Cornell University ILR School

Cornell University ILR School
DigitalCommons@ILR

Board Decisions - NYS PERB

New York State Public Employment Relations Board (PERB)

2-22-1979

State of New York Public Employment Relations Board Decisions from February 22, 1979

New York State Public Employment Relations Board

Follow this and additional works at: https://digitalcommons.ilr.cornell.edu/perbdecisions

Thank you for downloading an article from DigitalCommons@ILR.

Support this valuable resource today!

This Article is brought to you for free and open access by the New York State Public Employment Relations Board (PERB) at DigitalCommons@ILR. It has been accepted for inclusion in Board Decisions - NYS PERB by an authorized administrator of DigitalCommons@ILR. For more information, please contact catherwood-dig@cornell.edu.

If you have a disability and are having trouble accessing information on this website or need materials in an alternate format, contact web-accessibility@cornell.edu for assistance.

State of New York Public Employment Relations Board Decisions from February 22, 1979

Keywords

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

Comments

This contract is part of a digital collection provided by the Martin P. Catherwood Library, ILR School, Cornell University. The information provided is for noncommercial educational use only.

This article is available at DigitalCommons@ILR: https://digitalcommons.ilr.cornell.edu/perbdecisions/138

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of ROCKVILLE CENTRE PRINCIPALS ASSOCIATION, Respondent, -and- ROCKVILLE CENTRE UNION FREE SCHOOL DISTRICT, Charging Party.	#2A-2/22/79 BOARD DECISION AND ORDER CASE NO. U-3527

BARATTA & SOLLEDER (GEORGE J. SOLLEDER, JR., ESQ., of Counsel) for Respondent

WAGER, WINICK, GINSBERG, EHRLICH, REICH & HOFFMAN (JEROME H. EHRLICH, ESQ., of Counsel) for Charging Party

On September 18, 1978, the Rockville Centre Union Free School District (District) filed a charge that the Rockville Centre Principals Association (Association) violated §209-a.2(b) of the Taylor Law in that it submitted a proposal for a nonmandatory subject of negotiation to a factfinder and refused to withdraw the proposal when the District demanded that it do so. The Association proposal is:

"2. SALARIES.

For the school year July 1, 1978 to June 30, 1979, members of the Association shall receive a salary increase equivalent to 1.20 percent of the increase granted to members of the Professional Teaching Staff for the same period.

For the school year July 1, 1979 through June 30,1980 members of the Association shall receive a salary increase equivalent to 1.15 percent of the increase granted to members of the Professional Teaching Staff for the same period.

For the school year July 1, 1980 to June 30, 1981 members of the Association shall receive a salary increase equivalent to 1.15 percent of the increase granted to

members of the Professional Teaching Staff for the same period."

The Association acknowledges that it submitted the proposal to the factfinder and that it would not withdraw the proposal despite the District's demand that it do so. It contends, however, that this conduct does not constitute an improper practice.

THE RIGHT TO SUBMIT PROPOSALS FOR NONMANDATORY SUBJECTS TO A FACTFINDER

In 1974, this Board first determined that a party to negotiations violates its duty to negotiate in good faith when, over the objections of the other party, it presses a proposal for a nonmandatory subject into factfinding, Board of Higher Education, 7 PERB ¶3028. In part, this position was based upon NLRB v. Borg-Warner Corp., 356 U.S. 342 (1958), in which the United States Supreme Court determined that a party may not press a proposal for a nonmandatory subject to the point of insistence.

The correctness of this doctrine was reexamined in Monroe-Woodbury Teachers Association, 10 PERB ¶3029 (1977). The majority of the Board reaffirmed the doctrine. Its reasoning was that as the negotiating process continues, subjects of peripheral concern must be removed if the parties are to reach agreement. Factfinding was seen as an important step in the elimination of extraneous demands. The parties should be willing to abandon proposals at factfinding unless they are vital to it. Thus, the refusal to withdraw a proposal from a factfinder despite the demand of the other party that it do so was seen as similar to the insistence that was before the court in Borg-Warner. Notwithstanding the concerns of a particular party, the Board ruled that as a matter of law, nonmandatory subjects of negotiation must be treated as

peripheral subjects, saying,

> "We are persuaded that for a party to insist upon submission of permissive subjects to the factfinding process is an act that tends to frustrate the goal of the factfinder and the parties, to wit, an agreement."

In a dissenting opinion, Member Klaus wrote that the Board majority was imposing a "mechanistic" test for whether a party was improperly insisting upon a demand while "[u]nder Borg-Warner the insistence is substantive, lying in the imposition of the precondition to the making of any agreement" (emphasis in original). She further stated that the majority doctrine was unwise because "factfinding is a continuation of the bargaining process" and the forcible elimination of nonmandatory subjects of negotiation at the factfinding stage would diminish the likelihood of the parties reaching "their own agreement through the give-and-take of the process as guided by a third party."

Finding much merit in both opinions in Monroe-Woodbury Teachers Association, we have reexamined the question.

The discussion of the Borg-Warner decision does not seem to be very useful except insofar as it establishes the principle that under certain circumstances a party must withdraw its proposal for a nonmandatory subject. The differences between the private and public sector in the negotiation processes and particularly in the use of third parties to assist in the resolution of disputes makes the specific analysis in Borg-Warner inapplicable here. The most relevant difference is the statutory basis for and the frequent use of factfinding under the Taylor Law. The framers of the Taylor Law contemplated that an informed public opinion would pressure the parties to a negotiation to make appropriate concessions. "The factfinding report and recommendations [were designed to] provide

a basis to inform and to crystallize thoughtful public opinion and news media comment."[1] In keeping with the design of its framers, §§205.4 and 209.3(b) of the Taylor Law authorize and direct this Board to appoint or retain factfinders.

It appears that the report and recommendations of a factfinder are intended to be a pressure upon the parties to make concessions; thus, the submission of a proposal to a factfinder is designed to solicit his assistance in pressuring the other party. It would be improper for a factfinder appointed or retained by this Board to pressure a party to make a concession involving a nonmandatory subject of negotiation. Similarly, it is improper for a party to insist that the factfinder do so. By refusing to withdraw from factfinding a proposal for a nonmandatory subject despite the demand of the other party that it do so, the first party violates its duty to negotiate in good faith.

THE NEGOTIABILITY OF PARITY

The contested proposal here is for indices of teacher salaries to principal salaries for the period of July 1, 1978 through June 30, 1981. Thus, the salaries that would be paid to employees represented by the Association would be determined by the salaries yet-to-be-negotiated by the District and the employee organization representing teachers. This automatic mathematical tie-in of the salary schedule of one unit of employees to the yet-to-be-negotiated salary schedule of another unit of employees

---

1 Governor's Committee on Public Employment Relations, Final Report, March 31, 1966, page 37.

of the same employer is a form of parity. This Board first dealt with the question of whether this form of parity is a mandatory subject of negotiation in City of Albany (Firefighters), 7 PERB ¶3079 (1974) and by a two-to-one margin, we determined that it is not. The reason given was that by seeking to be a silent partner in the negotiations between the employer and a second unit, the first unit was interfering with those negotiations.[2]

Parity was again considered by the Board in City of New York, 10 PERB ¶3003 (1977). The City of New York had entered into an agreement with its firefighters that it would grant them any wage increases that might be thereafter obtained by the policemen in negotiations. It reached similar agreements with the court officers and sanitation workers, except that their parity relationship to the policemen varied from the one-to-one relationship specified in the firefighters' contract. As such, their agreements are a clear precedent for the proposal in the case before us. In the New York City case, the City had resisted the policemen's proposal for an increase exceeding that which had been given to the firefighters and the specified ratio to the agreements of the court officers and the sanitation workers. In justification

---

2 Our opinion did not deal with other forms of parity, such as a demand for benefits already obtained by other units or a demand for parity with the benefits to be paid to employees of a different employer. We have also distinguished between this form of parity and a demand for the reopening of negotiations should another unit of employees of the same employer obtain greater benefits in the future, IAFF Local 189, 11 PERB ¶3087 (1978). These other forms of parity do not interfere with the negotiation rights of employees in another negotiating unit.

of its position, it said that to grant the policemen's demand would require additional payments to the firefighters, the court officers and the sanitation workers which would cost the City about triple the amount that it would have to pay policemen for each dollar in excess of the firefighter settlement.

The majority of this Board ruled that the City violated its duty to negotiate in good faith with the policemen by committing itself to parity clauses in the firefighter, court officer and sanitation worker contracts. It held that the parity clauses constituted interferences with the statutory negotiation rights of the policemen and were, therefore, illegal. Member Klaus dissented from that opinion, stating, inter alia, that it is beyond the authority of this Board to declare a parity clause illegal. Subsequently, in Onondaga Community College, 11 PERB ¶3045 (1978), Member Klaus, while maintaining her opinion that parity is not a prohibited subject of negotiation, subscribed to the opinion that it is also not a mandatory subject of negotiation.

In 1978, the Court of Appeals ruled that a contract clause providing for the continuation of contractual benefits after the expiration of the contract was valid, Niagara Wheatfield Administrators Association v. Niagara Wheatfield Central School District, 44 N.Y. 2d 68. It reversed the determination of the Appellate Division that such a contract provision was void. The Appellate Division, in turn, had reversed the award of an arbitrator applying a provision of the expired contract. The effect of the Court of Appeals decision was to reinstate the arbitrator's award,which, it turned out, dealt with a "tie-in", which is another name for parity. The Court of Appeals stated (at Page 73):

> "In the case before us, we must first observe that the tie-in provision alone is not offensive to public policy. In fact, a tie-in provision similar to that here presented was statutorily required until 1971. (Education Law §3101, repealed 1971.)"

We do not believe that the Court of Appeals has overruled our decision in City of New York that parity is a prohibited subject of negotiation. The specific question before the Court of Appeals was whether a proposal for a continuation of benefits clause was a prohibited subject of negotiation; not whether a parity clause was prohibited. The validity of the parity clause considered by the arbitrator was assumed by the parties in their arguments to the Court of Appeals and was not contested. There is no indication that the passing reference of the Court of Appeals to parity reflected any consideration of the interpretation of the Taylor Law dealt with in our City of New York decision.[3] Moreover, the repeal of Education Law §3101, referred to in the Court of Appeals opinion, supports our understanding of what is proper negotiation under the Taylor Law. As indicated in the memorandum

---

3 This public policy has been considered by the courts and boards of other States as well. The Connecticut Supreme Court held that parity is a prohibited subject of negotiation in Firefighters Local 1219 v. Labor Board, 171 Conn. 342 (1976), 370 A.2d 952, 93 LRRM 2098, 2 PBC ¶20192. To the same effect, see decisions of the Massachusetts, New Jersey and Pennsylvania agencies: Medford School Committee and Medford Teachers Association, Mass. Case MUP-2349 (1977); City of Plainfield, N.J. Case 4 NJPER ¶4130 (1978); and Commonwealth of Pennsylvania, PA. Case 9 PPER ¶9084 (1978). In earlier cases, the agencies of Michigan and Wisconsin reached a contrary conclusion, Matter of City of Detroit, Mich. Case No. C-72A-1 (1972), appeal dismissed as moot, City of Detroit v. Killingsworth, Michigan Court of Appeals, 84 LRRM 2627; and West Allis Professional Policemen's Protective Association, Wisconsin decision No. 12706 (1974).

of the State Senate Committee on Rules,[4] the parity provision, along with other mandated salary schedules, was repealed because it was inconsistent with the Taylor Law requirement that, in the future, employees would "receive that compensation obtained through the collective bargaining process."

We adhere to our opinion in City of New York and we determine that the Association violated its duty to negotiate in good faith by refusing to withdraw from factfinding its proposal for parity when the District demanded that it do so.

NOW, THEREFORE, WE ORDER the Association to withdraw its proposal for parity.

DATED: Albany, New York
February 23, 1979

Harold R. Newman

Harold R. Newman, Chairman

David C. Randles

David C. Randles, Member

---

4 See New York State Legislative Annual 1971, pages 51-52

DISSENTING OPINION OF MEMBER KLAUS

In my dissenting opinion in City of New York, 10 PERB ¶3003 (1977), I stated my view that the inclusion in a collective bargaining agreement of a parity provision similar to that here involved did not constitute an improper practice. It was my view, for the reasons there expressed, that the provision in question did not violate any terms of the statute or offend against public policy. Unlike the majority, I read the decision of the Court of Appeals in the Niagara-Wheatfield case as a direct and clear statement that such a provision, particularly in the context of the underlying authority imposed upon public employers under the Taylor Law, does not contravene public policy. The Court plainly saw that issue as a preliminary question of law before approaching the broader issue in the case. The majority comment on the Court's reference to the prior requirement of the Education Law is to be read, it would appear to me, as meaning that there was no longer a need for a statutory requirement for a tie-in provision similar to that here presented for the reason that the scope of bargaining permitted by the Taylor Law accomplished the same purpose as the Education Law and, therefore, made the tie-in provision of the Education Law unnecessary.

The case before us presents for the first time the question whether the submission to fact finding by one party over the objection of the other of a tie-in provision constitutes an improper practice within the meaning of §209-a.1(d). As the majority concludes that the demand in question is a non-mandatory one because it contravenes public policy, it has sustained the charge. In view of my position that the demand is not unlawful, and because it deals with the subject of salaries, which is plainly within the ambit of

negotiability described by the Taylor Law, (§§201.4 and 204.3), I would find that the Association's refusal to withdraw the proposal upon the demand of the District does not violate the Act.

Accordingly, I would dismiss the charge.

DATED: Albany, New York
February 23, 1979

Ida Klaus

Ida Klaus, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2B-2/22/79

In the Matter of

LAKELAND CENTRAL SCHOOL DISTRICT
OF SHRUB OAK,

Employer,

-and-

LAKELAND CAFETERIA ASSOCIATION,

Petitioner,

-and-

LAKELAND SCHOOL UNIT, WESTCHESTER CHAPTER
CIVIL SERVICE EMPLOYEES ASSOCIATION, INC.,
LOCAL 860,

Intervenor.

BOARD DECISION AND ORDER

Case No. C-1664

STEYER & SIROTA, for Employer
JOSEPH D. ERRICO, for Petitioner
GRAE & ROSE, for Intervenor

On April 20, 1978, the Lakeland Cafeteria Association (LCA) filed a petition for certification as a representative of a unit of cafeteria workers employed by the Lakeland Central School District of Shrub Oak. The unit is an existing one and has been represented by the Lakeland School Unit, Westchester Chapter Civil Service Employees Association, Inc., Local 860 (CSEA). CSEA was permitted to intervene in the proceeding.

CSEA has filed exceptions to the order of the Director of Public Employment Practices and Representation that there be an election in the existing unit. In its exceptions, CSEA contends

that the petition should have been dismissed because:

1) LCA is a management dominated organization;

2) LCA's petition is not supported by an adequate showing of interest;

3) LCA is not an employee organization as that term is defined by the Taylor Law; and

4) An existing contract bars the LCA petition.

The director considered the four arguments presented by the exceptions and rejected them. We affirm the decision of the director for the following reasons:

1. The hearing officer properly excluded evidence that might have supported CSEA's allegation that LCA is a management dominated organization. We have long held that an allegation that a union is dominated by an employer will not be considered in a representation proceeding. Such an issue can be presented to the Board only by an improper practice charge.[1]

2. The allegation that the showing of interest is inadequate contends that it consists of

> "the names and addresses of individuals without any statements contained thereon designating as collective bargaining agent or negotiating representative for the alleged members of the petitioner."

A review of the file of the director reveals that the petition was supported by evidence of current membership in LCA. Section 201.4(b) of the rules of this Board specifically provides that such evidence is acceptable as a showing of interest.

3. The basis of CSEA's exception directed to the status

---

1 See CSL §209-2.1(b) and State of New York, 2 PERB ¶3070 (1969); Triborough Bridge and Tunnel Authority, 6 PERB ¶3070 (1973).

of LCA as an employee organization is that it is prepared to admit to membership any cafeteria employee, be he a "Democrat", "Republican" or "Communist." This, according to CSEA violates §201.5 of the Taylor Law and §105 of the Civil Service Law. Section 201.5(a) of the Taylor Law provides, in part, that an organization is not an "employee organization," and thus not authorized to represent public employees, if membership in it is prohibited by §105 of the Civil Service Law. Section 105 bars persons who advocate the violent overthrow of the United States or any state or any political subdivision thereof from public employment. Section 105 also declares that membership in the communist party is prima facie evidence that the member is such a person.

To the extent that §105 of the Civil Service Law is constitutional,[2] §201.5 of the Taylor Law might preclude an organization, such as the Communist party, that advocates a violent overthrow of the United States from being deemed an employee organization. In no event, however, would it require the disqualification of an otherwise qualified employee organization by reason of the fact that it does not bar from membership in it those who may be members of the communist party.

4. In support of its allegation that the LCA petition is barred by a contract, CSEA relies upon a memorandum of under-

---

2 Keyishian v. Board of Regents, 385 U.S. 589 (1967). Contemporaneous with the enactment of the Taylor Law, aspects of this law were declared unconstitutional.

standing covering 1977-79 which was prepared on March 6, 1978. That memorandum was never executed by any party and its terms have not been implemented. The Director ruled that "an unsigned memo does not satisfy the requirements of a contract bar, and therefore, the petition is timely." We agree.[3]

NOW, THEREFORE, WE ORDER that an election by secret ballot be held under the supervision of the Director among the employees in the unit described in his decision who were employed on the payroll date immediately preceding the date of this decision.

IT IS FURTHER ORDERED that the employer shall submit to us as well as to LCA and CSEA, within 7 days from the receipt of this decision, an alphabetized list of employees in the negotiating unit set forth in the Director's decision who were employed on the date immediately preceding this decision.

DATED: Albany, New York
February 22, 1979

Harold R. Newman, Chairman

Ida Klaus, Member

David C. Randles, Member

---

3 Farmingdale UFSD, 7 PERB ¶3073 (1974)

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of STATE OF NEW YORK, UNIFIED COURT SYSTEM, Employer, -and- NINTH JUDICIAL DISTRICT COURT EMPLOYEES ASSOCIATION, LOCAL 710, SEIU, AFL-CIO, Petitioner, -and- THE CIVIL SERVICE EMPLOYEES ASSOCIATION, INC., LOCAL 1000, AFSCME, AFL-CIO, Intervenor.	#2C-2/22/79 BOARD DECISION AND ORDER CASE NOS. C-1722/ C-1724/ C-1725

ROEMER & FEATHERSTONHAUGH, ESQS.,
(STEPHEN J. WILEY, ESQ., of Counsel),
for the Intervenor

WILLIAM R. PITASSY, ESQ., for Petitioner

HOWARD A. RUBENSTEIN, ESQ., for the Employer

This matter comes to us on a motion of the Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO (CSEA) for an order revoking the certifications heretofore issued to the Ninth Judicial District Court Employees Association Local 710, SEIU, AFL-CIO (petitioner).

The three petitions were filed on July 3, 1978. Petitions C-1722, C-1724 and C-1725 are for representation of employees of the Unified Court System of the State of New York who work in courts servicing the City of White Plains, the County of Rockland and the County of Westchester, respectively. The three petitions name the petitioner as the Ninth Judicial District Court Employees Association and separately note its affiliation with Local 710,

SEIU, AFL-CIO. The showing of interest supporting the petitions, however, merely specified support for SEIU. A notice of election in each of the three petitions was issued on October 25, 1978. It specified that there would be an election between CSEA and the Court Employees Local 710, SEIU, AFL-CIO. Petitioner was also identified on the ballot as Court Employees Local 710, SEIU, AFL-CIO.

The three elections were by mail ballot. Ballots were mailed on November 6, 1978. All ballots received at the Post Office by 9:00 a.m. November 27, 1978 were counted on that day. The results of the election were:

	C-1722	C-1724	C-1725
Number of Eligible Voters	17	51	177
Valid Votes Cast	13	43	132
Votes Cast for CSEA	6	13	51
Votes Cast for Petitioner	7	30	77
Votes Cast against Both	0	0	4

On July 31, 1978, the American Federation of State, County and Municipal Employees (AFSCME), with which CSEA had been affiliated since April 21, 1978, filed a charge against SEIU with the AFL-CIO complaining that the petitions constituted a raid upon it in violation of Article XX of the AFL-CIO Constitution. A determination sustaining the charge was issued on November 10, 1978. The record contains a document in the form of a letter from SEIU to petitioner dated November 22, 1978 stating that SEIU had revoked petitioner's charter. The record contains another document in the form of a letter from SEIU to the Board dated November 27, 1978, which purports to inform this Board of the revocation of

petitioner's charter. No such letter was received by this Board.

After the election, CSEA filed objections to conduct affecting the results of the election. The basis of the objection was that SEIU could not accept certification by reason of the determination in the Article XX case. CSEA argued that "PERB should not certify an employee organization where such organization will ultimately be required to disclaim any interest in representing the employees in the unit." Petitioner's answer to the objections was received on December 5, 1978. The answer was that Article XX is an internal proceeding of the AFL-CIO which "does not provide the basis of resort to court or other legal proceedings to settle disputes arising under the Article." In this answer, petitioner continued to identify itself as the "Ninth Judicial District Court Employees Association, Local 710, Service Employees International Union, AFL-CIO."

On December 7, 1978, at a time when we had no knowledge of the revocation of petitioner's charter as a constituent unit of SEIU, we accepted petitioner's argument that Article XX is an internal proceeding of the AFL-CIO and dismissed CSEA's objections regarding the election and certified the Ninth Judicial District Court Employees Association, Inc., Local 710, SEIU, AFL-CIO in the three units.

Subsequently, AFSCME brought a noncompliance proceeding before the AFL-CIO in which it charged SEIU with failure to comply with the earlier determination. The record shows that on January 17, 1979, during the course of that proceeding, AFSCME first learned of the letter informing petitioner that its charter from SEIU had been revoked and of the letter ostensibly mailed to this Board informing it of the situation. This newly discovered evi-

dence is the basis of the motion now before us.

In its reply, petitioner contends that the letter informing it of the revocation of its charter could not have come into its possession prior to the election. Accordingly, the disaffiliation must be deemed to have occurred after the election was completed. It argues further that, "the Association's reply did not deny the fact of the disaffiliation."

The employer takes no position on the motion.

DISCUSSION

We conclude that the certifications issued on December 7, 1978 to the Ninth Judicial District Court Employees Association, Local 710, SEIU, AFL-CIO were improper in that they went to an organization that no longer existed. Indeed, that organization had not existed on November 27, 1978, the date when the ballots were counted. And contrary to the statement in petitioner's reply to the motion before us, its answer (dated December 5, 1978) to CSEA's objections to the conduct affecting the results of the election did deny the fact of disaffiliation, thus misrepresenting its status to this Board. It did so by continuing to identify the petitioner as an affiliate of SEIU.[1] Had the situation been disclosed to us by December 7, 1978, we would not have certified petitioner in the three units. Accordingly, we will revoke the certifications.

Information regarding the revocation of petitioner's charter should have been called to the attention of the voters immediately. It is irrelevant whether the failure to do so is attributable to

1 One may entertain additional suspicions regarding the November 27, 1978 letter addressed to this Board but never received by it and the timing of the November 22, 1978 letter (twelve days after the determination in the Article XX proceeding) informing petitioner of the revocation of its charter.

the Ninth Judicial District Court Employees Association or to SEIU; they had a joint responsibility to inform the voters as to the true identity of the organization appearing on the ballot. Had this significant information been communicated promptly, the results of the election might have been different. Accordingly, we set aside the elections.

The Director of Public Employment Practices and Representation is directed to hold an election in each of the units for which a new showing of interest is submitted by March 30, 1979 on behalf of the Ninth Judicial District Court Employees Association. In those units for which no new showing of interest is submitted by that date on behalf of the Ninth Judicial District Court Employees Association, the petitions will be dismissed.

NOW, THEREFORE, WE ORDER that the certifications herein be, and they hereby are, revoked.

DATED: Albany, New York
February 23, 1979

Harold R. Newman, Chairman

Ida Klaus, Member

David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2D-2/22/79

In the Matter of

VILLAGE OF JOHNSON CITY,

Respondent,

-and-

JOHNSON CITY FIREFIGHTERS ASSOCIATION, LOCAL 921, AFL-CIO, IAFF,

Charging Party.

BOARD DECISION AND ORDER

CASES NOS. U-3357
U-3358
U-3359
U-3360
U-3361
U-3417

BALL & McDONOUGH, P.C., for Charging Party

PETER PIRNIE, for Respondent

Case No. U-3417 was brought by the Johnson City Firefighters Association, Local 921, AFL-CIO, IAFF (Local) against the Village of Johnson City. It is before us on exceptions filed by both parties to those findings of the hearing officer's decision that are against them. The hearing officer dismissed seven of nine allegations made by the Local and found merit in two.

Cases U-3357 and U-3363 were brought by the Village against the Local. In part, they share the same record as Case No. U-3417. These cases come to us under §204.4 of our rules without any report or recommendation of a hearing officer.

We have consolidated all cases for purposes of decision.

CHARGE OF THE LOCAL

Case U-3417

On July 13, 1978, the Local filed a charge alleging that the Village violated §209-a.1(a), (b) and (d) of the Taylor Law. The hearing officer found a violation of §209-a.1(d) in that the Village's negotiator, Dr. Peter Pirnie, was not prepared effec-

because the mere filing of a charge is not an improper practice.

In its exceptions, the Local argues that a violation exists because the charging party's motivation in filing the charges was to delay negotiations. The record does not support this argument of improper motivation on the part of the Village.

The fifth and sixth allegations -- refusal to provide information -- sustained by the Hearing Officer [2]

These allegations are that the Village failed to provide the Local directly and through its negotiator with certain information it needed for negotiations. The hearing officer found that the Village refused to negotiate in good faith in that it did not provide relevant information. The first piece of information sought by the Local was the details of a work schedule that was proposed by the Village for negotiation. An incomplete version of the schedule was given to the Local on April 5, 1978. The Local was also told that it had been given the details of the same proposed work schedule three years earlier. The hearing officer determined that the Village did not supply sufficient information about its proposed work schedule to the Local and that its negotiator was not sufficiently prepared to do so. The record supports these determinations.

The second piece of information sought by the Local was whether the Village would accept a grievance arbitration award that had been rendered on March 8, 1978, which directed the Village to try to augment its staff. The Local asserted that it needed this information to formulate its wage demands.

---

2 No exceptions were directed to the hearing officer's disposition of the third and fourth allegations.

tively to negotiate his own proposals made in behalf of the Village. He dismissed the charge in all other respects.

The first allegation -- refusal to negotiate -- dismissed by the Hearing Officer

The first allegation of the charge is that the Village refused to negotiate between December 1977 and March 8, 1978. The hearing officer dismissed this aspect of the charge as untimely since the events occurred more than four months before the filing of the charge. He did consider the events based on the respondent's alleged conduct occurring within the timely period.

In its exceptions, the Local argues that, although the alleged improper conduct occurred before March 8, 1978, it was not aware of the impact of that conduct until March 19, 1978. On that date, the Village refused a request of the Local to extend the contract that was due to expire on May 31, 1978. The Local asserts that it first became concerned by the Village's refusal of the extension that its conduct before March 8 had made a settlement by May 31 unlikely. That allegation is not established on this record. The refusal of March 19, 1978 does not extend the Local's time in which to file a charge complaining about events that occurred before March 8, 1978 and of which it had immediate knowledge.

Accordingly, we affirm the hearing officer's dismissal of this allegation of the charge.

The second allegation -- the filing of a charge by the Village -- dismissed by the Hearing Officer

The second allegation is that the Village improperly submitted charges in Cases U-3357 and U-3363 for the purpose of delaying negotiations.[1] The hearing officer dismissed this allegation

5633

1 Those charges were filed to question the arbitrability of matters raised by a petition for interest arbitration.

The hearing officer determined that both items of information were needed by the Local. Relying upon our decision in City of New York, 9 PERB ¶3031, he concluded that,

> "An employer must provide, when requested, relevant information sufficient to permit the other side to analyze the proposals it has made or to prepare counter proposals of its own."

We affirm the hearing officer's conclusions on these allegations.

The seventh allegation -- authority of negotiator -- dismissed by the Hearing Officer

The seventh allegation is that the Village failed until March 27, 1978, to empower its negotiator to reach an agreement.

The Local excepts to the hearing officer's dismissal of this allegation. It argues that it was prevented from proving this allegation by the hearing officer, who ruled that it could not see notes being used by a Village witness. According to the Local, if it had been able to see those notes, it would have been able to prove this allegation in the cross-examination of the Village witness. This argument is also the basis of an exception directed to the hearing officer's conduct of the hearing. We conclude that the Local was not prejudiced by the hearing officer's ruling. The notes which the witness had before him merely contained dates to aid his recollection and did not relate to his authority to enter into agreements with the Local. Moreover, the record clearly supports the hearing officer's determination that the Village's negotiator was sufficiently empowered before March 27, 1978, to enter into agreement as indicated by the fact that he agreed to several matters before that date.

Allegation of improper conduct of hearing officer -- refusal to permit amendment of the charge

The Local, in its exceptions, argues that the hearing officer committed reversible error by refusing the Local's request to amend its charge to include evidence of conduct transpiring during August 1978. The hearing officer ruled that the new allegations could not be considered during that particular day's proceedings.

The amendment of a charge is normally a matter of discretion.[3] Here, the hearing officer exercised his discretion properly consistent with due process.

Exception directed to dismissal of alleged violation of §209-a.1(a) and (b)

The Local argues that the hearing officer improperly dismissed the §209-a.1(a) and (b) charges. The hearing officer found the record devoid of evidence that the Village's conduct was intended to interfere with the representation rights of the Local or that it dominated or interfered with the administration of the Local for the purpose of depriving it of such rights. The record supports his determination.

CHARGES OF THE VILLAGE

Case U-3357

The charge of the Village is that the Local prematurely declared impasse. The parties first met on March 4, 1978, at

---

3 Section 204.1(d) of our Rules provides:

"The Director or hearing officer designated by the Director may permit a charging party to amend the charge before, during or after the conclusion of the hearing upon such terms as may be deemed just and consistent with due process..."

which time they discussed ground rules for negotiations and the Local presented its demands. The Village presented its proposals during the next negotiation session held on March 8. During the next session, on March 16, the Local's proposals were explored and discussed. At that point, the Local declared an impasse.

In Matter of Bellport Teachers Association,[4] we held that the declaration of impasse before the demands of the parties have actually been considered is premature. Here, the Local had failed to negotiate in good faith because it declared an impasse[5] prematurely. This was a violation of §209-a.2(b) of the Taylor Law. Ordinarily, we would not permit interest arbitration to proceed until the parties have first attempted to reach an agreement through substantial negotiation.[6] Here, however, this course would be inappropriate. The record indicates that a PERB-appointed mediator met with the parties on March 29. The parties then met without him on March 30, April 3, April 5 and April 10, as well as on other occasions. During these meetings, the parties did in fact attempt to reach agreement. Thus, the Local's failure to negotiate in good faith before declaring impasse is not attributable to the parties' subsequent unsuccessful efforts to reach agreement.

---

4 6 PERB ¶3018 (1973).

5 See Mt. Vernon, 11 PERB ¶3095 (1978).

6 Town of Haverstraw, 9 PERB ¶3063 (1976).

U-3358 and U-3361

These charges allege that the Local misstated the Village's position in its petition to PERB requesting interest arbitration. Charge U-3358 also alleges that the Local submitted a new salary proposal in its petition for interest arbitration.

The charge that the Local misstated the Village's position in its interest arbitration petition does not constitute an improper practice, as the petition is merely a procedural step. The Village can restate what its position is in its response to the petition for interest arbitration. The allegation that the Local submitted a new salary proposal in its petition is not supported by the evidence.

U-3359 and U-3360

These charges allege that the Local submitted nonmandatory subjects to arbitration. The contract that expired May 31, 1978 contained a clause specifying the unit composition and another providing health insurance benefits for retirees. Neither of these clauses dealt with mandatory subjects of negotiation. In its petition for interest arbitration, the Local stated that the parties had agreed to retain the clauses. The Village denies that it reached such an agreement and complains that the Local was improperly insisting upon the negotaition of nonmandatory subjects. The record does not clearly establish the charge, as the Local's conduct is as consistent with a misunderstanding of the Village's position as it may be with improper insistence.

NOW, THEREFORE, WE ORDER that:

1. In Case No. U-3417, the Village negotiate in good faith with the Local by providing the information requested and by adequately explaining its negotiation proposals. In all other respects, this charge be dismissed.

2. In Case No. U-3357, the Local cease and desist from declaring impasse in negotiations prior to the time when the respective proposals of the parties have been considered.

3. In Case Nos. U-3358, U-3359, U-3360 and U-3361, the charges be dismissed.

DATED: Albany, New York
February 23, 1978

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

#2E-2/22/79

In the Matter of the

WESTMORELAND NONINSTRUCTIONAL EMPLOYEES' SERVICE ORGANIZATION, NYSUT, AFT, AFL-CIO,

Respondent,

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

BOARD DECISION AND ORDER

CASE NO. D-0172

On December 5, 1978, Martin L. Barr, Counsel to this Board, filed a charge alleging that the Westmoreland Noninstructional Employees' Service Organization (respondent) had violated Civil Service Law (CSL) §210.1 in that it caused, instigated, encouraged, condoned and engaged in a strike against the Westmoreland Central School District on October 25, 26, 27, 30, 31 and November 1, 1978.

Prior to the expiration of respondent's extended answering time, respondent agreed to forego filing its answer, and thus admit 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 fifty percent (50%) of that amount which would otherwise be deducted during a year.[1/] The charging party has

[1/] This is intended to be the equivalent of a six-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 respondent are not deducted in this manner.

recommended a suspension of the respondent's deduction privileges to the extent of fifty percent (50%) of the annual amount of such deductions.

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 deduction privileges of the Westmoreland Noninstructional Employees' Service Organization be suspended commencing as of September 1, 1979, and continuing for such period of time during which fifty percent (50%) of its annual dues and agency shop fee deduction, if any, would otherwise be deducted. Thereafter, no dues or agency shop fee shall be deducted on its behalf by the Westmoreland Central School District until the Westmoreland Noninstructional Employees' Service Organization affirms that it no longer asserts the right to strike against any government as required by the provisions of CSL §210.3(g).

Dated: Albany, New York
February 22, 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 JOHNSON CITY POLICE BENEVOLENT ASSOCIATION, Respondent, -and- VILLAGE OF JOHNSON CITY, Charging Party.	#2F-2/22/79 BOARD DECISION AND ORDER CASE NO. U-3453

EARL D. BUTLER, ESQ., for Respondent

PETER PIRNIE, for Charging Party

The charge herein alleges that the Johnson City Police Benevolent Association (PBA) did not negotiate in good faith in that it refused, upon the request of the charging party, to withdraw from interest arbitration a proposal for a nonmandatory subject of negotiation. The contested proposal provides:

> "Upon retirement of a member of the Johnson City Police Department, Blue Cross, Blue Shield and Major Medical (Metropolitan) Insurance shall be continued under the Group Plan with the Village paying 50% for employees cost and 35% for dependent cost. In accordance with the rules of New York State, Department of Civil Service, this coverage will not be cancelled at age 65. The insurance coverage stays in effect until the employee dies."

The PBA has explained its proposal as not requiring insurance by a specific carrier. It does, however, insist that the arbitration panel make a determination on its proposal for the extension of health insurance to retired employees and their dependents until the death of the retired employee.

Johnson City contends that there are two reasons why PBA committed an improper practice by insisting that the arbitration panel make a determination

on this demand. First, it alleges that the demand is for a retirement benefit and, by that reason, is not a mandatory subject of negotiation. (Section 201.4 of the Taylor Law, Incorporated Village of Lynbrook v. PERB 64 AD 2d 902 [2d Dept., 1978].) Second, it alleges that the demand is for a benefit to be provided for a period of time exceeding two years and is, therefore, beyond the power of an arbitration panel to provide (Section 209.4 (c) (vi) of the Taylor Law).

The decision of the Appellate Division in Lynbrook v. PERB supports Johnson City's argument that the proposal is for a retirement benefit and therefore not a mandatory subject of negotiation. Accordingly, we do not find it necessary to reach the question whether a proposal for the duration of a benefit in excess of two years, such as that here involved, is beyond the authority of an interest arbitration panel.

NOW, THEREFORE, WE ORDER THE PBA to withdraw the contract proposal.

DATED: Albany, New York
February 23, 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 TOWN OF CHEEKTOWAGA, Respondent, - and - CHEEKTOWAGA POLICE CLUB, INC., Charging Party.	#2G-2/22/79 BOARD DECISION AND ORDER CASE NO. U-3182

WEBER, WESTON, KANE & MOEN, Esqs., for Respondent

DIXON AND DE MARIE, P.C., for Charging Party

This matter comes to us on the exceptions of the Town of Cheektowaga (Town) to a hearing officer's decision that it violated its duty to negotiate in good faith by refusing to execute a contract that it made with the Cheektowaga Police Club, Inc. (Police Club). The Town acknowledges it refused to execute the contract, but contends that the contract contains a clause to which it never agreed.

FACTS

The contract referred to in the charge is one designed to succeed an earlier contract that expired in December 1976. The Town and the Police Club agreed upon many terms of a successor contract, but they could not agree on others. Finally, in September 1977, the parties submitted the outstanding dispute to interest arbitration under §209.4 of the Taylor Law. Among the provisions ostensibly resolved by agreement was §20.04 of the proposed successor contract entitled, Police Radio Dispatcher. The Police Club asserts that the parties agreed, in April 1977, to the following:

> "The Police Radio Dispatcher is to be paid at the same rate of pay as detective upon assignment to that position. [I]n order [to] calculate the dispatcher's salary, it would be presumed he is receiving senior patrolman's pay.
>
> The Police Radio Dispatcher must agree to remain in the position for 1 year.
>
> The Police Radio Dispatcher must be a Civil Service Police Officer."

The Town asserts that it never agreed to the final sentence, "The Police Radio Dispatcher must be a Civil Service Police Officer". On the basis of the evidence in the record, the hearing officer accepted the position of the Police Club and ordered the Town to execute a contract containing the disputed sentence.

DISCUSSION

We find that the record lacks important evidence. Section 205.4 of the Rules of this Board specifies the information that must be included in a petition to this Board requesting interest arbitration. To be included is a statement of each of the terms and conditions "that have been agreed upon." Section 205.5 of our Rules provides that the response to a petition requesting arbitration should "set forth respondent's position specifying the terms and conditions of employment that were resolved by agreement...." Those documents have not been made a part of the record in this case, nor has evidence been taken as to them. If properly completed, they should reflect the understanding of the parties in September 1977 as to whether they had an agreement on the provision numbered §20.04 and, if so, what that agreement was. Those documents and testimony related to them are relevant to the resolution of the factual issue before us.

Accordingly, we remand this proceeding to the hearing officer to reopen the record for the purpose of including the two documents, which are on file in the conciliation office of this Board, and receiving any related evidence that the parties may wish to submit.

DATED: Albany, New York
February 23, 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	:	#2H-2/22/79
STATE OF NEW YORK (UNIFIED COURT SYSTEM),	:	
Employer,	:	
- and -		
COURT OFFICERS BENEVOLENT ASSOCIATION OF NASSAU COUNTY,	:	Case No. C-1668
Petitioner,	:	
- and -		
NASSAU CHAPTER, CIVIL SERVICE EMPLOYEES 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 COURT OFFICERS BENEVOLENT ASSOCIATION OF NASSAU COUNTY

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: All non-judicial employees employed by the System in Nassau County and who, prior to April 1, 1977, were employees of Nassau County and included within the bargaining unit defined by the County of Nassau Public Employment Relations Board in a "Certification of Representative and Order to Negotiate" issued in Case No. R-007, dated October 18, 1968.

Excluded: All other employees.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with COURT OFFICERS BENEVOLENT ASSOCIATION OF NASSAU COUNTY

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 22nd day of February, 1979
Albany, New York

Harold R. Newman
Harold R. Newman, Chairman

Ida Klaus
Ida Klaus, Member

David C. Randles
David C. Randles, Member

5646

PERB 58.4

SCHEDULE "A"
COUNTY OF NASSAU
PUBLIC EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF THE PETITION OF THE NASSAU CHAPTER, CIVIL SERVICE EMPLOYEES' ASSOCIATION, INC.
AN EMPLOYEES' ORGANIZATION, FOR RECOGNITION AS THE DULY AUTHORIZED REPRESENTATIVE OF CERTAIN DESIGNATED EMPLOYEES OF THE COUNTY OF NASSAU,
A PUBLIC EMPLOYER.
CASE NO.: R-007

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

The Civil Service Employees' Association, Nassau County Chapter, having petitioned this Board for recognition and certification as the duly authorized employee organization to represent the public employees of the County of Nassau, in the unit hereinafter set forth, for the purpose of negotiating collectively on behalf of such employees with the County of Nassau, as the public employer, in the determination of their terms and conditions of employment and the administration of grievances arising thereinunder; and

The Board, upon due consideration of such petition as well as of all of the facts and evidence submitted in the course of a full hearing, conducted pursuant to Section VIII of the Rules of Procedure of this Board, and the findings and recommendations of the Hearing Officer made in connection therewith, having determined,

a) the Civil Service Employees' Association Nassau County Chapter, to be an employee organization within the meaning of Article 14, Section 201, of the Civil Service Law, and Nassau County Ordinance No. 228/1967, as amended, and

b) the said employee organization to be qualified under all of the standards set forth in Section 207, of this the aforesaid Article 14, and Nassau County Ordinance No. 228/1967, as amended, for the determination of representation status, and

c) the unit of employees contended for to be an appropriate one, and the Board having further determined, on all of the evidence submitted in behalf of the petitioner employee organization, that such proof was insufficient to permit of certification without an election and for such reason and pursuant to Section VI of its Rules of Procedure, ordered that such an election be held under the direction and supervision of the American Arbitration Association, as the authorized agent of the Board for such purpose, and

(19) Director of the Children's Shelter
(20) Director of Family Services
(21) Parks Maintenance Superintendent
(22) Assistant Parks Maintenance Superintendent
(23) Superintendent of Parks
(25) Fire Marshal
(26) County Director of Safety
(27) Undersheriff
(28) Superintendent of Highway Maintenance
(29) Assistant Superintendent of Highway Maintenance
(30) Director of Bureau Motor Equipment Management
(31) Superintendent of Building Maintenance
(32) Director, Bureau of Building Services
(33) Sewer Maintenance Superintendent
(34) Deputy Director, Bureau Purchase and Supply
(35) Director, Bureau Purchase and Supply
(36) County Director of Accounting
(37) Field Audit Director
(38) Superintendent of Real Estate
(39) Director, Motor Vehicle Bureau
(40) Director, Traffic Engineering
(41) Superintendent of Sewage Plants
(42) Administrative Officer I
(43) Administrative Officer II
(44) Chief Clerk, Board of Assessors
(45) Assistant Nursing Home Administrator
(46) Assistant Hospital Administrator I
(47) Assistant Hospital Administrator II

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with

THE NASSAU CHAPTER, CIVIL SERVICE
EMPLOYEES' ASSOCIATION, INC.

and if agreement is reached with regard to the terms and conditions of employment, and the determination and administration of grievances, such agreement shall be reduced to writing.

Dated this 18th day of October, 1968
at Mineola, New York.

On behalf of the
Public Employment Relations Board

Milton Friedman	Leonard Cooper	Edward Regnell
Chairman	Member	Member