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5-7-1979

## State of New York Public Employment Relations Board Decisions from May 7, 1979

New York State Public Employment Relations Board

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## State of New York Public Employment Relations Board Decisions from May 7, 1979

### Keywords

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

### Comments

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STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

#2A-5/7/79

In the Matter of

POLICE BENEVOLENT ASSOCIATION OF THE  
CITY OF WHITE PLAINS, INC.,

Respondent,

-and-

CITY OF WHITE PLAINS,

Charging Party.

BOARD DECISION AND ORDER

CASE NO. U-2804

MARTIN W. SCHWARTZ, ESQ., for Respondent

RAINS, POGREBIN & SCHER (TERENCE H. O'NEIL, ESQ.,  
of Counsel), for Charging Party

The charge herein was filed by the City of White Plains on June 27, 1977. It alleges that the Police Benevolent Association of the City of White Plains, Inc. committed an improper practice in that it improperly insisted upon the negotiation of nonmandatory subjects by submitting them to compulsory interest arbitration over the objections of the City.

1 One of the allegedly nonmandatory subjects of negotiation was the demand that an employee could not be suspended without pay when he is served with disciplinary charges. Section 75 of the Civil Service Law deals with the discipline of employees of public employers other than the State of New York. Subdivision 3 of that section authorizes the suspension without pay of an employee who has been charged with misconduct or incompetence. Two months before the filing of the charge herein, this Board had determined that the provisions of Civil Service Law §75 relating to "disciplinary proceedings" are preemptive of the subject and are not open to collective negotiations", City of Auburn, 10 PERB ¶3045. An appeal was taken from that determination. On October 4, 1977, the Supreme Court, Albany County, reversed our determination in the Auburn case, Auburn Police Local 195 v. Helsby, 91 Misc. 2d 909; 10 PERB ¶7016, and we appealed that decision. Accordingly, we advised the parties that we would hold the instant case until the Auburn case was resolved by the courts and our own position could be clarified. The decision of the Supreme Court was subsequently affirmed by the Appellate Division, Third Department, 62 App.Div. 2d 12 (1978), 11 PERB ¶7003, and on March 29, 1979, it was affirmed by the Court of Appeals, \_\_\_ NY 2d \_\_\_, 12 PERB ¶7006. We now decide the instant case.

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DISCUSSION

The following three demands are before us:

1. "Disciplinary Procedures (Suspension of Employees)

An employee may not be suspended without pay when he is served with charges. The member shall be placed on modified assignment with full pay and all benefits, unless the City determines that he is capable of performing full police duty."

The entire subject of employee discipline is not preempted by §75 of the Civil Service Law. Section 75 leaves the subject of this demand to the discretion of the public employer; therefore, this demand is a mandatory subject of negotiation. The demand would merely require the employer to pay wages to an employee who is facing disciplinary charges. The concern of the demand is with such economic benefits.

2. "Polygraph and Chemical Tests - The City shall not make use of polygraph, psychological stress evaluator or any other test designed to measure veracity by monitoring of bodily functions, and/or chemical tests on employees when investigating their activities. An employee may not be ordered or requested to take any of the aforementioned tests."

This is a nonmandatory subject of negotiation. It is not limited to procedures solely relating to ordinary employee departmental discipline and hence goes beyond the scope of terms and conditions of employment. Its broad scope might preclude the police department from investigating suspected and actual crimes of policemen in the manner that it investigates suspected and actual crimes of others.

3. "Safety Clause - Article XX of the present contract shall be amended to read as follows:

No police officer shall be ordered to operate vehicles or equipment which is defective, and as such may cause physical harm to the officer or other person(s) or damage to the vehicle or other vehicles. A police officer shall not be penalized, re-assigned or disciplined for refusing to operate unsafe vehicle(s) or equipment."

This is a mandatory subject of negotiation. It consists of a general safety clause and a provision that a police officer should not be penalized for

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refusing to operate unsafe equipment.<sup>2</sup> The application of the safety clause in specific situations would be subject to the grievance procedures established by the agreement. The provision sought here is substantially similar to that already approved by us and the Court in City of New Rochelle v. Crowley, 61 AD 2d 1031 (2nd Department, 1978), 11 PERB ¶7002.

NOW, THEREFORE, WE ORDER that the Police Benevolent Association of the City of White Plains, Inc., withdraw the second of the demands discussed herein, and in all other respects the charge herein is dismissed.

DATED: Albany, New York  
May 8, 1979

*Harold R. Newman*  
\_\_\_\_\_  
Harold R. Newman, Chairman

*Ida Klaus*  
\_\_\_\_\_  
Ida Klaus, Member

*David C. Randles*  
\_\_\_\_\_  
David C. Randles, Member

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<sup>2</sup> We do not interpret the term "reassigned" in this demand to mean that a police officer shall remain free of any other assignment during the period when his vehicle is deemed defective.

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of :  
: #2B-5/7/79  
TOWN OF LEWISTON, :  
: Employer, :  
: BOARD DECISION AND ORDER  
-and- :  
: CASE NO. C-1657  
CIVIL SERVICE EMPLOYEES :  
ASSOCIATION, INC., :  
: Petitioner. :  
:

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On March 27, 1978, the Civil Service Employees Association, Inc. (petitioner) filed, in accordance with the Rules of Procedure of the Public Employment Relations Board, a timely petition for certification as the exclusive negotiating representative of certain employees employed by the Town of Lewiston (employer).

Following an informal conference, the parties executed a consent agreement which was approved by the Director of Public Employment Practices and Representation on January 29, 1979.

The negotiating unit stipulated to therein was as follows:

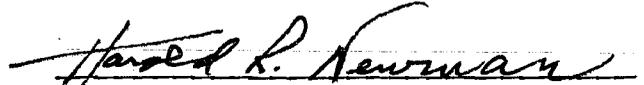
Included: All full-time laborers, motor equipment operators, maintenance man in sewer and water departments, auto mechanic, dog enumerator/maintenance man.

Excluded: Seasonal, temporary and all other employees.

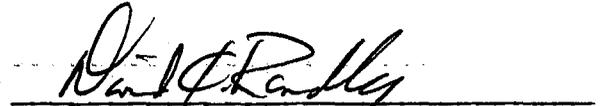
Pursuant to the consent agreement, a secret-ballot election was held on February 26, 1979. The results of the election

indicate that the majority of eligible voters in the stipulated unit who cast valid ballots do not desire to be represented for purposes of collective negotiations by the petitioner.<sup>1/</sup>

Therefore, it is ordered that the petition should be, and hereby is, dismissed.

  
Harold R. Newman, Chairman

  
Ida Klaus, Member

  
David C. Randles, Member

Dated at Albany, New York  
This 7th day of May, 1979.

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<sup>1/</sup> There were fifteen (15) ballots cast in favor of and eighteen (18) ballots against representation by the petitioner. One challenged ballot was cast, but it was not sufficient to affect the results of the election.

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

Riverhead Central School District, #2C-5/7/79  
Employer,  
- and -  
Civil Service Employees Association, Case No. C-1872  
Suffolk Educational Chapter, Local 870,  
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 Civil Service Employees Association, Suffolk Educational Chapter, Local 870

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: Aides/monitors.

Excluded: All other employees.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with the Civil Service Employees Association, Suffolk Educational Chapter, Local 870

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 7th day of May, 1979  
Albany, New York

Harold R. Newman  
Harold R. Newman, Chairman

Ida Klaus  
Ida Klaus, Member

David C. Randles  
David C. Randles, Member

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In the Matter of :  
STATE OF NEW YORK, UNIFIED COURT SYSTEM : #2D-5/7/79  
(CITY OF WHITE PLAINS), :  
Employer, :  
-and- :  
NINTH JUDICIAL DISTRICT COURT EMPLOYEES : Case No. C-1722  
ASSOCIATION, :  
Petitioner, :  
-and- :  
CIVIL SERVICE EMPLOYEES ASSOCIATION, INC., :  
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 the Civil Service Employees Association, Inc., Local 1000, AFSCME, 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: Court Assistant I, Court Office Assistant, City Marshall, Court Clerk I, Court Assistant II, Court Reporter I and Chief Clerk, City Court.

Excluded: All other employees.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with the Civil Service Employees Association, Inc., Local 1000, AFSCME, 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 8th day of May, 1979  
Albany, New York

*Harold R. Newman*  
Harold R. Newman, Chairman

*Ida Klaus*  
Ida Klaus, Member

*David C. Randles*  
David C. Randles, Member

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PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of :  
STATE OF NEW YORK, UNIFIED COURT SYSTEM :  
(COUNTY OF ROCKLAND), : #2E-5/7/79  
Employer, :  
-and- :  
NINTH JUDICIAL DISTRICT COURT EMPLOYEES : Case No. C-1724  
ASSOCIATION, :  
Petitioner, :  
-and- :  
CIVIL SERVICE EMPLOYEES ASSOCIATION, INC., :  
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 the Ninth Judicial District Court Employees Association

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: Assistant Surrogate Court Clerk, Court Clerk I, Court Office Assistant, Court Reporter I, Secretary to Judge, Deputy Commissioner of Jurors, Court Assistant I, Assistant Court Clerk, Uniformed Court Officer, Senior Court Officer, Clerk, Assistant Court Clerk, Senior Library Clerk, Court Assistant II, Court Clerk II, Deputy Chief Clerk-Family Court, Court Clerk III and Senior Stenographer.

Excluded: Chief Clerk - Family Court, Law Secretary to Judge, Commissioner of Jurors, Chief Clerk - Surrogate Court and all other employees.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with the Ninth Judicial District Court Employees Association

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 8th day of May, 1979  
Albany, New York

Harold R. Newman  
Harold R. Newman, Chairman

Ida Klaus  
Ida Klaus, Member

David C. Randles  
David C. Randles, Member

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STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of \_\_\_\_\_ :  
STATE OF NEW YORK, UNIFIED COURT SYSTEM : #2F-5/7/79  
(COUNTY OF WESTCHESTER), \_\_\_\_\_ :  
Employer, \_\_\_\_\_ :  
-and- \_\_\_\_\_ :  
NINTH JUDICIAL DISTRICT COURT EMPLOYEES : Case No. C-1725  
ASSOCIATION, \_\_\_\_\_ :  
Petitioner, \_\_\_\_\_ :  
-and- \_\_\_\_\_ :  
CIVIL SERVICE EMPLOYEES ASSOCIATION, INC., :  
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 the Ninth Judicial District Court Employees Association

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: See attached list.

Excluded: First Deputy Commissioner of Jurors,  
Commissioner of Jurors, Chief Clerk  
Family Court, Chief Clerk Surrogate  
and all other employees.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with the Ninth Judicial District Court Employees Association

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 8th day of May, 1979  
Albany, New York

*Harold R. Newman*  
Harold R. Newman, Chairman

*Ida Klaus*  
Ida Klaus, Member

*David C. Rändlós*  
David C. Rändlós, Member

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Unit: Included: Secretary to Chief Clerk, Law Librarian III, Deputy Commissioner of Jurors, Stenographer, Court Clerk III, Court Assistant I, Court Reporter I, Court Assistant II, Assistant Court Clerk, Court Clerk I, Account Clerk, Court Clerk II, Court Office Assistant, Court Assistant I, Law Library Clerk, Senior Stenographer, Surrogate Court Clerk II, Court Assistant II, Surrogate Court Clerk Accounting II, Senior Law Stenographer, Impanelling Assistant, Uniformed Court Officer, Secretary to Judge, Office Machine Operator, Assistant Surrogate Court Clerk, Senior Office Machine Operator, Principal Stenographer, Secretary to Surrogate, Surrogate Court Clerk (Prob) I, Assistant County Court Clerk, Messenger, Senior Law Library Clerk, Surrogate Court Clerk I, Deputy Chief Clerk-Family Court, Law Assistant II, Deputy Chief Clerk-Surrogate Court, Law Secretary to County Court Judge and Law Secretary to Family Court Judge.