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State of New York Public Employment Relations Board Decisions from April 24, 1981

New York State Public Employment Relations Board

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NY, NYS, New York State, PERB, Public Employment Relations Board, board decisions, labor disputes, labor relations

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of	#2A-4/24/81
BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK and UNITED FEDERATION OF TEACHERS, Respondents,	BOARD DECISION AND ORDER
-and-	Case No. U-4387
RICHARD BEHRENS, Charging Party.	

THOMAS A. LIESE, ESQ., for Respondent Board of Education

JAMES R. SANDNER, ESQ., (PAUL H. JANIS, ESQ., of Counsel), for Respondent United Federation of Teachers

MARVIN DATZ, for Charging Party

This matter comes to us on the exceptions of Richard Behrens to a hearing officer's decision dismissing his charge. The charge was dismissed by the hearing officer on October 10, 1980.

During the two weeks following his receipt of the decision, Behrens wrote to the Chairman of this Board and to several members of its staff complaining about the conduct of the hearing officer and alleging that it was prejudicial to him. He was informed by return mail that the only way that the decision of the hearing officer could be reviewed was by his filing of exceptions.[1]

1 Both the Board Counsel and the Deputy Chairman wrote to Behrens on October 20, 1980, and advised him that Section 204.10 of

Notwithstanding these answers, Behrens did not file exceptions by November 3, 1980, the last day on which exceptions could have been timely filed. Neither did he ask for an extension of time during which to file exceptions. Instead he demanded that Counsel to this Board conduct an investigation of the hearing procedure in this case and, on November 21, 1980, he again wrote to the Chairman of the Board, this time saying that he reserved the right to file exceptions after the investigation was completed.

On January 29, 1981, Behrens did file exceptions. The respondent Board of Education has protested the exceptions on the ground that they were late and that no extension of time during which to file exceptions had been granted to Behrens. On February 11, 1981, Behrens responded to this position of the Board of Education, but did not address the issue of timeliness of his exceptions.

We determine that the exceptions herein are not timely.[2] Behrens' demand for an investigation does not excuse the gross untimeliness of the exceptions. Moreover, by demanding an investigation of the hearing process rather than filing exceptions, Behrens has attempted to impose a new procedure upon this Board which is not consistent with its Rules. We find this to be without any warrant or basis in law. Section 204.10 of the Rules of this Board provides an adequate and reasonable basis for reviewing the conduct of a hearing officer. An aggrieved party may not com-

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1 (continued) the Rules of Procedure of this Board specify the manner in which such a complaint may be presented to this Board. A copy of the Rules was sent to him.

2 Westbury Union Free School District, 12 PERB ¶3107 (1979).

pel this Board to apply review procedures of its preference in place of those established by this Board. Accordingly, we decline to conduct the investigation demanded by Behrens, although if timely exceptions had been filed, we would have done so in the course of evaluating those exceptions.

NOW, THEREFORE, WE ORDER that such exceptions be, and they hereby are, dismissed.

Dated, New York, New York
April 24, 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-4/24/81
COPIAGUE UNION FREE SCHOOL DISTRICT, Respondent,	:	BOARD DECISION & ORDER OF REMAND
-and-	:	
COPIAGUE ASSOCIATION OF PRINCIPALS, Charging Party.	:	Case No. U-4297

HENRY A. WEINSTEIN, ESQ., for Respondent

BARATTA & SOLLEDER, ESQS. (GEORGE J. SOLLEDER, JR., ESQ., of Counsel), for Charging Party

The charge by the Copiague Association of Principals (Association) alleges, in part, that the Copiague Union Free School District (District) violated its duty to negotiate in good faith in that it rejected an agreement based upon an issue not previously included in negotiations.

The Association filed an exception to the hearing officer's decision in which it complained that the hearing officer did not deal with this particular charge. We found merit in this exception and remanded the matter to the hearing officer to "take further relevant evidence and resolve the question of the credibility of the conflicting testimony." Copiague UFSD, 13 PERB ¶3081 (1980)

Thereafter, upon her review of the record in the original hearing, the hearing officer determined that there was sufficient evidence for her to make a final determination in the case without taking further evidence. She therefore resolved questions of the credibility of conflicting testimony, and issued a decision dismissing the charge once again.

The matter now comes to us on the exceptions of the Association. It argues, in part, that the hearing officer committed error by failing to follow the Board's instructions to take further evidence. We agree.

NOW, THEREFORE, WE REMAND this matter to the hearing officer for further proceedings in accordance with this decision.

Dated, New York, New York
April 24, 1981

Harold R. Newman
Harold R. Newman, Chairman

Ida Klaus
Ida Klaus, Member

David C. Randles
David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of PEEKSKILL MUNICIPAL HOUSING AUTHORITY, Respondent, -and- PEEKSKILL MUNICIPAL HOUSING AUTHORITY UNIT, LOCAL 860, CIVIL SERVICE EMPLOYEES ASSOCIATION, INC., Charging Party.	#2C-4/24/81 BOARD DECISION AND ORDER CASE NO. U-3768

PETER B. NICKLES, ESQ., for Respondent

GRAE & ROSE, ESQS. (ARTHUR H. GRAE, ESQ. and JAMES M. ROSE, ESQ., of Counsel), for Charging Party

This matter comes to us on the exceptions of the Peekskill Municipal Housing Authority (Authority) to a hearing officer's decision that it violated its duty to negotiate in good faith with the Peekskill Municipal Housing Authority Unit, Local 860, Civil Service Employees Association, Inc. (CSEA) by abolishing a position of maintenance-laborer in order to avoid its obligation to negotiate as to a requirement that the incumbent reside on the Authority's premises.

George Travis, a unit employee, performed janitorial services for the Authority. Although residency on the premises of the Authority was not a specified requirement of his position, Travis did reside at the Authority's Bohlmann Towers apartment building when hired, and later at its Turnkey apartment buildings. Some years later, Travis notified the Authority that he intended

to move into private housing, and the Authority responded that it would consider such a move to be a resignation. Travis, nevertheless, did move and he was informed that the Authority accepted his resignation.

Thereafter, Travis was reinstated when the Authority decided to institute a disciplinary proceeding against him. Among the specifications of the disciplinary charge was an allegation that Travis was "incompetent to perform the duties of [his position] because [he was] not physically present at said site and on call 24 hours per day". The chairman of the Authority, who served as hearing officer, dismissed this part of the disciplinary charge on the basis of his conclusion that residency on the premises had not been made a necessary condition of Travis' employment.[1] Thereafter, the Authority abolished Travis' position and created in its place a new position of "resident maintenance-mechanic".

On these facts, the hearing officer determined that the Authority engaged in an improper unilateral action in violation of its duty to negotiate with CSEA. Acknowledging that the Authority had a right to create a new position with residency on the premises as a qualification of employment, he noted that the imposition upon current employees of a requirement that they reside on the premises is a mandatory subject of negotiation.

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1 The Authority chairman found Travis guilty of violations alleged in other specifications of the charge, but these findings were reversed in court, Travis v. Peekskill Housing Authority, 72 AD2d 818 (Second Dept., 1979).

On the facts before him, the hearing officer concluded that the Authority abolished Travis' position and created another one in order to avoid negotiating with CSEA as to a requirement that current employees reside on the Authority's premises. He further determined that the Authority's unilateral action involving, as it did, the elimination of Travis' position, may have diminished Travis' earnings, and he recommended that Travis be made whole for such losses.

Having reviewed the record and considered the parties' memoranda of law, we affirm the findings of fact and conclusions of law of the hearing officer.[2]

NOW, THEREFORE, WE ORDER the Peekskill Municipal Housing Authority:

1. To cease and desist from requiring Travis or any current employee to reside on its premises as a condition of his continued employment.

2. On demand, to negotiate in good faith with CSEA concerning the imposition of a requirement that current employees reside on its premises.

3. To reinstate Travis to his former position with full back pay and benefits, less earnings from other employment, and with interest at the rate of three percent per annum; and

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2 In its exceptions, the Authority argues that even if there is merit in the charge, Travis should not be reinstated. It asserts that if the decision of the hearing officer is affirmed, it will enter into negotiations with CSEA, the result of which will be an agreement requiring the employee holding the position in question to reside in the Turnkey apartments. Inasmuch as Travis would be unwilling to accept reappointment on such a condition, according to the Authority, the Board should not order that he be reinstated to that position. This proposition of the Authority is too conjectural for us to consider in fashioning an appropriate remedy.

4. To conspicuously post a notice, in the form attached, in all places normally used to communicate with unit employees.

DATED: New York, New York
April 24, 1981

Harold R. Newman

Harold R. Newman, Chairman

Ida Klaus

Ida Klaus, Member

David C. Randles

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: the Peekskill Municipal Housing Authority will:

1. Not require George Travis or any current employee to reside on its premises as a condition of his continued employment.

2. On demand, negotiate in good faith with CSEA concerning the imposition of a requirement that current employees reside on its premises.

3. Reinstate George Travis to his former position with full back pay and benefits, less earnings from other employment, and with interest at the rate of three percent per annum.

....PEEKSKILL MUNICIPAL HOUSING AUTHORITY....
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.

NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of CLARKSTOWN TEACHERS ASSOCIATION, NYSUT, Respondent, upon the Charge of Violation of §210.1 of the Civil Service Law.	#2D-4/24/81 BOARD DECISION AND ORDER CASE NO. D-0205

On December 10, 1980, the Chief Legal Officer of the Clarkstown Central School District filed a charge alleging, as amended by letter dated March 20, 1981, that the Clarkstown Teachers Association, NYSUT (CTA) had violated Civil Service Law (CSL) §210.1 in that it caused, instigated, encouraged, condoned and engaged in an eight day strike against the Clarkstown Central School District (District) for the period commencing October 1, 1980. The charge further alleges that ninety-five per cent of the members of the negotiating unit participated in the strike.

The CTA filed an answer but thereafter agreed to withdraw it, thus admitting to all of the allegations of the charge upon the understanding that the charging party would recommend, and this Board would accept, a penalty for an indefinite suspension of respondent's dues and agency shop fee deduction privileges, if any, with permission to the respondent to apply to this Board one year from the date of this decision for full restoration of such dues deduction and agency shop fee privileges upon fulfillment of the conditions of our order, hereinafter set forth. The charging party has recommended this penalty.

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 furthers the policies of the Act.

WE ORDER that the dues deduction and agency shop fee privileges, if any, of the Clarkstown Teachers Association, NYSUT, be suspended indefinitely, commencing on the first practicable date, provided that it may apply to this Board after the expiration of one year from the date of this order for the full restoration of such privileges. Such application shall be on notice to all interested parties and supported by proof of good faith compliance with subdivision 1 of CSL §210 since the violation herein found, such proof to include, for example, the successful negotiation, without a violation of said subdivision, of a contract covering the employees in the unit affected by the violation and accompanied by an affirmation that it no longer asserts the right to strike against any government as required by the provisions of CSL §210.3(g).

If it becomes necessary to utilize the dues and agency shop fee deduction process for the purpose of paying the whole or any part of a fine imposed by order of a Court as a penalty in a contempt action arising out of the strike herein, the suspension of the dues and agency shop fee deduction privileges ordered hereby may be interrupted or postponed for such period as shall be sufficient to comply

with such order of the Court, whereupon the suspension ordered hereby shall be resumed or initiated as the case may be.

Dated: New York, New York
April 23, 1981

HAROLD R. NEWMAN, Chairman

IDA KLAUS, Member

DAVID C. RANDLES, Member

NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of	#2E-4/24/81
CLARKSTOWN EDUCATIONAL SECRETARIES' ASSOCIATION, NYSUT,	BOARD DECISION AND ORDER
Respondent,	CASE NO. D-0206
upon the Charge of Violation of §210.1 of the Civil Service Law.	

On December 10, 1980, the Chief Legal Officer of the Clarkstown Central School District filed a charge alleging, as amended by letter dated March 20, 1981, that the Clarkstown Educational Secretaries' Association, NYSUT (CESA) had violated Civil Service Law (CSL) §210.1 in that it caused, instigated, encouraged, condoned and engaged in an eight day strike against the Clarkstown Central School District (District) for the period commencing October 1, 1980. The charge further alleges that seventy-five per cent of the members of the negotiating unit participated in the strike.

The CESA filed an answer but thereafter agreed to withdraw it, thus admitting to all of the allegations of the charge upon the understanding that the charging party would recommend, and this Board would accept, a penalty of forfeiture of respondent's dues and agency shop fee deduction privileges, if any, to the extent of 58.33% of the amount otherwise deductible during the 1981-82 school year.[1/] The charging party has recommended this penalty.

1/ This is intended to be the equivalent of a seven month suspension of the privileges of dues and/or agency shop fee deductions, if any, if such were withheld in equal monthly installments throughout the year. In fact the annual dues of CESA are not deducted in equal monthly installments.

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 furthers the policies of the Act.

WE ORDER that the dues deduction and agency shop fee privileges, if any, of the Clarkstown Educational Secretaries' Association, NYSUT, be suspended, commencing on the first practicable date and continuing for such a period as would be required to deduct fifty-eight and thirty-three one hundredths (58.33%) per cent of its annual dues deduction and agency shop fees, if any. Thereafter, no dues or agency shop fees shall be deducted on its behalf by the Clarkstown Central School District until the Clarkstown Educational Secretaries' Association, NYSUT, affirms that it no longer asserts the right to strike against any government as required by the provisions of CSL §210.3(g).

If it becomes necessary to utilize the dues and agency shop fee deduction process for the purpose of paying the whole or any part of a fine imposed by order of a Court as a penalty in a contempt action arising out of the strike herein, the suspension of the dues and agency shop fee deduction privileges ordered hereby may be interrupted or postponed for such period as shall be sufficient to

comply with such order of the Court, whereupon the suspension ordered hereby shall be resumed or initiated as the case may be.

Dated: New York, New York
April 23 , 1981

HAROLD R. NEWMAN, Chairman

IDA KLAUS, Member

DAVID C. RANDLES, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of	:	
SARATOGA-WARREN COUNTIES BOCES,	:	#3A-4/24/81
Employer,	:	
-and-	:	Case No. C-2213
SARATOGA-WARREN COUNTIES BOCES TEACHERS ASSOCIATION,	:	
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 Saratoga-Warren Counties BOCES Teachers 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 non-instructional employees.

Excluded: All professional, certified personnel, administrative and supervisory personnel, Secretaries to the Superintendent, Assistant Superintendent and Business Manager, Account Clerk/Typist, Senior Account Clerk, Business Office Manager, Coordinator for Gifted/Talented, Assistant to Director of Data Center, Director of Data Center, Negotiator/Legal Assistant, Head Custodian.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with Saratoga-Warren Counties BOCES Teachers 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 24th day of April , 1981
New York, New York

Harold R. Newman
Harold R. Newman, Chairman

Ida Klaus
Ida Klaus, Member

David C. Randles
David C. Randles, Member

PERB 58.3

6864

STATE OF NEW YO[illegible]
PUBLIC EMPLOYMENT RELAT[illegible]S BOARD

In the Matter of	:	
COUNTY OF ORANGE AND THE SHERIFF OF THE COUNTY OF ORANGE, Joint Employer,	:	#3B-4/24/81
-and-	:	
ORANGE COUNTY DEPUTY SHERIFF'S ASSOCIATION, Petitioner,	:	Case No. C-2057
-and-	:	
COUNTY EMPLOYEES UNIT, ORANGE COUNTY LOCAL 836, CIVIL SERVICE EMPLOYEES ASSOCIATION, INC., Intervenor.	:	

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

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

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

IT IS HEREBY CERTIFIED that Orange County Deputy Sheriff's 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: All full-time Deputy Sheriffs.

Excluded: Sheriff, Undersheriff, Jail Administrator, Correction Supervisor, Assistant Correction Supervisor, Chief Communications Officer, Chief Transportation Officer, Supervisor of the Civil Division and all other employees.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with Orange County Deputy Sheriff's 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 24th day of April , 1981
New York, New York

Harold R. Newman, Chairman

Ida Klaus, Member

David C. Randles, Member

6865

PERB 58.4

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of	:	
TOWN OF GREECE,	:	#3C-4/24/81
Employer,	:	
-and-	:	
GOLD BADGE CLUB,	:	Case No. C-2084
Petitioner,	:	
-and-	:	
GUMSHOE CLUB PBA OF THE GREECE POLICE BUREAU,	:	
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 GOLD BADGE CLUB

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: precinct commander, lieutenant, sergeant, detective supervisor, detective, youth coordinator and youth officer

Excluded: all other employees

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with the GOLD BADGE CLUB

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 24th day of April , 1981
New York, New York

Harold R. Newman
Harold R. Newman, Chairman

Ida Klaus
Ida Klaus, Member

David C. Randles
David C. Randles, Member

PERB 58.3

6866

STATE OF NEW YOR[illegible]
PUBLIC EMPLOYMENT RELATI[illegible]S BOARD

In the Matter of	:	#3D-4/24/81
COUNTY OF SCHENECTADY AND SHERIFF, Joint Employer,	:	
-and-	:	
SCHENECTADY COUNTY SHERIFF'S BENEVOLENT ASSOCIATION, Petitioner,	:	Case No. C-2064
-and-	:	
SCHENECTADY COUNTY CHAPTER, CIVIL SERVICE EMPLOYEES ASSOCIATION, INC., Intervenor.	:	

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

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

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

IT IS HEREBY CERTIFIED that Schenectady County Sheriff's Benevolent 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: Correction Officer, Correction Lieutenant, Correction Captain, Patrol Officer, Patrol Lieutenant, Dispatcher and Civilian Enforcement Officer (as well as CETA employees holding any of these positions).

Excluded: Sheriff, Under-Sheriff, Major, per diem Court Officer and civilian employees of the Sheriff's Department.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with Schenectady County Sheriff's Benevolent 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 24th day of April, 1981
New York, New York

Harold R. Newman
Harold R. Newman, Chairman

Ida Klaus
Ida Klaus, Member

David C. Randles
David C. Randles, Member

PERB 58.4

6867