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# State of New York Public Employment Relations Board Decisions from January 20, 1981

New York State Public Employment Relations Board

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# State of New York Public Employment Relations Board Decisions from January 20, 1981

**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-1/20/81
ELWOOD UNION FREE SCHOOL DISTRICT,	:	<u>BOARD DECISION AND ORDER</u>
Respondent,	:	
-and-	:	<u>CASE NO. U-4535</u>
ELWOOD TEACHERS ALLIANCE,	:	
Charging Party.	:	

TOAZ, BUCK, MYERS, BERNST, YOUNG & COTE  
(LOUIS C. BERNST, ESQ., of Counsel) for  
Respondent

SY HOROWITZ for Charging Party

This matter comes to us on the exceptions of the Elwood Teachers Alliance (Alliance) to a hearing officer's decision dismissing its charge. The charge alleged that the Elwood Union Free School District (District) had violated its duty to negotiate in good faith regarding the impact of its assignment of a unit employee's job duties to a nonunit employee. The hearing officer determined that the District had met with the Alliance to discuss the impact of the reassignment of the job duties and had thus fulfilled its obligation to negotiate. In support of its exceptions, the Alliance argues that the record does not support the hearing officer's finding of a meeting between the District and the Alliance. It further argues that the discussion which the District alleges to have taken place would not have constituted negotiations within the meaning of the Taylor Law.

The record shows that in May 1979, a unit employee who spent one-half of her time as a reading teacher and one-half of her time as an administrative assistant, retired. The District abolished her position at that time. It assigned her administrative responsibilities to nonunit administrators and her reading responsibilities to a unit employee. On December 17, 1979, the Alliance wrote to the District demanding "that your representative contact Biedermann, [the president of the Alliance] to negotiate the impact of this new condition of employment." On January 15, 1980, Assistant Superintendent Burr called Biedermann to discuss the demand. During their conversation, he indicated that he saw "no need to negotiate" the matter but, nevertheless did discuss the relative positions of both parties.<sup>1</sup> No further discussions were held, nor were any sought by the Alliance.

The question presented by these facts is whether the District refused to negotiate the impact of the reassignment.<sup>2</sup>

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<sup>1</sup> Biedermann did not recall this discussion or even hearing from Burr about Alliance's demand of December 17, 1979. The hearing officer, however, credited the testimony of Burr that it took place. We find no reason to reject this finding of the hearing officer.

<sup>2</sup> Section 204.3 of the Taylor Law provides:

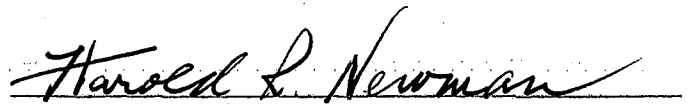
"For the purpose of this article, to negotiate collectively is the performance of the mutual obligation of the public employer and a recognized or certified employee organization to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written agreement incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession."

On the evidence before us, we cannot find a violation by the District. It was asked to negotiate the matter with Biedermann and it did engage in discussions with him. It is not clear whether what transpired during those discussions constituted negotiations. That Burr saw "no need to negotiate" is not an indication that he refused to do so. The fact that he did review the position of both parties shows at least a willingness to negotiate. The record does not show that the District refused to meet with the Alliance at reasonable times after the first discussion and to confer about the impact of the reassignment. On the contrary, the record indicates that no further discussions were held because the Alliance did not seek them.

We conclude that the record does not establish a violation of the District's duty to negotiate.

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

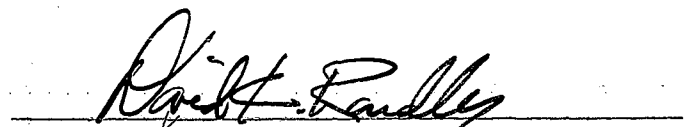
DATED: Albany, New York  
January 19, 1981



Harold R. Newman, Chairman



Ida Klaus, Member



David C. Randles, Member

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of	:	#2B-1/20/81
COUNTY OF ULSTER,	:	
	:	<u>BOARD DECISION AND ORDER</u>
Respondent,	:	
-and-	:	<u>CASE NO. U-4590</u>
ULSTER COUNTY UNIT, LOCAL 856, CIVIL	:	
SERVICE EMPLOYEES ASSOCIATION, INC.,	:	
Charging Party.	:	

THEALAN ASSOCIATES, INC. (JOSEPH T. KELLY,  
of Counsel) for Respondent

ROEMER & FEATHERSTONHAUGH (WILLIAM M. WALLENS, ESQ.,  
of Counsel) for Charging Party

This matter comes to us on the exceptions of the Ulster County Unit, Local 856, Civil Service Employees Association, Inc. (CSEA), to a hearing officer's decision dismissing its charge that the County of Ulster (County) acted improperly on December 19, 1979, when it awarded certain unit employees merit increases.<sup>1</sup> In its charge, CSEA alleges that the awarding of merit increases constitutes a violation of the "status quo" and is, therefore, violative of CSL §209-a.1(d). It also alleges that the awarding of merit increases indicated that the County negotiated with individual employees and is, therefore, violative of CSL §209-a.1

<sup>1</sup> The hearing officer's decision also dismissed a charge of CSEA in Case U-4589. There are no exceptions to that part of the hearing officer's decision and we do not deal with it.

(a), (b) and (c).<sup>2</sup> The hearing officer dismissed the allegation that the awarding of merit increases was violative of CSL §209-a.1(d) because she found that the County did not effect any unilateral change. She also found that it was not violative of CSL §209-a.1(a), (b) and (c) because she found no factual basis for this part of the charge. Having reviewed the record, we affirm the finding of the hearing officer that the evidence does not indicate any violation of §209-a.1(a), (b) or (c). Indeed, CSEA's arguments in support of its exceptions appear to be directed only to the hearing officer's determination that the County's award of the merit increases does not violate CSL §209-a.1(d).

The record shows that the County awarded merit increases to employees in six of the last ten years, but that the number awarded in 1980 is substantially greater than the number awarded in any of the prior years. There were an aggregate 24 merit increases during the prior ten years and 20 merit increases in 1980. The record further shows that provision for merit increases was annually included in both the tentative and proposed budgets of the County but that the County did not inform CSEA of that fact and that it was not aware of the merit increases awarded during

2 CSL §209-a.1 provides:

"1. Improper employer practices. It shall be an improper practice for a public employer or its agents deliberately (a) to interfere with, restrain or coerce public employees in the exercise of their rights guaranteed in section two hundred two for the purpose of depriving them of such rights; (b) to dominate or interfere with the formation or administration of any employee organization for the purpose of depriving them of such rights; (c) to discriminate against any employee for the purpose of encouraging or discouraging membership in, or participation in the activities of, any employee organization; or (d) to refuse to negotiate in good faith with the duly recognized or certified representatives of its public employees."

6707

the past ten years.

CSEA might possibly have discerned the past merit increases from the budget. To do so, however, it would have had to compare the line item budget entry of more than 1000 unit employees with the rate that would have normally been applicable to them under the contract. This might have revealed that on 24 occasions, individual employees were paid above the contract rate.

The basis of the hearing officer's decision that the County did not violate its duty to negotiate in good faith is that the merit increases awarded over the ten-year period had established a past practice and that the County's conduct in 1980 was consistent with that past practice. Thus, the County's conduct did not constitute a change in any term or condition of employment.

We do not agree. Merit increases are a mandatory subject of negotiation. A public employer violates its duty to negotiate in good faith when it unilaterally decides to award merit increases. The fact that Ulster County committed such a violation for ten years does not mean that it is privileged to continue to do so. Although the conduct of the County was not clandestine, that conduct cannot be deemed appropriate without prior notice to CSEA. It would be unreasonable, moreover, to expect that CSEA should have discovered for itself the past awards of merit increases.

Accordingly, CSEA cannot be held to have acquiesced in the action of the County in paying merit increases. That conduct must be seen as a repeated violation and not as an accepted past practice. Therefore, we determine that the County violated §209-a.1(d)



by awarding merit increases to certain unit employees in December, 1979.

NOW, THEREFORE, WE ORDER:


(1) that so much of the charge as alleges a violation of CSL §209-a.1(a), (b), and (c) be, and it hereby is, dismissed;

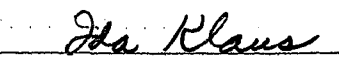
(2) that the County cease and desist from refusing to negotiate with CSEA concerning merit increases;

(3) that the County cease and desist from unilaterally awarding merit increases to unit employees; and,

(4) that the County post conspicuously a notice in the form attached, at locations normally used for communication with its employees.

DATED: Albany, New York  
January 20, 1981

  
Harold R. Newman, Chairman

  
Ida Klaus, Member

  
David C. Randles, Member

APPENDIX

# NOTICE TO ALL EMPLOYEES

PURSUANT TO

THE DECISION AND ORDER OF THE

NEW YORK STATE

PUBLIC EMPLOYMENT RELATIONS BOARD

and in order to effectuate the policies of the

NEW YORK STATE

PUBLIC EMPLOYEES' FAIR EMPLOYMENT ACT

we hereby notify our employees that:

1. The County of Ulster will not refuse to negotiate with CSEA concerning merit increases.
2. The County of Ulster will not unilaterally award merit increases to unit employees.

..... County of Ulster .....  
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 : #2C-1/20/81  
:   
THE DEER PARK TEACHERS ASSOCIATION, : BOARD DECISION AND ORDER  
: CASE NO. D-0184  
:   
Upon the Charge of Violation of :   
Section 210.1 of the Civil Service :   
Law. :   
:

MARTIN L. BARR, Esq., (RICHARD A. CURRERI, Esq.  
of Counsel), for Charging Party

PAUL E. KLEIN, Esq. (ROBERT D. CLEARFIELD, Esq., of  
Counsel) for Respondent

COOPER and ENGLANDER (ROBERT E. SAPIR, Esq.  
of Counsel) for Intervenor Deer Park Union  
Free School District

On October 26, 1979, Martin L. Barr, Counsel to this Board, filed a charge alleging that the Deer Park Teachers Association (Respondent) had violated Civil Service Law (CSL) §210.1 in that it caused, instigated, encouraged, condoned and engaged in a strike against the Deer Park Union Free School District on September 28, October 2 and October 3, 1979. The charge further alleged that on said dates, approximately 355 employees in a negotiating unit consisting of approximately 360 professional teaching and nonteaching professional employees, participated in the strike.

At the outset of a hearing held on November 19, 1980, respondent agreed to withdraw its answer, thus admitting all allegations of the charge upon the understanding that the charging party would recommend, and this Board would accept, a penalty of ~~loss of its dues and agency shop fee deduction privileges to the~~ extent of forty percent (40%) of the amount which would otherwise be deducted during a year<sup>1/</sup>. The charging party has so recommended.

On the basis of the unanswered charge, we find that the respondent violated CSL §210.1 in that it engaged in a strike as charged, and we determine that the recommended penalty is a reasonable one and will effectuate the policies of the Act.


NOW, THEREFORE, WE ORDER that all dues deduction privileges of the Deer Park Teachers Association, and agency shop fee deduction privileges, if any, be suspended, commencing on the first practicable date, and continuing for such period of time during which forty percent (40%) of its annual dues and agency shop fees, if any, would otherwise be deducted. Thereafter, no dues or agency shop fees shall be deducted on its behalf by the Deer Park Union Free School District until the Deer Park


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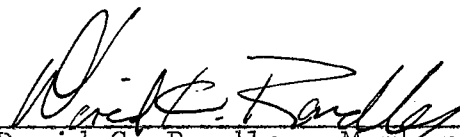
<sup>1/</sup> This is intended to be the equivalent of a five-month suspension of the privileges of dues and agency shop fee deductions, if any, if such were withheld in twelve monthly installments throughout the year. In fact, the annual dues of the respondent are not deducted in this manner.

Teachers Association affirms that it no longer asserts the right to strike against any government, as required by the provisions of CSL §210.3(g).

Dated: Albany, New York  
January 19, 1981

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

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

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

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of :  
TOWN OF MEREDITH, : #3A-1/20/81  
Employer, :  
- and - : Case No. C-2128  
LOCAL 338, INTERNATIONAL BROTHERHOOD :  
OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN :  
AND HELPERS 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 Local 338, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers 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.

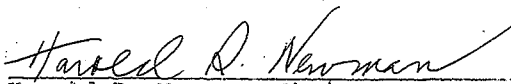
Unit: Included: All town highway employees.

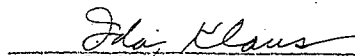
Excluded: All others.

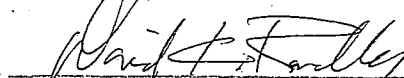
Further, IT IS ORDERED that the above named public employer shall negotiate collectively with Local 338, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America

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 19th day of January, 1981  
Albany, 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 :  
WAVERLY CENTRAL SCHOOL DISTRICT, : #3B-1/20/81  
Employer, :  
- and - :  
WAVERLY EDUCATIONAL SECRETARIES ASSOCIATION, : Case No. C-2127  
NYEA/NEA, :  
Petitioner, :  
- and - :  
WAVERLY EDUCATIONAL SECRETARIES 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 Waverly Educational Secretaries Association, 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.

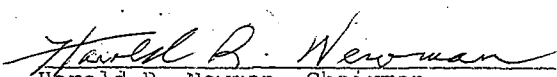
Unit: Included: All civil service competitive office staff.

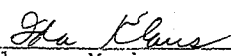
Excluded: Secretary to Superintendent/Business Manager,  
Senior Account Clerk.

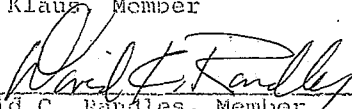
Further, IT IS ORDERED that the above named public employer shall negotiate collectively with the Waverly Educational Secretaries Association, NYEA/NEA

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 19th day of January, 1981  
Albany, 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 \_\_\_\_\_ :  
COUNTY OF CHEMUNG, \_\_\_\_\_ : #3C-1/20/81  
-and- Employer/Petitioner, \_\_\_\_\_ :  
CIVIL SERVICE EMPLOYEES ASSOCIATION, \_\_\_\_\_ : Case No. C-2083  
-and- Intervenor, \_\_\_\_\_ :  
INTERNATIONAL BROTHERHOOD OF TEAMSTERS \_\_\_\_\_ :  
CHAUFFEURS, WAREHOUSEMEN & HELPERS, \_\_\_\_\_ :  
LOCAL UNION 529, \_\_\_\_\_ :  
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 Civil Service Employees Association

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

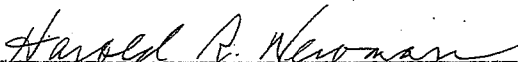
Unit: Included: All employees in the titles of:  
Senior Sewer Treatment Operator,  
Sewer Treatment Operator, Sewer  
Treatment Operator Trainee, Skilled  
Mechanic, Maintenance Mechanic,  
Maintenance Man, Semi-skilled  
Laborer, Laborer.


Excluded: All other employees.

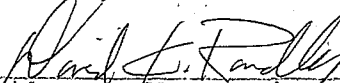
Further, IT IS ORDERED that the above named public employer shall negotiate collectively with Civil Service Employees Association

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 19th day of January, 1981  
Albany, New York

  
Harold R. Newman, Chairman

  
Ida Klaus, Member

  
David C. Randles, Member