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Board (PERB)

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9-10-1979

## State of New York Public Employment Relations Board Decisions from September 10, 1979

New York State Public Employment Relations Board

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## State of New York Public Employment Relations Board Decisions from September 10, 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

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In the Matter of	:	(#2A - 9/10/79)
FAIRVIEW PROFESSIONAL FIREFIGHTERS ASSOCIATION, INC., LOCAL 1586, IAFF,	:	
	:	<u>BOARD DECISION AND</u>
Respondent,	:	<u>ORDER</u>
-and-	:	
FAIRVIEW FIRE DISTRICT,	:	<u>CASE NO. U-4015</u>
Charging Party.	:	
	:	

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KENNETH PELUSO, for Respondent

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

The charge herein was brought by the Fairview Fire District (District) against the Fairview Professional Firefighters Association, Inc., Local 1586, IAFF, (Local 1586). It alleges that Local 1586 violated its duty to negotiate in good faith by submitting demands involving nonmandatory subjects of negotiation to an interest arbitration panel. As the dispute is one that primarily involves the scope of negotiation under the Public Employees' Fair Employment Act, it is being processed under §204.4 of our Rules. This section permits the submission of a dispute directly to the Board without any report or recommendation from a hearing officer.

There are eight demands in question.

1. Local 1586 demands the following amendment of Article 16 (Work Schedule) of the 1977-78 agreement between the parties:

"That Article 16 (Work Schedule) be expanded to outline more specifically the present 4 group, 2 platoon system and that scheduled working hours not be altered except as provided for in the labor agreement." (emphasis supplied)

Article 16 of the parties' 1977-78 agreement provides:

"ARTICLE 16 - WORK SCHEDULE

The work schedule shall be established on the following basis:

Beginning January 1, 1977 to December 31, 1978 - forty (40) hours per week.

Work schedules shall be published not later than December 31st of the year preceding.

If future legislation requires less than forty (40) hour work weeks, the parties will adopt said legislative enactment and amend this Agreement to conform to said legislation."

This demand is not a mandatory subject of negotiation because it is too vague. The underscored language might mean nothing more than that the District should provide a notice to the employees of the work schedule that exists under the present system. On the other hand, the demand might call for unspecified changes in the work schedule. Because those changes are not specified, neither we nor the District can determine whether the demands would interfere with the right of the District to set the number of firefighters to be on duty at any given time. The right to set that number is a management prerogative, White Plains, 5 PERB ¶3013 (1972).

2. Local 1586 demands the following amendment of Article 40

(Training) of the 1977-78 agreement:

"That Article 40 (Training) be amended in part so that training and job related programs outside employees' regularly scheduled working hours be compensated at one and one half times the employee's salary. Further that training related nonemergency exercise and all outside work will be suspended when weather conditions become severe, i.e., thunder-rain storms, snow, blizzards and temperature humidity index above 78%, wind chill factor below 32°."

Article 40 of the parties' 1977-78 agreement provides:

"ARTICLE 40 - TRAINING

A training program shall be undertaken for the uniformed members. If training is outside a regularly scheduled tour of duty, then compensation shall be paid based on additional hours payable at straight time."

Although the first sentence, standing alone, appears to be a demand for compensation and, therefore, a mandatory subject of negotiation, there is no basis for treating the entire paragraph as anything other than a unitary demand, Haverstraw, 11 PERB ¶3109 (1978). The second sentence would prevent the District from providing certain services to its constituency when weather conditions are severe. This is not a mandatory subject of negotiation. A public employer may decide unilaterally when the services should be performed and when they should be curtailed because of weather conditions. It cannot be required to negotiate a demand that it withhold any services that it deems appropriate for the performance of its mission, Rochester Firefighters, 12 PERB ¶3047 (1979).

3. Local 1586 demands the following amendment of Article 41 (Safe Apparatus and Vehicles) of the 1977-78 agreement:

"Article 41 (safe apparatus & vehicles) should be amended in part to read that any employee if in his own opinion is not able to make or cause the necessary repairs required to keep such vehicle or apparatus in service and operating safely, shall not be held responsible."

Article 41 of the 1977-78 agreement provides:

"ARTICLE 41 - SAFE APPARATUS AND VEHICLES"

Any employee assigned to drive or ride any apparatus or vehicle shall report any defect, malfunction or unsafe condition immediately to an officer on duty. If said condition exists, the officer shall immediately report to the Chief of Department for a final determination. If the Chief of Department can't be reached for a determination or another Staff Officer can't be reached, then the Officer on Duty shall make the final determination as to what repairs should be made if possible, or to keep the apparatus or vehicle in service for emergency use. If vehicle is determined to be unsafe, it shall be removed from service."

Employers may, in their exclusive discretion, hold employees responsible for the quality of the work that is assigned to them so long as the assignment

is inherent in the job for which the employees were hired.<sup>1</sup> The record reveals that some repairs and maintenance of vehicles and apparatus are part of the inherent responsibilities of firefighters employed by the District. This demand would permit an individual firefighter to avoid responsibility for the quality of such work by his own judgment that he is not capable of performing it. It is not a mandatory subject of negotiation.

4. Local 1586 demands the following amendment of Article 43

(Repairs and Maintenance) of the 1977-78 agreement:

"That Article 43 (repairs and maintenance) be amended so that each employee be required to maintain the district station houses and surrounding grounds with the exception that they shall not be required to perform painting, carpentry, electrical wiring, roofing, plumbing, masonry work, heavy landscaping, heating installation and any other work that may be classified as a skilled tradesman's profession."

Article 43 of the 1977-78 agreement provides:

"ARTICLE 43 - REPAIRS & MAINTENANCE

All repairs and maintenance, except major repairs, required in the operation of apparatus, equipment, house and grounds, shall be performed by employees where and when it is necessary. Assignment to these duties shall be at the discretion of the Chief of Department or the Duty Officer in charge."

The demand is that firefighters not be assigned the work of carpenters, electricians, plumbers, masons and other skilled craftsmen. There is nothing in the record to indicate that such assignments are part of the inherent work of firefighters. Accordingly, we rule that the demand is a mandatory subject of negotiation, Scarsdale, supra.

5. This is a new demand. It calls for a general health and safety committee.

"A general health and safety committee should be created consisting of two (2) representatives appointed by the Fire District and two (2) representatives appointed by the Union. The committee shall cover all matters relating to the health and safety of the bargaining unit as prescribed and set forth by this Public Arbitration

<sup>1</sup> See Scarsdale PBA, 8 PERB ¶13075 (1975)

Panel. Decisions of the committee shall be made by a majority vote, provided, however, that an equal number of representatives appear at such committee meetings, which shall be held at least quarterly or on special call of any two representatives." (emphasis supplied)

This is not a mandatory subject of negotiation. The jurisdiction of the health and safety committee would extend to all matters relating to health and safety "as prescribed and set forth by this Public Arbitration Panel". The quoted language is too broad; the authority of the health and safety committee might be extended to matters that are not mandatory subjects of negotiation.

6. This is a new demand. In the following language, it calls for the inclusion of New York State Civil Service job descriptions in the agreement:

"The N.Y.S. Civil Service description of each employee covered by the labor agreement and each employee working for the fire district should be included in the agreement."

By its terms, it covers not only employees in the negotiating unit, but extends to all other employees of the Fire District. Demands relating to non-unit employees are not mandatory subjects of negotiation, Somers Faculty Association, 9 PERB ¶3014 (1976). On this basis alone, without even considering the nature of the first sentence, we find the demand to be non-mandatory.

7. This is a demand to retain Article 27 (Promotions) of the 1977-78 agreement. Article 27 provides:

"Article 27, Promotions: Promotions shall be made where possible from the ranks of the Department for all positions other than that of Chief of Department in accordance with rules and regulations of the Department of Civil Service, County of Westchester and State of New York.

Furthermore, to provide the District with the best management and employee potential available, an examination shall be made as a requirement of all employees due consideration for promotion by a person qualified as a practitioner in the field of psychology."

This demand would interfere with the right of the District to establish qualifications for promotion. It is not a mandatory subject of negotiation, Hempstead PBA, 11 PERB ¶3072 (1978).

8. This is a demand to retain Article 45 (Residency) of the 1977-78 agreement. Article 45 provides:

"Article 45, Residency: It is agreed upon between the District and the Union that any employee of the District may reside in any town, city, village, hamlet, etc. of any state of his choice."

In City of Auburn, 9 PERB ¶3085 (1976), we distinguished between the duty to negotiate a residency requirement for tenured and non-tenured employees as well as between those who are required to be residents when hired and those for whom the residency requirement was imposed after their original appointment. The demand herein, which is to preclude a residency requirement, does not distinguish among the different types of employees to which it would apply. Therefore, we view it as a unitary demand which is a non-mandatory subject of negotiation if any part of it is a non-mandatory subject of negotiation, Haverstraw, 11 PERB ¶3109 (1978).

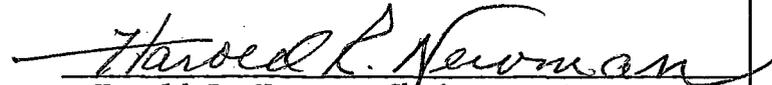
In Auburn, supra, we held that a residency requirement for non-tenured employees who were not required to be residents when they were hired is a mandatory subject of negotiation. However, such a residency requirement for tenured employees who achieved tenure without being required to be residents, is not a mandatory subject of negotiation. This is because it would diminish the vested rights of those employees in their jobs if the employer could discipline them for failure to comply with a subsequently imposed requirement. It would be illegal for the employer to impose a residency requirement upon such employees and there is no duty to negotiate with respect to that which is illegal. The continuing application of a residency requirement to an employee who was required to be a resident when he was hired is also not a mandatory subject of negotiation because Public Officers Law §30 states a public policy that "Every office shall be vacant upon ... the incumbent ... ceasing to be a resident of

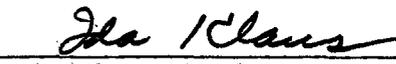
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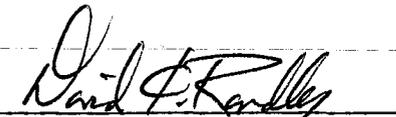
the state, or if he be a local officer of the political subdivision or municipal corporation of which he is required to be a resident when chosen;" City of Salamanca, 12 PERB ¶3079 (1979). Considered as a unit, the demand herein is not a mandatory subject of negotiation.

NOW, THEREFORE, WE ORDER Local 1586 to withdraw Items 1, 2, 3, 5, 6, 7 and 8 from the interest arbitration panel.

Dated, New York, New York  
September 11, 1979

  
Harold R. Newman, Chairman

  
Ida Klaus, Member

  
David C. Randles, Member

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

#2B-9/10/79

TOWN OF CHEEKTOWAGA,

BOARD DECISION AND ORDER

Respondent,

-and-

CASE NO. U-3645

CHEEKTOWAGA CAPTAINS AND LIEUTENANTS ASSOCIATION,

Charging Party.

EMPLOYER RELATIONS ASSOCIATES, INC., (TIMOTHY J. KANE,  
ESQ., of Counsel) for Respondent

SARGENT, SCIBETTA & REPKA, P.C., (NICHOLAS J. SARGENT,  
ESQ., of Counsel) for Charging Party

The charge herein has been filed by the Cheektowaga Captains and Lieutenants Association (Association). It alleges that the Town of Cheektowaga (employer) has violated its duty to negotiate in good faith by refusing to negotiate the following demand:

"When a vacancy exists in the rank of Captain for eight (8) or more hours, the senior available Lieutenant on that shift shall be compensated on an out-of-rank basis as 'acting' Captain for each hour worked."

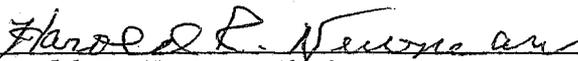
The employer concedes that it has refused to negotiate the demand. It defends its conduct, however, by the assertion that the demand does not constitute a mandatory subject of negotiation. It argues that the demand effectively requires that each shift be supervised by an officer of the rank of Captain and, thus, is a manning requirement that would impair the Town's ability to reduce the number of Captains. In support of its argument, it cites Troy UFFA, 10 PERB ¶3015, in which we held, at page 3034, that "the rank of supervisors to be assigned to a particular duty is a management prerogative".

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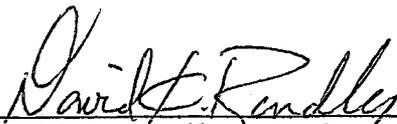
We do not find the Troy decision applicable. The demand does not interfere with the right of the employer to establish its own table of organization or to determine whether a Captain is required on a particular shift. If, pursuant to the table of organization established by the employer, no Captain were required on a particular shift, the absence of a Captain would not create a vacancy and the contract clause sought would not be applicable. Its application would be limited to situations where a vacancy exists, that is, where a Captain is called for by the employer's table or organization, but is not present. Under such circumstances, the senior available Lieutenant would be given extra compensation. As the demand is merely for compensation, it is a mandatory subject of negotiation, Office of Court Administration, 12 PERB ¶13075.

NOW, THEREFORE, WE ORDER the Town of Cheektowaga to negotiate in good faith with the Cheektowaga Captains and Lieutenants Association with respect to the demand in question.

DATED: New York, New York  
September 11, 1979

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

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

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

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STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIO. BOARD

In the Matter of

TOWN OF BLOOMING GROVE HIGHWAY DEPARTMENT,

#2C-9/10/79

-and-

Employer,

Case No. C-1919

IBEW, LOCAL UNION, 363,

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 IBEW, Local Union, 363

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 representative for the purpose of collective negotiations and the settlement of grievances.

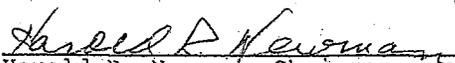
Unit: Included: All employees of the Town of Blooming Grove Highway Department.

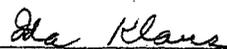
Excluded: Highway Superintendent.

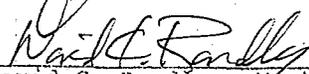
Further, IT IS ORDERED that the above named public employer shall negotiate collectively with IBEW, Local Union, 363

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 10th day of September, 1979  
New York, New York

  
Harold R. Newman, Chairman

  
Ida Klaus, Member

  
David C. Randles, Member

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STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of \_\_\_\_\_ :  
LOCUST VALLEY CENTRAL SCHOOL DISTRICT, :  
Employer, : #2D - 9/10/79  
-and- : Case No. C-1799  
LOCUST VALLEY EDUCATIONAL ADMINISTRATORS :  
ASSOCIATION, :  
Petitioner, :  
-and- :  
LOCUST VALLEY SCHOOL EMPLOYEES ASSOCIATION, :  
Intervenor. :  
\_\_\_\_\_

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

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

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

IT IS HEREBY CERTIFIED that the Locust Valley School Employees Association

has been designated and selected by a majority of the employees of the above named public employer, in the unit described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: All department chairmen

Excluded: All other employees

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with the Locust Valley School 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 10th day of September, 1979.  
New York, 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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