



Cornell University
ILR School

Cornell University ILR School
DigitalCommons@ILR

Board Decisions - NYS PERB

New York State Public Employment Relations
Board (PERB)

10-19-1977

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

New York State Public Employment Relations Board

Follow this and additional works at: <http://digitalcommons.ilr.cornell.edu/perbdecisions>

Thank you for downloading an article from DigitalCommons@ILR.

Support this valuable resource today!

This Article is brought to you for free and open access by the New York State Public Employment Relations Board (PERB) at DigitalCommons@ILR. It has been accepted for inclusion in Board Decisions - NYS PERB by an authorized administrator of DigitalCommons@ILR. For more information, please contact hlmdigital@cornell.edu.

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

Keywords

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

Comments

This document is part of a digital collection provided by the Martin P. Catherwood Library, ILR School, Cornell University. The information provided is for noncommercial educational use only.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2A-10/19/77

In the Matter of :
STATE OF NEW YORK (Office of Employee Relations), :
Respondent, : BOARD DECISION AND ORDER
-and- :
PUBLIC EMPLOYEE FEDERATION, AFL-CIO, : CASE NO. U-2755
Charging Party, :
-and- :
CIVIL SERVICE EMPLOYEES ASSOCIATION, INC., :
Intervenor. :

The Public Employee Federation, AFL-CIO (hereinafter PEF) filed a charge on June 23, 1977 alleging that the State of New York, through its Office of Employee Relations (hereinafter OER) had violated §209-a.1 (a) and (b) of the Taylor Law ¹ by denying it access for organizational solicitation purposes to employees on the premises of the State. The Civil Service Employees Association, Inc. (hereinafter CSEA) intervened in the proceeding. It argued that PEF's charge should be dismissed because it is not an employee organization within the meaning of §201.5 of the Taylor Law.

A hearing officer's decision was issued on August 22, 1977. The hearing officer found that on May 12, 1977 OER issued a directive to State agencies denying PEF access to State premises for the purpose of soliciting

1 Section 209-a.1 reads, in pertinent part:

"Improper employer practices. It shall be an improper practice for a public employer or its agents deliberately (a) to interfere with, restrain or coerce public employees in the exercise of their rights guaranteed in section two hundred two for the purpose of depriving them of such rights; (b) to dominate or interfere with the formation or administration of any employee organization for the purpose of depriving them of such rights;...."

4943

support. He concluded that OER had not committed an improper practice because its action was neither designed to deprive employees of their right of organization nor was it inherently destructive of such employee rights. PEF has filed exceptions to this part of the hearing officer's decision.

The hearing officer also determined that PEF was an employee organization. CSEA has filed exceptions to that part of the decision.

A representation case (C-1537) is now pending in which the same parties are litigating, among other things, the question whether the representation petition was timely filed.

The question of denial of access cannot be answered without first reaching the question of whether the representation petition was timely. Accordingly, we defer consideration of the PEF exception until receipt of the decision of the Director of Public Employment Practices and Representation (hereinafter the Director) in the representation case. The remaining question is whether PEF is an employee organization within the meaning of the Taylor Law.

PEF was originally formed in 1975 by several employee organizations, among which were the New York State United Teachers (hereinafter NYSUT) and the Service Employees International Union (hereinafter SEIU).

On July 20, 1977, these two employee organizations agreed to continue PEF as a joint activity "for the primary purpose of improving the terms and conditions of employment of public employees." The agreement stated that

"It is further the purpose of the Public Employees Federation to organize the employees of the State of New York in order to represent said employees for the purpose of seeking improvements in wages, hours, and conditions of employment."

PEF has no constitution, by-laws, offices, employees or members. Its activities are directed by John Geagan, Director of Organization of SEIU, and Vito DeLeonardis, Executive Director of NYSUT. Staff facilities and funds are furnished by the two organizations. Geagan testified that, if and when it is certified, the employees in what will then be the PEF negotiating unit would develop the constitution and by-laws that would best suit their needs. He also testified that the explicit purpose of PEF is to supplant CSEA.

DISCUSSION

CSEA argues that PEF does not meet the definition of an employee organization as stated in §201.5 of the Taylor Law. That definition provides:

"The term 'employee organization' means an organization of any kind having as its primary purpose the improvement of terms and conditions of employment of public employees,...."

CSEA advances two arguments in support of its position that PEF is not an employee organization. First, it argues that the primary purpose of PEF is to supplant CSEA and not the improvement of terms and conditions of employment of public employees. The underscored language is CSEA's attorney's reformulation of testimony of Geagan that this was the explicit purpose of PEF.²

It is clear that PEF was created as a vehicle in which NYSUT and SEIU could jointly supplant CSEA as the representative of State employees but that is not inconsistent with the fact that its primary purpose as supported by the record is the improvement of terms and conditions of employment of public employees.

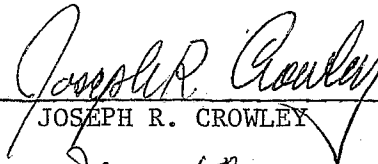
² Elsewhere Geagan testified that it was the "express purpose" of PEF to undertake the challenge of CSEA. Still elsewhere, he testified that "the primary basis, as I stated, was to supplant the incumbent corporation, the Civil Service Employees Association with the Public Employee Federation, and the organization was developed solely for the purpose of representing public employees in the State of New York."

The second argument of CSEA is that PEF is not an organization at all. We find that PEF is an organization within the meaning of the Taylor Law. The absence of current employee members is not, as CSEA argues, controlling. A substantial number of public employees have indicated their support of this organization and their desire to be represented by it for purposes of collective negotiations.

In Matter of East Meadow Public Schools, 1 PERB ¶374 (1968) we determined that the petitioning Federated Service Workers Union was not an employee organization because its structure was such that no employees could ever become members of it. In contrast, the record here indicates that PEF will establish a membership organization if and when it is certified,³ and further that each of its constituent organizations plainly meets the Taylor Law definition.⁴

NOW, THEREFORE, we determine that PEF is an employee organization within the meaning of §201.5 of the Taylor Law.

Dated: New York, New York
October 19, 1977



JOSEPH R. CROWLEY


IDA KLAUS

³ In a related context, in Matter of State of New York, 1 PERB ¶399.85 (1968), we affirmed a decision of Director (1 PERB ¶424) rejecting a contention that CSEA was not an employee organization because managerial employees were active in it on the basis of testimony that it was prepared to restrict active participation in the affairs of any negotiating unit in which it might be certified to members of CSEA who would be within that unit.

⁴ Compare Utility Services, Inc., 158 NLRB No. 52 (1966, 62 LRRM 1099) in which the NLRB held that three unions could be certified jointly to represent employees on a joint basis.



#3A(1)-10/19/77

THE CITY OF NEW YORK
OFFICE OF THE MAYOR
NEW YORK, N.Y. 10007

October 14, 1977

Professor Joseph Crowley
Ms. Ida Klaus
New York State Public Employment
Relations Board
50 Wolf Road
Albany, New York 12205

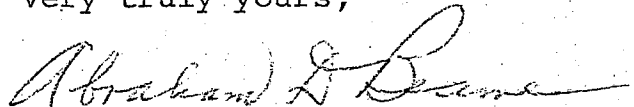
Dear Members Crowley and Klaus:

I have reviewed your letter of September 30, 1977 with care and concern.

Although I do not agree with your legal and substantive conclusions it is evident that the issue you pose is of far reaching significance and raises substantial legal questions and policy considerations. Accordingly, I believe that joint discussions amongst all the interested parties would be fruitful. I am informed that the Board of Collective Bargaining will be tendering an invitation to PERB toward that objective and I have asked the Corporation Counsel and the Director of the Office of Municipal Labor Relations to make themselves available for all such future meetings.

I would appreciate a response from you at your earliest convenience with respect to my suggested discussions.

Very truly yours,


ABRAHAM D. BEAME

4947

Professor Joseph Crowley
Ms. Ida Klaus

-2-

October 14, 1977

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

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

W. Bernard Richland, Esq.
Corporation Counsel
Law Department
Municipal Building - Rm. 1656
New York, New York 10007

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

Hon. Judah Gribetz
Counsel to the Governor
Capitol
Albany, New York 12224

Hon. Louis J. Lefkowitz
Attorney General
Capitol
Albany, New York 12224

Hon. Warren M. Anderson
Senate Majority Leader
Capitol
Albany, New York 12224

Hon. Stanley Steingut
Speaker of the Assembly
Capitol
Albany, New York 12224

4948

OFFICE OF COLLECTIVE BARGAINING

250 Broadway
New York, N. Y. 10007
(212) 566-3900

#3A(2)-10/19/77

N. Y. S. PUBLIC EMPLOYMENT
RELATIONS BOARD
RECEIVED

OCT 17 1977

MR. LEFKOWITZ

DEPUTY CHAIRMEN
THOMAS M. LAURA
MALCOLM D. MACDONALD

EXECUTIVE SECRETARY
JOHN P. MCNAMARA

IMPARTIAL MEMBERS

ARVID ANDERSON
CHAIRMAN
WALTER L. EISENBERG
ERIC J. SCHMERTZ

CITY OF NEW YORK MEMBERS

VIRGIL B. DAY
EDWARD SILVER

LABOR MEMBERS

EDWARD F. GRAY
HARRY VAN ARSDALE, JR.

October 14, 1977

Hon. Joseph R. Crowley
Hon. Ida Klaus
Public Employment Relations Board
50 Wolf Road
Albany, New York 12205

Dear Members Crowley and Klaus:

The Board of Collective Bargaining, at its meeting of October 12, gave careful consideration to the subject matter of your letter of September 30, 1977 to Mayor Abraham D. Beame, a copy of which was addressed to this office. In a covering letter of the same date addressed to me, Deputy Chairman Jeromé Lefkowitz invited our comments.

The issues raised by your letter are clearly of major significance and it was the unanimous view of the Board that PERB members, the BCB and staffs should meet as promptly as possible to discuss appropriate action for resolution of the questions you have put forward.

We are confident that you will agree that matters of such great concern to both the city and the state require the best efforts of all of us and that you will welcome, as we do, an opportunity again to serve the best interests of our respective constituencies through cooperative and constructive joint efforts. We are prepared to arrange such a meeting as soon as you desire. We will

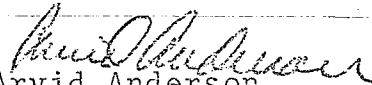
4949

Hon. Joseph R. Crowley
Hon. Ida Klaus

October 14, 1977

therefore look forward to hearing from you with regard to the meeting we propose and to make necessary arrangements.

Sincerely yours,


Arvid Anderson,
Chairman

cc: Hon. Abraham D. Beame
Mayor, City of New York

Board of Collective Bargaining

Hon. Jerome Lefkowitz ✓
Deputy Chairman
Public Employment Relations Board

Hon. Anthony C. Russo, Director
Office of Municipal Labor Relations

Mr. Victor Gotbaum, Chairman
Municipal Labor Committee

Hon. Judah Gribetz
Counsel to the Governor

Hon. Louis J. Lefkowitz
Attorney General

Hon. Warren M. Anderson
Senate Majority Leader

Hon. Stanley Steingut
Speaker of the Assembly



#3A(3)-10/19/77

BOARD MEMBERS
~~ROBERT D. HESSEY~~
CHAIRMAN
JOSEPH R. CROWLEY
IDA KLAUS

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

October 19, 1977

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

Dear Mayor Beame:

We have received your letter of October 14, 1977 proposing that we meet with the Board of Collective Bargaining, the Corporation Counsel and the Director of the Office of Municipal Labor Relations for the purpose of considering whether certain provisions of the New York City Collective Bargaining Law are in compliance with the Taylor Law, and if not, what should be done about the matter. We accept your proposal and will be in touch with Mr. Arvid Anderson by phone to arrange for such a meeting.

Pending such meeting, we do not plan any legal action regarding this matter.

Very truly yours

Joseph R. Crowley *Ida Klaus*
JOSEPH R. CROWLEY IDA KLAUS

cc - Hon. Arvid Anderson
Mr. Anthony C. Russo
W. Bernard Richland, Esq.
Mr. Victor Gotbaum
Hon. Judah Gribetz
Hon. Louis J. Lefkowitz
Hon. Warren M. Anderson
Hon. Stanley Steingut

4951