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Board (PERB)

5-19-1977

State of New York Public Employment Relations Board Decisions from May 19, 1977

New York State Public Employment Relations Board

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State of New York Public Employment Relations Board Decisions from May 19, 1977

Keywords

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Comments

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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of	:	#2A-5/19/77
GENERAL BROWN TEACHERS ASSOCIATION,	:	
	:	
Respondent,	:	<u>BOARD DECISION AND</u>
	:	
-and-	:	<u>ORDER</u>
	:	
GENERAL BROWN CENTRAL SCHOOL DISTRICT	:	
OF BROWNVILLE AND DEXTER,	:	Case No. U-2475
	:	
Charging Party.	:	

The charge herein was filed on December 30, 1976 by the General Brown Central School District of Brownville and Dexter. It alleges that the General Brown Teachers Association violated Civil Service Law §209-a.2(b) by insisting, over the objection of the school district, upon negotiating through the fact-finding process, the retention of a provision of their former agreement entitled "Reduction in Personnel". The school district alleged that such provision constituted a non-mandatory subject of negotiations. The Association asserts that the provision deals only with the impact of reductions in personnel and is therefore a mandatory subject of negotiations. The case comes to us directly pursuant to §204.4 of our Rules of Procedure for expedited treatment as a scope of negotiations dispute. This dispute will be decided on the basis of the charge and amended charge (filed February 10, 1977), the answer of the Association, filed March 17, 1977, and the briefs of the parties.

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The "Reduction of Personnel" provision which is the subject of this dispute is as follows:

REDUCTION OF PERSONNEL

A. The School District has the responsibility to determine any reduction in personnel. However, the District will give advance notice of possible personnel reductions which might affect the members of the General Brown Teachers Association, to the Executive Committee of the Association. Seven members of the Executive Committee will meet with the Board of Education at a mutually agreeable time to discuss possible reductions in personnel - before the Board makes its final decision.

B. In the event that circumstances arise which would make it necessary for the General Brown Central School Board of Education to consider a reduction in the number of professional staff or the elimination of existing programs, such consideration will be forwarded to an Ad Hoc Committee. No further Board of Education action on this matter will be taken for thirty days. (The Board may act after 15 days in a situation where the Board feels it is absolutely necessary.) This Ad Hoc Committee shall consist of two members appointed by the General Brown Teachers Association, two principals selected by the principals, and two Board of Education members selected by the Board, and the District Principal as a non-voting member. The Ad Hoc Committee shall report its recommendation to the Board of Education within 15 days of the Board announcement of a considered reduction or program elimination.

All professional staff presently employed, except those funded by Federal or State Funds (such as grants, titles, DAHB) have a guarantee of professional employment with the district as long as that teacher's level of performance is satisfactory, and a position for which he (she) is certified exists. If the Federal or State funds are withdrawn, or if a position for which a teacher is certified does not exist, professional staff are guaranteed employment in other positions as soon as positions for which they are certified are available. The Association President shall be notified in writing when a position first appears to be in jeopardy.

The provision does not modify or replace the system of evaluation for retention or discharge of probationary employees before or after transfer and does not in any way apply to staff members employed to replace teachers on leave.

The charging party's position is that this provision, in its entirety, constitutes a non-mandatory subject of negotiations. It argues that the manner in which management reaches decisions on such management prerogatives as abolition of positions is itself also a management prerogative. The Association, it argues, has no right to insist that it be consulted in the decision-making process, however sound such consultation may be as a matter of educational policy. The Association observes that this provision would not take away the right of the school district to reduce personnel but merely requires advance notice of possible staff reductions and prior consultation with the Association before a final decision on staff reductions is made by the school district. It argues that these provisions involve only the impact of decisions concerning reductions in personnel not the decisions themselves, and are, therefore, mandatory subjects of negotiations.

We have previously had occasion to consider the distinction between a demand for notice of a contemplated decision and a demand for reasonable notice of the final decision itself. In City of Albany, 7 PERB 3132, at 3135, we stated:

As to the proposal in Article VII, Section 7 it has been decided by this Board (Matter of New Rochelle) that a decision to curtail or limit services is not a mandatory subject of negotiations.

Accordingly, any proposal to limit a public employer's exercise of this power is not a mandatory subject of negotiations. The thrust of the union's proposal herein would be to preclude or inhibit the exercise of such power. Therefore, to that extent, it is not a mandatory subject of negotiation. However, as noted previously, a provision for reasonable notice of the implementation of such decision is not unreasonably related to the requirement that a public employer negotiate over the impact of such decisions.

Furthermore, in Somers Faculty Association, 9 PERB 3022, we determined that the establishment of educational committees designed to give teachers a role in the formulation of educational policy is not a mandatory subject of negotiations.

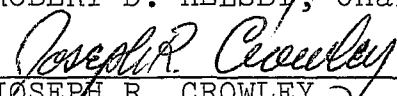
It is our conclusion that this "Reduction of Personnel" provision does not relate to the requirement to negotiate over the impact of a management decision but rather that it would give the Association a role in the formulation of educational policy by involving it in the decisional process itself. The provision is, therefore, not a mandatory subject of negotiations.

WE ORDER the General Brown Teachers Association to negotiate in good faith. ¹

Dated: New York, New York
May 19, 1977



ROBERT D. HELSBY, Chairman



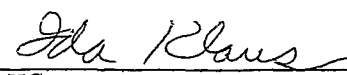
JOSEPH R. CROWLEY

DISSENT OF MEMBER IDA KLAUS

For the reasons stated in my dissenting opinion in Monroe-Woodbury Central School District, 10 PERB ¶3029, I would dismiss the charge or, in the alternative, send the case to hearing for a full and complete evidentiary record.

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Dated: New York, New York
May 19, 1977



IDA KLAUS

1. This contemplates that it should not insist upon its demand for a non-mandatory subject of negotiations.

NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the : Case No. D-0145
MIDDLE COUNTRY SECRETARIAL ASSOCIATION : BOARD DECISION
AND ORDER
upon the Charge of Violation of Section 210.1 :
of the Civil Service Law. :

On February 28, 1977, Martin L. Barr, Counsel to this Board, filed a charge alleging that the Middle Country Secretarial Association, had violated Civil Service Law (CSL) §210.1 in that it caused, instigated, encouraged, condoned, and engaged in a one-day strike against the Middle Country Central School District #11 on December 2, 1976.

The Middle Country Secretarial Association (Association) filed an answer but thereafter agreed to withdraw it, thus admitting to all of the allegations of the charge.

The members of the Association are paid bi-weekly and are employed on varying bases. Some work all year round, either full time or part time. Others regularly work part time, either during the whole year or for part of the year. In light of these factors, the charging party recommends a penalty of loss of dues check-off privileges for a period sufficient to affect twenty-five (25%) percent of the annual dues,^{1/} which the Association accepts.

^{1/} This is intended to be the equivalent of a three-month suspension if the annual dues were deducted in equal monthly installments throughout the year. As noted above, the annual dues are not deducted in this manner.

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

We find that the Association violated CSL §210.1 in that it engaged in a strike as charged.

WE ORDER that the dues deduction privileges of the Middle Country Secretarial Association be suspended, commencing on the first practicable date, so that no further dues be deducted by the Middle Country Central School District #11 on its behalf for a period of time during which 25% of its annual dues would otherwise be deducted. Thereafter, no dues shall be deducted on its behalf by the Middle Country Central School District #11 until the Middle Country Secretarial Association affirms that it no longer asserts the right to strike against any government as required by the provisions of CSL §210.3(g).

Dated: New York, New York
May 19, 1977



ROBERT D. HELSBY, Chairman



JOSEPH R. CROWLEY



IDA KLAUS

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of :
MOUNT VERNON CITY SCHOOL DISTRICT, : #2C-5/19/77
Employer, :
- and - :
MOUNT VERNON TEACHERS UNION, NEW YORK :
EDUCATORS ASSOCIATION/NATIONAL : CASE NO. C-1462
EDUCATION ASSOCIATION, :
Petitioner, :
- and - :
MOUNT VERNON FEDERATION OF TEACHERS, :
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 the Mount Vernon Federation of Teachers

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: Full-time classroom teachers, school social workers, kindergarten teachers, teachers of the physically handicapped, attendance teachers, teachers of special education, speech clinicians, teachers of instrumental music, teachers of the mentally retarded, counsellors, psychologists, librarians and homebound teachers.

EXCLUDED: All other employees.

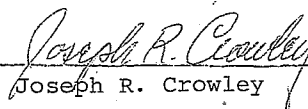
Further, IT IS ORDERED that the above-named public employer shall negotiate collectively with the Mount Vernon Federation of Teachers

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 19th day of May, 1977.



Robert D. Helsby, Chairman



Joseph R. Crowley



Ida Klaus

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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of :
EAST ROCKAWAY UNION FREE SCHOOL : #2D-5/19/77
DISTRICT, :
Employer, :
- and - :
EAST ROCKAWAY CUSTODIANS ASSOCIATION, : CASE NO. C-1468
Petitioner, :
- and. - :
SERVICE EMPLOYEES UNION, LOCAL 100, :
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 the East Rockaway Custodians 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.

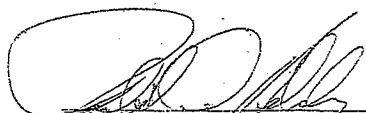
Unit: INCLUDED: All full and all part-time custodial and maintenance employees including Head Custodians and Maintenance Mechanics.

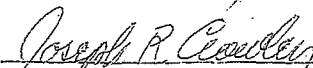
EXCLUDED: All other employees of the district.

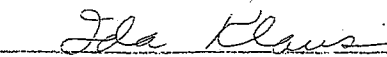
Further, IT IS ORDERED that the above-named public employer shall negotiate collectively with the East Rockaway Custodians Association

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 19th day of May, 1977.


Robert D. Helsby, Chairman


Joseph R. Crowley


Ida Klaus

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