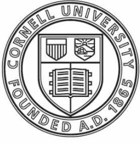
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New York State Public Employment Relations Board (PERB)

6-27-1980

State of New York Public Employment Relations Board Decisions from June 27, 1980

New York State Public Employment Relations Board

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State of New York Public Employment Relations Board Decisions from June 27, 1980

Keywords
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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of ITHACA CITY SCHOOL DISTRICT BOARD OF EDUCATION, Respondent, -and- ITHACA CITY SCHOOL DISTRICT EMPLOYEES ASSOCIATION, NYEA/NEA, Charging Party.	#2A-6/27/80 BOARD DECISION AND ORDER CASE NO. U-3448

BOND, SCHOENECK & KING, ESQ. (THOMAS J. GROOMS, ESQ., JOSEPH R. COOK, ESQ., of Counsel), for Respondent

PAUL E. KLEIN, ESQ. (JANET AXELROD, ESQ., of Counsel), for Charging Party

HENRY F. SABOTA, ESQ. for New York State School Boards Association, *amicus curiae*

During the week of June 19, 1978 Richard E. Backer, Superintendent of Schools of the Ithaca City School District, distributed a notice to part-time school bus drivers, food service workers and ten-month clerical personnel which assured them of continuance of employment for the 1978-79 academic year.[1] The employees who received the notices are in a negotiating unit represented by the Ithaca City School District Employees Association, NYEA/NEA, charging party herein. On June 26, 1978, charging party's president wrote to Superintendent Backer advising him that it

1 Pursuant to §590.11 of the Labor Law, as interpreted by Labor Department Special Bulletin A-710-53, the effect of such a notice is to disqualify the recipient employee for unemployment insurance compensation during the summer vacation. For a comprehensive discussion of the issue, see our opinion in Spencerport, 12 PERB ¶3074 (1979).

deemed the notices of continuing employment to constitute improper negotiations with individual employees. In the same letter, charging party's president offered to negotiate the offers of assured employment.[2] Superintendent Backer never responded to charging party's request to negotiate.

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2 The letter stated:

> "It has come to our attention that you have distributed documents relating to offers of employment for the school year 1978-79 to individual members of the bargaining unit represented by the Ithaca Employees Association.
>
> Please be advised that the Ithaca Employees Association views these alleged offers of employment to individual members to be in violation of the Taylor Law which prohibits entering into agreements with any individual or organization other than the Ithaca Employees Association.
>
> The Ithaca Employees Association is prepared to meet with the district for the purpose of negotiating the aforementioned alleged offers of employment. Please notify the Ithaca Employees Association within seven days of certified receipt of this letter whether the district will negotiate with respect to employment offers for the school year 1978-79.
>
> Failure to respond within the time period herein beforementioned will be construed as a denial of the Ithaca Employees Association request to negotiate and we shall then procede [sic] to seek relief from the Public Employment Relations Board."

On or about June 21, 1978, Thomas R. Valentine, Transportation Manager of the School District, wrote the following message on the chalkboard in the bus drivers' room:

> "As per conference with Mr. Sweet 6/21/78 if you sign the letter you will not be eligible for unemployment this summer. If you do not sign the letter it is considered as a voluntary quit and you still will not be eligible (because you have to wait 7 weeks). Also, if you do not sign the letter and should come back in the fall, a new seniority date will be assigned. See me if any further ?s.
>
> TRV"
>
> (emphasis in original)

The charge herein was filed on August 2, 1978. It alleges that the Ithaca City School District Board of Education (District) violated parts (a), (b) and (d) of §209-a.1 of the Taylor Law by the above stated conduct. The hearing officer agreed. Relying upon Spencerport Central School District, supra, he rejected charging party's contention that the mere distribution of the notices assuring employees of continued employment after the summer recess was a violation. However, he construed charging party's request for negotiations as a demand to negotiate the impact of the District's decision to guarantee continued employment to unit employees. Holding that the demand to negotiate impact dealt with a mandatory subject of negotiation, he ruled that the District's refusal constituted a violation of its duty to negotiate in good faith.

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The hearing officer further ruled that the chalkboard notice of the Transportation Manager also constituted an improper practice. He noted that in attempting to persuade bus drivers to accept the offer of renewed employment, the Transportation

Manager had indicated that unit employees who did not sign would be treated as having voluntarily quit and would lose seniority should they return. The hearing officer determined that the chalkboard notice itself went into criteria for the termination of employment and seniority -- two mandatory subjects of negotiation, and that they constituted improper direct negotiations with unit employees on those two subjects. Among other things, his remedial Order would require the District to retract, ab initio the notices to the bus drivers that assured them of continued employment.

Both parties have filed exceptions. In support of its exceptions, charging party argues that this Board should overrule its decision in Spencerport. In support of its exceptions, the District argues,[3] inter alia,

1. It never refused to negotiate the impact of its decision to assure unit employees of continued employment because charging party never sought such negotiations,

2. There is no proof that any bus drivers ever saw the chalkboard announcement.

3. In any event, the chalkboard announcement did not constitute negotiations with employees concerning criteria for termination of employment or seniority, and

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3 We have received a brief amicus curiae from the New York State School Boards Association which supports the positions of the District.

4. Assuming a violation, the remedy is inappropriate to the extent that it would require retraction, ab initio, of the notices to the bus drivers because there was no impropriety in their original issuance, the violation having come later.

We reject charging party's exceptions for the reasons set forth in the Spencerport decision. Although we find merit in some of the District's exceptions, we nevertheless sustain the hearing officer's determination that the District has violated CSL §209-a.1(a).

In part, the decision in this case turns upon interpretations of charging party's letter of June 26, 1978 and of the chalkboard message. In his letter of June 26, 1978, charging party's president asserted that the District Superintendent acted improperly when he distributed offers of continuing employment to individual unit employees because such offers constituted negotiations. Charging party's request for negotiations appears to have been designed to substitute for these allegedly improper negotiations. As such, the request went no further than the subject matter of the offer of continued employment, a nonmandatory subject of negotiation. Unlike the hearing officer, we do not construe the letter of June 26 as proposing negotiations concerning the impact of the District's decision to guarantee continuing employment to unit employees.

6337

We do, however, agree with the hearing officer's conclusions concerning the chalkboard announcement. The chalkboard announcement was posted in the bus drivers' room by the Transportation Manager who intended the bus drivers to read it. Absent

specific evidence to the contrary, logic dictates a presumption that they did so. The chalkboard announcement indicates that the refusal of an employee to accept the offer of continued employment would have implications concerning seniority rights and other terms and conditions of employment. The Transportation Manager was telling the bus drivers about changes that would be made in their terms and conditions of employment unless they signed the notices offering them continued employment. The announcement also invited further inquiries by the employees. Like the hearing officer, we read the announcement as constituting negotiations concerning these matters.

Our decision in Spencerport did not authorize direct negotiations with employees over all matters that may be affected by a notice of continuing employment. In particular, that decision did not permit direct dealing with represented employees regarding mandatory subjects of negotiation,[4] such as seniority.[5] Accordingly, such direct negotiations constitute an interference with the employees' rights in violation of CSL §209-a.1(a).

We do not doubt that the bus drivers perceived the announcement as a pressure upon them to accept the offer of continued employment which may have persuaded them to sign the notices

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4 Buffalo Board of Education, 6 PERB ¶3050 (1973); Genesee Community College, 9 PERB ¶3005 (1976).

5 City of White Plains, 9 PERB ¶3007 (1976).

sent to them. Accordingly, we order that the execution of those notices should be deemed null and void to the extent that such execution may affect the seniority rights and other terms and conditions of employment of the employees in question. We do not, however, see how the improper negotiations could taint the previous issuance of the notices which, as we have said, was not improper. Accordingly, we reverse that part of the hearing officer's remedial order as would require retraction of the notices.

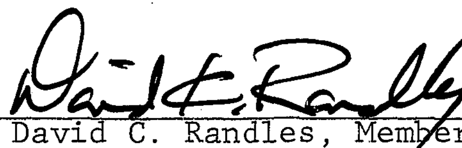
NOW, THEREFORE, WE ORDER the Ithaca City School District Board of Education to cease and desist from negotiating directly with employees represented by the Ithaca City School District Employees Association, NYEA/NEA and to deem null and void the signatures of any bus drivers on notices of continued employment that were distributed on or about June 19, 1978 to the extent that such signatures may affect the seniority rights and other terms and conditions of employment of such bus drivers.

WE FURTHER ORDER that the Ithaca City School District Board of Education post conspicuously notice in the form attached at

a location used for communication with its bus drivers.

DATED: Albany, New York
June 27, 1980

Harold R. Newman, Chairman


David C. Randles, Member

For the reasons stated in her dissenting opinion in Spencerport, Member Klaus dissents from that part of this decision finding no violation as to the distribution of the notices and she concurs in the result as to the chalkboard announcement but would find it to be simply one inseparable aspect of a course of unlawful dealing with individual employees in derogation of the status of their collective bargaining representative.

Ida Klaus, 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 Ithaca City School District Board of Education will not negotiate directly with bus drivers who are represented by the Ithaca City School District Employees Association, NYEA/NEA concerning their terms and conditions of employment.

The Ithaca City School District Board of Education deems null and void the signatures of bus drivers on notices of continued employment that were distributed on or about June 19, 1978, to the extent that such signatures may affect the seniority rights and other terms and conditions of employment of said bus drivers.

....
Employer

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

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

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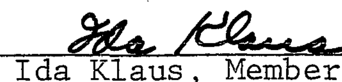
STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of	#2B-6/27/80
DOBBS FERRY UNION FREE SCHOOL DISTRICT	BOARD DECISION ON MOTION
-and-	CASE NO. U-4090
GIDEON HIRSCH	

Gideon O. Hirsch, the charging party herein, has made a motion under §204.7(h) of our Rules for permission to appeal directly to this Board from rulings of a hearing officer. The rulings complained about by Mr. Hirsch deal with the admissibility of evidence. Under our regular procedures, objections to evidentiary rulings can be brought to this Board in the context of exceptions to the decision of a hearing officer. Those procedures were designed to permit cases to be resolved in an expeditious manner. As interlocutory appeals impede the expeditious progress of proceedings, they are permitted only in unusual circumstances. No such circumstances have been demonstrated here. Accordingly, the motion is denied.

DATED: Albany, New York
June 26, 1980

Harold R. Newman, Chairman


Ida Klaus, Member

David C. Randles, Member

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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

SKANEATELES CENTRAL SCHOOL DISTRICT,

Employer,

- and -

SKANEATELES TEACHERS ASSOCIATION, NYSUT/AFT,

Petitioner.

#3A-6/27/80

Case No. C-1988

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 Skaneateles Teachers Association, NYSUT/AFT

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: See attached.

Excluded: See attached.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with the Skaneateles Teachers Association, NYSUT/AFT

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 26th day of June, 1980
Albany, New York

Harold R. Newman, Chairman

Ida Klaus, Member

David C. Randles, Member

6343

PERB 58.3

Case No. C-1988

Unit: Included: All regularly employed classroom teachers requiring certification by the New York State Education Department, inclusive of kindergarten teacher(s), elementary teacher(s), secondary teacher(s), school librarian(s), school nurse teacher(s), guidance counselor(s), reading coordinator(s), school psychologist(s), speech therapist(s), music coordinator(s), physical education teacher(s), music teacher(s), art teacher(s), home economics teacher(s), industrial arts teacher(s),temporary teachers who shall be defined as substitute teachers employed to replace teachers who are on leave, but are expected to return. Temporary teachers shall be further defined as substitute teachers who are employed in the same position for a semester or more. Also included are any other regularly employed special area classroom teachers.

Excluded: Superintendent, Administrative Assistant for Business, Building Principal(s), Assistant Principal(s), Director(s), Department Coordinator(s), Supervisor(s), and any other employee(s) requiring administrative or supervisory certification by the New York State Education Department. All casual, temporary, and substitute persons, except temporary teachers, are excluded as are summer school teacher(s), adult education teacher(s), teacher aide(s), teaching assistant(s) and other para-professionals. Also excluded are all other employees.

PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

HARBORFIELDS CENTRAL SCHOOL DISTRICT,

Employer,

-and-

LOCAL 144, DIVISION 100,
SERVICE EMPLOYEES INTERNATIONAL UNION,
AFL-CIO,

Petitioner.

#3B-6/27/80

Case No. C-2041

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 144, Division 100, Service Employees International Union, AFL-CIO

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: Cooks, Assistant Cooks, and Food Service Workers.

Excluded: Head Cooks, Food Service Director and clerical employees.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with Local 144, Division 100, Service Employees International Union, AFL-CIO

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 26th day of June, 1980
Albany, New York

Harold R. Newman, Chairman

Ida Klaus, Member

David C. Randles, Member

PERB 58.3

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of	
TOWN OF CLAY,	#3C-6/27/80
Employer,	
-and-	Case No. C-2039
CLAY POLICE BENEVOLENT ASSOCIATION,	
Petitioner.	

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 Clay Police Benevolent 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 part-time policemen employed by the Town of Clay.

Excluded: All other employees.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with the Clay Police Benevolent 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 26th day of June, 1980
Albany, New York

Harold R. Newman, Chairman

Ida Klaus, Member

David C. Randles, Member

PERB 58.3

6346