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State of New York Public Employment Relations Board Decisions from September 9, 1980

New York State Public Employment Relations Board

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State of New York Public Employment Relations Board Decisions from September 9, 1980

Keywords

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Comments

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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of	:	#2A-9/9/80
SOUTH JEFFERSON CENTRAL SCHOOL DISTRICT,	:	
Respondent,	:	<u>BOARD DECISION</u>
-and-	:	<u>AND</u>
SOUTH JEFFERSON TEACHERS ASSOCIATION,	:	<u>ORDER</u>
Charging Party.	:	<u>CASE NO. U-4213</u>

WILLMOTT, WISNER, McALOON
SCANLON & SAUNDERS, ESQS.,
(DANIEL SCANLON, JR., ESQ.,
of Counsel), for Respondent

WILLIAM L. CURTIS, JR., for
Charging Party

This matter comes to us on the exceptions of the South Jefferson Central School District (District) to a hearing officer's decision that it violated its duty to negotiate in good faith by appointing teachers to extra duty coaching assignments.

On August 17, 1979, the District assigned coaching responsibilities to three teachers who were in the negotiating unit represented by the South Jefferson Teachers Association (Association) as follows:

1. Jill Hyde - (a) Cheerleading - to commence with the opening of school in September,
(b) Junior Varsity Girls Softball

2. Stephen Jackowski - Junior High School Cross Country Coach - to commence with the opening of school in September
3. Margaret Kibling - (a) Junior Varsity Girls Soccer - to commence August 27, 1979
(b) Junior High School Girls Track Coach

The coaching assignments were to be conducted after the regular dismissal time of students and teachers and, thus, constituted additional working time for Hyde, Jackowski and Kibling. For this additional working time, each was paid the amount specified in the agreement between the District and the Association as compensation for such work.

Prior to August 17, 1979, the practice had been for the District to fill all coaching positions with volunteers. Some of the volunteers had been unit employees while others had not. In February 1979, the District's negotiating team had proposed a change in the agreement with the Association which would have provided that all physical education teachers be appointed to two coaching assignments each academic year. The Association resisted this demand and, eventually, it was taken by the District to fact-finding. The factfinder's recommendation did not resolve the issue and negotiations on the proposal continued thereafter.¹

¹ The stipulation of the parties, entered into on December 6, 1979, states as follows:

"5) Post fact-finding bargaining has continued and no resolution of the District's proposal has been reached by the parties."

The District made two arguments in defense of its conduct - (1) that the appointment of physical education teachers to coaching assignments is not a mandatory subject of negotiation and (2) that proximity to the start of the school year necessitated the appointment of the teachers at the particular time that they were made. The hearing officer rejected both of these arguments and he ordered the District to rescind the assignments not yet completed and to negotiate such assignments in good faith. In its exceptions to us, the District reiterates its two defenses. It also asserts that the remedy proposed by the hearing officer is inappropriate because it would require the cancellation of the spring sports program.

We affirm the determination of the hearing officer that the appointment of Hyde, Jackowski and Kibling to coaching assignments to be performed after the regular dismissal time of teachers and in addition to their normal duties is a mandatory subject of negotiation. Sackets Harbor Central School District, 13 PERB ¶3058 (1980). However, with respect to those coaching assignments that were to have commenced on or before the opening of school in September 1979, we determine that the District's appointment of the teachers did not violate its duty to negotiate in good faith. In Cohoes City School District, 12 PERB ¶3113 (1979), we ruled that a public employer:

"may unilaterally change a term and condition of employment where: (1) there are compelling reasons for the employer to act unilaterally at the time it does so; and (2) it had negotiated the change in good faith by negotiating with the employee organization to the point of impasse before making the change and by continuing thereafter to negotiate the issue."

With respect to the fall activities, the conduct of the District meets this test. It negotiated with the Association to the point of impasse about its proposal that physical education teachers be appointed to coaching assignments. With respect to the fall coaching assignments, the District's proposal had to be implemented on or about August 17, 1979, or not at all. And after implementing its negotiation proposal, the District continued to negotiate as to its proposal. However, the record discloses no compelling need, in August 1979, for the assignment of Jill Hyde as Junior Varsity Girls Softball Coach or Margaret Kibling as Junior High Girls Track Coach because those assignments were to be fulfilled at a later time. Thus, to this extent, we affirm the decision of the hearing officer that the District violated its duty to negotiate in good faith.²

NOW, THEREFORE, WE ORDER the South Jefferson Central School District to cease and desist from taking unilateral action as to any term and condition of employment

² As all the appointments have already been completed, the Order recommended by the hearing officer that the District rescind them is not appropriate.

without prior appropriate negotiations
with the duly chosen representative of
its employees.

DATED: Albany, New York
September 8, 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 RELATIONS BOARD

In the Matter of	:	
EAST SYRACUSE-MINOA CENTRAL SCHOOL DISTRICT,	:	#2B-9/9/80
Employer,	:	
-and-	:	<u>BOARD DECISION</u>
EAST SYRACUSE-MINOA CLERICAL ASSOCIATION,	:	<u>AND</u>
NYSUT,	:	<u>ORDER</u>
Petitioner,	:	<u>CASE NO. C-1994</u>
-and-	:	
COUNCIL OF NON-INSTRUCTIONAL PERSONNEL,	:	
Intervenor.	:	

RICHARD ROSINSKI, ESQ., for
Employer and Intervenor

FRANK SQUILLACE, ESQ., for
Petitioner

On March 12, 1968, the East Syracuse-Minoa Central School District (District) recognized the East Syracuse-Minoa Representative Council of Non-Instructional Personnel (Council) as the exclusive negotiating representative of the following groups of employees: (1) Bus Drivers, (2) Clerical Employees and Teacher Aides, (3) Custodians and Cleaners, (4) Food Service Handlers, (5) Mechanics - General and Transportation. The Council structured itself so that each of the five described groups of employees had a separate organizational structure and elected two representatives to the Council to act on its behalf. The by-laws of the Council referred to the groups as "units of non-instructional personnel". The East Syracuse-Minoa Association of Clerical

Personnel (Association) is the name of the organization of the clerical employees and teacher aides of the District. After affiliating with the New York State United Teachers, the Association filed the petition herein to be the exclusive representative of the clerical employees and teacher aides.

Both the District and the Council opposed the petition. The Acting Director of Public Employment Practices and Representation (Director) ordered that there be an election among the employees in the "unit of teacher aides and clerical employees". The District has filed exceptions to the order of the Director protesting, among other things, that he improperly fragmented the existing negotiating unit. The Council has not filed exceptions.

So far as the record shows, the practice of the parties since the 1968 resolution has been to conduct negotiations at two levels. The Council has represented employees directly for the negotiation of terms and conditions of employment applicable to all five groups. The organizations representing the five "units of non-instructional personnel" have represented the employees in each of the "units" for the negotiation of terms and conditions of employment specifically related to each of them.


By its petition covering only clerical employees and teacher aides, the Association seeks to alter the negotiating unit structure of the non-instructional employees of the District. It seeks to remove clerical employees and teacher aides from the negotiating unit represented by the Council by broadening the

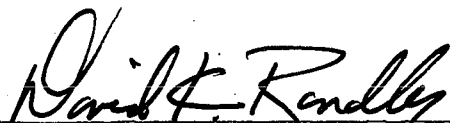
scope of its negotiation for clerical employees and teacher aides to include those terms and conditions of employment that have previously been negotiated by the Council. Although he ordered an election in the unit sought by the Association, the Director did not deal directly with the question of the appropriateness of that unit and, hence, of the fragmentation of the unit represented by the Council. Accordingly, we determine that this matter should be remanded to the Director of Public Employment Practices and Representation for further consideration of the appropriateness of the unit sought.

NOW, THEREFORE, WE ORDER that the matter herein be, and it hereby is, remanded to the Director of Public Employment Practices and Representation for further proceedings in accordance with this Decision.

DATED: Albany, New York
September 9, 1980


Harold R. Newman, Chairman


Ida Klaus, Member


David C. Randles, Member

NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of : #2C-9/9/80
LAKELAND FEDERATION OF TEACHERS, LOCAL 1760, : BOARD DECISION
AMERICAN FEDERATION OF TEACHERS, AFL-CIO, : AND ORDER
Upon the Charge of Violation of Section : CASE NO. D-0159
210.1 of the Civil Service Law. :
:

JAMES R. SANDNER, ESQ., Attorney for
Lakeland Federation of Teachers

This matter comes to us on the Motion of the Lakeland Federation of Teachers, Local 1760, American Federation of Teachers, AFL-CIO (LFT) for an order restoring to it the dues deduction rights suspended by our decision and order of March 29, 1978 (11 PERB ¶3020).

LFT's dues deduction privileges have been suspended because it violated §210.1 of the Civil Service Law (the Taylor Law) in that it engaged in a forty-two day strike against the Lakeland Central School District of Shrub Oak from September 6, 1977 through November 8, 1977. We ordered that the dues deduction privileges of LFT "be suspended indefinitely, commencing on the first practicable date, provided that it may apply to this Board at any time after July 1, 1980 for full restoration of such privileges".

We further directed that LFT "may apply to this Board after September 1, 1979 for the conditional suspension of the forfeiture of those privileges". We indicated that, as a requirement for

both the conditional suspension of the forfeiture and for the full restoration of LFT's dues deduction privileges, we would want proof of good faith compliance with CSL §210.1 after the violation, "such proof to include, for example, the successful negotiation, without violation of said subdivision, of a contract covering the employees in the unit" Finally, we ordered that,

"If it becomes necessary to utilize the dues deduction process for the purpose of paying the whole or any part of a fine imposed by order of a court as a penalty in a contempt action arising out of the strike herein, the suspension of dues deduction privileges ordered hereby may be interrupted or postponed for such period as shall be sufficient to comply with such order of the court, whereupon the suspension ordered hereby shall be resumed or initiated, as the case may be." (emphasis supplied).

By reason of a contempt of court action arising out of the strike, LFT's dues continued to be deducted until May 3, 1979, to pay its contempt of court fine.

By Motion dated September 28, 1979, LFT sought restoration of the dues deduction privilege. We denied the motion on November 9, 1979 (12 PERB ¶3109), noting that our initial order:

". . . contemplated the passage of a minimum period of seventeen months before LFT could apply for the conditional suspension of the forfeiture of its dues deduction privileges. Accordingly, the application by LFT is premature."

The LFT has submitted an affidavit verified on August 13, 1980, requesting restoration of the dues deduction privilege and affirming that it does not assert the right to strike against

any government, and we have ascertained that it has not engaged in, caused, instigated, encouraged, condoned or threatened a strike against the Lakeland Central School District of Shrub Oak since the date of the above-stated violation. The LFT and the School District have successfully negotiated a successor contract to one which expired on June 30, 1980. A representative of the School District has submitted an affidavit supporting the requested restoration.

For the reasons set forth in our decision of November 9, 1979, we treat this present motion as an application for the conditional suspension of the forfeiture of LFT's dues deduction privileges.

We find that such conditional suspension of the forfeiture is warranted. LFT may apply for full restoration of its dues deduction privileges at any time after August 1, 1981, subject to the requirements contained in our order of March 29, 1978.

NOW, THEREFORE, WE ORDER that the indefinite forfeiture of the dues deduction privileges of the Lakeland Federation of Teachers, Local 1760, AFT, AFL-CIO be and it hereby is suspended, effective as of the first payroll period commencing after October 3, 1980, on condition that such suspension of the forfeiture shall be subject to revocation in the event of a strike or strike threat by said employee organization prior to full restoration of its dues deduction privileges.

DATED: Albany, New York
September 8, 1980


HAROLD R. NEWMAN, Chairman


IDA KLAUS, Member


DAVID C. RANGLES, Member

6473

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of	:	#2D-9/9/80
TOWN OF TUXEDO P.B.A.,	:	
Respondent,	:	<u>BOARD DECISION</u>
-and-	:	<u>AND</u>
TOWN OF TUXEDO,	:	<u>ORDER</u>
Charging Party.	:	<u>CASE NO. U-4784</u>

DRANOFF, DAVIS, KRUSE, RESNICK &
FIELDS, ESQS., (RAY KRUSE, ESQ.,
of Counsel), for Respondent

ARTHUR MOSKOFF, ESQ., for Charging
Party

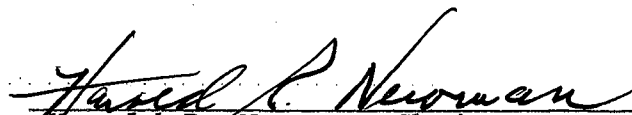
This matter comes to us on the exceptions of the Town of Tuxedo (Town) to the decision of the Director of Public Employment Practices and Representation (Director) dismissing its charge that the Town of Tuxedo P.B.A. violated its duty to negotiate in good faith by submitting to interest arbitration demands that had been previously withdrawn during negotiations. The Town filed its response to the petition for interest arbitration on June 16, 1980, while the improper practice charge herein was not filed until June 26, 1980. Relying upon §205.6 of our Rules, the Director ruled that the charge herein was not timely. In pertinent part, that Rule provides that:

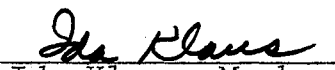
"Objections to the arbitrability of any matter set forth in the petition or response may only be raised by the filing of an improper practice charge....[S]uch a charge(s) may not be filed after the date of the filing of the response [to the petition for arbitration]...."

In support of its exceptions, the Town explains that it did not have improper practice charge forms available at the time it filed the response to the petition for interest arbitration. It also explains that it changed attorneys between the time it received the petition for arbitration and the time it filed its response. This does not excuse the Town's failure to comply with the filing requirements of Rule 205.6¹.

Accordingly, WE AFFIRM the decision of the Director and WE ORDER the charge herein be, and it hereby is, dismissed.

Dated: Albany, New York
September 9, 1980


Harold R. Newman, Chairman


Ida Klaus, Member


David C. Randles, Member

¹ The petition for interest arbitration was filed on April 2, 1980, more than seven weeks before the filing of the response. Assuming arguendo that the time requirements imposed by §205.6 of our Rules can be waived, we would see no reason to waive them in this instance. The seven week period between the filing of a petition for arbitration and the filing of a response afforded the Town ample opportunity to obtain improper practice charge forms. The change of attorneys is not a sufficient reason for its failure to do so.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of :
 : #2E-9/9/80
TOWN OF PENFIELD, :
 :
Employer, : BOARD DECISION AND ORDER
 :
- and - :
 : CASE NO. C-2085
TOWN OF PENFIELD UNIT, :
MONROE COUNTY LOCAL, :
C.S.E.A., INC., LOCAL 1000, AFSCME, :
 :
Petitioner. :
 :

On June 11, 1980, the Town of Penfield Unit, Monroe County Local, C.S.E.A., Inc. (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 Penfield (employer).

Thereafter, the parties agreed to a negotiating unit as follows:

Included: Laborers, mechanical equipment operators, mechanics, sewage treatment plant operators, dispatchers, custodians, cleaners, and working foreman employed by the employer in its Public Works Department and its Parks Department.


Excluded: Director of Public Works, Superintendent of Highways, Superintendent of Sewers, Superintendent of Buildings, Director of Parks and Recreation, office clerical employees, security personnel, students, trainees, temporary or seasonal employees and all other employees of the employer.

Pursuant to agreement, a secret-ballot election was held on August 15, 1980. The results of the election indicate that the majority of eligible voters in the agreed upon unit who

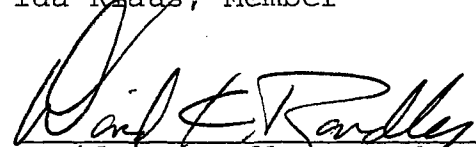
cast valid ballots do not desire to be represented for purposes of collective bargaining by the petitioner.^{1/}

THEREFORE, IT IS ORDERED that the petition should be, and hereby is, dismissed.

Dated: Albany, New York
September 8, 1980


Harold R. Newman, Chairman


Ida Klaus, Member


David C. Randles, Member

^{1/} There were fifteen (15) ballots cast in favor of representation by the petitioner and nineteen (19) ballots against representation by the petitioner.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of :
CITY OF JAMESTOWN, : #3A-9/9/80
- and - Employer, :
JAMESTOWN NURSING UNIT, CHAUTAUQUA COUNTY : Case No. C-2082
LOCAL, CSEA, INC., LOCAL 1000, AFSCME, :
- and - Petitioner, :
JAMESTOWN GENERAL HOSPITAL NURSES :
ASSOCIATION, :
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 Jamestown General Hospital Nurses 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: Nursing Assistant, Licensed Practical Nurse, Registered Professional Nurse, Senior Hospital Nurse, Head Nurse, Technician, Psychiatric Aide, Family Health Nurse, Family Health Aide

Excluded: All other employees.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with the Jamestown General Hospital Nurses 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 9th day of September, 1980
Albany, New York

Harold R. Newman
Harold R. Newman, Chairman

Ida Klaus
Ida Klaus, Member

David C. Randles
David C. Randles, Member

6478

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of :
TOWN OF PHILIPSTOWN, : #3B-9/9/80
Employer, :
-and- :
LOCAL 456, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, : Case No. C-2070
CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, :
Petitioner, :
-and- :
CIVIL SERVICE EMPLOYEES ASSOCIATION, INC., :
PHILIPSTOWN UNIT, LOCAL 1000, 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 the Civil Service Employees Association, Inc., Philipstown Unit, Local 1000, AFSCME, 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: Highway Department & Town Dump-Blue Collar positions: Laborer, Motor Equipment Operator, Heavy Motor Equipment Operator, Mechanic, Working Foreman and Foreman.

Excluded: All others.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with the Civil Service Employees Association, Inc., Philipstown Unit, Local 1000, AFSCME, 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 8th day of September, 1980
Albany, New York

Harold R. Newman
Harold R. Newman, Chairman

Ida Klaus
Ida Klaus, Member

David C. Raudles
David C. Raudles, Member

6479

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of :
COUNTY OF ONEIDA, : #3C-9/9/80
- and - Employer, :
TEAMSTERS LOCAL #182, : Case No. C-2052
- and - Petitioner, :
ONEIDA COUNTY DEPUTY SHERIFFS :
BENEVOLENT ASSOCIATION, :
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 Teamsters Local #182

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 of the Oneida County Deputy Sheriffs Department.

Excluded: Sheriff, Undersheriff, Secretary to Sheriff.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with the Teamsters Local #182

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 8th day of September, 1980
Albany, New York

Harold R. Newman
Harold R. Newman, Chairman

Ida Klaus
Ida Klaus, Member

David C. Randles
David C. Randles, Member

6480

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of :
BROOME COMMUNITY COLLEGE, : #3D-9/9/80
Employer, :
- and - :
BROOME COMMUNITY COLLEGE/NEA, NYEA/NEA, : Case No. C-2019
Petitioner, :
- and - :
CSEA, LOCAL 1000, 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 Broome Community College/NEA, NYEA/NEA

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.

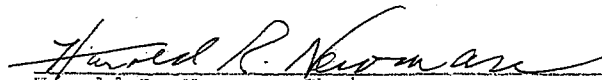
Unit: Included: All clerical and maintenance employees employed by the Broome Community College.

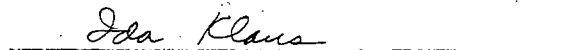
Excluded: President, all Assistant Associate and Vice-Presidents, all Deans and Assistants to the Deans, the Budget Control Officer, all Directors, Executive Assistant to the President, and all Professional Staff, the Secretary to the President, the Secretaries to the Vice-Presidents and all others.

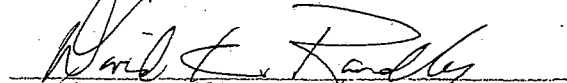
Further, IT IS ORDERED that the above named public employer shall negotiate collectively with Broome Community College/NEA, NYEA/NEA

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 8th day of September, 1980
Albany, New York


Harold R. Newman, Chairman


Ida Klaus, Member


David C. Randles, Member