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

New York State Public Employment Relations Board

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

Keywords

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Comments

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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

#2A-9/24/76

ORANGE COUNTY COMMUNITY COLLEGE FACULTY
ASSOCIATION,

:

BOARD DECISION AND ORDER

Charging Party, :

- and -

:

ORANGE COUNTY COMMUNITY COLLEGE and
COUNTY OF ORANGE,

:

CASE No. U-2137

Respondents. :

On May 28, 1976, the Orange County Community College Faculty Association (Faculty Association) filed the charge herein alleging that the County of Orange failed to negotiate in good faith in violation of CSL Section 209-a.1(d) in that it refused to negotiate with regard to twenty-three demands of the Faculty Association. The County responded, on June 29, 1976, that it had negotiated with the Faculty Association in good faith "as to all matters over which negotiations must mandatorily take place" and that the demands as to which it refused to negotiate were non-mandatory subjects of negotiation.

At the request of the parties and in accordance with Section 204.4 of our Rules, we have given this proceeding expedited treatment by dispensing with an intermediate report from a hearing officer. After a conference with a hearing officer, the parties submitted their briefs directly to us. Twenty demands of the Faculty Association are in issue; we deal with them in the order that they were specified in the Faculty Association's draft of its contract proposals and they bear the number assigned to them by the Faculty Association.

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Our determination that a particular matter is not a mandatory subject of negotiation does not preclude the public employer from negotiating with the Association with respect to that item. Similarly, our determination that a particular matter is a mandatory subject of negotiation does not require that the parties reach agreement as to it in their negotiations.

DEMAND #1 - PREAMBLE

"The Faculty Association, by entering into this agreement, assumes responsibility for the quality of education that only the faculty provides. In order to provide effectively for the quality of education...the Legislature of the County of Orange recognizes:

- (1) the principle of a democratic institution, and
- (2) the duty of the Faculty Association to participate fully in all policies, practices and procedures in Orange County Community College."

This is not a mandatory subject of negotiation. It is in the nature of a general prefatory affirmation by the parties of their mutual responsibility for the quality of education as evidenced by their action in entering upon the collective agreement as such. The declaration goes beyond the form and content of mutual undertakings required to be incorporated in a collective agreement covering terms and conditions of employment. Moreover, to the extent that it might be regarded as a substantive part of the proposed agreement, the demand would clearly be non-mandatory. It would be directly related to the mission of the public employer and consequently governed by Matter of City School District of the City of New Rochelle, 4 PERB ¶3060 (1971). It would also deal with the administrative organization and operation of an institution of higher education and would be governed by Matter of Board of Higher Education of the City of New York, 7 PERB ¶3028(1974).

DEMAND #5 - ACCESS TO COLLEGE PROPERTY

"Duly authorized representatives of the Association shall be admitted to transact official Association business on College property." ¹

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¹ Article II D. of the current contract contains similar language with the restrictive language "at reasonable times".

This is a mandatory subject of negotiation insofar as it covers proper and legitimate official business relating to the Association's role as the representative of the employees in the bargaining unit (Matter of Board of Education of the City School District of the City of Albany, 6 PERB ¶3012 [1973]). We also determined that a demand for time off with pay for union leaders while engaged in such work on behalf of their union was a mandatory subject of negotiation (Matter of City of Albany and Albany Police Officers Union, 7 PERB ¶3078 [1974]). Those demands and the demand herein would appear to be for cooperation by a public employer to facilitate the functions of representation of employees by the organization that has been recognized or certified to represent them.

DEMAND #6 - ASSOCIATION USE OF COLLEGE FACILITIES AND EQUIPMENT

"The Association shall have the right to use College facilities and equipment; including typewriters, mimeographing machines, other duplicating equipment, calculating machines, audio-visual equipment, mail, telephone, and computer services." ²

This demand is for assistance from the public employer that is essentially different from reasonable cooperation to facilitate representation of the public employees. It seeks assistance from the employer in the operation and conduct of the business of the organization as such. The scope and extent of the assistance sought by the Faculty Association, if granted, would raise questions of improper public employer support of an employee organization under CSL §209-a.1(b). It is not a mandatory subject of negotiation.

DEMAND #10 - BOARD OF TRUSTEES

"The President of the Association or his designate (sic) shall be granted the right to appear at any meeting of the Board of Trustees....The Association shall be provided with the minutes of all Board meetings, public and executive." ³

² Article II E. of the current contract contains similar language with the restrictive language "at reasonable times when such equipment is not otherwise in use."

³ This is an extension of Article II, Paragraph I of the existing contract, which permits the President of the Association to appear at meetings of the Board of Trustees whenever a meeting concerns a matter relating to faculty complaints.

This is not a mandatory subject of negotiation. It does not pertain directly to the Association's appropriate role as the representative of the employees in matters relating to working conditions. Moreover, neither party is entitled to access to the internal affairs of the other. It may be that statutes other than the Taylor Law guarantee faculty association leaders, as members of the general public, access to some meetings of the Board of Trustees. These statutes do not bear upon the question before us, and the Faculty Association's rights under them must be pursued in an appropriate forum.

DEMAND #15 - ADMINISTRATORS RETURN TO THE BARGAINING UNIT

"Administrators shall have no priority to return to faculty status unless an announced vacancy exists and the search committee recommends the return to faculty status."

The Faculty Association indicates that this demand is designed to protect unit employees' seniority rights. To the extent that it would require delegation to a search committee of the authority to appoint or reappoint employees, it deals with the administrative organization and operation of an institution of higher education; it is governed by Matter of Board of Higher Education of the City of New York, supra, and is not a mandatory subject of negotiation.

DEMAND #17 - COLLEGE CALENDAR

"The College calendar shall be ratified on or before February 1 by the Faculty Association. A committee with equal representation from the Administration and representatives chosen by the Faculty Association shall promulgate (issue) the calendar."⁴

This is not a mandatory subject of negotiation. While a college calendar may include matters that are mandatory subjects of negotiation, this demand in its present form encompasses a broad non-mandatory area dealing essentially with the administrative organization of the over-all academic program.

4424

⁴ Article IV F. of the current contract requires submission of the academic calendar to the Faculty for advice and recommendations prior to its adoption and promulgation.

DEMAND #18 - CLASS SIZE

"Class sizes shall be determined by a majority vote of each department for the classes taught within the Department. A faculty member shall be allowed to stretch his enrollment not to exceed five (5) per cent."

This is not a mandatory subject of negotiation. This conclusion is dictated by our decision in Matter of West Irondequoit Teachers Association, 4 PERB ¶3070(1971), confirmed West Irondequoit Teachers Association v. Helsby, 35 NY 2d 46(1974). The principle announced in that decision applies as well to post-secondary education.

DEMAND #19 - COURSE OFFERINGS

"A list of tentative course offerings shall be promulgated by the faculty members of each Department. Each faculty member shall submit his proposed schedule of courses to the Department Chairman, and every effort shall be made to provide the faculty member with the schedule he has selected."

Some aspects of this demand are too vague and unclear to permit a determination as to whether or not it is a mandatory subject of negotiation. Those aspects that relate to course offerings deal with educational policy and are not mandatory subjects of negotiation.

DEMAND #25 - PART-TIME FACULTY

"Part-time faculty shall not be employed when there is sufficient course demand to justify the employment of a full-time faculty member."

This is not a mandatory subject of negotiation. The demand goes beyond hours of work and the preservation of unit work. It extends to the manpower policies and hiring practices of the employer and is covered by our New Rochelle decision supra.

DEMAND #26 - ASSIGNMENTS FOR EXTRA COMPENSATION

"Full-time faculty members shall be given first priority in teaching assignments in:

- a. the day division
- b. the evening division (for extra compensation)
- c. two (2) summer school courses for extra compensation.

4425

"The counselors and librarians shall have first priority to work one summer school session for the equivalent pay of teaching six (6) credit hours according to academic rank." ⁵

This is a mandatory subject of negotiation only insofar as it relates to the opportunity of employees within the negotiating unit to earn extra compensation in other teaching and related assignments. The employer complains that the demand, if granted, would preclude the hiring of Department Chairmen and other supervisory personnel for extra-compensation teaching assignments. This objection goes to the merits of the demand, and not to its standing as a mandatory subject of negotiation. It is not mandatory to the extent that it would limit the assignment of faculty where necessary to accomplish the mission and educational program of the employer. See our comments on Demands #25 and #27.

DEMAND #27 - HOURS AND DAYS OF WORK

"No full-time faculty member shall be required to teach a course in the evening or weekends."

This demand is not a mandatory subject of negotiation. It is not concerned with limiting the number of hours employees may be required to work. Rather, it deals with the kind of work to which they may be assigned and when they may be required to perform it. Its effect would be to restrict the nature of the services that may be offered by the public employer. In Matter of City of White Plains (Firefighters), 5 PERB ¶3008 (1972), we determined that it is a management prerogative to decide how many employees it needs on duty at any given time. That holding is applicable here.

DEMAND #34 a - APPOINTMENTS TO TEACHING VACANCIES

"Candidates for a teaching vacancy within any Division shall be screened and interviewed by a committee composed of the Division Chairman, the appropriate Department Chairman and two (2) members of the Faculty Association elected by the Division." ⁶

⁵ This derives from Article IV A. 5. of the current contract.

⁶ This derives from Article IV G. of the current contract.

This is not a mandatory subject of negotiation. It deals with who shall be responsible for the administrative operation of the institution and is covered by Matter of Board of Higher Education of the City of New York, supra.

DEMAND #36 - WORK LOCATION

"No faculty member shall be required to teach on load at an off-campus location."

This is not a mandatory subject of negotiation. It is an extension of Demand #27 in that it deals with where teachers may be required to teach.

DEMAND #38 - TEACHING MATERIALS

"Textbooks, examinations and other materials shall be selected by the faculty member involved in teaching the course."

This is not a mandatory subject of negotiation. What is involved is of the essence of educational policy.

DEMAND #42 - ABSENCE DUE TO INJURY

"Whenever a faculty member is absent from his duties as a result of on-the-job injury covered by Workmen's Compensation, he shall be paid at the level of his salary which would otherwise have been due but for said injury (less the amounts of any Workmen's Compensation award made for temporary disability due to said injury) for the period of six (6) months from date of injury, and no part of such absence shall be charged to leave to which he might otherwise be entitled."

This is a demand for compensation and is a mandatory subject of negotiation.

DEMAND #54 - FACULTY ADVISING PROGRAM

"No member of the teaching faculty shall be required to have advisees. The ratio of professional counselors to full-time students shall not exceed one to 250."

This is not a mandatory subject of negotiation. Whether or not students should have access to members of the teaching faculty for advice on their academic pursuits and course-related matters is an aspect of educational policy. The ratio of professional counselors to students is covered in Matter of West Irondequoit Teachers Association as discussed in our comments on Demand #18.

4427

DEMAND #56 - COURSE OUTLINES

"Faculty members shall not be required to turn in course outlines or course evaluations."

This is not a mandatory subject of negotiation. The preparation and submission of course outlines and course evaluations is an essential aspect of what may be required for effective teaching and is, hence, within the realm of educational policy.

DEMAND #58 - KEYS

"Each faculty member shall be given a key to the building of his primary responsibility."

This is not a mandatory subject of negotiation. It goes beyond mere access to the premises of the employer, which may be a term and condition of employment; it may affect the security of those premises, which is a matter within the realm of management prerogative.

DEMAND #61 C - COMMITTEE ON REAPPOINTMENT, PROMOTION AND TENURE

"The Committee on Reappointment, Promotion and Tenure shall be chaired by the President of the College. It shall consist of the Academic Dean, three (3) tenured members of the Faculty Association selected by its members, and the Department and Division Chairmen of the individual whose status is being examined. The President shall define all criteria to be used for promotion, retention and tenure and shall give a copy to all faculty members by September 1 of each academic year. Written rationale for the decision shall be given to the faculty member when promotion, retention or tenure is denied."

The first two sentences deal with the structure of the Committee on Reappointment, Promotion and Tenure. Essentially a matter of the administrative organization and operation of an institution of higher education it is governed by Matter of Board of Higher Education of the City of New York, supra. It is not a mandatory subject of negotiation.

The final two sentences of the demand would require written statements of the criteria for promotion, retention and tenure and a written rationale for all decisions denying promotion, reappointment and tenure. Except to the

extent that in the absence of necessary reasons for such specification, they would impose a management duty upon a particular member of management, the President, they constitute a mandatory subject of negotiation.

DEMAND #62 D - FACULTY EVALUATION

"Faculty members, including technical assistants, both full and part-time, shall be evaluated by the following procedure for purposes of reappointment, promotion and tenure. The faculty members of each Division, the Counseling Center faculty, and the Library faculty shall determine their own evaluation system not later than October 15 of each academic year at a formally constituted Library, Counseling Center or Division meeting chaired respectively by the Head Librarian, Associate Dean of Students for Counseling and Admissions, and Division Chairmen. The evaluation system shall be adopted in the following manner: secret ballot and majority vote of faculty members present, including Division Chairmen and Department Chairmen. This procedure shall be binding on all parties. All evaluation reports shall state whether they represent a recommendation or non-recommendation. All evaluation reports shall be made available to those evaluated, and those evaluated shall have the right to file a written response to the evaluation report and attach it thereto. The evaluation system may not violate any terms of this contractual agreement."

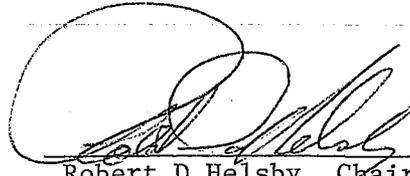
This is not a mandatory subject of negotiation. A faculty association may insist upon the negotiation of a demand for due process in the application of an evaluation system. This demand, however, which would permit faculty members of each Division to establish their own evaluation system as such each year, goes beyond due process and would intrude upon a management's clear prerogative.

NOW, THEREFORE, in view of the above conclusions of law:

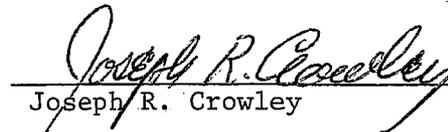
1. The charge should be and hereby is dismissed with respect to those matters that we have herein determined not to be mandatory subjects of negotiation, and also with respect to Demand #19 (for the reasons stated in the discussion of that demand); and

2. With respect to those matters that we have determined to be mandatory subjects of negotiation, WE ORDER the County of Orange to negotiate in good faith with the Orange County Community College Faculty Association.

DATED: New York, New York
September 24, 1976



Robert D. Helsby, Chairman



Joseph R. Crowley



Ida Klaus

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2B-9/24/76

In the Matter of
CITY OF KINGSTON,

Charging Party,

--and--

NEW YORK STATE PROFESSIONAL FIREFIGHTERS
ASSOCIATION, INC., Local 461,
Respondent.

BOARD DECISION AND ORDER

CASE No. U-2163

The charge herein was filed by the City of Kingston on June 16, 1976. As amended, it alleges that Local 461 of the New York State Professional Firefighters Association, Inc. (Local 461) refused to negotiate in good faith, in violation of CSL Section 209-a.2(b), in that it improperly insisted upon the negotiation and arbitration of six demands that allegedly are non-mandatory subjects of negotiation. The charge was filed simultaneously with objections to the arbitrability of the six demands under Section 205.6 of our Rules. Pursuant to that section of our Rules, this charge is accorded expedited treatment, which means that the matter has come directly to this Board without the benefit of a report and recommendation of a hearing officer.

Thirty issues were presented to the factfinder. The factfinding process resulted in the resolution of thirteen of these issues and Local 461 seeks to take the remaining seventeen issues to arbitration. Of these, the City protests the arbitrability of six. The parties have chosen to rely upon the papers submitted to the Director of Public Employment Practices and Representation and not to file briefs. The City's arguments are included in its charge and in two letters of August 16, 1976 and one of August 23, 1976. Local 461's position is found in its letter of July 9, 1976. The precise language of the demands is contained in the Local's letter of August 20, 1976.

4431

We deal with the demands in the order that they were specified in the charge. *Our determination that a particular matter is not a mandatory subject of negotiation does not preclude a public employer from negotiating with an employee organization about such an item, but it does preclude an arbitration panel from making an award on it, except upon the submission of both parties. Similarly, our determination that a particular matter is a mandatory subject of negotiation does not require that the parties reach agreement as to it in their negotiations; neither does it indicate any direction to the arbitration panel regarding the substance of its award.*

1. Vacation Schedule

Local 461's demand is that, "No more than two (2) regardless of rank on Platoons may be off on Vacation at the same time." (sic)

This demand would restrict the authority of the City to decide how many firefighters it requires on duty at any given time. It is not a mandatory subject of negotiation. See Matter of White Plains (Firefighters), 5 PERB ¶3008 (1972) in which we said (at page 3015):

"It is the City alone which must determine the number of firemen it must have on duty at any given time. It cannot be compelled to negotiate with respect to this matter."

2. Equipment Safety Committee

Local 461's demand is for inclusion in the agreement of the following definition:

"Safety Committee means a committee appointed by the President of the Union with the approval of the Executive Board, whose duties will be to investigate the complaint of any fire fighter that equipment he is required to use is inadequate or unsafe, and to certify the condition of such equipment to the Union and the Fire Chief."

There is no indication in the old contract or in these demands of what the effect would be of such a certification that equipment is unsafe. One

implication is that the City would have to take such equipment out of operation. If so, this would give a committee appointed by Local 461 veto power over equipment selected by the City. If so, it would be a non-mandatory subject of negotiation. It may be that this was not Local 461's intention in making the demand, but when a party seeks to take a demand to arbitration, that demand must be clear. Ambiguities are resolved against the parties making the demand. Accordingly, we determine that the demand herein is not a mandatory subject of negotiation.

3. Twenty-Year Retirement

Local 461's demand is:

"Starting with January 1, 1976 the City will also provide this department with a twenty (20) year retirement under 384 D of the New York State Policemen's and Firemen's Retirement System."

The City argues that retirement benefits are a management prerogative.

As a general proposition, this is the effect of the language of CSL Section 2014; however, Chapter 159 of the Laws of 1976 provides that:

"A participating employer...and its employees shall continue to have the right to negotiate with respect to any benefit provided by or to be provided by such employer to such employees as members of such [a retirement] system and not requiring approval by act of the legislature."

The retirement benefit sought in the demand is one that does not require approval by act of the legislature and is, therefore, a mandatory subject of negotiation.

4. Death Benefits

Local 461's demand is for the benefits made available by Paragraph 2 of the General Municipal Law Section 208-b, which provides:

"2. The death benefit shall be paid by the municipality upon the allowance of the claim therefor, and shall consist of:

a. An amount equal to the salary received by such member either during the year immediately preceding his death, or during the year preceding such injuries, whichever is greater and

b. One thousand dollars for each child of such member under eighteen on the date of the member's death."

The position of the City is that the granting of the benefits authorized by General Municipal Law Section 208-b is within the discretion of the municipality and that collective negotiations cannot invade this discretionary authority. This position is wrong. A public employer is obligated to negotiate over terms and conditions of employment that, but for the Taylor Law, it would be free to determine unilaterally. It is where a statute denies the public employer any discretionary authority by imposing specific terms and conditions of employment that the employer is relieved of its obligation to negotiate.

5. Tuition for Fire Training Classes

Local 461's demand is:

"College Courses: The employer agrees to pay for tuition of three credit courses per semester for fire training at an accredited community or four year college. This would be paid in full at the end of each semester and only upon satisfactory completion of courses. The employer agrees to pay for the costs of books, registration and supplies required by the college to attend said classes. The employer may advance funds for books and tuition subject to re-imbusement if courses are not satisfactorily completed at the end of each semester."

Financial support for the taking of work-related courses is a mandatory subject of negotiation. This has been so determined by the New York State Court of Appeals in Board of Education v. Huntington Teachers, 38 NY 2d 122 (1972).

6. Manning per Platoon

Local 461's demand is:

"The City of Kingston Fire Department will be maintained at a minimum regular working platoon and level of eighteen (18) paid fire fighters and paid fire officers."

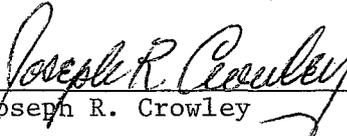
This is not a mandatory subject of negotiation. See Matter of City of White Plains (Firefighters), supra. A fortiori, the demand herein is not a mandatory subject of negotiation. Not only would it preclude reducing the total number of firefighters on duty at any given time below the number sought by Local 461, but it would also require that none of the minimum complement be comprised of volunteer firefighters.

NOW, THEREFORE, in view of the above conclusions of law, we dismiss the charge with respect to those matters herein that we determine to be mandatory subjects of negotiation, and with respect to those matters that we determine not to be mandatory subjects of negotiation,

WE ORDER Local 461, New York State Professional Firefighters Association, Inc., to negotiate in good faith.¹

Dated: New York, New York
September 24, 1976


Robert D. Helsby, Chairman


Joseph R. Crowley


Ida Klaus

¹ The charge falls with respect to mandatory subjects of negotiation as there is a duty to negotiate over them, which includes arbitration. Local 461's duty to negotiate in good faith over non-mandatory subjects of negotiation contemplates its withdrawing such demands from arbitration.