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2-12-1979

State of New York Public Employment Relations Board Decisions from February 12, 1979

New York State Public Employment Relations Board

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State of New York Public Employment Relations Board Decisions from February 12, 1979

Keywords

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Comments

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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2A - 2/12/79

In the Matter of
COUNTY OF SUFFOLK,

Respondent,

-and-

SUFFOLK COUNTY PATROLMEN'S
BENEVOLENT ASSOCIATION, INC.,

Charging Party.

BOARD DECISION AND ORDER

CASE NO. U-3210

KIMMEL & KIMMEL, for Respondent

HARTMAN & LERNER, for Charging Party

The Suffolk County Patrolmen's Benevolent Association, Inc., (PBA) has filed exceptions to a hearing officer decision dismissing its charge. The charge alleges that the County of Suffolk (County) committed an improper practice by refusing to execute a contract "embodying the terms and conditions of employment of...[its] police officers...as defined by the prior agreement and the arbitration award."

Facts

The PBA and the County have negotiated a series of collective agreements covering policemen who are in a unit represented by PBA. On November 3, 1976, PBA and the County executed an agreement for the 1976 calendar year that embodied the determination of an arbitration panel which was issued pursuant to Subdivision 4 of §209 of the Taylor Law. Subsequently, the parties were unable to agree upon a contract to commence on January 1, 1977, but they did agree that the terms and conditions set forth in their 1976 agreement would continue in full force except to the extent that they were amended by the determination of another arbitration panel. That determination

was issued on December 5, 1977 and covered the 1977 and 1978 calendar years.

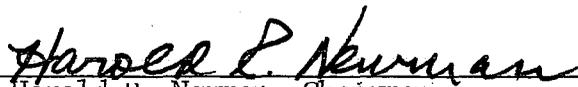
After the issuance of the determination of the arbitration panel, PBA demanded that the County execute an agreement containing the terms of the 1976 agreement as altered by the arbitration panel determination. The County acknowledged that the agreement sought accurately reflected the obligations of the parties as imposed by the arbitration determination but it, nevertheless, refused to execute the desired agreement. Its reason was that it is not obligated to execute an agreement when terms and conditions of employment are determined by an arbitration panel. It did, however, indicate that it is "prepared to print and distribute an informational copy of a document which integrates the arbitration award into the language of the previous contract." There is no dispute regarding the accuracy of the informational document that the County is prepared to print and distribute.

Discussion

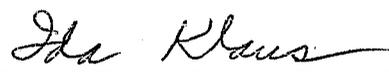
PBA claims the County committed an improper practice by refusing to execute a contract embodying the terms and conditions of employment of its police officers as defined by the prior agreement and the arbitration award. In effect, this would have required the County to convert the arbitration award into an agreement by executing a document containing its terms. The County acknowledges that it must abide by the award, but it argues that it is not obligated under the law to convert it into a formal agreement. The County is correct. When negotiations involving police or fire departments do not result in an agreement, §209.4 of the Taylor Law provides for a determination by a public arbitration panel. This determination is not an agreement, but is a substitute for one.

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

DATED: New York, New York
February 12, 1979



Harold R. Newman, Chairman



Ida Klaus, Member



David C. Randles, Member

tinuing implementation of the provisions and procedures of the Taylor Law.

Acting pursuant to §203.8 of our Rules, we directed that the questions raised by the petition be investigated. The investigation reveals that the petitioner's claim is based on a decision of the local board dated June 1, 1978, affirming a local hearing officer's report and recommendation dated October 11, 1977, which denied CIR's petition for certification of itself for a separate unit of interns and residents employed at the Nassau County Medical Center, and for decertification of CSEA as their negotiating representative in a broader unit. A hearing was held before John F. Coffey, Esq., the local board's hearing officer, on October 20, 1976. His decision was rendered upon the record of that hearing and, by agreement of the parties, upon the record of a prior representation proceeding between the same parties. We have been furnished copies of the transcript of the hearing held before the local hearing officer, the local hearing officer's report and recommendation and the local board's decision and order. Memoranda of law have been filed by the petitioner and by the County Attorney of Nassau County. On November 17, 1978, the petitioner submitted a reply memorandum.

In 1975, CIR filed a virtually identical petition with this Board after the Nassau County PERB had denied its petition for certification and decertification. In a decision and order dated December 5, 1975 (8 PERB ¶3091), we dismissed CIR's petition as being untimely filed. We stated, however, that even if timely, the petition would nevertheless be dismissed since its "contentions do not relate to any procedural matter, but rather to the merits of the local board's unit determination." We cited the following previously declared standard as governing the review of the merits of a local PERB unit determination:

The decisions made by the local board on September 4, 1968 reflect careful con-

sideration of the issues and may be deemed to reflect that board's best judgment within the guidelines set forth in the statute. It is not contemplated that this Board's function of reviewing such determination is intended as a method by which this Board might substitute its judgment for that of the local board in such representation proceedings. (New York State Nurses Assn., 1 PERB ¶3247 [1968]; see also Nassau County Correction Officers Benevolent Association, Inc., 8 PERB ¶3068 [1975])

Application of this standard to the instant petition again calls for a dismissal. Once again, petitioner apparently claims that the decisions of this Board applying the Taylor Law standards for determining unit appropriateness mandate that there be a separate unit of interns and residents by reason of the unique community of interest shared by them. We reiterate that we have at no time rendered any such decision. Nor is there any policy of this Board which would require a separate negotiating unit for interns and residents. In our 1975 CIR decision, we cited, "only by way of illustration", the Director's decision in Matter of County of Erie (Edward J. Meyer Memorial Hospital), 8 PERB ¶4045 (1975), which denied a petition seeking to separate interns and residents from an overall County unit, as reflecting the absence of any such policy. Petitioner places great reliance upon the fact that we later reversed the Director's decision in Erie (9 PERB ¶3029 [1976]). Such reliance is misplaced. Our decision in Erie neither stated nor implied that the Taylor Law requires the establishment of a separate unit for interns and residents. It simply held that, upon the record in that case, such fragmentation was warranted.

The local board has owed its existence to the fact that the local ordinance by which it was created has been held by PERB to be substantially

equivalent to the Taylor Law (11 PERB ¶3040 [1978]). Section 5(a) of the Nassau County's local ordinance, which defines the criteria governing unit determinations is virtually identical to §207.1 of the Taylor Law. This Board will review a challenge to a unit determination of the local board only when it is clear that one or more of these criteria have been disregarded. If it appears that the local board in making its determination, has given careful consideration to these criteria, the possibility that this Board might reach a different conclusion on the same facts is not controlling in deciding the issue before us.

It appears that the local hearing officer, whose report was adopted by the local board, fully considered the statutory criteria in arriving at the unit determination in issue, and that the local board's decision thus reflects its "best judgment within the guidelines set forth in the statute". The local hearing officer, in fact, agreed with the petitioner that interns and residents shared a unique community of interest, and that officials at the level of the proposed unit had the power to make effective recommendations regarding the terms and conditions of employment of the employees in question. He further determined, however, that creation of a separate unit would be incompatible with the joint responsibilities of the employer and its employees to serve the public interest, and on balance, held that fragmentation was not warranted. Petitioner argues that there was no basis in the record for the determination of the hearing officer. This is a matter of the weight of the evidence which is not for this Board to review in this implementation proceeding.

As all necessary criteria have been recognized and considered by the local board in determining the issue of appropriate unit, we cannot find that the provisions and procedures enacted by Nassau County have not been implemented by the Nassau County Public Employment Relations Board in a manner substantially equivalent to those provisions and procedures set forth in Article 14 of the Civil Service Law and the Rules of Procedure of this Board. In view of the foregoing,

WE ORDER that the petition of the Committee of Interns and Residents be, and it hereby is, dismissed.

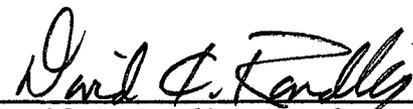
Dated, New York, New York
February 12, 1979



Harold R. Newman, Chairman



Ida Klaus, Member



David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of	:	#2C - 2/12/79
	:	
CHATEAUGAY CENTRAL SCHOOL DISTRICT,	:	
	:	<u>BOARD DECISION AND ORDER</u>
Respondent,	:	
	:	
-and-	:	<u>CASE NO. U-3350</u>
	:	
CHATEAUGAY CHAPTER, NYSUT, LOCAL 2557,	:	
	:	
Charging Party.	:	
	:	

RICHARD G. RYAN, for Respondent

DALE D. FAIRCHILD, for Charging Party

This matter comes to us on the charge of the Chateaugay Chapter of the New York State United Teachers, Local 2557, AFL-CIO (Local 2557) that the Chateaugay Central School District (District) violated §209-a.1(d) in that it refused to negotiate in good faith as to the continuation of nine provisions of an expiring agreement. The District responds that the nine provisions are all nonmandatory subjects of negotiation and that, accordingly, it is under no statutory duty to negotiate as to them. As this case presents a dispute primarily involving scope of negotiations, it comes to us under §204.4 of our Rules, which dispenses with an intermediate report by a hearing officer.

DISCUSSION

The following demands are the subject of this proceeding and bear the identification specified in the prior agreement.

1. Article VI C

"Special attention shall be given to the number of children in each of the grades (K-12) and that class size in each instance coincide as closely as possible with the recommendations of the State Education Department."

This demand deals with class size, a nonmandatory subject of negotiation. It does not set specific numerical limitations on class size, but sets forth a

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policy and a goal. Even so, the demand is not a mandatory subject of negotiation. In Pearl River, 11 PERB ¶3085, we wrote of a similar demand: "If it is not a general clause that is subject to interpretation by an arbitrator, it is in the nature of a preamble such as we have ruled not to be a mandatory subject of negotiation."

2. Article VI D

"The school district will strive to employ only full qualified teaching personnel who comply with the New York State certification requirements. The Association President shall, upon request, be given a list of all uncertified teaching personnel."

The first sentence of this provision deals with the qualifications of teachers to be hired by the District. This is a management prerogative. There is no indication in the record that the second sentence of Article VI D was intended by Local 2557 to be considered by the District independently of the first sentence. Accordingly, Article VI D is not a mandatory subject of negotiation.

3. Article VI E

"It is recognized that questions relating to the number of staff is within the province of the Board. However, the Board will substantially comply with the recommendations of the State Education Department before making any reduction in staff. In the event reductions must be made, proper attention will be given to seniority as provided in the Tenure Law."

A provision requiring compliance with State law is not a mandatory subject of negotiation, New Rochelle, 8 PERB ¶3071. As this demand does no more than require compliance with State law in the event that staff reductions must be made, it is not a mandatory subject of negotiation.

4. Article VI I

"The Board shall not replace any teacher with a paraprofessional or teacher aide for regular, unsupervised classroom teaching assignment."

This demand, which involves the assignment of work to staff, also restates responsibilities that are set forth in law. The Education Law §3009 and §80.33 of the Regulations of the Department of Education prohibit the

assignment of unsupervised classroom teaching to paraprofessionals or teacher aides. Accordingly, for this reason alone, it is not a mandatory subject of negotiation.

5. Article VII

"ACCESS TO SCHOOL FACILITIES

Members of the Association may have access to the school building, at any time, to pursue their professional responsibilities. To accomplish access the Association members may 'check out' a master key from the Central Office for a specific period of time (normally one day) or when this is not practical, he may request admittance by contacting the District Principal, Elementary Principal or Head Custodian. Association members using the building will be responsible for insuring that unauthorized persons are not permitted in the building, that all equipment, lights, etc. are properly secured and that the building is securely locked when leaving. Keys checked out must not be loaned to others and extreme care must be taken to guard against loss or duplication. Keys must be returned to the Main Office on the next school day following check-out unless special arrangements are made."

It is not clear that the access for schoolteachers to school buildings when school is not in session is a term or condition of employment. In any event, this provision is not a mandatory subject of negotiation because it is restricted to members of Local 2557. Terms and conditions of employment contained in an agreement must apply to all unit employees similarly situated.

6. Article IX

"SUPPLIES AND MATERIALS

- A. A limited amount of funds for supplies during the school year will be available to be used to purchase emergency miscellaneous materials and supplies which are not immediately available from central supply or which cannot, by their unique nature, be stocked. Requests of this nature must be approved by the District Principal and the District Treasurer prior to purchase.
- B. Annual budget allocations for each department, and instructions for filing requisitions will be distributed by May 1st each year. Expenditures in excess of allocations will not be permitted except in cases of emergency or unusual and extenuating circumstances. All purchases shall be made as prescribed by law and in accordance with the purchasing procedure and must be approved by the District Principal and the District Treasurer or their designated representatives.
- C. The teacher shall be informed as soon as practicable as to the disposition of his requisitions. Mutual reconsideration will be given prior to the deletion of any items on requisition."

This provision would set a level of funds from which supplies and materials would be purchased. Essentially this is a budgetary matter and is more closely related to the level and quality of service to be furnished by the District than to terms and conditions of employment. Accordingly, it is not a mandatory subject of negotiations, New Rochelle, 4 PERB ¶3060.

7. Article X

"FACILITY AND EQUIPMENT PLANNING

When modifications to facilities (remodeling, building, etc.) or major equipment purchases are being considered, consultation with the teacher or teachers directly affected will be a matter of policy. In addition, teacher may voluntarily, or may be requested, to submit for the consideration of the Board and Administration, recommendations, and suggestions pertaining to modification or addition of facilities or equipment."

This provision requires prior consultation with teachers before capital improvements are made. Decisions regarding the making of capital improvements are a management prerogative that do not involve terms or conditions of employment. Accordingly, the provision is not a mandatory subject of negotiation.

8. Article XI

"ASSOCIATION/BOARD COMMUNICATION

The Association may select members to attend each Board meeting. While members may be called upon by the Board to act as resource people concerning matters affecting the Association, such members will not have any official power to act or speak on behalf of the Association membership unless specifically granted by the Association."

This provision would assure the right of members of Local 2557 to attend meetings of the Board of Education. The Taylor Law compels representatives of a school district to negotiate in good faith with representatives of a union. It does not, however, grant union members any greater rights than the public in general to attend meetings of the Board of Education. Attendance at such meetings is not a term and condition of employment.

9. Article XIV B"TEACHER EVALUATION

- B. A summary of each observation will be written by the administrator involved and will be reviewed and discussed with the teacher as soon as possible following the observation. The teacher may file a written comment on the evaluation. Each evaluation and comments will be initialed by the teacher and the administrator indicating that the evaluation was held and discussed. The teacher may receive a copy of the evaluation if he so desires. Each evaluation and any comments in connection with the observation will be filed in the teacher's personnel folder for future reference.

The Association asserts its desire and willingness to assist any member in improving his performance of his professional duties. To this end, the Association will each September appoint a standing "Committee on Teacher Improvement" to consist of 1 teacher from each of the following levels, K-2, 3-5, 6-8 and 9-12.

This committee will become active upon the request of any teacher, probationary or tenured, who desires its help. In the instance where the desire for help arises from a difficulty which has been discovered by and/or discussed with the Administration, the teacher may ask the Administrator involved to have the Committee initiate the contract with the teacher.

When activated the committee will advise the teacher involved of those members of the Association who would be most qualified to help with the teacher's particular problem(s). These members of the Association will then constitute the teacher's own Assistance Committee.

The Board and Administration recognize the valuable role the Association could play in improving instruction through this Committee and will work with them in whatever ways seem practical. At all times the privacy of the teacher will be protected and reports of observations and other information will be released to the Committee only on the request of the teacher. The role of the Administrator in working with this Committee will be largely that of guiding the Assistance Committee in selecting a method approach to use.

Any recommendations, comments, or suggestions made by the Assistance Committee concerning any member will become a part of the teacher's file and will be considered by the Board and Administration, along with other evaluative data as appropriate."

On the record, we cannot conclude that the various paragraphs of this provision constitute separate demands. Accordingly, the entire provision must be declared nonmandatory because of provisions in paragraphs 2-4. They establish a procedure for the improvement of teaching skills to be con-

ducted by the Association. This covers a subject outside the scope of terms and conditions of employment.

NOW, THEREFORE, in view of the above conclusions of law, WE ORDER that the charge herein be, and it hereby is, dismissed.

DATED: New York, New York
February 13, 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

#2D - 2/12/79

AMALGAMATED TRANSIT UNION, DIVISION 580, AFL-
CIO,

Respondent,

BOARD DECISION AND ORDER

-and-

PERRY TARQUINIO,

CASE NO. U-3206

Charging Party,

-and-

CENTRAL NEW YORK REGIONAL TRANSPORTATION
AUTHORITY,

Intervenor.

JOSEPH WELCH, for Respondent

PERRY TARQUINIO, pro se, for Charging Party

SCHULMAN & WHITELAW, ESQS., (BARRY M. SHULMAN, ESQ.,
of Counsel) for Intervenor

This matter comes to us on the exceptions of Perry Tarquinio to a decision of the Assistant Director of Public Employment Practices and Representation, dismissing his charge alleging that the Amalgamated Transit Union, Division 580, AFL-CIO (ATU) had committed an improper practice as defined in §209-a.2(a) of the Public Employees' Fair Employment Act by failing to discharge its duty of fair representation to him. He contends that ATU should have supported his efforts to regain certain seniority rights for him as an employee of the Central New York Regional Transportation Authority (RTA) that he had lost previously. The RTA was permitted to intervene at the pre-hearing conference. At the hearing, the ATU moved that the charge be dismissed as time-barred. Without reaching the merits of the case, the Assistant Director dismissed the charge in his decision of September 21, 1978 on the ground that it was not timely.

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Facts

Perry Tarquinio was first employed as a bus driver in 1963. His employment was terminated in 1966, but he was re-hired in 1967. The conditions of his reemployment were that he be on probation for an unspecified time and that his seniority rights be determined at a later date. Shortly thereafter, his seniority for vacation purposes was restored to the date of his original employment, but his seniority for bidding on bus runs was determined to run from his reemployment in 1967. On several occasions between 1967 and 1974, Tarquinio sought to have his full seniority rights restored. Tarquinio alleged that the Superintendent of Transportation, Edward Oot, had promised when he was re-hired that his full seniority rights would be restored after a short probationary period. This promise is not confirmed in the record.

Tarquinio took no action until April, 1975, when he approached Welch, the ATU business agent, seeking union assistance in having his seniority restored. Welch, after searching Tarquinio's files, found no evidence to support Tarquinio's claims. He then made a recommendation to the ATU Executive Board that they not pursue the matter since nothing in Tarquinio's file substantiated his claim that management had promised restoration of his seniority rights. The Executive Board followed Welch's recommendation and the matter was closed. It is this action by Welch and the Executive Board in April, 1975, that Tarquinio claims to be the breach of the duty of fair representation as charged in his petition. Tarquinio resigned from the ATU following their determination not to support his claim.

Subsequently, in February, 1977, Tarquinio requested and received permission to attend the February 28, 1977 meeting of the ATU Executive Board and present his claim. Tarquinio was relying in part on a letter written by Kulas, the former ATU business representative, to Shirtz, Director of Operations of ATU, which supported Tarquinio's claim that Edward Oot had promised that his

full seniority rights would be restored. After presenting his claim to the Executive Board, it voted to recommend to the union membership that his claim for seniority restoration not be supported.

Subsequently, Tarquinio was permitted to address the union's members before their March 9, 1977 meeting and request their support of his claim. By a vote taken immediately thereafter, the membership refused to do so. Tarquinio then filed the improper practice charge herein against ATU on March 20, 1978.

Discussion

Tarquinio, in his exception, contends that the April, 1975 decision of the Executive Board not to support his claim for seniority constituted ATU's improper practice. Clearly, more than four months elapsed between the events and the charge; therefore, the charge is not timely (Rules of Procedure, §204.1(a)). Moreover, even if Tarquinio were to have based his charge upon the 1977 refusals of the Executive Board of the Union to support the grievance, the charge would still be untimely. Accordingly, WE AFFIRM the Assistant Director's decision, and

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

DATED: New York, New York
February 12, 1979


Harold R. Newman, Chairman


Ida Klaus, Member


David C. Randles, Member

5607

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of :
WELLSVILLE CENTRAL SCHOOL DISTRICT, : #2E - 2/12/79
Employer, :
-and- :
WELLSVILLE EDUCATORS ASSOCIATION, : Case No. C-1802
NYEA/NEA, : Petitioner, :
-and- :
WELLSVILLE TEACHERS ASSOCIATION, :
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 Wellsville Educators Association, NYEA/NEA

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 professional staff employed by the District.

Excluded: Administrators, Director of Guidance and all other employees.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with Wellsville Educators Association/ NYEA/NEA

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 12th day of February, 1979
New York, New York

Harold R. Newman
Harold R. Newman, Chairman

Ida Klaus
Ida Klaus, Member

David C. Randles
David C. Randles, Member

5608

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of :
BEACON CITY SCHOOL DISTRICT, : #2F - 2/12/79
Employer, :
-and- :
BEACON FEDERATION OF WORKERS, AFL-CIO, :
Petitioner, : Case No. C-1772
-and- :
BEACON NON-INSTRUCTIONAL EMPLOYEES :
ASSOCIATION, :
-and- : Petitioner, :
LOCAL 445, I.B.T., :
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 Beacon Federation of 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.

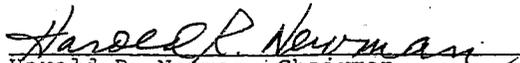
Unit: Included: All full and part-time custodians, cleaners, groundsmen, maintenance workers, bus driver/ auto mechanic, auto mechanic, laundress, bus drivers, teacher aides, matrons, drivers.

Excluded: All other employees.

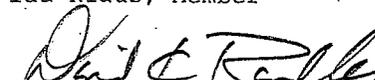
Further, IT IS ORDERED that the above named public employer shall negotiate collectively with Beacon Federation of Workers, AFL-CIO

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 12th day of February, 1979
New York, New York


Harold R. Newman, Chairman


Ida Klaus, Member


David C. Randles, Member

5609