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State of New York Public Employment Relations Board Decisions from December 20, 1979

New York State Public Employment Relations Board

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Keywords
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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of	(#1A-12/20/79)
EAST RAMAPO CENTRAL SCHOOL DISTRICT, Respondent,	BOARD DECISION AND ORDER
-and-	CASE NO. U-3347
BEATRICE KALIN, Charging Party.	

GREENBERG & WANDERMAN, ESQS., for Respondent

PAUL E. KLEIN, ESQ. (DEBORAH A. WATARZ, of Counsel) for Charging Party

The charge herein was filed by Counsel to the New York State Educators Association (NYEA) in the name of Beatrice Kalin. NYEA is a statewide organization with which the East Ramapo Teachers Association (ERTA) is affiliated, and ERTA, in turn, is the representative of a unit of employees of the East Ramapo School District (District), which includes Kalin. For six years Kalin taught for the District until she was excessed, prior to the opening of school in September, 1977. At that time, she was retained by the District as a regular substitute, a position which she held until February 3, 1978, when the teacher whom she replaced returned to work. The charge alleges that the termination of Kalin on February 3, 1978, violated §§209-a.1(a) and (d) of the

Taylor Law.[1] It also charges that the District violated these sections in that it refused to process a grievance relating to the termination of Kalin on February 3, 1978, which was filed by ERTA on March 13, 1978.

The District asserted five defenses in response to the charge.

1. PERB should decline jurisdiction over the charge because it alleges a contract violation and at least in part, the charge was based on alleged violations of the terms of an expired contract.

2. By reason of her discharge, Kalin is no longer an employee of the District and, thus, no longer enjoys the protections of the Taylor Law.

3. Substitute teachers enjoy neither tenure nor seniority rights and, thus, the discharge of Kalin on February 3, 1978, was not improper.

4. The controversy involves only educational issues over which the Commissioner of Education has exclusive jurisdiction.

5. The charge was not timely because it was not filed within four months of September, 1977, when Kalin knew she would be terminated upon the return of the teacher to whose position she was appointed.

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1 These sections provide:

"1. ....It shall be an improper practice for a public employer or its agents deliberately (a) to interfere with, restrain or coerce public employees in the exercise of their rights guaranteed in section two hundred two for the purpose of depriving them of such rights:...(d) to refuse to negotiate in good faith with the duly recognized or certified representative of its public employees."

The hearing officer dismissed the charge. In doing so, he dealt only with the third of the five defenses asserted by the District because his primary reason for dismissing so much of the charge as alleged a violation of §209-a.1(d) of the Taylor Law was one not raised by the District or considered by either party. He ruled that, as the charge was brought in the name of Kalin and not in the name of ERTA, Kalin, as an individual, had no standing to allege a violation of the duty to negotiate in good faith because the duty extends to a labor organization and not to an individual. The hearing officer's reason for dismissing so much of the charge as alleged a violation of §209-a.1(a) of the Taylor Law was that the record contained no evidence that the District acted in any way to "interfere with, restrain or coerce" Kalin in the exercise of her Taylor Law rights.

The exceptions state that "ERTA was at all times a de facto charging party, even if not a formally named party". They also state that the hearing officer erred in failing to find a violation of either §209-a.1(d) or §209-a.1(a) of the Taylor Law.

DISCUSSION

Having reviewed the record, we conclude that ERTA may properly be deemed to have been the charging party and we so construe the charge. The case was tried by both parties as if ERTA were the charging party. The significance of Kalin being the named charging party was never considered by them prior to the issuance of the hearing officer's decision. We also find it significant that the charge was brought by Counsel to NYEA, who

has also respresented ERTA in several proceedings before this agency. Moreover, the testimony of an ERTA officer indicates that it supported Kalin.

Turning to the merits of the charge, we first affirm the determination of the hearing officer that the evidence does not support the allegation of the charge that the District's conduct violated §209-a.1(a) of the Taylor Law.[2] There is no evidence that the conduct of the District interfered with, restrained or coerced public employees in the exercise of rights guaranteed by the Taylor Law or that such conduct was designed to deprive employees of any such rights.

With respect to the alleged violation of §209-a.1(d), we affirm the determination of the hearing officer that the termination of Kalin on February 3, 1978, did not constitute a change of any past practice that was applicable to the circumstances under which she was terminated. This part of the charge cannot stand unless there was either a past practice of replacing one regular substitute teacher by another who had greater seniority at times other than the beginning of the school year or that there was any past practice of hiring a regular substitute for less than a full semester. The record supports the findings of the hearing officer that neither practice had been established.

The hearing officer did not reach the second specification of the alleged violation of §209-a.1(d), which is that the

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2 A charge alleging a violation of §209-a.1(a) may be filed by an individual.

District improperly refused to process the grievance filed by ERTA on behalf of Kalin. We address that part of the charge and find that it did improperly refuse to process the grievance. The District's refusal was based on the fact that the contract between it and ERTA had expired and they were still negotiating a successor contract. This was not a valid reason for the District to refuse to process the grievance. It was required to do so even though it would not have been obligated to arbitrate the grievance. Port Chester-Rye Union Free School District, 10 PERB ¶3079 (1977). None of the five asserted defenses of the District is relevant to its refusal to process the grievance. We, therefore, determine that this refusal violated §209-a.1(d) of the Taylor Law.

Ordinarily, the appropriate remedy for a public employer's refusal to process a grievance would be to order it to do so. Inasmuch as we have determined on this record that this part of the charge is without merit, it would not be appropriate for us in these circumstances to order the District to process this particular grievance. We do, however, deem it necessary to direct the District to process grievances in the interim period between contracts up to the point of arbitration.

NOW, THEREFORE, we determine that the East Ramapo Central School District violated §209-a.1(d) of the Taylor Law in that it refused to process a grievance while in negotiations for a contract to succeed one that expired. In all other respects, the

charge herein is DISMISSED; and

WE ORDER the East Ramapo Central School District:

1. To cease and desist from refusing to process grievances at pre-arbitration stages during the interim period between contracts; and

2. To post the attached notice in each facility within the District in locations ordinarily used to communicate with employees.

DATED: Albany, New York
December 20, 1979

Harold R. Newman
Harold R. Newman, Chairman

Ida Klaus
Ida Klaus, Member

David C. Randles
David C. Randles, Member

APPENDIX

NOTICE TO ALL EMPLOYEES

PURSUANT TO

THE DECISION AND ORDER OF THE

NEW YORK STATE
PUBLIC EMPLOYMENT RELATIONS BOARD

and in order to effectuate the policies of the

NEW YORK STATE
PUBLIC EMPLOYEES' FAIR EMPLOYMENT ACT

we hereby notify our employees that:

WE WILL NOT REFUSE TO PROCESS GRIEVANCES AT PRE-ARBITRATION STAGES DURING THE INTERIM PERIOD BETWEEN CONTRACTS.

EAST RAMAPO CENTRAL SCHOOL DISTRICT
Employer

Dated..... By.....
(Representative) (Title)

6099

This Notice must remain posted for 30 consecutive days from the date of posting, and must not be alter defaced, or covered by any other material.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of STATE OF NEW YORK (STATE UNIVERSITY OF NEW YORK), Employer, -and- COMMITTEE OF INTERNS AND RESIDENTS, Petitioner, -and- UNITED UNIVERSITY PROFESSIONS, INC., Intervenor.	(#1B-12/20/79) BOARD DECISION ON MOTION CASE NO. C-1751

The matter before us is a motion by the Committee of Interns and Residents (CIR) that this Board reconsider its decision and order of October 12, 1979 (12 PERB ¶3092). The grounds for the motion is a decision of a justice of the New York State Supreme Court[1], which first came to the attention of CIR on November 14, 1979. The Court noted, in passing, that the issue of whether CIR engaged in a strike against the New York City Health and Hospital Corp. is being litigated before another justice of the Supreme Court. CIR contends that this Board was without jurisdiction to decide the earlier case because, in doing so, it made a determination on the issue that is before the Court.

We deny the motion. This Board may, in the course of applying

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1 Matter of CIR v. N.Y. Health and Hospital Corp., N.Y.L.J. 11/14/79, p. 5, col. 3 (N.Y. County, Sutton J.)

the Taylor Law to matters that are properly before it, make a determination as to the responsibility of an employee organization for a strike, even if that determination is different from one made by a Court, because the Court and Board proceedings are separate and distinct. Board of Education v. PERB, 74 Misc.2d 741 (1973).

NOW, THEREFORE, WE ORDER that the motion herein be, and it hereby is, denied.

DATED: Albany, New York
December 20, 1979

Harold R. Newman, Chairman

Ida Klaus, Member

David C. Randles, Member