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Board (PERB)

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1-5-1979

## State of New York Public Employment Relations Board Decisions from January 5, 1979

New York State Public Employment Relations Board

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## State of New York Public Employment Relations Board Decisions from January 5, 1979

### Keywords

NY, NYS, New York State, PERB, Public Employment Relations Board, board decisions, labor disputes, labor relations

### Comments

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STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of :  
ROOSEVELT UNION FREE SCHOOL DISTRICT, : BOARD DECISION  
Respondent, : AND ORDER  
- and - : CASE NO. U-2986  
ROOSEVELT ADMINISTRATORS ASSOCIATION, :  
Charging Party. :

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COOPER & ENGLANDER, for Respondent  
ROBERT E. SAPIR, ESQ., Of Counsel

BARATTA & SOLLEDER, for Charging Party

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The charge herein was filed by the Roosevelt Administrators Association (Association) on November 14, 1977. It alleges that the Roosevelt Union Free School District (District) refused to negotiate in good faith in violation of Civil Service Law (CSL) §209-a.1(d) in that it withdrew two agreements reached with the District's representatives during the course of negotiations. One of the alleged agreements involved specified pay increases to two employees and the other provided for a specified package of disability benefits. In its answer the District alleged that it had engaged in "package" bargaining and that because the Board of Education of the District had rejected the financial settlement the entire package was never agreed upon.

The hearing officer dismissed the charge on September 19, 1978 for the following reasons: (1) there was no evidence that the Board of Education, as the legislative body of the District,

ever approved the two alleged items of agreement, both of which required legislative approval pursuant to the provisions of CSL §§204-a.1 and 201.10; (2) that the parties had been engaged in package bargaining and that no package was ever approved; (3) that, in any event, the charge was not timely under §204.1(a)(1) of our Rules of Procedure inasmuch as the Association knew or should have known that the District was not going to honor the two alleged agreements more than four months before the charge was filed; and (4) if there was any interim agreement, the District's breach of it would be remediable in a breach of contract proceeding rather than pursuant to an improper practice charge.

In its exceptions the Association argues (1) that there had been no agreement regarding package bargaining and (2) that the approval of the District's Board of Education was implicit in the agreement of its negotiator.

DISCUSSION

We affirm the decision of the hearing officer. The record does not reveal any evidence that the District's Board of Education ever took official action of any kind approving the alleged interim agreements. The Association relies exclusively upon the testimony of the negotiator for the District that "through the course of negotiations I made it abundantly clear to their negotiating team that I had to take the proposals back to the Board; that I did not and could not make the determination without Board approval." The Association argues that we must draw the inference that the negotiator's early acceptance of the pro-

posals must have been based upon Board of Education approval. We decline to make any finding of binding approval by the Board of Education on the basis of what would be at most only an inconclusive inference. Even assuming preliminary agreement among the negotiators as to the salaries of the two administrators and as to disability benefits, there is no evidence in the record that the Board of Education formally committed the District to such agreement.

Moreover, even if the Association's claim were accepted, that a final agreement separable from all other issues under negotiation was reached with respect to the two administrators' salaries and with respect to disability benefits, we find that the improper practice charge was not timely filed.<sup>1/</sup> This separable agreement was alleged to have been reached on November 8, 1976, but the charge herein was not filed until November 14, 1977. The Association claims that it was not until August 1977 that it learned that the District would not pay the agreed upon salaries. One of the administrators involved (Young) testified, however, that she received no payments reflecting the alleged salary

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<sup>1/</sup> Rules of Procedure §204.1(a)(1): ". . . a charge that any public employer or its agents . . . has engaged in or is engaging in an improper practice may be filed with the Director within four months thereof . . . ."

increase from November 1976 to June 1977, when she terminated her employment with the District. Considering the small size of the bargaining unit in question, we cannot accept that the Association did not know or did not have reason to know, at least by June 1977, that the alleged agreed upon salary increases were not going to be paid. Furthermore, the negotiating representative of the Association testified that in June 1977 he discovered that the disability benefits were not going to be provided. Thus, under the theory of its case, the Association's improper practice charge must be considered untimely.

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

DATED: Albany, New York  
January 5, 1979

*Harold R. Newman*  
HAROLD R. NEWMAN, CHAIRMAN

*Ida Klaus*  
IDA KLAUS, MEMBER

*David C. Randles*  
DAVID C. RANDLES, MEMBER

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of :  
STATE OF NEW YORK (DIVISION OF STATE POLICE), :  
Employer, :  
-and- :  
POLICE BENEVOLENT ASSOCIATION OF THE NEW :  
YORK STATE POLICE, INC., : Case Nos. C-1733,-37,  
-40,-42,-44,-47 & -48  
Petitioner-Intervenor, :  
-and- : (Troopers Unit)  
FRATERNAL ORDER OF NEW YORK STATE TROOPERS, :  
LOCAL 1908, AFSCME, AFL-CIO, :  
Petitioner-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 the Police Benevolent Association of the New York State Police, Inc.

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.

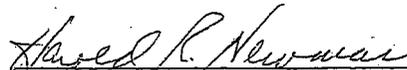
Unit A. Included: Troopers.

Excluded: All other employees.

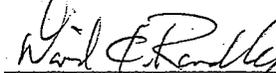
Further, IT IS ORDERED that the above named public employer shall negotiate collectively with the Police Benevolent Association of the New York State Police, Inc.

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 4th day of January, 1979  
Albany, New York

  
Harold R. Newman, Chairman

  
Ida Klaus, Member

  
David C. Randles, Member