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State of New York Public Employment Relations Board Decisions from January 23, 1978

New York State Public Employment Relations Board

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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of	:	
TOWN OF HUNTINGTON,	:	
Employer,	:	BOARD DECISION
-and-	:	AND ORDER
LOCAL 342, LONG ISLAND PUBLIC SERVICE EMPLOYEES,	:	
Petitioner,	:	Case No. C-1393
-and-	:	
CIVIL SERVICE EMPLOYEES ASSOCIATION, INC., SUFFOLK COUNTY CHAPTER,	:	
Intervenor.	:	

This matter comes to us on the exceptions of the Town of Huntington, the employer herein, from a decision of the Director of Public Employment Practices and Representation designating a negotiating unit of blue-collar supervisory employees. That unit comprises 53 foremen who had previously been in a comprehensive unit of blue-collar employees and one presently unrepresented employee, the beach manager.[1] The comprehensive blue-collar unit is represented by Local 342, Long Island Public Service Employees, which is also the petitioner herein.

[1] The petition sought a unit of supervisors which would also have included white collar supervisory employees who are in a comprehensive white collar unit that is represented by CSEA. There have been no exceptions filed by any party to that part of the Director's decision that excluded white-collar supervisors from the unit of blue-collar supervisory employees, and on this record, we agree with his determination.

The employer contends that the trial examiner erred in admitting hearsay evidence and conclusory statements by witnesses. It argues that the Director erred in not dismissing the petition because petitioner did not first request recognition from it in accordance with Section 201.3(a) of our Rules and because the petition was not supported by a showing of interest. The employer also alleges that the Director's decision was against the weight of the evidence which assertedly establishes not only that there is no inherent conflict of interest between supervisory blue-collar employees and rank-and-file blue-collar employees but also that a separate unit of supervisory employees would impair its ability to serve its constituency. In addition, the employer argues that the petitioner is foreclosed from claiming a conflict of interest for the reason that it deliberately created such conflict by its failure fairly to represent its total unit constituency. Other exceptions of the employer are that the supervisors' unit as defined by the Director includes titles that were not specified in the petition and that the Director erred in saying that it did not object to including the beach manager in the supervisors' unit.

For the reasons stated below, we affirm the determination of the Director that there should be a negotiating unit of blue-collar supervisors.

The hearing officer committed no error in his admission of evidence. It is well established that "[A]dministrative hearings are not limited to strict court rules in the reception of evidence . . .". (Schadt v. Sardino, 48 A.D.2d 171, 174 [1975]). "[H]earsay testimony is not barred . . . [but] it is required that there be a 'residual' of competent evidence of probative

force so substantial as to support the determination of the agency." (Shields v. Hults, 21 A.D.2d 745, 746 [1964]). In the instant proceeding, we find that there is sufficient competent and probative evidence to support the Director's conclusion that the performance by the supervisors of their duties and responsibilities, particularly in the area of discipline, has engendered a conflict between the interests of supervisory and rank-and-file employees which adversely affects the interests of the supervisors in the representation afforded them in the existing unit. There is no evidence to support the employer's assertion that such conflict is essentially without substance but was deliberately made to appear otherwise by the petitioner. Finally, there is no basis in the evidence for a finding that a separate unit of blue-collar supervisory employees would impair the employer's ability to perform its governmental functions. Accordingly, we affirm the Director's conclusion that the employer's bare claim of administrative convenience cannot serve to defeat petitioner's request, which is validly based upon a demonstrated essential conflict between the role of the blue-collar supervisors in their capacity as supervisors and their concerns as members of the same unit as their subordinates.

The employer's exception directed to the showing of interest to support the petition is rejected on the ground that the Director's determination is not reviewable (§201.4 of our Rules of Procedure and Board of Education of the City of Yonkers, 10 PERB ¶3100 [1977]).

We also find no merit in the contention that the petition was defective because petitioner did not first request recognition from the employer before filing its petition. Section 201.3(a) of our Rules, which is the basis for the employer's contention, is not applicable here. It relates to a situation

where the employees involved have not been previously represented and seek such representation for the first time. Where, as in the situation here, the petition is for employees who are already represented in an existing unit, there is no requirement of a prior request for recognition (Section 201.3[d] of our Rules).

The Director did not err by defining a supervisory unit that included titles not specified in the original petition. He was not "limited...to approving or disapproving units proposed by the parties to the dispute." (CSEA v. Helsby, 32 A.D.2d 131, 134 [1969], affirmed 25 N.Y.2d 842 [1969])[2]. By the same token, whether or not the employer objected to the inclusion of the beach manager in the supervisors' unit is also irrelevant, as the evidence establishes the appropriateness of his placement there.[3]

NOW THEREFORE WE ORDER that there shall be a unit of employees of the employer as follows:

INCLUDED: Labor foremen I, II and III, auto mechanic foremen II and III, incinerator plant foremen, sanitation site foremen, golf course manager, grounds maintenance foremen, senior bay constable, senior dog warden, senior sewerage plant operator, refuse manager and beach manager.

EXCLUDED: All other employees.

2] Moreover, the petition was amended at the hearing to include all but one of the titles included in the unit.

3] At all times the employer objected to the creation of any unit of supervisors. It did, however, submit a "Statement of Alternative Position", which specified certain job titles that it deemed to be supervisory and, therefore, the only ones possibly appropriate for inclusion in a separate supervisors' unit. Beach manager was one of those titles.

FURTHER IT IS ORDERED that an election by secret ballot shall be held under the Director's supervision among the employees in the unit determined above to be appropriate and who were employed by the employer on the payroll date immediately preceding the date of this decision, UNLESS the petitioner submits to him within ten days from the date of receipt of this decision, evidence to satisfy the requirement of §201.9(g) of the Rules for certification without an election.

IT IS FURTHER ORDERED that the employer shall submit to the Director and petitioner within 10 days from the date of receipt of this decision an alphabetized list of all employees within the unit determined above to be appropriate who were employed on the payroll date immediately preceding the date of this decision.

Dated, New York, New York
January 23, 1978

Joseph R. Crowley
Joseph R. Crowley

Ida Klaus
Ida Klaus

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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of MIDDLETOWN POLICE BENEVOLENT ASSOCIATION, INC., Respondent, -and- CITY OF MIDDLETOWN, Charging Party.	BOARD DECISION AND ORDER CASE NO. U-2743

The charge herein was filed by the City of Middletown (hereinafter the City) on June 20, 1977. It alleges that the Middletown Police Benevolent Association, Inc. (hereinafter PBA) improperly submitted to interest arbitration several demands that had been previously resolved during negotiations.[1] Specifically, the City contends that all but four of the sixteen demands which PBA seeks to arbitrate were withdrawn by PBA during the negotiations prior to its request for the assistance of a mediator and the subsequent recourse to arbitration.

This matter has been processed in accordance with §204.4 of our Rules. Thus, the hearing officer assigned to conduct the hearing has transmitted the record directly to us for determination.

The witnesses at the hearing were the parties' chief negotiators. They were the City Treasurer and the PBA president. While neither witness

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1 One of the objections to arbitrability enumerated in §205.6(a) of our Rules is that "a matter proposed had been resolved by agreement during the course of negotiations."

had a full recollection of what had occurred during the negotiations, there is sufficient evidence to establish the following facts: On November 9, 1976, after several negotiating sessions, PBA offered to withdraw twelve of its original demands if agreement were reached as to the four remaining demands as revised by PBA at the time of its conditional proposal.[2] At the negotiation sessions that took place thereafter, all discussion was restricted to the four demands. No agreement was reached on those demands. Thereafter, on February 9, 1977, Parrella, the PBA president, addressed a letter to PERB requesting the assistance of a mediator. In that letter, he specified the four items as the open issues. When PERB later appointed a factfinder on March 30, 1977, the PBA presented all sixteen demands for his consideration. Over the City's strong objections that all but four of the demands had been withdrawn during the negotiations, the factfinder addressed himself to the sixteen items.

It is clear from the testimony of Parella that it was the parties' understanding that, if agreement were reached during the negotiations on the four issues in contention, PBA's other demands would have been deemed with-

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[2] The four demands as endorsed by the membership of PBA on November 9, 1976, were:

"That the cleaning allowance be increased from $100.00 to $125.00;

That the percentage of sick time to be paid to a member upon retirement be increased to 50%, 180 days maximum;

That the membership receive a cost of living salary increase for each of the two years;

That members in the detective bureau be given equal compensation as patrolmen for their overtime and court time."

It appears from the record that the City has agreed to PBA's demand that the clearning allowance be increased to $125.00.

drawn and a complete contract would have resulted. No such agreement had been reached when the negotiating dispute was submitted to PERB for arbitration. It cannot be said that an award issued in interest arbitration is to be regarded as though it were an agreement reached between the parties on all outstanding issues. Interest arbitration in police and firefighter disputes is not a part of the negotiating process, and its end result, namely, the award, cannot be regarded as though it were an agreement arrived at by the parties. It is, rather, a substitute for, and similar in effect to, the final determination imposed by the legislative body of the particular government for resolving deadlocks involving other classes of employees after the parties' efforts to reach an agreement have failed. In Haverstraw, 9 PERB ¶3063 (1967), we stated (at p. 3109):

> "Interest arbitration is not, and was not intended as an alternative to, or substitute for, good faith negotiations. Rather, it is a procedure of last resort in police and fire department impasse situations when efforts of the parties themselves to reach agreement through true negotiations and conciliation procedures have actually been exhausted."

We conclude that, while the negotiations centered on the four demands, the condition for PBA's withdrawal of the twelve demands was not satisfied during the negotiation process because the parties had failed to reach agreement on the four demands when the deadlock developed. Hence, the other twelve demands remained alive. Accordingly, we find that PBA committed no violation of the duty to bargain in good faith when it revived the twelve issues by presenting them to the arbitrator.

NOW, THEREFORE, WE ORDER that the charge herein be dismissed.

DATED: New York, New York
January 23, 1978

Joseph R. Crowley

Joseph R. Crowley

Ida Klaus

Ida Klaus

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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of SOCIAL SERVICE EMPLOYEES UNION, LOCAL 371, Respondent, -and- SERGE B. RAMEAU, Charging Party.	BOARD DECISION AND ORDER CASE NO. U-2583

This matter comes to us on the exceptions of the Social Service Employees Union, Local 371, respondent herein, from a hearing officer's decision finding it in violation of §209-a.2(a) of the Taylor Law in that it did not accord fair representation to Serge B. Rameau, the charging party, when it refused to process a grievance that he submitted to respondent on February 15, 1977, and it did not explain to him the reason for the refusal. Respondent has also filed a motion, with an accompanying affidavit, for an order reopening the record on the asserted ground that it has newly discovered evidence directly affecting the finding of the hearing officer.

The following facts gave rise to the grievance: Mr. Rameau was an acting Senior Hospital Care Investigator at Lincoln Hospital. Three permanent Senior Hospital Care Investigator positions became available at Lincoln Hospital. Two of the positions were filled by persons who ranked higher on the eligibility list than Rameau; the third position remained vacant. Rameau's grievance protested the employer's refusal to appoint him to the third vacancy. McGreen, the respondent's representative for Local 371, refused to sign the grievance. Rameau testified that the reason given by McGreen for his refusal was that Joseph, respondent's grievance representative, had instructed him not to sign any grievance on Rameau's behalf because Rameau was about to

testify against other representatives of Local 371 in a proceeding that was unrelated to any of the issues in the instant case. McGreen denied receiving the written grievance from Rameau or telling him that he had been instructed not to sign or process grievances on his behalf. Based on the demeanor of the witnesses, the hearing officer credited the testimony of Rameau that he submitted the grievance and that McGreen refused to sign it or process it for the reasons stated by Rameau.[1] He concluded:

> "...even if the Local at some later date may have determined the grievance to be non-meritorious (footnote omitted), it owed a duty to Rameau to either process his grievance or respond and explain the basis for its rejection. It did neither. This perfunctory, indeed arbitrary, conduct which I have found to have been motivated by McGreen and Joseph's hostility toward him is violative of §209-a.2(a) of the Act."

In support of its motion to reopen the hearing, respondent has submitted affidavits indicating that during February 1977 Rameau contacted Lillian Roberts, Associate Director of District Council 37, a superior body of Local 371, and that she did thereafter successfully attempt to obtain for Rameau a permanent promotion to Senior Hospital Care Investigator, which he received in June 1977. The implication of the affidavit is that Rameau, in the first instance, sought the assistance of the superior body and not that of Local 371 in presenting and pursuing his grievance and that the superior body did do so. Rameau's response negates this implication. He asserts that, in accordance with the grievance procedure, he submitted his grievance directly to Local 371 and not to District Council 37. He indicated that he spoke to Roberts only about a human rights action that he had brought against the Local and the superior body on January 31, 1977. Without resolving this conflict, we deny the motion. The request to submit new evidence after a hearing officer's

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1 On two other issues of fact, the hearing officer resolved the question of credibility by crediting testimony of Bouie and of Joseph, both witnesses for respondent, rather than the testimony of Rameau.

determination had been made should not be granted unless it is clear that the requesting party did not know, and should not reasonably be expected to have known, about the existence of further evidence. The proposed testimony of Roberts is not of such a character. The final day for the presentation of evidence to the hearing officer was June 14, 1977, a week after Rameau was notified of his promotion and while the hearing was still open. The affidavit was not submitted until November 2, 1977. In any event, the allegations in the affidavit could not affect the outcome of the proceeding, as they would not establish that the grievance was submitted in the first instance to the superior body for prosecution.

In support of its contention that the hearing officer's reliance upon the testimony of Rameau should be reversed, respondent argues that, as a matter of law, Rameau's testimony about the grievance cannot be believed because on other issues the hearing officer credited the testimony of witnesses who contradicted the testimony of Rameau. We do not agree. The hearing officer evaluated the testimony of the witnesses on each point. That his resolution of credibility questions followed no unvarying automatic pattern, is an indication that he considered the demeanor of the witnesses and other relevant factors in a discriminating manner, rather than adopting a general inflexible standard, as respondent would wish us to do. We affirm the hearing officer's findings of fact and conclusions of law and determine that respondent violated §209-a.2(a) of the Taylor Law in that it refused to consider or process a grievance submitted by Serge B. Rameau on February 15, 1977, and refused to explain its reasons for doing so.

NOW, THEREFORE, WE ORDER that Social Service Employees Union, Local 371, cease and desist from refusing to

represent Serge B. Rameau fairly and impartially and from refusing to evaluate his grievances and explaining to him its failure to process any grievance properly submitted by him.

DATED: New York, New York
January 23, 1978

Joseph R. Crowley

Joseph R. Crowley

Ida Klaus

Ida Klaus