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State of New York Public Employment Relations Board Decisions from June 1, 1978

New York State Public Employment Relations Board

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State of New York Public Employment Relations Board Decisions from June 1, 1978

Keywords

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Comments

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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of	:	#2A-6/1/78
	:	
STATE OF NEW YORK (OFFICE OF EMPLOYEE RELATIONS),	:	
	:	BOARD DECISION ON
Employer,	:	<u>MOTIONS</u>
	:	
-and-	:	
	:	CASE NO. C-1537
PUBLIC EMPLOYEE FEDERATION, AFL-CIO,	:	
	:	
Petitioner,	:	
	:	
-and-	:	
	:	
CIVIL SERVICE EMPLOYEES ASSOCIATION, INC.,	:	
	:	
Intervenor.	:	

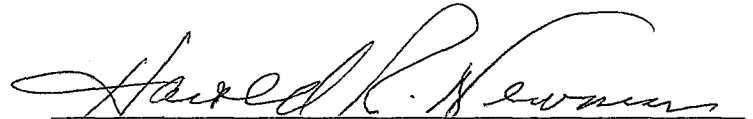
On December 30, 1977, this Board issued a decision and order in the above-entitled matter finding a sufficient showing of interest by the Public Employee Federation, AFL-CIO (PEF), in support of its petition for an election and ordering an election to be held (10 PERB ¶3018). The election was held on April 12, 1978. PEF received a majority of the votes cast and the Civil Service Employees Association, Inc. (CSEA) has filed exceptions to the election. On May 18, 1978, during the course of the hearings now in progress on the objections, CSEA moved for the reopening of our decision of December 30, 1977 on the ground of newly discovered evidence which, it claims, establishes the fraudulent nature of the showing of interest.

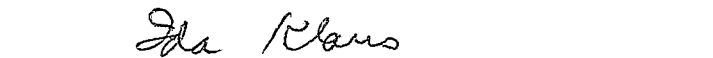
An election having been held, we find that the allegation of fraud is relevant to the question of whether that election represents a genuine expression of the free choice of the voters. This question, including the

issue of fraud, is properly before the Director of Public Employment Practices and Representation (Director) on CSEA's objections to the election, whether or not explicitly stated in the objections. We do not pass upon the issue of fraud at this time and we deny the motion. Section 201.11 of our Rules provides for our review of representation proceedings upon their completion, including the Director's determination on objections to the conduct of an election.

On May 28, 1978, CSEA submitted to us a second motion. It requests this Board to instruct the Director to investigate expeditiously, to the exclusion of the other objections, whether the showing of interest was fraudulent. This motion is not validly addressed to us. It concerns the discretion of the Director to determine the order of presentation of evidence before him.

Dated, Albany, New York
June 2, 1978


Harold R. Newman, Chairman


Ida Klaus, Member

In the Matter of the :

PLAINEDGE FEDERATION OF TEACHERS, LOCAL 1380, : BOARD DECISION
AND ORDER

upon the Charge of Violation of Section : Case No. D-0148
210.1 of the Civil Service Law. :

On May 23, 1977, the Chief Legal Officer of the Plainedge Union Free School District filed a charge alleging that the Plainedge Federation of Teachers, Local 1380 violated Civil Service Law §210.1 in that it had caused, instigated, encouraged, and condoned a strike against the District that consisted of the teachers' (1) refusal to participate at faculty meetings and other school activities in September and October, 1976, and (2) mass resignation from their extracurricular activities for 40 days during November and December of that year.

After a hearing, the hearing officer issued his decision finding that a strike had occurred and that the Plainedge Federation of Teachers had violated Civil Service Law §210.1 as alleged. He found no extreme provocation on the part of the employer and that the impact of the strike consisted of the fact that the students in the School District were without extracurricular activities for a one-month period.

Subsequent to the hearing officer's decision, the Plainedge Federation of Teachers submitted to this Board a letter which states that it and the Plainedge School District believe that a dues deduction suspension of two months would be "fair, equitable and in the interest of future harmonious relations between

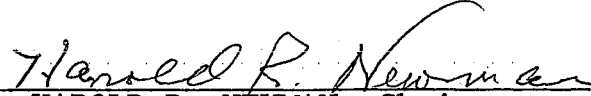
the parties." The employee organization concedes that its activities during November and December, 1976 constituted a strike.

On the basis of all of the circumstances disclosed on the record, including the unusual nature of the strike and its limited impact, we determine here that a penalty of a two-months loss of dues check-off privileges as proposed by both sides is a reasonable one.

We find that the Plainedge Federation of Teachers, Local 1380 violated Civil Service Law §210.1 in that it engaged in a strike as charged.

WE ORDER that the dues and agency shop fee deduction privileges of the Plainedge Federation of Teachers, Local 1380 be suspended, commencing with the beginning of the 1978-1979 school year, so that no further dues or agency shop fees be deducted by the Plainedge Union Free School District on its behalf for a period of two months. Thereafter, no dues or agency shop fees shall be deducted on its behalf by the Plainedge Union Free School District until the Plainedge Federation of Teachers, Local 1380 affirms that it no longer asserts the right to strike against any government, as required by the provisions of Civil Service Law §210.3(g).

DATED: Albany, New York
June 1, 1978


HAROLD R. NEWMAN, Chairman


IDA KLAUS, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of	:	#2C-6/1/78
CITY OF MOUNT VERNON,	:	
Respondent,	:	
-and-	:	<u>BOARD DECISION</u>
	:	<u>AND ORDER</u>
UNIFORMED FIRE FIGHTERS ASSOCIATION,	:	CASE NO. U-2943
I.A.F.F., Local 107,	:	
Charging Party.	:	

The charge herein was filed by the Mount Vernon Uniformed Fire Fighters Association, Local 107, I.A.F.F. (Local 107) on October 21, 1977. It alleges that the City of Mount Vernon (City) violated Section 209-a.1(d) of the Taylor Law by refusing to negotiate in good faith over Local 107's demand to create a "Joint Safety Committee." In its answer, the City denies commission of an improper practice, asserting that the proposal in question concerns a non-mandatory subject of negotiations. Since the dispute involves a disagreement as to the scope of negotiations under the Taylor Law, it has been processed under Section 204.4 of our Rules of Procedure, which permits the direct submission of the dispute to this Board upon a stipulation and the briefs of the parties.

The stipulation sets forth that on or about October 12, 1977, Local 107 presented the at-issue demand to the City. Said demand, which the City, by letter of October 13, contended was a non-mandatory subject and thus refused to negotiate, read as follows:

10. JOINT SAFETY COMMITTEE: A general health and safety committee shall be created consisting of two (2) representatives appointed by the City and two (2) representatives appointed by the President of the UFFA. The Committee's jurisdiction shall cover all matters of safety to the members of the Fire Department covered under this Collective Bargaining Agreement, including but not limited to the total number of employees reporting to a fire and the minimum amount of employees to be assigned to each piece of fire fighting apparatus. The foregoing is intended to be illustrative and not inclusive. Decision of the Committee shall be made by majority vote, provided, however, that an equal amount of representatives appear at each Committee meeting, which shall be held at least quarterly or on special call of any two of the representatives. In the event of a deadlock between the Union and City Representatives, the issue in dispute shall be submitted to binding arbitration.

Local 107 places heavy reliance upon this Board's decision in City of New Rochelle, 10 PERB ¶3078 (1977). Indeed, in that case we held that a union demand utilizing language virtually identical to that of the instant demand constituted a mandatory subject of negotiations. Aware of this decision, the City urges its reversal, contending that the thrust of the proposal in New Rochelle and herein concerns manning, and is unrelated to employee safety. More specifically, the City contends that safety aspects only attach after arrival at a fire, and that therefore, even if these concerns should properly be subject to the jurisdiction of a health and safety committee, the instant demand, which would also give the committee jurisdiction over "pre-arrival" matters, such as assignments to a rig and transportation to the fire, clearly usurps management's rights regarding

deployment of personnel.

We decline the invitation to reverse our decision in New Rochelle. Recently, in Matter of City of New Rochelle v. Crowley, et al., ___AD2d___, 11 PERB ¶7002 (1978), the Appellate Division, Second Department, unanimously confirmed PERB's determination and in so doing cited with approval our prior White Plains II^{1/} and Newburgh^{2/} decisions, as well as our subsequent decision in Troy.^{3/} Such decisions, the Court held, evidenced that PERB had "... established an eminently reasonable balance between the conflicting considerations involved," precluding management from foreclosing negotiations over the creation of a committee to consider "individual and specific factual situations that encompass safety considerations," while barring a union from forcing management "to negotiate general questions of manpower under the guise of safety." The Court went on to hold that when viewed within this framework, the demand was mandatorily negotiable.

While the Court's decision is clearly dispositive of the instant case, some comment should be made regarding the City's contention that "pre-arrival" situations are strictly manpower concerns. Admittedly, we held in Newburgh that the predominant characteristic of rig manning is that of manpower and deployment. However, it was our dissatisfaction with the prospect of having to confront every specific factual situation dealing with rig

^{1/} Matter of White Plains PBA, 9 PERB ¶3007 (1976).

^{2/} I.A.F.F. of the City of Newburgh, Local 589, 10 PERB ¶3001 (1977), aff'd 59 A.D.2d 342 (3d Dept., 1977).

^{3/} Troy Uniformed Firefighters Assn., Local 2304, I.A.F.F., 10 PERB ¶3105 (1977).

manning that had prompted us in White Plains II to recommend the creation of a joint safety policy committee, with disputes therein to be subject to binding contract arbitration. As we stated in Troy, the necessity of determining the safety aspects of given rig manning demands in improper practice proceedings

"would place an unwarranted burden upon the collective negotiations process because it would require, as a prior condition, that the negotiability of each manning/safety demand be determined by us after an extended factual hearing as to the balance between the two conflicting concerns."

Thus, while the assignment of personnel per se and, arguendo, transportation to a fire, may be characterized as primarily matters of manpower, this is not to say that in individual fact situations, safety aspects may not predominate.

Significantly, even if the parties or an interest arbitration panel were to adopt the instant demand in haec verba, neither the committee nor the contract arbitrator would thereby acquire carte blanche over manpower issues. We reiterate that "[i]t was not the intent of our New Rochelle decision to authorize the safety committee to set general minimum manning requirements for a rig under the guise of a purported safety claim." ^{4/}
As the Court in New Rochelle emphasized:

Manpower questions may properly be considered by the committee, and by the arbitrator if they cannot agree, only within the framework of individual and specific factual situations. Neither it nor the arbitrator may consider general minimum manning requirements. The arbitrator, if called upon, may resolve disputes involving a question of safety only in particularized and specific situations. (emphasis added)

^{4/} Id., at 3182-83.

Therefore, any award rendered by a contract arbitrator concerning assignment of fire fighters per se, or their transportation to or from a fire would have to be based upon safety and not manpower factors, lest the arbitrator exceed his authority and subject his award to vacatur.

ACCORDINGLY, we determine that Demand #10 of Local 107 is a mandatory subject of negotiation and

WE ORDER the City to negotiate with Local 107 over this demand.

DATED: Albany, New York
June 1, 1978

Harold R. Newman
Harold R. Newman, Chairman

Ida Klaus
Ida Klaus, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of	:	#2D-6/2/78
COUNTY OF ROCKLAND,	:	
	:	<u>BOARD DECISION AND ORDER</u>
Employer,	:	
-and-	:	<u>CASE NO. C-1507</u>
ROCKLAND COUNTY SHERIFF'S PATROL ASSOCIATION,	:	
Petitioner,	:	
-and-	:	
ROCKLAND COUNTY SHERIFF'S DEPUTIES ASSOCI-	:	
ATION, INC.,	:	
Intervenor.	:	

This matter comes to us on the exceptions of the Rockland County Sheriff's Patrol Association, Petitioner herein, from a determination of the Director of Public Employment Practices and Representation (Director) that there should not be a separate unit for deputy sheriffs of Rockland County who work in the Patrol Division. At present, there is a negotiating unit consisting of deputies in three of the four divisions of the Sheriff's Department of Rockland County. ¹The three divisions are Patrol, Civil and Court. ²There are approximately 36 deputy sheriffs in the Patrol Division, 8 in the Civil Division and 3 in the Court Division. The deputy sheriffs in the Patrol Division perform enforcement functions normally associated with the criminal

- ¹ They are represented by the Rockland County Sheriff's Deputies Association, Inc., the Intervenor herein. It has taken no position regarding the appropriateness of the unit sought by Petitioner.
- ² Deputy sheriffs in the fourth Division, the Jail Division, are in a separate unit which was created by the parties themselves, without objection from any outside organization.

law enforcement responsibilities of a police force. They carry weapons. The deputy sheriffs in the Civil Division are primarily engaged in the service of processes in civil lawsuits. They do not wear uniforms and do not carry weapons, although they are authorized to do so. On occasion, they may make civil arrests. Deputy sheriffs in the Court Division maintain order in courts. They wear uniforms and, on occasion, they carry weapons.

The Director determined that there is a community of interest among all the deputy sheriffs within the existing unit by reason of their comparable terms and conditions of employment and the centralized administration of the substantially similar personnel practices and policies relating to all in the present unit. He rejected the Petitioner's argument that conflicts within the existing unit weaken the position of deputy sheriffs in the Patrol Division -- for the reason that such deputies comprise over three-fourths of the employees in the negotiating unit and are, therefore, in a position to protect their interests. The Director also noted that the employer urged retention of the existing unit because its fragmentation would be administratively inconvenient. He cited our decision in City of Amsterdam, 10 PERB ¶13031, in which we relied in part upon the stated position of the employer that its administrative convenience in carrying out its mission would be better served there by a separate unit structure for the police force.

In its exceptions, Petitioner argues that the Director's decision ignores evidence of conflicts of interest between the deputy sheriffs in the Patrol Division and deputy sheriffs in the Court and Civil Divisions. It further argues that deputy sheriffs in the Patrol Division must have a separate unit because they are policemen, and policemen should never be included in a unit with other employees. Finally, it contends that, as policemen in a separate unit, their negotiating disputes would be subject to interest arbitration, a procedure which could not be applicable to the other deputy sheriffs,

and that this difference in the availability of impasse procedures compels a separate negotiating unit.

We are not persuaded by the Petitioner's exceptions. We agree with the Director that the record does not disclose a conflict of interest between the deputy sheriffs in the Patrol Division and those in the Civil and Court Divisions. Neither do we find that the job duties of the deputy sheriffs in the Patrol Division render them members of a police force and, hence, require a separate negotiating unit for them. Like the employees in the other two divisions, they are, in fact, deputy sheriffs, exercising their particular patrol functions as deputy sheriffs. If the deputy sheriffs in the Patrol Division were covered by the interest arbitration provisions of the Taylor Law and the other deputy sheriffs were not, we might well find that the disparate impasse procedures compel a separate negotiating unit for the other groups. As a matter of law, however, deputy sheriffs in the Patrol Division are not covered by the interest arbitration provision³ and, thus, this argument is irrelevant.


ACCORDINGLY, WE AFFIRM the decision of the Director, and

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

ALBANY: Albany, New York
June 2, 1978



Harold R. Newman, Chairman



Ida Klaus, Member

³ Interest arbitration is available to a "police force or police department of any county, city, except the city of New York, town, village...or police district...." This definition excludes deputy sheriffs (Matter of Erie County Sheriff and Erie County, 7 PERB ¶3057 [1974]).

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of	:	#2E-6/2/78
CARTHAGE CENTRAL SCHOOL DISTRICT,	:	
	:	<u>BOARD DECISION AND ORDER</u>
Respondent,	:	
-and-	:	<u>CASE NO. U-2902</u>
CARTHAGE TEACHERS ASSOCIATION, LOCAL 2542,	:	
Charging Party.	:	

This matter comes to us on the exceptions of the Carthage Teachers Association, Local 2542 (Association) to the decision of the hearing officer dismissing its charge that the Carthage Central School District (District) committed an improper practice in that it refused to compensate teachers for graduate credits that had been earned after the expiration of a prior contract and before the execution of a new one. At the hearing, the District argued that its conduct was authorized by the agreement between the parties.

FACTS

The prior contract had expired on June 30, 1977. On August 18, 1977, the parties agreed that a salary increase at a total cost of \$290,000 would be paid over two years and they initialed their agreement. When the parties met on August 30 to allocate this sum of money, they found themselves at variance as to whether their agreement was intended to cover payment for new graduate credit hours that were earned during the hiatus between the contracts.

The matter had not been discussed by the parties when the amount of the total sum for salary payments was considered and agreed upon. In the past, the District had paid for such new credit hours out of its own budget, and the Association believed that the District would continue to do so. The Association argues that, absent any explicit agreement to the contrary, provisions of prior

contracts and understandings must be deemed to be carried over into the new agreement. The District believed that its offer of \$290,000 covered all salary items and it maintains that the Association should have understood that the payments for the new graduate credits must come from that money.

The hearing officer determined that, notwithstanding both parties' assumption that they reached an agreement on August 18, 1977, there had been a mutual misunderstanding regarding a material term of that agreement and, thus, there was no agreement at all. Accordingly, he rejected the allegation that the District unilaterally altered the terms and conditions of unit employees by failing to execute and implement an agreement previously reached.

The hearing officer also rejected the Association's alternative argument that the District unilaterally altered terms and conditions of employment by failing to pay for the graduate hours even if there were no agreement to do so. The theory of this alternative basis of the charge is that prior terms and conditions of employment must be continued even after the expiration of an agreement so long as the parties are under an obligation to continue their negotiations for a successor agreement. Relying upon the Court of Appeals opinion in Rockland County BOCES v. PERB, 41 NY2d 753 (1977), which held that this duty was not applicable to increased payments such as increments, and upon a hearing officer's opinion in Averill Park Central School District, 10 PERB ¶4560 (1977), which applied the Court of Appeals decision to payments for additional credit hours, the hearing officer dismissed this basis of the charge.

DISCUSSION

We affirm the decision of the hearing officer dismissing the charge. We agree with the hearing officer that, absent an agreement, there would be no obligation to pay for new credit hours. The Association appears to concede this. In its brief on appeal, it argues that this case must be distinguished

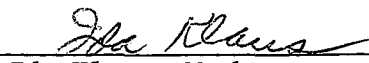
from the Averill Park case because here there was a successor agreement which was ratified by the parties and which was implemented except for the disagreement involving the source of the payment for new credit hours. Thus, it is clear that the Association places sole reliance upon the existence of an agreement on the allocation of the \$290,000 sum.

While the hearing officer may be correct in dismissing the charge on the basis of his conclusion that a mutual misunderstanding of a material term¹ of what the parties believed they had agreed upon resulted in no agreement, we need not reach that conclusion in sustaining his dismissal. In view of the charging party's basic position that an agreement was reached, the dispute which it seeks to have us decide would, in any event, be no more than one involving the interpretation and application of that alleged agreement. In its brief, the District correctly argues that such a dispute is not within the jurisdiction of this Board.² It must be resolved through the dispute resolution mechanism established by the parties in their contract, or, in the absence of such a mechanism, by a court action for breach of contract.

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

DATED: Albany, New York
June 2, 1978


Harold R. Newman, Chairman


Ida Klaus, Member

¹ Cf. Yonkers Federation of Teachers, 8 PERB ¶3020 (1975).

² St. Lawrence County, 10 PERB ¶3058 (1977) and §205.5(d) of the Civil Service Law, as amended by Chapter 429 of the Laws of 1977.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2G-6/1/78

In the Matter of :

KESHEQUA CENTRAL SCHOOL DISTRICT, :

Employer, :

- and - :

CASE NO. C-1560

KESHEQUA NON-TEACHING ASSOCIATION, :

Petitioner. :

BOARD DECISION

On October 17, 1977, the Keshequa Non-Teaching Association (petitioner) filed, in accordance with the Rules of Procedure of the Public Employment Relations Board, a timely petition for certification as the exclusive negotiating representative of certain employees employed by the Keshequa Central School District.

The parties executed a consent agreement which was approved by the Director of Public Employment Practices and Representation on April 25, 1978. The negotiating unit stipulated to therein was as follows:

Included: All non-teaching staff.

Excluded: Bus drivers, bus-driver mechanic, building principals, physicians, guidance counselor, business manager, district principal, central office secretaries, secretaries to the building principals, head custodians, cafeteria supervisors and transportation supervisors.


Pursuant to the consent agreement, a secret ballot election was held on May 12, 1978. The results of this election indicate that the majority


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of eligible voters in the stipulated unit who cast valid ballots do not desire to be represented for purposes of collective negotiations by the 1/ petitioner.

Therefore, it is ordered that the petition should be, and hereby is, dismissed.

Dated: Albany, N.Y.
This 1st day of June, 1978


HAROLD R. NEWMAN, Chairman


IDA KLAUS, Member

1/ There were 13 ballots cast in favor of representation by the petitioner and 22 ballots against representation by the petitioner.