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New York State Public Employment Relations  
Board (PERB)

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3-31-1981

## State of New York Public Employment Relations Board Decisions from March 31, 1981

New York State Public Employment Relations Board

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## State of New York Public Employment Relations Board Decisions from March 31, 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

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In the Matter of : #2A-3/31/81  
WEST HEMPSTEAD UNION FREE SCHOOL DISTRICT, :  
Respondent, : BOARD DECISION  
- and - : AND ORDER  
WEST HEMPSTEAD AIDES ASSOCIATION, : CASE NO. U-4056  
Charging Party. :  
:

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HENRY A. WEINSTEIN, ESQ., for Respondent

KAPLOWITZ & GALINSON, ESQS. (BARBARA J. JOHNSON, ESQ.,  
of Counsel), for Charging Party

The West Hempstead Union Free School District abolished five teacher aide positions, the incumbents of which had performed supervisory duties in the high school cafeteria, terminated the employment of these employees and assigned the cafeteria supervision to teachers who performed these assignments for one period per day at extra pay. Four of the aides were later reemployed for fewer hours per day in different positions.

The West Hempstead Aides Association, which represents the teacher aides, filed a charge alleging that this abolition of unit positions and assignment of the work outside the unit without first negotiating with it, violates §209-a.1(d) of the Taylor Law.

Upon stipulated facts obtained through an exchange of correspondence between the hearing officer and the parties, the hearing officer found that the District acted in violation of the

belief that a disciplinary problem existed in the high school which could better be controlled by classroom teachers. He held that because the safety and proper supervision of students was involved, the District's decision was a managerial one made in the performance of its mission. The hearing officer therefore concluded that the District's decision did not involve a mandatory subject of negotiation. Accordingly, he dismissed the charge.

The charging party duly filed exceptions to the hearing officer's decision arguing, inter alia, that the employer's mission, i.e., the service it chooses to provide to the community, was not involved because the teachers perform exactly the same work as that performed by the teacher aides.

While the District has maintained that the duties, assignments and responsibilities of the teachers who now supervise the cafeteria are dissimilar to those of the teacher aides they replaced, there is no evidence in the record with respect to this claim. We deem such evidence relevant to a determination of this <sup>1</sup> matter.

There is also no evidence in the record of the disciplinary problem claimed to exist in the high school cafeteria. We deem such evidence relevant as well.

Accordingly, we are remanding the proceeding to the hearing officer to conduct a hearing for the purpose of taking evidence relating to the disciplinary problem claimed to exist in the

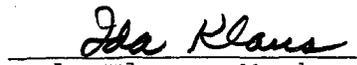
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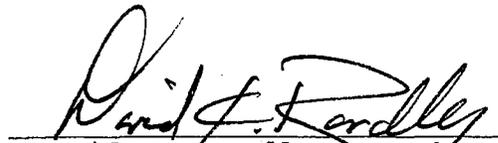
<sup>1</sup> North Shore Union Free School District, 10 PERB ¶3082 (1977, remand), 11 PERB ¶3011 (1978, final decision).

high school cafeteria and the duties, assignments and responsibilities of the teachers who now supervise the cafeteria and the teacher aides who formerly supervised the cafeteria. The hearing officer is to submit to this Board a report of his evidentiary findings, with copies to the parties, who may file exceptions to such findings.

DATED: Albany, New York  
March 31, 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-3/31/81
EAST SYRACUSE-MINOA CENTRAL SCHOOL DISTRICT,	:	
Employer,	:	<u>BOARD DECISION</u>
-and-	:	<u>AND ORDER</u>
EAST SYRACUSE-MINOA CLERICAL ASSOCIATION,	:	
NYSUT,	:	<u>CASE NO. C-1994</u>
Petitioner,	:	
-and-	:	
COUNCIL OF NON-INSTRUCTIONAL PERSONNEL,	:	
Intervenor,	:	

RICHARD ROSINSKI, ESQ., for Employer  
FRANK SQUILLACE, ESQ., for Petitioner  
SANDRA CROTTY, for Intervenor

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

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

Both the District and the Council opposed the petition. The Acting Director of Public Employment Practices and Representation (Director) ordered that there be an election among the employees in the "unit of teacher aides and clerical employees". The District filed exceptions to the order of the Director protesting, among other things, that he improperly fragmented the existing negotiating unit. On the record before it, this Board could not determine whether the original recognition of the Council was as representative of a single unit consisting of five groups or of five separate units. Were it the latter, the Acting Director's decision would not have fragmented any existing unit. Were it the former, the existing unit would have been fragmented and the Acting Director would have had to have dealt with the question of whether the existing unit or the proposed unit were more appropriate. Accordingly, we remanded the matter for further proceedings. Upon remand, the Acting Director held a further hearing. The evidence at that hearing did not establish the nature of the original recognition. It did show, however, that from 1968 through 1978, the locus of the more significant negotiations had been at the group level and that, in 1978, it shifted to the Council level.

The Acting Director did not find it necessary to decide whether the original recognition had created one or five units because of his conclusion that clerical employees and teacher aides had been afforded inadequate representation by the Council for the reason that the other four groups comprising the Council gave low priority in the negotiations to the clerical employees and teacher aides. He therefore concluded that the five groups did not constitute a single cohesive unit. Accordingly, even if there had been a single unit, it would be appropriate to fragment that unit by excluding the clerical employees because of an internal conflict of interest as between the clerical employees and teacher aides and the other four groups comprising the Council.

The District and the Council have both filed exceptions to the decision of the Acting Director. They argue that he has misinterpreted the evidence and that the record does not justify fragmentation of the existing unit, which consists of five groups. We have reviewed the evidence and conclude that it supports the determination of the Acting Director.

NOW, THEREFORE, WE AFFIRM the findings of fact and conclusions of law of the Acting Director, and, by reason of the foregoing, we find the appropriate unit to consist of all clerical employees and teacher aides to the exclusion of all other employees, as determined by the Acting Director, and

WE ORDER that an election by secret ballot shall be held among those within the unit who were employed on the payroll date immediately preceding the date of this decision.

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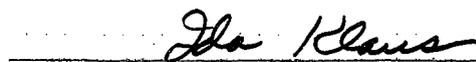
WE FURTHER ORDER that the District submit to the Director, the Council and the Association, an alphabetized list of unit employees within ten days of the receipt of this decision.

If the intervenor desires to participate in the election, it shall so advise the Director, the District and the Association by written notice within ten days of its receipt of this decision. If such notice is not received, the Association may, within ten days thereafter, submit to the Director evidence sufficient to satisfy the requirements of §201.9(g)(1) of the Rules of this Board for certification without an election.

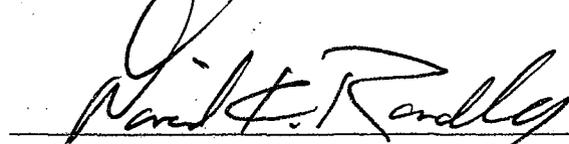
DATED: Albany, New York  
March 31, 1981



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-3/31/81
POLAND CENTRAL SCHOOL DISTRICT,	:	
	:	
Employer,	:	
	:	
-and-	:	<u>BOARD DECISION AND</u>
	:	<u>ORDER</u>
POLAND CENTRAL SCHOOL BUS DRIVERS	:	
ASSOCIATION,	:	
	:	CASE NO. C-2087
Petitioner.	:	

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On June 23, 1980, the Poland Central School Bus Drivers 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 of the Poland Central School District (employer). 1/

On January 20, 1981, the Director of Public Employment Practices and Representation ordered that a secret ballot election be conducted among employees in the following unit:

Included: All full-time and part-time non-instructional employees.

Excluded: Substitute bus drivers and employees who occupy the position of head bus drivers, head mechanic, cafeteria manager, head custodian or superintendent's secretary.

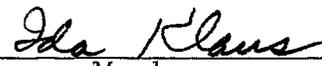
Pursuant to that order, a secret ballot election was held on February 27, 1981. The results of the election indicate that the majority of eligible voters in the unit who cast valid ballots do not desire to be represented for purposes of collective

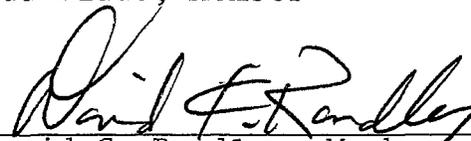
negotiations by the petitioner.<sup>2/</sup>

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

Dated: Albany, New York  
March 31, 1981

  
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Harold R. Newman, Chairman

  
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Ida Klaus, Member

  
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David C. Randles, Member

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<sup>2/</sup> There were 14 ballots cast in favor of and 21 ballots against representation by the petitioner. One challenged ballot was cast but it was not sufficient to affect the results of the election.

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of :  
TOWN OF AMHERST, : #3A-3/31/81  
Employer, :  
- and - :  
AMHERST EMPLOYEES ASSOCIATION, : Case No. C-2051  
Petitioner, :  
- and - :  
AFSCME, COUNCIL 66, LOCAL 1783B, :  
AFL-CIO, :  
Intervenor. :

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that the Amherst Employees Association

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.

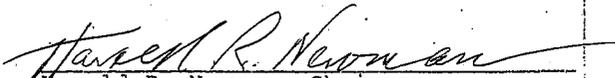
Unit: Included: Laborer, Laborer Foreman, Working Foreman, Sewage Treatment Plant Operator, Sewer Maintenance Man, Senior Maintenance Man, Motor Equipment Operator, Automotive Mechanic and Mason.

Excluded: All other employees.

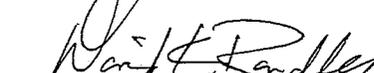
Further, IT IS ORDERED that the above named public employer shall negotiate collectively with the Amherst Employees Association

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 31st day of March, 1981  
Albany, New York

  
Harold R. Newman, Chairman

  
Ida Klaus, Member

  
David C. Randles, Member