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State of New York Public Employment Relations Board Decisions from March 30, 1977

New York State Public Employment Relations Board

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State of New York Public Employment Relations Board Decisions from March 30, 1977

Keywords

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

Comments

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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of

#2A-3/30-31/77

BOARD OF EDUCATION OF THE CITY SCHOOL
DISTRICT OF THE CITY OF NEW YORK

:

:

BOARD DECISION AND ORDER

Upon the Application for Designation of
~~Persons as Managerial or Confidential.~~

:

:

CASE No. E-0144(c)

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This matter comes to us upon exceptions filed by The Council of Supervisors and Administrators, Local 1, AFSA, AFL-CIO (CSA) from a decision of the Director of Public Employment Practices and Representation (Director) designating certain employees of the Board of Education of the City School District of the City of New York (employer) as managerial and/or confidential.^{1/}

Having considered CSA's exceptions and its supporting arguments, we confirm the Director's findings of fact. With one exception, we also confirm his conclusions of law.

The first of the exceptions relates to the Director's determination regarding Deputy Community Superintendents. The question was whether Deputy Community Superintendents holding supervisory licenses were represented by CSA, it being understood that unless they were so represented, CSA had no

^{1/} The employer had filed an application on November 30, 1971 seeking the designation of certain of its employees as managerial and/or confidential. Because of the diversity of occupations covered by the application, decisions were issued with respect to different groups of employees at different times. In some instances consideration of the status of one group of employees was held up while a decision on a different group of employees was being appealed. In all, there were 25 days of hearing on the application. The instant decision concludes consideration of the application.

standing to object to their designation as managerial and/or confidential employees. The Director determined that CSA did not represent them saying:

"...By its April 1971 resolution, the Board created a wholly new title of deputy community superintendent. The possession of a supervisory license was not a prerequisite to the position; in fact, the requirement of state certification rather than Board of Examiners' licensing was inserted specifically so that other than pedagogical staff could be hired [Footnote omitted]. Moreover, in practice, hiring was done without regard to whether the individual held a supervisory license...."

In its exceptions, CSA argues that the 1971 resolution is a violation of the Education Law as it created a distinct and independent position of Deputy Community Superintendent. This argument was properly disregarded by the Director. It was not his responsibility to determine whether the structure created by the employer was consistent with the Education Law. That issue can be litigated elsewhere. It was his responsibility to determine what the actual practice has been regarding the Deputy Community Superintendents and to apply the Taylor Law to that practice. This is what he did, and his determination that Deputy Community Superintendents were not represented by CSA is supported by the record.

A second exception relates to the test used by the Director in determining that certain employees in the Office of the Chancellor were managerial and/or confidential. It is conceded that a 1975 amendment (L. '75, ch. 854) of a 1971 statute (L. '71, ch.503, §5) specifying a declaration of legislative intent altered language that had previously expressed a legislative preference for the retention of negotiating rights for school principals who had previously enjoyed them. CSA argues that the application herein having been filed prior to the enactment of the 1975

amendment should be evaluated on the basis of the 1971 language. This argument would be persuasive if the effect of this decision were retroactive to a period prior to the effective date of the 1975 amendment. The Taylor Law, however, makes it clear that the designation of employees as managerial and/or confidential is not retroactive. On the contrary, often it is prospective rather than immediate, taking effect only upon the expiration of a current contract covering the employees so designated (CSL §201.7). Accordingly, we dismiss this exception. We do, however, reverse the Director's conclusion with respect to one of the persons in the Chancellor's office, Virginia Rederer. The Director wrote:

"While none of the five special assistants is privy to collective negotiations information, all except Rederer are regularly exposed in the course of performing their jobs to privileged material on personnel and contract administration which is not intended for 'the eyes or ears of rank-and-file personnel or their negotiating representative' and clearly are confidential [Footnote omitted]. Rederer's work with resolutions has not, so far, involved her in such privileged matters. However, as a special assistant, she is expected to perform any task assigned, and, according to the testimony of the executive assistant, all special assistants will be privy at times to 'matters that involve staff, staff records, audits [and] financial records' which could affect the livelihood of Board employees." [Emphasis supplied]

It thus appears that Ms. Rederer's job assignment does not expose her to materials related to collective bargaining or contract administration. Exposure of an employee to "matters that involve staff, staff records, audits and financial records" does not warrant the designation of that employee as confidential within the meaning of the Taylor Law.

In a third exception CSA argues that the decision is academic because some of the persons designated as managerial and/or confidential are no longer employed by the employer. In some instances the decision of the Director does deal with specific individuals. This is because some of

the positions covered by it are unique and the Director had to consider the precise job assignments and responsibilities of the individual. His decision, however, is applicable not only to that individual but also to his successors so long as the job assignments and responsibilities remain the same. This same analysis applies to CSA's exception that some of the persons designated managerial and/or confidential still work for the employer but have been transferred to different positions.

Another exception of CSA relates to Unit Heads and Assistant Unit Heads of the Board of Examiners. It argues that there is too much variation among the duties of persons holding these titles for them to be treated as a unit. It also argues that as a group they are not exposed to confidential information which would justify their designation as confidential employees. We confirm the findings of fact and conclusions of law of the Director with respect to Unit Heads and Assistant Unit Heads of the Board of Examiners.

The last exception with which we deal related to three persons who work in the employer's Division of Business and Administration -- Elizabeth Cagan, I. Louis Gordon and Bertha Leviton. CSA argues that the responsibilities of the first involves the routine implementation of contractual obligations and that the second performs a high level clerical type of assignment that involves no discretion affecting labor relations. The work of the third, according to CSA, is not related to labor relations. We conclude that all three are managerial employees for the reasons set forth in the Director's decision.

NOW, THEREFORE, we make the designation of the following persons as managerial or confidential, as the case may be, and dismiss the application in all other respects.

OFFICE OF LABOR RELATIONS: Mary Weed, Harry Lasser, Harold Stein;

OFFICE OF PERSONNEL: Dennis Hays, James Sealey, Roger Forrester, Gerald Brooks, Bernard Esrig, Walter Burge, Raymond Greenstein, Alfred Waters, Gladstone Atwell, David Smith, Philip Lewis;

OFFICE OF THE CHANCELLOR: Irving Rosenbaum, Joseph Sassente, Ilza Williams, Arthur Capson, Sidney Jaffe;

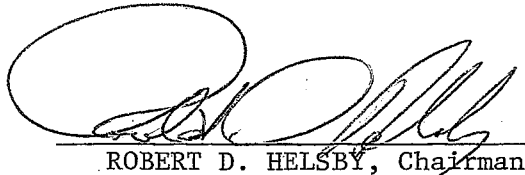
BOARD OF EXAMINERS: Unit Heads: Catherine Cahill, Alvin Kulick, Max Parness, Michael Howley, Albert W. Benjamin, Arnold Taub;

Assistant Unit Heads: Mary Cohn, Thomas Dosey, Elmer Hurwood, Sonja Rose, Julian Levy, Pauline Tolmage, Frances Rebble;

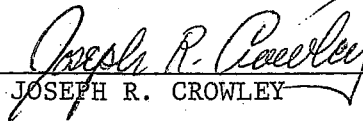
DIVISION OF BUSINESS AND ADMINISTRATION:

Elizabeth Cagan, I. Louis Gordon, Bertha Leviton.

DATED: Albany, New York
March 30, 1977



ROBERT D. HELSBY, Chairman



JOSEPH R. CROWLEY

DID NOT PARTICIPATE

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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

#2B-3/30-31/77

STATE OF NEW YORK (STATE UNIVERSITY OF NEW YORK
AT STONY BROOK),

Respondent,

: BOARD DECISION AND ORDER

- and -

RICHARD W. GLASHEEN,

Charging Party.

: Case No. U-1623

Background: Case No. U-1110

On February 25, 1974, United University Professions, Inc. (UUP), acting as the duly recognized representative in the negotiating unit, filed a charge alleging a violation by respondent of CSL §209-a.1(c) in that it failed to renew Glasheen's contract for improper reasons. On May 6, 1974, UUP requested permission to withdraw the charge pursuant to an agreement with respondent to submit the underlying dispute to arbitration. Permission was granted on August 7, 1974, on notice to PERB's Director of Public Employment Practices and Representation that the dispute had been scheduled for arbitration. It appears, however, that the dispute was settled by UUP and respondent before arbitration on terms short of reinstatement of Glasheen. Finding this outcome unacceptable, Glasheen, acting in his own behalf through his counsel, initiated a proceeding against respondent under Article 78 in the Supreme Court, Suffolk County, seeking a stay of his dismissal. Although PERB was not a party to the Court proceeding and had no notice of it, reference to the history of Charge U-1110 was apparently made before the Court. On February 24, 1975, the Court issued its judgment denying the relief sought for lack of jurisdiction. The Court declared, however, that it was granting Glasheen "the right to reopen the improper practice charge heretofore filed by him and closed by PERB, August

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6, 1974..." It stated further that, "the petitioner may proceed de novo before PERB or move to open the closed Improper Labor Practice charge."

Mr. Glasheen did not move to reinstate the charge. He filed a new charge in the instant proceeding, Case No. U-1623.

The Instant Proceeding: Case No. U-1623

The charge herein was filed by Richard W. Glasheen on May 23, 1975.

It alleges that the State of New York (State University of New York at Stony Brook) (respondent) violated CSL Section 209-a.1(a), (b) and (c) by terminating his appointment in one position and denying him appointment to other positions because of his efforts to create a separate negotiating unit of non-teaching professionals employed by the respondent. Neither the charge nor the supporting documents alleged facts occurring within four months of its filing, as required by §204.1 of the Rules of this Board. Accordingly, the Director of Public Employment Practices and Representation wrote to Mr. Glasheen's representative advising him that the charge could not be processed unless there was an indication that conduct violative of the Taylor Law occurred within the four months' period. Thereafter, there were several communications between the hearing officer assigned to the case and Mr. Glasheen's representative dealing with the deficiency of the charge. In one letter, Mr. Glasheen's representative alleged that discriminatory actions were taken by respondent against him during the summer of 1975. The hearing officer advised him that these actions, having occurred after the charge was filed, could not validate the charge, although they could be the basis of a new charge. At the oral argument, he acknowledged that no such charge was filed. Eventually, the hearing officer dismissed the charge in a decision dated November 9, 1976 saying:

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"In view of the charging party's continued failure to correct the deficiencies in the charge to conform to the Rules and thus to prosecute the charge, and since the charge is untimely on its face, the charge should be, and hereby is, dismissed in its entirety."

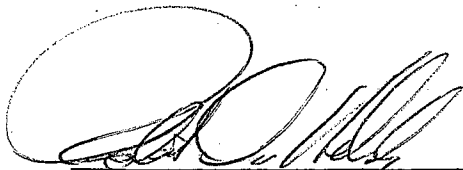
Mr. Glasheen has filed exceptions to this decision. Simultaneously, he has attempted to resurrect the earlier charge against respondent, Case No. U-1110. The request contained in his exceptions that we now consider the first charge (Case No. U-1110) along with the instant case, No. U-1623, is inappropriate. That earlier case was withdrawn and has never been reinstated. Accordingly, it is not before us.

The instant charge dealt with events that were time barred by our Rules of Procedure. Respondent, relying upon our Rules, objects to any consideration of the instant charge. Glasheen replies that he was authorized to proceed de novo before PERB by the Supreme Court. Inasmuch as this Board was not a party to that proceeding, it is not bound by the court decision. It is, however, bound by its own Rules.

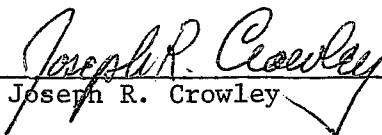
Accordingly, we affirm the determination of the hearing officer below that the charge herein was not timely, and

WE ORDER that the charge herein be dismissed.

Dated: Albany, New York
March 30, 1977



Robert D. Helsby, Chairman



Joseph R. Crowley



Ida Klaus

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2C-3/30-31/77

In the Matter of

SALMON RIVER CENTRAL SCHOOL DISTRICT,

Respondent,

-and-

SALMON RIVER TEACHERS ASSOCIATION,

Charging Party.

BOARD DECISION AND ORDER

CASE NO. U-2060

This matter comes to us on the exceptions of the Salmon River Central School District (respondent) to a decision of a hearing officer finding that it committed an improper practice in violation of CSL Section 209-a.1(d) in that it refused to negotiate in good faith by disavowing an agreement that it had reached with the Salmon River Teachers Association (charging party).

The charge, which was filed on March 29, 1976, alleged that the charging party and respondent had reached an agreement on March 9, 1976. It further alleged that respondent declined to execute the agreement when asked by the charging party to do so on March 11, 17 and 25, 1976. There was conflicting testimony regarding the events of March 9. The hearing officer resolved the conflict by crediting the testimony of the charging party's negotiators, and he concluded that the parties had, in fact, reached an agreement on March 9. As to the substance of that agreement, he relied upon a memorandum of understanding admitted in evidence, which a conciliator appointed by this Board had typed after respondent's negotiating representatives had left for the day. Respondent declined on March 11 to execute the claimed agreement because of some uncertainties relating to handwritten notations appearing on the typewritten copy. Thereafter, on March 17 and 25, the charging party submitted to respondent a draft of a proposed agreement which differed in sub-

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stance from the typewritten document that had been submitted to it on March 11. Unlike the March 11 document, the second one contained no reopener provision. Respondent refused to execute the draft submitted to it on March 17 and again on March 25.

Respondent objects to the admission of the memorandum of understanding that was typed by the Board conciliator. The basis for this objection is CSL §205.4(b), which provides that no conciliator

"employed or retained by the board, shall...be compelled to nor shall he voluntarily disclose to any administrative or judicial tribunal...any information relating to the resolution of a particular dispute in the course of collective negotiations acquired in the course of his official activities under this article, nor shall any reports, minutes, written communications, or other documents pertaining to such information and acquired in the course of his official activities under this article be subject to subpoena or voluntarily disclosed..."

We sustain the respondent's position and determine that the hearing officer should have excluded the memorandum of understanding under the circumstances here. We also conclude, from the entire record, that there was no evidence to show what the terms of the alleged agreement were. We find that there was, in fact, no agreement on March 9. Apart from the conflict in the testimony, we note that the two documents submitted by the charging party to respondent for execution as "the agreement" differed in at least one significant particular. Thus, although charging party's representatives may, perhaps, have thought that they had reached some sort of understanding on March 9, that understanding could not have been reached as the final agreement of the parties inasmuch as the charging party submitted a changed version on March 17. This leads us to the conclusion that there was no agreement.

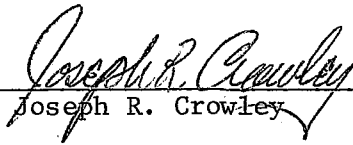
ACCORDINGLY,

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

DATED: Albany, New York
March 30, 1977



Robert D. Helsby, Chairman



Joseph R. Crowley



Ida Klaus

ATTACHMENT

A. All full and part-time teachers, including:

Special Education Teachers
Head Start Teachers
Helping Teachers

B. All specially certificated personnel, including:

Librarians
Guidance Counselors
School Psychologists
Home-School Counselors
Nurse-Teachers
Speech Correctionists
Attendance Counselors

C. Long Term Substitute Teachers.

A long term substitute teacher is a certified teacher hired by the district by means of a board resolution for a fixed duration for a period of 90 calendar days to 1 year to substitute for a teacher who has been granted a leave of absence by the board of education.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of :
CORNING-PAINTED POST AREA SCHOOL : #2D-3/30-31/77
DISTRICT, :
Employer, :
-and- :
CORNING EDUCATORS ASSOCIATION, :
NYEA/NEA, : CASE NO. C-1428
Petitioner, :
-and- :
CORNING TEACHERS ASSOCIATION, NYSUT/ :
AFT, :
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 CORNING TEACHERS ASSOCIATION, NYSUT/AFT

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: See Attached.

Excluded: All other employees.

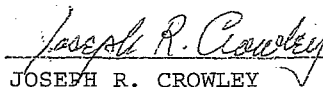
Further, IT IS ORDERED that the above-named public employer shall negotiate collectively with CORNING TEACHERS ASSOCIATION, NYSUT/AFT

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 30 day of March, 1977.



ROBERT D. HELSBY, CHAIRMAN



JOSEPH R. CROWLEY



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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of :
LANCASTER CENTRAL SCHOOLS, : #2E-3/30-31/77
Employer, :
-and- :
LANCASTER ASSOCIATION OF SERVICE :
PERSONNEL, :
Petitioner, : CASE NO. C-1432
-and- :
LANCASTER UNIT, ERIE COUNTY EDUCA- :
TIONAL EMPLOYEES CHAPTER, 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 LANCASTER ASSOCIATION OF SERVICE PERSONNEL

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 non-teaching employees.

Excluded: Superintendent of buildings and grounds, supervisor of transportation, district school lunch manager, title I personnel.

Further, IT IS ORDERED that the above-named public employer shall negotiate collectively with LANCASTER ASSOCIATION OF SERVICE PERSONNEL

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 30 day of March, 1977.

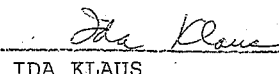


ROBERT D. HELSBY, CHAIRMAN.



JOSEPH R. CROWLEY

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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of :
SCHUYLER-CHEMUNG-TIOGA BOCES, :
Employer, : #2F-3/30-31/77
-and- :
SCHUYLER-CHEMUNG-TIOGA BOCES UNITED :
TEACHERS, :
Petitioner, :
-and- : CASE NO. C-1438
SCHUYLER-CHEMUNG-TIOGA EDUCATIONAL :
ASSOCIATION, NYEA-NEA, :
Intervenor, :
-and- :
SCHUYLER-CHEMUNG-TIOGA TEACHERS :
ASSOCIATION, INDEPENDENT, :
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 SCHUYLER-CHEMUNG-TIOGA EDUCATIONAL ASSOCIATION/NYEA-NEA

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 teaching staff including teaching assistants

Excluded: Administrators and all others.

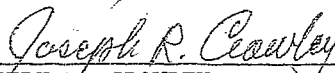
Further, IT IS ORDERED that the above-named public employer shall negotiate collectively with SCHUYLER-CHEMUNG-TIOGA EDUCATIONAL ASSOCIATION/NYEA-NEA

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 30 day of March, 1977.



ROBERT D. HELSBY, CHAIRMAN



JOSEPH R. CROWLEY



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