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12-2-1980

State of New York Public Employment Relations Board Decisions from December 2, 1980

New York State Public Employment Relations Board

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State of New York Public Employment Relations Board Decisions from December 2, 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-12/2/80
UNITED FEDERATION OF TEACHERS, :
Respondent, : BOARD DECISION AND ORDER
-and- :
 : CASE NO. U-4725
JACOB ABRAMSON, SAUL GOTTLIEB, :
SETH WOHL and NORMAN SIROTA, :
Charging Parties. :
:

JAMES R. SANDNER, ESQ., (NANCY E.
HOFFMAN, ESQ., of Counsel) for
Respondent

SAUL GOTTLIEB, pro se

The charge herein was filed by Saul Gottlieb, and others, on May 22, 1980. It alleges that the United Federation of Teachers (UFT) violated its duty of fair representation in that it failed to represent the charging parties in layoff proceedings and in civil litigation matters. The hearing officer determined that the charging parties were not in any unit represented by UFT, and on September 24, 1980, dismissed the charge. In a letter dated October 24, 1980, and postmarked the following day, Mr. Gottlieb filed exceptions to the hearing officer's decision. UFT responded to the exceptions on October 28, 1980, and urged that the exceptions be dismissed because they were filed by Mr. Gottlieb more than fifteen working days after his receipt of the decision of the hearing officer and are, thus, not timely.

Section 204.10 of the Rules of this Board permits the filing of exceptions within fifteen working days after the receipt of the decision of a hearing officer. If filed by mail, the act of mailing must occur two days before the due date of any filing. (Rule 200.10). Mr. Gottlieb received his copy of the decision of the hearing officer on October 4, 1980. Allowing for weekends and the holiday of Columbus Day, his exceptions should have been filed by October 21. He did not do so and he did not request an extension of time during which to file exceptions.

Section 204.12 of the Rules of this Board provides that in the event of "extraordinary circumstances", we may extend the time during which a request may be made for an extension of time to file exceptions.¹ Mr. Gottlieb has alleged no such extraordinary circumstances. By way of explanation of his late filing, Mr. Gottlieb wrote without specifying details that his exceptions should be deemed timely because he received his copy of the decision late because of a death in his family.

Mr. Gottlieb has not indicated any specific facts showing how he was prejudiced by the circumstances of a death in his family. Hence the extension of his time during which to file exceptions due to extraordinary circumstances is not justified. The effect of the delay in Mr. Gottlieb's receipt of the decision did not prejudice him. His time to file exceptions ran from the date of his receipt of that decision.

¹ See Westbury/Handy, 12 PERB ¶3107 (1979).

NOW, THEREFORE, WE ORDER that the exceptions of
Saul Gottlieb be, and they hereby
are, dismissed.

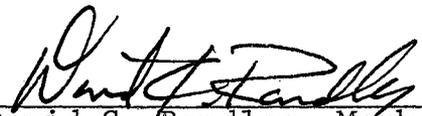
DATED: New York, New York
December 2, 1980



Harold R. Newman, Chairman



Ida Klaus, Member



David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of : #2B-12/2/80
STATE OF NEW YORK, : BOARD DECISION AND ORDER
Respondent, :
-and- : CASE NO. U-4373
CIVIL SERVICE EMPLOYEES ASSOCIATION, :
INC., LOCAL 1000, AFSCME, AFL-CIO, :
Charging Party. :

JOSEPH M. BRESS, ESQ., (FLORENCE T. FRAZER,
ESQ., of Counsel) for Respondent

ROEMER & FEATHERSTONHAUGH (STEPHEN J. WILEY,
ESQ., of Counsel) for Charging Party

This matter comes to us on the exceptions of the Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO (CSEA) to a hearing officer's decision dismissing its charge that the State of New York (State) violated its duty to negotiate in good faith by unilaterally requiring the payment of a five dollar application fee as a prerequisite to participation in open competitive civil service examinations.

The hearing officer found that, in 1963, the State suspended a prior practice of charging an application fee for open competitive civil service examinations. On July 9, 1979, it notified CSEA that the application fee would be reinstated and it did reinstate the fee on July 24, 1979.¹ The CSEA president expressed dissatisfaction with the reinstatement of the fee, but no demand was made to negotiate the subject.

¹ The authority for this action is CSL §50.5.

The hearing officer further found that there is a distinction between open competitive and promotional civil service examinations. The former may be taken by anyone, whether or not already employed by the State, who meets the minimum qualifications for the position for which the examination is given. The latter may be taken only by present employees within a promotional series of titles and is for advancement by reason in part of their State service, from one title to another within the series. He also found that some State employees are limited to open competitive examinations either because the position they are seeking is not within their promotional series or because they are not otherwise eligible for the promotional examination. Examples of reasons why a State employee may not be eligible for a promotional examination are that he does not have permanent status in his current position or that he does not have sufficient time in the current position to qualify for the promotional examination.

On these facts, the hearing officer determined that open competitive examinations are directed at the public at large; that current State employment is not a requirement for participation in such an examination; and that State employees who take them are no different from the public at large. He concluded that present State employment carries no reasonable expectancy of progression into positions covered by open competitive examinations. He found that the fee is totally unrelated to employment status and cannot be considered a term or condition of employment, and concluded that the State did not violate its duty to negotiate in good faith when it reinstated the application fee.

In support of its exceptions, CSEA argues that an opportunity for a current employee to take a civil service examination without having to pay a fee is a financial benefit and hence a term and condition of employment with respect to which the State could not act unilaterally.

The exemption of State employees from an application fee requirement for the taking of open competitive examinations would be a financial benefit and a term and condition of employment.² Had CSEA sought to negotiate for such an exemption, the State would have been obligated to negotiate the matter. In fact, apart from a protest in general terms against the proposed action, CSEA sought no negotiations. In its charge, CSEA protests the total unilateral action of the State which imposed a fee upon all applicants for open competitive examinations whether or not they are State employees. The State's action was not directed at current State employees as such. Its application to current State employees was only incidental to the substance of the charge.

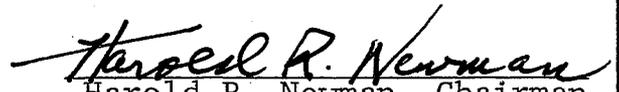
The action of the State may be analogized to that of a government that maintains a bridge, the use of which has been toll-free. If that government decided to impose a toll for the use of the bridge, its employees, as well as other constituents, would be affected. The same would be true thereafter if the government

² See Haverstraw v. Newman, 75 AD2d 844, 13 PERB ¶7006 (2nd Dept. 1980), in which the Appellate Division affirmed a decision of this Board that legal insurance is a form of compensation and, as such, a term and condition of employment.

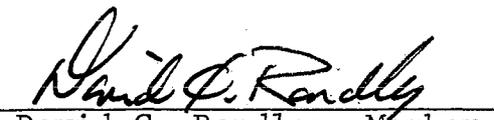
decided to increase the toll. Notwithstanding the financial impact of such action upon the government's employees, there would be no duty to negotiate with the union representing its employees before imposing or raising the tolls. A different conclusion would be reached if the union sought to negotiate an exemption for unit employees or if unit employees alone had been exempted from the fee and the government unilaterally eliminated that exemption. The union did not seek to initiate any negotiations. In City of New York, 9 PERB ¶3076 (1976), we held that a public employer could not unilaterally withdraw the special privilege that had been afforded to a limited group of employees of free transportation on a ferry that the public employer operated.

NOW, THEREFORE, WE affirm the decision of the hearing officer and WE ORDER that the charge herein be, and it hereby is, dismissed.

DATED, New York, New York
December 2, 1980


Harold R. Newman, Chairman


Ida Klaus, Member


David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

: #2C-12/2/80

CITY OF BUFFALO,

: BOARD DECISION AND

Respondent,

: ORDER

-and-

LOCAL 2651, AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO,

: CASE NO. U-4473

Charging Party.

JOSEPH P. MCNAMARA, ESQ., (RAUL FIGUEROA,
ESQ., of Counsel) for Respondent

GORSKI & MANIAS (JEROME C. GORSKI, ESQ.,
of Counsel) for Charging Party

This case comes to us on the exceptions of the City of Buffalo (City) to a decision that it unilaterally changed a term and condition of employment on February 1, 1980, in that it discontinued the practice of permitting its building inspectors to use their personal automobiles for work and reimbursing them for such use. Instead, it offered to pay their bus fare. The City admitted the unilateral action and defended its conduct by asserting a contractual right to do so. In its exceptions, it argues that the hearing officer should have declined to assert jurisdiction because the charge merely alleges a contract violation.

Building inspectors have used their own cars for work and been reimbursed for such use since at least 1963. Past collective agreements, however, have been silent as to the right of building inspectors, as a matter of their own choice, to use their personal automobiles for work and as to the reimbursement rate under such circumstances. The 1976-77 agreement did set a \$4.50 per day

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reimbursement rate for the use of a private automobile when its use is required by the City. At stated, in pertinent part:

"[E]mployees who are required to use their personal automobiles on City business shall be compensated at the rate of \$4.50 per day.

Those employees who are required to travel throughout the City on City business shall be reimbursed for any travel expenses incurred when they do not own automobiles or do not use their automobiles." (emphasis supplied)

The rate specified in that agreement and in prior agreements for the reimbursement of employees who were required to use their personal automobiles was extended in the past to employees who were permitted to do so.

During negotiations for an agreement to succeed the one that expired on June 30, 1979, Local 2651, AFSCME, AFL-CIO (Local 2651) demanded an increase in the allowance specified in the agreement to \$5.25. The City opposed any increase. At one point during negotiations, it counter-proposed that inspectors be given free bus tokens. The union rejected the proposal, and it was not discussed again during negotiations. The parties did not reach an agreement, and eventually the dispute was submitted to the City's legislative body. In response to the union's continuing request for an increase of the automobile allowance to \$5.25, the City offered the suggestion that inspectors could use buses if not satisfied with the existing rate. In December 1979, the City Council imposed a legislative determination which provided that:

"The existing collective bargaining agreement between the parties be continued until June 30, 1980 except for the changes therein as recommended

in the factfinder's report...and with the following additional changes...the auto allowance for members of Local No. 2651 be increased to \$5.25 per day."

The legislative action was still in effect at the time of the City's unilateral action at issue before us.

The hearing officer determined that the issue before him did not involve the interpretation of a contract. He found that the issue before him would not be one of contract interpretation even if the legislatively imposed settlement were deemed to be the equivalent of a contract.¹ He reasoned that the contract, or its legislative equivalent, merely deals with the obligation of the City to reimburse employees who are required to use their personal automobiles, while the instant issue involved the right of employees to be reimbursed for the use of their personal automobiles when they are permitted to use them. The latter issue, he ruled, was covered by a long-standing past practice and not by the provisions of the contract.

In its exceptions, the City argues that the prior contract, and its extension by the legislative determination, gave the City an option to require or not to require the use of personal automobiles and it set a reimbursement rate only for such required use of automobiles. Thus, according to the City, it was not obligated to compensate employees except when personal automobile use was required. In effect, the City argues, Local 2651 consented to unilateral action by it concerning permitted use of personal automobiles.

¹ See Massapequa Union Free School District, 8 PERB ¶3022 (1975) in which we held that coverage of a subject by a legislative determination has the same consequences regarding the obligation to negotiate the subject thereafter as does coverage of the subject by an agreement.

The City's position is not consistent with either its own past practice or its actions during the negotiations. The past practice was to permit the use of personal automobiles by employees and to extend the contractual rate for required use of personal automobiles to permitted use of personal automobiles. The negotiation position of the City confirms its awareness of these past practices. When confronted with a demand for an increase in the reimbursement rate for the required use of personal automobiles, it responded that the building inspectors could use public transportation if they were not satisfied with the existing rate. Clearly, that response could have meaning only with respect to the permitted and not the required use of personal automobiles.

NOW, THEREFORE, WE AFFIRM the decision of the hearing officer, and

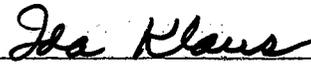
WE ORDER the City to return to the practice in effect prior to February 1, 1980, of permitting building inspectors in the negotiating unit represented by Local 2651 to use personal automobiles in the performance of their jobs, and to reimburse such employees therefor under the rate established by the City Council

for the use of their automobiles
since February 1, 1980.

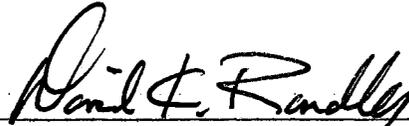
DATED: New York, New York
December 1, 1980



Harold R. Newman, Chairman



Ida Klaus, Member



David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of	:	#2D-12/2/80
STEUBEN-ALLEGANY BOCES,	:	
	:	
Respondent,	:	<u>BOARD DECISION</u>
	:	
-and-	:	<u>AND</u>
	:	
STEUBEN-ALLEGANY BOCES UNIT, STEUBEN	:	<u>ORDER</u>
COUNTY CHAPTER of the CIVIL SERVICE	:	
EMPLOYEES ASSOCIATION, INC.,	:	<u>CASE NO. U-4259</u>
	:	
Charging Party.	:	

HENRY M. HILLE, ESQ., for Respondent

RAYMOND F. DUCHARME, for Charging Party

This matter comes to us on the exceptions of Steuben-Allegany BOCES (BOCES) to a hearing officer's determination that it violated §209.a.1(d) of the Taylor Law by acting unilaterally when it issued a directive on June 19, 1979, limiting employees who wished to smoke in an office building to two designated smoking areas.

FACTS

BOCES moved some of its offices to a new building in 1976. Before doing so, it told some of its employees that after the move, smoking would be limited to specified smoking areas. This message was not communicated directly to the Steuben-Allegany BOCES Unit, Steuben County Chapter of the Civil Service Employees Association, Inc. (CSEA), charging party herein, and neither BOCES nor CSEA ever proposed negotiations regarding the right of employees to smoke while working.

From the time of the move in 1976, until June 19, 1979, BOCES continued to permit employees to smoke at their work stations. Throughout this time, the only space that BOCES deemed adequately ventilated for smoking was the conference room and, on occasion, it was unavailable to employees who wished to smoke. The June 19, 1979 directive was issued after BOCES completed the ventilation of the kitchen. Pursuant to the directive, smoking would be permitted only in the conference room or the kitchen. Employees who wished to smoke were permitted to do so during their coffee breaks. They were also permitted to take work into the conference room or kitchen where that was feasible. Moreover, they were permitted to utilize the half-hour coffee break time in more frequent and shorter intervals than the two traditional fifteen-minute breaks. The restriction on smoking in office rooms was not applicable to unit employees only. It applied to non-unit employees and to visitors in the building as well.

BOCES, which had been asked by some employees to provide them with a smoke-free work environment, considered the new procedure to be a reasonable compromise between the interests of smoking and nonsmoking employees. CSEA, however, was not satisfied and it filed both a grievance and the improper practice charge herein. On October 12, 1979, an arbitrator denied the grievance on the ground that the collective agreement between BOCES and CSEA "unambiguously reserved to management any rights

it had before the contract was signed except those 'expressly and specifically' abridged.¹

In the improper practice case, BOCES again pointed to the management rights clause of the contract and asserted that by agreeing to it, CSEA waived any right it may have had to negotiate regarding smoking rights of employees. It also argued that, in any event, the arbitration award had dealt with the question and was dispositive of the issue. The hearing officer rejected both of these arguments. He determined that the language of the management rights clause was too general to constitute a waiver of CSEA's right to negotiate a matter not specifically covered by the contract and that the arbitrator's contrary conclusion was not binding upon this Board.²

Dealing with the merits of the charge, the hearing officer determined that the directive restricting smoking to specified locations was a work rule that dealt with a term and condition of employment. Balancing the unit employees' interest in negotiating this term and condition of employment against

¹ The language of the management rights clause is:
"Any and all rights, powers and authority the Employer had prior to entering this Agreement are retained by the Employer except as expressly and specifically abridged, delegated, granted or modified by this Agreement."

² These determinations were made in an interim decision 13 PERB ¶4511 (1980), in which the hearing officer denied a motion to dismiss the charge.

management's interest in controlling the work environment and in satisfying some non-unit employees, the hearing officer determined that the unit employees' interest predominated, and he concluded that the directive involved a mandatory subject of negotiation. In making this determination, the hearing officer noted that the office building in which smoking was limited was not normally used by students, thus, BOCES could not argue persuasively that the limitation on smoking was designed to influence student conduct.

DECISION

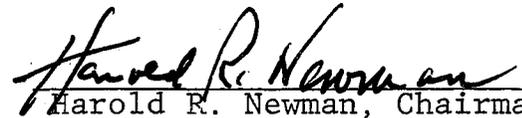
In its exceptions, BOCES argues that the hearing officer should have accepted the arbitrator's award, that he ignored evidence that the union had waived its right to negotiate and that he erred in finding the restriction on smoking to be a mandatory subject of negotiation. Each of these arguments was presented to and considered by the hearing officer. For the reasons set forth in his decision, we affirm the conclusions of the hearing officer.

NOW, THEREFORE, WE ORDER BOCES TO:

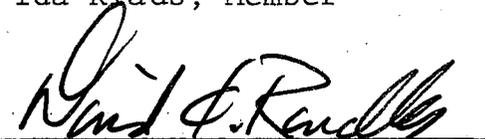
1. Rescind and cease enforcement of its June 1979 directive regarding smoking restrictions insofar as that directive and enforcement practice apply to employees in the unit represented by the CSEA at the BOCES' Bath office.

2. Negotiate in good faith with CSEA regarding imposition of smoking restrictions upon unit employees.
3. Post notices in the form attached in its Bath office in locations ordinarily used to communicate information to the unit employees.

Dated: New York, New York
December 2, 1980


Harold R. Newman, Chairman


Ida Klaus, Member


David C. Randles, Member

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 Steuben-Allegany BOCES (BOCES):

1. Will rescind and cease enforcement of the June 1979 directive regarding smoking restrictions insofar as that directive and enforcement practice apply to employees in the unit represented by the Steuben-Allegany BOCES Unit, Steuben County Chapter of the Civil Service Employees Association, Inc. (CSEA) at the BOCES' Bath office;
2. Will negotiate in good faith with CSEA regarding imposition of smoking restrictions upon unit employees.

Steuben-Allegany BOCES
.....
Employer

Dated

By
(Representative) (Title)

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

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

#2E-12/2/80

SOUTH ORANGETOWN CENTRAL SCHOOL DISTRICT,

Respondent,

BOARD DECISION

- and -

AND ORDER

SOUTH ORANGETOWN KITCHEN WORKERS ASSOCIATION,

CASE NO. U-4315

Charging Party.

ARTHUR PRINDLE, ESQ., for Respondent

GERARD E. MOLONY, ESQ., for
Charging Party

This matter comes to us on the exceptions of the South Orangetown Kitchen Workers Association (Association) to a hearing officer's decision dismissing its charge that the South Orangetown Central School District (District) had refused to negotiate with it in good faith.

FACTS

The District has employed cafeteria workers since 1971. On February 15, 1977, the District entered into an agreement with the Association in which it recognized the Association as the exclusive bargaining agent of the cafeteria workers. The agreement, which covered the period September 1, 1977 through August 31, 1979, specified that commencing September 1977, there would be sixteen cafeteria workers and that the number would be increased or decreased thereafter pursuant to a mutually acceptable procedure depending upon the volume of sales.

Notwithstanding this agreement, the District abolished the unit positions on August 23, 1978, and it subcontracted its food service program. The Association did not file an improper practice charge with respect to this conduct of the District but it did file a contract grievance. An arbitration award was issued on July 12, 1979, in which the arbitrator determined that the District had violated the contract by laying off the employees. He awarded the sixteen employees, who were laid off, back pay in the aggregate amount of \$64,351.06.

On July 31, 1979, the Association sought to commence negotiations for an agreement to succeed the one that would expire on August 31, 1979, and the District met with the Association on August 16, 1979. At that negotiation session, it offered to re-hire the cafeteria workers and to pay them the same wages it paid to educational aides. The Association counter-proposed a considerably higher salary schedule and the District responded that its ability to pay the wages sought by the Association was adversely affected by the arbitration award. It, therefore, proposed that the cafeteria workers waive their rights under the arbitration award or some part of it.¹

¹ It is not clear from the record, but the District's proposal may have been that the cafeteria workers should yield some of the benefits won in the arbitration award even if they were to receive the same wages as the educational aides. The District's Labor Relations Consultant testified (at Page 51)

"Q. If they had accepted that offer that you made at that time, would they have had a contract without giving back the Arbitrator's Award."

"A. It is very difficult for me to answer that because if the kitchen workers moved off their position on \$7. down to the wage package that was already answered by other units, it was a good likelihood that we could have worked something out, yes. I don't know. It depends on what happens at the table."

The Association rejected the District's proposal and negotiations were broken off. Two days later, the District declared an impasse and it sought the assistance of the conciliation section of the Board for the resolution of that impasse. A factfinder was appointed and the District participated in the factfinding process. It, nevertheless, rejected the recommendation of the factfinder.

The District's response to the charge was that it had been under no obligation to negotiate with the Association because the Association no longer represented any employees of the District. The hearing officer did not rule on the merits of this response.² Instead, she dismissed the charge on the ground that the evidence did not establish that the District refused to negotiate in good faith.

DECISION

In support of its exceptions, the Association argues that the conduct of the District in August 1979, and thereafter, did not constitute good faith negotiations. It contends that the District conditioned negotiations upon a waiver by the Association of rights of unit employees that had accrued in the past. Thus, according to the Association, the District was not willing to negotiate future terms and conditions of employment but was

² The arbitration award would appear to constitute a finding that the Association was assured that the District would continue to employ sixteen cafeteria workers for the contract period. At least until August 31, 1979, the cafeteria workers would appear to have continued to have had the status of employees of the District, even though they were not performing work at that time.

trying to force 'the union' to return money that was paid under a past contract."

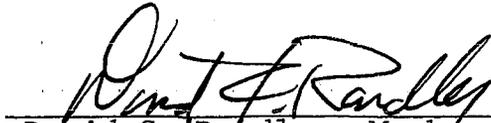
We do not read the record as supporting the Association's argument. The District entered into negotiations with the Association and made a wage offer. During these negotiations, it indicated that its ability to pay was affected by the liability that was occasioned by the arbitration award. It never indicated that it would not enter into an agreement with the Association unless the cafeteria workers waived the benefits won under the arbitration award; it merely indicated that the cost of those benefits was a factor that would affect the level of wages it would be willing to provide.

NOW, THEREFORE, WE AFFIRM the decision of the hearing officer and we order that the charge herein be, and it hereby is, dismissed.

Dated, New York, New York
December 2, 1980


Harold R. Newman, Chairman


Ida Klaus, Member


David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of
COUNTY OF NASSAU,

Respondent,

-and-

NASSAU CHAPTER OF THE CIVIL SERVICE
EMPLOYEES ASSOCIATION, INC.,

Charging Party.

#2F-12/2/80

BOARD DECISION AND ORDER

CASE NO. U-3933

EDWARD G. McCABE, ESQ., (JACK OLCHIN, ESQ.,
of Counsel), for Respondent

RICHARD M. GABA, ESQ., (BARRY J. PEEK, ESQ., of
Counsel), for Charging Party

The charge herein was filed by the Nassau Chapter of the Civil Service Employees Association, Inc. (CSEA). It alleges that the County of Nassau (County) violated §209-a.1(d) of the Taylor Law in that it discontinued a past practice of assigning County-owned vehicles to employees of its Department of Public Works on a 24-hour basis.¹ The County acknowledged the conduct complained about, but it asserted that it was not violative of the Taylor Law.

The hearing officer found merit in both specifications of the charge. He found that County employees in the Department of Public Works had enjoyed the benefit of County-owned vehicles, which were available on a 24-hour basis for use in connection with

¹ The charge also alleges that the County refused to negotiate the "impact" of the discontinuance of the use of County-owned vehicles, but it does not indicate the nature of the "impact" proposals. In view of our decision that the discontinuance of the use of vehicles is improper, we do not reach the impact issue.

their employment as well as for driving to and from work, and that this benefit was eliminated by the County unilaterally. He also found that the county rejected a demand by CSEA that it negotiate the impact of the elimination of the benefit. On these facts, the hearing officer recommended that

"the County be ordered forthwith to reinstate that practice and compensate the affected employees for reasonable expenses incurred for transportation to and from work since January 1, 1979, plus interest at 3% per annum, and to negotiate with CSEA, at its request, as to the use of County vehicles by employees in its Department of Public Works."

The County has filed exceptions to the decision of the hearing officer. In support of those exceptions, it argues that the use of County-owned vehicles by employees in the Department of Public Works is not a mandatory subject of negotiation because that use was for the convenience of the County, rather than for the benefit of the employees. In connection with this argument, it complains that it was not given an adequate opportunity to establish relevant facts. A second argument made by the County is that the agreement between the County and CSEA contained a "zipper clause" which permitted the County to eliminate the use of County-owned vehicles. Third, the County argues that the contract between the parties did not require it to maintain past practices and, absent such a requirement, it was free to alter past practices.

The record indicates that the County was not deprived of any opportunity to establish relevant facts.² The County's argu-

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² The basic facts are presented by stipulation. The County was also given an opportunity to submit additional allegations of fact in the form of an affidavit. Such affidavit would either have been the basis for an expansion of the stipulations or of a hearing. The County did not avail itself of the opportunity to submit the affidavit.

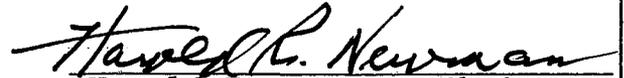
ment that employee use of its vehicles was not a mandatory subject of negotiation was considered by the hearing officer. So was its argument that CSEA waived any right it may have had to negotiate as to the discontinuance of that use. For the reasons stated in his decision, we affirm the action of the hearing officer rejecting these arguments. The proposition that an employer may change a past practice as to working conditions unless there is a contractual duty to maintain past practices was not considered by the hearing officer. We reject this proposition. The duty to negotiate in good faith includes an obligation to continue past practices that involve mandatory subjects of negotiation, even in the absence of a provision to that effect in the contract. Queens Borough Public Library, 8 PERB ¶3085 (1975). We find that there was a duty to negotiate the subject matter of the past practice.

NOW, THEREFORE, WE ORDER the County of Nassau to:

1. Reinstate the practice of assigning County-owned vehicles to certain employees of its Department of Public Works on a 24-hour basis;
2. Compensate the affected employees for reasonable expenses incurred for transportation to and from work since January 1, 1979, plus interest at 3% per annum; and

3. Negotiate with CSEA, at its request, as to the use of County-owned vehicles by employees in its Department of Public Works.

Dated, New York, New York
December 2, 1980


Harold R. Newman, Chairman


Ida Klaus, Member


David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of	:	#2G-12/2/80
TOWN OF CHILI,	:	
Employer,	:	<u>BOARD DECISION AND</u>
-and-	:	<u>ORDER</u>
CHILI UNIT, MONROE COUNTY LOCAL, CSEA,	:	<u>CASE NO. C-2090</u>
INC., LOCAL 1000, AFSCME,	:	
Petitioner.	:	

On June 23, 1980, the Chili Unit, Monroe County Local, CSEA, Inc., Local 1000, AFSCME (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 Chili (employer). The parties executed a consent agreement which was approved by the Director of Public Employment Practices and Representation on October 1, 1980. The negotiating unit stipulated to therein was as follows:

Included: The following positions in the Town Highway Department: Laborer, Motor Equipment Operator, General Mechanic, Mechanic, Working Foreman, Road Foreman

Excluded: All other employees.

Pursuant to the consent agreement, an election was held on November 5, 1980. The results of the election indicate that the majority of eligible voters in the stipulated unit who cast

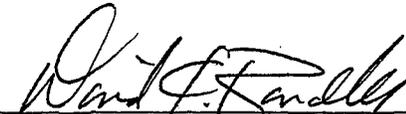
valid ballots do not desire to be represented for purposes of collective negotiations by the petitioner.¹

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

Dated: New York, New York
December 1, 1980


Harold R. Newman, Chairman


Ida Klaus, Member


David C. Randles, Member

¹ There were 8 ballots cast in favor of and 13 ballots against representation by the petitioner.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of	:	#2H-12/2/80
COUNTY OF SENECA and LOCAL 850, CIVIL	:	
SERVICE EMPLOYEES ASSOCIATION, INC.,	:	<u>BOARD DECISION AND</u>
	:	<u>ORDER</u>
Respondents,	:	
-and-	:	
WILLIAM L. JONES,	:	<u>CASE NO. U-4547</u>
Charging Party.	:	

JOHN M. SIPOS, ESQ., for County of Seneca,
Respondent

ROEMER & FEATHERSTONHAUGH (MICHAEL J. SMITH,
ESQ., of Counsel), for Local 850, CSEA,
Respondent

WILLIAM L. JONES, pro se

The charge herein was filed by William L. Jones, the Welfare Management System Coordinator of the County of Seneca (County), on February 14, 1980. He alleges that the County violated §209-a.1(a) and (c) of the Taylor Law in that it interfered with his rights and discriminated against him because he filed a contract grievance. He further alleges that Local 850 of the Civil Service Employees Association, Inc. (CSEA) violated §209-a.2(a) in that it supported the improper conduct of the County.

The alleged impropriety involves a grievance filed by Jones on October 30, 1979, pursuant to Article 15 of the agreement between the County and CSEA. The County rejected the grievance on the ground that Jones was not covered by the agreement; it did not consider the position of Welfare Management System Coordinator

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to be in the negotiating unit. Jones deemed the rejection of his grievance to have been occasioned by a conspiracy between the County and CSEA to deny him his contract rights and he filed the charge herein.

The evidence presented at the hearing is that, prior to June 5, 1978, Jones was employed by the County as an accountant, a position within the negotiating unit. The position of Welfare Management System Coordinator was created on May 23, 1978, by a resolution of the County Board of Supervisors and Jones was appointed to that position in June 1978. The newly created position was not considered to be a unit position either when it was created or when Jones was promoted to it. Nevertheless, when the January 1, 1979 agreement between the County and CSEA was distributed, it specified a salary for the position of Welfare Management System Coordinator. The salary contained in the schedule was not the actual salary received by Jones and, according to the testimony of the present and prior personnel directors of the County, the listing of the position in the salary schedule was a mistake. In support of this testimony, there is a letter from the current personnel officer of the County to the president of CSEA, dated October 17, 1979, indicating that "The title of Welfare Management System Coordinator is a typographical error on the 1979 schedule. This title should never have appeared on the schedule."

During the hearing, Jones sought to introduce evidence to establish that he was not a department head and could not be ex-

cluded from the unit on that ground. The hearing officer rejected the testimony for the reason that even if Jones established that he is not a department head, it would not follow that he is in the negotiating unit. The hearing officer credited the testimony of the prior and present personnel officers of the County that the position of Welfare Management System Coordinator was not in the negotiating unit and she determined that proof that Jones was not a department head would therefore be irrelevant. In the absence of evidence that either the County or CSEA discriminated against Jones or interfered with his rights, the hearing officer dismissed the charge.

Jones has filed exceptions to the hearing officer's decision.

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

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

Dated, New York, New York
December 2, 1980


Harold R. Newman, Chairman


Ida Klaus, Member


David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of : #2I-12/2/80
: :
BOARD OF POLICE COMMISSIONERS OF THE : BOARD DECISION AND
NEW PALTZ POLICE DEPARTMENT : :
: ORDER
Upon the Application for Designation : :
of Persons as Managerial or Confidential. : :
: CASE NO. E-0666

J. PHILIP ZAND, ESQ., Attorney for Applicant

The Board of Police Commissioners of the New Paltz Police Department (Employer) filed an application on July 17, 1980, for the designation of its Chief of Police and Police Lieutenant as managerial or confidential employees in accordance with the criteria set forth in §201.7 of the Taylor Law. Rule 201.10(b) of this Board specifies that such an application "may be filed from the first day of the fourth month through the last day of the fifth month of the fiscal year of the public employer...." The fiscal year of the Employer is coterminous with the calendar year. Accordingly, an application would be timely only if filed during the months of April and May.

As the application herein was not timely filed, it was dismissed by the Acting Director of Public Employment Practices and Representation (Acting Director). The Employer has filed exceptions to the decision of the Acting Director. Its exceptions indicate no basis for a reversal of his decision. Rather, they refer to a related representation case (C-2079) brought by a petition of the New Paltz Police Association to represent all police officers who work for the Employer, including the Chief of Police and the Police Lieutenant. The Employer is opposing

the petition because it objects to the inclusion of the Chief of Police and the Police Lieutenant in the negotiating unit. That case is presently before the Director of Public Employment Practices and Representation. It is independent of the instant case because the Chief of Police and the Police Lieutenant may be excluded from the negotiating unit on grounds specified in §201.7 of the Taylor Law even if they are not designated as managerial or confidential employees.

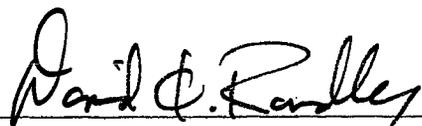
WE AFFIRM the findings of fact and conclusions of law of the Acting Director in the case before us, and

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

DATED: New York, New York
December 2, 1980


Harold R. Newman, Chairman


Ida Klaus, Member


David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of : #2J-12/2/80
COUNTY OF NASSAU, :
Respondent, :
-and- : BOARD DECISION AND ORDER
CLARE J. ROSE, :
Charging Party. : CASE NO. U-4276

JACK OLCHIN, ESQ., for Respondent

WILLIAM D. FRIEDMAN, ESQ., for Charging
Party

This matter comes to us on the exceptions of Clare J. Rose, charging party herein, to a hearing officer's decision dismissing her charge for failure to prosecute.

The record shows that the attorneys for Rose and for the County of Nassau, respondent herein, both agreed that a hearing was unnecessary because all relevant facts could be stipulated. The hearing officer gave the parties a series of extensions of time during which to prepare and file their stipulation, but they did not do so. He scheduled a hearing, but it was cancelled at the joint request of the parties' attorneys. It was originally agreed that the stipulation would be submitted on January 19, 1980. After considerable correspondence, a final deadline was set for July 16, 1980. When that deadline was not met and no explanation of the delay was given the hearing officer dismissed the charge.

In support of her exceptions, charging party states that, as a remedy for the delay, the hearing officer should have held a hearing and not dismissed the charge. The record indicates that

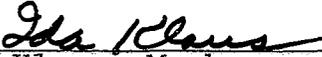
the hearing officer had scheduled hearings for November 14, 1979 and May 21, 1980. Both were adjourned at the request of the charging party as well as of the respondent, and not on the hearing officer's own motion.

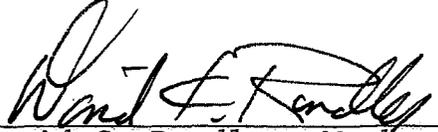
NOW, THEREFORE, WE AFFIRM the decision of the hearing officer, and

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

Dated, New York, New York
December 2, 1980


Harold R. Newman, Chairman


Ida Klaus, Member


David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of :
ROCHESTER CITY SCHOOL DISTRICT, : #3A-12/2/80
Employer, :
- and - : Case No. C-2035
ROCHESTER TEACHERS ASSOCIATION, :
NYSUT, AFT, :
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 Rochester 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: All Education Associates.

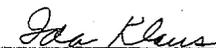
Excluded: All others.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with the Rochester 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 1st day of December, 1980
New York, New York


Harold R. Newman, Chairman


Ida Klaus, Member


David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of : #3B-12/2/80
ORLEANS-NIAGARA BOARD OF COOPERATIVE :
EDUCATIONAL SERVICES, :
Employer, :
- and - :
CIVIL SERVICE EMPLOYEES ASSOCIATION, INC., : Case No. C-2017
Petitioner, :
- and - :
ORLEANS-NIAGARA BOCES ASSOCIATION OF :
EDUCATIONAL SECRETARIES, :
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 Orleans-Niagara BOCES Association of Educational Secretaries

has been designated and selected by a majority of the employees of the above named public employer, in the unit described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: Unit 1 - Clerical Staff - Account Clerk/Typist, Senior Clerk, Audio-Visual Aide, Typist, Stenographer, Payroll Clerk, Nurse.

Excluded: Secretary to District Superintendent/Internal Auditor, Secretary to Assistant Superintendent for Administration/Board Clerk, Secretary to Assistant Superintendent for Instruction, Senior Account Clerk/District Treasurer, Resource Materials Manager, Superintendent of Buildings and Grounds, and all other employees.

Further, IT IS ORDERED that the above named public employee shall negotiate collectively with the Orleans-Niagara BOCES Association of Educational Secretaries

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 1st day of December, 1980
New York, New York

Harold R. Newman
Harold R. Newman, Chairman

Ida Klaus
Ida Klaus, Member

David C. Randles
David C. Randles, Member