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State of New York Public Employment Relations Board Decisions from March 29, 1979

New York State Public Employment Relations Board

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State of New York Public Employment Relations Board Decisions from March 29, 1979

Keywords

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Comments

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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of : #2A-3/29/79
: :
HUDSON VALLEY COMMUNITY COLLEGE : BOARD DECISION AND ORDER
FACULTY ASSOCIATION, : :
: :
Respondent, : CASE NO. U-3728
: :
-and- : :
: :
HUDSON VALLEY COMMUNITY COLLEGE, : :
: :
Charging Party. : :
: :

In the Matter of : :
: :
HUDSON VALLEY COMMUNITY COLLEGE, : :
: :
Respondent, : CASE NO. U-3819
: :
-and- : :
: :
HUDSON VALLEY COMMUNITY COLLEGE : :
FACULTY ASSOCIATION, : :
: :
Charging Party. : :
: :

REX TROBRIDGE, for the Association

ROBERT E. GRAY, ESQ., and DONALD W. SCHMIDT,
for the College

On December 11, 1978, the Hudson Valley Community College (College) filed a charge that the Hudson Valley Community College Faculty Association (Association) refused to negotiate in good faith in that it improperly insisted upon the negotiation of nonmandatory subjects of negotiation (Case No. U-3728). When this charge was filed the negotiation dispute had been submitted to a factfinder. The College had demanded that the Association withdraw the disputed negotiation proposals, but the Association had refused to do so. It responded that each of the contested proposals was a mandatory subject of negotiation and on January 31, 1979 it filed a countercharge (Case No. U-3819). The

5676

countercharge alleges that the College refused to negotiate over demands made by the Association involving mandatory subjects of negotiation. The College concedes that it has refused to negotiate over the enumerated demands, but it justifies this refusal by its contention that the demands do not constitute mandatory subjects of negotiation.

Both cases involve disputes as to the scope of negotiation under the Taylor Law and they have been processed under §204.4 of our Rules, which permits the record to be submitted directly to this Board without a hearing officer's report or recommendations. The two charges have been consolidated because the scope of negotiation issues are identical, each charge being the ¹ converse of the other.

We now discuss the demands.

Demand 1

In cases where economic necessity or changes in academic requirements necessitates a reduction in the number of teaching faculty, the College will give those faculty thus affected notice thereof as soon as possible but not later than April 1, and will give priority consideration to retaining those faculty members holding continuing appointment within their department, division, and on a college-wide basis.

The demand is for notice in the event of layoff and for an order of layoff. These involve the impact of a College decision to curtail services and abolish positions. They are mandatory subjects of negotiation, City of White Plains, 5 PERB ¶13008 (order of layoff) and City of Albany, 7 PERB ¶13078 (reasonable notice).

¹ At a conference between the parties on January 30, 1979, they amended their charges to reflect developments during negotiations.

Demand 2

Faculty within a department affected by retrenchment shall be retrenched in accordance with the following criteria:

- (i) years of service from date of original college appointment;
 - (ii) teaching ability as demonstrated by evaluations and documentation;
 - (iii) appropriate and unique qualification experience (teaching and related).
- (2b): Non-tenured faculty shall be retrenched before tenured faculty.

Unlike the statutory tenure conferred upon public school teachers after three years of service, tenure in a community college is a creature of the contract or the policies of the Board of Trustees. The demand is mandatory, inasmuch as it relates to the order of retrenchment, City of White Plains, supra. We reject the College's contention that the demand intrudes upon the employer's right to determine the nature of its workforce.

Demand 3

There shall be no retrenchment of personnel or staff at the time of the execution of the agreement for the duration hereof by reason of the application of the workload provision herein contained.

By this demand the Association proposes that there be no layoffs as a result of its concessions on workload. The demand is a nonmandatory proposal for job security, Yonkers City School District, 40 NY2d 268, 9 PERB ¶17519; Burke v. Bowen, 40 NY2d 264, 9 PERB ¶17520.

Demand 4

The College shall continue payment of health insurance premiums for two years after retrenchment of a faculty member.

The College, relying on our decision in City of Troy, 10 PERB ¶3015, argues that the demand is nonmandatory inasmuch as it relates to benefits for persons who are no longer public employees at the time of negotiations. In Troy, we found a demand that the city provide similar health coverage for cer-

tain retired employees and their families to be nonmandatory. However, it does not follow that since the continued payment of health insurance premiums is nonmandatory as it relates to retired employees, it must likewise be a nonmandatory subject as it relates to retrenched employees. A significant difference is that retirement benefits are prohibited subjects of negotiation, Taylor Law §201.4. Here, the Association seeks to negotiate the impact of the College's decision to retrench. As such, the demand is mandatorily negotiable, Somers Central School District, 9 PERB ¶3014, at pp. 3024-5.

Demand 5

In the event that the parties fail to reach agreement before the expiration of this agreement, the parties agree to maintain all terms and conditions of employment in effect until the negotiation of a successor agreement and to make such agreement retroactive to the date on which the agreement expires.

The College concedes that a maintenance of standards clause affecting terms and conditions of employment which are mandatory subjects of negotiation is mandatorily negotiable, but argues that this demand is nonmandatory because it lacks specificity and may include issues which are nonmandatory. We reject this contention. The demand is for the maintenance of "terms and conditions of employment" and the Taylor Law uses this phrase to denote mandatory subjects of negotiation, Taylor Law §§201.4 and 203. Accordingly, the demand is mandatory because it relates to the continuation of mandatory subjects of negotiation, Troy, supra.

Demand 6

Laboratory sections will be limited to 20 students. Where students are using dangerous mechanical or electrical equipment, or are exposed to other significant hazards, the number of students will be limited to 18. Courses falling in this latter category shall be agreed upon separately and incorporated by reference herein.

The demand is a nonmandatory subject of negotiation. We repeatedly have held that class size is a policy decision inasmuch as it relates to the

basic mission of the employer, Orange County Community College, 9 PERB ¶3068; West Irondequoit, 35 NY2d 46, 4 PERB ¶3070. While the Association asserts that the demand results from safety problems in the laboratories, in essence it concerns class size; the Association cannot compel the negotiation of this class size demand under the guise of a safety demand.

Demand 7

Faculty teaching assignments will be limited to 18 contact hours and 500 student contact hours per semester and three courses per semester.

The College, in its brief, argues that "student contact hours are a direct function (product-sum) of class size". A computer matrix enclosed in the College's brief indicates that student contact hours are calculated by multiplying the number of classes taught by the number of students in each class. The Association is not, by this demand, insisting that the College negotiate over class size alone. Viewed in this light, the demand is essentially one of workload, and is mandatory. The College would have the option of easing teacher workload by reducing class size (nonmandatory) or by reducing the number of classes assigned to a teacher (mandatory). As the choice of alternatives is left to the employer, the proposal here is mandatory, Orange County Community College, 10 PERB ¶3080 at p. 3138. Moreover, in Yorktown, 7 PERB ¶3030, the Board found a demand that there be a maximum of 22,000 weighted student contact minutes per week to be mandatory. In that case, the formula for determining weighted student contact minutes included not only hours of work and number of teaching periods, but also class size.


NOW, THEREFORE, we find merit in the charge of the College (U-3728) that alleges that the Association failed to negotiate in good faith regarding Demands 3 and 6, and in the charge of the Association (U-3819) that alleges that the College failed to negotiate in good faith regarding Demands 1, 2, 4,

5 and 7. In all other respects, both charges herein are dismissed.

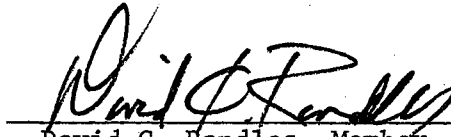
WE ORDER:

1. The Association to withdraw from factfinding the demands determined herein to be nonmandatory, and
2. The College to negotiate with the Association over those demands herein determined to be mandatory subjects of negotiation.

DATED: Albany, New York
March 29, 1979




Harold R. Newman, Chairman



David C. Randles, Member

In view of my dissent in Matter of Monroe-Woodbury Teachers Association, 10 PERB ¶3029 (1977), and without conceding the correctness of the Board's position in this case, I concur in the result only for the reason that I do not wish to perpetuate dissents in all cases of this type which may come before the Board.

DATED: Albany, New York
March 29, 1979



Ida Klaus, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of :
UTICA CITY SCHOOL DISTRICT, : #2B-3/29/79
Employer, :
- and - :
LOCAL 182, INTERNATIONAL BROTHERHOOD :
OF TEAMSTERS, : Case No. C-1796
Petitioner, :
- and - :
CIVIL SERVICE EMPLOYEES ASSOCIATION, :
LOCAL 1000, AFSCME, AFL-CIO, :
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 Local 182, International Brotherhood of Teamsters

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 members of the secretarial staff of the school district on permanent tenure or probationary appointment.

Excluded: Any employee whose remuneration is based on less than half of the annual salary rate for the position.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with Local 182, International Brotherhood of Teamsters

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 29th day of March, 1979
Albany, New York

Harold R. Newman
Harold R. Newman, Chairman

Ida Klaus
Ida Klaus, Member

David C. Randles
David C. Randles, Member

5682

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of :
PLAINVIEW-OLD BETHPAGE CENTRAL SCHOOL : #2c-3/29/79
DISTRICT, :
Employer, :
- and - :
CSEA, LOCAL 1000, AFSCME, AFL-CIO, : Case No. C-1790
Petitioner, :
- and - :
LOCAL #237, INTERNATIONAL BROTHERHOOD OF :
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS :
OF AMERICA, :
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 Local #237, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America

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 Buildings and Grounds personnel including Matrons; Cleaners; Custodians; Groundskeepers; Night Custodians, In-Charge, Mail and Supply Clerks; A. V. Technicians; Maintenance Men; Assistant Head Custodians--Junior and Senior High Schools; T. V. Technicians; Head Custodians--Elementary, Junior and Senior High Schools.

Excluded: All other employees.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with Local #237, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America 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 29th day of March, 1979
Albany, New York

Harold R. Newman
Harold R. Newman, Chairman

Ida Klaus
Ida Klaus, Member

David C. Randles
David C. Randles, Member

5683

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of _____ :
TOWN OF COLUMBUS, _____ :
Employer, _____ : #2D-3/29/79
- and - _____ : Case No. C-1856
TEAMSTERS LOCAL UNION #182, _____ :
Petitioner. _____ :

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that the Teamsters Local Union #182

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 non-confidential, non-managerial employees of Town of Columbus Highway Department including motor equipment operators, mechanics, laborers and plow operators.

Excluded: Superintendent of Highways.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with the Teamsters Local Union #182

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 29th day of March, 1979
Albany, New York

Harold R. Newman
Harold R. Newman, Chairman

Ida Klaus
Ida Klaus, Member

David C. Randles
David C. Randles, Member

5684