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9-30-1977

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

New York State Public Employment Relations Board

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# State of New York Public Employment Relations Board Decisions from September 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

#2A-9/30/77

In the Matter of

NORTH SHORE UNION FREE SCHOOL DISTRICT,

Respondent,

-and-

NORTH SHORE SCHOOLS FACULTY ASSOCIATION,

Charging Party.

BOARD DECISION AND ORDER

CASE NO. U-2286

This matter comes to us on the exceptions of both the North Shore Schools Faculty Association (charging party herein) and of the North Shore Central School District (respondent herein) to different parts of a hearing officer's decision. The charge had complained about two different actions of the respondent. It alleged that respondent had committed an improper practice by:

- "1 - abolishing a unit position, nurse-teacher, and creating the non-unit position of registered nurse as a substitute for the abolished position, and
- 2 - unilaterally adopting and implementing a change in its observation and evaluation procedure without negotiating said change with the association."

The hearing officer found merit in the first specification in the charge, but not in the second specification. Respondent filed exceptions to that part of the hearing officer's decision which found it in violation of §209-a.1(d) of the Taylor Law in that it unilaterally converted the position of nurse-teacher, which had been included in the unit, into the position of registered nurse, which it treated as not being in the unit and for which it set terms and conditions of employment unilaterally. The charging party filed exceptions to that part of the hearing officer's decision which found that respondent's adoption of a new evaluation system was not an improper unilateral action. The

The public employer could unilaterally eliminate a nurse-teacher position and substitute for it a nurse position with substantially different duties. As this record lacks evidence on the amount of time that any nurse-teacher had spent in classroom teaching without supervision, we cannot accept the assumption of the hearing officer that it was minimal. However, even if the employer could properly have substituted one position for the other, it does not follow that the new position would not be deemed to be encompassed in the existing unit, in which case, there would be a question as to whether the employer could properly set the salary scale for it unilaterally. The unit coverage of the new position is dependent upon its actual duties as well as on the definition of the existing unit and its past interpretation by the parties. The recognition clause of the former agreement specifically covered "the professional personnel of the district (hereinafter referred to as 'teachers') including all curriculum associates, psychologists, nurse-teachers,...." There is not sufficient evidence in the record to determine whether the newly created position of nurse -- which is that of a professional, but not of a "teacher", is included in the unit as agreed to and described by the parties.<sup>1</sup> Accordingly, we remand this case to the hearing officer to obtain further evidence on the teaching duties of both the nurse-teacher and the nurse positions and on the meaning of the unit description and to make a further report.

#### The Evaluation Procedures

We also remand this issue to the hearing officer for additional evidence and for a further report.

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<sup>1</sup> It is a separate question whether, if not now included, the nurse should be added to the unit by application of the standards set forth in §207 of the Taylor Law. That question can only be answered in a representation proceeding.

arguments of the parties and the discussion in the hearing officer's opinion are primarily directed to the question of whether either of the employer's actions was a management prerogative, in which event there would have been no duty to negotiate. The hearing officer concluded that the reassignment of duties formerly exercised by a nurse-teacher -- a title within the negotiating unit represented by charging party -- to a newly created title of registered nurse -- a title which the employer treated as not being in their negotiating unit -- was not a management prerogative. Accordingly, he ruled that respondent had a duty to negotiate about this action. He also concluded that the change in the evaluation system that had been adopted by respondent was a management prerogative and that it had no obligation to negotiate with respect to this matter.

#### The Nurse-Teacher/Nurse Positions

In its exceptions, the employer argues that in abolishing the position of nurse-teacher and substituting the position of nurse, it had set different duties for the positions. Although the nursing duties remained the same, the teaching duties had been altered. A nurse-teacher is authorized to teach a class without supervision; a nurse may only teach a class under the supervision of a certified teacher. The hearing officer acknowledged that the employer had a right to curtail the services that it offered and to eliminate a nurse-teacher position unilaterally. However, he determined that the employer violated its duty to negotiate when it placed the substituted position of nurse outside the negotiating unit and established a salary schedule for that position without negotiating about the matter. In support of that determination, he found that the duties of the nurse-teacher were substantially unchanged upon assignment to the nurse, because the former teaching duties appeared to have been minimal.

The hearing officer is correct that the employer could have changed from a subjective evaluation system to an objective one unilaterally. It appears, however, that what charging party is seeking is to negotiate as to the impact of such a unilateral change on terms and conditions of employment. The hearing officer should report as to whether there is any such impact.

ACCORDINGLY, this case is remanded to the hearing officer for further action in accordance with this opinion.

Dated: New York, New York  
September 30, 1977

  
\_\_\_\_\_  
JOSEPH R. CROWLEY

  
\_\_\_\_\_  
IDA KLAUS

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

#2B-9/30/77

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In the Matter of :

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

Employer, :

-and- :

BOARD DECISION & ORDER

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HEALTH SCIENCES COUNCIL, :

Petitioner, :

CASE NO. C-1422

-and- :

UNITED UNIVERSITY PROFESSIONS, INC., :

Intervenor. :

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The matter herein was commenced by the filing of a petition by the Health Sciences Council (petitioner) for decertification of the United University Professions, Inc. (UUP), and for certification of itself as the exclusive negotiating representative of a unit consisting of some 325 academic and non-academic professional employees of the State University of New York (SUNY). Although SUNY maintains health sciences centers at four separate locations, the personnel sought to be represented by petitioner are all employed exclusively at its Stony Brook facility.

Petitioner contends that these employees have a separate community of interest so distinct from overall university personnel as to warrant a separate negotiating unit. Both SUNY and UUP contend that the existing university-wide unit of faculty and non-faculty employees should be perpetuated without fragmentation.

At the outset it should be noted that in an early decision, this Board held that a single, statewide unit for SUNY employees was

most appropriate [State of New York (State University of New York), 2 PERB 3492 (1969)]. In 1974, the Director of Public Employment Practices and Representation had occasion to re-examine the issue, but found no reason to alter the prior unit determination [State of New York (State University of New York), 7 PERB 4007]. Neither decision, of course, is ipso facto determinative of the instant proceeding. Therefore, pursuant to his investigatory function, the Director ordered the petitioner to submit an affidavit by which it could indicate any change in circumstances which might dictate a contrary ruling. The Director did not schedule an evidentiary hearing; rather, he used the affidavit to determine whether or not such a hearing was necessary. Concluding in the negative, the Director dismissed the petition, holding:

\*\*\*Without determining whether a unit limited to the health sciences centers would be most appropriate, I find that the Council's proposed unit is too narrow....

Petitioner has taken exception to this "decision upon affidavit" and contends that a hearing is required.

In ordering petitioner to submit a supporting affidavit for use in determining whether an evidentiary hearing was warranted, the Director properly exercised the discretion inherent in his investigatory role; the procedure serves to eliminate those claims which are clearly unmeritorious. Nevertheless, we reject his conclusion that the instant proceeding be dismissed without such a hearing. The affidavit submitted by petitioner contains allegations concerning Stony Brook's mission, working conditions, terms of employment, and special concerns which, if proven, might raise substantial questions regarding the propriety of retaining its Health Sciences community within the overall, statewide unit. The petitioner should be afforded the opportunity to present and elicit such proof at an evidentiary hearing. Only in that

fashion will the information be provided necessary to determine whether the employees sought to be represented by petitioner have a community of interest sufficiently distinct as to warrant their exclusion from the single, university-wide unit.

ACCORDINGLY, this matter is remanded to the Director with directions to schedule an evidentiary hearing bearing upon the appropriate negotiating unit.

Dated at New York, New York  
This 30th day of September, 1977

  
\_\_\_\_\_  
Joseph R. Crowley

  
\_\_\_\_\_  
Ida Klaus

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of : #2C-9/30/77  
: COUNTY OF DUTCHESS, :  
: Employer, :  
: - and - :  
: DUTCHESS COUNTY UNIT, DUTCHESS COUNTY : CASE NO. C-1514  
: CHAPTER, CIVIL SERVICE EMPLOYEES :  
: ASSOCIATION, INC., :  
: 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 Dutchess County Unit, Dutchess County Chapter, 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.

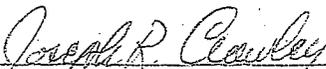
Unit: Included: All employees of the employer.

Excluded: All titles contained in attached Appendix A and Administrative Officer (Community Mental Health) Department of Mental Hygiene; Director of Social Services, Department of Social Services; Director of Administrative Services, Department of Health; Director of Patient Services, Department of Health; Public Health Administrator, Grade II, Environmental Health Services, Department of Health; Superintendent of Construction and Maintenance, Department of Public Works; Senior Engineer, Department of Public Works; Legal Stenographer, Department of Law; Senior Stenographer, County Legislature; Senior Stenographer, County Executive; Personnel Technician, Personnel Department and Equal Employment Opportunity Officer, Personnel Department.

Further, IT IS ORDERED that the above-named public employer shall negotiate collectively with the Dutchess County Unit, Dutchess County Chapter, 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 30 day of September, 19 77.

  
Joseph R. Crowley

  
Ida Klaus

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TITLES EXCLUDED FROM THE NEGOTIATING UNIT

The positions which are excluded from the negotiating unit include, but are not limited to, the following:

Assistant to the Chairman	Commissioner of Social Services
Assistant County Attorneys	Commissioner of Solid Waste
Assistant to County Executive	Community College -all faculty & administrators
Assistant District Attorneys	Comptroller
Assistant Medical Examiners	Confidential Attendant
Attorneys	Confidential Law Secretary
Board of Elections-all employees	County Attorney
Budget Director	County Executive
Chief Clerk - Family Court	County Legislators
Chief Clerk - Surrogates Court	County Veterinarian
Civil Defense Director	Court Clerk III (Cal. Clerk)
Clerk of the Legislature	Court Clerk II (Cal. Clerk)
Commissioner of Aviation	Court Crier
Commissioner of Finance	Deputy Chief Clerk
Commissioner of Health	Deputy Civil Defense Director
Commissioner of Jurors	Deputy Clerk of the Legislature
Commissioner of Mental Hygiene	Deputy Commiss. of Aviation
Commissioner of OCIS	Deputy Commiss. of Finance 1st & 2nd
Commissioner of Parks & Recreation	Deputy Commiss. of Jurors
Commissioner of Personnel	Deputy Commiss. of OCIS
Commissioner of Planning	Deputy Commiss. of Personnel
Commissioner of Public Works	Deputy Commiss. of Planning

Deputy Commissioner Public Works  
Deputy Commissioner of Social Services  
Deputy Comptroller  
Deputy County Clerks  
Deputy Director of Veterans Affairs  
Deputy Director of Real Property Tax  
Deputy Health Commissioner  
Deputy Public Defenders

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Deputy Sealer of Weights & Measures

Director, Office for the Aging

District Attorney

Executive Director, Youth Board

Executive Secretary

Fire Coordinator

First Investigator

Historian

Investigator (District Attorney)

Jail - all employees

Judges

Law Secretary to Judge

Legislative Aides

Manpower Director

Medical and Dental Director

Medical Examiner

Probation Director

Purchasing Agent

Sealer of Weights & Measures

Secretary to the President, Community College

Sheriff - all employees

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of :  
VILLAGE OF MONROE, : #2D-9/30/77  
Employer, :  
- and - : CASE NO. C-1516  
INTERNATIONAL BROTHERHOOD OF :  
ELECTRICAL WORKERS, LOCAL 363, :  
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 International Brotherhood of Electrical Workers, Local 363, AFL-CIO

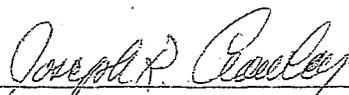
has been designated and selected by a majority of the employees of the above-named public employer, in the unit described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: INCLUDED: All Highway and Water Department Employees.  
EXCLUDED: Superintendent of Highway Department,  
Superintendent of Water Department,  
Control Clerk in Water Department and  
temporary and seasonal employees.

Further, IT IS ORDERED that the above-named public employer shall negotiate collectively with the International Brotherhood of Electrical Workers, Local 363, 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 30 day of September, 1977.

  
Joseph R. Crowley

  
Ida Klaus

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of :  
TOWN OF MONROE, : #2E-9/30/77  
Employer, :  
- and - : CASE NO. C-1519  
LOCAL 363, INTERNATIONAL BROTHERHOOD :  
OF ELECTRICAL WORKERS, 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 International Brotherhood of Electrical Workers, AFL-CIO, Local 363

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 Highway Department employees.  
EXCLUDED: Superintendent of Highways, temporary and seasonal employees.

Further, IT IS ORDERED that the above-named public employer shall negotiate collectively with the International Brotherhood of Electrical Workers, AFL-CIO, Local 363

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 September , 19 77 .

*Joseph R. Crowley*  
\_\_\_\_\_  
Joseph R. Crowley

*Ida Klaus*  
\_\_\_\_\_  
Ida Klaus



#3A-9/30/77

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

270 Broadway  
New York, New York 10007

September 30, 1977

Hon. Abraham Beame  
Mayor, City of New York  
City Hall  
New York, New York 10007

Dear Mayor Beame:

In a recent decision of the United States District Court (Buffalo Teachers Federation, Inc. v. Helsby, et al., S.D.N.Y., Judge Marvin E. Frankel, decided July 29, 1977) it has been held that the disparate treatment of employee organizations whose strikes come under this Board's jurisdiction with respect to forfeiture of membership dues deduction rights compared to those employee organizations whose strikes are exempt from this Board's jurisdiction by reason of Section 212 of the Civil Service Law, contravenes the Equal Protection Clause of the U.S. Constitution. That decision has prompted this Board to review whether the collective bargaining procedures of the City of New York are presently substantially equivalent to the provisions and procedures of Article 14 of the Civil Service Law (the Taylor Law), as required by Section 212 of the Civil Service Law. In this regard, we believe it is significant that this Board has required, as a prerequisite to approval of the establishment of all other local boards, that they be empowered to direct forfeiture of membership dues deduction rights of employee organizations found to have engaged in a strike. The New York City Office of Collective Bargaining, the establishment of which was not subject to prior approval of our Board, is the only local board whose procedures do not so provide.

Therefore, it is the conclusion of this Board that the City of New York's collective bargaining procedures (set forth in Chapter 54 of the New York City Charter and Chapter 54 of the Administrative Code) are not substantially equivalent to the provisions and procedures of the Taylor Law because the New York City procedures do not include provisions and procedures substantially equivalent to subdivision 3 of Section 210 of the Civil Service Law, which provides for the forfeiture of the membership dues deduction rights of employee organizations found to have engaged in a strike.

This is to advise you that this Board has concluded that the discharge of its statutory responsibilities requires it to institute a declaratory judgment action for a determination that the City of New York's collective bargaining procedures are not substantially equivalent to the provisions and procedures set forth in the Taylor Law unless the City of New York promptly enacts provisions and procedures substantially equivalent to subdivision 3 of Section 210 of the Civil Service Law.

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The requirement of substantial equivalency calls for provisions and procedures similar to those contained in Section 210.3(b) through (g) of the Civil Service Law. However, as we have advised all other local governments, to avoid the possible imposition of a double penalty a clause may be appended to the counterpart of Section 210.3(c) to the effect that a proceeding need not be instituted if an application to punish for contempt has been made pursuant to Section 211 of the Civil Service Law and such application terminates in a judgment on the merits.

We would request a response within two weeks as to your intentions in regard to this matter.

Very truly yours,

  
\_\_\_\_\_  
Joseph R. Crowley

  
\_\_\_\_\_  
Ida Klaus

cc: Hon. Arvid Anderson, Chairman  
NYC Office of Collective Bargaining  
270 Broadway - 28th Floor  
New York, N.Y. 10007

Mr. Anthony Russo, Director  
Office of Municipal Labor Relations  
250 Broadway  
New York, N.Y. 10007

Mr. Victor Gotbaum, Chairman  
Municipal Labor Committee  
140 Park Place  
New York, N.Y. 10007

Hon. Judah Gribetz,  
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Capitol  
Albany, N.Y. 12224

Hon. Louis J. Lefkowitz  
Attorney General  
Capitol  
Albany, N.Y. 12224

Hon. Warren M. Anderson  
Senate Majority Leader  
Capitol  
Albany, N.Y. 12224

Hon. Stanley Steingut  
Speaker of the Assembly  
Capitol  
Albany, N.Y. 12224

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