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3-25-1980

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

New York State Public Employment Relations Board

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# State of New York Public Employment Relations Board Decisions from March 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

In the Matter of	:	#2A-3/25/80
COUNTY OF RENSSELAER (Eugene Eaton, as Sheriff and William J. Murphy, as County Executive),	:	
Respondent,	:	<u>BOARD DECISION AND</u>
-and-	:	<u>ORDER</u>
RENSSELAER COUNTY LOCAL 842, DEPUTY SHERIFFS UNIT OF THE CSEA, LOCAL 1000, AFSCME, AFL-CIO,	:	<u>CASE NO. U-3940</u>
Charging Party.	:	

MARVIN J. HONIG, ESQ., for Respondent

ROEMER AND FEATHERSTONHAUGH (RICHARD  
BURSTEIN, ESQ., of Counsel) for  
Charging Party

This matter comes to us on the exceptions of Eugene Eaton, Sheriff of Rensselaer County<sup>1</sup>, to a decision of a hearing officer that the Sheriff refused to negotiate in good faith with the Rensselaer County Local 842, Deputy Sheriffs Unit of the CSEA, Local 1000, AFSCME, AFL-CIO (CSEA), in violation of §209-a.1(d) of the Public Employees' Fair Employment Act. The hearing officer found that after agreeing with CSEA to do so, the Sheriff failed to promote the enactment of a local law placing employees in the Sheriff's Department in the competitive class of civil service.

<sup>1</sup> The Sheriff and Rensselaer County are joint public employers of deputy sheriffs. Ulster County, 3 PERB ¶3032 (1970), confirmed 37 AD2d 437.

Background<sup>2</sup>

As a result of negotiations among CSEA, the Sheriff and a representative of the County Executive, an agreement was reached in late 1978 to succeed one expiring December 31, 1978. Part of that agreement was an undertaking by the County Executive and the Sheriff to support adoption of the aforementioned local law.

Hearing Officer's Decision

The hearing officer found that the County Executive did not fail to support passage of the local law. However, he found that the Sheriff, after initially supporting passage of the law, withdrew his support in late February 1979, because CSEA had written a letter to him on February 23, 1979, objecting to the establishment of a substation without first negotiating its impact upon the terms and conditions of employment of the employees.

The Sheriff's Exceptions

The Sheriff excepts to the hearing officer's decision on two grounds. The first is that the record does not show that the Sheriff withdrew his support for passage of the local law. The second ground is that the actions of the Sheriff which the hearing officer found to constitute a withdrawal of support occurred

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The facts are fully recited in the hearing officer's decision.

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some time after the bill had been withdrawn from the Legislature by its chairman.

Discussion

Both exceptions are rejected and the hearing officer's decision is affirmed.

The first exception is rejected because, as set forth in the hearing officer's decision, although the Sheriff testified that he had never withdrawn his support for the local law, two County legislators testified to the contrary. One testified that because of CSEA's letter, the Sheriff indicated to him that he was "up in the air" about passage of the bill. The other testified that because of CSEA's letter, the Sheriff indicated to him that there should not be action on the bill and agreed with him that he should withdraw his sponsorship of it. The Sheriff, who acknowledged that he was very upset by CSEA's letter, admitted that he made no effort to keep the legislator from withdrawing his sponsorship.

The second exception is rejected because, although the bill had been withdrawn by the legislature, it is clear from the record that it could have been reintroduced at any time.

Thus, the record fully supports the hearing officer's findings. As pointed out in the hearing officer's decision, the Sheriff was legally obligated to exert his best efforts to seek legislative approval of the agreement reached with CSEA, including the undertaking to have the employees placed in the competitive class of civil service<sup>3</sup>. The Sheriff's failure to exert his best efforts to obtain passage of a local law placing these employees in the competitive class of civil service constitutes a refusal to negotiate in good faith in violation of §209-a.1(d) of the Act<sup>4</sup>.

NOW, THEREFORE, WE ORDER that Eugene Eaton, Sheriff of Rensselaer County:

1. Cease and desist from refusing to negotiate in good faith with CSEA.
2. Exert his best efforts to seek passage by the Rensselaer County Legislature of a law placing the employees of the Sheriff's Department in the competitive class of civil service.


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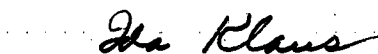
<sup>3</sup> Union Springs, 6 PERB ¶3074 (1973); City of Rochester, 7 PERB ¶3060 (1974).

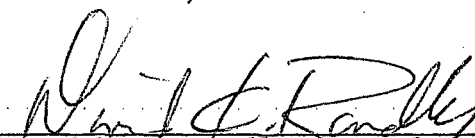
<sup>4</sup> Union Springs and City of Rochester, supra.

3. Post notices in the form attached throughout the Sheriff's Department in places ordinarily used to communicate information to unit employees.

DATED: Ithaca, New York  
March 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

I hereby notify my employees that: The Sheriff of Rensselaer County will:

1. Not refuse to negotiate in good faith with Rensselaer County Local 842, Deputy Sheriffs Unit of the CSEA, Local 1000, AFSCME, AFL-CIO.
2. Exert his best efforts to seek passage by the Rensselaer County Legislature of a law placing the employees of the Sheriff's Department in the competitive class of civil service.

.....  
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.*



STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of	:	#2B-3/25/80
WESTBURY WATER AND FIRE DISTRICT,	:	<u>BOARD DECISION</u>
Respondent,	:	<u>AND</u>
-and-	:	<u>ORDER</u>
NASSAU CHAPTER, CIVIL SERVICE EMPLOYEES ASSOCIATION, INC.,	:	<u>CASE NO. U-3794</u>
Charging Party.	:	

MARTIN M. SCHER, ESQ. for Respondent

RICHARD M. GABA, ESQ., (BARRY J. PEEK, ESQ.,  
of Counsel), for Charging Party

This matter comes to us on the exceptions of the Westbury Water and Fire District, respondent herein, to a hearing officer's decision that it violated §209-a.1(d) of the Taylor Law by unilaterally changing terms and conditions of employment of employees represented by the Nassau County Chapter of the Civil Service Employees Association, Inc., charging party herein<sup>1</sup>.

The charging party was first recognized to represent a unit of employees of the respondent in May 1978. The hearing officer determined that, at that time, unit employees:

1. were given a 45 minute lunch break on  
Fridays to facilitate their cashing

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<sup>1</sup> The hearing officer dismissed so much of the charge as alleged that respondent also violated paragraph (a) of §209-a.1 of the Taylor Law. The charging party has filed no exceptions. Consequently, this part of the hearing officer's decision is not before us.

checks, instead of the usual lunch break of one-half hour.

2. who were driving district-owned vehicles as part of their work assignment were permitted to use them to go home for lunch.
3. were permitted to borrow tools owned by the district.
4. were permitted to bring their private vehicles to respondent's shop and to use the shop's facilities to repair their vehicles.

Sometime after the charging party was recognized, and while the parties were in negotiations, the District announced that it was terminating these practices effective January 1, 1979. This action was incorporated in a memorandum which the District issued to the employees on December 29, 1978.

The hearing officer concluded that the District's conduct constituted a violation of its duty to negotiate in good faith. He based this conclusion upon determinations that there was a past practice of providing the four benefits; that each of the four items is a mandatory subject of negotiation; that CSEA had not waived its right to negotiate these four items, but had, in fact, repeatedly made known to the District its desire to negotiate them and the District refused to negotiate.

Respondent has excepted to both the hearing officer's findings of fact and his conclusions of law. In support of its

exceptions, it argues:

1. the hearing officer erred in determining that there was a past practice of providing the four benefits referred to above, and
2. the hearing officer erred in ruling that the four benefits involved matters about which it was obligated to negotiate,
  - (a) because the matters are not mandatory subjects of negotiation; and
  - (b) because charging party waived any right it might have had to negotiate the matters.

All the material arguments made by respondent in support of its exceptions were previously presented to the hearing officer and were considered by him. Having reviewed the record, we affirm the hearing officer's findings of fact and we agree with his conclusions of law. Accordingly, we affirm his decision. We also determine that the hearing officer's proposed order is appropriate for the violation found herein.

NOW, THEREFORE, WE ORDER that respondent rescind its memorandum of December 29, 1978 which terminated the four past practices and that it negotiate in good faith with charging party concerning the benefits encompassed by that memorandum.

WE FURTHER ORDER that respondent pay each affected employee for the additional fifteen minutes worked

each Friday from January 1, 1979 at the  
appropriate rate of pay.

March 24, 1980  
Ithaca, 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  
COUNTY OF CLINTON,

Employer,

-and-

CLINTON COUNTY HIGHWAY DEPARTMENT  
EMPLOYEES ORGANIZATION,

Petitioner,

-and-

CIVIL SERVICE EMPLOYEES ASSOCIATION, INC.,  
LOCAL 810,

Intervenor.

#3C-3/25/80

BOARD DECISION AND  
ORDER

CASE NO. C-1899

PATRICK R. MC GILL, ESQ., for Employer

PATRICK H. DUHAIME, for Petitioner

ROEMER & FEATHERSTONHAUGH (WILLIAM E. WALLENS,  
ESQ., of Counsel), for Intervenor

This matter comes to us on the exceptions of the Clinton County Highway Department Employees Organization (petitioner) to a decision of the Director of Public Employment Practices and Representation (Director) dismissing its petition to represent blue-collar employees of the Highway Department and Landfill Division of the County of Clinton (employer). The matter is also before us on the motion of the intervenor, endorsed by the employer, to dismiss petitioner's exceptions on the ground that they are technically insufficient.

The negotiating unit which petitioner seeks to represent is now part of a larger negotiating unit that has been represented by the intervenor for twelve years. The larger unit is countywide and comprises both blue-collar and white-collar employees. About three-quarters of these employees perform white-collar work, while the approximately eighty employees sought by the petitioner perform blue-collar work. In addition to these eighty employees, there are approximately twenty-five other blue-collar employees in other <sup>1</sup> departments of the employer.

In dismissing the petition, the Director determined that all unit employees share a general community of interest. He also accepted the contention of the employer that the existing unit structure better served its administrative convenience than did the unit structure sought by the petitioner. It is to these determinations that petitioner has filed exceptions.

The exceptions were timely filed, but they were not served upon the employer and the intervenor within the time authorized by §201.12(a) of our Rules of Procedure.<sup>2</sup> Petitioner asks us to excuse its noncompliance with our Rules on the ground that it did not

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<sup>1</sup> In its exceptions, petitioner indicates that it is willing to represent all blue-collar employees. The record does not show that it indicated such a willingness prior to the decision of the Director.

<sup>2</sup> The Rule states:

"§201.12(a) Within ten working days after receipt of the decision of the Director, a party may file with the Board an original and four copies of a statement in writing setting forth exceptions thereto, and an original and four copies of a brief in support thereof shall be filed with the Board simultaneously, at which time copies of such exceptions and brief shall be served upon each party to the proceeding." (emphasis supplied)

understand them. It thought that the reason this Board required an original and four copies of the exceptions was that it would distribute the exceptions to the other parties.

The intervenor and the employer respond that the exceptions must be dismissed because petitioner's noncompliance with the Rules cannot be excused. They argue that our Rule has the force of law and is binding upon this Board as well as upon the parties. Accordingly, they assert, this Board cannot suspend the Rule. They further argue that, even if this Board could suspend the Rule, it should not do so because the Rule is clear and explicit and should have been understood by the petitioner.

We are not persuaded by these arguments. As noted by the Appellate Division (In Matter of Lake Placid Club v. Abrams, 6 AD2d 469, at p. 472 [2nd Dept. 1958], aff'd, 6 NY 2d 857 [1959]):

"Generally speaking rules of administrative agencies which regulate procedure affecting substantial rights of individuals may not be waived [citations omitted]. Rulings which do not affect substantial rights of individuals, the waiver of which would not be prejudicial, may be relaxed when the ends of justice require it [citations omitted]."

The failure of petitioner to serve the employer and the intervenor with copies of exceptions that were properly filed with this Board does not appear to have prejudiced either the employer or the petitioner. It also does not appear to have affected substantial rights of individuals. Accordingly, we deny the motion and address the merits of petitioner's exceptions.

The basic position of petitioner is that the leadership of the intervenor, which comes from its white-collar constituency, cannot, or will not, provide adequate representation to these employees of the Highway Department and Landfill Division. In support of this position, it has introduced evidence of procedural irregularities in elections conducted by the intervenor in connection with the ratification of a collective agreement. The petitioner also contests the determination of the Director that the existing unit structure better serves the administrative convenience of the employer than would the unit structure proposed by the petitioner.

The record shows a history of poor communications between the intervenor and employees of the Highway Department and Landfill Division. However, it also shows that the problem is attributable to the Highway and Landfill employees because they have frequently refused either to talk to or to listen to the intervenor with respect to labor relations. The reason for this refusal is that the Highway and Landfill employees have been dissatisfied with the economic terms of past agreements. The record, however, gives no indication of discrimination by the intervenor against Highway and Landfill employees. The economic gains of those employees have been comparable to those of other departments<sup>3</sup>. This dissatisfaction of the Highway and Landfill employees is not a basis for fragmenting the negotiating unit in which they have been located for twelve years.

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<sup>3</sup> Employees in the Sheriff's Department have done better in some recent agreements, but not at the expense of the Highway and Landfill employees.



The record does show some irregularities in the vote of Highway and Landfill employees on ratification of the recent collective agreement between the intervenor and the employer. The Director determined that these irregularities were the result of honest mistakes and do not reflect any discrimination against Highway and Landfill employees. Moreover, they were corrected by the intervenor in the second ratification vote.

Accordingly, for these reasons, we find no basis in this record to sustain the petitioner's exceptions to the Director's decision dismissing the petition<sup>4</sup>.

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

Dated: Ithaca, New York  
March 25, 1980

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

*Ida Klaus*  
Ida Klaus, Member

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

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<sup>4</sup> We find it unnecessary to deal with petitioner's exception to the Director's acceptance of the employer's contention that the existing unit structure better serves its administrative convenience than does the unit structure sought by petitioner. The issue is not material to the basis for this decision.

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of :  
PLAINEDGE PUBLIC SCHOOLS; : #3A-3/25/80  
Employer, :  
- and - : Case No. C-2012  
PLAINEDGE CAFETERIA EMPLOYEES ASSOCIATION, :  
:

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 Plainedge Cafeteria 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: Cook, Assistant Cook, Cashier, Food Service Helper and Kitchen (Storeroom) man.

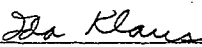
Excluded: All other employees.

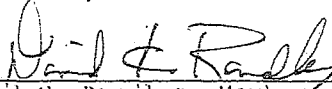
Further, IT IS ORDERED that the above named public employer shall negotiate collectively with the Plainedge Cafeteria Employees Association

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 24th day of March, 1980  
Ithaca, New York

  
Harold R. Newman, Chairman

  
Ida Klaus, Member

  
David C. Randles, Member

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