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1-25-1980

## State of New York Public Employment Relations Board Decisions from January 25, 1980

New York State Public Employment Relations Board

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## State of New York Public Employment Relations Board Decisions from January 25, 1980

### Keywords

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

### Comments

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STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

#2A-1/25/80

In the Matter of  
TOWN OF DEERPARK (HIGHWAY DEPARTMENT),  
Employer,  
-and-  
INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS, LOCAL 363,  
Petitioner.

BOARD DECISION

AND ORDER

CASE NO. C-1950

On October 12, 1979, the International Brotherhood of Electrical Workers, Local 363 (petitioner), filed, in accordance with the Rules of Procedure of the Public Employment Relations Board, a timely petition for certification as the exclusive negotiating representative of certain employees employed by the Town of Deerpark Highway Department.

The parties executed a Consent Agreement wherein they stipulated that the negotiating unit would be as follows:

Included: All full-time and part-time employees of the Highway Department, including heavy equipment operator, mechanic, foreman and assistant foreman.

Excluded: Highway Superintendent and all other employees.

Pursuant to the Consent Agreement and in order for the petitioner to demonstrate its majority status, a secret ballot election was held on December 26, 1979. The results of the

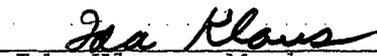
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election indicate that a majority of eligible voters in the stipulated unit do not desire to be represented by the petitioner.<sup>1</sup>

THEREFORE, IT IS ORDERED that the petition be, and it hereby is, DISMISSED.

Dated: Albany, New York  
January 24, 1980

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

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

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

<sup>1</sup> Of the 9 ballots cast, 1 was for and 6 against representation by the petitioner. There were 2 challenged ballots, which were not sufficient in number to affect the results of the election.

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of the Application of the : #2B-1/25/80  
CITY OF SYRACUSE, :  
for a determination pursuant to Section : DOCKET NO. S-0016  
212 of the Civil Service Law. :  
:

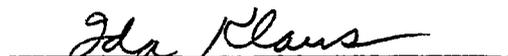
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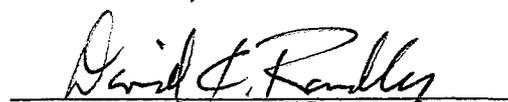
At a meeting of the Public Employment Relations Board held on the 24th day of January, 1980, and after consideration of the application of the City of Syracuse made pursuant to Section 212 of the Civil Service Law for a determination that Chapter 30 of the Revised General Ordinances of the City of Syracuse as last amended by General Ordinance No. 49-1979 is substantially equivalent to the provisions and procedures set forth in Article 14 of the Civil Service Law with respect to the State and to the Rules of Procedure of the Public Employment Relations Board, it is

ORDERED, that said application be, and the same hereby is, approved upon the determination of the Board that the Ordinance aforementioned, as amended, is substantially equivalent to the provisions and procedures set forth in Article 14 of the Civil Service Law with respect to the State and to the Rules of Procedure of the Public Employment Relations Board.

Dated: Albany, New York  
January 24, 1980

  
HAROLD R. NEWMAN, Chairman

  
IDA KLAUS, Member

  
DAVID C. RANGLES, Member

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STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of	:	#2C-1/25/80
CHEEKTOWAGA CAPTAINS AND LIEUTENANTS ASSOCIATION,	:	
Respondent,	:	<u>BOARD DECISION AND</u>
-and-	:	<u>ORDER</u>
TOWN OF CHEEKTOWAGA,	:	
Charging Party.	:	<u>CASE NO. U-3802</u>

Employer Relations Associates, Inc.,  
(Timothy J. Kane, Esq., of Counsel),  
for Charging Party

Sargent, Scibetta & Repka, P.C.,  
(Nicholas J. Sargent, Esq., of Counsel),  
for Respondent

This matter comes to us on the exceptions of the Town of Cheektowaga, which is the charging party, to a decision of the hearing officer dismissing its charge for lack of prosecution. The charge alleges that the Cheektowaga Captains and Lieutenants Association improperly insisted upon the negotiation of several demands for non-mandatory subjects of negotiation by presenting those demands for interest arbitration.<sup>1</sup>

<sup>1</sup> In a related case, the Cheektowaga Captains and Lieutenants Association charged the Town of Cheektowaga with a refusal to negotiate one of the demands involved in the instant case. That demand was determined by this Board to be a mandatory subject of negotiation. Town of Cheektowaga v. Cheektowaga Captains and Lieutenants Association, 12 PERB ¶3082 (1979).

As the issues presented by the charge appear to involve primarily a dispute as to scope of negotiations under the Act, the hearing officer attempted to expedite disposition of the charge by obtaining a stipulation as to the facts. She prepared a stipulation and submitted it to the parties but it was rejected by the Town on the ground that it was "inexact". The hearing officer then asked the Town to prepare its own stipulation for consideration by the Association, but the Town did not do so.

Having failed to obtain a stipulation as to the facts, the hearing officer scheduled a hearing in Buffalo, New York for the afternoon of June 14, 1979. The date and time of the hearing were agreed to by both parties. The charging party did not appear at the hearing and the hearing officer never received any explanation for its failure to do so. After waiting more than two weeks for an explanation, she issued a decision dismissing the petition for failure to prosecute.

In the Town's exceptions, its attorney states that he became ill on the night before the hearing and that, upon his awakening late the following morning, he telephoned his office and asked them to notify the Buffalo office of this Board that he could not attend the hearing that afternoon because he was home sick. According to the Town's attorney, the Buffalo office of PERB was notified, albeit less than two hours before the scheduled hearing, that he would be absent because he was ill.

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The information concerning the notice of the attorney's absence and the reason therefor was, apparently, never communicated to the hearing officer, but we cannot attribute this failure to the Town or its attorney. Moreover, inasmuch as there were a number of

admitted telephone conversations between the hearing officer and the parties, several of which were not reflected by confirming correspondence of either side, we must assume that the absence of a written record of the call from the Town's attorney is consistent with the informal manner in which the parties and the hearing officer were communicating with one another.

Accordingly, we accept the Town attorney's statement that a call was made in his behalf to the Buffalo office of PERB informing it that he could not attend the hearing because of his illness and we direct that this proceeding be remanded to a hearing officer for appropriate processing and disposition pursuant to Part 204 of our Rules of Procedure.

NOW, THEREFORE, WE ORDER that the decision of the hearing officer be reversed and that this proceeding be, and it hereby is, remanded to the Director of Public Employment Practices and Representation for appropriate further processing and disposition.

DATED: Albany, New York  
January 24, 1980

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

*Ida Klaus*  
Ida Klaus, Member

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

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STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of	:	#2D-1/25/80
NIAGARA FRONTIER TRANSPORTATION AUTHORITY,	:	<u>BOARD DECISION AND</u>
Employer,	:	<u>ORDER</u>
-and-	:	
NIAGARA FRONTIER TRANSPORTATION AUTHORITY	:	<u>CASE NO. C-1936</u>
PEACE OFFICERS' BENEVOLENT ASSOCIATION,	:	
Petitioner.	:	

---

WILLIAM E. STRAUB, ESQ. (DAVID F. MIX, ESQ., of Counsel)  
for Employer

McMAHON & CROTTY (E. JOSEPH GIROUX, JR., ESQ., of  
Counsel) for Petitioner

On September 4, 1979, the Niagara Frontier Transportation Authority Peace Officers' Benevolent Association (Association) filed a petition to represent peace officers holding the rank of patrolman and sergeant who provide security at airports owned and operated by the Niagara Frontier Transportation Authority (NFTA). NFTA is a public benefit corporation under §1299-C(1) of the Public Authorities Law and a public employer within the meaning of the Taylor Law. It contracts with Service Systems Corporation (SSC), a private corporation, for security services at the airports.

Earlier in 1979, another union, the International Guards Union of America (IGUA) had sought to be certified as the collective bargaining representative of all regular full-time and part-time deputized peace officers employed at the NFTA airports. IGUA had filed a petition for such employees with the National Labor Relations Board (NLRB) and had specified SSC as the employer.

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After a hearing, the NLRB Regional Director concluded that SSC is a joint employer of the peace officers along with NFTA. He further concluded that NFTA is an exempt employer under the National Labor Relations Act and that, by reason of the joint employer relationship, SSC shares in the statutory exemption enjoyed by NFTA. Accordingly, he dismissed the petition.

The parties agreed that, along with such other documentary evidence as they might wish to submit, the record developed in the NLRB proceeding would constitute the record in the instant proceeding. On that record, the Director of Public Employment Practices and Representation (Director) reached the same conclusion as did the Regional Director of the NLRB: SSC and NFTA are a joint employer. He further determined that this Board has no jurisdiction over the employees of the joint employer because SSC is a private entity and PERB has no jurisdiction over a joint employer unless each constituent part of the joint employer is itself a public employer.

Both the Association and NFTA have filed exceptions. In support of its exceptions, the Association asserts that, for Taylor Law purposes, NFTA is the sole employer because it exercises sufficient control over the terms and conditions of employment of the peace officers to be able to engage in effective collective negotiations for them without the participation of SSC. It further argues that this Board has jurisdiction over the peace officers as public employees even if SSC is, as a technical matter, a joint employer of them. The test, according to the Association, is whether the nature of the employment is unequivocally or substan-

tially public<sup>1</sup> and, according to the Association, the record demonstrates that this test has been met. The Association contends that SSC merely acts as a hiring agent for NFTA and also provides bookkeeping and accounting services to NFTA, but that all the essential terms and conditions of employment of the peace officers are set by NFTA.

In its cross-exceptions, NFTA asserts that SSC is the sole employer of the peace officers who work at its airports.

#### DISCUSSION

Having reviewed the record, we determine that NFTA is not the sole employer of the peace officers who work at the airports that are owned or operated by it.

SSC is a private corporation that offers food, maintenance and security services to both public agencies and private businesses throughout the country. It furnishes services to six enterprises in the Buffalo area including NFTA. SSC hires its own personnel in this area in accordance with a standard hiring procedure. Persons employed by it are not specifically hired for any particular enterprise. They serve as a pool from which SSC assigns individuals to the enterprises to perform requested services. SSC retains the authority to fire any individual so assigned. NFTA may object to an individual assigned to it as a peace officer by SSC, but it cannot fire him. If NFTA objects to a particular individual, SSC may reassign him to a different enterprise or discharge him. In practice, SSC reassigns its employees from account to account as it sees fit.

1 See N.Y. Public Library v. PERB, 37 NY2d 752 (1975).

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In most positions, newly hired employees are paid the minimum wage. A peace officer working at an airport who wants a raise must seek it from SSC and not from NFTA. He must also turn to SSC if he wishes a promotion to the rank of sergeant. SSC consults with NFTA before promoting an employee to the rank of sergeant; it does not consult with NFTA before granting a raise. SSC also provides fringe benefits to all its employees in the Buffalo area, including those who work as peace officers at the airports. That program includes hospitalization, life insurance and retirement benefits. SSC grants vacation time and it alone decides on the vacation schedule of peace officers, subject to its obligation to have the appropriate number of peace officers at the airports.

Not all employees who are hired by SSC and work at the airports have peace officer status. Some security positions require that status; others do not. From time to time, SSC proposes to NFTA that certain individuals assigned by it to NFTA be given peace officer status, because NFTA and not SSC has the legal authority to grant that status. No employee proposed by SSC for that status has ever been refused it by NFTA.

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On these facts, it is clear that SSC exercises substantial control over the terms and conditions of employment of the peace officers who work at the airports and whom the Association seeks to represent. Accordingly, we find that SSC is an employer of these employees. We further find that their employment is not unequivocally or substantially of a public nature.

In view of these findings, it is unnecessary to address the allegation of NFTA that SSC is the sole employer of the peace

officers. This Board does not have jurisdiction over the peace officers even if NFTA be a joint employer of them along with SSC. The jurisdiction of this Board extends to "a joint public employer of public employees"<sup>2</sup>, but not to employees of a joint employer, one part of which is a private entity. In reaching this conclusion, we adopt the position of Board member Joseph Crowley in New York Public Library, 5 PERB ¶3045 (1972). His dissenting opinion was commented upon favorably by the Appellate Division, New York Public Library v. PERB, 45 AD2d 271, 277 (1st Dept., 1975), aff'd 37 NY2d 752 (1975), although the court's holding in that case was based upon other grounds. In commenting upon issues before us, the Appellate Division stated that this Board's jurisdiction over a joint employer "presumes that each of the entities comprising the joint public employer be, in its own right, a public employer of public employees within the meaning of the Act."

NOW, THEREFORE, WE ORDER that the petition herein be, and it hereby is, dismissed.

DATED: Albany, New York  
January 24, 1980

  
Harold R. Newman, Chairman

  
Ida Klaus, Member

  
David C. Randles, Member

<sup>2</sup> CSL §201.6(b).

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

#2E-1/25/80

In the Matter of

BOARD OF EDUCATION OF THE CITY SCHOOL  
DISTRICT OF THE CITY OF NEW YORK,

Respondent,

-and-

UNITED FEDERATION OF TEACHERS, LOCAL 2,  
AFT, AFL-CIO,

Charging Party.

BOARD DECISION

AND

ORDER

CASE NO. U-3647

THOMAS P. RYAN, ESQ., for Respondent

JAMES R. SANDNER, ESQ. (A. MICHAEL WEBER, ESQ.  
and SUSAN JONES, ESQ., of Counsel) for  
Charging Party

The charge herein was filed by the United Federation of Teachers, Local 2, AFT, AFL-CIO (UFT). It alleges that the Board of Education of the City School District of the City of New York (employer) violated §209-a.1(d) of the Taylor Law in that, without prior negotiation with UFT, it directed all its current employees who are residents of New York City to continue to reside in the City and it informed them that failure to maintain such residence would be cause for removal.<sup>1</sup> Many of these employees are in negotiating units represented by UFT. The employer acknowledged that it issued a directive requiring current employees who are residents of New York City to maintain such residence, but it asserted that

<sup>1</sup> In its charge, UFT also complained about other conduct of the employer relating to employee residency. The hearing officer dismissed those aspects of the charge and UFT has not filed exceptions to that part of his decision.

the imposition of such a residency requirement is a management prerogative and it was consequently not under a duty to negotiate the matter.

The hearing officer determined that a residency requirement for persons who are already working for the employer is a term and condition of their employment and that the employer's unilateral change violated §209-a.1(d) of the Taylor Law. This matter comes to us on the exceptions of the employer to that decision.

In its exceptions, the employer contends that a residency requirement is a prohibited subject of negotiation because, under the State Education Law and public policy, it is reserved exclusively for managerial determination. It supports this proposition on the authority of two decisions of the New York State Court of Appeals in which other matters were held to be reserved for management and, therefore, not mandatory subjects of negotiation. In Cohoes Central School District v. Cohoes Teachers Association, 40 NY2d 774 (1976), the Court of Appeals held that a board of education could not negotiate away its responsibility for making decisions whether to grant or to withhold tenure. In Board of Education, Great Neck Union Free School District v. Areman, 41 NY2d 527 (1977), it held that a board of education could not bargain away its authority to inspect teacher files.

#### DISCUSSION

A residency requirement for persons who are already employed is a term and condition of employment. Auburn City Unit, CSEA,

9 PERB ¶3085 (1976)<sup>2</sup>. Ordinarily, a term or condition of employment is a mandatory subject of negotiation. However, a contrary conclusion may follow if it is determined that a particular subject matter is excluded from negotiation by the "plain and clear" meaning of statutory or decisional law,<sup>3</sup> or by the dictates of public policy.<sup>4</sup> It is by this rationale that the Court of Appeals determined that the granting or denial of tenure and the inspection of teacher files were not proper subjects for negotiation in its Cohoes and Great Neck decisions.<sup>5</sup>

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- 2 Similar conclusions have been reached in other jurisdictions. Detroit Police Officers Association v. Detroit, 291 Mich.44, 85 LRRM 2536 (Mich.Sup.Ct., 1974); City of Brookfield v. WERC, 87 LRRM 2099 (Wisc. Cir. Ct., 1974); Boston School Teachers Committee, 3 MLC 1603 (Mass. Labor Commission, 1977); and City School District of Pittsburgh, 9 PPER ¶9618 (Pa. Labor Relations Board, 1978).
- 3 Syracuse Teachers Association v. Board of Education, 35 NY2d 743, 744 (1974).
- 4 Susquehanna Valley School District, 37 NY2d 614 (1975).
- 5 Similarly, we have determined that a residency requirement for current employees who were hired subject to such a residency requirement is not a mandatory subject of negotiation. Salamanca, 12 PERB ¶3079 (1979). We reached that conclusion because Public Officers Law §30 provides that:

"Every office shall be vacant upon...the incumbent... ceasing to be an inhabitant of 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;" (emphasis supplied)

In Auburn, supra, we ruled that an employer violates its duty to negotiate in good faith when it unilaterally imposes a residency requirement upon employees who had not been hired subject to such a requirement. The employer asks that we reverse our decision in Auburn on the theory that the imposition of a residency requirement upon employees is a management prerogative. However, it points to no statute or decision that leaves it to the discretion of management whether employees who were not hired subject to a residency requirement may have a residency requirement imposed upon them thereafter. Nor has it advanced any persuasive arguments why public policy requires that this subject be deemed a management prerogative. We conclude that there is no valid basis for departing from our decision in Auburn. The issue before us is whether the employer may unilaterally impose a residency requirement on current employees. We conclude that it may not do so. Its action, which may also infringe upon employees' tenure rights,<sup>6</sup> constitutes a violation of its duty, under the Taylor Law, to negotiate in good faith.

NOW, THEREFORE, WE ORDER the employer to cease and desist from imposing upon current employees within negotiating units represented by charging party a requirement of

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<sup>6</sup> We also indicated in Auburn that for current employees who enjoy tenure, the imposition of a residency requirement would violate the statute upon which tenure is based. Thus, the employer could not require the employee organization to negotiate as to a residency requirement for such employees.

either establishing or maintaining  
residency in the City of New York.

DATED: Albany, New York  
January 24, 1980

  
Harold R. Newman, Chairman

  
Ida Klaus, Member

  
David C. Randles, Member

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of : #2F-1/25/80  
CITY OF LONG BEACH, :  
Respondent, : BOARD DECISION AND ORDER  
-and- : CASE NO. U-3804  
PBA OF THE CITY OF LONG BEACH, INC., :  
Charging Party. :  
:

---

GUAZZO, SILAGI, CRANER & PERELSON, P.C. (CAESAR  
C. GUAZZO, ESQ., of Counsel) for Respondent

HARTMAN & LERNER (HARRY D. HERSH, ESQ., of Counsel)  
for Charging Party

The charge herein was filed by the Patrolmen's Benevolent Association of the City of Long Beach, Inc. (PBA). It alleges that the Police Commissioner of the City of Long Beach (City) improperly assigned George Voigt, president of the PBA, to a walking post on January 23, 1979, in retaliation for the release by Voigt, on behalf of PBA, of a statement criticizing the police commissioner. The matter comes to us on the exceptions of PBA to a decision of the hearing officer dismissing the charge.

FACTS

On January 19, 1979, Voigt, acting in his capacity as president of PBA, issued a written statement that was highly critical of the Police Commissioner of Long Beach. The statement complained that the commissioner had engaged in a "personal vendetta" against many patrolmen, several of whom had chosen to leave

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the force. It also complained that discipline of police officers was enforced by "whim and caprice". Among the many more specific complaints was the allegation that police officers were not receiving adequate training. This statement was mailed to civic leaders and to the press and, on January 22, 1979, it became the subject of a press conference called by Voigt. The newspapers reported the PBA complaints on January 23 and these newspaper articles came to the attention of the police commissioner.

Later that day, Voigt was transferred from his assignment as a driver of a two-man patrol car on the 4:00 p.m. to midnight shift and was assigned to a walking post. As a senior employee, Voigt is rarely assigned to foot patrol. In 1978 he was assigned to foot patrol only twice, once on August 4 and once on August 22. Voigt had not been assigned to foot patrol in 1979 except on January 23, 1979. Post 9, to which Voigt was assigned on January 23, 1979, is completely within Post A. Post 9 had not been regularly covered since October 3, 1978, and it was not covered at all between October 31, 1978, and January 23, 1979. It was also not covered in the period immediately after January 23, 1979. The decision to transfer Voigt from driver of a two-man patrol car to Post 9 was made personally by the police commissioner after he admittedly saw the newspaper articles containing PBA's criticism of him.

The police commissioner testified and explained his action. He stated that between 3:30 and 4:00 p.m. on January 23, 1979, he received two or three telephone calls warning him that there might be a gang war in the vicinity of Post 9 that evening. The calls came on his private wire and were, therefore, neither re-

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corded nor noted. They came from people who were known to him, but whose identity he could not divulge without compromising them. Previously these informants had accurately forecast a gang war.

The instant warning, as well as a standing problem of juvenile fights and general vandalism in the area of Post 9, persuaded the police commissioner, he said, to fill the post that night. The police commissioner testified that he checked the daily roster sheet and observed that there was only a single two-man patrol car for the 4:00 p.m. to midnight shift and that the car was manned by Voigt and Wolstad. He then selected Voigt for Post 9 because Wolstad was less experienced and was less imposing physically (Wolstad is about 5'7" and weighs about 125 pounds). Ordinarily, assignments are made by Sergeant LaMarca, but LaMarca was on vacation on January 23, 1979. Thus, according to the police commissioner, he told Lieutenant Chalvein to reassign Voigt and he explained to Chalvein the reason for it. As a police officer with about twenty-five years' experience, he testified, Chalvein could be relied upon to advise Voigt of the trouble that the commissioner said he expected at Voigt's post.

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Following the instructions given to him, Lieutenant Chalvein did assign Voigt to Post 9. However, according to Voigt, Chalvein did not tell him that a gang war was anticipated in the vicinity of Post 9. Shaun Dowling, the police officer assigned to Post A, testified that he, too, was never told that any particular trouble was anticipated at his post on January 23, 1979. He also testified that there had been no particular increase in crime in the vicinity of Post 9 in the days or weeks immediately preceding January 23, 1979.

The hearing officer found it suspicious that neither Voigt nor Dowling was informed of the expected trouble in the vicinity of Post 9, but he nevertheless accepted the testimony of the police commissioner giving his reasons for the reassignment of Voigt. Crediting that testimony, the hearing officer found that Voigt's reassignment was not improperly motivated.

In its exceptions, PBA argues that the circumstantial evidence supporting a conclusion that Voigt's reassignment was improperly motivated is so strong that the police commissioner's unsupported testimony must, as a matter of law, be rejected.

#### DISCUSSION

We conclude that Voigt was reassigned from a driving post to a walking post on January 23, 1979, in retaliation for the issuance of a PBA statement criticizing the police commissioner. In reaching this conclusion, we are mindful that the hearing officer who heard his testimony believed that the police commissioner made the reassignment for a legitimate police-related reason. At issue here is the motivation of the police commissioner when he reassigned Voigt and the acceptability of the reason that he gave for that reassignment in light of the surrounding circumstances.

We find the circumstantial evidence to be convincing that the reason given by the police commissioner for Voigt's reassignment was a pretext and that his real motive was to retaliate against Voigt for the issuance of a statement criticizing him. The most compelling circumstances that bring us to this conclusion are:

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1. The timing of the reassignment. It occurred on the same day and within hours of the newspaper reports of Voigt's criticism of the police commissioner.
2. The infrequency of Voigt's assignment to any walking post.
3. The infrequency of the assignment of any police officer to Post 9.

Thus, the coincidence of a police officer who is rarely given a walking post being assigned to a walking post that is rarely filled, shortly after the police officer criticized the police commissioner, casts suspicion upon the validity of the reason given by the police commissioner for his action. These circumstances were explained by the police commissioner as deriving from two or three warnings received by him that afternoon of trouble at Post 9. The commissioner's explanation as to why he made no record of so important a series of phone calls is unsatisfactory. Furthermore, we note that no warning whatsoever was transmitted to Voigt or Dowling, the police officers who were assigned to the area, by Lieutenant Chalvein concerning anticipated trouble in the vicinity of Post 9. That a warning of such significance was not transmitted by an experienced officer as Lieutenant Chalvein casts doubt upon the commissioner's testimony that he had in fact received such phone calls.

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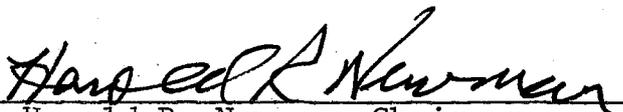
Our conclusion that Voigt's reassignment was in retaliation for PBA's criticism of the police commissioner raises the question whether the criticism was a protected activity under the Taylor Law. We conclude that Voigt's issuance of the critical statement was protected because it was issued by Voigt, as president of

PBA, and it expressed dissatisfaction with the terms and conditions of employment of the unit employees.

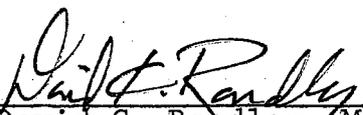
NOW, THEREFORE, WE DETERMINE that the City violated §209-a.1 (a) and (c) of the Taylor Law in that it interfered with the rights of Voigt and discriminated against him because he criticized the police commissioner's treatment of unit employees, and

WE ORDER the City of Long Beach to cease and desist from interfering with, restraining, coercing or discriminating against any of its employees in the exercise of rights protected by the Act, and that the City conspicuously post a notice in the attached form at all locations ordinarily used by it for communication with unit personnel.

DATED: Albany, New York  
January 25, 1980

  
Harold R. Newman, Chairman

  
Ida Klaus, Member

  
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 interfere with, restrain, coerce  
or discriminate against any of our employees in the  
exercise of rights protected by the Public Employees'  
Fair Employment Act.

.....  
Employer

Dated .....

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

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