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State of New York Public Employment Relations Board Decisions from August 15, 1979

New York State Public Employment Relations Board

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State of New York Public Employment Relations Board Decisions from August 15, 1979

Keywords

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Comments

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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

#2A - 8/15/79

In the Matter of :
NEW YORK STATE COURT EMPLOYEES ASSOCIATION, :
Charging Party, : BOARD DECISION AND
-and- : ORDER
RICHARD J. BARTLETT, as Chief Administrator :
of the Courts of the State of New York and : CASE NO. U-3714
HOWARD A. RUBENSTEIN, as Director of Employee :
Relations of the Office of Court Administration, :
Respondents. :

In the Matter of :
RICHARD J. BARTLETT, as Chief Administrative :
Judge of the Unified Court System of the :
State of New York, :
Charging Party, : CASE NO. U-3767
-and- :
NEW YORK STATE COURT EMPLOYEES ASSOCIATION, :
Respondents. :

WHITEMAN, OSTERMAN & HANNA (MELVIN H. OSTERMAN, JR., ESQ.
and NORMA MEACHAM CROTTY, ESQ., of Counsel) for the
Office of Court Administration

PHILLIPS, NIZER, BENJAMIN, KRIM & BALLON, (ALBERT H. BLUMENTHAL,
ESQ., STEPHANIE D. HILL, ESQ., and GEOFFREY McC. JOHNSON, ESQ.,
of Counsel) for New York State Court Employees Association

On December 1, 1978, the New York State Court Employees Association (Asso-
ciation) filed an improper practice charge in Case No. U-3714, alleging that
Richard J. Bartlett and Howard A. Rubenstein (respondents), as Chief Administra-
tive Judge of the State's unified court system and Director of Employee
Relations of the State Office of Court Administration (OCA), respectively, re-

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fused to negotiate with respect to various Association demands concerning mandatory subjects of negotiation. Respondents filed an answer asserting that the subject demands are not mandatorily negotiable and subsequently, on January 3, 1979, filed a charge in Case No. U-3767 alleging that the Association had violated its duty to negotiate in good faith by insisting upon the negotiation of prohibited or nonmandatory subjects.

A pre-hearing conference was held on January 15, 1979, during which the parties agreed upon a statement of the demands at issue. Since the matter primarily involves the scope of negotiations under the Taylor Law, it has been referred directly to us for expeditious determination pursuant to §204.4 of our Rules, without an intermediate hearing officer's report. Both parties participated in oral argument and submitted written briefs.

BACKGROUND

The Association is comprised of four separate employee organizations: the New York State Court Clerks Association; the Court Clerks Benevolent Association, Local 584, SEIU, AFL-CIO; the New York State Supreme Court Officers Association; and Local 598, SEIU, AFL-CIO. These organizations were jointly certified by the New York City Office of Collective Bargaining as negotiating representatives of nonjudicial court employees in the City of New York. OCA and the City of New York were joint employer signatories to a 1976-78 collective agreement with the latter three organizations; the New York State Court Clerks Association has not been a party to an agreement since 1976.

Prior to April 1, 1977, individual local governments were responsible for the operating costs of courts of the unified court system located within their respective jurisdictions. Hence, the employees herein represented by the Association were paid by the City of New York. On August 5, 1976, however, the State Legislature, finding that "[i]t is both uneconomical and inefficient to have

the responsibility of funding this state-operated court system divided among the various units of local governments", passed the Unified Court Budget Act¹ (herein also referred to as the Judiciary Law). Under this Act, the State assumed the operating costs of all State courts of record, and, effective April 1, 1977, nonjudicial employees in such courts, including those represented by the Association, became State-paid employees with OCA as their sole immediate employer. The Judiciary Law also contains significant language concerning the classification of these new State employees and their allocation to salary grades. That language, at the core of these proceedings, will be discussed in detail, infra.

On or about October 11, 1977, OCA and the Association commenced successor contract negotiations. During such negotiations, a dispute arose concerning numerous Association demands, many of which involved employee classification and allocation. The dispute led to the filing of the instant charges.

CLASSIFICATION AND ALLOCATION

As noted, at the heart of the dispute between the parties is the question of whether employer decisions concerning classification and allocation are mandatory subjects of negotiation. OCA claims that specific provisions contained within the Judiciary Law mandate that these matters be left within its sole province. The Association contends that other provisions of that Law dictate a contrary conclusion.

Classification

Classification has been defined in the personnel provisions of the Civil Service Law as "a grouping together, under common and descriptive titles, of positions that are substantially similar in the essential character and scope

¹ L. 1976, ch. 966, enacting Judiciary Law §220. This section was later re-numbered as Judiciary Law, §39 (L. 1978, ch. 156).

of their duties and responsibilities and in the qualification requirements therefor². It thus involves first the devising of a personnel structure based on general occupational function, and then the determination of which individual positions are to be assigned to which particular functional group. By way of example, in the instant case OCA has proposed for the negotiating unit under consideration nine major functional groupings or "occupational series", including those of court clerk, office assistant, court security, court reporter, court interpreter, secretarial and stenographic, legal, administrative, and law librarian, and has assigned specific job titles to each of these groups on the basis of proposed "title standards" which detail distinguishing features, typical duties, requisite skills and qualifications for each position.³

To determine the negotiability of classification decisions under the Taylor Law, we resort to the primary-characteristic test used in all scope of negotiations cases: Is the particular type of decision primarily related to the terms and conditions of employment of those affected by it, or is it primarily related to the formulation or management of public policy, i.e. to the exercise of governmental "mission"⁴. We perceive the decision as to how employees shall be classified as having predominantly the latter character-

² Civil Service Law §2.11.

³ See, "Proposed Classification Plan for Non-Judicial Positions in the Unified Court System" and "proposed Title Standards for Non-Judicial Employees in the Unified Court System".

⁴ See, e.g., Saratoga Springs City School District, 11 PERB ¶13037 (1978), aff'd 68 AD 2d 202, 12 PERB ¶7008 (3rd Dept., 1979), mt. lv. app. den. ___ NY2d ___, 12 PERB ¶7012 (1979).

istic, and hence as being a nonmandatory subject of negotiation under the Taylor Law.

Classification is clearly a personnel management tool which facilitates the ascertainment of staffing needs within particular areas of an employer's operation. It is closely allied to the setting of job qualifications, the promulgation of job descriptions characterizing employees' essential duties and functions and the creation of a table of organization -- all of which we have previously held to constitute nonmandatory subjects of negotiation.⁵ Moreover, classification as such does not establish, and does not have a direct impact upon, terms and conditions of employment. While a particular occupational grouping might reflect a higher average rate of compensation than another due to the nature of duties and level of qualifications of the positions it comprises, this would be due not to the classification decision itself, but rather to subsequent processes of contract salary negotiations and allocation to salary grade. On analysis then, by Taylor Law principles, employee classification is not a mandatory subject of negotiation.

We next examine whether other statutory provisions dictate a contrary conclusion here. Judiciary Law §39.8(a) reads as follows with respect to classification:

"The administrative board of the judicial conference shall adopt a classification structure for all non-judicial officers and employees who become employees of the state of New York pursuant to this section which shall provide for the classification of positions in accordance with duties required to be performed in title in these positions and in accordance with the responsibilities of the position and the volume of work in the court or court-related agency in which the position exists. Nothing in this section shall prohibit the subsequent restructuring of the classification and duties of employees in accordance with the rules of the administrative board."

⁵ West Irondequoit Board of Education, 4 PERB ¶3070 (1971); Waverly Central School District, 10 PERB ¶3103 (1977); Onondaga Comm. Coll. Federation of Teachers, 11 PERB ¶3045 (1978).

This statute explicitly authorizes the employer to promulgate a classification scheme for nonjudicial employees. Since, as we have already indicated, the classification decision itself does not establish and does not directly impact upon terms and conditions of employment and hence does not fall within the ambit of an employee organization's negotiation rights, it cannot be said to diminish those rights. Thus, the Judiciary Law does not conflict with the Taylor Law principle that a classification decision is a nonmandatory subject of negotiation.

We now turn to the specific demands by which the Association seeks to negotiate various aspects of job classification:

Demands IV, XV(N), XVI(A), XVI(C), XVI(D), XVII and XVIII⁶, all explicitly seek to negotiate the employer's decision to classify or reclassify employees, and hence are not mandatory subjects of negotiation. Demands III(3) and XIV, while couched in terms of "impact", are also nonmandatory subjects of negotiation. We treat with each of these more specifically:

In Demand IV, the Association seeks to negotiate any decision to reclassify or alter job titles, or to create new titles, which would impact upon the Association's unchallenged representation status. This clearly is not a demand seeking to relieve adverse impact under Taylor Law principles, but rather one which seeks to negotiate the classification plan itself.

Similarly, in Demand XV(N), the Association seeks to negotiate any reclassification decision or any decision to create new positions which adversely impacts upon union membership or dues deductions. The decision, and not its Taylor Law impact, is the real subject of the negotiation demand. Moreover,

⁶ The full text of the Association demands or parts thereof which are in dispute may be found in the Appendix to this decision.

the subject matter of this demand, i.e., union membership, would not in any event be a term or condition of employment.

In Demand XVI(A), the Association seeks a right of prior approval regarding any initial title classification, and seeks to negotiate any classification decision which impacts upon employee workload or level of responsibility. Again, the Association is seeking a direct role in the nonmandatory decisional process.

Demands XVI(C) and XVI(D) seek to negotiate inter alia, any future classifications, and any classifications which impact upon salaries. The fact that these demands also seek negotiations concerning matters other than classification does not preserve any part of either demand as a mandatory subject of negotiation. As we held in Haverstraw, 11 PERB ¶3109 (1978), where a demand containing a nonmandatory element is presented in a unitary, inseparable fashion, the entire demand must be deemed nonmandatory.

In Demand XVII, the Association seeks to negotiate classification decisions which may adversely impact upon employer payments to the Association welfare fund. The demand is not limited to negotiations regarding methods of relieving any adverse impact or compensating employees therefor, but rather is one to negotiate the classification decision itself.

In Demand XVIII, the Association seeks to negotiate classification decisions which may adversely impact upon its status as exclusive negotiating representative for "covered employees" in certain retirement systems. This demand is essentially the same as Demand IV, and similarly is a nonmandatory subject of negotiation.

In Demand III(3), the Association seeks to negotiate the "effect" of reclassification or of the creation of new positions upon union membership or dues deductions. Inasmuch as the "effect" is to be "handled in accordance with the provisions of paragraph N of Demand XV", supra, it requires negotiation of

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the classification decision itself, rather than its impact on terms and conditions of employment. In any event, even if this were clearly an impact demand, the subject matter of said demand, i.e. union membership, is not a term and condition of employment, and hence, a negotiating obligation would not attach.

Finally, in Demand XIV, the Association seeks a guarantee that certain existing promotional lines will remain unchanged in the event of a reclassification and, alternatively, seeks to negotiate the impact of reclassification upon such promotional lines. Since the demand would mandate negotiations regarding the criteria or qualifications for promotion, which is a matter of managerial prerogative, it is a nonmandatory subject, Onondaga Community College supra; West Irondequoit Bd. of Ed., supra.

Allocation

Job allocation is a process by which each of the positions, once classified, is assigned to one or another of the 38 salary grades specified in §37 of the Judiciary Law. Each of the salary grades has a minimum annual salary, a maximum annual salary, and three intermediate steps. Movement from step to step occurs annually and is automatic. Many positions with different classifications may be allocated to the same salary grade. Thus, for example, positions classified separately as senior court officer and assistant court clerk, allocated to salary grade 16, would have the same minimum and maximum salaries and the same intermediate salary progression steps.

OCA contends that job allocation is part of the classification process. According to OCA, its duty to negotiate wages and salaries includes the duty to negotiate the minimum and maximum salaries for each salary grade as well as the annual increments, once it has assigned positions to salary grades. It would not, however, include the allocation of any position to any salary grade. Thus, the employee organizations would be limited to negotiating a single salary scale for the diverse occupations that OCA would unilaterally decide should be

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allocated to the same grade.

The Association asserts that the allocation of job classifications to salary grades is an aspect of wage determination which, pursuant to public policy and the Taylor Law, is a mandatory subject of negotiation.

We agree with the Association that the duty to negotiate wages and salaries as specified in the Taylor Law extends to the negotiation of the salary grades of each occupational classification. Otherwise, the Association would be foreclosed from the exercise of the full scope of its negotiation rights under the Taylor Law. Hence, absent a clear legislative intent to the contrary or unusual policy considerations, salary grade allocation is a mandatory subject of negotiation, City of New Rochelle, 7 PERB ¶4505, affirmed 7 PERB ¶ 3021 (1974).

There is such a clear contrary legislative intent with respect to employees of the Executive Branch of the State, whose jobs are allocated to grade by the independent Director of Classification and Compensation pursuant to Article 8 of the Civil Service Law. ⁷ OCA contends that this legislative intent is applicable to employees of the Judicial Branch of government as well as to those of the Executive Branch. We disagree. The Legislative Committee report preceding the enactment of the legislation applicable to the Executive Branch reveals that the Legislature removed allocation from the negotiating table in reliance upon the mechanism it established under Article 8 of the Civil Service Law which brought all allocation decisions and employee appeals therefrom within

⁷ This legislative intent was specified in L. 1970, ch. 158, §24. In relevant part it states:

"...the legislature finds and declares that allocations and reallocations to salary grades of positions in the classified service of the state are not terms and conditions of employment under article fourteen of the civil service law. The legislature further finds and declares that such allocations and reallocations are not within the scope of a fact-finding board but are to be accomplished exclusively pursuant to the provisions of article eight of the civil service law."

the purview of an independent Director of Classification and Compensation and State Civil Service Commission.⁸ Nonjudicial employees are not covered by and have no recourse to Article 8 of the Civil Service Law. Rather, matters of classification and allocation of nonjudicial employees are within the domain of the Chief Administrator of the Courts and OCA (as delegated by the Chief Judge of the Court of Appeals), i.e., the employer herein.⁹ OCA contends that the procedures contained in its proposed classification plan for determination of allocations and appeals are no less comprehensive than those contained in CSL Article 8 for Executive Branch employees. A self-imposed procedure, however, stands in significant contrast to one which is legislatively mandated.

OCA also attributes to the Legislature a direct intent to exclude allocation from the scope of negotiation in Judiciary Law §39.8(a). With respect to allocation, that section reads as follows:

"...The administrative board in accordance with section two hundred nineteen of this article shall determine, retroactive to April first, nineteen hundred seventy-seven, the salary grade of each employee who becomes an employee of the state of New York pursuant to this section; provided, however, nothing herein contained shall be deemed to diminish: (i) the right of any employee organization to negotiate wages or salaries pursuant to article fourteen of the civil service law, or: (ii) the right of any employee to receive wages or salaries pursuant to subdivision six of this section."

⁸ A select joint legislative committee report states, in relevant part:

"Article 8 of the Civil Service Law sets out carefully the detailed procedure for insuring that job titles in the Civil Service system are allocated appropriately to salary grade positions, taking into consideration all relevant circumstances which bear upon job evaluation. This system is intended to be administered by the Director of Classification and Compensation impartially and without undue pressures of competing interests, in order to insure that such job title-salary relationships shall be fair and equitable. In our view, it was not the intention of the Legislature in adopting Article 14 of the Civil Service Law to abrogate in any fashion the exclusive responsibility of the Director in this area....In this particular instance...the long-standing special procedure provided by Article 8 of the Civil Service Law requires us to conclude that this matter of salary grade allocation must be decided by the Director of Classification and Compensation...."

⁹ See Corkum v. Bartlett, 46 NY2d 424 (1979); N.Y.S. Const. Art. VI, §28; Judiciary Law §§39.8(a) and 211.1(d).

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The Association argues that the two provisos at the end of §39.8(a) mandate that allocation be subjected to the negotiations process. We agree with the Association. The language of §24 of Chapter 158 of the Laws of 1970, applicable to the Executive Branch, discussed above, plainly manifests that when the Legislature seeks to remove a matter from the negotiating table, it does so in no uncertain terms. No comparable language can be found in Judiciary Law §39.8(a), nor anywhere else in the Judiciary Law. To the contrary, Judiciary Law §39.6(a)¹⁰ together with the second proviso in §39.8(a), continues the right of nonjudicial employees to receive existing benefits until altered by state law or successor contract, and the first proviso to §39.8(a) preserves the right of employee organizations to negotiate wages and salaries under the Taylor Law in their behalf. If the initial clause of §39.8(a) were to be read as barring the negotiation of allocation decisions, the rights afforded by the two provisos and by §39.6(a) would be severely eroded. Nothing suggests that such was the Legislature's intent. Consequently, we view the initial clause of §39.8(a) simply as enabling language which confers the power to make allocation decisions upon the administrative board, but which does not preclude the negotiation of such decisions with employee organizations representing court employees.

OCA also makes a public policy argument that allocation be excluded from the scope of negotiations. It would have us conclude that the avoidance of a highly complex pay structure for its employees is a public policy consideration sufficiently significant to excuse it from the negotiation of job allocation.

¹⁰ In relevant part this statute provides that nonjudicial employees who become state employees pursuant to the act:

"shall be entitled to the salaries, wages, hours and other terms and conditions of employment to which they were entitled pursuant to any law or contract in effect immediately prior to the effective date hereof...until altered by state law or by the terms of a successor contract...."

It argues that, if it were required to negotiate allocation decisions with each of the organizations representing 42 different negotiating units, it would be unable to develop a rational personnel structure because the organizations all have adverse competing interests, each seeking to maximize benefits for its own membership. This argument is one of administrative convenience and not of public policy relating to governmental mission. As such, it cannot outweigh the significance of the essential wage characteristics of allocation decisions. The language of the Judiciary Law supports this conclusion.

In enacting Judiciary Law §39.7, the Legislature specifically preserved a labor relations structure by which nonjudicial employees are represented in diverse negotiating units. Under that statute, PERB is precluded from altering any established negotiating unit comprised exclusively of court employees or that part of any other negotiating unit comprised of such employees. Had the Legislature intended to avoid the results claimed by OCA, it could have placed all nonjudicial employees in a single negotiating unit to be represented by a single employee organization. By choosing instead to perpetuate the existing structure, the Legislature plainly implied that it did not share OCA's administrative convenience concerns.

Having determined that the Judiciary Law does not upset, but in fact supports, our Taylor Law analysis, we now look at the two Association demands seeking negotiations as to allocation. Demand XI seeks the assurance that implementation of "slotting", i.e., allocation of positions to salary grades, shall have no adverse impact upon employees who are promoted. In effect, this is a demand seeking to negotiate pay ranges and schedules to be applied to employees upon promotion, so as to prevent any monetary loss. In Demand XVI(B), the Association seeks assurances regarding the salary ranges to which positions will be allocated under specified conditions, and as to allocation within a salary range. In accordance with our foregoing discussion, these demands involve mandatory subjects of negotiation, and the employer is obligated to nego-

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tiate with the Association in their regard.

THE REMAINING DEMANDS

Wages

The employer has refused to negotiate two demands relating to wages. In Demand VI, the Association seeks to negotiate as to the time when salary increments will be paid. In Demand XII(B), the Association seeks to negotiate pay differentials in the event that reclassification or reallocation alters employee workload or responsibilities. These demands relate directly to wages, and are mandatory subjects of negotiation (CSL §204.3).

In Demand VI, the Association also seeks legislative amendment of Judiciary Law provisions to reflect negotiated changes in the salary schedule. While the content of legislation is generally not within the scope of negotiations, in Rochester Fire Fighters Local 1071, 12 PERB ¶3047 (1979), we held that legislation "becomes a matter of concern under the Taylor Law when it is necessary for the implementation of terms of a collective agreement (CSL §204-a)". The instant demand merely seeks employer support in obtaining requisite implementing legislation, and therefore is a mandatory subject of negotiation.

Job Assignment

In Demand XXVII(F), the Association seeks to negotiate the impact of the classification plan "upon assignments, reassignments and transfers". In Demand XXVIII, it seeks an assurance that employees will not be assigned "out-of-title work". Both demands relate to the deployment of staff, which this Board has held to be a management prerogative and, hence, a nonmandatory subject of negotiation, Orange Co. Comm. Coll. Faculty Assn., 9 PERB ¶3068 (1976); City of White Plains, 5 PERB ¶3008 (1972).¹¹ Administrative remedies may be available

¹¹ In the private sector, the Eighth Circuit Court of Appeals, holding that an employer did not discriminate against employees whose assignments it changed, stated that "an employer has a fundamental right to assign employees to positions the employer deems, in the exercise of its managerial discretion, most expedient", Macy's v. NLRB, 389 F.2d 835, 839, 67 LRRM 2563, 2565 (1968).

in the event of an assignment to "out-of-title" work". In the collective bargaining context, however, though a union may seek negotiations for extra compensation for out-of-title assignments, it may not insist upon negotiations regarding the decision to make such assignments.¹²

Job Qualifications

In Demand XXXI(K), the Association seeks to preserve existing promotional lists for a period of four years from the date of implementation of the classification plan, and alternatively, seeks negotiations regarding which existing lists are appropriate for newly created, altered, or converted titles. The negotiation of promotional lists impinges upon an employer's right unilaterally to determine qualifications for promotion. Consequently, the demand is not a mandatory subject of negotiation, West Irondequoit Bd. of Ed., supra.

Court Consolidation and Reorganization

In Demand XXV(J), the Association seeks a guarantee that any court consolidation or reorganization which affects nonjudicial employees "be implemented through a procedure to be adopted by the parties". The organizational structure of a public employer is not a mandatory subject of negotiation, Scarsdale, 8 PERB ¶3075 (1975).

Grievances

In Demand XXIX, the Association seeks to establish a specified grievance procedure. The procedure for resolving grievances concerning terms and conditions of employment is, of course, a mandatory subject of negotiation. In the instant demand, however, the Association extends the grievance procedure to encompass matters which are nonmandatory subjects of negotiation, such as dis-

¹² Compare West Irondequoit Teachers v. Helsby, 35 NY2d 46 (1974) in which the Court held that teachers could seek negotiations for varying compensation depending upon the size of the classes to which they are assigned, but they may not insist upon negotiations regarding the decision to make such assignments.

putes concerning improper job classification and injuries inflicted by other employee groups, unions or associations. While the demand does include matters which are properly subject to the grievance procedure, the Association has not indicated that it intends the list of grievable subjects to be treated as separable. Accordingly, we address the list as unitary, and find the entire demand to be a nonmandatory subject of negotiation, Haverstraw, supra; Pearl River U.F.S.D., 11 PERB ¶3085 (1978).

Labor Management Committees

In Demand XXX, the Association seeks to establish a labor-management committee to make binding recommendations concerning employee working conditions and "all other matters of mutual concern". Inasmuch as the committee could be given final jurisdiction over matters which are themselves nonmandatory subjects of negotiation, the demand is nonmandatory, Pearl River, supra.

Peace Officer Status

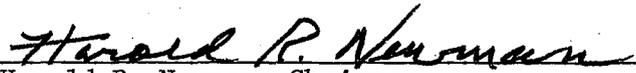
In Demand XXI(A), the Association seeks legislation to maintain the peace officer status of any employee who, by reason of reclassification, experiences a change in job title. The conferring of peace officer status is a matter of legislative policy and is not a term or condition of employment. The legislation sought by the Association here is not of the type contemplated by CSL §204-a for the implementation of the terms of a collective agreement. This demand is not a mandatory subject of negotiation, Rochester Fire Fighters Local 1071, supra.

NOW, THEREFORE,

1. In Case No. U-3714, WE ORDER the employer to negotiate in good faith with respect to those portions of Demands VI, XI, XII(B), and XVI(B) as are appended hereto. In all other respects, the charge is dismissed.

2. In Case No. U-3767, WE ORDER the Association to cease insisting upon the negotiation of those portions of Demands III(3), IV, XIV, XV(N), XVI(A), XVI(C), XVI(D), XVII, XVIII, XXV(J), XXVII(F), XXVIII, XXIX, XXX, XXXI(A) and XXXI(K) as are appended hereto.
- In all other respects, the charge is dismissed.

DATED: Albany, New York
August 15, 1979



Harold R. Newman, Chairman



Ida Klaus, Member



David C. Randles, Member

A P P E N D I X

The following are the demands of the Association that are under challenge. They are listed in numerical order in accordance with the numbers assigned by the Association.

DEMAND III: UNION RECOGNITION AND UNIT DESIGNATION

(3) any effect such reclassification or creation of new positions may have upon union membership and dues deductions shall be handled in accordance with the provisions of paragraph N of Demand XV.

DEMAND IV: UNCHALLENGED REPRESENTATION

Pursuant to Section 208 of the Civil Service Law, the Union shall have unchallenged representation status for the maximum period permitted by Law on the date of execution of this Agreement. Any decision of the Employer to reclassify, alter or convert present job titles specified in this Agreement, or to create new job positions performing similar work, which has an impact upon the Union's unchallenged representation status, shall be negotiated with the Union.

DEMAND VI: EMPLOYER'S OBLIGATION UNDER CHAPTER 966

The Employer and the Union recognize that it is the Employer's obligation to adopt a classification structure for each employee covered herein pursuant to Section 8 (A) of the State Takeover Bill and it is further recognized that it is the Employer's obligation to establish a salary grade for each employee covered herein in conformance with Section 8 (B) of the above cited Law and in accordance with Section 219 of the Judiciary Law.

A P P E N D I X

Both parties agree that Section 219 contains a salary grade schedule calling for a 5-step minimum to maximum pay plan with four equal annual increment steps between the minimum and maximum of the grade. In addition, there are two longevity steps above the maximum of the grade.

Each increment step takes effect on the first day of each Fiscal Year (April 1st) following the completion of at least twelve payroll periods in title in the previous year.

The first longevity step is payable on the first day of the Fiscal Year (April 1st) following the completion of five years at the maximum of the employee's pay grade.

The second longevity step is payable on the first day of the Fiscal Year (April 1st) following the completion of ten years at the maximum of the employee's pay grade.

The Employer shall follow the above format when the slotting of all covered employees is accomplished under existing law, and said Section 219 shall be amended to reflect all salary raises, salary ranges, increments, and increases and any other terms and conditions of employment provided herein.

DEMAND XI: ADVANCEMENT INCREASES

The Employer agrees that the implementation of slotting under Judiciary Law, Sections 219, 220, shall have no adverse impact upon employees promoted or advanced to a title covered by this Agreement.

(The rest of the demand is not in dispute.)

DEMAND XII: PAY DIFFERENTIALS

(B) To the extent that any classification, reclassification, allocation or reallocation has an impact upon the volume of work or level of responsibility of employees covered by this Agreement, any and all such employees shall

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receive a pay differential which shall be negotiated with the Union and shall be computed upon base salaries and deemed part of wages and compensation for all purposes.

DEMAND XIV: LINES OF PROMOTION

The Employer and the Union agree that should a subsequent reclassification alter or convert the present job titles specified in the unit designation herein or create new titles performing essentially similar work, the lines of promotion listed below shall remain unchanged. In any event, the impact of such subsequent reclassification upon the existing lines of promotion listed below shall be negotiated with the Union. Both parties recognize the following to be the existing promotion lines:

- | | |
|-------------------------|---|
| Uniformed Court Officer | - promotes to Senior Court Officer
or to Assistant Court Clerk. |
| Senior Court Officer | - lines can only be filled by a
promoted Uniformed Court Officer.
SCO's promote to Court Clerk I or
Supervising Court Officer. |
| Assistant Court Clerk | - lines can only be filled by a pro-
moted Uniformed Court Officer or an
SCO by lateral transfer. ACC pro-
motes to Court Clerk I or Surrogate's
Court Clerk I. |
| Court Clerk I | - lines can only be filled by a pro-
moted Senior Court Officer or
Assistant Court Clerk. CCI promotes |

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to Court Clerk II or to Surrogate's Court Clerk II.

Court Clerk II

- lines can only be filled by a promoted Court Clerk I. CC II promotes to Court Clerk III or to Surrogate's Court Clerk III.

* Court Clerk III

- lines can only be filled by a promoted Court Clerk II. CC III promotes to Court Clerk IV.

* Court Clerk IV

- lines can only be filled by a promoted Court Clerk III.

* Does not apply to incumbent Court Clerk III and Court Clerk IV and will take effect upon ratification of this agreement.

All promotions from Uniformed Court Officer to Court Clerk IV shall be by competitive promotional examination only.

DEMAND XV: UNION RIGHTS AND DUES DEDUCTION

(N) Any decision of the Employer to reclassify, alter, or convert Present Job Titles specified in this Agreement, or to create new job positions performing similar work, which has an impact upon Union membership and dues deductions, shall be negotiated with the Union.

DEMAND XVI: CLASSIFICATION AND ALLOCATION

(A) Classification:

1. No title shall be initially classified by the Employer without prior approval of the Union.

A P P E N D I X

2. Any classification which has an impact upon the volume of work and/or level of responsibility of any employees covered by this Agreement shall be negotiated with the Union.

(B) Allocation:

1. Upon initial allocation to State pay grades there shall be no "red-circling"; specifically, (a) each existing title shall be allocated to a salary grade which has a maximum rate which encompasses the highest rate in the title established under the salary ranges proposed in Demand VII, and (b) if two or more existing titles are combined into a single title, the single title shall be allocated to a salary grade which has a maximum rate which encompasses the highest rate in the highest salaried existing title established under the salary ranges proposed in Demand VII.

2. An employee's annual increment step shall be determined by his years of service in title prior to allocation or by his salary prior to allocation, whichever would produce the higher incremental step. Upon allocation, no employee shall be paid a salary rate which falls between annual increment steps; rather, an employee shall be raised to the next higher annual increment step above his pre-allocation salary.

(C) Reclassification/Reallocation: Any future reclassification and/or reallocation shall be the subject of collective bargaining. This provision shall survive the expiration of this Agreement.

(D) Any classification, reclassification, allocation, or reallocation, which has an impact upon salary ranges, salary raises, increments, or increases shall be negotiated with the Union.

A P P E N D I XDEMAND XVII: WELFARE FUNDS

Any decision of the Employer to reclassify, alter or convert present Job Titles specified in this Agreement, or to create new job positions performing similar work, which has an impact upon Employer payments to the Welfare Funds referred to in this Demand, shall be negotiated with the Union.

DEMAND XVIII: PENSIONS

Any decision of the Employer to reclassify, alter or convert present Job Titles specified in this Agreement, or to create new job positions performing similar work, which has an impact upon the Union's status as the sole and exclusive bargaining representative for covered employees included in the New York City Employees Retirement System and the New York State Retirement System shall be negotiated with the Union.

DEMAND XXV: CIVIL SERVICE, CAREER DEVELOPMENT AND JOB SECURITY

(J) Any court consolidation or reorganization to the extent that it effects non-judicial employees, shall be implemented through a procedure to be adopted by the parties.

DEMAND XXVII: TRANSFERS

(F) The impact of the Employer's statewide classification system upon assignments, reassignments and transfers shall be the subject of negotiation with the Union.

DEMAND XXVIII: OUT-OF-TITLE WORK

No person shall be assigned to perform the duties of any position unless he has been duly appointed, promoted, or reinstated to such position in accordance with the provisions of the Rules of the Administrative Board of the Judicial Conference.

A P P E N D I X

DEMAND XXIX: GRIEVANCE PROCEDURE

(A) The term "grievance" shall mean:

1. A dispute concerning the application or interpretation of the terms of this collective bargaining Agreement.
2. A dispute concerning improper classification of job position or improper allocation to salary grade.
3. A claimed violation, misinterpretation or misapplication of the rules or regulations, policy or orders of the Employer affecting any terms and conditions of employment.
4. A violation of any past practice involving the labor-management relationship of the parties.
5. A claimed assignment of employees to out of title work or duties different from those stated in their job specifications.
6. A claimed arbitrary or capricious act affecting the terms and conditions of employment.
7. A claimed improper holding of an open competitive rather than a promotional examination.
8. A claimed wrongful disciplinary action against an employee.
9. A condition of employment which adversely affects the health and safety of employees.
10. A claimed discriminatory supervisory practice.
11. A claimed injury or discrimination inflicted by other employee groups, unions or associations.
12. A claimed unreasonable work assignment or condition.

A P P E N D I X

13. Any other dispute which the two parties agree can best be settled by submission to the grievance procedure.

(The language of the rest of the demand occasions no dispute.)

DEMAND XXX: LABOR MANAGEMENT COMMITTEE

To facilitate communication between the Employer and the Union and to enhance constructive employee relations a Labor-Management Committee shall be established effective 4/1/77.

The Committee shall act on a City-wide basis covering each title in this negotiating unit and every Court and Court agency in which the Union has membership.

The Committee shall consider and recommend changes in the working conditions of the employees covered by this Agreement and all other matters of mutual concern including those subject to the grievance procedure. Such recommendations shall be binding upon the Employer.

(The rest of the demand is not in dispute.)

DEMAND XXXI: MISCELLANEOUS

(A) If any classification or reclassification results in a change in title for any covered employee who is now a peace officer, the Employer shall report such change to the State legislature and the Governor and shall submit legislation for the continuation of these newly converted titles in section 1.20 of the Criminal Procedure Law.

(K) Should a subsequent reclassification alter or convert any job title specified in Demand III or create a new job title performing essentially similar work, no then-existing promotion list shall be terminated as a result

A P P E N D I X

of said reclassification and no such list shall be terminated for any reason until four years from the date of its implementation.

Upon the implementation of any reclassification, the Employer shall enter into negotiations with the Union for the purpose of resolving the question of which existing lists may be made appropriate for any of the created, altered or converted titles, in addition to the original titles.

For Charging Parties

BERNARD F. ASHE, ESQ., (J. MICHAEL EADRY, ESQ., of Counsel)
for Spencerport Transportation Association and Spencerport
Central School Office Personnel Association

ROEMER & FEATHERSTONHAUGH (STEPHEN J. WILEY, ESQ., of
Counsel) for Galway Unit of CSEA, CSEA, Inc., Local 1000,
and Non-Teaching Unit of the Northeastern Clinton Central
School of the Clinton County Chapter, CSEA

For Respondents

THEALAN ASSOCIATES, INC., (ANTHONY P. DI ROCCO, of Counsel)
for Spencerport Central School District

JOHN J. MYCEK, ESQ., for Greater Amsterdam School District

VAN VRANKEN & MAHAR, ESQS., for Galway Central School District

WILLIAM COLGAN for Northeastern Clinton Central School District

For NYS School Boards Association, Amicus

WHITEMAN, OSTERMAN & HANNA, (MELVIN H. OSTERMAN, JR., ESQ.,
of Counsel)

BACKGROUND

In 1976, Congress required each State to cover employees of
local government under its unemployment insurance program.¹ How-
ever, it authorized states to withhold unemployment insurance
benefits from employees of educational institutions whose unem-
ployment is during a school vacation if there is a reasonable
assurance that the unemployed individual will be returned to
employment at the conclusion of the vacation.² New York State has

1 Public Law 94-566, amending the Federal Unemployment Tax Act,
Title 26, USC, Chapter 23.

2 26 USC, §3304 (a) (6) (A) ii provides, in pertinent part that at
the option of a state, unemployment insurance

"may be denied to any individual for any week which
commences during a period between two successive
academic years or terms if such individual performs
such services in the first of such academic years or
terms and there is a reasonable assurance that such
individual will perform such services in the second
of such academic years or terms...."

enacted legislation providing such an exclusion from unemployment insurance benefits. In the case of teaching personnel, the exclusionary language is a close paraphrase of the wording of the Federal statute. However, Labor Law §590.11, which applies to non-professional employees, is significantly different. By its terms, such an unemployment insurance claimant who is not in a bargaining unit is disqualified for benefits during a vacation period if he has "an individual contract to perform services" for the academic year following the vacation. A claimant who is a member of a collective bargaining unit will be disqualified if he "has a written contract which continues his services" for the following academic year.³ On April 25, 1978, the Labor Department issued a Special Bulletin interpreting §590.11.⁴ Its interpreta-

3 In pertinent part, Labor Law §590.11 reads:

"11. Benefits based on non-professional employment with certain educational institutions. If a claimant was employed in other than an instructional, research or principal administrative capacity by an educational institution which is not an institution of higher education, the following shall apply to any week commencing during the period between two successive academic years or terms provided the claimant as a member of a collective bargaining unit has a written contract which continues his services in such capacity for any such institution or institutions for both of such academic years or terms or an individual contract to perform services for such period if he is not a member of a bargaining unit; and, during the period of any such contract, to any week commencing during an established and customary vacation period or holiday recess, not between such academic terms or years, provided the claimant performed services for such institution immediately before such vacation period or holiday recess and the claimant has a contract, as above, that continues his or her services for the period immediately following such vacation period or holiday recess;"

4 Special Bulletin A-710-53.

tion is that a claimant who is a member of a collective bargaining unit having a collective bargaining agreement may be denied benefits during the vacation period even though the collective agreement does not guarantee his continued employment if

"he has an individual notice, letter or document containing such guarantee, provided such instruments are not expressly prohibited by the terms of the collective bargaining agreement."

It further provides that the claimant may be denied benefits if he

"is a member of a collective bargaining unit having no collective bargaining agreement or having an expired agreement, but he has an individual notice, letter or document containing a guarantee of his continued employment;"

During June 1978, several school districts unilaterally issued written notices to non-teaching employees that they were guaranteed employment for the academic year following the 1978 summer vacation. This conduct has given rise to two parallel groups of proceedings.

Claimants for unemployment insurance who received those notices were disqualified by the Labor Department. On December 8, 1978, the Unemployment Insurance Appeals Board affirmed those disqualifications. The correctness of the posture of the Labor Department has been brought before the Appellate Division and is awaiting resolution. The critical issue in those cases will probably focus on the Labor Department's interpretation of §590.11 and the question whether anything less than a collective agreement guaranteeing continuing employment is sufficient to disqualify a claimant who is in a bargaining unit from unemployment insurance benefits.

FACTS

The cases herein are part of the second group of proceedings. They are before this Board on charges that are made by five employee organizations which represent employees of four school districts who received notices that their employment will be continued after the 1978 summer recess.

At the time when the notices were issued by the four school districts that are the respondents herein, the Spencerport Central School District was a party to collectively negotiated agreements with the Spencerport Transportation Association, NYSUT, AFT, AFL-CIO, and with the Spencerport Civil Service Office Personnel Association, NYSUT, AFT, AFL-CIO, the charging parties in Cases U-3433 and U-3434, respectively. The Galway Central School District was then a party to a collectively negotiated agreement with the Galway Unit of the Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO, the charging party in U-3475. The Greater Amsterdam School District was then engaged in collective negotiations with the Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO, charging party in U-3477, for an agreement to succeed a prior agreement between them. The Northeastern Clinton School District was then engaged in collective negotiations with the Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO, charging party in U-3476, for an agreement to succeed a prior agreement between them.

The June 1978 notices issued by the four school districts did not purport to set terms and conditions of employment. In Spencerport and Galway, the terms and conditions of employment would be as specified in the current collective agreements, and in Greater Amsterdam and Northeastern Clinton, they would be as eventually specified in the agreements being negotiated collectively. The

notices issued by the four school districts all requested the recipient employees to acknowledge receipt of the notice and the Spencerport and Galway notices also requested the recipient employees to indicate whether they accepted the employment that was being offered to them. During the negotiations involving the employer in Northeastern Clinton, the employee organization had made a demand for a guarantee of job security. The employer did not agree to negotiate this demand.

The five above-captioned cases all present a common question: Is it an improper practice for a school district to issue to some of its non-teaching employees notices that their services will be continued for the following year? The charges allege that the employers' conduct constituted a refusal to negotiate in good faith, in violation of CSL §209-a.1(d) and an interference with employees for the purpose of depriving them of their organizational rights, in violation of CSL §209-a.1(a). In a consolidated decision, a hearing officer determined that the employers in Cases U-3433, U-3434, U-3475 and U-3477 violated neither. In a separate decision, he exonerated the employer in Case No. U-3476. The charging parties in all of the cases have filed exceptions and we have consolidated them for decision. The basis of his decisions is that the unilateral issuance of individual notices did not constitute a violation by any of the four employers of its duty to negotiate in good faith (CSL §209-a.1[d]) because the granting or withholding of an assurance of continued employment is not a mandatory subject of negotiation. He also determined that the unilateral issuance of notices did not constitute interference with employees for the purpose of depriving them of their organiza-

tional rights (CSL §209-a.1[a]) because the employers' conduct was neither motivated by a design to deprive employees of their organizational rights nor was it inherently destructive of those rights.

DISCUSSION

The first question raised by the exceptions of the charging parties is: does the language of Labor Law §590.11 reflect a legislative intention that assurances of continued employment for non-teaching employees of school districts be a mandatory subject of negotiation? The second question raised by the exceptions derives from an alternative argument of the charging parties: even if an assurance of continued employment for ten-month non-teaching employees of school districts is not a mandatory subject of negotiation, does a school district, nevertheless, interfere with the organizational rights of these employees when it makes commitments to them regarding such continued employment?

The Alleged Refusal to Negotiate

There is no dispute that the normal rule is that a guarantee of continued employment is not a mandatory subject of negotiation. It is equally clear that such a guarantee is a subject about which a public employer could negotiate collectively and that the public employer could be bound by the terms of a collective agreement on this subject.⁵ Charging parties assert, however,

5 In Burke v. Bowen, 40 NY2d 264 (1976), the Court of Appeals said (at P.267):

"While 'job security' is not a term or condition of employment subject to mandatory bargaining under the Taylor Law (Civil Service Law §204, subd. 2), 'job security' for a reasonable period of time is a permissive subject for a public employer to negotiate, and to agree upon in a collective agreement."

that the enactment of Labor Law §590.11 reflects a legislative intention that there be a different rule when the effect of such a guarantee of continued employment would be to deprive non-teaching employees of school districts of unemployment insurance benefits. Some support for this assertion can be found in the language of Labor Law §590.11, which refers to individual contracts guaranteeing continued employment to employees who are not in negotiating units while omitting the reference to individual contracts in the case of employees who are in such units. The claimants argue that this language indicates that the legislature assumed and intended that, for employees in negotiating units, there would be collective negotiations on job security.

We do not find this reasoning convincing. The legislature, in enacting Labor Law §590.11, must be deemed to have known of the prior rulings of the Court of Appeals that job security is a permissive, but not a mandatory, subject of negotiation. The interpretation of Labor Law §590.11 urged upon us by the charging parties would require a determination that the legislature amended the Taylor Law by implication, a statutory construction which is "not favored"⁶. By way of contrast, when, in 1973, the legislature changed the scope of negotiations under the Taylor Law by amending the Retirement and Social Security Law, it made conforming amendments in the Taylor Law.⁷ We conclude that the reference in Labor

⁶ McKinney's Statutes §370.

⁷ See L. 1973, ch. 382, §§6 and 48, which amended CSL §201.4 and enacted Ret. & Soc. Sec. Law, Art. 12.

Law §590.11 to individual contracts for some, but not other, employees contemplated the result of permissive negotiations and not an expansion of the scope of mandatory negotiations. Thus, while the statutory language has significance for the resolution of questions presented to the Labor Department concerning disqualification of non-teaching employees from unemployment insurance benefits, it has no bearing upon the questions before this Board.

The Alleged Interference with Organizational Rights

Unilateral action by a public employer concerning a matter that is not a mandatory subject of negotiation is nevertheless improper if the action is taken for the purpose of interfering with the organizational rights of public employees. This would be the case, for example, if an employer were to reassign an employee for the purpose of chilling organizational activities such as the preparation of negotiation demands, Cohoes City School District, 12 PERB ¶3065 (1979). Sometimes the improper motivation may be presumed from the action itself if it is inherently destructive of the organizational rights of employees, State of New York, 10 PERB ¶3108 (1977). Depending upon the extent of the harm that the action inflicts upon employees' organizational rights, the presumption may or may not be rebuttable by explanations offered by the employer to justify its conduct, NLRB v. Great Dane Trailers, 338 US 26 (1967). That harm increases as a union representing or seeking to represent employees is made to appear ineffectual by an employer's conduct.

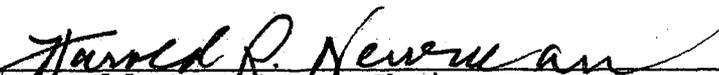
The widespread commitment of job security to individual employees by the four employers, with the consequent disqualification of the employees from unemployment insurance benefits may

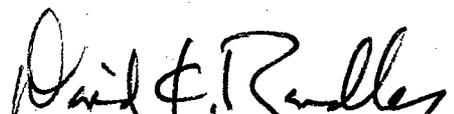
be sufficient to impose upon the employers the burden of justifying their actions because it could chill union support. That potential harm, however, is not sufficient to create an irrebuttable presumption. The employers' conduct in unilaterally offering employees continued employment, a non-mandatory subject of negotiation, is not, in itself, wrongful. The Supreme Court has said: "In the sense of contracts of hiring, individual contracts between the employer and employee are not forbidden, but indeed are necessitated by the collective bargaining procedure.", J. I. Case v. NLRB, 321 US 332, 335-6 (1944).

On the facts in these cases, the four employers have met the burden of explaining their actions as being motivated by legitimate business concerns and not by a design to interfere with the organizational rights of employees.

NOW, THEREFORE, WE ORDER that the charges herein be, and they hereby are, dismissed.

DATED: Albany, New York
August 14, 1979


Harold R. Newman, Chairman


David C. Randles, Member

DISSENTING OPINION OF IDA KLAUS

For the reasons hereinafter stated, I would find a violation of §209-a.1(a) and (d) by all of the respondents.

Section 590.11 of the Labor Law expresses a policy that non-professional employees of educational institutions receive unemployment insurance benefits during summer and other recess periods for which they are not paid unless, prior to the recess, they are contractually guaranteed employment after the recess. In the case of employees who are in a collective bargaining unit, the statute permits disqualification for benefits only by means of a contract with the collective bargaining representative. Disqualification by means of a contract with the individual employee is permitted only where the individual is not a member of a collective bargaining unit.

While we should not ordinarily interpret a statute that is enforceable by another agency, significant meaning must be attributed to the Legislature's use in this context of concepts peculiar to the Taylor Law. It would appear that, by providing that collective bargaining is the only means by which employees in bargaining units may be disqualified for unemployment insurance benefits, the Legislature has evinced an intention to bring this particular subject matter within the jurisdiction of this Board.

I do not share the view of my colleagues that in the first exception expressed in §590.11 of the Labor Law, the Legislature meant no more than to acknowledge the permissive nature under the Taylor Law of job security provisions in collective bargaining

agreements. Normally, public employers rarely agree to include such provisions in collective agreements. It would, therefore, make little sense in this context for the Legislature to carve out an exception only for those few employers who would voluntarily accept such a demand in dealing with a collective bargaining representative. See City of Albany v. Robert D. Helsby, et al., 48 AD2d 998 (3rd Dept., 1975), aff'd. on opinion of the App. Div., 38 NY2d 778 (1975), for a similar approach to legislative construction.

Looking at the language of §590.11 in the context of the Taylor Law, we must assume that, by permitting disqualification through direct dealing with individual employees only in the absence of a collective bargaining representative, and permitting disqualification only through collective negotiations when there is a collective bargaining representative, the Legislature intended that the Taylor Law status of the collective bargaining representative not be undermined by bypassing it and dealing directly with individual employees in the unit.

Hence, I conclude that, while the employers would normally have no obligation to negotiate the subject of job security, they may not, in the presence of a collective bargaining representative, deal directly with individual employees in order to disqualify them for unemployment insurance benefits. I therefore find that these employers violated §209-a.1(d) by communicating directly with the individual employees.

I find in addition a violation of subsection (a). Whatever

their reasons may have been, the conduct of the employers in disregarding the collective bargaining representative and going directly to the individual employees was so inherently destructive of the employees' Taylor Law rights as to carry its own unlawful intent and motivation. NLRB v. Erie Resistor Corp., 373 US 221 (1963); NLRB v. Great Dane Trailers, 338 US 26 (1967); State of New York, 10 PERB ¶3108. The answer to the finding of my colleagues that the employers were governed by a legitimate business concern is that the Legislature specifically directed that that concern be dealt with through negotiation.

DATED: Albany, New York
August 15, 1979



Ida Klaus, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

#2C - 8/15/79

STATE OF NEW YORK (STATE UNIVERSITY
OF NEW YORK),

Employer,

BOARD DECISION AND ORDER

-and-

COMMITTEE OF INTERNS AND RESIDENTS,

Petitioner,

CASE NO. C-1751

-and-

UNITED UNIVERSITY PROFESSIONS, INC.,

Intervenor.

JOSEPH M. BRESS, ESQ., (JOSEPH P. MARTINICO, ESQ.,
of Counsel) for Employer

IRWIN GELLER, ESQ., for Petitioner

JAMES R. SANDNER, ESQ., for Intervenor

This matter comes to us on the exceptions of the Committee of Interns and Residents (CIR) to the decision of the Director of Public Employment Practices and Representation (Director) dismissing its petition for certification as the exclusive representative of medical and dental interns, residents and fellows (house staff officers) employed by the State of New York throughout the State University system (employer). The Director's decision granted the motion of the employer made during the course of a hearing on the question whether there should be a separate negotiating unit for the house staff officers of the employer.

The basis of the motion was that CIR could not be certified to represent public employees because it had struck against the New York City Health and Hospitals Corporation (Corporation), a public employer, on January 17, 1979 and that strike invalidated the "no-strike affirmation" which it had filed with its petition on August 31, 1978.

The Director determined that CIR was responsible for a house staff officer strike against the Corporation, as alleged, and he granted the motion to dismiss the petition. In its exceptions, CIR contests the Director's conclusion that there was a strike. It further argues that, in any event, the Director's action was excessive when he dismissed the petition.

The Strike

CIR concedes that it is responsible for a job action taken by the house staff officers against the Corporation on January 17, 1979. It argues, however, that the job action did not constitute a strike because it was neither for the purpose of improving any employee's terms and conditions of employment nor related to any other matters pertaining to the Taylor Law. According to CIR, the job action was a political protest against contemplated action by the Mayor of the City of New York involving the closing of several hospitals. The underlying concern was medical care for residents of the City of New York; job security for house staff officers was not in issue.

In support of its argument that its job action of January 17, 1979 was not a strike, CIR cites the report of the Governor's Committee on

Public Employees whose recommendations were the basis of the Taylor Law. It proposed that a "purpose" clause be included in the statutory definition of a strike. The Legislature, however, did not do so. In Local 342, 2 PERB ¶3001, this Board said,

"A work stoppage whether it be termed a strike, a demonstration or a protest, if it involves a concerted work stoppage as here, is within the terms of the statutory prohibition."

The job action conducted by CIR on January 17, 1979, constituted a violation of §210 of the Taylor Law.¹

The Consequences of the Strike

The "no-strike affirmation" filed by CIR along with its petition is required by statute (CSL §208.3). That affirmation may not be a meaningless gesture. An employee organization which seeks certification under the Taylor Law must commit itself to adhere to the policies specified in that law -- including a commitment not to strike. An affirmation that is not sincerely made abuses Taylor Law processes and requires the dismissal of the petition. Similarly, an employee organization which has given a sincere "no-strike affirmation" may become disqualified for certification if, subsequent to the affirmation, it indicates by word or by deed that it is no longer adhering to its earlier commitment.

¹ The corporation and its employees come under the jurisdiction of the New York City Collective Bargaining Law. Accordingly, this Board has no jurisdiction to consider whether CIR should lose its privilege of having its dues checked off by the Corporation by reason of the job action.

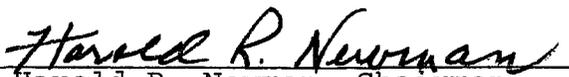
The job action conducted by CIR may indicate that the affirmation given only 4-1/2 months earlier was not sincere. Alternatively, it may be that during the interim CIR abandoned the posture represented by its affirmation. In either case, the decision to dismiss the petition would have to be affirmed. On the other hand, it may be that CIR can explain its conduct in a manner that would persuade us that its "no-strike affirmation" was sincerely given at first and continued thereafter to reflect the posture of the organization. The opinion of the Supreme Court (New York City Health and Hospitals Corp. v. CIR, NYLJ, P.1, Col. 5, July 16, 1979, 12 PERB ¶7528) denying a motion of the Corporation that CIR be held in criminal contempt by reason of its job action suggests that this may be a possibility.² In Town of Huntington, 1 PERB ¶399.96 (1968), we permitted an employee organization to persuade us that its job action was consistent with its "no-strike affirmation." The same opportunity is extended to CIR.

NOW, THEREFORE, we invite CIR to submit to us, within 20 days from this Order, affidavits and other documents in support of its assertion that its no-strike affirmation was and continues to be bona fide. After evaluating this material, we will determine

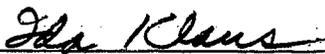
² CF Probation and Parole Officers Assn. 4 PERB ¶3065 (1971).

whether or not to affirm the determination of the Director
dismissing the petition.

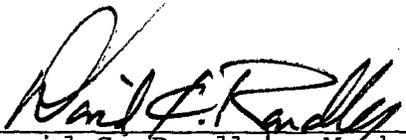
DATED: Albany, New York
August 15, 1979



Harold R. Newman, Chairman



Ida Klaus, Member



David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of
TOWN OF CHEEKTOWAGA,
Employer,
-and-
TOWN OF CHEEKTOWAGA EMPLOYEES' ASSOCIATION,
Petitioner,
-and-
AFSCME, COUNCIL 66, LOCAL 1026,
Intervenor.

#2H - 8/15/79
Case No. C-1888

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

TOWN OF CHEEKTOWAGA 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: All employees of the Town of Cheektowaga, including Dog Wardens, Senior Sewage Treatment Plant Operator, and CETA employees.

Excluded: Elected officials, members of the Police Department, Supervisor's Secretary, Town Attorney, Clerks to the Town Justices, Town Engineer, Fiscal Officer, Health Officers, Executive Director of the Youth Board, Assessors, Working Foremen, Assistant Working Foremen, Building and Plumbing Inspector, Members of the Boards and Commissions appointed by the Town Board, seasonal, temporary and part-time employees, First Deputy Town Clerk, Second Deputy Town Clerk, Deputy Receiver of Taxes and Assessments, Youth Board Program Coordinator, and Senior Recreation Supervisor.

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

TOWN OF CHEEKTOWAGA 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 14th day of August, 1979
Albany, New York

Harold R. Newman
Harold R. Newman, Chairman

Ida Klaus
Ida Klaus, Member

David C. Randles
David C. Randles, Member

5901

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of :
ALLEGANY COUNTY, : #2G - 8/15/79
Employer, :
-and- : Case No. C-1903
NEW YORK COUNCIL 66, AFSCME, AFL-CIO, :
-and- Petitioner, :
NEW YORK STATE NURSES 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 the New York State Nurses 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: All employees licensed to practice as a registered professional nurse.

Excluded: Public Health Administrator
Supervisory Public Health Nurse
Director of Patient Services

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

Nurses 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 14th day of August, 1979.

Albany, New York

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 :
BINGHAMTON-JOHNSON CITY JOINT SEWAGE BOARD, : #2F - 8/15/79
Employer, :
- and - :
WATER POLLUTION CONTROL EMPLOYEES' ASSOCIATION, : Case No. C-1906
Petitioner, :
- and - :
LOCAL UNION #826, 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 Water Pollution Control 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: Sewage plant operator, sewage plant operator trainee, sewage plant mechanic, instrumentation mechanic, laboratory technician and maintenance man.

Excluded: Chief sewage plant operator, senior sewage plant operator and chemist.

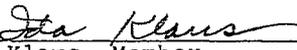
Further, IT IS ORDERED that the above named public employer shall negotiate collectively with Water Pollution Control Employees' Association

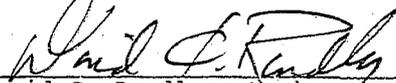
and enter into a written agreement with such employee organization with regard to terms and conditions of employment, and shall negotiate collectively with such employee organization in the determination of, and administration of, grievances.

Signed on the 14th day of August, 1979

Albany, New York


Harold R. Newman, Chairman


Ida Klaus, Member


David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of :
TOWN OF CARMEL, : #2E-8/15/79
Employer, :
- and- :
LOCAL 456, INTERNATIONAL BROTHERHOOD OF :
TEAMSTERS, : Case No. C-1762
Petitioner, :
-and- :
TOWN OF CARMEL UNIT, PUTNAM COUNTY 840, :
CSEA, INC., :
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 456, 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: Laborer and Foreman

Excluded: All other Titles

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with Local 456, 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 14th day of August, 19 79

Albany, N.Y.

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 :
METROPOLITAN SUBURBAN BUS AUTHORITY, :
-and- Employer, : #2D - 8/15/79
WILLIAM CAFEY and FRANCIS RAGONA, :
-and- Petitioners, : Case No. C-1896
TRANSPORT WORKERS UNION OF AMERICA, :
LOCAL 252, AFL-CIO, Intervenor, :
-and- :
AMALGAMATED TRANSIT UNION LOCAL 1181-1061, :
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 Transport Workers Union of America, Local 252, 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: Lead Mechanics; Technician Mechanics; Classes I, II, III, IV, and V Mechanics; Class I Body Mechanics; Class I Register Mechanics; Class II Stock Room Mechanics; Class V(i) Interior Cleaners; and Bus Operators.

Excluded: All other employees employed by the Metropolitan Suburban Bus Authority.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with the Transport Workers Union of American, Local 252, 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 14th day of August , 1979

Albany, N.Y.


Harold R. Newman, Chairman


Ida Klaus, Member


David C. Randles, Member

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