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6-10-1980

## State of New York Public Employment Relations Board Decisions from June 10, 1980

New York State Public Employment Relations Board

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## State of New York Public Employment Relations Board Decisions from June 10, 1980

### Keywords

NY, NYS, New York State, PERB, Public Employee 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

INCORPORATED VILLAGE OF HEMPSTEAD,

Employer,

-and-

POLICE BENEVOLENT ASSOCIATION OF  
HEMPSTEAD, INC.,

Petitioner.

BOARD DECISION AND ORDER

CASE NO. C-1960

CULLEN & DYKMAN, ESQS. (GERARD FISHBERG, ESQ.,  
of Counsel), for Employer

GEHRIG, RITTER, COFFEY, McHALE & McBRIDE,  
for Petitioner

The petition herein was filed by the Police Benevolent Association of Hempstead, Inc. (PBA) on November 1, 1979. It seeks to add two police captains employed by the Village of Hempstead to a unit of police department employees currently represented by PBA. The Acting Director of Public Employment Practices and Representation dismissed the petition on the ground that it was not timely and PBA has filed exceptions to that action.

In balancing the need for employees to be able to change their representative from time to time against the need for stability in labor relations, our Rules of Procedure specify the times when representation petitions may be filed. At the time when the petition herein was filed, PBA and the Village were engaged in collective negotiations for an agreement that would take

effect on June 1, 1979.<sup>1</sup> The petition was filed more than 120 days after the expiration of an arbitration award which prescribed the terms and conditions of employment of unit employees. Ordinarily, a petition may be filed 120 days after the expiration of an agreement if no successor agreement has been negotiated (Rules, §201.3[e]) and, as an interest arbitration award has the same effect as an agreement, usually a petition may be filed 120 days after the expiration of such an award. However, the Rules (§201.3[e]) expressly limit the filing of a petition 120 days after the expiration of a written agreement to an employee organization "other than the recognized or certified employee organization". As PBA is the certified negotiating representative of unit employees, its petition is not timely.

In support of its exceptions, the PBA asserts that §201.3(e) of the Rules "does not apply to accretions sought by the existing employee organization". It presents no reason for this interpretation of the Rules except to state that it is required by logic.

The purpose of the Rule permitting a petition by an employee organization other than the recognized or certified representative reflects the statutory policy of striking an appropriate balance between the need for stability of bargaining relationships and

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<sup>1</sup> The last agreement between the parties covered the one-year period between June 1, 1976 and May 31, 1977. For the two-year period between June 1, 1977 and May 31, 1979, the terms and conditions of employment of unit employees were established by an impasse arbitration award issued pursuant to §209.4 of the Taylor Law.

the availability of an opportunity for employees to change representatives. When parties to a negotiating relationship do not agree upon a new contract, an outside employee organization is authorized by §201.3(e) to file a petition which might have the effect of changing the representatives of the employees, even though the petition may interfere with continued negotiations. Here the policy of facilitating change predominates. However, the Rule recognizes the concern for the continued uninterrupted progress of negotiations between the employer and the incumbent organization and does not permit either of them to interfere with its own negotiations by filing a representation petition.

Claiming that the Rule is unfair to the two captains<sup>2</sup> because it deprives them of representation rights, PBA seeks an exception. It is not the Rules however that deprive the employees of representation rights. The Rules provide in clear language the appropriate times when a petition may be filed by PBA to add the two captains to its unit. The PBA has not complied with the Rules which specify the timeliness of petitions. The defect in the petition, therefore, cannot be laid to the Rules.

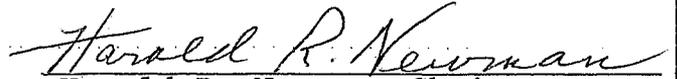
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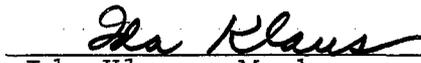
<sup>2</sup> A prior petition filed by the two captains themselves was dismissed because individuals may not file a petition for certification. Village of Hempstead, 12 PERB ¶3051 (1979)

NOW, THEREFORE, WE AFFIRM the decision of the Acting Director  
of Public Employment Practices and Representation, and

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

DATED, New York, New York  
June 10, 1980

  
Harold R. Newman, Chairman

  
Ida Klaus, Member

  
David C. Randles, Member

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

WEBUTUCK TEACHERS ASSOCIATION

upon the Charge of Violation of Section  
210.1 of the Civil Service Law

BOARD DECISION AND

ORDER

CASE NO. D-0168

BERNARD F. ASHE, ESQ. (IVOR R. MOSKOWITZ,  
ESQ., of Counsel), for Respondent

MARTIN L. BARR, ESQ. (JEROME THIER, ESQ.,  
of Counsel), for Charging Party

The charge herein alleges that the Webutuck Teachers Association (Respondent) violated §210.1 of the Taylor Law in that it caused, instigated, encouraged, condoned and engaged in a strike against the Northeast Central School District (Employer) on June 5, 1978. Respondent is the representative of a unit of teachers who work for the Employer.

A hearing was held and the hearing officer concluded that Respondent did violate §210.1 of the Taylor Law as charged, but that "[t]he impact of the strike on the public health, safety or welfare of the community is de minimis, if at all measurable." Respondent objects to the hearing officer's determination that there was a strike.

The record shows that in 1971 the junior-senior high school teachers suggested that there be a monthly teachers' meeting after school. This suggestion was adopted by the Employer and, except for several months in 1974, a monthly meeting has been held ever since. However, while most teachers have attended these meetings, there has been a high tolerance of absenteeism, with teachers notifying the Employer whenever a meeting interfered with a professional

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or personal obligation.

In late May 1978, Respondent was in negotiations with the Employer for a collective agreement. On May 31, 1978, during the course of these negotiations, Respondent adopted a motion made by its President that unit employees abstain from after-school activities. Pursuant to this motion, more than half of the junior-senior high school teachers absented themselves from a faculty meeting that was held on June 5, 1978. On the day of the meeting, and before its commencement, the Employer's Superintendent distributed a memorandum to unit employees advising that "[a]ttendance at a faculty meeting is part of a teacher's overall job responsibility and is required . . .". Respondent would justify these absences by asserting that attendance at those meetings is voluntary.

We affirm the determination of the hearing officer that the concerted refusal of the unit employees to attend the faculty meeting after school on June 5, 1978 constituted a violation of §210.1 of the Taylor Law. The fact that the practice of the monthly meetings was initiated at the suggestion of the teachers does not establish that subsequent attendance at these meetings was voluntary. Although unpenalized absences of some individual teachers in the past may indicate that some teachers may have regarded attendance as voluntary, any possible uncertainty as to the possible voluntary nature of this meeting was removed by the memorandum of the Employer's Superintendent to the faculty on

that day advising them that attendance was required.<sup>1</sup> Moreover, although the Employer did not grant permission for the past teacher absences, the teachers had notified it when absences were contemplated. On June 5, 1978, the Employer was notified that the teachers would be absent. This notice, however, was the announcement of a concerted action rather than the notice of individual teachers.

We turn next to a determination of the extent of the penalty to be imposed upon the striking employee organization (CSL §210.3 [f][ii]). The impact of the strike is a factor we must consider. We affirm the determination of the hearing officer that the impact of the strike was de minimis. A second circumstance that must be considered is the extent to which the strike reflects a willful defiance of the Taylor Law prohibition of strikes (CSL §210.3[f][i]). We determine that if there was any willful defiance at all, it was slight at most. Although Respondent was in error when it asserted that attendance at this particular after-school teachers' meeting was voluntary, there is sufficient basis for finding that it had a good-faith belief that the assertion was true.

Accordingly, we determine that, under the unusual circumstances herein, the statutory right of the Webutuck Teachers Association to the deduction of membership dues and its contrac-

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<sup>1</sup> Farmingdale, 11 PERB ¶3055 (1978).

tual right, if any, to agency shop fee payments should not be suspended.<sup>2</sup> It should be noted, however, that the impact of our decision upon Respondent is not insignificant. Our determination that it has struck in violation of the Taylor Law will be given serious consideration in the event that it strikes a second time. It is our practice to impose a more severe penalty upon employee organizations which strike a second time than we do for a first offense.<sup>3</sup>

NOW, THEREFORE, WE DETERMINE that the Webutuck Teachers Association has violated §210.1 of the Taylor Law, that the impact of the strike upon the health, safety and welfare of the community was de minimis, and that the violation reflects at most a slight willful defiance of the law.

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See Probation and Parole Officers Association of Greater New York, 4 PERB ¶3065 (1971), a decision in which we imposed no penalty because the circumstances reflected a de minimis impact of a strike and a good faith belief that the employees' conduct was lawful. See also, Amalgamated Transit Union, Division 282, 4 PERB ¶3053 (1971), in which we imposed a slight penalty despite the considerable impact of a strike because the extent of willful defiance of the Taylor Law was slight.

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Unless there are special mitigating circumstances, we normally impose an indefinite suspension of dues checkoff and agency fee payment privileges for a second violation. See e.g. Lake-länd, 11 PERB ¶3020 (1978).

WE ORDER that no forfeiture of dues checkoff or agency shop  
fee payment privileges be imposed.

Dated, New York, New York

June 9, 1980

  
Harold R. Newman, Chairman

  
Ida Klaus, Member

  
David C. Randles, Member

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of :  
VILLAGE OF MINEOLA, :  
Employer, :  
-and- :  
LOCAL 808, INTERNATIONAL BROTHERHOOD OF : Case No. C-1957  
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND :  
HELPERS OF AMERICA, :  
Petitioner, :  
-and- :  
CIVIL SERVICE EMPLOYEES ASSOCIATION, INC., :  
NASSAU CHAPTER, AFSCME, AFL-CIO, :  
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 Local 808, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America

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 personnel in the employ of the Village.

Excluded: Confidential and library employees.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with Local 808, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America 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 9th day of June, 1980  
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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STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of \_\_\_\_\_ ;  
BAYPORT-BLUE POINT UNION FREE SCHOOL DISTRICT, :  
Employer, :  
-and- :  
EDUCATIONAL OFFICE PERSONNEL ASSOCIATION : Case No. C-1974  
OF BAYPORT-BLUE POINT, :  
Petitioner, :  
-and- :  
SUFFOLK EDUCATIONAL CHAPTER, CSEA, INC., :  
LOCAL 870, :  
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 Educational Office Personnel Association of Bayport-Blue Point

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 full-time ten and twelve month certified clerical employees designated as clerk-typist, senior clerk-typist, stenographer, account clerk and senior stenographer.

Excluded: All managerial and/or confidential employees.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with the Educational Office Personnel Association of Bayport-Blue Point

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 9th day of June, 1980  
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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PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of :  
CITY OF UTICA BOARD OF WATER SUPPLY, :  
Employer, :  
- and - :  
LOCAL UNION 182, INTERNATIONAL BROTHERHOOD : Case No. C-1898  
OF TEAMSTERS, :  
Petitioner, :  
- and - :  
CIVIL SERVICE EMPLOYEES ASSOCIATION, :  
LOCAL 1000, AFSCME, :  
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 Local Union 182, International Brotherhood of Teamsters

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 full-time, permanent employees of the Utica Board of Water Supply.

Excluded: All temporary employees, General Manager, employees represented by Management Employees Association and managerial/confidential employees.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with Local Union 182, International Brotherhood of Teamsters

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 9th day of June, 1980  
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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