer dismissing the charge in its entirety. That charge alleged that respondent violated Sections 209-a.1(a), (b) and (c)¹ of the Civil Service Law by refusing to permit one of charging party's representatives to be present during the course of an interview conducted by the City's Department of Investigation with Sanford Rifkin, an employee of the City's Department of Social Service and a member of charging party. The charge further alleges that Mr.

1 CSL §§209-a.1 reads, in pertinent part:

"1.It shall be an improper practice for a public employer or its agents deliberately (a) to interfere with, restrain or coerce public employees in the exercise of their rights guaranteed in section two hundred two for the purpose of depriving them of such rights; (b) to dominate or interfere with the formation or administration of any employee organization for the purpose of depriving them of such rights; (c) to discriminate against any employee for the purpose of encouraging or discouraging membership in, or participation in the activities of, any employee organization;" (emphasis supplied)

Rifkin believed he was being interviewed as part of an investigation involving City real estate transactions that might result in disciplinary actions being taken against him. Respondent denied that it had any obligation to permit a union representative to accompany Rifkin during the interview. It further alleged that Rifkin was not compelled to submit to the interview alone and that he was informed he could refrain from doing so.

On June 5, 1975, Rifkin was instructed to call John Appicella, Esq., an investigating attorney with the Department of Investigation. He did so and was directed to report to Appicella on June 10 for an interview to be conducted in connection with Appicella's investigation of a City real estate action that Rifkin had taken part in. Rifkin was aware of newspaper reports concerning the investigation and expressed concern to Herbert Goldstein, his grievance representative. Goldstein made an arrangement for Clifford S. Bart, Esq., the charging party's attorney, to represent Rifkin at the interview and both Goldstein and Bart accompanied Rifkin to his meeting with Appicella. Upon their arrival, Appicella advised them that Goldstein would not be permitted into the interview; Rifkin, accompanied by Bart, entered Appicella's office and participated in the interview. Since then, no disciplinary action of any kind has been taken against Rifkin by either the Department of Investigation or the Department of Social Service.

There is a dispute regarding the circumstances under which Rifkin participated in the interview accompanied by the charging party's attorney, but not by its grievance representative. The charging party argues that Rifkin was coerced into so participating by an awareness that he could have been disciplined for refusing to do so. Respondent argues that Rifkin was not coerced; rather, it was explained to him that he could refuse to participate in the interview, but that the matter would not be dropped by the Department of Investigation at

that time. On the basis of the evidence presented to him, the hearing officer concluded:

"Although required by his employer to appear for the meeting with Appicella, Rifkin's subsequent participation in the investigatory interview was entirely voluntary and consistent with a desire on his part to 'clear himself' of any possible suspicion, rather than out of fear or concern that he might be disciplined for his failure to participate. This conclusion is buttressed not only by the demeanor of the witnesses at the hearing but by the fact that he made the decision to participate in the presence of both his union representative and its legal counsel--and presumably with their advice."

Accordingly, he determined that the charge should be dismissed.

In its exceptions, the charging party argues that the hearing officer erred in finding Rifkin's participation in the interview voluntary. In support of that and other related exceptions, the charging party submitted an effective brief. The brief also articulates the proposition that, as a matter of law, Rifkin was entitled to be accompanied by charging party's grievance representative at the interview. For this proposition it relies primarily upon the decision of the U.S. Supreme Court in NLRB v. Weingarten, 420 U.S. 251 (1975). In that case, the U.S. Supreme Court held that it was a permissible construction of the National Labor Relations Act when the NLRB ruled that an individual employee is entitled to union assistance during an investigation which he believes might lead to disciplinary action. In his decision, the hearing officer had indicated his opinion "that the general rule of Weingarten is applicable [under the Taylor Law]...." Respondent, which endorses the hearing officer's findings of fact, takes exception to this opinion. It argues, in what is also an effective brief, that the Weingarten doctrine is not applicable to the Taylor Law. It also argues that the City's Department of Investigation could be guilty of no improper practice with respect to Rifkin because it is not his employer and, therefore, has no Taylor Law obligations to him.

This latter argument is not persuasive. The Taylor Law obligation of refraining from improper practices is imposed upon the public employer and its agents. In this instance, the City of New York is the employer and the Department of Investigation is its agent. However, we find that neither the City nor its agents committed any improper practice against Rifkin or the charging party. The charge alleges violations of CSL Sections 209-a.1(a), (b) and (c). These three statutory provisions prohibit three types of improper practice when such conduct is intended to interfere with the organizational or representational rights of public employees. Thus, an element of the charge is anti-union animus. No such animus is apparent in the record. Moreover, the admission of charging party's attorney into the interview dispels any possible suspicion of such animus. Neither does the exclusion of the charging party's grievance representative from the interview, which was part of a preliminary investigation, constitute a per se violation of the statute. In Matter of Scarsdale PBA, 8 PERB 3131 (1975), we held that a demand for union representation at such an interview was not a mandatory subject of negotiations. Thus, we do not find it necessary to reach the question of whether Rifkin voluntarily participated in the interview or was coerced into doing so either by Appicella or by the circumstances. Were we to reach that question, we would have to balance the arguments made by charging party in its brief regarding the circumstances under which Rifkin agreed to participate in the hearing against the hearing officer's specific findings based, as they were, upon the demeanor and credibility of the witnesses.

We also find it unnecessary to determine whether the Weingarten doctrine applied under the Taylor Law, and we disassociate ourselves from the expression of opinion by the hearing officer that the Weingarten doctrine is applicable. We are aware that the Supreme Court relied upon language in Section 7 of the National Labor Relations Act that is not present in the Taylor Law in

endorsing the NLRB's decision in the Weingarten case. That language provides:
 "[e]mployees shall have the right...to engage in...concerted activities for the purpose of...mutual aid or protection." We have not had the occasion to deal with this question directly, but in Scarsdale, supra, we considered a related question. Before us was the question of the negotiability of a demand that no policeman may,

"[b]e subject to any investigation, interrogation, or interview in relation to any type of disciplinary action without first being presented with a copy of an accusatory report....Upon receipt of the accusatory instrument, the member shall not be required, requested, or ordered to make any statement, written or oral, without being represented by the PBA."

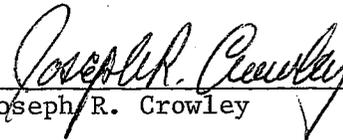
We ruled, "To the extent that this demand applies to preliminary investigations, it is not a mandatory subject of negotiations."

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

Dated: New York, New York
 June 24, 1976



Robert D. Helsby, Chairman



Joseph R. Crowley

(did not participate in decision)
 Ida Klaus

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2C-6/24/76

In the Matter of

BUFFALO PATROLMEN'S BENEVOLENT ASSOCIATION,

Respondent,

-and-

CITY OF BUFFALO,

Charging Party.

BOARD DECISION AND ORDER

CASE NO. U-2093

This case is related to Case No. U-1941 involving the same parties and decided by us on March 7, 1976 (9 PERB 3039). In that case, as in this, the City of Buffalo (City) charged the Buffalo Patrolmen's Benevolent Association (PBA) with refusal to negotiate in good faith in violation of Civil Service Law Section 209-a.2(b) by insisting upon the negotiation of demands that are not mandatory subjects of negotiations. In the earlier decision, we deferred consideration of the allegation that two demands not referred to in the original charge were non-mandatory because, with respect to such two demands, the charge raised issues that were beyond scope of negotiations. One of those demands related to polygraph testing during investigations of departmental misconduct; PBA had alleged that they had not improperly insisted that polygraph testing be prohibited in the agreement because the City had waived any right to object to prohibition of such testing.

The instant case was filed on April 20, 1976. It relates only to the negotiability of a demand of the PBA that "Police officers shall not be required to submit to polygraph tests during investigations of Departmental misconduct." This clause had been included in a contract expiring on June 30, 1975 by reason of the award of an arbitration panel. The charge alleges that the City has consistently resisted the inclusion of this item in any successor agreement and that the PBA insisted upon submitting this demand to the factfinder over

the City's objections.

On April 27, 1976, the hearing officer forwarded the charge to the PBA and indicated that "the City seeks expedited determination as to whether police officers shall not be required to submit to polygraph tests...." In that letter, the hearing officer directed the PBA to submit an answer to the charge and requested the parties to submit legal memoranda by May 7, 1976. On June 3, 1976, the PBA responded that "The proper procedure to gain PERB's ruling in respect to an item's non-negotiability is not through the filing of an improper practice charge. Accordingly, it is respectfully requested that Case No. U-1941 (sic) be dismissed for failure to state a claim upon which relief can be granted." The matter has now been transmitted to us by the hearing officer.

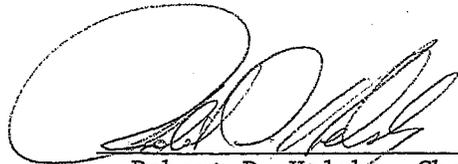
We reject PBA's contention that we may not resolve the question of whether a demand is a mandatory subject of negotiations in the context of an improper practice case and we reach the merits of the charge. In doing so, we accept the allegations of fact contained in the unanswered charge and determine that the demand in question is not a mandatory subject of negotiations. In Matter of Scarsdale PBA, 8 PERB 3131, we dealt with a related question involving department investigations. We ruled that, to the extent that a demand that an employee be entitled to union representation when being questioned applies to preliminary investigations, it is not a mandatory subject of negotiations. More to the point, in the earlier Buffalo PBA case, we determined that a demand prohibiting breathalyzer and blood tests is also not a mandatory subject of negotiations. In that decision, we noted that in the private sector a demand by an employee organization that employees not be required to submit to polygraph testing is a mandatory subject of negotiations (see Medi-Center Mid-South Hospital, 221 NLRB No. 105 [1975], 90 LRRM 1576). However, we rejected the reasoning of the NLRB because the case before us involved policemen, stating:

"Law enforcement personnel may be held to a higher standard of compliance with law than other persons."

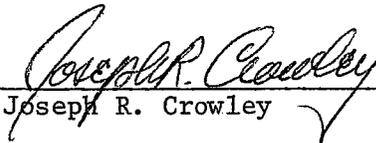
Following our reasoning in the earlier Buffalo case, we determine that the demand herein is not a mandatory subject of negotiations, and

WE ORDER the Buffalo Patrolmen's Benevolent Association to negotiate in good faith with the City of Buffalo.¹

Dated: New York, New York
June 24, 1976



Robert D. Helsby, Chairman



Joseph R. Crowley

(did not participate in decision)

Ida Klaus

¹ PBA's duty to negotiate in good faith over non-mandatory subjects of negotiations contemplates its withdrawing such demand from factfinding and/or arbitration.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

2D-6/24/76

In the Matter of :

STATE OF NEW YORK, STATE UNIVERSITY OF NEW YORK, :

Respondent, :

-and- :

UNITED UNIVERSITY PROFESSIONS, INC., AFL-CIO, :
LOCAL 2190, :

Charging Party. :

BOARD DECISION AND ORDER

CASE NO. U-1862

On October 20, 1975, United University Professions, Inc., AFL-CIO, Local 2190 (charging party) filed an improper practice charge against the State of New York, State University of New York (respondent) alleging a violation of CSL Section 209-a.1(a), (b) and (c).¹ The specifics of the charge were that seven employees of the Empire State College of the State University had suffered injurious personnel decisions by reason of their support for the charging party. These improprieties were alleged to have occurred to different individuals on different dates, the earliest occurring on June 20, 1975 and the

1 Civil Service Law §209-a.1 reads, in pertinent part:

"1.It shall be an improper practice for a public employer or its agents deliberately (a) to interfere with, restrain or coerce public employees in the exercise of their rights guaranteed in section two hundred two for the purpose of depriving them of such rights; (b) to dominate or interfere with the formation or administration of any employee organization for the purpose of depriving them of such rights; (c) to discriminate against any employee for the purpose of encouraging or discouraging membership in, or participation in the activities of, any employee organization;"

latest on September 1, 1975.²

The Director of Public Employment Practices and Representation (Director) wrote to the charging party on October 24, 1975 advising it that he found deficiencies in the charge and inviting it to communicate with the hearing officer assigned to the case. Following such communication, an addendum to the charge was filed on December 19, 1975; it, too, was rejected on December 23, 1975 because of deficiencies. The charge was again amended to meet the deficiencies. That amendment also specified that three additional employees had been discriminated against by respondent. Further material in support of the charge arrived at the Board on February 24, 1976 and on the following day notice of charge was sent to the respondent for the first time.

Respondent moved to dismiss the charge to the extent that it relates to the original seven individuals on the theory that the charge had not been legally sufficient until February 13, 1976 and that, by that date, it was no longer timely under Section 204.1 of our Rules, which restricts the filing of the charge within four months of the action complained about. The hearing officer granted the motion to dismiss. This ruling is the basis of the instant appeal.

² In part, the charge alleges:

"II.(A). Upon information and belief, the following individuals are all members of the bargaining agent acting in various capacities of the agent's Empire State College Chapter;

Upon information and belief, all of the below individuals are being discriminated against because of their union activities and beliefs: ...[there follows a listing of the seven individuals and for each the alleged injurious personnel decision and the date of such decision]....

III. The aforementioned actions serve to interfere with, restrain and coerce, public employees in the exercise of their rights guaranteed in Sec. 202 of the Act, dominate or interfere with the formation or administration of the employee organization and discriminate against employees for the purpose of discouraging membership in and participation in the activities of the employee organization in derogation of Sections 209-a.1 (a), 1(b), 1(c) of the Act."

The charging party and respondent have presented written briefs and oral argument to us on this matter. The arguments of the charging party are (1) that the charge was legally sufficient when filed on October 20, 1975 and (2) even if not legally sufficient on October 20, 1975, it should not be dismissed because respondent has suffered no actual prejudice as a result of not being notified of the charge until February 25, 1976. For its part, respondent endorses the determination of the hearing officer that the charge was legally insufficient until February 13, 1976. It also argues that the four-month period of the filing of the charge as set forth in Section 204.1 of the Rules is jurisdictional and cannot be waived. It expresses this argument in terms of prejudice by saying that it would suffer "prejudice as a matter of law" if it were required to defend against charges that were not timely filed. In support of this argument, it relies upon the decision of the State Supreme Court for the proposition that PERB may not waive its own Rules (Cattaraugus County Chapter of CSEA v. PERB, 3 PERB 7056 [Sp. Term Rens. Co., 1970]). Having considered the arguments of the parties and given attention to the charge as originally filed, we deem that the charge when originally filed was legally sufficient, albeit not artistically drawn. Thus, the requests of the Director and the hearing officer for additional materials were in the nature of requests for particularization and did not reflect upon the validity of the charge.

We regret that the internal procedures established by the Director did not call for notification of respondent until the Director³ and/or the hearing officer is satisfied as to the form of a charge. Where, as in the instant case, as long as four months have elapsed between the filing of a charge and notification of a respondent, it is possible that a respondent will suffer actual prejudice. No such prejudice has been demonstrated in the instant case, but respondent should be given an opportunity to do so. Should such prejudice

³ We have revised this procedure.

be demonstrated, we will find ourselves in the distressing situation where our internal procedures will have hurt either the charging party or the respondent. In that event, we will attempt to resolve the situation in accordance with its equities, although respondent makes the point that the Cattaraugus decision may deny us the opportunity to do so. In any event, the ruling of the hearing officer is reversed and the charge -- with reference to the seven employees -- is remanded to him for hearing on all issues, including prejudice, along with the charge with reference to the three additional employees.

There is a second issue in this case. On May 8, 1976, the Chairman of this Board was asked to issue a subpoena duces tecum on behalf of the charging party for five categories of documents in the possession of respondent.⁴ On

⁴ The request was for:

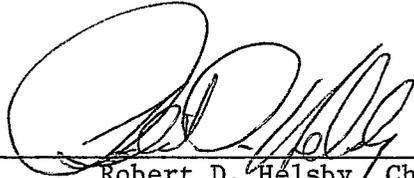
- "a) The confidential personnel files located at Empire State College, Saratoga, New York regarding: Randy Reiter, Joel Shufro, Lee Johnson, James Paul, Marilyn Huber, Harold Roeth, William Frankonis, Peter Pollak, Steven Wilson and Judith Krom.
- b) All correspondence to the central administration of Empire State College at Saratoga with regard to the following individuals from the deans and other administrative personnel of the respective learning centers: Randy Reiter, Joel Shufro, Lee Johnson, James Paul, Marilyn Huber, Harold Roeth, William Frankonis, Peter Pollak, Steven Wilson and Judith Krom.
- c) Copies of all initial appointment letters to all full-time mentors hired by Empire State College since 1971 or, in the alternative, the list of all full-time mentors hired by Empire State College since 1971 with the rank hired at, the degree attained when hired, and the subject taught upon hiring.
- d) The record of the Full-Time Equivalencies taught by each full-time mentor at the Northeast Learning Center, Albany, New York, for the academic year 1974-75.
- e) Copies of all initial appointment letters to all part-time mentors who were hired to teach at least a half-time schedule since 1971, or, in the alternative, the list of all such mentors and the type of appointment each received, i.e., permanent or temporary.
- f) Copies of all letters sent to all full-time mentors hired by Empire State College since 1971 offering contract renewals, or, in the alternative, records of each full-time mentor hired since 1971 indicating the length of each contract renewal since their hire."

May 12, 1976, he issued a subpoena duces tecum for the first two categories of the matters sought by the charging party. Respondent has made a motion that the subpoena duces tecum be withdrawn. The basis for the motion was that (1) respondent was not given one day's notice pursuant to CPLR Section 2307 (a); (2) the subpoena fails to describe with sufficient specificity the records required; (3) the charging party failed to indicate that the records sought are relevant to the instant proceeding; and (4) no subpoena should be issued until we have ruled on the timeliness of the charge with respect to the original seven employees. In its brief in support of its motion, respondent also argues that the subpoena should be withdrawn because it mandates the production of confidential material.

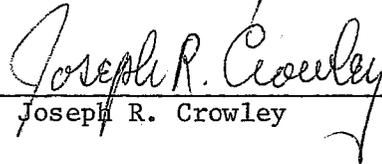
On May 26, 1976, the charging party submitted an affidavit in support of issuance of the subpoena. That affidavit establishes the relevancy of the materials sought to our satisfaction. Although we find that the subpoena duces tecum is sufficiently specific, the charging party's affidavit of May 26, 1976 provides clarification of what is required of respondent. It is the subpoena duces tecum as clarified that we grant herein. Having decided that the charge with respect to the seven individuals is timely, respondent's specification that the subpoena be stayed is academic. The materials sought by the charging party are not privileged communications and such status of confidentiality as they may enjoy is not sufficient to prevent their production in connection with the hearing. Finally, the reconsideration by us of the request for the subpoena duces tecum upon the written briefs and oral arguments of both parties cures any objection to the original issuance of the subpoena without one day's notice to respondent, if such notice is required. Accordingly, we reaffirm the issuance of the subpoena duces tecum.

NOW, THEREFORE, WE ORDER that the matter with respect to the seven individuals as specified in the original charge be remanded for hearing along with the matter with respect to the three additional individuals, and that the issuance of the subpoena duces tecum by the Chairman on May 12, 1976 be confirmed and that the respondent honor the subpoena duces tecum as clarified.

DATED: New York, New York
June 24, 1976



Robert D. Helsby, Chairman



Joseph R. Crowley

(Did not participate in decision)

Ida Klaus

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF :

ONONDAGA COUNTY SOLID WASTE DISPOSAL
AUTHORITY, :

Employer, :

-and- :

INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL 545, AFL-CIO, :

Petitioner. :

#2E-6/24/76

CASE NO. C-1357

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 International Union of Operating Engineers, Local 545, 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.

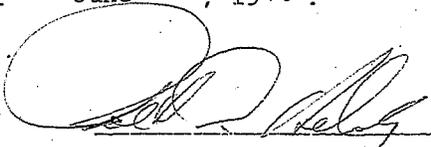
Unit: Included: All part and full time dozer operators, crane operators, truck drivers, mechanics, mechanic helpers, welders, heavy equipment operators, weigh masters, laborers, maintenance men, shredder operators, maintenance electric trainees, welder trainees, maintenance trainees, forman, messenger-driver and stock clerk employed at the Employer's Rock Cut Road location, Van Buren, Clay, Brighton and Towpath landfill locations, and the Employer's Seventh North Street location.

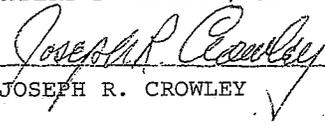
Excluded: All office clericals, guards, supervisors and seasonal employees.

Further, IT IS ORDERED that the above-named public employer shall negotiate collectively with International Union of Operating Engineers, Local 545, 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 24th day of June, 1976.


ROBERT D. HELSBY, CHAIRMAN


JOSEPH R. CROWLEY

(Did not participate)

IDA KLAUS

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2F-6/24/76

IN THE MATTER OF :
COUNTY OF ERIE (EDWARD J. MEYER :
MEMORIAL HOSPITAL), :
Employer, :
-and- : Case No C-1240
BUFFALO HOUSE STAFF ASSOCIATION, :
Petitioner, :
-and- :
ERIE COUNTY CHAPTER OF THE 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

BUFFALO HOUSE STAFF ASSOCIATION

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.

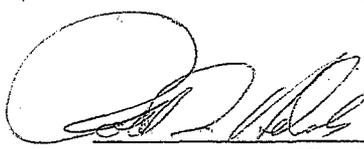
Unit: Included: All interns and residents employed by the County.

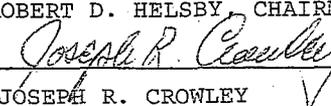
Excluded: All other employees of the County.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with Buffalo House Staff Association

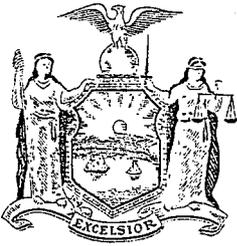
and enter into a written agreement with such employee organization with regard to terms and conditions of employment, and shall negotiate collectively with such employee organization in the determination of, and administration of, grievances.

Signed on the 24th day of June , 19 76 .


ROBERT D. HELSBY, CHAIRMAN


JOSEPH R. CROWLEY

(Did not participate)
IDA KLAUS



JEROME LEFKOWITZ
DEPUTY CHAIRMAN

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

June 24, 1976

#4-6/24/76

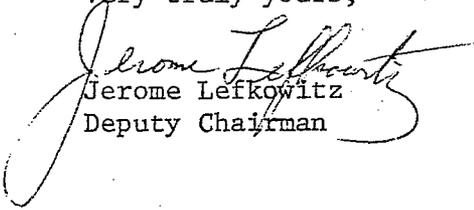
Mr. William D. Cabin
Executive Assistant
Board of Public Disclosure
Department of State Building
162 Washington Avenue
Albany, New York 12231

Dear Mr. Cabin:

On April 28, 1976 I wrote to you describing the practice of the part-time members of PERB in accepting clients and labor arbitration assignments under circumstances that would occasion no conflict of interest with their official responsibilities on behalf of PERB. You indicated to me that this practice was consistent with Executive Order #10.

The Board has now decided to formalize these practices and has incorporated them into a Resolution adopted at its meeting of June 24, 1976. A copy of the Minutes of that meeting, including the Board Resolution (Item 4.) is transmitted herewith to you.

Very truly yours,


Jerome Lefkowitz
Deputy Chairman

JL/lc
Encs.

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