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10-15-1980

## State of New York Public Employment Relations Board Decisions from October 15, 1980

New York State Public Employment Relations Board

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## State of New York Public Employment Relations Board Decisions from October 15, 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-10/15/80
BOARD OF EDUCATION OF THE CITY SCHOOL	:	
DISTRICT OF THE CITY OF BUFFALO,	:	
Employer,	:	BOARD DECISION
-and-	:	AND
	:	<u>ORDER</u>
BUFFALO SUBSTITUTE TEACHERS ASSOCIATION,	:	CASE NO. C-2042
NEW YORK EDUCATORS ASSOCIATION/NATIONAL	:	
EDUCATION ASSOCIATION,	:	
Petitioner.	:	

JOSEPH P. McNAMARA, ESQ.,  
(PATRICIA A. PANCOE, ESQ., and  
CHRISTOPHER K. REED, ESQ., of  
Counsel), for Employer

PAUL E. KLEIN, ESQ., (ROBERT D.  
CLEARFIELD, ESQ. of Counsel),  
for Petitioner

The Board of Education of the City School District of the City of Buffalo (District) maintained a list of per diem substitute teachers during the school years 1978-79 and 1979-80. The list contained 1,606 names. Of these, 1,241 worked at least one day in either of those years. The median number of days worked by any per diem substitute was 25 in 1978-79 and 24 in 1979-80. At the end of the 1978-79 school year, the District notified approximately 400 of the per diem substitute teachers on its list that they had a reasonable assurance of continued employment with the District during the 1979-1980 school year.<sup>1</sup>

<sup>1</sup> The probable effect of this notice was to render those teachers ineligible for unemployment compensation during the hiatus between the 1978-79 and the 1979-80 school years. Labor Law Section 590.10

In October 1979, the Buffalo Substitute Teachers Association, New York Educators Association/National Education Association (Association) wrote to the District requesting a list of per diem substitute teachers. Such a list was provided by the District and contained approximately 400 names. The Association then filed the petition herein to represent the approximately 400 per diem substitutes.

In response to the petition, the District asserted that all per diem substitute teachers constitute a single class with the same employment characteristics and that they could not be divided for representation purposes. Thus, given the low median number of days worked by per diem substitute teachers, they have only a casual employment relationship with the District and they are, therefore, not employees within the meaning of the Taylor Law.

The Director of Public Employment Practices and Representation was persuaded by the District's argument and he dismissed the petition. The matter is now before us on the exceptions of the Association. The questions before us are whether the per diem substitutes employed by the District are divisible into two identifiable groups and, if so, whether one of the groups has a sufficiently significant employment relationship with the District to be deemed employees within the meaning of the Taylor Law.

Ordinarily, per diem substitute teachers constitute a single indivisible group. Although some of the teachers work frequently, and others only rarely, this distinction is not deemed sufficient

to divide them into two groups<sup>2</sup>. Here, however, the District itself appears to have recognized the existence of two separate groups of per diem substitutes and notified the teachers in one of the groups that they had a reasonable assurance of continued employment. It may be that these same teachers were also recognized by the District as having a distinct identity as employees in that their names only were furnished to the petitioner in October 1979 in response to its request for the names of its per diem substitutes. In order to resolve the questions before us, we should know the basis of the District's distinctive treatment of these per diem substitute teachers.

ACCORDINGLY, WE REMAND this matter to the Director of Public Employment Practices and Representation for such further proceedings as may be necessary to resolve the issues presented, as herein indicated.

DATED: Albany, New York  
October 15, 1980

Harold R. Newman  
Harold R. Newman, Chairman

Ida Klaus  
Ida Klaus, Member

David C. Randles  
David C. Randles, Member

<sup>2</sup> By way of contrast, long term substitute teachers are distinguishable from per diem substitutes and they have been held to be employees for the purposes of the Taylor Law. Weedsport Central School District, 12 PERB ¶3004 (1979).

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of	:	#2B-10/15/80
LAWRENCE UNION FREE SCHOOL DISTRICT,	:	
Employer,	:	<u>BOARD DECISION AND ORDER</u>
-and-	:	
LAWRENCE PUBLIC SCHOOLS ASSOCIATION OF COUNSELORS AND PSYCHOLOGISTS,	:	<u>CASE NO. C-1893</u>
Petitioner,	:	
-and-	:	
LAWRENCE TEACHERS ASSOCIATION,	:	
Intervenor.	:	

WINICK, GINSBERG, EHRLICH, REICH & HOFFMAN  
(JEROME H. ERLICH, of Counsel), for Employer

PAUL J. DERKASH, ESQ., for Petitioner

VINCENT CALLACI, for Intervenor

This matter comes to us on the exceptions of the Lawrence Union Free School District (District) to a decision of the Acting Director of Public Employment Practices and Representation (Director) defining a negotiating unit of guidance counselors and psychologists employed by it and directing an election in that unit. The District argues that the Director erred in that he did not add the guidance counselors and psychologists to an existing unit of teachers and other non-supervisory professional employees which is represented by the Lawrence Teachers Association (LTA).

Facts

Until November 1978, there were two negotiating units of professional employees of the District. One was comprised of teachers and other employees in related professional occupations and the other was comprised of principals, executive assistant principals, assistant principals, directors, supervisors, administrative assistants, elementary assistants in instruction, department heads, guidance counselors and psychologists. The former was represented by LTA and the latter by Lawrence Public Schools Association of Administrators and Supervisors. In the fall of 1978, it became apparent that the second unit was not cohesive and that an organization representing only principals, assistant principals and directors intended to file a petition for a separate unit. After discussions with representatives of the employees in the second unit, the District agreed to recognize the existence of two separate units, one for principals, assistant principals, directors, supervisors and administrative assistants, and a second for department heads. This left the guidance counselors and psychologists in no negotiating unit, it being the intention of the District to add them to the teachers' unit when the period preventing any change in that unit would expire.<sup>1</sup>

The guidance counselors and psychologists objected to the course of action contemplated by the District and, forming the Lawrence Public Schools Association of Counselors and Psychologists (Association), filed a petition for representation in a

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<sup>1</sup> The teachers' unit could not be changed until November 1980, except by agreement, because the District and LTA were parties to an agreement that would not expire until June 30, 1981.

separate unit. LTA, which has intervened in the proceeding, supports the petition. It does not wish to have counselors and psychologists in its unit because their terms and conditions of employment are somewhat more favorable than those of teachers, making it a problem for LTA to represent both groups in a single unit.

The Director found that guidance counselors and psychologists have somewhat different and usually more favorable terms and conditions of employment than teachers, but that many of the terms and conditions of employment of guidance counselors and psychologists were also enjoyed by some of the employees in the LTA unit. Accordingly, he determined that there were sufficient similarities between the terms and conditions of employment of guidance counselors and psychologists and some of the employees in the LTA unit that, if confronted with the unit determination question herein as an initial matter, he might have defined a single unit. He declined to do so, however, because of the long-standing separation of guidance counselors and psychologists from the employees in the teachers' unit and a concern that this past separation would lead to conflicts between the two groups if they were to be placed together in a single unit.

#### Discussion

6503 In support of its exceptions, the District argues that the Director did not pay sufficient heed to its administrative convenience in having to deal with four units of professional employees, where, in the past, it had only to deal with two. It also argues that the Director engaged in unsupported conjecture in reaching the conclusion that a unit combining guidance counselors and psychologists with teachers would not be cohesive.

We affirm the decision of the Director. While we understand the District's concern about having four negotiating units for professionals in place of two such negotiating units, we note that it was with the District's consent that the original single supervisors' unit was divided into three groups, one of principals, assistant principals and directors, one of department heads, and one of guidance counselors and psychologists. Moreover, the District agreed that the first two groups should form separate units and objects only to a separate unit for the third group.

The District had a good reason for agreeing to the dissolution of the original supervisors' unit. That unit was not cohesive, and a non-cohesive negotiating unit serves neither the need of the employees to share a community of interest nor the administrative convenience of the employer. That principle is applicable to the issue before us. The evidence supports the determination of the Director that the combination of guidance counselors and psychologists with teachers in a single unit would incur a significant risk of another non-cohesive unit and one which the teachers' representative does not wish to represent.

NOW, THEREFORE, WE AFFIRM the decision of the Director, and

WE ORDER that there be a unit as follows:

Included: Guidance counselors and psychologists

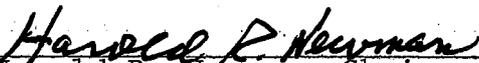
Excluded: All other employees

WE FURTHER ORDER that an election by secret ballot be held under the Director's supervision among the employees of this unit who were employed on the payroll date immediately preceding the date of this decision, unless the

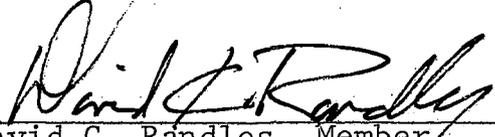
Lawrence Public Schools Association of Counselors and Psychologists submits to the Director within ten days from the date of receipt of this decision, evidence to satisfy the requirements of §201.9(g)(1) of the Rules for certification without an election.

WE FURTHER ORDER that the District shall submit to the Director and to the Lawrence Public Schools Association of Counselors and Psychologists, within ten days of the date of its receipt of this decision, an alphabetized list of all employees within this unit who were employed on the payroll date immediately preceding the date of this decision.

DATED: Albany, New York  
October 15, 1980

  
\_\_\_\_\_  
Harold R. Newman, Chairman

  
\_\_\_\_\_  
Ida Klaus, Member

  
\_\_\_\_\_  
David C. Randles, Member

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of	:	#2C-10/15/80
TOWN OF AMHERST,	:	
	:	
Employer,	:	<u>BOARD DECISION AND ORDER</u>
-and-	:	
	:	
AMHERST EMPLOYEES ASSOCIATION,	:	<u>CASE NO. C-2051</u>
	:	
Petitioner,	:	
-and-	:	
	:	
AFSCME, COUNCIL 66, LOCAL 1783B,	:	
AFL-CIO,	:	
	:	
Intervenor.	:	

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SILVERBERG, YOOD, SELLERS & RAMM,  
(SANFORD M. SILVERBERG, ESQ., of  
Counsel), for Petitioner

This matter comes to us on the exceptions of the Amherst Employees Association (Association) to a decision of the Director of Public Employment Practices and Representation (Director) dismissing its petition. The Director dismissed the petition on his own motion because it was not in compliance with §201.4(d) of our Rules, which provides that a petition must be accompanied by a declaration by a responsible officer or agent of the Association attesting to the authenticity of the showing of interest.

In the instant case, the showing of interest is comprised of several petitions containing eight (8) signatures per page, each countersigned by J. Fox, a unit employee. There is no indication, however, that J. Fox is a responsible officer or agent of the Association and there is no declaration by him or by any other

representative of the Association that the showing of interest is authentic. In its place, however, there is an indication at the bottom of each of the pages of the petition comprising the showing of interest that the signatures were all executed in the presence of a notary public.

In its exceptions, the Association asserts that it is in substantial compliance with the requirements of §201.4(d) of our Rules. We agree. We also agree with the Director, however, that the procedure followed by the Association did not satisfy the purpose of the Rule, which, he said, is "to establish the Association's responsibility and accountability for the submission, not the notary's...." We do not believe, however, that this technical inadequacy is a sufficient basis for dismissing the petition.

Under the circumstances herein, the time in which to file the declaration of authenticity should be extended so as to permit the Association to change its substantial compliance to complete compliance. Accordingly, the Association is hereby given ten (10) working days from its receipt of this decision to submit a declaration of authenticity in conformity with §201.4(d) of our Rules.

NOW, THEREFORE, WE ORDER that, if the declaration of authenticity is timely submitted, the matter be remanded to the Director for further proceedings; if it is not timely submitted,

6507

the petition be dismissed.

DATED: Albany, New York  
October 15, 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

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In the Matter of : #2D-10/15/80  
:   
WAYNE CENTRAL SCHOOL DISTRICT, :   
: BOARD DECISION AND ORDER  
:   
Employer, :   
:   
-and- : CASE NO. C-2093  
:   
WAYNE CENTRAL EDUCATIONAL SUPPORT :   
PERSONNEL ASSOCIATION, :   
:   
Petitioner. :   
:

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On June 30, 1980, the Wayne Central Educational Support Personnel Association (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 Wayne Central School District (employer).

Following an informal conference, the parties executed a consent agreement which was approved by the Acting Director of Public Employment Practices and Representation on August 8, 1980. The negotiating unit stipulated to therein was as follows:

Included: All non-teaching employees.

Excluded: Substitutes, Facilities Manager, Transportation Manager, Personnel Assistant, Secretary to Director of Administrative Operations, Secretary to Superintendent, Clerk of Board of Education, Treasurer of Board of Education, Cafeteria Coordinator, seasonal and casual laborers.

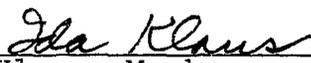
Pursuant to the consent agreement, a secret-ballot election was held on September 16, 1980. The results of the election indicate that the majority of eligible voters in the stipulated

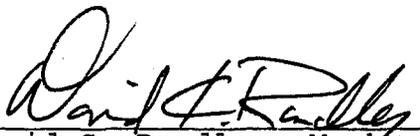
unit who cast valid ballots do not desire to be represented for purposes of collective negotiations by the petitioner.<sup>1/</sup>

Therefore, it is ordered that the petition be, and hereby is, dismissed.

Dated: Albany, New York  
October 15, 1980

  
Harold R. Newman, Chairman

  
Ida Klaus, Member

  
David C. Randles, Member

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<sup>1/</sup> There were 51 ballots cast in favor of and 61 ballots against representation by the petitioner. Three challenged ballots were cast, but they were not sufficient to affect the results of the election.

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of : #2E-10/15/80  
:   
NORTH SALEM CENTRAL SCHOOL DISTRICT, :   
:   
Employer, : BOARD DECISION AND ORDER  
:   
-and- :   
: CASE NO. C-2099  
LOCAL 200, GENERAL SERVICE EMPLOYEES' :   
UNION, SEIU, AFL-CIO, :   
:   
Petitioner. :   
:

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On July 16, 1980, Local 200, General Service Employees' Union, SEIU, 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 North Salem Central School District (employer).

Following an informal conference, the parties executed a consent agreement which was approved by the Director of Public Employment Practices and Representation on August 27, 1980. The negotiating unit stipulated to therein was as follows:

Included: All regular full-time and part-time Drivers, Driver/Custodians and Custodians.

Excluded: Head Bus Driver, Head Custodian and all other employees.

Pursuant to the consent agreement, a secret-ballot election was held on September 25, 1980. The results of the election indicate that the majority of eligible voters in the stipulated unit who cast valid ballots do not desire to be represented for

purposes of collective negotiations by the petitioner.<sup>1/</sup>

Therefore, it is ordered that the petition be, and hereby is, dismissed.

Dated: Albany, New York  
October 15, 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>1/</sup> There were 10 ballots cast in favor of and 17 ballots against representation by the petitioner. One challenged ballot was cast, but it was not sufficient to affect the results of the election.