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New York State Public Employment Relations  
Board (PERB)

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10-29-1976

## State of New York Public Employment Relations Board Decisions from October 29, 1976

New York State Public Employment Relations Board

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# State of New York Public Employment Relations Board Decisions from October 29, 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-10/29/76

In the Matter of

BINGHAMTON FIRE FIGHTERS, LOCAL 729,  
IAFF, AFL-CIO,

Respondent,

-and-

CITY OF BINGHAMTON,

Charging Party.

BOARD DECISION AND ORDER

CASE NO. U-2263

On October 19, 1976, the Binghamton Fire Fighters, Local 729, IAFF, AFL-CIO (Local 729) filed a Motion with us for the reconsideration of the Decision and Order we issued in this case on October 8, 1976. That Decision and Order found Local 729 in violation of CSL §209-a.2(b) and directed it to negotiate in good faith with the City of Binghamton. The gravamen of the decision was that, from the beginning of negotiations through factfinding, Local 729 had reduced its demand for a wage increase from fourteen percent (14%) to thirteen and one-half percent (13-1/2%), but its petition for interest arbitration contained a demand for a wage increase of eight percent (8%), which had not been previously communicated to the City. This constituted a failure to negotiate in good faith because "[b]y withholding from the City a concession that it was prepared to incorporate in a public position, Local 729 frustrated the possibility of agreement prior to arbitration."

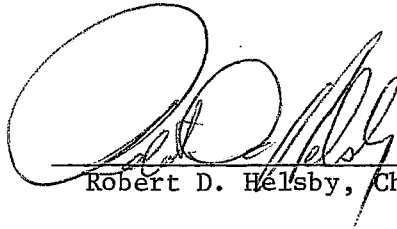
Local 729's Motion is supported by an affidavit which contains the allegation that it had indicated to the City its willingness to reduce its demand to five and one-half percent (5-1/2%) in return for alternative concessions from the City; thus, according to Local 729, the demand of eight percent (8%) contained in its petition for arbitration was not a matter over which the parties had no opportunity to negotiate.

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We deny Local 729's Motion for reconsideration. In doing so, we do not reach any of the factual or legal issues that might be inherent in the allegation contained in the supporting affidavit. Reconsideration of a quasi-judicial determination by an administrative agency is an unusual procedure. (see New York Jurisprudence, Vol 1. Administrative Law §§155, 156 and 157). None of the circumstances that would permit such reconsideration are present in the instant case. The factual basis for the decision derived from information contained in Local 729's answer in the original case. Allegations made in support of the motion do not contain newly discovered evidence.

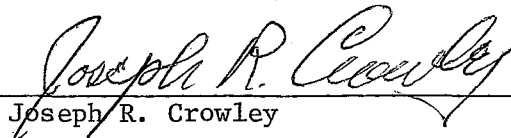
ACCORDINGLY, the motion for reconsideration is denied.

DATED: Albany, New York  
October 29, 1976



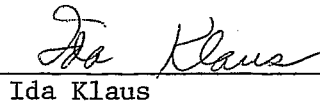
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Robert D. Helsby, Chairman



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Joseph R. Crowley



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Ida Klaus

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

#2B-10/29/76

In the Matter of  
CITY OF NEW YORK,

Respondent,

-and-

SERGEANTS' BENEVOLENT ASSOCIATION OF  
THE CITY OF NEW YORK,  
LIEUTENANTS' BENEVOLENT ASSOCIATION  
OF THE CITY OF NEW YORK,  
PATROLMEN'S BENEVOLENT ASSOCIATION  
OF THE CITY OF NEW YORK,  
CAPTAINS' ENDOWMENT ASSOCIATION  
OF THE CITY OF NEW YORK,  
DETECTIVES' ENDOWMENT ASSOCIATION  
OF THE CITY OF NEW YORK,

Charging Parties.

BOARD DECISION & ORDER

CASE NOS. U-1792  
U-1793  
U-1794  
U-1795  
U-1796

The five charges herein were filed on September 17, 1975 by the Sergeants' Benevolent Association of the City of New York, Lieutenants' Benevolent Association of the City of New York, Patrolmen's Benevolent Association of the City of New York, Captains' Endowment Association of the City of New York, and the Detectives' Endowment Association of the City of New York (collectively referred to as the charging parties). They all allege that the City of New York (City) committed improper practices in violation of CSL Section 209-a.1(a) and (d) when on August 25, 1975 it unilaterally withdrew free subway and bus transportation privileges previously enjoyed by police officers and on September 13, 1975 when it unilaterally withdrew free ferry transportation privileges previously enjoyed by police officers. The charges were consolidated for hearing. After the hearing, a decision was issued by the Director of Public Employment Practices and Representation who was substituted for the hearing officer because the hearing officer had resigned. The Director dismissed the charge. His reason for dismissing the charge with

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respect to subway and bus transportation was that such transportation privileges had been withdrawn by the Transit Authority (TA), not by the City and the TA was an independent entity. Although the Director found that the City had acted unilaterally in discontinuing free transportation by police officers on its ferries, he dismissed the charge insofar as it dealt with ferry transportation on the theory that it was not a term and condition of employment of police officers. His factual basis for this conclusion was there was no evidence in the record relating to the value of the transportation to the police officers or the extent to which police officers took advantage of it. Accordingly, he reasoned that the record did not support the conclusion that free ferry transportation was "an inducement to employment" or that it had "a significant and material relationship to terms and conditions of employment".

The charging parties have filed exceptions to both aspects of the Director's decision dismissing the charge.

#### FACTS

For at least 35 years prior to 1975, police officers both on and off duty, enjoyed free transportation on subways, buses and ferries. The subways and buses are owned by the City but since 1953 they have been operated by the TA, a public benefit corporation. The ferries are both owned and operated by the City.

The TA operates the subways and buses under a lease agreement with the City which owns almost all the equipment and is responsible for the TA's capital expenditures. The TA's operating costs are subsidized by the City, State and Federal governments. Its independence of the City is evidenced by the fact that it occasionally sues the City for damages for sewer main breaks and the City occasionally brings suit against it. However, the TA must give reduced fares to specified groups of people provided that the City pays it for the lost revenues and administrative costs (Public Authority Law §1205.2). The record indicates that the City has not made such a request regarding police

officers. Rather, the TA determined, on its own, to provide them with free personal transportation. In 1969, the TA and the City entered into an agreement pursuant to which the City agreed to pay a specified sum to reimburse the TA for revenues lost by reason of such free transportation for that year. Since then, the TA has neither sought nor been granted reimbursement by the City.

On July 31, 1975, Mayor Beame announced a "program of recovery" to combat the City's fiscal crisis. That announcement indicated that subway and bus fares would rise on September 1, 1975. The announcement contained a recommendation that a new fare system should be devised that would diminish the impact of the fare rise on persons who pay a double fare. The Mayor also urged the TA:

"to cut its costs, as the City has, to achieve the economies required of all in this time of crisis. Unnecessary overtime must be sharply curtailed. Similarly, everyone who uses mass transit facilities should pay a fare. Now, all uniformed personnel and Transit Authority employees are granted privileged status. No one is entitled to a free ride for personal transportation under today's conditions."  
(emphasis supplied)

On the same day the TA issued a resolution which increased fares and incorporated some of the suggestions of the Mayor. It continued the practice of carrying uniformed police officers and TA employees without charge, but it discontinued the practice of carrying police officers not in uniform.

On September 13, 1975, Mayor Beame announced that effective September 16, 1975 non-uniformed police officers would no longer be given free passage on the City's ferries.

#### DISCUSSION

We confirm the determination of the Director that the City did not violate its duty to negotiate in good faith with the police associations by reason of the TA's termination of free subway and bus transportation privileges

previously enjoyed by police officers. We are persuaded by the evidence in the record that the decision was made solely by the TA. In reaching this conclusion, we are aware of the evidence in the record that the TA received considerable subsidization from the City. We are also mindful of the proximate relationship of the Mayor's suggestion to the TA's action. These circumstances, however, do not persuade us that the City is responsible for the action taken by the TA.

With respect to that part of the charge which deals with free transportation for police officers on the ferries, we conclude that the City violated its duty to negotiate in good faith<sup>1</sup>. Free personal transportation on the City-owned ferries was a term and condition of employment. Such a benefit cannot be withdrawn unilaterally. The charging parties were not required to establish widespread use of that benefit.

There is no indication in the record that the City withdrew free personal transportation on ferries for police officers for other than financial reasons. Accordingly, this action constitutes a refusal to negotiate in good faith in violation of CSL §209-a.1(d), but it is not an interference with, restraint or coercion of public employees "in the exercise of their rights guaranteed in section 202 for the purpose of depriving them of such rights" in violation of CSL §209-a.1(a). An intent to deprive employees of the right of organization assured by CSL §202 is an element of such a violation and this intent has not been established.

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<sup>1</sup> In reaching a contrary conclusion, the Director was misled by some of the language in our decision in Matter of State of New York, 6 PERB ¶3005 (1975) in which we found free parking to be a term and condition of employment.



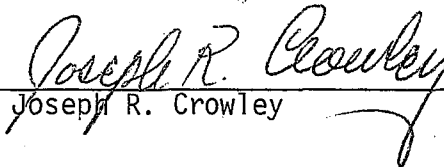
NOW, THEREFORE, in accordance with the above findings of fact and conclusions of law, and in view of the specific violation of the City's duty to negotiate in good faith that we have found,

WE ORDER the City to negotiate in good faith.

Dated: Albany, New York  
October 29, 1976



Robert D. Helsby, Chairman



Joseph R. Crowley



Ida Klaus

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

#2C-10/29/76

\_\_\_\_\_  
In the Matter of :  
: :  
EASTCHESTER TEACHERS ASSOCIATION :  
: :  
upon the Charge of Violation of Section :  
210.1 of the Civil Service Law :  
\_\_\_\_\_ :

BOARD DECISION AND ORDER

CASE NO. D-0129

On March 4, 1976, Counsel for the New York State Public Employment Relations Board filed a charge against the Eastchester Teachers Association (Association) alleging that it violated CSL Section 210.1 in that it caused, instigated, encouraged, condoned and engaged in a twenty-one day strike between January 20 and March 1, 1976, inclusive. The Association denied the allegations of the charge and asserted that the Eastchester Union Free School District (Employer) had engaged in such acts of extreme provocation as to detract from its responsibility - if any - for the strike.

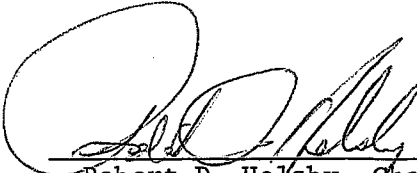
Thereafter, the hearing officer determined that the Association had wilfully violated the statutory prohibition against striking and that the strike was not occasioned by the Employer's acts of extreme provocation. In its brief to the Board, the Association protests these determinations. It argues that the Employer approached negotiations with a predetermined intention not to grant any increase during the first year of any contract. According to the Association, this approach, which was first revealed in the successful campaign of three members of the Employer board, who were elected to it during the year preceding the strike, "was deliberately designed to cause a strike", so that enough money could be saved by nonpayment of wages and by the collection of Taylor Law penalties to finance salary increases. These arguments were first raised before the hearing officer and he found that the Association did not prove that the Employer's negotiating posture was designed to frustrate agreement. We confirm his findings of fact and conclusions of law and, upon

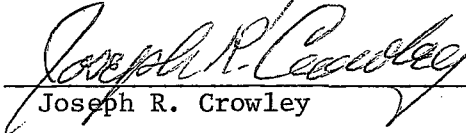
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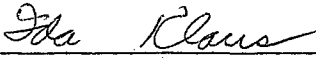
his opinion, we determine that the Association violated CSL Section 210.1.

NOW, THEREFORE, WE ORDER that the dues deduction privileges of the Eastchester Teachers Association be forfeited for a period of one year;<sup>1</sup> thereafter, no dues shall be deducted on its behalf by the Eastchester Union Free School District until the Eastchester Teachers Association affirms that it no longer asserts the right to strike, as is required by the provisions of CSL Section 210.3(g).

Dated: Albany, New York  
October 29, 1976

  
Robert D. Helsby, Chairman

  
Joseph R. Crowley

  
Ida Klaus

<sup>1</sup> The dues deductions for the Eastchester Teachers Association are made from the teacher's first eight paychecks which covers a period of sixteen (16) weeks. Hence, the total dues for the current year will have been paid before this order can become effective. Accordingly, this order contemplates that no dues will be deducted on behalf of the Association during the 1977-1978 school year.

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF

#2D-10/29/76

ROCKVILLE CENTRE PUBLIC LIBRARY,  
Employer,

-and-

CIVIL SERVICE EMPLOYEES ASSOCIATION,  
INC.,

Petitioner.

Case No. C-1402

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 CIVIL SERVICE EMPLOYEES ASSOCIATION, INC.

has been designated and selected by a majority of the employees of the above named public employer, in the unit described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: All full and part-time Librarians and Non-Librarians.

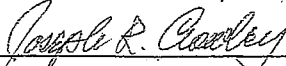
Excluded: Director, Assistant Director, Administrative Assistant/Secretary to Director, Account Clerk /Bookkeeper Pages, Temporary Employees and College Students.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with CIVIL SERVICE EMPLOYEES ASSOCIATION, INC.

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

Signed on the 29th day of October, 19 76.

  
ROBERT D. HELSBY, CHAIRMAN

  
JOSEPH R. CROWLEY

  
IDA KLAUS

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

#2E-10/29/76

IN THE MATTER OF \_\_\_\_\_  
LOCKPORT MEMORIAL HOSPITAL, \_\_\_\_\_  
Employer, \_\_\_\_\_  
-and- \_\_\_\_\_  
LOCKPORT HOSPITAL UNIT, NIAGARA COUNTY \_\_\_\_\_  
CHAPTER, C.S.E.A., INC., \_\_\_\_\_  
Petitioner. \_\_\_\_\_  
Case No. C-1390

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 LOCKPORT HOSPITAL UNIT, NIAGARA COUNTY CHAPTER, C.S.E.A., INC.

has been designated and selected by a majority of the employees of the above named public employer, in the unit described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: Cook, food service helper, helper-part time, kitchen helper, porter, cleaner, laundry washer, laundry worker, seamstress, press operator, orderly, senior orderly, aide, laborer A, laborer B, laborer C, switchboard operator, fireman and ward clerks.


Excluded: Seasonal, emergency, temporary and all other employees.


Further, IT IS ORDERED that the above named public employer shall negotiate collectively with LOCKPORT HOSPITAL UNIT, NIAGARA COUNTY CHAPTER, C.S.E.A., INC.

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

Signed on the 29 day of October, 1976.

  
ROBERT D. HELSBY, CHAIRMAN

  
JOSEPH R. CROWLEY

  
IDA KLAUS

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF : #2F-10/29/76  
DEPEW UNION FREE SCHOOL DISTRICT, :  
Employer, :  
-and- : Case No. C-1313  
DEPEW ADMINISTRATORS ASSOCIATION, :  
Petitioner. :

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected;

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that DEPEW ADMINISTRATORS 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: Principals, Assistant Principals, Directors and Chief Guidance Counselor.

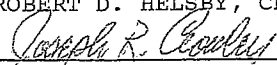
Excluded: School Psychologist and Attendance Officer.

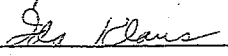
Further, IT IS ORDERED that the above named public employer shall negotiate collectively with DEPEW ADMINISTRATORS ASSOCIATION

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 29th day of October , 19 76.

  
ROBERT D. HELSBY, CHAIRMAN

  
JOSEPH R. CROWLEY

  
IDA KLAUS