2-12-1980

State of New York Public Employment Relations Board Decisions from February 12, 1980

New York State Public Employment Relations Board

State of New York Public Employment Relations Board Decisions from February 12, 1980

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

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of	#2A - 2/12/80
TOWN OF AMHERST, Respondent,	BOARD DECISION AND ORDER
-and-	CASE NO. U-4253
AMHERST POLICE CLUB, INC., Charging Party.	

MOOT, SPRAGUE, MARCY, LANDY, FERNBACH & SMYTHE (JOHN B. DRENNING, ESQ., of Counsel) for Respondent

SILVERBERG, SILVERBERG, YOOD & SELLERS (SANFORD M. SILVERBERG, ESQ., of Counsel) for Charging Party

The charge herein was filed by the Amherst Police Club, Inc. (Club), on September 21, 1979. It alleges that the Town of Amherst (Town) violated Section 209-a.1(d) of the Act when it refused to negotiate a dental plan proposal and a "bill of rights" proposal, despite a PERB decision on the negotiability of these subjects (Case U-3861, decided August 1, 1979). The Town, in its answer, admitted its refusal to negotiate these proposals but denied any obligation to negotiate either of them.

The hearing officer found that the Town is obligated to negotiate these two demands and so ordered. In its exceptions the Town argues: (1) that this Board exceeded its powers in its decision in Case U-3861, and (2) that the Club waived its right to negotiate the demands by participating in an arbitration proceeding while the Town's improper practice charge was pending before us and by agreeing that the interest arbitration panel did not have to decide the issues pending before this Board. The Town has also requested "relief equivalent to the resettlement of an order" in Case U-3861.

Discussion and Order

We affirm the findings of fact and conclusions of law of the hearing officer.

In our decision in Case No. U-3861, we determined that the two demands now in issue were mandatory subjects of negotiation: (1) we acknowledged an amendment made by the Club in its brief in that case to the "bill of rights" demand eliminating any apparent application to investigation of criminal conduct and, with that understanding, we found the demand mandatory, and (2) as to the "dental plan" demand, we noted the Club's amendment to its proposal to limit coverage only to active employees and having been advised that the Town conceded that as so amended the demand was negotiable, we concluded that no decision on this item was necessary. We dismissed the charge as to them.

The Town now urges that we were without power to consider amendments to the Club's demands after the filing of the petition for arbitration and the filing of the Town's improper practice charge.[1] Further, the Town also contends that it did not concede on the record that the amended "dental plan" demand was a mandatory subject of negotiation. We agree with the hearing officer that these contentions of the Town constitute a collateral attack on our prior decision. If the Town felt aggrieved by that decision, judicial review pursuant to the provisions of CPLR Article 78 was available to it as the proper recourse.

The Town's further argument to us (in support of its request to "resettle" our order in Case U-3861) that the order is not reviewable by the

---

1 We should note that we have in other cases accepted amendments to demands and rendered our determinations on that basis. This practice is consistent with our view that the policies of the Act, to promote collective negotiations, will be furthered thereby. See Troy Uniformed Fire Fighters Assn., 10 PERB ¶3015; City of Rochester, 12 PERB ¶3010.

court because it did not direct the Town to do anything, is without merit. There is no question that our determination that the two items are mandatory subjects of negotiation constituted our conclusion that the Town was obligated to negotiate the two items. Since the Town had filed the charge regarding the two items and we did not sustain its charge as to them, our order dismissing the Town's charge as to them must be deemed a final order and hence subject to court review. As the charge was filed by the Town and not against it, it was the only kind of final order that we could properly issue.[2]

We also agree with the hearing officer's rejection of the Town's arguments that the Club has waived its right to negotiate the two items by its participation in the arbitration proceeding with respect to other proposals whose arbitrability was not in issue. Section 205.6(c) of our Rules of Procedure states:

> "The public arbitration panel shall not make any award on issues, the arbitrability of which is the subject of an improper practice charge, until final determination thereof by the Board or withdrawal of the charge; the panel may make an award on other issues."

The purpose of this rule is to permit the arbitration panel to make an award, if it chooses to do so, on items the arbitrability of which is not in dispute, while reserving to this Board the exclusive power to determine arbitrability questions raised in improper practice proceedings. In these circumstances an arbitration panel must exercise its own discretion, however, as to the appropriate course it will follow with respect to the demands before it in each case. If the decision on the merits of the issues pending before

---

2 See Buffalo PBA, 9 PERB ¶3024; City of Kingston, 9 PERB ¶3069; Corning Police Department, CSEA, 9 PERB ¶3086.

this Board could in the view of the arbitration panel affect its decision on the merits of the issues pending before the panel, the panel could properly determine not to proceed with those other issues until our final determination. On the other hand, if the arbitration panel does render an award on the other demands before it prior to our final determination, it is understood that any issues found by this Board to be arbitrable must then be considered by that panel, unless in negotiations the parties agree otherwise.

It is clear, therefore, that the Club's participation in the arbitration proceeding, which resulted in an award signed in late June 1979 (prior to our decision in Case U-3861) covering items other than those pending before this Board, was wholly in accord with the statute and our Rules and cannot, per se, constitute a waiver of its right to negotiate and, if necessary, arbitrate the two demands in question. To hold otherwise would permit an employer simply by filing an improper practice charge, either to delay the arbitration proceeding or remove from negotiation or possible arbitration any demands specified in the employer's improper practice charge and found by us to be mandatory subjects of negotiation. Furthermore, we agree with the hearing officer's analysis of the record of the arbitration proceeding (which has been made part of the record of this proceeding) and his conclusion based on it, that it does not support a finding that the statements and actions of the representatives of the Club during and after the arbitration hearing constitute an explicit waiver of its right to negotiate whatever demands this Board found to be mandatory.

Finally, we agree with the hearing officer that, inasmuch as the amended demands approved by us may not have been negotiated by the parties in that form, the Club pursued a proper course, consistent with the policies of our statute, in first requesting the Town to negotiate the two demands, as

amended, before submission to the arbitration panel.[3] Accordingly, we determine that the Town did refuse to negotiate in good faith in violation of CSL §209-a.1(d).

NOW, THEREFORE, WE ORDER the Town of Amherst to negotiate the subject demands in good faith with the Amherst Police Club, Inc.

DATED: New York, New York
February 12, 1980

Harold R. Newman, Chairman

Ida Klaus, Member

David C. Randles, Member

3 See Town of Haverstraw, 9 PERB §3063. If, after such opportunity for negotiations, the parties are unable to agree, the items should be referred to the previously designated arbitration panel for final disposition.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of WHITESBORO CENTRAL SCHOOL DISTRICT, Respondent, -and- WHITESBORO TEACHERS ASSOCIATION, Charging Party.	#2B - 2/12/80 BOARD DECISION AND ORDER CASE NO. U-3822

HANCOCK, ESTABROOK, RYAN, SHOVE & HUST (JAMES P. BURNS, III, ESQ., of Counsel) for Respondent

RICHARD L. BRUCE, representative for Charging Party

The charge herein was filed by the Whitesboro Teachers Association (Association) on February 2, 1979, against the Whitesboro Central School District (District), alleging, as amended, that the District violated §209-a.1(a) and (c) of the Act when a member of its Board, Robert Meyers, appeared at Association meetings on December 12, 1978, and January 23, 1979, without permission of the Association. The hearing officer dismissed the charge on the ground that no improper motivation on Meyers' part was established. The Association has filed exceptions which urge this Board to find that Meyers' conduct, under the circumstances disclosed in the record, was inherently destructive of the Association's rights and constituted per se interference in violation of §209-a.1(a). The District, in addition to supporting the dismissal of the charge, also contends that the Association's exceptions were not timely filed.

Discussion and Order

We reverse the hearing officer and find that Meyers' insistence upon attending the Association membership meetings was inherently destructive of the employees' rights and constituted interference with their organizational rights in violation of §209-a.1(a) of the Act.

With the permission of the District, the Association held a meeting at a school auditorium on December 12, 1978, for the purpose of reporting on the progress of negotiations. Robert Meyers, a school board member, appeared at the meeting, and, when requested to leave by Association officials, at first refused. He explained that he did so because he advocates open meetings in school buildings and felt he had a right to attend by virtue of Education Law §414. Meyers then left and the meeting proceeded. On January 22, 1979, the Association once again met in a school building with the permission of the District for the purpose of ratifying a collective bargaining agreement. Again Meyers attended, but this time he did not leave, although requested to do so. The Association then moved its meeting to a non-District building and ratified the Agreement.

The District relies on §414 of the Education Law, which reads in pertinent part as follows:

> "The trustees or board of education may adopt reasonable regulations for the use of such schoolhouses, grounds or other property, all portions thereof, when not in use for school purposes or when the school is in use for school purposes if in the opinion of the trustees or board of education use will not be disruptive of normal school operations, for such other public purposes as are herein provided;...
>
> (c) For holding social, civic and recreational meetings and entertainments, and other uses pertaining to the welfare of the community; but such meetings, entertainment and uses shall be non-exclusive and shall be open to the general public...." (emphasis added)

The fact that Meyers may have been motivated by his strong belief in "open meetings" and his belief that Education Law §414 applied to Association meetings involving employer-employee relations within the school district cannot be dispositive of the Association's charge. Of paramount significance is the fact that Meyers was a representative of the employer -- a member of the legislative body of the employer -- who insisted upon attending a meeting of the Association at which vital matters affecting employer-employee relations were to be discussed. Even in the absence of proof of any intention to weaken the employee organization, conduct of an employer or one acting in its behalf which has a predictably chilling effect on the employee organization's activities clearly discourages participation in the activities of the employee organization.[1] Meyers' conduct constituted an inherently destructive interference by the employer with the right of the employees guaranteed by §202 of the Act to form, join, and participate in their own employee organization. For purposes of the Taylor Law, a member of the school board is a representative of the employer, not a member of the general public as contemplated in §414.

The District's exception addressed to the timeliness of the Association's exceptions is without merit. Section 204.10 (c)

---

1 Fashion Institute of Technology, 5 PERB ¶3018; State of New York, 10 PERB ¶3108.

of our Rules does not apply in this case. The time limitation set forth in Section 204.10(a) of the Rules is applicable, and the Association's exceptions met that requirement.

NOW, THEREFORE, WE ORDER the Whitesboro Central School District, its agents and representatives, to:

(1) cease and desist from attending meetings of the Whitesboro Teachers Association without permission of the Association, and

(2) post notices supplied by this Board on bulletin boards normally used to communicate with unit employees, which shall state: "The Whitesboro Central School District, its agents and representatives, will not attend meetings of the Whitesboro Teachers Association, without permission of the Association."

Dated, New York, New York
February 12, 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:

The Whitesboro Central School District, its agents and representatives, will not attend meetings of the Whitesboro Teachers Association, without permission of the Association.

.....
Employer

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

6172

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.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of	#2C - 2/12/80
CITY OF ALBANY, Respondent,	BOARD DECISION AND ORDER
-and-	CASE NO. U-3567
ALBANY POLICE OFFICERS UNION, LOCAL 2841, COUNCIL 82, AFSCME, AFL-CIO, Charging Party.	

W. DENNIS DUGAN, ESQ., for Respondent

ROWLEY AND FORREST (BRIAN J. O'DONNELL, ESQ., of Counsel) for Charging Party

This matter comes to us on the exceptions of the Albany Police Officers Union, Local 2841, Council 82, AFSCME, AFL-CIO (Union) to a hearing officer's decision dismissing its charge. The Union is the exclusive representative of a unit of police officers employed by the City of Albany (City). The charge alleges that the City violated its duty to negotiate with the Union in good faith in that, without prior negotiation with the Union, it unilaterally transferred nineteen police officers from work involving communications, towing and the issuance of parking tickets to other assignments, and that it hired twenty-eight civilians, not members of this bargaining unit, to perform work previously assigned to the nineteen police officers.

The hearing officer ascertained that no police officers were laid off as a result of the reassignments. He also found that the reassignments were motivated only by a desire to utilize police officers more efficiently and by

the City's determination that employees who could be given responsibilities for communciations, towing and parking ticket issuance did not have to meet the qualifications for appointment as police officer.

We have dealt with the question whether, under similar circumstances, a public employer could assign work previously performed by police officers to civilians in County of Suffolk, 12 PERB ¶3123, decided by us on December 27, 1979, after the exceptions were filed in the instant case. In that decision, we determined that the conduct of the employer was not violative of its statutory duty to negotiate in good faith because it did not involve a mandatory subject of negotiation. We there found that the employer's conduct in assigning to civilians the duties in question concerned primarily a determination of the qualifications for the respective jobs involved, a well-established management right. We also deemed significant that no police officers were laid off or otherwise adversely affected. We affirm the hearing officer here on the basis of our opinion in County of Suffolk, and

WE ORDER that the charge herein be, and it hereby is, DISMISSED.

DATED, New York, New York
February 12, 1980

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 RELATIC BOARD

In the Matter of	
BUFFALO BOARD OF EDUCATION, Employer,	#3A - 2/12/80
- and -	
BUFFALO BOARD OF EDUCATION PROFESSIONAL, CLERICAL & TECHNICAL EMPLOYEES ASSOCIATION; Petitioner,	Case No. C-1968
- and -	
COUNCIL 35, LOCAL 650, A.F.S.C.M.E., 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 BUFFALO BOARD OF EDUCATION PROFESSIONAL, CLERICAL & TECHNICAL 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 in the job titles listed on the attached Appendix.

Excluded: All other employees.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with BUFFALO BOARD OF EDUCATION PROFESSIONAL, CLERICAL & TECHNICAL 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 11th day of February, 19 80

New York City

Harold R. Newman, Chairman

Ida Klaus, Member

David C. Randles, Member

6175

ATTACHMENT

GRADE 5

Clerk
Microfilm Operator
Stenographer
Typist

GRADE 6

Account Clerk
Account Clerk-Typist
Account Clerk-Stenographer
Calculating Machine Operator

GRADE 7

Community Education Leader
Senior Typist
Varitype Operator

GRADE 8

Elementary School Clerk
Key Punch Operator
Mail Distribution Clerk
School Clerk-Stenographer
Security Officer
Senior Account Clerk
Senior Account Clerk-Typist
Telephone Operator

GRADE 9

Data Processing Equipment Operator
Duplicating Equipment Operator
Hearing Stenographer
Junior Auditor
Senior School Clerk-Stenographer
Senior Stenographer

GRADE 9-A

School Nurse

GRADE 10

Assistant Supervising School Lunch Manager
Data Control Clerk
Payroll Auditor
Principal Clerk
Senior Account-Clerk Stenographer
Senior Bookkeeping Machine Operator
Senior Inventory Clerk
Senior Warrant Clerk (Accounting)

GRADE 10-A

Drafting Technician
Senior Data Processing Equipment Operator

GRADE 11

Contract and Specifications Clerk
Senior Audio Visual Technician
Statistics Clerk

GRADE 11-A

Assistant Accountant
Assistant Auditor

GRADE 12

Computer Operator
Principal Inventory Control Clerk
Supervisor of Inventory

GRADE 12-A

Senior Personnel Clerk
Associate Account Clerk
Stenographic Secretary

GRADE 12-B

Auditing Inspector
Senior Drafting Technician
Senior Duplicating Machine Operator

GRADE 13

Assistant Supervisor of Data Processing Equipment
Research Aide

GRADE 14

Supervisor of Bus Aides

GRADE 14-A

Assistant Supervisor of Instructiona Equipment

GRADE 15

Assistant Secretary of the Board
Assistant Supervisor of Transportati
Duplicating Machine Equipment Supervisor
Personnel Assistant
Senior Accountant
Senior Auditor

GRADE 15-A

Nutritionist

GRADE 16

Computer Programmer
Senior Chemist
Sheet Metal Supervisor I
Stenographic Secretary to the Superintendent
Supervisor of Ground I
Supervisor of Instructional Equipment
Supervisor of Security

GRADE 17

Buyer
Coordinator of Home School Relation

GRADE 17-A

Chief Payroll Auditor

GRADE 18

Assistant Engineer (Mechanical)
Budget Examiner
Supervisor of Building Repairs
Systems Analyst

GRADE 19-A

Auditor
Supervising Accountant
Supervisor of Electrical Repairs
Supervisor of Painting
Supervisor of Plumbing & Heating

GRADE 20

Senior Architect
Senior Engineer (Structural)
Supervising School Lunch Manager
Supervisor of Service Center
Supervisor of Transportation
Supervising Plant Engineer

GRADE 21

Director of Public Relations
Director of Reconstruction
Director of Security
Purchasing Agent

GRADE 22-A

Director of Data Processing
Director of School Plant Operation

GRADE 23

Associate Architect
Associate Engineer
Director of Service Center

GRADE 24-A

Assistant Superintendent of Plant
Assistant Superintendent of Transportation