12-1-1976

State of New York Public Employment Relations Board Decisions from December 1, 1976

New York State Public Employment Relations Board

State of New York Public Employment Relations Board Decisions from December 1, 1976

Keywords

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

NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD

#2A-12/1/76

In the Matter of the

FARMINGDALE FEDERATION OF TEACHERS, INC.

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

Case No. D-0132

BOARD DECISION & ORDER

On May 24, 1976, Martin L. Barr, Counsel to this Board, filed a charge alleging that the Farmingdale Federation of Teachers, Inc., had violated Civil Service Law §210.1 in that it caused, instigated, encouraged, condoned and engaged in a 7 day strike against the Farmingdale Union Free School District on May 6, 7, 10, 11, 12, 13, and 14, 1976.

The Farmingdale Federation of Teachers, Inc., filed an answer but thereafter agreed to withdraw it, thus admitting all of the allegations of the charge. The Farmingdale Federation of Teachers, Inc., joined the Charging Party in recommending a penalty of loss of dues check-off privileges for 60% of its annual dues.

On the basis of the charge unanswered, we determined that the recommended penalty is a reasonable one.

We find that the Farmingdale Federation of Teachers, Inc., violated CSL §210.1 in that it engaged in a strike as charged.

WE ORDER that the dues deduction privileges of the Farmingdale Federation of Teachers, Inc., be suspended, commencing on the first practicable date, so that no further dues be deducted by the Farmingdale Union Free School District on its behalf for a period of time during

which 60% of its annual dues would otherwise be deducted. Thereafter, no dues shall be deducted on its behalf by the Farmingdale Union Free School District until the Farmingdale Federation of Teachers, Inc., affirms that it no longers asserts the right to strike against any government as required by the provisions of CSL §210.3(g).

Dated, Albany, New York
December 1, 1976

ROBERT D. HELSBY, Chairman

JOSEPH R. CROWLEY

IDA KLAUS

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2B-12/1/76

In the Matter of TOWN OF HAVERSTRAW, Charging Party, -and- TOWN OF HAVERSTRAW PATROLMAN'S BENEVOLENT ASSOCIATION, Respondent.	BOARD DECISION AND ORDER CASE NO. U-2045

This matter comes to us on a motion for reargument and reconsideration of a decision that we issued on September 8, 1976 that was filed by the Town of Haverstraw Patrolman's Benevolent Association (PBA). We found merit in a charge by the Town of Haverstraw (Town) that PBA had violated CSL §209-a.2(b) by failing to negotiate in good faith with the Town. The conduct of PBA that we determined to constitute a failure to negotiate in good faith was:

1. withholding of its demands for several months which prevented the Town from preparing itself adequately to enter upon negotiations,
2. refusing to cooperate with the Town in ascertaining the cost of demanded benefits involving life, hospital and dental insurance,
3. refusing to discuss the crucial issue of wages while asserting other relatively insignificant demands, thereby denying the Town a realistic frame of reference for productive negotiations on all economic issues in dispute.

PBA's papers in support of its reargument and reconsideration asserted that all the events that we found to constitute a failure to negotiate in good faith occurred more than four months prior to March 1, 1976, the date of the filing of the charge by the Town. Thus, according to PBA, the charge should have been dismissed under §204.1 of our Rules.[1] PBA's papers argue that this Board has treated its four-month limitation as a jurisdictional requirement.

The Town has submitted papers in opposition to the motion for reargument and reconsideration. These papers attempt to demonstrate that the conduct of PBA constituting a failure to negotiate in good faith continued up to the time of the charge. We are not so persuaded. The chronology upon which PBA relies is accurate. Its improper conduct occurred more than four months prior to the filing of the charge. The Town also argues that the four-month provision in §204.1 of our Rules is not jurisdictional and, unless it is affirmatively pleaded by a respondent, it is waived. Its arguments for support of this proposition are based upon policy considerations, rather than precedent. Indeed, some strong policy arguments were made by the Town in response to which we will restudy our practice. However, our practice has been that we have consistently construed our Rule as barring access to this Board on charges that are filed more

---

1 §204.1 provides in part an original and four copies of "[A] charge that any public employer or its agents, or any employee organization or its agents, has engaged in or is engaging in an improper practice may be filed with the Director within four months thereof...."

than four months after the events about which they complain. Our practice, if it is to be changed, should not be changed by a decision which necessarily affects parties after the fact, as it would here; rather, any change should be accomplished by way of amendment to our Rules so as to put parties on notice of its prospective effect.

Accordingly, we grant PBA's motion and withdraw our decision and order of September 8, 1976.[2]

NOW, THEREFORE, WE ORDER that the charge filed by the Town of Haverstraw in Case No. U-2045 on March 4, 1976 be, and hereby is, dismissed.

DATED: Albany, New York
December 1, 1976

Robert D. Helsby, Chairman

Joseph R. Crowley

Ida Klaus

---

2 This action is taken on procedural grounds and does not constitute a withdrawal from our opinion that the conduct of PBA constituted a failure to negotiate in good faith that we would find to be violative of CSL §209-a.2(b), if a timely improper practice charge were filed.