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Board (PERB)

9-8-1977

State of New York Public Employment Relations Board Decisions from September 8, 1977

New York State Public Employment Relations Board

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State of New York Public Employment Relations Board Decisions from September 8, 1977

Keywords

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

Comments

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Because of the changes in Civil Service Law §209.4 contained in Chapter 216 of the Laws of 1977, the following amendments are proposed to PERB's Rules relating to compulsory interest arbitration, since factfinding was eliminated.

§205.3 Compulsory Interest Arbitration; Scope.

The following relates to impasses in collective negotiations between a recognized or certified employee organization that represents officers or members of an organized fire department or an organized police force or police department of any county, city (except the City of New York), town, village, fire district or a police district and the employing county, city (except the City of New York), town, village, fire district or police district [when the recommendations of a fact-finding board do not resolve such impasse].

§205.4 (a) Filing. A petition requesting the Board to refer an impasse to a public arbitration panel may be filed by an employee organization or public employer after [ten] fifteen days have elapsed following [submission to] appointment by the Board of [the report and recommendations of the fact-finder applicable] a mediator to such impasse.

It shall be served upon the other party to the impasse immediately.

Paragraph (d) of §205.7, which granted a right to a stenographic record of the arbitration proceeding on request to PERB, with the cost to be borne either by the party requesting the record or divided between the parties is inconsistent with the statute, as amended, and we propose to delete that paragraph.

[(d) Both parties shall have a right to a stenographic record taken of the arbitration proceeding. A request for a stenographic record must be made in writing to the Board within seven days after the designation of the public arbitration panel. The cost of such record shall be paid by the party requesting it or divided equally between both parties if both make such request. If a stenographic record is requested by either party, three copies of the transcript shall be provided to the arbitration panel.]

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2A-9/8-9/77

In the Matter of :
 :
BOARD OF EDUCATION AND ADMINISTRATION OF :
THE RANDOLPH CENTRAL SCHOOL DISTRICT, : BOARD DECISION AND ORDER
 :
Respondent, :
 :
-and- :
 : CASE NO. U-2357
RANDOLPH CENTRAL SCHOOL TEACHERS :
ASSOCIATION, LOCAL 2946, :
 :
Charging Party. :
 :

This matter comes to us on the exceptions of Randolph Central School Teachers Association, Local 2946 (Local 2946) from a hearing officer's decision dismissing its charge that the Board of Education and Administration of the Randolph Central School District (School District) violated §209-a.1(a), (b), (c) and (d) of the Taylor Law when it refused to process a grievance that had been initiated by Local 2946. The hearing officer determined that, under the contract which had been agreed to by the School District and Local 2946, the latter lacks standing to invoke the grievance procedure. The agreement provides that a grievance may only be brought by a teacher.

In its exceptions, Local 2946 contends that the Taylor Law establishes a statutory right for a recognized or certified employee organization to represent in grievances the employees in the negotiating unit and that such right encompasses the right of the organization to initiate and process grievances without regard to whether or not the agreement by its terms permits it to do so.

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Two provisions of the Taylor Law are relevant -

Section 204.2 provides:

"Where an employee organization has been certified or recognized pursuant to the provisions of this article, the appropriate public employer shall be, and hereby is, required to negotiate collectively with such employee organization in the determination of, and administration of grievances arising under, the terms and conditions of employment of the public employees as provided in this article, and to negotiate and enter into written agreements with such employee organizations in determining such terms and conditions of employment."

Section 208 provides that a public employer shall extend to a certified or recognized employee organization the following rights, among others:

"(a) to represent the employees in negotiations notwithstanding the existence of an agreement with an employee organization that is no longer certified or recognized, and in the settlement of grievances;"

Thus, §204.2 confers authority on the duly recognized or certified employee organization to negotiate a grievance procedure as the mechanism for the practical administration of complaints addressed to the observance of the substantive terms of the collective agreement. The authority to negotiate and fashion such a mechanism by agreement obviously extends to the inclusion in the design of the essential provision as to how the procedure may be invoked. We do not read these two sections of the law to mandate that an employee organization have a right to initiate a grievance where, as here, the employee organization has agreed that grievances may be initiated only by teachers. Section 208 grants to the duly recognized or certified employee organization the right to represent employees in the unit in the settlement of grievances arising, as well, under a subsisting agreement previously negotiated by a displaced representative. The two provisions read together do not mean, however, that the right to negotiate and the exclusive right to represent includes the absolute right to initiate.

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Local 2946 has agreed that recourse to the grievance procedure should be reserved exclusively to the individual aggrieved teacher. The stipulated record before us does not in any way indicate that, by giving the sole right to invoke the grievance procedure to the individuals, Local 2946 intended to deprive the unit employees of the beneficial force of its exclusive negotiating status or to relax its vigilance in protecting the integrity of the basic agreement. The sole issue before us, therefore, is whether the public policy of the Taylor Law nevertheless requires the School District to process a grievance brought by Local 2946 on its own initiative. We hold that it does not. Our holding is restricted to the particular charge before us. We do not, and need not, here pass upon other issues which may be presented by charges in other cases arising under §208, such as, for example, the propriety of a public employer's attempt to deny a union any participation or representation in a grievance arbitration proceeding even if the employer relied upon a contractual provision authorizing such exclusion.

The final question is whether the hearing officer erred in interpreting the agreement. Local 2946 argues that the meaning of the agreement was not before him as its improper practice charge raised only an issue of statutory interpretation. We reject this argument. In Matter of St. Lawrence County, 10 PERB ¶3058, we recently adopted the dissenting opinion in Matter of Town of Orangetown, 8 PERB ¶3042. Consequently, the Board will not pass upon a question of contractual interpretation where the charge alleges that a mere violation of a contract in and of itself constitutes unlawful unilateral action. We noted, however, that in order to determine whether an improper practice has been committed for other reasons, interpretation of a contract may be necessary. This would be so, for example, where it is alleged that "...an employee organization has waived its right to negotiate on a particular subject so as to permit unilateral action by an employer...." The instant situation presents a


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comparable circumstance. The hearing officer properly considered the contract so as to determine whether Local 2946 had agreed in the negotiated procedure that it would not file a grievance on its own initiative.


We affirm the findings of fact and conclusions of law of the hearing officer.

ACCORDINGLY, WE ORDER that the charge herein be, and it hereby is,
dismissed.

DATED: New York, New York
September 8, 1977



Joseph R. Crowley



Ida Klaus

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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

#2B-9/8-9/77

MINEOLA TEACHERS ASSOCIATION,

Respondent,

: BOARD ORDER

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

CASE No. D-0137

On February 16, 1977 this Board issued a decision and order in this proceeding finding that the Mineola Teachers Association violated Civil Service Law Section 210.1 in that it engaged in a seven-day strike during October 1976 and directed the suspension of the dues deduction privileges of the Association for a period of time during which sixty (60%) per cent of its annual dues would otherwise be deducted.

The Association has filed a motion requesting this Board to stay the operation of the said order pending the outcome of litigation questioning the constitutionality of the penalty procedures relating to Civil Service Law Section 210.3. A recent decision in Buffalo Teachers Federation, Inc. v. Helsby, et. al. in the U. S. District Court for the Southern District of New York has concluded that said procedures may unconstitutionally deny equal protection of the law.

If we were to grant the request of the Association we would be, in effect, suspending the operation of Civil Service Law Section 210.3. We do not believe that such suspension is justified pending final resolution of such issue. Accordingly, we deny the motion of Mineola Teachers Association.

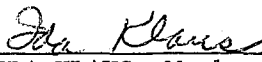
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WE ORDER that the motion of Mineola Teachers Association to stay
the operation of this Board's order of February 16, 1977
in this proceeding is hereby denied.

DATED: New York, New York
September 8, 1977



JOSEPH R. CROWLEY, Member



IDA KLAUS, Member

NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD

Im the Matter of :
DIVISION 100, LOCAL 144, SERVICE EMPLOYEES : Case No. D-0151
INTERNATIONAL UNION, AFL-CIO (East Islip :
Custodial, Maintenance and Bus Drivers Unit) : BOARD DECISION
 : & ORDER
upon the Charge of Violation of Section 210.1 :
of the Civil Service Law. :
:

On June 21, 1977, Martin L. Barr, Counsel to this Board, filed a charge alleging that Division 100, Local 144, Service Employees International Union, AFL-CIO (East Islip Custodial, Maintenance and Bus Drivers Unit) (hereinafter: Respondent), had violated Civil Service Law §210.1 in that it caused, instigated, encouraged, condoned and engaged in a four day strike against the East Islip School District during the period May 23, 1977 through May 26, 1977.

The Respondent did not file an answer to the charge and thus admitted its allegations. Furthermore, Respondent agreed to forego its right to present evidence at a hearing scheduled to develop a record for the purpose of fixing the duration of the forfeiture and joined the Charging Party in recommending a penalty of loss of dues checkoff privileges for six months.

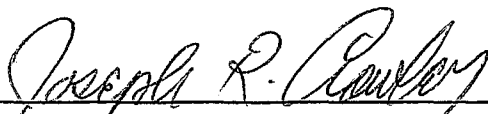
On the basis of the unanswered charge, we determine that the recommended penalty is a reasonable one.

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We find that Division 100, Local 144, Service Employees International Union, AFL-CIO (East Islip Custodial, Maintenance and Bus Drivers Unit) violated CSL §210.1 in that it engaged in a strike as charged.

WE ORDER that the dues deduction privileges of Division 100, Local 144, Service Employees International Union, AFL-CIO (East Islip Custodial, Maintenance and Bus Drivers Unit) be suspended for a period of six months commencing on the first practicable date. Thereafter, no dues shall be deducted on its behalf by the East Islip School District until Division 100, Local 144, Service Employees International Union, AFL-CIO (East Islip Custodial, Maintenance and Bus Drivers Unit) 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
September 8, 1977



Joseph R. Crowley



Ida Klaus

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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of : #2D-9/8-9/77
PLAINEDGE UNION FREE SCHOOL DISTRICT, :
Employer, : BOARD DECISION
- and - : Case No. C-1472
DIVISION 1181-1061 AMALGAMATED TRANSIT :
UNION, AFL-CIO, :
Petitioner. :

On January 28, 1977, Division 1181-1061 Amalgamated Transit Union, AFL-CIO (petitioner) filed, in accordance with the Rules of Procedure of the Public Employment Relations Board, a timely petition for certification as the exclusive negotiating representative of certain employees employed by the Plainedge Union Free School District.

The parties executed a consent agreement wherein they stipulated that the negotiating unit would be as follows:

Included: All drivers, matrons, dispatcher-drivers, couriers and mechanics.

Excluded: All those within any other negotiating unit as of the date of this agreement and all other employees.

Pursuant to the consent agreement, a secret mail-ballot election was held, and the ballots were counted on June 7, 1977. The results of this election indicate that the majority of eligible voters in the stipulated unit who cast valid ballots do not desire

Board - C-1472


to be represented for purposes of collective negotiations by the petitioner.^{1/}

Accordingly, the petition should be, and it hereby is, dismissed.

Dated: New York, New York
September 8, 1977



Joseph R. Crowley



Ida Klaus

^{1/} Of thirty-five ballots received, 17 were cast for and 17 against representation by the petitioner. One ballot was challenged; the challenge was sustained by the Director of Public Employment Practices and Representation in a decision dated August 12, 1977.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2E-9/8-9/77

In the Matter of
ADDISON CENTRAL SCHOOL DISTRICT,
Employer,
-and-
CIVIL SERVICE EMPLOYEES ASSOCIATION,
INC., ADDISON SCHOOL UNIT OF THE
STEUBEN COUNTY CHAPTER,
Petitioner.

BOARD DECISION & ORDER

CASE NO. C-1489

On May 9, 1977, Civil Service Employee Association, Inc., Addison School Unit of the Steuben County Chapter (petitioner) filed, in accordance with the Rules of Procedure of the New York State Public Employment Relations Board, a timely petition for certification as the exclusive negotiating representative of certain non-instructional employees employed by the Addison Central School District. Thereafter, the parties entered into a consent agreement in which they stipulated to the following as the appropriate negotiating unit:

INCLUDED: All permanent full and part time non-teaching personnel (non-certificated) employed by the District.

EXCLUDED: Itinerant substitutes, seasonal or temporary employees, student employees and employees in the following job titles: secretary to the district principal; district treasurer/sr. acct. clerk; district clerk/sr. stenographer; payroll clerk; tax collector; superintendent of bldgs. and grds.; transportation supervisor; school lunch manager; school physician; elementary principal's typist; high school principal's typist; administrative asst. typist.

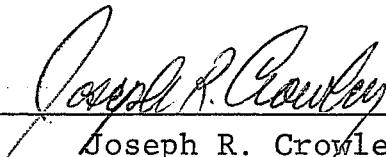
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The consent agreement was approved by the Director of Public Employment Practices and Representation on July 8, 1977.


Pursuant to the consent agreement, a secret ballot election was held on August 26, 1977. The results of this election indicate that a majority of the eligible voters in the stipulated unit who cast ballots do not desire to be represented for purposes of collective negotiations by the petitioner.^{1/}

THEREFORE, IT IS ORDERED that the petition should be, and hereby is, dismissed.

Dated at New York, New York
This 8th day of September, 1977



Joseph R. Crowley



Ida Klaus

^{1/} Of the 69 employees participating in the election, 30 voted in favor of and 39 voted against representation by the petitioner.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of :
Poughkeepsie Housing Authority, : #2F-9/8-9/77
Employer, :
- and - :
SCHOOL AND LIBRARY EMPLOYEES, LOCAL : CASE NO. C-1488
UNION NO. 74, SERVICE EMPLOYEES :
INTERNATIONAL UNION, AFL-CIO, :
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 the School and Library Employees, Local Union No. 74, Service Employees International Union, AFL-CIO 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.

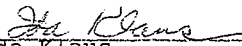
Unit: INCLUDED: All full-time, part-time and seasonal building and maintenance personnel employed by the employer.

EXCLUDED: All other employees of the employer.

Further, IT IS ORDERED that the above-named public employer shall negotiate collectively with the School and Library Employees, Local Union No. 74, Service Employees International Union, AFL-CIO, 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 8th day of September, 1977.


Joseph R. Crowley


Ida Klaus

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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of :
COUNTY OF ORLEANS AND SHERIFF OF : #2G-9/8-9/77
ORLEANS COUNTY, :
Joint Employer, :
- and - :
SECURITY AND LAW ENFORCEMENT :
EMPLOYEES, COUNCIL 82, AFSCME, : CASE NO. C-1483
Petitioner, :
- and - :
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 the Security and Law Enforcement Employees, Council 82, AFSCME

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.

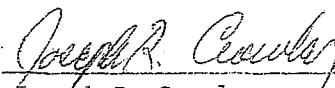
Unit: Included: All employees of the Sheriff's Department of the County of Orleans.

Excluded: Sheriff, undersheriff and any seasonal, temporary or part-time employees.

Further, IT IS ORDERED that the above-named public employer shall negotiate collectively with the Security and Law Enforcement Employees, Council 82, AFSCME,

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 8th day of September, 1977.


Joseph R. Crowley



Ida Klaus

4858



4F-9/8-9/77

BOARD MEMBERS
ROBERT D. HELSBY
CHAIRMAN
JOSEPH R. CROWLEY
IDA KLAUS

NEW YORK STATE
PUBLIC EMPLOYMENT RELATIONS BOARD
50 WOLF ROAD
ALBANY, NEW YORK 12205

September 9, 1977

Mr. Philip L. Toia
Director of the Budget
State Capitol
Albany, New York 12224

Dear Mr. Toia:

On August 16 and again on August 24, PERB's Executive Director requested of the Division of the Budget permission to increase the per diem rate paid to members of our panels of mediators and factfinders. The per diem is \$125; the request was to increase that to \$150.

Substantial documentation was provided to the Budget justifying the increase. The most compelling argument for such an increase rests in the fact that the New Jersey Public Employment Relations Commission presently pays \$200 per day to its per diem mediators, most of whom serve on the New York Board's panels as well. The result has been that our agency has sustained the loss of service by some of our better per diem people because they can do similar work for New Jersey and be paid substantially more.

We have been told that the Division of the Budget denied the agency's request to increase the per diem rate because there is involved a major commitment of funds for the remaining six months of the present fiscal year and for subsequent fiscal years, and that with a new chairman likely to be appointed sometime soon, the new chairman may desire to commit funds in other areas rather than in the conciliation function. We, the two members who now comprise the Public Employment Relations Board, urge that the Division of the Budget approve the increase at this time. The most sensitive and, indeed, the most visible activity engaged in by PERB is in its conciliation workload. If we continue to fall short in terms of what we are prepared to pay per diem mediators and factfinders (who generally work evenings, weekends and holidays with no provision for out-of-pocket expenses), we do a serious disservice to parties who need service in resolution of contract disputes.

We appeal to you to reverse the interim decision that has been made by the Division of the Budget and urge you to permit the increase in the per diem rate to become effective October 1, 1977. We are attaching copies of the original correspondence requesting the increase so that you may be fully acquainted with all of the arguments presented.

Ida Klaus
Ida Klaus, Board Member

Sincerely,

Joseph R. Crowley
Joseph R. Crowley, Board Member

Attchs.

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NEW YORK STATE
PUBLIC EMPLOYMENT RELATIONS BOARD
50 WOLF ROAD
ALBANY, NEW YORK 12205

BOARD MEMBERS

ROBERT D. HELSBY
CHAIRMAN

JOSEPH R. CROWLEY

~~XXXXXXXXXX~~

Ida Klaus

EXECUTIVE DIRECTOR
RALPH VATALARO

August 16, 1977

Mr. Lowell Walker
NYS Division of the Budget
State Capitol
Albany, NY 12224

Dear Lowell:

As you may recall, PERB historically compensated its per diem mediators and fact finders at the rate of \$100; that rate was established in 1967 and prevailed until 1976 when we were able to persuade both Budget and the Legislature of the pressing needs to increase the rate to \$150.

PERB subsequently was required, by the Division of the Budget and the Legislature to reduce costs substantially and at that time, we proposed to Budget a plan that, among other things reduced the per diem from \$150 to \$125. The savings that accrued from that reduction was approximately \$50,000.

Since last year, we have continued to pay \$125 and, quite frankly, we feel that the cut was a disservice to our panel members who ordinarily receive more than \$150 when working for other states or while working as arbitrators in the private sector. Moreover, all members of our panels were asked to donate one case to PERB when we were in serious financial trouble a couple of years ago. All responded affirmatively, and in fact, a dozen or so of our panel members donated more than one case. We estimated the contributed services at \$43,000.

We are now requesting approval to increase the per diem from \$125 to \$150.

We believe this is a justified request for the reasons noted above. In addition to those reasons, I would also point out that the Legislature has approved in the Supplemental Budget an increase of \$50 per diem for our two part-time Board members, bringing the new per diem up to \$150.

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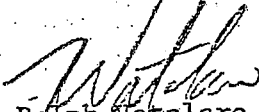
Mr. Lowell Walker

Page 2

We are presently experiencing a good overall expenditure program. That is, we continue to show savings each month, and we continue to carry several vacancies which result in considerable savings to the agency. I am confident that the increase of \$25 per diem for our panel members will not cause us to go beyond our ceiling for fiscal 1977-78.

I respectfully ask that the Budget approve this request and invite whatever questions or additional information you may seek.

Sincerely,



Ralph Vatalaro
Executive Director

RV:bf

P.S. This proposal is intended to become effective October 1, 1977.

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NEW YORK STATE
PUBLIC EMPLOYMENT RELATIONS BOARD
50 WOLF ROAD
ALBANY, NEW YORK 12205

BOARD MEMBERS
ROBERT D. HELSBY
CHAIRMAN
JOSEPH R. CROWLEY
~~XXXXXXXXXX~~
Ida Klaus

EXECUTIVE DIRECTOR
RALPH VATALARO

August 24, 1977

Mr. Lowell Walker
NYS Division of the Budget
State Capitol
Albany, NY 12224

Dear Lowell:

As a follow up of my original letter requesting approval to increase the per diem rate for our panels of mediators and fact finders, I'm writing to provide you with the following additional information.

The state that most closely compares to New York is New Jersey. It closely resembles our operations in many respects including workload, staffing, etc. It maintains panels of per diem mediators and fact finders just as we do in New York. The New Jersey Board is paying \$200 per day to mediators serving on an ad hoc basis. That rate does not include actual and necessary expenses incurred by those persons in such capacity. The rate is paid for a work day consisting of five hours or less. In fact-finding, the parties are required to share costs and the state imposes a ceiling on what a fact finder may charge. That ceiling is \$250. The same ceiling applies to arbitrators working in police and firefighter disputes. The New Jersey law actually provides for payment of panel fact finders by the New Jersey Board, but the Legislature each year reduces the Board's appropriation in the amount that the Board would need to pay for fact-finding. Thus, the Board by its own policy requires the parties to share in the fact-finding costs.

In Wisconsin, the per diem and expenses of panel members are also shared by the parties; the rate most commonly charged is \$250 per day. A few panel members in Wisconsin receive \$300 per day and some others receive \$200 per day.

The Office of Collective Bargaining in New York City permits panel members to charge \$250 per day; this cost is shared by the parties.

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Mr. Lowell Walker
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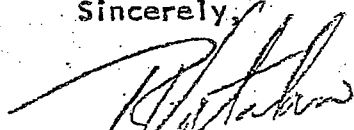
As a general proposition, arbitrators working in grievance matters are charging daily fees of between \$200 and \$300 per day. Those at the higher level are generally members of the National Academy who perform arbitration services in the private sector and receive the same fee when handling grievance arbitrations for PERB or other public sector boards. Those fees are shared by the parties.

Our rate is obviously lower than the rates charged in any of the jurisdictions mentioned herein. It is true that except for the mediation panel in New Jersey, the other fees are a charge back to the parties receiving the service and they are shared equally. Our statute does not permit sharing of costs by the parties except in the interest arbitration cases for police and firefighter bargaining units.

We continue to experience some difficulty in competing, particularly with the New Jersey agency because it utilizes many of the same people on our panels. The proximity of New Jersey to New York is obviously the reason. We have lost some extremely talented panel members due to the fact that our rate is low, and we do not permit billing of expenses. We have tried over the years to assign panel members in their respective geographic areas so that few costs are incurred by the panel members in connection with our work.

To maintain a consistent level of competence among our panel members, it is important that we increase the rate to a level that is reasonably competitive with New Jersey and some of the other jurisdictions. For these reasons and for those cited in my original letter, I would urge that the Division of the Budget approve our request to increase the per diem rate from \$125 to \$150 effective October 1, 1977. I can foresee no problem in keeping within our expenditure ceiling if the rate is increased.

Sincerely,



Ralph Vatalaro
Executive Director

RV:sc

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