3-29-1978

State of New York Public Employment Relations Board Decisions from March 29, 1978

New York State Public Employment Relations Board

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State of New York Public Employment Relations Board Decisions from March 29, 1978

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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Application of the
COUNTY OF TOMPKINS

for a Determination pursuant to Section 212 of the Civil Service Law.

BOARD ORDER

At a meeting of the Public Employment Relations Board held on the 30th day of March, 1978, and after consideration of the application of the County of Tompkins made pursuant to Section 212 of the Civil Service Law for a determination that its Resolution No. 320 of 1969 as last amended by Resolution No. 66 of March 13, 1978, is substantially equivalent to the provisions and procedures set forth in Article 14 of the Civil Service Law with respect to the State and to the Rules of Procedure of the Public Employment Relations Board, it is

ORDERED, that said application be and the same hereby is approved upon the determination of the Board that the Resolution aforementioned, as amended, is substantially equivalent to the provisions and procedures set forth in Article 14 of the Civil Service Law with respect to the State and to the Rules of Procedure of the Public Employment Relations Board.

DATED: New York, New York
March 30, 1978

HAROLD R. NEWMAN, Chairman

IDA KLAUS

5146
STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Application of the
TOWN OF NORTH CASTLE
for a Determination pursuant to Section 212 of the Civil Service Law.

Pursuant to Section 212 of the Civil Service Law, by notice dated October 28, 1977, the Town Board of the Town of North Castle, the Town Attorney and the Chairman of the North Castle Public Employment Relations Board were advised that the local enactment establishing such Board must be amended to conform to the amendments to the Public Employees' Fair Employment Act effected by L. 1977, c. 216, 429, 677, 678, and 817 in order to remain substantially equivalent thereto, and that an application for approval thereof, complying with Part 203 of the Rules of this Board, must be submitted within sixty (60) days after receipt of such notice.

On January 9, 1978, the same Town officers were advised in a letter from Counsel to this Board that it would be recommended that prior approval of the local enactment be rescinded by this Board without further notice unless the application aforementioned was filed within thirty (30) days of the date of said letter. On February 10, 1978, the Town Attorney advised Counsel to this Board that the Town Board of the Town of North Castle did not wish to continue its local public employment relations board. On February 15, 1978, this Board served a Notice of Failure of Compliance upon the aforementioned Town officers, which notice
declared that this Board would rescind its approval of the local enactment unless the application was filed by March 1, 1978. As of the date of this order, said application has not been filed. It is, therefore,

ORDERED that the order of this Board dated October 25, 1968, approving the enactment of the Town Board of the Town of North Castle establishing a public employment relations board, be and the same hereby is rescinded upon the ground that said enactment is no longer substantially equivalent to the Public Employees' Fair Employment Act, as amended by L. 1977, c. 216, 429, 677, 678, and 817, and that said Town has failed to comply with Section 212 of the Civil Service Law.

Dated: New York, New York
March 30, 1978

HAROLD NEWMAN, Chairman

IDA KLAUS
STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

COUNTY OF ROCKLAND,

Respondent,

-and-

ROCKLAND COUNTY UNIT, ROCKLAND COUNTY LOCAL 844,
CIVIL SERVICE EMPLOYEES ASSOCIATION, INC., and
JUNE PITTS,

Charging Parties.

This matter comes to us on the exceptions of the Rockland County Unit,
Rockland County Local 844, Civil Service Employees Association, Inc. and June
Pitts, charging parties herein, from a hearing officer's decision dismissing
their charge that respondent, Rockland County, violated its duty to negotiate
in good faith when it refused to proceed to arbitration on a grievance filed
after the expiration of the contract under which the grievance arose. The
hearing officer relied upon our decision in Matter of Port Chester-Rye Union
Free School District, 10 PERB ¶3079 (1977), in which we said:

"The obligation to arbitrate must be regarded as
wholly contractual, deriving its existence from
the terms of the actual bargain of the parties,
rather than from the statutory mandate . . .
[A] contract having expired, the provision to
arbitrate is no longer in effect."

In challenging the hearing officer's determination and the Board decision
which it follows, the charging party relies upon the decision of the United
States Supreme Court in Nolde Brothers, Inc. v. Bakery Workers Local 358,
U.S. ___ (1977), 97 S.Ct. 1067, 51 L. Ed. 2d 300, 81 LC ¶13055. In that case,
the court compelled an employer to arbitrate a grievance involving a claim for severance pay which was filed after the termination of the contract that authorized grievance arbitration. It held: "The fact that the union asserted its claim to severance pay shortly after, rather than before, contract termination does not control the arbitrability of the claim." In support of its holding, the court found it "noteworthy that the parties drafted their broad arbitration clause against a backdrop of well-established federal labor policy favoring arbitration as the means of resolving disputes over the meaning and effect of collective-bargaining agreements." It accordingly interpreted the absence of any provision in the expired agreement with respect to the post-expiration status of the availability of arbitration as reflecting an intent of the parties to continue such recourse.

Neither the *Nolde* decision nor its reasoning is applicable here. Section 209-a.3 of the Taylor Law provides that in the adjudication of improper practice charges, "fundamental distinctions between private and public employment shall be recognized, and no body of federal or state law applicable wholly or in part to private employment, shall be regarded as binding or controlling precedent." Addressing itself to the "strong presumption favoring arbitrability" relied upon by the court in *Nolde*, the New York State Court of Appeals stated, in *Matter of Liverpool*, 42 N.Y.2d 509, 513-14:

"In the field of public employment, as distinguished from labor relations in the private sector, the public policy favoring arbitration -- of recent origin -- does

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1 This principle has been reasserted in *So. Colonie CSD v. Longo*, 43 N.Y.2d 136 (1977), 10 PERB ¶7539; *Binghamton Civil Service Forum v. City of Binghamton*, N.Y.2d (decided 2/27/78), 11 PERB ¶7508.
not yet carry the same historical or general acceptance. According to the charging parties, the remedial procedures including arbitration, specified in an agreement apply to all alleged violations of the agreement occurring before its expiration. They find strong support for this proposition in Nolde.

The hearing officer considered this argument and ruled that it is irrelevant whether a grievance over an action occurring during the life of an agreement is filed before or after the expiration of that agreement. In either case, the employer's refusal to proceed to arbitration would constitute, at most, a contract violation, a matter over which this Board has no jurisdiction because it does not constitute an improper practice. We agree with the hearing officer. We note that the Nolde case is, itself, instructive in this regard. It involved a civil action by the union to compel the employer to

2 See §205.5(d) of the Taylor Law and Matter of St. Lawrence County, 10 PERB ¶3058 (1977).
arbitrate the grievance or, in the alternative, for a judgment for the severance pay due; it did not involve a charge of an unfair labor practice under the National Labor Relations Act. The Court held arbitration to be the proper recourse.

WE AFFIRM the hearing officer, and

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

Dated, New York, New York
March 29, 1978

Harold R. Newman, Chairman

Ida Klaus
In the Matter of:

THOUSAND ISLANDS CENTRAL SCHOOL DISTRICT, Respondent,

- and -

THOUSAND ISLANDS TEACHERS ASSOCIATION, LOCAL #09-395, Charging Party.

This matter comes to us on the exceptions of Thousand Islands Teachers Association, Local #09-395, charging party herein, to a hearing officer's decision dismissing its charge that the respondent, Thousand Islands Central School District, violated its duty to negotiate in good faith when, after the expiration of the 1974-77 agreement between the parties and before the negotiation of a successor agreement, it unilaterally eliminated the arbitration stage of the grievance procedure provided in the expired agreement. The 1974-77 agreement was silent on the status of the arbitration recourse after the expiration of that agreement. The hearing officer relied upon our decision in Matter of Port Chester-Rye Union Free School District, 10 PERB ¶3079 (1977), in which we said:

"The obligation to arbitrate must be regarded as wholly contractual, deriving its existence from the terms of the actual bargain of the parties, rather than from the statutory mandate. . . . [A] contract having expired, the provision to arbitrate is no longer in effect."
In challenging the hearing officer's determination and the Board decision which it follows, the charging party relies upon the decision of the United States Supreme Court in Nolde Brothers, Inc. v. Bakery Workers Local 358, U.S. ___ (1977), 97 S.Ct. 1067, 51 L. Ed.2d 300, 81 LC ¶13055. In that case, the Court compelled an employer to arbitrate a grievance involving a claim for severance pay which was filed after the termination of the contract that authorized grievance arbitration. It held: "The fact that the union asserted its claim to severance pay shortly after, rather than before, contract termination does not control the arbitrability of the claim." In support of its holding, the court found it "noteworthy that the parties drafted their broad arbitration clause against a backdrop of well-established federal labor policy favoring arbitration as the means of resolving disputes over the meaning and effect of collective-bargaining agreements." It accordingly interpreted the absence of any provision in the expired agreement with respect to the post-expiration status of the availability of arbitration as reflecting an intent of the parties to continue such recourse.

The Nolde decision is not controlling upon this Board; nor is its decision applicable here. Section 209-a.3 of the Taylor Law provides that in the adjudication of improper practice charges, "fundamental distinctions between private and public employment shall be recognized, and no body of federal or state law applicable wholly or in part to private employment shall be regarded as binding or controlling precedent." Addressing itself to the "strong presumption favoring arbitrability" relied upon in Nolde, the New York State
Court of Appeals stated, in Matter of Liverpool, 42 N.Y.2d 509, 513-14 (1977):

"In the field of public employment, as distinguished from labor relations in the private sector, the public policy favoring arbitration -- of recent origin -- does not yet carry the same historical or general acceptance... Accordingly, it cannot be inferred as a practical matter that the parties to collective bargaining agreements in the public sector always intend to adopt the broadest permissible arbitration clauses. ...it must be taken, in the absence of clear, unequivocal agreement to the contrary, that the board of education did not intend to refer differences which might arise to the arbitration forum." (emphasis in original)

This supports our conclusion in Port Chester and that of the hearing officer here.

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

DATED: New York, New York
March 29, 1978

Harold R. Newman, Chairman
Ida Klaus

1] This principle has been reasserted in So. Colonie CSD v. Longo, 43 N.Y.2d 136 (1977), 10 PERB ¶7539; Binghamton Civil Service Forum v. City of Binghamton, _____ N.Y.2d _____ (decided 2/27/78), 11 PERB ¶7508.
This matter comes to us on the exceptions of the North Babylon Office Personnel Association, charging party herein, from a decision of the Director of Public Employment Practices and Representation dismissing its charge that the respondent, North Babylon Union Free School District, violated its duty to negotiate in good faith by failing to pay salary increases for the 1977-78 school year as specified in the parties' collective bargaining agreement. The director determined that the conduct alleged in the charge may raise questions of breach of contract, but that, even if established, the breach of contract would not constitute a failure to negotiate in good faith. In support of this conclusion, he cited §205.5(d) of the Taylor Law, a 1977 amendment, which provides, in part, that this Board

"shall not have authority to enforce an agreement between an employer and an employee organization and shall not exercise jurisdiction over an alleged violation of such an agreement that would not otherwise constitute an improper employer or employee organization practice."

To the same effect, he also cited our pre-amendment decision in Matter of St. Lawrence County, 10 PERB ¶3058 (1977).

In its exceptions, the charging party argues that the director has misapplied §205.5(d) of the statute and our St. Lawrence decision. It would interpret the St. Lawrence decision as merely stating a discretionary
"deferral" policy of this Board not to rule on charges involving a contract violation where grievance arbitration is available. On the basis of its interpretation of St. Lawrence, the union urges that this Board should consider the charge in the instant case by reason of two special circumstances which leave it no other "viable" means of redress: (1) Recourse to grievance arbitration was barred by untimeliness when the charge was filed; (2) The contract arbitration clause does not in any event provide for binding arbitration.

We find no merit in the charging party's position. The St. Lawrence decision does not articulate a "deferral" policy. It is directed to the jurisdiction of this Board over contract violations, as is §205.5(d) of the Taylor Law which incorporates and clarifies this doctrine of jurisdictional limitation.

Hence, we must conclude that neither of the special circumstances urged by the charging party is, or can be, relevant to our decision.

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

DATED: New York, New York
March 29, 1978

[Signatures]
Harold R. Newman, Chairman
Ida Klaus
In the Matter of

SACHEM CENTRAL SCHOOL DISTRICT BOARD OF EDUCATION and its agent, RICHARD BERGER, SUPERINTENDENT OF SCHOOLS,

Respondents,

-and-

SACHEM EDUCATORS' ASSOCIATION,

Charging Party,

-and-

SACHEM CENTRAL TEACHERS ASSOCIATION,

Intervenor.

The charge herein was filed by the Sachem Educators' Association (SEA) on June 17, 1977. It alleges that the Sachem Central School District Board of Education, by its agent, Richard Berger, Superintendent of Schools (respondent) violated §209-a.1(a), (b) and (c) of the Taylor Law by refusing SEA's request to use teacher mailboxes for distribution of its materials that were part of its organizing campaign. The Sachem Central Teachers Association (SCTA) was permitted to intervene as a party and it supported the posture of respondent that denial of the teacher mailboxes to SEA was proper. The hearing officer determined that denial of SEA's request to use teacher mailboxes was a violation of §209-a.1(a) and (c) of the Taylor Law, but not of §209-a.1(b) of that Law.

1 Section 209-a.1 provides: "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; (c) to discriminate against any employee for the purpose of encouraging or discouraging membership in, or participation in the activities of, any employee organization."
This matter comes to us on the exceptions of both SEA and SCTA. Respondent has filed no exceptions. SEA argues that the hearing officer erred in permitting SCTA to intervene and in his failure to find a violation of §209-a.1(b) of the Taylor Law. SCTA takes exception to several of the hearing officer's findings of fact and conclusions of law. It argues that the hearing officer erred in that he failed to find that PERB lacks jurisdiction over the dispute because the sole issue is one of contract interpretation or, in the alternative, that respondent's conduct was protected by reason of its contract with SCTA, which gave SCTA, as the exclusive bargaining representative, exclusive access to teacher mailboxes. It further argues that SCTA was denied no rights to which it was entitled under the Taylor Law.

We dismiss the exceptions of SEA. The hearing officer committed no error in permitting SCTA to intervene. Among the issues in the case are whether SCTA's contract with the respondent barred the use of the teacher mailboxes by SEA and, if so, whether this is lawful. SCTA has a legitimate interest in this proceeding to protect its agreement and to support its understanding of its provisions and to argue for its validity. We also affirm the hearing officer's determination that the denial of SEA's request to use teacher mailboxes did not constitute a violation of §209-a.1(b) of the Taylor Law. An element of the charged violation of §209-a.1(b) is that the conduct complained about constituted an interference with the internal affairs of SEA. As there is no basis for such a conclusion, we find that it did not.

We find no merit in the exceptions of SCTA. The hearing officer correctly ruled that this Board has jurisdiction over the charge, notwithstanding SCTA's allegation that all that is involved is an interpretation of its agreement with respondent. SCTA relies upon §205.5(d) of the Taylor Law as amended by Chapter 429 of the Laws of 1977 and Matter of St. Lawrence County, 10 PERB ¶3058 (1977), which deny this Board jurisdiction over an alleged violation of an agreement "that would not otherwise constitute an improper
employer or employee organization practice." At issue here, however, is the claimed right of SEA, an organization that has no contractual relationship with respondent. The agreement between SCTA and respondent was made relevant to that issue by the employer's reliance on the agreement. Hence, the hearing officer's interpretation of the agreement was necessary for a determination of statutory rights as raised by it.

Traditionally, teacher mailboxes have been maintained in schools for the primary purpose of internal communication between school administration and teachers concerning school-related matters. Some school districts have used teacher mailboxes solely for their own communications to teachers; others have permitted access as well to various groups or to individuals. With the advent of teacher organizations and collective bargaining, the availability of this valuable and ready means of reaching teachers has become a subject of collective bargaining. Under the Taylor Law, the benefit of access may be granted solely to the exclusive representative of the teachers pursuant to the terms of a collective bargaining agreement for appropriate organizational communications, thereby withholding the same privilege from other unions seeking to organize teachers. If, however, the bargaining agreement does not clearly grant the privilege solely to the exclusive representative and the privilege is also extended to organizations and individuals having interests unrelated to school activities or to labor-relations matters, the denial of the same benefit to a minority labor organization for the deposit of its proper and appropriate organizing materials constitutes unlawful discriminatory treatment of the minority organization in violation of its rights under §202 of the Taylor Law.

We agree with the hearing officer that the cases cited by SCTA are irrelevant insofar as they indicate that SEA has no constitutional right to use the teacher mailboxes. The right to organize granted to public employees by §202 of the Taylor Law exceeds those rights that are protected by the first
Amendment of the Constitution so long as this statutory right or its exercise does not infringe upon constitutional guarantees.

As the record in this case is limited to the stipulation of the facts entered into by charging party and the respondent, we are necessarily confined to those allegations in reaching our conclusion. The hearing officer determined that, on its face, the contract language relied upon by SCTA does not grant it exclusive use of teacher mailboxes. While we note ambiguity in the agreement, unilluminated by the stipulation of the parties, we read the words and interpret them in the same way as the hearing officer. Absent an allegation as to past practice of the employer in this respect, and without the benefit of clear evidence as to the intent of the parties, we find that the agreement did not grant an exclusive privilege to the intervenor as a labor organization with respect to access to teacher mailboxes.

We must therefore conclude on the basis of this particular record that the denial of SEA's request constitutes unlawful interference with the fundamental right of public employees to organize and, hence, a violation of §209-a.1(a) of the Taylor Law even in the absence of a showing that the employer was motivated by animus against SEA.

The record does not indicate that any employees were "discriminated against" because of any activities connected with the matter under dispute. This is an element of a violation of §209-a.1(c) of the Taylor Law. Accordingly, we reverse the hearing officer's determination that respondent's conduct constituted such a violation.

NOW THEREFORE, WE ORDER respondent to extend to SEA the same access
to teacher mailboxes that it grants to SCTA, the Parent-Teachers Organization, the Boy Scouts and the Girl Scouts.

DATED: New York, New York
March 30, 1978

Harold R. Newman, Chairman

Ida Klaus
The charge herein was filed by the Civil Service Employees Association, Inc., hereinafter CSEA. It alleges that the State of New York (State University of New York at Albany), hereinafter SUNY, violated its duty to negotiate in good faith when it unilaterally changed the terms and conditions of employment of certain employees by furloughing them without pay on November 26, 1976. A SUNY motion to dismiss the charge was denied by the hearing officer. SUNY's exceptions and supporting memorandum argue that the charge should be dismissed for any one of three reasons:

1. The issue is one of contract interpretation and, therefore, does not fall within the jurisdiction of PERB.

2. The issue has already been resolved by an arbitrator who found that SUNY's action was proper. Even if PERB has jurisdiction over the dispute, the hearing officer should have determined that the arbitrator's award was dispositive of the issue.

3. The hearing officer should have determined that, on its face, the charge does not allege a unilateral change in terms and conditions of employment.
FACTS

In 1975, SUNY authorized its campus presidents to furlough certain employees in negotiating units represented by CSEA on the Friday following Thanksgiving Day. CSEA contested this action and its grievance was brought to arbitration on the question whether SUNY violated its agreement with CSEA. The arbitrator determined that SUNY's conduct violated no provision of the agreement, and he denied the grievance. He found that his conclusion had "apparent textual support" in the management rights clause of the contract which reserved to SUNY the right to determine the number of personnel required and to deploy the work force. In his opinion he wrote, "[t]his is not a unilateral change in terms and conditions of employment. That would require an affirmative contractual obligation restricting the employer's action." (emphasis in original)

DISCUSSION

Having considered the written and oral arguments of the parties, we affirm the determination of the hearing officer and the reasoning contained in his decision. Accordingly, we address the exceptions only briefly. SUNY's posture that the charge merely alleges a contract violation is without support. SUNY does not direct our attention to any contract language dealing with the subject of furloughs, which might authorize the conduct complained about. On the face of the contract, the specific subject of unpaid furloughs has not been negotiated. If it has not been negotiated, SUNY's defense would appear to be that CSEA has waived its right to negotiate this subject for the duration of the contract. The resolution of this question is a proper matter for PERB because it deals essentially with a statutory duty. (Matter of St. Lawrence County, 10 PERB ¶3058 [1977]).

We are also not persuaded by SUNY that the contract has been definitively interpreted as covering unpaid furloughs and authorizing SUNY's conduct. The submission to the arbitrator merely asked whether the
contract prohibited SUNY from furloughing employees without pay, and the arbiter determined that nothing in the contract restricted SUNY's authority "to take the specific action which it took here." The hearing officer correctly determined that the arbitrator's reference to the ambiguous contract language and to its "apparent textual support for the employer's argument," was obviously not necessary to his decision in the case and his reasons are, in any event, not persuasive to us. He was also correct in not deeming himself bound by the arbitrator's conclusion that SUNY's conduct did not constitute a unilateral change in terms and conditions of employment merely because there was no explicit contract provision proscribing SUNY's action. The question whether CSEA waived its right to negotiate an explicit, or even implicit, clause covering unpaid furloughs remains unanswered notwithstanding the arbitrator's award.

Finally, we affirm the hearing officer's determination that the unilateral institution by respondent of an unpaid furlough for the employees here involved would, if proven, constitute a refusal to negotiate in good faith. On this point, SUNY's exceptions complain that the record does not support a conclusion that there has been such a unilateral change in terms and conditions of employment. That is true; but there is, as yet, no appropriate record on which to make a decision. No hearing has been held and the factual issues have not yet been addressed.

Accordingly, we affirm the hearing officer's decision denying the motion to dismiss and remand the charge to him for a hearing and determination on the merits.

Dated, New York, New York
March 30, 1978

Harold R. Newman, Chairman
Ida Klaus

Harold R. Newman, Chairman
Ida Klaus

5165
NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of:

HAMPTON BAYS TEACHERS ASSOCIATION,

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

Case No. D-0161

BOARD DECISION
AND ORDER

On January 13, 1978, Martin L. Barr, Counsel to this Board, filed a charge alleging that the Hampton Bays Teachers Association (Association) had violated Civil Service Law (CSL) §210.1 in that it caused, instigated, engaged, condoned and engaged in a two-day strike against the Hampton Bays Union Free School District (District) on October 17 and 18, 1977.

The charge further alleged that approximately 51 teachers out of a negotiating unit of 85 participated in the strike.

The Association filed an answer but thereafter agreed to withdraw it, thus admitting to all of the allegations of the charge upon the understanding that the charging party would recommend, and this Board would accept, a penalty of loss of its deduction privileges to the extent of one-third (1/3) of the amount that would otherwise be deducted during a year.\footnote{This is intended to be the equivalent of a four-month suspension of the privileges of dues and/or agency shop fee deduction, if any, if such were withheld in equal monthly installments throughout the year. In fact, the annual dues of the Association are not deducted in this manner.}

The charging party has recommended a suspension of deduction privileges for one-third (1/3) of the annual amount of such deductions.
On the basis of the unanswered charge, we find that the Association violated CSL §210.1 in that it engaged in a strike as charged, and we determine that the recommended penalty is a reasonable one.

WE ORDER that the deduction privileges of the Hampton Bays Teachers Association be suspended commencing as of May 1, 1978, and continuing for such period of time during which one-third (1/3) of its annual dues and agency shop fee deduction, if any, would otherwise be deducted. Thereafter, no dues and agency shop fee shall be deducted on its behalf by the Hampton Bays Union Free School District until the Hampton Bays Teachers Association 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
March 29, 1978

HAROLD R. NEWMAN, Chairman

IDA KLAUS, Member
In the Matter of the

LAKELAND FEDERATION OF TEACHERS,
LOCAL 1760, AMERICAN FEDERATION
OF TEACHERS, AFL-CIO

Upon the Charge of Violation of
Section 210.1 of the Civil Service Law.

On December 13, 1977, Martin L. Barr, Counsel to this Board, filed a charge alleging that the Lakeland Federation of Teachers, Local 1760, American Federation of Teachers, AFL-CIO, hereinafter the respondent, had violated Civil Service Law §210.1 in that it caused, instigated, encouraged, condoned and engaged in a 42 day strike against the Lakeland Central School District of Shrub Oak (District) during the period September 6, 1977 through November 8, 1977. It appears from the charge that an average of 340 of the District's 475 teachers absented themselves on each day of the strike. This is the second instance involving a strike violation charged against the respondent (see 4 PERB 3051).

The respondent filed an answer which, inter alia, denied the material allegations of the charge. However, it thereafter agreed to withdraw its answer, thus admitting all of the allegations of the charge, upon the understanding that the charging party would recommend, and this Board would accept, a penalty of indefinite suspension of respondent's dues checkoff privileges with permission to the respondent to apply to this Board after July 1, 1980 for full restoration and after September 1, 1979 for conditional suspension of the forfeiture of such dues.

BOARD DECISION AND ORDER

Case No. D-0159
deduction privileges upon fulfillment of the conditions of our Order, hereinafter set forth. The charging party has recommended this penalty.

On the basis of the unanswered charge, we find that the respondent violated CSL §210.1 in that it engaged in a strike as charged, and we determine that the recommended penalty is a reasonable one.

WE ORDER that the dues deduction privileges of the Lakeland Federation of Teachers, Local 1760, American Federation of Teachers, AFL-CIO, be suspended indefinitely, commencing on the first practicable date, provided that it may apply to this Board at any time after July 1, 1980 for the full restoration of such privileges. Such application shall be on notice to all interested parties and supported by proof of good faith compliance with subdivision one of Section 210 of the Civil Service Law since the violation herein found, such proof to include, for example, the successful negotiation, without a violation of said subdivision, of a contract covering the employees in the unit affected by the violation, and accompanied by an affirmation that it no longer asserts the right to strike against any government as required by the provisions of Civil Service Law §210.3(g). However, the respondent may apply to this Board after September 1, 1979 for the conditional suspension of the forfeiture of those privileges. Such application may be made under the same circumstances as an application for the full restoration of dues deduction privileges. Such suspension, if granted, shall be subject to revocation in the event of a
strike or strike threat. If it becomes necessary to utilize the dues deduction process for the purpose of paying the whole or any part of a fine imposed by order of a court as a penalty in a contempt action arising out of the strike herein, the suspension of dues deduction privileges ordered hereby may be interrupted or postponed for such period as shall be sufficient to comply with such order of the court, whereupon the suspension ordered hereby shall be resumed or initiated, as the case may be.

Dated: Albany, New York
March 29, 1978

[Signature]

HAROLD R. NEWMAN, CHAIRMAN

[Signature]

IDA KLAUS
In the Matter of
TOWN OF HUNTINGTON,
Employer,
- and -
LOCAL 342, LONG ISLAND PUBLIC SERVICE EMPLOYEES,
Petitioner,
- and -
CIVIL SERVICE EMPLOYEES ASSOCIATION, INC., SUFFOLK COUNTY CHAPTER, Intervenor.

CASE NO. C-1393

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 Local 342, Long Island Public Service Employees 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: 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.

Further, IT IS ORDERED that the above-named public employer shall negotiate collectively with Local 342, Long Island Public Service Employees 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 29th day of March, 1978.

Harold Newman
Ida Klaus
In the Matter of
ROCHESTER CITY SCHOOL DISTRICT,
Employer,
and
ADMINISTRATORS AND SUPERVISORS ASSOCIATION
OF ROCHESTER,
Petitioner,
and
ROCHESTER TEACHERS ASSOCIATION,
Intervenor.

CASE NO. C-1587.

#2K-3/29/78

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the
above matter by the Public Employment Relations Board in accor-
dance 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 Rochester Teachers 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: All certified employees in the administrative and super-
visory salary schedule, with the exception of the Super-
intendent, Assistant Superintendents, Coordinators,
Administrative Directors, Supervising Directors and
Teachers on Special Administrative Assignment.

Excluded: All other employees.

Further, it is ORDERED that the above-named public employer
shall negotiate collectively with the Rochester Teachers 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 29th day of March, 1978.

Harold Newman
Ida Klaus

PERB 58.3 (12-77)
In the Matter of
MASSAPEQUA UNION FREE SCHOOL DISTRICT,
Employer,
- and -
MASSAPEQUA FEDERATION OF TEACHERS, LOCAL 1442, NYSUT, AFL-CIO,
Petitioner,
- and -
MASSAU CHAPTER CSEA & NASSAU COUNTY CSEA,
SCHOOL DISTRICT UNIT 23C,
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 Massapequa Federation of Teachers, Local 1442, NYSUT, AFL-CIO 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: Account Clerks, Stenographic Secretaries, Senior Stenographers, Stenographers and Clerk Typists.

Excluded: All other employees including those employees excluded by a determination of the Public Employment Relations Board dated February 22, 1971 (#4 PERB 1(3004) and the Account Clerk and Clerk Typists assigned to the Office of the Business Manager.

Further, IT IS ORDERED that the above-named public employer shall negotiate collectively with Massapequa Federation of Teachers, Local 1442, NYSUT, 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 29th day of March, 1978.

Harold Newman
Ida Klaus

PERB 58.3 (12-77)
Pursuant to and by virtue of the authority vested in the Public Employment Relations Board under Article 14 of the Civil Service Law, I, Harold R. Newman, Chairman of the Public Employment Relations Board, acting on behalf of such Board, hereby amend NYCRR Title 4, Chapter VII, Part 208, as follows. Any parts of the Rules of the Board not explicitly mentioned herein remain in effect as previously promulgated. These amendments shall take effect on filing with the Secretary of State.

Part 208 of PERB’s Rules of Procedure is hereby REPEALED.

A new Part 208 is added, to read as follows:

PART 208 ACCESS TO RECORDS OF THE BOARD.

§208.1 Records Available for Public Inspection and Copying.

The records of the Board available for public inspection and copying, in accordance with the procedures hereinafter set forth, shall be the records so designated in the subject matter list prescribed to be maintained by section eighty-seven of the Public Officers Law.

§208.2 Procedures for Inspection and Copying of Records.

(a) The Board’s Executive Director is hereby designated its Records Access Officer for the purposes of these Rules.

(b) A request to inspect any record shall be made either orally or in writing to the Board’s Executive Director at 50 Wolf Road, Albany, New York 12205, who will make suitable arrangements for such inspection during regular office hours at the offices of the Board in Albany, New York City or Buffalo, unless the location of a particular record may require its inspection at a particular office, in which case inspection shall occur at such office.

Note: Most records of the Board available for inspection may also be found in the published volume entitled Official Decisions, Opinions and Related Matters of the Public Employment Relations Board, sets of which are kept in various libraries, including the library of the Court of Appeals, the four Appellate Divisions and the Board’s libraries. Also contained in said publication are selected reports of fact-finding boards. Note: Since most of PERB’s records are intended for the guidance of, and to be helpful to, various segments of the public, they are ordinarily available for inspection on the day that a request is received. However, if a request is made to inspect large numbers of records, PERB reserves the right to require reasonable advance notice of such request.

(c) Copies of documents previously prepared for distribution and in stock are available without charge by either writing to the Board’s Executive Director or requesting such documents at the Board’s principal offices at 50 Wolf Road, Albany, New York 12205.
(d) Except as provided in subdivision (c) of this section, a fee of twenty-five cents per page will be charged for all copies made upon request by anyone other than a representative of a public employer or employee organization or a member of a Board panel, to whom one copy of a document may be given without charge. The Board will make every effort to comply with requests for such copies as expeditiously as possible.

(e) Stenographic services at hearings held by the Board are provided pursuant to contract under which the stenographer has exclusive right to reproduce and sell copies of minutes at hearings at charges fixed in such contract. While the minutes of hearings may be inspected at the offices of the Board, any person desiring a copy of minutes must make arrangements directly with the stenographer. The name and address of the current contract stenographer will be furnished by the Executive Director upon request.

§208.3 Appeal.

(a) An appeal may be taken to the chairman of the Board within thirty working days from:

(1) denial of a request for access to records;

(2) a failure to provide access to records within five working days after receipt of a request;

(3) the failure to furnish a written acknowledgment of receipt of a request for access to records and of a statement of the approximate date when the request will be granted or denied in the event additional time is needed to make a decision on the request.

I hereby certify that these amendments were adopted by the Public Employment Relations Board on March 29, 1978.

Harold R. Newman
Chairman
Public Employment Relations Board