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State of New York Public Employment Relations Board Decisions from December 20, 1977

New York State Public Employment Relations Board

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State of New York Public Employment Relations Board Decisions from December 20, 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

In the Matter of	:	
	:	
LOCAL 1070, DISTRICT COUNCIL 37, AFSCME,	:	
AFL-CIO and CATHERINE STOLZE,	:	<u>BOARD DECISION AND ORDER</u>
	:	
Respondents,	:	
	:	
-and-	:	<u>CASE NO. U-2008</u>
	:	
SHALOM SIMON,	:	
	:	
Charging Party.	:	
	:	

The hearing officer dismissed Mr. Simon's charge against Local 1070, District Council 37, AFSCME, AFL-CIO (hereinafter AFSCME) and Catherine Stolze on the ground that Mr. Simon did not take any action to prosecute his charge for a long period of time and that he had not satisfactorily explained the reason for the delay. The charge, which was filed on February 7, 1976, had alleged that AFSCME discriminated against Mr. Simon, a nonmember, in that it did not process his grievance against his employer, the City of New York. On March 17, 1976, Mr. Simon consented to an adjournment of his case so that AFSCME could process his grievance. The Attorney for AFSCME wrote to him:

"It is my hope that we will be able to reach an amicable settlement of the disagreements between you and the Union. After the complete processing of your grievance, you may be able to judge better whether you wish to proceed with the improper practice charge hearing. In any event, your agreement to an adjournment of the improper practice charge hearing will not prejudice your position."

The grievance was resolved to the satisfaction of Mr. Simon during July 1976. However, he informed AFSCME that he intended "to proceed with the processing of his improper practice charge against the union." The hearing officer then wrote to Mr. Simon on July 22, 1976, urging him to withdraw his charge and indicating that he would not reschedule the hearing until he received an offer of proof

from Mr. Simon.¹ Eight months later, there being no further communication among the parties regarding the case, the hearing officer advised Mr. Simon he was closing the case on the presumption that the charge had been abandoned. When Mr. Simon objected to the closing of the case, the hearing officer agreed to reopen it if Mr. Simon could justify his failure to prosecute the case between July 1976 and March 1977. Mr. Simon, who is not represented by an attorney, wrote to the hearing officer that it was his understanding that, given his refusal to withdraw the charge, the case would proceed to a hearing automatically. He also wrote that he would not furnish an offer of proof unless compelled to as a matter of law.

The hearing officer dismissed the charge on September 3, 1977 because he was not satisfied that Mr. Simon explained his failure to prosecute it. Mr. Simon has filed exceptions to that decision in which he writes:

"I have always consented to adjournments. I have never precipitated an adjournment request. I believed then and do so now, that I had no obligation to request a rescheduling of a hearing."

AFSCME has filed a response in which it supports the ruling of the hearing officer, and adds that,

1 The hearing officer wrote:

"This will confirm my telephone advice to you concerning what I will require in order to reschedule the hearing in the above proceeding; including particularly a written explanation in the way you hope to prove that respondent deliberately 'interfered with, restrained or coerced you in the exercise of your rights...to form, join and participate...any employee organization of (your) own choosing.'

I understand that respondent handled a grievance for you which resulted in a monetary settlement by the City. Therefore I am at a loss to understand why you are pressing your charge. Accordingly, enclosed are three withdrawal request forms. In the event you wish to withdraw your charge, please sign and return two copies so we may close our files."

"[I]t would be prejudicial to Respondents to reopen this matter after such a long period of time. Witnesses may not be available and even if they are, their memory of the events would have faded after such a long time."

In our view, there has been a misunderstanding between the charging party and the hearing officer as to what effect a favorable decision of the grievance would have on the continuation of the proceeding before us. Both appeared to have conflicting impressions as to the next step to be taken and both acted accordingly, perhaps even allowing unintended assumptions to be made as to the effect of the successful outcome of the grievance prosecution on the basic proceeding. For this reason, and because a favorable outcome of the underlying grievance would not in and of itself be deemed to defeat the basic charge, we conclude that the charge has retained its vitality. Accordingly, the proceeding commenced before us should be permitted to go forward.

Although we regret the inconvenience that the long delay may cause AFSCME, we are not persuaded that the delay denies it the opportunity of preparing its defense against the charge.

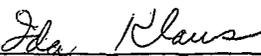
ACCORDINGLY, we reverse the hearing officer's decision, and

WE ORDER that the charge herein be reopened.

DATED: New York, New York
December 20, 1977



Joseph R. Crowley



Ida Klaus

In the Matter of
RED HOOK CENTRAL SCHOOL DISTRICT,
Employer,
- and -
RED HOOK NON-INSTRUCTIONAL
ASSOCIATION,
Petitioner.

CASE NO. C-1579

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 Red Hook Non-Instructional Association

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

Unit: Included: Secretaries, Custodians, Bus Drivers, Cafeteria Workers, Maintenance Workers, Aides, Typists, Clerical Workers, Auto Mechanics; School Courier

Excluded: All others

Further, IT IS ORDERED that the above-named public employer shall negotiate collectively with the Red Hook Non-Instructional 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 20th day of December, 1977.
New York, New York

Joseph R. Crowley
Joseph R. Crowley

Ida Klaus
Ida Klaus

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of	:
ELWOOD UNION FREE SCHOOL DISTRICT,	:
Respondent,	:
-and-	:
	<u>BOARD DECISION AND ORDER</u>
ELWOOD TEACHERS ALLIANCE,	:
Charging Party.	:
	<u>CASE NO. U-2754</u>

The charge herein was filed by the Elwood Teachers Alliance (Alliance) on June 23, 1977. It alleges that the Elwood Union Free School District (school district) violated §209-a.1(d) of the Civil Service Law by its failure to negotiate in good faith in that it unilaterally changed the evaluation form which it had been using and that it refused the Alliance's demand to negotiate over that change. The school district responded that it had been under no duty to negotiate over the change in its evaluation form because the change involved evaluation criteria and was not a mandatory subject of negotiation. Inasmuch as the dispute involves a disagreement as to the scope of negotiations under the Taylor Law, it has been processed under §204.4 of our Rules which permit the submission of the dispute to this Board without a hearing officer's decision upon a stipulation and the briefs of the parties.

The stipulation sets forth that on May 18, 1977 the Alliance demanded negotiations over changes that had been made by the school district unilaterally in the teacher evaluation form and that, on June 8, 1977, the school district refused to enter into such negotiations, but solicited suggestions that the Alliance might have regarding the changes. The old and revised evaluation forms

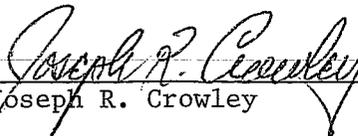
are appended to this decision as Exhibit A and Exhibit B, respectively. The changes include:

1. The reduction of four quality categories -- "Highly Satisfactory", "Satisfactory", "Needs Improvement" and "Unsatisfactory" -- to two quality categories -- "Satisfactory" and "Needs Improvement".
2. Among the professional qualities against which a teacher would be evaluated, the school district deleted "Attitude" and substituted (a) "Performance of School Duties" and (b) "Class or Departmental Responsibilities". It also changed "Response to Criticism" to "Response to Suggestions for Improvement".
3. Among the instructional qualities against which a teacher would be evaluated, the school district deleted "Preparation" and substituted (a) "Sets Realistic Standards" and (b) "Uses Fair and Valid Evaluation Techniques". It also deleted (a) "Rapport with Students" and (b) "Respects Worth and Dignity of Individual Child".

The Alliance relies upon our decision in Monroe Woodbury Teachers Association, 3 PERB ¶3014 (1970), in which we determined that "Procedures to be followed in the evaluation and dismissal of a probationary or untenured teacher" are a mandatory subject of negotiation. The change in the evaluation form, however, is not one of procedure, but of standards. The new form changes some of the criteria against which teachers are to be evaluated and simplifies the measurement standards. The criteria and standards for teacher evaluation are a management prerogative (Somers Faculty Association, 9 PERB ¶3014 at p. 3024 [1976]).

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

DATED: New York, New York
December 21, 1977



Joseph R. Crowley



Ida Klaus

5021

ELWOOD PUBLIC SCHOOLS
Huntington, N.Y.

DUE

PERSONNEL EVALUATIVE REPORT () Probationary, 1st Yr. - 12/15, 3/20
() Probationary, 2nd Yr. - 12/15, 3/20
() Probationary, 3rd Yr. - 12/1, 2/15
() Tenure - 5/15

TEACHER _____ SCHOOL _____ GR/SUBJ. _____ DATE _____

Status: () Tenure () Probationary Yrs. in Dist. _____ Abs. This Yr. To Date _____

	Satisfactory	Needs Improvement*	Comments *(Comments Required For These Ratings)
<u>Professional Qualities</u>			
Punctuality			
Performance of School Duties			
Grade or Departmental Responsibilities			
Report with Colleagues			
Professional Responsibilities/Involvement			
Response to Suggestions for Improvement			
Records and Reports			
Comments: (Use reverse side for further comments)			

	Satisfactory	Needs Improvement*	Comments
<u>Instructional Qualities</u>			
Knowledge of Subject Area			
Planning			
Sets Realistic Standards			
Uses Fair & Valid Evaluative Techniques			
Development of Lesson			
Control			
Report with Students			
Enthusiasm - Motivation			
Room Environment and Management			
Provision for Pupil Differences			
Comments: (Use reverse side for further comments)			

Continuation of Employment: () Recommended () Pending () Not Recommended

Progress Toward Tenure to Date: () Positive () Pending Further Evaluation
() Unsatisfactory () Does Not Apply

Number of Observations This Year () Principal () Administrator - Total _____

ACKNOWLEDGEMENT OF RECEIPT:

Teacher's Signature _____ Evaluator's Signature _____

Date _____

Date _____

NOTE: Teacher's signature does not necessarily indicate agreement with the content of this report. The teacher has the right to submit a written response to this report.

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ENTIRE 13

LINCOLN PUBLIC SCHOOLS
Huntington, N.Y.

DUE

PERSONNEL EVALUATIVE REPORT

- () Probationary, 1st Yr. - 12/15,3/20
- () Probationary, 2nd Yr. - 12/15,3/20
- () Probationary, 3rd Yr. - 12/15,2/15
- () Tenure - 4/15

TEACHER _____ SCHOOL _____ GR/SUBJ. _____ DATE _____

Status: () Tenure () Probationary Yrs. in Dist. ___ Abs. This Year To Date _____

	Highly Satisfactory	Satisfactory	Needs Improvement*	Unsatisfactory*	Comments
<u>Professional Qualities</u>					
Punctuality					
Attitude					
rapport with Colleagues					
Professional Responsibilities					
Response to Criticism					
Records and Reports					
Comments: (use reverse side for further comments)					

	Highly Competent	Competent	Needs Improvement*	Unsatisfactory*	Comments
<u>Instructional Qualities</u>					
Knowledge of Subject Area					
Planning					
Preparation					
Development of Lesson					
Control					
rapport with Students					
Respects Worth and Dignity of Ind. Child					
Communication with Children					
Enthusiasm - Motivation					
Room Environment and Management					
Provision for Pupil Differences					
Comments: (use reverse side for further comments)					

Continuation of Employment: () Recommended () Pending () Not Recommended
 Progress Toward Tenure To Date: () Positive () Pending Further Evaluation
 () Unsatisfactory () Does Not Apply

Number of Observations This Year () Principal () Other - Total _____

ACKNOWLEDGEMENT OF RECEIPT:

Teacher's Signature _____ Evaluator's Signature _____

Date _____

Date _____

NOTE: Teacher's signature does not necessarily indicate agreement with the content of this report. The Teacher has the right to submit a written response to this report.

EXHIBIT A

5022