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State of New York Public Employment Relations Board Decisions from September 22, 1980

New York State Public Employment Relations Board

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Keywords

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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of ELMIRA TEACHERS ASSOCIATION, NYSUT, Respondent, -and- PATRICIA BENSON, Charging Party.	#2A-9/22/80 BOARD DECISION AND ORDER CASE NOS. U-4079 and U-4209

PAUL S. MAYO, for Respondent

JOHN B. SCHAMEL, JR., for Charging Party

Patricia Benson first charged (Case No. U-4079) that the Elmira Teachers Association, NYSUT (Association) discriminatorily and negligently failed to pursue an effective remedy in a grievance that she filed against the Elmira City School District (District). Subsequently, she charged the Association (U-4209) with making coercive statements about her and interfering with her rights because she sought the assistance of a representative of a rival organization in connection with her grievance.[1] Having consolidated the two cases, the hearing officer dismissed both charges. The matter now comes to us on Benson's exceptions to both parts of the hearing officer's decision.

CASE NO. U-4079

Benson, a long-time employee of the District, was characterized by her building principal as "argumentative to the point of

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1 The charge had also alleged that the remarks coerced other members of the Association. Benson has not filed exceptions to that part of the hearing officer's decision dismissing that part of the charge.

being insubordinate" after a meeting with him on October 23, 1978. The principal placed a statement to that effect in a "personnel file" which he maintained in his office. Benson, on her own, filed a grievance complaining about the entry in the file and alleging that the principal was not permitted to maintain a personnel file other than the official personnel file which is maintained in the District's central office. The principal denied the grievance at Level I and sent a copy of his decision to the Association's president and to McMordie, the grievance chairperson.

After receiving the decision, which was the first notification that the Association had of the filing of the grievance, McMordie arranged a meeting with Benson to discuss the grievance. Benson was told by McMordie and Mayo, the Association's field representative, that they did not believe that the grievance had merit, but that they would nevertheless carry it to Level II, which is to the District Superintendent, in the hope that he would resolve the personal differences between Benson and the principal.

When the Superintendent rejected the grievance at Level II, Benson asked McMordie to take the matter further. McMordie informed Benson that she did not deem the matter to be arbitrable and Benson told McMordie that she would pursue her rights with the assistance of a representaitive of a rival organization. McMordie then complained that Benson's resort to a rival organization was "unprofessional and unethical", but told her that the Association stood by its obligation to pursue her rights.[2]

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2 The representative of the rival organization instituted an Article 78 proceeding on Benson's behalf. That action was discontinued when the District's attorney advised Benson that the notes in the principal's file would not be considered a reprimand. This conclusion satisfied Benson.

Benson claims that the conduct of the Association constituted a violation of its duty to her of fair representation. The hearing officer rejected the claim. She found no evidence that the Association was improperly motivated, grossly negligent or irresponsible in its decision not to take Benson's grievance to arbitration. She further found no relationship between McMordie's complaint about Benson's "unprofessional and unethical" conduct in seeking the assistance of a rival organization and the Association's prior decision not to take the grievance to arbitration.

CASE NO. U-4209

After the first incident, the principal proposed to the Superintendent that Benson be transferred to another school because of personal differences between them. Benson objected to the transfer. Four days before Benson was officially notified that she was being transferred, a cocktail party was held at the home of one of the District's teachers at which several Association activists were present. During the course of the party, one of the teachers, a friend of Benson, told the group that according to Benson the transfer was still not certain. Mayo, the Association's field representative, responded that the transfer had been decided upon. The two then debated the matter and made mock bets concerning the outcome. In the course of the discussion, Mayo said that Benson had "screwed" him and that he would "get her". This comment of Mayo is the basis of the second charge.

The hearing officer dismissed the charge. She found the record barren of any evidence that the Association or Mayo had any

role whatsoever in Benson's transfer. She also found that Mayo's statement, although ill considered and unwise, did not, in the context of the social circumstances in which it was made, interfere with Benson's rights and it was therefore not coercive.

Having reviewed the record and considered the arguments of the parties, we affirm the findings of fact and conclusions of law of the hearing officer.

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

DATED: Albany, New York
September 22, 1980

Harold R. Newman, Chairman

Ida Klaus, Member

David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of	#2B-9/22/80
POLICE ASSOCIATION OF THE CITY OF MOUNT VERNON, INC.,	BOARD DECISION AND ORDER
Respondent,	CASE NO. U-4668
-and-	
CITY OF MOUNT VERNON,	
Charging Party..	

RICHARD A. HARTMAN, ESQ., (REYNOLD A. MAURO, ESQ., of Counsel), for Respondent

RAINS & POGREBIN, ESQS., (TERENCE M. O'NEIL, ESQ. and PAUL J. SCHREIBER, ESQ., of Counsel), for Charging Party

The charge herein was filed by the City of Mount Vernon (City) on April 21, 1980. It alleges that the Police Association of the City of Mount Vernon, Inc. (Association) violated its duty to negotiate in good faith by submitting to interest arbitration four demands which do not involve mandatory subjects of negotiation. The Association did not contest the City's allegations of fact, but defended its conduct by asserting that the demands involved mandatory subjects of negotiation. Thus we are presented with questions as to the proper scope of the duty to negotiate in good faith.

The first demand would require the City to afford the Association (a) the use of a room as an office, (b) the use of a

bulletin board and (c) released time for negotiations.[1] The second demand would provide that work schedules will be posted three months in advance and will not be altered, except for emergencies.[2] The third demand is for a Bill of Rights for Police Officers.[3] Among other things, the Bill of Rights provides:

> "If a member of the Police Department is under arrest or is likely to be, that is, if the member is a suspect or the target of a criminal investigation, the member shall be informed of this immediately at the initial contact and he shall be given his rights pursuant to the Miranda decision."

The fourth demand is:

> "All other benefits being enjoyed by the members shall be continued unless specifically amended by this Agreement."

The hearing officer determined that each of the four demands was a nonmandatory subject of negotiation and she ordered the

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1 The demand states:

> "The Association rights are to continue as heretofore, such as the use of a room as an office in Headquarters, the use of a bulletin board, and released time for negotiations as in the past, at the discretion of the Commissioner and according to the needs of the Department. The consent of the Commissioner shall not be unreasonably withheld."

2 The demand states:

> "Work schedules shall be posted three months in advance and shall not be altered, except for emergencies, and in no instance shall the posted schedule be altered for the purpose of avoiding payment of overtime."

3 The complete Bill of Rights proposal is contained in an Appendix to this decision.

Association to negotiate in good faith by withdrawing the demands. Preliminarily, she determined that the record did not indicate that any of the four demands was treated as divisible in negotiations between the Association and the City and thus, each of the demands was proposed as a unit. Applying the rule of Town of Haverstraw, 11 PERB ¶3109 (1978), she ruled that if part of any of the four demands was a nonmandatory subject of negotiation that entire demand must be deemed nonmandatory.

Dealing with the substance of the demands, the hearing officer determined that the first demand was a nonmandatory subject of negotiation because, among other things, it seeks the use of a room as an office. Relying upon Amherst Police Club, 12 PERB ¶3071 (1979), she ruled that this is not a mandatory subject of negotiation because it would require the City to assist the Association in its internal affairs and if granted, would raise questions of improper public employer support of an employee organization. She ruled that the second demand was not a mandatory subject of negotiation because by precluding the alteration of work schedules, except for emergencies, during a three-month period, it would interfere with the City's right to determine its manpower needs. That, she found, is a prerogative of the City even in non-emergency situations. She ruled that the third demand was not a mandatory subject of negotiation because, among other things, it:

"...would interfere with the City Police

> Department's right to investigate possible criminal conduct that might involve a unit employee [citations omitted]".

Finally, she ruled that the fourth demand was too broad to be a mandatory subject of negotiation in that the employee benefits that would be continued were not restricted to matters that were themselves mandatory subjects of negotiation.

The Association has filed exceptions to each of the material conclusions of the hearing officer. Having reviewed the record and considered the arguments of the parties, we affirm those conclusions.

NOW, THEREFORE, WE ORDER the Association to negotiate in good faith by withdrawing the demands determined to be nonmandatory subjects of negotiation.

DATED: Albany, New York
September 22, 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	#2C-9/22/80
CENTEREACH FIRE DISTRICT, Employer,	BOARD DECISION AND ORDER
- and -	
LOCAL 144, DIVISION 100, SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO Petitioner.	CASE NO. C-2088

On June 24, 1980, Local 144, Division 100, Service Employees International Union, AFL-CIO (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 Centereach Fire District.

The parties executed a Consent Agreement wherein they stipulated that the negotiating unit would be as follows:

Included: Custodian, Foreman, Custodian/Dispatcher, Mechanic.

Excluded: All other employees.

Pursuant to the Consent Agreement and in order for the petitioner to demonstrate its majority status, a secret ballot election was held on September 4, 1980. The results of the election indicate that a majority of eligible voters in the stipulated unit do not desire to be represented by the petitioner. 1/

1/ Of the 9 ballots cast, 2 were for and 7 were against representation by the petitioner. There were no challenged ballots.

THEREFORE, IT IS ORDERED that the petition be, and it hereby is, DISMISSED.

Dated: Albany, New York
September 22, 1980

Harold R. Newman, Chairman

Ida Klaus, Member

David C. Randles, Member

PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of	:	
TOWN OF AMHERST, Employer,	:	#3A-9/22/80
- and -	:	
AMHERST CLERICAL AND TECHNICAL EMPLOYEES, Petitioner,	:	Case No. C-2071
- and -	:	
TOWN OF AMHERST UNIT, ERIE COUNTY CHAPTER OF CSEA, INC., 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 Town of Amherst Unit, Erie County Chapter of CSEA, Inc.

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 town employees.

Excluded: Officials, department heads and appointed positions; and Assistant to the Supervisor, Town Attorney, Principal Clerk Typist (Personnel), Clerk Typist (Personnel), Senior Clerk (Special Assessments), Deputy Town Attorneys, Senior Clerk Typist (Council Office), Deputy Town Clerks, Chief Accountant, Assistant Building Commissioner, Clerk to Town Justices, Sewage Maintenance Engineer, Wastewater Treatment Plant Superintendent, Deputy Highway Superintendent, General Foreman (Parks), Assistant Planning Director, Accountant, Senior Clerk Stenographer (Supervisor's Office), School Crossing Guards, seasonal employees, non-regular part-time employees and those employees working less than 20 hours per week, third-party sponsored employment, and those employees covered by any other bargaining unit.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with the Town of Amherst Unit, Erie County Chapter of CSEA, Inc.

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 22nd day of September, 1980
Albany, New York

Harold R. Newman, Chairman

Ida Klaus, Member

David C. Randles, Member

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PERB 58.3

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of	#3B-9/22/80
VILLAGE OF HAMBURG, Employer,	
- and -	Case No. C-2044
COMMUNICATIONS WORKERS OF AMERICA, 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 Communications Workers 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: Police Clerks

Excluded: All others.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with the Communications Workers 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 22nd day of September, 1980
Albany, New York

Harold R. Newman, Chairman

Ida Klaus, Member

David C. Randles, Member

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PERB 58.3