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11-20-1978

State of New York Public Employment Relations Board Decisions from November 20, 1978

New York State Public Employment Relations Board

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State of New York Public Employment Relations Board Decisions from November 20, 1978

Keywords

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Comments

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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2A - 11/20/78

In the Matter of

STATE OF NEW YORK

-and-

COMMITTEE OF INTERNS & RESIDENTS,
NEW YORK EDUCATORS ASSOCIATION,

-and-

UNITED UNIVERSITY PROFESSIONS, INC.

BOARD DECISION ON MOTION FOR RE-
VIEW OF AN INTERIM RULING

CASE NOS. C-1735/C-1751

The Committee of Interns and Residents has made a motion pursuant to §201.9 (c) (3) of our Rules for authorization to submit exceptions to an interim ruling by the Director of Public Employment Practices and Representation.¹ The Director has determined that an election should be held among employees in the existing Professional Service negotiating unit of the State University of New York without first resolving the question whether interns and residents should be removed from that unit. Interns and residents comprise a small proportion of the employees in the existing unit -- approximately 490 of 16,000. The Committee of Interns and Residents complains that the procedure adopted by the Director has delayed resolution of the question whether interns and residents should be given a separate unit and that "these

¹ Section 201.9 (c) (3) provides: "Review. Unless expressly authorized by the Board, rulings by the Director or by a trial examiner shall not be appealed directly to the Board, but shall be considered by the Board when it considers such exceptions to the decision of the Director as may be filed."

delays would not have occurred had the usual and correct procedure been adhered to of holding the election after the completion of hearings and the decisional process on all relevant Petitions".

Having considered the motion, the Board hereby denies review of the interim ruling.

The motion is dismissed.

DATED: Albany, New York
November 20, 1978



Harold R. Newman, Chairman



David C. Randles, Member

Member Ida Klaus dissents.



Ida Klaus, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of
TOWN OF ORANGETOWN,

Respondent,

- and -

ORANGETOWN POLICE BENEVOLENT
ASSOCIATION,

Charging Party.

#2B - 11/20/78

BOARD DECISION AND ORDER

CASE NO. U-3216

JAMES L. CASEY, ESQ., for Respondent

RAYMOND KRUSE, ESQ., for Charging Party

This matter comes to us on the exceptions of the Orangetown Police Benevolent Association (PBA) to a hearing officer's decision dismissing its charge. The charge alleges that the Town of Orangetown (Town) violated its duty to negotiate in good faith by altering terms and conditions of employment in that it unilaterally gave extra time off to some employees in the unit represented by PBA, but not to others. PBA is the exclusive representative of the police department employees.

FACTS

On Friday, January 20, 1978, the Town supervisor closed the Town offices because of a snow emergency. Those employees who were unable to travel to work on that day were given an excused absence with no charge against any leave accruals. Those who succeeded in coming to work on that day, were credited with an additional day of leave to be used in the future. No additional leave was credited to those employees who were not scheduled to work on January 20, 1978. The decision to close the Town offices was made without consultation with the unions that represented Town employees. That decision applied to employees of the police department, among others.

There is no record that Town offices had ever been closed previously because of an emergency. There were occasions when Town offices had been closed by the Town on a "planned basis". On those occasions, employees who had not been scheduled to work were given an extra day off. The theory underlying PBA's charge is that the past practice of granting all employees a day off when Town offices were closed on a "planned basis" is applicable to the closing of Town offices on an "emergency basis". It asserts that the failure of the Town to grant an extra day off to employees not scheduled to work on January 20, 1978 constituted a unilateral change in terms and conditions of employment.

The hearing officer rejected this assertion. He concluded that there is a reasonable distinction between the closing of Town offices on a "planned basis" and their closing on an "emergency basis". It is to this conclusion that PBA has filed exceptions.

DISCUSSION

We affirm the determination of the hearing officer. The distinction between the closing of Town offices on a "planned basis" and on an "emergency basis" is a reasonable one. There is no past practice regarding the granting of extra time off to employees not scheduled to work on a day when Town offices are closed on an "emergency basis". Accordingly, the Town did not alter terms and conditions of employment when it decided to deny extra time off to employees not scheduled to work on January 20, 1978.

This does not dispose of the exceptions completely. PBA argues:

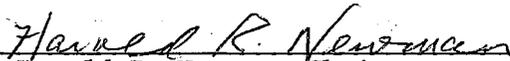
"Even assuming the January 20th closing represented a brand new situation, the union would have a right to negotiate the effects of the policy decision made in reference thereto." (emphasis supplied)

Although we agree with this proposition, we do not find a violation in the instant case. The Town did have an obligation to negotiate with the PBA with respect to the impact of its decision to close Town offices

on January 20, 1978, upon the employees affected by it. This decision affected the employees who were scheduled to work on that day. The Town did negotiate about the impact of its decision upon them, and the charge does not relate to them. The charge only alleges a refusal to negotiate as to the impact of the Town's decision upon employees who were not scheduled to work on January 20, 1978. However, the policy decision to close Town offices had no effect upon the working conditions of those who were not scheduled to work that day.. Therefore, there was no duty to negotiate with respect to them.

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

DATED: Albany, New York
November 21, 1978



Harold R. Newman, Chairman



Ida Klaus, Member



David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of	:	#2C - 11/20/78
TOWN OF SMITHTOWN,	:	
Respondent,	:	<u>BOARD DECISION AND ORDER</u>
-and-	:	<u>CASE NO. U-2519</u>
RITA A. GLASHEEN,	:	
Charging Party.	:	

RICHARD W. GLASHEEN, for Charging Party
JAMES MALBY, ESQ. and
JOHN J. TOOMEY, JR., ESQ., for Respondent

The charge herein was filed by Rita A. Glasheen on January 27, 1977.

It alleges that the Town of Smithtown committed an improper practice by terminating her because she utilized the grievance procedure contained in a collective agreement between the Town and the Smithtown unit of the Suffolk Chapter of CSEA and because she pursued a promotion in reliance on certain provisions of that agreement. A formal hearing was held on the charge. The hearing was held on nine days, and extended from June through October 1977. The record of the hearing is more than 1200 pages. After the hearing, the parties submitted written briefs, the last of which was submitted to the hearing officer in late December 1977.

On March 29, 1978, the hearing officer issued his decision. He concluded that neither Glasheen's utilization of the contractual grievance procedure nor her reliance upon provisions of the collective agreement relating to promotions was the reason for her termination. Glasheen was terminated, according to the hearing officer, because she was deemed by the Town to be a part-time employee who was paid on an annual basis, and all such part-time employees of the Town were terminated on December 30, 1976. Glasheen was one

of 70 employees so terminated.

The part-time employees were told that, commencing January 4, 1977, they could apply for new employment as hourly employees. Glasheen applied for reemployment on January 4, 1977, but she alone of the 70 terminated employees was not rehired. The hearing officer determined that the effective decision not to rehire Glasheen was made by Richard W. Germain, Head of the Recreation Department. He further determined that Germain's decision not to rehire Glasheen was not occasioned by her participation in protected activities, but rather by a personal dislike for Glasheen growing out of interpersonal frictions¹ within the Recreation Department.

Glasheen has filed exceptions to the hearing officer's decision. In her exceptions, she contends that the hearing officer erred in his conduct of the hearing in several particulars and that he erred in his findings of fact. Glasheen also argues that the entire defense of the Town of Smithtown must be disregarded because the Town's answer, filed by the Town Supervisor, was not authorized by the Town Board and under Town law no other body or individual may submit an answer on behalf of the Town.

The implication of this last exception is that there was no proper answer submitted by the Town, and that the charge must therefore be deemed admitted. We dismiss this exception. Assuming the Town Supervisor's submission of an answer was ultra vires his authority, it was filed under color of authority and received without objection by Glasheen. In any event, the hearing officer could have proceeded with the hearing even if the answer were considered a nullity. Section 204.3(e) of our Rules permits, but does not require, a hearing officer to treat the absence of an answer as an admission of the material facts in a charge and a waiver by a respondent of a hearing. The

¹ The basis and nature of these frictions are reported in his decision.

hearing officer did not do so in the instant case. Moreover, after participating fully in so protracted a hearing without raising this issue, Glasheen cannot now deem it to have been an exercise in futility and contend that it be disregarded. The hearing was properly held, and the hearing officer's decision rests upon the evidence in the record.

We find no prejudicial error in the hearing officer's conduct of the hearing. We have reviewed the record² and find that the hearing officer did impose limitations upon the presentation of Glasheen's case. Insofar as we can determine, those limitations restricted the presentation of testimony that was either irrelevant or repetitious. We also find that on one occasion, the hearing officer expressed impatience at the way the hearing was proceeding. Neither his rulings nor his expression of impatience appears to have prejudiced charging party's opportunity to prepare a complete record on all relevant matters.

We also conclude that the hearing officer did not err in his findings of fact. The record indicates that there is a basis for doubt as to whether Glasheen was a part-time employee, covered by the termination policy, or a full-time employee and, therefore, not covered by it. She and other employees in the Recreation Department were instructed to work one set of hours, but to record a different set of hours in order to satisfy Civil Service requirements. In any event, the record does not suggest that the reason the Town treated her as a part-time employee was to establish a pretext for her termination. On the contrary, the record establishes that she was not singled out for termination, but was one of a large number of employees who were similarly situated as to

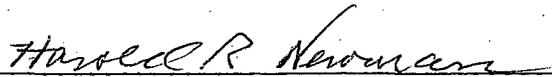
² Section 204.10 (b) (3) provides that exceptions should specify page citations of the record relied upon. Glasheen provided so few record references that we consequently found it necessary to search the record of more than 1200 pages ourselves for possible prejudicial errors by the hearing officer.

employment status, all of whom were terminated.

Glasheen was, however, unique in that she alone was not rehired. The record establishes that she and a fellow employee in the Recreation Department, Gloria Swenson, were harassing each other. It further shows that Germain Head of the Recreation Department, was disturbed by Glasheen's behavior in the office and that he wanted her to be transferred out of his department. He favored Swenson and resented intrusions into these quarrels by Glasheen's husband, who was Assistant to the Town Supervisor. These differences led to arguments between the Glasheens and Germain. Thus, the record supports the hearing officer's conclusion that the decision not to rehire Glasheen, made by Germain, was arrived at because he deemed her to be a disruptive individual within his department. We agree with the hearing officer that the record does not establish that, but for her exercise of protected rights, Glasheen would still be working for the Town of Smithtown.

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

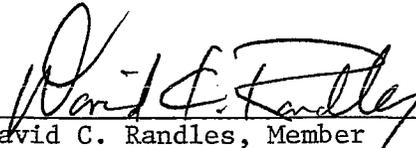
DATED: Albany, New York
November 21, 1978



Harold R. Newman, Chairman



Ida Klaus, Member



David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of _____ :
TOWN OF HAVERSTRAW, _____ : #2D - 11/20/78
Employer, _____ :
-and- _____ : Case No. C-1758
LOCAL UNION 363, INTERNATIONAL BROTHERHOOD OF _____ :
ELECTRICAL WORKERS, AFL-CIO, _____ :
Petitioner. _____ :

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 Union 363, International Brotherhood of Electrical Workers, 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: All Highway Department employees.

Excluded: Superintendent of Highways, temporary, seasonal and all other employees.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with Local Union 363, International Brotherhood of Electrical Workers, 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 20th day of November , 19 78
Albany, New York

Harold R. Newman
Harold R. Newman, Chairman

Ida Klaus
Ida Klaus, Member

David C. Randles
David C. Randles, Member